June 28, 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, July 11, 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 16, 2011
Regular meeting held June 6, 2011

PUBLIC PARTICIPATION

VISIONING

- Volusia County Presentation on Smart Growth

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. A-6-11: FREEMAN / CANAL STREET
Diane K. and Thomas E. Freeman, 5954 Raleigh Barrows Court, Port Orange, Florida, 32127, applicants and property owners, request annexation; *Comprehensive Plan* amendment from County Commercial to City Commercial; and rezoning from County B-5, Heavy Commercial to City B-3, Highway Service Business District. The subject property consists of approximately 0.6 acres and is generally located southwest of the intersection of Canal Street and Ingham Road.

C. A-7-11: SALAMONE/1250 BOLTON ROAD
Fillippa D. Salamone, 1250 Bolton Road, New Smyrna Beach, applicant and property owner, requests annexation, *Comprehensive Plan* amendment from County Urban Low Intensity to City Low Density Residential, and rezoning from County R-4 – Urban Single Family Residential to City R-2 – single Family Residential. The subject property is approximately 0.387 acres and is generally located north of Eslinger Road and southwest of the intersection of Bolton Road and Magnolia Drive.

D. V-6-11: 837 & 839 E 17TH AVENUE
Hal Spence, Esq., 221 North Causeway, New Smyrna Beach, Florida 32169, applicant on behalf of the Estate of Genevieve Zdunowski, 839 East 17th Avenue, New Smyrna Beach, Florida 32169, owner, requests variances to the dimensional requirements to zoning district R-2 Single Family Residential reducing the minimum lot frontage from 75 feet to 49.97 feet, reducing the minimum side yard from 7.5 feet to 4.5 feet, and reducing the minimum lot size from 8,625 square feet to 7,500 square feet.

E. V-7-11: WALLSCHLAEGER / 107 DONLON DRIVE
Glenn D. Storch, P.A., 420 South Nova Road, Daytona Beach, Florida, 32114, applicant on behalf of the property owner, Mark Wallschlaeger, 107 Donlon Drive, New Smyrna Beach, Florida, 32168, requests a 21-foot variance from the minimum required 25-foot upland buffer adjacent to a wetland, to allow a swimming pool to be approximately four feet from the wetland line. The subject property is zoned R-1, Single-Family Residential; contains approximately 1.3 acres and is generally located at the east end of Donlon Drive, east of South Riverside Drive and west of the Indian River.

F ZT-9-11: BOAT SLIP ALLOCATIONS
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 establish policies regarding the allocation of boat slips from the City's aggregate slip pool.

G. ZT-12-11: SIDEWALK FUND
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 establish a sidewalk fund.

H. ZT-13-11: PAIN MANAGEMENT CLINIC MORATORIUM
The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval a temporary moratorium on the issuance of business tax receipts, building permits, development orders and other approvals related to pain clinics and pain management clinics.

I. ZT-14-11: INTERNET CAFÉ MORATORIUM
The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval of a temporary moratorium on the issuance of business tax receipts, building permits, development orders and other approvals related to internet cafes.

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 Workshop on Monday, May 16, 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
Jason McGuirk
Laurene Herwald
Brooks Casey

Also present were Gail Henrikson, Planning Manager, Marissa Moore, City Planner, Commissioner Plaskett, Commissioner Grasty and members of the public.

Travous Dever, Ian Ratliffe and Kenneth Bohannon were absent.

DISCUSSION

Ms. Henrikson stated the purpose of the meeting was to discuss State Road 44 and gave a power point presentation. She reviewed a timeline of development along SR44 up to 2010. She pointed out areas of development throughout the years but explained that there has been no significant development over the past 15 years. She discussed various infrastructure and regulatory issues that may be affecting development along SR 44.

Public Participation

Barbara Herrin, 465 Wildwood Drive, New Smyrna Beach, stated that a letter was submitted with regards to where the Corridor 44 Association stands on any changes. She stated that some changes would be acceptable and others would not be acceptable.

Commissioner Plaskett asked how long Kmart has been at its location.

Ms. Henrikson stated she believed it was constructed in the 1980's.

Ms. Moore stated that all the trees along SR 44 and those immediately in front of Kmart were all planted at the same time. She stated there is a big difference in the size of the trees. She stated that there are a lot of benefits to having these landscaped areas, including noise abatement and shade.

Mr. McGuirk asked if the growth of the trees have to do with the size of the area surrounding the tree.

Ms. Moore stated that the size of the tree well does affect how the tree grows.

Mr. McGuirk asked Ms. Moore to do some additional research regarding the minimum distance that development should be kept from trees that are to be preserved. He stated that having just a general rule of thumb would be helpful.

Glenn Storch, 420 South Nova Road, Daytona Beach, Florida, stated that he liked the flexibility that was used in the Home Depot site. He stated that he was in favor of all the items that the staff had identified but he wanted to add one more. He stated that Daytona created a taxing district that helped maintain the median landscaping. He stated it was approximately $100 dollars or so per year per business. He stated that he recommends the City consider this.

Ms. Moore stated that the City had hired a consultant who has suggested the "adopt a median" program, which would allow a business to adopt the portion of the median that is located in front of the business.

Ms. Henrikson asked Ms. Moore to speak about the entry way features that are currently under design.

Ms. Moore stated that the City received funds from the Volusia County Transportation Planning Organization and FDOT for gateway features at SR 44 and I-95 as well as Canal Street and SR 44. She stated that on Tuesday, May 24th, the two conceptual plans for each location would be presented to the City Commission. She gave brief descriptions of the proposed projects.

Mr. McGuirk acknowledged Commissioner Grasty and stated that he was opening up the topic to the public for discussion.

No Public Participation.

Mr. McGuirk opened up Board discussion.

Mr. McGuirk asked how the Utilities Commission assessments are calculated.

Ms. Henrikson stated that at the time of site plan review, the applicant would be referred to Randy Walter. She gave an example using the ABC Fine Wine and Spirits application.

Mr. McGuirk stated that it would make sense to him that because SR 44 is a commercial district and a main artery into the City, that utilities need to be run out there. He stated that he understands that the Utilities Commission cannot afford to foot the bill. He stated that the City has an infrastructure problem. He stated that the City should create an assessment district along all of State Road 44 where utilities are lacking.

Ms. Herwald stated that the owners of those vacant lots may not have the funds for the assessment.

Ms. Henrikson stated that staff would be sending out a formal petition to all the property owners with regard to creating an assessment district.

Mr. Clark asked if there were grant funds to help with this.

Ms. Henrikson stated that there might be under CDBG but wasn't sure if SR 44 would qualify. She also stated that there would not be enough funds to cover the entire cost.

Mr. Casey stated that he was opposed to making property owners pay for service they may not be ready to use.

Commissioner Grasty spoke with regards to the sewer line to Venetian Bay.

He also mentioned that a state law was being proposed which, if it were to go into effect, would required every septic system to be inspected. He stated that those inspections would cost the property owner $300 to $500 dollar every five years.

Mr. McGuirk stated that the City needs to move forward with regards to infrastructure improvements. He stated his intention was to have a list to bring in front of the City Commission. He asked whether there was a consensus among the Board members to do this.

Glen Storch, discussed access management stating that cross-access easements are quite typical. He stated that the cross-access easements would increase traffic in front of businesses and the businesses may benefit. He stated he has not run into any issues with these cross-access easements and has generally only seen benefits to all the businesses.

Mr. Clark stated his concerns that a lot of the roads off SR44 are narrow roads and did not feel that the City has the same situation as Port Orange or Ormond Beach.

Ms. Herwald stated that she does everything possible to stay off SR 44 and asked if Paige Avenue could be used as a collector to take some traffic off SR 44.

Mr. Casey stated that in Ormond Beach there are some residential neighborhoods along Granada and maybe the City should look at that area.

Mr. McGuirk asked if the City wants to be able to access businesses from the side roads.

Ms. Henrikson stated that she was asking for clarification from the Board as to whether access should be permitted from side streets at all. If the Board agreed that there should be access from the side streets, should that access be mandatory or should the developer be able to decide whether the driveway should be on State Road 44 or on the side street. She added that if there is only one access point into a

multi-business development, there should also be a requirement to provide some kind of stabilized emergency access in addition to the main access off the main street.

Mr. McGuirk stated that he would like to leave the option of having access from a side street open.

Ms. Herwald suggested for corner properties to limit access from SR44 and have access just from a side street. She stated that it would help the traffic issues that already exist on SR 44. She asked Ms. Henrikson if that kind of direction was what the staff was looking for from the Board.

Ms. Henrikson stated yes, that she was looking from the Board whether it should be mandatory to have access only from the side street on corner lots or would it be optional.

Mr. McGuirk agreed that there should be a limit to how much access from SR 44 is allowed.

Commissioner Plaskett stated that Ms. Henrikson should do a study first before discussing in further detail access points or other proposed regulations. She stated that she had worked with FDOT and there are minimum standards on arterial roadways. She spoke of the use of deceleration lanes on Dunlawton Avenue and Granada Boulevard. She stated that most developers don't want to pay for those. She stated that a study to look at the area's issues should be done first before going on with further discussion and asking for any guidance from the Board. She stated that it is a difficult decision to make without taking more into consideration at this time.

Mr. McGuirk stated that he understood what Commissioner Plaskett was stating but that he was comfortable with making a recommendation tonight on the use of side roads as an option and that was all that he was looking at right now.

Mr. McGuirk asked the Board what their consensus was at this time.

Ms. Herwald stated she could not see why the Board would say no to side street access, especially without a study.

Mr. Casey stated that he did not want to prohibit any access.

The Board agreed to keep the side street access on the table.

The Board discussed design guidelines and agreed on the following:

1. Minimum 45-foot setback to coincide with the landscaping buffer and easements.

2. Landscaping and UC Easements: Neither the Board nor staff recommended any changes
3. Permitted Uses: The Board consensus was generally in favor to allow additional uses along State Road 44
4. PUD Size: The Board consensus was to reduce the minimum PUD size requirement from 2.0 acres for commercial development to 0.75 acres
5. Widening of State Road 44: The Board consensus was that widening of State Road 44 would likely have to occur at some time in the future and that the City should not close the door on that option. The Board generally agreed that alternate east/west routes needed to be reviewed.
6. Design Guidelines: The majority of members agreed that some type of design guidelines should be drafted for new development along State Road 44. Brooks Casey stated that he opposed creating any design guidelines.

Commissioner Grasty stated that he had spoken with a couple of politicians in Port Orange regarding Dunlawton Avenue. He stated that they wished they had better signage to tell someone where they were at. He stated some of those places have shared driveways, too. He also mentioned the landscape buffers and the issue with power lines.

REPORTS AND COMMUNICATIONS BY THE BOARD

None.

REPORTS AND COMMUNICATIONS BY THE STAFF

Ms. Henrikson provided an update of the project list from the December 2010 P & Z Workshop to the board.

ADJOURNMENT

With there being no further business, the meeting was adjourned at 8:45 p.m.

The Local Planning Agency/Planning and Zoning Board held a regular meeting on Monday, June 6, 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
Travous Dever
Kenneth Bohannon
Jason McGuirk
Laurene Herwald
Ian Ratliff

Brooks Casey was absent.

Also present were Planning Manager Gail Henrikson, Planner Marissa Moore, Planner Kevin Jameson; Assistant City Attorney Greg McDole, Recording Secretary Debbie Jenkins 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 May 2, 2011, seconded by Mr. Bohannon. Motion passed on a roll-call vote, 5-0. Laurene Herwald abstained as she was not present at the May meeting.

PUBLIC PARTICIPATION
None.

VISIONING
Pain Management Clinics

Ms. Henrikson stated that the staff had been contacted by the New Smyrna Beach Police Department regarding their concerns about Pain Management Clinics and the need to establish a moratorium on them. She stated that this had come before the board in December 2010 and no action was taken at that time. She stated that staff was looking to the Board to make a recommendation as to whether a moratorium should be enacted. She stated a representative from the NSBPD was in attendance to speak on the matter.

Sergeant Eugene Griffith, representative for the New Smyrna Beach Police Department, gave a power point presentation regarding prescription drug overdoses. Sgt. Griffith stated that in Volusia County in the last two years, 277 people have lost their lives and since his study, two more locally have died. Sgt. Griffith stated that New Smyrna Beach has had ten deaths in the last two years and that did not include the two recent deaths, one of which was here in New Smyrna Beach. He stated that within the statistics for

New Smyrna Beach, the average age of death is 43 years. He stated that in twenty states the leading cause of death has been prescription overdose whereas the leading cause of death used to be car crashes. He stated that with the increased drug abuse, crime in the city has increased as well within the past two years. He stated that the police have seen 58 robberies and over 1,000 burglaries within last six months. He also stated that there have been 88 daytime residential or car burglaries. He stated that this shows the brazenness of these drug users. He stated that they are addicted and will do anything to obtain drugs. He pointed out the cities that have already placed a moratorium on new pain management clinics. He provided ordinances from other cities and stated Edgewater, Daytona Beach Shores, Port Orange, Ponce Inlet and Daytona Beach all have enacted moratoriums. He stated these businesses are very lucrative and he estimates that these doctors are making between $100,000 to $200,000 a week. He stated that if New Smyrna Beach does not act on this these clinics will open up here. He stated once they are here it would be very difficult to get rid of them. He stated that a clinic had opened in Port Orange and they had a problem with people sleeping in the parking lot overnight waiting for the clinic to open up. He believes this would lead to more crimes being committed in order to get more money for the drugs. He added that this was the new crack cocaine only ten times worse.

Mr. McGuirk stated that in his neighborhood, he had seen the effects on the motels. He stated that since the Sandman Motel had closed he had noticed a lot of people just walking around and up and down the street all day long. He said they were just hanging around on the corners.

Sgt. Griffith stated that a lot of these people feel they are not breaking the law because they have prescriptions. He added that many of these people were using phony MRI's and other fake documents to get these drugs.

Mr. McGuirk stated he saw an article where it stated that Florida wrote prescriptions for 41 million pills and that the next closest was Ohio at about a million.

Sgt. Griffith stated that 90% of the drugs provided to the entire nation had come out of Florida.

Ms. Henrikson stated that she was looking for direction from the Board as to whether there should be a moratorium or not. She stated that she would also want some direction with regards to the zoning specifics to be included with the moratorium but that could be discussed at another time.

The general consensus of the Board was that there should be a moratorium. Mr. Bohannon stated he was still "on the fence" about it. He stated that the focus should be on the doctors who run these clinics and not on the clinics themselves. He stated that there were good intentions when the clinics had first started. He stated the intent was to help those who really needed it.

<u>Public Participation</u>
None.

Draft revisions to alcohol regulations

Ms. Henrikson reviewed the current regulations and the proposed changes with the Board. She stated that this item was only being presented for discussion tonight. She stated that there have been concerns from the merchants and business owners on Flagler Avenue as to how this would affect the image of Flagler Avenue.

Public Participation

Shelley Pastene, 421 Flagler Avenue, New Smyrna Beach, stated that this is a touchy area because the Planning and Zoning Board has to deal with the image and perception of New Smyrna Beach. He spoke about Winter Park's image that they have created. He stated that Winter Park was a classy place to go visit. Winter Park was a very strict community. He stated that when he was in Orange County, Winter Park had allowed only nine liquor licenses within their municipality. He stated that the city needs to be selective. He stated that the owners on Flagler Avenue need to protect their businesses. He stated that the City should look very closely at what Winter Park has done. He does not want to live or work in a community that has anything less than the finest.

Mr. Ratliff stated that staff's proposal appears to be a reasonable approach.

Mr. Dever stated there were two sides to the argument. He stated that the City's businesses should be driven by what the market would allow. He stated that he did not feel the changes to the distance requirements would affect the City all that much.

Mr. Clark stated that there had been prior discussions on this and it appeared that what had been discussed had already been incorporated here and he was fine with that.

Ms. Herwald asked if this would be specific to neighborhoods.

Ms. Henrikson stated that the proposed changes were intended to be city wide. However, she added that the City could draft for different regulations for different areas because what might be appropriate for one part of the City might not be for another area.

Mr. Dever agreed with Ms. Henrikson concerning drafting different regulations for different neighborhoods.

Mr. McGuirk stated he agrees with the direction that staff was proposing but stated that the key to achieving what Winter Park has would be with reference to the quality of a business rather than how much alcohol was permitted.

Ms. Henrikson asked for feedback from the board concerning the 300-foot distance requirement from a Church and how the Board felt this should be addressed.

Mr. Dever stated that exemptions should be allowed when applying for licenses within older, more densely developed areas such as the downtown area. He stated that there should be some flexibility.

Ms. Henrikson asked the Board whether they felt there should be a distinction between beer and wine versus hard liquor.

The board's general consensus was that there was not a need to make a distinction between the two.

Draft special events ordinance

Ms. Moore stated that this ordinance was based on the Port Orange ordinance. She stated the ordinance was needed to avoid subjectivity and to establish consistent criteria that could be used to review special event applications. She stated that the other issues would be signage, fees for the event set up/take down and defining what exactly constitutes a special event.

Public Participation

None

Mr. Ratliff asked if the local Merchants Association was asked for input on this.

Ms. Moore stated that she had spoken with someone on the Flagler Avenue Hospitality Committee prior to the meeting just to open a dialogue, however, it has not been brought up at a specific meeting. She stated that the City's Special Events Committee meets weekly. She stated that the timing for requests to address issues is 45 days for major events and 21 days for minor events.

Mr. Dever stated that while he was okay with the guidelines, these events are important to New Smyrna Beach and he doesn't want it to become too difficult to apply for the events.

Ms. Moore stated that the intent of the ordinance was to be fair and consistent. She stated that consideration was given to incorporate the wayfinding sign program for special events.

Mr. Clark stated that there was a real need for guidance, especially with regard to signs and that he liked the fact that the Special Events Committee meets weekly.

Ms. Herwald stated that there are direct costs for these events and they need to be defined in order to for the City to recover those costs.

Mr. Bohannon asked whether the events process could be streamlined by allowing the committee to address those issues without having to go before the City Commission.

Ms. Moore stated that due to issues such as street closures and alcohol consumption the City Commission needs to be involved.

Mr. McDole stated that Chapter 316 requires that the City Commission approve street closures.

Mr. McGuirk stated that he liked the signs that the Parks and Recreation Department placed in the rights-of-way for special events. He stated that the ordinance should create a standard as to the criteria and where the placement of the signs could go. He stated that the events could be paid by the permitting process. He said the fees collected would be just to recover the cost of the event and not for profit.

Ms. Moore asked the Board whether snipe signs should be allowed.

Mr. McGuirk stated that there should be a fee for any violations with regard to the signs.

Ms. Moore asked how to address the parking issues for these events. She stated that parking tickets were given out at the last Images event.

Mr. McGuirk stated that the police should make that judgment call. He stated that he did not feel it was necessary for the Board to take action regarding parking at this time.

Public Participation
None.

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.

Mr. McGuirk announced that staff was requesting that this case be continued.

Mr. Ratliff made the motion to continue until the July 11, 2011 Planning and Zoning Board Meeting, seconded by Mr. Clark. The motion passed unanimously on roll call vote, 6-0.

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.

Mr. McGuirk swore in the staff.

Mr. Jameson presented the staff report. He stated that this non-confirming property had been grandfathered in. He stated that not all the variance criteria had been met and that staff was recommending denial.

Gary Zollo, 15 Camino Real Court, Edgewater, Florida, stated he was here to ask the board to allow a variance so that he could replace the old lift with a new one.

Mr. Clark asked whether or not it could be enclosed.

Mr. Zollo stated that he would need to speak with the landlord. He stated he will do whatever he has to do to make this work.

James J. Earl, Earl's Transmission, 601 North Dixie Freeway, New Smyrna Beach, stated that the lift was a tool used to do his job. He stated that he needed to be able to utilize his tools in order to do his work. He stated he has an outside lift that he had been trying to get squared away with the city. He stated that he had been working to clean up his property but, times are tough and in order to work, he needs his lift.

Mr. Bohannon stated that the staff is trying to bring the area into conformity with current regulations.

Mr. James stated he was denied a fee waiver for the variance. He stated that he had offered to install higher fences and add bushes in order to comply.

Mr. McGuirk asked if it was too much of a hardship to enclose the lift.

Mr. Earl stated that the setbacks would make it difficult.

Mr. McGuirk asked if any of these buildings with those issues could add on right now.

Ms. Henrikson stated yes as long as the setbacks were met.

Mr. Dever stated that he did not agree with placing the burden on the business if they were just replacing what was already there.

Mr. Clark stated that the existing operation does not conform to code. Mr. Clark asked if the old lift was usable.

Ms. Henrikson stated that replacement need to comply with current code.

Mr. Clark asked if perhaps the Board could place a condition on approval of the variance that would require the applicant to come into compliance within a certain timeframe.

Mr. McDole stated the Board could grant the variance with a condition that would require the applicant to enclose the lift within a certain period of time.

Mr. Bohannon made a motion to continue the case to November 2011 Planning and Zoning Board Meeting, seconded by Mr. Dever. The motion failed 2-4. Mr. Clark stated no, that the City should allow the applicant more time to confirm. Mr. Dever stated no, and agreed with Mr. Clark's comment. Mr. Ratliff stated no, that more time should be allowed. Mr. McGuirk stated no, that the item should be addressed now.

Mr. Ratliff made a motion to continue until the March 2012 Planning and Zoning Board Meeting, seconded by Mr. Bohannon. The motion passed on roll call, 5-1. Mr. McGuirk stated no, that this issue should be addressed now.

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).

Ms. Henrikson reviewed the staff report with the Board. She stated that staff was recommending approval with the following four conditions:

1) A 6-foot wall masonry wall be installed
2) Access be provided through either the parking lot to the east or from Horton Street
3) The landscape buffer was a minimum of 17 feet in width
4) The variance approval would expire if a change of ownership or usage occurred

Mr. Bohannon asked why there was no entrance currently proposed on Horton Street.

Ms. Henrikson stated that it stems from the question of who would be using the parking lot. She stated that there were concerns that patrons from the tavern would use the parking lot, which could have a significant impact on the residences to the north of the proposed parking lot.

Ms. Henrikson stated the applicant had shown the concept plan to the surrounding residents at a meeting that had been held at the end of April.

Bill Roehrborn, 205 Ocean Drive, New Smyrna Beach, Florida, 32169, stated that he had had a long discussion with the neighbors concerning the buffer. He had the understanding that the wall would allow him more parking spaces and would be a permanent solution. He stated that he was okay with conditions one through three but not with condition number four. He stated he has chosen to go through the variance process in order to come up with a permanent solution that would make his neighbors happy. He stated that if the variance was conditioned on all four items then he would rescind his application for the variance and go back to the 25 foot landscape buffer.

Doug Everson, 805 East 2nd Avenue, New Smyrna Beach, stated that when they decided to purchase their property they had done some research concerning the rules for the buffer before they purchased. He stated that he received a call from the Little Theatre representative while they were clearing the land on the parking lot site. He stated that they went over and put up a fence to protect their property from patrons from the tavern. He stated instead of the 25 foot landscape buffer, he would rather see a building because at least he would have some protection from the building for his property. He agrees with the staff's request for condition #4. He stated that the applicant wants the variance to be permanent in order to use it for a bargaining tool in the future. He stated that the applicant shouldn't have any concerns about condition #4 if his intent was to have the property permanent used as a parking lot and not for future land swap. He asked that the Board to grant the variance with all four conditions or at least the 25 foot buffer.

Ms. Henrikson stated that the next resident had submitted a written letter that the Board had been given copies of.

Colleen Kubik, 1201 Horton, New Smyrna Beach, Florida, stated that her main concern was safety. She has been here nine years and admires how the City monitors development. She stated she feels safe in the City. She stated that it would be vital to place a concrete wall there. She stated that she was always cleaning up trash from the tavern patrons and that the patrons were always trespassing on her property and she has had to call police on a few occasions. She commented that she was also concerned about water retention. She asked what was going to happen with the trees that exist on the property. She stated the she was also concerned about the possible access from East 3rd Avenue and Horton Street. She commented that it would pose safety issues. She also stated that she had met with the applicant to discuss what was listed under condition #4 and thought that they had an agreement concerning that topic.

Stewart Mitchell, P.O. Box 904579, Maitland, Florida, stated he was very familiar with the property at the corner of East 3rd Avenue and Horton Street. He stated that he had walked that property many times throughout the years. He stated that he has always had a good working relationship with the Little Theatre and that the property was the last piece that has a 25-foot buffer requirement. He stated that the applicant was proposing a brick wall. He noted that the Police Department was responsible for the enforcement of regulations. He stated that the applicant should not be penalized for actions stemming from the tavern patrons.

Vance Henderson, 1201 Horton, New Smyrna Beach, stated that the real problem was that the City does not have adequate regulations for residential property adjacent to commercial property with regard to barriers. He stated that most other cities have this in place. He stated that if the applicant withdraws his petition, it would be a no win situation for him because the applicant could just go ahead with his plans without the wall. He would just go with the landscape buffer and he would be within his right to do that. He stated that there needs to be a compromise. He stated that the right thing to do would be to have a wall. He stated that the City also needs a noise ordinance.

Mr. Roehrburn stated that he wanted to address the subject of the land swap. He stated that is not the intent and never has been. He stated that the only reason that he suggested the move of Gingras Chiropractic was because it was the only contiguous parcel to the Little Theatre and to move the business would increase the parking area.

Mr. Dever asked why the agreement to move the Gingras Chiropractic business to the subject property couldn't be made part of the variance approval.

Mr. Clark and Ms. Herwald both stated that they agreed with all four conditions.

Mr. McGuirk stated that he was bothered by condition #4. He stated that he believed that the variance should go with the property and to not do so would create future problems for that parcel.

Mr. Dever asked the applicant whether he was in agreement with condition #4.

Mr. Roerhburn stated that he was not and he did not request it. He asked the Board to not vote on it if that was part of the condition.

Mr. Bohannon made a motion to approve the variance request, seconded by Mr. Ratliff. The motion passed, 6-0 with the following three 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**

D. <u>SV-2-11: ROYAL STREET / DAHL</u>

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.

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

Daniel Johns, 3869 South Nova Road, Port Orange, project engineer and representative for the owner, stated he was there to answer any questions.

Mr. Dever made a motion to recommend approval to the City Commission, seconded by Mr. Bohannon. The motion passed, 6-0

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.

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

Jim Morris, representative for the applicant, handed out copies of the survey and legal description of the area requested to be vacated and asked the Board to recommend the vacation. He stated he was going to work with the City Attorney to resolve any deed issues.

Mr. Bohannon asked if this was surplus property.

Mr. Morris stated that the Mitchells had conveyed it over to the city for right-of-way purposes. However, because the city does not have plans to widen the road, the applicant has asked to have it returned. He stated that he was not sure that vacation was necessary but has gone ahead with the application anyway.

No one from the public spoke for or against the request.

Mr. Clark made the motion to recommend approval to the City Commission, seconded by Mr. Dever. The motion passed 6-0.

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.

Mr. Jameson reviewed the staff report and stated that staff was recommending approval.

No Public Participation.

Mr. Dever made the motion to recommend approval to the City Commission, seconded by Mr. Bohannon. The motion passed 6-0.

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.

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

No Public Participation.

Ms. Herwald made the motion to recommend approval to the City Commission, seconded by Mr. Clark. The motion passed 6-0..

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.

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

Mr. Rakowski, Land Planning Consultant, New Smyrna Beach, stated that the original application was to eliminate the prohibition against applying the Hospitality future land use designation along ocean front property. The original application also included a request to add commercial and multi-family uses to the Hospitality category. He reviewed the history of this case for the Board. He stated that he supports the staff's recommendation.

Mr. Clark asked whether it would always be appropriate to have a hospitality use in a commercial district.

Ms. Henrikson stated that if someone came in looking for the hospitality land use, they would have to apply for a separate amendment for their particular property. She stated that at that time, the board would have to look at that particular property and decide whether the request was appropriate.

No Public Participation.

Mr. Dever made the motion to recommend approval to the City Commission, seconded by Mr. Bohannon. The motion passed unanimously on a roll call vote, 6-0.

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.

Mr. Jameson reviewed the staff report and stated that staff was recommending approval.

No Public Participation.

Mr. Clark mad e the motion to recommend approval to the City Commission, seconded by Mr. Ratliff. The motion passed 6-0.

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.

Ms. Henrikson reviewed the staff report and stated that staff was recommending approval with the corrected language that states that the Planning and Zoning Board, not the Plan Review Committee, is the entity responsible for approving Class III site plans. She stated that no new regulations were being proposed.

Mr. Bohannon asked for clarification of what would constitute a major or minor Class I site plan.

Mr. Bohannon asked if it would be logical to change the categories to Classes I-IV, instead of using the terms major and minor.

Ms. Henrikson stated yes, it could be done that way.

Mr. Ratliff made the motion to recommend approval to the City Commission, seconded by Mr. Clark. The motion passed 6-0.

REPORTS AND COMMUNICATIONS BY THE BOARD
Mr. McGuirk asked when the U. S. 1 regulations would be on the City Commission agenda.

Ms. Henrikson stated that it was scheduled for first reading on June 14th.

Mr. McGuirk stated that the financial disclosures should have come in the mail and reminded the Board members that the forms need to be completed and mailed by July 1, 2011. He stated that there is a penalty for being late.

REPORTS AND COMMUNICATIONS BY THE STAFF

Ms. Henrikson asked the Board for direction regarding a variance request had been previously approved for the former Flip Flops restaurant. The original approval was specifically for a wood deck. However, the new property owner wanted to replace the wood deck with concrete. Ms. Henrikson asked the Board whether using a different material would be consistent with the original variance approval.

Mr. McDole stated that the Board could make an interpretation the wood deck could include other types of building materials.

Mr. Dever made the motion to agree that the concrete would be the same as the wood decking for the variance, seconded by Ms. Herwald. The motion passed, 6-0.

Ms. Henrikson stated that a letter from DCA is due back by June 9th and she has received a preliminary email from DCA stating that they expect to find the City in compliance.

ADJOURNMENT

With there being no further business, the meeting was adjourned at 9:27 p.m.

Interoffice Memorandum
City of New Smyrna Beach

To: Planning and Zoning Board Members

From: Gail Henrikson, AICP, Planning Manager GAH

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

Date: July 11, 2011

The applicant has requested that this item be continued until the August 1, 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. The applicant has also been working with owners of non-residential properties to find parking lots where off-site valet parking could be provided. Until the parking arrangements are finalized, staff cannot determine what, if any, variances would be required.

CITY OF NEW SMYRNA BEACH – CITY COMMISSION
A-6-11: FREEMAN / CANAL STREET
July 11, 2011

I. Background

A. **Applicant:** Thomas and Diane K. Freeman, 5954 Raleigh Barrows Ct., Port Orange, Florida 32127

B. **Property Owners:** Thomas and Diane K. Freeman, 5954 Raleigh Barrows Ct., Port Orange, Florida 32127

C. **Request:** Voluntary annexation , *Comprehensive Plan* amendment, and rezoning

- **From:** County Future Land Use (FLU) designation of Commercial; and County zoning B-5, Heavy Commercial.
- **To:** City FLU designation of Commercial; and City zoning B-3, Highway Service Business.

D. **Site Information:**

- **Size:** .57 acres
- **Location:** The property is located on the south west corner of the intersection of Canal Street and Ingham Road. (see **Exhibit A** for a location map).
- **Tax I.D. Number:** 7419-10-00-0010

II. Findings

A. The subject property is an approximately .57-acre parcel. The parcel is adjacent to Canal Street to the north and Ingham Road to the east. The parcel was platted in 1918 as lots 1,2 & 3 of C.R. Arnold's Subdivision. 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 Commercial. The property is currently zoned Volusia County B-5, Heavy Commercial.

North

Future Land Use:	City Commercial
Existing Land Use:	Type C Service Station (Body Shop)
Zoning:	City PUD Planned Unit Development and City B-3 Highway Service Business

South

Future Land Use:	County Urban Medium Intensity
Existing Land Use:	Single Family Residential
Zoning:	County MH-5 Urban Mobile Home

East

Future Land Use:	City Commercial & County Urban Medium Intensity
Existing Land Use:	Abandoned and condemned gas station & Mobile Homes.
Zoning:	City B-3 Highway Service Business & County MH-5 Urban Mobile Home

West

Future Land Use:	County Commercial
Existing Land Use:	Motel
Zoning:	County zoning B-5, Heavy Commercial

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 two (1) soil types that are on the property and has characteristics of medium to very 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 wooded to the south and around the perimeter. The parcel fronts both Canal Street and Ingham Road.

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 Commercial and B-5 Heavy Commercial, respectively. The annexation application was received as a result of letters staff mailed to surrounding property owners when the property to the north applied for annexation. Staff and is requesting a City FLU designation of Commercial, which would allow for a mix of office and business uses. The applicant is also requesting a City zoning classification of B-3 Highway Service Business District, which would allow for uses consistent with the surrounding properties. 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, containing a condemned gas station. Immediately to the north, across Canal Street , is a body shop. To the west is a motel. Given the location of the subject property and surrounding uses, commercial uses and zoning appear appropriate.

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. This annexation request is within the City's annexation area and within the City's water and wastewater service area.

H. 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.

I. There are numerous *Comprehensive Plan* maps that must be amended to incorporate the subject properties into the *Comprehensive Plan* (see **Exhibits O through Y**).

J. 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 commercial uses to the east, west, and north and by mobile home zoned properties to the east and south.***

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. The proposed City future land use and zoning district are similar to the existing County land use and zoning district. 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 and north has a FLU designation of Commercial and is zoned B-3 and PUD. The properties to the west have a County FLU designation of Commercial and are County zoned B-5, Heavy Commercial. The properties to the south and east have County FLU of Urban Medium Intensity and a County zoning of MH-5 Urban Mobile Home.

III. Recommendation

Staff recommends that the Planning and Zoning Board recommend to the City Commission **approval** of the annexation, *Comprehensive Plan* amendment to City Commercial, and the rezoning to City Zoning district designation B-3 Highway Service Business District, with the following condition:

1. A determination of school concurrency is obtained prior to scheduling the *Comprehensive Plan* amendment and rezoning for City Commission adoption.

LOCATION MAP

A-6-11

Bay St.

Map of Subdivision of a Part of Lots 5 & 6 Block 8, according to Hodgemans Map of Daytona, Florida.

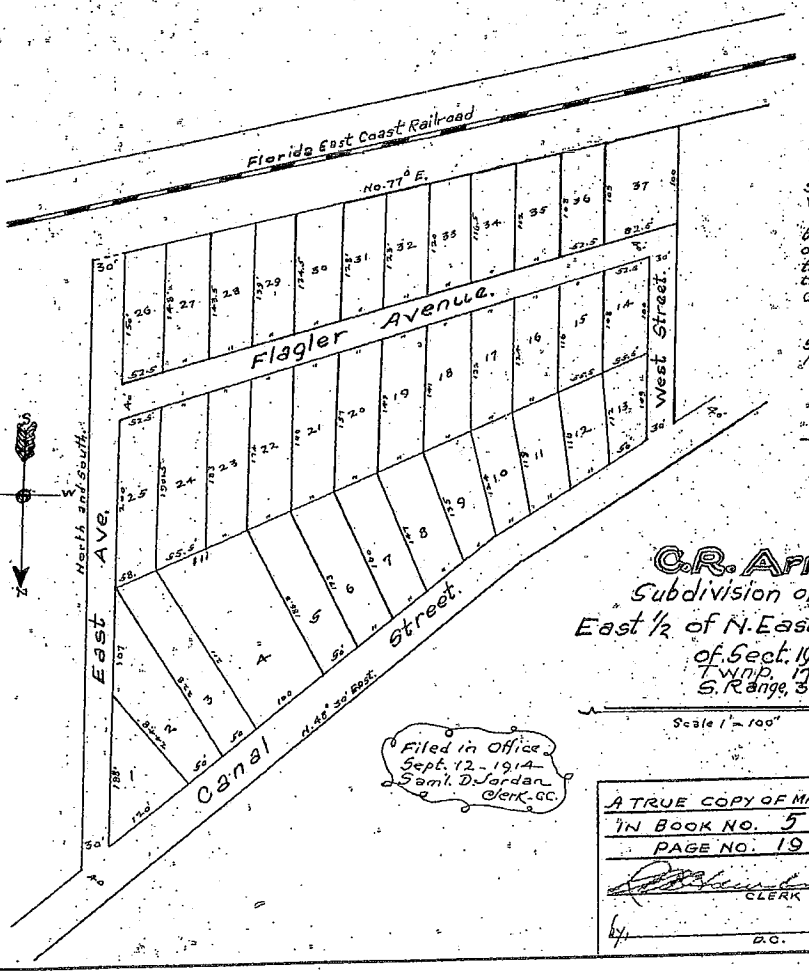
June - 1914 - Scale 40'-1".
C.M. Rogers
Engineer
Daytona, Fla.

State of Florida
County of Volusia

Lucy A. Cross being duly sworn, says that she is owner of the east 16 ft. of the West 25 ft of Lot 6 and the east 100 ft of the West 300 ft. of Lot 5 and the east 30 ft. of the West 330 ft. of the South 85 ft of Lot 5, Block 8 (330) Hodgemans Daytona, that she has caused the same to be surveyed and platted by C.M. Rogers, Civil Engineer according to the plat herewith submitted, which is sworn to be correct and files the same for record - - - Lucy A. Cross

Signed, sworn and acknowledged before me this 20th day of Oct. A.D. 1914
Laurence H. Thompson
Notary Public.
My Commission Expires Sept. 14 1917.

Filed in Office
Oct. 26 - 1914
Sam'l. D. Jordan, Clk.
By Clifford Betts, D.C.



