May 23, 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, June 6, 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

Regular meeting held May 2, 2011

PUBLIC PARTICIPATION

VISIONING

- Pain Management Clinics
- Draft revisions to alcohol regulations
- Draft special events ordinance

OLD BUSINESS

A. V-3-11: 916 SOUTH RIVERSIDE DRIVE / SMITH
Scott Smith, 916 South Riverside Drive, applicant and property owner, requests the following variances in order to allow a Bed and Breakfast to operate at 916 South Riverside Drive:

1. Variance to waive the requirement to provide 16 on-site parking spaces;
2. Variance to two signs in lieu of the one sign permitted by code; and
3. Variance to allow a 32-square foot sign in lieu of the maximum 10-square foot sign permitted by code.

The subject property is zoned R-2, Single-Family Residential, contains approximately 0.491 acres and is generally located northwest of the intersection of South Riverside Drive and Second Street.

NEW BUSINESS

B. V-4-11: GARY'S TRANSMISSION/539 N DIXIE FWY
Gary A.Zollo, 15 Camino Real Court, Edgewater, Florida, 32132 applicant on behalf of owners Franklin and Carol Stuart, 37935 Burhans Road, Eustis, Florida, 32736, requests a variance to section 801.05E to allow for an outside automobile lift and outside repair of automobiles. The property consists of approximately 0.338 acres, is zoned B-3 Highway Service Business District and is generally located southeast of the intersection of US1 and Ronnoc Lane.

C. V-5-11: LITTLE THEATRE LANDSCAPE BUFFER
Bill Roehrborn, 205 Ocean Drive, New Smyrna Beach, Florida, 32169, applicant on behalf of the property owner, Little Theatre of New Smyrna Beach, Inc., P. O. Box 114, New Smyrna Beach, Florida, 32170-0114, requests a 9-foot landscape buffer variance from the minimum required 25-foot landscape buffer, to allow a 16-foot landscape buffer and fence adjacent to residentially zoned property. The subject property consists of approximately 0.543 acres, is zoned B-2, Neighborhood Business District, and is generally located northeast of the intersection of Horton Street and East 3rd Avenue (SR A1A).

D. SV-2-11: ROYAL STREET / DAHL
Robert Dahl, 802 Magnolia Street, New Smyrna Beach, Florida, 32168, requests vacation of Royal Street, a platted, unopened, 50-foot right-of-way. The subject property measures approximately 50 feet by 633 feet and is located south of Paige Avenue and west of Mission Road.

E. SV-3-11: SAXON DRIVE / MITCHELL
Stewart B. Mitchell, P. O. Box 940579, Maitland, Florida, 32794 requests vacation of an approximately 27' x 300' portion of the west side of Saxon Drive between East 7th Avenue and East 8th Avenue.

F. A-4-11: PLUMB / PAIGE AVENUE
Arthur Kranis and Arthur Plumb, applicants and property owners, request annexation; *Comprehensive Plan* amendment from Volusia County Urban Medium Intensity to City Medium Density Residential; and rezoning from Volusia County R-4, Urban Single-Family to City R-4, Multi-Family Residential. The subject property consists of approximately 0.699 acres and is generally located south of Paige Avenue and west of Mission Road.

G. A-5-11: SECOND AVENUE ANNEXATION
David McCallister, Fire Chief, City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests annexation of an approximately 50' x 290' platted but unopened right-of-way known as Second Avenue. The

subject property is generally located south of Buck Lane, north of Findley Street, east of Old Mission Road and west of the Kmart Shopping Center.

H. CPA-1-10: HOSPITALITY FUTURE LAND USE (MULTI-FAMILY AND COMMERCIAL)
Mark H. Rakowski, AICP, Land Planning Consultant, 822 East 8th Avenue, New Smyrna Beach, Florida, 32169, requests *Comprehensive Plan* amendment to allow non-residential and multi-family residential uses in the Hospitality Future Land Use designation.

I. ZT-08-11: LDR AMENDMENT – SERVICE STATION AMENDMENTS
The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval of an administrative amendment to Section 201.00 of the City's Land Development Regulations to revise the definition of differing types of service stations.

J. ZT-10-11: LDR AMENDMENT – SITE PLAN REGULATIONS
The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval of amendments to the City's *Land Development Regulations* to revise the regulations relating to site plan review and approval.

COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

REPORTS AND COMMUNICATIONS BY THE STAFF

ADJOURNMENT

Respectfully,

Jason McGuirk
Chairperson

cc: Mayor and City Commissioners
City Manager
City Clerk
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

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

ROLL CALL

The following members answered to roll call:
Jesse Clark
Brooks Casey
Travous Dever
Kenneth Bohannon
Jason McGuirk

Laurene Herwald was absent. Marie Bushey had resigned.

Also present were Planning Manager Gail Henrikson, Planner Marissa Moore, Planner Kevin Jameson; Assistant City Attorney Greg McDole and members of the public.

APPROVAL OF MINUTES

Mr. Clark made a motion to approve the minutes of the Planning and Zoning Board meeting held April 4, 2011, and the minutes from the Workshop held March 21, 2011, seconded by Mr. Bohannon. Motion passed on a roll-call vote, 5-0.

Mr. McGuirk stated that he would like to address Item C on the agenda, case V-3-11: 916 South Riverside Drive. He stated that the applicant had requested that this item be continued until the June 6, 2011 Planning and Zoning Board Meeting.

Mr. Dever made a motion to continue case V-3-11: 916 South Riverside Drive until the June 6, 2011 Planning and Zoning Board Meeting, seconded by Mr. Clark. Motion passed unanimously on a roll-call vote, 5-0.

PUBLIC PARTICIPATION
None.

VISIONING
Future Community Redevelopment Agency (CRA) District

Mr. Otte distributed a handout showing the proposed CRA district to the Board members. Mr. Otte stated that the County contribution into the CRA should equal the City contribution and currently the County pays more. Mr. Otte discussed the areas proposed in the new CRA district which included properties on U.S. 1, State Road 44 and properties located within the Historic Westside Neighborhood.

Mr. McGuirk asked whether a business that doesn't pay into CRA because it is exempt, could the business get CRA funds.

Mr. Otte answered yes, for example the hospital was part of the CRA for many years and then it became exempt.

Mr. McGuirk asked whether the old high school site on the North Causeway was included in the proposed CRA district and whether is it taxed.

Mr. Otte stated that it appears to be included and that his understanding is that it is state owned and therefore not taxed.

Mr. McDole stated that churches and non-profit organizations do not pay taxes yet they receive the benefits.

Mr. Clark asked if the Board could get updates to this list after it is reviewed, discussed and fine tuned.

Mr. Otte stated yes.

Mr. Dever stated that after reviewing the map, it appears that the Flagler district would be eliminated.

Mr. Otte stated that the County is interested in regaining all beachside properties in their tax base and is the City. He stated he would not be surprised if it stopped at the end of the North Causeway before the draw bridge.

Mr. Dever stated that he was concerned about eliminating Flagler Avenue from a future CRA district.

Mr. Otte stated that parking on Flagler Avenue is one of the goals to be addressed by City Commission this year and that would be one of the reasons for including it in a new CRA district.

Public Participation
None.

OLD BUSINESS

A. 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.

Ms. Henrikson reviewed the staff report. She stated that she was attempting to pull everything out of the different articles within the *Land Development Regulations* concerning subdivisions and create a separate chapter. She stated that staff was also proposing to eliminate the sketch plat process and change vesting from the preliminary plat stage to the final plat stage. She stated the third largest change being proposed was the way improvements are financed and installed.

Mr. McGuirk asked about the court case regarding Brooksville, Florida.

Mr. McDole summarized the Brooksville case for the Board Members.

There was further discussion amongst the board members regarding the case and the pros and cons of allowing infrastructure improvements to be bonded.

Mr. Casey made the motion to recommend the City Commission approve an administrative 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, seconded by Mr. Bohannon. Motion passed on a roll-call vote, 5-0 with the following two conditions:

1. **Language allowing infrastructure improvements to be bonded in order to record the final plat be included in the ordinance; and**
2. **The preliminary plat procedures be revised to eliminate Planning and Zoning Board review of preliminary plats**

NEW BUSINESS

B. V-2-11: 835 EAST 17TH AVENUES / RILEY

Gerard J. Pendergast, 120 Canal Street, New Smyrna Beach applicant on behalf of property owners John J. and Susan C. Riley, 835 East 17th Avenue, requests a 5-foot front yard setback variance from the required 30-foot front yard setback to preserve existing trees on site. The subject property is zoned R-2, Single Family Residential, contains approximately 0.238 acres and is located on the south side of East 17th Avenue between Saxon Drive and South Atlantic Avenue.

Ms. Moore presented the case. She stated that staff was recommending approval with two conditions. She stated that she had received an email, as well as a phone call, from a resident of New Smyrna Beach, who requested that the email be read in full at the meeting. She read the email, which requested that the variance be denied, to the Board members.

J. Pendergast, 120 Canal Street, New Smyrna Beach, applicant, stated that he was trying to leave the existing plant growth the way it is, which would require a five foot variance in order to pull the house closer to the road.

Public Participation

None.

Mr. Clark asked the applicant about blocking views of neighboring property owners.

Mr. Pendergast stated that he did not feel that it would create any hardship or danger for the neighbors.

Mr. Casey made the motion to recommend the City Commission approve a variance to allow a 5-foot front yard setback variance from the minimum required 30-foot front yard setback, to allow a single-family residence to be constructed 25 feet from the front property line, seconded by Mr. Bohannon. Motion passed on a roll-call vote, 5-0 with the following two conditions:

1. **Tree roots should be cut by hand and treated in an appropriate way (to include treatment and timeframes) according to standards set forth by the International Society of Arboriculture; and**
2. **No roots closer than four (4) feet from the tree are to be cut for construction of the house, including the trench for the footer.**

C. V-3-11: 916 SOUTH RIVERSIDE DRIVE / SMITH

Scott Smith, 916 South Riverside Drive, applicant and property owner, requests the following variances in order to allow a Bed and Breakfast to operate at 916 South Riverside Drive:

1. Variance to waive the requirement to provide 16 on-site parking spaces;
2. Variance to two signs in lieu of the one sign permitted by code; and
3. Variance to allow a 32-square foot sign in lieu of the maximum 10-square foot sign permitted by code.

The subject property is zoned R-2, Single-Family Residential, contains approximately 0.491 acres and is generally located northwest of the intersection of South Riverside Drive and Second Street.

Mr. Dever made a motion to continue the case until the June 6, 2011 Planning and Zoning Board Meeting, seconded by Mr. Clark. Motion passed on a roll-call vote, 5-0.

D. ZT-4-11: DOCK POLICIES

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, request approval of an administrative amendment to the City's *Land Development Regulations* to establish regulations regarding second story decks over boat slips; covered terminal platforms; and docks on vacant property.

Ms. Moore presented the staff report. She stated that staff was recommending some design criteria and building codes that second story decks and covered platforms would have to comply with. She stated that one of the City Commissioners requested that staff review the current regulations that allow boat docks and terminal platforms on properties that do not have a primary structure.

Mr. Casey asked what the concern was for allowing a dock on a parcel that does not have a house yet. He stated he did not understand the reason. He stated that if someone was to spend the money to place a dock on the property, he did not feel that they would let the property get trashed.

Public Participation

Commissioner Plaskett stated that a boat dock is an accessory structure, and typically by definition, the primary structure should be built first or built at the same time the primary structure is being built. She stated that there are other assessory structures that cannot be built such as storage sheds or carports and as an accessory structure, it has to be accessory to a primary structure.

Mr. McGuirk clarified that this affects all accessory structures not just boat docks.

Mr. McGuirk inquired about requiring docks to be perpendicular to the shore.

The Board members and staff discussed setbacks and how docks are constructed.

Mr. Bohannon asked Mr. Pendergast about the aesthetic appeal of the docks.

Mr. Pendergast stated that he felt the boat houses and docks that currently exist are part of the charm.

Chuck Nighswonger, 512 South Riverside Drive, stated that he agrees with Mr. Pendergast, that there was some charm to the docks along the river. He discussed the replacement of his dock which occurred in 2004. He stated that he did not feel there was an issue with second story decks.

Jim Vandergrifft, 210 South Orange Street, stated that Mr. Nighswonger's deck allows a lot of visibility and that his second story dock provides more visibility than if there were a roof. He stated that measuring to the top of the railing is reasonable. He stated he agreed with Ms. Moore's recommendation. He also stated he felt that it was okay to build docks on vacant land.

Commissioner Plaskett stated that she supports the second story flat decks and that it would be better than pitched roofs.

Mr. Bohannon made the motion to recommend the City Commission approve an administrative amendment to the City *Land Development Regulations* to establish regulations regarding second story decks over boat slips and covered terminal platforms, seconded by Mr. Casey. Motion passed on a roll-call vote, 5-0 with the following condition:

1. **Existing provisions in the *Land Development Regulations* allowing docks on vacant land before a primary use is constructed <u>not</u> be deleted from the code.**

E. ZT-7-11: TATTOO PARLOR REGULATIONS

City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, request the approval of an administrative amendment to the City *Land*

Development Regulations to establish regulations regarding the establishment of tattoo parlors within the MU, B-3, and B-5 Zoning Districts.

Mr. Jameson presented the staff report. He stated staff was recommending approval with four conditions:

1. Cannot operate within 300 feet of a church or school
2. Number of chairs would be established at the time of application for a business tax receipt.
3. Minors would not be permitted inside the business during hours of operation.
4. Tattooing areas would not be visible from the public right-of-way.

Mr. McGuirk asked if this type of use would be allowed in the Arts Overlay District.

Ms. Henrikson stated yes.

Mr. Dever stated that there should be a provision in the regulations concerning whether accompanied minors are allowed in the parlor. Mr. Dever asked who regulates that someone under 18 years of age cannot go into a particular establishment even if accompanied by their parent. He asked if this was regulated at the City or State level.

The Board Members discussed further the issue of accompanied minors and deferred to the Florida Statues.

Mr. Bohannon made the motion to recommend the City Commission approve an administrative amendment to the City *Land Development Regulations* to establish regulations regarding the establishment of tattoo parlors within the MU, B-3, and B-5 Zoning Districts, seconded by Mr. Dever. Motion passed on a roll-call vote, 5-0 with the following condition:

1. **Language regarding minors in tattoo parlors be revised to reference Florida Statutes.**

F. <u>CPA-1-11: ENCLAVES #1, 2 and 3</u>

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests the following:

1. *Comprehensive Plan* amendment from Volusia County Environmental System Corridor to City Low-Density Residential; and
2. Rezoning from Volusia County Resource Corridor, to City R-1 – Single-Family Residential.

The subject properties were part of the Joint Planning Agreement between Volusia County and the City, to annex enclave areas within the City's boundaries. The subject properties consist of approximately 8.149 acres and are located on the west side of Sundance Trail, north of Art Center Avenue.

Ms. Moore reviewed the staff report and stated that staff was recommending approval.

Public Participation
None.

Mr. Bohannon made the motion to recommend the City Commission approve:

1. Comprehensive Plan amendment from Volusia County Environmental System Corridor to City Low-Density Residential; and
2. Rezoning from Volusia County Resource Corridor, to City R-1 – Single-Family Residential,

seconded by Mr. Casey. Motion passed on a roll-call vote, 5-0.

Mr. McGuirk stated that it had been requested by an audience member that Item K be moved up on the agenda.

There was no opposition to the request.

K. ZT-6-11: U. S. 1 DEVELOPMENT REGULATIONS
The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval of amendments to the City's *Land Development Regulations*, to revise setback and landscaping requirements along U. S. 1.

Ms. Henrikson summarized the staff report. She stated that the staff was recommending approval.

Mr. McGuirk inquired about the need for front and side buffers.

Ms. Henrikson stated that there would be a required minimum 5 foot buffer on both the front and side property lines.

Mr. Casey asked about the removal of some of the permitted uses.

Mr. Bohannon asked whether the B-3 district encompassed all of US1 within the City limits.

Ms. Henrikson stated that the B-3 zoning district is primarily located on US1. However, there are also some pockets of B-3 zoning on Canal Street west of U.S. 1 and along some portions of State Road 44. She stated that staff was not actually removing permitted uses but rather has replaced some of the uses with a more general description under which the current uses would fall under.

Mr. Clark made the motion to recommend the City Commission approve an administrative amendment to the City's *Land Development* to revise setback and

landscaping requirements along U. S. 1., seconded by Mr. Dever. Motion passed on a roll-call vote, 5-0 with the following condition:

1. Language be added requiring a minimum 5-foot setback from all front and side corner property lines

Mr. McDole recommended that the following cases be consolidated and that the board incorporate them by reference and make a motion based on the written reports. There was no objection by the Board Members and no public participation.

Mr. McGuirk read out all the cases for the record.

G. CPA-2-11: ENCLAVE #5

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests the following:

1. *Comprehensive Plan* amendment from Volusia County Urban Medium Intensity to City Commercial; and
2. Rezoning from Volusia County B-4(C), General Commercial Development District, to City B-3(C), Highway Service Business District (Corridor Overlay Zone).

The subject properties were part of the Joint Planning Agreement between Volusia County and the City, to annex enclave areas within the City's boundaries. The subject properties consist of approximately 1.216 acres and are located on the north side of State Road 44, between Mission Drive/Wallace Road and Eddie Road.

H. CPA-3-11: ENCLAVE #13

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests the following:

1. *Comprehensive Plan* amendment from Volusia County Urban Medium Intensity to City Medium Density Residential; and
2. Rezoning from Volusia County R-4, Urban Single-Family Residential, to City R-3B(C), Single Family Residential District (Corridor Overlay Zone).

The subject property was part of the Joint Planning Agreement between Volusia County and the City, to annex enclave areas within the City's boundaries. The subject property consists of approximately 0.261 acres and is located approximately 650 feet west and 150 feet north of the intersection of Findley Street and Old Mission Road.

I. CPA-4-11: ENCLAVE #4

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests the following:

1. *Comprehensive Plan* amendment from Volusia County Urban Low Intensity to City Low Density Residential; and
2. Rezoning from Volusia County R-1 – Suburban Single-Family Residential and County Rural Residential to City R-1 – Single-Family Residential and City Residential Estate.

The subject properties were part of the Joint Planning Agreement between Volusia County and the City, to annex enclave areas within the City's boundaries. The subject properties consist of approximately 7.231 acres and are located on the west side of South Glencoe Road, between State Road 44 and Wood Creek Lane.

J. CPA-5-11: ENCLAVES #6, 7, 8, 9, 10, 11, 12

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests the following:

1. *Comprehensive Plan* amendment from Volusia County Low Impact Urban to City Low Density Residential; and
2. Rezoning from Volusia County RPUD, Residential Planned Unit Development, to City PUD, Planned Unit Development.

The subject properties were part of the Joint Planning Agreement between Volusia County and the City, to annex enclave areas within the City's boundaries. The subject properties consist of approximately 22.22 acres and are located within the Waterford Estates subdivision, north and east of South Glencoe Road.

Mr. Bohannon made the motion to recommend the City Commission approve all four cases, as recommended by staff. Seconded by Mr. Clark. Motion passed on a roll call vote, 5-0.

REPORTS AND COMMUNICATIONS BY THE BOARD

None.

REPORTS AND COMMUNICATIONS BY THE STAFF

Ms. Henrikson stated that Marie Bushey had submitted a letter of resignation. Ms. Henrikson also reminded the Board of their quarterly workshop scheduled for May 16, 2011.

ADJOURNMENT

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

Interoffice Memorandum
City of New Smyrna Beach

To: Planning and Zoning Board Members

From: Gail Henrikson, AICP, Planning Manager GAH

CC: Sgt. Eugene Griffith, NSBPD

Subject: **PAIN MANAGEMENT CLINICS**

Date: May 21, 2011

In December 2010, staff presented information to the Planning and Zoning Board regarding pain management clinics. A copy of the memo and supporting documentation presented to the Board in December 2010 is attached to this memo. The information was presented to the Board in order to obtain input as to whether the City should consider a moratorium on these types of uses. At that meeting, the consensus of the Board was that the City should take no action. A copy of the relevant portion of the December 2010 Planning and Zoning Board meeting minutes are also attached to this memo.

In June 2010, then-Governor Charlie Christ signed combined Senate Bill 2272, which contained regulations regarding pain management clinics. The bill was to take effect on October 1, 2010. Following the November 2010 election and subsequent installation of the new governor, implementation of the bill was placed on hold while the regulations were reviewed to determine their impact on the businesses that would be regulated and the privacy of persons using prescription drugs. In May 2011, the Legislature passed House Bill 7095. This new bill makes failure to comply with requirements of Chapter 456.44, F.S., grounds for disciplinary action; provides mandatory administrative penalties for certain violations related to prescribing; requires prescriptions for controlled substances to be written on counterfeit-resistant pad produced by approved vendor or electronically prescribed; provides conditions for being approved vendor; requires certain physicians to designate themselves as controlled substance prescribing practitioners on their practitioner profiles, etc. Governor Scott has not yet signed this bill, but is expected to do so.

Despite attempts at state legislation, 11 other municipalities within Volusia County have adopted moratoriums on pain management clinics. Planning staff was recently contacted by police department staff who again raised concerns that if the City does not adopt a moratorium, the City may see a proliferation of pain

management clinics, and associated crime rate increases. Planning staff has requested that a representative from the New Smyrna Beach Police Department be present at the June 6, 2011 Planning and Zoning Board meeting to discuss this topic in further detail.

ACTION STEPS

Staff is requesting input from the Planning and Zoning Board members as to whether the City should adopt a six-month moratorium on pain management clinics. If a moratorium is established, the six month period would be used to draft and adopt regulations for this type of use.

LOCAL PLANNING AGENCY
PLANNING AND ZONING BOARD
MINUTES
December 6, 2010

The Local Planning Agency/Planning and Zoning Board held a regular meeting on Monday, December 6, 2010 in the City Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida. Planning Manager Gail Henrikson called the meeting to order at 6:30 p.m.

ROLL CALL

The following members answered to roll call:
Marie Bushey
Jesse Clark
Brooks Casey
Travous Dever
Laurene Herwald
Kenneth Bohannon

Jason McGuirk was absent.

Also present were Planner Jake Baker; Assistant City Attorney Greg McDole; Recording Secretary Debbie Jenkins and members of the public.

VOTE TO ELECT ACTING CHAIRPERSON

Mr. Bohannon made the motion to elect Jesse Clark as Acting Chairperson for the December 6, 2010 meeting, seconded by Ms. Bushey. Motion passed unanimously on a roll-call vote, 6-0.

APPROVAL OF MINUTES

Mr. Bohannon made the motion to approve the minutes of the regular meeting held November 1, 2010, seconded by Mr. Dever. Motion passed on a roll-call vote, 3-0. Ms. Herwald, Mr. Clark and Ms. Bushey abstained.

PUBLIC PARTICIPATION

None.

VISIONING

PAIN MANAGEMENT CLINICS

Mr. Baker stated that Pain Management Clinics have had little regulation as to how the clinics operate. There have been recent issues in other communities with Pain Management Clinics. Other cities have issued moratoriums in an effort to regulate the

operations of those Pain Management Clinics. Mr. Baker said that the state has adopted regulations to control such clinics but it is being challenged in the courts as unconstitutional. Mr. Baker stated that there are two clinics currently operating in New Smyrna Beach. The first one opened in 1998 and the second opened in 2007. There have been no issues with these Pain Management Clinics.

Mr. Casey stated that he would want to be careful when drafting the language on this. Mr. Casey mentioned Senate Bill 22-72.

Mr. Dever stated that since there are no current issues with the two clinics that are operating perhaps no action is necessary at this time.

Ms. Bushey stated she would like to see if rules could be put in place for just new Pain Management Clinics. She stated concern over the fact that other towns have adopted moratoriums. And that new Pain Management Clinics might start coming to New Smyrna Beach because of those moratoriums.

Ms. Herwald asked if the moratorium would have a time frame.

Ms. Henrikson stated yes, that a moratorium would have to be for a specific period of time and would have to be used to draft regulations for those clinics. It is not something the City could just keep extending.

Mr. McDole stated that the State has implemented new regulations for the Pain Clinics as of October 1st and regardless of the fact that it is being challenged, the City would still have to follow those State regulations.

Mr. Casey stated that he was not in favor of a moratorium.

Ms. Bushey stated she was in favor of a moratorium.

The general consensus of the Board was to not take action on this item at this time.

2011 CALENDARS

Mr. Casey made the motion to approve the 2011 Calendars, seconded by Ms. Bushey. Motion passed unanimously on a roll-call vote, 6-0.

OLD BUSINESS

A. ZT-19-10: LDR AMENDMENT – ILLICIT DISCHARGE

Kyle Fegley, City Engineer, City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, request the approval of an administrative amendment to the City *Land Development Regulations* to establish regulations regarding the discharge of materials such as oil, grease, gasoline, tires, trash and other pollutants into the City's stormwater system.

Saturday, May 21, 2011 | E-Edition : Click for Electronic Edition

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DeLand pursues rules for pain clinics

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STAFF REPORT

May 3, 2011 12:05 AM

Posted in: West Volusia

DELAND -- City leaders agreed to move forward Monday with the development of operating restrictions for new pain management clinics.

Commissioners reviewed several constraints in a proposed ordinance during a meeting Monday night. They did not vote, but instructed staff to pursue developing the ordinance, which will first need to be reviewed by the Planning Board before coming back to the commission for final approval.

City Attorney Darren Elkind said the ordinance may be ready in 60 to 90 days. The local law would require clinics to have sufficient parking and an indoor waiting room to accommodate all patients.

Hours of operation would need to be between 7 a.m. and 6 p.m. Monday through Friday, with no weekend hours. The clinic location would also have to be at least a half mile away from any other pain clinic, and possibly from schools and drug stores.

Flagler County and 11 cities in Volusia County have passed moratoriums on pain clinics opening within their limits. There are roughly 45 clinics registered with the state Health Department in Volusia and Flagler.

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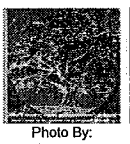
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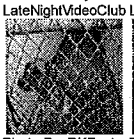
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Interoffice Memorandum

City of New Smyrna Beach

To: Planning and Zoning Board Members
From: Jake Baker, AICP, Planner
Subject: Pain Management Clinics
Date: November 18, 2010

Pain Management Clinics have become a concern for governments at all levels throughout the United States. Recently the Volusia Council of Governments (VCOG) assembled a task force whose mission was to develop strategies to prevent the epidemic of abuse, addiction, overdose and illegal distribution of illegal drugs throughout Volusia County.

The task force studied the activity through June 2010 and discovered that:

- Throughout Volusia County, there were 39 deaths related to Oxycodone in 2009, a 77% increase from 2008
- Volusia County has increased referrals to detox and rehab facilities since 2005 by 14.5 times
- Volusia County has increased the number of pills seized twelve times since 2005, and in the first seven months of 2010 seized over 2,000 pills of Oxycodone

Throughout the State, many counties and cities have issued moratoriums on the approval of new Pain Management Clinics. Further, a new State law took effect October 1, 2010 which limits advertising and cash-only transactions for these types of clinics. However, this law is being challenged in court as unconstitutional. Volusia County Chairman Frank Bruno stated that he would like to see what effect the new State law has before VCOG formally urges member cities to pass Pain Management Clinic moratoriums.

According to information from the Volusia Council of Governments, the State Health Department has approved licenses for eight pain clinics in New Smyrna Beach (see attached list).

Staff has included documents, articles, and reports on the following pages for more information regarding Pain Management Clinics and the potential negative impacts these types of facilities may have on a community.

Recommendation

Staff is requesting input from the Board as to whether new regulations need to be drafted to address this issue.

Application Status for Pain Clinic in Volusia County - Location Order

Clinic	Received	License Status	File #	Status Changed	License #	App. Status	Clinic Owner(s)	Physician License #	Physician Name	Dispensing Physician?	Clinic Practicing Location Addr1	Clinic Prac. Loc. Addr2	Clinic Prac. Loc. City	Clinic Prac. Loc. State	Clinic Prac. Loc. Zip	Clinic Prac. Loc. County
PRC ASSOCIATES, LLC	12/23/09	Approved	76	3/9/10	648	Clear	MALIK, VINOD KUMAR MD	69567	MALIK, VINOD KUMAR MD	Dispensing Practitioner	7401/2 W. PLYMOUTH AVE		DELAND	FL	32720	VOLUSIA
PRC ASSOCIATES, LLC	12/23/09	Approved	76	3/9/10	648	Clear	MALIK, VINOD KUMAR MD	69567	MALIK, VINOD KUMAR MD	Dispensing Practitioner	7401/2 W. PLYMOUTH AVE		DELAND	FL	32720	VOLUSIA
O.R. HUNT M.D.	1/12/10	Approved	811	4/1/10	878	Clear		10281	HUNT, OWEN R JR		121-B PLYMOUTH AVE		DELAND	FL	32720	VOLUSIA
O.R. HUNT M.D.	4/2/10	Deleted	994	4/14/10		Deleted					121 B W. PLYMOUTH AVE		DELAND	FL	32720	VOLUSIA
SSP MEDICINE, INC	12/23/09	Approved	92	12/31/09	45	Clear	KHROMOV, ALEX DAVID	96564	KHROMOV, ALEX DAVID	Dispensing Practitioner	1565 SAXON BLVD	SUITE# 20	DELTONA	FL	32725	VOLUSIA
SSP MEDICINE, INC	12/23/09	Approved	92	12/31/09	45	Clear	KHROMOV, ALEX DAVID	96564	KHROMOV, ALEX DAVID	Dispensing Practitioner	1565 SAXON BLVD	SUITE# 20	DELTONA	FL	32725	VOLUSIA
ALL CARE CHIROPRACTIC AND WELLNESS CENTE	1/5/10	Cancelled	676	4/27/10	Appl In Proc						505 DELTONA BLVD	SUITE 103	DELTONA	FL	32725	VOLUSIA
MOUNTAIN SPINE & ACCIDENT CENTER, LLC	1/15/10	Approved	849	3/1/10	604	Clear	MOUNTAIN, MATTHEW THOMAS	8010	MOUNTAIN, MATTHEW THOMAS		777 DELTONA BLVD	STE 21	DELTONA	FL	32725	VOLUSIA
MOUNTAIN SPINE & ACCIDENT CENTER, LLC	1/15/10	Approved	849	3/1/10	604	Clear	MOUNTAIN, MATTHEW THOMAS	81176	UMPIERRE, ENRIQUE GERARDO	Dispensing Practitioner	777 DELTONA BLVD	STE 21	DELTONA	FL	32725	VOLUSIA
MOUNTAIN SPINE & ACCIDENT CENTER, LLC	1/15/10	Approved	849	3/1/10	604	Clear	MOUNTAIN, MATTHEW THOMAS	81176	UMPIERRE, ENRIQUE GERARDO	Dispensing Practitioner	777 DELTONA BLVD	STE 21	DELTONA	FL	32725	VOLUSIA
CENTRAL FLORIDA PRIMARY PHYSICIANS	3/19/10	Approved	963	3/30/10	862	Clear	VELASCO, ANDRES FELIPE	96936	VELASCO, ANDRES FELIPE	Dispensing Practitioner	1555 SAXON BLVD	STE 302	DELTONA	FL	32725	VOLUSIA
CENTRAL FLORIDA PRIMARY PHYSICIANS	3/19/10	Approved	963	3/30/10	862	Clear	VELASCO, ANDRES FELIPE	96936	VELASCO, ANDRES FELIPE	Dispensing Practitioner	1555 SAXON BLVD	STE 302	DELTONA	FL	32725	VOLUSIA
CENTRAL FLORIDA PRIMARY PHYSICIANS	3/19/10	Approved	963	3/30/10	862	Clear	VELASCO, ANDRES FELIPE	96936	VELASCO, ANDRES FELIPE	Dispensing Practitioner	1555 SAXON BLVD	STE 302	DELTONA	FL	32725	VOLUSIA
AMBULATORY ANESTHESIA PROVIDERS	1/5/10	Approved	573	1/13/10	277	Clear	DUNHAM, ANNE INTOCCIA, LAPHAM, DIANE FRANCES; THOMPSON, DAVID JAMES	74466	DUNHAM, ANNE INTOCCIA		508 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA

Application Status for Pain Clinic in Volusia County - Location Order

Clinic	Received	License Status	File #	Status Changed	License #	App. Status	Clinic Owner(s)	Physician License #	Physician Name	Dispensing Physician?	Clinic Practicing Location Addr1	Clinic Prac. Loc. Addr2	Clinic Prac. Loc. City	Clinic Prac. Loc. State	Clinic Prac. Loc. Zip	Clinic Prac. Loc. County
AMBULATORY ANESTHESIA PROVIDERS	1/5/10	Approved	573	1/13/10	277	Clear	DUNHAM, ANNE INTOCCIA, LAPHAM, DIANE FRANCES, THOMPSON, DAVID JAMES	74466	DUNHAM, ANNE INTOCCIA		508 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
AMBULATORY ANESTHESIA PROVIDERS	1/5/10	Approved	573	1/13/10	277	Clear	DUNHAM, ANNE INTOCCIA, LAPHAM, DIANE FRANCES, THOMPSON, DAVID JAMES	40977	THOMPSON, DAVID JAMES		508 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
AMBULATORY ANESTHESIA PROVIDERS	1/5/10	Approved	573	1/13/10	277	Clear	DUNHAM, ANNE INTOCCIA, LAPHAM, DIANE FRANCES, THOMPSON, DAVID JAMES	37519	LAPHAM, DIANE FRANCES		508 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
M EMADADUL HAQUE, M.D., P.A.	3/17/10	Approved	956	5/4/10	944	Clear	HAQUE, MUHAMMAD EMDADUL, SULTANA, NASREEN	76036	HAQUE, MUHAMMAD EMDADUL		412 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
M EMADADUL HAQUE, M.D., P.A.	3/17/10	Approved	956	5/4/10	944	Clear	HAQUE, MUHAMMAD EMDADUL, SULTANA, NASREEN	76036	HAQUE, MUHAMMAD EMDADUL		412 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
M EMADADUL HAQUE, M.D., P.A.	3/17/10	Approved	956	5/4/10	944	Clear	HAQUE, MUHAMMAD EMDADUL, SULTANA, NASREEN	76036	HAQUE, MUHAMMAD EMDADUL		412 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
M EMADADUL HAQUE, M.D., P.A.	3/17/10	Approved	956	5/4/10	944	Clear	HAQUE, MUHAMMAD EMDADUL, SULTANA, NASREEN		SULTANA, NASREEN		412 PALMETTO STREET		NEW SMYRNA BEACH	FL	32168	VOLUSIA
PRC ASSOCIATES, LLC	12/23/09	Approved	95	3/9/10	651	Clear	MALIK, VINOD KUMAR MD	69567	MALIK, VINOD KUMAR MD	Dispensing Practitioner	2720 REBECCA LANE	SUITE 104	ORANGE CITY	FL	32763	VOLUSIA
PRC ASSOCIATES, LLC	12/23/09	Approved	95	3/9/10	651	Clear	MALIK, VINOD KUMAR MD	69567	MALIK, VINOD KUMAR MD	Dispensing Practitioner	2720 REBECCA LANE	SUITE 104	ORANGE CITY	FL	32763	VOLUSIA
NEW HOPE MINISTRIES OF SANFORD, INC.	6/4/10	Approved	1082	6/17/10	995	Clear	STRINGER, NEIL M	58544	CHAMBERS, RALPH JENNINGS JR	Dispensing Practitioner	2750 ENTERPRISE ROAD		ORANGE CITY	FL	32763	VOLUSIA

RESOLUTION 2010-11

A RESOLUTION OF THE VCOG, INC. GOVERNING BOARD ENCOURAGING VOLUSIA CITIES AND COUNTY TO DECLARE A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF APPLICATION OR THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR THE OPERATION OR "PAIN CLINICS" AND "PAIN MANAGEMENT CLINICS" FOR 180 DAYS OR LONGER.

WHEREAS, VCOG, Inc. a Volusia Council of Governments, was established in January 1970, to develop coordinated plans, programs and policies of mutual interest for all participating jurisdictions in Volusia County; and

WHEREAS, VCOG, Inc. Governing Board consists of representatives from the Cities of Daytona Beach, Daytona Beach Shores, DeBary, DeLand, Deltona, Edgewater, Holly Hill, Lake Helen, New Smyrna Beach, Oak Hill, Orange City, Ormond Beach, Pierson, Ponce Inlet, Port Orange and South Daytona, the County of Volusia and the Volusia County School Board; and

WHEREAS, as a result of illegal prescription drug abuse VCOG is working with over 20 collaborative organizations and created a Substance Abuse Task Force whose mission is to develop strategies to prevent the epidemic of the abuse, addiction, overdose and illegal distribution of prescription drugs; and

WHEREAS, this task force has studied the activity up through June 2010 and found that; Volusia County had 39 deaths related to Oxycodone in 2009, a 77% jump from 2008; Volusia County has increased referrals to detox and rehab facilities since 2005 by 14.5 times; Volusia County increased pills seized twelve times since 2005 and that within the first seven months of 2010 have already seized 2,000 pills in Oxycodone alone; and

WHEREAS, the Cities and County of Volusia have grown from 25 pain clinics and pain management clinics since December 2009 to a total of 38 pain clinics and pain management clinics which is a 65% increase in the number of individuals interested in opening "pain clinics" and "pain management clinics" as a result of southern counties in Florida having placed moratoriums and increased regulations; and

WHEREAS, pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the Cities and County of Volusia are authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the public health, safety and welfare is a legitimate public purpose recognized by the courts of Florida; and

WHEREAS, Florida Statutes, Section 893.055, prescription drug monitoring program that was to go into effect December 2010, has been delayed and that portion of the Statute that went into effect October 1, 2010; that will prohibit dispensing more than 72 hours of controlled substance to cash paying customers; prevent felons and disciplined physicians from owning and operating pain clinics or pain management clinics; and provides greater medical regulatory authority and ability to shut down clinics in violation of the law by the health department; needs to be monitored for a period of time to determine the effect of the new laws and where necessary changes in the existing law needs to occur; and

WHEREAS, over 16 counties and over 30 cities in Florida, including Volusia cities; South Daytona, Port Orange, Ponce Inlet, and Orange City, have enacted moratoria pertaining to pain clinics and pain management

clinics in their jurisdictions, and as a result, the County could become a target for the migration and proliferation of new pain management clinics; and

WHEREAS, on November 19, 2009, the Broward County Grand Jury issued an Interim report entitled "The Proliferation of pain clinics in South Florida" after an Investigation and review of the "Pill Mill" proliferation in South Florida and the effect on Broward County as a major source of Oxycodone, a controlled substance; and

WHEREAS, the Grand Jury found that the number of pain clinics increased from 4 to 176 in two years in South Florida and that 9 million dose units of Oxycodone was dispensed every 6 months; and

WHEREAS, the Grand Jury recommended that the State prescription drug monitoring program be swiftly implemented and adequately funded, as of the time of the Grand Jury report the program had not been funded by the State; and

WHEREAS, the Grand Jury found that in the State of Florida in 2006 there were 2,780 lethal dose reports of prescription drugs, in 2007 there were 3,317 lethal dose reports of prescription drugs, in 2008 there were 3,750 lethal dose reports of prescription drugs and in 2008 an additional 6,286 reports of non-lethal prescription drugs detected in deceased persons that may have been found in combination with other substances to be lethal; and

WHEREAS, the Grand Jury found that burglaries and robberies in the areas where pain clinics and pain management clinics are located have increased; drug trafficking in prescription drugs and street level sales of prescription drugs have increased; and identity theft and organized criminal activities have increased; and

WHEREAS, the Governing Board of VCOG believes that by establishing a 180 day or longer moratorium on the issuance of business tax receipts for "pain clinics" and "pain management clinics", the cities and County of Volusia will have the opportunity to research and study various regulatory options as well as the effects of the present law; and

WHEREAS, the Governing Board of VCOG finds it is in the best interest of the citizens of Volusia County to minimize and control the adverse effects of pain clinics and pain management clinics and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life and preserve property values by adopting appropriate regulations; and

WHEREAS, the Governing Board of VCOG encourages those Cities and the County of Volusia, who have not yet placed a moratorium on pain clinics and pain management clinics in their jurisdiction, do so until appropriate regulations are in place.

NOW, THEREFORE, BE IT ORDAINED BY THE VCOG GOVERNING BOARD:

SECTION 1: Encourages the cities and the County of Volusia to place a 180 day or longer moratorium on the submission, processing and issuance of business tax receipts for the operation of clinics and pain management clinics from its effective date of the ordinance to research the nature and scope of possible measures of mitigation and regulation of pain clinics and pain management clinics.

SECTION 2: This moratorium shall not affect any business currently operating within the cities or County of Volusia pursuant to a validly issued business tax receipt as long as the business and property are in compliance with all applicable, local, County, State and Federal laws.

SECTION 3: Applications for business tax receipts for the operation of pain clinics and pain management clinics received after the date of advertisement of the first reading of the ordinance shall be held in abeyance until the conclusion of the moratorium period.

SECTION 4: Renewal of Business Tax Receipts authorized to renew the business tax receipt of any existing business affected by this moratorium with a valid business tax receipt in the event such receipt expires before the expiration of this moratorium, upon a finding that the business has taken adequate precautions to mitigate the potential for abuse of prescription drugs.

BE IT FURTHER RESOLVED, that this Resolution be spread upon the minutes of this meeting held November 22, 2010.

VCOG, INC.

ATTEST:

MARY J. SWIDERSKI
EXECUTIVE DIRECTOR

ROBERT F. APGAR, CHAIR

ORDINANCE 2011-01

AN ORDINANCE OF THE CITY OF LAKE HELEN, FLORIDA RELATING TO THE IMPOSITION OF A TEMPORARY MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR, OR LAND USE AND BUILDING APPROVALS (DEVELOPMENT ORDERS OR DEVELOPMENT PERMITS) OF, PAIN MANAGEMENT CLINICS UNTIL SEPTEMBER 1, 2011; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR A DEFINITION; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR EXCEPTIONS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INSTRUCTIONS RELATIVE TO CODIFICATION IN THE *CODE OF ORDINANCES OF THE CITY OF LAKE HELEN, FLORIDA* AND PROVIDING FOR AN EFFECTIVE DATE WITH A SUNSET DATE AND A METHOD OF POTENTIAL EXTENSION.

WHEREAS, the City of Lake Helen is vested with home rule authority pursuant to Article VII, Section 2 of the *Constitution of the State of Florida* and Chapter 166, *Florida Statutes*, as well as other controlling law to enact ordinances; and

WHEREAS, there has been a recent proliferation of pain clinics, pain management clinics, and cash only pharmacies throughout the State of Florida all of which are generally known as "pain management clinics"; and

WHEREAS, the Prescription Drug Monitoring Program set forth in Section 893.055, *Florida Statutes*, is currently under regulatory strain and uncertainty and the Florida Legislature is grappling with the issues relating to prescription drug monitoring and related matters and, therefore, there is a current absence of effective regulation of the dispensing of controlled substances and prescriptions for controlled substances for physicians; and

WHEREAS, the United States Department of Health and Human Services has released data showing that prescription drug deaths are now the fourth leading cause of death in the United States, after heart disease, cancer and stroke; and

WHEREAS, various studies and reports have been conducted concerning the proliferation of pain management clinics in Florida, and in 2008, prescription drugs were attributed to an average of nearly 13.5 deaths per day in Florida; and

WHEREAS, reports have found that burglaries and robberies in the areas where pain management clinics are located have increased; drug trafficking in prescription drugs and street level sales of prescription drugs have increased; and identity theft and organized criminal activities have increased; and

WHEREAS, on-site dispensing of prescription drugs requires additional security measures be in place to assure the public health, safety, and welfare; and

WHEREAS, according to a study reported by the *New York Times* in 2008, while 38 other states have prescription drug monitoring programs that track sales, Florida does not, resulting in, according to federal, state and local law enforcement officials, Florida becoming a source of prescription drugs that are illegally sold across the United States; and

WHEREAS, physicians and other persons dispensing prescription drugs through pain clinics, facilities, or office are required under controlling Florida law to register with the Florida Department of Health in order to conduct such businesses; and

WHEREAS, several counties and municipalities in Florida have established moratoria on certain new pain management clinics to curb the immediate negative impacts created by these clinics, such as illegal prescription, drug trafficking and sales

of illegal drugs around the pain management clinics, and loitering in areas surrounding the clinics and the City of Lake Helen recognizes and adopts the findings made by those jurisdictions; and

WHEREAS, the negative impacts associated with certain pain management clinics create an urgent situation necessitating immediate investigation into regulation of pain management clinics in the City; and

WHEREAS, under its home rule authority, the City can pass additional legislation to further regulate pain management clinics as long as these additional regulations are not preempted by Federal or Florida law and are not inconsistent with the statutory provisions; and

WHEREAS, the City of Lake Helen Chief of Police and others have made the City Commission aware of illegal drug use and distribution associated with some pain management clinics which dispense narcotic drugs on site; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with pain management clinics is significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has indicated that it has identical concerns as the City Commission regarding the increased illicit use of pain management clinics by persons obtaining prescription drugs for improper purposes; and

WHEREAS, City staff, and others, are in the process of analyzing the effects of pain management clinics and preparing recommendations which will better promote the health, safety, morals and general welfare of the City; and

WHEREAS, as a result of other jurisdictions in Florida having recently enacted moratoria pertaining to pain management clinics in their jurisdictions, the City of Lake Helen could become a target for the migration and proliferation of new pain management clinics; and

WHEREAS, the City has been advised that the Florida Board of Medicine and Board of Osteopathic Medicine are currently engaged in rulemaking but have not yet been able to effectually adopt and implement the new rules setting forth standards of practice for health care practitioners who practice in privately-owned pain management clinics; and

WHEREAS, the City Commission of the City of Lake Helen has determined that a temporary moratorium on the opening of new pain management clinics will provide interim oversight of the proliferation of these establishments; and

WHEREAS, the City Commission of the City of Lake Helen finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of pain management clinics and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life and preserve property values by adopting appropriate regulations regulating pain management clinics; and

WHEREAS, the City Commission of the City of Lake Helen hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Lake Helen.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Lake Helen, Florida:

SECTION I. LEGISLATIVE FINDINGS. A new section of the *Code of Ordinances of the City of Lake Helen, Florida* is created to read as follows:

(a). The City of Lake Helen has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

(b). The foregoing recitals (whereas clauses) are hereby adopted as the legislative findings of the City Commission of the City of Lake Helen and incorporated into this Ordinance as if set forth *in haec verba*.

SECTION II. DEFINITION OF PAIN MANAGEMENT CLINIC; ADMINISTRATIVE RULES. A new section of the *Code of Ordinances of the City of Lake Helen, Florida* is created to read as follows:

(a). For the purposes of this Ordinance, a *pain management clinic* is a clinic required to be registered with the Department of Health pursuant to Section 458.3265 or Section 459.0137, *Florida Statutes*. A *pain management clinic* is generally defined as:

> All privately owned pain-management clinics, facilities, or offices, which advertise in any medium for any type of pain-management services, or employ a physician or an osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, unless (i) licensed as a facility pursuant to Chapter 395, *Florida Statutes*; (ii) the majority of the physicians who provide services in the clinic primarily provide surgical services; (iii) the clinic is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded $50 million; (iv) the clinic is affiliated with an accredited medical school at which training is

provided for medical students, residents, or fellows; (v) the clinic does not prescribe or dispense controlled substances for the treatment of pain; or (vi) the clinic is owned by a corporate entity exempt from federal taxation under 26, *United States Code*, § 501(c)(3).

(b). The City Administrator is authorized to promulgate any administrative rules that may be necessary to implement the provisions of this Ordinance; provided, however, that the adopted rules shall be reported to the City Commission as soon as practical.

SECTION III. TEMPORARY MORATORIUM UPON PAIN MANAGEMENT CLINICS. A new section of the *Code of Ordinances of the City of Lake Helen, Florida* is created to read as follows:

(a). All activities relating to the acceptance, review and action upon land use, development, and building applications related to a pain management clinic are temporarily suspended in order for the City of Lake Helen, through its officials and staff, to have adequate time and opportunity to conduct a study or studies and comprehensively analyze the adequacy of application criteria, standards, and other approved processes and procedures related to the issuance of said permits within the City of Lake Helen.

(b). Accordingly, there is hereby established and imposed a temporary moratorium on the receipt and/or acting upon applications for any and all land use approvals, building permits and development permits and orders related to pain management clinics until September 1, 2011 in order to permit the City to research the nature and scope of possible measures of mitigation and regulation of pain management clinics.

(c). During the time the temporary moratorium is in effect, the City will not accept any applications or act on any pending applications for any land use approvals, building permits or any development permits or orders for pain management clinics and no pain management clinics shall be permitted within the City.

(d). It is prohibited and unlawful for any person or entity to own or operate a pain management clinic in violation of the moratorium enacted by this Ordinance. Any person or entity owning or operating a pain management clinic in violation of this Ordinance shall be subject to code enforcement activities by the City using any and all legal remedies and processes that are available to the City and the City Administrator is hereby authorized to instruct the City Attorney to file such legal actions and lawsuits as may be appropriate in the judgment of the City Administrator after consultation with the City Attorney.

SECTION IV. EXISTING BUSINESSES. A new section of the *Code of Ordinances of the City of Lake Helen, Florida* is created to read as follows:

This moratorium shall not affect any business lawfully operating within the City pursuant to valid permits and approvals if in compliance with all applicable City, Volusia County, State and Federal laws, codes, ordinances, rules, regulations and policies.

SECTION V. LOCAL BUSINESS TAX; NO LAND USE, BUILDING, DEVELOPMENT OR OTHER APPROVAL UPON PAYMENT. A new section of the *Code of Ordinances of the City of Lake Helen, Florida* is created to read as follows:

The payment of the local business tax and the issuance of a business tax receipt shall not, in any way, be deemed to grant any right or entitlement to any payee of the local business tax such as, but not limited to, any land use, building or development approval. The payment of the tax represents only the payment of a tax and nothing

more. The payment of the tax shall not exempt the payee from any other provision of Federal, State or City law, ordinance, rule, regulation or policy.[1]

SECTION VI. SAVINGS.

The prior actions of the City of Lake Helen relating to the regulation of pain management clinics and the administration of the local business tax are hereby ratified and affirmed.

SECTION VII. CONFLICTS.

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION VIII. SEVERABILITY.

If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION IX. CODIFICATION.

Except for Section 5, the provisions of this Ordinance shall not become and be made a part of the *Code of Ordinances of the City of Lake Helen, Florida*.

[1] See Attorney General Opinion Number AGO 90-25, dated April 3, 1990, to Mr. Randy Ludacer, County Attorney for Monroe County.

SECTION X. EFFECTIVE DATE; SUNSET DATE; POTENTIAL EXTENSION OF TIME.

(a). This Ordinance shall become effective immediately upon enactment by the City Commission.

(b). Except for Section V, this Ordinance shall automatically sunset on September 1, 2011, unless otherwise reaffirmed or amended by the City Commission prior to that date.

(c). Notwithstanding the time limit on the moratorium herein established, in the event the City Commission finds that additional time is needed for staff to conclude its review of the problems associated with pain management clinics within the City and for the drafting of regulations of those businesses, then the term of this Ordinance may be extended by the City Commission for an additional ninety (90) days by resolution.

THIS ORDINANCE DULY PASSED on first reading this 10th day of February. A.D., 2011, by the City Commission of the City of Lake Helen, Florida, at its Regular Meeting duly assembled.

THIS ORDINANCE DULY PASSED AND ADOPTED on final reading this 14th day of April. A.D., 2011, by the City Commission of the City of Lake Helen, Florida, at its Public Hearing duly assembled.

CITY OF LAKE HELEN, FLORIDA

Buddy Snowden, Mayor

ATTEST: _____
Don Findell, City Administrator

APPROVED AS TO FORM AND LEGALITY:

_____
Lonnie N. Groot, City Attorney

STAFF REPORT
MORATORIUM EXTENSION
Pain Management Clinics

REQUEST:	A 180-day extension to the moratorium an additional 180 days on the issuance of development orders, building permits, and zoning approvals for business tax receipts for the operation of pain management clinics within the City of Port Orange.
OWNER/APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	**Approval of an extension to the moratorium**
STAFF CONTACT:	Gwen Perney, Planner (386) 506-5673

PLANNING COMMISSION DATE: April 28th, 2011

The City Council adopted Ordinance No. 2010-37 at the January 18, 2011 meeting. This ordinance enacted a moratorium regarding the issuance of development orders, building permits, and zoning approvals for business tax receipts for the operation of pain management clinics within the City. The moratorium is set to expire on July 18th, 2011.

After the State adopted SB 2272, that became effective October 1, 2010, regulating the registration and inspection of pain management clinics and requiring the creation and maintenance of a database that would track the dispensing of controlled substances and the patients who receive them, there has been debate at the State level whether or not to repeal this bill. Recently there has been a compromise between the factions at the State level regarding those requirements.

House Bill 7095 is the current measure moving forward that would provide more guidance to local municipalities on how pain management clinics will be able to operate. Staff recommends the moratorium be extended for 180 days in order to further research regulations in House Bill 7095 and incorporate them into amendments to the Land Development Code (LDC) and Code of Ordinance. If the moratorium is not extended, pain management clinics would be able to locate within any zoning district that allows medical offices as a permitted use without any special development requirements or submission of any paperwork prior to the issuance of a business tax receipt other than what is currently required for a medical office.

RECOMMENDATION:
Approval of the moratorium extension on the issuance of business tax receipts, building permits, and zoning approvals for the operation of pain management clinics for a period of 180 days, or until such time as regulatory code amendments are adopted.

CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 12/14/10

SUBJECT: **MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS, BUILDING PERMITS AND ZONING APPROVALS FOR BUSINESS TAX RECEIPTS FOR THE OPERATION OF PAIN MANAGEMENT CLINICS IN THE CITY OF PORT ORANGE**

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:
Approval of Ordinance No. 2010-37, Issuing a Moratorium relating to Pain Management Clinics within the City of Port Orange.

SUMMARY:
PLANNING COMMISSION ACTION: October 28, 2010
Recommended **approval** (5-0, Commissioners Barker and Booth, excused) of the moratorium on the issuance of development orders, building permits, and zoning approvals for business tax receipts for the operation of pain management clinics within the City of Port Orange subject to review by the City Attorney as to legal form and content. The moratorium will be in effect for 180 days in which time Staff will further research and propose amendments to the Land Development Code and Code of Ordinances regarding the location of pain management clinics within the City of Port Orange.

ATTACHMENTS: [X] Ordinance [ ] Resolution [ ] Budget Resolution

[ ] Other [ ] Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD		Wayne Clark Community Development Director	Date 12/7/10
FINANCE DEPARTMENT	N/A	Approved as to Budget Requirements	Date
CITY ATTORNEY		Approved as to Form and Legality	Date 12.7.10
CITY MANAGER		Approved Agenda Item For:	

COUNCIL ACTION: [X] Approved as Recommended [ ] Disapproved

[ ] Tabled Indefinitely [ ] Continued to Date Certain [ ] Approved with Modification

ORDINANCE NO. 2010-37

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ESTABLISHING A MORATORIUM RELATING TO THE ISSUANCE OF PERMITS FOR PAIN CLINICS AND PAIN MANAGEMENT CLINICS; MAKING FINDINGS; PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS, BUILDING PERMITS, ZONING APPROVALS AND FOR BUSINESS TAX RECEIPTS FOR PAIN CLINICS AND PAIN MANAGEMENT CLINICS IN THE CITY OF PORT ORANGE; PROVIDING AMENDMENTS AFFECTING THE CITY OF PORT ORANGE CODE OF ORDINANCES AND LAND DEVELOPMENT CODE; PROVIDING FOR THE DURATION OF THE MORATORIUM AND METHOD OF HANDLING APPLICATIONS AND PERMITS DURING OR PRIOR TO THE MORATORIUM; PROVIDING FOR INTERPRETATION; PROVIDING DEFINITIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange regulates the use of land through its Comprehensive Plan and the Land Development Code; and

WHEREAS, the City's Land Development Code provides definitions pertaining to the use and development of land; and

WHEREAS, the City Council has expressed a desire to consider legislation similar to neighboring jurisdictions relating to pain clinics and pain management clinics; and

WHEREAS, the City of Port Orange Land Development Code does not specifically and clearly define or establish standards for the pain clinics and pain management clinics; and

WHEREAS, the City Manager and the members of the City Council have indicated that the City must act to regulate the pain clinics and pain management clinics

within the City, in order to preserve the public health, safety, welfare of the City of Port Orange; and

WHEREAS, Florida Statue, Section 893.055, prescription drug monitoring program has not been implemented by the State of Florida and therefore there is a current absence of regulation for the dispensing of controlled substances and prescriptions for controlled substances for physicians; and

WHEREAS, on November 19, 2009, the Broward county Grand Jury issued and interim report entitled "The Proliferation of Pain Clinics in South Florida" after an investigation and review of the "Pill Mill" proliferation in South Florida and the effect on Broward County as a major source of Oxycodone, a controlled substance; and

WHEREAS, the Grand Jury found that the number of pain clinics increased from 4 to 176 in two years in South Florida and that 9 million dose units of Oxycodone was dispense every 6 months; and

WHEREAS, the Grand Jury recommended that the State prescription drug monitoring program be swiftly implemented and adequately funded; as of the time of the Grand Jury report the program had not been funded by the State; and

WHEREAS, the Grand Jury found that in the State of Florida in 2006 there were 2,780 lethal dose reports of prescription drugs, in 2007 there were 3,317 lethal dose reports of prescription drugs, in 2008 there were 3,750 lethal dose reports of prescription drugs and in 2008 an additional 6,286 reports of non-lethal prescription drugs detected in deceased persons that may have been found in combination with other substances to be lethal; and

WHEREAS, the grand jury found that burglaries and robberies in the areas where pain clinics were located have increased; and identity theft and organized criminal activities have increased; and

WHEREAS, the City Community Development Department believes that additional study for nuisance and cost impacts on the community, businesses and city services is needed in regard to specific amendments to the Code of Ordinances and the Land Development Code relating to the pain clinics and pain management clinics, including but not limited to, the issuance of development orders, building permits, and zoning approvals for business tax receipts pertaining to the pain clinics and pain management clinics within the City; and

WHEREAS, the City Council hereby determines that the amendments which may be proposed are of such gravity that issuing any development orders, building permits and zoning approvals for business tax receipts for pain clinics and pain management clinics would in all probability undermine the recommendations of the Community Development Department for amendments to the Land Development Code; and

WHEREAS, the City needs time to develop and implement amendments to the Code of Ordinances and the Land Development Code; and

WHEREAS, to protect, preserve, and effectuate the public health safety and welfare, the City Council finds that a moratorium on the receipt of applications for and the issuance of any development orders, building permits and zoning approvals for business tax receipts for the pain clinics and pain management clinics is required for a limited duration and until amendments to the Code of Ordinances and the Land Development Code may be made to address the concerns referenced above; and

WHEREAS, the moratorium is required to preserve the status quo for the pain clinics and pain management clinics because applications for the development approval, building permits, other development permits and zoning approvals for business tax receipts for the pain clinics and pain management clinics may have a tendency to increase during the period prior to adoption of any amendments made to the Code of Ordinances and the Land Development Code; and

WHEREAS, the City Council determines this to be so, because property owners may anticipate that existing regulations relating to pain clinics and pain management clinics might be amended to prohibit or further restrict such uses; and

WHEREAS, the City Council also finds that the City can accommodate the public need for the pain clinics and pain management clinics while also preserving the community from harm resulting from processing development orders, building permits and zoning approvals for business tax receipts for the pain clinics and pain management clinics; and

WHEREAS, specific authority for this ordinance includes but is not limited to Public Law No. 104-104, Section 704; Article VIII, Section 2, Florida Constitution of 1968; Chapters 163 and 166, Florida Statutes; Article II, Section 7, Florida Constitution of 1968; and Sections 163.3161, 163.3194, and 163.3201, Florida Statutes; and

WHEREAS, the Planning Commission, sitting as both the Local Planning Agency and the Planning Commission (hereinafter referred to as the "LPA"), has found this ordinance to be consistent with the Comprehensive Plan; and

WHEREAS, the LPA has determined that this ordinance is necessary to promote the economic order of the community by providing an orderly permitting process that will

encourage the proper location and regulation for the pain clinics and pain management clinics; and

WHEREAS, the LPA finds that additional reasons necessary for imposing the moratorium in this ordinance include:

1. Preservation of the status quo in the community to avoid a crisis being created by the impact on abutting properties, property values and community/neighborhood preservation;
2. Preservation of the status quo in the community pending a determination by the City to adopt amendments to the Code of Ordinances and the Land Development Code relating to the pain clinics and pain management clinics;
3. Avoiding the creation of vested rights or nonconforming or inconsistent uses as a result of new permitting systems and regulations;
4. Control of community development during the time period of the development of the Code of Ordinances and the Land Development Code regulations; and
5. Allowing a time period for comprehensive planning to proceed, if applicable; and

WHEREAS, the LPA finds that based on the foregoing reasons for the moratorium established by this ordinance will promote the public health, welfare, safety, aesthetics, and economic order of the community and the region; and

WHEREAS, the LPA has determined that a moratorium of one hundred eighty (180) days in duration is the minimum reasonable period of time needed to study this

issue and determine what, if any, remedial legislation is needed; and

WHEREAS, the City Council hereby adopts the findings of the LPA as its own.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Definition. For the purposes of this ordinance, "pain clinic and "pain management clinic" are defined as follows:

a. any clinic, medical office or medial practitioner's office that is not affiliated with a hospital, hospice or other facility for treatment of terminally ill in Volusia County; and

b. the primary business purpose of such clinic, medical office or medical practitioner's office is to prescribe or dispense to individuals pain medication, identified in Schedules II, III, and IV in Sections 893.03, 893.035, 893.0355, Florida Statutes; or

c. the clinic, medical office or medical practitioner's office, that is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain and not related to cancer, which persists beyond the usual course of the disease or the injury that is the cause of the pain for more than 90 days after surgery.

Section 2. Moratorium Imposed.

a. The Land Development Code and the Code of Ordinances of the City of Port Orange, Florida are hereby amended by placing a moratorium on the issuance of development orders, building permits and zoning approval for business tax receipts for pain clinics and pain management clinics as principal or accessory uses. The moratorium imposed herein shall extend to any and all kinds of development orders, building permits and zoning approvals for business tax receipts that relate to pain clinics and pain management clinics, except as provided in subsection b. For purposes herein, the term, "development order," shall have the same meaning as that set forth in Section 163.3164, Florida Statutes.

b. Applications for issuance of a development order or permit for the pain clinics and pain management clinics shall be considered pursuant to the following requirements:

(1) To protect the due process and other constitutional rights of applicants and the general public, applications submitted prior to the date of enactment of a resolution of intent to declare the moratorium whereupon this ordinance became a pending ordinance, shall be processed in good faith and development orders/permits, building permits and zoning approvals for business tax receipts for such applications may be issued during the pendency of the moratorium.

(2) To protect the due process and other constitutional rights of applicants and the general public, applications received on or after the date of enactment of a resolution of intent to declare the moratorium whereupon this ordinance became a pending ordinance but prior to the date that this ordinance became effective shall be processed in routine fashion without slowing or accelerating review. However, if no final development order/permit, building permit and zoning approval for business tax receipts has been issued before the effective date of this ordinance, such applications shall be subject to the moratorium on the issuance of development orders/permits, building permits and zoning approvals for business tax receipts as set forth in subsections a and b of this section.

(3) Applications received on or after the effective date of this ordinance may be received and reviewed. However, no development order, building permit or zoning approval for business tax receipts shall be issued in violation of the moratorium on the issuance of development orders, building permits and zoning approvals for business tax receipts as set forth in subsections a and b of this section. If amendments to the Comprehensive Plan or the Land Development Code are adopted by the City Council on or

before the expiration of the moratorium that revise the substantive or procedural legal requirements regarding the pain clinics and pain management clinics, any application not approved for issuance of a development order, building permit and zoning approval for business tax receipts and submitted on or after the date of enactment of a resolution of intent to declare the moratorium whereupon this ordinance became pending but before the expiration of the moratorium shall be required to comply with the new substantive or procedural legal requirements.

c. The moratorium imposed by this ordinance shall expire within one hundred eighty (180) days of adoption of this Ordinance by the City Council, or upon the adoption of an ordinance amending the Code of Ordinances and the Land Development Code regarding the permitting of or otherwise regulating the pain clinics and pain management clinics, whichever event shall first occur. The moratorium shall be deemed to be in effect over all of the geographic area of the City now existing or which may be hereafter annexed during the pendency of the moratorium. This ordinance shall be deemed to be pending on the pain clinics and pain management clinics, within the meaning of the term "pending ordinance" as that term is used in Smith v. City of Clearwater, 403 So.2d 407 (Fla. 1981).

d. During the pendency of this moratorium the City Manager and the Community Development Director shall proceed in good faith to undertake a planning study to determine appropriate amendments to development related ordinances, if any.

e. The Community Development Director shall make interpretations of this ordinance.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

_____
MAYOR ALLEN GREEN

ATTEST:

_____
Kenneth W. Parker, City Manager

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
City Attorney

CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 5/17/11

SUBJECT: **MORATORIUM EXTENSION ON THE ISSUANCE OF DEVELOPMENT ORDERS, BUILDING PERMITS AND ZONING APPROVALS FOR BUSINESS TAX RECEIPTS FOR THE OPERATION OF PAIN CLINICS AND PAIN MANAGEMENT CLINICS IN THE CITY OF PORT ORANGE**

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:
Approval of Ordinance No. 2011-8, extending an existing moratorium an additional 180 days on the issuance of Development Orders, Building Permits, and Zoning Approvals for Business Tax Receipts for the operation of Pain Clinics and Pain Management Clinics in the City of Port Orange, as recommended by the Planning Commission.

SUMMARY:
PLANNING COMMISSION ACTION: April 28, 2011
Recommended approval 6-0 of the moratorium extension for a period of 180 days, or until such time as regulatory code amendments are adopted.

The moratorium extension is to provide additional time to further research regulations in House Bill 7095 if it becomes law and other state actions related to these uses and incorporate them into amendments to the Land Development Code (LDC) and Code of Ordinances. The staff report is attached for more information.

