



# City of New Smyrna Beach

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September 21, 2011

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

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of the regular meeting of the LOCAL PLANNING AGENCY AND THE PLANNING AND ZONING BOARD on MONDAY, October 3, 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 September 12, 2011

## PUBLIC PARTICIPATION

## VISIONING

- 2011 Growth Management Changes

## OLD BUSINESS

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

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

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

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

NEW BUSINESS

B. V-10-11: JENNINGS/351 GRANADA STREET

William L. Jennings, 351 Granada Street, New Smyrna Beach, Florida, 32169, applicant and property owner, requests a variance to the maximum allowed height of an accessory building to allow an accessory structure to exceed the height of the existing residence. The subject property contains approximately 0.22 acres, is zoned R-2, Single-Family Residential and is located at 351 Granada Street.

G. CPA-7-11 Colony Park East

Glenn D. Storch, Esquire, 420 South Nova Road, Daytona Beach, Florida, 32114, applicant on behalf of the property owners, Colony Park, LLC and New Smyrna Beach Acquisitions, 411 Commercial Court, Venice, Florida, 32127, requests approval of a Comprehensive Plan amendment to change the future land use designation of the subject property from County Commercial and County Urban Medium Intensity to City State Road 44 PUD. The subject property consists of approximately 41.45 acres, is zoned PUD, Planned Unit Development, and is generally located on the north side of State Road 44, east of Colony Park Road.

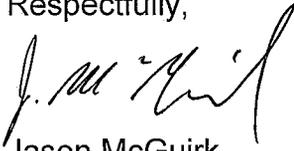
COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

REPORTS AND COMMUNICATIONS BY THE STAFF

- National Community Planning Month

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:

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



1 The Local Planning Agency/Planning and Zoning Board held a regular meeting on  
2 Monday, September 12, 2011 in the City Commission Chambers, 210 Sams Avenue,  
3 New Smyrna Beach, Florida. Chairperson Jason McGuirk called the meeting to order at  
4 6:30 p.m.

5 ROLL CALL

6  
7 The following members answered to roll call:

8 Laurene Herwald

9 Ian Ratliff

10 Travous Dever

11 Kenneth Bohannon

12 Jason McGuirk

13 Jessie Clark

14  
15 Brooks Casey was absent.

16  
17 Also present were Planning Manager Gail Henrikson, Planner Marissa Moore, Planner  
18 Kevin Jameson; and members of the public.

19  
20 **PUBLIC PARTICIPATION**

21 None.

22  
23 Mr. McGuirk noted that case SE-1-11 was being withdrawn at the request of staff.

24  
25 Ms. Henrikson explained that letters had been sent to adjacent property owners and  
26 advertisements were placed in the paper. However, the City's internal schedule for this  
27 project was revised and it was not included in the agenda. She stated that staff would  
28 assign a new case number to the application and readvertise.

29  
30 Mr. McGuirk stated that case V-8-11 / Oceanview Condo Association – 207 North  
31 Atlantic was also being withdrawn at the request of staff.

32  
33 Jim Smith, 414 Florida Avenue, New Smyrna Beach, asked for clarification as to  
34 whether the case was being continued or completely withdrawn.

35  
36 Ms. Henrikson stated that it was being withdrawn and, if the applicant wanted to pursue  
37 the request in the future, a new application would need to be submitted and notices  
38 would have to be resent to all property owners within 150 feet.

39  
40 **APPROVAL OF MINUTES**

41  
42 Mr. Dever made a motion to approve the minutes of the regular Planning and  
43 Zoning Board meeting held August 1, 2011, and minutes of the Planning and  
44 Zoning Board workshop held August 15, 2011, seconded by Mr. Bohannon.  
45 Motion passed unanimously on a roll-call vote, 6-0.

46  
47 **VISIONING**

48 Flagler Avenue Parking Study

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

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Ms. Henrikson addressed the Board and stated that the draft study was scheduled to go before the City Commission at a workshop on October 11<sup>th</sup>. She stated that since she had provided a summary at the August 1<sup>st</sup> meeting, she would primarily be available to answer questions.

Mr. Bohannon asked whether this was the entire study or just the first part.

Ms. Henrikson stated that it was the entire.

Mr. Bohannon asked Ms. Henrikson what option she would recommend as the best from the study.

Ms. Henrikson stated that ultimately the City would either need to build a parking structure or the City would need to review its regulations. She discussed the current 50% parking reduction currently provided to business owners on Flagler Avenue and Canal Street. She stated that if the City eliminated the 50% reduction, it could choose to then institute an "in-lieu" fee. An "in-lieu" fee would allow business owners and developers to contribute a set amount per required on-site parking space towards a fund that the City could then use to build or lease parking lots.

Mr. Bohannon asked whether the distance for off-site parking was currently 150 feet.

Ms. Henrikson stated that it was currently 1,000 feet. She stated that there was also an amendment on this agenda that would increase that distance to 1,500 feet.

Mr. Bohannon asked about leasing parking spaces from Coronado Methodist Church.

Ms. Henrikson provided the Board with the general history of discussions between the City and the Church.

There was further general discussion about parking at the Coronado Methodist Church.

Mr. Bohannon asked about making the Flagler Avenue Beach Ramp one-way and the impacts it would have on surrounding neighborhoods.

Ms. Henrikson explained what the likely scenario would be. She also discussed recommendations that were included in the Volusia County beach parking study.

Mr. Bohannon asked whether opening the Crawford Road Beach Ramp would alleviate traffic on Flagler Avenue.

Ms. Herwald asked about parking meters on Flagler Avenue and whether that had ever been discussed with the City Commission.

Ms. Henrikson stated that discussions about paid parking had occurred with the City Commission in the context of the North Causeway Boat Ramps, the Flagler Avenue

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

1 Boardwalk parking lot and possibly at the Esther Street Beachfront Park. She stated  
2 that the Commission was not amenable to charging for parking at the boat ramps.

3  
4 Mr. Dever asked whether there was really a serious problem with parking on Flagler  
5 Avenue, other than during special events? He asked why the study had been done.

6  
7 Ms. Henrikson explained that this was one of the City Commission's top ten goals for  
8 2011. She stated that the data from the CRA master plan update showed that a future  
9 deficit of approximately 350 spaces would occur if Flagler Avenue was developed to its  
10 maximum extent.

11  
12 There was general discussion about future development could occur on Flagler Avenue  
13 in the future.

14  
15 There was general discussion about whether the parking issues on Flagler Avenue  
16 were real or perceived.

17  
18 Mr. Dever stated that the City has been discussing for several years about selling  
19 properties. He asked whether if, any of those properties are sold, could some of the  
20 money be ear-marked for parking.

21  
22 Mr. Bohannon stated that it would go into the general fund and could not be ear-  
23 marked.

24  
25 Mr. Ratliff stated that he believed that there are certain parts of Flagler Avenue that  
26 have a real parking problem right now. He discussed possible alternative locations for  
27 parking in the Flagler Avenue area. He stated that he thought there were many good  
28 suggestions in the study.

29  
30 Mr. Bohannon asked about utilization of the Flagler Dunes parking lot.

31  
32 Ms. Henrikson stated that she had not seen it utilized at full capacity. She stated that  
33 this might be an issue of better signage.

34  
35 There was general discussion about the use of signs for public parking.

36  
37 Mr. Clark stated that if the landscape islands on Flagler Avenue were removed that  
38 there didn't appear to be a big gain in on-street parking.

39  
40 Mr. Dever asked which three properties were being considered for off-beach parking.

41  
42 Ms. Moore identified the three parcels that the City was considering proposing for  
43 ECHO grant funding for off-beach parking.

44  
45 Mr. McGuirk stated that he was surprised at the lack of teeth in the study. He stated  
46 that the study identified a number of different recommendations but did not include an

1 action plan for implementation. He stated that he was concerned about the lack of  
2 direction.

3  
4 Specifically, Mr. McGuirk cited the recommendation to add bike racks along Flagler  
5 Avenue. He stated that on Page 5, there is language stating that the restaurants that  
6 generate parking are not in conflict with the retail businesses because they are closed.  
7 He stated that he found that section confusing.

8  
9 He stated that he would like to see a focus on paid parking. He stated that the City  
10 needs to focus on the Flagler Avenue area to create some sort of parking district to deal  
11 with long-term parking issues. He stated that possible options included metered parking  
12 or a special assessment district for parking. He stated that he hoped to see more  
13 direction in the study.

14  
15 Mr. McGuirk stated that satellite might not be a viable option for special events. He  
16 stated, however, that it might be viable for employees.

17  
18 He stated that the study needs to concentrate on how this district could generate  
19 funding to create more parking.

20  
21 Ms. Henrikson asked whether he would support an "in-lieu" fee.

22  
23 Mr. McGuirk stated that he would be open to the idea but, that he would need to have  
24 more information before he could definitively answer that question. He stated that he  
25 foresaw that 5-7 years out, Flagler Avenue would not need to rely so much on special  
26 events, which would alleviate some of the parking problems.

27  
28 **OLD BUSINESS**

29  
30 None

31  
32 **NEW BUSINESS**

33  
34 B. **A-12-11: OTTER CREEK PROPERTIES/NORTH OF STATE ROAD 44**

35 Glenn D. Storch, Esquire, 420 South Nova Road, Daytona Beach, Florida 32114,  
36 applicant on behalf of the property owner, Otter Park Properties, LLC, 3806  
37 Daughtery Road, Zephyrhills, Florida, 33540, requests voluntary annexation,  
38 *Comprehensive Plan* amendment from County Urban Low Intensity and County  
39 Urban Medium Intensity to City Medium Density Residential, and rezoning from  
40 County R-1, Suburban Single-Family Residential and County R-4, Urban Single-  
41 Family Residential to City R-4, Multi-Family Residential. The subject property  
42 consists of approximately 26.19 acres and is generally located north of State  
43 Road 44 and south of Pioneer Trail.

44  
45 Ms. Henrikson addressed the Board, stated staff's findings and recommended that staff  
46 recommended approval.

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

1 Ms. Herwald asked if there was any sewer within close proximity to the property.

2  
3 Ms. Henrikson stated that sewer lines were stubbed out in the Colony Park Road right-  
4 of-way by Home Depot.

5  
6 Ty Harris, 112 West New York Avenue, DeLand, applicant on behalf of the property  
7 owner, addressed the Board. He discussed the \$50,000 commitment the developer had  
8 made to the extension of Colony Park Road. He referred the Board to the map on page  
9 B-5 of the staff report. He stated that there are no plans to develop the property at this  
10 point.

11  
12 No one spoke for or against the request.

13  
14 **Mr. Bohannon made a motion to recommend the City Commission approved the**  
15 **requested annexation, *Comprehensive Plan* amendment and rezoning, seconded**  
16 **by Mr. Dever. Motion passed unanimously on a roll call vote 6-0.**

17  
18 C. A-13-11: HALL/389 OTTER BOULEVARD

19 John L. Hall, 389 Otter Boulevard, New Smyrna Beach, FL, 32168, applicant and  
20 property owner, requests annexation, *Comprehensive Plan* amendment from  
21 County Urban Low Intensity to City Low Density Residential, and rezoning from  
22 County R-1, Suburban Single-Family Residential to City R-1, Single-Family  
23 Residential. The subject property contains approximately 0.843 acres and is  
24 generally located on the east side of Otter Boulevard, south of Pioneer Trail.

25  
26 Ms. Moore addressed the Board, reviewed staff's findings and stated that staff  
27 recommended approval of the request.

28  
29 Ms. Henrikson stated that she had been contacted by the property owner who was not  
30 able to attend the meeting.

31  
32 No one from the public spoke for or against the request.

33  
34 **Mr. Dever made a motion to recommend the City Commission approve the**  
35 **requested annexation, *Comprehensive Plan* amendment and rezoning, seconded**  
36 **by Mr. Clark. Motion passed unanimously on a roll call vote, 6-0.**

37  
38 D. PUD-3-11: REGENCY PUD-2<sup>ND</sup> AMENDMENT

39 Kai Burk, P.E., 445 24<sup>th</sup> Street, Vero Beach, FL, 32960, applicant on behalf of  
40 property owner, New Smyrna Regency, LLC, One Independent Drive, Unit 114,  
41 Jacksonville, FL 32202, requests approval of the 2<sup>nd</sup> amendment to amend the  
42 Regency Planned Unit Development Master Development Agreement to modify  
43 signage, architectural and landscaping requirements for Future Development  
44 Parcels H & I. The subject property consists of approximately 42.7 acres, is  
45 zoned PUD, Planned Unit Development, and is generally located northwest of  
46 the intersection of Interstate 95 and State Road 44.