State of Florida
Volusia County

On this day personally appeared before me, C.R. Arnold, who makes oath before me, that he is the owner of the land embraced in this plat and plat and that the survey and plat of the same is correct. - - - - - - - C.R. Arnold

Sworn to and subscribed before me this 11th day of Sept. A.D. 1914.
R.B.F. Roper
Notary Public
My Commission Expires
Feb. 6th 1918.

C.R. Arnold's
Subdivision of part of
East 1/2 of N. East 1/4 of N. West 1/4
of Sect. 19.
Twnp. 17
S. Range, 34 E.

Scale 1" = 100'

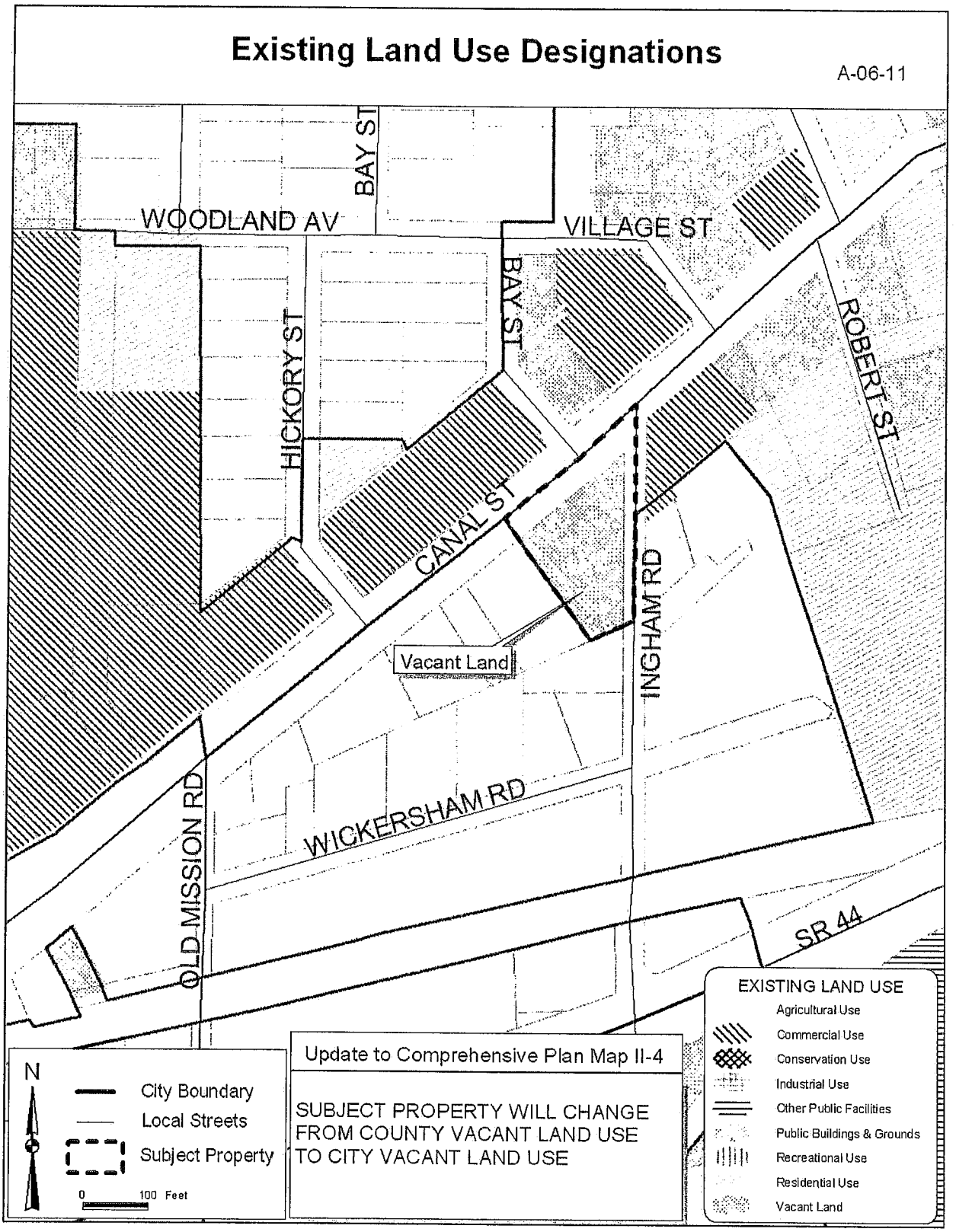
Filed in Office
Sept. 12 - 1914
Sam'l. D. Jordan
Clerk - CC.

Surveyed and platted by
R.B.F. Roper
1914.

A TRUE COPY OF MAPS
IN BOOK NO. 5
PAGE NO. 19
CLERK
D.C.

BOOK 5-19 PAGE 16

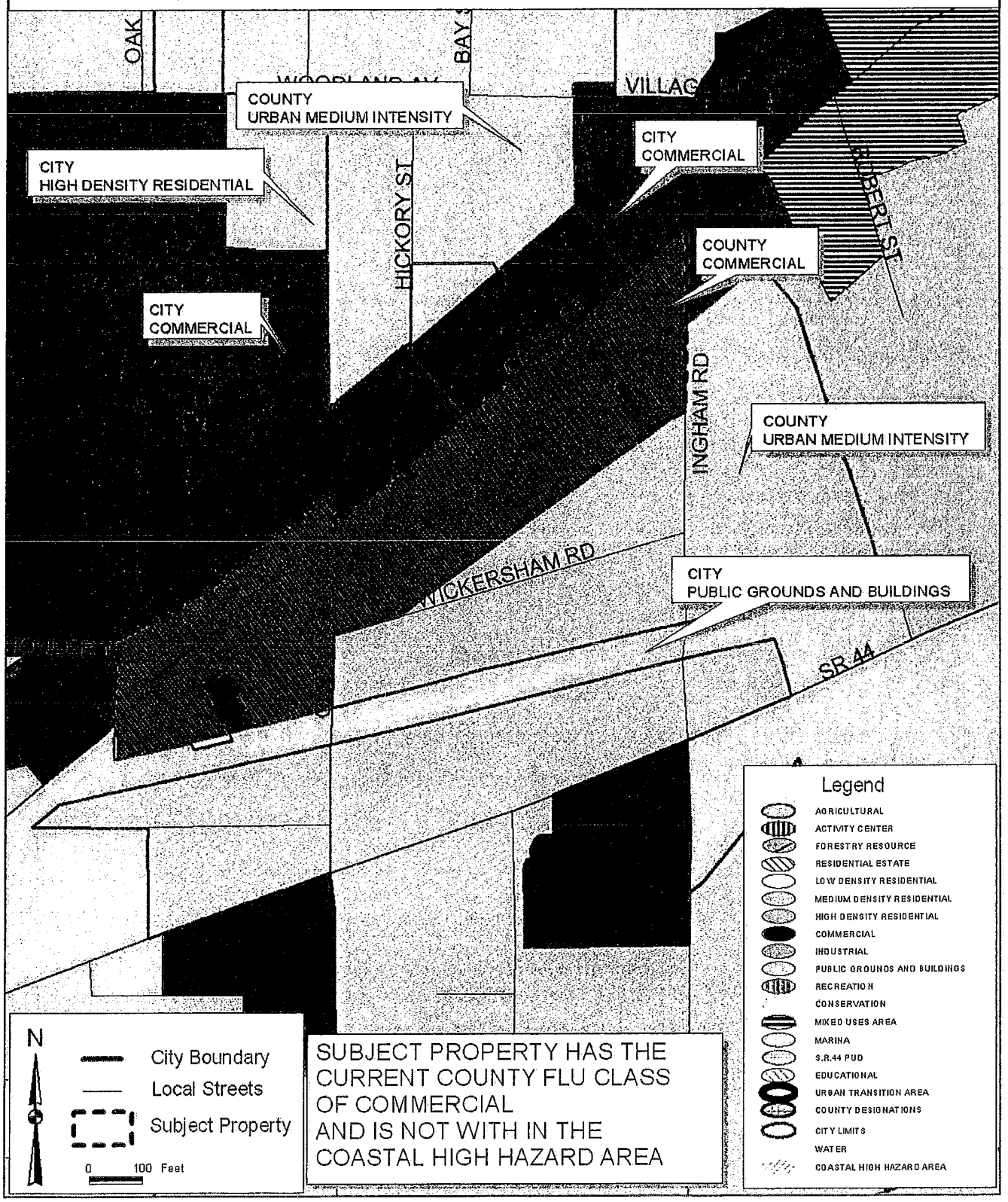
Redrawn from Originals by W.R. Ritcentak 1943

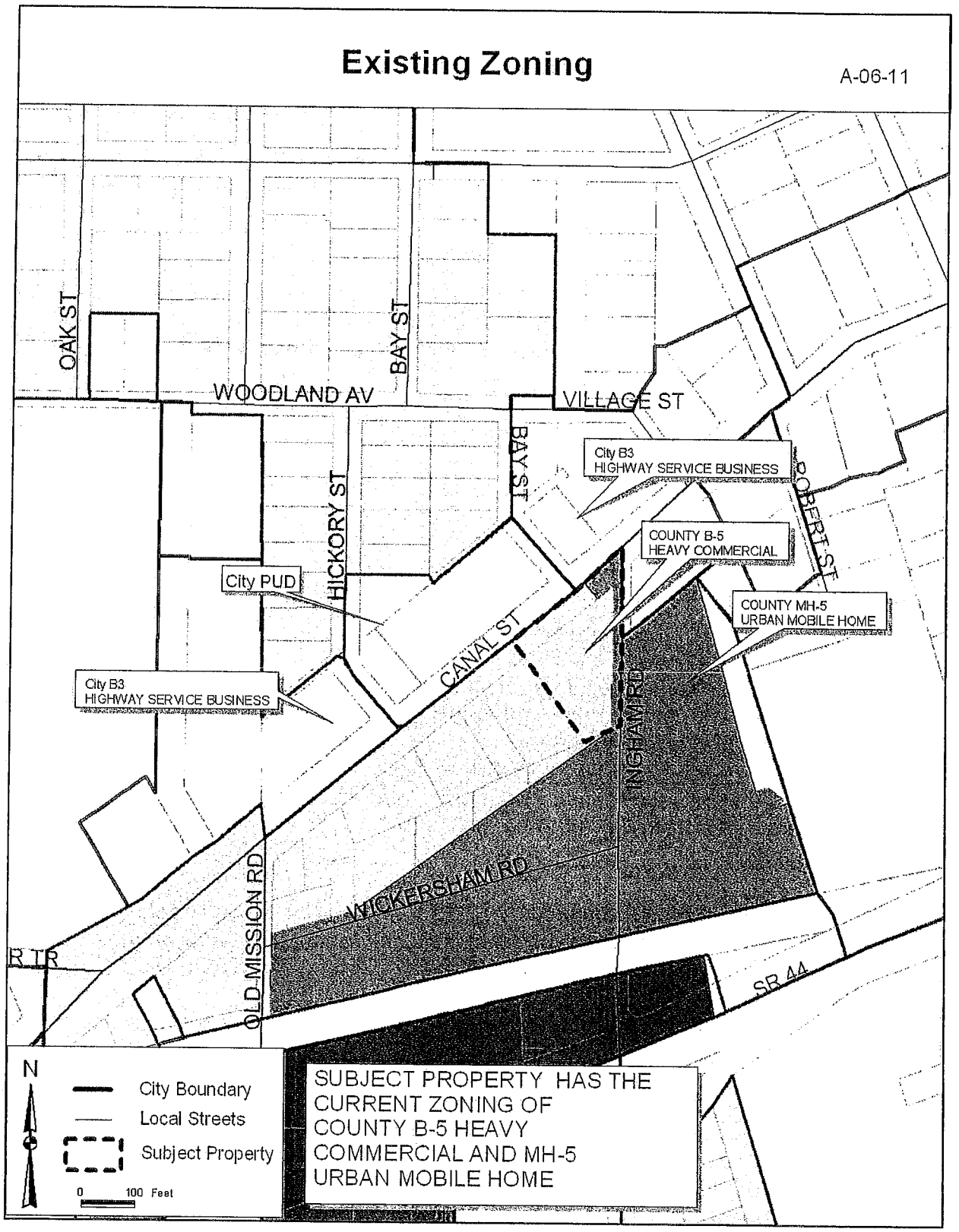

Existing Land Use Designations
A-06-11
WOODLAND AV
BAY ST
VILLAGE ST
HICKORY ST
BAY ST
ROBERT ST
CANAL ST
INGHAM RD
Vacant Land
WICKERSHAM RD
OLD MISSION RD
SR 44
N
City Boundary
Local Streets
Subject Property
0
100 Feet
Update to Comprehensive Plan Map II-4
SUBJECT PROPERTY WILL CHANGE FROM COUNTY VACANT LAND USE TO CITY VACANT LAND USE
EXISTING LAND USE
Agricultural Use
Commercial Use
Conservation Use
Industrial Use
Other Public Facilities
Public Buildings & Grounds
Recreational Use
Residential Use
Vacant Land

1

Existing Future Land Use Designations

A-06-11




Existing Zoning
A-06-11
OAK ST
BAY ST
WOODLAND AV
VILLAGE ST
BAY ST
City B3
HIGHWAY SERVICE BUSINESS
ROBERT ST
HICKORY ST
COUNTY B-5
HEAVY COMMERCIAL
City PUD
COUNTY MH-5
URBAN MOBILE HOME
CANAL ST
City B3
HIGHWAY SERVICE BUSINESS
INGHAM RD
WICKERSHAM RD
OLD MISSION RD
R TR
SR 44
N
City Boundary
Local Streets
Subject Property
0 100 Feet
SUBJECT PROPERTY HAS THE CURRENT ZONING OF COUNTY B-5 HEAVY COMMERCIAL AND MH-5 URBAN MOBILE HOME

VOLUSIA COUNTY B-5 HEAVY COMMERCIAL CLASSIFICATION

Purpose and intent: The purpose and intent of the B-5 Heavy Commercial Classification is to provide areas for commercial uses and structures that are not generally compatible with B-4 uses and structures.

Permitted principal uses and structures: In the B-5 Heavy Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

Art, dance, modeling and music schools.

Auction parlors.

Automobile, bicycle, boat, mobile home, motorcycle, recreational vehicle, trailer, light and heavy truck sales, rental, storage (not including salvage or junkyards) or service establishments. (Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)

Automobile body shops.

Automobile driving schools.

Automobile service stations, types A, B and C.

Bars and liquor stores.

Beauty and barber shops.

Bowling alleys.

Building material sales and storage.

Car washes.

Catering services.

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

Contractor's shop, storage and equipment yard. (Ord. No. 82-20, § IX, 12-9-82)

Convenience stores with more than eight vehicular service positions per fuel dispenser island. (Ord. No. 2004-20, § V, 12-16-04)

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

Day care centers (refer to subsection 72-293(6)). (Ord. No. 2004-20, § V, 12-16-04)

Dental laboratories. (Ord. No. 90-34, § 34, 9-27-90)

Employment agencies.

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

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

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

Financial institutions.

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

Flex office/warehouse facility. (Ord. No. 2004-20, § V, 12-16-04)

Funeral homes.

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

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

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

Hardware/home improvement retail center. (Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)

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

Houses of worship. (Ord. No. 2004-20, § V, 12-16-04)
Laundry and dry-cleaning establishments.
Libraries. (Ord. No. 92-6, § XXXVII, 6-4-92)
Marine engine repair and service.
Medical and dental clinics. (Ord. No. 2004-20, § V, 12-16-04)
Mini-warehouses which meet the requirements of subsection 72-293(5). (Ord. No. 82-20, § IX, 12-9-82)
Museums. (Ord. No. 92-6, § XXXVII, 6-4-92)
Nightclubs.
Outdoor entertainment event (refer to section 10-31 et seq., article II, Code of Ordinances of the County of Volusia). (Ord. No. 94-4, § XXXIX, 5-5-94; Ord. No. 2002-22, § X, 11-7-02)
Pawnshops.
Pest exterminators.
Printing and engraving, including photostating and publishing.
Private clubs. (Ord. No. 84-1, § XXXII, 3-8-84)
Public schools. (Ord. No. 92-6, § XXXVII, 6-4-92)
Publicly owned parks and recreational areas. (Ord. No. 92-6, § XXXVII, 6-4-92)
Publicly owned or regulated water supply wells. (Ord. No. 92-6, § XXXVII, 6-4-92)
Radio and television broadcasting stations.
Recycling collection center. (Ord. No. 90-34, § 34, 9-27-90)
Restaurants, types A and B. (Ord. No. 84-1, § XXXI, 3-8-84)
Retail sales and services.
Retail specialty shops.
Rug cleaning establishments.
Sweepstakes centers (refer to subsection 72-290(12)). (Ord. No. 2011-06, § II, 3-17-11)
Tailors.
Taxicab stands.
Theaters.
Travel agencies.
Veterinary clinics.
Welding and soldering shops.
Wholesale-retail nursery.
(Ord. No. 84-1, § XXXII, 3-8-84; Ord. No. 98-25, § VII, 12-17-98)
Permitted special exceptions: Additional regulations/requirements governing permitted special exceptions are located in sections 72-293 and 72-415 of this article. (Ord. No. 90-34, § 34, 9-27-90)
Communication towers exceeding 70 feet in height above ground level. (Ord. No. 97-19, § II, 8-7-97)
Bus garages and repair shops.
Bus stations.
Campgrounds. (Ord. No. 2004-20, § V, 12-16-04)
Cemeteries (refer to subsection 72-293(4)). (Ord. No. 2004-20, § V, 12-16-04)
Curb markets. (Ord. No. 84-1, § XXXII, 3-8-84)
Drive-in theaters.
Excavations only for stormwater retention ponds for which a permit is required by this article. (Ord. No. 84-1, § VII, 3-8-84; Ord. No. 89-20, § VII, 6-20-89)
Flea markets (refer to subsection 72-293(7)).
Moving and storage companies.
Outdoor entertainment and recreational uses and structures. (Ord. No. 92-6, § XXXVII, 6-4-92)

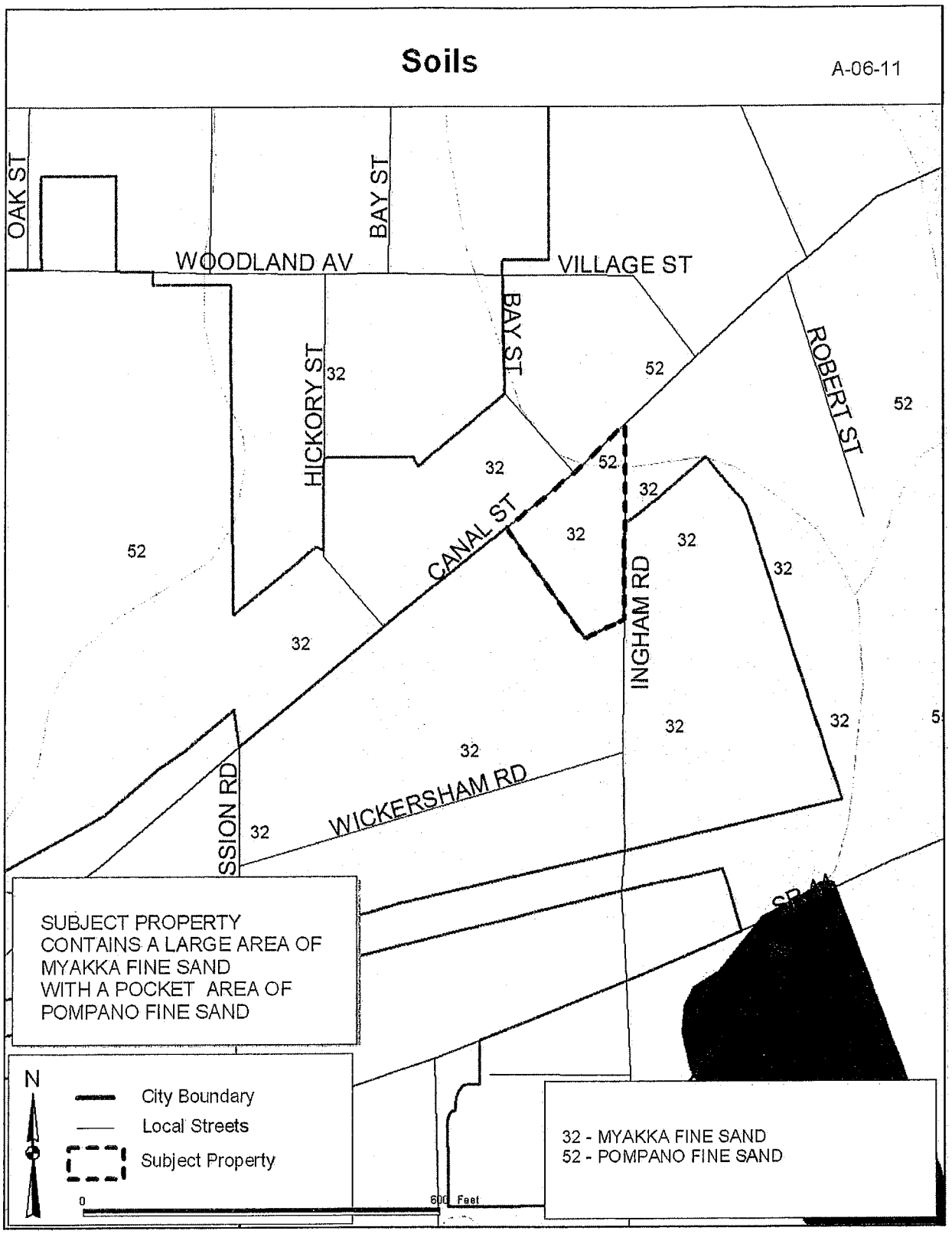
Professional or trade schools related to permitted uses (refer to subsection 72-293(2)).
Public use not listed as a permitted principal use. (Ord. No. 92-6, § XXXVII, 6-4-92)
Public utility uses and structures (refer to subsection 72-293(1)). (Ord. No. 84-1, § III, 3-8-84)
Railroad yards, sidings and terminals.
Schools, parochial or private (refer to subsection 72-293(4)).
Only one single-family dwelling for the owner or manager of an existing permitted principal use. (Ord. No. 84-1, §§ XXX, XXXII, 3-8-84)
Temporary asphalt batching plants (refer to subsection 72-293(9)).
Truck and freight transfer terminals.
Truck stops.
Truck storage.
Warehouses.
(Ord. No. 2004-20, § V, 12-16-04)
Dimensional requirements:
Minimum lot size:
Area: One acre. (Ord. No. 2004-20, § V, 12-16-04)
Width: 150 feet. (Ord. No. 2004-20, § V, 12-16-04)
Minimum yard size:
Front yard: 35 feet.
Rear yard: 20 feet, unless abutting an agricultural, residential or mobile home zoned property, then 35 feet. (Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)
Side yard: Ten feet, unless abutting an agricultural, residential or mobile home zoned property, then 35 feet. (Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)
Waterfront yard: 25 feet. (Ord. No. 82-20, § XIII, 12-9-82; Ord. No. 90-34, § 34, 9-27-90; Ord. No. 94-4, § XXXIX, 5-5-94)
Maximum building height: 45 feet.
Maximum lot coverage: The total lot area covered with principal and accessory buildings shall not exceed 35 percent.
Off-street parking and loading requirements: Off-street parking and loading areas meeting the requirements of section 72-286 shall be constructed. (Ord. No. 90-34, § 34, 9-27-90)
Landscape buffer requirements: Landscaped buffer areas meeting the requirements of section 72-284 shall be constructed.
Final site plan requirements: Final site plan approval meeting the requirements of division 3 of the Land Development Code [article III] is required. (Ord. No. 82-20, § X, 12-9-82; Ord. No. 88-2, § IV, 1-19-88)

Volusia County Commercial (C)

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

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

However, the Plan recognizes existing strip commercial development along Many arterial roadways may remain. These areas are identified on the Future Land Use Map and if the designation is shown on only one side of a roadway, this specifically provides that particular side is intended for commercial use and is not to suggest that the opposite side is also included. Future extension of the strip commercial beyond that shown on the Plan Map shall require a Plan amendment. Existing commercial uses not indicated on the Future Land Use Map may be consistent with the Plan if they comply with Number 16 of the Interpretation Section.


Soils
A-06-11
OAK ST
BAY ST
WOODLAND AV
VILLAGE ST
BAY ST
HICKORY ST
ROBERT ST
CANAL ST
INGHAM RD
WICKERSHAM RD
SSION RD
32
52
SUBJECT PROPERTY
CONTAINS A LARGE AREA OF
MYAKKA FINE SAND
WITH A POCKET AREA OF
POMPANO FINE SAND
N
City Boundary
Local Streets
Subject Property
0
600 Feet
32 - MYAKKA FINE SAND
52 - POMPANO FINE SAND

1

Soils Group No. 32—Myakka Fine Sand

This nearly level, poorly drained soil is in the flatwoods. The acreage is extensive. Individual areas range from a few acres to more than 750 acres.

Typically, this soil is sandy to a depth of more than 80 inches. The surface layer is 5 inches of black fine sand over 22 inches of gray fine sand. The subsoil extends to 90 inches or more. The upper 15 inches is black loamy fine sand coated with organic matter. The next 12 inches is dark reddish brown fine sand coated with organic matter. To a depth of 78 inches is yellowish brown fine sand that contains discontinuous layers of dark reddish brown material. Below this to 90 inches is dark reddish brown fine sand.

Included with this soil in mapping are small areas of Basinger and Immokalee soils, depressional Myakka soils, and Pomona and St. Johns soils. In some places, areas of the included soils are too small to be shown individually on the soil map. In others, they occur where the soil boundaries are gradual. The included areas make up 15 to 20 percent of any one mapped area.

Runoff is slow to very slow. The water table is within 12 inches of the surface from June to November and commonly within 40 inches of the surface the rest of the year except during extended droughts. Some areas are artificially drained by a system of ditches or, in a few places, by tile. Permeability is rapid in the surface layer and moderate in the subsoil. Infiltration is impeded by the seasonal high water table near the surface. The available water capacity is low. The organic matter content and natural fertility are low. If broad fields are left bare, wind erosion can occur.

The natural vegetation is the pine-palmetto type typical of the flatwoods. Slash and longleaf pine are the overstory, and sawpalmetto dominates the understory. Pineland threeawn is the predominant grass in the more open areas.

The potential is **low to medium** for community development. The seasonal high water table at or near the surface is a hazard for foundations, pavements, and septic tank absorption fields. In places outfall ditches can be constructed to control the surface water. Mounding is needed to raise the sites for structures and onsite waste disposal fields. A maintenance program is needed to keep ditches open and functioning. Standing water in the ditches increases the need for mosquito control. In periods of heavy or prolonged rain, ponding is likely to occur in broad areas, driveways, and low streets.

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.

Soils Group No. 52—Pompano Fine Sand

This poorly drained, newly level sandy soil occurs in poorly defined drainageways and low areas Individual areas are long or egg-shaped and range from 3 to 50 acres.

Typically, the surface layer is dark grey fine sand about 7 inches thick. The underlying material is fine sand to a depth of 80 inches or more. The upper 26 inches is grey, and the lower 47 inches is light grey.

Included with this soil in mapping are small areas of Basinger, Immokalee, and Placid soils. Also included area a few areas of similar soils that are in depressional areas and are covered with standing water for 3 to 9 months in most years. The included soils make up about 25 percent of any one mapped area.

The water table is within a depth of 10 inches for 2 to 6 months in most years and within 30 inches for more than 6 months in most years. The available water capacity is very low. Permeability is rapid, but downward movement of water is impeded by the seasonal high water table. The soil is low in natural fertility and organic matter content.

The natural vegetation is generally wetland grasses and shrubs, such as Sand Cordgrass, Maidencane and St. Johnswort.

This soil is not suited to vegetable crops unless the water table is controlled. Under high level management, it can be used for some vegetable crops, but a system that reliably controls the water table is essential.

This soil is not suited to citrus because of the high water table and the severe hazard of frost.

Under high level management, this soil is suited to improved pasture grasses or grass and clover. Water control is needed.

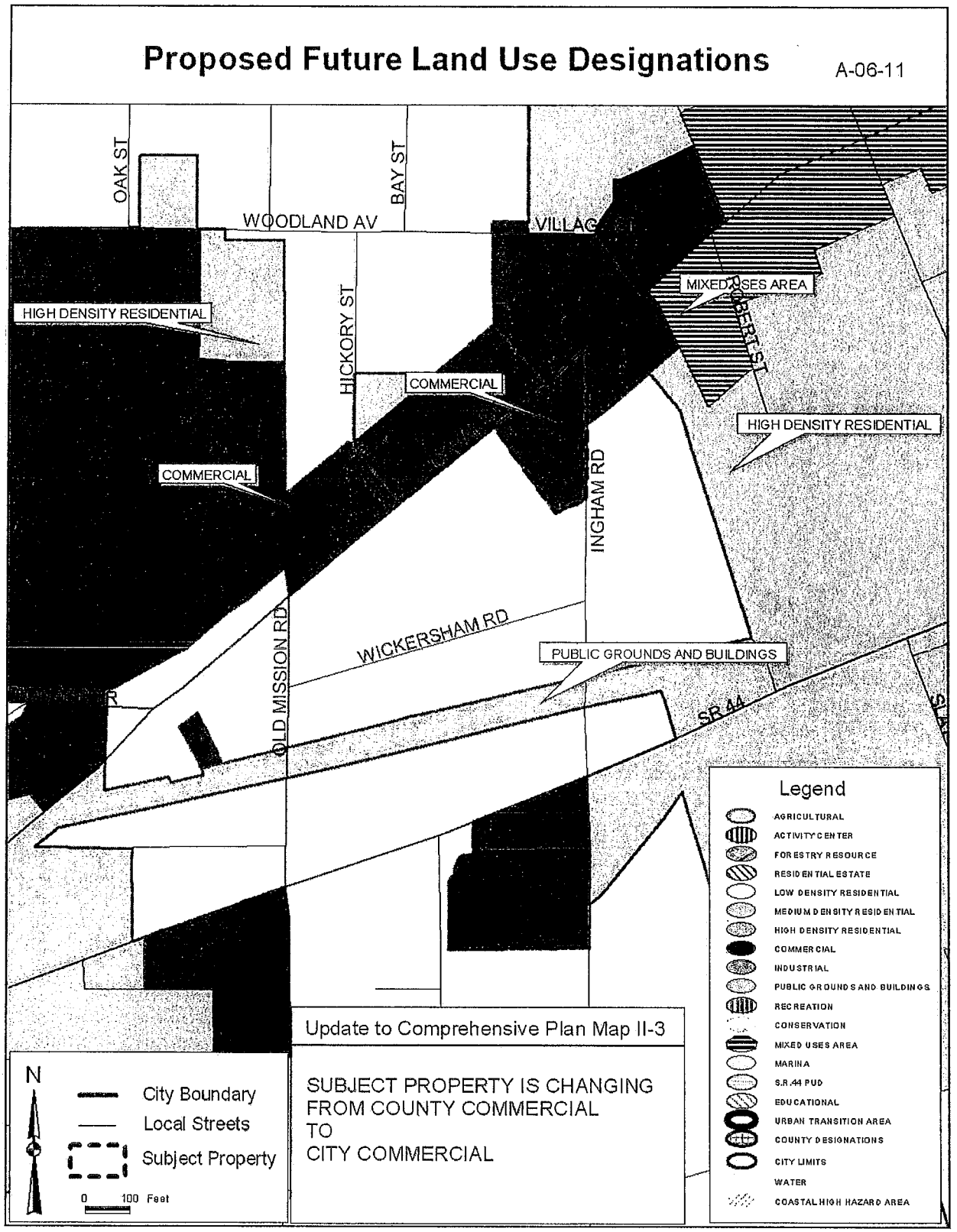
The potential productivity is moderate for Slash Pine. Some water control is needed in establishing Pine seedlings.

The potential is **very low** for community development. Wetness and the seasonal high water table, which is typically above the surface, are difficult to overcome because of the soil's low position on the landscape and the lack of suitable drainage outlets.

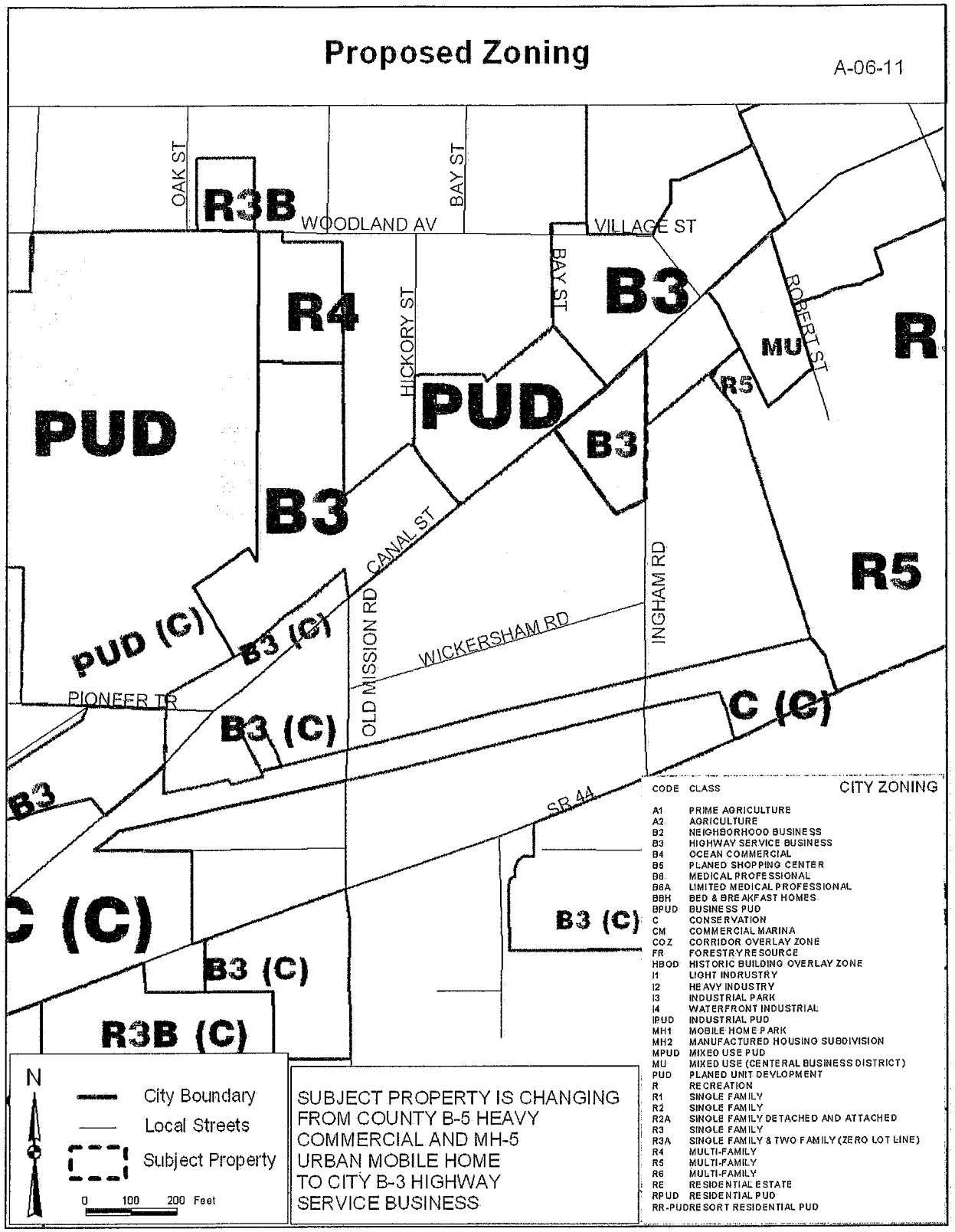
The capability subclass is IVw.

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.

81


Proposed Future Land Use Designations
A-06-11
OAK ST
BAY ST
WOODLAND AV
HICKORY ST
INGHAM RD
OLD MISSION RD
WICKERSHAM RD
SR 44
HIGH DENSITY RESIDENTIAL
COMMERCIAL
COMMERCIAL
MIXED USES AREA
HIGH DENSITY RESIDENTIAL
PUBLIC GROUNDS AND BUILDINGS
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
N
City Boundary
Local Streets
Subject Property
0 100 Feet
Update to Comprehensive Plan Map II-3
SUBJECT PROPERTY IS CHANGING
FROM COUNTY COMMERCIAL
TO
CITY COMMERCIAL

82


Proposed Zoning
A-06-11
OAK ST
R3B
WOODLAND AV
BAY ST
VILLAGE ST
R4
HICKORY ST
BAY ST
B3
ROBERT ST
MU
R
PUD
PUD
R5
B3
B3
CANAL ST
INGHAM RD
R5
PUD (C)
B3 (C)
OLD MISSION RD
WICKERSHAM RD
PIONEER TR
B3 (C)
C (C)
B3
SR 4A
C (C)
B3 (C)
B3 (C)
R3B (C)
N
City Boundary
Local Streets
Subject Property
0 100 200 Feet
SUBJECT PROPERTY IS CHANGING FROM COUNTY B-5 HEAVY COMMERCIAL AND MH-5 URBAN MOBILE HOME TO CITY B-3 HIGHWAY SERVICE BUSINESS
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

City of New Smyrna Beach Commercial Future Land Use

Intent: These areas are primarily suitable for office and retail businesses. They should be confined to certain arterial and collector roads, and to the Flagler Avenue and Canal Street districts. Hotels are permitted uses in the same commercial areas at a maximum density of 24 dwelling units per acre.

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	2.0
Industrial	2.0
Mixed Use Beachside	3.0
Mixed Use Mainland	6.5
Marina	1.5
SR 44 Corridor PUD	1.0
Public Land Use	1.0
Schools	0.3
Agriculture	0.1
Recreation	0.5
Conservation	0.1

CITY OF NEW SMYRNA BEACH B-3, HIGHWAY SERVICE BUSINESS DISTRICT

Intent. The B-3, Highway Service Business District is intended for application along highways carrying large volumes of traffic where establishments may locate to serve large sections of the city and the persons traveling in vehicles.