ATTACHMENTS: [X] Ordinance [ ] Resolution [ ] Budget Resolution

[ ] Other [ ] Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Wayne Clark Community Development Director	Date 5/6/11
FINANCE DEPARTMENT N/A	Approved as to Budget Requirements	Date
CITY ATTORNEY Asst.	Approved as to Form and Legality	Date 5/6/2011
CITY MANAGER	Approved Agenda Item For:	

COUNCIL ACTION: [ ] Approved as Recommended [ ] Disapproved

[ ] Tabled Indefinitely [ ] Continued to Date Certain [ ] Approved with Modification

ORDINANCE NO. 2011-8

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, EXTENDING AND ESTABLISHING A MORATORIUM RELATING TO THE ISSUANCE OF PERMITS FOR PAIN CLINICS AND PAIN MANAGEMENT CLINICS; MAKING FINDINGS; PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS, BUILDING PERMITS, ZONING APPROVALS AND FOR BUSINESS TAX RECEIPTS FOR PAIN CLINICS AND PAIN MANAGEMENT CLINICS IN THE CITY OF PORT ORANGE; PROVIDING AMENDMENTS AFFECTING THE CITY OF PORT ORANGE CODE OF ORDINANCES AND LAND DEVELOPMENT CODE; PROVIDING FOR THE DURATION OF THE MORATORIUM AND METHOD OF HANDLING APPLICATIONS AND PERMITS DURING OR PRIOR TO THE MORATORIUM; PROVIDING FOR INTERPRETATION; PROVIDING DEFINITIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange regulates the use of land through its Comprehensive Plan and the Land Development Code; and

WHEREAS, the City's Land Development Code provides definitions pertaining to the use and development of land; and

WHEREAS, the City Council has expressed a desire to consider legislation similar to neighboring jurisdictions relating to pain clinics and pain management clinics; and

WHEREAS, the City of Port Orange Land Development Code does not specifically and clearly define or establish standards for the pain clinics and pain management clinics; and

WHEREAS, the City Manager and the members of the City Council have indicated that the City must act to regulate the pain clinics and pain management clinics

within the City, in order to preserve the public health, safety, welfare of the City of Port Orange; and

WHEREAS, on January 18, 2011, the City of Port Orange enacted Ordinance 2010-37 establishing a moratorium on the issuance of Development Orders, Building Permits and Zoning Approvals for Business Tax Receipts for the operation of Pain Management Clinics; and

WHEREAS, Florida Statue, Section 893.055, prescription drug monitoring program has not been implemented by the State of Florida and therefore there is a current absence of regulation for the dispensing of controlled substances and prescriptions for controlled substances for physicians; and

WHEREAS, on November 19, 2009, the Broward county Grand Jury issued and interim report entitled "The Proliferation of Pain Clinics in South Florida" after an investigation and review of the "Pill Mill" proliferation in South Florida and the effect on Broward County as a major source of Oxycodone, a controlled substance; and

WHEREAS, the Grand Jury found that the number of pain clinics increased from 4 to 176 in two years in South Florida and that 9 million dose units of Oxycodone was dispense every 6 months; and

WHEREAS, the Grand Jury recommended that the State prescription drug monitoring program be swiftly implemented and adequately funded; as of the time of the Grand Jury report the program had not been funded by the State; and

WHEREAS, the Grand Jury found that in the State of Florida in 2006 there were 2,780 lethal dose reports of prescription drugs, in 2007 there were 3,317 lethal dose reports of prescription drugs, in 2008 there were 3,750 lethal dose reports of

prescription drugs and in 2008 an additional 6,286 reports of non-lethal prescription drugs detected in deceased persons that may have been found in combination with other substances to be lethal; and

WHEREAS, the grand jury found that burglaries and robberies in the areas where pain clinics were located have increased; and identity theft and organized criminal activities have increased; and

WHEREAS, the City Community Development Department believes that additional study for nuisance and cost impacts on the community, businesses and city services is needed in regard to specific amendments to the Code of Ordinances and the Land Development Code relating to the pain clinics and pain management clinics, including but not limited to, the issuance of development orders, building permits, and zoning approvals for business tax receipts pertaining to the pain clinics and pain management clinics within the City; and

WHEREAS, the City Council hereby determines that the amendments which may be proposed are of such gravity that issuing any development orders, building permits and zoning approvals for business tax receipts for pain clinics and pain management clinics would in all probability undermine the recommendations of the Community Development Department for amendments to the Code of Ordinances and to the Land Development Code; and

WHEREAS, the City needs additional time to develop and implement amendments to the Code of Ordinances and the Land Development Code; and

WHEREAS, to protect, preserve, and effectuate the public health safety and welfare, the City Council finds that a moratorium on the receipt of applications for and

the issuance of any development orders, building permits and zoning approvals for business tax receipts for the pain clinics and pain management clinics is required for a limited duration and until amendments to the Code of Ordinances and the Land Development Code may be made to address the concerns referenced above; and

WHEREAS, the moratorium is required to preserve the status quo for the pain clinics and pain management clinics because applications for the development approval, building permits, other development permits and zoning approvals for business tax receipts for the pain clinics and pain management clinics may have a tendency to increase during the period prior to adoption of any amendments made to the Code of Ordinances and the Land Development Code; and

WHEREAS, the City Council determines this to be so, because property owners may anticipate that existing regulations relating to pain clinics and pain management clinics might be amended to prohibit or further restrict such uses; and

WHEREAS, the City Council also finds that the City can accommodate the public need for the pain clinics and pain management clinics while also preserving the community from harm resulting from processing development orders, building permits and zoning approvals for business tax receipts for the pain clinics and pain management clinics; and

WHEREAS, specific authority for this ordinance includes but is not limited to Public Law No. 104-104, Section 704; Article VIII, Section 2, Florida Constitution of 1968; Chapters 163 and 166, Florida Statutes; Article II, Section 7, Florida Constitution of 1968; and Sections 163.3161, 163.3194, and 163.3201, Florida Statutes; and

WHEREAS, the Planning Commission, sitting as both the Local Planning Agency

and the Planning Commission (hereinafter referred to as the "LPA"), has found this ordinance to be consistent with the Comprehensive Plan; and

WHEREAS, the LPA has determined that this ordinance is necessary to promote the economic order of the community by providing an orderly permitting process that will encourage the proper location and regulation for the pain clinics and pain management clinics; and

WHEREAS, the LPA finds that additional reasons necessary for imposing and extending the moratorium include:

1. Preservation of the status quo in the community to avoid a crisis being created by the impact on abutting properties, property values and community/neighborhood preservation;
2. Preservation of the status quo in the community pending a determination by the City to adopt amendments to the Code of Ordinances and the Land Development Code relating to the pain clinics and pain management clinics;
3. Avoiding the creation of vested rights or nonconforming or inconsistent uses as a result of new permitting systems and regulations;
4. Control of community development during the time period of the development of the Code of Ordinances and the Land Development Code regulations; and
5. Allowing a time period for comprehensive planning to proceed, if applicable; and

WHEREAS, the LPA finds that based on the foregoing reasons for the

moratorium extended and established by this ordinance will promote the public health, welfare, safety, aesthetics, and economic order of the community and the region; and

WHEREAS, the LPA has determined that a moratorium extension of one hundred eighty (180) days in duration is the minimum reasonable additional period of time needed to study this issue and determine what, if any, remedial legislation is needed; and

WHEREAS, the City Council hereby adopts the findings of the LPA as its own.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Definition. For the purposes of this ordinance, "pain clinic and "pain management clinic" are defined as follows:

a. any clinic, medical office or medial practitioner's office that is not affiliated with a hospital, hospice or other facility for treatment of terminally ill in Volusia County; and

b. the primary business purpose of such clinic, medical office or medical practitioner's office is to prescribe or dispense to individuals pain medication, identified in Schedules II, III, and IV in Sections 893.03, 893.035, 893.0355, Florida Statutes; or

c. the clinic, medical office or medical practitioner's office, that is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain

and not related to cancer, which persists beyond the usual course of the disease or the injury that is the cause of the pain for more than 90 days after surgery.

Section 2. Moratorium Imposed and Extended

a. The Land Development Code and the Code of Ordinances of the City of Port Orange, Florida are hereby amended by placing a moratorium on the issuance of development orders, building permits and zoning approval for business tax receipts for pain clinics and pain management clinics as principal or accessory uses. The moratorium imposed herein shall extend to any and all kinds of development orders, building permits and zoning approvals for business tax receipts that relate to pain clinics and pain management clinics, except as provided in subsection b. For purposes herein, the term, "development order," shall have the same meaning as that set forth in Section 163.3164, Florida Statutes.

b. Applications for issuance of a development order or permit for the pain clinics and pain management clinics shall be considered pursuant to the following requirements:

(1) To protect the due process and other constitutional rights of applicants and the general public, applications submitted prior to the date of enactment of a resolution of intent to declare the moratorium whereupon this ordinance became a pending ordinance, shall be processed in good faith and

development orders/permits, building permits and zoning approvals for business tax receipts for such applications may be issued during the pendency of the moratorium.

(2) To protect the due process and other constitutional rights of applicants and the general public, applications received on or after the date of enactment of a resolution of intent to declare the moratorium whereupon this ordinance became a pending ordinance but prior to the date that this ordinance became effective shall be processed in routine fashion without slowing or accelerating review. However, if no final development order/permit, building permit and zoning approval for business tax receipts has been issued before the effective date of this ordinance, such applications shall be subject to the moratorium on the issuance of development orders/permits, building permits and zoning approvals for business tax receipts as set forth in subsections a and b of this section.

(3) Applications received on or after the effective date of this ordinance may be received and reviewed. However, no development order, building permit or zoning approval for business tax receipts shall be issued in violation of the moratorium on the issuance of development orders, building permits and zoning approvals for business tax receipts as

set forth in subsections a and b of this section. If amendments to the Comprehensive Plan or the Land Development Code are adopted by the City Council on or before the expiration of the moratorium that revise the substantive or procedural legal requirements regarding the pain clinics and pain management clinics, any application not approved for issuance of a development order, building permit and zoning approval for business tax receipts and submitted on or after the date of enactment of a resolution of intent to declare the moratorium whereupon this ordinance became pending but before the expiration of the moratorium shall be required to comply with the new substantive or procedural legal requirements.

c. The moratorium imposed and extended by this ordinance shall expire one hundred eighty (180) days after the expiration date of July 18, 2011 established in Ordinance 2010-37, or upon the adoption of an ordinance amending the Code of Ordinances and the Land Development Code regarding the permitting of or otherwise regulating the pain clinics and pain management clinics, whichever event shall first occur. The moratorium shall be deemed to be in effect over all of the geographic area of the City now existing or which may be hereafter annexed during the pendency of the moratorium. This ordinance shall be deemed to be pending on the pain clinics and pain management clinics, within the

meaning of the term "pending ordinance" as that term is used in Smith v. City of Clearwater, 403 So.2d 407 (Fla. 1981).

d. During the pendency of this moratorium the City Manager and the Community Development Director shall proceed in good faith to undertake a planning study to determine appropriate amendments to development related ordinances, if any.

e. The Community Development Director shall make interpretations of this ordinance.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

_____
MAYOR ALLEN GREEN

ATTEST:

_____
Kenneth W. Parker, City Manager

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
City Attorney

STAFF REPORT
MORATORIUM
Pain Management Clinics
City of Port Orange, applicant

REQUEST: To establish a 180-day moratorium on the issuance of business tax receipts for pain management clinics within the City of Port Orange.

OWNER/APPLICANT: City of Port Orange

STAFF RECOMMENDATION: **Approval**

STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

PLANNING COMMISSION DATE: October 28th, 2010

BACKGROUND:

Over the past year, cities within the State of Florida have established moratoriums on the application of new pain management clinics within their jurisdictions. Pain management clinics, or "pill mills," in other cities have become locations for criminal activity. At these clinics, doctors prescribe and dispense painkillers such as oxycodone, which has been proven to be addictive and cause habitual abuse and drug-seeking behavior. According to the 2010 Florida Medical Examiners Commission Drug Report, in the year 2009, oxycodone was the cause of 1,185 deaths in Florida. Thirty-nine of those oxycodone deaths were in Volusia County.

The first State law (SB 462) requiring the registry of pain management clinics with the State Health Department became effective July 1, 2009, but the creation of the database has remained unfunded and will not be in service until December 1, 2010. Further laws regarding the regulation of the ownership and management of pain clinics, who may practice at the clinics, and penalties for operating an unregistered clinic (SB 2272) have an effective date of October 1, 2010. Some of the requirements set forth by SB 2272 have been under review since its adoption in June 2010.

DISCUSSION:

City staff has expressed concern with the possibility of "pill mills" under the guise of legitimate pain management clinics or doctor's offices seeking to operate in Port Orange due to the current lack of more restrictive requirements than are established in other surrounding cities. There are pain management clinics already established within the city that have acquired business tax receipts for the operation of their business as a "medical office." Currently medical offices are allowed as permitted uses within the Professional Office, Community Commercial, Highway Commercial, Interchange Commercial Development, Ridgewood Development, and many Planned Commercial Development zoning districts without any special development requirements such as separation from other uses and buffering.

The concern with pain management clinics relates specifically to other activities (commonly referred to as "secondary effects") which have been observed around pain

The concern with pain management clinics relates specifically to other activities (commonly referred to as "secondary effects") which have been observed around pain clinics in other cities, and the effects they have on surrounding properties. It has been observed in South Florida and the Tampa area that the operation of pain clinics without restrictions may expose the surrounding neighborhood to illegal, unsafe or unhealthy activities such as sale and possession of controlled substances, panhandling, loitering, solicitation, and violent crimes against persons and property. The operation of such businesses may also blight neighborhoods, adversely affect neighboring businesses, and lower real property values.

Staff proposes establishing a moratorium for 180 days in order to further research the state regulations, any regulatory ordinances that have been proposed or adopted in surrounding cities, and various regulatory options. Any future LDC or Code of Ordinances amendments regarding pain management clinics will establish criteria for their location within certain zoning districts and operating requirements.

RECOMMENDATION:

Staff recommends **approval** of the moratorium on the issuance of business tax receipts for pain management clinics for a period of 180 days.

Order Confirmation

Ad Order Number	Customer	Payor Customer	PO Number
0000912561	CITY OF PORT ORANGE	CITY OF PORT ORANGE	061348 R. FENWICK
Sales Rep.	**Customer Account**	**Payor Account**	**Ordered By**
0098	002715	002715	ROBIN FENWICK
Order Taker	**Customer Address**	**Payor Address**	**Customer Fax**
0098	ATTN CITY CLERK SHIRLEY KELLY,1000 C PORT ORANGE FL 32129 USA	ATTN CITY CLERK SHIRLEY KELLY,1000 C PORT ORANGE FL 32129 USA	(386)756-5290
Order Source			**Customer EMail**
Phone	**Customer Phone**	**Payor Phone**	skelly@port-orange.org
Current Queue	(386)756-5219	(386)756-5219	**Special Pricing**
Ready			None

Tear Sheets	Proofs	Affidavits	Blind Box	Promo Type	Materials
2	0	0			

Invoice Text
PUBLIC NOTICE 2010-28-36-37-38

Ad Order Notes
CLS LEGAL LINER

Net Amount	Tax Amount	Total Amount	Payment Method	Payment Amount	Amount Due
$387.37	$0.00	$387.37		$0.00	$387.37

Ad Number	Ad Type	Ad Size	Color	Production Method	Production Notes
0000912561-0	CLS Legal	: 1.0 X 132 cl	<NONE>	Internal	

External Ad Number	Ad Attributes	Ad Released	Pick Up
		No	

Product Information Run Schedule Invoice Text	Placement/Classification Sort Text	Run Dates	# Inserts	Cost
News-Journal: :	CLS Legal	1/7/2011	1	$387.37
NOTICE The City Council of the City of Pc	NOTICETHECITYCOUNCILOFTHECITY(			
WV Edition: :	CLS Legal	1/7/2011	1	$0.00
NOTICE The City Council of the City of P	NOTICETHECITYCOUNCILOFTHECITY(			

Ck paper on 1/7/11 for ad. ad ran as required. Fenwick

ORDINANCE NO. 2010-O-19

AN EMERGENCY ORDINANCE OF THE CITY OF EDGEWATER, FLORIDA, DECLARING A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION OR PETITION FOR THE ESTABLISHMENT OF "PAIN CLINICS" AND "PAIN MANAGEMENT CLINICS" FOR A PERIOD OF ONE (1) YEAR; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING FOR AN EFFECTIVE DATE AND ADOPTION.

WHEREAS, the City Council of the City of Edgewater, Florida, has made the following determinations:

1. Pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City of Edgewater is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law.

2. The public health, safety and welfare is a legitimate public purpose of the City of Edgewater.

3. The City of Edgewater is concerned about an increase in the number of individuals interested in opening "pain clinics" and "pain management clinics" in the City.

4. On November 19, 2009, the Broward County Grand Jury issued an interim report entitled "The Proliferation of Pain Clinics in South Florida" after an investigation and review of the "Pill Mill" proliferation in South Florida and the effect on Broward County as a major source of Oxycodone, a controlled substance.

~~Strike through~~ passages are deleted.
Underlined passages are added.

11. The Florida Legislature in 2010 passed Senate Bill 2272 to provide more regulatory control over pain management clinics via amendments to Section 893.055, Florida Statutes, known as "Prescription Drug Monitoring Program."

12. The regulations as contained in Senate Bill 2272 regulating pain clinics will not take full effect until December 1, 2010.

13. Chapter 2009-198, Laws of Florida, recognizes mismanaged or fraudulently maintained pain clinics can inflict incalculable damages to local communities and the state as a whole in the form of lost lives, increased crime, human misery from addiction, ballooning health care costs and Medicare fraud.

14. The City Council desires the opportunity to review its codes and Senate Bill 2272 to determine the effectiveness of such regulations and whether amendments should be made to the City's codes and regulations to address public health, safety and welfare concerns associated with the opening of pain management clinics.

15. The City Council hereby directs its staff to analyze the effects and potential effects of pain management clinics in the City to determine whether additional standards to the City's land development regulations are necessary to maintain public health, safety and welfare.

16. The City Council hereby directs its staff to evaluate the process for the issuance of development permits, business licenses or other approvals regulating the sanctioning of pain management clinics within the City to determine whether changes are necessary to assure public health, safety and welfare are not jeopardized by the opening of pain management clinics.

17. To provide the City staff with sufficient time to complete the analyses directed herein, it is necessary to declare a moratorium on the filing and/or receiving of applications or petitions for the establishment of pain management clinics.

~~Strike through~~ passages are deleted.
Underlined passages are added.

SECTION 2. MORATORIUM.

A moratorium on the submission, processing and issuance of business tax receipts, certificates of use, development permits, development orders or other permits or approvals for the operation of pain clinics and pain management clinics, as defined herein, is hereby established for a period of one (1) year from the effective date of this ordinance to research the nature and scope of possible measures of mitigation and regulation of pain clinics and pain management clinics.

SECTION 3. EXISTING BUSINESSES.

This moratorium shall not affect any business currently operating within the City of Edgewater pursuant to a validly issued business tax receipt and certificate of use as long as the business and property are in compliance with all applicable, local, county, state and federal laws.

SECTION 4. NEW BUSINESSES.

Applications for business tax receipts, certificates of use, development permits, development orders or other permits for approvals for the operation of pain clinics and pain management clinics, as defined herein, received after the date of advertisement of the reading of this ordinance shall be held in abeyance until the conclusion of the moratorium period.

SECTION 5. RENEWALS.

The Director of Development Services, or his designee, is authorized to renew the business tax receipt, certificate of use, development permit, development order or other permit or approval of any existing business affected by this moratorium in the event of expiration before the conclusion of this moratorium, upon a finding that the business has taken adequate precautions to mitigate the potential for abuse of prescription drugs.

~~Strike through~~ passages are deleted.
Underlined passages are added.

SECTION 9. ADOPTION.

After Motion to approve by Councilman Cooper and Second by Councilwoman Rhodes, the vote on the first reading of this ordinance held on August 16, 2010, was as follows:

	AYE	NAY
Mayor Mike Thomas	X	
Councilwoman Debra J. Rogers	Absent	
Councilwoman Gigi Bennington	X	
Councilwoman Harriet B. Rhodes	X	
Councilman Ted Cooper	X	

PASSED AND DULY ADOPTED this 16th day of August, 2010.

ATTEST:

Bonnie Wenzel

Bonnie Wenzel
City Clerk

CITY COUNCIL OF THE
CITY OF EDGEWATER, FLORIDA

By: Mike Thomas

Mike Thomas
Mayor

Robin L. Matusick

Robin L. Matusick
Paralegal

For the use and reliance only by the City of Edgewater, Florida. Approved as to form and legality by: Carolyn S. Ansay, Esquire City Attorney Doran, Sims, Wolfe, Ansay, Kundid & Birch	Approved by the City Council of the City of Edgewater at a meeting held on this 16th day of August, 2010 under Agenda Item No. 8-f.

~~Strike through~~ passages are deleted.
Underlined passages are added.

#2010-O-19

Interoffice Memorandum
City of New Smyrna Beach

To: Planning and Zoning Board Members

From: Gail Henrikson, AICP, Planning Manager

Subject: **PROPOSED REVISIONS TO CITY ALCOHOL REGULATIONS**

Date: May 21, 2011

BACKGROUND

At the April 4, 2011 Planning and Zoning Board meeting, staff asked for a consensus of the Board members as to whether changes should be considered to the City's regulations regarding the sale of alcoholic beverages. Staff presented various examples of times when the existing regulations create conflicts that may prevent desired businesses from opening. The consensus of the Board was that changes were needed and that staff should present a draft of the proposed changes at the June Planning and Zoning Board meeting. A copy of the April 4, 2011 meeting minutes are attached to this memo. A copy of the April 4, 2011 memo is also attached.

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.

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.

Staff has prepared a draft of suggested revisions to the City's alcohol regulations. In preparing the draft revisions, staff reviewed ordinances in DeLand, Daytona Beach, Daytona Beach Shores, Deltona, Ormond Beach and Port Orange. As far as staff was able to determine, the cities of DeLand, Deltona and Port Orange do not have distance requirements between businesses selling alcoholic beverages. The City of Daytona Beach requires a 500-foot separate between businesses selling alcoholic beverages but, only within certain zoning districts. Daytona Beach Shores does not specify a minimum separation between businesses but only allows the sale of alcoholic beverages within certain zoning districts. Bars are not permitted within redevelopment areas in Daytona Beach Shores but package stores and restaurants serving alcohol are permitted. Ormond Beach has a 1,000-foot separate between bars, nightclubs and lounges, unless the bar or lounge is located within a hotel or motel that has 100 rooms or more. Additional parking is required for the bar or lounge.

The changes proposed by staff are summarized below:

Chapter 10, Code of Ordinances

- Add the City Commission as one of the entities that may approve consumption of alcohol at special events on publicly owned properties. The City Commission currently approves special events that involve street closures or the use of public properties. The proposed change would only codify existing practices.

Sections 801.03 and 801.04, Land Development Regulations

- Eliminate all distance requirements between businesses selling alcohol for consumption on premises, except for businesses licensed as bars, nightclubs or lounges, as defined by Florida Statutes. The 1,000-foot distance requirement would remain in effect for bars, nightclubs and lounges. Staff is proposing to retain the distance requirement between bars, nightclubs and lounges as these types of establishments generally have longer business hours than restaurants and may generate more noise than restaurants that serve alcohol. Additionally, because one of the primary purposes of a bar, nightclub or lounge is to serve alcohol, eliminating all controls on location may result in an increase of drunken driving incidents, public intoxication citations, drunk and disorderly citations and other types of misdemeanor activity.

- Add an exemption to the 1,000-foot distance requirement for bars, nightclubs or lounges associated with a state-licensed hotel or motel containing a minimum of 100 rooms.
- Eliminate the requirement for a certified survey to determine the distance between bars, nightclubs and lounges.
- Eliminate the distance requirements between package stores.

Article II, Land Development Regulations

- Revise the definition of "bar" to eliminate language that classifies any establishment that advertises alcoholic beverages as a bar.
- Revise the definition of "bar" to state that the definition also includes the word "lounge".

ACTION STEPS

Staff has forwarded a copy of the proposed revisions to the New Smyrna Beach Police Department, Chamber of Commerce, Flagler Avenue Merchants and Canal Street Historic District representatives for review and comment. Staff is requesting input from the business community and the Planning and Zoning Board on the proposed changes. Based upon input received at the June 6, 2011 board meeting, staff will incorporate any desired changes and bring the final draft back for Board action at the July 11, 2011 meeting.

PROPOSED CHANGES
CHAPTER 10, NEW SMYRNA BEACH CODE OF ORDINANCES

Sec. 10-1. - Definitions.
The city adopts by reference the definitions set out in F.S. § 561.01.
(Code 1975, § 5-1)
Cross reference— 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 reference— 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 reference— 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 <u>and/or the city commission</u> 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)

PROPOSED REVISIONS TO SECTIONS 801.03 AND SECTION 801.04 OF THE CITY'S *LAND DEVELOPMENT REGULATIONS*

801.03 Distance Requirements for ~~Places of Business Where Alcoholic Beverages are Served to Customers for Consumption on the Premises~~ Bars, Nightclubs and Lounges.

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 aforedescribed separation requirement. Ord. 19-92.~~

No bar, nightclub, or lounge, as defined in this Code, shall be located within 1,000 feet of an existing bar, nightclub or lounge, except when part of a hotel or motel having 100 or more rooms. Said hotel must be licensed by the Florida Department of Business and Professional Regualtion.

~~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 bar, nightclub or lounge ~~place of business where alcoholic beverages are to be sold to customers for consumption on the premises,~~ and a bar, nightclub or lounge ~~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;~~

~~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.~~

C~~D~~. Existing Conditions.

~~Places of business where alcoholic beverages are sold to customers for consumption on the premises~~ Bars, nightclubs and lounges 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 aforedescribed 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.~~

PROPOSED REVISIONS TO ARTICLE II, LAND DEVELOPMENT REGULATIONS

ARTICLE II
DEFINITIONS

***

Ballpark: A field with or without spectator seats or player seats in which baseball, softball, football, soccer, rugby, lacrosse, polo, field hockey, or any other field sport is played.

Bar: Any place devoted primarily to the retailing and drinking of malt, vinous or other alcoholic beverages~~, or any place where any sign is exhibited or displayed indicating that alcoholic beverages are obtainable for consumption on the premises~~. The word "bar" should include the words "saloon", "tavern", "pub", "lounge" and "bar room".

Beach: That area of unconsolidated material along the Atlantic Ocean that extends landward form the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation *usually the effective limit of storm waves).

***

Select Year: 2010 Go

The 2010 Florida Statutes(including Special Session A)

Title XXXIV
ALCOHOLIC BEVERAGES AND TOBACCO

Chapter 562
BEVERAGE LAW: ENFORCEMENT

View Entire Chapter

562.14 Regulating the time for sale of alcoholic and intoxicating beverages; prohibiting use of licensed premises.—

(1) Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division between the hours of midnight and 7 a.m. of the following day. This section shall not apply to railroads selling only to passengers for consumption on railroad cars.

(2) Except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor's licensed premises and whose principal business is the sale of alcoholic beverages, shall allow the licensed premises, as defined in s. 561.01(11), to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited. However, this prohibition shall not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to this subsection, shall be construed to apply to a theme park complex as defined in s. 565.02(6) or an entertainment/resort complex as defined in s. 561.01(18).

(3) The division shall not be responsible for the enforcement of the hours of sale established by county or municipal ordinance.

(4) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; ss. 1-4, ch. 21944, 1943; s. 1, ch. 22605, 1945; s. 16, ch. 23746, 1947; s. 1, ch. 57-327; ss. 16, 35, ch. 69-106; s. 566, ch. 71-136; s. 2, ch. 72-230; s. 21, ch. 79-11; s. 3, ch. 97-165.

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Select Year: 2010 Go

The 2010 Florida Statutes(including Special Session A)

Title XXXIV
ALCOHOLIC BEVERAGES AND TOBACCO

Chapter 565
LIQUOR

View Entire Chapter

CHAPTER 565
LIQUOR

565.01 Definition; liquor.
565.02 License fees; vendors; clubs; caterers; and others.
565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers.
565.04 Package store restrictions.
565.045 Regulations for consumption on premises; penalty; exemptions.
565.05 Purchase of distilled spirits by licensed clubs; size of individual containers.
565.06 Clubs to sell only individual drinks.
565.07 Sale or consumption of certain distilled spirits prohibited.
565.08 Labeling regulations; liquor.
565.095 Licensure as primary American source of supply.
565.10 Distilled spirits container limit.
565.11 Refilling liquor bottles; misrepresentation; penalty.
565.12 Excise tax on liquors and beverages.
565.13 Monthly payment of tax by distributor.
565.16 Beverage lists furnished to vendors.
565.17 Beverage tastings by distributors and vendors.

565.01 Definition; liquor.—The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

History.—s. 5, ch. 72-230; s. 14, ch. 86-269.
Note.—Former s. 561.01(6).

565.02 License fees; vendors; clubs; caterers; and others.—

(1) The following state license taxes apply to vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content:

(a) A vendor operating a place of business where beverages are sold only in sealed containers for consumption off the premises where sold shall pay an amount equal to 75 percent of the amount of the license tax for vendors in the same county as provided in paragraphs (b), (c), (d), (e), and (f).

(b) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $1,820.

(c) A vendor operating a place of business where consumption on the premises is permitted in a county having a population over 75,000 and not over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $1,560.

(d) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 50,000 and not over 75,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $1,300.

(e) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 25,000 and not over 50,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $858.

(f) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of 25,000 or less, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $624.

(g) A vendor operating a place of business where consumption on the premises is permitted and which has more than three separate rooms or enclosures in which permanent bars or counters are located from which alcoholic beverages are served for consumption on the licensed premises shall pay, in addition to the license tax imposed in paragraphs (b)-(f), $1,000. However, such permanent bars or counters do not include service bars not accessible to the public or portable or temporary bars being used for a single occasion or event. A golf club licenseholder may operate service bars or portable or temporary bars on the grounds contiguous to its licensed premises and shall pay $100 for a certified copy of the club license, which shall be posted on the bar. The area contiguous to the licensed premises shall be considered an extension of the licensed premises upon payment of the fee, posting of the certified copy of the license, and notation of such extension upon the sketch accompanying the original license application.

(2) Any operator of railroads or sleeping cars in this state may obtain a license to sell the beverages mentioned in the Beverage Law on passenger trains upon the payment of an annual license tax of $2,500, the tax to be paid to the division. Such license shall authorize the holder thereof to keep for sale and sell all beverages mentioned in the Beverage Law upon any dining, club, parlor, buffet, or observation car operated by it in this state, but such beverages may be sold only to passengers upon the cars and must be served for consumption thereon. It is unlawful for such licensees to purchase or sell any liquor except in miniature bottles of not more than 2 ounces. Every such license shall be good throughout the state.

No license shall be required, or tax levied by any municipality or county, for the privilege of selling such beverages for consumption in such cars. Such beverages shall be sold only on cars in which are posted certified copies of the licenses issued to such operator. Such certified copies of such licenses shall be issued by the division upon the payment of a tax of $10.

(3)(a) Operators of steamships and steamship lines, buses and bus lines, or airplanes and airlines engaged in interstate or foreign commerce or plying between fixed terminals and upon fixed schedules in this state may obtain licenses to sell the beverages mentioned in the Beverage Law:

1. On steamships, buses, and airplanes operated by such operators, upon the payment of an annual license tax of $1,100; and
2. In no more than one passenger waiting lounge licensed by the division and operated by an airline licensed herein at each of its terminals in the state for ticketed passengers whose flights are scheduled to depart within 24 hours of service and guests in the company of such ticketholders, provided such licensed airline has first obtained an appropriate space lease or permit providing for payment of nondiscriminatory rental and concession fees and upon the payment of an additional license tax of $1,100 per lounge.

All such license taxes shall be paid to the division. Such licenses shall authorize the holders thereof to keep for sale and sell all beverages mentioned in the Beverage Law upon any steamship, bus, or airplane or in any such airline passenger waiting lounge operated by such operators in this state, but such beverages may be sold only to passengers upon such steamships, buses, and airplanes and to ticketed passengers and their guests in such airline passenger waiting lounges and may be served only for consumption on such steamships, buses, and airplanes or in such airline passenger waiting lounges. It is unlawful for such licensees to purchase for resale any liquor except in miniature bottles of not more than 2 ounces or liquor in individual containers of not less than one-fifth of 1 gallon. Such sales are permitted while such steamships, buses, and airplanes are in transit; but such sales are not permitted on airplanes while such airplanes are in airports. Every such license shall be good throughout the state. No license may be required or tax levied by any municipality or county for the privilege of selling such beverages for consumption on such steamships, buses, or airplanes or in such airline passenger waiting lounges. The division shall issue a license to sell alcoholic beverages on steamships, buses, and airplanes to an operator of a steamship line, bus line, or airline, at a central location designated on the sworn application for license. The application for initial issuance of such a license must specify the number of steamships, buses, or airplanes in the fleet scheduled by the operator of the line for operation in this state. An application for renewal of such a license must specify the total number of steamships, buses, or airplanes in the fleet that operated in this state during the preceding license year. In addition to the annual license tax imposed under this subsection, a tax of $25 is imposed for each steamship, bus, or airplane which is disclosed on the application for license or renewal of license. Upon the payment of all applicable license taxes, each such steamship, bus, or airplane is considered a licensed premises under the Beverage Law. However, this paragraph does not apply to operators of pleasure, excursion, sightseeing, or charter boats not having regular round-trip runs of more than 100 miles in each direction; but operators of such boats may obtain licenses, with such boats being designated as their places of business, upon compliance with all the laws relating to vendors operating places of business where consumption on the premises is permitted. However, the operator of any pleasure, excursion, sightseeing, or charter boat which has a Coast Guard-approved capacity of at least 125 passengers may be granted a special liquor license to sell and serve alcoholic beverages to passengers during a period of no longer than 1 hour prior to departure on a scheduled or chartered cruise while the boat is docked at a docking facility or marina and the period during which the boat is in operation on the scheduled or chartered cruise for consumption on the premises only. The fee for such special license shall be the same as that charged pursuant to paragraphs (1)(b)-(f) based on the location of the home port of the boat. Also, no license to sell the beverages herein defined shall be issued to the operator of any boat which plies upon or is anchored upon the waters of any lake within this state.

(b) Operators of railroads, sleeping cars, steamships, buses, and airplanes licensed under this section shall not be required to obtain their beverages from licensees under the Beverage Law, but such operators shall keep strict accounts of all such beverages sold within this state and shall make monthly reports to the division on the forms prepared and furnished by the division. Such operators are required to pay an excise tax for such beverages sold within this state as to which such excise tax has not theretofore been paid, equal to the tax assessed against manufacturers and distributors. Such operators shall pay such tax monthly to the division at the same time they furnish the reports hereinabove provided for. Such reports shall be filed on or before the 15th day of each month for sales for the previous calendar month.

(4) Persons associated together as a chartered or incorporated club, including any social club incorporated by order of a circuit judge after its charter has been found to be for objects authorized by law and approved by the judge as organized for lawful purposes and not for the purpose of evading license taxes on dealers in beverages defined herein, which such organization is a bona fide club, and has been at the time of application for license hereunder in continuous active existence and operation for a period of not less than 2 years in the county where it exists, shall before serving or distributing to its members or nonresident guests the beverages defined herein, whether such service or distribution is made upon contribution to the club of money or by check or other device, pay an annual state license tax of $400. However, any golf club operated by or on behalf of any incorporated municipality in this state, and any veterans' or fraternal organization of national scope, need not have been, or need not be, in continuous active existence or operation for any required period of time prior to an application for license hereunder. The payment of such club license tax shall authorize the service and distribution to members and nonresident guests of the club only, and such service and distribution to the members and nonresident guests shall not be deemed sales within the meaning of the law in this state; but any service or distribution to anyone other than a member or nonresident guest of such licensed club shall be deemed a sale, and any officer, member, or employee of any such licensed club who sells or distributes or serves any such beverages to any person other than a member or nonresident guest of such club for money or other value shall be deemed guilty of selling such beverages without a license and shall be punished as provided by law. The holders of a golf club license may sell alcoholic beverages to those other than members and their nonresident guests on days when the club is open to the public. For each such day of service to nonmembers, the club shall obtain from the division for a fee of $50 an extension of its license to permit such sales. Such license extensions shall be limited to one event per year, not to exceed 8 consecutive days. Any officer of any such club which has not paid such license who knowingly permits such service or distribution by such club of the beverages herein defined to members or nonresident guests of such club shall, upon conviction thereof, be punished as herein provided. However, this subsection does not apply to a club organized or used for the purpose of evading the payment of the license tax on vendors of such beverages; such club is subject to the payment of the license tax imposed by the Beverage Law upon vendors. The president, vice president, secretary, or treasurer, or officers of corresponding duties by any name they may be called, of any club required by this section to pay a license tax are required to see that such license tax is paid and, in default thereof, shall each be personally liable to the punishment provided by the Beverage Law for nonpayment of the license tax hereby required. Clubs which are not

authorized to obtain licenses under this subsection or which do not obtain licenses under this subsection may, if they comply with this provision of the Beverage Law, obtain licenses as vendors. A club obtaining such club license shall not purchase any beverage herein defined from anyone other than a distributor or vendor licensed under the Beverage Law; nor shall such club dispense or serve any beverage defined herein unless such beverage has been purchased by such club from such licensed distributor or vendor; nor shall the club dispense or serve any such beverage on which a tax is required by the Beverage Law unless such beverage tax has been paid as required by that law. Such club license cannot be transferred in any manner whatsoever.

(5) A caterer at a horse or dog racetrack or jai alai fronton may obtain a license upon the payment of an annual state license tax of $675. Such caterer's license shall permit sales only within the enclosure in which such races or jai alai games are conducted, and such licensee shall be permitted to sell only during the period beginning 10 days before and ending 10 days after racing or jai alai under the authority of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation is conducted at such racetrack or jai alai fronton. Except as in this subsection otherwise provided, caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

(6) A vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex that is owned, managed, controlled, and operated by such vendor, may operate under a master license issued for the type of service offered if the theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities, the enclosed area has a controlled entrance to, and exit from, the enclosed area, and at least 1 million visitors annually pay admission fees to the theme park complex. In addition to the license taxes imposed in paragraphs (1)(b)-(f), an additional tax of $1,500 shall be imposed for up to 5 additional bars, $2,500 for 6 to 10 additional bars, and $3,500 for more than 10 additional bars. The enclosed area within the theme park shall be considered an extension of the licensed premises upon the payment of the fee and the notation of such extension on the sketch accompanying the original license application.

(7) A marine exhibition park complex may obtain, upon the payment of appropriate fees, a license for on-premises consumption of alcoholic beverages not subject to any quota or limitation if:

(a) The marine exhibition park complex comprises at least 25 enclosed acres of land.
(b) The enclosed area has a controlled entrance to, and exit from, the enclosed area.
(c) At least 450,000 visitors annually pay admission fees to the marine exhibition park.
(d) The marine exhibition park has been in continuous existence for at least 30 years.

In addition to the license taxes imposed in paragraphs (1)(b)-(f), an additional tax of $1,500 shall be imposed for up to 5 additional bars, $2,500 for 6 to 10 additional bars, and $3,500 for more than 10 additional bars. The enclosed area within the marine exhibition park shall be considered the licensed premises upon the payment of the fee. Except as otherwise provided in this subsection, entities licensed under this subsection shall be treated as vendors licensed to sell alcoholic beverages by the drink and shall be subject to all the provisions relating to such vendors.

(8) A state-chartered legal entity not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra may obtain a license upon the payment of an annual license tax of $400. Such license shall permit sales only within the enclosure in which such symphony normally and regularly performs and in which alcoholic beverages are otherwise authorized; and such licensee shall be permitted to sell only during the hours in which the symphony premises are in use for a cultural event under the auspices or authorization of the licensee. The issuing of a license under this section is not subject to any quota or limitation, except that the license shall be issued only to an entity supporting a well-recognized symphony the reputation of which is known generally in the state or region of operation. Except as otherwise provided in this subsection, entities licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

(9) It is the finding of the Legislature that passenger vessels engaged exclusively in foreign commerce are susceptible to a distinct and separate classification for purposes of the sale of alcoholic beverages under the Beverage Law. Upon the filing of an application and payment of an annual fee of $1,100, the director is authorized to issue a permit authorizing the operator, or, if applicable, his or her concessionaire, of a passenger vessel which has cabin-berth capacity for at least 75 passengers, and which is engaged exclusively in foreign commerce, to sell alcoholic beverages on the vessel for consumption on board only:

(a) During a period not in excess of 24 hours prior to departure while the vessel is moored at a dock or wharf in a port of this state; or
(b) At any time while the vessel is located in Florida territorial waters and is in transit to or from international waters.

One such permit shall be required for each such vessel and shall name the vessel for which it is issued. No license shall be required or tax levied by any municipality or county for the privilege of selling beverages for consumption on board such vessels. The beverages so sold may be purchased outside the state by the permittee, and the same shall not be considered as imported for the purposes of s. 561.14(3) solely because of such sale. The permittee is not required to obtain its beverages from licensees under the Beverage Law, but it shall keep a strict account of all such beverages sold within this state and shall make monthly reports to the division on forms prepared and furnished by the division. A permittee who sells on board the vessel beverages withdrawn from United States Bureau of Customs and Border Protection bonded storage on board the vessel may satisfy such accounting requirement by supplying the division with copies of the appropriate United States Bureau of Customs and Border Protection forms evidencing such withdrawals as importations under United States customs laws. Such permittee shall pay to the state an excise tax for beverages sold pursuant to this section, if such excise tax has not previously been paid, in an amount equal to the tax which would be required to be paid on such sales by a licensed manufacturer or distributor. A vendor holding such permit shall pay the tax monthly to the division at the same time he or she furnishes the required report. Such report shall be filed on or before the 15th day of each month for the sales occurring during the previous calendar month.

(10) A state-chartered legal entity not for profit organized principally for the purpose of operating a theater with live performances and not fewer than 100 seats may obtain a license upon the payment of an annual license tax of $400. Such license shall permit sales for consumption on the premises only to patrons during any regularly scheduled live theater performance. No licensee under this special license shall enter into any exclusive contract for its use. Except as otherwise provided in this subsection, an entity licensed hereunder shall be treated as a vendor licensed to

sell by the drink the beverages mentioned herein and is subject to all the provisions hereof relating to such vendor.

(11) The John and Mable Ringling Museum of Art direct-support organization may obtain a license upon the payment of an annual license tax of $400. Such license shall permit sales for consumption on the premises of the museum in conjunction with artistic, educational, cultural, civic, or charitable events held on the premises of the museum under the auspices or authorization of the licensee. The issuing of a license under this subsection is not subject to any quota or limitation, except that the license shall be issued only to the direct-support organization of the museum or its designee. Except as otherwise provided in this subsection, the entity licensed hereunder shall be treated as a vendor licensed to sell by the drink the beverages mentioned herein and shall be subject to all provisions relating to such vendors.

(12) Except as expressly provided otherwise in this section, a vendor holding a permit is subject to the provisions of the Beverage Law.

History.—s. 1, ch. 72-42; s. 5, ch. 72-230; s. 2, ch. 72-272; s. 1, ch. 74-96; s. 2, ch. 75-278; s. 1, ch. 80-100; ss. 13, 22, ch. 81-158; s. 2, ch. 83-79; s. 2, ch. 84-142; ss. 2, 3, ch. 84-286; s. 5, ch. 85-161; s. 1, ch. 87-348; s. 1, ch. 89-361; s. 9, ch. 92-176; s. 221, ch. 94-218; s. 13, ch. 95-346; s. 875, ch. 97-103; s. 69, ch. 2000-258; s. 96, ch. 2004-5.

Note.—Former s. 561.34.

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers.—

(1)(a) Each liquor manufacturer authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch he or she operates in the state, as follows:

1. If engaged in the business of distilling spirituous liquors and nothing else, a state license tax of $4,000.
2. If engaged in the business of rectifying and blending spirituous liquors and nothing else, a state license tax of $4,000.

(b) Persons licensed hereunder in the business of distilling spirituous liquors may also engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(2) Distributors authorized to do business under the Beverage Law, unless otherwise provided, shall pay a state license tax of $4,000 for each and every establishment or branch they may operate or conduct in the state. However, in counties having a population of 15,000 or less according to the latest state or federal census, the state license tax for a restricted license shall be $1,000, but the holder of such a license shall be permitted to sell only to vendors and distributors licensed in the same county, and such license shall contain such restrictions. In such counties, licenses without such restrictions may be obtained as in other counties, but the tax for a license without such restrictions shall be the same as in other counties. Warehouses of a licensed distributor used solely for storage and located in the county in which the license is issued to such distributor shall not be construed to be separate establishments or branches.

(3) Each broker or sales agent and each importer, as defined in s. 561.14(4) and (5), respectively, shall pay an annual state license tax of $500.

History.—s. 5, ch. 72-230; s. 18, ch. 81-158; s. 876, ch. 97-103.

Note.—Former s. 561.35.

565.04 Package store restrictions.—Vendors licensed under s. 565.02(1)(a) shall not in said place of business sell, offer, or expose for sale any merchandise other than such beverages, and such places of business shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

History.—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 13, ch. 23746, 1947; s. 1, ch. 29964, 1955; s. 1, ch. 57-327; s. 1, ch. 65-143; s. 1, ch. 67-257; s. 5, ch. 72-230.

Note.—Former s. 562.09.

565.045 Regulations for consumption on premises; penalty; exemptions.—

(1) Vendors licensed under s. 565.02(1)(b)-(f) shall provide seats for the use of their customers. Such vendors may sell alcoholic beverages by the drink or in sealed containers for consumption on or off the premises where sold.

(2)(a) There shall not be sold at such places of business anything other than the beverages permitted, home bar and party supplies and equipment (including but not limited to glassware and party-type foods), cigarettes, and what is customarily sold in a restaurant.

(b) The provisions of paragraph (a) do not apply to any vendor who has been issued, pursuant to local law, a special alcoholic beverage license for an entertainment or lodging complex; nor do they apply to any vendor who operates an establishment which is part of an international tourist attraction located within a special improvement district that is created by local law and that includes territory in more than one county.

(3) The premises of all such vendors shall be subject to and meet all the applicable provisions of chapter 381 and the regulations promulgated thereunder.

History.—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 14, ch. 23746, 1947; s. 1, ch. 67-256; s. 2, ch. 72-230; s. 2, ch. 77-471; s. 2, ch. 87-52.

Note.—Former s. 562.10.

565.05 Purchase of distilled spirits by licensed clubs; size of individual containers.—It is unlawful for any person holding a license as a club for the sale of distilled spirits to purchase any of said distilled spirits in individual containers larger than 1.75 liters or 59.18 ounces, or smaller than 0.50 liter or 16.9 ounces, except for golf clubs licensed pursuant to s. 561.20(7)(b), which may purchase 50-milliliter or 1.7-ounce containers.

History.—s. 1, ch. 19500, 1939; CGL 1940 Supp. 7648(34); s. 5, ch. 72-230; s. 3, ch. 72-272; s. 1, ch. 75-96; s. 200, ch. 77-104; s. 1, ch. 79-143; s. 9, ch. 96-419; s. 10, ch. 2000-191.

Note.—Former s. 569.03.

565.06 Clubs to sell only individual drinks.—It is unlawful for any person holding a license as a club for the sale of intoxicating liquors and beverages to sell the same except by the individual drink. However, golf clubs licensed pursuant to s. 561.20(7)(b) may sell individual containers of 50 milliliters or 1.7 ounces for consumption on the premises only.

History.—s. 2, ch. 19500, 1939; CGL 1940 Supp. 7648(35); s. 5, ch. 72-230; s. 11, ch. 2000-191.

Note.—Former s. 569.04.

565.07 Sale or consumption of certain distilled spirits prohibited.—No distilled spirit greater than 153 proof shall be sold, processed, or

consumed in the state.
History.—s. 3, ch. 85-203.

565.08 Labeling regulations; liquor.—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing 0.5 percent or more of alcohol by volume, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.
History.—s. 5, ch. 72-230; s. 15, ch. 86-269.
Note.—Former s. 561.09(1).

565.095 Licensure as primary American source of supply.—
(1) DEFINITION.—"Primary American source of supply" means the manufacturer, rectifier, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases spirituous liquors from a manufacturer, rectifier, or bottler who represents that there is no primary American source of supply for the brand, and such applicant must petition the division for approval of licensure.
(2) TAX CONTROL LICENSURE REQUIRED.—For purposes of tax revenue control, no person, firm, corporation, or other entity which is the primary American source of supply as defined herein may sell, offer for sale, accept orders for sale, ship, or cause to be shipped into this state any spirituous liquors to any distributor or importer within the state without having first obtained licensure as a primary American source of supply on forms provided by, and in such manner as prescribed by, the division. Applicants for licensure as a primary American source of supply shall be exempt from the requirements and qualification standards set forth in ss. 561.15 and 561.17.
(3) LICENSE FEES.—Licensure as a primary American source of supply authorizes the shipment of distilled spirits manufactured within and without the state to licensed distributors, importers, manufacturers, bonded warehouses, and registered exporters within the state. The annual license fee for a primary American source of supply is $30 for each brand that requires a federal label approval and is scheduled for shipment to a licensed distributor or importer within this state for the purpose of being sold within the state. The annual license fee shall be submitted with the application for initial licensure. This license shall be renewed each year, and the renewal fee shall be $30 for each brand shipped into the state during the preceding year.
(4) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS PROHIBITED.—No holder of a distributor's license or importer's license as classified by s. 561.14(2) may ship or cause to be shipped into this state, or accept delivery of from another state or a foreign country, any spirituous liquors except directly from a primary American source of supply.
(5) PRIVATE LABELS.—Nothing herein shall prohibit the ownership by vendors of brand names of distilled spirits and vinous beverages commonly known as private labels; provided, that such ownership and use thereof does not otherwise violate the Beverage Law.
(6) RULEMAKING AUTHORITY.—The division shall promulgate rules as necessary to carry out the purpose of this section.
History.—ss. 2, 3, ch. 78-135; s. 2, ch. 85-58; s. 11, ch. 96-419.

565.10 Distilled spirits container limit.—It is unlawful for any distributor or vendor to sell or distribute distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces. The division is authorized to make reasonable rules in accordance with chapter 120 governing the standards of fill of distilled spirits containers, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such standards of fill of distilled spirits containers.
History.—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 1, ch. 57-327; s. 1, ch. 61-447; s. 1, ch. 65-142; s. 1, ch. 67-524; s. 148, ch. 71-355; s. 5, ch. 72-230; s. 1, ch. 73-328; s. 2, ch. 75-96; s. 2, ch. 79-143.
Note.—Former s. 562.08.

565.11 Refilling liquor bottles; misrepresentation; penalty.—Any person who shall reuse or refill with distilled spirituous liquors for the purpose of sale a bottle or other container which has once been used to contain spirituous liquors, or any person who shall willfully misrepresent or permit to be misrepresented the brand of distilled spirits being sold or offered for sale in or from any bottles or containers, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and, when such person is licensed under this law, be subject to have his or her license revoked by the division. The possession of such a refilled or a mislabeled bottle or other container of spirituous liquors shall be prima facie evidence of the violation of this section.
History.—s. 5, ch. 72-230; s. 877, ch. 97-103.
Note.—Former s. 561.09(2).

565.12 Excise tax on liquors and beverages.—
(1) As to beverages containing 17.259 percent or more of alcohol by volume and not more than 55.780 percent of alcohol by volume, except wines, there shall be paid by every manufacturer and distributor a tax at the rate of $6.50 per gallon. As to beverages containing less than 17.259 percent of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate provided in chapter 564.
(2) As to beverages containing more than 55.780 percent of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate of $9.53 per gallon.
(3) The excise taxes required to be paid by this section are not required to be paid upon any alcoholic beverage sold to a post exchange, ship service store, or base exchange located in a military, naval, or air force reservation within this state.
(4) The department is authorized to adopt rules to effectuate the provisions of this section.
History.—s. 5, ch. 72-230; s. 3, ch. 77-407; s. 15, ch. 83-349; s. 9, ch. 84-262; s. 2, ch. 85-203; s. 16, ch. 86-269; s. 11, ch. 88-308; s. 4, ch. 91-60.
Note.—Former s. 561.46.

565.13 Monthly payment of tax by distributor.—Every distributor selling spirituous beverages within the state shall pay the tax to the division monthly on or before the 10th day of the following month, less 1.0 percent of the tax due, which shall be withheld by the distributor for

keeping prescribed records, furnishing bond, and properly accounting for and remitting taxes due to the state. However, no allowance may be granted or permitted when the tax is delinquent at the time of payment.

History.—s. 1, ch. 69-49; ss. 16, 35, ch. 69-106; s. 5, ch. 72-230; s. 16, ch. 83-349.

Note.—Former s. 561.505.

565.16 Beverage lists furnished to vendors.—A distributor of spirituous beverages in this state may furnish, give, rent, loan, or sell to a vendor, and a vendor may accept, alcoholic beverage lists, otherwise referred to as "wine lists," without the same being a violation of s. 561.42(1).

History.—s. 2, ch. 81-159.

565.17 Beverage tastings by distributors and vendors.—A licensed distributor of spirituous beverages, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

History.—s. 2, ch. 81-160.

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The 2010 Florida Statutes(including Special Session A)

Title XXXIV
ALCOHOLIC BEVERAGES AND TOBACCO

Chapter 564
WINE

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CHAPTER 564
WINE

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564.01 Definitions.—

(1) "Wine" means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

(2) "Fortified wine" means all wines containing more than 17.259 percent of alcohol by volume.

History.—s. 4, ch. 72-230; s. 10, ch. 86-269.
Note.—Former s. 561.01(4),(5).

564.02 License fees; vendors; manufacturers and distributors.—

(1) Each vendor authorized to sell brewed beverages containing malt, wines, and fortified wines shall pay an annual state license tax, as follows:

(a) Vendors operating places of business where beverages are sold only for consumption off the premises shall pay an amount equal to 50 percent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted.

(b) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $280.

(c) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 75,000 and not over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $240.

(d) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 50,000 and less than 75,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $200.

(e) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 25,000 and less than 50,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $160.

(f) Vendors operating places of business where consumption on the premises is permitted in counties having a population of less than 25,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $120.

(2) Each wine manufacturer authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch he or she may operate, as follows:

(a) If engaged in the manufacturing or bottling of wines and of nothing else, he or she shall pay $1,000.

(b) If engaged in the manufacturing of wines and cordials and of nothing else, he or she shall pay $2,000.

(3)(a) Each distributor authorized to sell brewed beverages containing malt, wines, and fortified wines in counties where the sale of intoxicating liquors, wines, and beers is permitted shall pay for each and every such establishment or branch he or she may operate or conduct a state license tax of $1,250.

(b) A bona fide religious order, monastery, church, or religious body that has a tax-exempt status as provided by s. 212.08(7)(m) or (p) may be licensed as a distributor under this subsection if its sales and distribution are limited to wines sold solely for religious or sacramental purposes to holders of valid permits obtained under s. 564.03; and such religious order, monastery, church, or religious body shall pay a state license tax of $50 for each and every such distribution establishment to be operated by the licensee.

History.—s. 4, ch. 72-230; s. 1, ch. 79-305; s. 4, ch. 83-79; s. 2, ch. 85-204; s. 11, ch. 86-269; s. 30, ch. 87-6; s. 8, ch. 92-176; s. 874, ch. 97-103; s. 9, ch. 2000-228.
Note.—Former ss. 561.34, 561.35.

564.025 Surtax on license fees.—Each vendor of beverages containing alcohol of 0.5 percent or more by volume and not more than 14 percent by weight and of wines regardless of alcoholic content shall pay an annual surtax in an amount equal to 40 percent of the license fee imposed by s. 564.02(1).
History.—s. 25, ch. 86-269.

564.03 Wines; sacramental and religious purposes.—
(1) For the purpose of this section the term "wine" is hereby defined to mean wine, vinous spirits, or vinous liquors.
(2) Any religious order, monastery, church or religious body, or any minister, pastor, priest, or rabbi thereof, may purchase wine for religious or sacramental purposes from any duly licensed wholesaler or retailer within the state, by obtaining a permit from the division for such purchases herein provided.
(3) The division shall issue said permit upon sworn application, stating the name of the applicant, the religious purpose for which the wine is to be used, the amount to be purchased, and from whom the purchase is to be made.
(4) The division for good cause may refuse to issue said permit.
(5) Said wine and the sale thereof, when sold as herein provided and used for religious or sacramental purposes, shall be exempt from all other restrictions, regulations, and taxation now provided by the laws of the state for the sale and distribution of wine.
History.—ss. 1, 2, 3, 4, 5, ch. 20978, 1941; s. 7, ch. 29964, 1955; ss. 16, 35; ch. 69-106; s. 4, ch. 72-230; s. 29, ch. 79-11.
Note.—Former s. 562.49.

564.04 Labeling regulations; wine.—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all wines containing 0.5 percent or more of alcohol by volume, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.
History.—s. 4, ch. 72-230; s. 12, ch. 86-269.
Note.—Former s. 561.09(1).

564.045 Licensure as primary American source of supply.—
(1) DEFINITION.—"Primary American source of supply" means the manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.
(2) TAX CONTROL LICENSURE REQUIRED.—For purposes of tax revenue control, no person, firm, corporation, or other entity which is the primary American source of supply as defined herein may sell, offer for sale, accept orders for sale, ship, or cause to be shipped into this state any vinous beverages to any distributor or importer within the state without having first obtained licensure as a primary American source of supply on forms provided by, and in such manner as prescribed by, the division. Applicants for licensure as a primary American source of supply shall be exempt from the requirements and qualification standards set forth in ss. 561.15 and 561.17.
(3) LICENSE FEES.—Licensure as a primary American source of supply authorizes the shipment of vinous beverages manufactured within and without the state to licensed distributors, importers, manufacturers, bonded warehouses, and registered exporters within the state. The annual license fee for a primary American source of supply is $15 for each brand that requires a federal label approval and is scheduled for shipment to a licensed distributor or importer within this state for the purpose of being sold within the state. The annual license fee shall be submitted with the application for initial licensure. This license shall be renewed each year and the renewal fee shall be $15 for each brand shipped into the state during the preceding year.
(4) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS PROHIBITED.—No holder of a distributor's license or importer's license as classified by s. 561.14(2) may ship or cause to be shipped into this state, or accept delivery from another state or a foreign country of, any vinous beverages except directly from a licensed primary American source of supply.
(5) PRIVATE LABELS.—Nothing herein shall prohibit the ownership by vendors of brand names of distilled spirits and vinous beverages commonly known as private labels; provided that such ownership and use thereof do not otherwise violate the Beverage Law.
(6) RULEMAKING AUTHORITY.—The division shall promulgate rules as necessary to carry out the purpose of this section.
History.—ss. 1, 3, ch. 78-135; s. 1, ch. 85-58; s. 10, ch. 96-419.

564.05 Limitation of size of individual wine containers; penalty.—It is unlawful for any person to sell within this state any wine in individual containers holding more than 1 gallon of such wine. Provided, that qualified distributors and manufacturers may sell to other qualified distributors or manufacturers such wine in any size containers. Any person convicted of a violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
History.—ss. 1, 2, ch. 19498, 1939; CGL 1940 Supp. 7648(33); s. 7, ch. 22858, 1945; s. 580, ch. 71-136; s. 4, ch. 72-230.
Note.—Former s. 569.06.

564.055 Cider containers.—Notwithstanding any other law to the contrary, cider, as defined in s. 564.06(4), may be sold by vendors at retail in any size individual container containing no more than 32 ounces of cider; however, this section does not prohibit cider from being packaged and sold in bulk, in kegs or barrels, or in any individual container that contains 1 gallon or more of cider, regardless of container type.
History.—s. 2, ch. 2001-78.

564.06 Excise taxes on wines and beverages.—
(1) As to beverages including wines, except natural sparkling wines, cider and malt beverages, containing 0.5 percent or more alcohol by volume and less than 17.259 percent alcohol by volume, there shall be paid by all manufacturers and distributors a tax at the rate of $2.25 per gallon.
(2) As to all wines, except natural sparkling wines, containing 17.259 percent or more alcohol by volume, there shall be paid by manufacturers

and distributors a tax at the rate of $3.00 per gallon.

(3) As to natural sparkling wines, there shall be paid by all manufacturers and distributors a tax at the rate of $3.50 per gallon.

(4) As to cider, which is made from the normal alcoholic fermentation of the juice of sound, ripe apples, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume, there shall be paid by all manufacturers and distributors a tax at the rate of $.89 per gallon. With the sole exception of the excise tax rate, cider shall be considered wine and shall be subject to the provisions of this chapter.

(5)(a) As to wine coolers, which are a combination of wines containing 0.5 percent or more alcohol by volume, carbonated water, and flavors or fruit juices and preservatives and which contain 1 to 6 percent alcohol content by volume, there shall be paid by all manufacturers and distributors a tax at the rate of $2.25 per gallon.

(b) All products however derived, distilled, mixed, or fermented and which contain less than 6 percent alcohol by volume which are taxed under this chapter shall be available for purchase and sale as provided in ss. 563.02, 564.02, and 564.04 by any licensee holding a valid license to sell alcoholic beverages for consumption either on or off premises, and nothing contained in chapter 562, chapter 563, chapter 565, or this chapter shall be construed to prevent such sales.

(6) Wine used by any established church as sacramental wine or in connection with religious services is hereby expressly exempted from the provisions of this section.

(7) Every distributor selling wine within the state shall pay the tax to the division monthly on or before the 10th day of the following month, less 1.9 percent of the tax due, which shall be withheld by the distributor for keeping prescribed records, furnishing bond, and properly accounting for and remitting taxes due to the state. However, no allowance shall be granted or permitted when the tax is delinquent at the time of payment.

(8) The excise taxes required to be paid by this section are not required to be paid upon any alcoholic beverage sold to a post exchange, ship service store, or base exchange located in a military, naval, or air force reservation within this state.

(9) The department is authorized to adopt rules to effectuate the provisions of this section.

(10) Fifty percent of all revenues collected from the excise taxes imposed by this section on wine produced by manufacturers in this state from products grown in the state must be deposited into the Viticulture Trust Fund established pursuant to s. 599.012.

History.—s. 4, ch. 72-230; s. 2, ch. 77-407; ss. 1, 2, ch. 79-304; s. 414, ch. 81-259; s. 14, ch. 83-349; s. 8, ch. 84-262; s. 1, ch. 85-204; s. 13, ch. 86-269; s. 2, ch. 87-226; ss. 10, 18, ch. 88-308; s. 6, ch. 90-233; s. 3, ch. 91-60; s. 2, ch. 94-296; s. 7, ch. 96-419.

Note.—Former s. 561.46.

564.07 Wine lists furnished to vendors.—A distributor of vinous beverages in this state may furnish, give, rent, loan, or sell to a vendor, and a vendor may accept, alcoholic beverage lists, commonly referred to as "wine lists," without the same being a violation of s. 561.42(1).

History.—s. 1, ch. 81-159.

564.08 Wine tastings by distributors and vendors.—A licensed distributor of vinous beverages, or any vendor, is authorized to conduct wine tastings upon any licensed premises authorized to sell vinous or spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the wine tasting shall be limited to and directed toward the general public of the age of legal consumption.

History.—s. 1, ch. 81-160.

564.09 Restaurants; off-premises consumption of wine.—Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a full course meal consisting of a salad or vegetable, entree, a beverage, and bread and consumed a portion of the bottle of wine with such meal on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and full course meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

History.—s. 1, ch. 2005-250.

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BEER

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563.01 Definition.—The terms "beer" and "malt beverage" mean all brewed beverages containing malt.
History.—s. 3, ch. 72-230.
Note.—Former s. 561.01(3).

563.02 License fees; vendors; manufacturers and distributors.—

(1) Each vendor of malt beverages containing alcohol of 0.5 percent or more by volume shall pay an annual state license tax as follows:

(a) Vendors operating places of business where beverages are sold only for consumption off the premises, an amount equal to 50 percent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted. Vendors holding such off-premises sales licenses shall not be subject to zoning by municipal and county authorities.

(b) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, $200.

(c) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 75,000 and not over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, $160.

(d) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 50,000 and less than 75,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, $120.

(e) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 25,000 and less than 50,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, $80.

(f) Vendors operating places of business where consumption on the premises is permitted in counties having a population of less than 25,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, $40.

(2) Each manufacturer engaged in the business of brewing only malt beverages shall pay an annual state license tax of $3,000 for each plant or branch he or she may operate. However, each manufacturer engaged in the business of brewing less than 10,000 kegs of malt beverages annually for consumption on the premises pursuant to s. 561.221(3) shall pay an annual state license tax of $500 for each plant or branch.

(3) Each distributor who shall distribute or sell alcoholic beverages containing less than 17.259 percent alcohol by volume shall pay an annual state license tax of $1,250 for each establishment or branch he or she may operate.

History.—s. 3, ch. 72-230; s. 8, ch. 86-269; s. 2, ch. 87-63; s. 7, ch. 92-176; s. 872, ch. 97-103.
Note.—Former ss. 561.34, 561.35.

563.021 Malt beverages; exclusive sales territories.—

(1) No distributor shall sell or deliver any brand or brands of malt beverages in this state to any retail vendor whose place of business is outside of the distributor's restricted exclusive sales territory for such products. The restricted exclusive sales territory shall be mutually agreed upon by the manufacturer or importer and each distributor, and shall be embodied in a formal written agreement between the manufacturer or importer and each distributor, which agreement shall designate the specified brand or brands for which the territory is granted and set forth the exact geographical area of the territory. Where a manufacturer or importer sells several brands, the agreement may apply to all brands sold by the manufacturer or importer or may apply to one brand or several brands so long as each brand is covered by an exclusive territorial agreement. No manufacturer or importer shall provide by such written agreement for the distribution of a brand to more than one distributor for all or any part of the designated territory. All such agreements shall be filed with the division.

(2) Upon a prima facie showing of a violation of this section, the division, on its own motion or on complaint of a manufacturer or distributor,

may pursue appropriate administrative remedies provided by law, including the revocation or suspension of licenses, the imposition of fines or any combination of the foregoing.

(3) No provision of any written agreement required by this section shall expressly, by implication, or in its own operation establish or maintain the resale price of any brand or brands of beer sold by the malt beverage distributor.

History.—s. 14, ch. 88-308.

563.022 Relations between beer distributors and manufacturers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) Regulation of business relations between beer distributors and manufacturers is necessary and appropriate in the public interest.

(b) This section is enacted pursuant to authority of the state under the provisions of the Twenty-First Amendment to the United States Constitution to promote the public's interest in fair, efficient, and competitive distribution of malt beverage products by regulation and encouragement of manufacturers and distributors to conduct their business relations toward these ends by:

1. Assuring that the beer distributor is free to manage its business enterprise, including the distributor's right to independently establish its selling prices;

2. Assuring the manufacturer and the public of service from a distributor who will devote reasonable efforts and resources to sales and distribution of the manufacturer's products, which distributor has been granted the right to sell and distribute and to maintain a satisfactory sales level; and

3. Establishing and maintaining an orderly system of distribution of beer to the public.

(c) This section shall govern all relations between manufacturers and their distributors to the full extent consistent with the constitutions and laws of this state and the United States.

(d) In order to promote the intention and policies announced herein, the provisions of this section shall be liberally construed.

