



AGENDA
Regular City Council Meeting(Amended)
Monday, January 6, 2025, 6:00 PM
Council Chambers, 116 First Street, Neptune Beach, Florida

1. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE
 - A. Election of Vice Mayor
2. AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS / NONE
3. APPROVAL OF MINUTES
 - A. **December 2, 2024, Regular Council Meeting**
December 3, 2024, Special City Council Meeting/Swearing In Ceremony
4. COMMENTS FROM THE PUBLIC
5. CITY MANAGER REPORT
 - A. City Manager Report
6. CONSENT AGENDA / NONE
7. VARIANCES / SPECIAL EXCEPTIONS / DEVELOPMENT ORDERS / NONE
8. ORDINANCES / NONE
9. OLD BUSINESS
 - A. Drivers vs. City of Neptune Beach (Special Magistrate Report)
 - B. Consideration of Approval of Purchase and Sale Agreement between the City of Neptune Beach and Marshpoint Properties Two, LLC
10. NEW BUSINESS
 - A. RESOLUTION NO. 2025-01, A Resolution of the City of Neptune Beach, Florida, Accepting the Conveyance of the Pedestrian Bridge, Located on the West Side of Penmand Road, and Which Pertains to the Bridge Number 724393, and Approving the Transfer and Maintenance Agreement Between the State of Florida Department of Transportation, the City of Jacksonville, and the City of Neptune Beach
 - B. RESOLUTION NO. 2025-02, A Resolution of the City of Neptune Beach, Florida, Authorizing the Mayor to Execute an Updated Interlocal Cooperation Agreement with the City of Jacksonville for the Community Development Block Grant Program for Fiscal Years 2025, 2026, and 2027, and any Renewal Periods; and Providing for an Effective Date
 - C. RESOLUTION NO. 2025-03, A Resolution of the City of Neptune Beach, Florida, Determining the Existence of An Unsafe Condition Located at 630 Atlantic Boulevard, Neptune Beach Florida 32266-4000, Parcel I.D. Number 1723941700, Which Poses a Threat to Human Health, Life, Safety and the Welfare of the Public;

Prohibiting Development and Building Permits; and Providing for an Effective Date.

- D. RESOLUTION NO. 2025-04, A Resolution of the City of Neptune Beach, Florida, Appointing Members to the Community Development Board
- E. Consideration of Approval of Agreement for 911 User Fee Distribution between Jacksonville Sheriff's Office and the City of Neptune Beach
- F. Consideration of Approval of Contract for Lobbying Services Between The Southern Group of Florida, Inc. and the City of Neptune Beach

11. COUNCIL COMMENTS

12. ADJOURN



**MINUTES
REGULAR CITY COUNCIL MEETING
MONDAY, DECEMBER 2, 2024, 6:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266**

Pursuant to proper notice, a Regular City Council Meeting of the City Council of the City of Neptune Beach was held on Monday, December 2, 2024, at 6:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida 32266

IN ATTENDANCE:

Mayor Elaine Brown
Vice Mayor Kerry Chin
Councilor Lauren Key
Councilor Nia Livingston
Councilor Josh Messinger

STAFF:

City Manager Richard Pike
City Attorney Paul Waters
Chief of Police Michael Key
Chief Financial Officer Jaime Hernandez
Public Works Director Deryle Calhoun
Parks and Sustainability Director Colin Moore
HR Coordinator Jillian McCann
City Clerk Catherine Ponson

Call to Order/Roll
Call/Pledge

Mayor Brown called the meeting to order at 6:00 p.m. and Councilor Key led the Pledge of Allegiance.

APPROVAL OF MINUTES

Minutes

Made by Messinger, seconded by Chin.

MOTION: TO APPROVE THE FOLLOWING:

November 4, 2024, Regular City Council Meeting
November 18, 2024, Special City Council Meeting
November 18, 2024, Workshop City Council Meeting

Roll Call Vote:

Ayes: 5-Key, Livingston, Messinger, Chin, and Brown

Noes: 0

MOTION CARRIED

CITY MANAGER REPORT

City Manager
Report

City Manager Richard Pike announced that the next day, December 3, 2024, at 3:00 p.m., a dedication for the completion of Jarboe Park Phase I would be held. A plaque has been designed and the ceremony will take place near Neptune House located in Jarboe Park.