Permitted uses.

Adult congregate living facility
Ambulance service
Animal clinics (outpatient care only and no overnight boarding)
Archery range
Armory
Attached dwellings
Automobile sales, new and used
Bakeries
Banks
Barbershops
Barricade rental, storage, and sales
Beauty shops
Boat, motor, and boat trailer sales and service
Bowling alley
Boxing or sports arena
Business and communications systems
Bus station
Car rental and leasing
Carwashes
Carpet and rug cleaning
Ceramic shops
College level and adult educational facilities
Convenience stores with gas pumps
Fruit stands
Funeral homes
Furniture showrooms
Gift shops
Golf driving range
Government buildings and offices
Greenhouses and nurseries
Grocery stores
Health center
Hobby craft shops
Income tax services
Laundry and dry cleaning establishments
Lending agencies
Liquor stores
Lodges
Miniature or par 3 golf course
Mobile home sales
Multi-family dwelling units
Parking lots
Pawn shops
Pest control agencies

Printing shops
Professional office, including accounts, architects, consultants, dentists, engineers, financial, insurance, lawyers, medical, and stockbrokers
Radio, television, and phonograph repair
Real estate brokers
Restaurants, types "A," "B," "C," and "D"
Retail and wholesale parts sales
Retail plumbing and electrical fixtures
Retail sales and services
Service stations, types "A" and "B"
Sharpening and grinding shops
Sign painting shops
Skating rink
Solar window tinting shops
Swimming pool supply/equipment/service business
Taverns
Taxicab stands
Tire and battery service
Transient lodging:
"Transient lodging rooms, standard," as defined by • this LDR, shall be a maximum of 500 square feet.
"Transient lodging rooms, deluxe," as defined by this • LDR, shall be a maximum of 750 square feet.
The maximum room size does not include any balcony, • porch or deck area connected to the unit.
No more than 30 percent of the units may be deluxe. •
Travel agencies
Truck and trailer rentals (for properties in the district that front along U.S. Highway 1 and meet the conditions in [sub]section 801.18)
Upholstery shops
Videotape rental
Permitted accessory uses. Any accessory use customarily incidental to a permitted principal use.
Special exceptions.
Building material sales and/or building material yards, provided all building materials that are stored shall be buffered by a screen designed to block the view of the building materials. The screen may include fences, walls, or vegetative landscaping. Building materials shall not project higher than the screen. Walls that are part of a building structure may substitute for the screen buffer.
Child day care facilities, subject to the following additional conditions:
(1) The property shall be located within 500 feet of an arterial or collector roadway.
(2) Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach four feet in height within two years. The hedge plants must be planted three feet apart, on center.
(3) Play areas shall be located outside all applicable setback dimensions.
(4) The property shall have a separate vehicular drop off and pickup areas with a minimum 100-foot long drive lane outside of the public right-of-way, or sufficient parking area to provide enough space for drop off and pick up.
(5) Play areas shall be located to the side or rear of the building, outside of the required setbacks.

Churches
Miniwarehouse storage facilities, when constructed a distance of one platted lot depth or 100 feet, whichever is greater, from state and federal highway rights-of-way; no other commercial use or business shall be permitted with the facility, and a landscaped buffer area shall be provided on all boundaries facing a residential district.
Outdoor display, storage, or sale of vehicles, or other equipment or material, provided that in the interest of safety to children and adjacent property, outdoor storage areas will be encompassed by a fence or wall at least six feet high, the bottom four feet being solid and the top two feet being open. Operative automobiles and mobile homes for sale shall be exempt from this requirement.
Theaters
Waterfront dining and entertainment establishments
Dimension requirements.
Minimum yard size.
Front yard: 40 feet or as required per [sub]section 504.01M. of this LDR
Side yard: Ten feet
Rear yard: Ten feet
Corner lots.
(1) Parcels which front on two streets shall provide a 40-foot front yard on one street and a 20-foot front yard on the other street. The 40-foot front yard shall be adjacent to the major or most traveled roadway.
(2) Parcels which front on three streets shall provide a 40-foot front yard on one street and a 20-foot front yard on the other two streets. The 40-foot front yard shall be adjacent to the major or most traveled roadway.
Maximum principal building height. 35 feet.
Maximum building coverage. The total area covered with buildings shall not exceed 35 percent of the total lot area.
Maximum impervious lot coverage. The total area of the lot that may be covered with impervious material is 75 percent.
Buffers.
Landscaped buffer area(s) as defined in this LDR shall be required at property lines of nonresidential developments as follows:
(1) All front property lines;
(2) Along side or rear lot line abutting a residentially zoned lot, the buffer shall be 25 feet wide; and
(3) Alongside and rear lot lines not abutting residentially zoned lots, the buffer shall be seven feet wide.
Landscaped or natural vegetative buffers for multifamily development shall be provided as indicated in [sub]section 605.05 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 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.
Visibility at intersections. Visibility at intersections shall be provided as required in this LDR.
Landscaping. A landscaping plan is required as described in this LDR.
Off-street parking and loading. Off-street parking and loading space shall be provided as required in this LDR.
Building projections. There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than five feet to a

property line; and those structures allowed in [sub]section 804.03.
Maximum unit density for transient lodging units.
Hospitality future land use designation: 75 units per acre.
Activity center future land use designation: 40 units per acre.
Marina future land use designation: 24 units per acre. Density may be increased up to 48 units per acre if the following conditions are met:
(1) A minimum of 20 percent of the total usable land area is preserved by deed or easement for public access and/or public recreation; and
(2) The public use area shall comprise at least 40 percent of the total linear footage of shoreline available to the property
All other future land use designations permitting transient lodging units: 24 units per acre.
Maximum dwelling unit density. 12 dwelling units per acre beachside and 18 units per acre mainland. No less than 3,630 square feet of lot area for each beachside dwelling unit and 2,420 square feet of lot area for each mainland dwelling unit.
Multifamily residential standards.
Minimum floor area.
450 square feet of livable area for a one-bedroom unit
550 square feet of livable area for a two-bedroom unit
700 square feet of livable area for a three-bedroom unit
Maximum building length and width. Building facades parallel to the street upon which the building fronts or parallel to a waterfront shall not exceed 150 feet. No building constructed after the effective date of the LDR shall have a dimension that exceeds 200 feet.
Minimum building separation. Where two or more multifamily dwellings, single-family dwellings attached or detached, duplexes, apartments, condominiums, or 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 five feet of building height over 20 feet. When buildings vary in height, said distance is to be based on the highest building. (For example: The distance between a 20-foot tall building and a 25-foot tall building shall be 21.5 feet.)
Minimum requirements for townhouses and townhouse lots.
All lots shall be adjacent to a public right-of-way or common area.
Lots shall have a minimum width of 20 feet where a living unit is to be located.
Lot frontage along a right-of-way or common area shall be a minimum of ten feet.
Front setbacks shall be 20 feet or as required per [sub]section 504.01M. of this LDR.
Side setbacks shall be zero feet.
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.

IMPACT ANALYSIS

Existing County FLU	Acres	Density	Units	Existing County Zoning	Acres
Commercial	0.57	0	0	B-5 Heavy Commerical	0.57
Total	0.57	0	0		0.57

Requested City FLU	Acres	Density	Units	Requested City Zoning	
Commercial	0.57	0	0	B-3 Highway Service	0.57
Total	0.57	0	0		0.57

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.)
Commercial = 0.55	13656.06	Commercial = 2.0	49658.4

Trip Generation[1]	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)
	2500 Sq. Ft. Conv. Mkt. w/ Gas (853)	2114.00	156.43	2500 Sq. Ft. Conv. Mkt. w/ Gas (853)	2114.00	156.43	0.00	0.00
	11156.06 Sq. Ft. Spec. Retail (814)	494.44	56.00	47158.4 Sq. Ft. Spec. Retail (814)	2090.06	236.74	1595.62	180.73
TOTAL		**2608.00**	**212.43**		**4204.00**	**393.17**	**1595.62**	**180.73**

	Existing FLU			Proposed FLU				
	0% Residential	100% Office on Commercial		Commercial (millions of gallons)	Maximum Peak Flow (Million GPD)	Existing Average Daily Flow (Million GPD)	Total Average Daily Flow after Annexation	Remaining Capacity (GPD)
Potable Water[2]	0.00	2048.41	N/A	0.00744876	7.13	4.60	4,600,000.01	2,529,999.99
Wastewater Treatment[3]	0.00	2048.41	N/A	0.0062073	7	4.09	4,090,000.01	2,909,999.99
Solid Waste[4]	0.00	N/A	N/A	0	n/a[4a]	n/a[4a]	n/a[4a]	n/a[4a]
Stormwater[5]	Peak discharge rate and total runoff volume leaving the site for a 25 year storm of 24 hour duration shall be limited to 110 percent of the present discharge rate and total discharge volume.							

Notes:

1. Source: ITE Trip Generation Manual, 8th Edition Convenience Store With Gas Pumps - Average Daily Trips = 845.60 trips/1000 square feet weekday; 62.57 trips/1000 square feet weekday for peak hour of generator.
   Specialty Retail Center (814) Average Daily Trips= 44.32 1000 square feet, weekday, PM Peak = 5.02 trips/1000 square feet

2. Potable Water: County = 200 gallons per day(GPD) per ressidential unit; 0.15 GPD per sq. ft. of office building area; 0.1 GPD per sq. ft. of retail, institutional & industrial building area. City = 300 gallons per day per residential unit or ERU

3. Sanitary Sewer: 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.

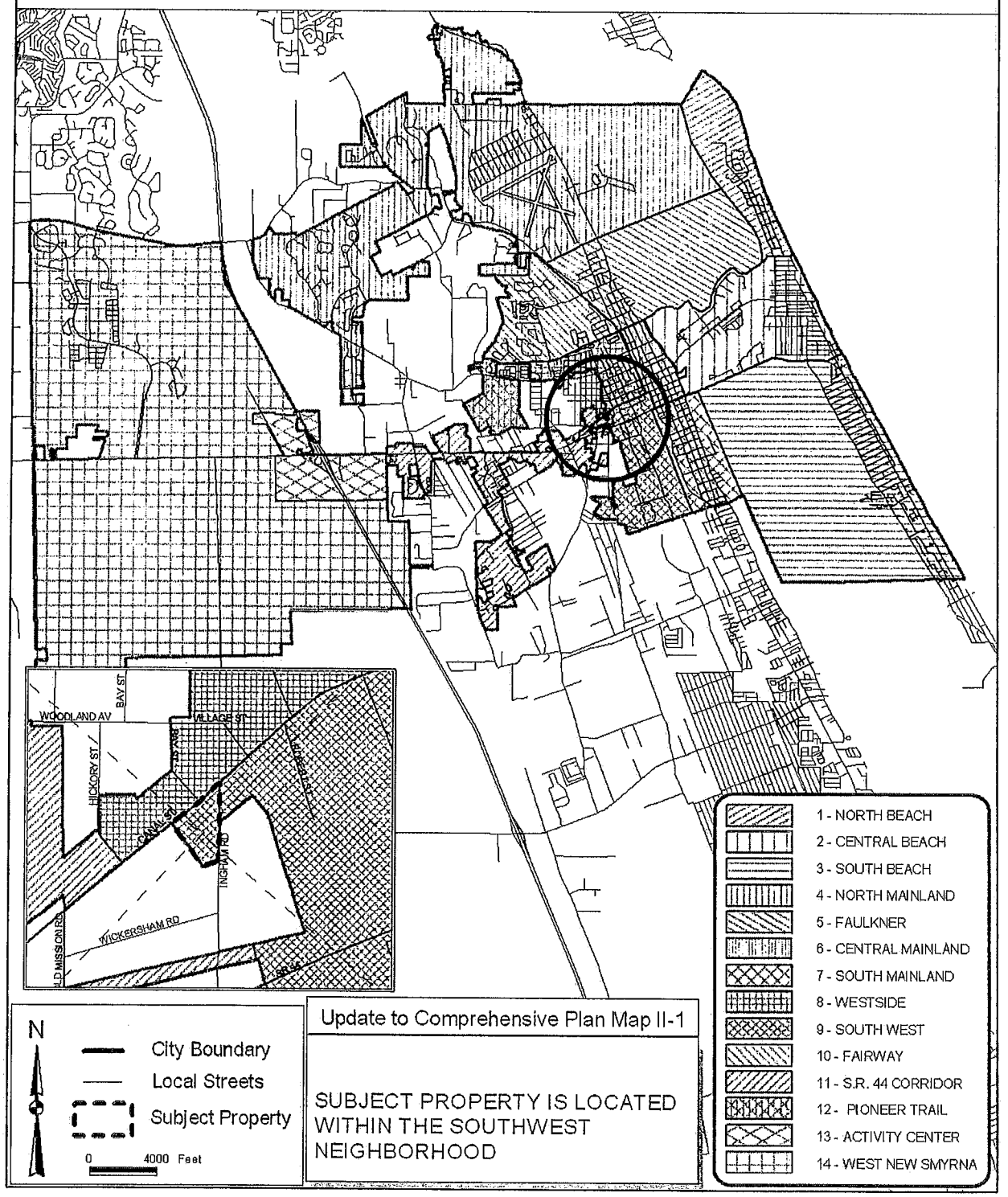
4. Solid Waste: County = 8.6 pounds per day per person. City = 7.3 pounds per person per day. Non-residential waste is included in these figures.

4a. 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

5. 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-06-11

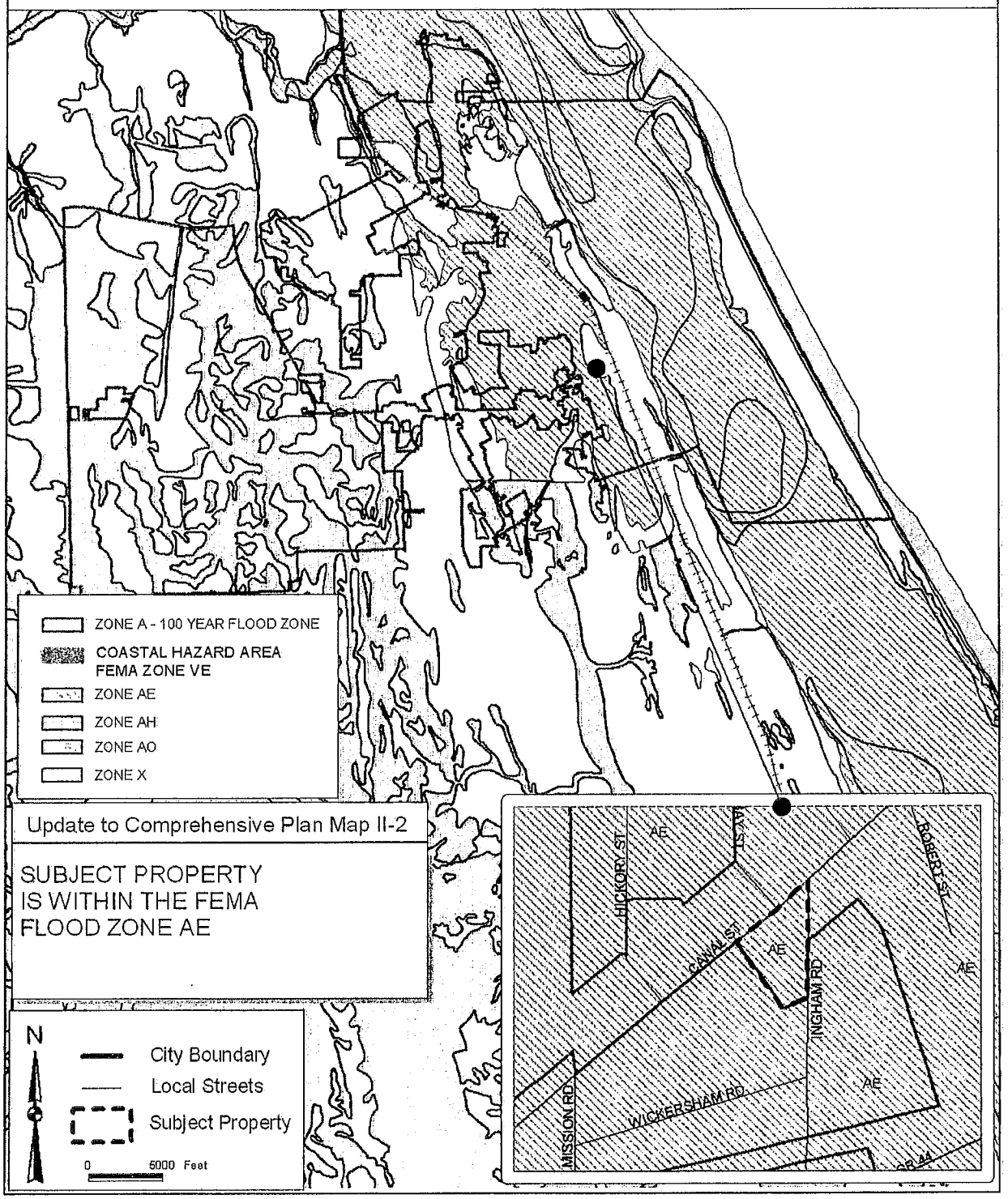


Update to Comprehensive Plan Map II-1

SUBJECT PROPERTY IS LOCATED WITHIN THE SOUTHWEST NEIGHBORHOOD

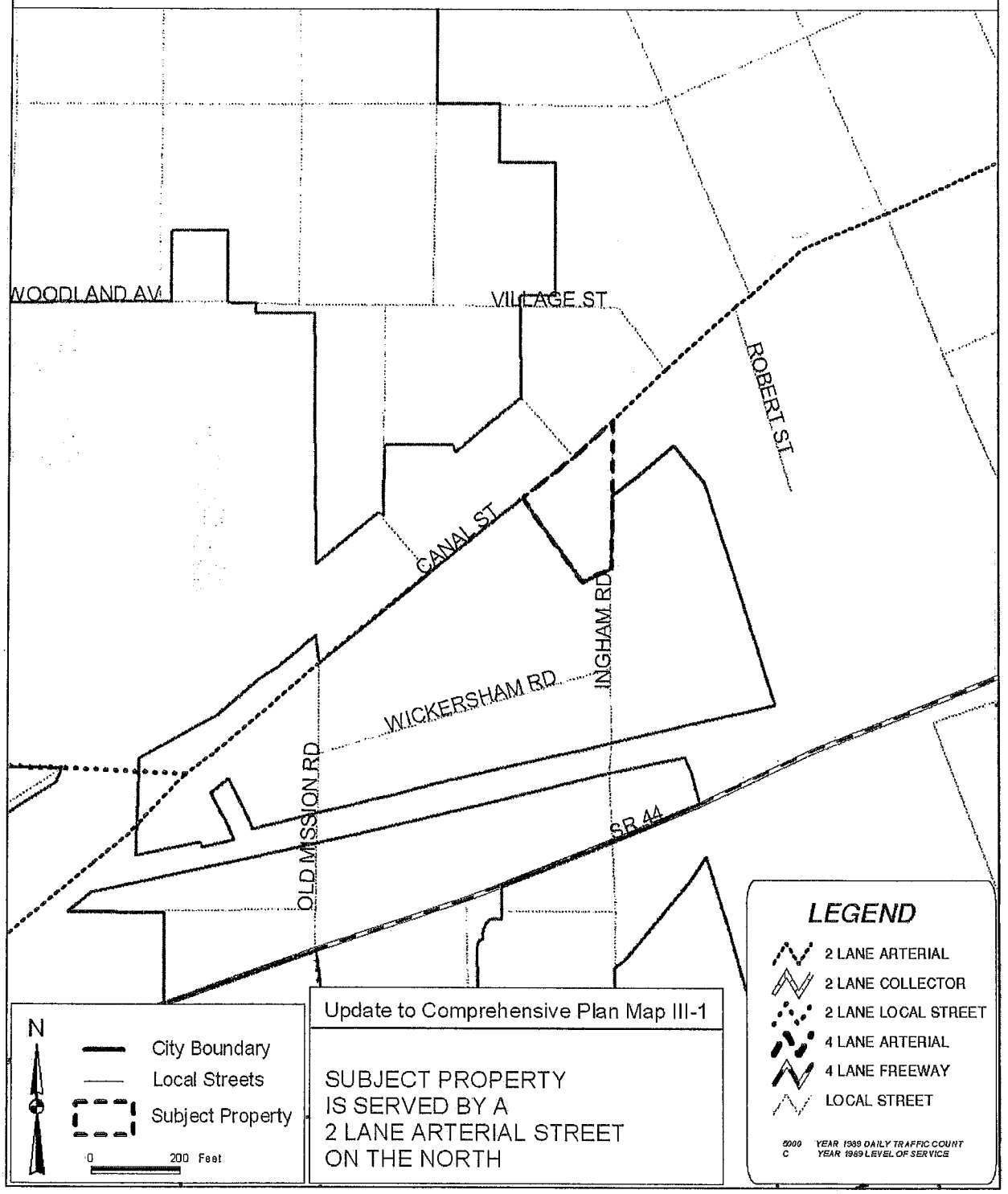
Flood Prone Areas

A-06-11



1989 Traffic Conditions

A-06-11



1995 Traffic Conditions

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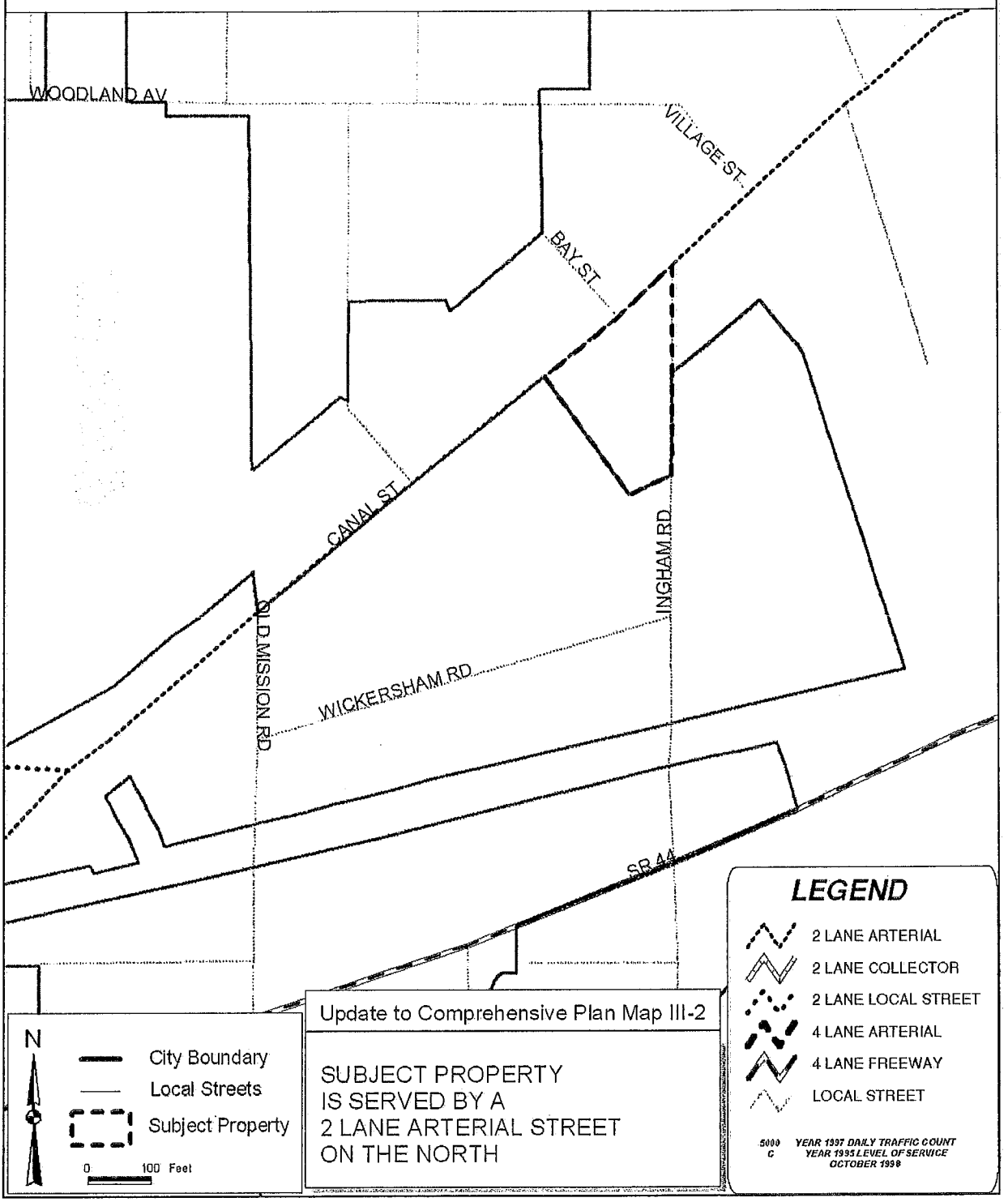

2010 Traffic Conditions

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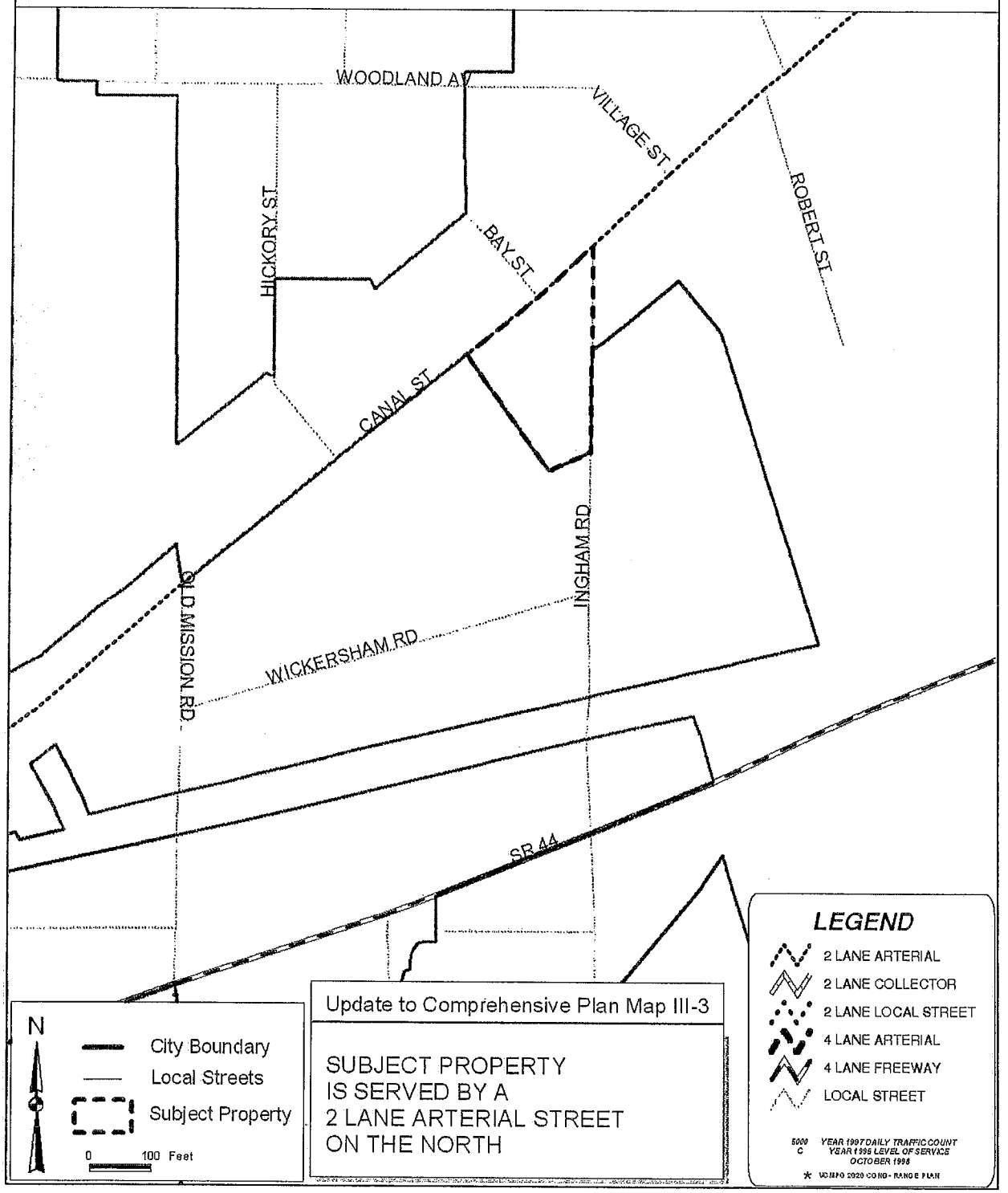
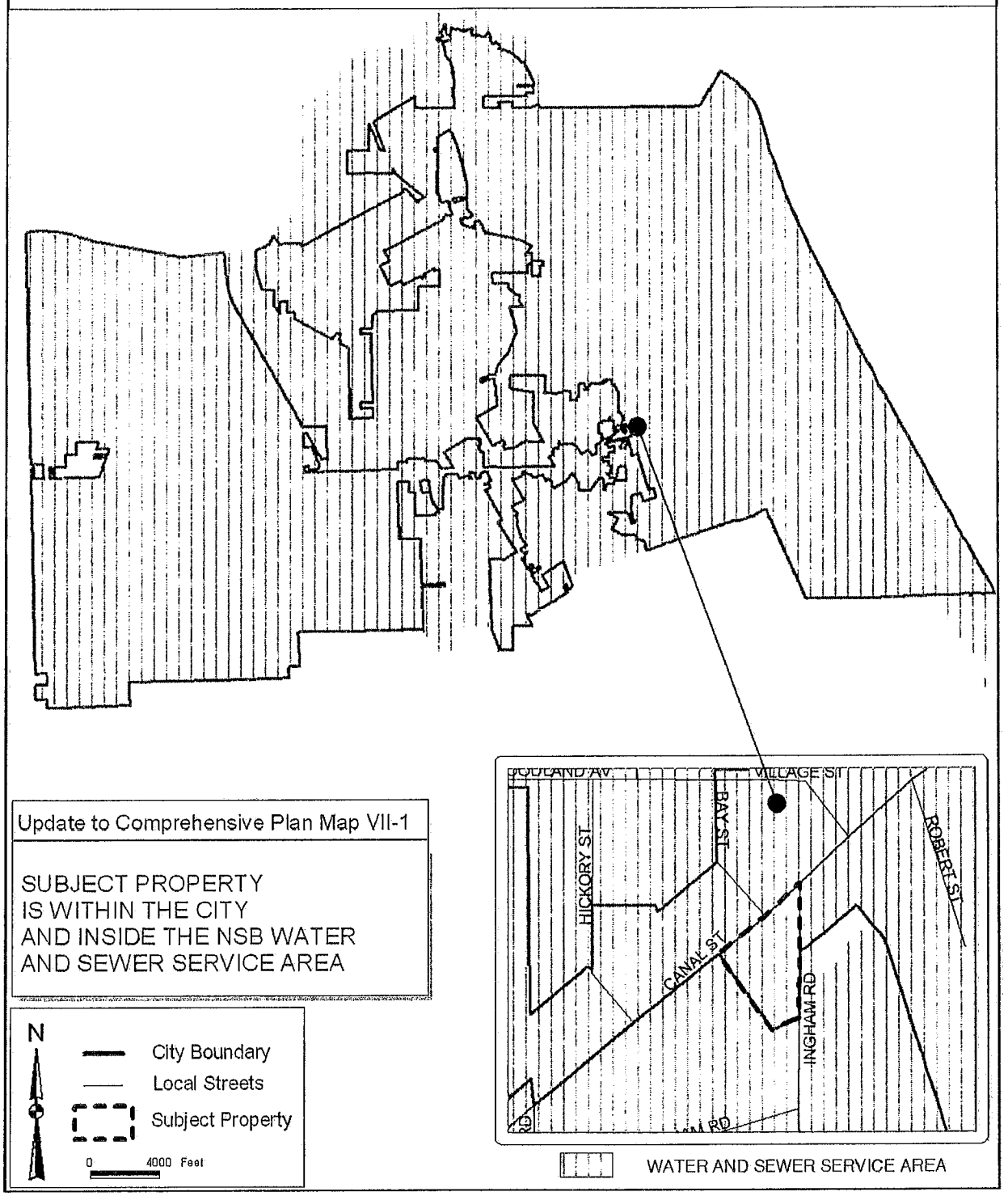