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

1  
2 Ms. Henrikson addressed the Board, reviewed staff's findings and stated that staff  
3 recommended approval of the request, with the condition that minor modifications, as  
4 discussed in Finding "E" of the staff report, be incorporated into the final design of the  
5 building, to the maximum extent possible.

6  
7 Mr. Bohannon asked for clarification on staff's recommendation.

8  
9 Ms. Henrikson stated that staff believed there was agreement between the City and the  
10 Cracker Barrel representatives as to what types of minor modifications could be made.  
11 She stated that the intent was to provide flexibility while still trying to obtain as much  
12 compliance with the design standards as possible.

13  
14 Mr. Dever asked whether Cracker Barrel had purchased the property.

15  
16 Ms. Henrikson stated that she did not believe that the property had been purchased.

17  
18 Kai Burk, 445 24<sup>th</sup> Street, Vero Beach, Florida, representative of the property owner,  
19 addressed the Board. He stated that Cracker Barrel had the property under contract but  
20 had not yet closed on the site. He stated that they were in the process of incorporating  
21 the modifications that had been discussed with staff.

22  
23 Mr. Bohannon asked whether the developer would be required to transfer the interior  
24 landscaping to somewhere else on- or off-site or whether this amendment would simply  
25 reduce the requirement.

26  
27 Ms. Henrikson stated that it would reduce the requirement and no mitigation or  
28 additional plantings would be required.

29  
30 Mr. Bohannon asked about whether the building would comply with the Activity Center  
31 Design Standards if the minor modifications are made.

32  
33 Ms. Henrikson stated that the building would not be in compliance even with the  
34 inclusion of the minor modifications. She explained the reasoning behind the design  
35 standards.

36  
37 Mr. Bohannon asked Mr. Burk about whether Cracker Barrel had discussed the sign  
38 changes with the property owners.

39  
40 Mr. Burk stated that they had. He added that it was only the wall sign that would not be  
41 in compliance.

42  
43 No one from the public spoke for or against the request.

44  
45 Mr. Bohannon stated that his concern was that the City finally had an area of the City  
46 that had designed standards and now the next project in wants to reduce those  
47 standards.

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

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2 Mr. McGuirk stated that he agree with Mr. Bohannon. Mr. McGuirk asked Mr. Burk  
3 whether the City's design guidelines were unusual or problematic.

4  
5 Mr. Burk stated that the City's regulations were not unusual. He stated that for Cracker  
6 Barrel, those requirements, if enforced, would be a deal killer.

7  
8 **Mr. Bohannon made a motion to recommend the City Commission approve the**  
9 **2<sup>nd</sup> Amendment to the Regency PUD Master Development Agreement, seconded**  
10 **by Mr. Dever. The motion included the staff's condition listed in Finding "E".**  
11 **Motion passed unanimously on a roll call vote, 6-0.**

12  
13 E. ZT-11-11: SIGN REGULATIONS

14 City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, FL,  
15 requests approval of amendments to the City's *Land Development Regulations* to  
16 amend established policies regarding to signage.

17  
18 Ms. Moore addressed the Board, explained the process used to draft the proposed  
19 changes, detailed the significant changes and stated that staff recommended approval.

20  
21 Mr. McGuirk asked what would happen after pole signs are amortized after 10 years.

22  
23 Ms. Moore stated that the signs would need to be removed.

24  
25 There was discussion about how the 10-year amortization period was determined and  
26 the impacts this might have on business owners. There was discussion about how the  
27 City would notify property owners about the 10-year amortization period if the revisions  
28 are adopted. Mr. McGuirk stated that if the City didn't enforce the amortization, some of  
29 the old rusted pole signs on US 1 would not be removed.

30  
31 Mr. McGuirk asked whether political signs would be allowed to be placed in the back of  
32 a truck or pulled by a trailer under the proposed amendments.

33  
34 There was general discussion about campaign signs and political speech.

35  
36 Mr. McGuirk asked about what type of signage would be allowed for bed and breakfast  
37 businesses.

38  
39 Ms. Moore stated that a maximum of 32 square feet, with a maximum height of eight  
40 feet.

41  
42 Ms. Henrikson stated that this was generally consistent with what had been approved  
43 for the assisted living facility on North Riverside Drive.

44  
45 Mr. Dever about the regulations for commercial real estate signs.

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

1 Ms. Henrikson stated that no changes were made to the real estate sign regulations, as  
2 they had been revised about a year ago.

3  
4 There was general discussion about regulations for electronic message center signs.

5  
6 Mr. Ratliff asked whether the merchant groups were satisfied with the proposed  
7 sandwich board regulations.

8  
9 Ms. Moore stated that they were and explained how the merchants had been included  
10 in the process.

11  
12 Mr. Ratliff asked what the most contentious issue had been.

13  
14 Ms. Moore stated that eliminating pole signs and increasing wall signage area for multi-  
15 family buildings had been the most contentious issues.

16  
17 Mr. Ratliff asked about the sign spinners that stand on the sidewalks and whether those  
18 would be banned under this ordinance.

19  
20 Ms. Moore stated that they would be banned under the proposed revisions.

21  
22 Mr. Clark asked when the 10-year amortization period would begin.

23  
24 Ms. Moore stated it would begin on the date the City Commission adopted the  
25 ordinance.

26  
27 There was general discussion about vintage signs.

28  
29 No one from the public spoke for or against the request.

30  
31 Mr. McGuirk acknowledged Commission Judy Reiker who was in the audience.

32  
33 **Mr. Dever made a motion to recommend the City Commission approve the**  
34 **requested amendment, seconded by Mr. Ratliff. Motion passed unanimously on a**  
35 **roll call vote, 6-0.**

36  
37 F. ZT-13-11: PAIN MANAGEMENT CLINICS

38 The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach,  
39 Florida, 32168, requests approval of amendments to the City's *Land*  
40 *Development Regulations* to establish regulations relating to pain clinics and  
41 pain management clinics.

42  
43 Mr. Jameson addressed the Board, reviewed staff's findings and stated that staff  
44 recommended approval of the request.

45  
46 Mr. McGuirk stated that he thought staff had done a good job in preparing the  
47 amendment. He asked whether this was consistent with the new state regulations.

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

1  
2 Mr. Jameson stated that it was.

3  
4 Mr. Ratliff asked about the definition of "pain management clinic" and whether other  
5 types of pain management treatments could come up that weren't covered under the  
6 definition.

7  
8 Mr. Jameson stated that it was possible. However, staff relied on the definition in the  
9 State's legislation, as staff does not have the medical background necessary to specify  
10 what types of treatments would qualify as pain management.

11  
12 **Mr. Clark made a motion to recommend the City Commission approve the**  
13 **requested amendment seconded by Mr. Ratliff. Motion passed unanimously on a**  
14 **roll call vote, 6-0.**

15  
16 G. ZT-14-11: INTERNET CAFES

17 The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach,  
18 Florida, 32168, requests approval of amendments to the City's *Land*  
19 *Development Regulations* to establish regulations regarding the operation of  
20 internet cafes.

21  
22 Mr. Jameson addressed the Board, reviewed staff's finding and stated that staff  
23 recommended approval of the proposed amendment.

24  
25 Mr. Bohannon asked about the proposed limitations on the hours of operation.

26  
27 Mr. Jameson explained that staff had reviewed other ordinances in surrounding  
28 jurisdictions and that many of them contained the same restrictions. Mr. Bohannon  
29 stated that he thought it was too early to draft legislation and that this might be too  
30 restrictive.

31  
32 Mr. Ratliff asked if any of the other conditional uses had restrictions on the hours of  
33 operation.

34  
35 Ms. Henrikson stated that there were only a limited number of conditional uses in the  
36 code right now. One is the farmer's market, which does not have any time restrictions.

37  
38 Ms. Henrikson stated that there have not been any issues associated with internet cafes  
39 within the City.

40  
41 Mr. McGuirk stated that staff had been objective in drafting the ordinance. He stated  
42 that this was a gray area in the law. He stated that for that reason, the City did need to  
43 be a little cautious when allowing these types of businesses to operate within its  
44 boundaries.

45  
46 There was general discussion about gambling and about the general hesitancy of the  
47 community to allow certain types of uses.

LPA/PLANNING AND ZONING BOARD  
SEPTEMBER 12, 2011  
MINUTES

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

Mr. Ratliff asked about the requirement to maintain 65% transparency on the windows.

Mr. Jameson stated that this was already required by code. He stated that the intent was to discourage illegal or unethical activities by requiring windows that can be seen through.

Mr. Dever asked whether beer and wine could have been served in an internet café before the moratorium and proposed regulation changes.

Mr. Jameson stated that this was a condition that was included in many of the internet café regulations from around Volusia County. There was discussion about promoting irresponsible behavior in the gambling community and whether beer and wine should be allowed to be served.

There was discussion about how the existing state legislation regarding gambling and sweepstakes already regulated internet cafes.

Mr. Ratliff asked whether some of the conditions recommended by staff could be removed. He also asked about whether conditional uses would come back before the Planning Board or City Commission for final approval.

Ms. Henrikson stated the Board could recommend eliminating some or all of the proposed conditions. She also stated that conditional uses are approved by staff, if the applicant meets all of the required conditions.

**Mr. Ratliff made a motion to recommend the City Commission approve the requested amendment, with the condition that staff conditions #2, #3 and #5 be removed. The motion was seconded by Ms. Herwald. Motion failed 2-4. Mr. McGuirk stated his reason for dissenting: "I think that the existing staff report was fine." Ms. Herwald stated her reason for dissenting: "I agree. I mean, same as Jason. No to approving it with those conditions. I seconded the way it was written." Mr. Dever stated his reason for dissenting: "I don't think we need this at all." Mr. Bohannon stated his reason for dissenting: "The rules and regulations that are promulgated are not the least restrictive means of doing it. They have arbitrary and capricious restrictions on an otherwise healthy and vibrant business."**

**Mr. Bohannon made a motion to approve the amendment as recommended by staff, seconded by Mr. Ratliff. Motion failed on a tie vote, 3-3. Mr. Ratliff stated his reason for dissenting: "I believe the proposal as written is too onerous." Mr. Dever stated his reason for dissenting: "Too restrictive." Mr. Bohannon stated his reason for dissenting: "No, with the hope and prayer that the City Commission will see the light".**

1 H. ZT-16-11: MAXIMUM DISTANCE FOR OFF-SITE PARKING

2 The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida,  
3 32168, requests approval of amendments to the City's *Land Development*  
4 *Regulations* to revise the regulations relating to the maximum allowed distance  
5 for off-site parking in the MU, Mixed-Use District.

6  
7 Mr. Jameson addressed the Board, reviewed staff's findings and stated that staff  
8 recommended approval of the request.

9  
10 No one from the public spoke for or against the request.

11  
12 **Mr. Ratliff made a motion to recommend the City commission approve the**  
13 **amendment, seconded by Mr. Dever. Motion passed unanimously on a roll call**  
14 **vote, 6-0.**

15  
16 I. ZT-17-11: WATER/SEWER LOS

17 The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach,  
18 requests approval of amendments to the City Land Development Regulations to  
19 revise the water and sewer level of service standards.

20  
21 Ms. Moore addressed the Board, reviewed staff's findings and stated that staff  
22 recommended approval of the request.

23  
24 **Mr. Bohannon made a motion to recommend the City Commission approve the**  
25 **requested amendment, seconded by Mr. Ratliff. Motion passed unanimously on a**  
26 **roll call vote, 6-0.**

27  
28 REPORTS AND COMMUNICATIONS BY THE BOARD

29 Mr. Bohannon asked what items were on the October agenda.

30  
31 Ms. Henrikson said at this point there are probably 7-8 items on the agenda.

32  
33 There was general discussion about waiving design guidelines and what corporations  
34 are willing to work in design guidelines and which will not modify their prototypical  
35 designs:

36  
37 There was discussion about the removal of trees at the Regency PUD site and about  
38 the construction of the proposed Wal-Mart. Mr. McGuirk asked when the new Wal-Mart  
39 would be opening and what would be happening with the existing Wal-Mart.

40  
41 Mr. Ratliff commended Ms. Moore on the sign ordinance.

42  
43 REPORTS AND COMMUNICATIONS BY THE STAFF

44 None.

45 ADJOURNMENT

46 With there being no further business, the meeting was adjourned at 8:10 p.m.

# Interoffice Memorandum

## City of New Smyrna Beach

**To:** Planning and Zoning Board Members

**From:** Gail Henrikson, AICP, Planning Manager *GAH*

**Subject:** **2011 GROWTH MANAGEMENT CHANGES**

**Date:** September 22, 2011

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In Spring 2011, the Florida Legislature approved House Bill 7207 (HB 7207), relating to growth management. The bill represented a significant overhaul of Chapter 163, Florida Statutes, which regulates comprehensive planning and concurrency requirements throughout the state.