(2) DEFINITIONS.—In construing this section, unless the context otherwise requires, the word, phrase, or term:

(a) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a distributor, who is entitled to inherit the deceased individual's ownership interest in the distributor under the terms of the deceased individual's will or other testamentary device, or who is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a distributor, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a distributor.

(b) "Distributor" or "wholesaler" means any person, firm, association, corporation, or company which is a distributor licensed to sell and distribute beer at wholesale to persons who are licensed to sell beer.

(c) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, for a definite or indefinite period of time in which a manufacturer grants to a beer distributor the right to purchase, resell, and distribute any brand or brands offered by the manufacturer.

(d) "Franchisee" means a beer distributor to whom a franchise is offered or granted.

(e) "Franchisor" means a beer manufacturer who grants a franchise to a beer distributor.

(f) "Fraud" includes actual fraud or constructive fraud as normally defined, in addition to the following:

1. A misrepresentation in any manner, whether intentionally false or arising from gross negligence, of a material fact.

2. A promise or representation not made honestly and in good faith.

3. An intentional failure to disclose a material fact.

4. Any artifice employed to deceive another.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned as defined and interpreted under s. 671.201(20).

(h) "Manufacturer" means any person who manufactures or imports beer for distribution to distributors licensed in Florida.

(i) "Person" means a natural person, corporation, association, partnership, trust, or other business entity and, in case of a business entity, shall include any other entity in which it has a majority interest or it effectively controls, as well as the individual officers, directors, and other persons in active control of the activities of each such entity. The term also includes heirs, assigns, personal representatives, and guardians.

(j) "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective manufacturer for Florida distributors that entered into, continued, or renewed an agreement with the manufacturer during a period of 24 months prior to the proposed transfer of the distributor's business, or for Florida distributors that have changed managers or designated managers during a period of 24 months prior to the proposed change in manager or successor manager of the distributor's business.

(k) "Retaliatory action" includes, but is not limited to, the refusal to continue an agreement or a material reduction in the quality of service or quantity of products available to a distributor under an agreement which refusal or reduction is not made in good faith.

(l) "Sale" includes the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any manner or form, whether by transfer in trust or otherwise, of beer or of any franchise related thereto for a consideration and any option, subscription, or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether in oral or written form, for a consideration.

(m) "Transfer of a distributor's business" means the voluntary sale, assignment, or other transfer of the business or control of the business of the distributor, including the sale or other transfer of stock or assets by merger, consolidation, or dissolution.

(3) APPLICATION.—Any person who engages directly or indirectly in purposeful agreements or contracts in connection with the sale of beer to beer distributors within this state shall be subject to the provisions of this section and shall be subject to the jurisdiction of the courts of this state for violations of this section in accordance with the provisions of the laws of this state.

(4) UNLAWFUL ACTS AND PRACTICES.—Unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, importing, distribution, sale, wholesaling, and franchising of beer, as defined in subsection (5), are declared to be unlawful. Any person who violates any provision of this section shall not be subject to the criminal penalties set forth in the Beverage Law on account of such violation.

(5) UNFAIR AND PROHIBITED ACTS.—

(a) It shall be deemed a violation of subsection (4) for any manufacturer or distributor to engage in any action which is in bad faith or unconscionable and which causes damage in terms of law or equity to any of the parties or to the public.

(b) It shall be deemed a violation of subsection (4) for a manufacturer or officer, agent, or other representative thereof:

1. To coerce or compel, or attempt to coerce or compel, any beer distributor to order or accept delivery of any beer or any other commodity or commodities which such beer distributor has not voluntarily ordered.

2. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the distributor's order to any distributor having a franchise or contractual agreement for the distribution and sale of beer sold by such manufacturer, beer covered by such franchise or contract. However, the failure to deliver any such beer shall not be considered a violation of this section if such failure is due to prudent and reasonable restriction on extension of credit by the manufacturer to the distributor, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the manufacturer, or any agent thereof, shall have no control whatsoever.

3. To coerce or compel, or attempt to coerce or compel, a beer distributor to enter into any agreement, whether written or oral, supplementary to an existing franchise with such manufacturer or officer, agent, or other representative thereof, or to do any other act prejudicial to such distributor, by threatening to cancel any franchise or any contractual agreement existing between such manufacturer and such distributor. However, notice in good faith to a beer distributor of such distributor's violation or breach of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this section if such notice is in writing, is mailed by registered or certified mail to such distributor at his or her current business address, and contains the specific facts as to the distributor's violation or breach of such franchise or contractual agreement.

4. To terminate, cancel, fail to renew, or refuse to continue the franchise or selling agreement of any such distributor without good cause as defined in subsections (7) and (10). The nonrenewal of a franchise or selling agreement without good cause shall constitute an unfair termination or cancellation regardless of the specified time period of such franchise or selling agreement.

5. To willfully discriminate, either directly or indirectly, in price offered to franchisees where the effect of such discrimination is likely to substantially lessen competition.

6. To prevent or attempt to prevent, by contract or otherwise, any beer distributor from changing the capital structure of his or her distributorship or the means by or through which he or she finances the operation of his or her distributorship, provided that the distributor at all times meets capital standards which are reasonable in light of generally accepted capital standards within the manufacturer's beer distribution system. Nothing in this subparagraph diminishes the right of a manufacturer to prohibit public ownership of its franchises.

7. To prevent or attempt to prevent, by contract or otherwise, any beer distributor or any officer, member partner, or stockholder of any beer distributor from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no distributor, officer, partner, or stockholder shall have the right to sell, transfer, or assign the franchise or power of management or control thereunder without the written consent of the manufacturer, distributor, or wholesaler, except that such consent shall not be unreasonably withheld.

a. No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or of all or any portion of a distributor's assets, a distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling a distributor, including the distributor's rights and obligations under the terms of an agreement, whenever the person or persons to be substituted meet reasonable qualifications. Upon the death of one of the partners of a partnership operating the business of a distributor, no manufacturer shall deny the surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the manufacturer and such partnership, provided that the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership, and provided further that such right is consistent with the rights and desires of the heirs or devises of the deceased partner.

b. Notwithstanding the provisions of subparagraph a., upon the death of a distributor, no manufacturer shall deny approval for any transfer of ownership to a designated member of the family of an owner of a distributor; provided, however, that any subsequent transfer of such ownership by such designated member shall thereafter be subject to the provisions of subparagraph a.

8. To obtain money, goods, services, anything of value, or any other benefit from any person in exchange for having coerced or compelled a beer distributor to do business with such other person.

9. To require a beer distributor to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this section.

10. To restrict or inhibit, directly or indirectly, the right of free association among manufacturers or distributors of beer for any lawful purpose.

11. To fix or maintain the price at which a distributor may resell beer.

12. To coerce or attempt to coerce any distributor to accept delivery of any beer or other commodity ordered by a distributor if the order was properly canceled by the distributor.

13. To change a distributor's quota of a brand or brands if the change is not made in good faith.

14. To require a distributor, by any means, to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer.

15. To take any retaliatory action against a distributor that files a complaint regarding an alleged violation by the manufacturer of state or federal law or an administrative rule.

16. To require or prohibit, without good cause provided in writing, any change in the manager or successor manager of any distributor who has been approved by the manufacturer as of June 4, 1987. Should a distributor change an approved manager or successor manager, a manufacturer shall not require or prohibit the change unless the person fails to meet the reasonable written standards for Florida distributors of the manufacturer which standards have been provided to the distributor.

(6) DISTRIBUTOR'S RESIGNATION, CANCELLATION, TERMINATION, FAILURE TO RENEW, OR REFUSAL TO CONTINUE.—Notwithstanding any agreement and except as otherwise provided for in this section, a manufacturer shall not cause a distributor to resign from an agreement, or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the manufacturer has complied with all of the following:

(a) Has satisfied the applicable notice requirements of subsection (9).

(b) Has acted in good faith.

(c) Has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.

(7) GOOD CAUSE.—Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under paragraph (6)(c) when all of the following occur:

(a) There is a failure by the distributor to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the distributor and the manufacturer.

(b) The manufacturer first acquired knowledge of the failure described in paragraph (a) not more than 18 months before the date notification was given pursuant to subsection (6).

(c) The distributor was given written notice by the manufacturer of failure to comply with the agreement.

(d) The distributor was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits provided for in paragraph (e).

(e) The distributor has been afforded 30 days in which to submit a plan of corrective action to comply with the agreement and an additional 90 days to cure such noncompliance in accordance with the plan or to sell his or her distributorship consistent with the provisions of this section.

(8) BURDEN OF PROOF.—For each termination, cancellation, nonrenewal, or discontinuance, the manufacturer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.

(9) NOTICE.—Notwithstanding any agreement and except as otherwise provided in this section, the manufacturer shall furnish written notice of the termination, cancellation, nonrenewal, or discontinuance of an agreement to the distributor not less than 90 days before the effective date of the termination, cancellation, nonrenewal, or discontinuance; in no event shall the contractual term of any such franchise or selling agreement expire without the written consent of the beer distributor involved prior to the expiration of at least 90 days following such written notice. The notice shall be by certified mail and shall contain all of the following:

(a) A statement of intention to terminate, cancel, not renew, or discontinue the agreement.

(b) A statement of the reason for the termination, cancellation, nonrenewal, or discontinuance.

(c) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(10) CONDITIONS AND NOTICE REQUIRED.—Notwithstanding subsections (6) and (9), a manufacturer may terminate, cancel, fail to renew, or discontinue an agreement for good cause after not less than 15 days' written notice given in the manner and containing the information required by subsection (9), if any of the following occur:

(a) Insolvency of the distributor, the filing of any petition by or against the distributor under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler which materially affects the distributor's ability to remain in business.

(b) Revocation of the distributor's license by the division or by the Federal Bureau of Alcohol, Tobacco and Firearms whereby the distributor cannot distribute beer for more than 60 days.

(c) The distributor, or a partner or an individual who owns 10 percent or more of the partnership or stock of a corporate distributor, has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the distributor or manufacturer. However, an existing stockholder or stockholders, partner or partners, a designated member or members, or the distributor itself, if incorporated, shall have, subject to the provisions of this section, the right to purchase the partnership interest or the stock of the offending partner or stockholder, and if the sale is completed within 15 days of the conviction of the offending partner or stockholder, the right of termination, cancellation, nonrenewal, or discontinuance of the distributorship agreement shall not apply.

(d) There was fraudulent conduct on the part of the distributor relating to a material matter in dealings with the manufacturer or its products.

(e) The principal of the distributor intentionally and willfully sells the manufacturer's products to a retailer or retailers located outside a distributor's territory, but only if the manufacturer has assigned exclusive territories to its distributors in Florida.

(f) The distributor fails to pay for the manufacturer's products ordered and delivered in accordance with terms established with the manufacturer and has continued to fail to make payment within 15 business days after receipt of notice of the delinquency and demand for immediate payment.

(g) The distributor sells, transfers, or assigns the franchise or control thereunder without the written consent of the manufacturer.

(11) DISCONTINUANCE OF PRODUCTION OR DISTRIBUTION.—Notwithstanding subsections (6), (9), and (10), a manufacturer may terminate, cancel, not renew, or discontinue an agreement upon not less than 30 days' prior written notice if the supplier discontinues production or discontinues distribution throughout this state of all the brands sold by the manufacturer to the distributor. Nothing in this section shall prohibit a manufacturer, upon not less than 30 days' notice, to completely discontinue the distribution throughout this state of any particular brand or package of beer. This subsection does not prohibit a manufacturer from conducting test marketing of a new brand of beer or from conducting the test marketing of a brand of beer which is not currently being sold in this state, provided that the manufacturer has notified the division in writing of its plans to test market. The notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the beer, the name or names of the brand of beer being tested, and the period of time during which the testing will take place. A market testing period shall not exceed 18 months.

(12) REASONABLE EFFORT REQUIRED.—The distributor shall devote such efforts and resources, as required in the agreement between the distributor and the manufacturer, to sales and distribution of all the manufacturer's products which the distributor has been granted the right and has agreed to sell and distribute so long as such requirements are reasonable. In the absence of such an agreement, the distributor shall devote reasonable efforts and resources.

(13) WAIVER PROHIBITED.—A distributor shall not waive any of the rights granted in any provision of this section. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(a) This subsection applies to:

1. A manufacturer;
2. Any officer, director, agent, or employee of a manufacturer; or
3. An affiliate of any manufacturer, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c), no entity or person specified in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor nor shall such entity sell directly to any vendor in this state other than to vendors who are licensed pursuant to s. 561.221(2).

(c) Any entity described in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership arrangement in which the entity described in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such limited partnership arrangements may exist for no longer than 8 years from their creation and shall not be extended or renewed by means of a transfer of full ownership to an entity described in paragraph (a) followed by the creation of a new limited partnership or by any other means. In any such arrangement for financial assistance, the federal basic permit and distributor's license issued by the division shall be issued in the name of the distributor and not in the name of an entity described in paragraph (a). If, after the creation of a limited partnership pursuant to this paragraph, an entity described in paragraph (a) acquires title to the distributorship which was the subject of the limited partnership, the entity described in paragraph (a) shall divest itself of the distributorship within 180 days, and the distributorship shall be ineligible for limited partnership financing for 20 years thereafter. No entity described in paragraph (a) shall enter into a limited partnership arrangement with a licensed distributor whose distributorship existed and was operated prior to the creation of such limited partnership arrangement.

(d) Nothing in the Beverage Law shall be construed to prohibit a manufacturer from shipping products to or between its breweries without a distributor's license.

(e) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor for a maximum of 180 consecutive days as the result of a judgment of foreclosure against the distributor or for 180 consecutive days after acquiring title pursuant to the written request of the licensed distributor. Under either of these circumstances, manufacturer ownership of an interest in the license, business, assets, or corporate stock of a licensed distributor shall only be for 180 days and only for the purpose of facilitating an orderly transfer of the distributorship to an owner not affiliated with a manufacturer.

(f) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have a security interest in the inventory or property of its licensed distributors to secure payment for said inventory or other loans for other purposes.

(15) AGREEMENTS SUBJECT TO SECTION.—The provisions of this section shall apply to all written or oral agreements between a manufacturer and beer distributor in existence on June 4, 1987, as well as agreements entered into or renewed after June 4, 1987.

(16) AGREEMENTS BINDING ON SUCCESSOR.—A successor to a manufacturer that continues in business as a manufacturer shall be bound by all terms and conditions of each agreement of the manufacturer in effect on the date of succession.

(17) REASONABLE COMPENSATION.—Upon termination:

(a) Any manufacturer which, without good cause, cancels, terminates, or fails to renew any agreement, or lawfully denies approval of, or unreasonably withholds consent to, any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, shall pay such distributor with whom it has a written contract reasonable compensation for the diminished value of the distributor's business or of any ancillary business or both which has been negatively affected by the act of the manufacturer. "Ancillary business" means a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, the assets of which are primarily used in transporting, storing, or marketing the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler which recycles returnable beverage containers; or any other business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, which business is primarily operated to benefit the wholesaler's ability to handle the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement. "Controlling stockholder" or "controlling partner" shall mean a person with an ownership interest in the wholesaler of 50 percent or more. The value of the distributor's business or ancillary business shall include, but not be limited to, its goodwill.

(b) In the event the manufacturer and the beer distributor are unable to mutually agree on the reasonable compensation to be paid for the value of the distributor's business, as defined herein, the matter may by agreement of the parties be submitted to a neutral arbitrator to be selected by the parties and the claim settled in accordance with the rules provided by the American Arbitration Association. Arbitration costs shall be paid one-half by the distributor and one-half by the manufacturer. The award of the arbitrator shall be final and binding on the parties.

(18) REMEDIES.—

(a) During the 90-day period provided in subsection (9) or during the 15-day period provided in subsection (10), either party, in appropriate circumstances, may bring action in the appropriate circuit court of this state to shorten the notice period so provided or to extend it pending a final determination of such proceedings on the merits.

(b) In any action brought under this section, the court shall have authority to grant temporary, preliminary, and final injunctive relief. If the court grants injunctive relief, bond shall not be required to be posted.

(c) In addition to temporary, preliminary, or final injunctive relief, any person who shall be aggrieved or injured in his or her business or property by reason of anything forbidden in this section may bring an action therefor in the appropriate circuit court of this state and, if successful shall recover the damages sustained and the costs of such action, including a reasonable attorney's fee.

(d) Without regard and in addition to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this section may bring an action to obtain a declaratory judgment that an act, action, or practice violates this section and to enjoin a manufacturer or distributor who has violated, is violating, or is otherwise likely to violate this section.

(e) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more persons may bring a class action for the benefit of the whole, including actions for injunctive relief.

(f) In an action for money damages, if a judge or jury finds that the defendant acted maliciously, the judge or jury may award punitive damages as permitted by Florida law.

(g) The remedies provided in this subsection shall be in addition to any other civil remedies provided by law or in equity. Nothing contained in this subsection shall give rise to or foreclose any claim which would otherwise exist against the manufacturer or distributor by any proposed purchaser of the distributor's business.

(19) CONTRACTS AND THE VALIDITY THEREOF.—No manufacturer shall effect any sale to a distributor in Florida except pursuant to a written contract between the manufacturer and the distributor which contract is consistent with the provisions of this section.

(20) REPURCHASE OF INVENTORY UPON TERMINATION.—

(a) Whenever any beer distributor enters into a franchise agreement with a manufacturer wherein the distributor agrees to maintain an inventory of beer and the franchise is subsequently terminated in accordance with this section and any circuit court injunction requested by the distributor has been denied or dissolved, the manufacturer shall repurchase the inventory as provided in this section. If the distributor has any outstanding debts to the manufacturer, then the repurchase amount may be credited to the distributor's account.

(b) The manufacturer shall repurchase that inventory previously purchased from him or her and held by the distributor on the date of termination of the contract. The manufacturer shall pay 100 percent of the actual distributor cost, including freight and reasonable storage and handling costs, of all unsold beer.

(c) Upon payment within a reasonable time of the repurchase amount to the distributor, the title and right of possession to the repurchased inventory shall be transferred to the manufacturer.

(d) The provisions of this section shall not require the repurchase from a distributor of:

1. Any inventory which the distributor desires to keep, provided the distributor has a contractual right to do so.

2. Any inventory which was ordered by the distributor on or after the date of receipt of the notification of termination of the franchise or contractual agreement.

3. Any inventory which was acquired by the distributor from any source other than the manufacturer.

(e) If any manufacturer shall fail or refuse to repurchase any inventory covered under the provisions of this section within 60 days after termination of a distributor's contract, he or she shall be civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the distributor, the distributor's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

(21) INDEMNIFICATION.—A manufacturer shall fully indemnify and hold harmless its distributor against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the manufacturer which are beyond the control of the distributor. The distributor must mail written notice to the manufacturer on a prompt and timely basis after receipt of notice of a complaint, claim, or lawsuit in order for the manufacturer to be liable under this subsection with respect to such complaint, claim, or lawsuit.

History.—s. 4, ch. 87-63; s. 1, ch. 88-21; s. 48, ch. 91-220; s. 873, ch. 97-103; s. 21, ch. 2007-134.

563.025 Surtax on license fees.—Each vendor of malt beverages containing alcohol of 0.5 percent or more by volume shall pay an annual surtax in an amount equal to 40 percent of the license fee imposed by s. 563.02(1).

History.—s. 23, ch. 86-269.

563.03 Regulation concerning draft beer.—Each and every tap or spigot through which draft beer is served shall, on the handle of such tap or spigot in plain view of the consuming public, display the name of the beer being presently served through such tap or spigot.

History.—s. 9, ch. 20830, 1941; s. 18, ch. 57-1; s. 3, ch. 72-230.

Note.—Former s. 561.60.

563.04 Labeling regulations; beer.—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of beer, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

History.—s. 3, ch. 72-230.

Note.—Former s. 561.09(1).

563.045 Brands or labels to be registered; qualification to do business; fee; revocation.—

(1) No manufacturer, brewer, bottler, distributor, or importer of malt beverages, whether licensed under the beverage laws of this state or not, shall sell or offer for sale in this state, or move or cause to be moved within this state or into this state, any malt beverages, without first qualifying to do business in the state and registering its name and the brands or labels under which the malt beverages are to be sold or moved and furnishing such samples and information as to content, quality, and formula of such malt beverages as the division may require.

(2) Each registrant shall pay an annual registration fee of $30 for a brand or label. Any registration may be suspended or revoked in the same manner as a beverage license for any violation of the Beverage Law.

(3) The purchase by any licensed wholesaler of any malt beverage from any manufacturer, brewer, bottler, distributor, or importer who has not complied with the provisions of subsection (1) is prohibited.

(4) The division shall promulgate rules to carry out the purpose of this section.

History.—s. 24, ch. 86-269.

563.05 Excise taxes on malt beverages.—As to malt beverages containing 0.5 percent or more of alcohol by volume, there shall be paid by all manufacturers, distributors, and vendors, as herein defined, a tax of 48 cents per gallon upon all such beverages in bulk or in kegs or barrels; and, when such beverages are sold in containers of less than 1 gallon, the tax will be 6 cents on each pint or fraction thereof in the container. However, the excise taxes required to be paid by this section upon malt beverages are not required to be paid upon such beverages when they are sold to post exchanges, ship service stores, and base exchanges located in military, naval, or air force reservations within this state.

History.—s. 3, ch. 72-230; s. 1, ch. 77-407; s. 12, ch. 83-349; s. 7, ch. 84-262; s. 9, ch. 86-269.

Note.—Former s. 561.46(1).

563.06 Malt beverages; imprint on individual container; size of containers; exemptions.—

(1) On and after October 1, 1959, all taxable malt beverages packaged in individual containers possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, shall have imprinted thereon in clearly legible fashion by any permanent method the word "Florida" or "FL" and no other state name or abbreviation of any state name in not less than 8-point type. The word "Florida" or "FL" shall appear first or last, if imprinted in conjunction with any manufacturer's code. A facsimile of the imprinting and its location as it will appear on the individual container shall be submitted to the division for approval.

(2) Nothing herein contained shall require such designation to be attached to individual containers of malt beverages which are transported through this state and which are not sold, delivered, or stored for sale therein, if transported in accordance with such rules and regulations as adopted by the division; nor shall this requirement apply to malt beverages packaged in individual containers and held on the premises of a brewer or bottler, which malt beverages are for sale and delivery to persons outside the state.

(3) Possession by any person in the state, except as otherwise provided herein, of more than 4½ gallons of malt beverages in individual containers which do not have the word "Florida" or "FL" as herein provided, shall be prima facie evidence that said malt beverage is possessed for the purpose of sale or resale.

(4) Except as otherwise provided herein, any malt beverages in individual containers held or possessed in the state for the purpose of sale or resale within the state which do not bear the word "Florida" or "FL" thereon shall, at the direction of the division, be confiscated in accordance with the provisions of the Beverage Law.

(5)(a) Nothing contained in this section shall require that malt beverages packaged in individual containers and possessed by any person in the state for purposes of sale or resale in the state have imprinted thereon the word "Florida" or "FL" if the manufacturer of the malt beverages can establish before the division that the manufacturer has a tracking system in place, by use of code or otherwise, which enables the manufacturer, with at least 85 percent reliability by July 1, 1996, and 90 percent reliability by January 1, 2000, to identify the following:

1. The place where individual containers of malt beverages were produced;
2. The state into which the individual containers of malt beverages were shipped; and
3. The individual distributors within the state which received the individual containers of malt beverages.

(b) Prior to shipping individual containers of malt beverages into the state which do not have the word "Florida" or "FL" imprinted thereon, the manufacturer must file an application with the division to claim the exemption contained herein and must obtain approval from the division to ship individual containers of malt beverages into the state which do not have the word "Florida" or "FL" imprinted thereon. Information furnished by the manufacturer to establish the criteria contained within paragraph (a) may be subject to an annual audit and verification by the division. The division may revoke an approved exemption if the manufacturer refuses to furnish the information required in paragraph (a) upon request of the division, or if the manufacturer fails to permit a subsequent verification audit, or if the manufacturer fails to fully cooperate with the division during the conducting of an audit.

(c) When a distributor has information that malt beverages may have been shipped into Florida on which payment of Florida excise taxes has not been made, such information may be provided to the division and the division shall investigate to ascertain whether any violations of Florida law have occurred.

(6) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing no more than 32 ounces of such malt beverages; provided, however, that nothing contained in this section shall affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(7) Any person, firm, or corporation, its agents, officers or employees, violating any of the provisions of this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and the license, if any, shall be subject to revocation or suspension by the division.

History.—ss. 1-5, ch. 25261, 1949; s. 9, ch. 29786, 1955; s. 1, ch. 59-143; s. 8, ch. 61-219; s. 1, ch. 65-246; ss. 16, 35, ch. 69-106; s. 561, ch. 71-136; s. 3, ch. 72-230; s. 31, ch. 86-269; s. 8, ch. 88-308; s. 1, ch. 88-413; s. 12, ch. 95-346; s. 8, ch. 96-419; s. 1, ch. 2001-78.

Note.—Former s. 561.471.

563.065 Price differentials.—Nothing in the Beverage Law shall prohibit licensed distributors of malt beverages from charging different malt beverage prices according to county, according to the branch of a distributor's parent place of business, according to whether a vendor sells malt beverages on premises or off premises, or according to quantity sold, as long as the price differentials are filed in advance with the Department of Business and Professional Regulation as provided by rule.

History.—s. 2, ch. 99-362.

563.07 Beer distributors' collection credit.—For the purpose of allowing credit to licensed distributors of malt beverages or beer for keeping prescribed records, furnishing bond, and properly accounting for and remitting taxes due to the state, such licensed distributors shall be allowed 2.5 percent of the amount of the tax due, accounted for, and remitted to the division, in the form of a deduction from such remittance. However, no allowance may be granted or permitted when the tax is delinquent at the time of payment.

History.—s. 3, ch. 72-230; s. 13, ch. 83-349.

Note.—Former s. 561.46(10).

563.08 Cash deposit on beer sales.—All licensed manufacturers, when distributing under a manufacturer's license, wholesalers and distributors of domestic malt or brewed beverages, as defined in the Beverage Law, shall require a minimum cash deposit of 50 cents on the sale of each case of 24 bottles of any domestic malt or brewed beverage herein referred to from their vendors, except nonreturnable bottles, and all vendors thereof shall make a minimum cash deposit of 50 cents on the purchase of each case of 24 bottles of any domestic malt or brewed beverage herein referred to, except nonreturnable bottles, and vendors shall require a minimum cash deposit of 50 cents on the sale of each case of 24 bottles of any domestic malt or brewed beverages herein referred to from their purchasers, except nonreturnable bottles. Said manufacturers, wholesalers,

and distributors shall keep a record of all such deposits and shall make refund to their vendors within 10 days after receipt of notice from such vendors in writing that empties are ready for return, if such be true, to such manufacturers, wholesalers, and distributors.

History.—s. 1, ch. 19570, 1939; CGL 1940 Supp. 4151(271dd); s. 24, ch. 25359, 1949; s. 3, ch. 72-230.

Note.—Former s. 562.22.

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Select Year: 2010 Go

The 2010 Florida Statutes(including Special Session A)

Title XXXIV
ALCOHOLIC BEVERAGES AND TOBACCO

Chapter 562
BEVERAGE LAW: ENFORCEMENT

View Entire Chapter

562.45 Penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.—

(1) Any person willfully and knowingly making any false entries in any records required under the Beverage Law or willfully violating any of the provisions of the Beverage Law, concerning the excise tax herein provided for shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It is unlawful for any person to violate any provision of the Beverage Law, and any provision of the Beverage Law for which no penalty has been provided shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that any person who shall have been convicted of a violation of any provision of the Beverage Law and shall thereafter be convicted of a further violation of the Beverage Law, shall, upon conviction of said further offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) Nothing contained in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. However, except for premises licensed on or before July 1, 1999, and except for locations that are licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, pursuant to chapter 509, a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(4), for counties, and s. 166.041(3)(c), for municipalities. This restriction shall not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in s. 561.422. The division may not issue a change in the series of a license or approve a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.

(b) Nothing in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the type of entertainment and conduct permitted in any establishment licensed under the Beverage Law to sell alcoholic beverages for consumption on the premises, or any bottle club licensed under s. 561.14, which is located within such county or municipality.

(c) A county or municipality may not enact any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. Except as otherwise provided in the Beverage Law, a local government, when enacting ordinances designed to promote and protect the general health, safety, and welfare of the public, shall treat a licensee in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state. Nothing in this section shall be construed to affect or impair the enactment or enforcement by a county or municipality of any zoning, land development or comprehensive plan regulation or other ordinance authorized under ss. 1, 2, and 5, Art. VIII of the State Constitution.

History.—s. 15, ch. 16774, 1935; s. 3, ch. 19301, 1939; CGL 1940 Supp. 4151(240), 7648(6); s. 4, ch. 29964, 1955; s. 1, ch. 57-327; s. 573, ch. 71-136; s. 2, ch. 72-230; s. 1, ch. 87-365; s. 24, ch. 91-60; s. 4, ch. 97-165; s. 2, ch. 99-156.

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~~Ms. Henrikson stated that the general consensus that she heard from the board is to follow the regulations pertaining to other commercial zoning districts. She stated that currently, the city does not have restrictions on hours of operation.~~

~~Mr. Casey stated he does not support restriction with regard to hours of operation.~~

~~Mr. McGuirk stated that is why he would like to see if there was further documented information with regard to the history of problems or issues arising from the operation of such businesses.~~

~~Mr. Jameson stated he will further research and bring his findings back to the board.~~

Alcohol Regulations

Ms. Henrikson stated that similar to the tattoo topic, staff has been running into issues regarding the current alcohol regulations. Ms. Henrikson stated that the code, which was written thirty years or so ago, is now facing issues that did not exist when the code was originally written. She stated that perhaps the city needs to take a look at those issues and have a discussion on it. She stated that staff is asking the board whether the existing alcohol regulations need to be looked at. She stated that she realizes this is a much bigger discussion that will affect the entire city and, as such, staff was not prepared to present it as an ordinance. However, staff is requesting whether the board even sees this as an issue that would require a broader public discussion.

Ms. Henrikson gave an example of business owner who wanted to open a wine store but also wanted to allow patrons to buy and consume wine on-site. However, because of current regulations, the business owner was prevented from doing so in the location they wanted to open the business.

Mr. McGuirk stated that with regard to Canal, Flagler and 3rd Avenue he feels that there was an issue but that he does not feel it was an issue on US1. He stated that he felt that there was a need to revamp the regulations.

Ms. Henrikson stated that a draft ordinance would be brought back at the June meeting as a visioning topic for discussion.

~~**OLD BUSINESS**~~

~~None.~~

~~**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.~~

Interoffice Memorandum
City of New Smyrna Beach

To: Planning and Zoning Board Members

From: Gail Henrikson, AICP, Planning Manager

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 to 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 aforedescribed 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;

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 aforedescribed 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)

Interoffice Memorandum
City of New Smyrna Beach

To: Planning and Zoning Board Members

From: Marissa Moore, Planner, Planning and Zoning

Subject: Special Events Draft Regulations

Date: 26 May 2011

Attached are the draft regulations for Special Events. If/when adopted, it will be a new section of the Code of Ordinances (except the very first paragraph which changes the existing language pertaining to approval for open containers on public property).

In regards to the draft sign regulations, they could possibly be more specific and therefore should be expanded to better explain what is allowed or not and exactly where signs are allowed (more specifically, off-site signage, to include snipe signs, "parking" / directional signs, etc., often located on city ROW, sometimes attached to phone poles and trees).

Establishing fees for such items as barricades/cones, police security, any permitting that we may impose in addition to what we already have, and fines for violations would need to be coordinated with the respective departments to determine appropriate amounts.

Applications will need to be devised for sidewalk sales and charitable organizations (a Special Event application has already been created for major and minor events, and is utilized by the Special Events Committee), to assist in keeping track of number of days of individual events and total days throughout the year, who is doing what (in case there is a complaint, to ease with enforcement by having contact names/numbers, etc.).

This is essentially a modified version of Port Orange's ordinance, with pieces pulled from various portions of their code, changed to coordinate with our existing codes and based on information attained by participation in the Special Events Committee with members of the other participating departments that review applications for events.

Staff is presenting this to the Planning and Zoning Board as a courtesy, as the adoption of the official language, because it amends the Code of Ordinances and not the Land Development Regulations, only goes to City Commission for two readings and does not

go before the Planning and Zoning Board for an official reading and recommendation. Staff is requesting input from the P&Z Board at this time.

Part II. Code of Ordinances
***

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

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~~ City Commission has been obtained.

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ARTICLE VI. SPECIAL EVENTS

Sec. 70-163 Special Events Definitions.

For purposes of this article, the following words, terms and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable organization means a group which is or holds itself out to be a benevolent, educational, voluntary, health, philanthropic, humane, patriotic, religious or eleemosynary organization or any person who solicits or obtains contributions solicited from the public for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state shall be a charitable organization.

Charitable purpose means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities or civic and public interests.

Community wide special event shall mean any of the following:

a. Bike Week (generally a ten-day period beginning on the last Friday in February), as recognized by the Daytona Beach-Halifax Area Chamber of Commerce;

b. Biketoberfest (generally the third weekend in October, plus the five days before and two days after), as recognized by the Daytona Beach-Halifax Area Chamber of Commerce; or

c. Any other event of significance to the community which may from time to time be recognized by resolution and/or approved by the City Commission.

Demonstration means a public gathering or procession conducted for the primary purpose of the exercise of the rights of public assembly and free speech as guaranteed by the First Amendment of the Constitution of the United States.

Major special event means a special event which, by itself or in conjunction with other events occurring during the same time (such as during a community wide special event), is likely to have a major impact on the community, including but not limited to factors such as traffic, noise, or other aspects of public health, safety and welfare.

Merchant activity means the outdoor sale, display, promotion of or giving away of merchandise, products, or services by a person at a special event.
Merchant activity area means an area designated for use, actually used, or allowed to be used for merchant activities by the special event sponsor.
Special event itinerant vendor shall mean all merchants and vendors who conduct merchant activity upon a special event sponsor's property and who are not the special event sponsor.
Special Events Committee (SEC) means the committee comprised of representatives from all potentially impacted departments by an event; this committee shall include, but not be limited to, representative from Parks and Recreation, Public Works, Planning & Zoning, Code Enforcement, Police Department, Building Department, Fire Department, and Airport.
Minor special event means any special event other than a major special event that has a minor impact on the community and does not require additional city resources, such as assistance needed from public safety or public works personnel for the event, not street closure(s).
Person shall mean individual human being and any partnership or corporation.
Solicitor or solicitations for charitable organizations means the request directly or indirectly for money, credit, property, financial assistance, or other thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value will be used for a charitable purpose as those purposes are defined in this section, and include the following methods of securing such money, credit, property, financial assistance, or other thing of value:
(1) Any oral or written request.
(2) The making of any announcement to the local press, over the radio or television, or by telephone or telegraph, concerning a local appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith.
(3) The distribution, circulation posting, or publishing of any handbill, written advertisement, or other local publication which directly or by implication seeks to obtain public support.
(4) The sale of, offer of, or attempt to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable purpose, or when the name of any charitable person is used or referred to in such an appeal as an inducement or reason for making any such sale, or when, in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose. Solicitation shall be deemed to have taken place when the request is made, whether or not the person making the request receives any contribution.

Special event shall mean any public or private non-profit event of limited duration that is beyond the scale or scope of everyday operations of the establishment holding the special event. For purposes herein, an event shall be deemed to be beyond the scale or scope of everyday operations if:

a. The event is held in conjunction with a community wide special event; and/or

b. The event involves the use of temporary structures regulated by the adopted building codes; and/or

c. The event involves the use of temporary power connections regulated by the adopted building codes; and/or

d. The event is of a kind not normally included within the use category for the establishment as referenced in the Land Development Regulations; and/or

e. The event is located outside of or partially outside of the area of the sponsoring property permitted for normal retail sales or services. For purposes herein, an area is permitted for normal retail sales or service if it is within the footprint of the primary structure or is shown on the approved site plan as being used for normal business activity on the sponsoring property, and includes, in the case of alcoholic beverages, the area defined in the permit (other than an extension of premises permit) issued by the Division of Alcoholic Beverages and Tobacco of the State of Florida Department of Business and Professional Regulation; and/or

f. At least three merchants other than the establishment holding the event will participate in the special event; and/or

g. The event involves any two or more of the following:

1. Occupancy limits established by the standard building code are likely to be exceeded.
2. The event is promoted or advertised as an event separate and apart from the establishment's everyday activities.
3. One or two merchants other than the establishment holding the event will participate in the event.
4. The event involves multiple sponsoring properties.

Notwithstanding the foregoing, events sponsored or cosponsored by the city shall not be deemed to be special events subject to the provisions of Section 606.00. Further, temporary activities solely involving constitutionally protected free speech or conduct which cannot constitutionally be subjected to licensing by this article because it is otherwise protected by the United States Constitution or Florida Constitution under existing judicial decisions, shall not be deemed to be special events.

Special event sponsor shall mean the property owner or occupant of the sponsoring property.

Sponsoring property shall mean the legal lot(s) or parcel(s) on which the special event is held and the legal lot(s) or parcel(s) designated for parking for such special event, regardless of zoning classification; provided, however, that in the case of a strip commercial shopping center, the term "sponsoring property" shall mean all of the lots and parcels comprising the shopping center.

Weapons shall mean any pistol, rifle, shotgun or other firearm, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap, knife, hatchet, ax, slingshot, blackjack, metal knuckles, mace, iron buckle, ax handle, crowbar, or any other instrument customarily used or intended for use as a dangerous weapon.

Sec. 70-164 Special event permit required.
(a) No person shall conduct or allow the conduct of any special event on its property or any other property without obtaining a special event permit in accordance with this article.
(b) Each special event sponsor shall obtain required permitting for itinerant vendors and tents as required by the Fire and Building Departments.

Sec. 70-165 Limitations on number and duration of special events.
Special events held in conjunction with a community wide special event shall not exceed the duration of the community wide special event. All other special events shall not exceed seven consecutive calendar days unless waived or modified by the city commission. No lot or parcel shall serve as a location of a special event, or any part of a special event, including parking, for more than a total of 40 days per calendar year. The 40-day limitation applies to all special events, including major special events and minor special events as defined in this article, and sidewalk and outdoor sales events as provided in section 70-169 below.

Sec. 70-166 Special event permit application.
(a) *Minor special events.* An application to hold a minor special event shall be made in writing to the director of Parks and Recreation, or the director's designee, using such forms and including such information as deemed necessary to determine compliance with the requirements of this article. At a minimum, the application shall include the following:

(1) The applicant's name, proposed location and description of the special event, and days and hours proposed.
(2) Proof that the applicant has a legal right to occupy the sponsoring property (e.g., through ownership, written lease or written authorization).
(3) A site sketch specifying the location of the special event area.
(4) The special event permit fee as established by resolution of the city commission.
(5) The application shall be submitted at least twenty business days before the special event commences to allow for sufficient staff review.
(6) Size, location and number of all signs to be utilized during the special event.
(7) Whether or not consumption of alcohol on public property will be requested, which must comply with Section 10-5 of the Code of Ordinances.

(b) *Major special events.* An application to hold a special event shall be made in writing to the Special Events Committee (SEC) using such forms and including such information as the city manager or his designee may deem necessary to determine compliance with the requirements of this article. At a minimum, the application shall include the following:

(1) The applicant's name, proposed location and description of the special event, and days and hours proposed.

(2) Proof that the applicant has a legal right to occupy the sponsoring property (e.g., through ownership, written lease or written authorization).
(3) A site plan specifying the location and contour of the special event area, pedestrian access, the number and location of merchant display areas designated, barricades, special signage and other devices necessary to maintain public safety, and indicating traffic and parking patterns.
(4) The special event permit fee as established by resolution of the city council.
(5) A minimum of forty-eight hours prior to the event the sponsor of the event shall provide a list to the city manager or his designee that specifies the total number of itinerant merchants, names of the merchants, and the goods and services to be provided by the merchants. The city manager or his designee shall use the list in order to issue the fire permits for itinerant merchants and shall collect the appropriate special event fire permit fee as established by resolution of the city commission. Additional itinerant merchants may be added to list after the event has started provided that the total number of itinerant merchants does not exceed the amount approved with the fire permit and all applicable fees are paid.
(6) The application shall be submitted at least 45 days to the SEC before the special event commences to allow for sufficient staff review and for consideration by the city commission.

Sec. 70-167. Procedure; review criteria.

(a) *Minor special events.* The SEC shall review the application submitted for completeness. The SEC is hereby authorized to reject any application, which is not complete, or which is not received by the specified deadline. A completed application shall be processed as follows: The SEC shall ensure that the application is reviewed by all affected city departments for compliance with all applicable regulations. The SEC may approve or deny such application, or may attach such conditions to an approval as provided by this article. Appeals from the decision by the SEC shall be made to the city manager a minimum of 21 business days prior to the minor special event. The city manager's determination whether to grant or deny an application for a minor special event shall be final.

(b) *Major special events.* The SEC shall review the application submitted for completeness. The SEC is hereby authorized to reject any application which is not complete, or which is not received by the specified deadline. Completed applications for major special event permits shall be reviewed to determine the anticipated impact on pedestrian and traffic patterns, noise, security, and other aspects of public health, safety or welfare and for compliance with this article. An application may be denied if the city commission determines that any of the following are true:

(1) The proposed special event cannot be conducted in such a manner as to ensure the public health, safety or welfare consistent with the provisions of this article, or the special event could be conducted in such manner as to ensure public health, safety or welfare only with certain conditions attached and the applicant refuses to accept such conditions as conditions of a permit.

(2) The applicant previously failed to clean up the site of the proposed special event, other property owned by the applicant, or properties adjacent to such site or such other property, of garbage, waste, trash or debris associated with a previous special event, and at the time of application:

a. Such conditions remain; or

b. Such conditions have been remedied by the city, but the applicant has failed to fully reimburse the city for the costs of such remedy.

(3) At the time of application, code violations exist on the site of the proposed special event.

(c) A completed application shall be processed as follows:

(1) The SEC shall ensure that the application is reviewed by all affected city departments and shall forward the application to the city commission for consideration with any recommendations made by the SEC. The city commission may approve or deny such application and in approving such application may attach such conditions as provided by this article.

(2) The city commission's determination whether to grant or deny an application for special event permit shall be final.

Sec. 70-168. Permit conditions.

(a) Every special event permit shall contain the following conditions:

(1) The permit holder shall comply with all applicable city ordinances.

(2) The permit holder shall be responsible for compliance with all other applicable state, county and city laws, rules, regulations, codes and ordinances, such as those relating to sales tax, the sale and consumption of food or alcoholic beverages, and public health.

(3) The permit shall be posted on the sponsoring property so that it is readily visible to the passing public. Each individual special event itinerant merchant shall post a copy of the official issued fire permit within the area that merchant is operating and so it is readily visible to the passing public.

(b) Notwithstanding the foregoing, and unless waived or modified by the city commission, the permit holder shall comply with all applicable city ordinances, including but not limited to the following:

(1) Section 304.00 of Chapter 8 of the Land Development Regulations, relating to adopted building codes;

(2) Sections 70-172, relating to temporary and special event signs;

(3) Article IV of Chapter 38 of the Code of Ordinances, relating to nuisances; and

(4) Article II of Chapter 70 of the Code of Ordinances, relating to obstruction and encroachment of rights-of-way, and Section 604.05 and 604.051, relating to preservation of trees and landscaping landscaping.

(c) Unless expressly waived by the city commission, the city shall impose on the major special event permittee as additional conditions, both of the following obligations:

(1) The posting, in advance, of a good and sufficient surety bond or cash bond in an amount to be determined by the city commission, unless the bond is waived under the conditions provided herein. The bond shall be conditioned upon full

compliance with the terms of the permit(s) and the provisions of this article, including but not limited to, the removal of any temporary structures constructed for the special event and any garbage, waste, trash and debris from the sponsoring property and any abutting properties which may become littered with garbage, waste, trash or debris as a result of the special event, within 48 hours after the special event.

(2) The payment, in advance, of any charges which the city may impose upon the permittee, such as fees associated with the use and/or delivery of City-owned barricades by City staff as further outlined in subsection (d)(3) below and the charge for use of police officer as further described in subsection (d)(5) of this section.

The failure to comply with these obligations at least five days prior to the scheduled commencement of the special event shall automatically void the permit(s).

(d) The city commission, for major events, or the SEC, for minor events, may impose such additional restrictions on the granting of a special event permit, as deemed necessary to ensure compliance with the provisions of this article, the Code of Ordinances and the Land Development Regulations. These conditions may include but shall not be limited to the following:

(1) Restrictions on the outside amplification of sound, hours of operation and signage. Noise shall generally be controlled by Article III of Chapter 38 of the Code of Ordinances, unless further restrictions are imposed due to the proximity of the event to residential property. Hours of operation of the special event shall generally be limited to 11:00 p.m., unless specifically waived or amended by the city commission.

(2) Restrictions on the location of semi-trailers, motor homes and similar vehicles used solely for storage of goods and merchandise displayed at the special event to the rear of a principal building, or to other locations such that these vehicles are not readily visible from the public right-of-way fronting the sponsoring property. This provision shall not be deemed to authorize the use of such vehicles for sleeping by participants in the special event while such vehicles are located on the sponsoring property.

(3) A requirement that appropriate traffic control devices, including barricades and/or cones be used at the special event permittee's expense as needed at the site of the special event to help ensure public safety. If the permittee chooses to borrow city-owned cones and/or barricades, the permittee must pay a charge for the use of and/or delivery of barricades and/or cones; whether the permittee picks up or has cones and/or barricades delivered, a deposit in the sum of 10% of the replacement cost of the barricades and/or cones shall be left with Public Works; a flat fee shall be charged for delivery as determined by the Public Works Department.

(4) Restrictions or prohibitions on the use of public rights-of-way.

(5) A requirement that the permittee pay a charge for the use of police officers needed at the site of the special event to help ensure public safety.

(6) A requirement that the permit holder screen participating merchants for compliance with applicable state, county and city laws, rules, regulations, codes and ordinances.

(e) The permit holder shall be responsible for compliance by all participating merchants with the permit conditions which may be imposed.

Sec. 70-169 Sidewalk and outdoor sales

Sidewalk sales and other outdoor sales events may be conducted in any nonresidential zoning district subject to the following regulations:

(1) No more than four outdoor sales events shall be permitted for any one business in any calendar year. Sales events shall not exceed seven consecutive days.

(2) Except as provided in subsection (3) of this section, sales shall be located on the sidewalk directly in front of the business establishment or retail store conducting the sale. Sales shall not impede pedestrian traffic or create a public safety hazard as determined by the city manager.

(3) Requests for use of parking areas or vacant commercial parcels for sales events may be permitted by the city council. Such requests shall include site plans specifying the limits of the sales area, pedestrian access, traffic patterns, location of merchandise, barricades, special signage, and other requirements necessary to maintain through traffic patterns and public safety in and around the sales area.

(4) Displays by any business establishment or retail store of seasonal or holiday items, such as Christmas trees and Halloween pumpkins, or items which may not easily be displayed indoors shall be exempt from this section, provided that such displays do not impede pedestrian traffic and the display area is located outside parking and traffic areas in front of the business establishment or retail store selling such items. Seasonal items do not include garden supplies and equipment, landscape materials, bicycles, children's pools, lawn furniture, fireworks, and other merchandise associated with spring and summer.

(5) Bake sales, cookie sales, car washes, charitable solicitation, temporary drop-off boxes used for four weeks or less, and other such sales and fundraising events conducted by or on behalf of a charitable organization as defined in Section 70-170 shall be exempt from subsection (1) of this section, provided that such sales or fundraising events do not impede pedestrian traffic or create a public safety hazard as determined by the city manager. However, such sales and fundraising events shall comply with all other applicable requirements of this section and article II of chapter 30.

(6) No outdoor sales event shall be conducted unless a permit has been obtained from the Parks and Recreation director or the director's designee. Site plans specifying the limits of the sales area, pedestrian access, traffic patterns, location of merchandise, barricades, special signage and other requirements necessary to maintain public safety shall be submitted with each Special Event application and reviewed by the affected departments. The city may, as a condition of permit approval, require the applicant to provide police officers at the expense of the applicant to help ensure public safety. The city may, as a condition of permit approval, require the applicant to post a good and sufficient surety bond or cash bond conditioned upon the removal of any garbage, waste,

trash, and debris from the property within 48 hours after the outdoor sales event. The permit shall be issued upon written application, subject to compliance with the requirements of this section and any conditions of approval and upon payment of the prescribed fee. A permit fee shall be required for each outdoor sales event.

Sec. 70-170 Charitable and religious solicitations

(a) Permitting - It shall be unlawful for any person directly or indirectly to solicit property or financial assistance of any kind, to sell or offer to sell any article, merchandise, goods, tax, service emblem, publication, ticket advertisement, subscription, or anything of value on the streets, sidewalks, or other public property in the city, unless such person has first obtained a permit to do so.

(b) Application - A written application for a permit for solicitation by a charitable organization required by this division shall be sworn to and filed with the city clerk; the application shall contain the following information:

(1) Name of the charitable organization applying for a permit to solicit and the address of its headquarters.

(2) Names and address of its principal officers and management.

(3) The purpose for which any receipts derived from such solicitations are to be used.

(4) The name of the person by whom the receipts of such solicitation shall be disbursed.

(5) The name, address and telephone number of the person who will be in direct charge of conducting the solicitation.

(6) An outline of the method to be used in conducting the solicitation.

(7) The time when such solicitation shall be made, giving the proposed dates for the beginning and ending of such solicitations.

(8) The amount of any wages, fees, commissions and expenses, or emoluments to be expended or paid to anyone in connection with such solicitation, together with the manner in which such wages, fees, expenses, commissions or emoluments are to be expended, to whom paid an amount thereof.

(9) Financial statement for the last preceding fiscal year of any funds collected by the activities set out in section 18-172 by the organization or persons seeking a permit for such solicitation, such statement giving the amount of money so raised, together with the cost of raising it, and the final distribution thereof.

(10) A full statement of the character and extent of the charitable, religious, educational or philanthropic work being done by the applicant organization within the city.

(11) A copy of the organization's certificate from the secretary of state, pursuant to F.S. Chapter 496, known as the Solicitation of Charitable Funds Act.

(12) A copy of its determination of tax exempt status by the Internal Revenue Service of the United States of America.

Sec. 70-171. Approval of charitable and religious solicitations.

If the application for a permit required by this division shows that the solicitation is to be made for a charitable, educational, religious, patriotic or philanthropic purpose, and that the proceeds derived from such solicitation will be used for such a purpose, and that the solicitation will be conducted in conformity with the requirements of this division and all other applicable laws, the city clerk shall approve such application. Upon approval of the application for a permit required by this division, the city clerk shall issue a permit to the applicant.

Sec. 70-172. Signage

(a) Prohibited *signs.* It shall be unlawful to erect, cause to be erected, maintain or cause to be maintained any sign described in Section 604.14B of the Land Development Regulations unless or except as follows:

(b) *Banners/temporary exterior wall signs.* Banners or other temporary wall signs shall be permitted so Special Events under the following conditions:

a. In conjunction with a grand opening for a new use in a nonresidential zoning district, for a period not to exceed 15 consecutive days and utilized within the first three months of business for the use.

b. For sidewalk sales and other outdoor sales as authorized by section 70-169 .

c. Maximum sign area shall be 32 square feet.

d. One temporary wall sign or banner per street frontage shall be permitted to be displayed during the special events described below. Such signs may carry business or product logos, and generic messages commemorating the event and/or welcoming visitors. The sign shall not convey specific sales information, such as prices or specials.

i. Bike week (generally three weeks after the Daytona 500, in March).

ii. Spring break (generally falling within the months of March and April).

e. The official dates and duration of the events specified above shall be those which are designated on the events calendar of the Daytona Beach and Halifax Area Chambers of Commerce.

(c) All temporary wall signs or banners allowed under this paragraph may be installed up to one week prior to the event, and shall be removed no later than 48 hours following the event.

(d) Temporary signs for special events shall be permitted as described in this section.

(1) *Setbacks, height, maximum signage.*

a. Setback shall be 25 feet from side property lines or equidistant between side property lines.

b. The maximum height shall be five feet in residential zones and eight feet in nonresidential zones.

c. The maximum signage shall be:

	Maximum per Sign	**Maximum per Parcel**
Residential zone	**6 square feet**	**32 square feet**
Nonresidential zone	**16 square feet**	**48 square feet**

(2) *General restrictions.* No special event sign may be used for the purpose of off-site advertising or any other purpose prohibited in section (a) above.

(3) No sign prohibited in section (a) of this chapter shall be authorized under this section as a special event sign.
(4) No special event sign shall be placed so as to obscure visibility of any permanent freestanding sign, unless such placement has been approved in writing and filed with the City Clerk by the property owner whose freestanding sign is obscured.
(5) No special event sign shall be placed on lots or parcels of any privately owned, undeveloped property without written authorization of the property owner. Such authorization shall be filed with the city clerk prior to posting any sign on the undeveloped property.
(6) The erection and removal of all special event signs shall be the responsibility of the person sponsoring the special event, except for political campaign signs which shall be the responsibility of the candidate for whom the sign was placed.
(7) Special event signs shall be erected not more than 30 days prior to a major event and not more than 48 hours prior to a minor special event. All special event signs shall be removed within five days after the major special event and not more than 48 hours after the minor special event for which the sign was authorized.
(8) *Bond requirements.* It shall be unlawful for any person authorized to post special event signs in accordance with this section to post any signs, billboards or posters on three or more parcels or lots of unimproved or vacant property unless such person posts a good and sufficient surety bond or cash bond in an amount of not less than $250.00, conditioned upon the removal of such signs, billboards and posters within five days after the major special event or witin 48 hours of the minor special event for which the signs were posted. Should the person who posted the bond for such signs fail or refuse to remove said signs, billboards or posters within five days after the special event, the city shall have the authority to remove such signs, billboards and posters and dispose thereof and charge the cost of such removal and disposition against the bond posted. In the event a cash bond is posted, any funds remaining in the hands of the city after the cost of such removal has been deducted shall be remitted to the person who posted the bond.

Sec. 70-173. Inspections.
As a condition of any permit, city officials, employees and agents shall have authority to enter upon the sponsoring property at any time to ensure public health, safety and welfare, compliance with this article, permit conditions, the Code of Ordinances and the Land Development Code.

Sec70-174. Violations.
(a) The city manager or his designee shall have authority to issue a notice of violation on the special event sponsor with respect to any special event which was not permitted as required by this article, or where one or more permit conditions have been violated. The notice of violation shall indicate the nature of the violation and specify the fee, if any, to bring the violation into compliance and a reasonable time for bringing the violation into compliance.
(b) If the special event sponsor of a permitted special event fails to comply with a notice of violation previously issued, and the violation is confined to the limits of a merchant display area as shown on the approved site plan or sketch, the city manager or his designee may order the use of such merchant display area temporarily suspended until the violation is cured, or the city manager or his designee may proceed as set forth in subsection (c) of this section.

(c) In the event that the special event sponsor fails to comply with a notice of violation or temporary suspension order previously issued, or in the event any violation of this article of such magnitude that there is an imminent threat to public health, safety or welfare regardless of whether notice has previously been issued, the city manager or his designee may revoke a special event permit without further notice. Examples of violations posing an imminent threat to public health, safety or welfare include, but are not limited to, failure to control parking or traffic, failure to comply with occupancy load restrictions, construction or use of temporary structures which are unsafe, and failure to comply with applicable food and beverage laws.
(d) Any notice of violation, temporary suspension order and revocation of permit authorized in this section shall be deemed delivered when delivered to the permittee, or to any person listed in the application for permit as managing or supervising the special event, or if such person does not appear to be on site, to any other person who appears to be in control of the special event or who appears to be acting on the special event sponsor's behalf. Delivery may be by hand or mailed; but if mailed, delivery shall not be complete until the notice or permit revocation has also been posted in conspicuous locations on the sponsoring property. It shall be unlawful for any person to remove a posted notice or permit revocation from the site.
(e) Once a permit has been revoked, the special event sponsor must close down the special event. Once a temporary suspension order has been issued, the special event sponsor must close down that portion of the special event subject to the order. The special event sponsor shall be required to show that noncompliance has been cured and pay a fee as established by resolution of the city council before the special event may be resumed.
(f) The authority conferred by this section shall apply in addition to any other remedies at law or ordinance for violations of this article.

Sec. 70-175. Public conduct during events on public property.
For the health, safety and welfare of the public, a special event or demonstration on public property shall require prior notification to the city manager if there is likelihood that the event will draw more than 200 people, impede traffic, or otherwise disrupt city business. The city manager retains the right to impose reasonable restrictions on the time, place, or manner of the use of public property as necessary to maintain the health, safety and welfare of the public.
For the health, safety and welfare of the public, it shall be unlawful for any person to carry, possess, exhibit, or display any of the following while participating in any special event or demonstration on public property or right-of-way:
(1) Weapons as defined in section 70-163;
(2) Any projectile launcher or other device that is commonly used for purpose of launching, hurling, or throwing any object, liquid, material or other substance;
(3) Any glass bottles, glass jars, or glass containers with the intent to injure persons or property;
(4) Paint or spray paint;
(5) Balloons filled with anything other than air or helium;
(6) Bricks, stones, rocks or pieces of asphalt or concrete;

(7) Any mask when used with the intent of preventing or hindering law enforcement officers from protecting persons or property, or when used to avoid identification while engaging or attempting to engage in unlawful acts;
(8) Any device when used with the intent to lock a person or persons to other persons or objects and with the intent to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon any facility, street, sidewalk, swale, alley, park, public recreation area or other place or building;
(9) Any toxic or noxious substance;
(10) Notwithstanding the foregoing, any prohibited weapon or item may be carried, possessed or displayed by law enforcement officers, fire/rescue officials, or other government officials at their discretion for public safety purposes during the scope of their employment.
A law enforcement officer shall notify person(s) in possession of weapons or prohibited items as specified above, that possession of said item(s) is unlawful and said items shall be immediately surrendered as directed by the law enforcement officer, the failure of which may result in arrest, provided, however, no notification is required prior to arrest for possession of a concealed weapon or as otherwise specified in F.S. Chapter 790.

Sec. 70-176. Penalties
Anyone who is convicted of violating a provision of this article shall be punished as provided by section 1-8 of the Code of Ordinances. Each day the violation continues shall be considered to be a separate offense.

Interoffice Memorandum
City of New Smyrna Beach

To: Planning and Zoning Board Members

From: Gail Henrikson, AICP, Planning Manager GH

Subject: **V-3-11: 916 SOUTH RIVERSIDE DRIVE / SMITH**

Date: May 25, 2011

The applicant has requested that this item be continued until the July 11, 2011 Planning and Zoning Board meeting. Staff has been working with the applicant to find alternative methods to provide the required number of parking spaces. Until that is finalized, staff cannot determine what, if any, variances would be required.

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

V-4-11: GARY'S TRANSMISSION

June 6, 2011

I. Summary

A. **Applicant:** Gary A. Zollo, 15 Camino Real Ct., Edgewater, FL 32132

B. **Property Owners:** Stuart Franklin and Carol, 37935 Burhans Road, Eustis, FL 32736

C. **Requests:** A variance to section 801.05E to allow for an outside automobile lift and outside repair of automobiles.

D. **Site Information:** The subject property is zoned B-3, Highway Service Business, contains approximately 0.338 acres and is located on the south east corner of US-1 and Ronnoc Lane. (see Location Map attached as **Exhibit A**).

E. **Tax I.D. Number:** 744130050070

II. Findings

A. The subject property has a Service Station, Type C on it. A Service Station, Type C is for the purpose of "re-building or reconditioning of engines, motor vehicles or trailers, collision service including body, frame or fender straightening or repair; overall painting or paint shop". Service Stations Type C are not generally allowed within the B-3 Zoning District. Service Stations, Types A & B. are permitted in a B-3 Zoning Districts Service Station Type A only allows for the lubricating of a vehicle and the changing of lubricating fluids. Service Stations, Type B allows for sale and installation of accessories, batteries, tires, brakes, and minor tune ups, but specifically prohibits mechanical and body repair. This location has been grandfathered in as a nonconforming use under Section 505.03.

B. The subject property has an outdoor vehicle lift onsite. This lift allows for and promotes the repair of vehicles outdoors. Outside repair of vehicles is prohibited under Section 801.05.E. "No repair of motor vehicles or parts thereof shall be made except within a structure provided for such purpose and no storage of motor vehicle parts shall be other than in an enclosed building." Therefore the lift is a nonconforming structure in itself. This use has been grandfathered in as a nonconforming use under Section 505.03.

C. Section 505.05.B. provides that should such nonconforming structure, or nonconforming portion of structure, be destroyed by any means other than deterioration through time, to an extent of more than 50 percent of its appraised value at time of destruction, it shall not be reconstructed except in conformity with the provisions of this LDR.

D. The LDR requires variance requests to meet all of the following criteria. The applicant's letter of response to the variance criteria is attached as **Exhibit B**, with photos shown in **Exhibit C**. Staff's responses to the criteria are listed below in **bold**.

(i) Special circumstances exist which are peculiar to the subject property owner's land, structure, or building, and do not generally

apply to the neighboring lands, structures, or buildings, in the same district or vicinity.

There is no special circumstance associated with this property. There are alternatives available to the applicant that would allow for a 3rd enclosed repair bay on the site for the continued repair of vehicles inside of a structure.

This criterion has not been met.

(ii) Strict application of the provisions of this LDR would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general.

The benefits provided by the outside lift and outside repair of vehicles is that it prevents a hardship of losing 1/3 of the site's repair bays. Section 305.05.D. (1) Financial disadvantages to the property owner shall not constitute conclusive proof of unnecessary hardship within the purpose of zoning. As noted, it appears that a 3rd enclosed bay could be added to the existing structure.

This criterion has not been met.

(iii) The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner created, to any degree, the hardship that is the subject of the variance request.

Per finding (i), there is no special circumstance

This criterion has not been met.

(iv) That granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.

In general, noxious uses are permitted only in specific zoning districts for the benefit of the community. Uses that have noxious effects on other properties be they visual, auditory, olfactory, or tactile should be limited. Nonconforming uses often have effects which are noxious to the surrounding properties. Therefore the continuation of a nonconforming use is generally a detriment to the community. In this case specifically, the nonconforming use here is the continuation of an activity that has been ongoing.

Further it is the intent of the of the Land Development Regulations that though a nonconforming use is initially permitted to continue, over time the nonconforming use will lessen in intensity and eventually be eliminated. The granting of a variance to continue with this nonconforming use would not appear consistent with the intent of the Land Development Regulations.

This criterion has not been met.

(v) That granting of the variance will not constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district.

Granting of this variance would constitute a grant of special privilege, as the outside repair of vehicles is not permitted under the current Land Development Regulations.

This criterion has not been met.

III. Recommendation

Staff recommends denial of variance request due to the application meeting none of the 5 required criteria for approval.

LOCATION MAP

EXHIBIT A

V-04-11

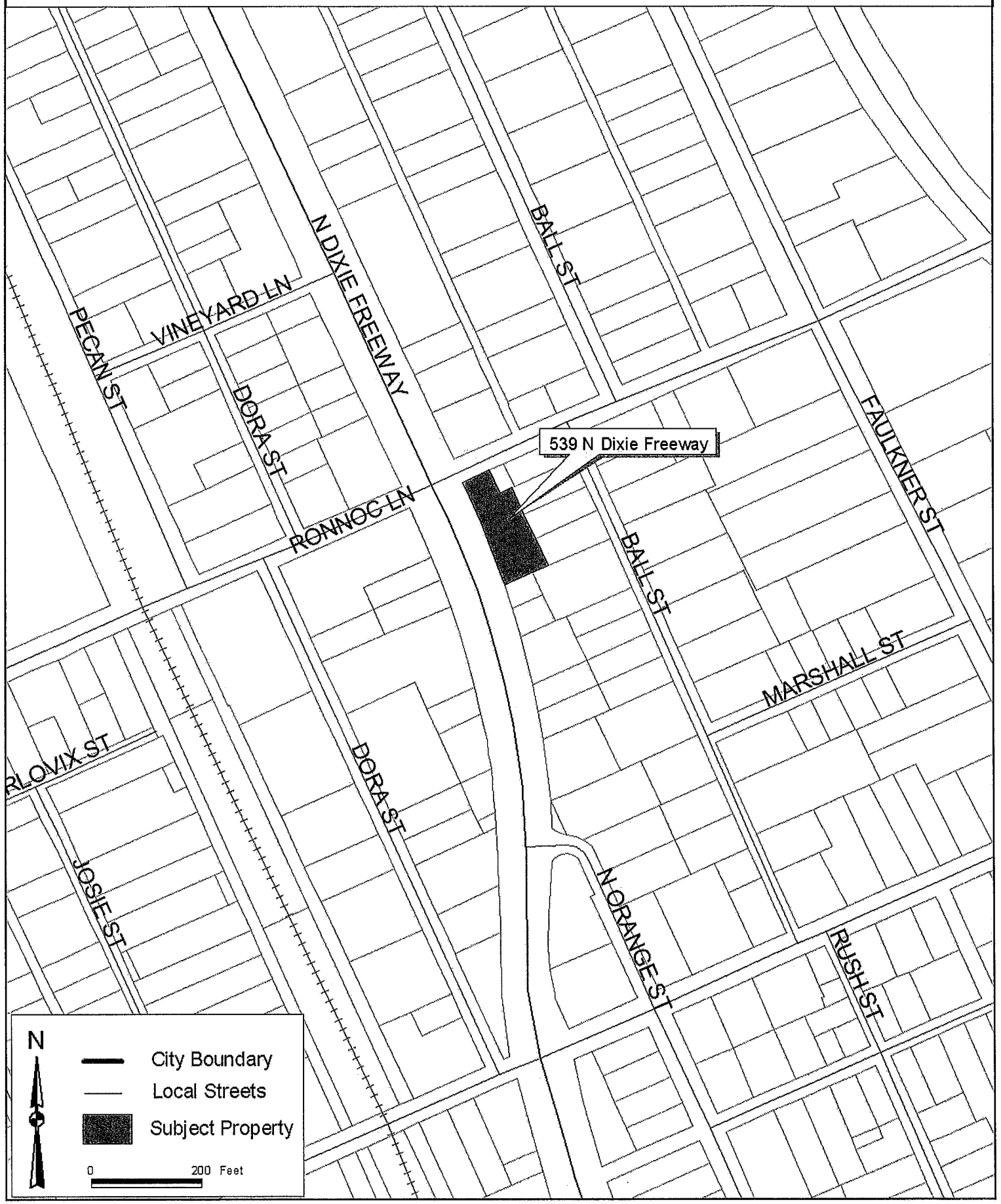


EXHIBIT B

5 April 2011

RE: Variance for Gary's Transmissions & Automotive Inc

Dear Gail,

When we moved into the building located at 539 N. Dixie Frwy there was an In Ground Air over Hydraulic lift located outside on the South end of the building. With this type of lift anyone could use it even after hours or at least let vehicle down, these lifts had no safety features.