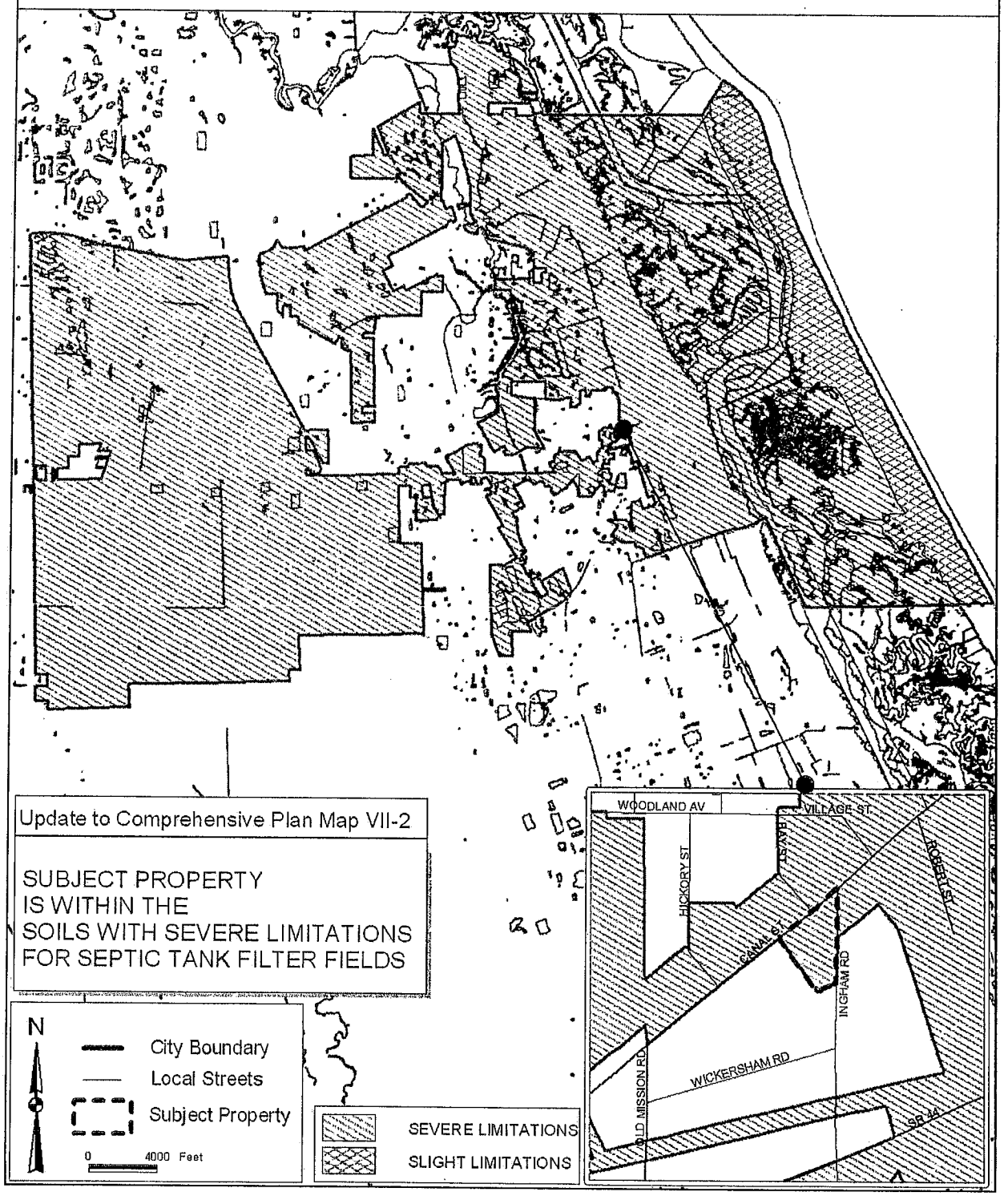
Water & Sewer Service Area

A-06-11



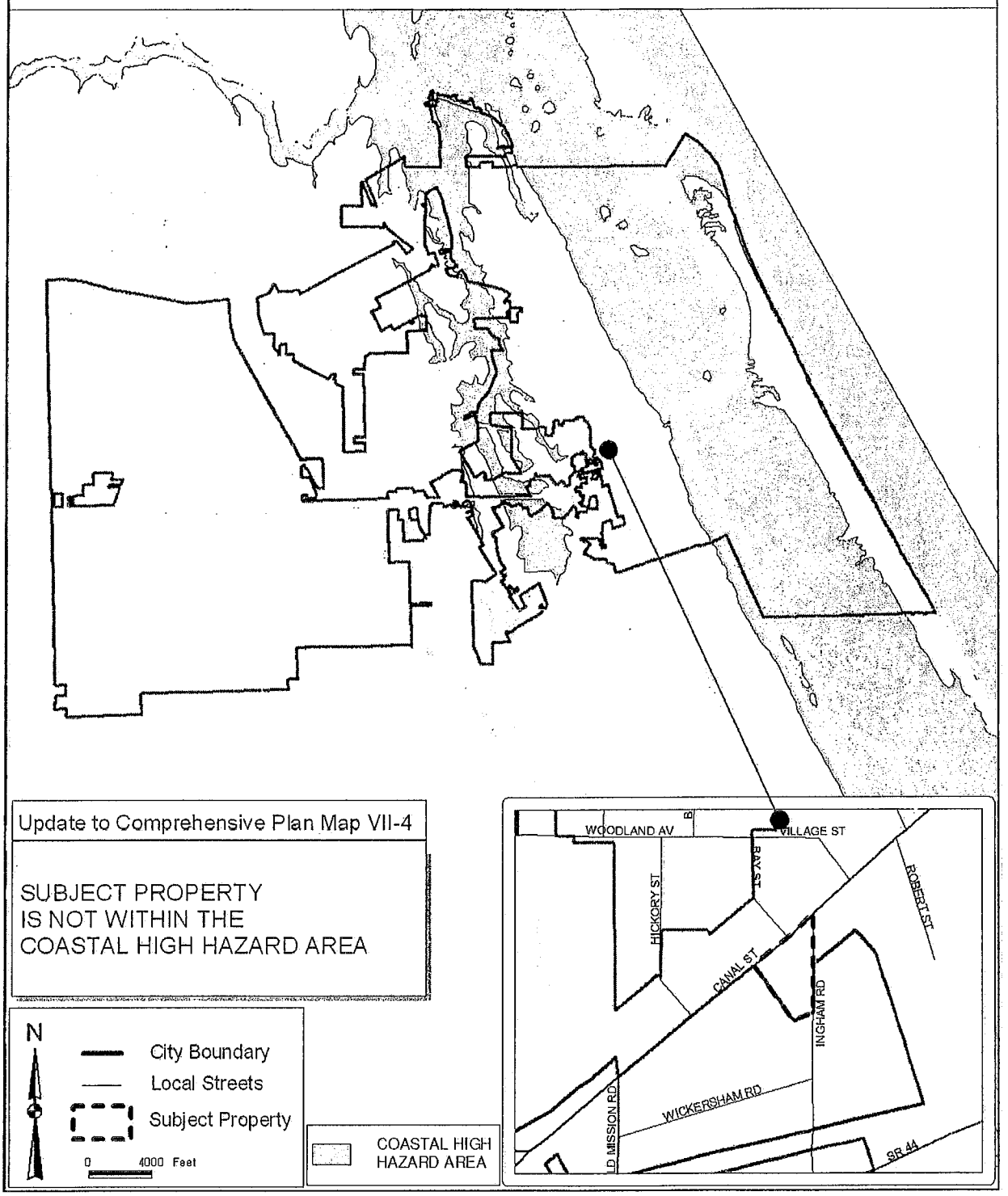
Soil Limitation for Septic Systems

A-06-11



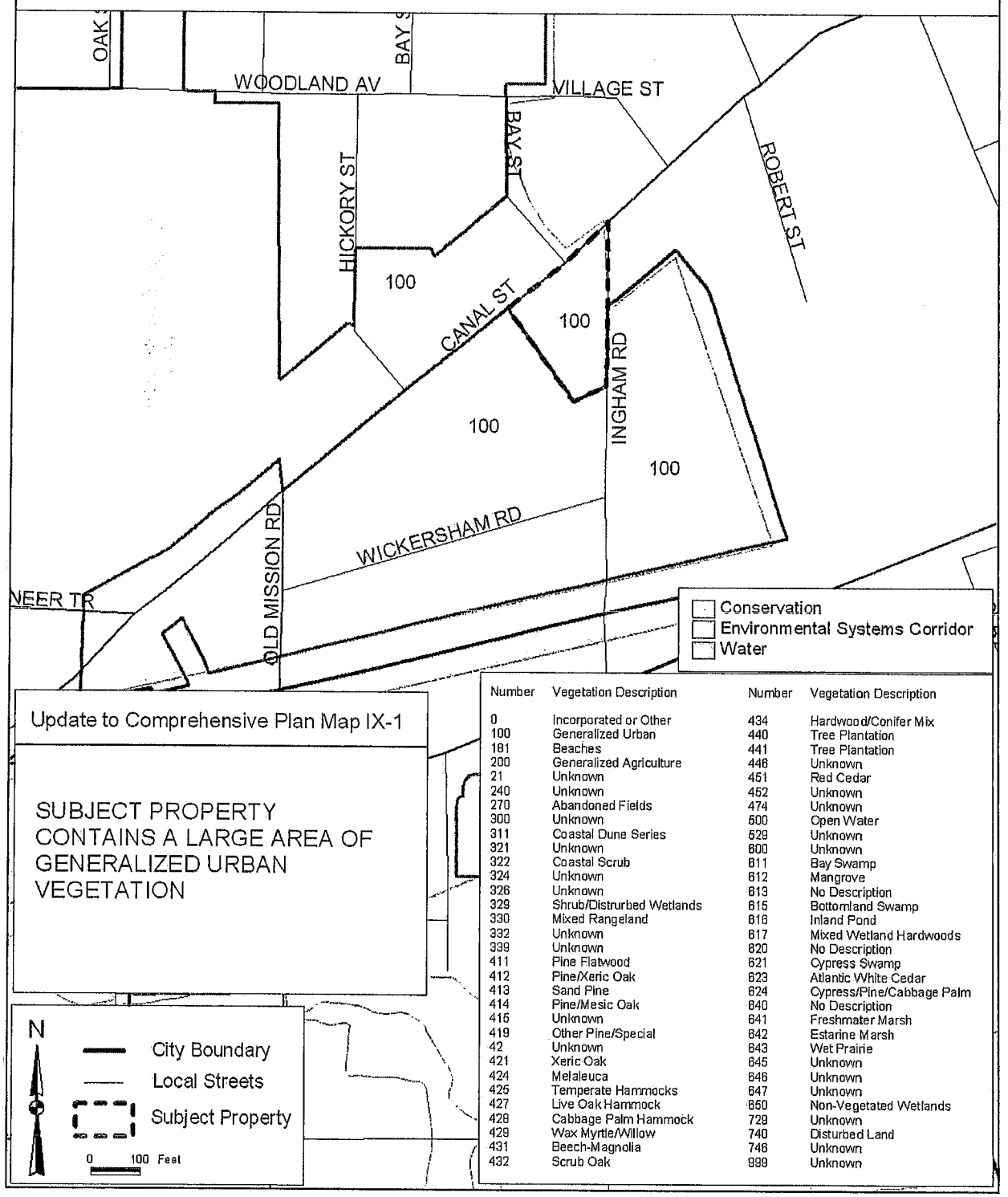
Coastal High Hazard Areas

A-06-11



Natural Resources

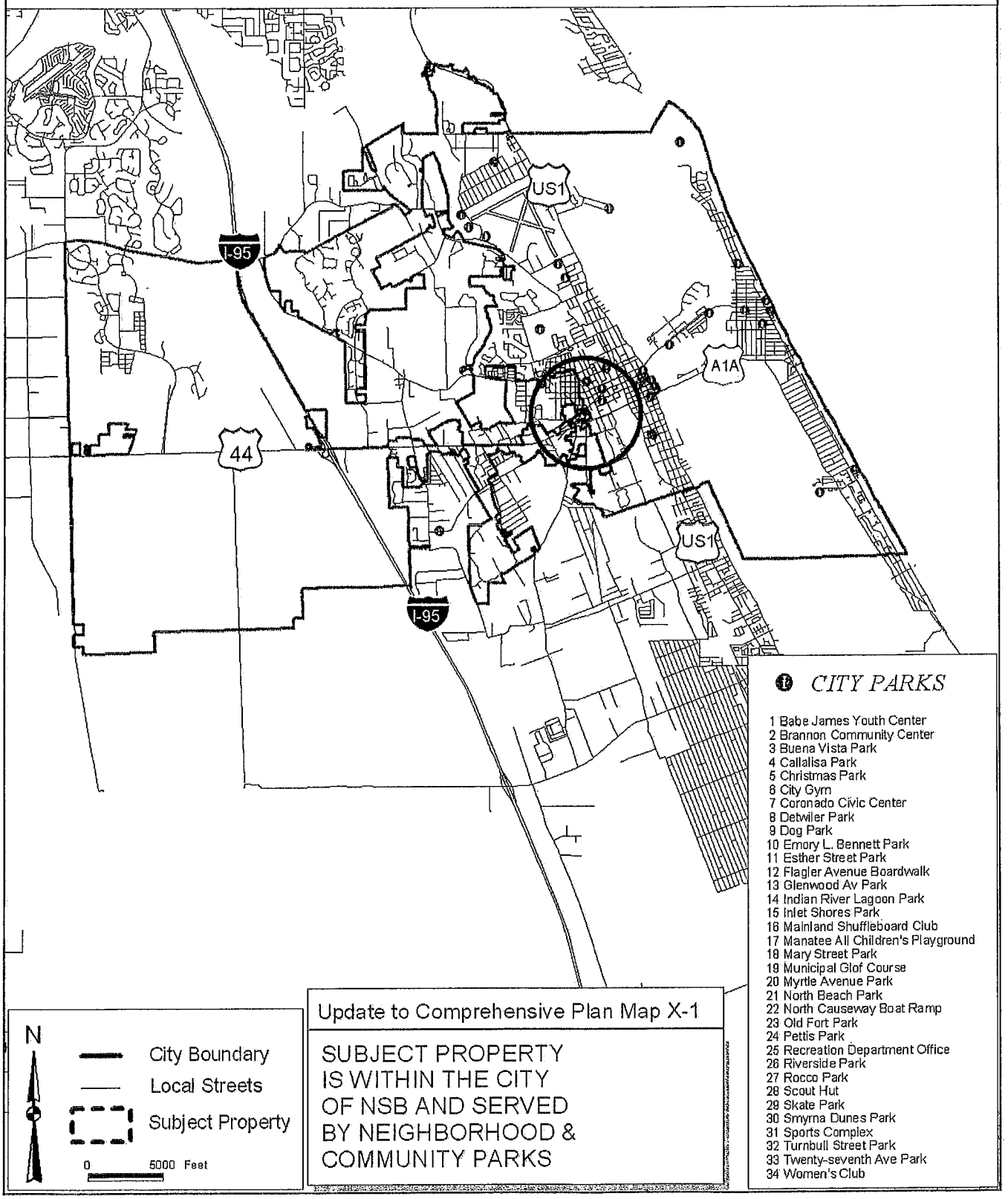
A-06-11



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/Disturbed Wetlands	615	Bottomland Swamp
330	Mixed Rangeland	616	Inland Pond
332	Unknown	617	Mixed Wetland Hardwoods
339	Unknown	620	No Description
411	Pine Flatwood	621	Cypress Swamp
412	Pine/Xeric Oak	623	Atlantic White Cedar
413	Sand Pine	624	Cypress/Pine/Cabbage Palm
414	Pine/Mesic Oak	640	No Description
415	Unknown	641	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-06-11

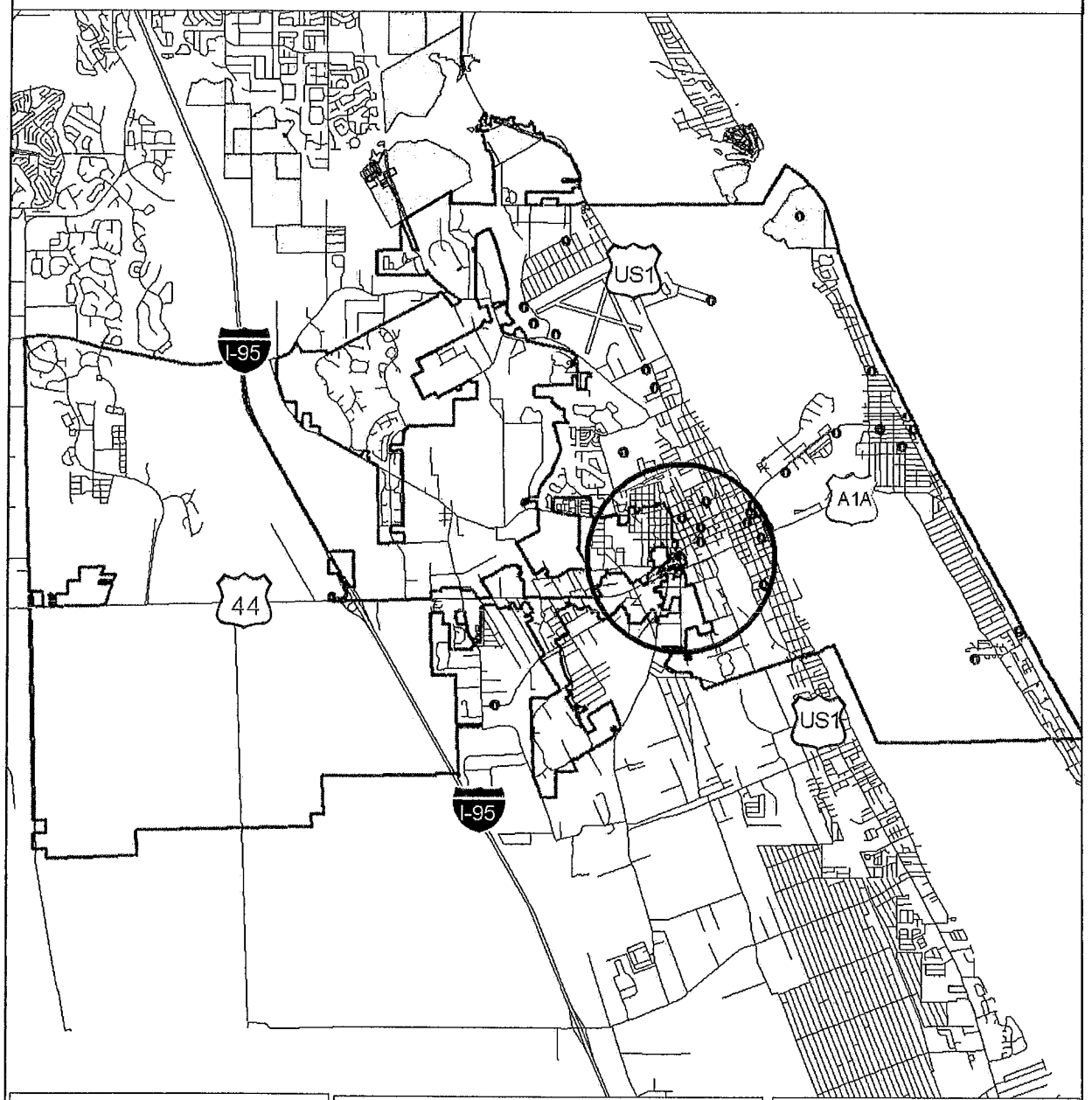


Update to Comprehensive Plan Map X-1

SUBJECT PROPERTY IS WITHIN THE CITY OF NSB AND SERVED BY NEIGHBORHOOD & COMMUNITY PARKS

Regional Parks & Special Use Facilities

A-06-11



N

City Boundary

Local Streets

Subject Property

0 4000 Feet

Update to Comprehensive Plan Map X-2

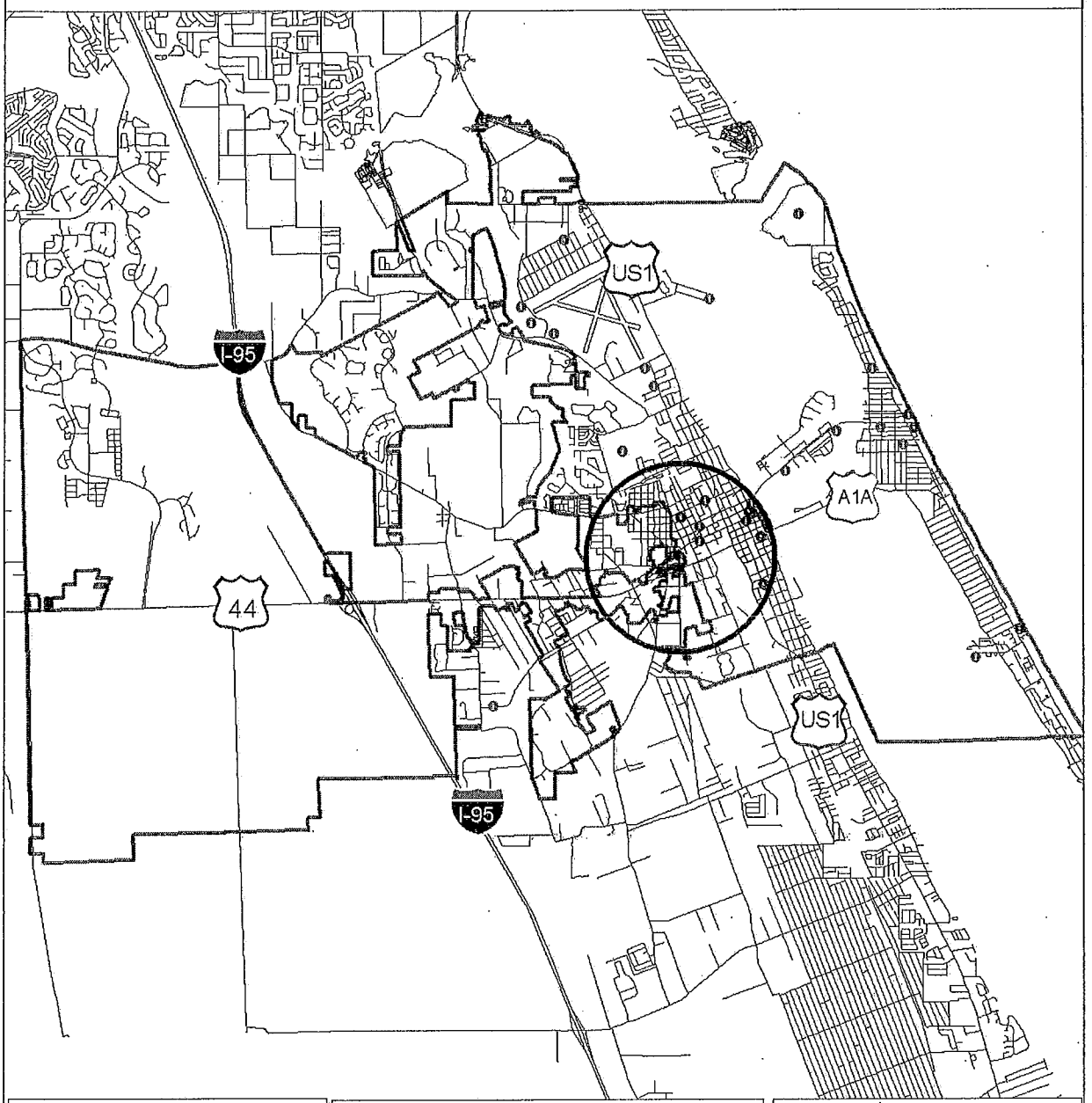
SUBJECT PROPERTY
IS WITHIN THE CITY
OF NSB AND SERVED
BY REGIONAL PARKS &
SPECIAL USE FACILITIES

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

Regional Parks & Special Use Facilities

A-06-11



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-7-11: SALOMONE / BOLTON ROAD

JULY 11, 2011

I. Background

A. **Applicant and Property Owner:** Fillippa D. Salomone, 1250 Bolton Road, New Smyrna Beach

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

- **From:** County Future Land Use (FLU) designation of Urban Low Intensity; and County zoning R-4 – Urban Single Family Residential
- **To:** City FLU designation of Low Density Residential; and City zoning R-2, Single-Family Residential

C. **Site Information:**

- **Size:** 0.387 acres
- **Location:** The property is generally located north of Eslinger Road and southwest of the intersection of Bolton Road and Magnolia Drive (see **Exhibit A** for a location map).
- **Tax I.D. Number:** 7344-03-00-4560

II. Findings

A. The subject property is an approximately 0.387-acre site that has been improved with a single-family detached residence. No additional improvements are proposed on the property at this time. A copy of the survey for the subject property is attached as **Exhibit B**. The property currently has a Volusia County Future Land Use (FLU) designation of Urban Low Intensity, which allows 0.2 to 4.0 units per acre. The property is currently zoned Volusia County R-4, Urban Single-Family Residential. The surrounding future land use, existing uses, and zoning are as follows:

North

Future Land Use:	City Low Density Residential
Existing Land Use:	Single-Family Residential
Zoning:	City R-2, Single-Family Residential

South

Future Land Use:	County Urban Low Intensity
Existing Land Use:	Vacant/forest
Zoning:	County R-4, Urban Single-Family Residential

East

Future Land Use:	County Urban Low Intensity
Existing Land Use:	Single-Family Residential
Zoning:	County R-4, Urban Single-Family Residential

West
Future Land Use: City Low Density Residential
Existing Land Use: Vacant/forest
Zoning: City A1 – Prime Agriculture

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**.

C. 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 Low Intensity and R-4, Urban Single-Family Residential, respectively. The closest FLU that matches the existing County designation is Low Density Residential, with the County's designation allowing 4 units per acre and the City's allowing 5. Therefore, staff is proposing that the FLU be changed to City Low Density Residential and the zoning be changed to R-2, Single-Family Residential, which would be consistent with adjacent development in the City as well as the existing use. Maps showing the proposed FLU and zoning changes are attached as **Exhibits I and J**. Descriptions of the proposed FLU and zoning designations are attached as **Exhibits K and L**.

D. This annexation request is within the City's annexation area and within the City's water and sewer service area.

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

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

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

objective is a comment in ***bold italics***.

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

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

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

  ***The proposed future land use amendment is for an already developed property. No new development is proposed and no increase in density is projected as a result of the future land use amendment. Therefore, the request is consistent with the* Comprehensive Plan.**

III. Recommendation

Staff recommends that the Planning and Zoning Board recommend the City Commission **approve** the annexation, *Comprehensive Plan* amendment to City Low Density Residential, and the rezoning to City zoning district designation R-2, Single-Family Residential.

EXHIBIT A

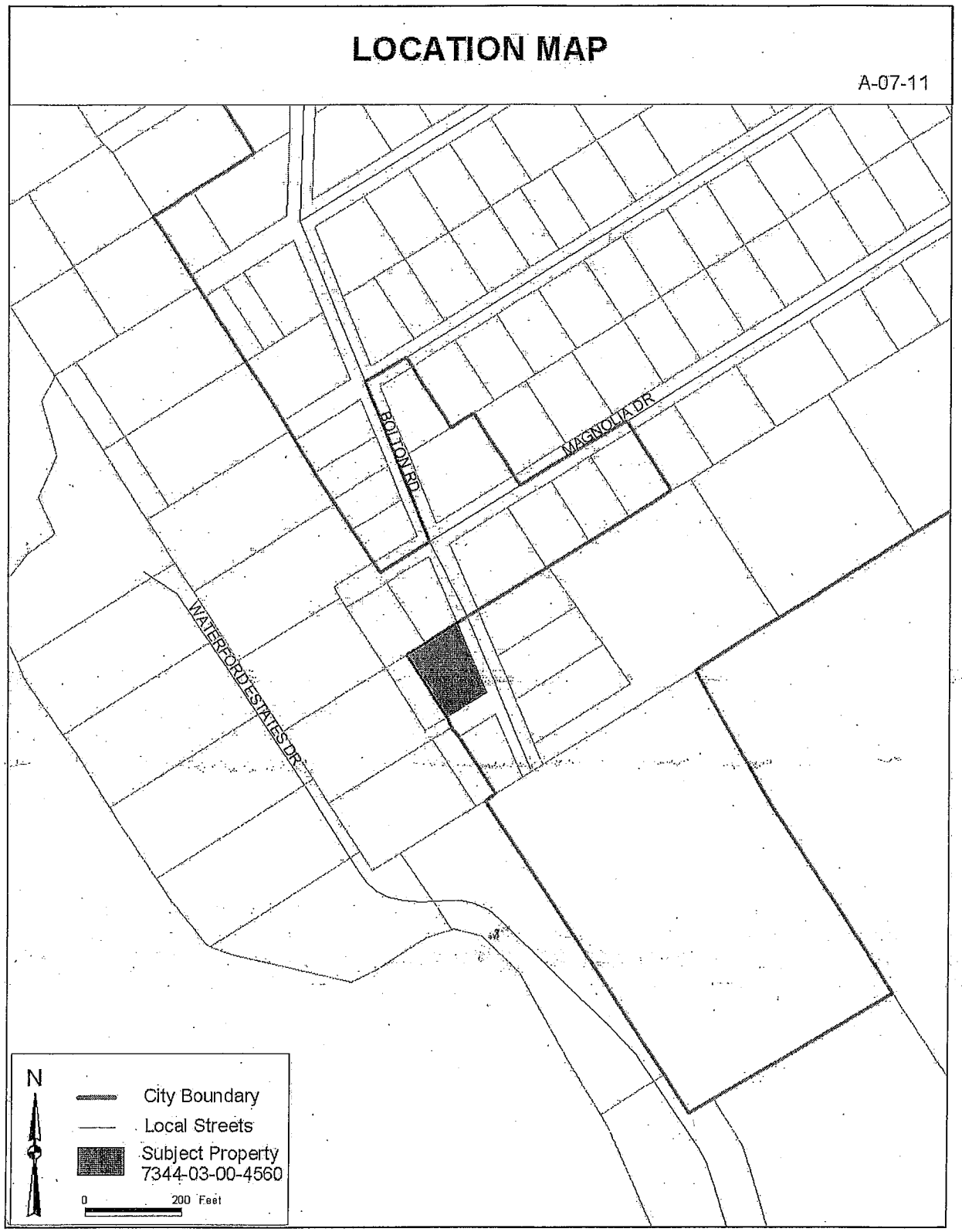

LOCATION MAP
A-07-11
BOLTON RD
MAGNOLIA DR
WATERFORD ESTATES DR
N
City Boundary
Local Streets
Subject Property
7344-03-00-4560
0
200 Feet

EXHIBIT B

LEGAL DESCRIPTION

LOTS 456 AND 457 BLOCK ——— AS SHOWN ON MAP OF CORBIN PARK SUBDIVISION, UNIT NO. 3

AS RECORDED IN MAP BOOK 23 PAGE 146 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

SURVEYOR'S NOTES:

(1) AS SCALED FROM FLOOD INSURANCE RATE MAP 12127C0700G DATED 4/15/02 THE ABOVE DESCRIBED PROPERTY LIES IN FLOOD ZONE A.
(2) ALL SET CORNERS ARE 1/2" IRON RODS WITH PLASTIC CAPS STAMPED L.S. 3450 UNLESS OTHERWISE NOTED.
(3) ALL ELEVATIONS SHOWN HEREON ARE BASED ON ASSUMED DATUM.
(4) ALL ANGLES AND 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) THE SURVEY SHOWN HEREON IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE.

LEGEND

C = CALCULATED
M = MEASURED
PL = PLAT
D. = DEED
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
W.F. = WOOD FENCE

P.U.B.D.ESMT. = 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. = CHAINLINK FENCE
CHD. BRNG. = CHORD BEARING
O.R.B. = OFFICIAL RECORD BOOK

C.B. = CONCRETE BLOCK
COL. = COLUMN
COVD. = COVERED
R/W = RIGHT OF WAY
PVMT. = PAVEMENT
R.P. = RADIUS POINT
℄ = CENTERLINE
R = RADIUS
Δ = DELTA ANGLE
A = ARC LENGTH
M.H. = MANHOLE
10.00 = EXISTING ELEVATION
A/C = CONC. AIRCONDITIONING PAD

I HEREBY CERTIFY THAT 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 PLOTTED UNDER MY DIRECTION.

ALL THE FOREGOING SUBJECT TO ANY DEDICATIONS, LIMITATIONS, RESERVATIONS, RESTRICTIONS OR EASEMENTS OF RECORD.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

DATE	ORDER NO.	FB. PG.	TYPE OF SURVEY and / or REVISIONS
8/17/2001		32/48	BOUNDARY SURVEY (VACANT LOTS)
7/26/2002		SKETCH	FOUNDATION SURVEY, REVISED FLOOD ZONE PER NEW FEMA MAPS
9/25/2002		SKETCH	FINAL SURVEY

CERTIFIED TO: FILLIPPA D. SALOMONE
BANK OF AMERICA, NA
AMERICAN PIONEER TITLE INSURANCE COMPANY

RAYMOND A. FORARE JR.
Professional Surveyor and Mapper NO. 3450
STATE OF FLORIDA

SCALE 1" = 30'

FORARE LAND SURVEYING
1608 PINE AVENUE
DELAND FLORIDA 32724
904-734-4245 904-437-0853

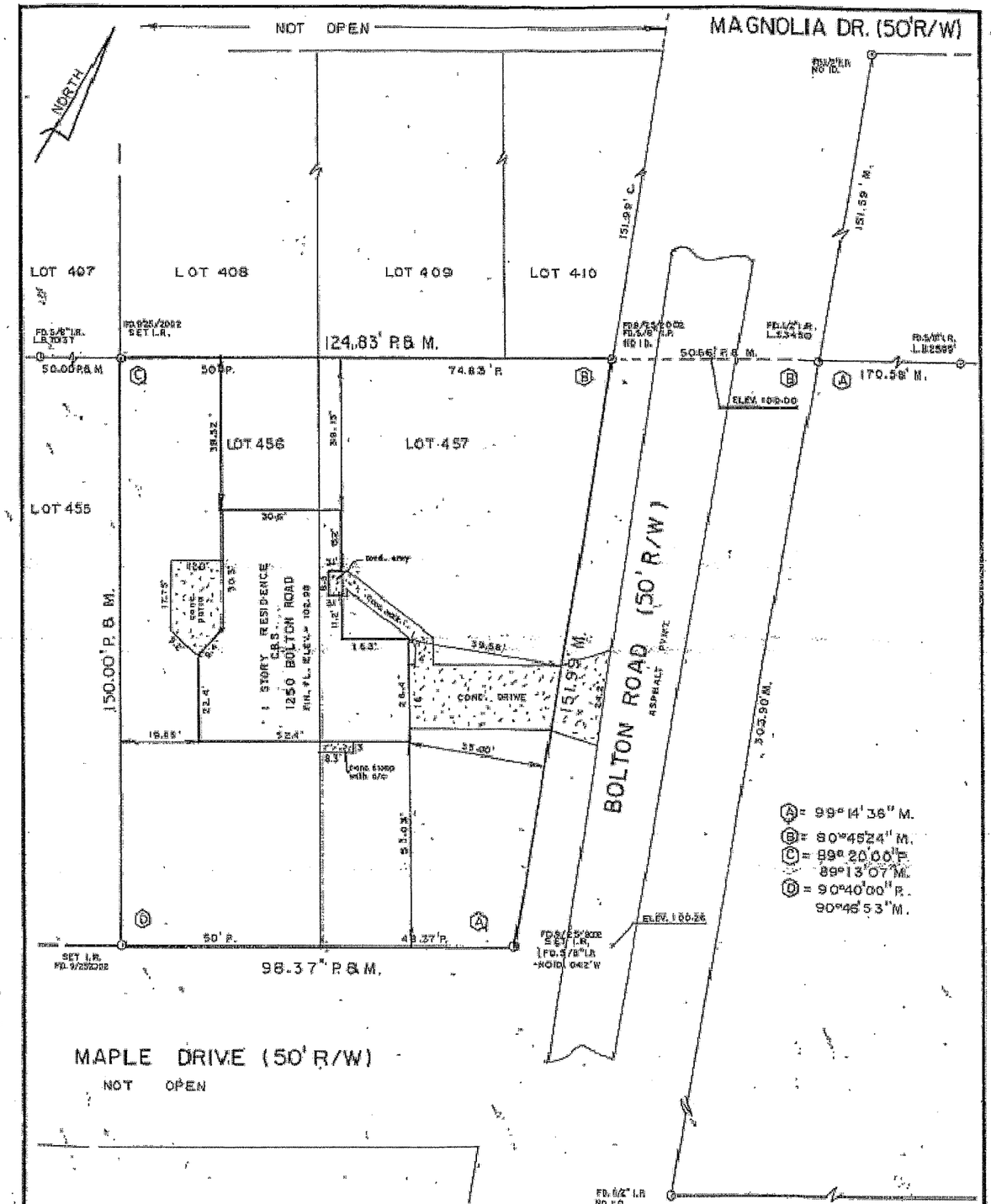


EXHIBIT C – EXISTING USES

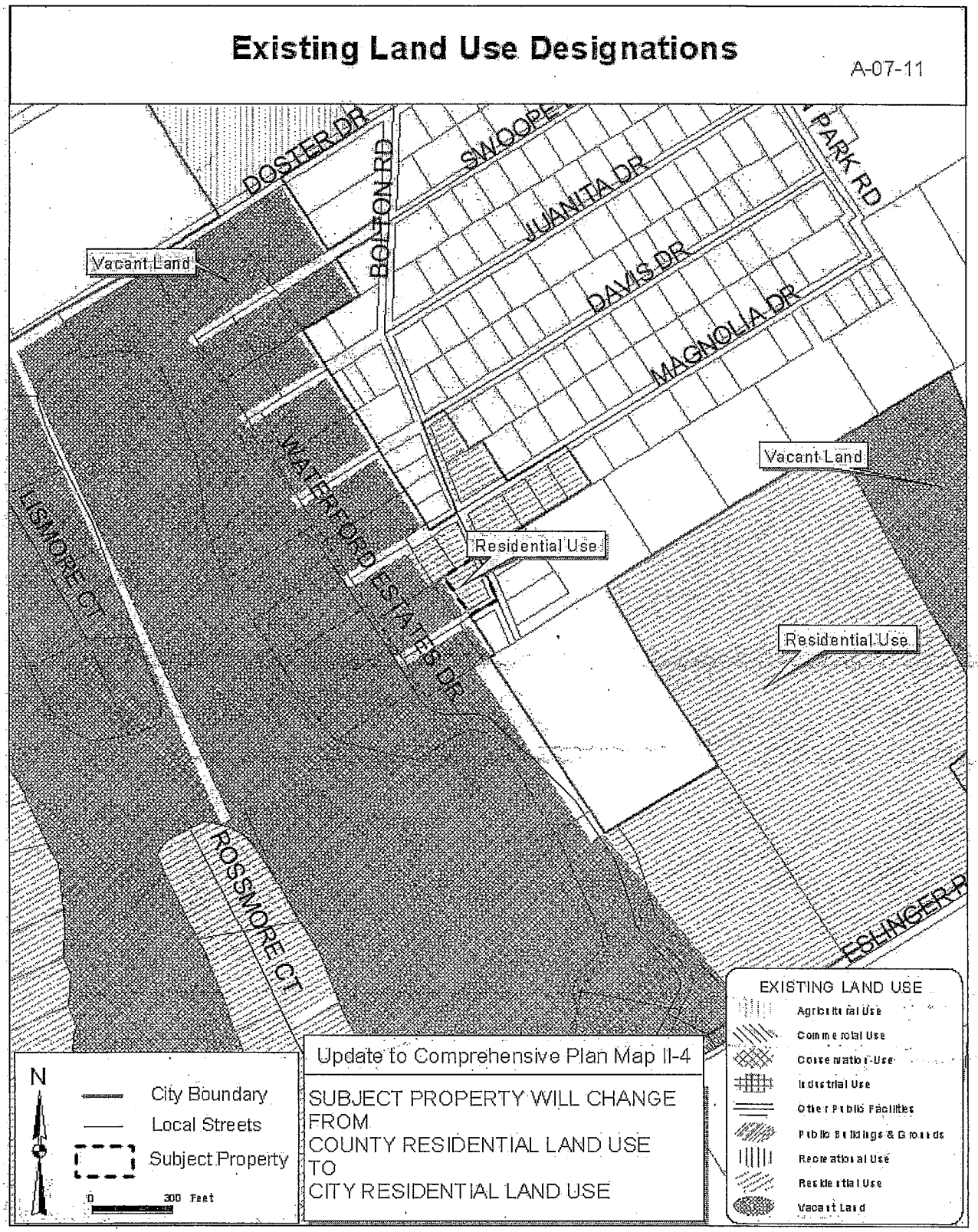


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EXHIBIT D – EXISTIING ZONING