Mr. Pike also reported that \$10,000 would be donated with Council's approval to the Neptune Beach Elementary Track Improvements. The money would come from Better Jacksonville Plan Funds. Mayor Brown thanked Councilor Key and Vice Mayor Chin bringing this project to Council's attention.

NEW BUSINESS

Well 5, Mechanical & Electrical Well 5 Mechanical and Electrical Construction Award. Public Works Director Deryle Calhoun thanked the Council for their support since he has been at Neptune Beach.

Mr. Calhoun stated that this request is for the completion of the mechanical and electrical components related to the installation of Well #5, which was awarded and approved to Partridge Well Drilling on November 4, 2024. This item is an award to Gruhn-May. They will be using Limbaugh Electrical as a subcontractor for the electrical work. He added that this is a budgeted item under Improvements- Not Buildings fund for FY25. There was \$1.5 million budgeted for Well #5 and it is under the budgeted amount.

Made by Chin, seconded by Key, Messinger.

MOTION: **TO AWARD/APPROVE TO GRUHN-MAY THE MECHANICAL AND ELECTRICAL CONSTRUCTION OF WELL#5 IN THE AMOUNT OF \$514,961.00.**

Roll Call Vote:

Ayes: 5- Livingston, Messinger, Key, Chin, and Brown

Noes: 0

MOTION CARRIED

SPECIAL AWARDS AND PRESENTATIONS

Employee Recognition Mayor Brown recognized the following employees for their years of service:

Public Works:

Michael Johnson – 45 years

Bobby Jones – 41 years

Jack Russell – 35 years

City Hall:

Piper Turner – 33 years

Rosemary Marrero – 30 years

Richard Pike – 40 years

Councilor Lauren Key Mayor Brown read a proclamation and presented Councilor Key with an engraved crystal vase. Councilor Key was appointed to the Community Development Board in 2018 and reappointed in 2019. She was elected unopposed to City Council in 2020. As Councilmember, she chaired the Finance Committee and has demonstrated invaluable commitment to the City during her time on Council.

Vice Mayor Kerry Chin Mayor Brown read a proclamation and presented Vice Mayor Chin with a plaque honoring his years of service to the City. He has served the City in some capacity for 23 years. He addressed many issues facing Neptune Beach while ensuring the well-being of citizens.

Mayor Elaine
Brown

Mayor Brown read a speech stating she was filled with mixed emotions, gratitude, nostalgia, and hope. She thanked her fellow Councilmembers and staff for all their efforts during her term as mayor. She thanked the citizens for the pleasure of serving as mayor.

City Clerk Catherine Ponson read a poem honoring Mayor Brown's hard work as Neptune Beach's mayor. Mayor Brown was presented with an engraved crystal gavel and her official mayoral photo was unveiled. The framed photo will join the other 12 mayors' photos who have served the City.

COUNCIL COMMENTS

Vice Mayor Chin thanked Mayor Brown for her kind words directed to everyone. It points out that the time on Council is fleeting. They serve on Council for brief moments but the backbone of the City is the strength of the staff. He thanked staff for doing their jobs under difficult circumstances and doing the best they can to make Neptune Beach as good as it can be. The importance of public service is acting as stewards but also creating an atmosphere where staff can operate to the best of their ability.

Vice Mayor Chin requested the incoming Council take care of staff because they will take care of the City and Council. He added he does not think that he will stop being a part of the community and giving back. He is going to donate the remaining balance of his campaign account will be donated to the Neptune Beach Elementary Track improvement project.

Councilor Key commented that it has been an honor and privilege to serve the residents of Neptune Beach. At times it has been difficult and tested her to limits she did not know existed. She would do it all over again and make every decision the same. She believes we have a wonderful City with great staff. She looks forward to all the things that the future holds. She hopes and prays and holds it dear to her heart that the community can move forward in a positive manner. She hopes that great things are accomplished together and stop the division, the vitriol, and the toxicity that occurs.