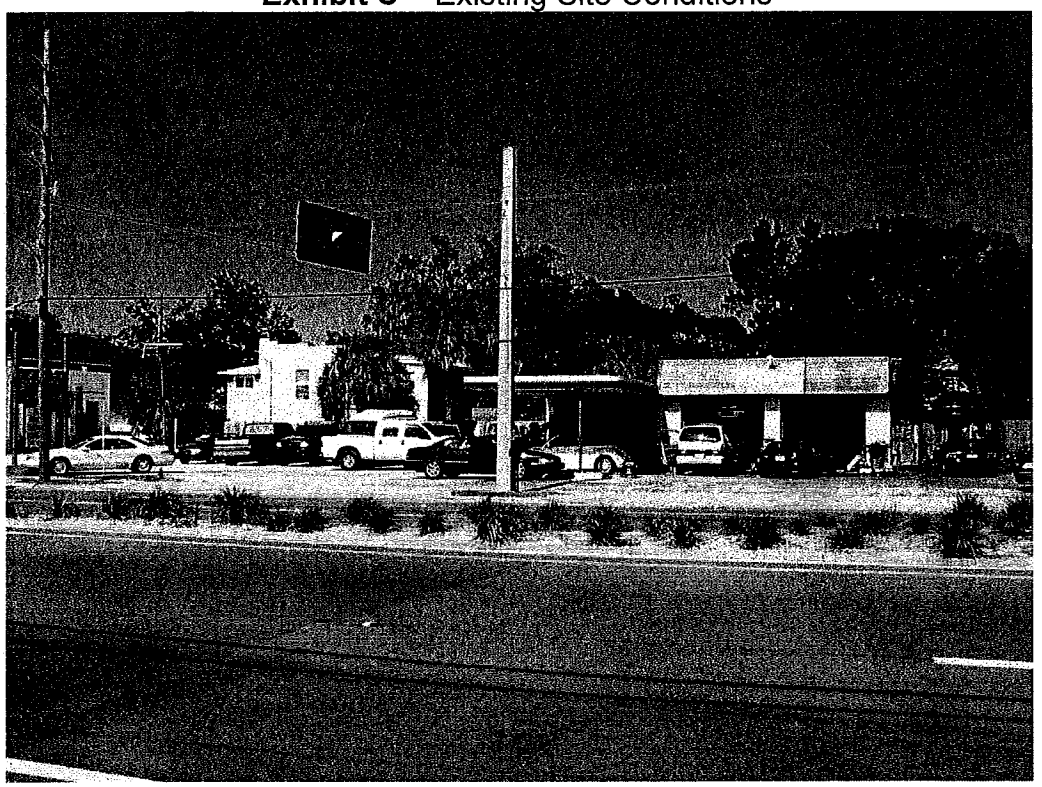
We, here at Gary's Transmission wanted to improve the lift to one with safety features. This lift is located on the same area as the old lift, it is much safer not only for the employees, but for anyone who may find it a temptation. Our new lift has no power going to it after hours; it also has locking mechanisms every couple of clicks. The only reason that we changed the lift from what was here to the new one was purely for safety reasons to everyone around.

We would like to thank you in advance for all of your time and help with this extremely important situation. Safety is our goal and we will do whatever it takes to comply with your orders.

Sincerely,

Gary A. Zollo, Pres.
Gary's Transmissions & Automotive, Inc.
539 N. Dixie Frwy.
New Smyrna Beach, FL 32168
Ph. 386-402-7829
Fax. 386-402-7830

Exhibit C – Existing Site Conditions



Previous lift recess

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

V-5-11: SMITH / LITTLE THEATRE PARKING LOT

JUNE 6, 2011

I. Summary

A. **Applicant:** Bill Roehrborn, 205 Ocean Drive, New Smyrna Beach, Florida, 32169

B. **Property Owner:** Little Theatre of New Smyrna Beach, Inc., P. O. Box 114, New Smyrna Beach, Florida, 32170-0114

C. **Request:** 9-foot landscape buffer variance from the minimum required 25-foot landscape buffer, to allow a 16-foot landscape buffer and fence adjacent to residentially zoned property.

D. **Site Information:** The subject property consists of approximately 0.543 acres, is zoned B-2, Neighborhood Business District, and is generally located northeast of the intersection of Horton Street and East 3rd Avenue (SR A1A) (see Location Map attached as **Exhibit A**).

E. **Tax I.D. Number:** 7416-05-27-0230

II. Findings

A. The subject property is an approximately 130' x 176' rectangular-shaped corner lot. The subject property is currently undeveloped and is moderately to heavily wooded. An aerial photo of the subject property is attached as **Exhibit B**. A copy of the survey is attached as **Exhibit C**.

B. In 2006, site plan approval was granted for the subject property to allow construction of a 5,520 s.f. two-story, multi-tenant retail/office building, with parking and associated site improvements. The project was never started and the site plan approval expired in 2008. Subsequently, the owner of the property sold the parcel to the Little Theatre in 2010. The property owner is proposing to construct a 42-space parking lot for use by patrons of the theatre. If the variance request is approved, approximately seven additional parking spaces could be constructed on-site.

C. The subject property is zoned B-2, Neighborhood Business District. Non-residential development in the B-2 zoning district is required to provide a 25-foot wide landscape buffer adjacent to residentially-zoned property. The property owner is requesting a 9-foot landscape buffer variance to allow a 16-foot wide landscape buffer along the north property line. A copy of the conceptual plan is attached as **Exhibit D**. The Board should note that although the request is to allow a 16-foot wide landscape buffer, the conceptual plan shows a 17'-4 ½" landscape buffer along the north property line.

D. An informational meeting was held with residents, representatives of the property owner and City staff on April 28. At that meeting, residents expressed concerns about impacts on drainage and groundwater; impacts

to existing mature trees on adjacent properties; lighting, access and security. Perhaps one the largest concerns raised by residents related to who would be allowed to use the parking lot and how access would be provided to the parking lot. The subject property is immediately east of the Beachside Tavern, across Horton Street. Patrons of the tavern often parking along the west side of the subject property, within the Horton Street right-of-way. Patrons also park on nearby side streets, within the surrounding residential neighborhood. Residents discussed instances of littering and drunken behavior during the late night and early morning hours, when patrons were leaving the tavern.

E. At the meeting, a consensus developed among residents and representatives of the property owner that if a variance were requested, the neighbors would request that a masonry wall be constructed along the north property line. The wall would provide increased security and reduce noise and light impacts from the parking lot. The applicant states in his application that a "fence" would be installed. Oftentimes, the terms "fence" and "wall" are used interchangeably. However, should the Board determine that the variance request should be approved, a condition of approval should be that the property owner constructs a six-foot tall masonry wall, that has an exterior finish of stucco or stone, as was discussed at the April 28th meeting with residents.

F. As shown on the conceptual plan, no direct access is proposed into the parking lot from either Horton Street or East 3rd Avenue. Instead, access would be provided from the east, through the Coronado Hardware parking lot. In order to this access configuration to occur, the owner of the Coronado Hardware property would need to provide a cross-access easement to the Little Theatre. Representatives of the Little Theatre have been work with the adjacent property owner to obtain the required easement. If the Board determines that the variance request should be approved, a condition of approval should be that access be limited to the east side of the parking lot. Should the adjacent property owner not provide the needed access easement, access should be limited only to Horton Street. No access points should be permitted on East 3rd Avenue, do to proximity to the intersection with Horton Street.

G. At the April 28th meeting, information presented to the residents showed that a 17-foot buffer would be provided in addition to the masonry wall. While the conceptual plan shows a 17'-4 ½" landscape buffer, the applicant is requesting a 16-foot buffer. Because the desired improvements can be constructed while still providing a 17-foot wide buffer, a condition of approval should be that the landscape buffer be a minimum of 17 feet in width.

H. While a buffer reduction may be appropriate for the proposed use associated with a certain business, a reduced buffer may not be appropriate in other situations. The B-2 zoning district allows a variety of

non-residential uses, including taverns, convenience stores with gas pumps and night clubs. If the Board determines that the variance request should be approved, a condition of approval should be that the variance approval expires should ownership or use of the property change.

I. The LDR requires variance requests to meet all of the following criteria. The applicant's letter of response to the variance criteria is attached as **Exhibit E**. Staff's responses to the criteria are listed below in **bold**.

(i) Special circumstances exist which are peculiar to the subject property owner's land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings, in the same district or vicinity.

In his response letter, the applicant states that the special circumstance associated with the subject property is the fact that it is one of the last remaining vacant lots along East 3rd Avenue. Staff concurs with this assessment. In the area between South Peninsula Avenue to just south of the Indian River Shopping Center, staff identified two vacant lots. One is the subject property and the other is on the south side of East 3rd Avenue, between Saxon Drive and South Peninsula Avenue.

As stated in the applicant's letter, because the north side of East 3rd Avenue abuts residentially zoned property, a 25-foot landscape buffer is required. Many of the businesses on the north side of East 3rd Avenue were either constructed prior to the requirement of the 25-foot buffer or received variances to reduce the landscape buffer requirement. A landscape buffer variance was approved for the Little Theatre expansion in 2003. Beach Access retail store received a landscape buffer variance in 2004, and the Utilities Commission received a landscape buffer variance in 2008.

Although approval of a variance on another property does not establish a precedence, it clearly indicates that there may be issues with the code requirements that do not reflect actual conditions on the ground.

This criterion has been met.

(ii) Strict application of the provisions of this LDR would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general.

Strict application of the provisions of the *Land Development Regulations* would not deprive the property owner reasonable rights commonly applicable to other properties in the same district. The property owner could still construct a parking lot, albeit with seven fewer spaces.

However, strict application would preclude a benefit to the community in general. The Little Theatre began operations in 1947, prior to adoption of the current parking requirements. When the Little Theatre expanded in 2004, a parking credit was given for the existing theatre and only minimum on-site parking is provided. Most patrons park at adjacent businesses or across East 3rd Avenue in the Indian River Shopping Plaza parking lot. Many of the patrons of the theatre are elderly and crossing East 3rd Avenue can be a safety hazard to both pedestrians as well as drivers. By providing a parking lot on the same side of the street, and on the same block as, the Little Theatre, more patrons will be able to safely access the theatre.

The criterion has been met.

(iii) The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner created, to any degree, the hardship that is the subject of the variance request.

The special circumstances identified by staff and the applicant are not a direct result of actions taken by the current or previous property owner. Rather, the special circumstances are a result of historical development patterns within the neighborhood and regulations of the City.

This criterion has been met.

(iv) That granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.

Granting the variances would not be detrimental to the public as a whole. However, granting of the variances could be potentially detrimental to the immediate neighborhood. The purpose of requiring a landscaped buffer between residential and non-residential uses is to mitigate potential negative impacts from noise and light. If the Board determines that the variance request should be approved, requiring a six-foot tall

masonry wall to be constructed would produce the same result as the additional vegetation that would have been planted had the full 25-foot landscape buffer been provided.

This criterion has been met.

(v) That granting of the variance will not constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district.

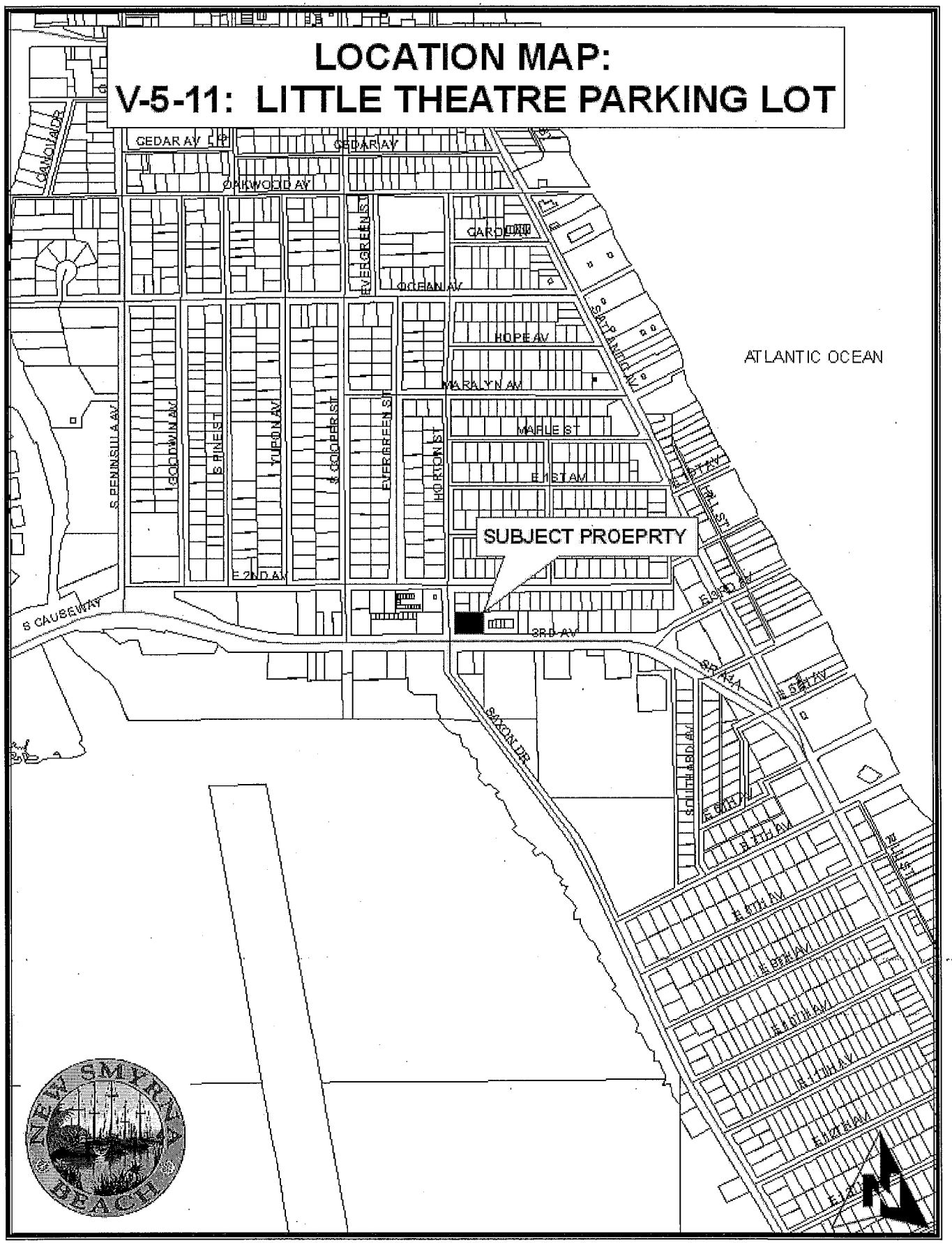
Granting of the variances would not constitute a grant of special privilege. As discussed above, there have been three other landscape buffer variances granted on this block since 2003. Additionally, if the property owner is required to install a six-foot tall masonry wall, the intent of the buffer requirement will continue to be met.

This criterion has been met.

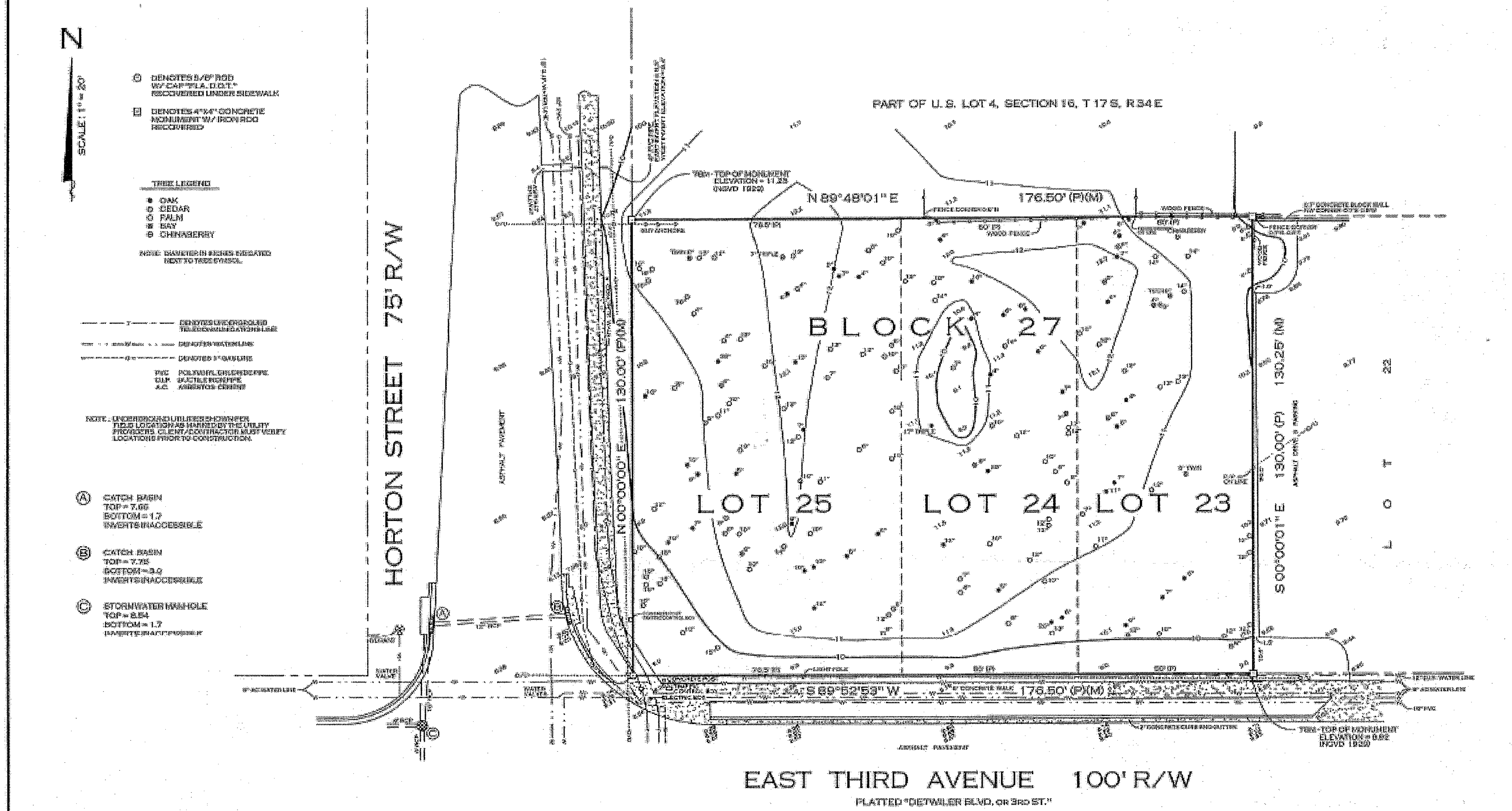
III. Recommendation

Because the request meets all of the variance criteria, staff recommends **approval**, with the following conditions:

1. The property owner shall construct a six-foot tall masonry wall that has an exterior finish of stucco or stone;
2. Access shall be limited to the east side of the parking lot. Should the adjacent property owner not provide the needed access easement, access should be limited only to Horton Street. No access points should be permitted on East 3rd Avenue.
3. The landscape buffer be a minimum of 17 feet in width
4. The variance approval shall expire should ownership or use of the property change.


LOCATION MAP:
V-5-11: LITTLE THEATRE PARKING LOT
CEDAR AV
OAKWOOD AV
GARDEN
OCEAN AV
HOPE AV
MARALYN AV
MARLE ST
1ST AV
SUBJECT PROEPRTY
2ND AV
3RD AV
S CAUSEWAY
S PENINSULA AV
GOODWIN AV
S PINE ST
TUPSON AV
S COOPER ST
EVERGREEN ST
HORTON ST
SAXON DR
ATLANTIC OCEAN
NEW SMYRNA BEACH

AERIAL PHOTO:
V-5-11: LITTLE THEATRE PARKING LOT
E 2ND AV
HORTON ST
3RD AV
BEACHSIDE TAVERN
SUBJECT PROPERTY
LITTLE THEATRE
NEW SMYRNA BEACH



PLAT OF BOUNDARY, TOPOGRAPHIC AND SPECIFIC PURPOSE SURVEY OF

Lots 23, 24 and 25, Block 27, JOHN Y. DETWILER'S FIRST ADDITION, SECTION 16, TOWNSHIP 17 SOUTH, RANGE 34 E, according to the plat thereof as recorded in Map Book 7, Page 65 of the Public Records of Volusia County, Florida

SURVEYOR'S NOTES & SURVEY REPORT:

1. Legal description provided by client or agent of client.
2. Bearings are assumed and based on the West line of subject property as being N 00 degrees 00' 00" E.
3. Subject to restrictions, reservations, limitations, easements and rights of way, if any, appearing of record. Per Florida Statutes Rule 61G17-6.0031(4)(e) surveyor is not responsible for any easements that are not provided to him except those shown on the plat of record.
4. This sketch of survey is subject to any facts that may be disclosed by a full and accurate title search.
5. This sketch of survey prepared without the benefit of an abstract and no title work has been performed or provided to this surveyor except as noted.
6. Underground utilities and features not located except as shown and as marked by the utility provider.
7. Dimensions are shown in feet and decimals thereof.
8. Drawing distance between features such as walls or fences and property lines may be exaggerated for clarity.
9. Features shown by symbol are not to scale.
10. Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.
11. Elevations shown refer to NGVD 1929 and based on USC & GS Monument F-212, elevation 7.85'.

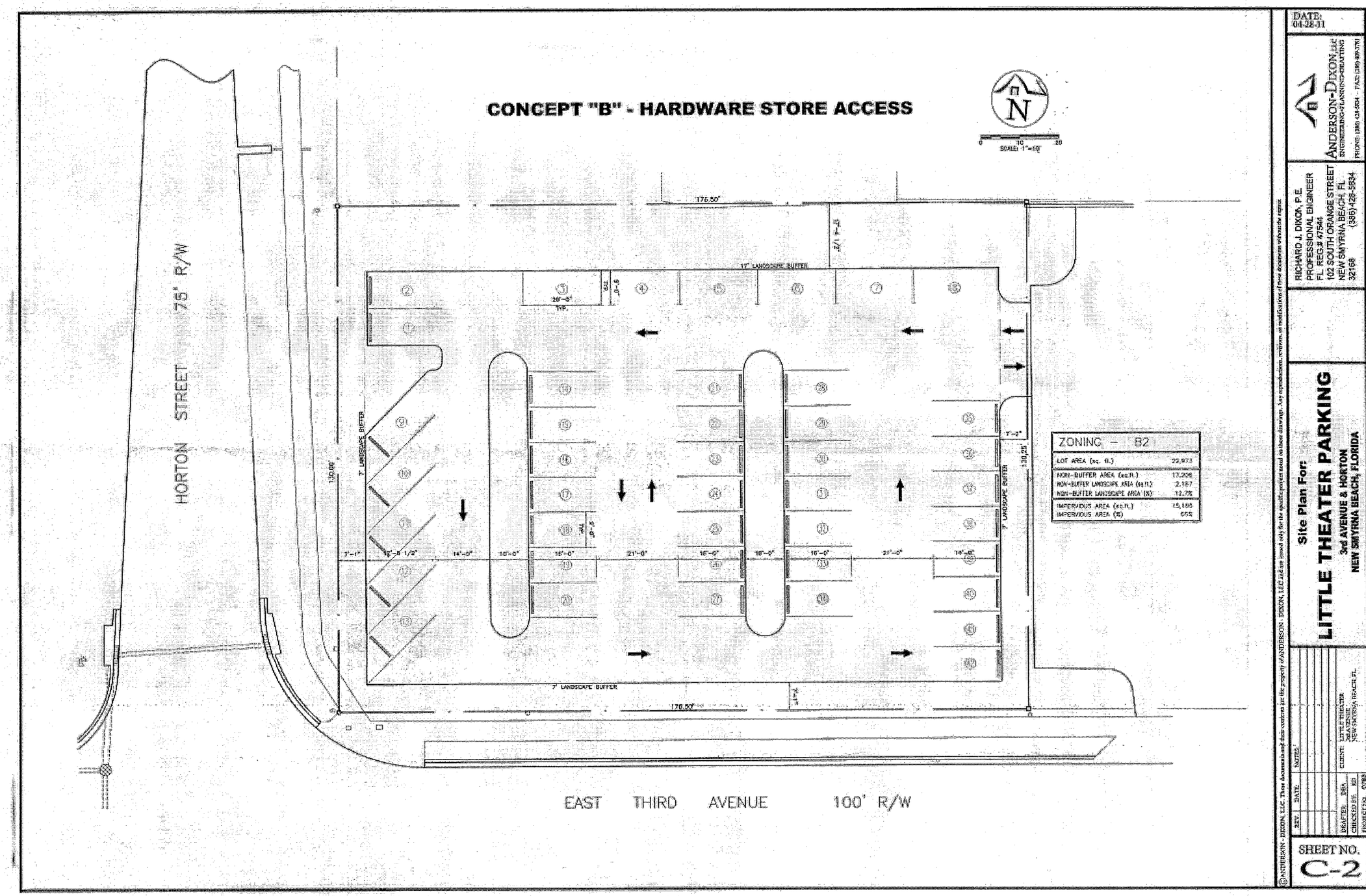
LEGEND & ABBREVIATIONS

ALLEN CAMPBELL & ASSOCIATES, INC.

PROFESSIONAL SURVEYING & MAPPING

SCALE: 1" = 20'

PREPARED FOR: LITTLE THEATRE OF NEW SMYRNA BEACH


CONCEPT "B" - HARDWARE STORE ACCESS
N
SCALE: 1"=10'
HORTON STREET 75' R/W
EAST THIRD AVENUE 100' R/W
176.50'
130.00'
130.25'
7' LANDSCAPE BUFFER
17' LANDSCAPE BUFFER
ZONING - B2
LOT AREA (sq. ft.) 22,973
NON-BUFFER AREA (sq.ft.) 17,208
NON-BUFFER LANDSCAPE AREA (sq.ft.) 2,187
NON-BUFFER LANDSCAPE AREA (%) 12.7%
IMPERVIOUS AREA (sq.ft.) 15,188
IMPERVIOUS AREA (%) 66%
DATE: 04-28-11
ANDERSON-DIXON
RICHARD J. DIXON, P.E.
PROFESSIONAL ENGINEER
FL REG.# 47544
102 SOUTH ORANGE STREET
NEW SMYRNA BEACH, FL
32168 (386)-428-5634
Site Plan For:
LITTLE THEATER PARKING
3rd AVENUE & HORTON
NEW SMYRNA BEACH, FLORIDA
SHEET NO.
C-2

Board of Adjustment

City of New Smyrna Beach

1) The Little Theatre has acquired on of the last vacant properties on Third Avenue and plans to use the property for much needed parking. Like the other properties on the north side of Third Avenue, we have residential neighbors to the north. They have approached us with concerns about our proposed use. They specifically have requested that we consider a privacy wall to mitigate noise and light impact from our property. The other properties along Third have fences along their north property line. The current regulations specify a 25 foot landscape buffer only.
2) A reduction of the landscape buffer to 16 feet would enable the Theatre to gain an additional 7 parking spaces. The additional spaces would justify the additional cost of a privacy wall. The other properties along Third have fences and no landscape buffer as they were developed prior to current buffer requirements.
3) This request is not as a result of any direct or indirect actions by the Little Theatre but in response to our neighbors' concerns.
4) The granting of this request will not cause substantial detriment to the public welfare or impair the purpose or intent of the Land Development Regulations. The public most impacted by the variance requested feel that a privacy wall will enhance the intent of the buffer requirements of the Land Development Regulations.
5) Granting this variance will not constitute a special privilege denied other property owners in the same district as their parking areas are already established closer to the property lines than is being requested in this application.

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

SV-2-11: ROYAL STREET / DAHL

JUNE 6, 2011

I. Background

A. **Applicant:** Robert J. Dahl, 802 Magnolia Street, New Smyrna Beach, Florida, 32168

B. **Request:** Vacation of Royal Street, a platted but unopened 50-foot wide right-of-way

C. **Right-of-Way Information:** The subject right-of-way is approximately 50' x 663' and is generally located south of Paige Avenue and west of Mission Road (see location map attached as **Exhibit A**)

II. Findings

A. The property adjacent to Royal Street was annexed into the City in March 2011. The surrounding property is currently vacant and is moderately to heavily wooded. Immediately east of the subject properties are the Sugartree Apartments, which were constructed in 1984 and 1985, according to information from the Volusia County Property Appraiser's website. The applicant is proposing to construct two multi-family senior residential buildings, with associated infrastructure improvements and a small storage shed/workshop to support the residential development. A copy of the conceptual site plan is attached as **Exhibit B**.

B. In order to facilitate the proposed development, the applicant is requesting that the City vacate the approximately 50' x 663' Royal Street right-of-way. The Royal Street right-of-way was originally platted as part of the H. W. Royal Subdivision in the 1920s (**Exhibit C**).

C. Section 305.03 of the City's Land Development Regulations requires the following items for a street vacation:

1. Completed application form
2. Receipt of application fee payment
3. Plat of survey, including legal description and acreage of street or alley proposed to be vacated
4. Letter from all land owners adjacent to portion of street or alley proposed to be vacated indicating that they have no objection to the vacation
5. Letter from Utilities Commission indicating:
   a. No objection to the vacation
   b. No utilities are within the right-of-way proposed to be vacated; or
   c. If utilities exist with right-of-way then letter must indicate what utilities are located in the right-of-way
   d. If utilities exist in right-of-way, then letter must indicate easements required

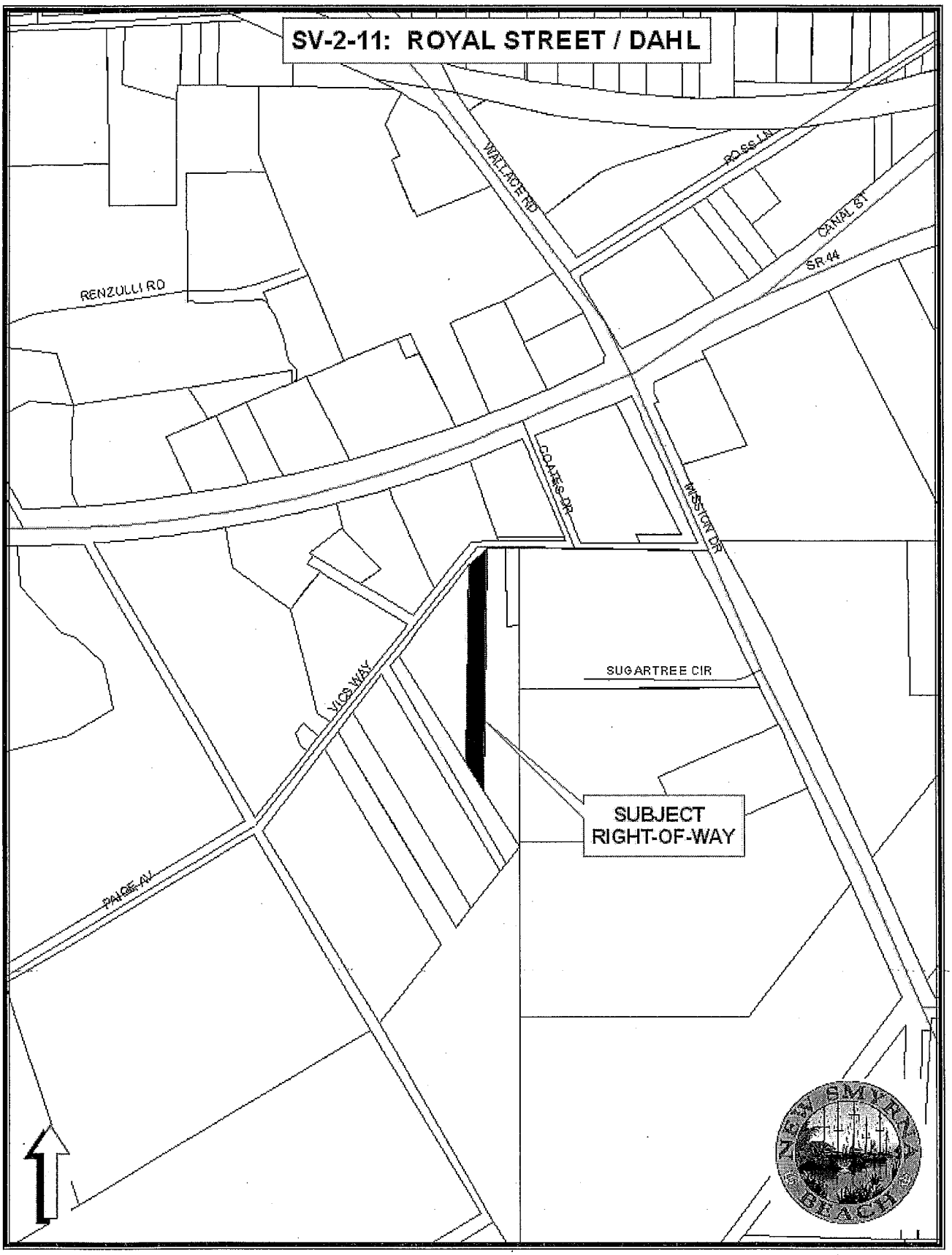
6. Letter from applicant explaining how the vacation is in the interest of the public good

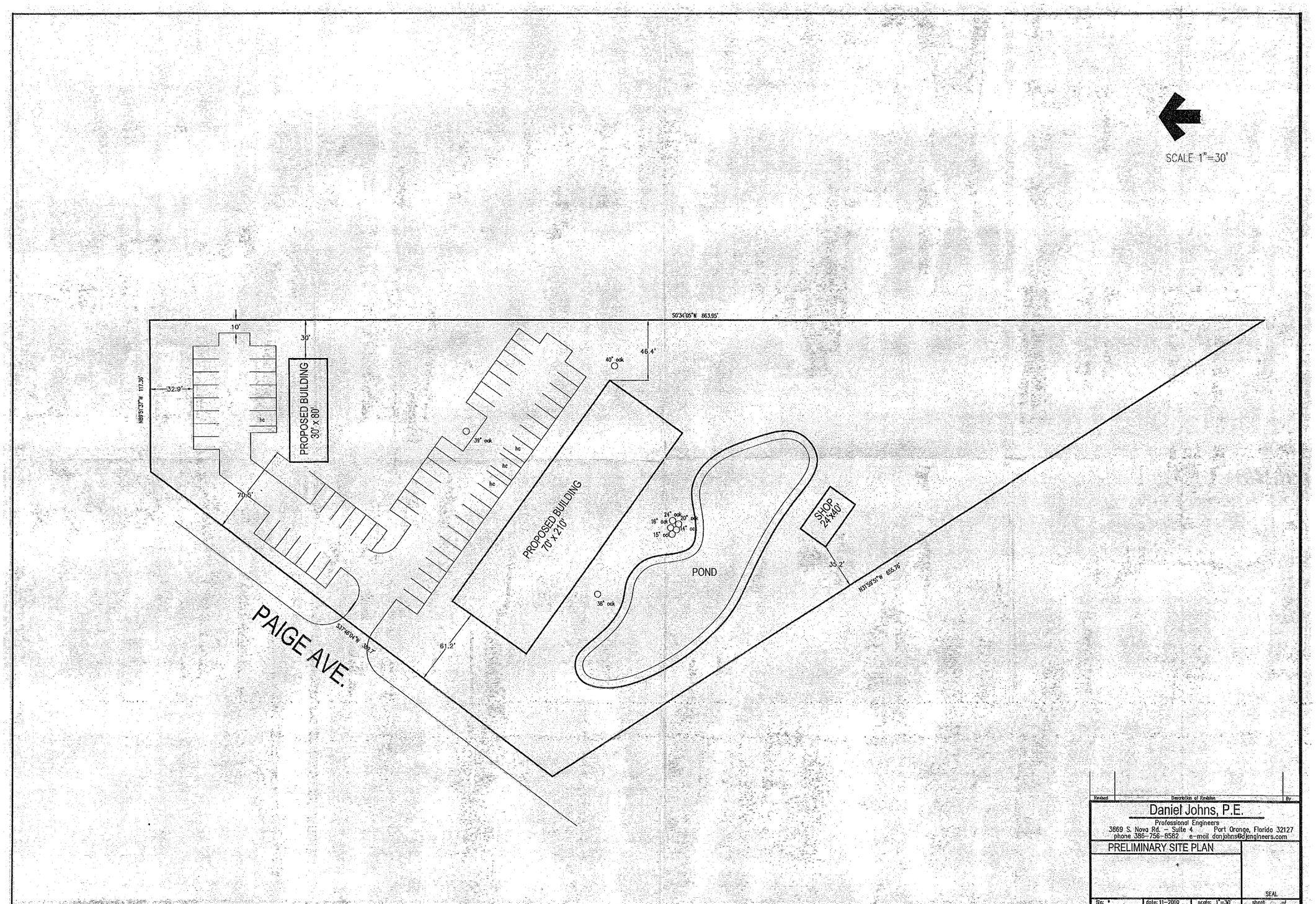
These items have been received by planning staff.

D. Please see **Exhibit D** for a copy of the survey indicating the section of Royal Street proposed for vacation and **Exhibit E** for a copy of the letter from the various utility providers indicating they have no objection to the street vacation. A copy of the letter from the adjacent property owner, stating that he has no object to the proposed vacation is attached as **Exhibit F**. A copy of the letter from the applicant describing the need for the street vacation and how the request is in the public good is attached as **Exhibit G**.

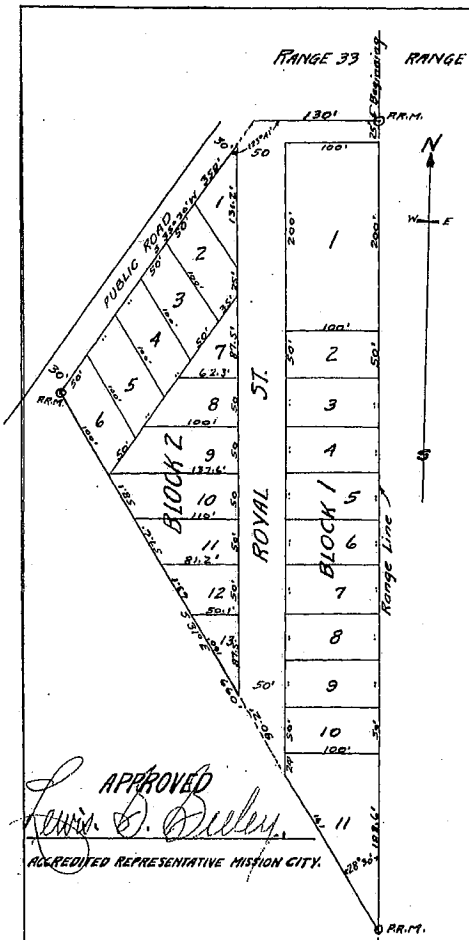
6. **Recommendation**

Because the request will result in a benefit to the public, Staff recommends **approval** of the proposed street vacation.


SV-2-11: ROYAL STREET / DAHL
WALLACE RD
ROSS LN
CANAL ST
SR 44
RENZULLI RD
COATES DR
WESTON DR
SUGARTREE CIR
VLOS WAY
PAIGE AV
SUBJECT
RIGHT-OF-WAY
NEW SMYRNA BEACH


SCALE 1"=30'
S0°34'05"W 863.95'
N89°51'37"W 117.35'
10'
30'
32.9'
PROPOSED BUILDING
30' x 80'
hc
70.5'
40' oak
46.4'
39' oak
PROPOSED BUILDING
70' x 210'
24' oak
20' oak
16' oak
14' oak
15' oak
POND
38' oak
SHOP
24'X40'
35.2'
N51°59'51"W 655.76'
PAIGE AVE.
S37°16'04"W 390.7'
61.2'
Revised
Description of Revision
By
Daniel Johns, P.E.
Professional Engineers
3869 S. Nova Rd. – Suite 4
Port Orange, Florida 32127
phone 386-756-8582
e-mail danjohns@djengineers.com
PRELIMINARY SITE PLAN
SEAL
file: *
date: 11-2010
scale: 1"=30'
sheet
of

8 - 64



MAP OF
H.W. ROYAL'S SUBDIVISION
MISSION CITY VOLUSIA CO.
FEBY. 24TH 1926 SCALE 1" = 100.

Certified in compliance with Survey Laws of 1925 and filed for record this FEB 26 1926

[signature] Clerk Circuit Court.

BY [signature] D.C.

BEING A PART OF LOT 3 OF SEC. 24 TWP 17 S, R 33 E. BEGINNING AT THE 1/4 SECTION POST ON THE EAST SIDE OF SEC 24, THENCE WESTERLY 130 FT. THENCE SOUTH 35°30' WEST 358 FT., THENCE SOUTH 31° EAST 660 FT., THENCE NORTH ALONG RANGE LINE BETWEEN RANGE 33 AND 34, CONTAING SIX ACRES MORE OR LESS.

We, H.W. Royal and Cassie Royal, his wife, hereby declare that we are the owners of the above described property, covered by the annexed plat of subdivision, and that we have caused the same to be subdivided as shown hereon, and we hereby dedicate all streets and avenues as shown thereon to the public use forever.

Signed and sealed in presence of:

R. S. Blinn

[signature] (SEAL)

[signature]

Her Cassie X. Royal (SEAL)
Mark

STATE OF FLORIDA
COUNTY OF VOLUSIA

I hereby certify that H.W. Royal and Cassie Royal, his wife, whose names are signed to the foregoing dedication, and who are personally known to me, came before me this day and acknowledged that they executed the same for the purpose therein expressed, and as their free act and deed; and the said Cassie Royal, wife of the said H.W. Royal, upon an examination made separate and apart from her husband, acknowledged before me that she executed the same for the purpose of relinquishing her dower, and right of dower and dedicating all her sole and separate estate in and to the lands therein dedicated, and that she did the same freely and voluntarily, and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal this 25 day of Feb AD. 1926.

Ray Sharp Blinn
Notary Public

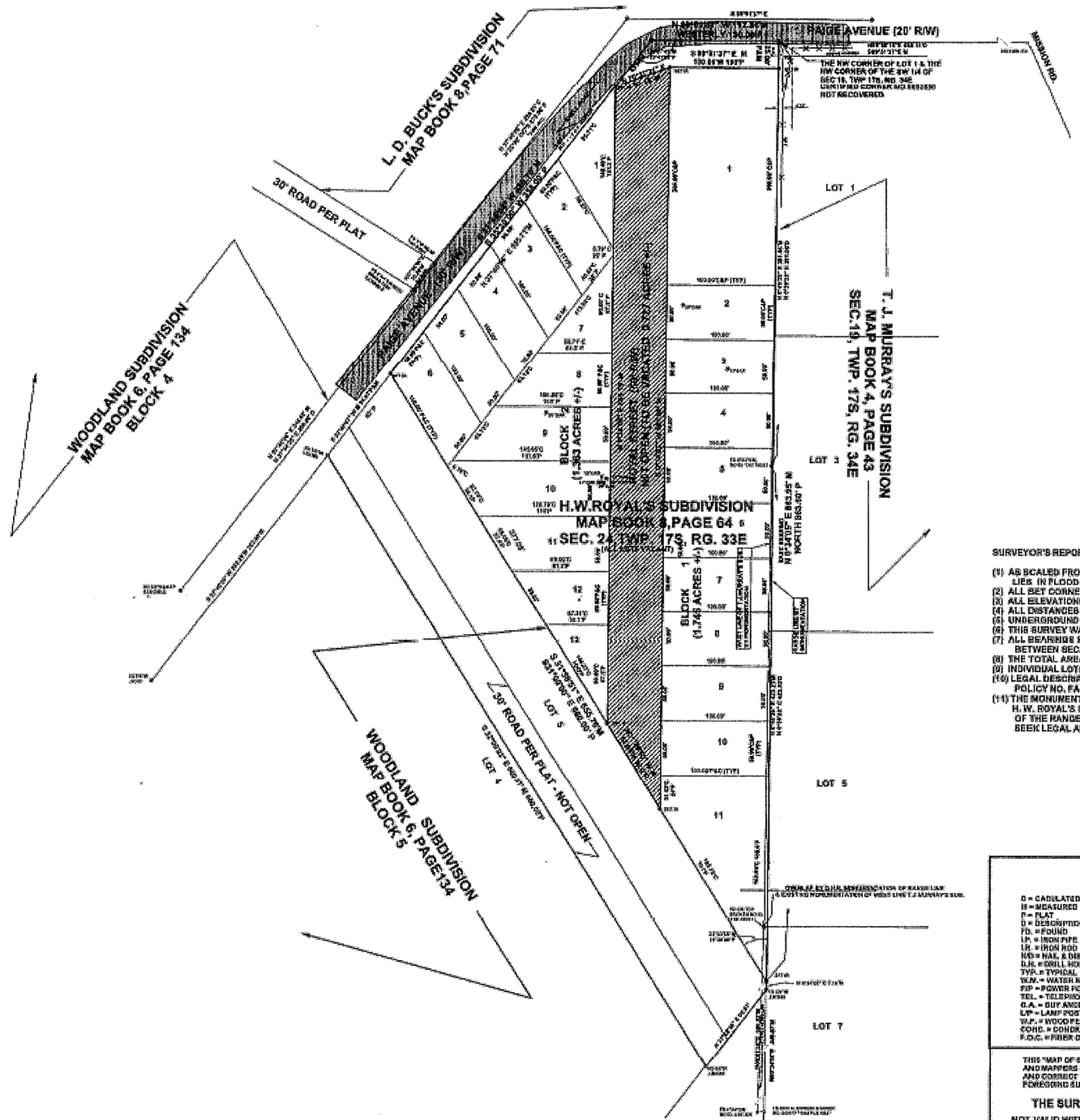
My commission expires Mch 11 1929

APPROVED
Lewis D. Bailey
ACCREDITED REPRESENTATIVE MISSION CITY.

I hereby certify that this map is a correct representation of land as platted and that permanent reference monuments have been placed as shown and as required by law.

Ray Sharp Blinn Engineer
CERT #574

BLINN & SMITH, ASSOCIATE ENGINEERS, NEW SMYRNA, FLA.



BOUNDARY SURVEY

LOTS 1,2,3,4,5,6,7,8,9,10 AND 11,BLOCK 1, AND LOTS 1,2,3,4,5,6,7,8,9,10,11,12, AND 13, BLOCK 2, OF MAP OF H.W. ROYAL'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 8, PAGE 64, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

SURVEYOR'S DESCRIPTION FOR PROPOSED VACATION OF PLATTED RIGHT-OF-WAY SHOWN AS ROYAL STREET ON MAP OF H. W. ROYAL'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 8, PAGE 64, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

ALL OF SAID ROYAL STREET LYING SOUTHERLY OF A LINE EXTENDING SOUTHWESTERLY FROM THE NORTHWEST CORNER OF LOT 1, BLOCK 1, TO THE NORTHERLY MOST CORNER OF LOT 1, BLOCK 2, ALL AS SHOWN ON SAID MAP OF H. W. ROYAL'S SUBDIVISION.

CONTAINING 0.727 ACRES MORE OR LESS.

SURVEYOR'S REPORT

(1) AS SCALED FROM FLOOD INSURANCE RATE MAP 12127C0540G DATED 4/15/02 THE ABOVE DESCRIBED PROPERTY LIES IN FLOOD ZONE AE .
(2) ALL SET CORNERS ARE 1/2" IRON RODS WITH PLASTIC CAPS STAMPED L.B.3456 UNLESS OTHERWISE NOTED.
(3) ALL ELEVATIONS SHOWN HEREON ARE BASED ON
(4) ALL DISTANCES SHOWN HEREON ARE PLAT UNLESS OTHERWISE NOTED.
(5) UNDERGROUND UTILITIES AND FOUNDATIONS NOT LOCATED.
(6) THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT.
(7) ALL BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING OF N0°04'05"E ALONG THE RANGE LINE BETWEEN SEC. 24, TWP. 17S, RG. 33E AND SEC. 19, TWP. 17S, RG. 34E.
(8) THE TOTAL AREA OF H. W. ROYAL'S SUBDIVISION INCLUDING PLATTED ROADS IS 3.910 ACRES MORE OR LESS.
(9) INDIVIDUAL LOTS CORNERS WERE NOT SET.
(10) LEGAL DESCRIPTION PER POLICY OF TITLE INSURANCE ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY POLICY NO. FA-35-1010-2438183.
(11) THE MONUMENTED WEST LINE OF THE T. J. MURRAY'S SUBDIVISION OVERLAPS THE EAST BOUNDARY OF H. W. ROYAL'S SUBDIVISION ACCORDING TO THE DEPARTMENT OF NATURAL RESOURCES. MONUMENTATION OF THE RANGE LINE BETWEEN SEC. 24, TWP. 17S, RG. 33E AND SEC. 19, TWP. 17S, RG. 34E. CLIENT SHOULD SEEK LEGAL ADVICE.

LEGEND

D = CALCULATED
M = MEASURED
P = PLAT
D = DESCRIPTION
FD. = FOUND
I.P. = IRON PIPE
I.R. = IRON ROD
N/D = NAIL & DISK
D.H. = DRILL HOLE
TYP. = TYPICAL
W.M. = WATER METER
P/P = POWER POLE
TEL. = TELEPHONE RISER
G.A. = GUY ANCHOR
L/P = LAMP POST
W.F. = WOOD FENCE
CONC. = CONCRETE
F.O.C. = FIBER OPTIC CABLE

P.U.&D.EMT. = PUBLIC UTILITY & DRAINAGE EASEMENT
P.C. = POINT OF CURVE
P.C.C. = POINT OF COMPOUND CURVE
P.R.C. = POINT OF REVERSE CURVE
P.T. = POINT OF TANGENCY
P.C.P. = PERMANENT CONTROL POINT
P.R.M. = PERMANENT REFERENCE MONUMENT
C.M. = CONCRETE MONUMENT
C.B.S. = CONCRETE BLOCK STUCCO
C.T.V. = CABLE TELEVISION RISER
C.L.F. = CHAIN LINK FENCE
160.00 = EXISTING ELEVATION
O.R.B. = OFFICIAL RECORD BOOK
A/C = AIRCONDITIONING PAD
N.G.V.D. = NATIONAL GEODETIC VERTICAL DATUM
A.P.P. = APPARENT PHYSICAL USE
NT = NOT VERIFIED BY FIELD MEASUREMENT
DNR = DEPARTMENT OF NATURAL RESOURCES

C.B. = CONCRETE BLOCK
COL. = COLUMN
COVD. = COVERED
R/W = RIGHT OF WAY
PVMT. = PAVEMENT
R.P. = RADIUS POINT
C/L = CENTER LINE
R = RADIUS
DELTA = CENTRAL ANGLE
A = ARC LENGTH
M.H. = MANHOLE
LC = LONG CHORD
SEC. = SECTION
TWP. = TOWNSHIP
RG. = RANGE
L.S. = LAND SURVEYOR
L.B. = LICENSED BUSINESS

THIS "MAP OF SURVEY" MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 61G17-6,FLORIDA ADMINISTRATIVE CODE,PURSUANT TO SECTION 472.027,FLORIDA STATUTES,AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS RECENTLY SURVEYED AND PLATTED UNDER MY DIRECTION.ALL THE FOREGOING SUBJECT TO ANY DEDICATIONS,LIMITATIONS,RESERVATIONS,RESTRICTIONS OR EASEMENTS OF RECORD.

THE SURVEY SHOWN HEREON IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

DATE	F.B.	PG.	TYPE OF SURVEY AND/OR REVISION
11/03/2010	681		LOCATION OF FLAGGED TREES
2/14/2011			SURVEYOR'S DESCRIPTION FOR PROPOSED VACATION OF ROYAL STREET

FORARE LAND SURVEYING
1016 PINE AVENUE
DELAND , FLORIDA 32724
386-734-8245 386-427-0853

DATE: 10/28/2010
F.B. NO. 98 134,77838
SCALE: 1" = 30'

PREPARED FOR THE BENEFIT OF:
LAKEVIEW EAST, INC.

RAYMOND A. FORARE JR.
PROFESSIONAL SURVEYOR AND MAPPER NO. 3488
STATE OF FLORIDA

UTILITIES COMMISSION,
CITY OF NEW SMYRNA BEACH, FLORIDA
200 Canal Street
New Smyrna Beach, Florida 32168
386-427-1361

Mailing Address:
Post Office Box 100
New Smyrna Beach, Florida 32170

March 30, 2011

Robert J. Dahl
Lakeview East Inc.
802 Magnolia Street
New Smyrna Beach, Fl. 32168

RE: Vacation of Royal Street – unopened platted right-of-way

Dear Mr. Dahl:

The Utilities Commission interposes no objection to the vacation of Royal Street right-of-way as depicted in your letter dated March 26, 2011and as described in a Boundary Survey by Forare Land Surveying for Lakeview East, Inc. dated 2/14/2011.

The Utilities Commission has no electric, water, sanitary sewer or reclaim water mains in the referenced vacation.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Randy L. Walter

Randy L. Walter
New Business Specialist

"Connecting You With Quality"

FLORIDA PUBLIC
UTILITIES

450 South Highway 17-92
DeBary, FL 32713
(386) 668-9319 Engineering
(386) 668-2718 Engineering Fax

April 1st, 2011

Robert J. Dahl
Lakeview East Inc.
802 Magnolia Street
New Smyrna Beach, FL 32168

Re: Vacate Un-improved Roadway-Royal Street
New Smyrna Beach, Volusia County

Dear Mr. Dahl:

Florida Public Utilities Company has no objections to the petition to vacate that certain un-improved roadway known as Royal Street that is contained within the Plat of H.W.ROYAL'S SUBDIVISION, as recorded in Map Book 8, page 64, of the Public Records of Volusia County, Florida.

If you have any questions or need additional information, please feel free to call.

Sincerely,

Dan P. Scribben
Engineering Manager
Central-Florida Division

Arthur Plumb
7004 JF Kennedy Blvd. East - 29E
Guttenberg, N.J. 07093
Property ID: 24-17-33-12-05-0050

To Whom It May Concern:

Regarding the proposed Vacation of the unopened street (Royal Street) as the adjacent property owner of (Full Parcel ID No. 24-17-33-12-05-0050) I have no objection to the vacation of unopened Royal Street. This refers only to the Royal Street vacation.

Arthur Plumb April 22, 2011

May 3, 2011

Robert J. Dahl
Lakeview East Inc.
802 Magnolia Street
New Smyrna Beach, FL 32168

To Whom It May Concern,

I am the owner of the property on Paige Avenue in New Smyrna Beach, platted as H.R. Royal subdivision. I would like to vacate the unopened road through the center of the property, platted as Royal Street. I believe this is in the public good because I would like to develop the property as a single parcel with multi family senior housing. This is a good use of the property because of it is in close proximity to shopping and other services. I also feel there is a need for additional senior housing in our community.

I would also like to point out that Royal Street is only internal to my development and the street vacation would not land lock or prevent access to any other property.

Sincerely,

Robert J. Dahl

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

SV-3-11: SAXON DRIVE / MITCHELL

June 6, 2011

I. Background

A. Applicant: Stewart B. Mitchell, P.O. Box 940579, Maitland, FL

B. Request: Vacation of 27-feet in width along 300.03 feet of the Saxon Drive right-of-way

C. Right-of-Way Information:

- **Size:** approximately 0.19 acres
- **Location:** the west side of Saxon Drive between the south side of East 7th Avenue and the north side of East 8th Avenue

II. Findings

A. In 1917, King's Highway, which ran roughly parallel to the river, was platted as a 50-foot wide right-of-way (ROW) in the Coronado Beach Realty Co. Subdivision (see **Exhibit 1**). However, the ROW, which became "Saxon Drive" did not physically correspond with the plat, and was paved and used for public use where it currently is located. King's Highway was never developed as a ROW. Instead, the ROW was created at the current location of Saxon Drive based on continued public use of private property.

B. In 1993, Fritz Mitchell deeded portions of his private property on which Saxon Drive was located to the City of New Smyrna Beach to rectify the issue of the ROW being located on private property. This public use on private property is known as a "prescriptive easement", meaning private property had been publically used openly and continuously for a number of years. Thus, legally, Saxon Drive was considered "public ROW". At the time this property was deeded to the City, Volusia County, which maintains Saxon Drive, had planned on Saxon Drive being 75-feet in width. Therefore, two portions of private property, each being 37.5-feet in width, were deeded to the City to create a 75-foot wide ROW in the subject location (see **Exhibit 2**).

C. In 2010, staff confirmed with Volusia County that Saxon Drive is maintained as a 50-foot ROW and the County no longer intends to expand Saxon Drive into a 75-foot (or greater) ROW. Therefore, it is not necessary for the 27-foot portion of Saxon Drive the applicant is requesting to vacate to be maintained as ROW (see **Exhibit 3** for survey and legal description of portion of Saxon Drive ROW applicant is requesting to be vacated). This portion of the ROW is currently vacant of development and contains natural vegetation.

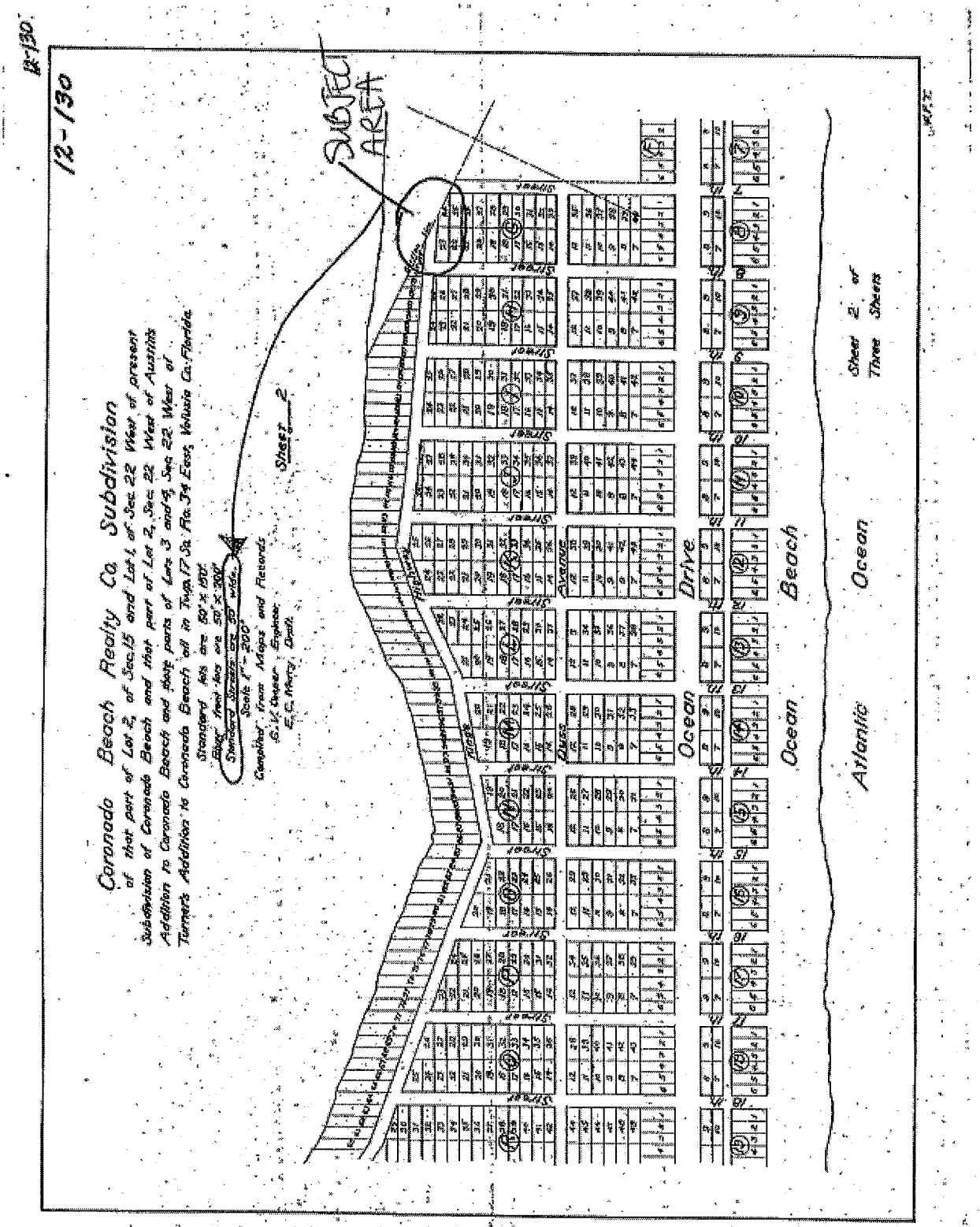
D. **Exhibit 4** is a letter from the Utilities Commission to the applicant in response to the request to vacate the portion of Saxon Drive. As can be seen, there is no objection from the Utilities Commission to this request, with the condition that a 25-foot Utilities Easement be dedicated on the private property on the west side of Saxon Drive. It should be noted that the applicant is requesting the 25-foot utilities easement dedicated with the Callalisa Creek Subdivision be vacated along with the ROW vacation request. As a condition of approval of the ROW vacation, staff recommends the 25-foot utilities easement be dedicated along the newly-created front property lines per requirements of the Utilities Commission.

E. **Exhibit 5** is the request letter from the applicant. **Exhibit 6** is a letter from the applicant stating there is no objection, as the adjacent property owner, to the vacation of the portion of Saxon Drive ROW.

III. Recommendation

Staff recommends that the Planning and Zoning Board recommend to the City Commission approval of the right-of-way vacation as described in **Exhibit 3** with the condition that a 25-foot utilities easement be dedicated per requirements outlined by the Utilities Commission.

Exhibit 1 – Original Plat of Proposed King's Highway Right-of-Way



66 **Exhibit 2 – Warranty Deeds deeding Saxon Drive to the City**

BOOK 3831 PAGE 4077 VOLUSIA CO., FL

FILED FOR RECORD
RECORD VERIFIED
074001

CLERK OF THE CIRCUIT
& CTY. COURT VOLUSIA CO.
93 JUN -1 PM 3:38

Parcel ID Number: 7415-04-39-0080
Grantee #1 TIN:

[Space Above This Line For Recording Data]

Warranty Deed

This Indenture, Made this 20th day of May, 1993 A.D., Between FRITZ K. MITCHELL, as Trustee of the Fritz K. Mitchell Revocable Trust dated September 13, 1989, with full power and authority to protect, conserve and to sell or to encumber or otherwise to manage and dispose of the real property described herein, of the County of Polk, State of Florida, grantor, and THE CITY OF NEW SMYRNA BEACH,

whose address is: 210 Sams Avenue, New Smyrna Beach, Florida 32168

of the County of Volusia, State of Florida, grantee.

Witnesseth that the GRANTOR, for and in consideration of the sum of ---------- TEN & NO/100($10.00) ---------- DOLLARS, and other good and valuable consideration to GRANTOR in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said GRANTEE and GRANTEE'S heirs and assigns forever, the following described land, situate, lying and being in the county of Volusia State of Florida to wit:

A portion of Saxon Drive, lying northerly of the westerly prolongation of the north line of East Eighth Avenue and lying southerly of the westerly prolongation of East Seventh Avenue being a portion of U. S. Lot 5, Section 16, Township 17 South; Range 34 East and being more particularly described as follows: As a point of reference commence at the southeast corner of Lot 6, Block "G", CORONADO BEACH SUBDIVISION, according to plat thereof recorded in Map Book 5, Page 83 of the Public Records of Volusia County, Florida; thence S 63° 35' 00" W along the northerly line of East Eighth Avenue and its westerly prolongation thereof, a distance of 1362.74 feet for the POINT OF BEGINNING; thence continue S 63° 35'

(Continued on attached)

and the grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Terri Rivera
Printed Name: Terri Rivera
Witness

Fritz K Mitchell (Seal)
FRITZ K. MITCHELL, as Trustee of the Fritz K. Mitchell Trust dated 9/13/89
P.O. Address 2214 Coventry Avenue, Lakeland, FL 33803

Printed Name: W. M. Gillespie
Witness

(Seal)

REC FEE $ 10.50 REC'D PAYMENT AS
DOC ST $ .70 INDICATED FOR CLASS
INT TAX $ "C" INTANGIBLE & DOC
PENALTY $ STAMP TAXES SIGNED
INTEREST $ (Seal)

Clerk Circuit Court Volusia Co. Florida

(Seal)

STATE OF Florida
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 20th day of May, 1993 by FRITZ K. MITCHELL, as Trustee of the Fritz K. Mitchell Revocable Trust dated September 13, 1989, with full power and authority to protect, conserve and to sell or to encumber or * who is personally known to me or who has produced his Florida driver's license as identification and who did take an oath. *otherwise to manage and dispose of the real property described herein,

This Document Prepared By:
W. M. GILLESPIE
GILLESPIE & GILLESPIE, PA
P.O. BOX 500 233 N. CAUSEWAY
NEW SMYRNA BEACH, FL 32170-0580

Printed Name: W. M. Gillespie
NOTARY PUBLIC
My Commission Expires:

Notary Public, State of Florida
My Commission Expires July 30, 1994
Bonded Thru Notary Public Underwriters

67

68

Exhibit 2 Cont'd

BOOK PAGE
3831 4078
VOLUSIA CO.,FL

00" W, a distance of 37.54 feet to the centerline of the existing pavement of Saxon Drive; thence N 23° 51' 59" W along said centerline, a distance of 300.30 feet to the westerly prolongation of the southerly line of East Seventh Avenue; thence N 63° 35' 00" E along said prolongation of the southerly line of East Seventh Avenue, a distance of 37.54 feet; thence S 23° 51' 59" E, a distance of 300.30 feet to the Point of Beginning.

Subject to restrictions, reservations and easements of record, if any, which are not reimposed hereby, and taxes subsequent to December 31, 1992 .

The property herein conveyed DOES NOT constitute the HOMESTEAD property of the Grantor. The Grantor's HOMESTEAD address is 2214 Coventry Avenue Lakeland, Florida.

074001

69

Exhibit 2 Cont'd

BOOK PAGE
3849 1005
VOLUSIA CO.,FL

Parcel ID Number: 7415-04-39-0000
Grantee #1 TIN:

[Space Above This Line For Recording Data]

Warranty Deed

This Indenture, Made this 23rd day of July, 1993 A.D., Between FRITZ K. MITCHELL, as Trustee of the Fritz K. Mitchell Revocable Trust dated September 13, 1989, with full power and authority to protect, conserve and to sell or to encumber or otherwise to manage and dispose of the real property described herein, of the County of Polk, State of Florida, grantor, and THE CITY OF NEW SMYRNA BEACH,

whose address is 210 Sams Avenue, New Smyrna Beach, Florida 32168

of the County of Volusia, State of Florida, grantee.