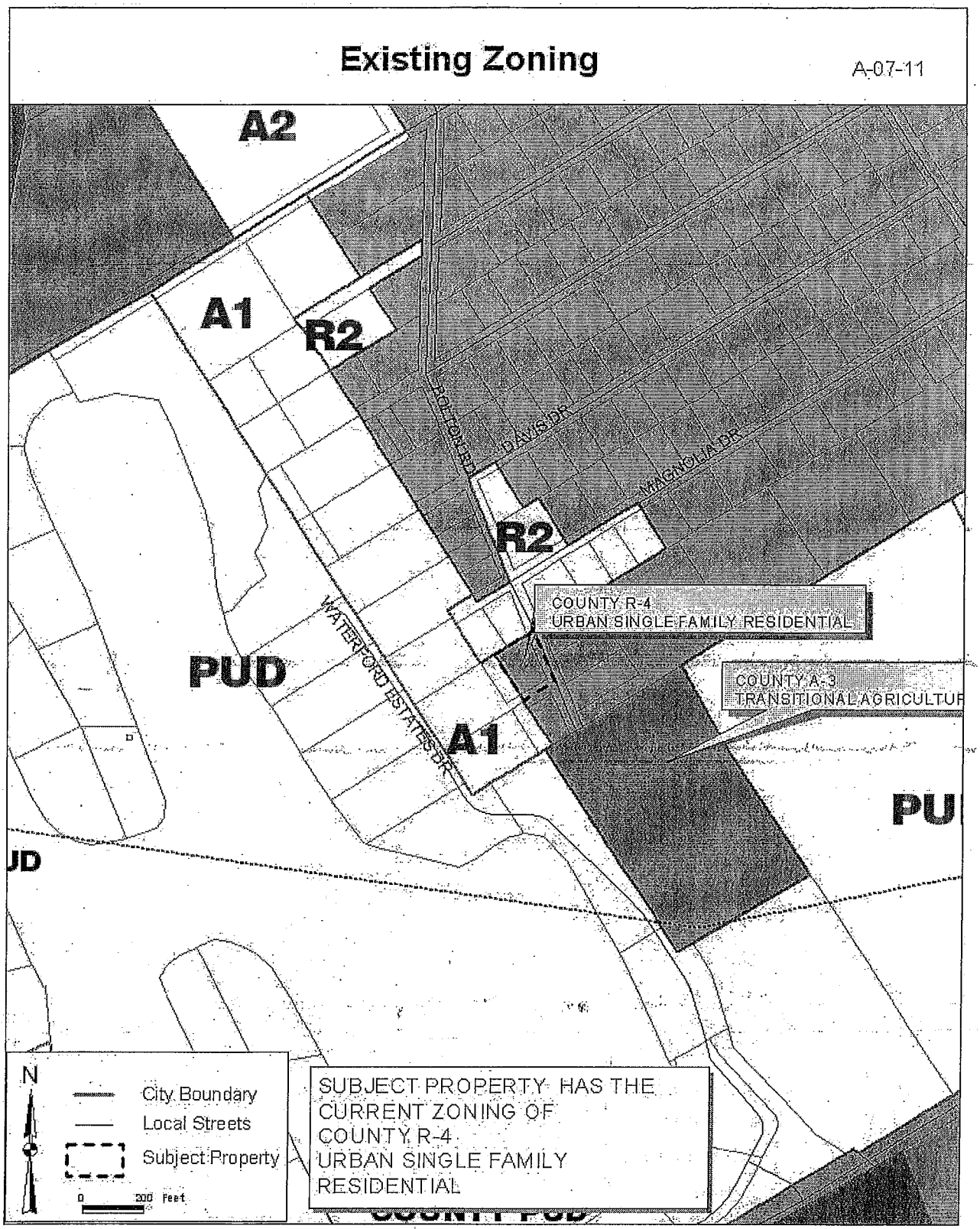

EXHIBIT E – EXISTIING FUTURE LAND USES

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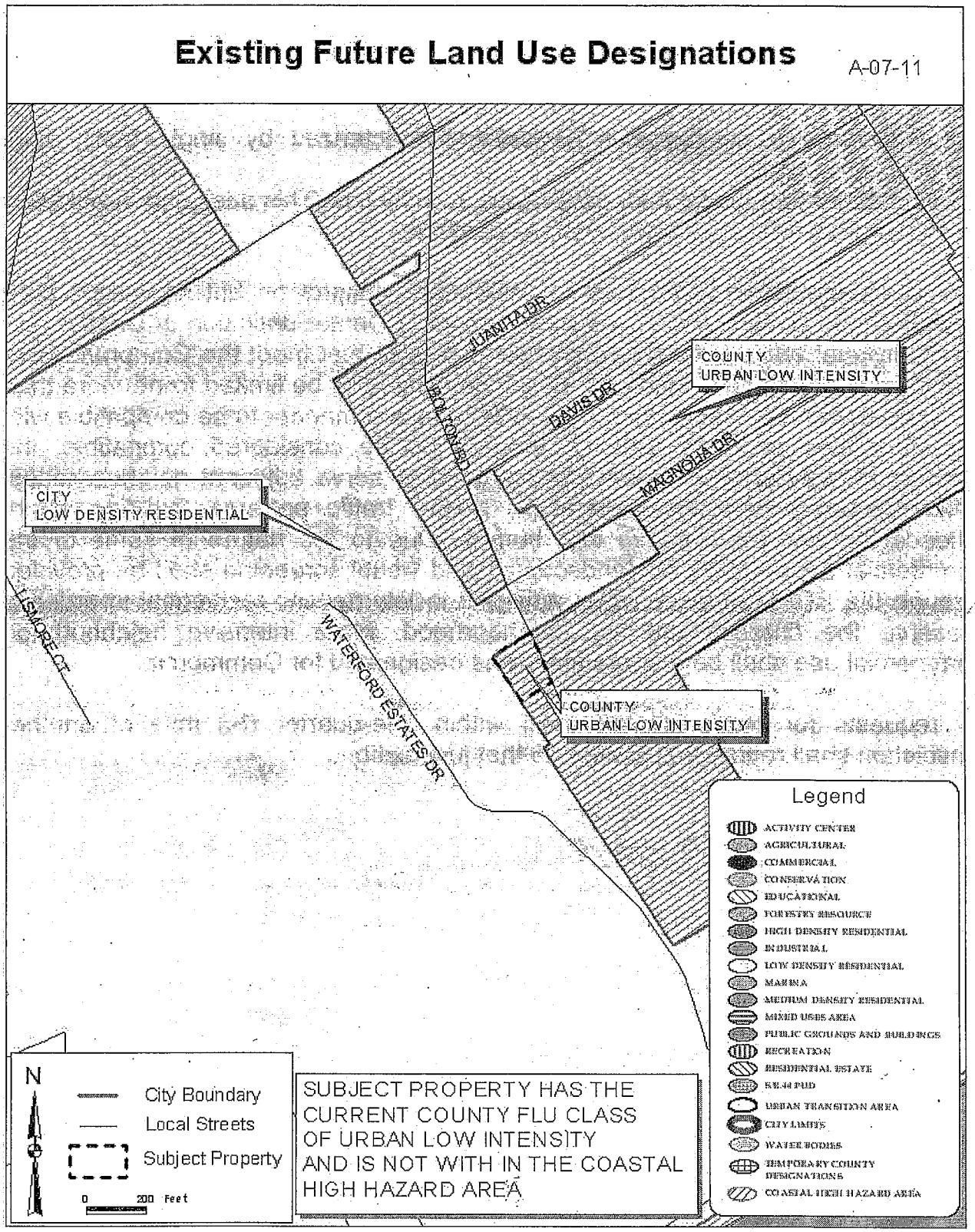

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EXHIBIT F – DESCRIPTION OF EXISTING FUTURE LAND USE

Urban Low Intensity (ULI)

Areas for low density residential dwelling units with a range of two-tenths (0.2) to four (4) dwelling units per acre. In reviewing rezoning requests, the specific density will depend on locational factors, particularly compatibility with adjacent uses and availability of public facilities.

This residential designation is generally characterized by single family type housing, e.g., single family detached and attached, cluster and zero lot line. This designation will allow existing agricultural zoning and uses to continue.

The ULI designation is primarily a residential designation but may also allow neighborhood convenience uses (see Shopping Center definition in Chapter 20) and individual office buildings as transitional uses that meet the Comprehensive Plan's location criteria. The commercial intensity shall be limited to no more than a fifty percent Floor Area Ratio (0.50 FAR) and in a manner to be compatible with the allowable residential density. In order to be considered compatible, the commercial development should be oriented to serve adjacent neighborhoods, reflect comparable traffic generation, similar traffic patterns, building scale, landscaping and open space and buffers. Due to the nature of some of the commercial uses, additional landscaping and visual screening shall be provided through the BPUD process when adjacent to low density residential in order to preserve the character of the neighborhood. More intensive neighborhood commercial use shall be reserved to areas designated for Commercial.

All requests for nonresidential uses within one-quarter (¼) mile of another jurisdiction shall require notification to that jurisdiction.

EXHIBIT G – DESCRIPTION OF EXISTING ZONING

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 G – DESCRIPTION OF EXISTING ZONING

- 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 H - SOILS

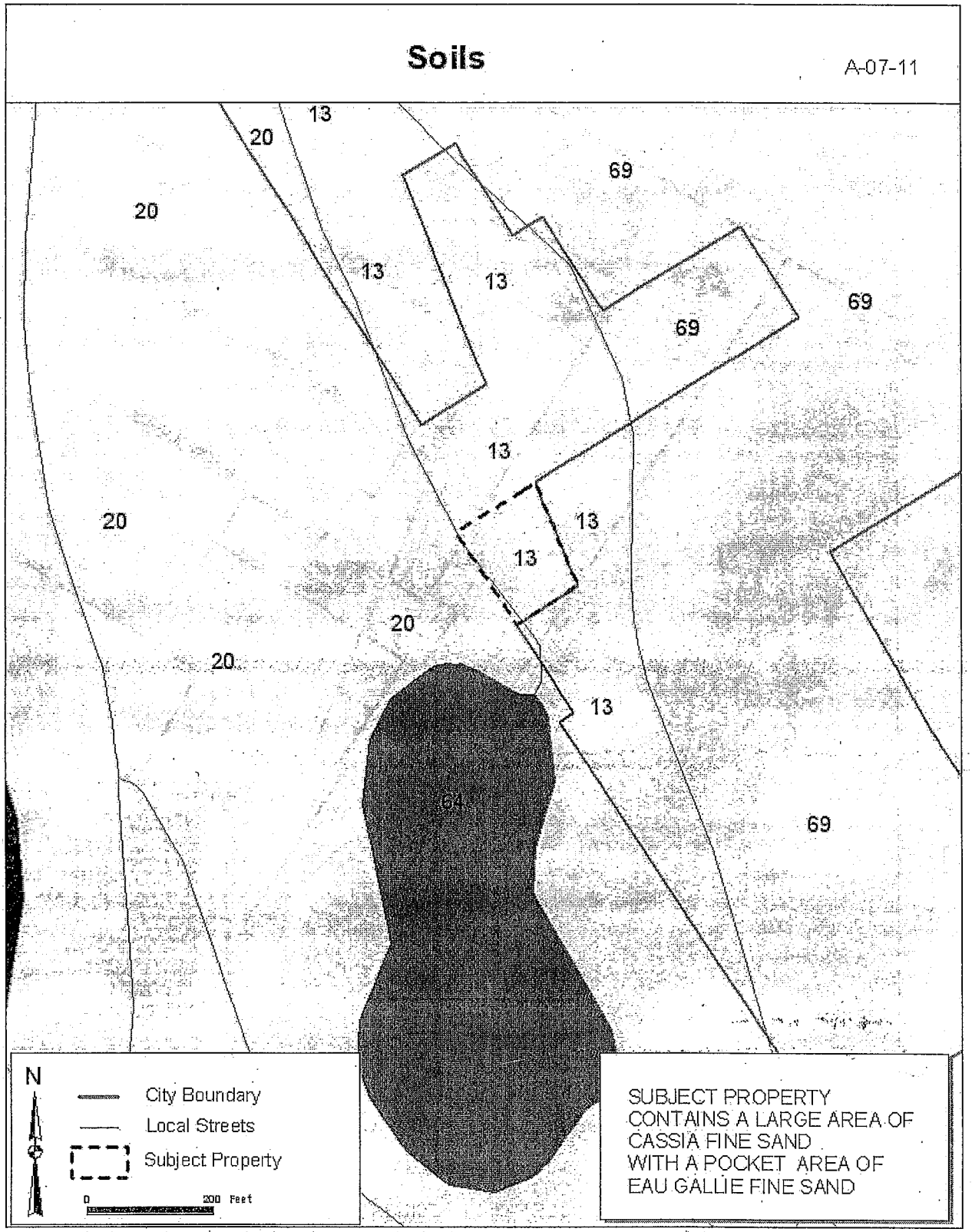

EXHIBIT I - PROPOSED ZONING

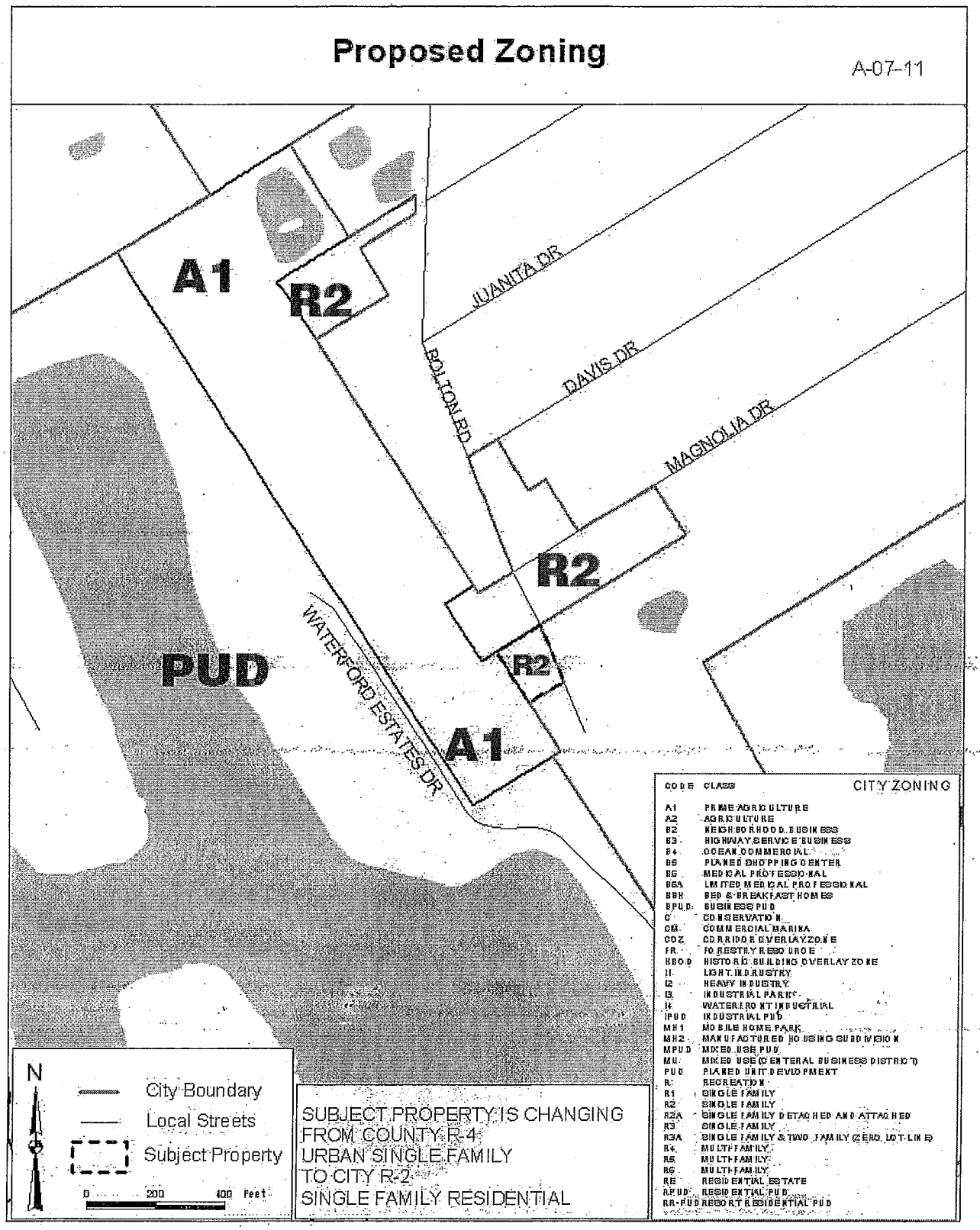

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EXHIBIT J – PROPOSED FUTURE LAND USE DESIGNATION

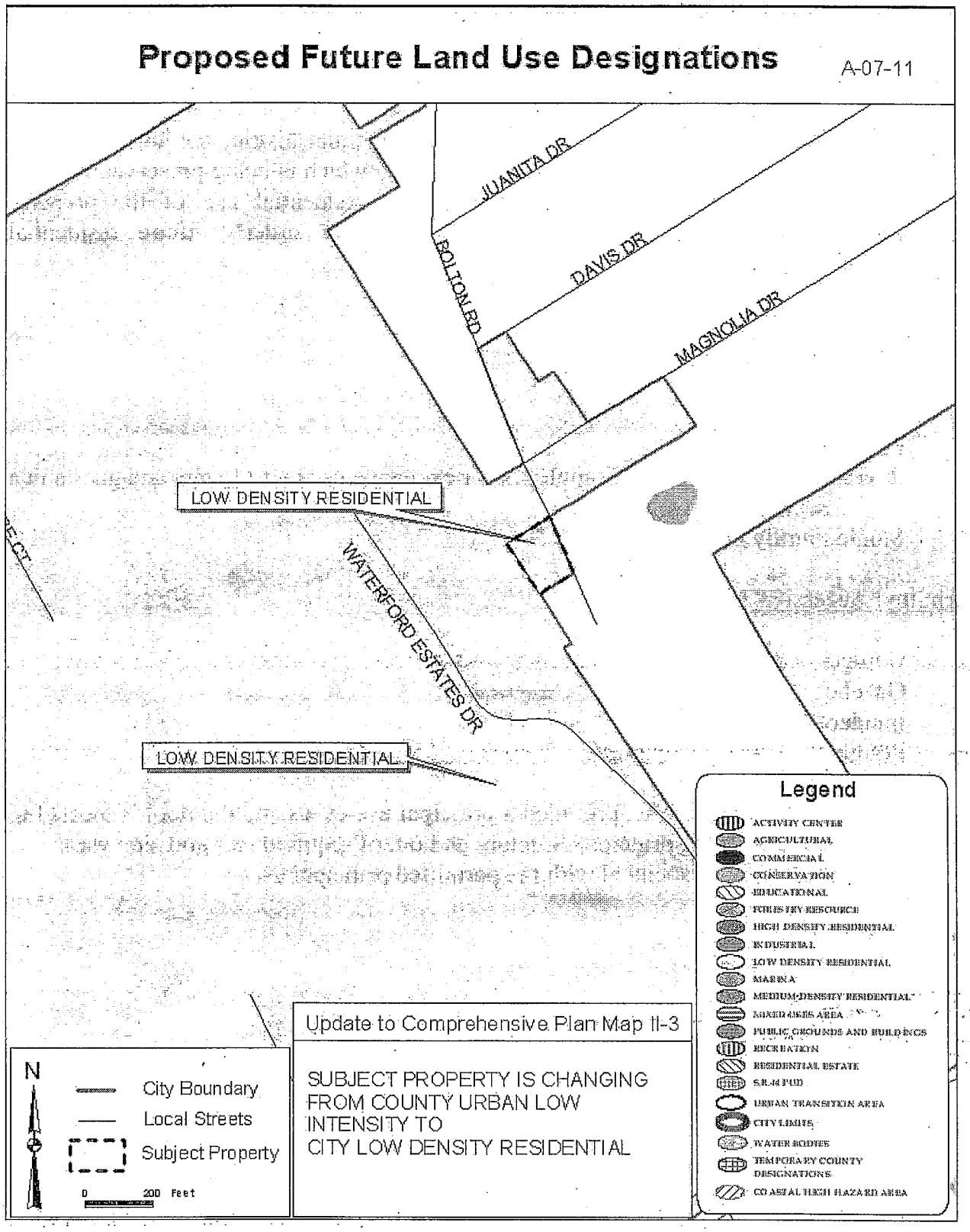

EXHIBIT K – DESCRIPTION OF PROPOSED ZONING

R-2 SINGLE FAMILY RESIDENTIAL DISTRICT

Intent:

The R-2 district is intended to be a single-family residential district for low population densities. Existing development and usage has resulted which is being preserved in order to stabilize the neighborhood. The nature of the residential use of the property throughout the district will enhance the prospects for orderly future residential development.

Permitted Uses:

- Playfields
- Playgrounds
- Public Parks
- Recreation Buildings and Complexes for exclusive use by 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 use exists and the pool is located to the rear of the principal structure and out of required rear and side yards
- 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.

EXHIBIT K – DESCRIPTION OF PROPOSED ZONING

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 thirty-five (35) feet from all side or rear property lines and off-street parking areas abutting residential property are screened by a buffer meeting the requirements of this LDR.

EXHIBIT L – DESCRIPTION OF PROPOSED FUTURE LAND USE

Low-Density Residential
Maximum allowed density: Up to five [5] dwelling units per acre
Intent: This use is appropriate where a more suburban development pattern exists or is desired and where urban services are to be kept to a minimum

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EXHIBIT M - NEIGHBORHOODS

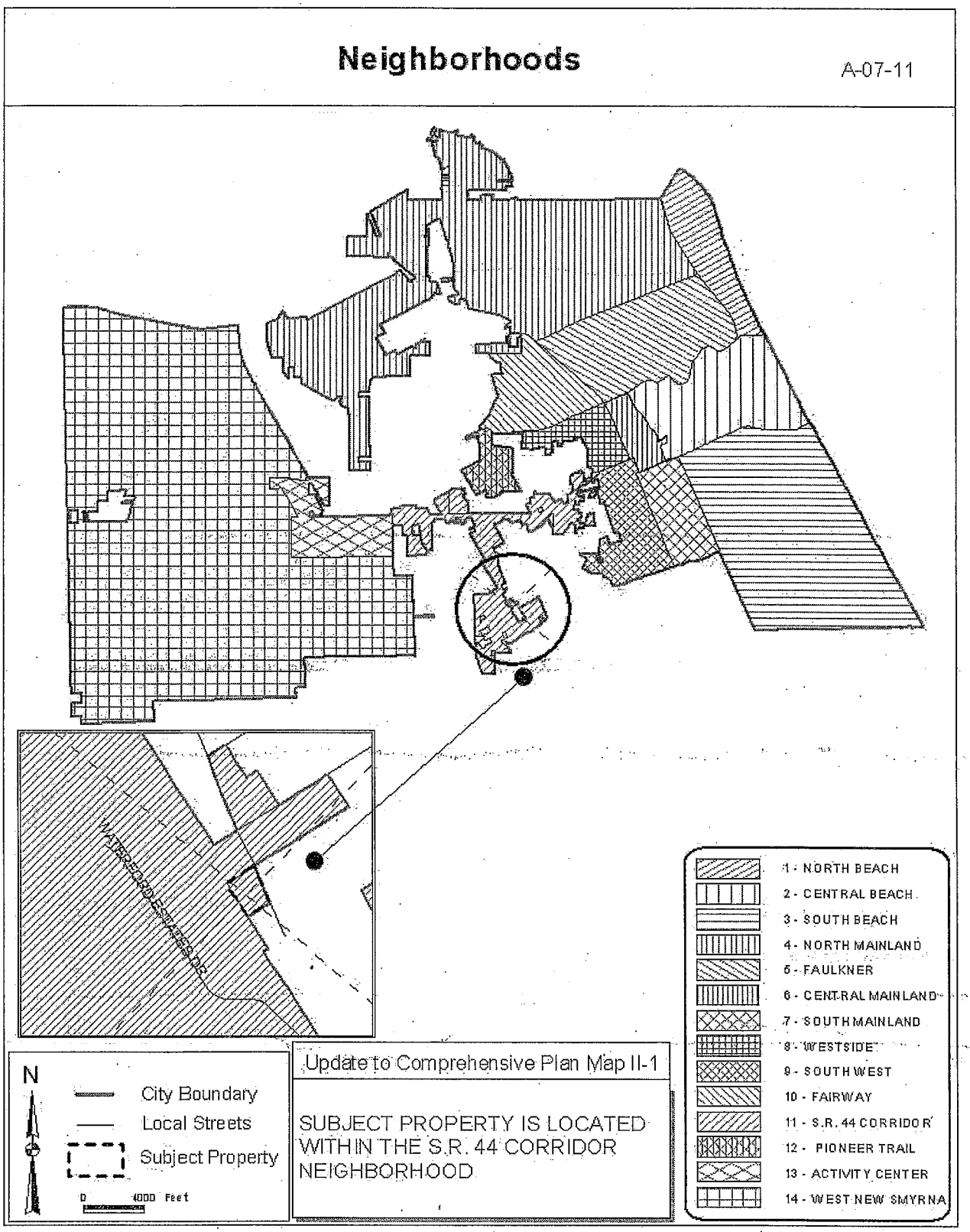

EXHIBIT N – FLOOD PRONE AREAS

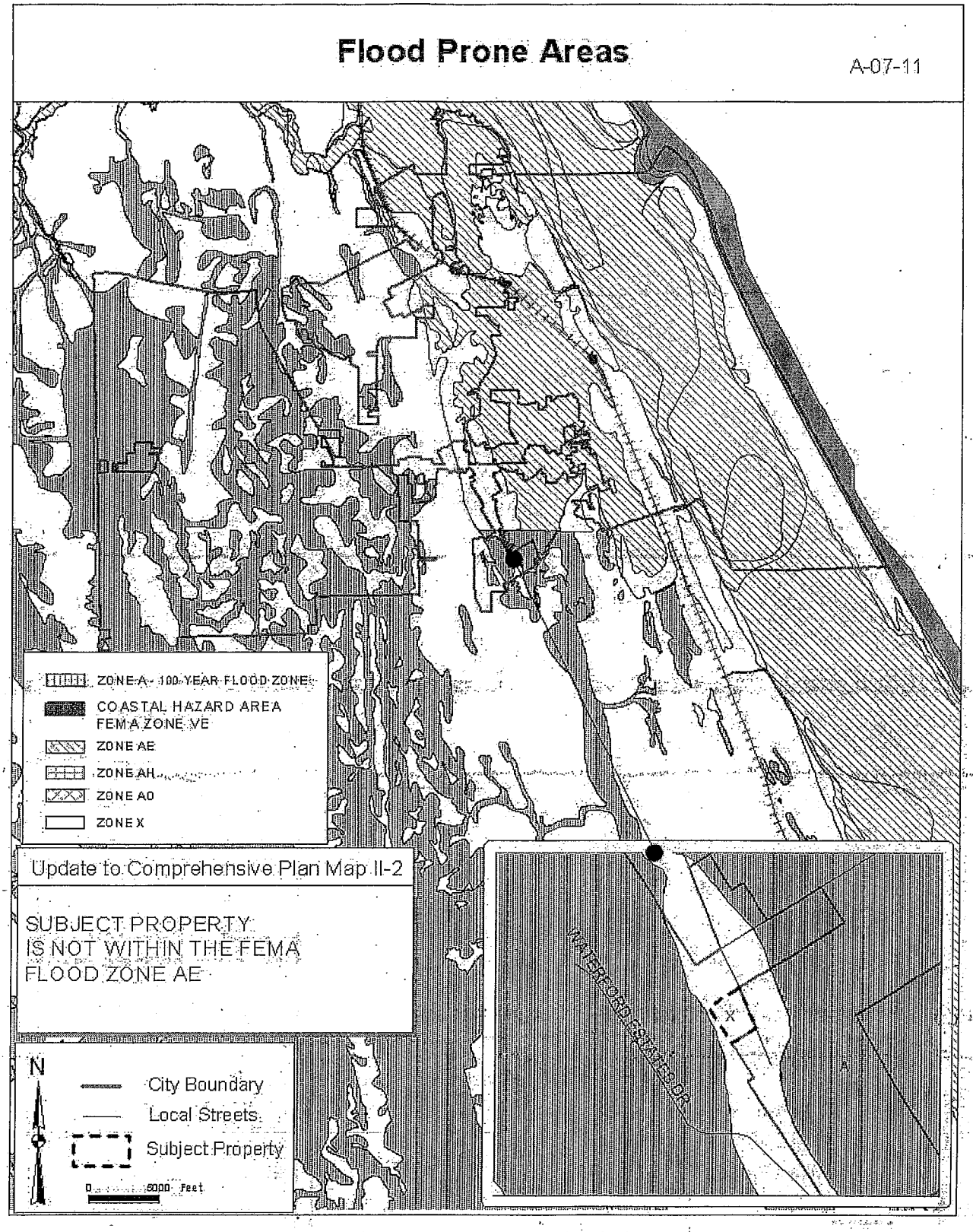

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EXHIBIT O – 1989 TRAFFIC CONDITIONS

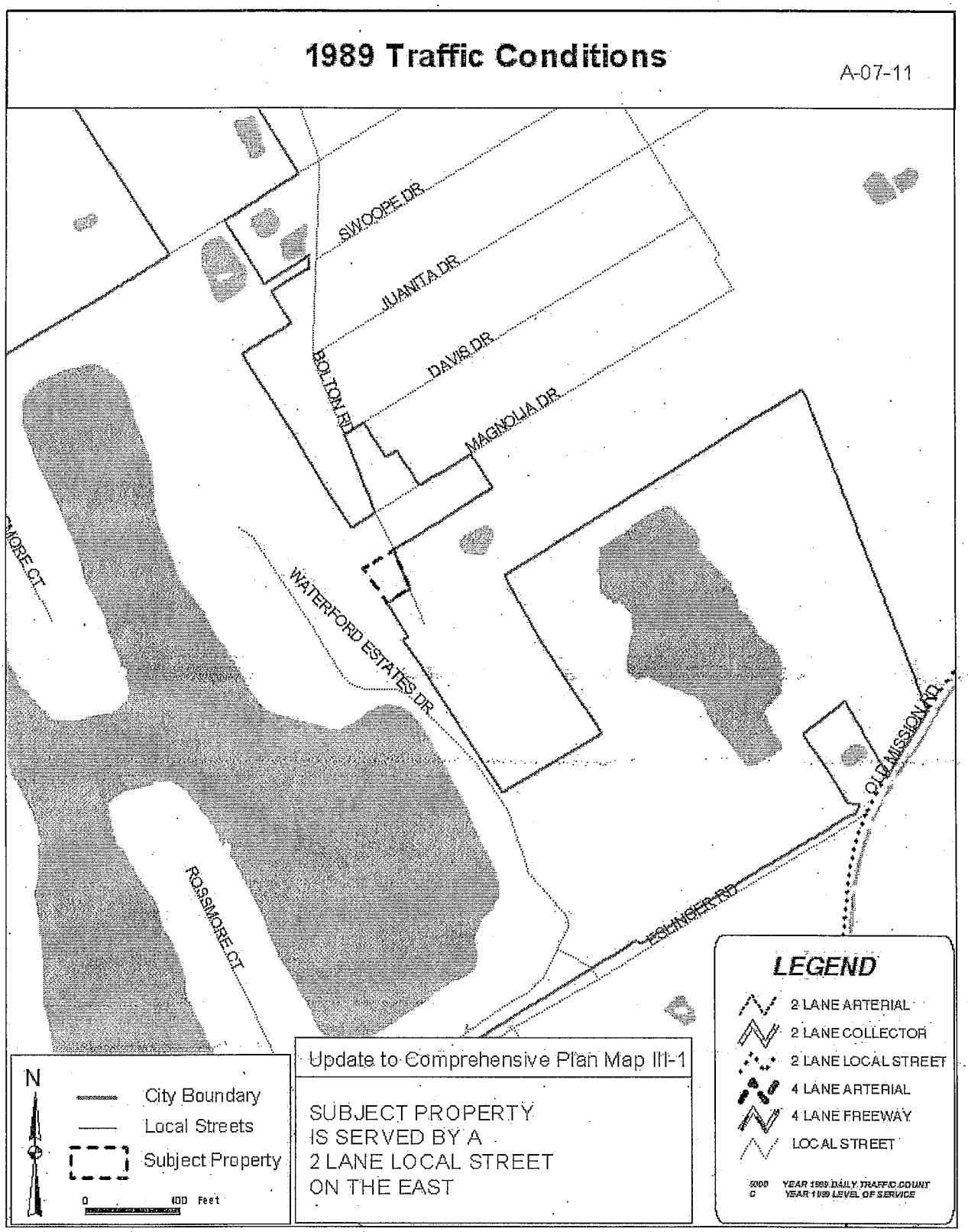

EXHIBIT P – 1995 TRAFFIC CONDISTIONS

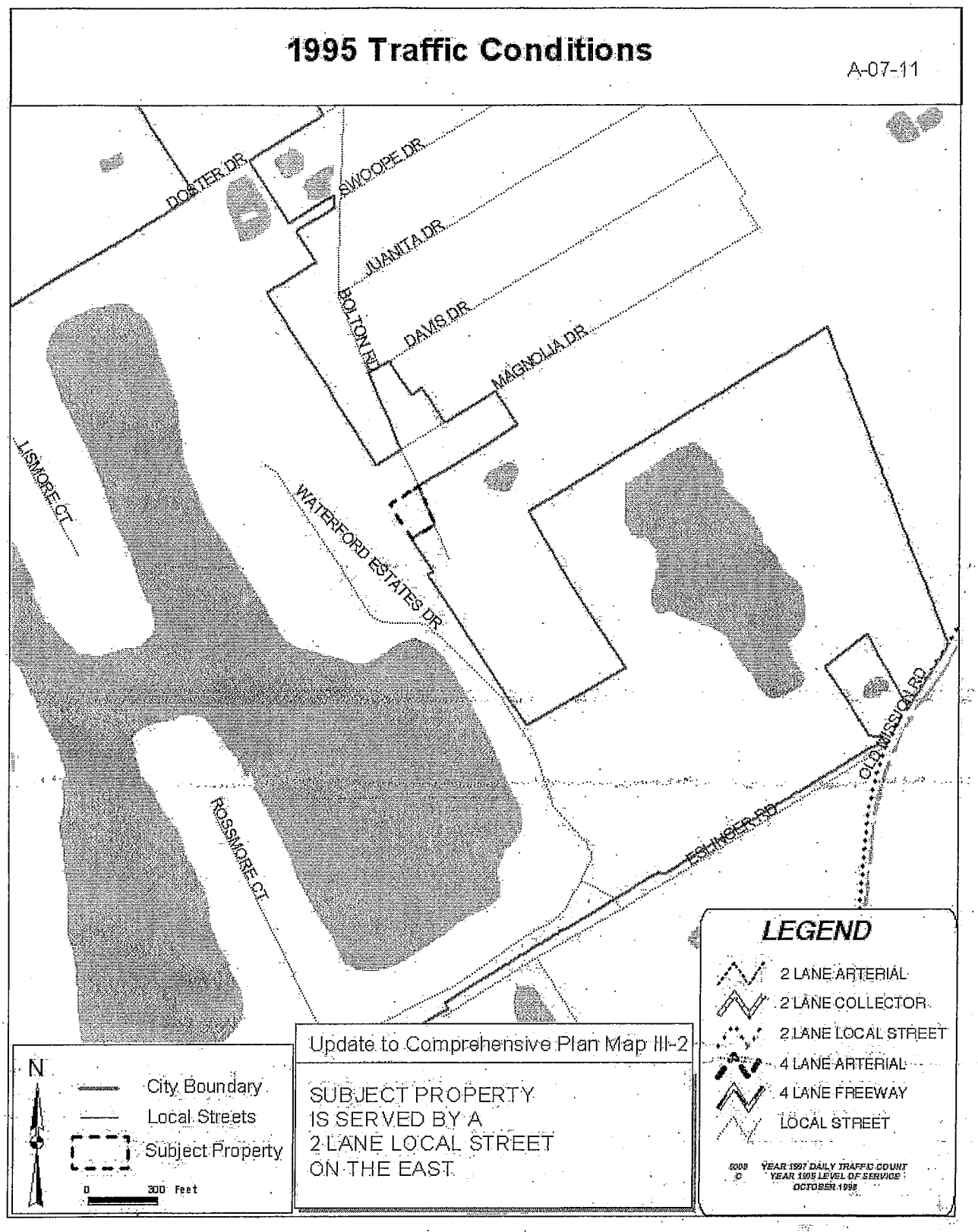

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EXHIBIT Q – 2010 TRAFFIC CONDITIONS

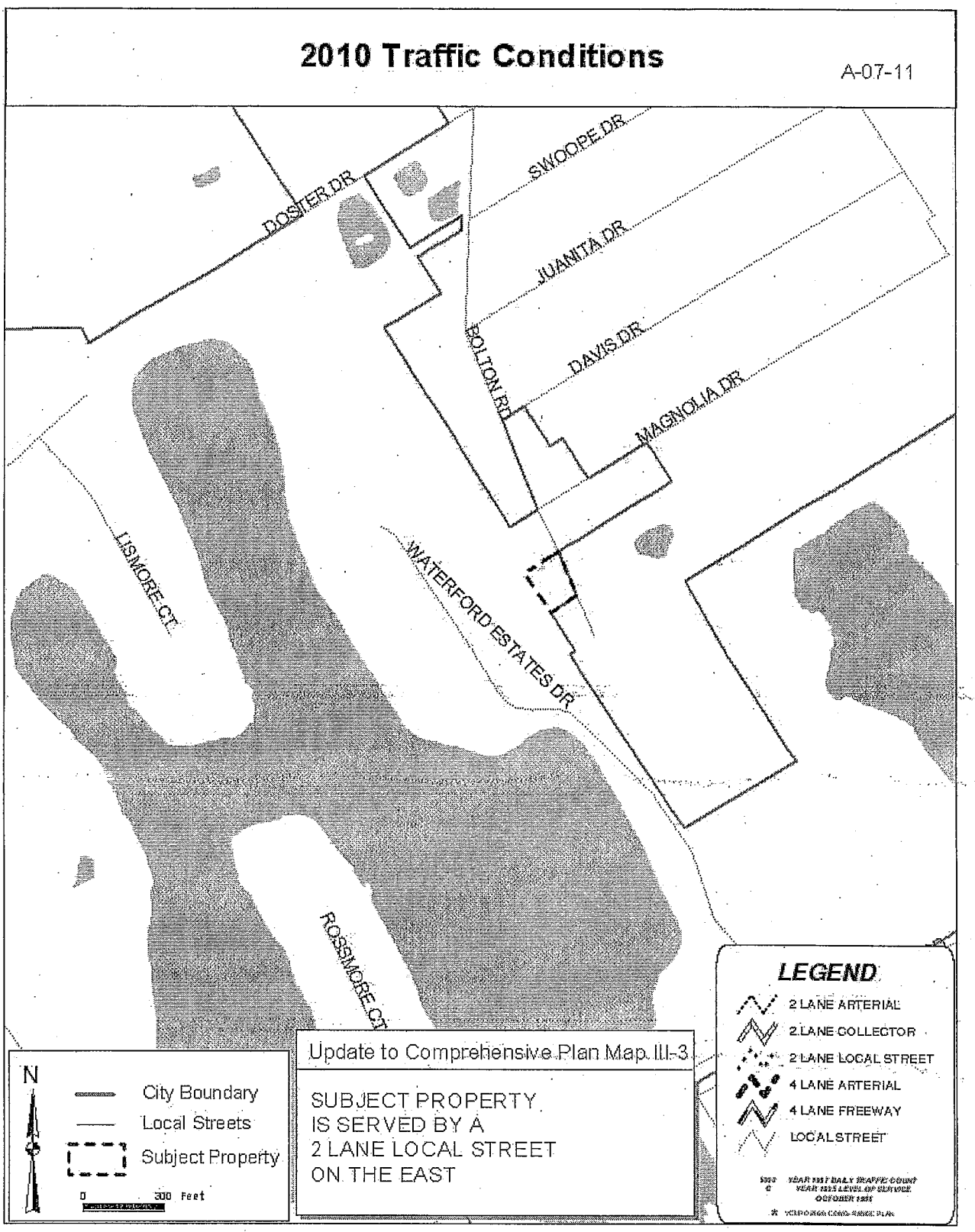

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EXHIBIT R – WATER AND SEWER SERVICE AREA