A summary of the highlights of HB 7207, the total length of which is 343 pages, is attached to the memo. The bill streamlines or eliminates many of the existing regulations governing review, adoption, and other procedures for adopting and amending comprehensive plan. The bill also removes state-mandated concurrency for transportation, parks and recreation and schools. These elements would now become optional at the discretion of the local government.

The purpose of this visioning topic is to begin discussions about whether the City of New Smyrna Beach should eliminate concurrency requirements for transportation and parks and recreation facilities. The City cannot choose to eliminate school concurrency requirements because school concurrency is also required under the Volusia County Charter and the Interlocal Agreement between the City and the School District.

### **TRANSPORTATION CONCURRENCY**

The purpose of traffic concurrency is to ensure that roadways do not become overly congested as a result of new development. The Transportation Element of the City's *Comprehensive Plan* establishes levels-of-service (LOS) for the following roadway classifications within the City:

- Florida Interstate Highway System: LOS "C"
- Other State Highway Systems: LOS "D"
- Minor Arterial Roads: LOS "E"
- Collector Roads: LOS "E"
- Local Roads: LOS "E"
- Roads located within the Central Business District: LOS "E"

The definitions of each LOS is described below. These levels-of-service are related to facility type and traffic volume in the Florida Department of Transportation (FDOT) *2009 Quality/Level of Service Handbook*.

LOS "A" - Represents free flow. Individual users are virtually unaffected by the presence of others in the traffic stream. Freedom to select desired speeds and to maneuver within the traffic stream is extremely high. The general level of comfort and convenience provided to the motorist is excellent.

LOS "B" - In the range of stable flow, but the presence of other users in the traffic stream begins to be noticeable. Freedom to select desired speeds is relatively unaffected, but there is a slight decline in the freedom to maneuver within the traffic stream from LOS "A." The level of comfort and convenience provided is somewhat less than at LOS "A," because the presence of others in the traffic stream begins to affect individual behavior.

LOS "C" - In the range of stable flow, but marks the beginning of the range of flow in which the operation of individual users becomes significantly affected by interactions with others in the traffic stream. The selection of speed is now affected by the presence of others, and maneuvering within the traffic stream requires substantial vigilance on the part of the user. The general level of comfort and convenience declines noticeably at this level. This LOS is generally selected for design of new facilities.

LOS "D" - Represents high-density, but stable flow. Speed and freedom to maneuver are severely restricted, and the driver experiences a generally poor level of comfort and convenience. Small increases in traffic flow will generally cause operational problems at this level.

LOS "E" - Represents operating conditions at or near the capacity level. All speeds are reduced to a low, but relatively uniform value. Freedom to maneuver within the traffic stream is extremely difficult, and it is generally accomplished by forcing a vehicle to "give way" to accommodate such maneuvers. Comfort and convenience are extremely poor, and driver frustration is generally high. Operations at this level are usually unstable, because small increases in flow or minor perturbations within the traffic stream will cause breakdowns.

LOS "F" - Used to define forced or breakdown flow. This condition exists wherever the amount of traffic approaching a point exceeds the amount, which can traverse the point. Queues form behind such locations.

Operations within the queue are characterized by stop-and-go waves, and they are extremely unstable.

While HB 7207 provides local governments with the ability to opt out of transportation concurrency requirements, if a local government chooses to enforce transportation concurrency, it must also provide a proportionate fair-share mechanism. Proportionate fair-share requires developers to pay only for their share of the costs of improvements needed to maintain concurrency. The fair-share payment is based upon the number of trips generated by the new development. The City adopted a proportionate fair-share ordinance in 2009.

Additionally, under the new regulations, a local government cannot require a developer to contribute a proportionate fair-share payment to a facility that is already deficient. To date, the City has experienced few roadway capacity issues. However, some new developments have been required to make proportionate fair-share payments towards signalization at State Road 44 and Glencoe Road, State Road 44 and Sugar Mill Drive and State Road 44 and Airport Road, based upon data and analysis included in their transportation impact studies.

The decision to eliminate all transportation concurrency requirements will have a significant long-term impact on the businesses and residents of the City. Lowering LOS standards or eliminating them completely may give the City a short-term advantage over neighboring communities that might choose to continue concurrency management in their communities. However, eventually allowing roadways to reach LOS "F" with no plan to add capacity and no financing strategies to do so, lacks foresight and accountability on the part of local government. It also forces existing residents and businesses to pay for the costs of new development.

#### **RECREATION AND OPEN SPACE CONCURRENCY**

With regards to concurrency requirements for Recreation and Open Space, this element, while mandated in the past, did not need to meet any specific requirements set by the state. Instead, each local government was allowed to set its own level-of-service standards. In 2010, as part of the EAR-based amendments, the entire Recreation and Open Space element was entirely rewritten. The rewrite eliminated the requirement for the City to provide a swimming pool and additional golf courses and added level-of-service standards for items such as boat ramps, bike trails and neighborhood parks. In addition to public meetings with the Planning and Zoning Board and City Commission, the revised recreation and open space standards were also reviewed at two public meetings with the Parks and Recreation Board.

Currently, the City has not identified any possible park deficiencies through the planning horizon (2025). The revised standards reflect the desires and needs of the community and have been developed at the local level. Parks and open

spaces play an important role in the overall quality of life experienced by residents of New Smyrna Beach. Parks such as Buena Vista and Rocco provide public access for fishermen. Riverside Park serves as a venue for many events, including Fish Stock and Relay for Life. Smaller park facilities such as Detwiler Park or Inlet Shores serve as neighborhood amenities. Pettis Park serves as a focal point and gathering place within the Historic Westside Neighborhood.

While New Smyrna Beach, like other communities across the nation, is primarily focused on job creation and economic development at this point in time, quality of life issues are an important, if intangible, component of economic development. Companies seeking to relocate or open additional facilities will look not only at the regulatory climate in a particular municipality but also at what the community has to offer the workers and their families. If two cities are competing for a business and the regulatory aspects are equal, decisions will often be based on second-tier criteria such as physical climate, schools, cultural opportunities and other quality of life issues. Parks, although often viewed as a non-necessity by many residents, particularly in times of economic adversity, play a vital role in any urban area.

#### **NEXT STEPS**

Staff is looking for input from the Planning and Zoning Board as to whether the City should consider reducing or eliminating transportation concurrency and recreation and open space concurrency requirements.

Because elimination of concurrency requirements for these two types of facilities may potentially have long-term consequences for the quality of life of all residents and business owners within the City, the decision to move forward should require several public workshops in order to obtain the consensus of the community.

# CARLTON FIELDS

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## 2011 CHANGES TO 163 AND 380 (HB 7207)

Topic	HB 7207
Repeal of 9J-5	<p>Portions of 9J-5 are incorporated into statutes including certain definitions, data and analysis requirements and sections from various elements. Rule 9J-5 is repealed.</p> <p>9J-11.023 is also repealed</p>
<p>Comprehensive Plan Amendment Process</p> <p>180 day deadline for adoption</p> <ol style="list-style-type: none"> <li>1. Expedited Review</li> <li>2. Current Review Process</li> <li>3. Small Scale Amendments</li> </ol>	<p>Streamlined and re-written. Removes twice per year limitation on plan amendments.</p> <p>Local Governments required to adopt plan amendments within 180 days after receiving agency comments or the amendment is withdrawn unless extended with concurrence from DCA and any commenting third party. DRI amendments exempt from 180-day requirement.</p> <p>New standard process for amendments set out in this outline</p> <p>(Called State Coordinated Review in bill) Retained for EAR Based Amendments, Sector Plans, Areas of Critical State Concern (ACSC), Rural Land Stewardship Areas and a newly adopted comprehensive plan for a new local government</p> <p>Approval process remains the same but requirements modified to remove density cap, allow text amendments that are directly related to a plan amendment like notes on the maps. Deletes prohibitions on using small scale amendment process such as if same property granted change in last 12 months and if the same owner has property within 200 feet and was granted change in past 12 months.</p>
Role of Agencies in review of plan amendments	<p>Comments from agencies on plan amendments limited to adverse impacts on important state resources and facilities (for state agencies) and regional resources and facilities (for RPCs). However, DCA has expanded comment authority under State Coordinated Review Process only.</p>

	<p>FDOT – Limited to issues within the agency’s jurisdiction as it relates to the requirements of this part and may include technical guidance.</p> <p>DCA (State Land Planning Agency or whatever form DCA takes) – For Expedited Review, DCA limited to important state resources and facilities outside the jurisdiction of other agencies and directs DCA to balance objectives of amendment against potential adverse impacts to important state resources and facilities. For State Coordinated Process, DCA issues ORC report and makes a compliance finding similar to current process.</p> <p>DEP – Limited to air and water pollution, solid waste, sewage, drinking water, state parks, greenways and trails, state-owned lands and conservation easements, wetlands and other surface waterbodies and Everglades Restoration.</p> <p>FFWCC – Limited to fish and wildlife habitat, listed species and their habitat</p> <p>WMD – Limited to wellfields, regional water supply plan, wetlands and other surface waterbodies, flood protection and floodplain management.</p> <p>RPC – Limited to adverse effects on regional resources or facilities in the SRPP and extrajurisdictional impacts inconsistent with comprehensive plan of any affected local governments in the region (latter current law).</p>
<p>Definition of Urban Service Area</p>	<p>Amends definition of urban service area deleting term “built up,” adding that the urban service area must be adopted in the comprehensive plan and replacing facilities in “the first 3 years of the capital improvements schedule” with “identified in the capital improvements element”. Also adds phrase “Urban Service Area includes any areas identified in the comprehensive plan as urban service areas, regardless of local government limitation.”</p>
<p>Compliance Finding and Challenges</p> <p>State Comprehensive Plan and 9J-5</p> <p>DCA Review of Adopted Amendment and Challenge Authority</p>	<p>Both removed from having a compliance determination made based on them.</p> <p>Under State Coordinated Process, DCA issues ORC report and Notice of Intent and conducts compliance review. DCA is not limited on comments and may challenge on compliance issues as well as impacts to important state resources or facilities.</p> <p>For Expedited Review Amendment, DCA may comment and challenge only if important state resources or facilities impacted.</p>

<p>State Coordinated Review of Amendments</p>	<p>Establishes one review process for coordinated and expedited amendments.</p> <p>3<sup>rd</sup> party may challenge an amendment. Local government determination is sustained if fairly debatable. DCA can not intervene in a citizen initiated petition.</p> <p>DCA may challenge an amendment. If DCA chooses to challenge it must do so within 45 days of determining the amendment is complete. For DCA challenge, the local government's determination of in compliance is presumed to be correct and sustained if shown by a preponderance of the evidence. (same as regular process now)</p> <p>Local government determination of internal consistency shall be sustained if fairly debatable.</p> <p>If ALJ finds not in compliance, Recommended Order (RO) submitted to the Administration Commission. If ALJ finds in compliance, RO submitted to DCA. DCA will issue the RO unless it finds the amendment not in compliance. Then, DCA shall refer the amendment to the Administration Commission.</p>
<p>Expedited Review of Amendments</p>	<p>DCA has 30 days from determining the amendment package is complete to challenge the amendment. DCA challenge under an expedited amendment is limited to the comments provided by the review agencies and a determination by the DCA that an important state resource or facility will be adversely impacted.</p> <p>The local government may challenge the DCA determination that an important state resource or facility will be impacted. The DCA determination must be supported with clear and convincing evidence.</p>
<p>Third Party challenges to Expedited Review</p>	<p>3<sup>rd</sup> party may challenge whether an amendment is in compliance. The local government determination will be sustained if fairly debatable. DCA cannot intervene in a citizen initiated petition.</p>
<p>Transition</p>	<p>DCA has 60 days after the effective date of this Act to review all pending administrative and judicial proceedings to determine if they are consistent with 163. Once a determination has been made, DCA has 30 days to file amended petition. If nothing filed within that timeframe, then case is dismissed.</p>
<p>Future Land Use Need</p> <p>Future Land Use amendment</p>	<p>Local government must provide minimum (as opposed to a maximum) amount needed for land uses based on BEBR mid range for a 10 year planning period. However, need must be more than just population projections and must provide adequate supply for real estate market. Does not apply to Areas of Critical State Concern.</p> <p>Clarifies plan amendment analysis requirements.</p>