Councilor Key pointed out that at the end of the day, we are all neighbors. Three generations of her family live here and two of her children were born here. She is raising her children here and she wants nothing more than for them to grow up and experience the wonderful Neptune Beach that she knows that it is. She thanked all the families of Council as it is a sacrifice to be in the public eye. She thanked the staff and is happy to have been a part of this experience.

Councilor Livingston remarked that her involvement in the community started with Mayor Brown campaigning at her house. Mayor Brown inspired her to do something for her community, her neighbors, and the future. She has gotten to know Council and it has been empowering.

Councilor Messenger commented that all of Council has done a lot for the community and will continue to do that. The amount of insight Mayor Brown bestowed upon him over the years has been invaluable. He met Vice Mayor Chin and his wife at a council meeting in 2013. It is amazing how everyone being neighbors and how involvement in the community can shape who you are and who you become. He added that the groundwork had been laid for the upcoming council members and the work will continue. He thanked Mayor Brown, Vice Mayor Chin and Councilor Key and it expressed that it has been an honor working with them.

Mayor Brown expressed she appreciated how Council worked together and had Neptune Beach at the forefront of every decision. There are great things to come, and it has been an honor to serve.

Adjournment

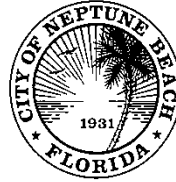
There being no further business, Mayor Brown adjourned the meeting at 6:38 p.m.

Corrine A. Bylund, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

Approved: _____



MINUTES
SPECIAL CITY COUNCIL MEETING
TUESDAY, DECEMBER 3, 2024, 7:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice, a Special City Council Meeting of the City Council of the City of Neptune Beach was held on Tuesday, December 3, 2024, at 7:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida 32266.

Attendance:	IN ATTENDANCE: Mayor Elaine Brown Vice Mayor Kerry Chin Councilor Lauren Key Councilor Nia Livingston Councilor Josh Messinger Mayor-Elect Cori Bylund Councilor-Elect Tim Horvath Councilor-Elect Brent Rogers	STAFF: City Manager Richard Pike City Attorney Paul Waters Chief of Police Michael Key Chief Financial Officer Jaime Hernandez Senior Center Director Leslie Lyne Public Works Director Deryle Calhoun Parks and Sustainability Director Colin Moore City Clerk Catherine Ponson
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Call to Order/Roll Call/Pledge	Mayor Brown called the Special Meeting to order at 6:00 p.m. and Councilor Messinger led the Pledge of Allegiance.
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Council Comments	Mayor Brown welcomed everyone to the Special Meeting and invited current Council Members to say a few words.
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Vice Mayor Chin welcomed all the incoming Councilors. He believes that they have the best interests of the City in mind. He thinks the City will be in good hands, especially when they work together and with staff. Staff is going to be their backbone and support. He thanked them for stepping up to public service and they will find it rewarding.

Councilor Key commented it had been an immense honor and privilege to serve the citizens of Neptune Beach. Three generations of her family live here. She stated Neptune Beach is a wonderful place, and she knows how much we want to preserve it. There are wonderful people and neighbors in Neptune Beach. She looks forward to what the future brings as she continues her work as an advocate for the community. She thanked everyone for their support.

Mayor Brown expressed it had been an honor to serve as mayor of this wonderful community. She could not have done it without the support of her family and husband, former mayor Richard Brown. She is grateful to the City Council, those present and those who have served over the eight years with her. Together they faced a lot of challenges, celebrated success, and created lasting memories. She pointed out that they are leaving the City with just under \$8 million in reserves and strategic plans and projects that are funded that will enhance the City in the future. Together they have made a difference.

They leave the City in capable hands of leadership and staff. She leaves with a heart full of memories and excitement of what is yet to come.

Oaths of Office

Oaths of Office.

Vic Micolucci administered the Oath of Office to Councilor Tim Horvath.

City Clerk Catherine Ponson administered the Oath of Office to Councilor Brent Rogers.

4th Judicial Circuit Judge L.E. Hutton administered the Oath of Office to Mayor Cori Bylund.

The new City Council was seated.

New Council Comments

Mayor Cori Bylund thanked everyone for coming and invited her fellow new Councilors to make remarks.