Witnesseth that the GRANTOR, for and in consideration of the sum of ---------- TEN & NO/100($10.00) ---------- DOLLARS, and other good and valuable consideration to GRANTOR in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said GRANTEE and GRANTEE'S heirs and assigns forever, the following described land, situate, lying and being in the county of Volusia State of Florida to wit:

The Westerly 1/2 of Saxon Drive lying northerly of the westerly prolongation of the north line of East Eighth Avenue and lying southerly of the westerly prolongation of East Seventh Avenue being a portion of U. S. Lot 5, Section 16, Township 17 South; Range 34 East and being more particularly described as follows: As a point of reference commence at the Southeast corner of Lot 6, Block "G", CORONADO BEACH SUBDIVISION, according to plat thereof recorded in Map Book 5, Page 83 of the Public Records of Volusia County, Florida; thence S 63° 35' 00" W along the northerly line of East Eighth Avenue and its westerly prolongation thereof, a distance of 1400.28 feet to the centerline of the existing pavement of Saxon Drive and for the POINT OF BEGINNING; thence continue S 63° 35' 00" W, a distance of 37.54 feet; thence N 23° 51' 59" W, a distance of 300.30 feet to the westerly prolongation of the southerly line of East Seventh Avenue; thence N 63° 35' 00" E, along said prolongation of the southerly line of East Seventh Avenue, a distance of 37.54 feet to the centerline of the existing pavement of Saxon Drive; thence S 23° 51' 59" E along said centerline a distance of 300.30 feet to the Point of Beginning.

FILED FOR RECORD
RECORD VERIFIED
11459
93 AUG 10 PM 12:20
CLERK OF THE CIRCUIT
& CTY COURT VOLUSIA CTY FL

(Continued on attached)

and the grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Lawanda F. Plenge
Printed Name: Lawanda F. Plenge
Witness

Fritz K. Mitchell (Seal)
FRITZ K. MITCHELL, as Trustee of the Fritz K. Mitchell Trust dated 9/13/89
P.O. Address 2214 Coventry Avenue, Lakeland, FL 33803

Terri Rivera
Printed Name: Terri Rivera
Witness

REC FEE $ 10.50 REC'D PAYMENT AS 1 (Seal)
DOC ST $ .70 INDICATED FOR CLASS
INT TAX $ _____ "C" INTANGIBLE & DOC
PENALTY $ _____ STAMP TAXES SIGNED
INTEREST $ _____

Clerk Circuit Court Volusia Co. Florida

STATE OF Florida
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 23rd day of July, 1993 by FRITZ K. MITCHELL, as Trustee of the Fritz K. Mitchell Revocable Trust dated September 13, 1989, with full power and authority to protect, conserve and to sell or to encumber or * who is personally known to me or who has produced his Florida driver's license as identification and who did take an oath. *otherwise to manage and dispose of the real property described herein,

This Document Prepared By:
W. M. GILLESPIE
GILLESPIE & GILLESPIE, PA
P.O. BOX 580 230 N. CAUSEWAY
NEW SMYRNA BEACH, FL 32170-0580

Terri Rivera
Printed Name: Terri Rivera
NOTARY PUBLIC
My Commission Expires: NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAR. 5, 1994
NOTARY TRAIN GENERAL INS. 1991

73
74

Exhibit 2 Cont'd

Warranty Deed - Page 2

BOOK PAGE
3849 1006
VOLUSIA CO., FL

Subject to restrictions, reservations and easements of record, if any, which are not reimposed hereby, and taxes subsequent to December 31, 1992 .

The property herein conveyed DOES NOT constitute the HOMESTEAD property of the Grantor. The Grantor's HOMESTEAD address is 2214 Coventry Avenue Lakeland, Florida.

Reserving unto the Grantor, his heirs, successors and assigns, ingress and egress over and across all of the above-described real property that is contiguous to the real property owned by Grantor. Grantor further reserves to himself, his heirs, successors and assigns the right of drainage upon said property so long as there is sufficient capacity to meet the Florida Department of Transportation standards for drainage for the roadway and its curtilage. The Grantor recognizes and acknowledges that its reservation of rights of drainage upon the upon the demised premises is subject to the Grantee's applicable Land Development Regulations and the Grantee's successors and assigns applicable Land Development Regulations.

111459

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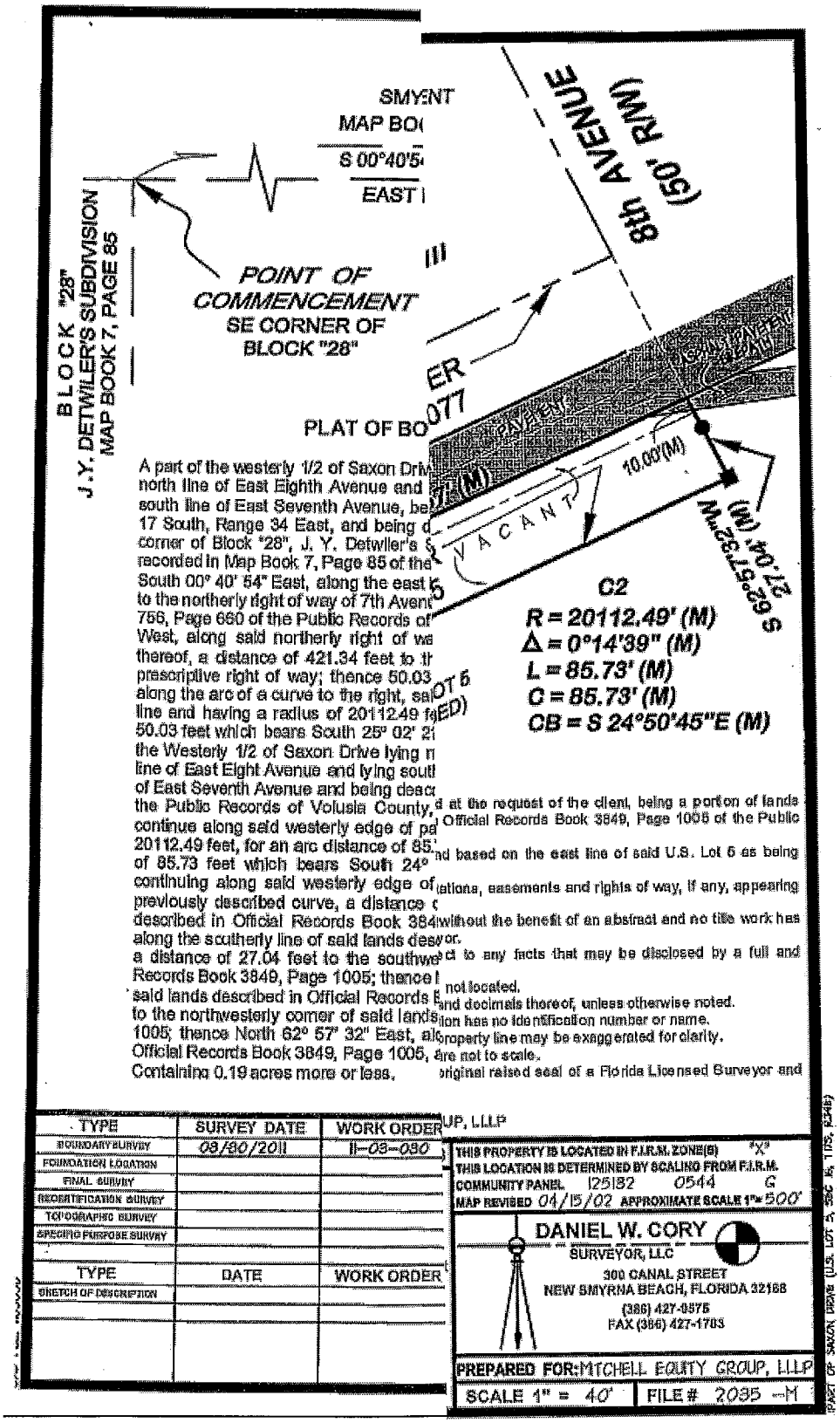
6


BLOCK "28"
J. Y. DETWILER'S SUBDIVISION
MAP BOOK 7, PAGE 85
POINT OF COMMENCEMENT
SE CORNER OF BLOCK "28"
8th AVENUE
(50' R/W)
VACANT
10.03'(M)
S 62°57'32"W
27.04' (M)
C2
R = 20112.49' (M)
Δ = 0°14'39" (M)
L = 85.73' (M)
C = 85.73' (M)
CB = S 24°50'45"E (M)
TYPE
SURVEY DATE
WORK ORDER
BOUNDARY SURVEY
08/30/2011
II-03-090
FOUNDATION LOCATION
FINAL SURVEY
RECERTIFICATION SURVEY
TOPOGRAPHIC SURVEY
SPECIFIC PURPOSE SURVEY
TYPE
DATE
WORK ORDER
SKETCH OF DESCRIPTION
THIS PROPERTY IS LOCATED IN F.I.R.M. ZONE(S) "X"
THIS LOCATION IS DETERMINED BY SCALING FROM F.I.R.M.
COMMUNITY PANEL 125182 0544 G
MAP REVISED 04/15/02 APPROXIMATE SCALE 1"=500'
DANIEL W. CORY
SURVEYOR, LLC
300 CANAL STREET
NEW SMYRNA BEACH, FLORIDA 32168
(386) 427-0575
FAX (386) 427-1703
PREPARED FOR: MITCHELL EQUITY GROUP, LLLP
SCALE 1" = 40'
FILE # 2035 -M

7

Exhibit 4 – Request from Applicant and Response from Utilities Commission to Vacate ROW and Utilities Easement

May 6, 2011

STEWART B. MITCHELL
Hog Eye Camp Road LLC
P.O. Box 940579
MAITLAND, FL 32794

MR. RANDY WALTER
UTILITIES COMMISSION NSB

I would like to apply to the City of New Smyrna Beach to vacate that portion of right of way known as the ~~east~~ West ROW 1/2 of Saxon Drive per official records book ~~3831~~ 3049 ROW, page ~~1077~~ 1005 ROW. Please see the attached survey that has the full description and dimensions.

Also, could the 25ft utility easement currently depicted on the Callisa Creek Vistas subdivision plat per official records book 55 pages 141 & 142 be vacated as well. It currently crosses newly subdivided lots 5, 6 & 7.

If this is acceptable to the U.C. please provide a letter stating there is no objection to the vacation of these two areas.

Sincerely

Stewart B. Mitchell

STEWART B. MITCHELL, MANAGING MEMBER

Exhibit 4 – Cont'd

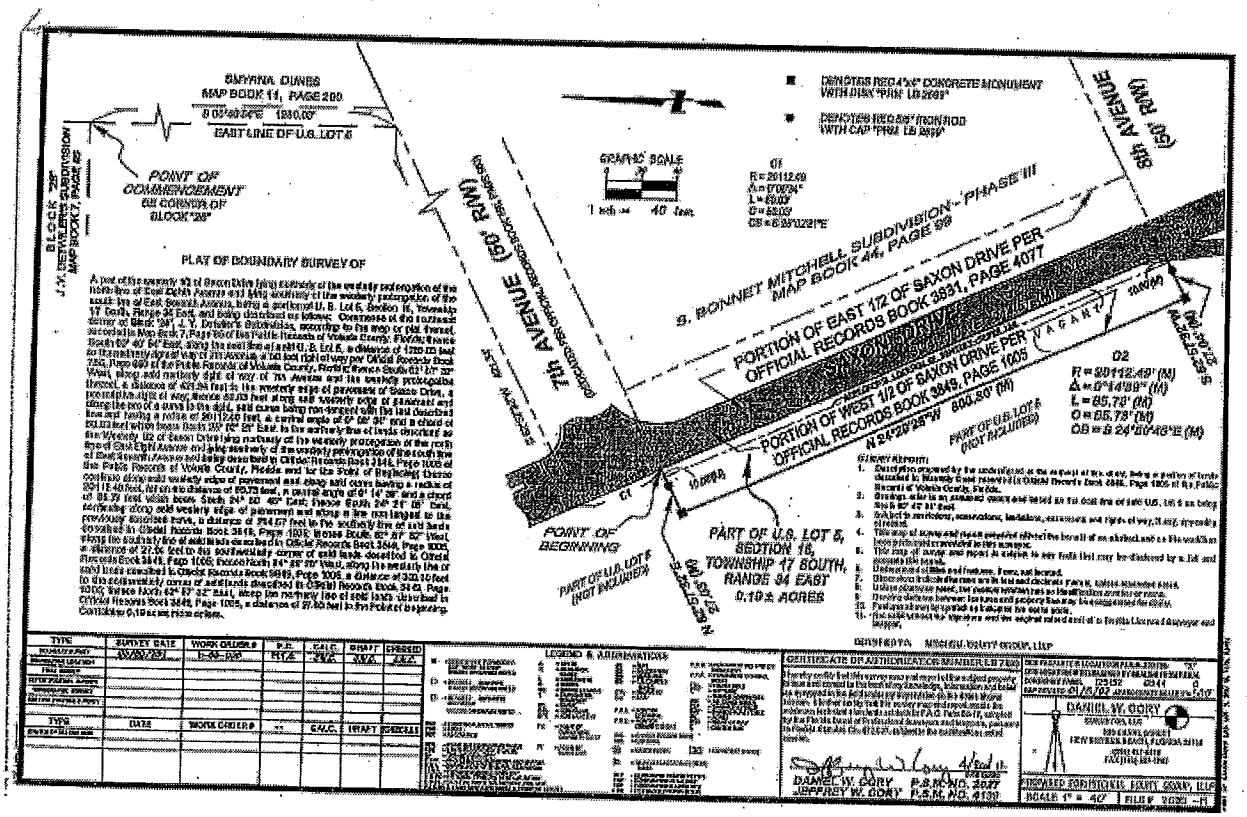


Exhibit 4 – Cont'd

UTILITIES COMMISSION,
CITY OF NEW SMYRNA BEACH, FLORIDA
200 Canal Street
New Smyrna Beach, Florida 32168
386-427-1361

Mailing Address:
Post Office Box 100
New Smyrna Beach, Florida 32170

May 10, 2011

Stewart B. Mitchell
Hog Eye Camp Road, LLC.
P.O. Box 940579
Maitland, FL. 32794

RE: Proposed right-of-way vacation of a portion of west ½ of Saxon Drive per official records book 3849, page 1005 and 25' easement as depicted per map book 55, pages 141 & 142 on lots 5, 6 & 7.

To Whom It May Concern:

The Utilities Commission interposes no objection to the proposed vacation of that portion of right-of-way known as the west ½ of Saxon Drive per official records book 3849, page 1005 and described by Daniel W. Cory Surveyor, LLC., Certified to: Mitchell Equity Group LLLP, dated 03/30/2011, work order # 11-03-030 attached.

The Utilities Commission has an existing 10" force main and 8" gravity sewer in the proposed vacation and would require a 25' easement from the edge of pavement into the property. There is no electric, water or reclaim facilities in the proposed vacation.

In addition the Utilities Commission interposes no objection to the proposed 25'easement vacation as depicted per map book 55, pages 141 & 142 on lots 5, 6 & 7.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Randy L. Walter

Randy L. Walter
New Business Representative

"Connecting You With Quality"

Exhibit 5 – Letter of Request for ROW Vacation from Applicant

THE STEWART MITCHELL CO.
COMMERCIAL/INVESTMENT REAL ESTATE BROKERAGE

P.O. BOX 940579
MAITLAND, FL 32794-0579
407-740-6004
FAX: 407-740-6030

May 5, 2011

Mr. Andrew J. McGuirk
Chairman
New Smyrna Beach Planning and Zoning Board
210 Sams Avenue
New Smyrna Beach, FL 32168

Dear: Chairman McGuirk and Members of the Planning and Zoning Board,

The proposed vacation of the property known as the West ½ of Saxon Drive between 7th and 8th Avenues, further described in the official records of Volusia County in book 3849 and on page 1005, having the dimensions of 300.03 feet long and 27.04 feet wide, will be in the interest of the public good because of the following reasons:

1. Aesthetically, all the homes in Callilisa Creek Vistas will have the same front yard setback, making for a beautiful uniform line of homes.
2. Surplus land no longer needed by for right of way will be added back on to the tax rolls as the front yard of three residential properties.
3. The underground utilities will be in a straight line, making the flow for water, sewer and electrical conduit direct. This should translate into lower future maintenance cost.

Uniform front yard setbacks, increase in tax revenues and reduction in future maintenance costs surely make this vacation in the interest of the public good.

Thank you for your review of this matter.

Sincerely,

Stewart B. Mitchell, CCIM
Managing Member
Hog Eye Camp Road, LLC

Exhibit 6 – Letter of No Objection from Adjacent Property Owner / Applicant

THE STEWART MITCHELL CO.
COMMERCIAL/INVESTMENT REAL ESTATE BROKERAGE

P.O. BOX 940579
MAITLAND, FL 32794-0579
407-740-6004
FAX: 407-740-6090

May 5, 2011

Mr. Andrew J. McGuirk
Chairman
New Smyrna Beach Planning and Zoning Board
210 Sams Avenue
New Smyrna Beach, FL 32168

Dear: Chairman McGuirk and Members of the Planning and Zoning Board,

I am writing you regarding the vacation of the right of way known as the West ½ of Saxon Drive between 7th and 8th Avenues, further described in official records book 3849 on page1005.

The property I manage is adjacent to this property. I, as Managing Member of the Hog Eye Camp Road Limited Liability Company, have no objection to the vacation of the 300.03 ft long by 27.04 piece of property.

Thank you for your review of this matter.

Sincerely,

Stewart B. Mitchell, CCIM
Managing Member
Hog Eye Camp Road, LLC

CITY OF NEW SMYRNA BEACH – CITY COMMISSION

A-4-11: PLUMB / PAIGE AVENUE

June 6, 2011

I. Background

A. **Applicant:** Arthur Plumb, 7004 J.F. Kennedy Blvd East #29E, Guttenberg, New Jersey, 07093

B. **Property Owners:** Arthur Kranis and Arthur Plumb, 7004 J.F. Kennedy Blvd East #29E, Guttenberg, New Jersey, 07093

C. **Request:** Voluntary annexation , *Comprehensive Plan* amendment, and rezoning

- **From:** County Future Land Use (FLU) designation of Urban Medium Intensity; and County zoning R-4, Urban Single-Family
- **To:** City FLU designation of Medium Density Residential; and City zoning R-4, Multi-Family Residential

D. **Site Information:**

- **Size:** .95 acres
- **Location:** The property is located on the south side of Paige Avenue, west of Mission Drive (see **Exhibit A** for a location map).
- **Tax I.D. Number:** 7324-12-05-0050

II. Findings

A. The subject property is an approximately .95-acre parcel. The parcel is adjacent to a platted, but unopened street right-of-way on the south. The property also has access from Vics Way, formerly known as Paige Avenue. A copy of the plat for the subject property is attached as **Exhibit B**. The property currently has a Volusia County Future Land Use (FLU) designation of Urban Medium Intensity, which allows up to eight units per acre. The property is currently zoned Volusia County R-4, Urban Single-Family. To the north of the subject property is the New Smyrna Beach Regional Shopping Center and several stand-alone commercial establishments. To the east of the property are the Sugartree Apartments. The property immediately to the east was recently annexed into the City. The proposed future land use designation for that property is High Density Residential, with a proposed zoning of R-4, Multi-Family Residential. However, until the land use and zoning are finalized, the adjacent property continues to retain its County future land use and zoning classifications. The surrounding future land use, existing uses, and zoning are as follows:

North

Future Land Use:	City Commercial
Existing Land Use:	Shopping Center, Stand-alone commercial
Zoning:	City B-5(C), Planned Shopping Center (Corridor

Overlay Zone) and City B-3(C), Highway Service Business District (Corridor Overlay Zone)

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

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

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

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

B. A map of the soils within the site is attached as **Exhibit H**. According the Volusia County Soil Survey prepared by the Soil Conservation Service, there is one (1) soil types that are on the property and has characteristics of medium to low potential for community development. Descriptions of the soil type is attached as **Exhibit I**. One must note that, in the context of soil type descriptions, the developmental potential is not a legal restraint on the amount of development, nor is the available soil information definitive in the process of determining the existence of wetlands. The soils map and description provides an indication of the amount of soil treatment necessary to allow further development (i.e. low development potential means more extreme treatment needs for development).

C. As stated above, the subject property is currently vacant and is moderately to heavily wooded. Paige Avenue was recently paved from Mission Drive to the New Smyrna Beach Regional Shopping Center entrance. This roadway segment was also renamed "Vics Way".

D. Previous City Commissions had established a policy that when property is annexed into the City, the City would assign a future land use and zoning designation that would closely match the existing County designations. As discussed above, the existing County FLU and zoning designations are Urban Medium Intensity and R-4, Urban Single-Family Residential, respectively. The annexation application was received as a result of letters staff mailed to surrounding property owners when the property to the east applied for annexation. Staff and is requesting a City FLU

designation of Medium Density Residential, which would allow up to 8 units per acre. The applicant is also requesting a City zoning classification of R-4, which would allow single-family, duplex or multi-family residential development. Maps showing the proposed FLU and zoning changes are attached as **Exhibits J and K**. Descriptions of the proposed FLU and zoning designations are attached as **Exhibits L and M**.

E. In reviewing the request, staff determined that the requested FLU and zoning designations would not be inconsistent with existing surrounding development. As discussed above, the properties to the east are vacant or contain the Sugartree Apartment complex. Immediately to the north, across Paige Avenue, is the New Smyrna Beach Regional Shopping Center, McDonald's, Taco Bell, Denny's and Walgreen's. Given the location of the subject property and surrounding uses, multi-family residential is a better long-term use for the site than single-family residential. Additionally, with regard to infill development and maximization of existing infrastructure, higher density should be clustered around existing retail services. This reduces the number of vehicular trips that would be utilizing State Road 44 or Mission Drive and impacting the intersection of State Road 44 and Mission Drive/Wallace Road, which has experienced concurrency issues in the past.

F. As part of the *Comprehensive Plan* amendment and rezoning process, the city will be required to obtain a determination from the Volusia County School District regarding the potential impacts of the proposed FLU amendment and rezoning. A concurrency review application has been submitted to the Volusia County School District.

G. Paige Avenue currently exists as a 30-foot right-of-way. Paige Avenue from Mission Drive to the New Smyrna Beach Regional Shopping Center entrance will be paved in the near future. In previous discussions between staff and the City Engineer, he has indicated that additional right-of-way dedication may be required along Paige Avenue to accommodate future stormwater drainage and/or sidewalks and to generally bring the Paige Avenue right-of-way further into compliance with minimum City standards. The applicant should be aware of the need to dedicate additional right-of-way and shall comply with this requirement. The exact width of the right-of-way dedication will be determined by the City Engineer during the site plan review process.

H. This annexation request is within the City's annexation area and within the City's water and wastewater service area.

I. 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. An analysis of the impacts on these facilities has been

compiled based on the theoretical maximums of the present and requested FLU designations (see **Exhibit N**). Any future development would have to demonstrate conformance with concurrency standards prior to vesting any specific development. Because the County's Urban Medium Intensity land use designation also allows a non-residential component, fewer theoretical vehicular trips would be generated if the City's Medium Density Residential FLU designation is approved. Additionally, student generation rates from the Volusia County School District show that multi-family residential units generate approximately 1/3 the number of students than single-family residential homes.

J. The only deficiencies the impact analysis detected were in regards to the Parks and Open Space adopted level of service standards for tennis courts and swimming pools. Per the current *Comprehensive Plan*, the City should have 23 tennis courts to meet the current demand based on the adopted level of service of one (1) court per 1,000 population. The City currently only has nine (9) courts. Additionally, the City should have one (1) swimming pool based on the adopted level of service standard of one (1) pool per 25,000 population. The EAR-based amendments that were adopted by the City Commission on April 12, 2011, propose to eliminate any requirement for the City to provide additional tennis courts beyond what exists and eliminate the requirement to provide a swimming pool. However, until the revisions to the *Comprehensive Plan* are approved by the Florida Department of Community Affairs (DCA), there will be a deficiency for these specific facilities. To date, DCA has not commented on this. However, staff if bringing it to the attention of the Planning & Zoning Board and the City Commission because of the possibility that the City may be found not in compliance because of this issue.

K. There are numerous *Comprehensive Plan* maps that must be amended to incorporate the subject properties into the *Comprehensive Plan* (see **Exhibits O through Z**).

L. 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 high density multi-family residential to the east and by high intensity commercial uses to the north.***

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 will not increase density in this area. However, placement of multi-family residential in close proximity to goods and services will reduce the number of vehicular trips on the City's roadways, including at the intersection of State Road 44 and Mission Drive/Wallace Road, which has experienced concurrency issues in the past. Prior to vesting the development, the owner will have to demonstrate all level-of-service standards will be met.

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.

Development of the subject property would constitute infill development, which is recommended by the **Comprehensive Plan.**

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.

The requested FLU and zoning designations are compatible and consistent with the City's surrounding FLU and zoning designations. The property to the east has a proposed FLU designation of high density residential and is zoned R-4, Multi-Family Residential. The properties to the north have a FLU designation of Commercial and are zoned B-5(C), Planned Shopping Center (Corridor Overlay Zone) and B-3(C), Highway Service Business District (Corridor Overlay Zone).

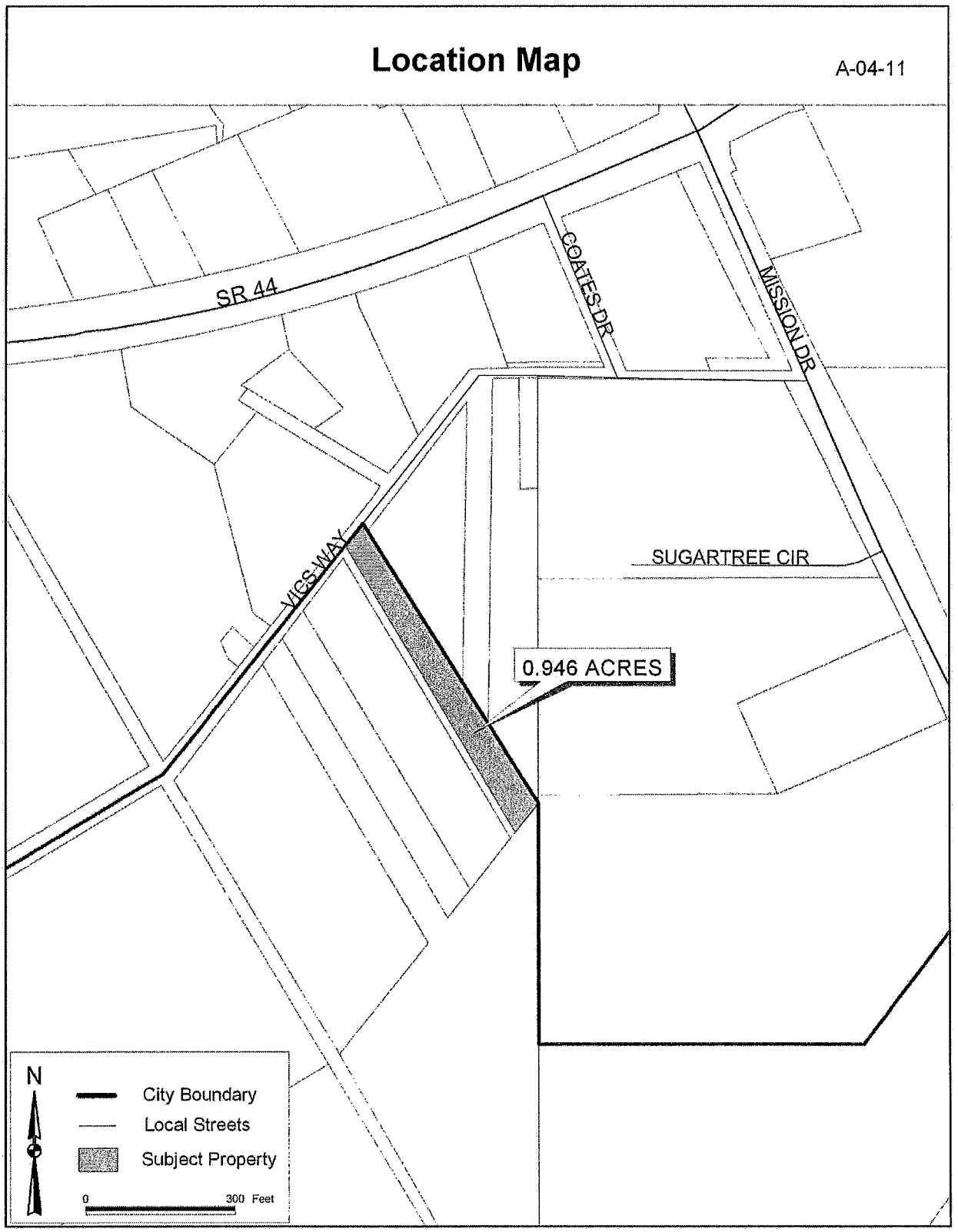
III. Recommendation

Staff recommended that the Planning and Zoning Board recommend to the City Commission **approval** of the annexation, *Comprehensive Plan* amendment to City Medium Density Residential, and the rezoning to City Zoning district designation R-4, Multi-Family Residential, with the following conditions:

1. A determination of school concurrency is obtained prior to scheduling the

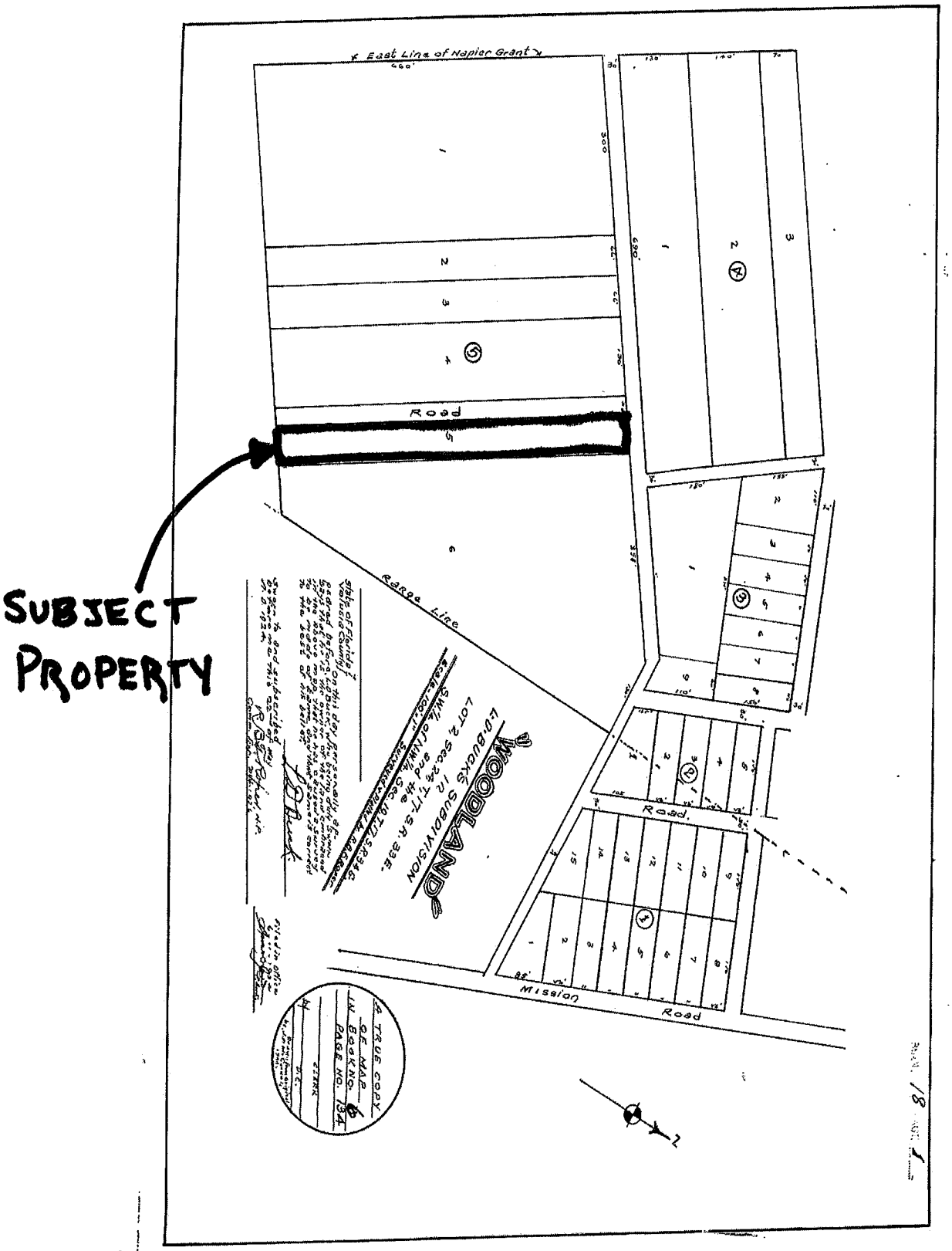
Comprehensive Plan amendment and rezoning for City Commission adoption.

2. The applicant agrees to dedicate additional right-of-way along Paige Avenue, if needed. The width of the dedication to be determined by the City Engineer during the site plan review or building permit process.


Location Map
A-04-11
SR 44
COATES DR
MISSION DR
VIGS WAY
SUGARTREE CIR
0.946 ACRES
N
City Boundary
Local Streets
Subject Property
0
300 Feet

258

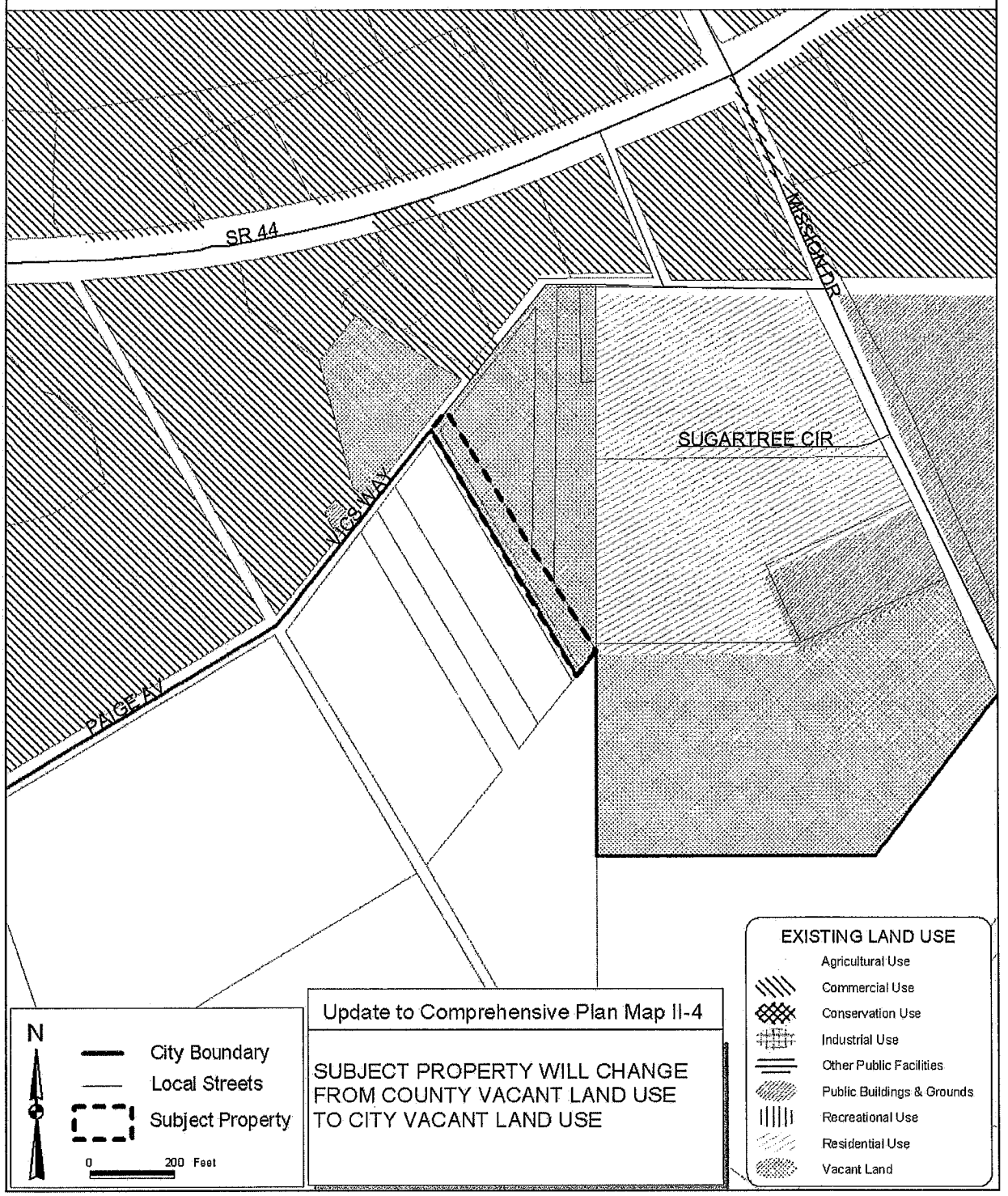
258


East Line of Napier Grant
Road
Range Line
Road
Mission Road
SUBJECT PROPERTY
WOODLAND
L.D. BUCKS SUBDIVISION
A TRUE COPY OF MAP IN BOOK NO. 6 PAGE NO. 134

259

Existing Land Use Designations

A-04-11



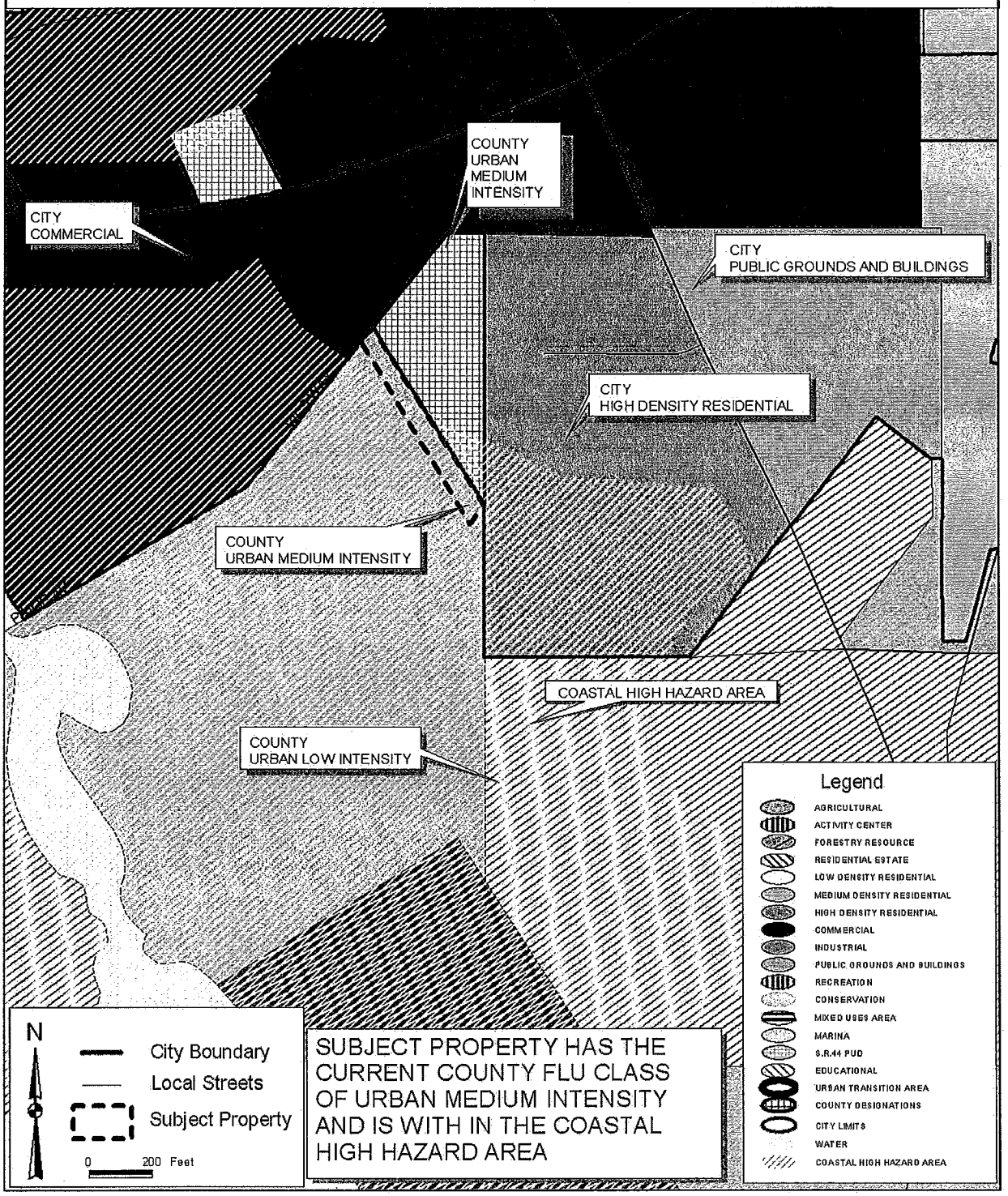
Update to Comprehensive Plan Map II-4

SUBJECT PROPERTY WILL CHANGE FROM COUNTY VACANT LAND USE TO CITY VACANT LAND USE

260

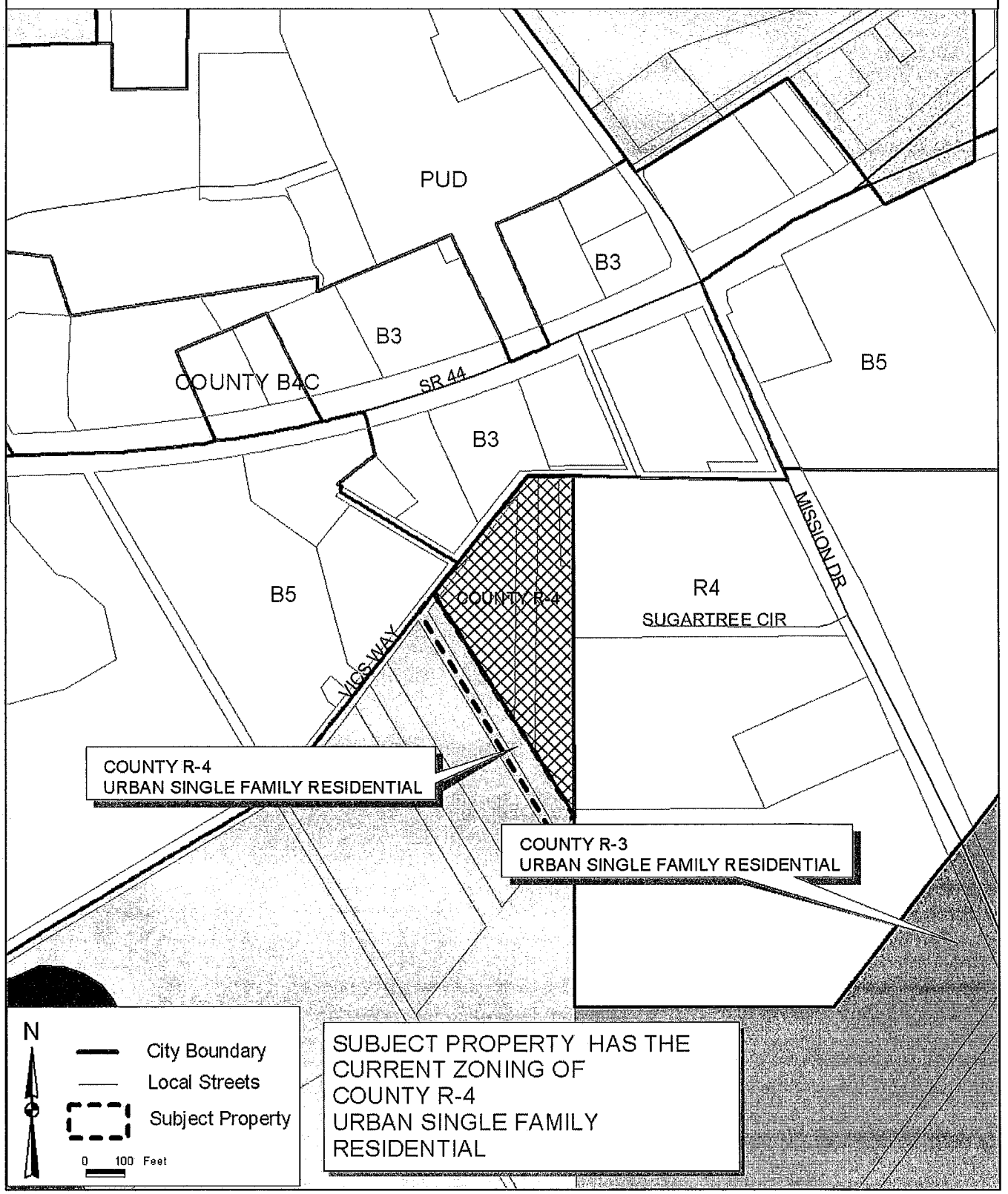
Existing Future Land Use Designations

A-04-11



Existing Zoning

A-04-11



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.

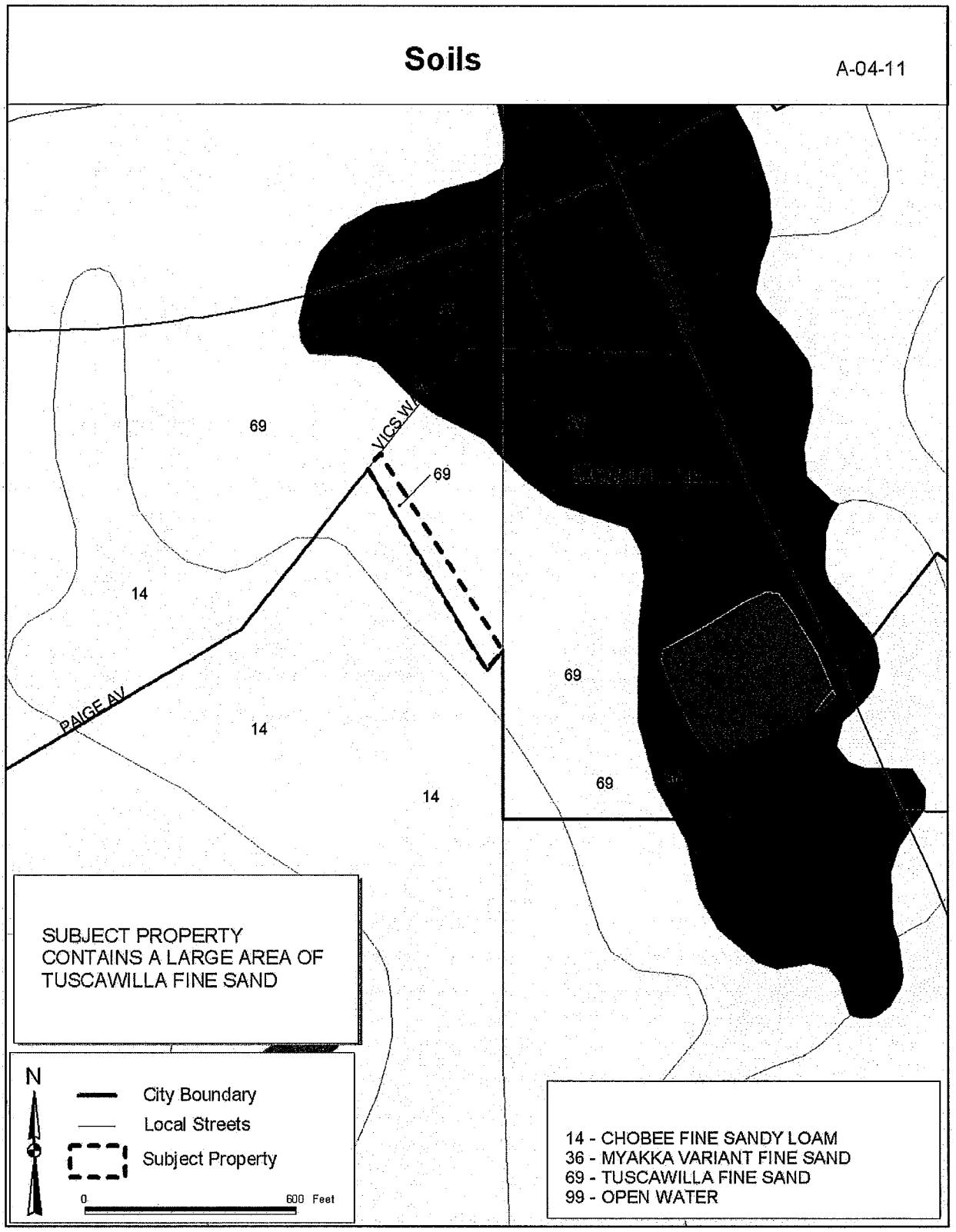
- Rear yard: 20 feet.
- Side yard: 20 feet combined, minimum of eight feet on any one side.
- Waterfront yard: 25 feet.

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.

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 (¼) mile of another jurisdiction shall require notification to that jurisdiction.


Soils
A-04-11
69
69
14
14
14
69
69
VICS WY
PAIGE AV
SUBJECT PROPERTY
CONTAINS A LARGE AREA OF
TUSCAWILLA FINE SAND
N
City Boundary
Local Streets
Subject Property
0
600 Feet
14 - CHOBEE FINE SANDY LOAM
36 - MYAKKA VARIANT FINE SAND
69 - TUSCAWILLA FINE SAND
99 - OPEN WATER

1

Soils Group 69—Tuscawilla Fine Sand

This nearly level, poorly drained soil is in broad hammocks near the coast. The acreage is extensive in Turnbull and Bulow hammocks. Undisturbed areas are characterized by micro relief of fairly closely spaced, low broad rises, or mounds, which are a few feet to more than 100 feet across, irregular in shape, and about 4 to 6 inches above the general level of the surrounding area. Slopes are 0 to 2 percent but mostly less than 1 percent.

Typically, the surface layer is dark gray fine sand about 3 inches thick. The subsurface layer is light brownish gray fine sand about 7 inches thick. The subsoil is 30 inches thick. In the upper 3 inches it is grayish brown fine sandy loam. To a depth of 32 inches it is gray sandy clay loam, and to 40 inches it is light gray fine sandy loam. Below the subsoil to 62 inches is light gray fine sand. To 68 inches is greenish gray fine sand. Below this to 80 inches is white shells and fine sand.

The water table is within a depth of 10 inches for 2 to 6 months in most years. Permeability is rapid in the sandy layers and moderately slow in the loamy layers. The available water capacity is low. Natural fertility is medium, and the organic matter content is low.

Natural vegetation is lowland hardwood hammock. The overstory is laurel oak, live oak, sweetgum, and coastal pignut hickory; and the understory is cabbage palm, southern magnolia, southern red cedar, American hornbeam, waxmyrtle, and longleaf uniola. In some places, the vegetation in the lower areas between the mounds is dominantly cabbage palm, American hornbeam, and pumpkin ash.

Large areas of this soil are in natural vegetation. Many areas in the vicinity of Port Orange and Daytona have been drained and used for farmland and community development. Where outlets are available, draining this soil is not difficult. Constructing ditches or canals that extend well into the substratum of sand and shell, which is rapidly permeable, allows free movement of the ground water.

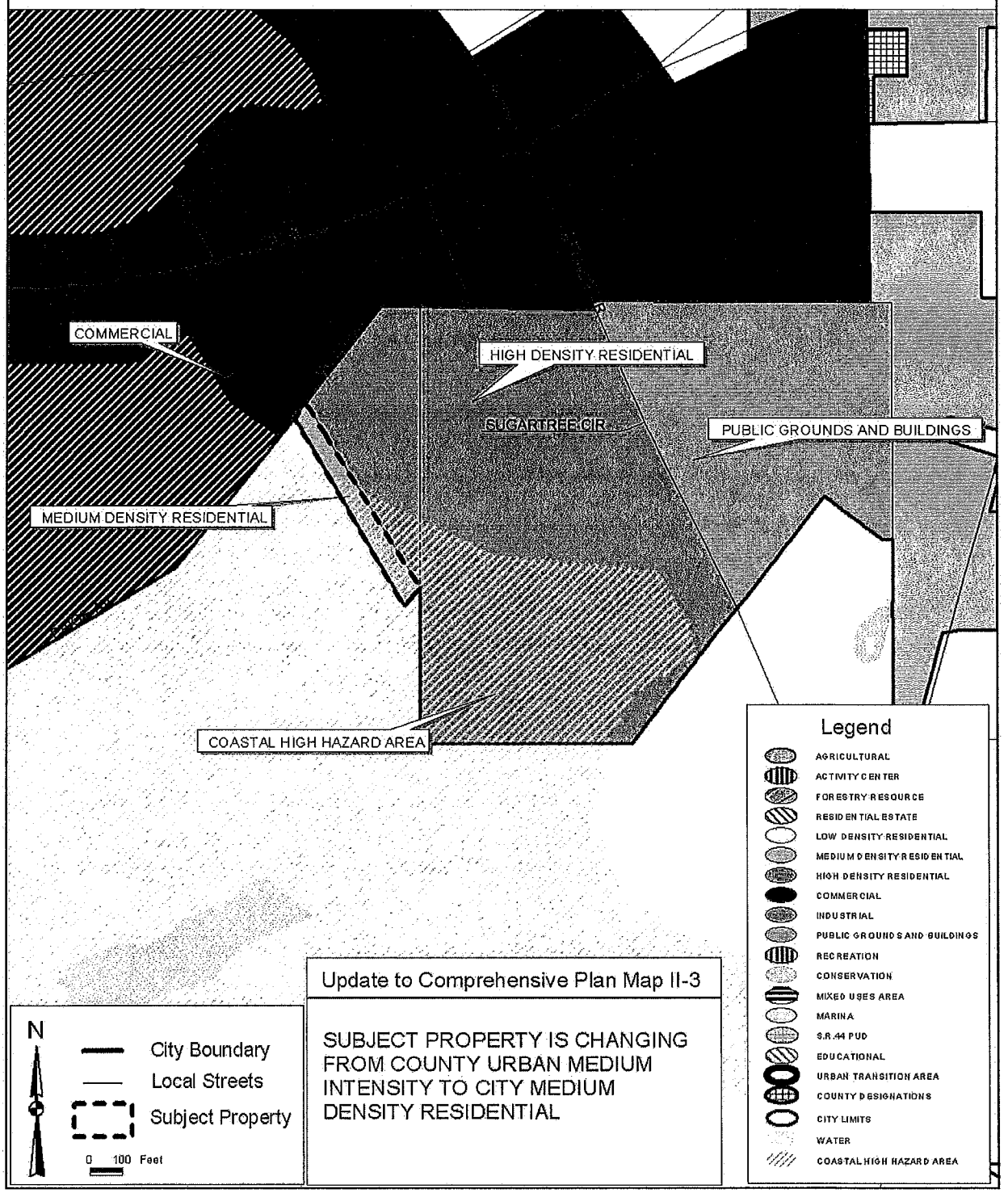
The potential is **medium** for community development. Wetness is a limitation. Water control is needed. Onsite sewage disposal systems are not satisfactory because of the seasonal high water table, the moderately slow permeability in the loamy subsoil, and the discontinuous layers of limestone. Poor drainage conditions do not permit below-grade construction. The fertility is medium and the water holding capacity is enough that lawns and other plantings grow well. There are many desirable native trees, such as live oak and magnolia, that should be protected during construction.

The potential is high for natural parks and wilderness areas. Many areas support a unique growth of mesic hardwoods.

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-04-11



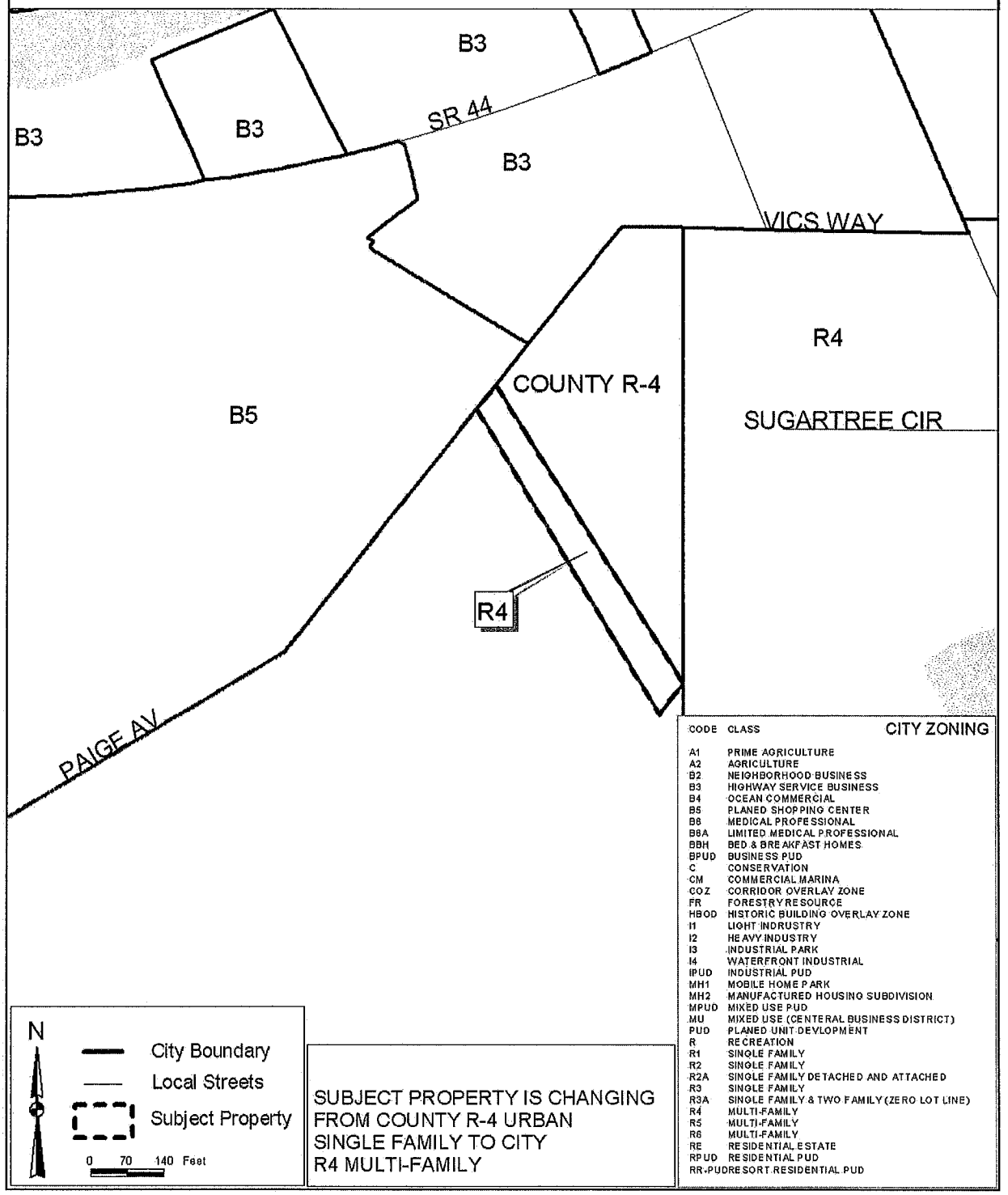
Update to Comprehensive Plan Map II-3

SUBJECT PROPERTY IS CHANGING FROM COUNTY URBAN MEDIUM INTENSITY TO CITY MEDIUM DENSITY RESIDENTIAL

1

Proposed Zoning

A-04-11



CITY ZONING

CODE	CLASS
A1	PRIME AGRICULTURE
A2	AGRICULTURE
B2	NEIGHBORHOOD BUSINESS
B3	HIGHWAY SERVICE BUSINESS
B4	OCEAN COMMERCIAL
B5	PLANED 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 INDRUSTRY
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 (CENTERAL BUSINESS DISTRICT)
PUD	PLANED UNIT DEVLOPMENT
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

MEDIUM-DENSITY RESIDENTIAL

Maximum allowed density: 5.01 to eight [8] dwelling units per acre

Intent: This use is intended to provide a buffer between low-density residential uses and more intense uses, such as high-density residential or commercial. It is also suitable at major intersections when adequate buffering from the highways can be provided.

R-4 MULTI-FAMILY RESIDENTIAL DISTRICT

Intent:

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)

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 aforedescribed 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 aforedescribed 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

(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.

(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:

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 Project Over 10 Acres	25 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.

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 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 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.

Existing County FLU	Acres	Density	Units	Existing County Zoning	Acres
County Urban Medium Intensity (UMI)	0.95	8 units/acre	8	R-4 - Urban Single-Family Residential	0.95
Total	**0.95**		**8**		**0.95**

Requested City FLU	Acres	Density	Units	Requested City Zoning	
Medium Density Residential	0.95	8 units/acre	8	R-4 Multi Family Residential	0.95
Total	**0.95**		**8**		**0.95**

	Existing FLU	Units	Requested FLU	Units	Increase/ (Decrease)
Dwelling Units	UMI = 8 dwelling units per acre	8	Medium Density Residential = 18 dwelling units per acre	8	
TOTAL DWELLING UNITS		**8**		**8**	0.0

Exsiting FLU		Proposed FLU	
Floor Area Ration (FAR)	Maximum Allowed Non-Residential Building Area (Sq. Ft.)	Floor Area Ration (FAR)	Maximum Allowed Non-Residential Building Area (Sq. Ft.)
UMI = 0.5	20691	Only Residential Allowed	0

Population[2]	2.41 persons per dwelling unit	18.32	2.41 persons per dwelling unit	18.32	0.00
Students[3]	0.396students per dwelling unit	3.01	students per dwelling unit	3.01	0.00

Trip Generation[4]	Existing Land Use			Proposed Land Uses				
	Land Use	Average Daily Trips	Peak Hour Trips	Land Use	Average Daily Trips	Peak Hour Trips	Average Daily Increase / (Decrease)	Peak Increase / (Decrease)
	Single-Family Residential	72.73	7.68	Single-Family Residential	72.73	7.68	0.00	0.00
TOTAL		**72.73**	**7.68**		**72.73**	**7.68**	**0.00**	**0.00**

Parks and Recreation[5]									
Existing Requirements (County)			**Proposed Requirements (City)**						
Facility Type	**Adopted Level of Service Standard**	**Total Required for Population of Subject Property**	Facility Type	Adopted Level of Service Standard per Person	Total Required for Population Before Proposed Annexation	Additional Required for Proposed FLU Population	Total Required after Annexation	Existing	Under / (Deficiency)[5a]
Local Park	0.002 acres per person	0.036632	Neighborhood Park Acres	0.001	23.473	0.018316	23.491316	29.156	5.66
District Park	0.005 acres per person	0.09158	Community Park Acres	0.00115	26.99395	0.0210634	27.0150134	75.664	48.65
			Tennis Courts	0.001	23.473	0.018316	23.491316	9	(14.49)
			Softball/ Baseball Fields	0.00033	7.74609	0.00604428	7.75213428	9	1.25
			Swimming Pools	0.00004	0.93892	0.00073264	0.93965264	0	(0.94)
			Handball/Racquetball Courts	0.0001	2.3473	0.0018316	2.3491316	5	2.65
			Boat Ramps	0.00029	6.80717	0.00531164	6.81248164	8	1.19
			18 Hole Golf Courses	0.00004	0.93892	0.00073264	0.93965264	1	0.06

	Existing FLU			Proposed FLU				
	100% Residential on MUI	49% Office +51% Residential on LUI and 100% Residential on ULI	49% Retail, Institutional, & Industrial + 51% Residential on LUI and 100% Residential on ULI	Residential	Maximum Peak Flow (Million GPD)	Existing Average Daily Flow (Million GPD)	Total Average Daily Flow after Annexation	Remaining Capacity (GPD)
Potable Water[6]	1520.00	N/A	N/A	0.0024	7.13	4.60	4,600,000.00	2,530,000.00
Wastewater Treatment[7]	1330.00	N/A	N/A	0.002	7	4.09	4,090,000.00	2,910,000.00
Solid Waste[8]	157.52	N/A	N/A	133.7068	n/a[8a]	n/a[8a]	n/a[8a]	n/a[8a]
Stormwater[9]	Peak discharge rate and total runoff volume leaving the site for a 25 year storm of 24 hour duration is limited to 110 percent of the present discharge rate and total discharge volume.							

Notes:

1. FAR for UMI is based on non-residential being ancillary to residential; staff therefore based this calculation on a maximum of 49% of the area being developed as non-residential
2. Population: 2.41 persons per residential unit or single-family dwelling per 2006-2008 American Community Survey for Volusia County
3. Student population is calculated at a rate of 0.396 students per dwelling unit
4. ITE Trip Generation Manual, 7th Edition Single-Family Residential - Average Daily Trips = 9.57 trips/unit weekay; 1.01 trips/dwelling unit for peak hour of adjacent street traffic, 4 p.m. and 6 p.m.
5. Because there are different Level of Service Standards for Parks and Open Sapce between the County and the City, it is not feasible to compare before and after annexation figures. However, as is shown on the table, concurrency with City standards is calculated.