<p>analysis</p> <p>Urban Sprawl</p> <p>Planning Timeframe</p> <p>New Towns and Transit Oriented Developments (TOD)</p> <p>Antiquated Subdivisions</p>	<p>Adds definition of urban sprawl, incorporates the 13 indicators of urban sprawl and adds new test for sprawl: plan amendment must meet 4 of 8 new criteria to be determined to not generate urban sprawl.</p> <p>Allows timeframes beyond the planning timeframe for projects and specific components of plan.</p> <p>Adds definitions</p> <p>Adds requirement for future land use map to be based upon the need to modify land uses and development patterns in antiquated subdivisions. Antiquated subdivisions are defined as a subdivision approved more than 20 years ago that has substantially failed to be built and its buildout would cause an imbalance of land uses and detrimental to the local and regional economies and development patterns.</p>
<p>Public Facilities/Capital Improvements Schedule</p>	<p>Deletes financial feasibility requirement.</p> <p>Permits Capital Improvements Schedule to be adopted through local ordinance, not a plan amendment.</p> <p>Modifies definition of public facilities to delete health systems and spoil disposal sites.</p>
<p>Concurrency / Transportation</p>	<p>Removes state mandated concurrency for transportation, parks and recreation and schools. All are optional for the local governments.</p> <p><del>Deletes concurrency exemptions.</del></p> <p>Removes state requirement to adopt mobility strategies to support and fund mobility and criteria for mobility plan.</p> <p>Replaces term “backlog” with “deficient.”</p> <p>If locals want to have home rule concurrency management, must allow proportionate share pay and go.</p> <p>Refines proportionate share language to simplify the proportionate share calculation; removes cost of deficiencies caused by prior approved projects and toll roads from calculations; specifies that once an impact is mitigated, it can not be charged again; provides for a credit for a proportionate share payment and specifies that local governments are not required to approve a development that is not otherwise qualified for approval.</p>

	<p>FDOT directed to develop and submit a study to the Legislature by 12/15 of this year on recommended changes or alternatives to the calculation of proportionate share contribution with local government and developer participation.</p>
School Planning	<p>Makes school concurrency optional.</p> <p>Removes requirement for public school facilities element.</p> <p>Removes many of the requirements related to school concurrency and interlocal agreement with school boards.</p> <p>Removes prohibition on adopting plan amendments for not addressing school siting requirements.</p> <p>Permits portables to be counted as supply for classrooms; currently, counting limited to 3 years.</p> <p>Removes requirement for collocation of parks and schools; up to local government.</p>
Sector Planning	<p>Removes pilot program and limitations on number of sector plans and establishes 15,000 acres as minimum size for sector plan.</p> <p>Makes scoping meeting an option for local government.</p> <p>Modifies submittal requirements – Only general information required at conceptual phase with detailed information deferred to detailed plan.</p> <p>Requires no demonstration of need and removes limitation to planning timeframe.</p> <p>Directs detailed map (DSAP) to be adopted by local development order – not plan amendment.</p> <p>Adds to requirements of DSAP identification of maximum and minimum densities and intensities and identification of water resource development and water supply.</p> <p>Requires consistency of conceptual plan with state and regional plans.</p> <p>Allows DCA to enter into an agreement with a local government for a large area comprehensive plan amendment consisting of at least 15,000 acres adopted on or before July 1<sup>st</sup> in order to apply the sector plan provisions.</p> <p>Requires that conservation easements are recorded and effective by the effective date of the development approvals within the sector plan</p>

	<p>area.</p>
Rural Land Stewardship Areas	<p>Removes requirement for an agreement with DCA.</p> <p>Allows one or more land owners to apply for RLSA in a local government and allows RLSA to include more than one county.</p> <p>Creates RLSA overlay zoning district by local ordinance.</p> <p>Replaces term “transferable rural land use credits” with “stewardship credits.”</p> <p>Deletes reference to minimum 25 year timeframe for receiving areas. Replace with provision that receiving areas based on available data and development potential represented by stewardship credits created in RLSA.</p> <p>Recognizes Collier County’s RLSA as a RLSA under the statute.</p> <p>Clarifies that landowners must consent to being in a RLSA; population based upon need is not required; and requires conservation easements to be in a place prior to receipt of stewardship credits being transferred.</p>
Evaluation and Appraisal Report Process Streamlined	<p>Requires local government to analyze plan every 7 years and determine if amendments required to address changes in state law or any other revision. Does not change timing for when EAR would be due, thus, 7 years from last EAR.</p> <p>Authorizes DCA to adopt a schedule for EAR submittal through rule making.</p> <p>Requires local government to send a letter to state land planning agency summarizing their findings.</p> <p>Local government one year to adopt EAR amendments.</p> <p>Restricts local government from amending its plan if review letter or EAR amendment is not submitted as required.</p> <p>Clarifies that all EARs and EAR Amendments must meet the new requirements in this bill even those that are due or overdue.</p>
Developments of Regional Impact	<p>Retains DRI exemption for properties within a designated DULA.</p> <p>Provides for 4 year extension of DRI build out, phasing and commencement dates and associated mitigation if requested by the developer for valid DRIs. Request must be made by 12/31/11. However, mitigation not extended if a development has commenced construction of phase to be mitigated and local government notifies developer by 12/1/11 that has let contract for mitigation required for</p>

	<p>that phase.</p> <p>Clarifies that the 180-day adoption date for plan amendments does not apply to DRIs.</p> <p>New thresholds in bill automatically apply for projects and trump any comprehensive plan requirements or agreements that would apply a stricter DRI threshold or require a DRI if now exempt.</p> <p>Adds an exemption from DRI review for solid mineral mining, industrial, hotel/motel and movie theaters. Clarifies that Spaceport launch facilities are industrial and thus, are exempt from DRI review.</p> <p>Adds requirement that DRI exemption for new solid mineral mining applies only if a mine owner enters into a binding agreement with FDOT to mitigate for any impacts to the Strategic Intermodal System (SIS)</p> <p>Increases the essentially built out criteria from 20% to 40%</p> <p>Increases substantial deviation criteria for attraction or recreation facilities, office and commercial.</p> <p>Amends aggregation criteria to remove voluntary sharing of infrastructure criterion and requires 3 of remaining criteria must be met to determine there is a unified plan of development.</p> <p>A local government may deny a NOPC for local reasons including if the change is not compatible with a plat restriction</p> <p>If the proportionate share formula changes, a DRI with transportation mitigation requirements under the old formula may request a local government modification. If local government agrees, the revision is presumed not to be a substantial deviation.</p>
<p>Dense Urban Land Areas (DULA)</p>	<p>Eliminates Dense Urban Land Areas in Ch. 163.</p> <p>Retains DRI exemption for local governments designated as Dense Urban Land Areas and requirements for DULAs under Ch. 380</p> <p>Protects DULA designation for local governments that meet the criteria. Any communities designated as a DULA will remain a DULA.</p> <p>If more than 85% of the total area of a DRI is in a DULA and the rest is not, then the entire DRI may be rescinded in both the DULA and non-DULA local governments if the portion of the development outside of the DULA does not independently meet the DRI thresholds.</p>

	Any area that has been identified as a DULA may not be removed from qualifying list. However, the DRI exemption only applies to the portion of the DULA that meets the criteria.
Permit and Development Order Extensions	<p>Provides a two year permit extension for those that received a permit extension under SB 360 (2009 2-year extension) if those permits were ineligible for extension under SB1752 (2010 2-year extension) because the permits expired after 1/1/12. The extension is not automatic and must be requested by the permit holder by 12/31/11.</p> <p>Also provides a two year extension if the permit or DO expires between 1/1/12 and 1/1/14. The permit holder must request the extension by 12/31/11.</p> <p>Caps all 2-year extensions granted since 2009 through this Act at a total of 4 years.</p>
Impact Fees	Provides a credit for impact fees under proportionate share.
Updates Ch.163	Reduces the size of Ch. 163 by removing sections that are not needed, have already been implemented, are rarely used or covered elsewhere in the statute.
Agricultural Enclaves	Plan amendments for agricultural enclaves are presumed to not be urban sprawl.
Rural Agricultural Industrial Area	Clarifies that this type of amendment is presumed to not be urban sprawl and the amendment must be considered by the local government within 90 days after the state land planning agency review is completed.
Climate Change - Adaptation	Defines the Adaptation Area and permits a local government with a Coastal Management Element to include an Adaptation area and plan for impacts from sea level rise.
Century Commission	Retained but scheduled for sunset on June 30, 2013.
Property Rights	Conforms intent language for growth management programs to inordinate burden language in property rights bill
Plan Amendments subject to Voter Referendum	Clarifies that a comprehensive plan amendment adopted under the expedited review process prior to this act becoming effective that was subject to voter referendum by local charter and found in compliance, may be readopted by ordinance and shall become effective upon approval by the local government and can not be challenged under the provisions of s.163 (St. Pete Beach)
Other Changes	
Local Referendums	Prohibits land use amendments requiring referendums.

Duplication of Permitting	Does not require local governments to duplicate or exceed a permitting program when a federal, state or regional agency has implemented a permitting program.
Annexations	Provides for joint agreements for municipal adoption of plan or plan amendments in advance of an annexation.
Military Base Compatibility	Any local government that amended its comprehensive plan to address military base compatibility requirements and was found in compliance after 2004 is not required to address the requirements adopted in 2010 session until the EAR is due. Also adds provision that comments from the military base commander on plan amendments are not binding on local government.
Administration Commission	Requires unanimous approval of Administration Commission for sanctions to be applied.
Development Agreements	Development agreements extended to 30 years and may be extended further by amendments.
DCA guidance on website	DCA must provide guidance on website for submittal and adoption of plans, plan amendments and land development regulations. These are not rules and are exempt from 120.54(1)(a)
Severability Clause	Contained in the bill
Effective Date	Upon Becoming Law
Deletions from 163	Provisions added under HB 697 (energy efficiency requirements in planning)  Reference to affordable housing needs assessment:  Community visioning provisions.

# 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:** September 21, 2011

---

Building Department and Planning staff met with the property owner and design consultants on Monday, September 19<sup>th</sup>. At that meeting, the property owner verified that he would be leasing parking spaces off-site at 715 Magnolia Street. The bed and breakfast would provide valet parking to patrons. Two parking spaces for either the property owner or the operator of the bed and breakfast would be provided within the Second Street right-of-way. The use of the Second Street right-of-way for a small paved parking area was approved by the City Commission on November 9, 2010.

The property owner has withdrawn the requests for the sign variances.

The property owner also indicated to staff that they would be revising the variance application in order to relocate the proposed swimming pool. The property owner received variance approval in April 2010 to allow a pool in the front yard, inside an existing enclosed courtyard. The interior wall of that courtyard has been removed and the proposed pool has shifted further to the west property line. Because the proposed pool location differs significantly from what was originally approved by the Board of Adjustment in April 2010, staff's determination is that a new variance would be required. This would necessitate re-advertising the request for the November 2011 Planning and Zoning Board meeting and re-sending notices to all property owners within 150 feet.

In order to re-advertise and re-notice the revised variance, the property owner is requesting that this item be continued to the November 7, 2011 Planning and Zoning Board meeting.

September 21, 2011

Gail Henrikson, AICP  
210 Sams Avenue  
New Smyrna Beach, FL 32169

**RE: 916 S Riverside Drive – Variance Continuation**

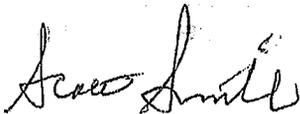
Dear Gail:

As a follow-up to yesterday's meeting, please let this serve to confirm my request for a variance continuation in concert with the Planning & Zoning Board meeting scheduled for November 7, 2011.

In addition to this, I have enclosed a check in the sum of \$200.00 for the "re-advertising" for the variance as outlined in your e-mail dated September 20<sup>th</sup>.

Gail, thank you for your assistance in this regard. Should you have any questions or require additional information, I can be contacted at 732-822-5007.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott P. Smith". The signature is written in a cursive style with a large, prominent initial "S".