Councilor Tim Horvath expressed his gratitude and appreciation for having the ability to be in this position. He expressed gratitude to the citizens and neighbors. Neptune Beach is a small community. We are all neighbors, which is what he loves and cherishes. He is happy to have the opportunity to be a part of it in a different way. He thanked his friends and family. He is excited to get to work and be a part of this.

Councilor Brent Rogers thanked everyone who supported him. He looks forward to starting a new chapter in Neptune Beach. He is a lifelong resident and is excited for the future.

Mayor Bylund remarked she sits before everyone taking the dais for the first time as mayor with great humility and deep gratitude. She is honored to serve as the newest mayor of Neptune Beach. She appreciates the weight of the responsibility that she now carries. She is committed to working tirelessly for the City. She thanked her husband, Dan Leonard. The decision to run was hard and it affects the entire family. She recognized her youngest son and grandson. She thanked everyone who helped with her campaign.

Mayor Bylund recognized the incredible hard work and dedication of the outgoing Mayor and City Councilors. She stated that their leadership has shaped our community in many ways. Their commitment to public service has set a very high standard for all to follow. She recognized Councilor Key, Vice Mayor Kerry Chin, and Mayor Brown. She is excited to work alongside staff to continue serving our community with dedication and pride. The work they do every day is the foundation of the City. She appreciates the commitment to making our City a great place to live and work. She looks forward to building strong collaborative relationships, tackling challenges together and celebrating the successes achieved as a team.

To her Neptune Beach neighbors, she stated what matters most is unity as a community. Though there have been differences throughout the process, there is a common goal to create a brighter future for Neptune Beach. Let us move forward together with a revived sense of purpose and hope. If we all pull together, we can overcome any challenges our City faces and we will build a better tomorrow for our children and grandchildren. The road ahead may not always be easy and we will not always agree. It is through our collective strength and resilience that we will continue to grow and thrive. As we turn this page to a new chapter, let us honor the work that has come before us and together let us create a future that makes us all proud.

Councilor Livingston commented that to everyone coming in that she is excited for what the future holds and looks forward to working alongside the new Council and getting to know them better, professionally and personally.

Councilor Messinger welcomed and congratulated his new colleagues. He looks forward to at least the next two years being able to work together, collaborate, and continue to progress our community forward. They will continue to face challenges. There is a lot coming their way as we evolve but he looks forward to a better Neptune Beach over the years working together.

Adjournment There being no further business, Mayor Bylund adjourned the meeting at 6:21 p.m.

Corrine A. Bylund, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

Approved: _____

City Manager's Report

Departmental Recaps-12/19/2024

Police Department-Chief Michael Key *(See Separate December 2024 Report)*

City Clerk-Catherine Ponson

- Submitted Continuing Assignments for Clerk Professional Program
- Fulfill ongoing public records requests and answered questions
- Orientation and transition for new Mayor and Councilmembers
- Order and prepare awards and materials for last council meeting
- Prepare Minutes and Council agenda packets

Community Development-Heather Whitmore

- Community Development Board: January 8, 2025
 - 834 McCollum Circle
 - Code Discussion: Boat/RV
 - Sec. 22-28. - Parking of boats and trailers
 - Sec. 27-335. - Parking, storage, or use of major recreational equipment.
 - Code Discussion: Hedges
 - Code Enforcement Workshop Comment summary
- 108 Orange Street – Petition for Relief FS. 70.51 Mediation
 - Verdict submitted by Magistrate
 - January 6, 2025 City Council
- Bakkes ROW Vacation and Concept Plan
 - January 6, 2025 City Council
 - Concept/Agreement
- Special Code Magistrate: January 30, 2025
 - 1901 Forest Avenue trees
- Fee Resolution Table 2022-07
 - Draft sent out by attorney
 - Organize a “Fee Review Committee” to certify the accuracy of fees in resolution
 - January Meetings
 - February 2025 City Council adoption
- Pete’s Bar settlement underway
 - Parking fee in lieu variance
 - Parking fee in lieu of account and contract
 - Parking fee MOU for improvements
 - Dumpster Lease