5a. Based on the existing adopted and approved *Comprehensive Plan*

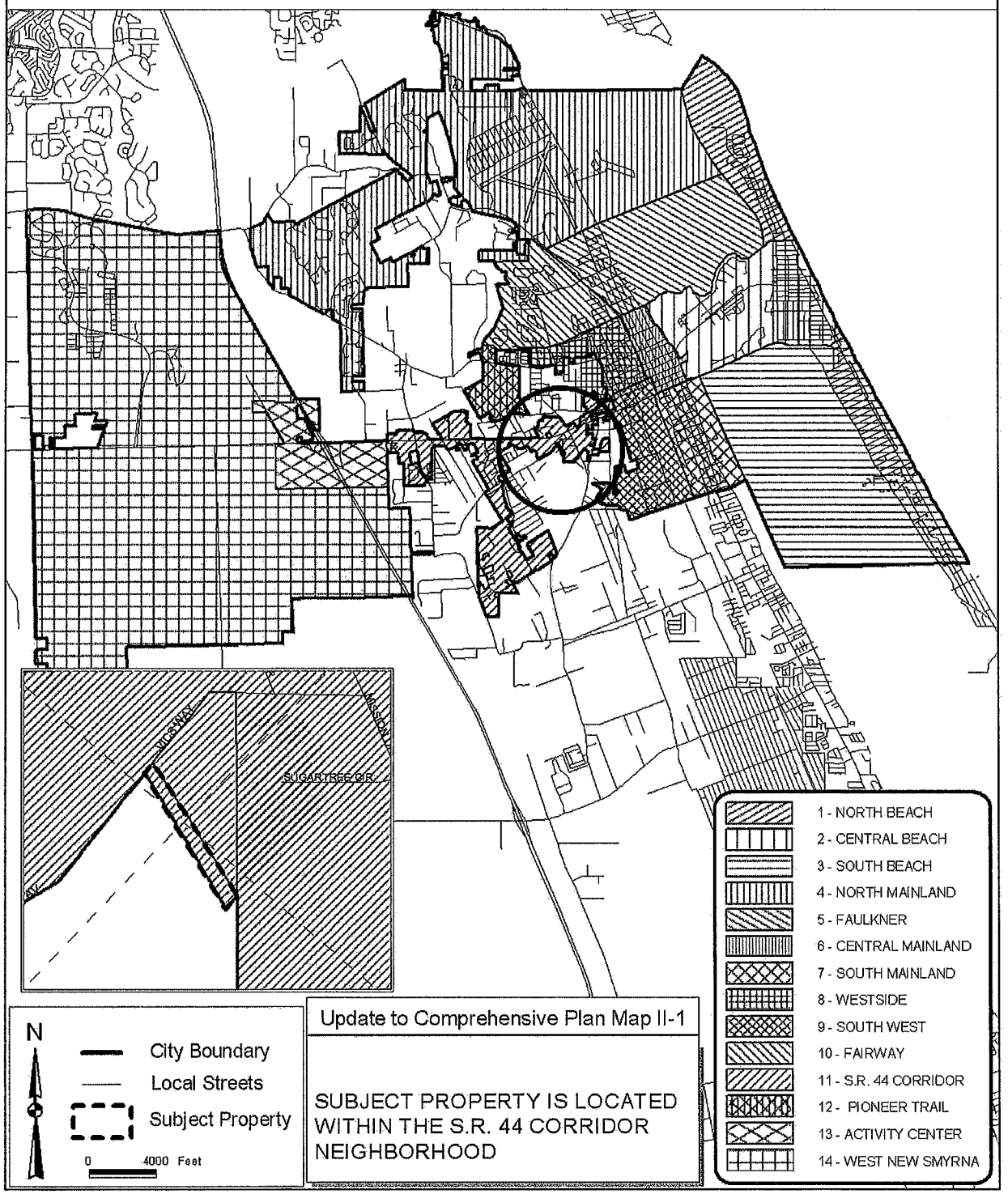
6. County = 200 gallons/day(GPD)/ressidential unit; 0.15 GPD/sq. ft. of office building area; 0.1 GPD/sq. ft. of retail, institutional & industrial building area. City = 300 gallons/day/residential unit or ERU
7. County = 175 GPD per residential unit; 0.15 GPD per sq. ft. office building area; 0.10 GPD per sq. ft. retail, institutional & industrial building area. City = 250 gallons per day per residential unit or ERU.
8. Solid Waste: County = 8.6 pounds per day per person. City = 7.3 pounds per person per day. Non-residential waste is included in these figures.

8a. Solid Waste is transported to the Tomoka Land Fill, which has a 40-year projected lifespan before reaching capacity and is therefore not affected by the proposed FLU changes

9. Stormwater Drainage: LOS standard = 25 year, 24 hour event. Drainage system will be designed to meet the requirements contained in the Land Development Regulations.

Neighborhoods

A-04-11

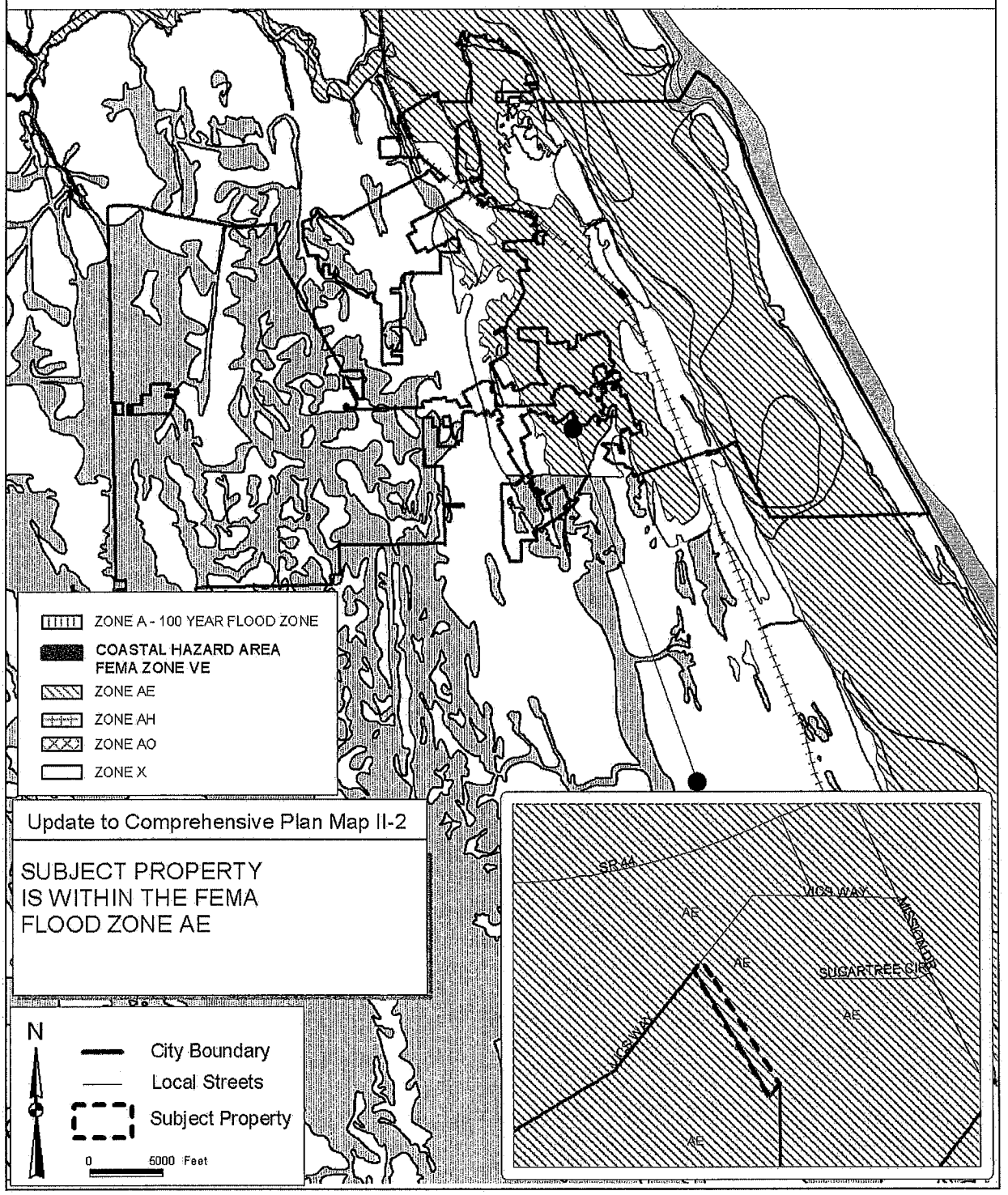


Update to Comprehensive Plan Map II-1

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

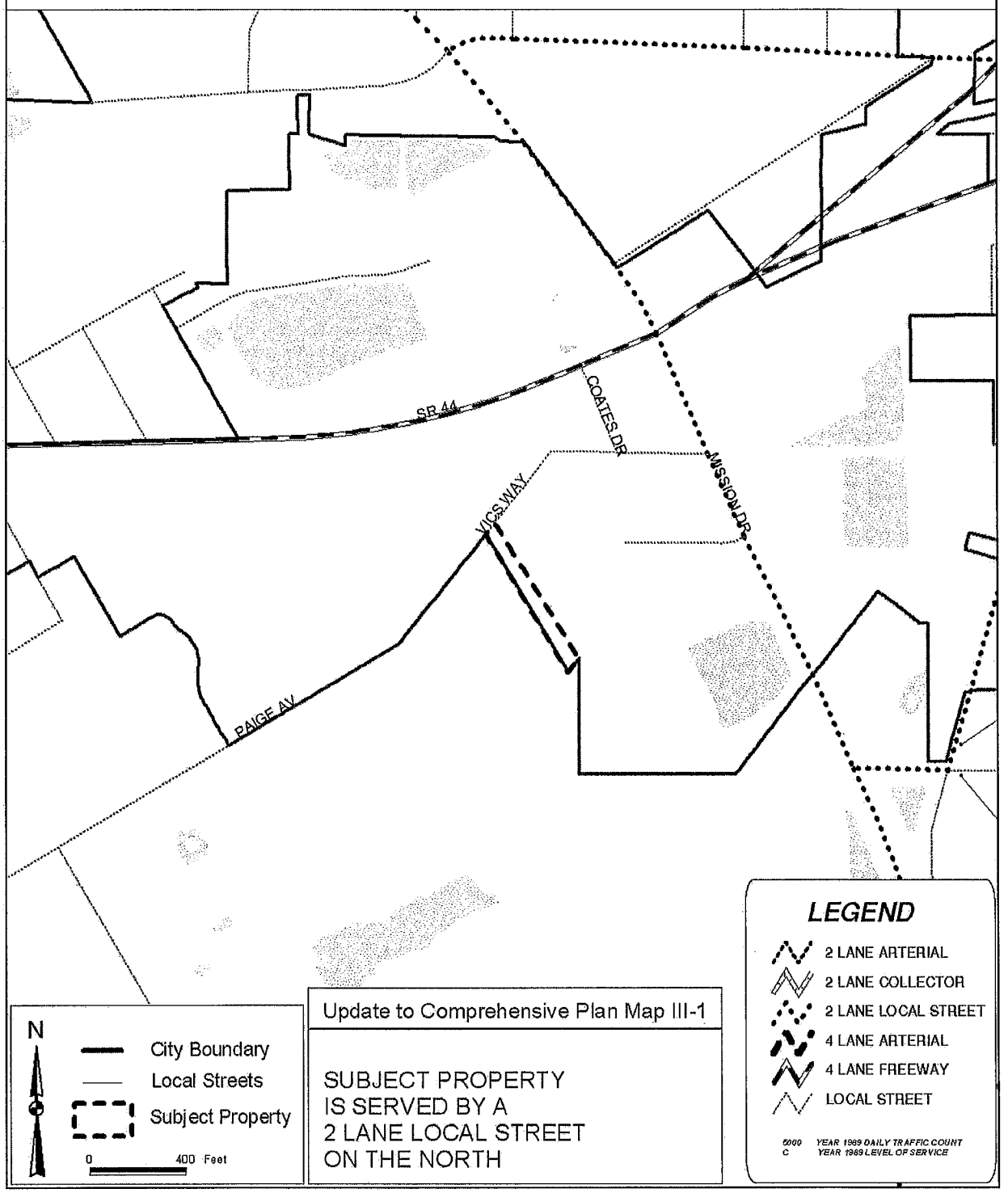
Flood Prone Areas

A-04-11



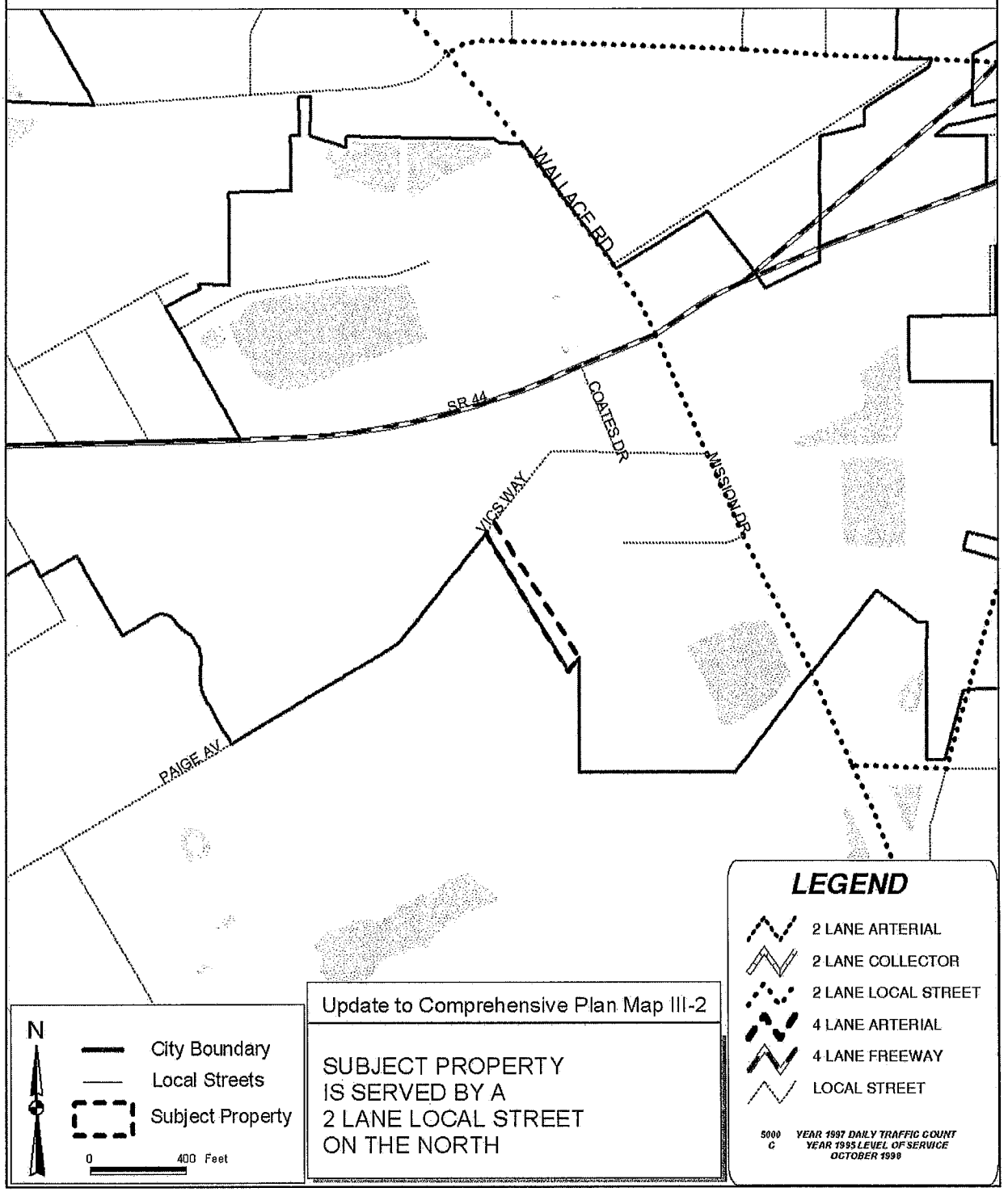
1989 Traffic Conditions

A-04-11



1995 Traffic Conditions

A-04-11

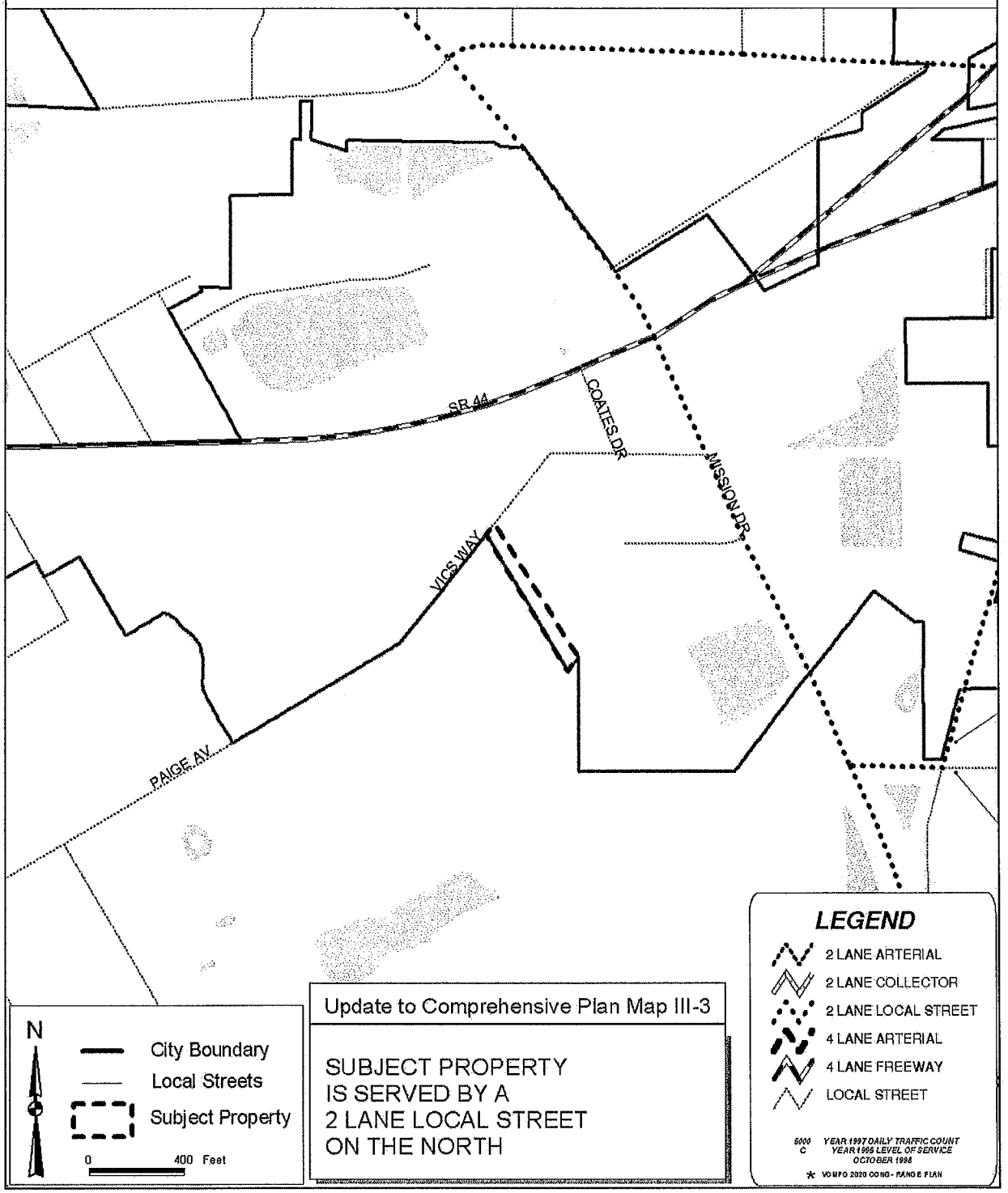


Update to Comprehensive Plan Map III-2

SUBJECT PROPERTY
IS SERVED BY A
2 LANE LOCAL STREET
ON THE NORTH

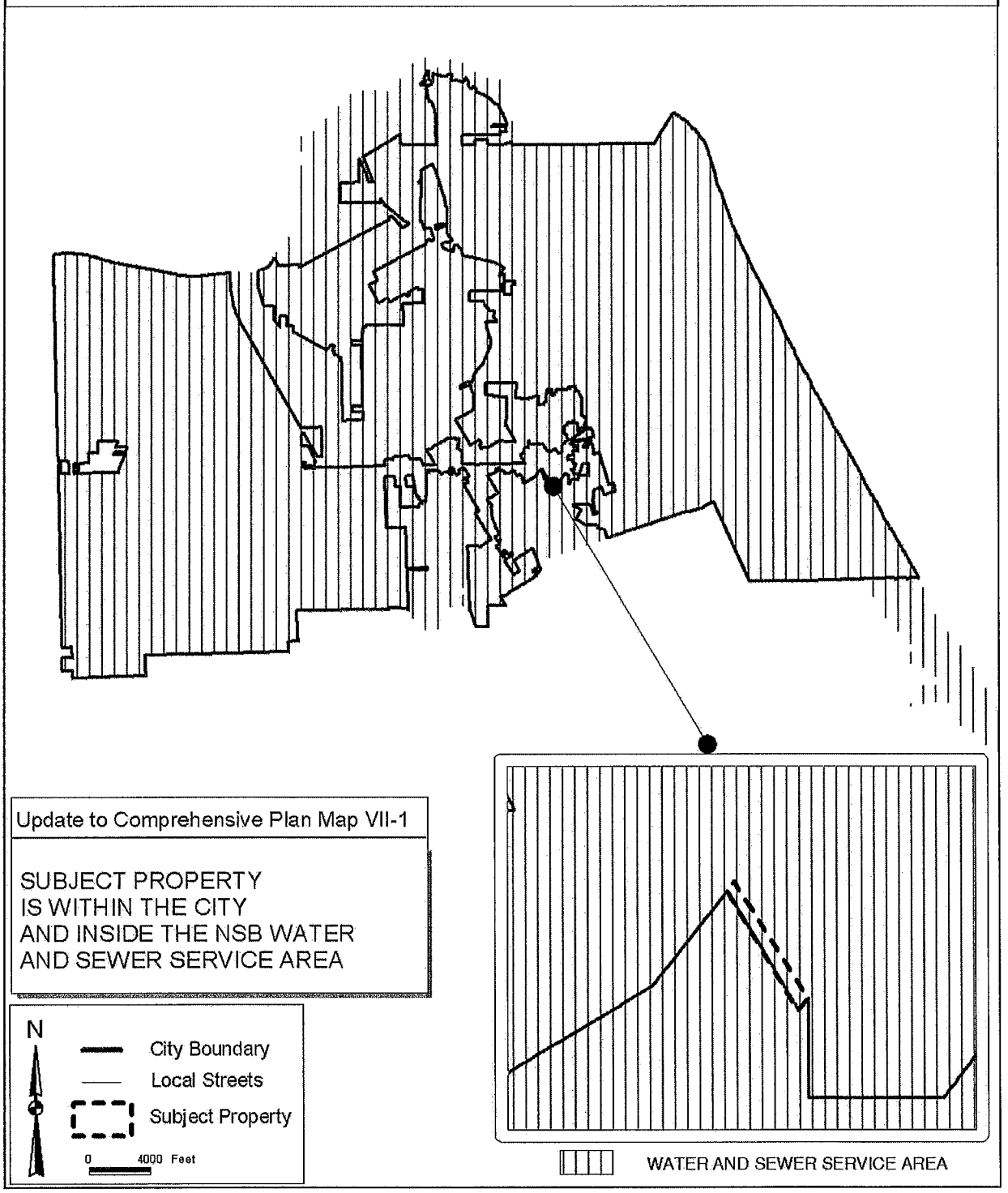
2010 Traffic Conditions

A-04-11



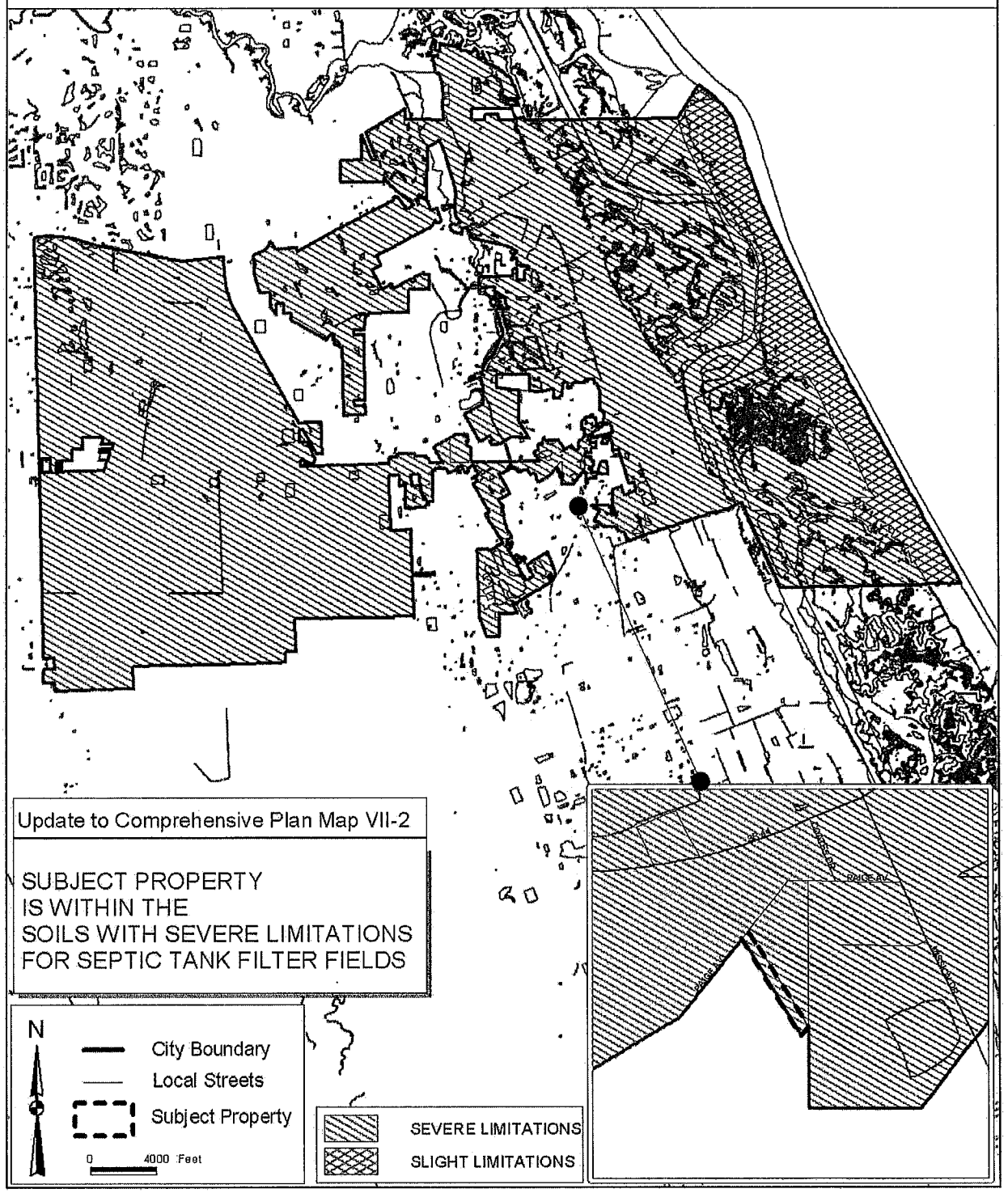
Water & Sewer Service Area

A-04-11



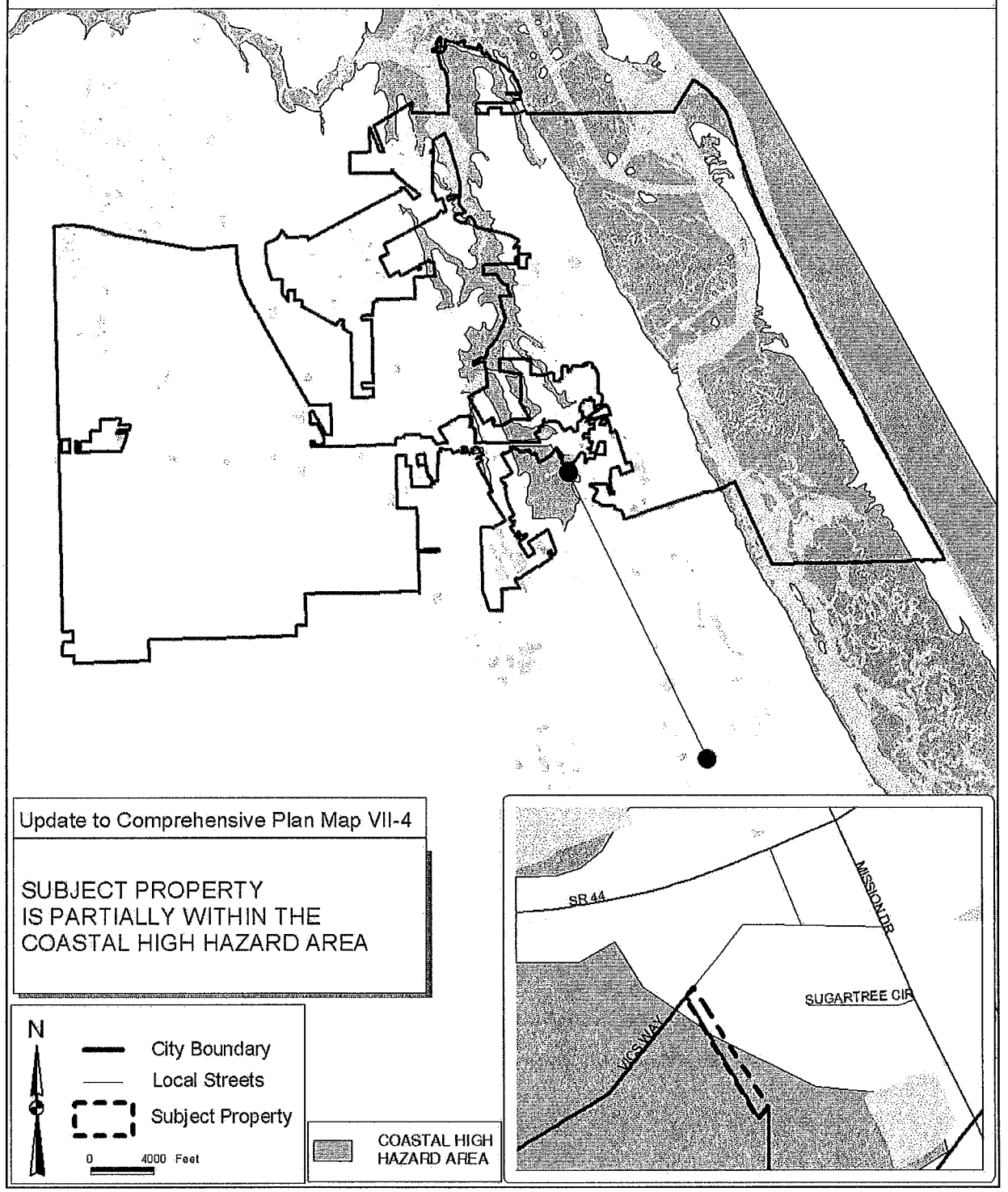
Soil Limitation for Septic Systems

A-04-11



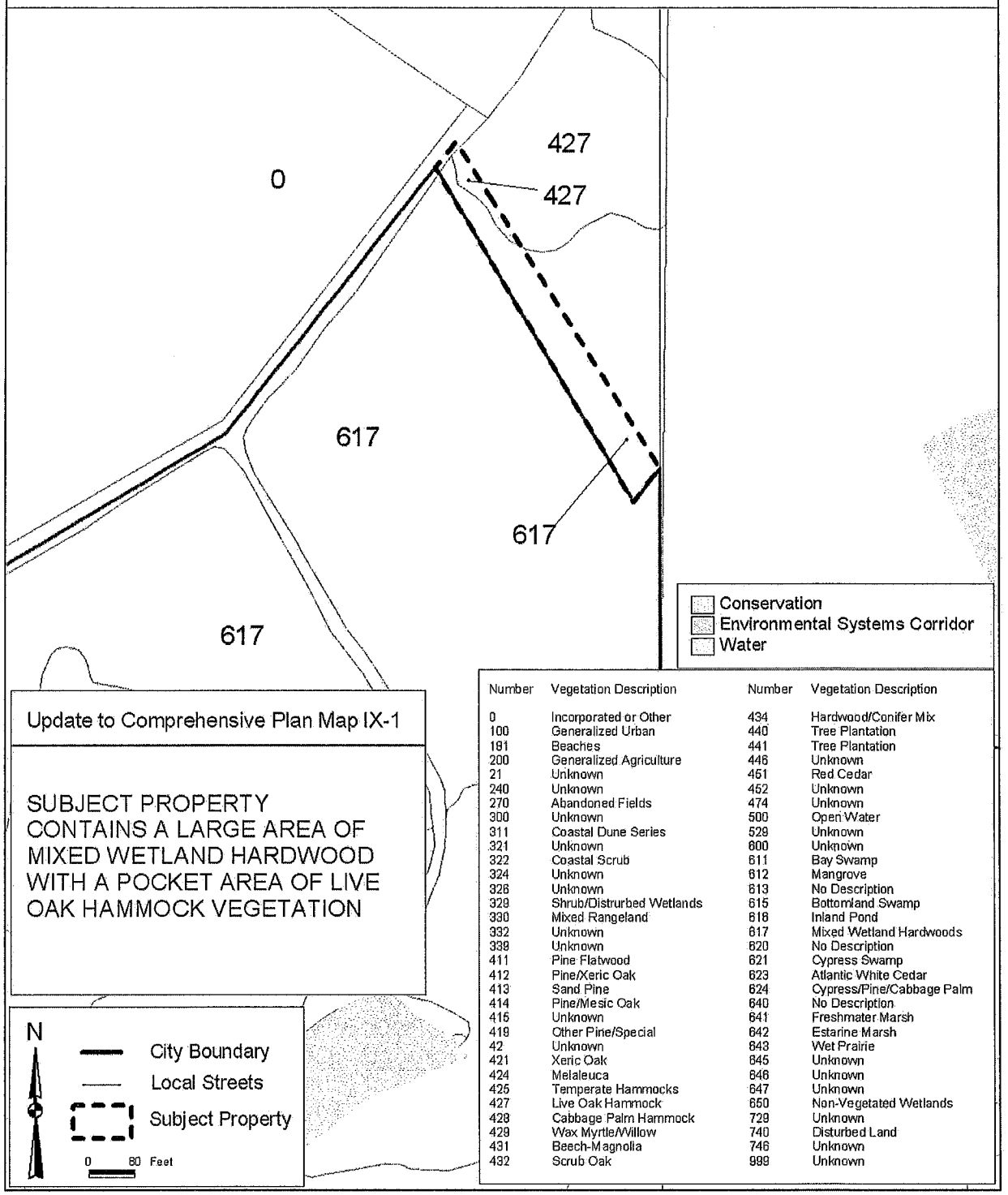
Coastal High Hazard Areas

A-04-11



Natural Resources

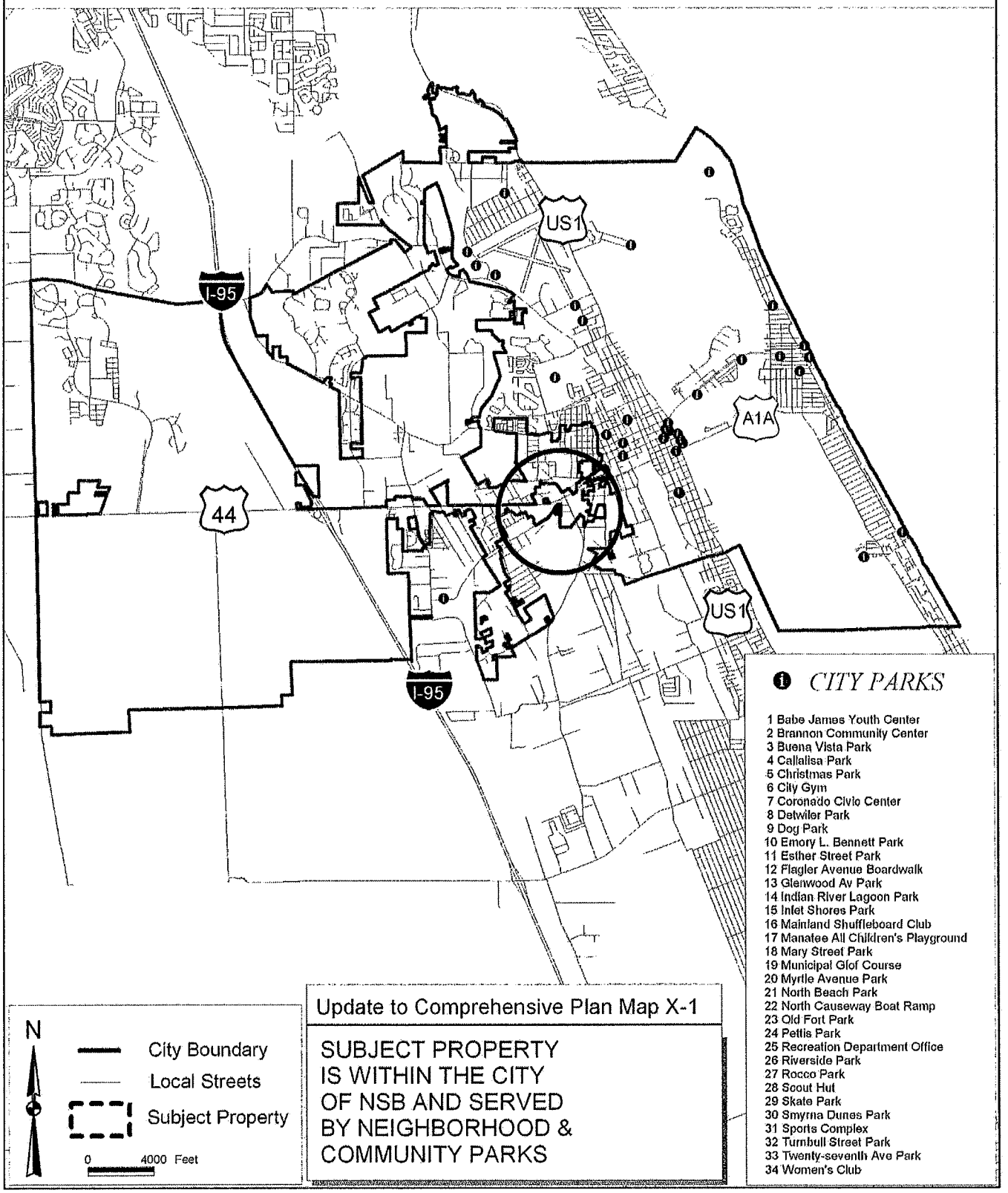
A-04-11



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/Distrurbed 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
416	Unknown	641	Freshmater 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

Neighborhood & Community Parks

A-01-11

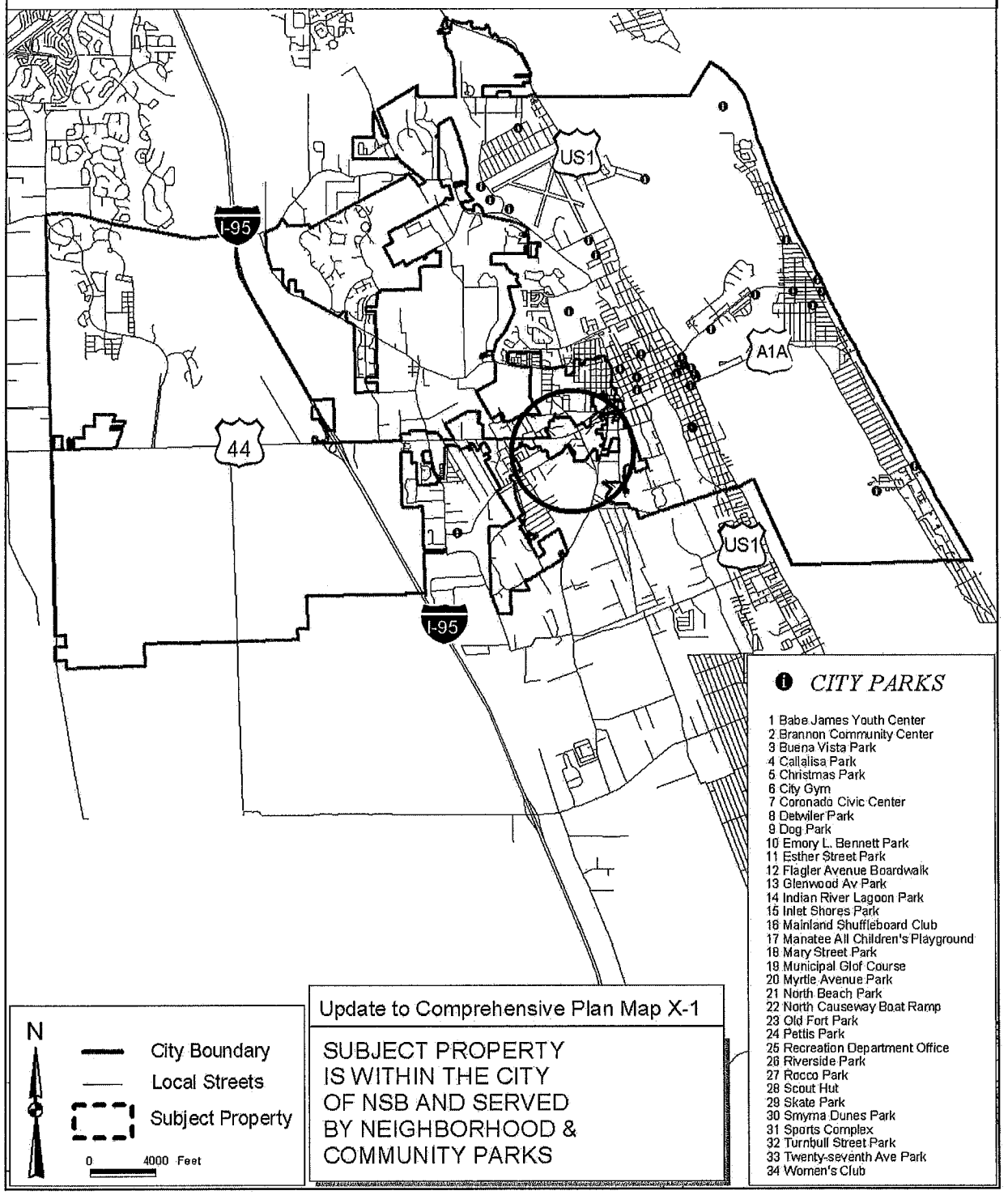


Update to Comprehensive Plan Map X-1

SUBJECT PROPERTY IS WITHIN THE CITY OF NSB AND SERVED BY NEIGHBORHOOD & COMMUNITY PARKS

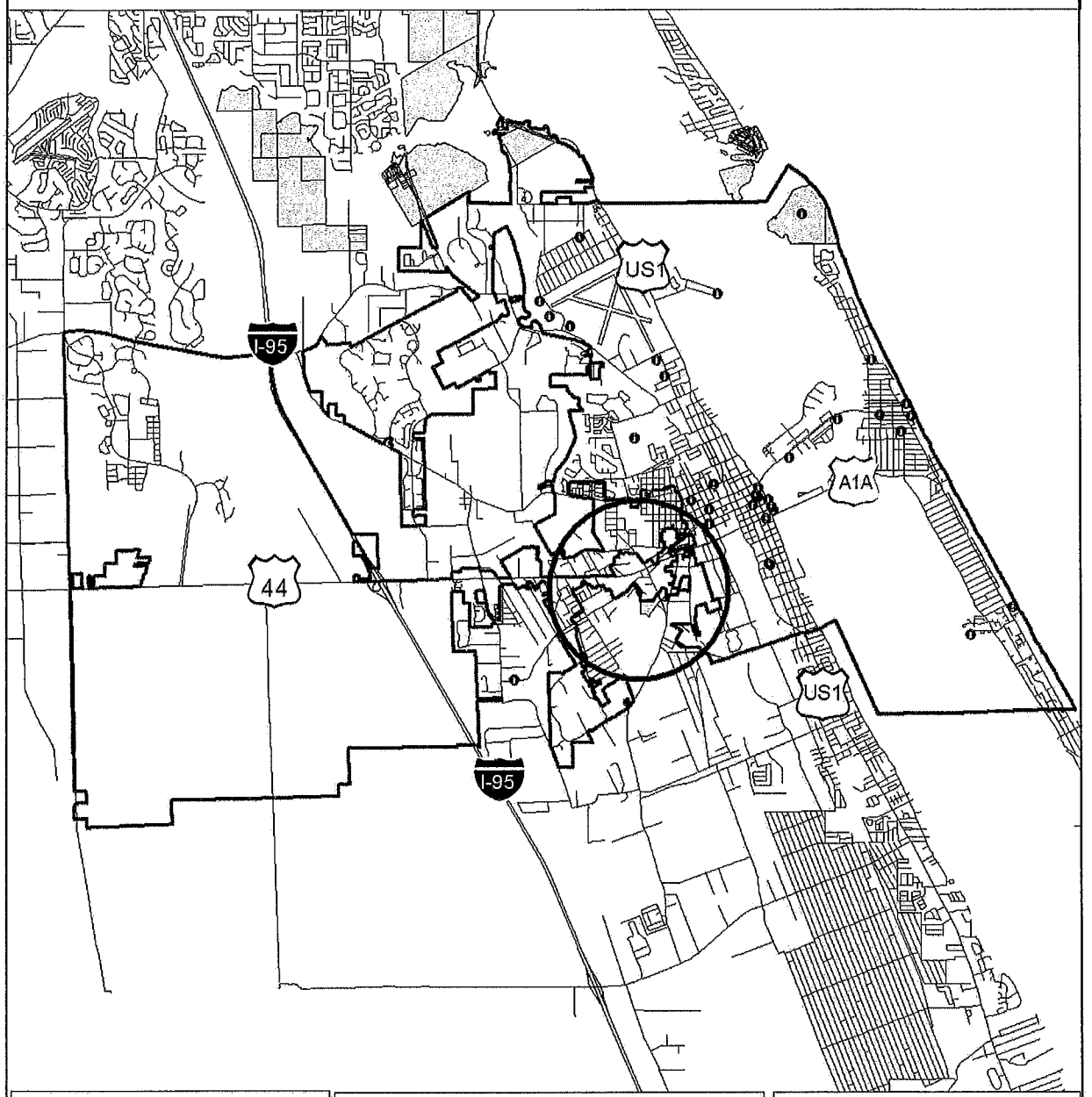
Neighborhood & Community Parks

A-04-11



Regional Parks & Special Use Facilities

A-04-11



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

CITY OF NEW SMYRNA BEACH – CITY COMMISSION

A-5-11: Second Avenue Right-of-Way

JUNE 6, 2011

I. Background

A. **Applicant:** David McCallister, City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach

B. **Property Owner:** Public Right-of-Way

C. **Request:** Voluntary annexation , *Comprehensive Plan* amendment, and rezoning

- **From:** County Future Land Use (FLU) designations of Urban Medium Intensity; and County R-4 Urban Single-Family Residential zoning
- **To:** City FLU designations of Medium Density Residential; and City zoning R-3B – Single-Family Residential

D. **Site Information:**

- **Size:** 0.161 acres
- **Location:** The property is generally located south of Buck Lane, north of Findley Street, east of Old Mission Road and west of the Kmart Shopping Center (see **Exhibit A** for a location map).
- **Tax I.D. Numbers:** N/A

II. Findings

A. The subject property is the approximately 0.161-acre portion of the eastern half of Second Avenue. The surrounding future land use, existing uses, and zoning are as follows:

North
Future Land Use: City Medium Density Residential
Existing Land Use: Vacant
Zoning: City R3B – Single-Family Residential

South
Future Land Use: County Urban Medium Intensity
Existing Land Use: Public Right-of-Way
Zoning: County R-4 Urban Single-Family Residential

East
Future Land Use: County Urban Medium Intensity
Existing Land Use: Single-Family Residential
Zoning: County R-4 Urban Single-Family Residential

West
Future Land Use: City Medium Density Residential
Existing Land Use: Vacant
Zoning: City R3B – Single-Family Residential

Maps showing the surrounding Existing Land Uses, Existing Zoning, and Existing Future Land Use Designations are attached (**Exhibits B, C, and D**). Descriptions of the current zoning and Future Land Use designations on the subject property are attached as **Exhibits E and F.**

B. A map of the soils within the site is attached as **Exhibit G**. Maps showing the proposed zoning and FLU changes are attached as **Exhibits H and I**. Descriptions of the proposed FLU and zoning designations are attached as **Exhibits J and K**. There are numerous *Comprehensive Plan* maps that must be amended to incorporate the subject properties into the *Comprehensive Plan* (see **Exhibits L through V**). **Exhibit W** is an aerial photo of the property for informational purposes.

C. The subject area is currently a platted, unopened 50-foot right-of-way, meaning it has been designated as a right-of-way, but has not been constructed to City standards as such. There is currently a dirt path that the nearby residents utilize to access their properties that lies adjacent and outside of the dedicated ROW. The City has annexed in the western half of the ROW when it annexed in the adjacent properties to the west and north. The city owns the properties to the north and west of the subject ROW and has attained Special Exception approval (April 2009) and City Commission approval (April 2011) to construct a fire station on these properties. The City intends on paving Second Avenue adjacent to these properties to provide access to the fire station site. However, because only half of the ROW was annexed, it makes sense and is supported by the County for the entirety of the ROW to be within the City, since the City will be paying for construction and maintenance of the roadway.

D. As part of the *Comprehensive Plan* amendment and rezoning process, the applicant will be required to obtain a determination from the Volusia County School District regarding the potential impacts of the proposed FLU amendment and rezoning. Because this area will be used as a right-of-way with no density or development permitted, other than a roadway, there will be no impact to schools.

E. This annexation request is within the City's annexation area and within the City's water and wastewater service area.

F. The *Land Development Regulations* requires any proposed development to conform to the Concurrency Management System. Because no development, other than a roadway, will be constructed on the subject area, no concurrency analysis is required.

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 vacant parcels to the west and north, which front on State Road 44. However, because this is to be a right-of-way only, access to facilities and services is not necessary.

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.

***Development of this subject area as a right-of-way will service the future development on the properties to the north and west – a City fire station. Additionally, by providing access to the fire station, thus making the fire station site more functional, the fire station itself will increase services to the community. Therefore, the proposed annexation and changes to the* Comprehensive Plan *are consistent with the* Comprehensive Plan.**

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.

***Development of this right-of-way would provide utility service extensions to the City-owned property to the north and west, planned for development as a fire station, which is recommended by the* Comprehensive Plan*. Since the right-of-way will be constructed and maintained by the City, it is recommended it be wholly within the incorporated City boundaries, which promotes "orderly development", as is recommended by the* Comprehensive Plan.**

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.

***Annexation of this road to service the planned fire station to the north and west of this right-of-way has already received both Planning and Zoning Board approval via approval of the Special Exception use in 2009, and City Commission approval to move forward with development of the fire station in April 2011. Therefore, annexation of this ROW is consistent with this objective of the* Comprehensive Plan.**

III. Recommendation

Staff recommended that the Planning and Zoning Board recommend to the City Commission **approval** of the annexation, *Comprehensive Plan* amendment to City Medium Density Residential, and the rezoning to City Zoning district designation R-3B, Single-Family Residential.

EXHIBIT A

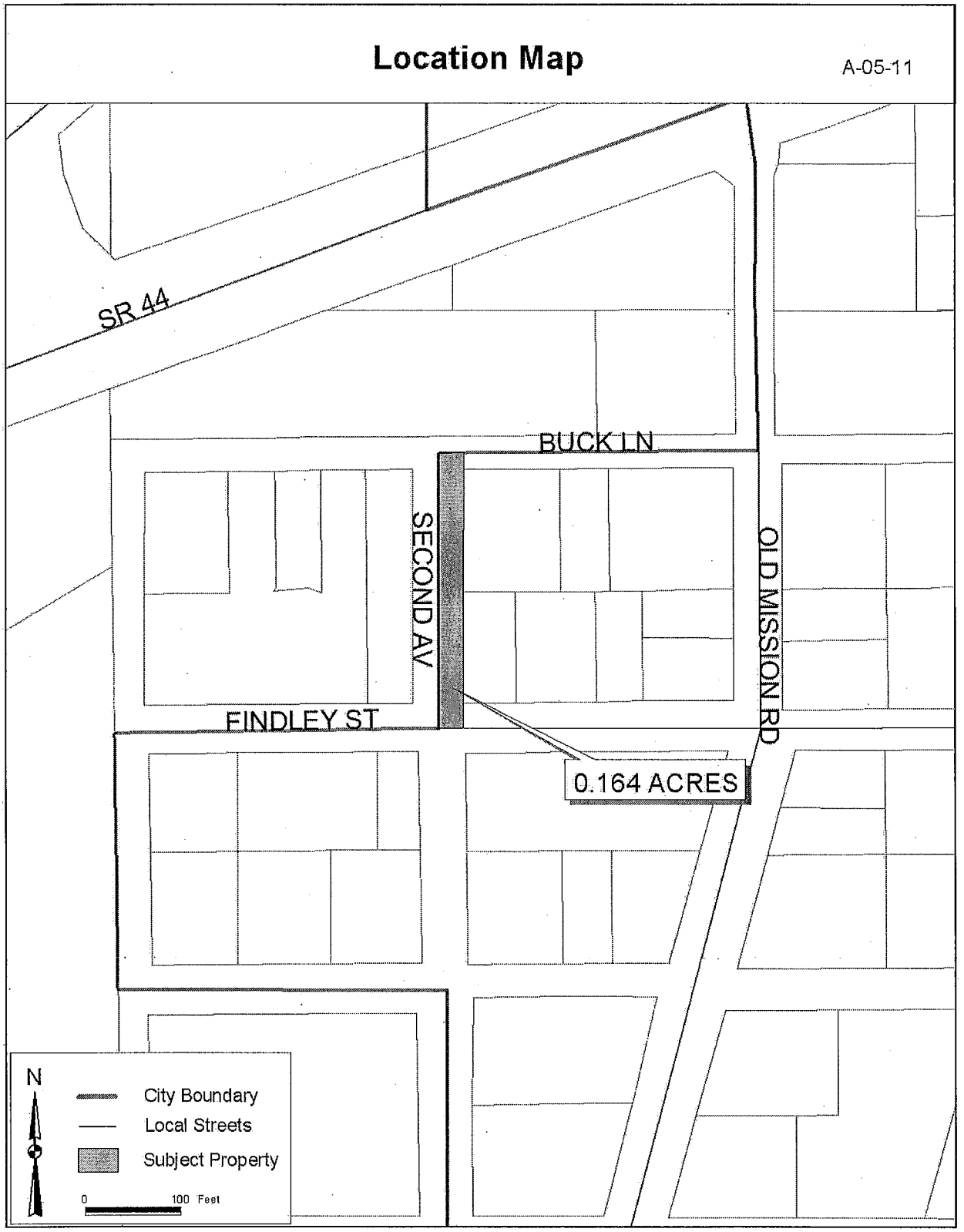
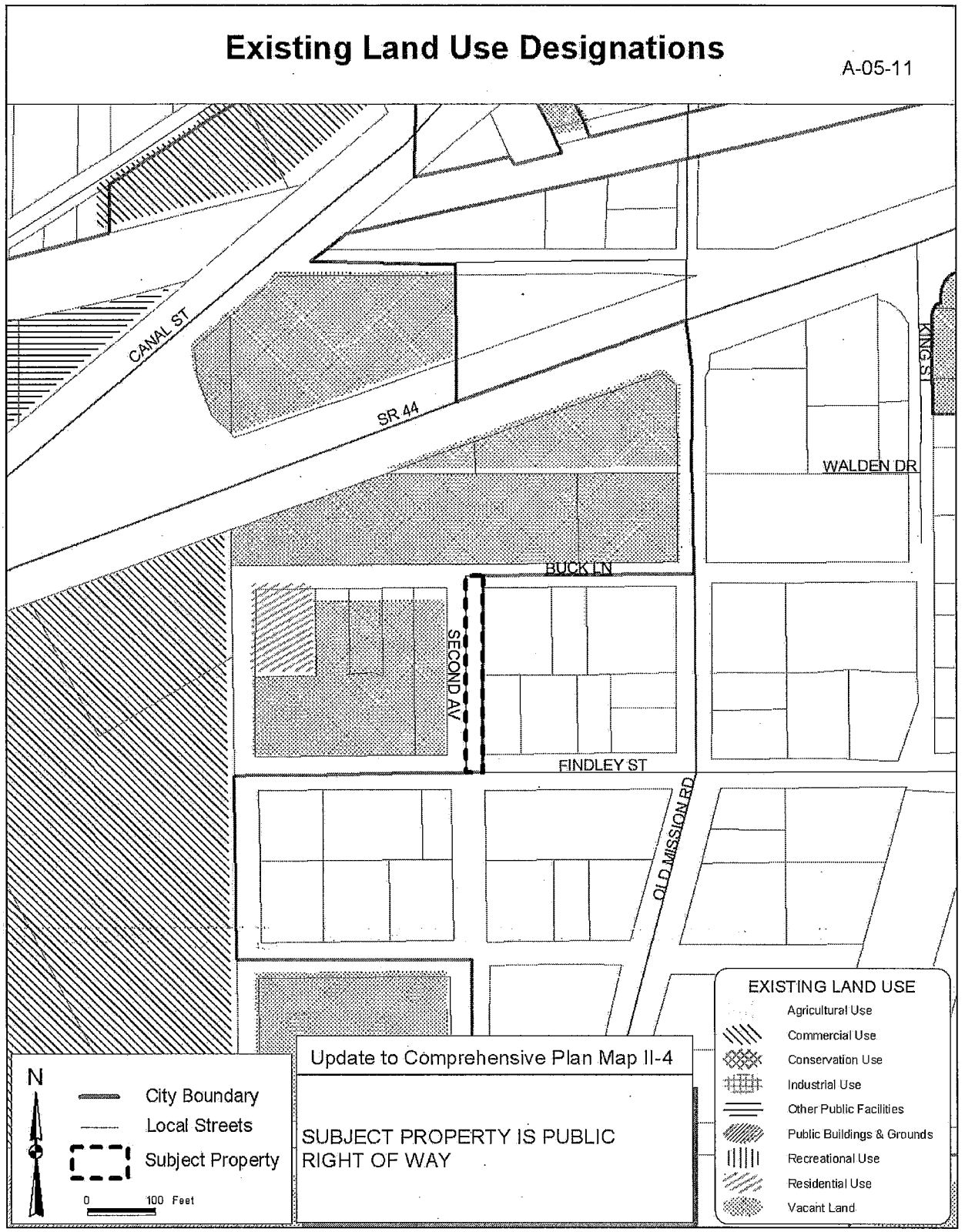

Location Map
A-05-11
SR 44
BUCK LN
SECOND AV
OLD MISSION RD
FINDLEY ST
0.164 ACRES
N
City Boundary
Local Streets
Subject Property
0
100 Feet

EXHIBIT B

163



164

EXHIBIT C

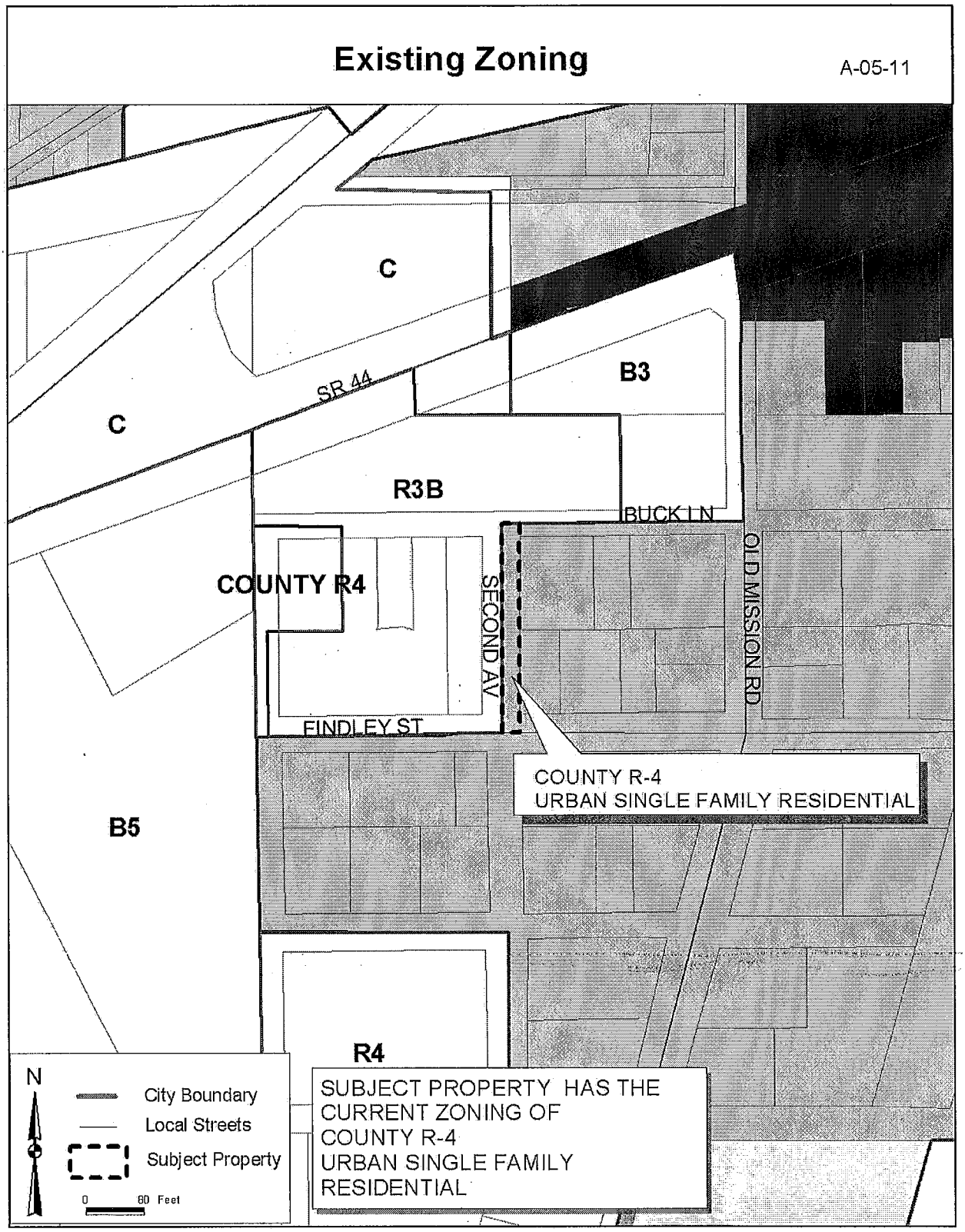
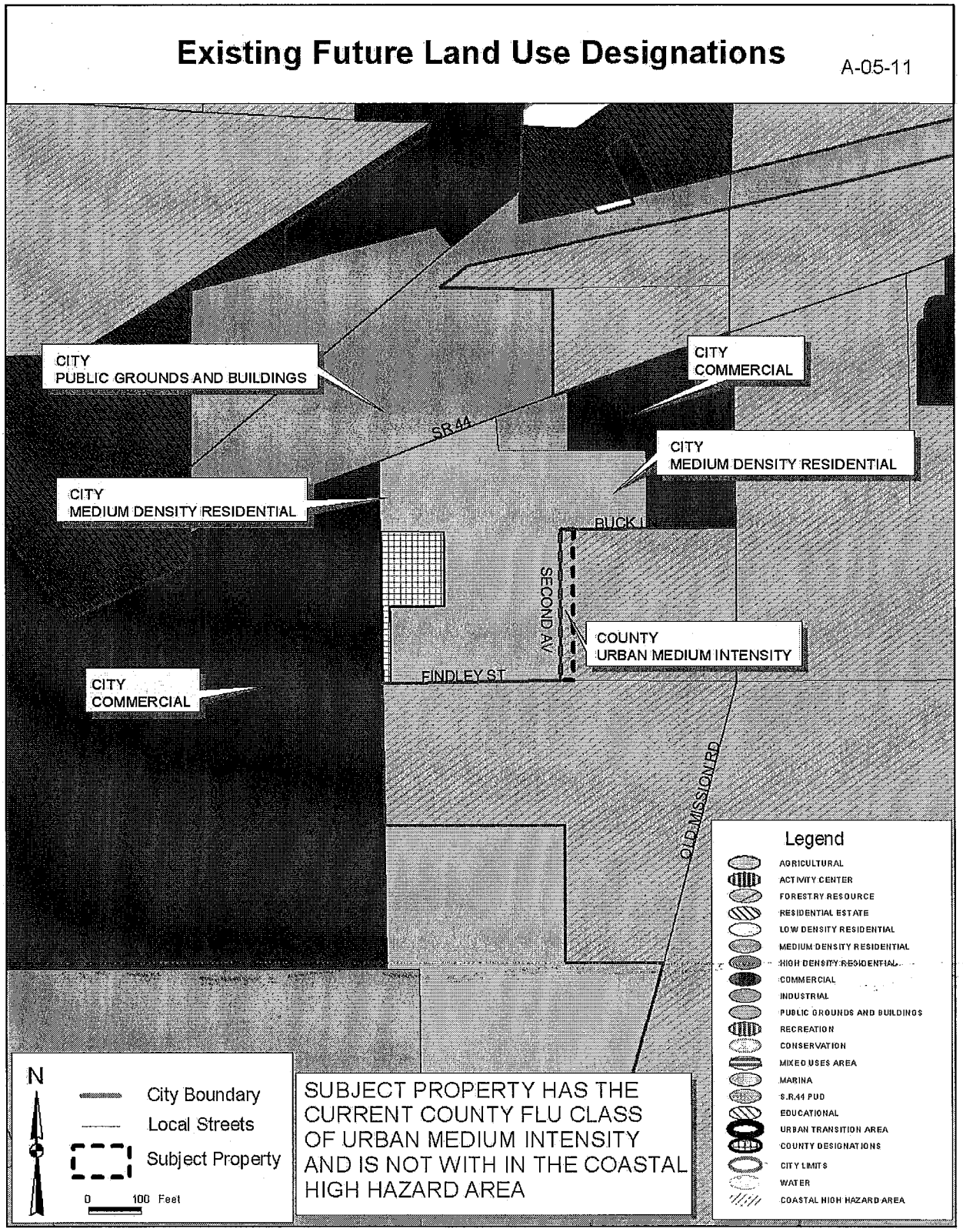

Existing Zoning
A-05-11
C
C
SR 44
B3
R3B
BUCK LN
COUNTY R4
SECOND AV
OLD MISSION RD
FINDLEY ST
COUNTY R-4
URBAN SINGLE FAMILY RESIDENTIAL
B5
R4
SUBJECT PROPERTY HAS THE CURRENT ZONING OF COUNTY R-4 URBAN SINGLE FAMILY RESIDENTIAL
N
City Boundary
Local Streets
Subject Property
0
60 Feet

EXHIBIT D



166

EXHIBIT E

Urban Medium Intensity (UMI) - Areas that contain residential development at a range of 4.1 to 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. This category may allow neighborhood business areas (See Shopping Center definition in Chapter 20) and office development that meet the Comprehensive Plan's location criteria. The commercial intensity should 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. High intensive commercial use, other than neighborhood business areas shall be reserved to areas designated for Commercial. All requests for non-residential uses within ¼ mile of another jurisdiction shall require notification to that jurisdiction.

EXHIBIT F

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

- 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.