Scott P Smith

1 CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES  
2 **V-10-11: JENNINGS / 351 GRANADA STREET**

3 October 3, 2011  
4

---

5 **I. Summary**

- 6 A. **Applicant:** William L. Jennings, P.O. Box 250, New Smyrna Beach,  
7 Florida 32170  
8  
9 B. **Property Owners:** William L. Jennings & Katherine H. H. & W. , P.O. Box  
10 250, New Smyrna Beach, Florida 32170  
11  
12 C. **Request:** Variance to the maximum allowed height of an accessory  
13 building to allow an accessory structure to exceed the height of the  
14 existing residence.  
15  
16 D. **Site Information:** The subject property is zoned R-2 Single Family  
17 Residential, contains approximately 0.22 acres and is located between  
18 Causeway Drive and Granada Street, at 351 Granada Street. (see  
19 Location Map attached as **Exhibit A**).  
20  
21 E. **Tax I.D. Number:** 7417-02-00-0270  
22

23 **II. Findings**

- 24  
25 A. The applicant is requesting a variance to allow for the construction of a  
26 garage of 20 feet in height. The applicant's house is 14 feet in height.  
27 Section 803.01.B of the Land Development Regulations states that  
28 accessory buildings shall not "Exceed the height of a conforming principal  
29 building or 25 feet, whichever is less in height." This prevents the  
30 applicant from constructing a garage in excess of 14 feet in height.  
31  
32 B. Causeway Drive along the north side of the property has a platted width of  
33 25 feet and a paved width of 14 feet and provides access to the rear of the  
34 lots fronting Granada Street and North Causeway. Causeway Drive  
35 therefore conforms to the definition of an alley in the LDR. The property at  
36 351 Granada Street is not a through lot and standard required yards for  
37 the R-2 District are in force. Those required yards are 30 feet in the front,  
38 7.5 feet on the sides and 7.5 feet in the rear.  
39  
40 C. The maximum permitted building coverage in the R-2 zoning district is  
41 40% of the lot size and the maximum impervious coverage may not  
42 exceed 60% of the lot size. The addition of the proposed garage will not  
43 exceed either standard.  
44  
45  
46 D. The LDR requires variance requests to meet all of the following criteria.  
47 The applicant's letter of response to the variance criteria is attached as  
48 **Exhibit B**, with photos of the site shown in **Exhibit C**. Staff's responses  
49 to the criteria are listed below in **bold**.  
50

- 1 (i) Special circumstances exist which are peculiar to the subject  
2 property owner's land, structure, or building, and do not generally  
3 apply to the neighboring lands, structures, or buildings, in the same  
4 district or vicinity.  
5

6 **There are no special circumstances that prevent the continued**  
7 **use of this property as developed. Staff observed only one**  
8 **other structure of more than one story on the lots fronting the**  
9 **north side of Granada Street.**

10  
11 **This criterion has not been met.**

- 12  
13 (ii) Strict application of the provisions of this LDR would deprive the  
14 subject property owner of reasonable rights commonly applicable to  
15 other properties in the same district or may preclude a benefit to the  
16 community in general.  
17

18 **Strict interpretation of the LDR does not deprive the owner of**  
19 **reasonable use of the property. A garage of 14 in height could**  
20 **be constructed or an RV of less than 35 feet in length could be**  
21 **stored outside in the back yard.**

22  
23 **This criterion has not been met.**

- 24  
25 (iii) The special circumstances and conditions that exist do not result  
26 from the direct or indirect actions of the present property owner(s)  
27 or past property owner(s). This criterion shall not be satisfied if the  
28 present or past property owner created, to any degree, the hardship  
29 that is the subject of the variance request.  
30

31 **The condition of the house being 14 feet in height is the result**  
32 **of the current or previous owner of the parcel.**

33  
34 **This criterion has not been met.**

- 35  
36 (iv) That granting of the variance will not cause substantial detriment to  
37 the public welfare or impair the purposes and intent of this  
38 Ordinance.  
39

40 **The granting of this variance would cause little detriment to**  
41 **the public welfare, but may impact adjacent property owners.**  
42 **Staff has received a letter of objection from the property owner**  
43 **to the west (EXHIBIT D) regarding impacts to her property.**  
44

1                   **With regard to the intent of the LDR, this would not be**  
2                   **impaired if the proposed variance were approved. The garage**  
3                   **as proposed would meet all required setback standards of the**  
4                   **R-2 zoning district and would be less than the 25 foot height**  
5                   **maximum for accessory buildings that would be allowed if the**  
6                   **house had a height greater than 25 feet. (EXHIBIT E)**

7  
8                   **This criterion has not been met.**

9  
10                   (v)   That granting of the variance will not constitute a grant of special  
11                   privilege that is denied by this Ordinance to other lands, structures,  
12                   or buildings, in the same district.

13  
14                   **The granting of this variance will constitute a grant of special**  
15                   **privilege that is not granted to other lots within the R-2 Single**  
16                   **Family Residential zoning district that have primary structures**  
17                   **of less than 25 feet in height.**

18  
19                   **This criterion has not been met.**

20  
21  
22                   **Recommendation**

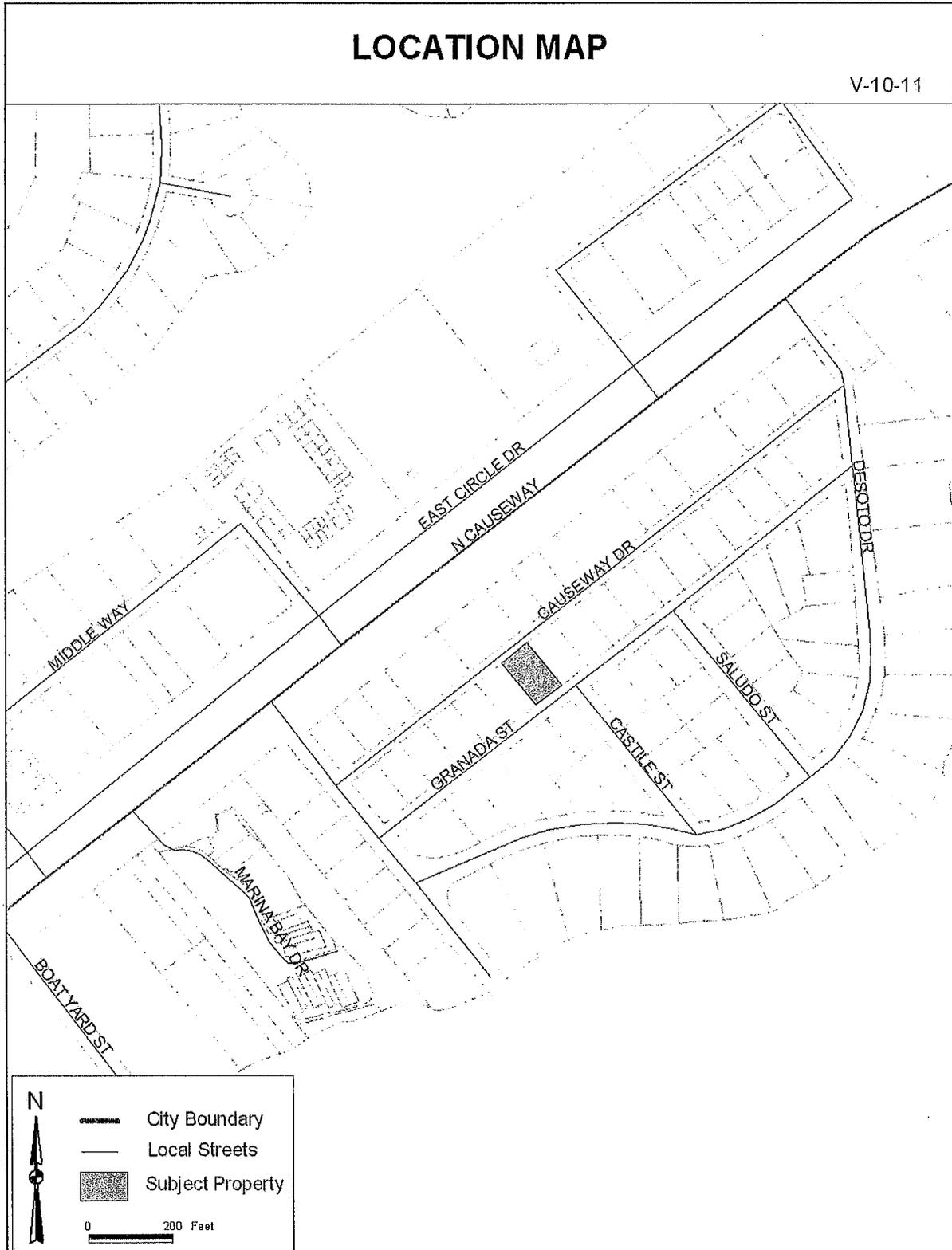
23  
24                   Staff recommends **denial** of variance request as none of the five required criteria for  
25                   approval have been met.

26  
27  
28                   Should the Planning and Zoning Board determine that the request meets all of the  
29                   variance criteria and should be approved, staff recommends that the Board place the  
30                   following conditions upon that approval:

- 31                   a. The garage may not exceed 20 feet in height.  
32                   b. The garage must be constructed so that no additional storm water runs off  
33                   onto abutting properties.  
34  
35

1

EXHIBIT A – Location Map



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**EXHIBIT B – Letter from Applicant**

August 31, 2011

City of New Smyrna Beach

Dear Sir:

My existing structure is not high enough to accommodate my vehicle.

Thanking you in advance for taking care of this matter.

Sincerely,

  
William L. Jennings

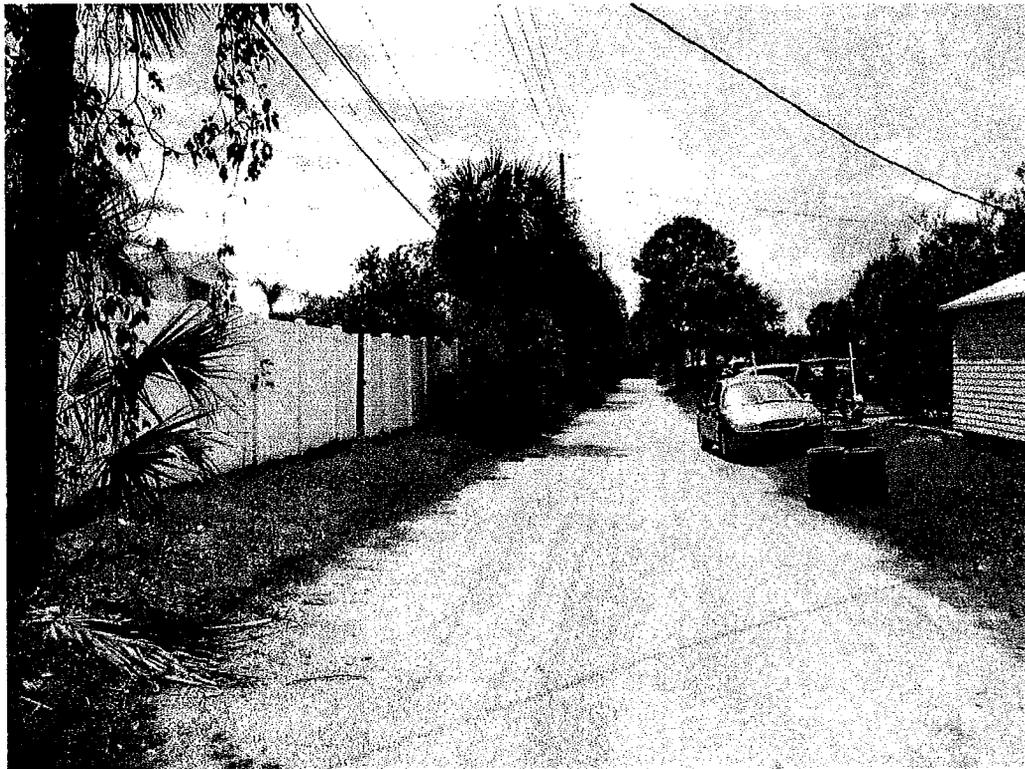
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**EXHIBIT C – Existing Site Conditions**



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**EXHIBIT C continued**



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**EXHIBIT D – Letter of Opposition**

September 21, 2011

Debra Fernandez  
341 Granada Street  
New Smyrna Beach, FL 32169

Gail Henrikson, Planning Manager  
City of New Smyrna Beach Development Services  
210 Sams Avenue  
New Smyrna Beach, FL 32168-7040

Dear Ms. Henrikson,

I am writing to protest the variance my neighbor, Mr. William Jennings @ 351 Granada Street is requesting so he can build a 20 ft high RV garage in his backyard. This structure would sit 7.6 ft from my property line with dimensions of 24 ft width by 34 feet length. With the height of the building at 20 feet, this would essentially be like having a 2 story commercial storage unit sitting adjacent to my property. Having something so large and so close to my backyard area would be an eyesore which ultimately would result in my property losing value.

Also, I am very concerned that the flat slant roof in the plan will reflect the afternoon sun producing daily glare onto my property. I have lived in my house since 1994 and built the pool in 2001 and my children and I utilize and enjoy our pool and backyard daily.

Having this large structure would be detrimental to the neighborhood because it could set a precedent and possibly lead to others requesting variances to build similar structures. Then each yard could essentially become boxed in by 20 foot walled structures thus changing the appearance and desirability of the neighborhood.

This is a residential area of mostly single story homes with the exception of mine which has a second story over the garage that we added in 2006. The addition was built within the footprints of the original structure so impact was minimal to the neighbors yards or views.

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**EXHIBIT D Continued**

I am enclosing two photos. One is of my backyard now. I leaned a ladder against the palm tree to show how high a twenty foot wall would be. My fence is 6ft high and the red cloth at the top of the ladder is approximately 20 ft. The second photo is of a similar structure Mr. Jennings wants to build to illustrate the size, location and impact this structure would have on my property.