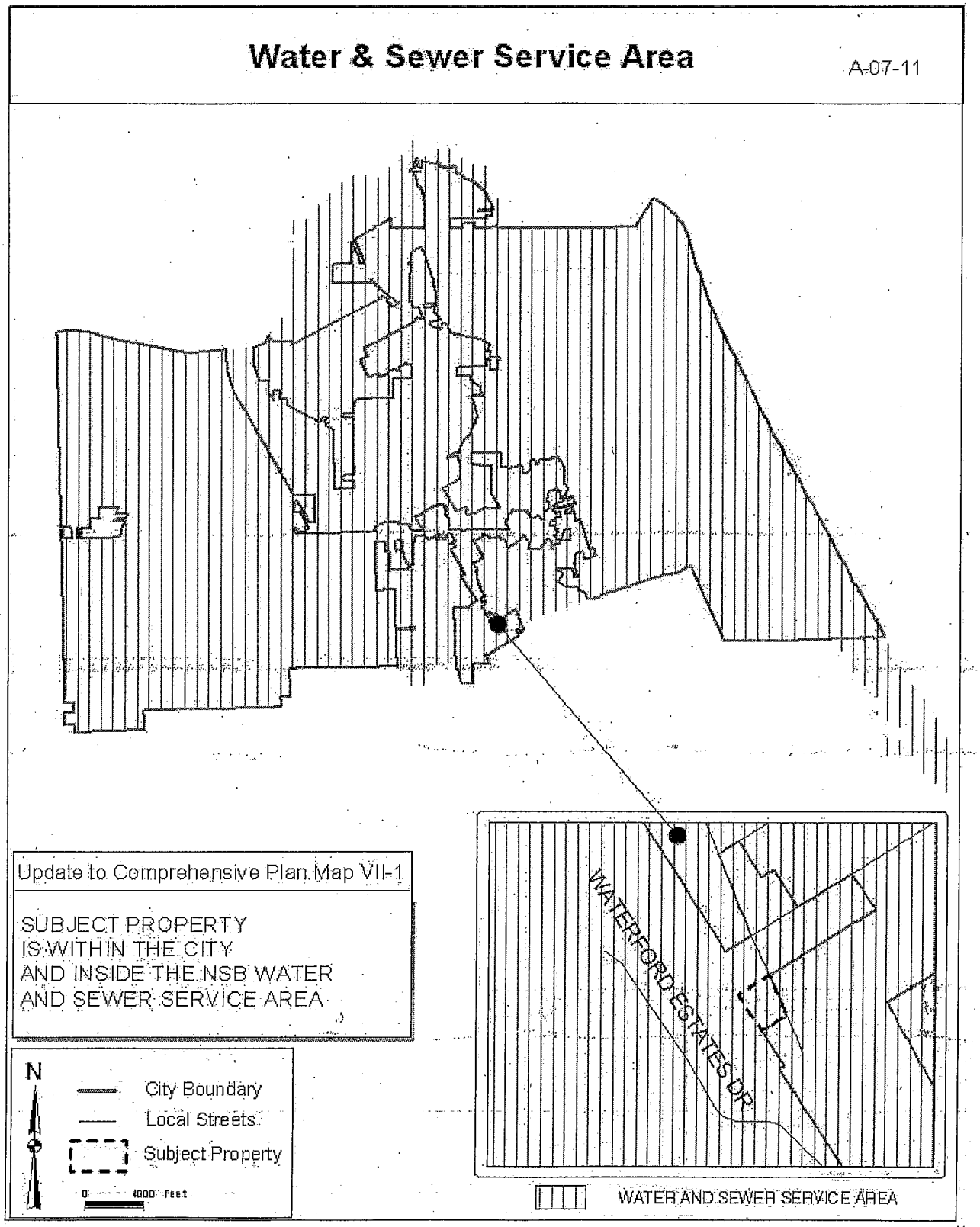
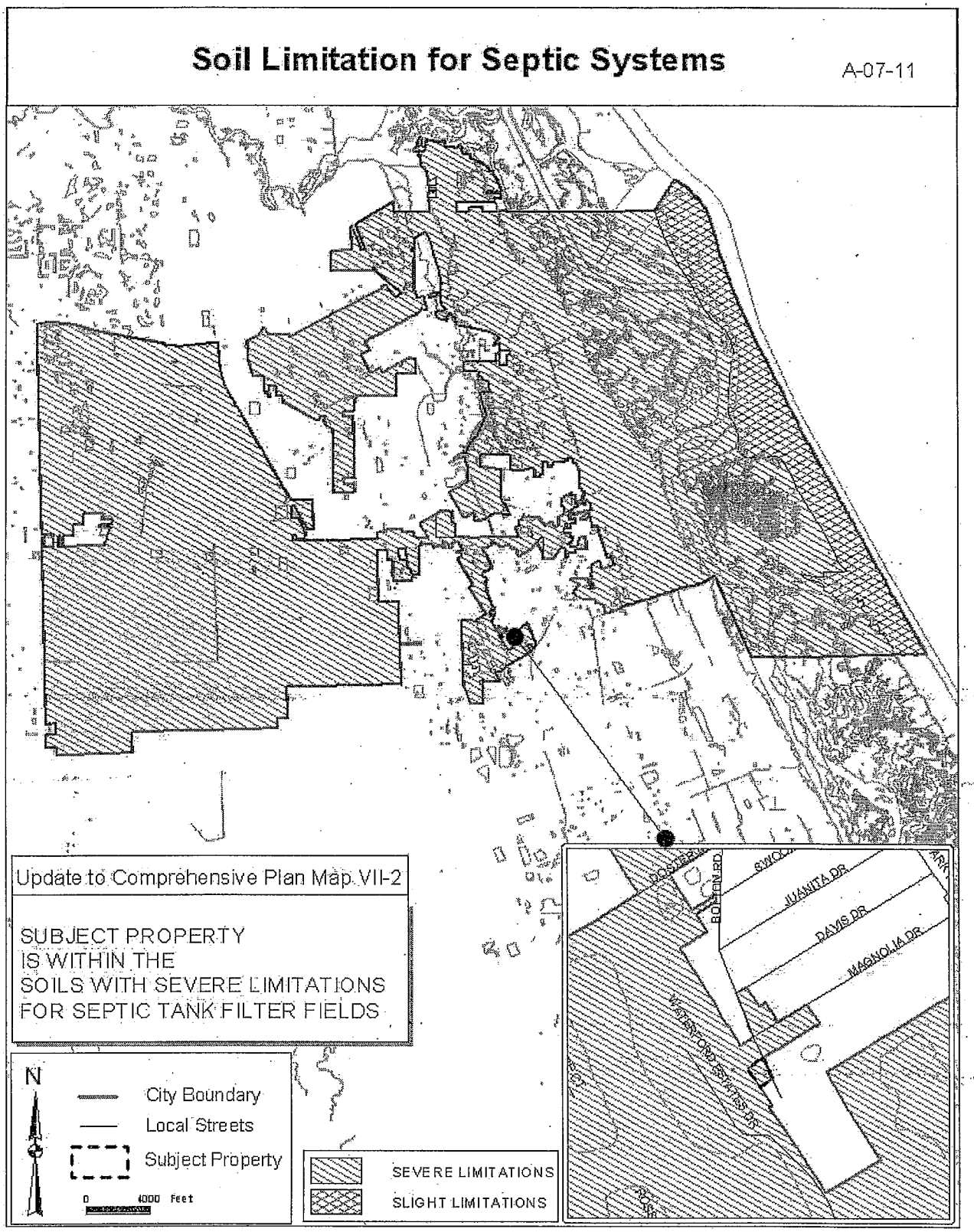


EXHIBIT S – SOIL LIMITATION FOR SEPTICE SYSTEMS



294

EXHIBIT T – COASTAL HIGH HAZARD AREAS

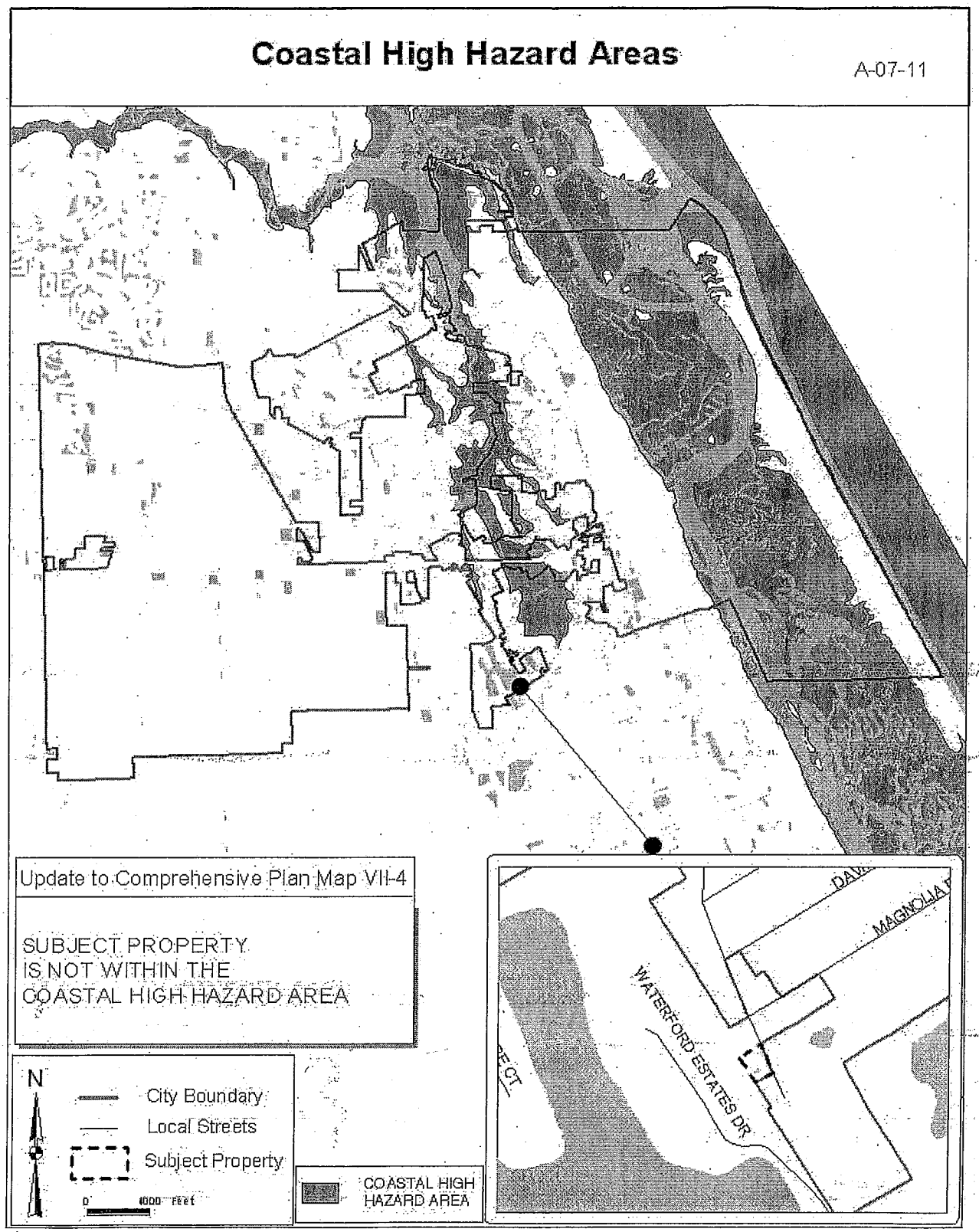
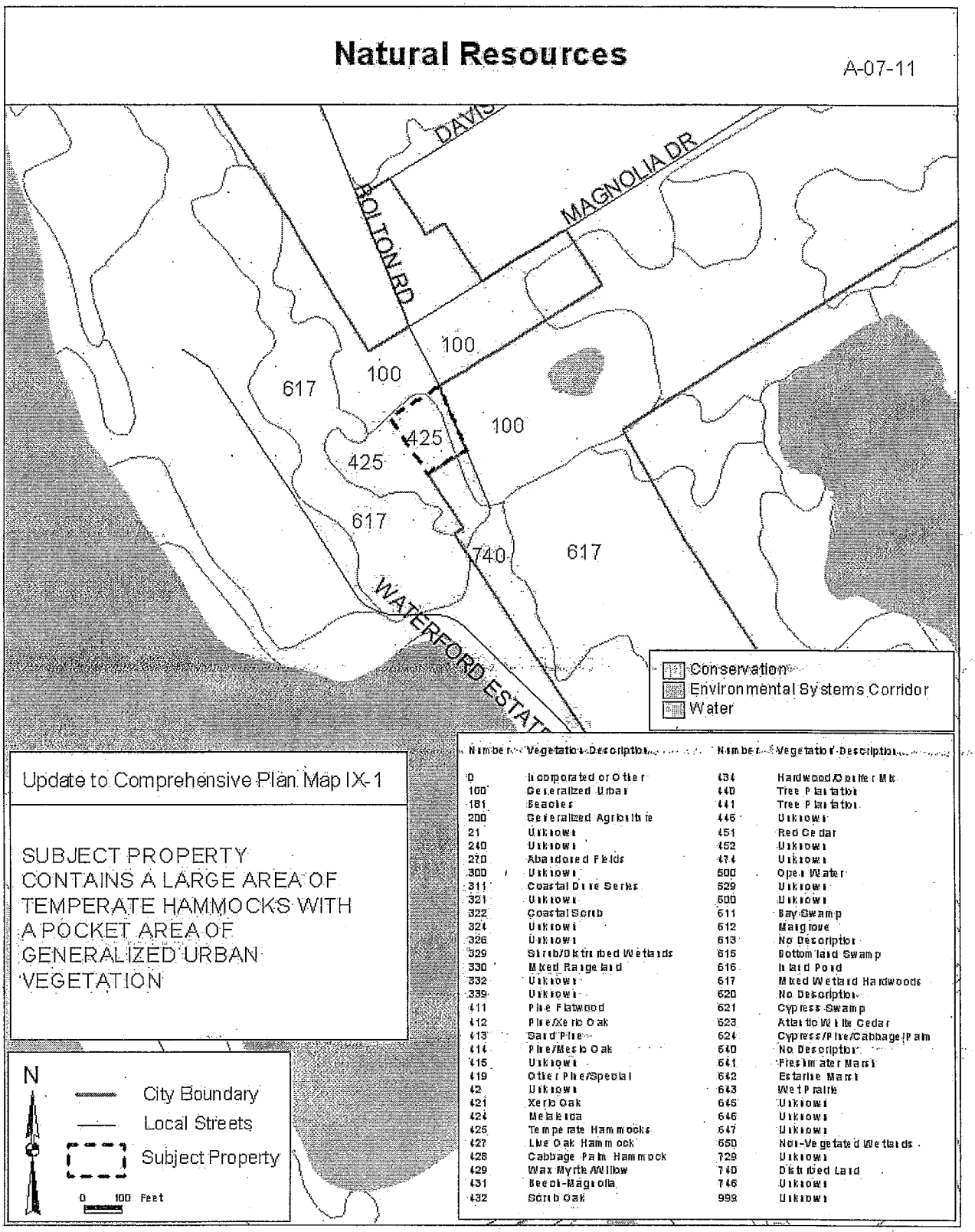


EXHIBIT U – NATURAL RESOURCES



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

EXHIBIT V – NEIGHBORHOOD AND COMMUNITY PARKS

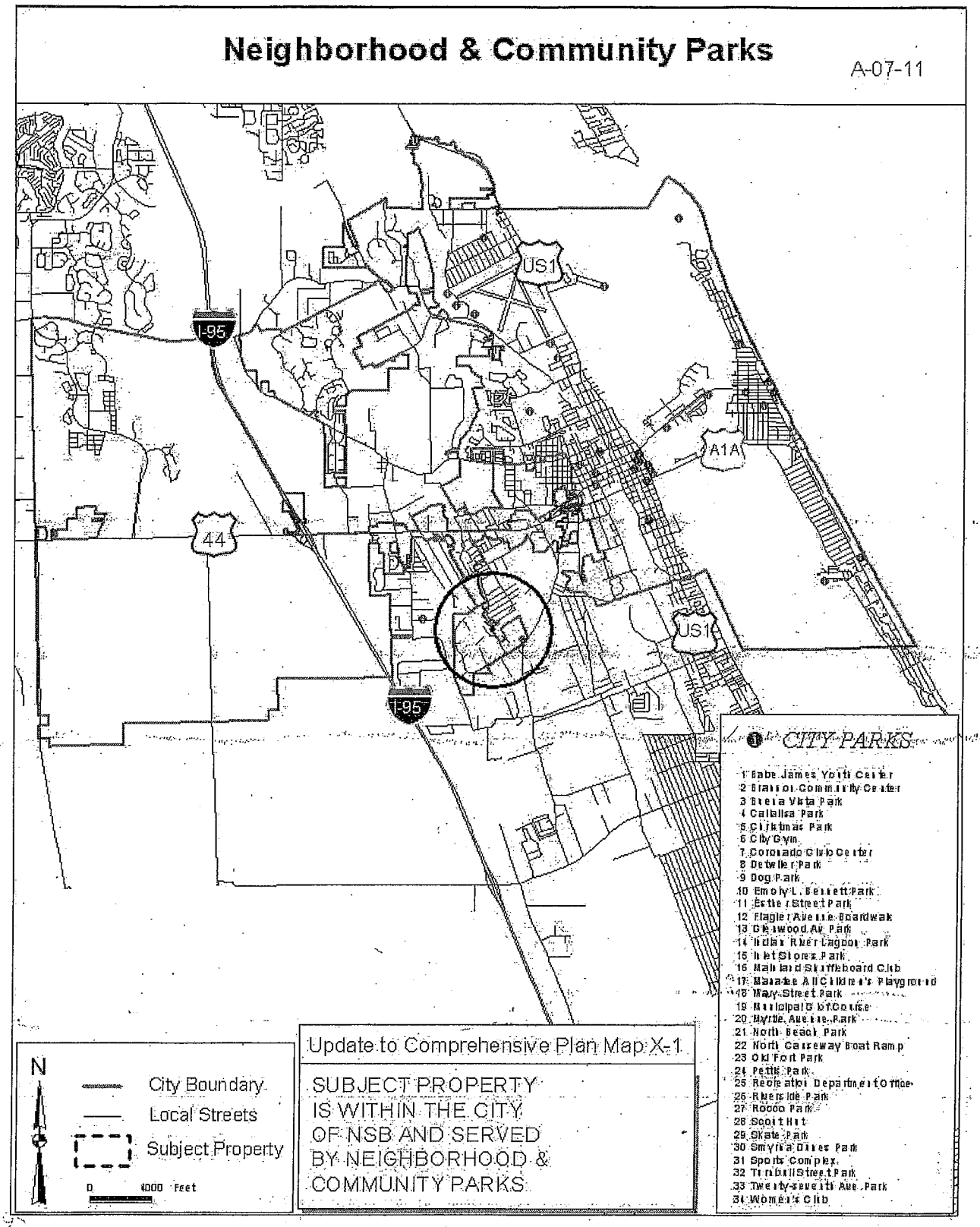


EXHIBIT W – REGIONAL PARKS AND SPECIAL USE FACILITIES

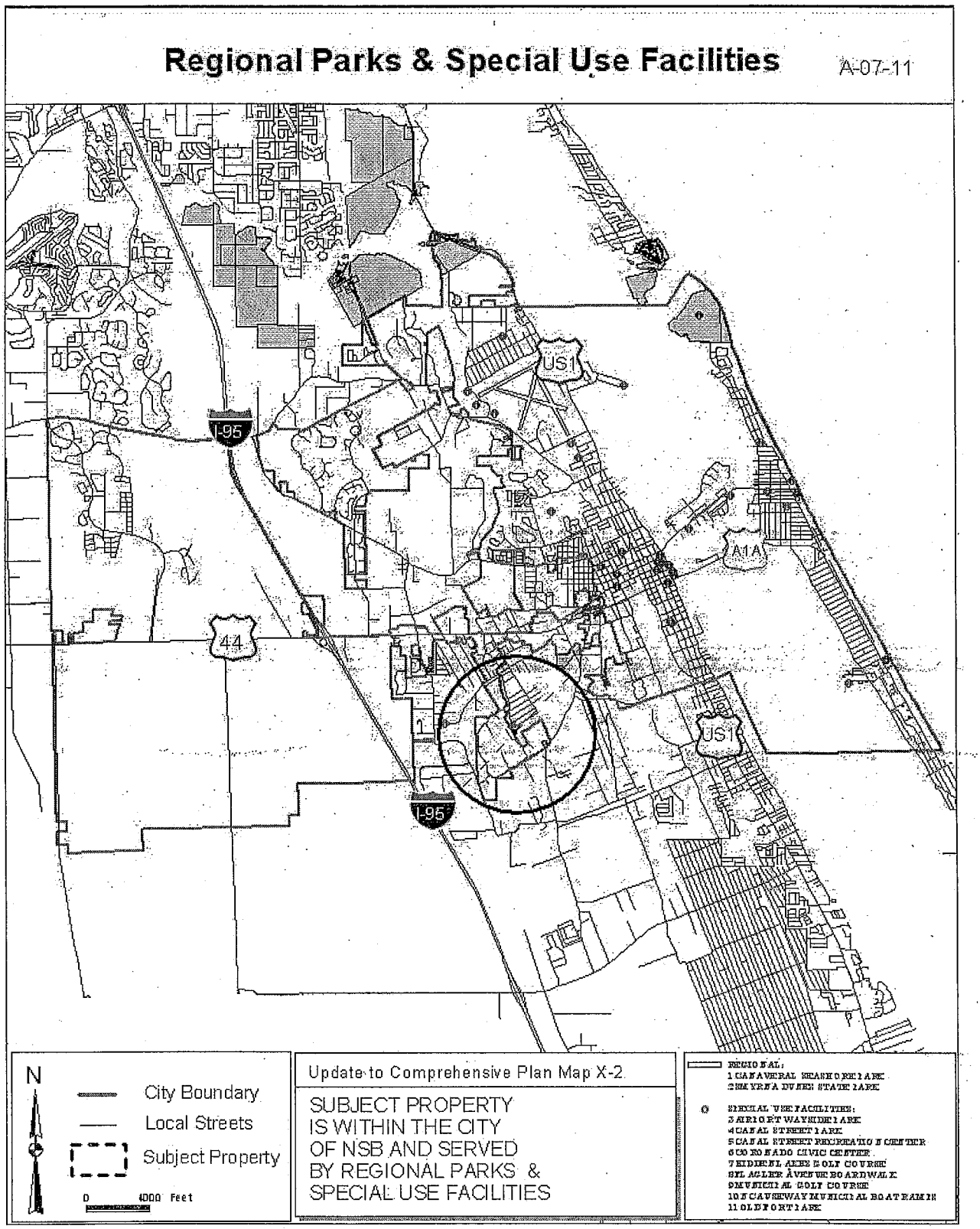


EXHIBIT X – AERIAL OF SUBJECT PROPERTY

299

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

V-6-11: ZDUNOWSKI / 837/839 EAST 17TH AVENUE

July 11, 2011

I. Summary

A. **Applicant:** Hal Spence, Esq., 221 North Causeway, New Smyrna Beach, Florida 32169

B. **Property Owners:** Estate of Genevieve Zdunowski, 839 East 17th Avenue, New Smyrna Beach, Florida 32169

C. **Requests:** Variances to the dimensional requirements to the R-2 Single Family Residential zoning district, reducing the minimum lot frontage from 75 feet to 49.97 feet, reducing the minimum side yard from 7.5 feet to 4.5 feet, and reducing the minimum lot size from 8,625 square feet to 7,500 square feet.

D. **Site Information:** The subject property is zoned R-2 Single Family Residential with a Future Land Use of Low Density Residential, contains approximately .34 acres and is located on the south side of East 17th Avenue approximately 230 feet west of South Atlantic Avenue. (see Location Map attached as **Exhibit A**).

E. **Tax I.D. Number: 742201490420**

II. Findings

A. The applicant has previous applied for a minor subdivision. . The City denied the application for a minor subdivision as all of the requirements could not be met under the current zoning regulations.

B. On 26 April 2011 Mr. Hal Spence applied for a variance on this parcel to assist in the administration of the estate of Genevieve Zdunowski. **(Exhibit B)**

C. This parcel currently has 2 detached single family dwellings on it. The two dwellings were built in 1971 and 1983 according to the Volusia County Property Appraiser's office. The R-2 zoning district does not allow more than one primary structure per parcel. This is an existing non-conforming use and could continue as such until one or both of the residences are damaged beyond 50% replacement value. At that time only 1 residence would be permitted on the parcel. **(Exhibit C)**

D. This parcel was platted as lots 42 and 43 of block Q of the Fuquay and Rogers Subdivision on 9 March 1925. **(Exhibit D)**

E. The applicant has submitted an application for a minor subdivision to be acted upon if this variance is granted. The applicant has made the survey for the existing parcel and the proposed parcels available. **(Exhibits E,F, & G)**

F. When parcels are combined, only the new parcel exists. There are generally no additional rights vested from the previous land configuration and no rights exist to revert the parcel to a previous land configuration.

G. Parcel 7422-01-49-0420 conforms to the minimum lot dimensions for the R-2 Single Family Residential District.

H. The west side yard of the parcel measures 4.7 feet. The required side yard is 7.5 feet. This existing non-conformity could continue as such until the western residence is damaged beyond 50% replacement value. At that time the 7.5 foot required side yard would come into force.

I. The request for the reduced side yard on the east side of the western dwelling (lot 42) is only required if the parcel is divided as the applicant requests. There is currently 17 feet between the dwellings.

J. Twenty one lots along the south side of this block of East 17th Avenue were platted in 1925 as 50 foot by 150 foot lots. At this time there are 18 parcels. Only 8 of the 18 lots on the south side of East 17th Avenue currently have 50 foot frontages.

K. Currently when applicants request to combine lots, they are informed that in the future the lots will not be able to be divided unless both lots can meet the minimum standards for lot dimensions at the time of the request.

L. 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 of the site 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 are not special circumstances that prevent the continued use of this property as developed. There are no special circumstances that would prevent this parcel from being redeveloped in the future per the Land Development Regulations for the R-2 Single Family Residential zoning district.

Minimum Lot frontage: This criterion has not been met.
Minimum Lot Size: This criterion has not been met.
Minimum Side Yard: 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.

Strict interpretation of the LDR does not prevent the continued use of the 2 residences on the existing parcel unless one or both of the residences are destroyed beyond 50% replacement value. In that case, only one residence would be permitted by the LDR. Reasonably one would expect to only be able to build one house upon an R-2 zoned lot of this size.

Minimum Lot frontage: This criterion has not been met.
Minimum Lot Size: This criterion has not been met.
Minimum Side Yard: 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.

The condition of the two 1925 platted lots being combined as one parcel is due to direct or indirect actions of the present property owner(s) or past property owner(s).

Minimum Lot frontage: This criterion has not been met.
Minimum Lot Size: This criterion has not been met.
Minimum Side Yard: 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.

The granting of this variance could cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance by creating two non-conforming parcels where one conforming parcel currently exists.

Minimum Lot frontage: This criterion has not been met.
Minimum Lot Size: This criterion has not been met.
Minimum Side Yard: 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.

The granting of this variance will constitute a grant of special privilege that is not granted to other conforming lots within the R-2 Single Family Residential zoning district.

Minimum Lot frontage: This criterion has not been met.
Minimum Lot Size: This criterion has not been met.

Minimum Side Yard: This criterion has not been met.

M. Should the Planning and Zoning Board determine that the request meets all of the variance criteria and should be approved, staff recommends that the Board place the following condition upon that approval:

a. At such a time as the residences are damaged beyond 50% replacement value, all variances relating to required yards or setbacks are revoked.

Recommendation

Staff recommends **denial** of variance request to reduce minimum street frontage from 75 feet to 49.97 feet due to the application meeting none of the 5 required criteria for approval.

Staff recommends **denial** of variance request to reduce minimum required side yard from 7.5 feet to 4.5 feet due to the application meeting none of the 5 required criteria for approval.

Staff recommends **denial** of variance request to reduce minimum lot size from 8,650 square feet to 7,500 square feet due to the application meeting none of the 5 required criteria for approval.

1

Exhibit A – Location Map

2

1
2

Exhibit B – Letter from Applicant

HAL SPENCE, P.A.
ATTORNEY AT LAW
221 N. CAUSEWAY, SUITE A
NEW SMYRNA BEACH, FL 32169-5239

TELEPHONE: 386-427-5227 FACSIMILE: 386-423-3909 EMAIL: HSPENCEPA@AOL.COM

April 26, 2011

Development Services
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, FL 32168

Re: Variance Letter of Response
Owner: Estate of Genevieve Zdunowski
Legal description: Lots 42 and 43, Block Q, Fuquay and Rogers Subdivision

Dear Sir/Madam:

Please consider the following information with this variance request:

1. This variance request is submitted in order to gain approval for two existing single family homes situated upon Lots 42 and 43.
2. Lot 43 is zoned R-4 multi-family and Lot 42 is zoned R-2 single family.
3. The owners of the above homes are both deceased and the estate has brought this variance request in order to equitably administer the estate (which includes these homes) to the heirs and close to pending probate.
4. Within the surrounding areas of Blocks Q and P, the applicant has located at least 21 lots, other than the applicant's lots, upon which homes are built on platted 50' wide lots. Therefore, granting this variance will not have an adverse effect upon the existing neighborhood.
5. Strict application of the Land Development Regulations would deprive the applicant of rights commonly applicable to the surrounding neighbors, based on the above and granting this request will not cause substantial detriment to the public welfare or intent of the law.
6. The grant of this variance will not constitute a special privilege to applicant, which did not cause the present existing situation.

Respectfully submitted,

Hal Spence
Attorney for Estate of Estate of Genevieve Zdunowski

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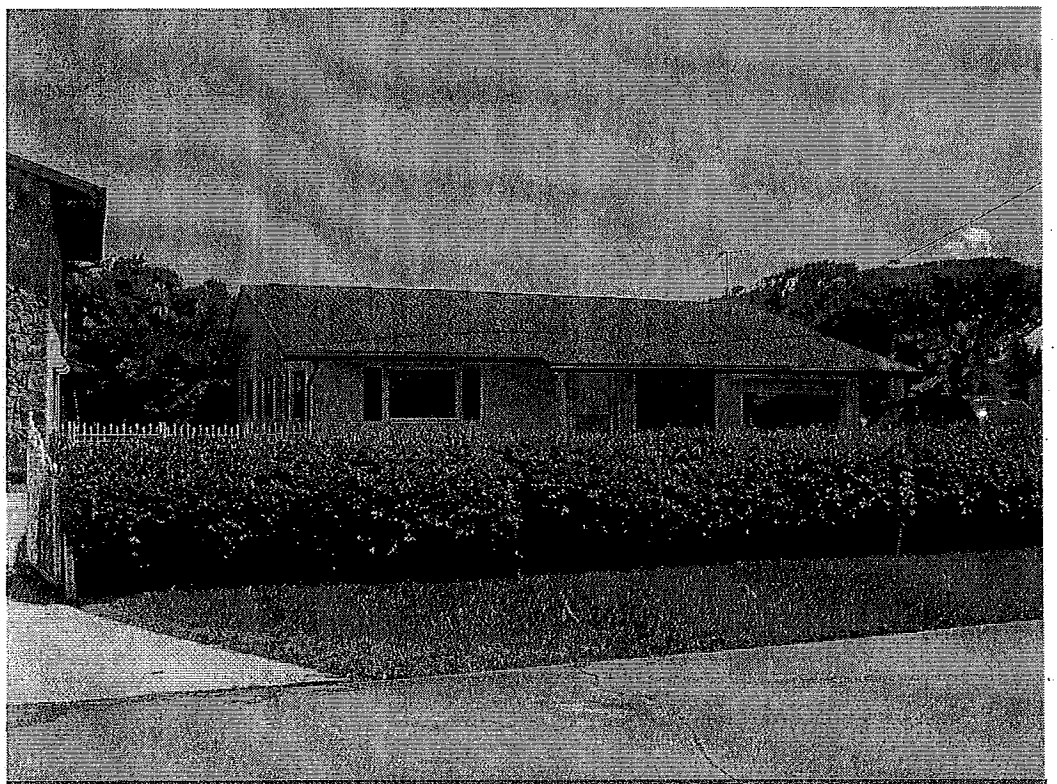
4
5

Exhibit C – Existing Site Conditions



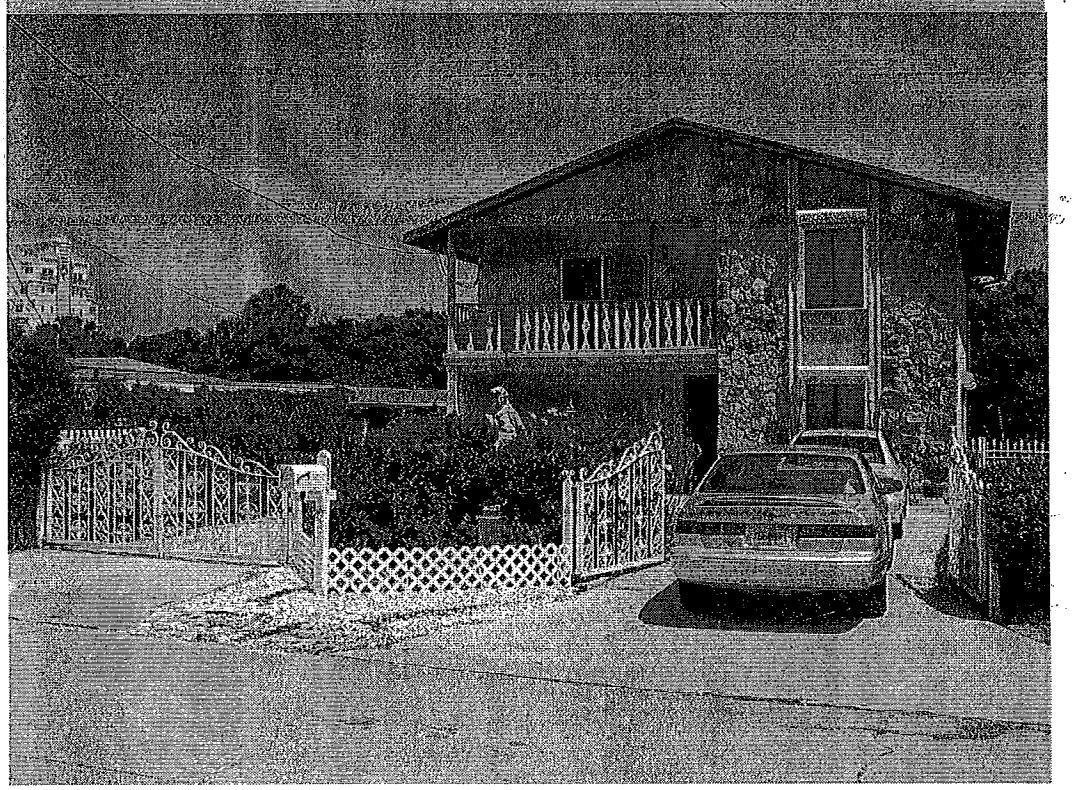
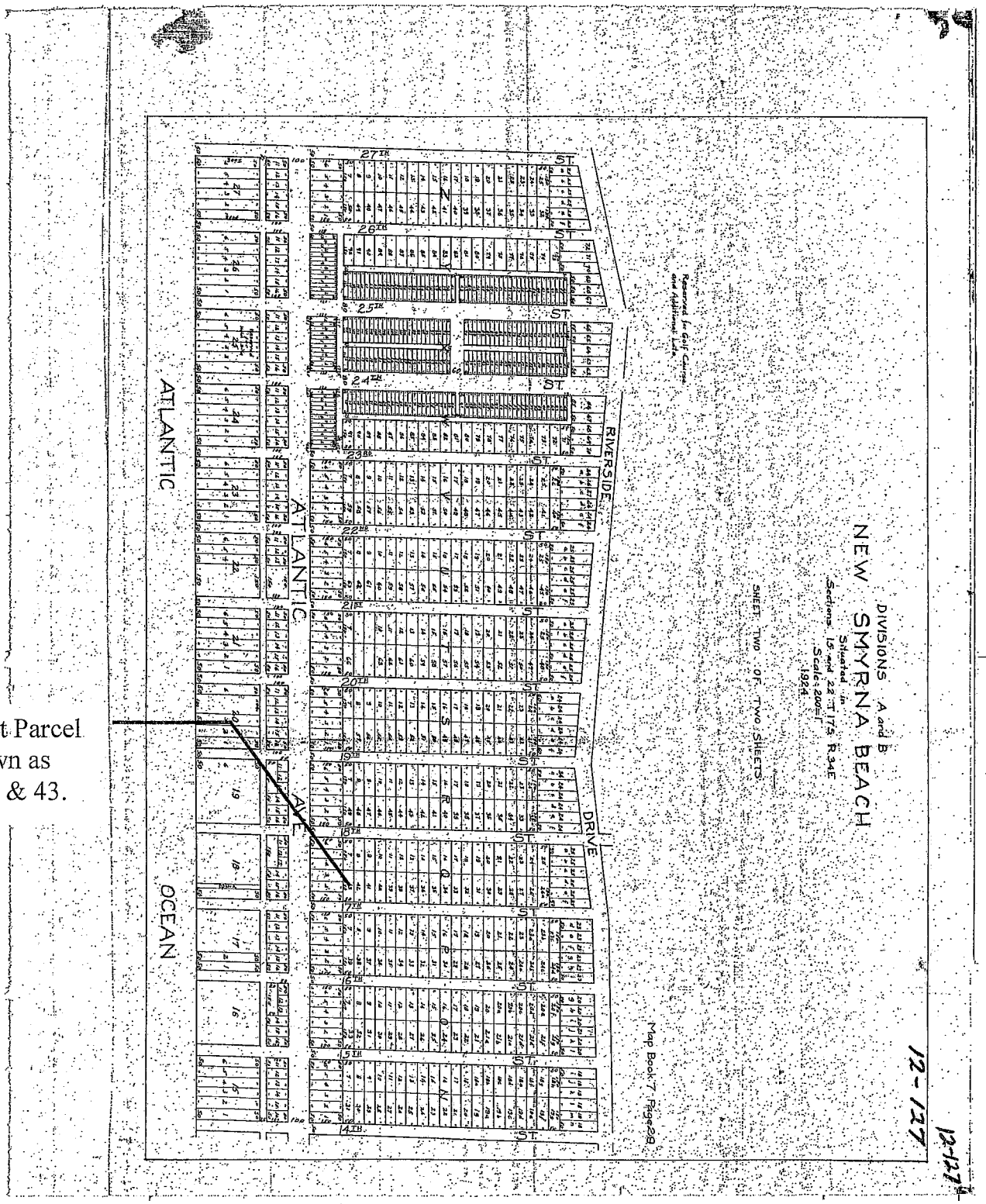


Exhibit D



Subject Parcel is shown as lots 42 & 43.