- Development Order Modification
- 1112 Third Street
 - Development Agreement
 - Utilities Availability
 - Development Order/Special Exception/Variance
- Kmart Redevelopment Letter of Availability
- JFRD Contract
- Community Development Digital Transition to GovBuilt
- Rico Armstrong Fire training – Budget Amendment to cover training cost
- Publix Development Moratorium in place – December 24, 2024 deadline
- Code Enforcement Policies, Procedures, and Priorities Workshop
 - Wednesday, January 22, 2025
- Incoming Development:
 - Aldi
 - 7 Brew
 - Big Publix remodel
 - 1112 Third St
 - 450 Atlantic Blvd
 - 436 Atlantic Blvd
- Heather to get recertified as Certified Floodplain Manager (CFM) March 17-21, 2025, Tampa CFM Recertification Course
- Planning Initiatives:
 - Kmart Redevelopment
 - Adoption of Properties Right's Comp Plan Element
 - Stormwater Comp Plan updates
 - LDC Updates/Corrections - long list
 - Utility code and ROW permitting process update - Working with attorney to update code early 2025
 - Lemon Street Unified Plan

Finance-Jaime Hernandez

- The new timecard system went live on Saturday, January 4, 2025
- Continuing with the audit for FY 2022-23
 - Expecting to be ready by February 15, 2025

Human Resources-Jillian McCann

- Advertising for:
 - Records Unit Services Division Supervisor
 - Staff Accountant

- Mechanical Technician
- Laborer I
- Utility Laborer I
- Beaches Parking Ambassador
- School Crossing Guard
- Police Officer
- Emergency Communications Officer
- We welcome a new employee, Emmanuel Aponte, to the Public Works department.
- Continuing Education – enrolled in Stoops Center at FSU College of Law, Employment and Human Resources Law certificate program

IT Department-Ricardo Pizarro

- Scanning and GovBuilt talks to bring online our Permitting and Licensing portal for citizen engagement
- Ordering of rails for our provisioning server for the data center
- Installation of the fiber circuit at the data center
- Beginning Work on the Water Plant Camera system now that the conduit is confirmed installed.
- Completing Work at Public Works for the Access Control Solution.
- P1 provisioning is nearing completion. Working with COJ for AIO update push and Esri Licensing
- Working on Renewals for software assurances (ESRI, GIS).

Parks & Sustainability-Colin Moore

- Replacement shower for Hopkins St beach access delivered and Public Works installed on 11/18
- Jarboe Park plaque dedication held on 12/3
- New Volleyball Court Fencing completed 12/13
- Town Center palm trimming to be completed by 12/20
- Continuing to coordinate with Neptune Beach Elementary PTA about track funding opportunities
- Due to water intrusion, Jarboe Park court light fixture components are being replaced under the manufacturer's warranty – anticipate replacement parts arriving in February 2025
- FDOT finalized well abandonment south of Atlantic Blvd near the Flyover on November 21, 2024

Public Works- Deryle Calhoun

(Updates in **bold** font)

Potable Water System

- **Replacement Well 5 – Site preparations completed for drilling rig mobilization.**

Permit modifications have delayed mobilization.

- Water Management District Consumptive Use Permit – **CONB has filed for an extension to challenge the conditions of the recently issued permit.**
- Fire protection water supply gap analysis – **Based on draft report discussions, consultant to incorporate CONB zoning information.**

Wastewater System

- Permit renewal application submitted to FDEP - Treatment capacities of both plants will be addressed during the permit renewal process. Consultant submitted proposed pilot plant study to FDEP on November 7, 2024. **A meeting was held with FDEP regarding the draft modified Consent Order for permit violations in 2022 and 2023.**
- Redundant 3rd Street gravity pipeline – The consulting engineer has submitted a permit application package to FDOT. **FDOT permit is in the final stages of review, with additional information provided to FDOT on December 18, 2024. FDEP permit has been received. Bid package is in development.**
- Florida Blvd force main extension – **The City Engineer has completed the design and is working on permit application packages for FDOT and COJ.** The project was approved in the FY25 budget.
- Stormwater and groundwater Inflow and Infiltration (I&I) reduction effort - Worked with the consulting engineer to identify wastewater pipes for targeted cleaning and televising to identify any defects, including customer service laterals. Indian Woods subdivision main pipes and service laterals were cleaned and televised. Cleaning and televising Oceanwood and parts of the Fletcher pump station collection system completed the week of November 11, 2024. Results will be used to identify pipe rehabilitation projects. **Consulting engineer developing bid package.**
- Northbound depression in 3rd St at Myrtle Street – Site was excavated and repaired the week of November 11, 2024.