Please consider my request and forward this letter on to the Zoning board so that they may know my concerns. Thank you for your time.

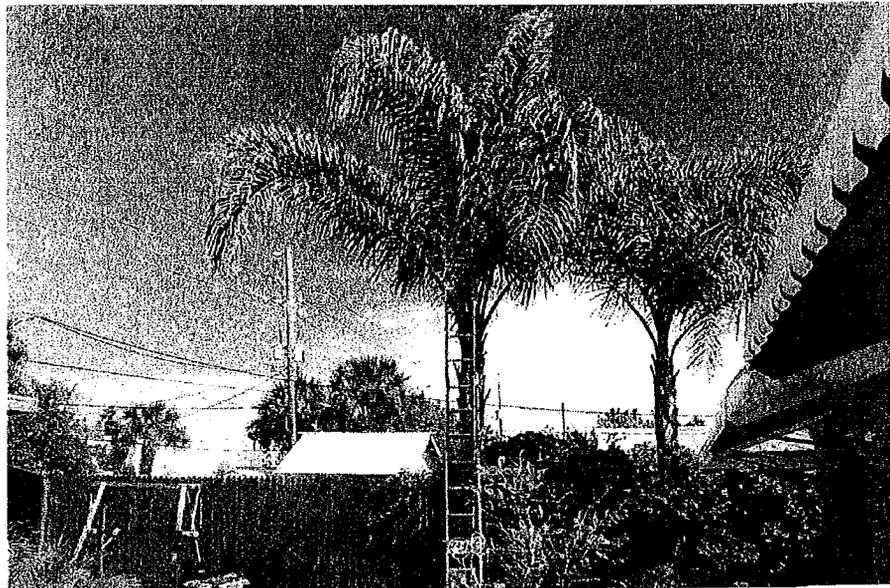
Sincerely,



Debra Fernandez

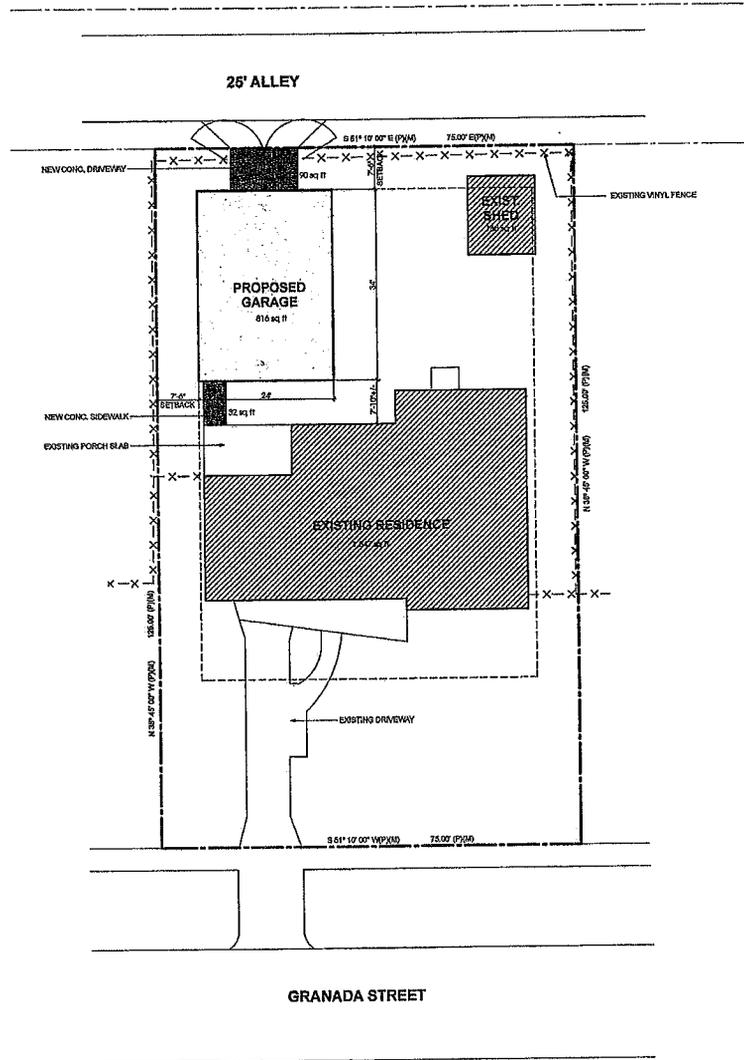
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**EXHIBIT D Continued**



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**EXHIBIT E Site With Proposed Garage**



**MAXIMUM BUILDING COVERAGE 40%**  
 TOTAL SITE AREA 9,375 SF x .40 = 3,750 MAX BUILDING COVERAGE ALLOWED

TOTAL BUILDING COVERAGE	EXISTING HOUSE	1,847 sf
	EXISTING SHED	169 sf
	NEW GARAGE	816 sf
<b>TOTAL</b>		<b>2,692 sf</b> IS LESS THAN 3,750

**MAXIMUM IMPERVIOUS COVERAGE 60%**  
 TOTAL SITE AREA 9,375 SF x .60 = 5,625 MAX IMPERVIOUS COVERAGE ALLOWED

TOTAL IMPERVIOUS COVERAGE	EXISTING HOUSE	1,847 sf
	EXISTING SHED	169 sf
	NEW GARAGE	816 sf
	EXISTING DRIVEWAYS/SLABS	739 sf
	NEW DRIVEWAYS/SLABS	122 sf
<b>TOTAL</b>		<b>3,692 sf</b> IS LESS THAN 5,625

SYA  
 Aug. 29, 2011

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 6  
 7

1 CITY OF NEW SMYRNA BEACH – PLANNING AND ZONING  
2 **CPA-7-11: COLONY PARK EAST /**  
3 **STATE ROAD 44**  
4 **OCTOBER 3, 2011**  
5

---

6 I. **Background**  
7

- 8 A. **Applicant:** Glenn D. Storch, 420 South Nova Road, Daytona Beach,  
9 Florida, 32114
- 10
- 11 B. **Property Owners:** Colony Park, LLC and New Smyrna Beach  
12 Acquisitions, 411 Commercial Court, Venice, Florida, 32127
- 13
- 14 C. **Request:** *Comprehensive Plan* amendment
- 15 • **From** County Future Land Use (FLU) designations of Commercial  
16 and Urban Medium Intensity
  - 17 • **To** City FLU designation of State Road 44 PUD
- 18
- 19 D. **Site Information:**
- 20 • **Size:** 41.45 acres
  - 21 • **Location:** Generally located on the north side of State Road 44,  
22 east of Colony Park Road (see location map attached as **Exhibit A**)
  - 23 • **Tax I.D. Numbers:** 7343-06-00-0233, 7343-06-00-0310, 7343-06-  
24 00-0061, and 7343-06-00-0064
- 25

26 II. **Findings**

- 27 A. The subject property is an approximately 41.45-acre site consisting of four  
28 parcels. A copy of the survey for the subject property is attached as  
29 **Exhibit B**. The property currently has Volusia County Future Land Use  
30 (FLU) designations of Urban Medium Intensity, which allows up to eight  
31 units per acre, and Commercial. The property is currently zoned City  
32 PUD(C), Planned Unit Development (Corridor Overlay Zone). To the west  
33 of the subject property are the Home Depot and the Murphy Oil  
34 convenience store and gas station. The surrounding future land use,  
35 existing uses, and zoning are as follows:

36 **North**

37 Future Land Use: County Urban Medium Intensity  
38 Existing Land Use: Vacant  
39 Zoning: County R-4, Urban Single-Family

40

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

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

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**East**

Future Land Use: County Urban Medium Intensity and County Commercial

Existing Land Use: Vacant

Zoning: County R-4, Single-Family Residential, County B-3, Shopping Center and County B-3(C), Shopping Center (Thoroughfare Overlay Zone)

**West**

Future Land Use: County Commercial

Existing Land Use: Home improvement store and convenience store with gas pumps

Zoning: County B-3, Shopping Center, County B-3(C), Shopping Center (Thoroughfare Overlay Zone) and County B-4(C),

Maps showing the surrounding Existing Land Uses, Existing Zoning, and Existing Future Land Use designations are attached as **Exhibits C, D, and E**, respectively. Descriptions of the existing Future Land Use designations on the subject property are attached as **Exhibit F**. A map showing the proposed Future Land Use designation is included as **Exhibit G**. The description of the proposed Future Land Use designation is attached as **Exhibit H**.

- B. The proposed Conceptual Development Plan shows the property being subdivided into five lots ranging in size from 1 acre to 15.7 acres. The Master Development Agreement would allow a mix of non-residential uses, including offices, automobile sales and retail. Access will be provided to the properties from State Road 44 and Colony Park Road. A copy of the Conceptual Development Plan is attached as **Exhibit I**.
- C. The subject properties are within the Utility Commission's water and wastewater service area. The properties are served by a 12-inch PVC water line is stubbed out in the Colony Park Road right-of-way, south of the subject properties. An 8-inch PVC sewer line is also located within the Colony Park Road right-of-way.
- D. Adequate services are available to serve the subject property. As part of the rezoning application, the applicant submitted a traffic impact analysis. This analysis showed that at project build-out in 2016, all roadway segments and intersections would operate within the required level-of-service. The one exception was the intersection of State Road 44 and Glencoe Road. However, FDOT has recently installed a full mast arm signal at this location. While the requested future land use designation

91 would allow up to 18 residential units per acre, the adopted PUD for the  
92 property does not allow any residential development. Additionally, 10  
93 acres of the site are reserved as conservation area, which will not allow  
94 any development.

- 95  
96 E. The *Comprehensive Plan* provides guidance on future land use  
97 amendments. The following is a list of objectives in the *Comprehensive*  
98 *Plan* that support this proposal. Following each objective is a comment in  
99 **bold**.

100  
101 **Future Land Use Element Objective 1:** To ensure that future  
102 development will be consistent with adjacent uses, natural limitations such  
103 as topography and soil conditions, the needs of the citizens of New  
104 Smyrna Beach, the Future Land Use Map, the availability of facilities and  
105 services, and the goals, objectives and policies contained within this  
106 *Comprehensive Plan*.

107 **The future development proposed on the subject property is**  
108 **consistent with proposed adjacent uses, natural limitations, and the**  
109 **availability of facilities and services. Therefore, it is consistent with**  
110 **the Comprehensive Plan. The property is bordered by existing**  
111 **commercial development to the west and is located on a major**  
112 **arterial roadway that has been designated for more intense non-**  
113 **residential and residential development by both the County and the**  
114 **City.**

115  
116 **Future Land Use Element Objective 2:** To provide adequate services  
117 and facilities for future development, at the adopted level-of-service  
118 standard. In order to maintain the adopted level-of-service standard,  
119 development orders and permits will be conditioned on the availability of  
120 the public facilities and services necessary to serve the proposed  
121 development.

122 **Adequate services are available to serve the subject property. As**  
123 **part of the rezoning application, the applicant submitted a traffic**  
124 **impact analysis. This analysis showed that at project build-out in**  
125 **2016, all roadway segments and intersections would operate within**  
126 **the required level-of-service. The one exception was the intersection**  
127 **of State Road 44 and Glencoe Road. However, FDOT has installed a**  
128 **full mast arm signal at this location. No other concurrency**  
129 **deficiencies have been identified.**

130  
131 **Future Land Use Element Objective 7:** To implement land use patterns,  
132 utility service extensions, impact fees, and an annexation methodology,  
133 which provide for orderly development and discourage urban sprawl.