EXHIBIT G

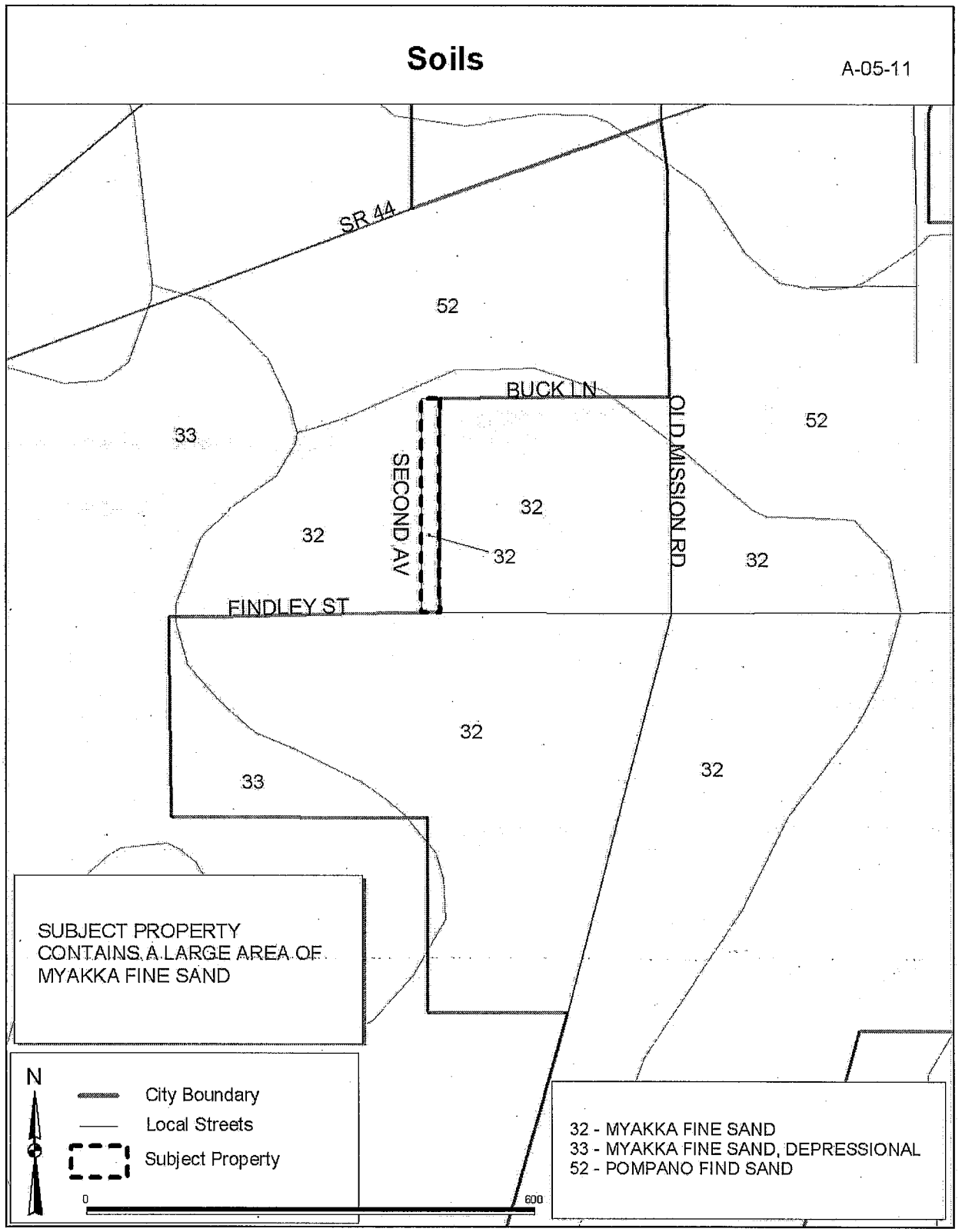

Soils
A-05-11
SR 44
52
BUCK LN
OLD MISSION RD
52
33
SECOND AV
32
32
32
32
FINDLEY ST
32
32
33
SUBJECT PROPERTY
CONTAINS A LARGE AREA OF
MYAKKA FINE SAND
N
City Boundary
Local Streets
Subject Property
0
600
32 - MYAKKA FINE SAND
33 - MYAKKA FINE SAND, DEPRESSIONAL
52 - POMPANO FIND SAND

EXHIBIT H (CONT'D)

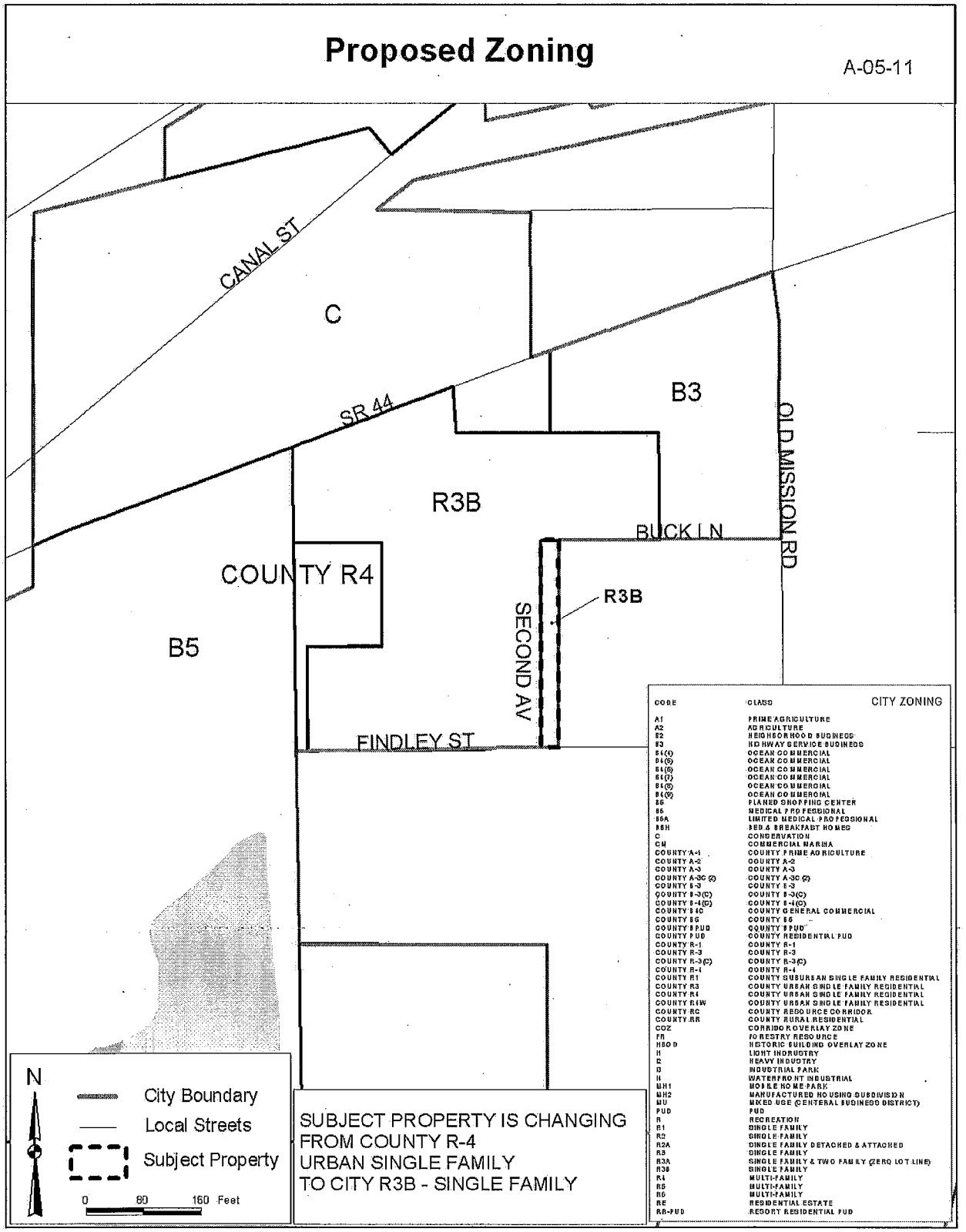
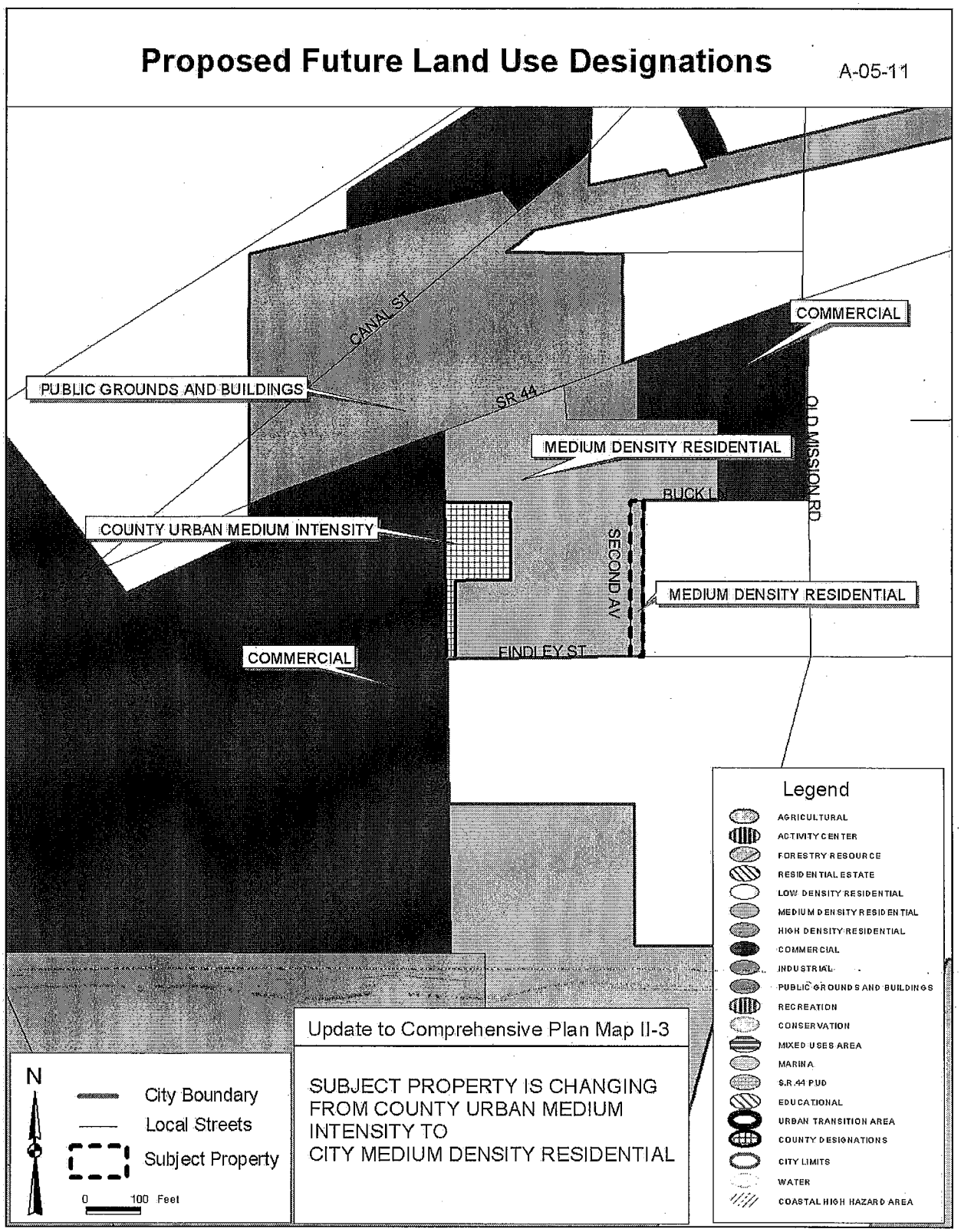


EXHIBIT I


Proposed Future Land Use Designations
A-05-11
CANAL ST
SR 44
COMMERCIAL
PUBLIC GROUNDS AND BUILDINGS
MEDIUM DENSITY RESIDENTIAL
OLD MISSION RD
BUCK LN
COUNTY URBAN MEDIUM INTENSITY
SECOND AV
MEDIUM DENSITY RESIDENTIAL
COMMERCIAL
FINDLEY ST
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 MEDIUM
INTENSITY TO
CITY MEDIUM DENSITY RESIDENTIAL
N
City Boundary
Local Streets
Subject Property
0
100 Feet

1

EXHIBIT J

R-3B SINGLE-FAMILY RESIDENTIAL DISTRICT

Intent:

The R-3B district is intended to allow medium density single-family residences. Lot width is reduced to increase the range of lot width available for single-family residential development.

Permitted uses:

Playfields
Playgrounds
Public Parks
Recreation Buildings and Complexes for residents and guests in 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 [Revised 4/9/02]

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

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 twenty-five (25) feet from all property lines and off-street parking areas abutting residential property are screened by a buffer meeting the requirements of this LDR. [Revised 3/27/00]

Dimensional Requirements:

Single Family Dwellings

Area	5,750 square feet
Depth	115 feet
Width	50 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 in Section 504.01(M) of this LDR.

(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:

650 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:

EXHIBIT J (CONT'D)

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 60 percent (60%). [Revised 1/28/99]

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, along the side lot line, and 30 feet from the intersection of the side and 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 Projection:

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

Off-Street Parking:

Off-street parking shall be provided as required in this LDR.

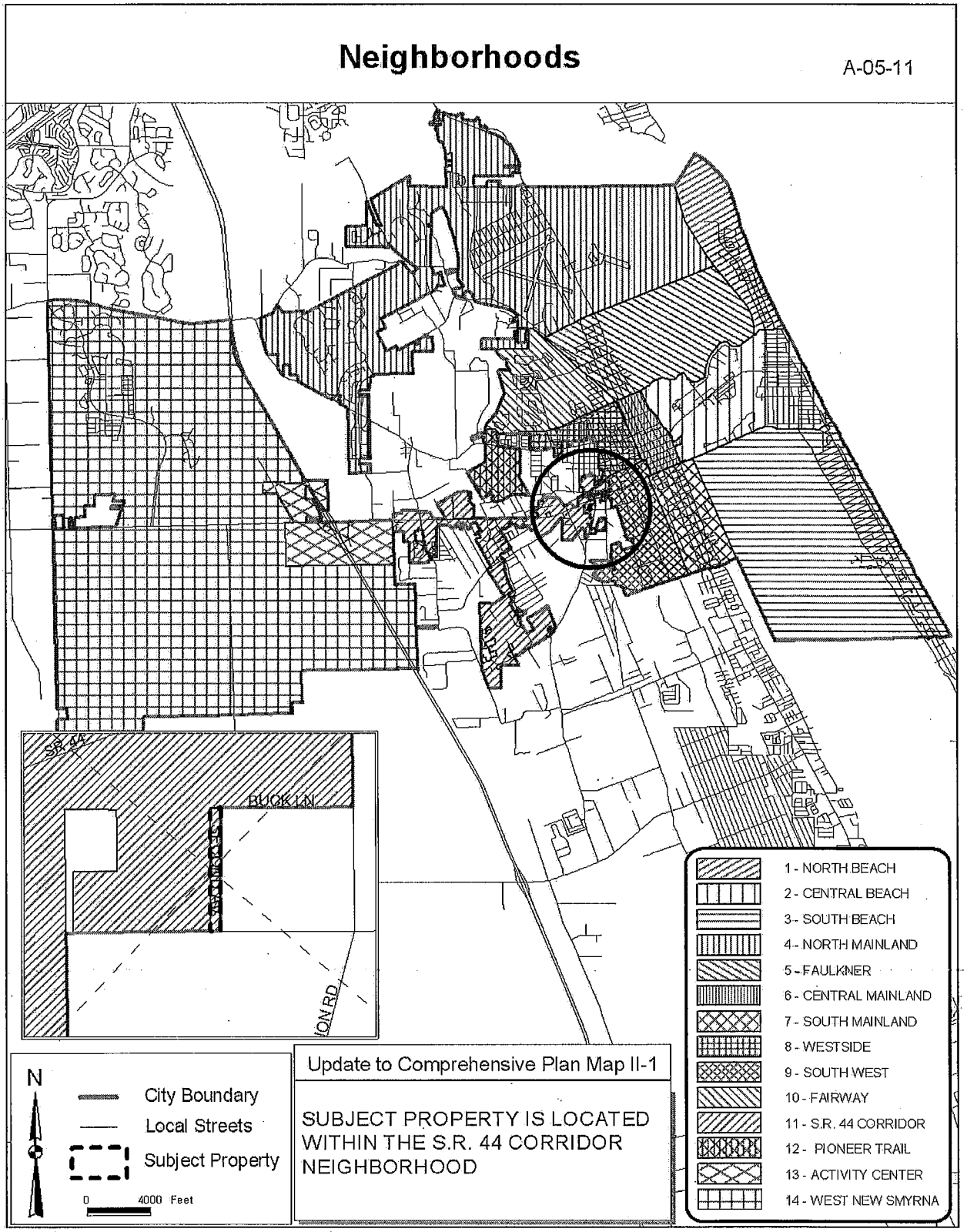
Visibility at Intersections:

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

EXHIBIT K

Medium-density Residential
(5.01 to eight [8] dwelling units per acre)
This use is intended to provide a buffer between low-density residential uses and more intense uses, such as high-density residential or commercial. It is also suitable at major intersections when adequate buffering from the highways can be provided.

EXHIBIT L


Neighborhoods
A-05-11
SR 44
BUCKLIN
ION RD
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
N
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

1

EXHIBIT M

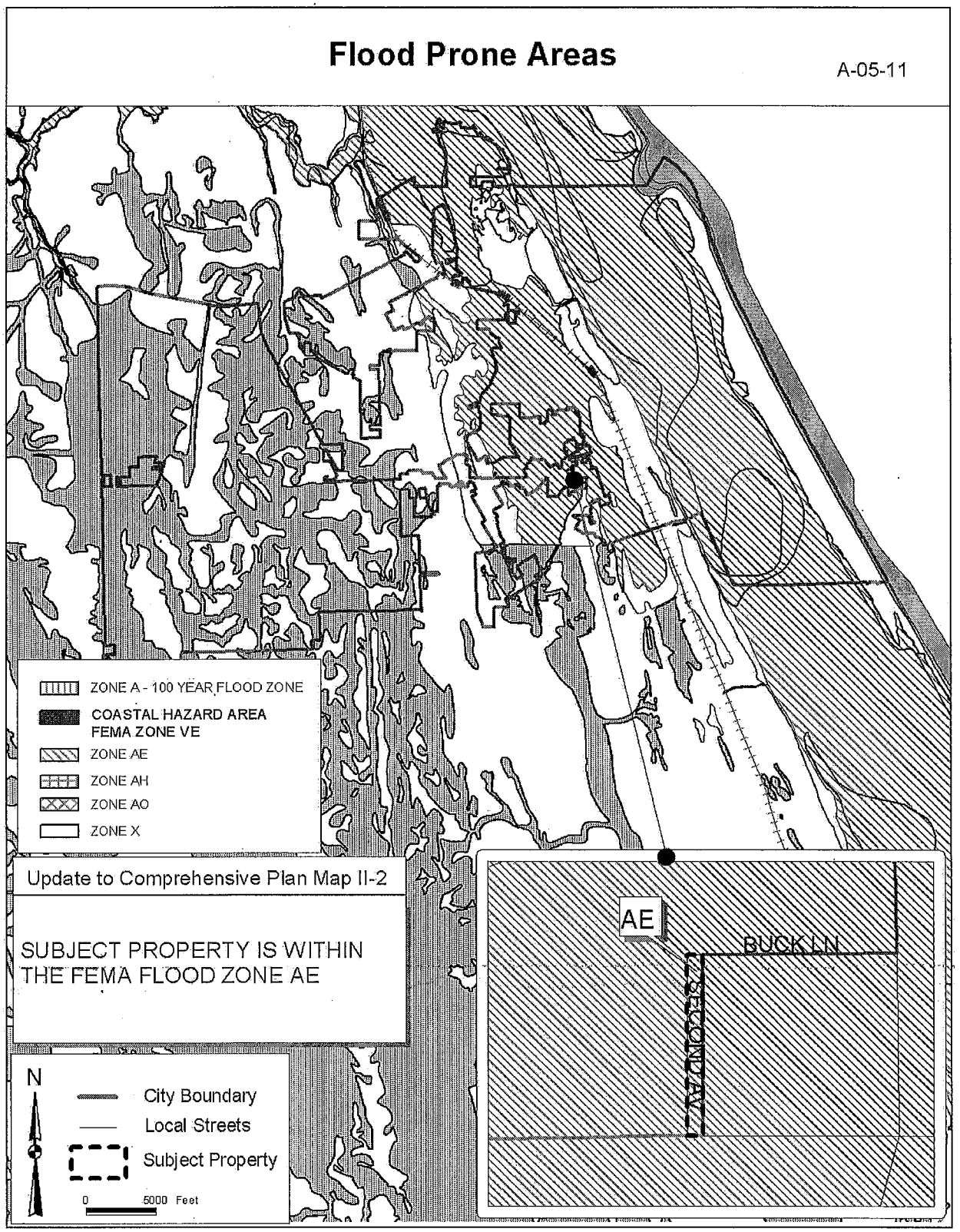

Flood Prone Areas
A-05-11
ZONE A - 100 YEAR FLOOD ZONE
COASTAL HAZARD AREA
FEMA ZONE VE
ZONE AE
ZONE AH
ZONE AO
ZONE X
Update to Comprehensive Plan Map II-2
SUBJECT PROPERTY IS WITHIN
THE FEMA FLOOD ZONE AE
AE
BUCK LN
SECOND AVE
N
City Boundary
Local Streets
Subject Property
0
5000 Feet

EXHIBIT N

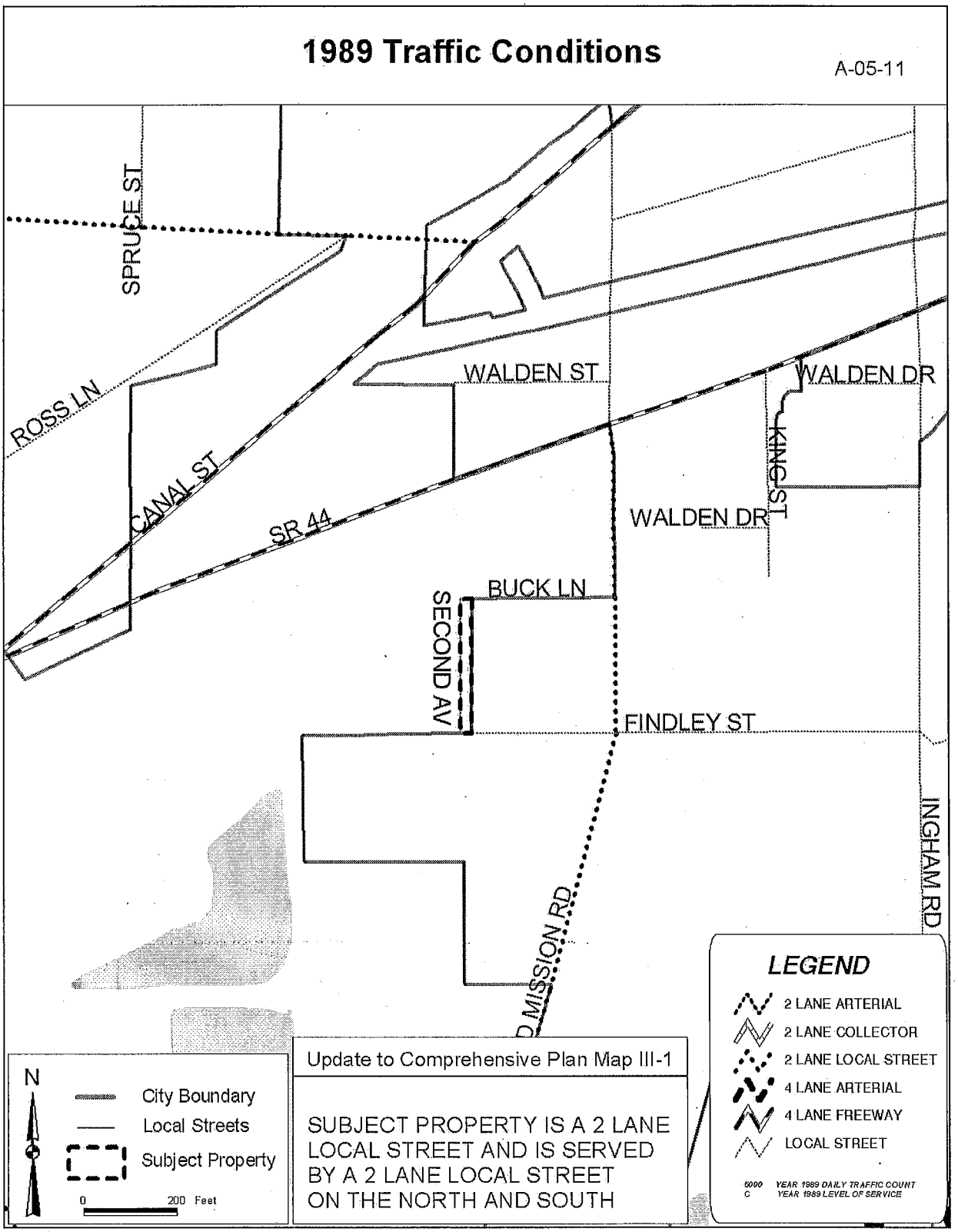

1989 Traffic Conditions
A-05-11
SPRUCE ST
ROSS LN
CANAL ST
SR 44
WALDEN ST
WALDEN DR
KING ST
WALDEN DR
BUCK LN
SECOND AV
FINDLEY ST
INGHAM RD
MISSION RD
LEGEND
2 LANE ARTERIAL
2 LANE COLLECTOR
2 LANE LOCAL STREET
4 LANE ARTERIAL
4 LANE FREEWAY
LOCAL STREET
5000 YEAR 1989 DAILY TRAFFIC COUNT
C YEAR 1989 LEVEL OF SERVICE
N
City Boundary
Local Streets
Subject Property
0 200 Feet
Update to Comprehensive Plan Map III-1
SUBJECT PROPERTY IS A 2 LANE LOCAL STREET AND IS SERVED BY A 2 LANE LOCAL STREET ON THE NORTH AND SOUTH

EXHIBIT O

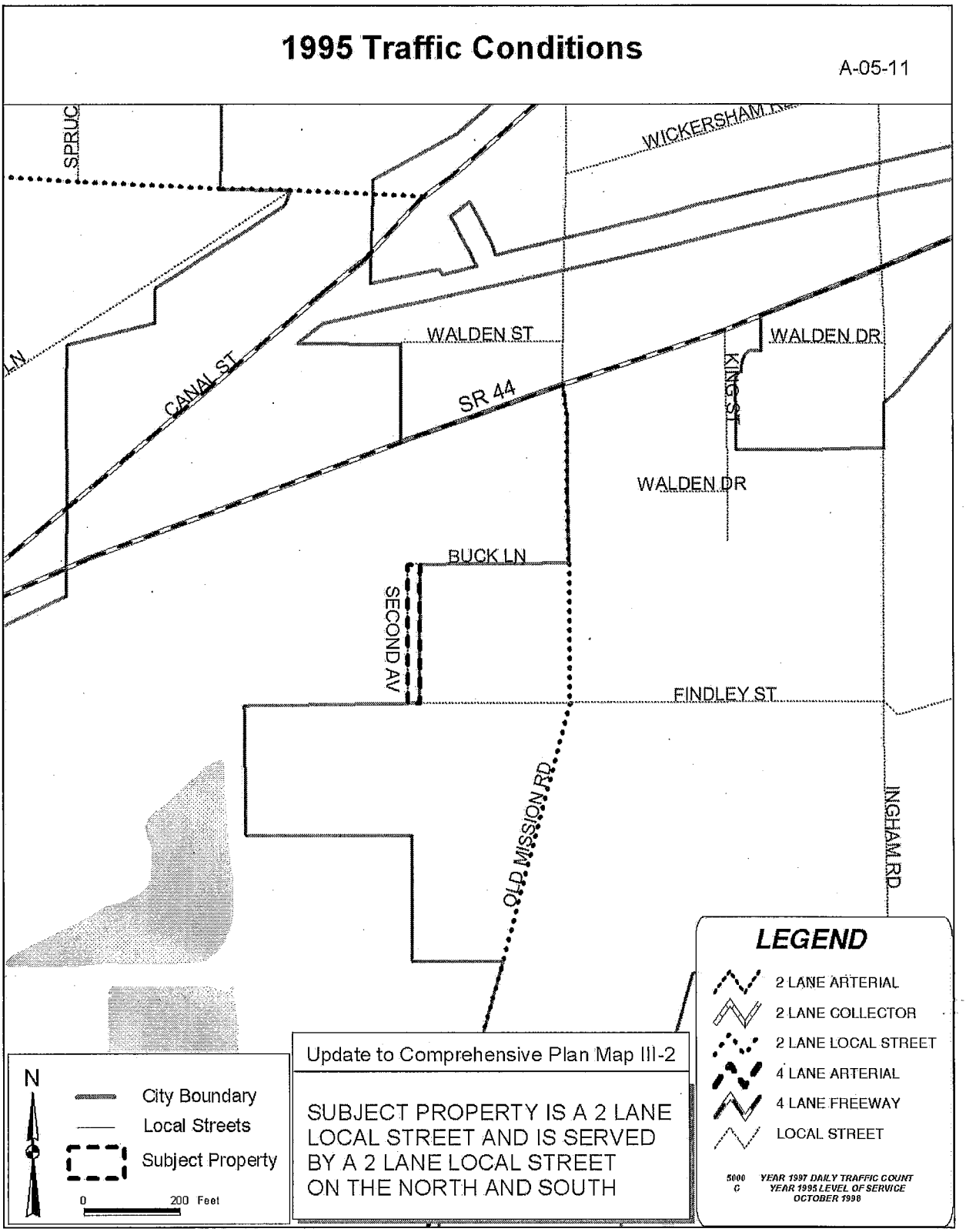

1995 Traffic Conditions
A-05-11
SPRUC
WICKERSHAM
WALDEN ST
WALDEN DR
KING ST
CANAL ST
SR 44
WALDEN DR
BUCK LN
SECOND AV
FINDLEY ST
OLD MISSION RD
INGHAM RD
LEGEND
2 LANE ARTERIAL
2 LANE COLLECTOR
2 LANE LOCAL STREET
4 LANE ARTERIAL
4 LANE FREEWAY
LOCAL STREET
5000 YEAR 1997 DAILY TRAFFIC COUNT
C YEAR 1995 LEVEL OF SERVICE
OCTOBER 1998
N
City Boundary
Local Streets
Subject Property
0 200 Feet
Update to Comprehensive Plan Map III-2
SUBJECT PROPERTY IS A 2 LANE LOCAL STREET AND IS SERVED BY A 2 LANE LOCAL STREET ON THE NORTH AND SOUTH

EXHIBIT P

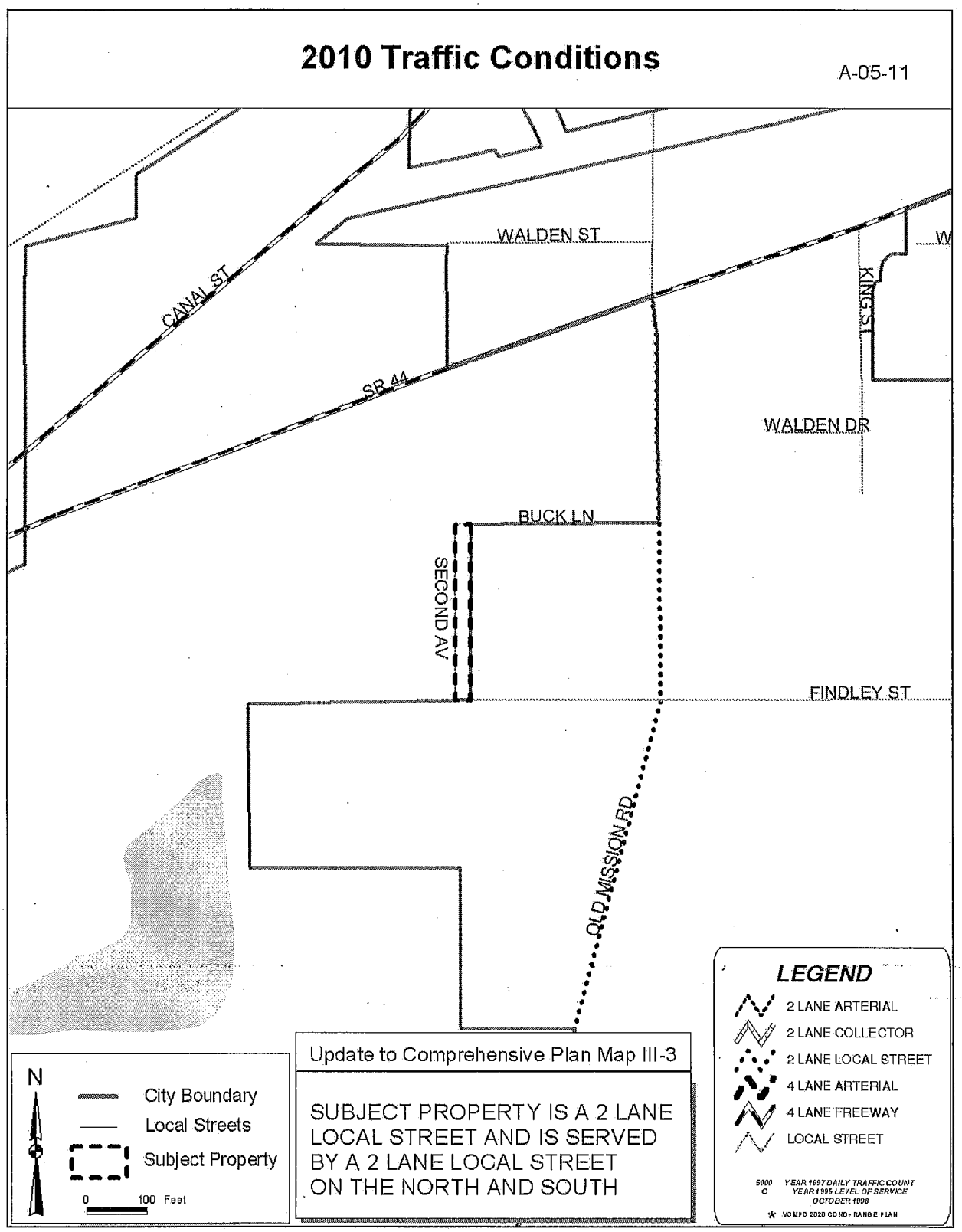

2010 Traffic Conditions
A-05-11
WALDEN ST
CANAL ST
SR 44
KING ST
WALDEN DR
BUCK LN
SECOND AV
FINDLEY ST
OLD MISSION RD
LEGEND
2 LANE ARTERIAL
2 LANE COLLECTOR
2 LANE LOCAL STREET
4 LANE ARTERIAL
4 LANE FREEWAY
LOCAL STREET
5000 C YEAR 1997 DAILY TRAFFIC COUNT YEAR 1996 LEVEL OF SERVICE OCTOBER 1998
* VOLUSIA COUNTY 2020 LONG-RANGE PLAN
Update to Comprehensive Plan Map III-3
SUBJECT PROPERTY IS A 2 LANE LOCAL STREET AND IS SERVED BY A 2 LANE LOCAL STREET ON THE NORTH AND SOUTH
N
City Boundary
Local Streets
Subject Property
0 100 Feet

EXHIBIT Q

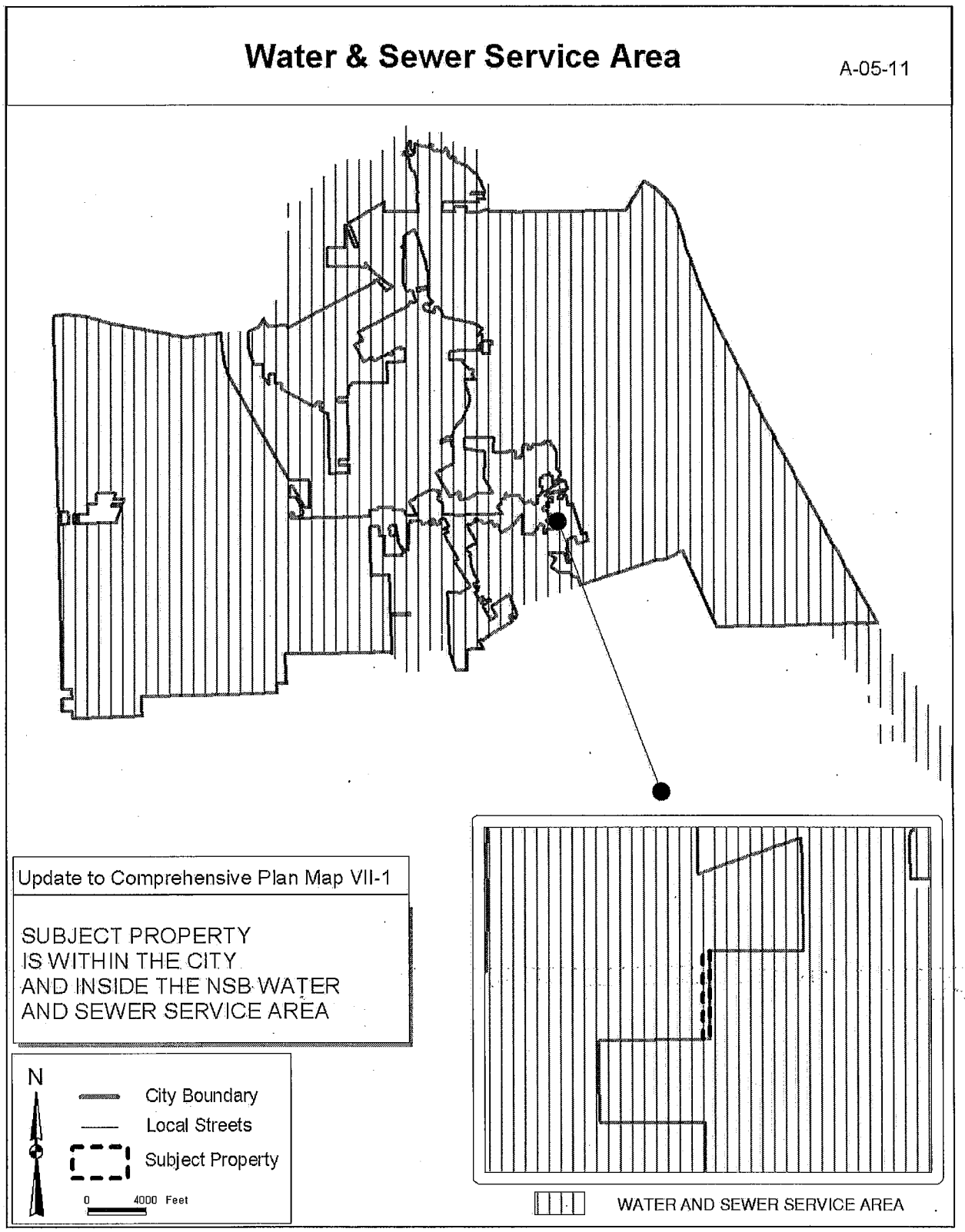

Water & Sewer Service Area
A-05-11
Update to Comprehensive Plan Map VII-1
SUBJECT PROPERTY
IS WITHIN THE CITY
AND INSIDE THE NSB WATER
AND SEWER SERVICE AREA
N
City Boundary
Local Streets
Subject Property
0
4000 Feet
WATER AND SEWER SERVICE AREA

EXHIBIT R

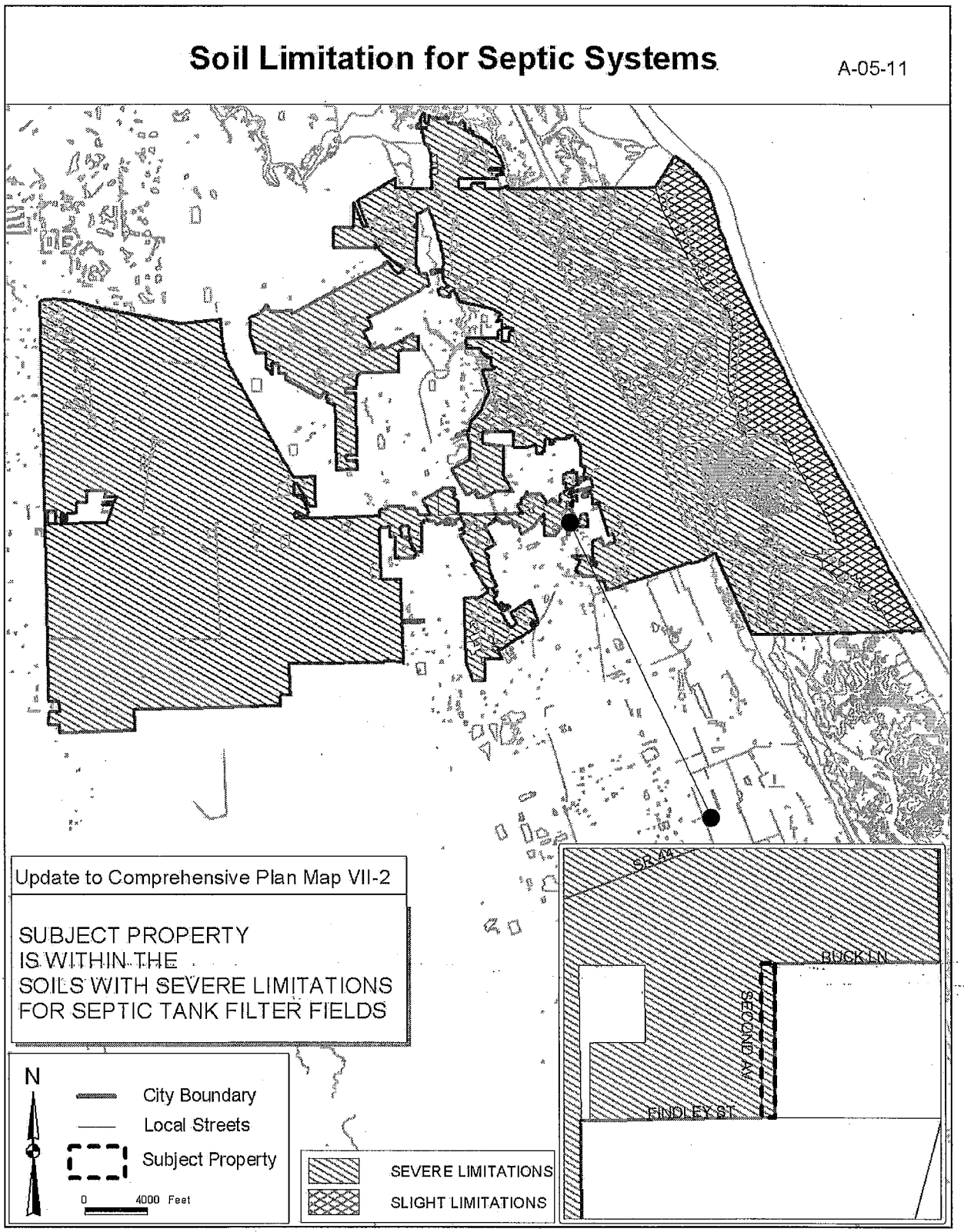

Soil Limitation for Septic Systems
A-05-11
Update to Comprehensive Plan Map VII-2
SUBJECT PROPERTY
IS WITHIN THE
SOILS WITH SEVERE LIMITATIONS
FOR SEPTIC TANK FILTER FIELDS
N
City Boundary
Local Streets
Subject Property
0
4000 Feet
SEVERE LIMITATIONS
SLIGHT LIMITATIONS
SR 44
BUCK LN
SECOND AV
FINDLEY ST

EXHIBIT S

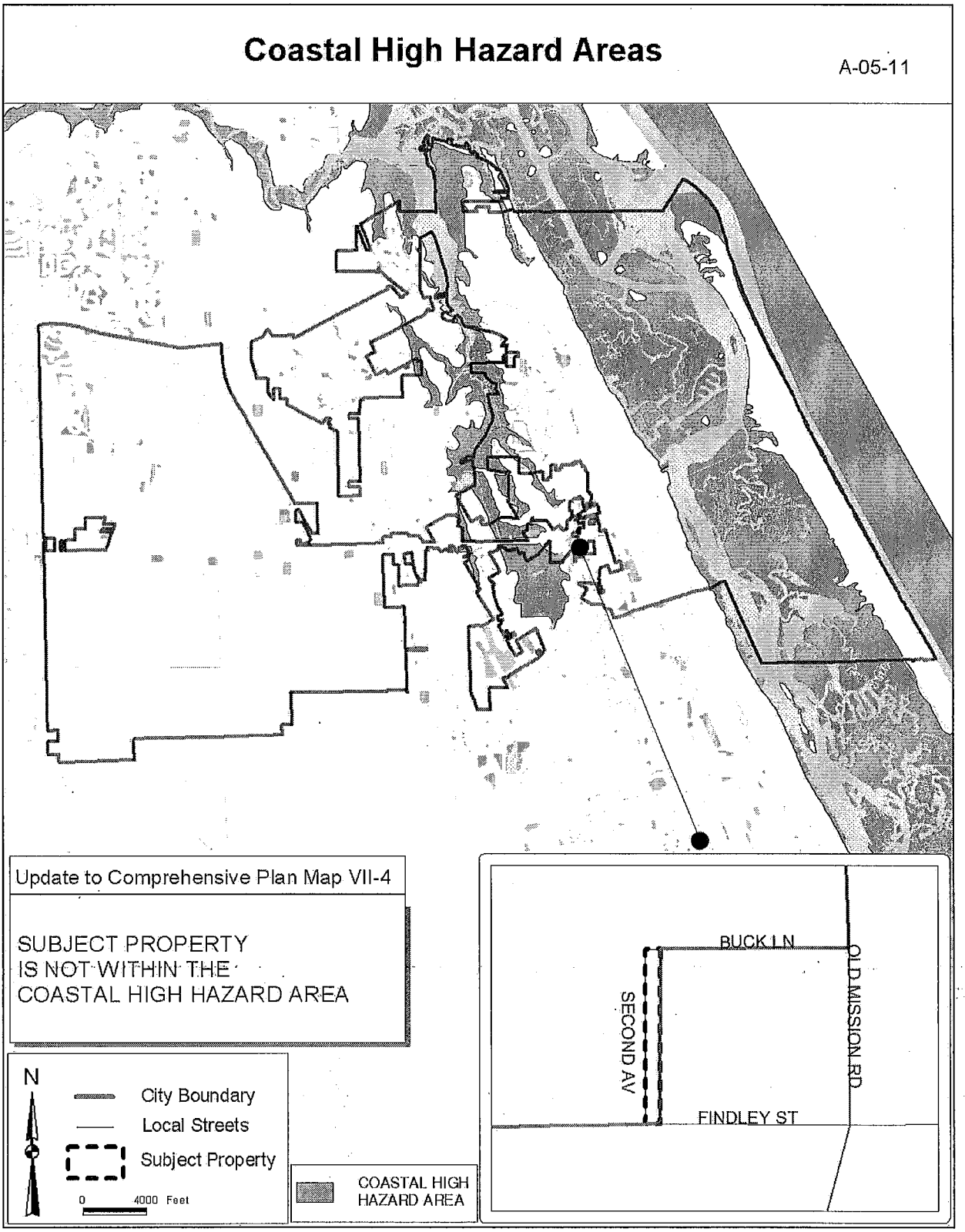
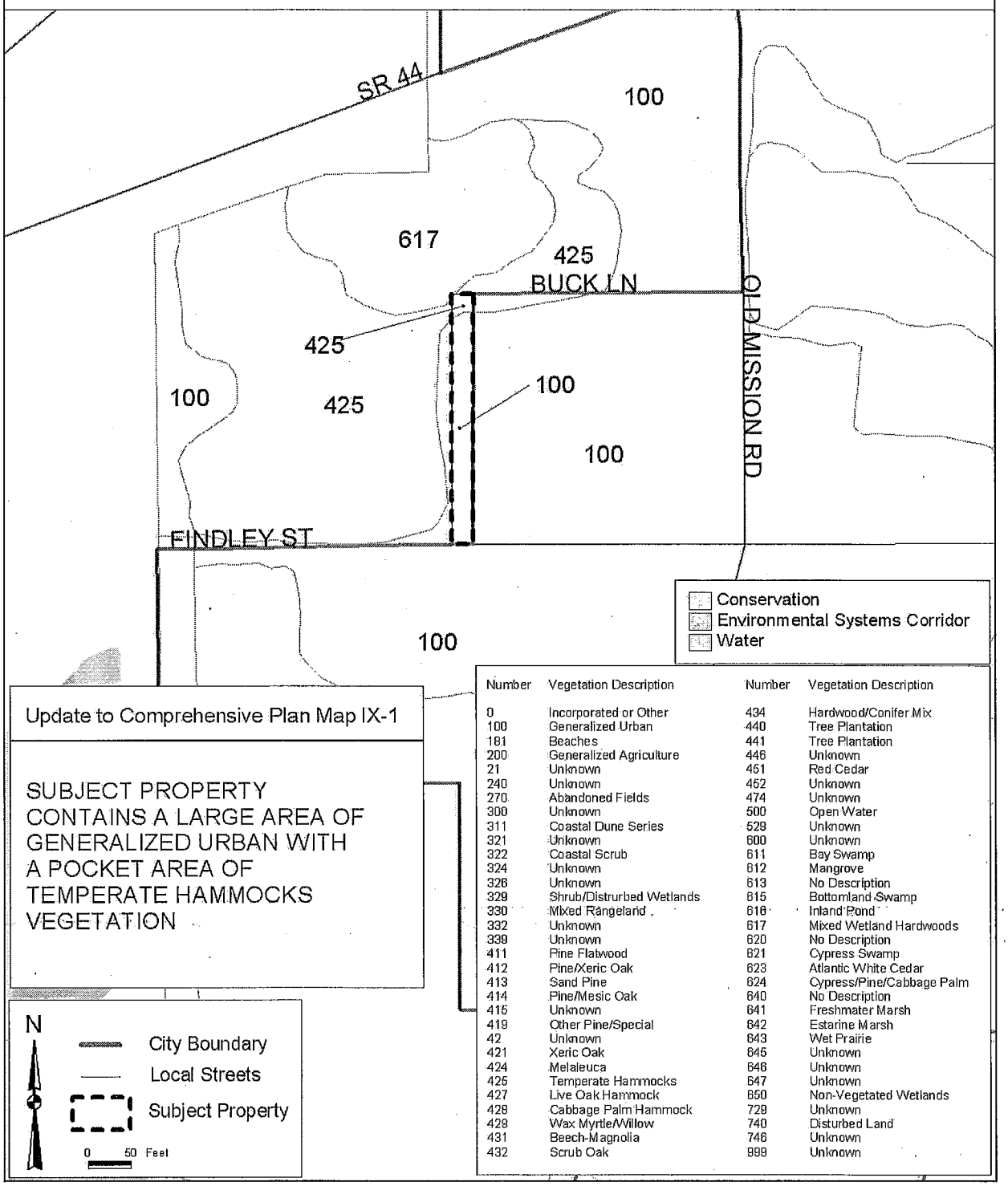

Coastal High Hazard Areas
A-05-11
Update to Comprehensive Plan Map VII-4
SUBJECT PROPERTY
IS NOT WITHIN THE
COASTAL HIGH HAZARD AREA
N
City Boundary
Local Streets
Subject Property
0
4000 Feet
COASTAL HIGH
HAZARD AREA
BUCK LN
OLD MISSION RD
SECOND AV
FINDLEY ST

EXHIBIT T

Natural Resources

A-05-11



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/Distrurbed 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	Freshmater Marsh
419	Other Pine/Special	642	Estarine Marsh
42	Unknown	643	Wet Prairie
421	Xeric Oak	645	Unknown
424	Melaleuca	646	Unknown
426	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

EXHIBIT U

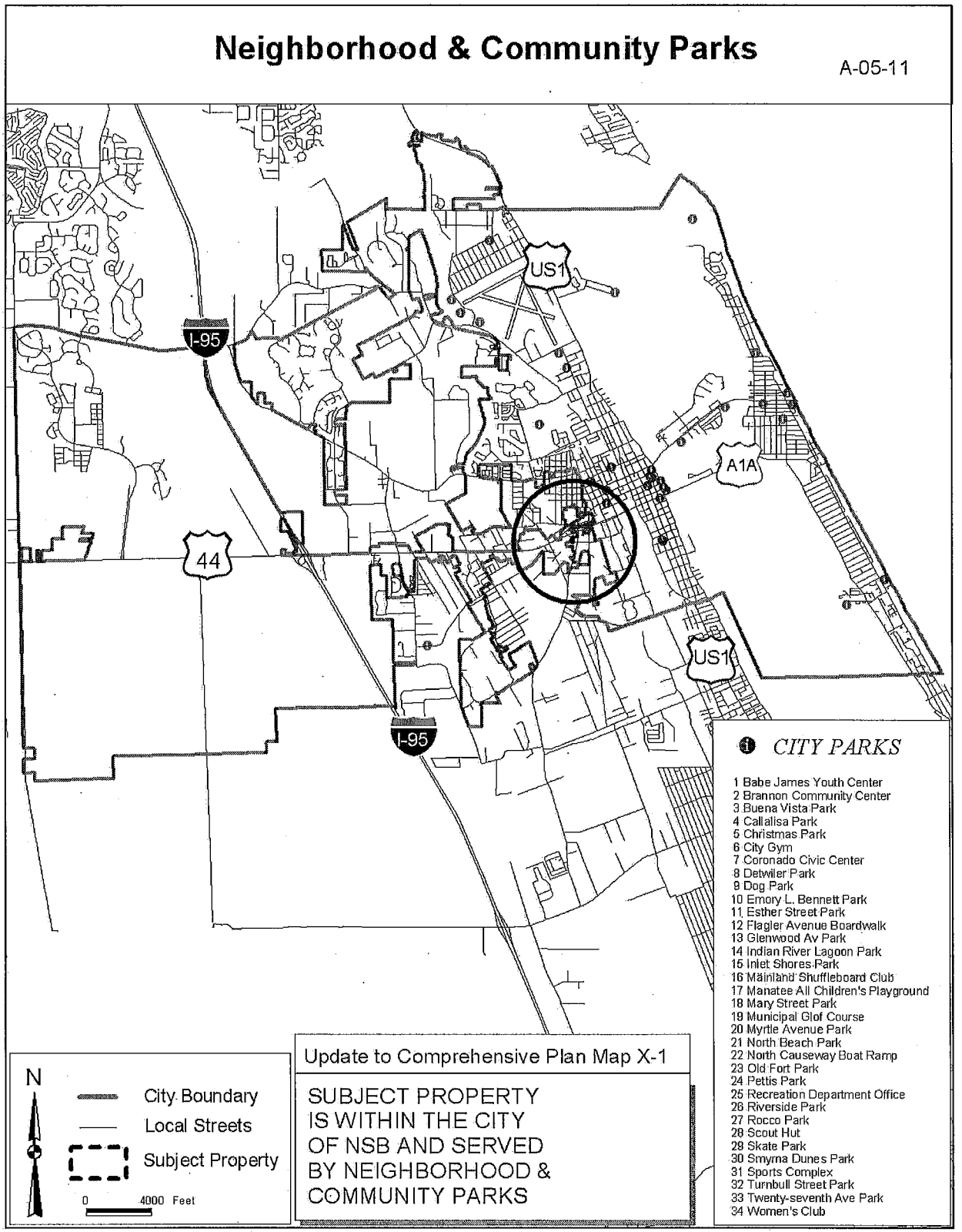
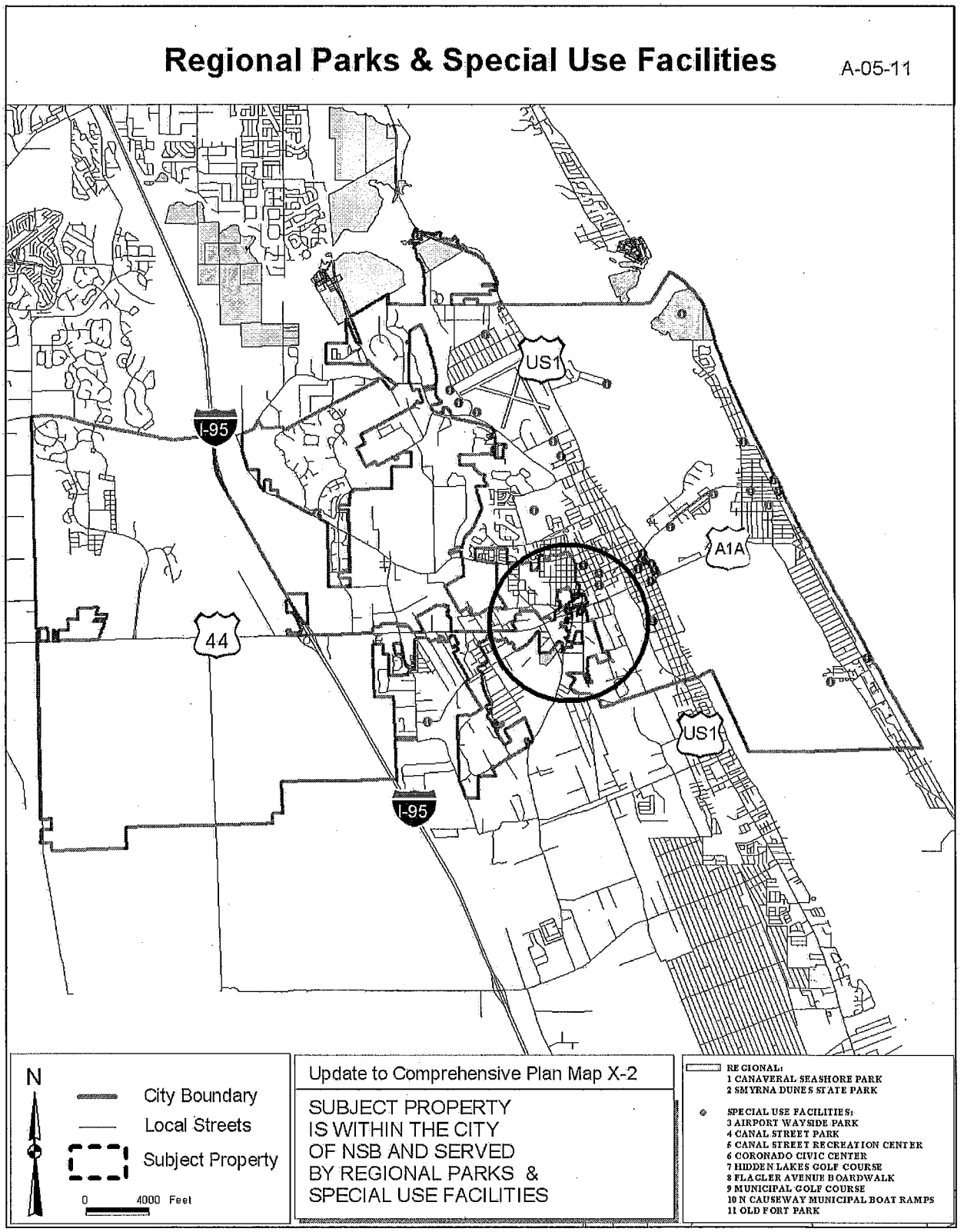
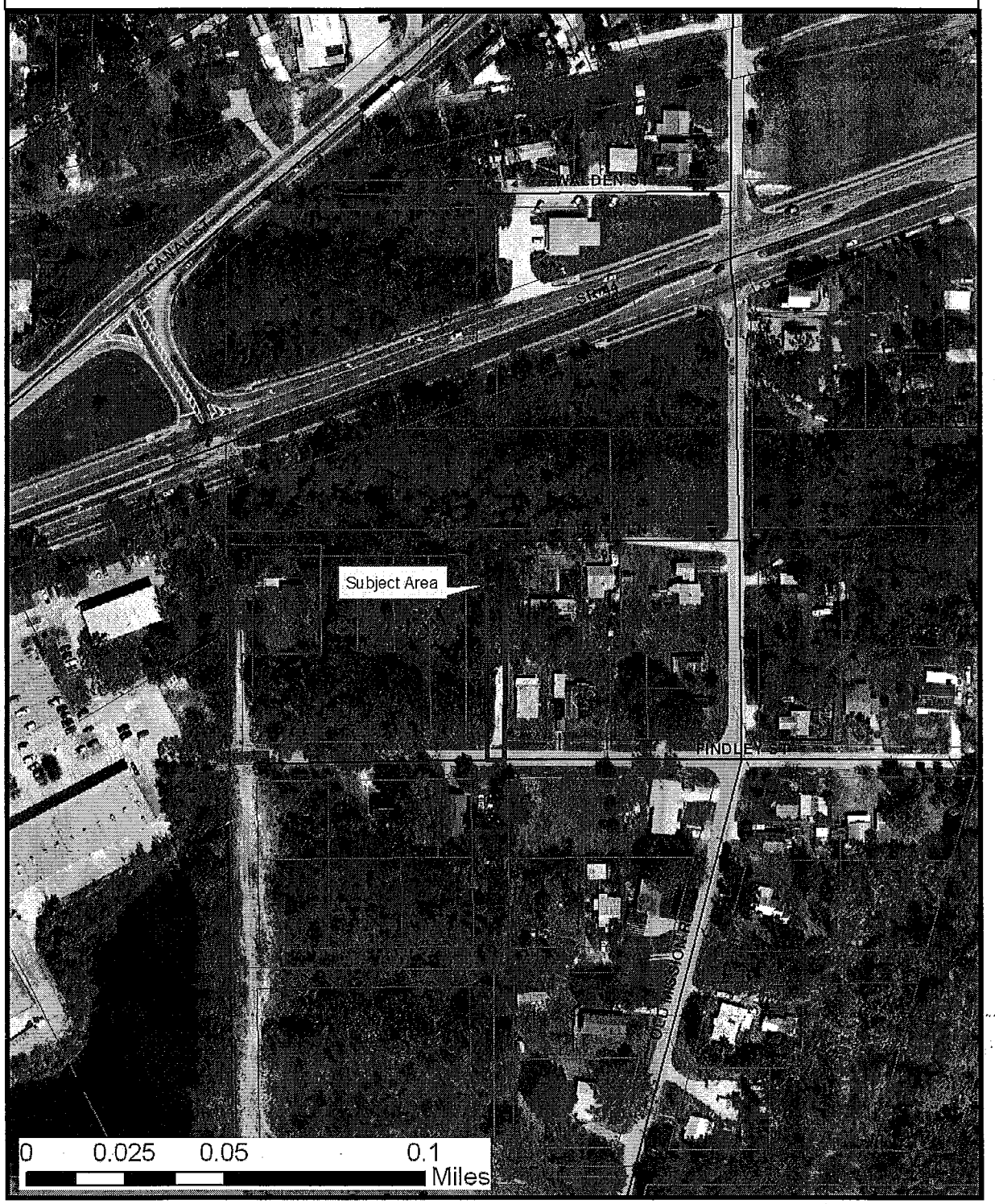

Neighborhood & Community Parks
A-05-11
US1
I-95
A1A
44
US1
I-95
CITY PARKS
1 Babe James Youth Center
2 Brannon Community Center
3 Buena Vista Park
4 Callalisa Park
5 Christmas Park
6 City Gym
7 Coronado Civic Center
8 Detwiler Park
9 Dog Park
10 Emory L. Bennett Park
11 Esther Street Park
12 Flagler Avenue Boardwalk
13 Glenwood Av Park
14 Indian River Lagoon Park
15 Inlet Shores Park
16 Mainland Shuffleboard Club
17 Manatee All Children's Playground
18 Mary Street Park
19 Municipal Golf Course
20 Myrtle Avenue Park
21 North Beach Park
22 North Causeway Boat Ramp
23 Old Fort Park
24 Pettis Park
25 Recreation Department Office
26 Riverside Park
27 Rocco Park
28 Scout Hut
29 Skate Park
30 Smyrna Dunes Park
31 Sports Complex
32 Turnbull Street Park
33 Twenty-seventh Ave Park
34 Women's Club
N
City Boundary
Local Streets
Subject Property
0 4000 Feet
Update to Comprehensive Plan Map X-1
SUBJECT PROPERTY
IS WITHIN THE CITY
OF NSB AND SERVED
BY NEIGHBORHOOD &
COMMUNITY PARKS

EXHIBIT V


Regional Parks & Special Use Facilities
A-05-11
US1
I-95
A1A
44
US1
I-95
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

AERIAL OF SUBJECT AREA AND SURROUNDING PROPERTIES



CITY OF NEW SMYRNA BEACH – PLANNING AND ZONING

CPA-1-10: HOSPITALITY FUTURE LAND USE / MULTI-FAMILY AND COMMERCIAL USES

JUNE 6, 2011

I. Background

A. Applicant: Mark H. Rakowski, AICP, Land Planning Consultant, 822 East 8th Avenue, New Smyrna Beach

B. Request: *Comprehensive Plan* Future Land Use Element amendment to the Hospitality Future Land Use (FLU) category to allow non-residential and multi-family residential uses.

II. Findings

A. In March 2010, the applicant submitted an application to amend the Hospitality Future Land Use category described in the City's *Comprehensive Plan.* The request consisted of two parts:

- To allow the Hospitality category to be applied to oceanfront parcels
- To add commercial and multi-family family uses in the Hospitality category

B. At its April 5, 2010 meeting, the Planning and Zoning Board voted 6-1 to approve the request to allow the Hospitality category to be applied to oceanfront properties. The Board voted 2-5 to allow commercial and multi-family uses in the Hospitality category. Therefore, that motion went forward to the City Commission with a recommendation of denial. A copy of the April 5, 2010 Planning and Zoning Board meeting minutes is attached as **Exhibit A**.

C. On April 27, 2010, the City Commission approved Ordinance 19-10 on first reading. This ordinance related to the request to allow the Hospitality category to be applied to oceanfront parcels. This ordinance was subsequently adopted by the City Commission on April 12, 2011. The adopted ordinance has been forwarded to the Florida Department of Community Affairs (DCA). Final approval of the ordinance is expected from DCA on or about June 9, 2011.

D. Also on April 27, 2010, the City Commission reviewed Ordinance 20-10 on first reading. Ordinance 20-10 related to allowing commercial and multi-family uses in the Hospitality category. At that meeting, the Commission voted to defer action on the ordinance and directed staff to bring the issue back to the Planning and Zoning Board as a visioning topic. Minutes of the April 27, 2010 City Commission meeting are attached as **Exhibit B**.

E. Staff presented this issue to the Planning and Zoning Board at its May 10, 2010 workshop. The Board did not take any action on the request and a clear consensus of the Board was not apparent. A copy of the May 10, 2010 Planning and Zoning Board workshop minutes is attached as **Exhibit C**.

F. One of the primary concerns presented to staff as a reason to support the proposed amendment, is that property owners are wary of giving up their ability to have commercial uses and multi-family uses on their property if they choose to change their land use category to Hospitality. Currently, the Hospitality category only allows hotels/motels at a maximum density of 75 units per acre. Under the current regulations, if a property owner applies to change his or her future land

use designation to Commercial, and then their proposed hotel/motel project does not come to fruition, the property owner would need to reapply for another land use amendment in order to build anything other than a hotel on the property.

G. In theory, staff understands this concern and sees the logic in the request. However, the concern of staff is that the proposed change to the Hospitality category would actually allow *more* development than the existing Commercial category. A table comparing the densities and intensities permitted under the current Hospitality and Commercial future land use categories is shown below. The example below is based on a two-acre beachside property.

	Hospitality FLU (Existing)	**Total Units/ Floor Area**	**Commercial FLU (Existing)**	**Total Units/ Floor Area**	**Hospitality FLU (Proposed)**	**Total Units/ Floor Area**
Multi-Family Units/Acre	0	0	12	24	12	24
Floor Area Ratio (FAR) (SF)	3.0	130,680	2.0	87,120	3.0	130,680
Hotel Units/Acre	75	150	24	48	75	150

H. Also of concern to staff are the types of commercial uses that would potentially be allowed on oceanfront parcels. Currently, all oceanfront parcels that have the Commercial future land use category are zoned B-4, Ocean Commercial. The B-4 zoning district allows only a very few selective uses, including transient lodging, multi-family residential, real estate offices and certain types of restaurants.