Stormwater System

- Hopkins Creek improvements at Florida and Forest – Design is underway by a COJ engineering consultant. **CONB reviewed 30% design.**
- Design for various small projects was approved by council. The design is complete. **Design presented at Council workshop on November 18, 2024. Project communication to property owners rolling out. Consultant has submitted for FDOT permit. PO issued to engineer for bid phase services.**
- Erosion control pilot project on Davis Creek. Bahia grass has been installed to stabilize the media, and test planting of various salt-tolerant plants is scheduled for late June/early July. Additional plant variety was installed. **Another product was procured for trial and was installed by Public Works staff the week of December 9, 2024.**

Senior Center

- **Water intrusion report with mitigation recommendations was received from consultant 12.06.24.**
- **Site meet with contractor 12.18.24 to develop probable costs of options for presentation to City Council.**

Senior Center-Leslie Lyne

- Opened the center on December 10, 2025, for classes and opportunities-parking is concerning
- Friday, January 17, 2025, St. Augustine Night of Lights and dinner-SOLD OUT
- Wednesday, February 12, 2025, Valentine's Day Tea -JB Woman's Club sponsor
- FSCJ Broadway in Jacksonville production of MJ, April 23, 2025
- YTD DONATIONS/FUNDRAISERS \$4,741.40
- Waiting for status for rehab of 2004 Forest Ave.-anticipate being reestablished in April 2025
- Received 2024-2025 CDBG Contract from COJ December 12, 2024-City Clerk has it on file
- Guest/Members on a fundraising tour to Canada
- Guests/Members scheduled for fundraising tours to Greece, Croatia, Azores, Kenya & Tanzania, South Africa, 2 Alaska tours, London & Paris, Historical Washington, DC, Holland & Belgium cruise, California Sequoia tour, Western Canada Wine tour
- Center will be open on Monday, Martin Luther King Day
- YTD Persons Served December 16, 2024, is 234-center has been open & operational for 11 days in FY 2024-2025.



Agenda Item #9A
108 Orange Street
Driver v. City of Neptune
Beach

CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT

AGENDA ITEM:	Drivers v. City of Neptune Beach (Special Magistrate Report)
SUBMITTED BY:	Paul Waters, City Attorney
DATE:	January 6, 2025
BACKGROUND:	On August 19, 2024, the City Council denied the Driver's application and development plan DP 24-04 for a proposed bed and breakfast at 108 Orange Street. The Drivers challenged the City Council's denial by requesting a hearing under Section 70.51, Fla. Stat., also known as the "Florida Land Use and Environmental Dispute Resolution Act" which allows an informal public dispute resolution process in which a Special Magistrate is utilized to conduct a mediation between the parties. The mediation was held by Special Magistrate Sidney Ansbacher on October 31, 2024. Special Magistrate Ansbacher will appear before the City Council tonight to present his report and recommendations.
RECOMMENDATION:	The Council may accept, reject, or accept the Special Magistrate's recommendation with modifications. The Drivers may then choose to accept or reject any approval by the Council.
ATTACHMENTS:	1. Final Special Magistrate Report 2. DP 24-04, Final Order Letter of Denial 3. Petition for Relief Pursuant to F.S. Section 70.51 4. Response of City to Petition for Relief 5. Initial Order 6. City's Notice of Participating Parties 7. Notice of F.S. 70.51 Proceeding 8. Amended Notice of F.S. 70.51 Proceeding 9. NB Memo – Quasi-Judicial Hearings 10. NB Memo – Maximum Height Allowances 11. Petitioners' Memo – Maximum Height During Plan Review 12. Petitioners' Memo - Site Plan Review 13. Joint Pre-Hearing Stipulation 14. August 19, 2024, City Council Agenda Materials

1. Final Special Magistrate Report

**MARGARET R. DRIVER and
DOUGLAS R. DRIVER, III,**

Petitioners,

v.