134 **The subject property is within the Utilities Commission, City of New**  
135 **Smyrna Beach water and sewer service area. The properties are**  
136 **currently served by City water and sewer.**

137  
138                   **Future Land Use Element Objective 10:** To protect existing desirable  
139 neighborhoods from encroaching new development which is incompatible  
140 and inconsistent with established character of the neighborhood.  
141                   **Unlike many of the commercial properties on the south side of State**  
142 **Road 44, the subject properties do not abut any residential**  
143 **neighborhoods. Therefore, the requested future land use**  
144 **designation is consistent with this policy of the Comprehensive Plan.**  
145

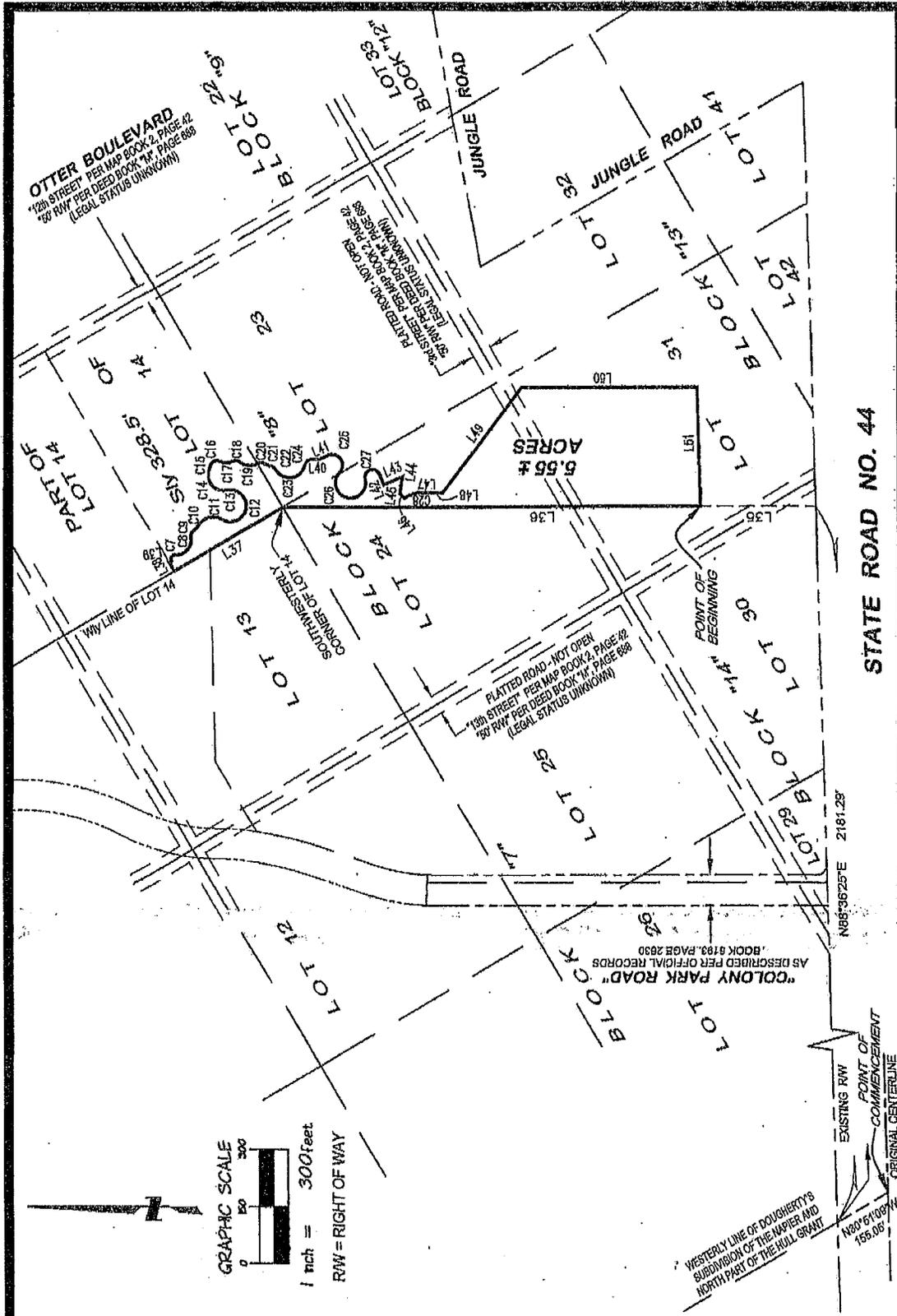
146 **III. Recommendation**

147 Staff recommends that City Commission approve the requested *Comprehensive*  
148 *Plan* amendment from County Commercial and County Urban Medium Intensity  
149 to City State Road 44 PUD.  
150

# Location Map

CPA-7-11



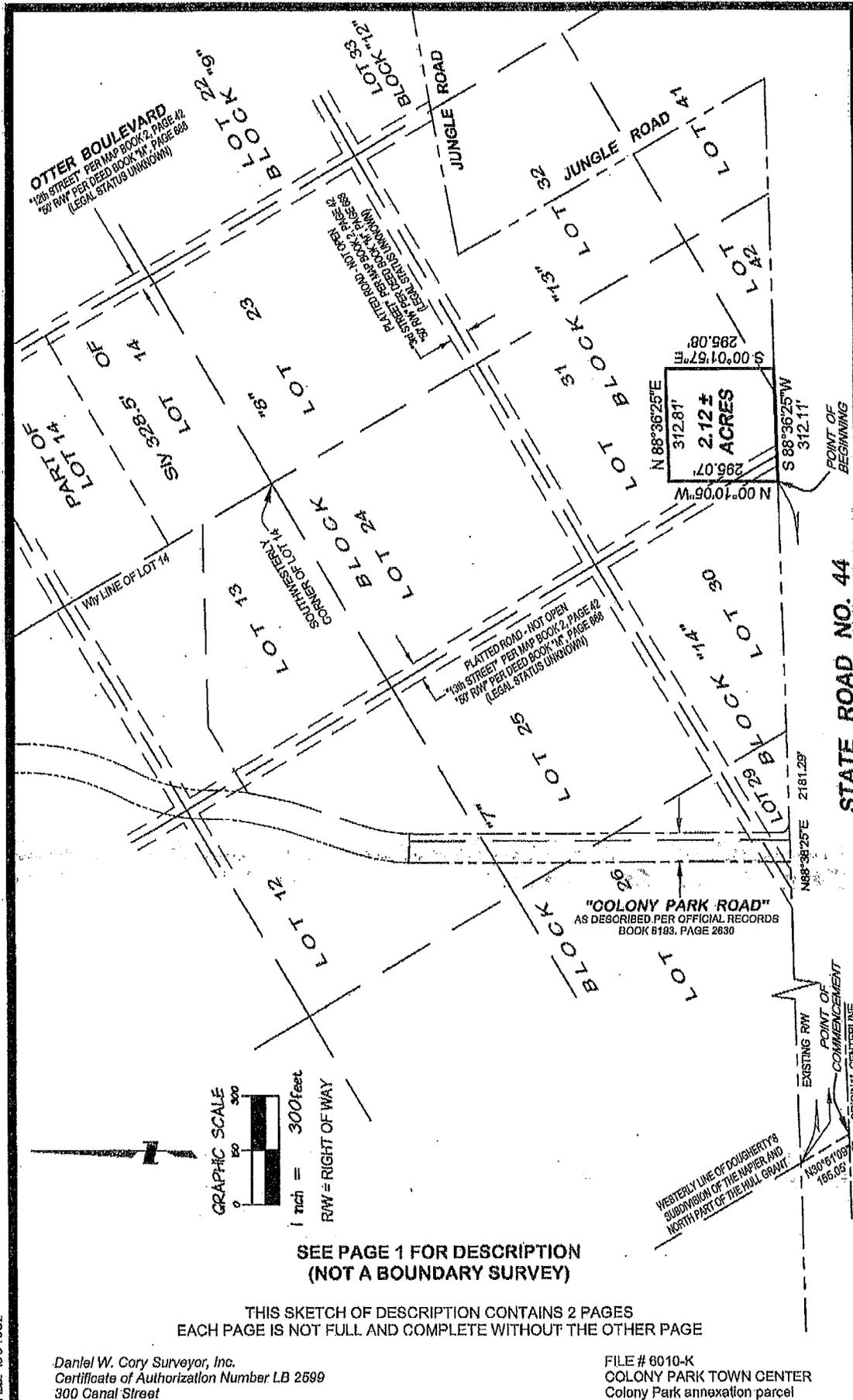


**NOT A BOUNDARY SURVEY**  
 (DESCRIPTION ON PAGE 1 OF 3)  
 (CALLS AND CURVE DATA ON PAGE 3 OF 3)

BY FILE: 10/10/03

Daniel W. Cory Surveyor, Inc.  
 Certificate of Authorization Number LB 2699  
 300 Canal Street  
 New Smyrna Beach, Florida 32168  
 (386) 427-0575

FILE # 6010-K  
 COLONY PARK TOWN CENTER  
 Colony Park s/t NSB Acquisitions parcel  
 (Work Order #10-04-033)  
 Page 2 of 2



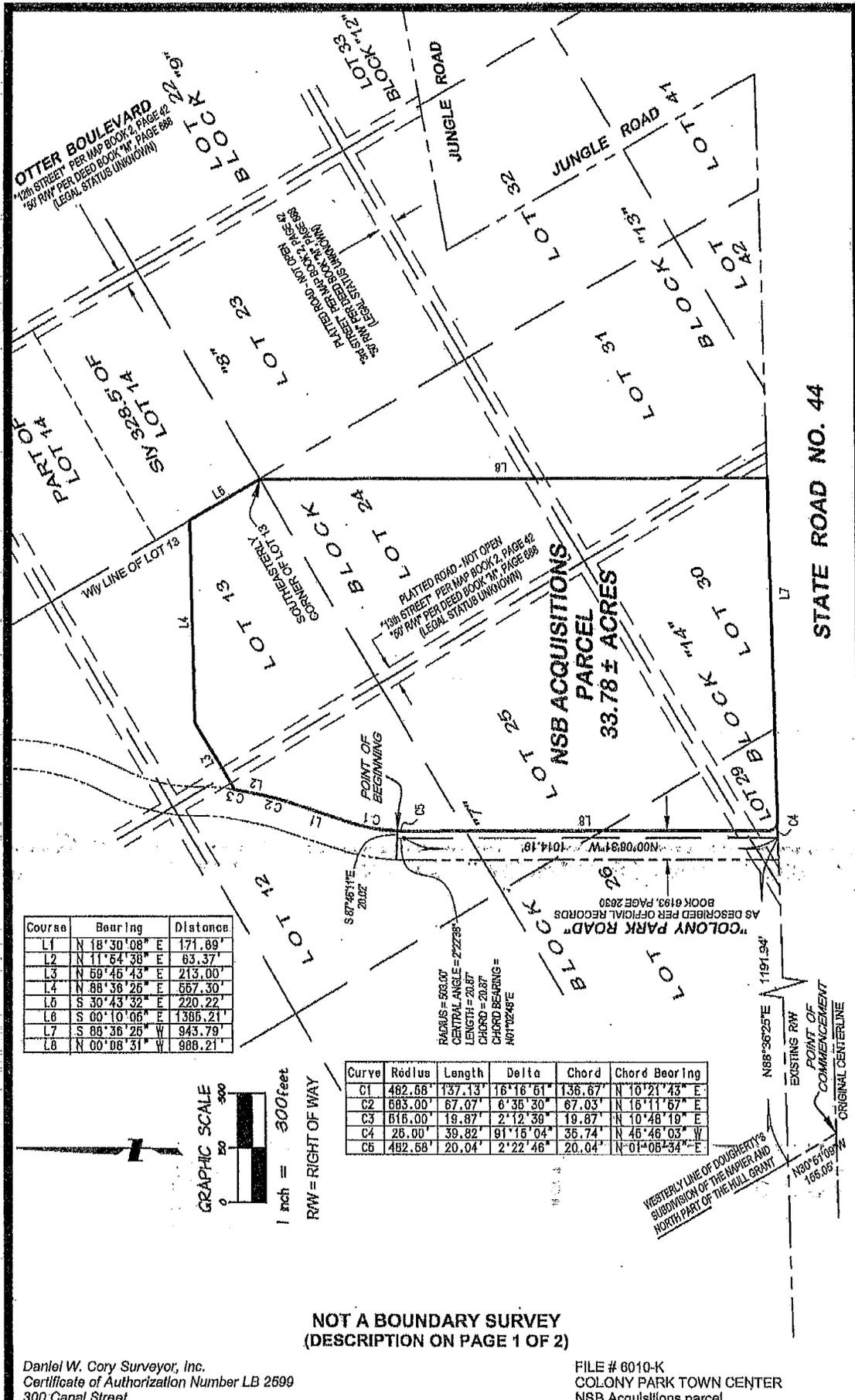
GRAPHIC SCALE  
 0 50 100 300  
 1 inch = 300 feet  
 RW = RIGHT OF WAY

SEE PAGE 1 FOR DESCRIPTION  
 (NOT A BOUNDARY SURVEY)

THIS SKETCH OF DESCRIPTION CONTAINS 2 PAGES  
 EACH PAGE IS NOT FULL AND COMPLETE WITHOUT THE OTHER PAGE

Daniel W. Cory Surveyor, Inc.  
 Certificate of Authorization Number LB 2599  
 300 Canal Street