I. In order to address these concerns, staff would recommend that if commercial and multi-family uses are permitted in the Hospitality category, the following conditions be applied:

- The floor area ratio (FAR) for non-transient lodging commercial uses be limited to 2.0
- Multi-family residential density not exceed 12 units/acre on the beachside and 18 units/acre on the mainland
- Non-residential uses, other than transient lodging, on oceanfront parcels be limited to permitted uses listed in the B-4, Ocean Commercial zoning category.

The proposed conditions reflect what would currently be allowed on any property that currently has a Commercial future land use designation. Therefore, adopting these conditions would ensure that property owners would continue to retain the exact same development rights they currently enjoy.

J. The proposed change to the Hospitality category is only a change to the text of the *Comprehensive Plan.* A site specific *Comprehensive Plan* amendment would be necessary for the Hospitality FLU designation to be applied to a particular property. The proposed changes would also apply to any properties that are currently designated as Hospitality on the City's future land use map.

III. Recommendation

Staff recommends that the Planning and Zoning Board recommend to the City Commission approval of the requested *Comprehensive Plan* amendment to the Hospitality FLU category as shown below (additions are underlined and deletions are ~~struck-through~~):

Future Land Use Element

***

Land Use Categories

Land use categories are useful for indicating the preferred future use (or uses) and maximum development densities and/or intensities for all lands within the planning area. Actual zoning districts permitted in each land use category are listed in the City *Land Development Regulations*. The land use categories and preferred uses applicable to the New Smyrna Beach planning area are presented below.

Parcels, which are currently undeveloped, are designated as "vacant" on the Existing Land Use Map. The Future Land Use Map is based on total buildout; therefore, no "vacant" lands are indicated. Many of the parcels of land designated as vacant have been skipped over in the traditional development pattern of the community. These parcels are suitable for infill development.

***

HOSPITALITY

Maximum allowed density:
Up to 75 transient lodging units per acre
Up to 12 dwelling units per acre on the barrier island
Up to 18 dwelling units per acre on the mainland
Maximum allowed Floor Area Ratio (FAR) (Transient Lodging): 3.0
Maximum allowed Floor Area Ratio (FAR) (Non-Residential other than transient lodging): 2.0

Intent: Areas composed primarily of accommodations for short-term visitors. In addition, amusements and restaurants may be permitted on oceanfront parcels between Esther Street and East 8th Avenue. ~~The floor area ratio shall not exceed 3 and the transient lodging density shall not exceed 75 units per acre.~~ A limit on the maximum size of individual transient lodging rooms, for the majority of the rooms in a project, is established by the *Land Development Regulations*. In order to be eligible for the Hospitality future land use, the following conditions must be met:

- The present Future Land Use designation is not residential;
- The parcel must be within or adjacent to an existing business district;
- The parcel must be located along an arterial or collector roadway;
- The business district in which the parcel is located must include such amenities as retail shopping,
- restaurants, entertainment venues, sporting venues, and other similar uses; and

- Shared parking must available
- Hotel / hotel conference center shall be designed to meet the typical size standard of a "Transient Rental Accommodation" and limited to thirty percent (30%) of the total number of allowed hotel rooms for specialty rooms that may be oversized or deluxe units for marketing purposes.
- The proposed project must commit to development using a planned unit development zoning format. Non-residential uses on oceanfront parcels, other than transient lodging, are limited to parking garages, real estate offices, restaurants (Types "A", "B", "C" and "D") and accessory uses customarily associated with these principal uses.

***

Goal, Objectives, and Policies

***

GOAL 2: GENERAL LAND USE PATTERN

To promote, protect and improve the public health, safety, and general welfare by ensuring consistency, economic viability, and stewardship of the natural environment, through appropriate land uses and land development regulations

OBJECTIVE:

1. Future Land Use Map: The City's continued growth shall be based upon the Future Land Use Map, which shall specify the desired development pattern for New Smyrna Beach through a land use category system that provides for the location, type, density, and intensity of development.

POLICIES:

a. The Future Land Use Map shall contain the following categories, as described in this Element:
   - Conservation
   - Forestry Resource (up to 1 dwelling unit per 20 acres)
   - Agriculture (up to 1 dwelling unit per acre)
   - Residential Estate (up to 1 dwelling unit per acre)
   - Low-Density Residential (up to 5 dwelling units per acre)
   - Medium-Density Residential (5.01 to 8 dwelling units per acre)
   - High-Density Residential (8.01 to 12 dwelling units per acre on the barrier island; 8.01 to 18 dwelling units per acre on the mainland)
   - Mixed Use (8.01 to 12 dwelling units per acre on the barrier island; 8.01 to 18 dwelling units per acre on the mainland)
   - Commercial (8.01 to 12 dwelling units per acre on the barrier island; 8.01 to 18 dwelling units per acre on the mainland; up to 24 transient lodging units per acre)
   - Hospitality (up to 75 transient lodging units per acre; up to 12 dwelling units per acre on the barrier island; up to 18 dwelling units per acre on the mainland)
   - Industrial
   - Industrial Mixed Use (up to 40 units per acre; up to 75 transient lodging units per acre)

- Southeast Volusia Activity Center (up to 18 dwelling units per acre; up to 40 transient lodging units per acre,)
- Marina (up to 24 transient lodging units per acre, which may be increased through a conditional density bonus of up to 100%)
- Recreation
- Public Grounds and Buildings
- Educational
- Sustainable Community Development (up to 1.5 dwelling units per acre, gross density)

***

i. Establish and maintain *Land Development Regulations* that use a combination of maximum building coverage and maximum building height to establish a maximum floor area ratio (FAR) envelope for non-residential land use classifications. The equivalent floor area ratio requirements are as follows:

Land Use Classification	Maximum FAR
Commercial	2.00
Industrial	2.00
Industrial Mixed Use	6.50
Hospitality (Transient Lodging)	3.00
Hospitality (Non-residential other than transient lodging)	2.00
Mixed Uses Beachside	3.00
Mixed Uses Mainland	6.50
Marina	1.50
Public Grounds and Buildings	1.00
Educational	0.25
Agriculture	0.10
Recreation	0.50
Conservation	0.10

***

APRIL 5, 2010 PLANNING AND ZONING BOARD MEETING MINUTES

E. CPA-1-10: FUTURE LAND USE ELEMENT / HOSPITALITY FUTURE LAND USE CATEGORY

Mark H. Rakowski, AICP, Land Planning Consultant, 822 East 8th Avenue, New Smyrna Beach, Florida, 32169, requests *Comprehensive Plan* amendment to eliminate the oceanfront property restriction and to allow non-residential and multi-family residential uses in the Hospitality Future Land Use designation.

Mr. Lingenfelter arrived at 6:55pm. He addressed the Board, reviewed staff's findings, and stated staff recommended the Board recommend the City Commission approve a *Comprehensive Plan* amendment to eliminate the oceanfront property restriction for the Hospitality Future Land Use designation and recommend the City Commission deny the request to allow non-residential and multi-family residential uses in the Hospitality Future Land Use designation.

Ms. Moore left at 7:00pm.

Mr. McGuirk stated that he did have a brief discussion with the applicant regarding the case. He asked if the hospitality future land use supersedes the existing zoning on a parcel.

Mr. Lingenfelter stated that part of the requirements of a hospitality land use designation is that the property owner is required to write a PUD because the city does not have a hospitality zoning category.

Mr. Bohannon asked if the city has had contact with the oceanfront parcels that are being impacted.

Mr. Lingenfelter stated that the proposed amendment would not impact any of them unless they specifically applied to have the Hospitality Future Land Use designation applied to their property.

Mr. Clark asked whether, if by changing the future land use designation from commercial to hospitality, the property owner would give up the option for commercial uses.

Mr. Lingenfelter stated that the hospitality future land use designation does allow some commercial uses associated with the hotel. However, the types of commercial uses would be less than allowed under the Commercial future land use designation.

Mr. Dever asked if there is a land size limitation.

Mr. Lingenfelter stated that there is no limit on how small a parcel can be for the hospitality future land use designation. However, the city's rules are that PUD's need to be at least ¾ of an acre.

Mr. Dever asked if they have to have a PUD in order to get this designation.

Mr. Lingenfelter stated that was correct.

Mark Rakowski, Land Planning Consulting, stated his name then addressed the Board. He stated that the reason for both requests is because if the hotel doesn't work out then the owner will have the choice to use the property for other commercial uses without having to apply to change the future land use designation back to Commercial. He stated that the city should encourage hotels because it helps with economic activity. He stated that there are about a half dozen oceanfront properties that are large enough to realistically accommodate a hotel. He stated that because of the limitations of the types of uses allowed by the hospitality future land use designation, property owners are discouraged from applying for the classification.

Mr. McGuirk asked what size the properties are that are between 24th thru 27th Avenue.

Mr. Rakowski stated that a couple of those properties are about 100 feet wide.

Mr. McGuirk asked if there was a way to exclude the property on the south beach.

Mr. Lingenfelter stated that it could be further restricted from certain areas.

Mr. Rakowski stated that he didn't think it was a good idea to restrict certain areas.

Mr. Casey asked why the city couldn't allow somebody to seek the hospitality designation without limiting them to just hospitality uses.

Mr. Lingenfelter stated that staff did not observe a measurable objective to have both commercial and hospitality uses in the Hospitality designation. He stated that it would create unpredictability as to what could happen on a piece of property.

Mr. Clark asked if staff's concern was that if hospitality and commercial uses were allowed on the same property that it would make it difficult for future development in those areas.

Mr. Lingenfelter stated that the concern is that the community won't know whether a piece of property would be developed as a hotel or some other type of commercial use that might not be compatible with the neighborhood.

Mr. Casey asked what the impact would be on residential development on these parcels.

Mr. Lingenfelter stated that the property owner would have to draft a PUD agreement for any type of development on the property. However, in the PUD agreement, they could negotiate for a higher maximum height than might currently be allowed under the existing zoning.

Sid Corhern, 204 Flagler Avenue, stated his name then addressed the Board. He stated that he liked the current hospitality rule because by keeping the checks and balances the city is able to maintain the character of the city.

Kenneth Bohannon made a motion, seconded by Jessie Clark, to recommend the City Commission approve the request for a *Comprehensive Plan* amendment to eliminate the oceanfront property restriction for the Hospitality Future Land Use designation. Motion passed on a roll-call vote, 6-1 with Ms. Bushey dissenting. Ms. Bushey- No, I'm concerned about how eliminating that what affect that would

have.

Travous Dever made a motion, seconded by Jason McGuirk, to recommend the City Commission approve the request for a *Comprehensive Plan* amendment to allow non-residential and multi-family residential uses in the Hospitality Future Land Use designation. Motion failed on a roll-call vote, 2-5 with Mr. Wheeler, Mr. McGuirk, Mr. Clark, Ms. Bushey and Mr. Bohannon dissenting. Mr. Wheeler- No, I believe that it opens the door up a little too wide and my concern about this all along is allowing hotels back on the oceanfront. It makes sense why we restricted that use to begin with. The Chair expressed at the May 3, 2010 meeting that his intent was that his concern was not allowing hotels within the hospitality district on the oceanfront. He stated that the oceanfront is the most appropriate place for the hotels to be. Mr. McGuirk- No, I think it changes the integrity of the hospitality future land use too much. Mr. Clark- No, just because I think we need more time to kind of wrap our arms around this. Ms. Bushey- No, I'm concerned about the increasing the density as a result of the change. Mr. Bohannon- No, I think it opens up the door a little too far.

Mr. Casey stated that he would like to see them keep the current commercial future land use designation, but add the additional element of the hospitality option instead of taking away commercial uses.

Mr. McDole stated that probably the best way is to come up with a completely different category and exclude different parts of the city.

APRIL 27, 2010 CITY COMMISSION MEETING MINUTES

Ordinance No. 19-10 – City Attorney Gummey read Ordinance No. 19-10, the first time by title only. Senior Planner Chad Lingenfelter outlined the proposed ordinance, which if adopted, would transmit to the Department of Community Affairs, a proposed amendment of the Comprehensive Plan, Future Land Use Element, by eliminating the oceanfront property restriction in the Hospitality Future Land Use designation and permitting density of 75 hotel units per acre on the oceanfront.

Mr. Lingenfelter reported that at its meeting on April 5, 2010, the Planning and Zoning Board recommended transmittal of the proposed ordinance by a majority vote of 6 to 1. Mark Rakowski, 822 East 8th Avenue, representing the applicant, outlined the proposed ordinance and commented on the history of the Hospitality future land use designation.

Commissioner Grasty commented on zoning of properties within the affected area of the proposed ordinance. Mr. Rakowski commented on allowable structure size related to the proposed ordinance. Vice Mayor Plaskett commented on impacts to the surrounding neighborhood the proposed ordinance would have.

Planning Manager Gail Henrikson clarified the proposed ordinance would affect other properties and outlined height and density negotiations for future zoning processes. City Attorney Gummey clarified the City Commission could change the Land Development Regulations to allow different density and amend the Future Land Use Map given compatibility and clarified the proposed ordinance would still require individual sites. Discussion continued regarding zoning map issues.

Mayor Barringer opened the public hearing.

Sidney Cohern, 204 8th Avenue, supported the proposed ordinance and commented on oceanfront type development in the downtown area. Mr. Cohern also commented on proposed hotel development within the business district.

Robert Rees, 391 Granada Street, opposed the proposed ordinance and commented on past Commission decisions regarding oceanfront development. Mr. Rees felt there was no room remaining in New Smyrna Beach for additional hotel development.

Leslie Sachs, 816 East 8th Avenue, opposed the proposed ordinance and commented on parking challenges on the beach.

Mayor Barringer closed the public hearing.

Vice Mayor Plaskett commented on attempts to protect the character of the City and did not support the proposed ordinance. Commissioner Reiker was uncomfortable with hotel development on the south side of the beach. Commissioner Grasty commented on existing building heights along the beach, and possible action to limit coverage area. Vice Mayor Plaskett was concerned with past hotel development and commented on current rental practices on the beach. Commissioner Hathaway commented on the need to limit Hospitality land use to certain areas of the City.

Motion:

Commissioner Grasty moved to approve Ordinance No. 19-10, with boundaries from 8th Avenue to 24th Avenue to Flagler Avenue. Commissioner Hathaway seconded the motion and the roll call was:

Commissioner Grasty yes
Mayor Barringer yes
Commissioner Hathaway yes
Vice Mayor Plaskett no
Commissioner Reiker yes

The motion carried by 4 to 1 majority vote, with Vice Mayor Plaskett voting no.

Ordinance No. 20-10 – City Attorney Gummey read Ordinance No. 20-10, the first time by title only. Senior Planner Chad Lingenfelter outlined the proposed ordinance, which if adopted would transmit to the State Department of Community Affairs, a proposed amendment of the City Comprehensive Plan, Future Land Use Element, that would allow non-residential and multi-family residential uses in the Hospitality Future Land Use designation. Mr. Lingenfelter reported that at its meeting on April 5, 2010, the Planning and Zoning Board recommended the City Commission not transmit the proposed ordinance by a vote of 2 to 5.

Commissioner Hathaway commented on his concerns with possible future financial impacts on property owners. Mr. Lingenfelter commented on possible uses related to property within the land use designation. City Attorney Gummey commented on the importance of the process in changing land use designations of property, and the future land use map.

Mark Rakowski, 822 East 8th Avenue, representing the applicant, commented on the challenges associated with the Hospitality land use designation and felt adoption of the ordinance would result in an improved business community.

Mayor Barringer opened the public hearing.

Debra Dugas, 200 North Pine Street, opposed the proposed hotel development on Flagler Avenue and commented on her concerns that future development would create traffic issues in the area.

Robert Rees, 391 Granada Street, opposed the proposed hotel development on Flagler Avenue and commented on the number of proposed units planned for the proposed hotel development on Flagler Avenue.

With no more citizens wishing to speak, Mayor Barringer closed the public hearing.

The Commission discussed the concerns of staff regarding the proposed ordinance.

Commissioner Grasty felt the item should be deferred to the regular meeting on May 25, 2010. Mayor Barringer felt the item should be deferred for future consideration after the Planning and Zoning Board visioning process was completed.

Motion:

Commissioner Grasty moved to defer consideration of Ordinance No. 20-10, to a future meeting, after the Planning and Zoning Board concluded its visioning process. Vice Mayor Plaskett seconded the motion and the roll call was:

Mayor Barringer yes
Commissioner Hathaway yes
Vice Mayor Plaskett yes
Commissioner Reiker yes
Commissioner Grasty yes

The motion carried unanimously.

MAY 20, 2010 PLANNING AND ZONING BOARD WORKSHOP MINUTES

A. Hospitality FLU/Commercial & Multi-Family

Mr. Lingenfelter stated that when the Hospitality FLU/Commercial & Multi-Family request change came before the City Commission the Commission requested staff to bring it back before the Planning and Zoning Board for further illustration on what would be gained or lost from this change. He discussed the tables where he illustrated the different changes that could happen. He asked if the Board had any questions or comments after reviewing the tables.

Mr. McGuirk stated that there was talk of creating another category for this and not putting it under the Hospitality FLU category. He stated that he would like to hear the pros and cons. He stated that he liked having something in place to promote a tourism district.

Mr. Lingenfelter stated that a tourism category can be created but until it's applied to a piece of property it doesn't matter. He stated that the table was meant to illustrate some of the pros and cons of the request.

Mr. Dever asked why a property has to lose one designation when it is changed to another classification.

Mr. Lingenfelter stated that with many amendments, whether changing designations within City classifications or whether going from county to city, there are often uses or densities or other items that a property owner may lose.

Mr. Dever stated that he doesn't want to see it as a free for all but feels the rules are a little too strict.

Mr. Wheeler asked how the city maintains continuity when there are several choices for commercial.

Mr. Lingenfelter stated that the Comprehensive Plan generally identifies where commercial uses should be and it's up to the zoning regulations to say specify what commercial uses are appropriate and how they should look.

Mr. Wheeler asked how difficult it is for a property owner who chooses the Hospitality FLU category to revert back to B-4.

Mr. Lingenfelter stated that the owner would have to apply to change their designation back to commercial and then either a PUD agreement or apply to revert back to their former zoning designation.

Mr. Wheeler asked how long that process would take.

Mr. Lingenfelter stated that it would take about 6 months if there are no complications.

Ms. Bushey asked why not make these changes on a case by case basis instead of distinguishing certain areas.

Mr. Lingenfelter stated that if a property owner changes the land use designation on a piece of property Hospitality and then their plans fall through and they want something else the property would have to go through the whole process all over again.

Mr. McGuirk asked if this would be part of the discussion at the workshop with the City Commission.

Mr. Lingenfelter stated that he did believe this would be one of the topics for discussion.

Mr. Casey stated that he was in favor of the applicant's request.

Mark Rakowski, Land Planning Consultant, stated his name then addressed the Board. He stated that the city needs to give the property owner more options on their property. He stated that property owners don't want to give up their commercial zoning to be able to have the Hospitality FLU category. He stated that without the change there probably won't be a lot of hotels built in the City.

Mr. Lingenfelter left at 7:08pm.

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

ZT-8-11: LDR AMENDMENT
REDEFINITION OF TYPES OF SERVICE STATIONS

June 6, 2011

Background

A. **Applicant:** City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, FL

B. **Request:** Approval of an amendment to the City's Land Development Regulations to redefine Service Station Type A, Service Station Type B, & Service Station Type C in order to provide a more accurate definition of what activities may take place under each type of service station.

Findings

A. Recently several citizens have enquired as to what type of automotive repair businesses the City allows to operate in various zoning districts.

B. The City has divided the types of automotive repair activities into 3 groupings, Service Station, Type A, Service Station, Type B, & Service Station, Type C.

C. Different types of service stations are restricted to what zoning districts they may operate within.

D. The current New Smyrna Beach Land Development Regulations definition for "Service Stations" contains incomplete coverage for vehicle repairs and a vagueness that allows for an inconsistent interpretation of the definitions.

E. Staff has investigated several other local governments in Florida in order to see how those government regulations address the various intensities of auto repair activities.

F. Staff determined that the current division of auto repair activities into 3 classes of intensity for the zoning districts is appropriate and that only a refining of what activities may take place under each defined intensity is required to address issues.

G. It is not the intent of staff to further restrict what activities are permitted under each type of service station or to cause currently conforming uses to become nonconforming uses. It is the intent of staff only to improve the definition of what repair activities may be performed under each service station type and to include automotive repair activities that are currently not addressed by the LDR and so would be limited to a type C service station or not allowed at all as they are not addressed in the LDR.

H. Staff hopes to provide fair and consistent responses to citizens and applicants by setting forth clear definitions of each type of service station.

Recommendation

Staff recommends **approval** of the proposed changes to the City's *Land Development Regulations*, as shown below (~~strikethroughs~~ are deletions and <u>underlines</u> are additions).

****

201.00. General definitions.

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Semipublic body. Any organization operating as a nonprofit activity and serving a public purpose or service including such organizations as noncommercial clubs, lodges, theater groups, recreational and neighborhood associations, cultural organizations, schools, and churches.

Service station, type A. ~~A business primarily engaged in servicing motor vehicles but limited to the sale of fuel, lubricants, and other accessory products necessary for the operation of motor vehicles, but not including the mechanical or body repair or the sale of motor vehicles.~~

A business primarily engaged in servicing motor vehicles but limited to:

1. *Sales of automotive fuels, lubricants, and accessories.*
2. *Sales, service, & maintenance of spark plugs and batteries.*
3. *Maintenance of lubrication systems including replacement of lubricants and filters.*
4. *Replacement of minor part items such as light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades.*
5. *Washing, polishing, and detailing services, sales of automotive washing and polishing materials, but not car washes.*

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Service station, type B. ~~Upholstering and servicing of automotive vehicles which includes the sale of fuel, lubricants, and other products necessary to the operation of motor vehicles including the sale and installation of accessories, tires, batteries, minor engine tune-ups, wheel balancing, and alignment, brake service, but not including mechanical or body repair or the sale of motor vehicles.~~

A business primarily engaged in servicing motor vehicles but limited to:

1. *All activities allowed by a type A service station.*
2. *Tire servicing, installation and repair, but not recapping or regrooving.*
3. *Windshield repair and replacement.*
4. *Mechanical repair that does not require the removal of the transmission, engine, heads, or crankcase. This includes, but is not limited to, engine tune ups and repairs to; exhaust, HVAC, brakes, cooling system, alignment, electrical system, & fueling systems.*

Service station, type C. ~~Re-building or reconditioning of engines, motor vehicles or trailers, collision service including body, frame or fender straightening or repair; overall painting or paint shop.~~

A business primarily engaged in servicing motor vehicles but limited to:

1. *All activities allowed by a type B service station.*
2. *Tire servicing including recapping and regrooving.*
3. *Transmission repair involving the removal, disassembly or reassembly of the transmission.*
4. *Engine Rebuilding, reconditioning, or repair involving the removal of the engine, heads, crankcase.*
5. *Collision service including body, frame or fender straightening or repair*
6. *Painting or paint shop.*
7. *Repairs requiring welding*
8. *Work involving undue noise, vibration, glare, fumes and smoke.*

Setback. The minimum distance between the property lines and the front, rear, or side line of the building, or any projections thereof, excluding projections specifically permitted.

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CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

ZT-10-11: LDR AMENDMENT – SITE PLAN REGULATIONS

JUNE 6, 2011

Background

A. **Applicant:** City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168

B. **Request:** Approval of an administrative amendment to the City's *Land Development Regulations* to revise the regulations relating to site plan review and approval.

Findings

A. Section 303.01 of the City's *Land Development Regulations* details the processes and approvals required for new development within the City. Section 303.01 has three different levels of review (Class I, II or III) depending upon the scope of the project.

B. Class I review is basically building permit review and applies primarily to single-family homes, additions and accessory structures. As part of the LDR amendment regarding regulations along U.S. 1, staff also proposed the following changes to the Class I site plan review process:

- **Increase the threshold between Class I and Class II site plans:** The current regulations state that when the area of a non-residential or multi-family addition or accessory structure exceeds 10% of the existing floor or 500 feet, whichever is *less* (emphasis added), the applicant must submit for Class II site plan review. For example, if the existing building is 1000 square feet, the largest addition that could be constructed is 100 square feet. If the addition were larger than 100 square feet, the applicant would be required to go through the Class II site plan review process. This has resulted in many small projects, such as the addition of a walk-in beer cooler, having to apply for Class II site plan review. Staff is proposing to change the word "less" to "greater", which will reduce the number of projects that would require Class II site plan review. Under the new regulations, the same 1000-square foot building would be able to build up to a 500-square foot addition without having to apply for Class II site plan review.
- **Specify the process and requirements for converting a residential structure to a non-residential use:** The additional language in Section 303.01 would require businesses that go through a change of use to go through the major Class I site plan process. Section 505.00 details regulations for non-conforming lots of records, structures and uses. Staff is proposing to add language specifying what types of activities will require upgrades to existing developments and what upgrades might be required. A definition of "Change of Use" would also be added to Article II.

C. Class II site plan review is required for any multi-family development containing 3-24 units; any non-residential development of 25,000 square feet or less; and any parking lot containing 8-50 parking spaces. Class III site plan review is required for any new development exceeding the Class II thresholds. Class II site plans are reviewed by the Plan Review Committee (PRC), which consists of staff members. Class III site plans are reviewed by the PRC and approved by the Planning and Zoning Board. Prior to February 2007, any project with more than 8 multi-family units or more than 5,000 square feet of floor area was required to go before both the PRC and Planning and Zoning Board. No changes are proposed to the thresholds between Class II and Class III site plans.

D. Staff is proposing to consolidate the regulations pertaining to new multi-family and non-residential development in a new article (Article XI) in the LDR. Additionally, because much of the language in Section 303.01 of the *Land Development Regulations* is out of date and is difficult to understand, staff has proposed revisions to clarify and update the regulations.

E. Other changes include adding an index at the beginning of the new Article XI, to assist readers in finding a pertinent section quickly. Regulations codifying the existing pre-construction meeting process and inspection processes has also been added.

Recommendation

Staff recommends **approval** of the proposed changes to the City's *Land Development Regulations*, as shown below (~~strikethroughs~~ are deletions and underlines are additions).

ARTICLE III
ADMINISTRATION AND ENFORCEMENT

***

~~**303.00 PROCEDURES FOR REVIEWING AND APPROVING DEVELOPMENTS**~~
~~**303.01 Site Plan Review and Approval**~~

~~Prior to issuing a building, water management, or land clearing, permit a site plan drawn to a scale no smaller than 1" = 50' must be submitted to, and coordinated by, the Planning Department and approved by the reviewing entity as indicated below. **(Ord.# 53-10)**~~

~~There shall be three categories of site plans to be reviewed: Class I site plans; Class II site plans; and Class III site plans. The description of each class of site plan and the entity responsible for reviewing and approving the site plan is contained below. No development shall be allowed within the City until a Class I, II, or III site plan has been approved. All development requiring a Class I, Class II or Class III site plan review shall comply with the Community Design Standards outlined in Article X of this LDR. The Development Services Director, or his/her~~

~~designee, shall determine which site plan review and approval is required in case it is not evident which review and approval procedure is appropriate for a development.~~ **~~Ord. # 20-07~~**

~~A. Site Plan Classification and Approval Responsibility~~

~~(1) Class I Site Plan.~~

~~A Class I site plan is required for the following development:~~

~~a. erection of sign(s);~~
~~b. erection of fence(s);~~
~~c. construction of single-family residences;~~
~~d. construction of duplex residences;~~
~~e. interior remodeling to single-family and duplex residences;~~
~~f. structures accessory to single-family residences and duplexes;~~
~~g. driveways and sidewalks for single-family and duplex residences;~~
~~h. additions to single-family and duplex residences;~~
~~i. parking lots containing less than 8 automobile parking spaces that are not associated with a structure requiring Class II or III site plan review and approval;~~
~~j. interior and exterior remodeling to existing non-residential or multi-family residential structures; and~~
~~k. additions or structures accessory to existing non-residential or multi-family residential structures provided said addition or accessory structure does not exceed 10 percent of the existing first floor building area or 500 square feet, whichever is less. (Ord. 29-91)~~

~~The Development Services Department shall be the entity responsible for reviewing and approving Class I site plans.~~

~~(2) Class II Site Plans.~~

~~A Class II site plan is required for 3 through 24 multi-family residential units, a duplex project having more than 4 duplexes (8 units), and any new or remodeled commercial or industrial buildings or structures with a footprint covering an area of 25,000 square feet or less which are not covered under a Class I site plan review and approval. Also included are transient lodging facilities that convert 24 or fewer units to multi-family residential. Also included are additions or structures accessory to any existing multi-family unit, non-residential or existing commercial or industrial structure with an area of 25,000 square feet or less which are not covered under a Class I site plan review and approval. Parking lots containing 8 through 50 automobile parking spaces not associated with a building requiring Class II or III site plan review and approval shall be construed as requiring a Class II site plan.~~ **~~Ord. # 22-91, # 20-07, #80-07. #72-08~~**

~~The entity responsible for reviewing and approving a Class II site plan is the Plan Review Committee. The City Manager or his/her designee, shall be responsible for coordinating the Plan Review Committee and said committee shall consist of the following individuals or their designees: Development Services Director or his/her designee, City Engineer, City Fire Marshal, City Building Inspector, City Public Works Director, City Horticulturist, City Police Chief and Utilities Commission Chief Engineer. Committee members shall be responsible for reviewing and approving site plans as they pertain to their particular area of responsibility.~~ **~~Ord. # 20-07~~**

~~The Plan Review Committee members shall indicate approval by signing the site plan. Should any member of the Plan Review Committee refuse to sign the site plan, they shall write a memo to the City Manager indicating the land development regulation(s) with which the applicant did not comply. Should the City Manager concur that the specified land development regulation(s) had not been complied with, the plan shall not be approved. Should the City Manager determine that the land development regulations have been met, the City Manager shall sign the plans and the plans shall be approved.~~ **~~Ord. # 22-91 & Ord. # 35-00~~**

~~(3) Class III Site Plan.~~

~~A Class III site plan contains more than 24 multi-family residential units, non-residential, commercial, or industrial buildings, that may be new or additions to existing structures, and cover more than 25,000 square feet of area; or one or more multi-family residential unit(s) added onto an existing multi-family structure, or located within, or an extension of, a multi-family intact development. Also included are transient lodging facilities that convert 25 or more units to multi-family residential. Parking lots not associated with a building requiring Class II or III site plan review and approval and containing more than 50 automobile parking spaces shall be construed as Class III site plans.~~ **~~Ord. # 20-07, # 80-07, #72-08~~**

~~The entity responsible for reviewing and approving the Class III site plan is the Plan Review Committee and the Planning and Zoning Board, respectively.~~

~~B. Required Information~~

~~Site plans containing the following information and attachments shall be submitted to the Development Services Department in accordance with the official Planning and Zoning Board meeting schedule prepared annually by the Development Services Department and approved by the Planning and Zoning Board. Such plans must be reviewed and approved by the appropriate reviewing entity. The applicant shall submit to the Development Services Department two (2) sets of Class I site plans and ten (10) sets of Class II and III site plans or a quantity otherwise required by the Development Services Director or his/her designee.~~

~~(1) the following information shall be included on a Class I site plan:~~

~~a. outside dimensions of proposed structure(s);~~
~~b. dimensions of proposed structure(s) from property lines;~~
~~c. description of proposed structure(s);~~
~~d. height above finished grade of proposed structure(s);~~
~~e. number of square feet of proposed structure(s) in the building footprints;~~
~~f. lot coverage of structure(s) in the building footprints;~~
~~g. lot dimensions;~~
~~h. indicate kitchen facilities;~~
~~i. location(s) and dimension(s) of accessory equipment (eg. outside central air conditioning units);~~
~~j. number, location, and dimension(s) of parking spaces (including bumper stops);~~
~~k. location of jurisdictional wetlands boundary line if on or within 25 feet of subject property;~~
~~l. survey of property. The survey shall be no more than two years old, unless the site has been altered by an act of nature;~~
~~m. water management plan for new single-family and duplex developments;~~
~~and~~
~~n. topographic information.~~
~~**Ord. # 20-07**~~
~~(2) the following information shall be included on a Class II or Class III site plan:~~

~~a. existing and proposed topography at one foot contour intervals or a topographic representation as required by the Development Services Director or his/her designee;~~
~~b. property dimensions, legal descriptions, total gross acreage, and zoning district of subject property and adjacent property. If project is phased, provide dimensions and general location of each phase;~~
~~c. dimensions of street systems, walks, entranceways, and off-street parking areas. Each off-street parking space shall be specifically designated and separately and consecutively numbered. Also, the location and dimension of the bumper stop or curb stop shall be included;~~

~~d. ingress and egress to a public right-of-way shall be in accordance with the appropriate governmental agency's regulations(city, county, state) and documentation shall be presented with the site plan application package;~~
~~e. locations and dimensions of buildings, fences, docks, and other structures and improvements on this proposed site, and on adjacent property within 50 feet perpendicular to property lines;~~
~~f. common open space areas and their treatment;~~
~~g. paving and stormwater drainage plan;~~
~~h. landscaping and utility plans;~~

~~i. elevation drawing, displaying all sides of the proposed building(s), and specifying the construction materials used, and height of building from base to the highest portion of the structure;~~

~~j. location of screened garbage collection area(s) with detail to the dimensions specified by the Public Works Director;~~

~~k. legal instruments required as deed covenants in the applicable zoning district shall be presented with site plan application package;~~

~~l. designation of proposed permitted use. The proposed permitted use shall be designated on the site plan and the following information applicable to the proposed permitted use shall be included on the site plan for the uses noted:~~

~~1. manufactured housing, mobile homes, and multi-family type use:~~

~~(a) number of units;~~
~~(b) density per acre; and~~

~~2. commercial, office, industrial, recreational, church, educational or club uses:~~

~~(a) number of square feet designated for each type of use within a building;~~
~~(b) number of seats proposed or other specific information required to determine parking requirements for the proposed uses; and~~
~~(c) maximum number of occupants permitted by the city fire code.~~

~~m. cover sheet showing the project title, project geographic location map and index showing the title of each sheet and page number in consecutive order. Each sheet shall have a page number;~~

~~n. name(s) of property owner(s), project planner, engineer, landscape architect and architect;~~

~~o. location and dimensions of easements (if any) identified by type (utility, drainage, etc.) or a note that no easements exists;~~

~~p. crown elevation of nearest adjacent street(s);~~

~~q. tabulations showing derivation of numbers of off-street parking and loading spaces required and provided, including handicapped parking;~~

~~r. handicapped parking spaces with a minimum dimension of 12 feet by 20 feet and a 60-inch wide access aisle on the passenger side with blue painted symbol on portion of parking space closest to the driveway. Each space shall have a placard sign with maximum size of 3 square feet and each space shall be outlined in 4-inch wide blue paint;~~

~~s. all parking spaces to be outlined with 4-inch wide white paint striping;~~

~~t. location of parking area and other outside lighting with a detail of the lighting system showing style height, candlus curve, and profile of the shielded non-glare fixture with a note indicating lighting to be shielded non-glare fixture;~~

~~u. finished floor elevation of proposed buildings (must be 12 inches minimum above the crown elevation of highest adjacent street);~~

~~v. entrances and exits of buildings and structures;~~

~~w. listing of the type of waste generated by quantity for industrial or commercial developments;~~

~~x. indication of all proposed waste management practices for industrial development;~~

~~o copies of agreements between the owner of a hazardous waste generating business and a licensed hazardous waste transportation company and hazardous waste disposal company;~~

~~o location of jurisdictional wetlands boundary line if on or within 25 feet of the subject property; and the location of the 25' foot wide upland buffer;~~

~~o erosion control plan.~~

~~o tree survey showing the location of all trees six (6) inches in diameter of greater at four (4) feet above ground level for properties west of the Indian River. For properties east of the Indian River, the tree survey shall show all trees four (4) inches in diameter or greater when measured four (4) feet above ground level;~~

~~o tree removal and mitigation table providing the following information;~~

- ~~type, size and cross-sectional diameter of each protected tree~~
- ~~that will be removed;~~
- ~~total cross-sectional diameter of all trees being removed;~~
- ~~calculation showing total square inches required to be replaced; and~~
- ~~list of replacement tree types and sizes.~~

~~dd. buffer planting table providing the following information;~~

~~i. length, width and total area of the required landscape buffer along each property line;~~

~~ii. calculation showing the square footage required for trees, shrubs and groundcover; and~~

~~iii. calculation showing the number and square footage of trees and shrubs provided in each buffer area.~~

~~ee. interior parking lot landscaping table providing the following information;~~

~~i. total paved area in parking spaces and drive aisles;~~

~~ii. calculation showing the total square footage required for interior parking lot landscaping; and~~

~~iv. calculation showing the total square footage provided for interior parking lot landscaping.~~

~~ff. photometric plan showing the location of all wall and parking lot pole lights, along with the foot candles for each light.~~ **Ord. # 20-07**

~~gg. all projects adjacent to the Atlantic Ocean shall also provide an opinion of title, signed by a licensed attorney at law. The opinion of title must be in a form acceptable to the City Attorney and the information provided in the opinion of title must be reviewed and approved by the City Attorney.~~ **Ord.# 50-08**

~~C. Site Plan Review Procedures~~

~~(1) Applicants for Class I site plan approval shall submit the required information with their application for a building permit. Review of the Class I site plan shall be done as part of the permit review process and issuance of a building permit and certificate of zoning shall be evidence of approval of the Class I site plan.~~

~~(2) Applicants for Class II and/or Class III site plan approval shall submit the required applications by the deadline established for Plan Review Committee review. Each application shall be reviewed for completeness and shall be returned to the applicant if the application is incomplete. The applicant shall then revise and resubmit the application.~~

~~(3) The Plan Review Committee shall review the applications for Class II and/or Class III site plan approval at its regularly scheduled meetings. The meeting agendas shall be provided to the press and posted in City Hall so that the public may be informed about scheduled applications. The meetings shall follow a quasi-judicial format providing for qualified expert testimony and for questions from the public about proposed site plans.~~

~~(4) At the Plan Review Committee meeting the Plan Review Committee shall provide the applicant with written and verbal comments about the site plan application including any actions required to conform the plan to City code and any actions that might be taken to improve the quality of the proposed development.~~

~~(5) After receiving comments from the Plan Review Committee the applicant shall have a maximum of one calendar year from the date of the Plan Review Committee meeting to resubmit the Class II and/or Class III site plan with all modifications necessary to bring the plan into compliance with City codes. If the applicant fails to submit a compliant site plan within this time frame, the application shall be considered void, and any further action with regard to the property shall require the submission of a new site plan application.~~

~~(6) The signature of each Plan Review Committee member being affixed to the plan shall be evidence of approval of the Class I and/or Class II site plan. The signature of the Planning & Zoning Board Chair shall be evidence of approval of a Class III site plan after review in a quasi-judicial hearing. One copy of the approval plan shall be provided to the applicant and the City shall retain the other copies as required in the application.~~

~~(7) Any site plan submitted prior to the adoption of this ordinance that does not receive approval within six months after the adoption of this ordinance shall be considered void and any further action with regard to the property shall require the submission of a new site plan application.~~ **~~Ord.# 20-07~~**

~~D. Site Plan Expiration~~

~~All approved site plans, including those approved prior to the effective date of this section and not previously expired, shall expire and thus become null and void two (2) years from the date of approval unless a building permit shall have been issued, and said permit remains active without interruption. A site plan shall not expire so long as a building permit remains active without interruption. However, a site plan, after two (2) years shall expire, even though a building permit has been issued prior to the site plan expiring, upon two (2) years elapsing and: (1) the owners abandoning the site for a period of six (6) months, (2) upon the owner failing to perform any meaningful or significant work on the site for a period of six (6) months, or (3) upon the owner failing to achieve substantial performance of the work described in the building permit within two (2) years of the date of issuance. Meaningful or significant work shall mean work performed in a workman like manner that is carried out in a manner that the obvious purpose and intent of the work is to complete the site within the customary period of time for the construction industry. Substantial performance shall be as defined in Section 304.00(F) of this code.~~ **~~(Ord. No. 53-10)~~**

~~If a proposed site plan is to be constructed in phases, the applicant shall include a phasing schedule with the application. So long as construction on the initial phase begins within two years from the date of approval, the site plan shall remain valid for the term of the approved phasing schedule.~~

~~E. Amendments to an Approved Site Plan~~

~~No changes may be made to an approved site plan except under the procedures provided below:~~

~~(1) Minor changes in the location, siting and height of the buildings, structures, parking spaces, utilities or any other portion of the site plan, may be authorized with the approval of the Development Services Director, or his/her designee and upon completion of the site plan change order procedure. The change order procedure shall be administered by the Development Services Director, or his/her designee and must assure~~

~~that site plan changes conform to City Land Development Regulations and sound planning design principles.~~

~~(2) All other changes in the use, any rearrangement of parking areas, buildings, lots, landscaping, any changes in the provisions of common open space and all other amendments to the approved site plan must be made by the entity who originally approved the site plan.~~

~~(3) No amendment may be made in the approved site plan unless the changes are shown to be required by changes in conditions that have occurred since the site plan was approved or by changes in the development policy of the community.~~

~~**Ord. # 20-07**~~

~~F. Enforcement~~

~~Following the issuance of a building permit, the Chief Building Official and City Engineer shall be informed at each stage of construction and shall inspect the project site to determine if there are any variations between the approved site plan and actual construction. Any variations shall be brought immediately to the attention of the project supervisor, and if the variation is significantly different from the site plan, the Chief Building Official or City Engineer shall immediately stop construction and direct the developer to submit new plans, indicating the variations, to the appropriate review body designated for Class I, II or III site plans, and shall be approved by said body prior to resuming construction.~~

~~G. Certificate of Occupancy~~

~~No Certificate of Occupancy (CO), except for a temporary CO, shall be issued until all site work and building construction is completed as indicated on the approved site plan and construction drawings as required by the Utilities Commission, all City Departments and County and State regulating agencies.~~

~~H. Developments with Approved Site Plans Either Completed or Partially Completed Prior to the Effective Date of This LDR. (Ord. 30-91)~~

~~The following regulations apply to developments with approved or partially approved site plans which contain development constructed prior to the effective date of this LDR:~~

~~(1) The development design and improvement standards contained within this LDR shall apply only to the undeveloped portion of the property proposed for additional development.~~

~~(2) No portion of a site containing existing improvements such as parking spaces, parking lots, parking access aisles, landscape areas or any other required improvements which do not meet the specifications of the LDR shall be required to upgrade the existing improvements to conform to the specifications of the LDR as a result of an additional site plan review.~~

~~However, any additional improvement or expansion of existing improvements constructed after the effective date of the LDR shall conform to the requirements of this LDR.~~

~~(3) The landscaping and buffer requirements of this LDR shall not apply to additional improvements to an existing site requiring a Class I or II site plan except that any parking lot constructed adjacent to a property line after the effective date of this LDR shall be screened along the property line by a minimum 7 foot wide landscaped or natural vegetative buffer, unless otherwise state in Article V.~~

~~(4) The following improvements may be required to conform to the LDR prior to any site plan approval:~~

~~a. sidewalks;~~
~~b. bicycle facilities;~~
~~c. outdoor lighting.~~

~~(5) The following basic services shall be provided for on all sites:~~

~~a. water;~~
~~b. sanitary sewer;~~
~~c. electric;~~
~~d. fire protection~~
~~e. police protection~~
~~f. stormwater management~~
~~g. addressing and mail service;~~
~~h. solid waste management.~~

~~(6) No change to a site shall allow any existing site improvements to be reduced in size or number unless it meets the minimum requirements of the LDR.~~

***

ARTICLE XI
SITE PLAN APPROVAL

Section 1: In general.
Section 2: Site plan classification
Section 3: Approval process.
Section 4: Improvements required.
Section 5: Minimum site improvements.
Section 6: Issuance of site construction permits.
Section 7: Inspections and acceptance.
Section 8: Variances.

Section 1: In general.

The provisions of this article are in addition to those for the subdivision of land, where sale of individual lots is also proposed.

Section 2: Site plan classification and approval responsibility.

(a) *Site plan required.* Prior to issuing a building, water management, or land clearing permit, a site plan drawn to a scale no smaller than 1" = 50' must be submitted to the Planning and Engineering Department and approved by the reviewing entity as indicated below.

(b) *Site plan classification.* There shall be three categories of site plans to be reviewed: Class I site plans; Class II site plans; and Class III site plans. The description of each class of site plan and the entity responsible for reviewing and approving the site plan is contained below. The administrative official or designee, shall determine which site plan review and approval is required in case it is not evident which review and approval procedure is appropriate for a development.

1. *Minor Class I site plan.* A minor Class I site plan is required for the following development:

   i. erection of sign(s);
   ii. erection of fence(s);
   iii. construction of single-family residences;
   iv. construction of duplex residences;
   v. interior remodeling to single-family and duplex residences;
   vi. structures accessory to single-family residences and duplexes;
   vii. driveways and sidewalks for single-family and duplex residences;
   viii. additions to single-family and duplex residences;
   ix. parking lots containing less than 8 automobile parking spaces that are not associated with a structure requiring Class II or III site plan review and approval;
   x. interior and exterior remodeling to existing non-residential or multi-family residential structures; and
   xi. additions or structures accessory to existing non-residential or multi-family residential structures provided said addition or accessory structure does not exceed 10 percent of the existing first floor building area or 500 square feet, whichever is greater.

   The Planning and Engineering Department shall be the entity responsible for reviewing and approving minor Class I site plans.

2. *Major Class I site plan.* A major Class I site plan is required for the following development:

   i. Conversion of a residential unit to a non-residential use.
   ii. Change in use.

   The Plan Review Committee shall be the entity responsible for reviewing and approving major Class I site plans.

3. *Class II site plan.* A Class II site plan is required for the following development:

   i. Multi-family residential projects consisting of 3 through 24 units
   ii. Duplex projects consisting of four or more duplex buildings (8 units)
   iii. New non-residential buildings or structures with a footprint covering an area of 25,000 square feet or less
   iv. Additions to any existing multi-family residential project or existing non-residential structure with an area of 25,000 square feet or less, which do not meet the criteria for Minor Class I site plan review
   v. Accessory structures associated with any existing multi-family residential project or existing non-residential structure with an area of 25,000 square feet or less, which does not meet the criteria for Minor Class I site plan review
   vi. Conversion of a transient lodging facilities that converts 24 or fewer units to multi-family residential or non-residential
   vii. Parking lots containing 8 through 50 automobile parking spaces not associated with a building requiring Class II or III site plan review

   The Plan Review Committee shall be the entity responsible for reviewing and approving Class II site plans.

4. *Class III site plan.* A Class III site plan is required for the following development:

   i. Multi-family residential projects consisting of more than 25 units
   ii. Duplex projects consisting of five or more duplex buildings (10 units)
   iii. New non-residential buildings or structures with a footprint covering an area of more than 25,000 square feet
   iv. Additions to any existing multi-family residential project or existing non-residential structure with an area of more than 25,000 square feet
   v. Accessory structures associated with any existing multi-family residential project or existing non-residential structure with an area of more than 25,000 square feet
   vi. Conversion of a transient lodging facilities that converts 25 or more units to multi-family residential or non-residential
   vii. Parking lots containing more than 50 automobile parking spaces not associated with a building requiring Class II or III site plan review

   The Plan Review Committee shall be the entity responsible for reviewing and approving Class III site plans.

Section 3: Approval process.

a. Minor Class I Site Plan.

1. The applicant shall submit to the Building Department two (2) sets of Class I site plans. The following information shall be included on a Class I site plan:

   i. outside dimensions of proposed structure(s);
   ii. dimensions of proposed structure(s) from property lines;
   iii. description of proposed structure(s);
   iv. height above finished grade of proposed structure(s);
   v. number of square feet of proposed structure(s) in the building footprints;
   vi. lot coverage of structure(s) in the building footprints;
   vii. lot dimensions;
   viii. indicate kitchen facilities;
   ix. location(s) and dimension(s) of accessory equipment (eg. outside central air conditioning units);
   x. number, location, and dimension(s) of parking spaces (including bumper stops);
   xi. location of jurisdictional wetlands boundary line if on or within 25 feet of subject property;
   xii. survey of property. The survey shall be no more than two years old, unless the site has been altered by an act of nature;
   xiii. water management plan for new single-family and duplex developments; and
   xiv. topographic information.

b. Major Class I Site Plan.

1. *Pre-application meeting.* Prior to submitting an application for a building permit for work to convert a residence to a non-residential use, or prior to changing the use of a building, as defined in article II of this code, the developer or the developer's representative shall meet with the Plan Review Committee (PRC), in order to verify the steps necessary for application and review, and discuss potential issues regarding the conversion. Within five (5) business days of the meeting, staff shall forward to the developer a written list of items that must be addressed either as part of the building permit or prior to receiving a Certificate of Occupancy for the building. No Certificate of Occupancy and/or business tax receipt shall be issued for the property until all items included in the written letter are addressed.
2. *Application and fee.* Application for a major Class I site plan review shall be on the form prepared by the City for such development and shall be accompanied by the fee established by the City Commission.

c. Class II or Class III Site Plan.

1. *Pre-application conference.* Prior to filing for Class II or Class III site plan approval, the developer, or the developer's representative must meet with the Plan Review Committee (PRC) members in order to discuss potential issues regarding the proposed projects. Comments made at the pre-

application meeting are advisory and intended to provide guidance and are non-binding on the formal review of the site plan.

i. *Application.* Application for Class II or Class III site plan approval shall be made to the Planning and Engineering Department utilizing the form provided by the department for that purpose, and accompanied by the appropriate review fee as adopted by resolution of the City Commission. Initial application shall be accompanied by ten (10) copies of the proposed site plan.

(a). *Review of application materials.* Within two working days of the receipt of an application, the department shall determine whether the application is complete. Incomplete applications shall be returned to the application with the deficiencies noted in writing. Re-application shall be accompanied by a re-application fee as adopted by resolution of the City Commission.

(b). *Initiation of development review.* When an application is determined to be complete, it shall be scheduled in accordance with the adopted submittal deadline calendar for the corresponding PRC meeting, and the applicant shall be so notified. All application packages must be submitted by 5:00 p.m. on the deadline date, in order to be scheduled for the next available PRC meeting.

ii. *Site plans and exhibits.* The following information shall be shown on, or enclosed with, the site plan submitted for approval, unless specifically waived by the PRC member responsible for review of that item. The site plan itself shall be drawn at a scale of no smaller than one inch equal to 50 feet.

(a). Engineered drawings, prepared by an architect or engineer registered in the State of Florida and based on an exact survey of the property, showing the following:

- Cover sheet:
  - Project title
  - Project location map
  - Index showing the title of each sheet and page number in consecutive order
  - name(s) of property owner(s), project planner, engineer, landscape architect and architect
  - Number of residential or transient lodging units and density per acre, if applicable
  - Overall building square footage; number of seats proposed; and maximum number of occupants permitted by the Fire Marshal, if applicable

- Parking calculation showing the number of off-street parking and loading spaces required and provided, including handicapped parking

- Overall site plan sheet:
  - Property dimensions, legal description, total gross acreage, and zoning district of subject property and adjacent property
  - If project is phased, dimensions and general location of each phase
  - Location and dimensions of buildings, fences, docks, and other structures and improvements on this proposed site, and on adjacent property within 50 feet perpendicular to property lines
  - Common open space areas and improvements, if applicable
  - Location of screened garbage collection area(s) and detail of proposed enclosure
  - Location and dimensions of easements, identified by type (utility, drainage, etc.) or a note that no easements exists
  - Location of jurisdictional wetlands boundary line if on or within 25 feet of the subject property; and the location of the 25' foot wide upland buffer
- Paving, drainage and grading plans:
  - Existing and proposed topography at one foot contour intervals;
  - Dimensions of streets, driveways, sidewalks, entranceways, and off-street parking areas
  - Each off-street parking space shall be consecutively numbered
  - Location and dimension of the bumper stop or curb stop
  - Crown elevation of nearest adjacent street(s)
  - Finished floor elevation of proposed buildings (must be 12 inches minimum above the crown elevation of highest adjacent street)
  - Erosion control plan
- Utility plan:
- Tree survey showing the location of all trees six (6) inches in diameter of greater at four (4) feet above ground level for properties west of the Indian River. For properties east of the Indian River, the tree survey shall show all trees four (4) inches in diameter or greater when measured four (4) feet above ground level
- Landscaping plan:

- Tree removal and mitigation table providing the following information;
  - type, size and cross-sectional diameter of each protected tree that will be removed;
  - total cross-sectional diameter of all trees being removed;
  - calculation showing total square inches required to be replaced; and
  - list of replacement tree types and sizes.
- buffer planting table providing the following information;
  - length, width and total area of the required landscape buffer along each property line;
  - calculation showing the square footage required for trees, shrubs and groundcover; and
  - calculation showing the number and square footage of trees and shrubs provided in each buffer area
- interior parking lot landscaping table providing the following information;
  - total paved area in parking spaces and drive aisles;
  - ii. calculation showing the total square footage required for interior parking lot landscaping; and
  - calculation showing the total square footage provided for interior parking lot landscaping

- Photometric plan:
  - Location of parking area and other outside lighting
  - Detail of the lighting system showing style height, candlus curve, and profile of the shielded non-glare fixture
  - Note indicating lighting to be shielded non-glare fixture
- Architectural sheets:
  - Elevation drawings, displaying all sides of the proposed building(s), and specifying the construction materials used, and height of building from base to the highest portion of the structure;
  - Entrances and exits of buildings and structures
- Copy of State or County driveway permits, if applicable
- Copies of agreements between the owner of a hazardous waste generating business and a licensed

hazardous waste transportation company and hazardous waste disposal company

- All projects adjacent to the Atlantic Ocean shall also provide an opinion of title, signed by a licensed attorney at law. The opinion of title must be in a form acceptable to the City Attorney and the information provided in the opinion of title must be reviewed and approved by the City Attorney

iii. *Review process.*

(a). *Plan Review Committee (PRC).*

1. All applications shall be reviewed by the PRC and members' comments shall be delivered and discussed at a regularly scheduled meeting. Formal comments of the PRC shall be transmitted in writing to the applicant at the regularly scheduled meeting.
2. Plans must be resubmitted in response to PRC comments no later than 120 days after the original PRC review.
3. Following resubmittal, PRC members shall have 10 working days to review and approve the revised plat and plans or provide the administrative official with a list of outstanding comments. Failure to review and approve, or provide a list of outstanding comments to the administrative official shall constitute approval on the part of the PRC member.
4. PRC approval shall constitute final approval for Class II site plans.

(b) *Planning and zoning board approval.* In addition to PRC review and approval, Class III site plans must also be reviewed and approved by the planning and zoning board. Only projects with ten or fewer outstanding technical and procedural comments shall be submitted by the department to the planning and zoning board for consideration, unless waived by the planning and zoning board.

1. *Planning and zoning board action.* The planning and zoning board shall consider the site plan at a regularly scheduled meeting, and determine if they meet the requirements of this code. The applicant or his/her authorized agent shall be present at the consideration by the planning and zoning board. Upon consideration of the comments of the PRC and the public, the board shall take one of the following actions:
   a. Table the consideration of the project to the next regularly scheduled meeting to allow for the resolution of outstanding issues.
   b. Disapprove the proposed site plan.

c. Approve the proposed site plan.

d. Approval the proposed site plan with conditions.

(c) *Appeals.* Final planning and zoning board action on a site plan application may be appealed to the City Commission. Request for appeal must be filed with the Planning and Engineering Department within 30 days of planning and zoning board action.

(d) *Failure to provide timely plan resubmission.* Failure to meet any of the resubmission deadlines cited above shall require the applicant to pay late fees or file a new application, including the appropriate review fees, whichever is deemed applicable by the administrative official.

(e) *Extension of resubmittal deadlines.* The administrative official may extend the resubmission deadlines cited above, when warranted by unforeseeable events. A request for extension must be filed in writing with the planning and engineering department explaining the circumstances justifying the extension and include a resubmittal extension fee as adopted by resolution of the City Commission.

(f) *Expiration.* Class II site plan approval shall expire two years after the plan review committee approves the site plan. Class III site plan approval shall expire two years after the planning and zoning board approves, or conditionally approves, the site plan.

A site plan shall not expire so long as a building permit remains active without interruption. However, if the owner abandons the site for a period of six (6) months, or the owner fails to perform any meaningful or significant work on the site for a period of six (6) months, or if the owner fails to achieve substantial performance of the work described in the building permit within two years of the date of issuance, the site plan approval shall expire. Meaningful or significant work shall mean work performed in a workman like manner that is carried out in a manner that the obvious purpose and intent of the work is to complete the site within the customary period of time for the construction industry. Substantial performance shall be as defined in Section 304.00(F) of this code.

If a proposed site plan is to be constructed in phases, the applicant shall include a phasing schedule with the application. If construction on the initial phase begins within

two years from the date of approval, the site plan shall remain valid for the term of the approved phasing schedule.

(g) *Amendments to an Approved Site Plan.* No changes may be made to an approved site plan except under the procedures provided below:

(h) Minor changes in the location, siting and height of the buildings, structures, parking spaces, utilities or any other portion of the site plan, may be authorized with the approval of the administrative official and upon completion of the site plan change order procedure.

All other changes in the use, any rearrangement of parking areas, buildings, lots, landscaping, any changes in the provisions of common open space and all other amendments to the approved site plan must be made by the entity that originally approved the site plan.

(i) *Enforcement.* Following the issuance of a building permit, the Chief Building Official and City Engineer shall be informed at each stage of construction and shall inspect the project site to determine if there are any variations between the approved site plan and actual construction. Any variations shall be brought immediately to the attention of the project supervisor, and if the variation is significantly different from the site plan, the Chief Building Official or City Engineer shall immediately stop construction and direct the developer to submit new plans, indicating the variations, to the appropriate review body designated for Class I, II or III site plans, and shall be approved by said body prior to resuming construction.

Section 4: Improvements required.
All final site development plans for new construction, increases in the size of a structure, or changing the use of structure, shall include all improvements required by this code and as outlined in this article.

a. *Completion of improvements prior to issuance of certificate of occupancy.* A certificate of occupancy shall not be issued by the building division until required improvements have been inspected and accepted by the responsible department or entity.
b. *Adopted of standard construction details.* All construction shall comply with the standard construction details for utilities as adopted by the Utilities Commission, City of New Smyrna Beach.
c. *Improvement or expansion of existing development.* No change to a site shall allow any existing site improvements to be reduced in size or number unless it meets the minimum requirements of the LDR.

d. *Upgrade of site improvements for existing development.* Unless otherwise noted herein, the following activities shall require the upgrade of existing site improvements to satisfy current code requirements. Such upgrade shall include, but not be limited to, the provision of paved, curbed and expanded parking facilities, stormwater retention, landscaping and buffers, irrigation, signage and architectural design as prescribed by this code. The administrative official may waive some or all of these required improvements based upon the extent of the proposed activity and the condition of the existing site development.

1. Change of use as described by the building code, the Standard Industrial Classification Manual or when determined to be of significance by the administrative official.
2. Re-use of any site development which has been abandoned as described by this code.
3. Substantial improvement to the property which require Class II or Class III site plan approval.
4. As a condition for granting approval of a special exception, variance, or change of one non-conforming use to another non-conforming for existing site developments, when appropriate.

e. *Modification of approved final site development plans/existing site developments to mitigate impacts of eminent domain actions.*

1. The owners of any property that has been the subject of an eminent domain action shall submit site development plans designed to mitigate the impacts of such eminent domain actions on the right-of-way buffer yards and parking/vehicular use areas within such property.
2. Mitigation requirements shall be as follows:
   i. Irrigation systems shall be provided as required by article VI of this code
   ii. New parking/vehicular use areas, including revised or new parking spaces, shall be provided in compliance with the requirements of article VI of this code
   iii. Right-of-way buffer landscaping and landscaping for vehicular use/parking areas shall be provided as required by article VI of this code.

Section 5: Minimum site improvements.

All site development plans shall reflect the installation of all improvements required in this code, in a manner consistent with standards of this code. Improvements include stormwater management systems, utilities, parking and loading areas, lighting, sidewalks, and landscaping and buffering, and any other facility required by this code.

a. *Easements and miscellaneous dedications.* The following minimum number and size of easements and dedications shall be reflected on the plat drawing. Larger easements may be specifically required based on the size, depth, or special maintenance requirements of a facility. All easements or dedications shall be graphically depicted unless otherwise noted.

1. *Drainage facilities.* A drainage easement shall be granted to the city where a proposed subdivision is traversed by any existing or proposed watercourse, canal, ditch, storm sewer, or other drainage way. Minimum size shall be as follows:

i. Lake or retention areas shall be covered by an easement extending to ten feet beyond the top of bank.
ii. Canals, water courses, drainage ways, channels or streams shall be covered by an easement extending to twenty feet beyond the top of bank on one side, and 20 feet beyond the top of bank on the other side, if needed.
iii. Swales, or any other facility up to 2 ½ feet deep and with side slopes no greater than 4:1 shall be covered by an easement extending to the top of bank.
iv. Storm sewer lines shall be covered by an easement of no less than 20 feet, centered on the centerline of the pipe.
v. The city may require the dedication of a drainage right-of-way over major facilities providing area-wide drainage.

2. *Utilities.* A utility easement shall be granted to the Utilities Commission, City of New Smyrna Beach wherever a proposed utility line or other facility is planned or located on or adjacent to any property not otherwise dedicated to or owned by the Utilities Commission. The size and location of such easements shall be determined by the Utilities Commission, City of New Smyrna Beach.

3. *Conservation easements.* Conservation easements shall be granted to the city or other appropriate governmental agency as follows:
i. Over all required tree preservation areas.
ii. Around all individual specimen trees required to be preserved.
iii. Over all wetlands, wetland buffers, and wetland mitigations areas.

Section 6: Issuance of site construction permits.
Once a site plan development order has been issued, the developer may request the issuance of site construction permits.

(a) *Pre-construction meeting.* A pre-construction meeting is required prior to the commencement of any construction activity, including clearing. Failure to begin construction within 45 days after the pre-construction meeting will require an additional pre-construction meeting. The requirements of this subsection may be modified by the administrative official in cases where the size, scope or relative lack of complexity of development plans suggests a lesser need for coordination.

1. *Attendance.* Upon request of the developer, the planning and engineering department shall schedule a pre-construction meeting to be attended by the following individuals or their representatives:
i. Developer; developer's engineer(s); and developer's landscape architect(s), appropriate.
ii. All contractors for the construction of the project improvements.
iii. All franchised utility companies.
iv. PRC members and appropriate city and Utilities Commission inspectors.

2. *Agenda:* The meeting shall include discussion of the construction schedule, construction permit conditions imposed by the city and other agencies, procedures for inspection and testing, coordination with the Utilities Commission and private utility companies, maintenance of

existing drainage ways, traffic maintenance, dewatering, access for construction stockpiling areas, the general construction requirements for site development and other details deemed necessary to assure safe construction in compliance with this code and with minimum disturbance to surrounding areas.

b. *Pre-construction submittals required before scheduling.* The following exhibits or documents shall be submitted to the department one week prior to scheduling the pre-construction meeting for the issuance of development permits:

1. Development order.
2. Copies of all contracts for the construction of the improvements.
3. Copies of certificates of insurance for all contractors providing workman's compensation as required by law and comprehensive liability insurance covering bodily injury, death and property damage, with limits of not less then $100,000.00 per person and $300,000.00 per occurrence, with the city listed as an additional insured and held harmless, as approved by the city attorney.
4. Copies of all applicable federal, state, regional, and county agency permits for construction.

c. *Pre-construction submittals required at or before the meeting.* The following exhibits or documents shall be submitted to the department at or prior to the pre-construction meeting for the issuance of development permits:

1. Proof that all development order contingencies have been met, if applicable.
2. Inspection fee payment as adopted by the city commission.
3. Plans for the management of traffic and dewatering activities, if applicable.
4. Construction schedule.

d. *Issuance of notice of proceed.* Upon receipt of all required documents and completion of the pre-construction meeting, the City Engineer shall issue a notice to proceed. The notice to proceed is contingent upon compliance with the development order. In addition, the city engineer may attach substantive and procedural contingencies on construction based on the requirements specified at the pre-construction meeting.

Section 7: Inspections and acceptance.

a. *Inspections.* The city shall inspect construction for conformance with the terms of the development permit. The city shall have the authority to reject materials or suspend work when construction is not in conformity with the terms of the development permit. The developer shall notify the city of the commencement of major phases of construction as discussed in the pre-construction meeting.

b. *Testing.* The developer shall provide laboratory tests to verify specifications of materials as required by this code. The city reserves the right to require additional testing based on unusual circumstances encountered in the field.

c. *Request for final inspection.* Final inspection of site improvements shall be scheduled no more than five working days after receipt of the following documents, unless a later date is requested by the developer:

i. *Certification of completion by the engineer of record and/or landscape architect, as appropriate.* Upon completion of the site improvements, the developer's engineer and/or landscape architect, as appropriate, shall submit a signed and sealed certificate stating that the work was constructed under his supervision, and has been completed in substantial conformance with the approved development plans in compliance with the requirements of this code.

ii. *As-built drawings.* One mylar copy and one electronic copy of as-built drawings. The mylar copy shall be signed and sealed by the architect or engineer of record, landscape architect, as appropriate, and surveyor.

iii. *Testing reports.* Copies of all testing reports shall be submitted.

d. *Final inspection report.* A final inspection report will be issued by the city, noting any discrepancies for the development permit, corrective actions required, and any site re-inspection fee required. In addition, the report shall review final documentation required for acceptance of the site improvements once any necessary corrections are made.

e. *Re-inspection.* Re-inspection may be requested at any time, subject to remittance of a site re-inspection fee, when required. Re-inspection will be scheduled within three working days, and an inspection report issued, if necessary.

f. *Acceptance of site improvements.* Upon completion of any corrective actions required upon inspection, site improvements shall be accepted by the city upon the receipt of the following:

1. All required certifications of completion under federal, state, regional, and county agency permits.
2. Recording of any additional on- or off-site easements required by the development permit or this code.

Section 8: Variances.

a. *Jurisdiction.* Variances to design or technical requirements of this code may be granted by the planning and zoning board. Appeals from the decision of the planning and zoning board shall be heard by the city commission.

b. *Procedure.* Application to vary from required improvements or design criteria shall be as outlined in article III of this code.

c. *Administrative variances to standard construction details.* Variances to the standard construction details; paving and drainage, and the standard utility details may be granted by the PRC member responsible for review of that requirement. Administrative variances shall be limited to alternative materials, technologies, techniques, or other means which are equivalent to the materials, technologies, techniques or other means outlined in the standard details.