In re: S. 70.51, F.S., proceeding

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent,

**FINAL
SPECIAL MAGISTRATE REPORT
UNDER S. 70.51, FLA. STAT.¹**

BACKGROUND

Margaret R. Driver (Driver, Owner, Petitioner)², requested a 70.51, Fla. Stat., proceeding to challenge the City of Neptune Beach City Council (City) (collectively, Driver and the City are sometimes the Parties) denial of a Final Development Plan on the Owner's vacant parcel at 108 Orange Street, Neptune Beach, Florida (RE# 172769-0000) (the Parcel). The Owner and the City agreed to use the undersigned to serve as a "Special Magistrate" to conduct the s. 70.51 proceeding. After multiple prehearing filings and discussions, the statutory proceeding took place pursuant to notice on October 31, 2024. The Parties impassed at the mediation phase described below, requiring the undersigned to issue a report pursuant to the statute. On November 2, I invited the Parties to file two short supplemental briefs on maximum heights and the procedure below. They did so. The City filed its memo on November 2, 2024, and Driver, on November 8, 2024. I provided a draft on November 15, 2024, and solicited Party comments. Driver waived any. The City had one minor, oral correction, which I incorporated. This final report follows, complete with recommendation. The statute dictates that I issue this report to all parties. The City Council issued the denial. It now may accept, reject, or accept my recommendation with modifications. Driver may then choose to accept or reject any approval by the City.

¹ Mrs. Driver's son, Douglas R. Driver, III, was also on the petition. He was the applicant for the denied Development Plan for the Parcel. While he participated fully, the subject statute s. 70.51, Fla. Stat., limits standing in this proceeding to an "Owner" of real property who applied for a development permit, and who received a development order. *Id.* at (2)(d). The last deed of record for the Parcel as defined below is recorded at OR 6761, pg. 1753, into Ms. Driver and her late husband, Mr. Driver. Their son does not appear on title. NOTE: Standing to petition under S. 70.51 is narrower than it would be under certiorari. Mr. Driver likely has standing to file a petition for certiorari.

² I thank the Parties and interested neighbors and other members of the public for participating in the mediation and related alternative dispute process first prong of this matter. Unfortunately, it impassed. I write this report as a result.

I. THE STATUTE

This matter arises under s. 70.51, Fla. Stat., also known as the “Florida Land Use and Environmental Dispute Resolution Act” or “FLUEDRA.” S. 70.51(1) (the Act).

The Act authorizes an Owner of Land or Real Property to request a s. 70.51 proceeding when the Owner alleges that “a development order, either separately or in conjunction with other development orders, ... is unreasonable or unfairly burdens the use of the [o]wner’s real property.” *Id.* at (3).

The Act defines “development order” in pertinent part as “any order ... which is or will have the effect of ... denying ... an application for a development permit” *Id.* at (2)(a). Subsection (2)(b) defines a “development permit” as “any action of local government” that “has the effect of authorizing the development of real property.” Subsection (2)(g) defines “land” or real property as “includ[ing] any appurtenances and improvements to the land.”

The Act does not define “development,” but subsection (2)(b) refers to various, nonexclusive statutory chapters, including ch. 380, Fla. Stat. S. 380.04, Fla. Stat., states:

380.04 Definition of development. –

(1) The term “development” means the carrying out of any building activity ... [or] the making of any material change in the appearance of any structure or land

Once the Owner files a s. 70.51, Fla. Stat., request, the local government must forward the request to an agreed upon “special magistrate.” *Id.* at (4). The local government may respond to the request. *Id.* at 16(a). The Act also requires an opportunity for neighbors and persons who appeared below to have meaningful participation. *Id.* at (5), (12), (15)(b), 17(c).

The s. 70.51 proceeding has two prongs. Subsection (17)(a) provides that “the first responsibility of the special magistrate is to facilitate a resolution of the conflict between the owner and the governmental entit[y]....” This requires “the special magistrate” to “act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution.” *Id.*

If the parties cannot settle in the first prong, the special magistrate must prepare a written recommendation, which must be provided to all parties. *Id.* at (19). This requires consideration of “the facts and circumstances set forth in the request for relief and any responses and any other information produced at the hearing in order to determine whether the action by the government entity ... is unreasonable or unfairly burdens the real property.” *Id.* at (17)(b).