EXHIBIT E

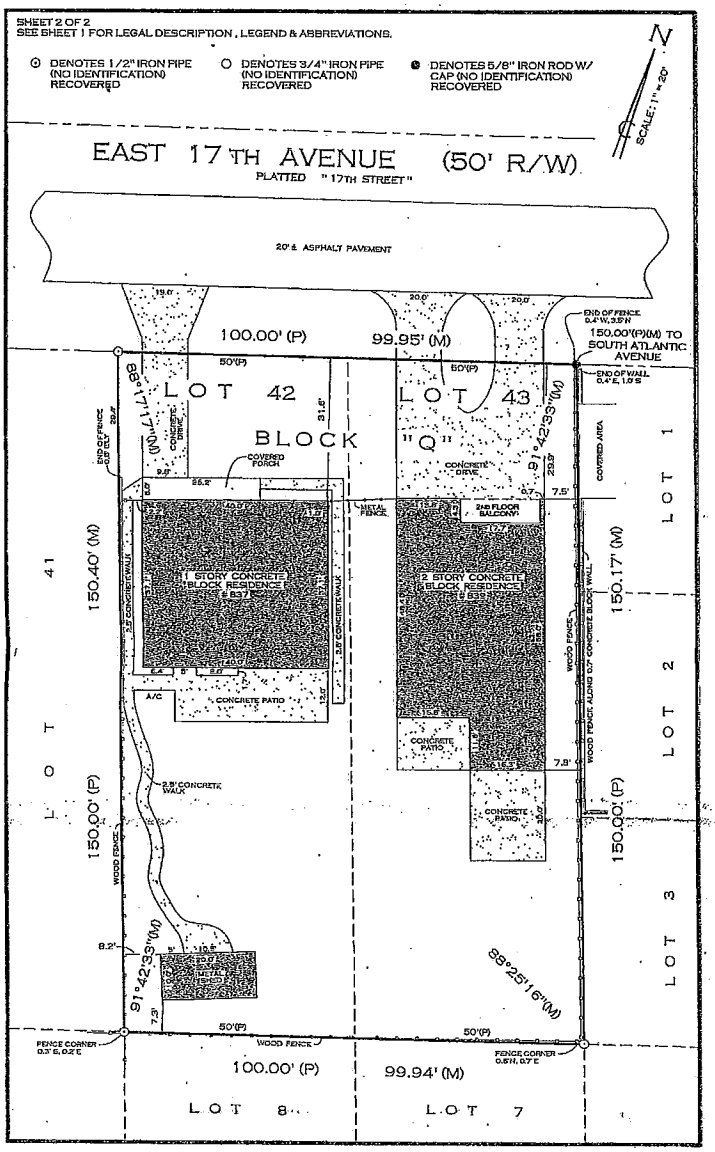

SHEET 2 OF 2
SEE SHEET 1 FOR LEGAL DESCRIPTION, LEGEND & ABBREVIATIONS.
DENOTES 1/2" IRON PIPE (NO IDENTIFICATION) RECOVERED
DENOTES 3/4" IRON PIPE (NO IDENTIFICATION) RECOVERED
DENOTES 5/8" IRON ROD W/ CAP (NO IDENTIFICATION) RECOVERED
N
SCALE: 1" = 20'
EAST 17TH AVENUE (50' R/W)
PLATTED "17TH STREET"
20'± ASPHALT PAVEMENT
100.00' (P)
99.95' (M)
150.00'(P)(M) TO SOUTH ATLANTIC AVENUE
LOT 42
LOT 43
BLOCK "Q"
88°17'17"(M)
91°42'33"(M)
COVERED PORCH
CONCRETE DRIVE
COVERED AREA
METAL FENCE
2ND FLOOR BALCONY
1 STORY CONCRETE BLOCK RESIDENCE
2 STORY CONCRETE BLOCK RESIDENCE
CONCRETE PATIO
A/C
2.5' CONCRETE WALK
WOOD FENCE
150.40' (M)
150.17' (M)
150.00' (P)
LOT 41
LOT 1
LOT 2
LOT 3
88°25'16"(M)
FENCE CORNER
100.00' (P)
99.94' (M)
LOT 8
LOT 7

EXHIBIT F

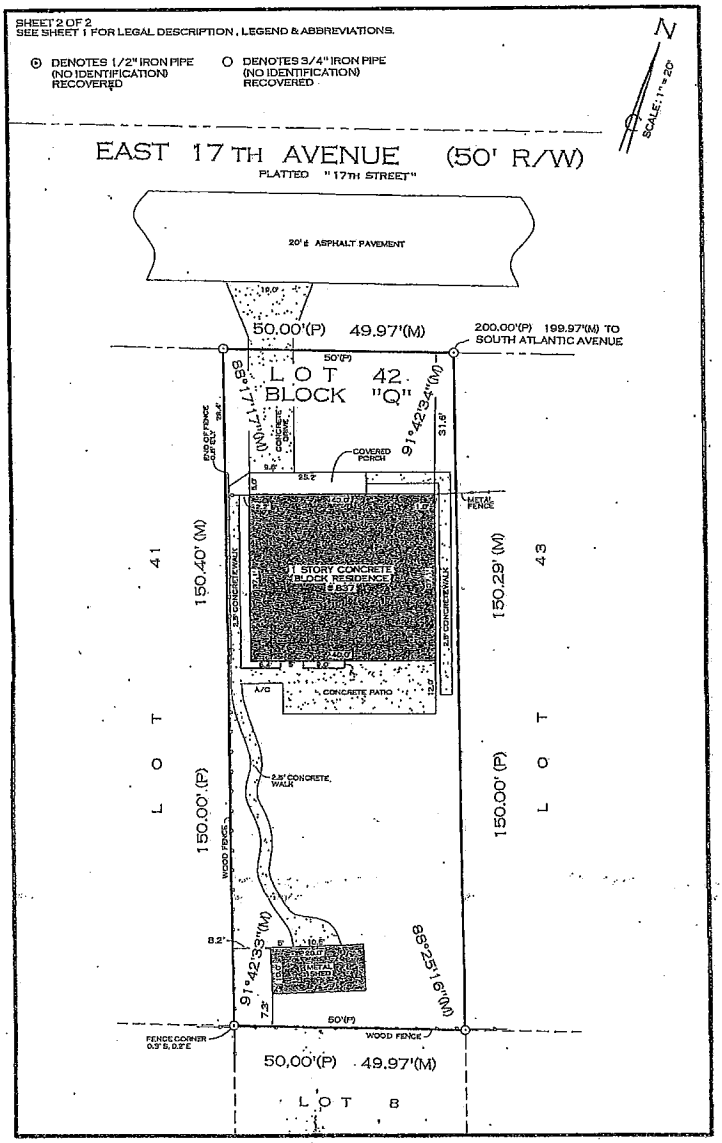
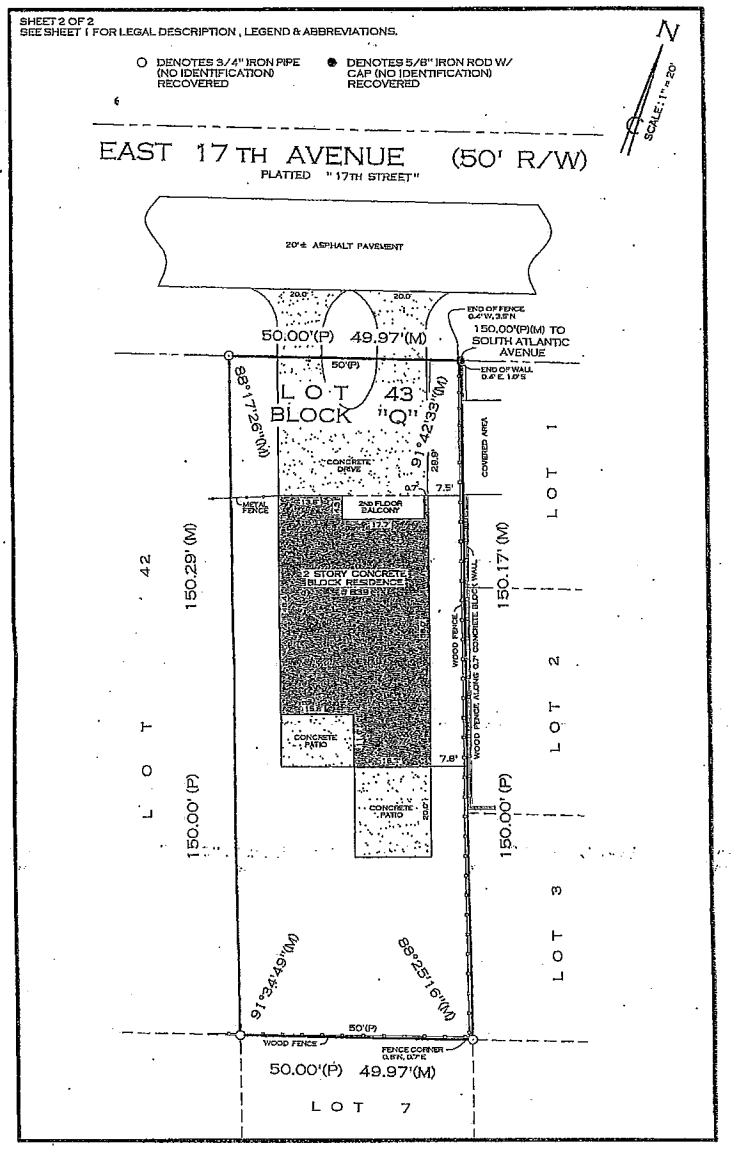

SHEET 2 OF 2
SEE SHEET 1 FOR LEGAL DESCRIPTION, LEGEND & ABBREVIATIONS.
DENOTES 1/2" IRON PIPE (NO IDENTIFICATION) RECOVERED
DENOTES 3/4" IRON PIPE (NO IDENTIFICATION) RECOVERED
N
SCALE: 1" = 20'
EAST 17TH AVENUE (50' R/W)
PLATTED "17TH STREET"
20' ± ASPHALT PAVEMENT
50.00'(P) 49.97'(M)
200.00'(P) 199.97'(M) TO SOUTH ATLANTIC AVENUE
LOT 42
BLOCK "Q"
COVERED PORCH
METAL FENCE
1 STORY CONCRETE BLOCK RESIDENCE
CONCRETE PATIO
A/C
2.5' CONCRETE WALK
WOOD FENCE
LOT 41
150.40' (M)
150.00' (P)
LOT 43
150.29' (M)
150.00' (P)
FENCE CORNER
50.00'(P) 49.97'(M)
LOT 8

EXHIBIT G


SHEET 2 OF 2
SEE SHEET 1 FOR LEGAL DESCRIPTION, LEGEND & ABBREVIATIONS.
DENOTES 3/4" IRON PIPE (NO IDENTIFICATION) RECOVERED
DENOTES 5/8" IRON ROD W/ CAP (NO IDENTIFICATION) RECOVERED
N
SCALE: 1" = 20'
EAST 17TH AVENUE (50' R/W)
PLATTED "17TH STREET"
20'± ASPHALT PAVEMENT
50.00'(P) 49.97'(M)
150.00'(P)(M) TO SOUTH ATLANTIC AVENUE
LOT 43
BLOCK "Q"
CONCRETE DRIVE
2ND FLOOR BALCONY
METAL FENCE
COVERED AREA
2 STORY CONCRETE BLOCK RESIDENCE
CONCRETE PATIO
WOOD FENCE
LOT 42
150.29' (M)
150.00' (P)
LOT 1
LOT 2
LOT 3
150.17' (M)
150.00' (P)
LOT 7
50.00'(P) 49.97'(M)

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

V-7-11: WALLSCHLAEGER / 107 DONLON DRIVE

JULY 11, 2011

I. Summary

A. **Applicant:** Glenn D. Storch, P. A., 420 South Nova Road, Daytona Beach, on behalf of

B. **Property Owner:** Mark Wallschlaeger, 107 Donlon Drive, New Smyrna Beach

C. **Requests:** a 21-foot variance from the minimum required 25-foot upland buffer adjacent to a wetland, to allow a swimming pool to be approximately 4-feet from the wetland line.

D. **Site Information:** The subject property is zoned R-1, Single Family Residential, contains approximately 1.3 acres and is generally located at the east end of Donlon Drive, east of South Riverside Drive. (see Location Map attached as **Exhibit A**).

E. **Tax I.D. Number:** 7449-14-00-0050

II. Findings

A. The subject property contains a single family residence as well as a multi-car garage with an apartment on the second and third stories. The primary building was constructed in 1981 with the garage/apartment structure constructed in 1991. Neither structure meets the minimum 25-foot upland buffer setback from the wetland line. However, the 25-foot upland buffer was adopted as a component of the 1991 Land Development Regulations, and was not applicable to construction of the original structure and may not have been applicable to construction of the garage/apartment structure built in 1991. Please see **Exhibit B** for photos of the structures and their relation to the river. While there is a coquina rock revetment on the slope within the upland buffer, it appears a healthy vegetative system is growing within the subject area.

B. While the two structures have rather large footprints, there is sufficient room on the west side of the property to construct a pool, decking, fencing and install landscaping to create a "customary" pool area typical of structures within this district (Please refer to **Exhibit C** for a copy of the survey).

C. The intent of the upland buffer is to provide additional protection to sensitive wetlands. Run-off from properties often include nutrients and/or pesticides/herbicides that negatively affect the plants and animals that utilize this element of a riparian ecosystem. The buffer provides an area for filtering these harmful elements before they enter into the wetlands. It also serves as an integral component of the riparian ecosystem – the uplands adjacent to wetlands provides a great diversity of vegetation utilized by many animal species that live and eat in these areas. Even though the area has a rather steep and rocky slope (the coquina rocks were placed by the previous property owner), there is a significant amount of soil and vegetation in this area that does capture at least some of the run-off. While a swale system is being proposed, the overall function of this element of the ecosystem will be reduced by further intruding into what is currently a rather "natural" landscape, all things considered.

Allowing further impacts to this required wetland buffer impairs the intent of the ordinance, even if portions of the upland buffer have already been impacted.

D. **Exhibit D** shows the proposed pool layout in between the two existing structures (the single-family residence and the garage with second- and third-story apartment).

E. **Exhibit E** was also submitted by the applicant depicting the general location proposed for the pool and decking.

F. 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 F**, with a photo submitted by the applicant shown in **Exhibit G** and the property-owner's letter of authorization attached as **Exhibit H**. 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.

While neither structure was constructed after upland buffer requirements were instituted, there is no hardship caused by this buffer requirement. There is significant room to the west of the garage/apartment to construct the proposed pool, decking, fencing and landscaping, which would meet all setbacks and not impact the wetland buffer at all.

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.

There is sufficient room to the west of the garage/apartment to construct the pool, which is customary for residences in this neighborhood. Therefore, strictly applying the requirement to maintain a 25-foot upland buffer from the wetlands would not preclude the property owner of reasonable rights. Allowing further impacts to the required buffer, the intent of which is outlined in finding C above, would preclude a benefit to the community that the buffer provides: protecting the sensitive wetlands and riparian zone.

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.

Even though the wetland buffer was not instituted prior to construction of the primary and secondary structures, there is sufficient room remaining on the property in which to construct a pool and customary accessory structures, and as stated before, no hardship exists requiring the pool to be constructed where it is proposed as shown in Exhibits D and E.

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.

The granting of this variance would impair the intent of the ordinance, as outlined in finding C above.

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.

This would be a grant of special privilege as the City does not allow impacts to wetland buffers for the reasons outlined in finding C above.

This criterion has not been met.

III. Recommendation

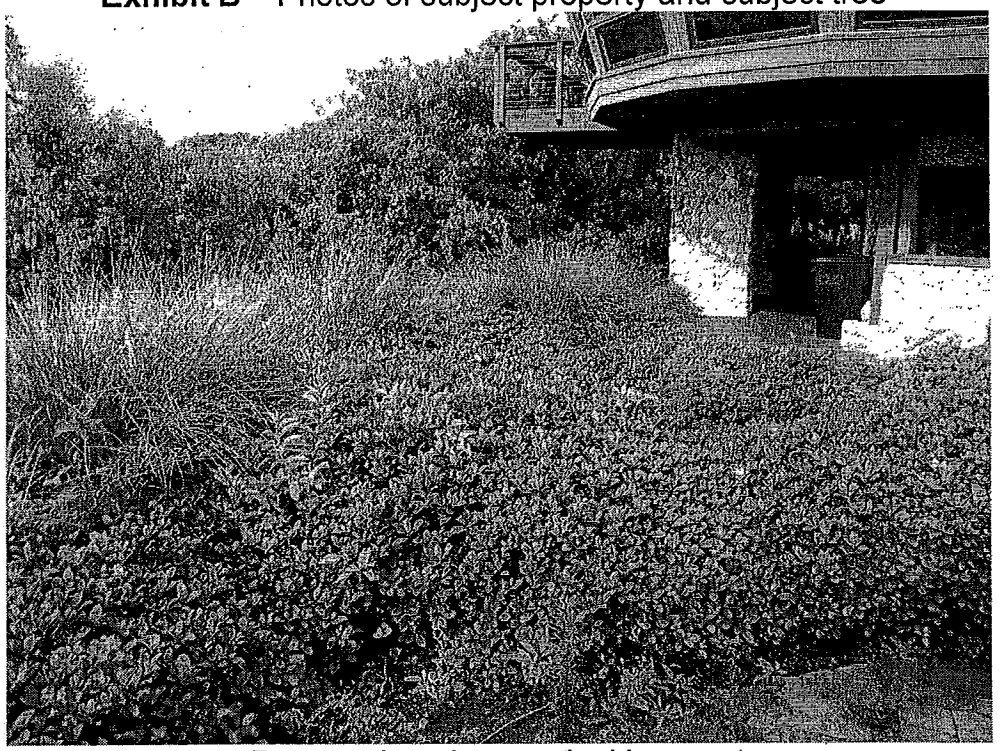
Because this request does not meet any of the variance criteria, staff recommends **denial** of this variance request.

1

Exhibit A – Location Map

2

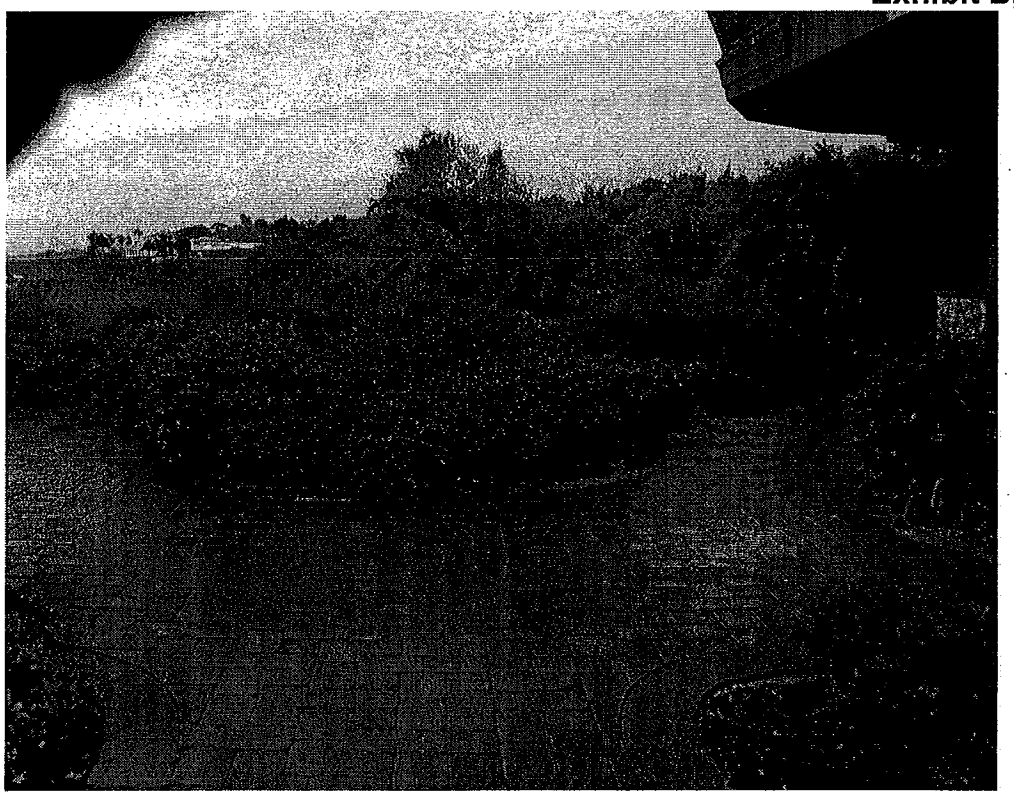
Exhibit B – Photos of subject property and subject tree



Proposed pool area – looking west

Proposed pool area, looking east

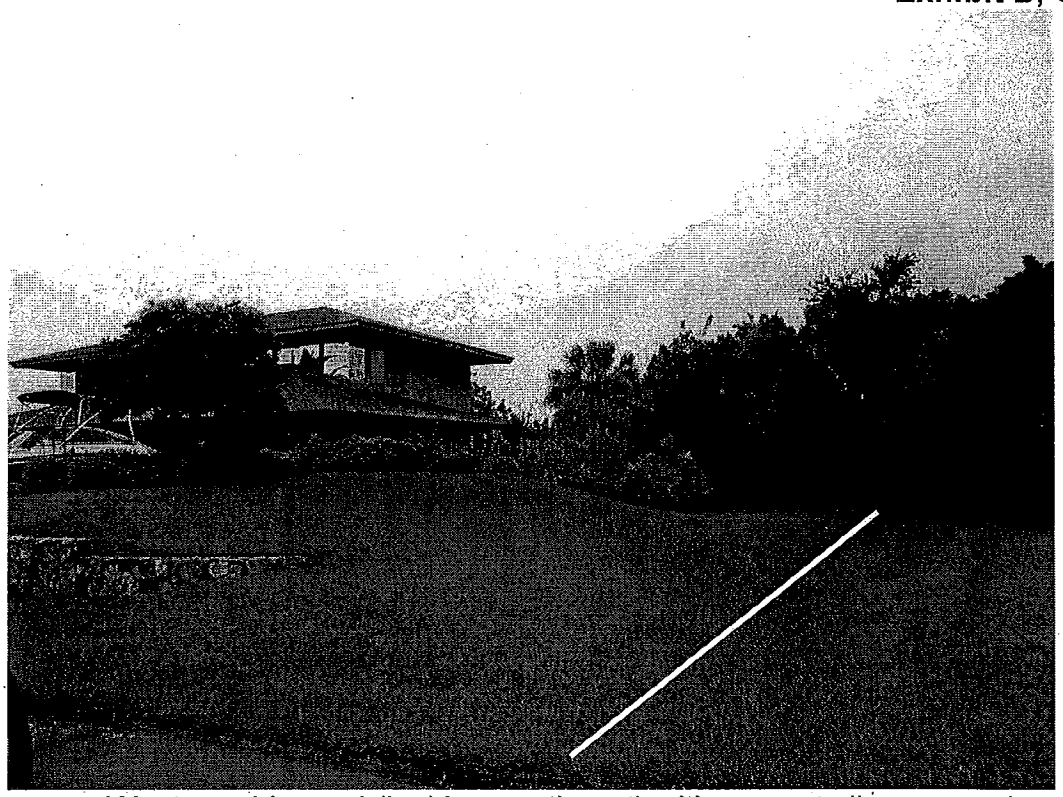
Exhibit B, Cont'd



View of proposed pool area looking south

View of proposed pool area looking east, which is heavily vegetated

Exhibit B, Cont'd

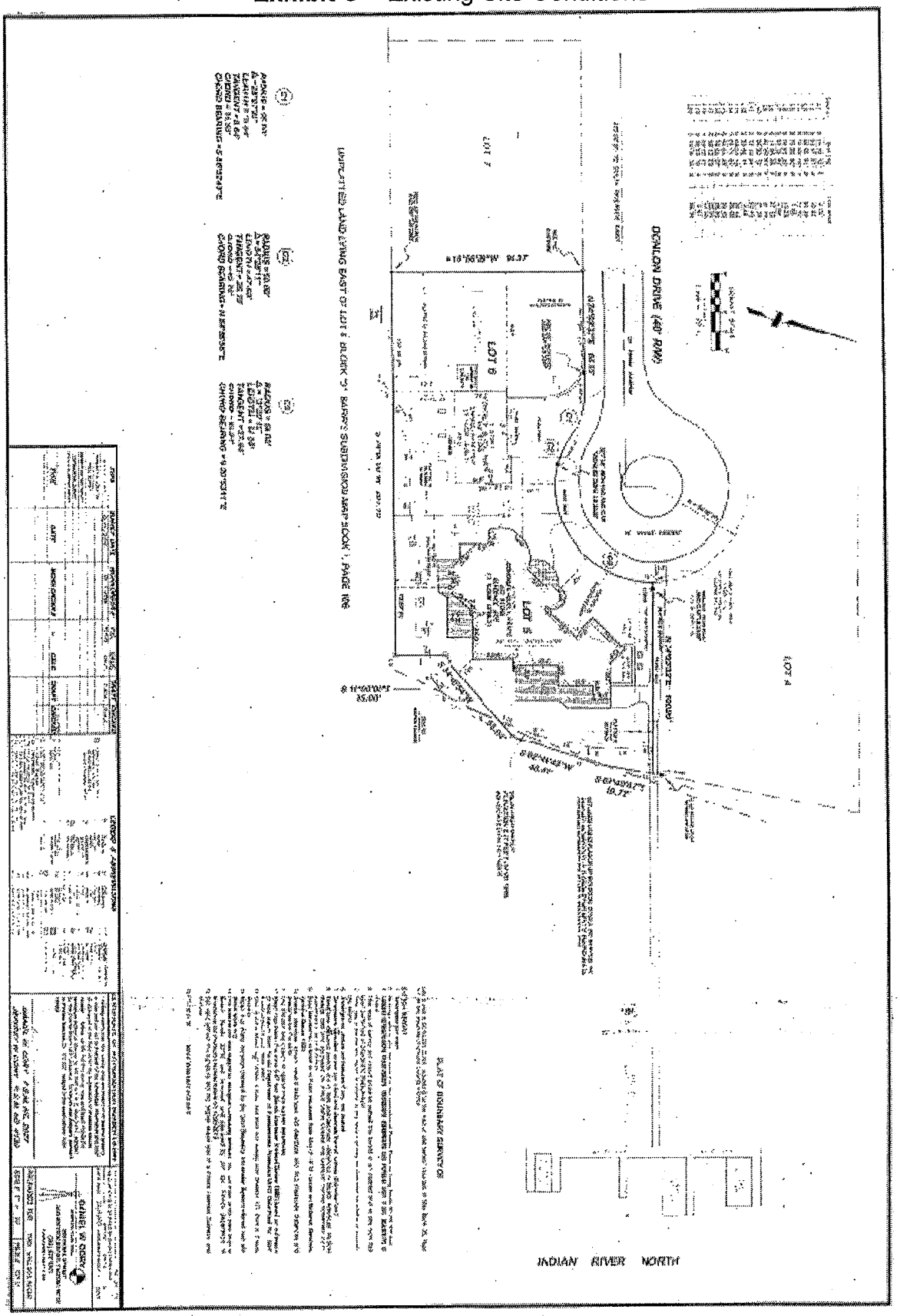


Western side yard (looking southeast) with property line approximated by white line

Additional view of western side yard, looking south

1

Exhibit C – Existing Site Conditions



2

Exhibit D – Proposed Pool Plan

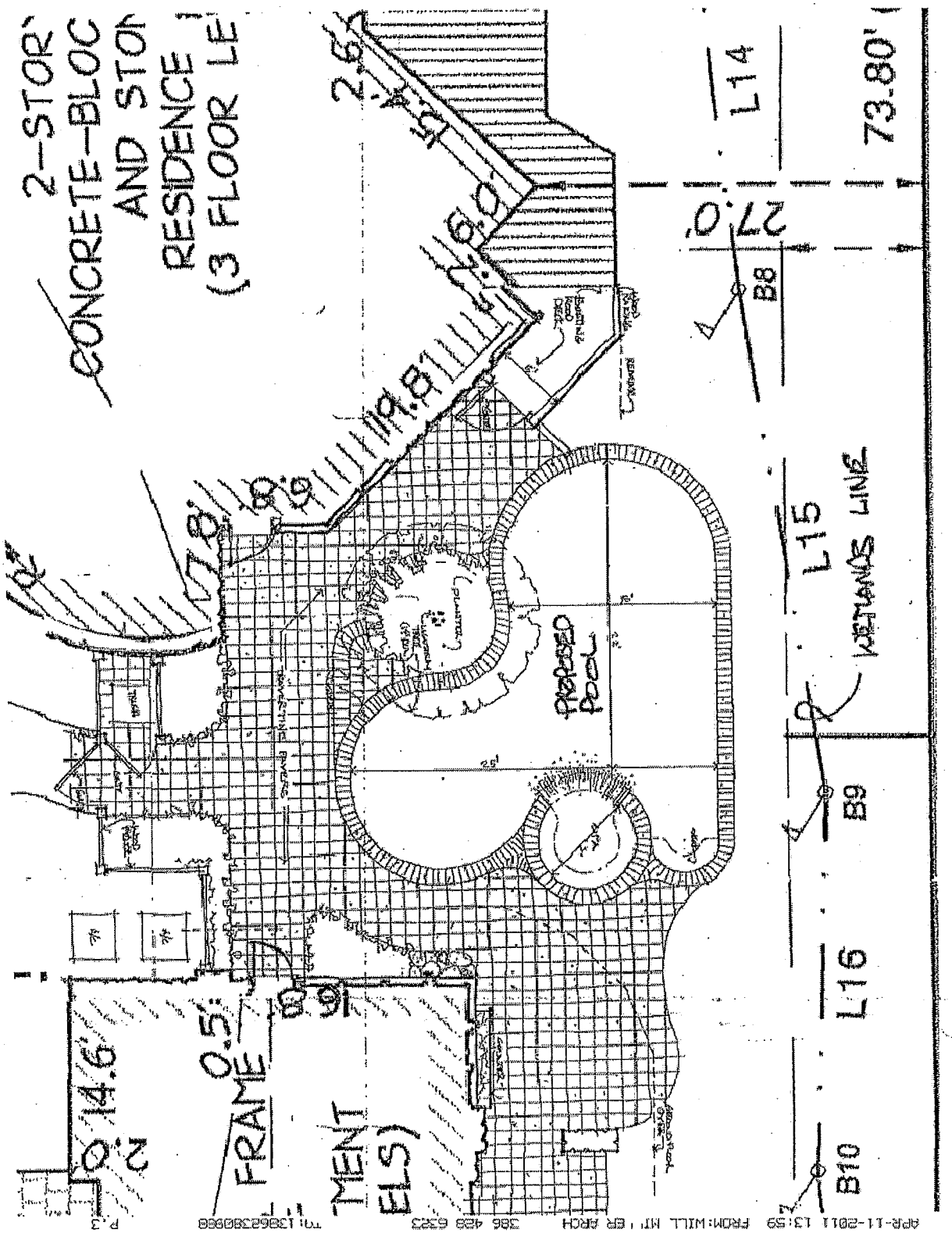
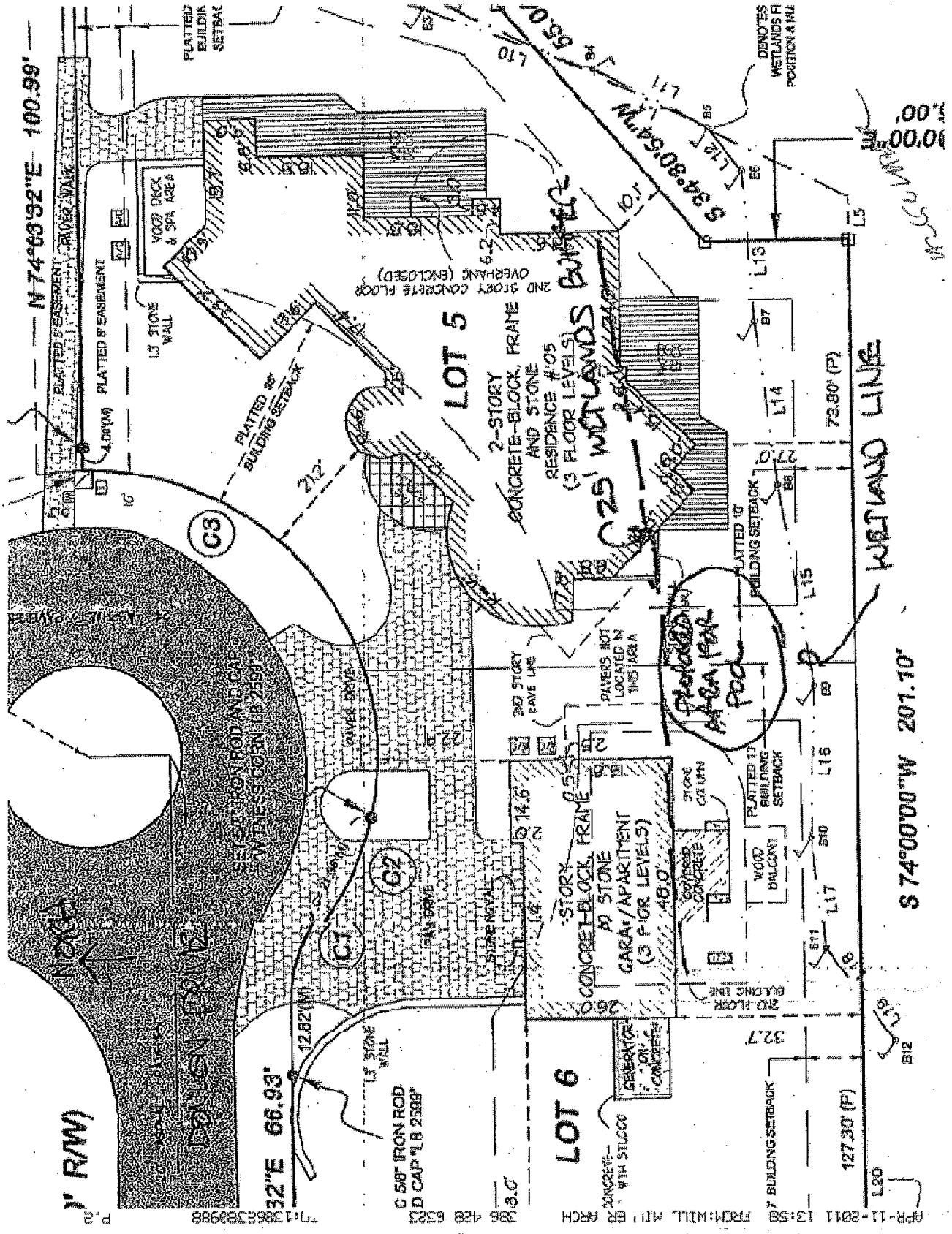


Exhibit E – Proposed pool location (approximate)



GLENN D. STORCH, P.A.
ATTORNEY AT LAW

420 South Nova Road
Daytona Beach, FL 32114-4514

(386) 238-8383 Ext. 11
(386) 238-0988 (fax)
glenn@storchlawfirm.com

May 25, 2011

VIA HAND DELIVERY
Ms. Gail Henrikson
City of New Smyrna Beach
Planning and Zoning Department
210 Sams Avenue
New Smyrna Beach, FL 32168

Re: Variance Request for Mark Wallschleager - 107 Donlon Drive

Dear Gail:

As you know, this firm has the pleasure to represent Mark Wallschleager in connection with the afore-referenced variance request. The property is a single-family home built prior to wetland buffer standards. This request is submitted on behalf of the owner in order to permit the addition of a swimming pool and to verify an existing home that extends into the wetland buffer. The variance is necessary because the wetland buffer currently crosses the existing home as well as the existing rock revetment. The pool is proposed to be 4 feet from the wetland line at the rock revetment. Accordingly, We are requesting a variance to permit a setback of 4 feet from the wetland buffer where the LDR requires 25 feet. We believe that the granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of the LDR. The LDR sets forth the following criteria for the Planning Manager to consider when recommending approval of a variance request:

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.