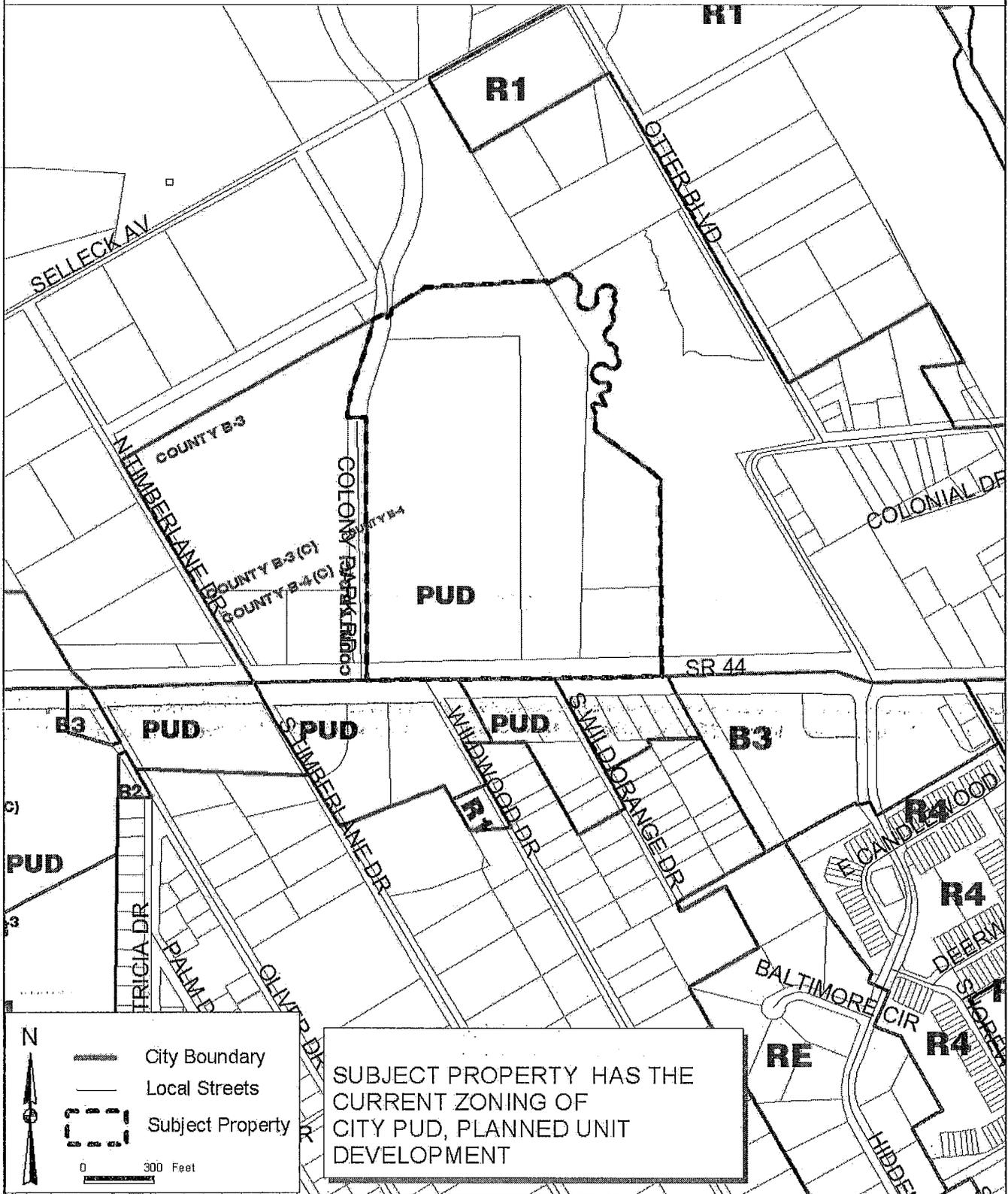
FILE # 8010-K  
 COLONY PARK TOWN CENTER  
 Colony Park annexation parcel





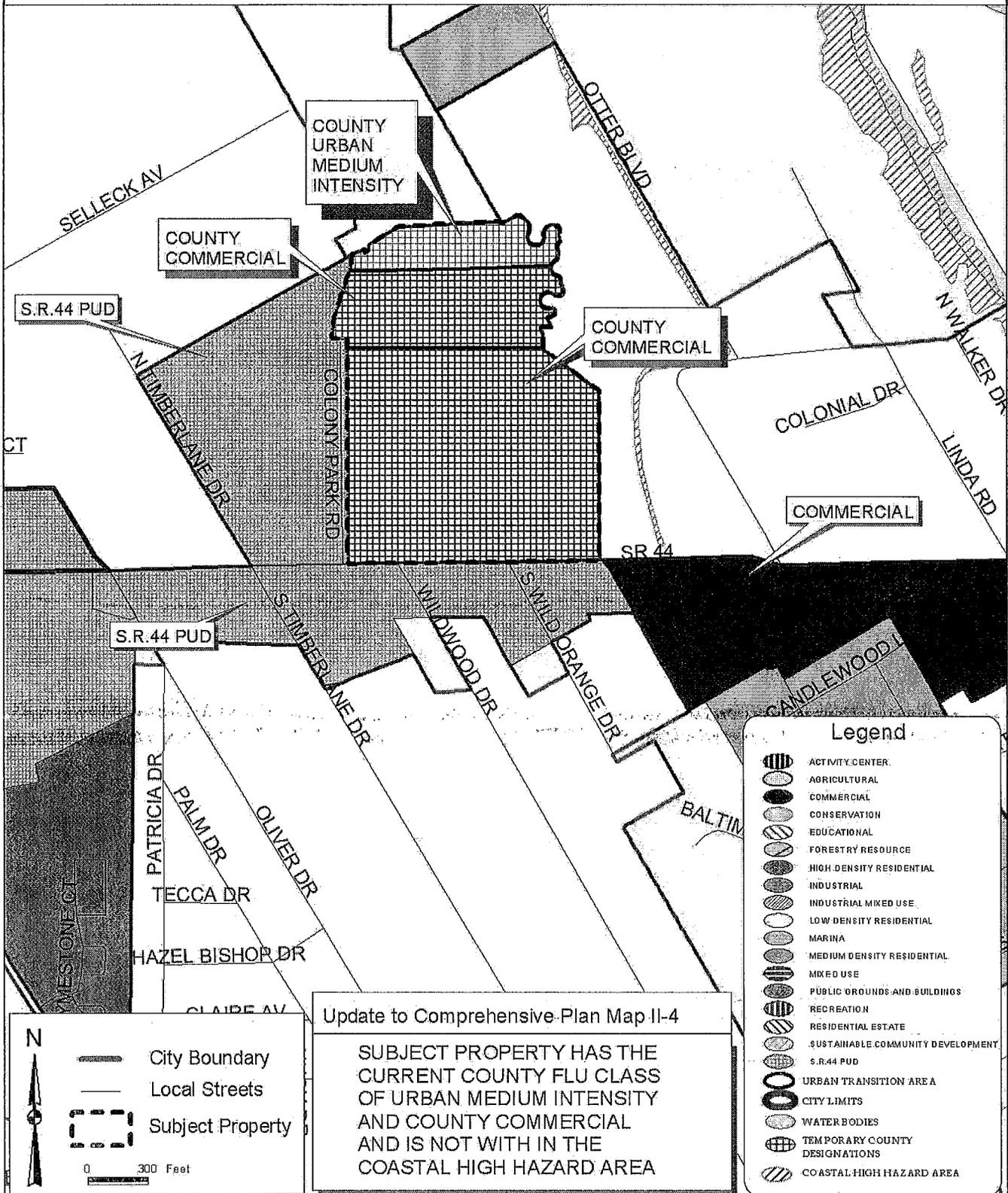
# Existing Zoning

CPA-07-11



# Existing Future Land Use Designations

CPA-07-11



**Volusia County Urban Medium Intensity (UMI)**

Areas that contain residential development at a range of greater than four (4) to eight (8) dwelling units per acre. The types of housing typically found in areas designated urban medium intensity include single family homes, townhouses and low-rise apartments. The UMI designation is primarily a residential designation but may allow neighborhood business areas (see Shopping Center definition in Chapter 20) and office development that meets the Comprehensive Plan's location criteria. The commercial intensity shall be no more than a fifty percent Floor Area Ratio (0.50 FAR) and shall be limited in a manner to be compatible with the allowable residential density. In order to be considered compatible, the commercial development should reflect similar traffic patterns, traffic generation, building scale, landscaping and open space, and buffers. More intensive commercial use, other than neighborhood business areas, shall be reserved to areas designated for Commercial. All requests for nonresidential uses within one-quarter (¼) mile of another jurisdiction shall require notification to that jurisdiction.

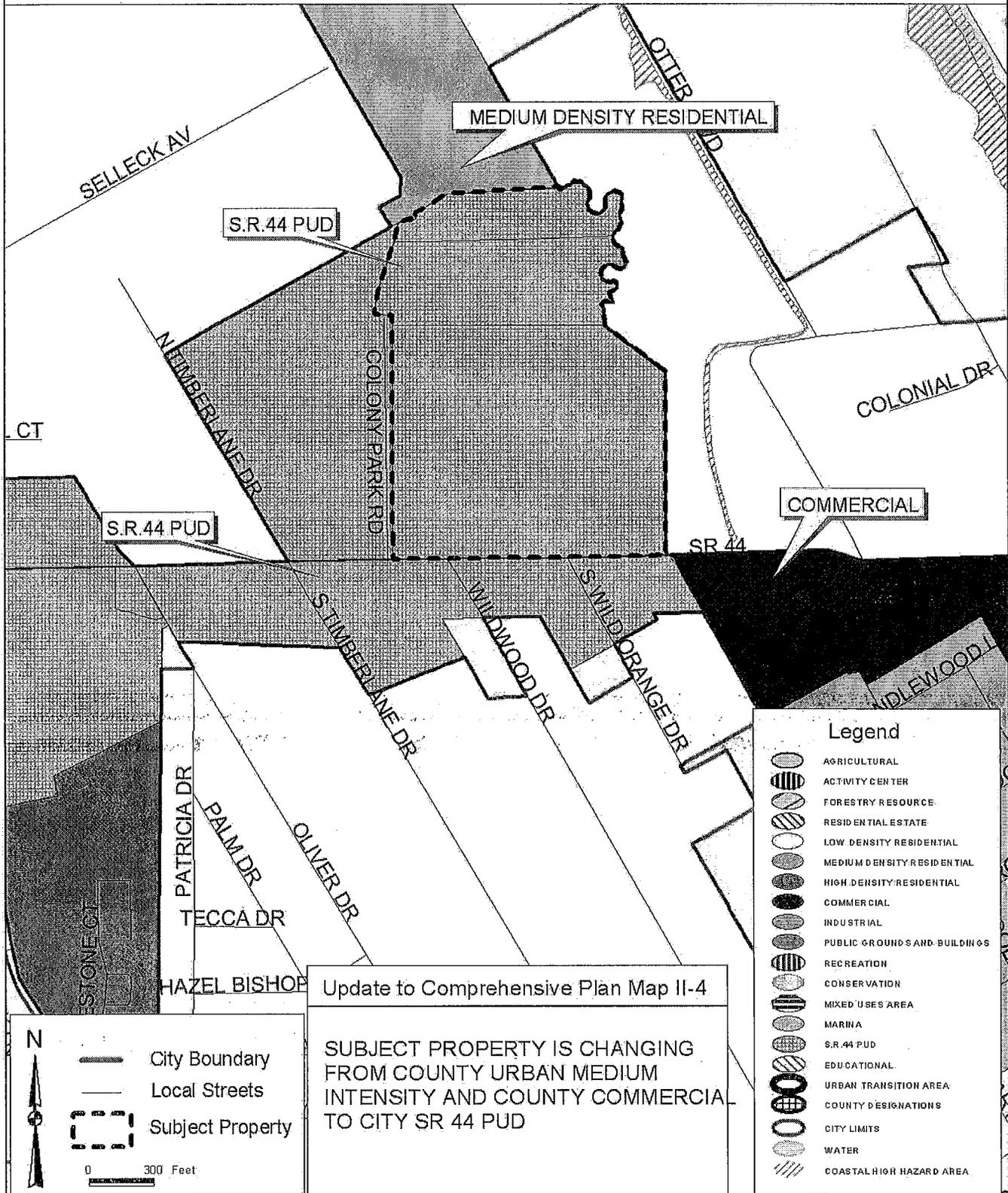
**Volusia County Commercial (C)**

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.**

# Proposed Future Land Use Designations

CPA-07-11



STATE ROAD 44 CORRIDOR PLANNED UNIT DEVELOPMENT

This category includes the area shown on the Future Land Use Map that shall be developed only as planned unit developments. The State Road 44 corridor, particularly the undeveloped areas west of Old Mission Road, should be developed in a manner to protect adjacent residential neighborhoods from adverse impacts of unbridled commercial development. The intent within this area is to foster high quality business activities, office, financial institutions, and housing of a density up to 18 units per acre, as well as other uses, which are compatible with the surrounding area. *Land Development Regulations* (including planned unit development zoning), as well as the site plan review process; will determine whether a proposed use is suitable for a particular parcel.