The property has an existing home which was constructed before the City adopted wetland buffer standards. The location of the home and the physical features of the land dictate the placement of accessory structures- including the proposed pool. Accordingly, there are special circumstances that warrant the requested variance.

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.

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Exhibit F, Cont'd

Strict application of the wetland buffer requirements would deprive the property owners of reasonable use of their property which other property owners enjoy. Section 701.11 of the LDR address wetland buffer requirements. Activities and /or construction which do not have significant adverse impacts on the natural function of buffer may be allowed within the buffer. Currently, the wetland buffer slopes steeply toward the wetlands, without any vegetative buffer, so that existing stormwater runoff goes directly to the wetlands. Proposed construction would allow reasonable use of the property and improve current conditions so as to redirect stormwater runoff in the wetlands buffer away from the wetlands by use of swales.

The special circumstances and conditions exist that 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 requested variance is not the result from the direct or indirect actions of the current or former property owners. The existing home was built before the City adopted wetland buffer requirements.

That granting of the variance will not constitute a grant of special privilege that is denied by this LDR to other lands, structures, or buildings, in the same district.

The variance request does not create a special privilege denied top other property owners in the same district.

The planning and zoning board shall have the power to hear and decide on applications to allow variations from the regulations of this LDR where by reason of unnecessary hardship or practical difficulty the literal enforcement of the requirements of this LDR would not carry out the spirit and purpose of this LDR.

The strict application of the wetland buffer requirements creates practical difficulty in the reasonable use of the land. Additionally, literal enforcement of the LDR decreases wetland protection because the proposed swale system will improve the functionality of the wetland buffer areas.

For the foregoing reasons, the Applicant respectfully request your support of this variance request. If you have any questions, please do not hesitate to call. Thank you for your courtesies.

Kindest regards,

Glenn D. Storch

cc:

Exhibit G – Photo submitted by applicant showing area of proposed pool

1 **Exhibit H – Letter of Authorization from Property Owner**

MARK WALLSCHLAEGER
107 Donlon Drive
New Smyrna Beach,
Florida 32168

City of New Smyrna Beach
Department of Development Services
210 Sams Avenue
New Smyrna Beach, FL 32168

Re: Authorization of Owners/Variance Request Application

Dear Sir or Madam:

Please let this letter serve as our authorization for our agent, Glenn D. Storch, Esq., of Glenn D. Storch, P.A., to represent us in the annexation of property described as follows:

Lots 4, 5 and 6, Donlon Cove Subdivision, according to the map or plat thereof, as recorded in Plat Book 35, Page 141, Public Records of Volusia County, Florida.

Parcel ID #: 7449-14-00-0040 and 7449-14-00-0050

Respectfully submitted,

Mark Wallschleager

Mark Wallschleager

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 26th day of May, 2011, by MARK WALLSCHLAEGER, who is personally known to me and did not take an oath.

My commission expires:

COLLEEN TYLER
Commission # DD 884399
Expires May 1, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

Type, Print or Stamp Name
My commission expires:

2

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

ZT-9-11: LDR AMENDMENT – BOAT SLIP ALLOCATIONS

JULY 11, 2011

Background

A. **Applicant:** City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168

B. **Request:** Approval of amendments to the City's *Land Development Regulations* to establish policies regarding the allocation of boat slips from the City's aggregate slip pool.

Findings

A. In October 2005, the Florida Fish and Wildlife Commission (FWC) approved Phase II of the Volusia County Manatee Protection Plan. Phase II includes the Boat Facility Siting Plan. This Boat Facility Siting Plan establishes boat slip to shoreline ratios throughout the County; mandates the use of specific siting criteria; and creates mitigation fees that will support the Manatee Conservation Fund for additional on-the-water manatee speed zone enforcement and conservation. On November 21, 2006, the City Commission adopted amendments to the City's *Comprehensive Plan* to include goals, objectives and policies to be used to implement the requirements of the Manatee Protection Plan.

B. Under the Boat Facility Siting Plan, the City participates in the slip allocation program. The City originally had 1,480 excess slips that could be allocated to future development within the City. Any single-family residential lot with riparian rights that was in existence on or before adoption of Phase II of the Manatee Protection Plan is automatically allowed to have up to two boat slips. Any slips above and beyond the two permitted boat slips would come from the excess slip pool. These excess slips are distributed as follows:

- 1,204 slips north of the North Causeway
- 276 slips south of the South Causeway
- An unlimited number of slips between the North and South Causeways

C. To date, the City has allocated 112 slips to the Island Town Center development north of the North Causeway and 1 slip to the Smyrna Yacht Club, which is south of the South Causeway. The City has also allocated six slips to the Waterway East condo, which is the area where an unlimited number of slips are permitted. This leaves a total of 1,367 available slips for future development.

D. The City Commission has not established a policy as to whether these excess slips should be allocated on a first-come, first-served basis; whether some or all of the slips should be reserved as an economic development tool; and whether there should be a charge to obtain a slip from the excess slip pool.

E. To date, the cities of Port Orange, Edgewater, Daytona Beach and Daytona Beach Shores and the Town of Ponce Inlet have adopted, or are in the process of adopting, regulations regarding how these slips should be allocated. Ponce Inlet has chosen to reserve 30% of its available allocation for future development and to ensure that Ponce Inlet will have slips available to address unforeseen changes in the boating industry. The City of Daytona Beach adopted policies and fees in June 2010. The City of Edgewater also adopted fees and policies in 2010.

F. On April 26, 2011, City staff brought this issue before the City Commission to obtain input and direction. The consensus of the Commission was that while policies needed to be established, there should not be a fee for applying for or obtaining a boat slip from the excess slip pool.

G. Staff reviewed the policies and procedures already adopted by surrounding cities on the east coast of Volusia County. Because all of the surrounding cities are charging fees – most in the $1,000 range – to obtain a slip from the excess slip pool, their procedures are typically more elaborate than what would be needed for the City of New Smyrna Beach, which will not be charging a fee. Because the excess slips are a limited commodity, and because future commissions may desire to charge a fee, staff has proposed requiring City Commission approval of any request to obtain a slip from the excess slip pool.

H. Once the City Commission has approved allocating a slip, that approval would remain in effect for three years. If the slips were not constructed within that three year period, the approval would expire and the slip would revert back to the excess slip pool.

I. Staff is also proposing criteria to assist the City Commission in determining when approval should be granted. These criteria, which are used in Ponce Inlet, Daytona Beach, and Edgewater, and proposed in the Port Orange ordinance, require that a "net public benefit" be demonstrated before the City Commission allocates an excess slip. These criteria are as follows:

- The number of slips in the project that will be made available for purchase, lease, or use by the general public.
- Construction, expansion, or improvements to new or existing public spaces, parks, plazas, walkways, or other features providing access to the waterfront for the general public, on- or off-site.
- Construction, expansion, or improvement of a public dock or boat ramp and related facilities on- or off-site.
- Redevelopment of upland uses in a redevelopment area consistent with the adopted area plan.
- Preservation of upland historic properties or structures.
- Construction or allocation of slips designed to benefit an underserved segment of the boating population.
- Acquisition of upland for public use.
- Preservation of historic properties or structures.

- Improvements to existing water-related facilities for use by the general public.
- Activities such as dredging that improve access to or navigability of the waterway.
- Parking spaces associated with a boat ramp, marina or other water-related facilities designed to accommodate a boat trailer and vehicle used to tow the trailer shall be considered a boat slip for allocation purposes. Such space must have direct access to the Indian River within the New Smyrna Beach municipal boundaries.
- Financial contribution toward a project as described above, or any public project which will enhance public use of and access to the waterway and riparian lands within the city.
- Construction, expansion, or improvement of stormwater management facilities for existing streets that dead end into the river.

J. Staff is also proposing that 50% of the excess slips, or 740 slips, be reserved for City projects; as an incentive for economic development in targeted areas of the City; or to ensure availability of boat slips to address unforeseen changes in either the boating industry or the types of development located within the City. An example of how these slips might be used relates to the Swoope site on U.S. 1. As the City works to establish a boat ramp at this location, additional boating-related development may occur in this area, which would require slips from the excess slip pool. If the City does not reserve these slips, it could be possible that the required number of slips might not be available to serve new development.

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 II
DEFINITIONS

***

208.00 Boat Slip Allocations

Boat facility: A public or private structure or operation within the municipal boundaries of the city where boats are moored and/or launched, including commercial, creational, industrial and residential marinas, boat ramps, dry storage and private docks. Boat facility shall also mean boat trailer parking, boat valet serve and other boat and trailer storage facilities location within a one (1) mile radius of the closest public boat launch. Single-family residential docks with two (2) or fewer wet and/or dry slips are not considered boat facilities.

Dry slip: A space designed for the storage of single watercraft in an upland location.

Excess slips: Any slip that has previously not been allocated, reserved or accounted for and subtracted from the maximum allowed slips. The number of excess slips shall be calculated by subtracting from the total aggregate number of slips (1,480) the number of slips already allocated (113) and by subtracting the total number of slips reserved to the City for future purposes (740). This results in a total of 627 excess slips

Multi-family facility: Community facility of three or more slips serving condominiums or other multi-family developments. No fueling or repair facilities shall be associated with these facilities.

New or expanded boat facility: A marine facility that is proposed to be built, restored, revitalized, renovated, or otherwise increased in size or scope.

Public access: Any boat dock, boat ramp, or related facility available to the public that is consistent with applicable state and local trespass laws.

Reserved slip: Boat slips set aside for future changes and/or evolutions in the boating industry that cannot be foreseen today; for public use; for City projects; or as an incentive for economic development in targeted areas of the city. Reserve pool slips represents 50 percent of the slips for possible future allotment (1,480), or 740 slips.

Slip pool: The combined total of excess and reserved slips make up the slip pool. The total slip pool allocation for the City of New Smyrna Beach is 1,480. These slips are physically distributed as follows: 1,204 slips north of the North Causeway; 276 slips south of the South Causeway; and an unlimited number of slips between the North and South Causeways.

Transient slips: Temporary docking or mooring space which may be used by the general public for short periods of time, including overnight, days, or weeks, but less than 30 days. Transient slips are not boat slips available for rental term of less than 30 days with rental agreements which contain automatic renewal rights or other similar conditions.

Wet slip: A space designed for the mooring of a single watercraft in water. Such spaces may extend from a dock or shoreline but shall not be allowed to project from a pier.

ARTICLE VIII
SUPPLEMENTARY REGULATIONS

***

803.04 Regulations pertaining to boats, boat docks, and boat docks with terminal platforms, covered boat slips (boat houses), mooring poles, and other boat storage and docking facilities.

***

803.045 Boat slip allocations

A. Purpose.

The excess boat slip allocation procedure is provided to allow for a fair and reasonable means of authorizing development of the limited number of boat slips allocated to the city, in accordance with the county's Manatee Protection Plan.

B. Procedure.

a. Requests for excess boat slip allocation shall be submitted to the City in accordance with the general application requirements and procedures set forth in this section.

b. The City Commission may grant requests for excess boat slip allocation at a public hearing.

C. Criteria.

The city commission shall evaluate the number of slips remaining in the city's inventory, and allocate additional slips based on a finding of net public benefit to be derived from the project. The finding of net public benefit shall be based on the effect the project has on public use and access to the water, including but not limited to the following factors:

a. The number of slips in the project that will be made available for purchase, lease, or use by the general public.

b. Construction, expansions, or improvements to new or existing public spaces, parks, plazas, walkways, or other features providing access to the waterfront for the general public, on- or off-site.

c. Construction, expansions, or improvement of a public dock or boat ramp and related facilities on- or off-site.

d. Redevelopment of upland uses in a redevelopment area consistent with the adopted area plan.

e. Preservation of upland historic properties or structures.

f. Parking spaces associated with a boat ramp, marina or other boat facilities, as defined in article II of this code, designed to accommodate a boat trailer and vehicle used to tow the trailer shall be considered a boat slip for allocation purposes. Such space must have direct access to the Indian River within the New Smyrna Beach municipal boundaries.

g. Construction or allocation of slips designed to benefit an underserved segment of the boating public.

h. Acquisition of upland for public use.

i. Improvements to existing water-related facilities for use by the general public.

j. Activities such as dredging that improve access to or navigability of the waterway.

k. Financial contribution toward a project as described above, or any public project which will enhance public use of and access to the waterway and riparian lands within the city.

l. Construction, expansion, or improvement of stormwater management facilities for existing streets that dead end into the river.

D. Effect of approval.

a. Reservation.

Upon approval by the city commission, the allocated boat slip(s) shall be reserved for three (3) years from the date of approval. Any reserved slips shall be removed from the excess slip pool and held in reserve during that three year period. Any number of slips the applicant does not build during the above-referenced reservation period shall be returned to the excess slip pool.

b. Construction.

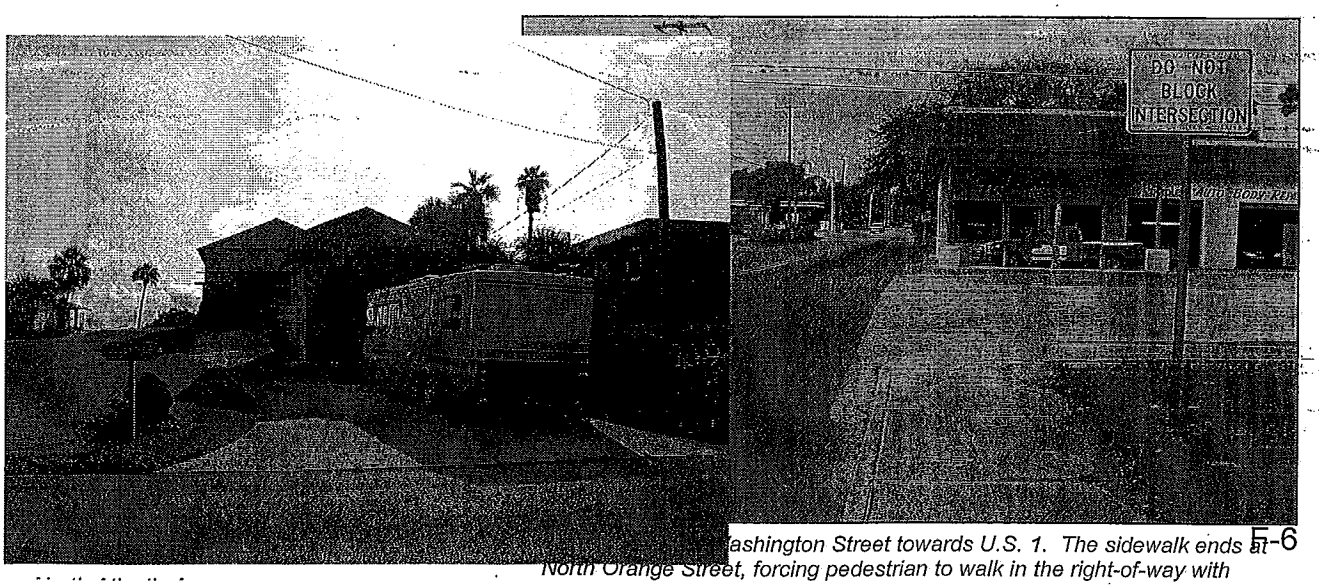
The applicant has three (3) years from the date of city commission approval to begin construction of the allocated boat slip(s). If construction does not begin within three years, the right to develop the slips shall cease and the reserved slips shall be released and placed back into the excess slip pool.

c. Extensions to slip reservation period.

Reservation of boat slips may be extended for a period of one additional year by the administrative official or designee, provided the applicant demonstrates significant good faith efforts in moving toward construction permitting approval. The administrative official or designee will determine good faith effort based on the applicant's attempts to secure required permits. These attempts should be initiated at the commencement of the reservation period and evidence of continuous effort and progress throughout the three year reservation period must be shown.

E. Exemptions.

Single-family residential lots with riparian rights that were in existence on or before November 21, 2005, shall have the right to and shall be allocated no more than two (2) boat slips without applying for excess slips. Any single-family residential lot with riparian rights created after November 21, 2005 shall be subject to boat slip allocation.



ashington Street towards U.S. 1. The sidewalk ends at North Orange Street, forcing pedestrian to walk in the right-of-way with

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

ZT-12-11: LDR AMENDMENT – SIDEWALK FUND

JULY 11, 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 establish a sidewalk fund.

Findings

A. Throughout New Smyrna Beach, there are areas that have an existing interconnected sidewalk system and areas where sidewalks are either non-existent or have been sporadically installed and do not interconnect. Most of the neighborhoods surrounding the traditional downtown area of Canal Street have sidewalks. Two noteworthy sections that do not are Washington Street, between North Orange Street and U.S. 1, and Wayne Avenue at the railroad tracks. Pedestrians walking this section of Washington Street have to walk in the street, where people regularly haul trailers with large boats. On Wayne Avenue, pedestrians and cyclists are forced into the road for roughly one hundred feet in a section of road that is also heavily trafficked. Photos of these areas are attached as **Exhibit A**.

B. In other areas sidewalks are only located on one side of the street, such as 2nd Street and 3rd Street on the mainland. Other streets in that neighborhood don't have sidewalks on either side of the street, such as 4th Street and 5th Street, including the bridge to Commodore Island and the Smyrna Yacht Club. On the beachside, on the east side of SR A1A between East 3rd Avenue and East 27th Avenue, there are no sidewalks at all. Crossing SR A1A is difficult for all age groups, and walking on the east side of the street can be a life-threatening experience.

C. Section 604.10 of the City's *Land Development Regulations* details when sidewalks are required to be installed, and specifies how those sidewalk must be built. Under the current regulations, the only way for a developer to not install a sidewalk is for the property owner to apply for a variance. This would require the applicant to demonstrate that there is a hardship, unique to the land or the building and, if the sidewalk installation were required, the property owner would subsequently be unable to make reasonable use of the property.

D. In April 2009, staff presented a visioning item to the Planning and Zoning Board regarding creation of a sidewalk trust fund. While the Board discussed the issue at length, no clear direction was given to staff as to whether to proceed with this item. Following the April 2009 meeting, staff has encountered various situations where developers have requested that sidewalks not be installed, due to physical constraints such as drainage ditches, historic trees or lack of right-of-way width.

In order to provide additional flexibility within the development process, staff is proposing an amendment to the City's *Land Development Regulations* to establish a Sidewalk Trust Fund. A copy of the minutes of the April 2009 Planning and Zoning Board meeting are attached as **Exhibit B**.

E. Volusia County established a "Sidewalk Improvement Trust Fund" to aid in the construction of sidewalks where possible. The County Council, in their consideration of a development application, may approve the payment of money into the trust fund in lieu of construction of sidewalks for a project. A local example of where it may not be feasible to install a sidewalk is the recently-constructed Volusia Motorsports building, located immediately east of the Wells Fargo bank (formerly Wachovia), which is at the northeast corner of Wallace Road and SR 44. There is not a sidewalk on the north side of SR 44, nor is there one on Ross Lane, and sidewalks won't be constructed on either of these roads for the foreseeable future.

F. If the City established such a fund, it could be used for the purpose of constructing pedestrian and bicycle facilities in areas determined by the City to be needed for the safety and convenience of the pedestrians and bicyclists, areas such as Washington Street between North Orange Street and US1, or along on the east side of North Atlantic Avenue between East 3rd Avenue and East 27th Avenue. Additionally, it may be possible to use the funds for repair and maintenance of existing sidewalk and bicycle path facilities, including those in public parks, depending upon how the ordinance is crafted. For example, funds collected in the City of Tampa Sidewalk Trust Funds can be used to replace existing sidewalks.

G. The City's *Land Development Regulations* (LDR) require that any development construct a sidewalk or bike path within the right-of-way adjacent to the parcel being developed. This requirement applies even if the adjacent lots do not have a sidewalk within the adjacent right-of-way. The theory is eventually either the City will construct a sidewalk along the developed lots without a sidewalk or a sidewalk will be installed by the owner when the property is redeveloped.

H. Another issue is the tremendous cost to construct a sidewalk where required by the LDR in some instances. For example, there are many drainage ditches throughout the City and there are often limited right-of-way widths. Often the location where a sidewalk would typically be constructed contains a large drainage ditch and there is no other location to place a sidewalk. An option would be to pipe the ditch and construct a sidewalk on top of the piped ditch. However, the cost to construct a sidewalk over a piped ditch could be five to ten times the cost of simply constructing a sidewalk at grade, which may be an undue burden to a developer or make a smaller development project infeasible. Ironically, oftentimes the location that has a ditch, or other obstruction that makes a sidewalk difficult is the very location where a sidewalk is needed.

I. In preparing the ordinance staff determined that specific criteria should be outlined to determine when an in-lieu of fee could be paid by the developer. Staff is recommending five criteria which, if any one is met, would allow the

developer to pay into the sidewalk fund in-lieu of constructing the sidewalk. The approval process would occur at the staff level, with appeals following the appeal process already outlined in the City's *Land Development Regulations.*

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).

604.10 Sidewalks

A. General requirements

(1) All developments shall have a sidewalk plan included to enable pedestrians to access the building(s) and parking lot, parking spaces and other accessory components of the site without walking through landscaped areas. The sidewalk plan shall be designed to provide direct pedestrian traffic, shall assume the pedestrians will take the most direct path to their destination, and shall assume that reasonable pedestrians will travel through grass or landscaping, if able to, before walking great distances to stay on the sidewalk.

(2) All developments, whether new or additions, are required to install public sidewalks along all road frontage in front of their parcel within the right-of-way six inches from the right-of-way line. This is not required if a sidewalk exists. If a sidewalk exists but does not meet the width requirements, the developer shall add the required width. This provision shall not apply if a bicycle path (not lane) exists in front of the establishment.

(3) If a sidewalk is required under section 604.10(A)(2), but the construction of the sidewalk is determined to not be practical, as outlined in section 604.10(A)(4), below, then the property owner or permit applicant shall make a contribution to the sidewalk trust fund in lieu of constructing the required sidewalk. The amount of the contribution shall be determined by multiplying the linear feet of that parcel's street frontage(s) (minus the width of any paved driveway and/or driveway apron) times the per linear foot contribution fee established pursuant to section 604.105 of this code.

(4) The decision of whether the construction of a sidewalk on a parcel is "not practical" shall be made by the city engineer or designee. In making such a decision, the city engineer or designee shall consider the following factors:

(a) Whether an adopted neighborhood plan or the City's *Comprehensive Plan* mandates that sidewalks not be constructed within a particular neighborhood; or

(b) Whether a sidewalk cannot be constructed without removing a historic or specimen tree within the right-of-way; or

(c) Whether a stormwater drainage ditch or similar public utility infrastructure readily prevents the construction of a sidewalk and neither the infrastructure nor the proposed sidewalk can be reasonably relocated or altered to accommodate both the infrastructure and the sidewalk; or

(d) Whether or not other unique or peculiar circumstances exist on a given parcel or development.

(5) In the event that it is determined that the construction of a sidewalk is "not practical" (as provided for in section 604.10(A)(4) and by the city engineer) and if the permit is being issued for a single-family residential home, the contribution to the sidewalk trust fund shall not be required in any of the following instances:

(a) The permit is issued for an affordable housing unit. For the purposes of this section, an affordable housing unit shall be determined as defined in Article II of this code; or

(b) The permit is issued for a single-family or two-family residential dwelling, which meets all of the following criteria:

(i) The single-family or two-family dwelling is located on a street functionally classified as a local road; and

(ii) The permit is for new construction or expansion of an existing single-family or two-family residential dwelling; and

(iii) There are no sidewalks on the local road within 500 feet of the single-family or two-family dwelling. This distance shall be measured linearly on the same side of the local road as the residence; and

(iii) The city's capital improvements plan does not include any plans for funding or construction of sidewalks on the local road within 500 feet in either direction of the single-family or two-family dwelling. This distance shall be measured linearly on the same side of the road as the residence.

(~~3~~6) The minimum width of sidewalks located along all local streets is four (4) feet and collectors and arterials shall have ~~5~~ five feet wide sidewalks. Sidewalks located in multi-family or duplex developments shall have a minimum width of thirty (30) inches provided they are used to access ten (10) or less dwelling units. Sidewalks located within multi-family and duplex and non-residential developments, where the sidewalk accesses more than ten (10) dwelling units, shall have a minimum width of four (4) feet. For the purpose of this section, access to residential development shall mean the only paved pathway to a building entranceway. All buildings shall have a sidewalk leading from the city right-of-way, public

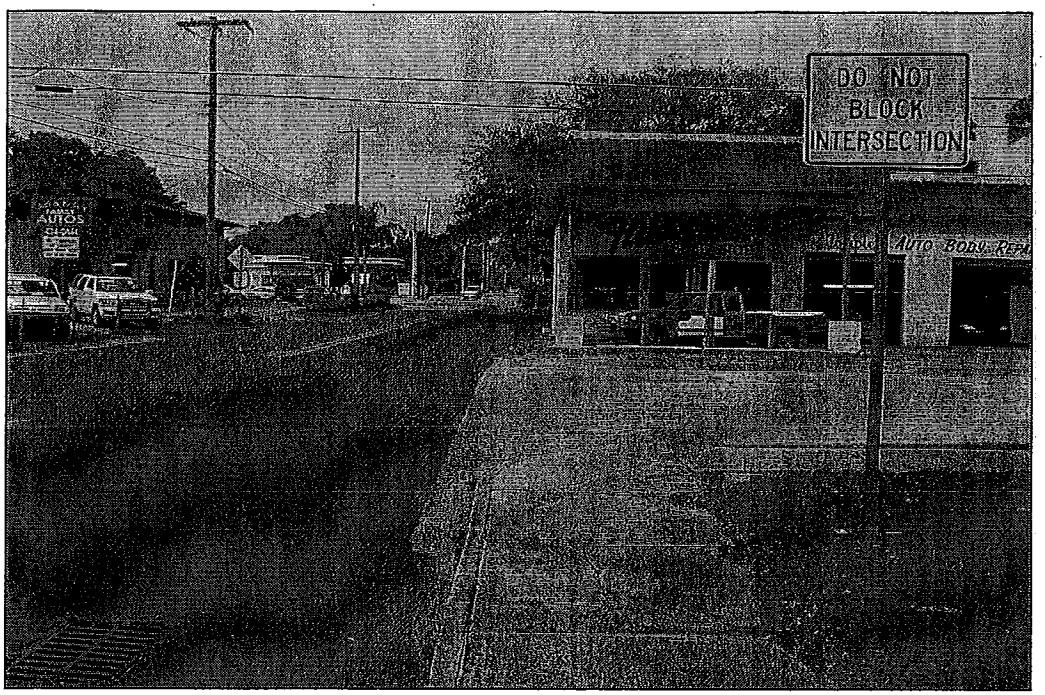
walkway or vehicular access way to the building entranceway. Stepping stones, gravel, or decorative rock shall not constitute a sidewalk.

(4~~7~~) Sidewalks shall be constructed of 3000 psi 28 day concrete with a minimum thickness of four (4) inches except that a minimum of six (6) inches is required at driveways. Sidewalks shall be reinforced with 6" X 6" and 10/10 wire mesh or contain fiberglass mesh within the ready mix. Wheelchair ramps for the handicapped shall be provided at all intersections and other points of pedestrian traffic flow.

604.105 Sidewalk Trust Fund

(a) There is hereby established a sidewalk trust fund. The sidewalk trust fund shall be used for the deposit, maintenance and distribution of all monetary contributions made in lieu of constructing a sidewalk pursuant to section 604.10(A) of this code. All contributions made to and interest derived from the sidewalk trust fund shall be used solely for the purpose of constructing, repairing or replacing sidewalks or bicycle paths along or on public streets or on public property.

(b) The sidewalk trust fund fee shall be established from time to time by city commission resolution. The fee shall be calculated by multiplying the number of linear feet of street frontage where a sidewalk is required to be built times the prevailing construction costs as determined by the city engineer.



Looking west on Washington Street towards U.S. 1. The sidewalk ends at North Orange Street, forcing pedestrian to walk in the right-of-way with bicycles, cars and large trucks and boat trailers.

North Atlantic Avenue

EXHIBIT B

LOCAL PLANNING AGENCY
PLANNING AND ZONING BOARD
MINUTES
APRIL 6, 2009

The Local Planning Agency/Planning and Zoning Board held a regular meeting on Monday, April 6, 2009 at the DeBerry Room, 200 Canal Street, New Smyrna Beach, Florida. Chairperson Rick Tresher called the meeting to order at 6:30 p.m.

ROLL CALL

The following members answered to roll call:

Rick Tresher
Jason McGuirk
Thomas Wheeler
Martha Ann Sibley
Maggie Hawk
Marie Bushey
Jessie Clark

Present were Development Services Director Mark Rakowski; Chief Planner Gail Henrikson; Recording Secretary Barbara Bobelak; Assistant City Attorney Greg McDole; and members of the public and press.

ELECTION OF VICE-CHAIRMAN

Marie Bushey made a motion to nominate Thomas Wheeler as the Vice-Chairperson. Motion passed unanimously on roll-call vote, 7-0.

APPROVAL OF MINUTES

Martha Ann Sibley made a motion to approve the minutes of the regular meeting held March 2, 2009, seconded by Thomas Wheeler. Motion passed unanimously on a roll-call vote, 7-0.

NO PUBLIC PARTICIPATION

VISIONING

Sidewalks and Sidewalk Fund

Mr. Rakowski discussed that he would like the Board's opinion on the development of sidewalks around the City, and would like to hear what areas they would consider to be priorities. Staff would also like input as to whether the City should create a formal sidewalk fund, similar to the one used by Volusia County. Volusia County established a "Sidewalk Improvement Trust Fund" to aid in the construction of sidewalks where possible. The

County Council, in their consideration of a development application, may approve the payment of money into the trust fund in lieu of construction of sidewalks for a project.

Mr. Clark asked if the fund could be used to repair sidewalks. Mr. Rakowski stated that could be something that could be done with the money.

Mr. McGuirk asked if the City was previously accepting money from developers for a sidewalk fund. Mr. Rakowski stated that the City has, in certain limited cases, accepted payments in lieu of constructing a sidewalk. However, the city actually needs to have a rule in the *Land Development Regulations* (LDR) to officially allow this. The City needs to have some criteria to determine when it might be acceptable to waive sidewalk construction and allow a developer pay in to a sidewalk fund.

Ms. Sibley asked how the City determines where new sidewalks should be constructed. She stated that there are so many areas in the City that need sidewalks. Mr. Rakowski stated that there is a Safe Walk to School Program. He stated that sidewalks near schools would be a first priority for new sidewalk construction.

Chairperson Tresher asked how staff would decide whether it's too expensive and difficult to put in a sidewalk. Mr. Rakowski gave examples of where it would be too difficult to put in sidewalks, such as areas where a ditch would need to be replaced with a culvert in order to level the ground and construct a sidewalk.

Mr. Wheeler stated that the City needs to repair existing sidewalks to enhance public safety and avoid potential liability. He stated that he would like to see requests to pay into a sidewalk fund, in lieu of constructing the sidewalk, come before the Planning and Zoning Board so citizens could have some input.

Ms. Hawk stated that she didn't see a need for a sidewalk on the east side of South Atlantic Avenue. Mr. Rakowski stated that one of the thoughts is to put the sidewalks on the east side and then have mid-block crossings. Doing so would allow pedestrians to cross in areas where they did not have to compete with cars that were also trying to turn down side streets.

Ms. Bushey asked if the sidewalk fund could be used to install crosswalks. Mr. Rakowski stated that it could be used for that also.

NEW BUSINESS

B. ZT-04-09: MAXIMUM COVERED BOAT SLIP SIZE

Jovanna Sayan, 3300 University Boulevard, Winter Park, Florida, requests approval of an amendment to the City's *Land Development Regulations* to increase the maximum allowed size for a single-slip boathouse from 360 square feet to 550 square feet and to increase the maximum allowed size for a two-slip boathouse from 600 square feet to 1,100 square feet.

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

ZT-13-11: PAIN MANAGEMENT CLINIC MORATORIUM

JULY 11, 2011

Background

A. **Applicant:** City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168

B. **Request:** Approval of a 180-day moratorium on the issuance of business tax receipts, building permits, development orders and other approvals related to pain clinics and pain management clinics.

Findings

A. Over the past year, many cities within the State of Florida have established moratoriums on the application of new pain management clinics within their jurisdictions. Pain management clinics 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 if 1,185 deaths in Florida. In an additional 763 deaths, oxycodone was found within the decedent. Between 2008 and 2009, deaths involving oxycodone increased by 23.8%. Thirty-nine of the 2009 oxycodone deaths were in Volusia County. Within New Smyrna Beach, 10 deaths have been attributed to drug overdoses during the past two years.

B. 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 was unfunded and was not expected to be in service until December 1, 2010. 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. This bill was approved by Governor Scott on June 3, 2011.

C. Despite the new legislation, the New Smyrna Beach Police Department has expressed concern about the possibility of pain management clinics seeking to

operate in New Smyrna Beach 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 businesses as a "medical office". Currently, medical offices are permitted within the following zoning districts:

- Mixed-Use (MU)
- Neighborhood Business (B-2)
- Highway Service Business (B-3)
- Planned Shopping Center (B-5),
- Medical Profession (B-6)
- Limited Medical Professional (B-6A)
- Light Industrial (I-1)
- Heavy Industrial (I-2)
- Industrial Park (I-3)
- Planned Unit Development (PUD)
- Corridor Overlay Zone (COZ)

D. 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. These second effects also impact surrounding properties, business owners and residents. For example, 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. Per Sgt. Eugene Griffith of New Smyrna Beach Police Department, along with the increased drug abuse, crime in the city has increased as well within the past two years. He stated that the police have seen 58 robberies and over 1,000 burglaries within the last six months. He also stated that there have been 88 daytime residential or car burglaries.

E. Staff is requesting that a 180-day moratorium be established in order to further research State regulations, any regulatory ordinances that have been proposed and/or adopted in surrounding cities, and various regulatory options. Any further amendments to the Land Development Regulations 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 businesses tax receipts and other development orders and/or approvals for pain management clinics for a period of 180 days.

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES

ZT-14-11: INTERNET CAFES MORATORIUM

JULY 11, 2011

Background

A. **Applicant:** City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168

B. **Request:** Approval of a temporary 180-day moratorium on the issuance of business tax receipts, building permits, development orders and other approvals related to internet cafes.

Findings

A. The City Commission has expressed concern with the operation of internet cafes within the City of New Smyrna Beach. The City's *Land Development Regulations* (LDR) does not currently define or specifically establish standards for internet cafes. Because the business typically operates by selling phone cards or internet time on a computer, staff has classified these types of businesses as retail. To date, staff is aware of four business tax receipts that have been submitted to operate an internet café within the City.

B. Currently, medical offices are permitted within the following zoning districts:

- Mixed-Use (MU)
- Neighborhood Business (B-2)
- Highway Service Business (B-3)
- Planned Shopping Center (B-5),
- Planned Unit Development (PUD)
- Corridor Overlay Zone (COZ)

C. Originally, internet cafes developed as businesses that provided computers for public use to conduct personal or professional business while users were away from their home or work computers. Internet cafes gained popularity in the mid-1990's as the world wide web and instant messaging became available. Internet cafes operate by selling internet time or phone cards, or a similar device. A customer can then use the PIN number on the card to access the machine for internet use.

D. As technology has evolved, internet cafes have declined in relevance. According to Neilson, approximately 80% of households in the United States have home computers and approximately 92% of those with home computers have internet access[1]. In recent years, email and internet service has become available directly to mobile phones. As the need to cater to basic internet access services has declined, internet café businesses have restructured themselves to cater more toward other services such as internet gaming. A customer still purchases a pass for internet time but, they are also awarded for their purchase of internet time by being provided a chance at a sweepstakes game. Many of these

internet sweepstakes games are programmed to have the look and feel of a vEgas0style slot machine. However, winnings are predetermined and there is no skill involved with winning a prize, as opposed to a traditional arcade game such as ski-ball or pinball. These types of games may or may not operate within the limitations of current state statutes.

E. Gambling in the State of Florida is governed by Chapter 849 of Florida Statutes. Chapter 849.094, Florida Statutes specifically exempts game promotions in connection with sale of consumer products or services from being considered a gambling activity. If the total announced value of the prizes awarded is more than $5,000, the business offering the prizes must register with the State Department of Agriculture and establish a trust fund with a balance sufficient to pay for the announced prizes.

F. As discussed above, to date, four business tax receipts have been issued for internet cafes within the City. Any applicant wishing to open an "internet café" within the City must sign a letter agreeing to abide by all regulations contained in Chapter 849, Florida Statutes. To date, no significant problems or issues have been identified related to these types of facilities. However, other cities within Central Florida have experienced issues related to secondary effects generated by the operation of internet cafes. The most prominent example is the recent shooting of a robbery suspect by an internet café security guard in the Orlando area. Other potential secondary impacts may include exposing the surrounding businesses and residents to illegal, unsafe or unhealthy activities such as 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.

G. In December 2009, a Florida circuit court judge dismissed charges against an Ocala businessman who operated an internet café. The judge stated that the evidence presented against the business owner was "weak" and the business was allowed to reopen. However, there are additional cases pending throughout the state that may prohibit these types of businesses or create new requirements for how they are operated. To date, no official opinion from the State's Attorney General has been issued on this subject.

H. Staff is requesting that a 180-day moratorium be established in order to further research State regulations, any regulatory ordinances that have been proposed and/or adopted in surrounding cities, and various regulatory options. Any further amendments to the Land Development Regulations regarding internet cafes will establish criteria for their location within certain zoning districts and operating requirements.

Recommendation

Staff recommends **approval** of the moratorium on the issuance of businesses tax receipts and other development orders and/or approvals for internet cafes for a period of 180 days.