The seminal article on the 1995 legislation that created s. 70.51 states:

Unlike the Harris Act, which provides an ample, if flexible, definition for the operative legal standard, [s. 70.51] does not define the term “unreasonable or unfairly burdens” which

must be applied by the special master to determine a landowner's rights. Deliberately opting to omit a definition of the term, the drafters chose to rely on the common sense judgment of the special master [now magistrate] selected by the parties themselves.

D. Powell, et al, *A Measured Step to Protect Private Property Rights*, 23 F.S.U. L. Rev. 255, 300 (1996).

Subsection (18) lists an exhaustive, but nonexclusive list of "circumstances to be examined in determining whether the development order ... is unreasonable or unfairly burdens use of the property." *Id.* While the special magistrate must "give weight only to relevant information," he or she is not limited by strict evidentiary rules. D. Powell, et al, at 308-09, fn 352-56, and accompanying text (1996).

If the special magistrate finds the development order is neither unreasonable nor unfairly burdensome to the property, the process ends. If, however, the special magistrate finds one or the other condition exists, and the Owner authorizes the special magistrate to do so, the special magistrate may recommend one or more alternatives that protect the public interest served by the development order, but reduce the burden on the property owner. *Id.* at 309, fn 357-59, and accompanying text, citing s. 70.51(19). Subsection (19) lists ten, nonexclusive options for proposing relief to the owner.

The local government has 45 days to accept, reject, or accept with modification, the special magistrate recommendations. If the owner rejects the recommendation of a modification by the government, or if the government rejects the recommendation, the local government "must issue a written decision within 30 days that describes as specifically as possible the use or uses available to the subject real property." S. 70.51(22).

A. AS APPLIED

1. The Parcel and Neighborhood

Mr. and Mrs. Driver acquired the 55' x 50' Parcel at 108 Orange Street on September 1, 1989. The Parcel had a duplex, which lay empty, and was in need of deferred maintenance by the time they bought the Parcel. Among several offers, Petitioner offered and paid \$110,000 for the Parcel, presumably reflecting the condition of the improvements. The larger neighborhood is transitional from beach homes of various vintages, with a few small-scale multi-family, to commercial.

The Parcel lies in the southwestern corner of a block bounded by Orange Street to the south, the beach to the east, Lemon Street to the north, and Midway Street to the west. The entire block contains single family homes, except 208 Oceanfront, which contains a homestead as part of a use described by the Duval County Property Appraiser as "0810 Residential Mixed Units 3-9, and containing three buildings."

The three properties across Midway, between Orange and Lemon, contain multi-family uses. The property appraiser records describe all three as “0800 Multi-Family Units 2-9.”

Hall Place connects Midway and First from halfway between Orange and Lemon. The two properties on the north side of Hall Place are used and listed as single family.

The lot across Orange Street from the Parcel, and all three lots south of Orange, between Midway and 1st Street, all are single family residences.

The City apparently raised substantial code enforcement issues that caused Mr. and Mrs. Driver to tear down the duplex in 2007. The lot has since lain fallow, save to “hold the world together.” The neighbors and the Drivers understandably see two sides of the same facts. The neighbors complain that the Drivers fail to maintain the Parcel. The Drivers complain that neighbors and others use the vacant Parcel for parking and for various other, unauthorized purposes. Both sides seem to want an occupied building, but they differ as to scale and use.

2. History and Development of Neptune Beach³

This dispute concerns varying perspectives of a corner of Neptune Beach. It combines Neptune Beach’s history with its planning and zoning codes. I’ll address each in turn.

In 1885, local jeweler and developer Eugene Gilbert named his proposed private development in this area Neptune. While his initial dream of a small community separate from Pablo Beach, the later Jacksonville Beach, fell short, his efforts led to today’s mostly bucolic, two square-mile town.

Henry Flagler played the same integral role here that he did in extending railroads and developing related resorts down Florida’s Atlantic coast to the Keys. The Florida East Coast Railway (FEC) bought two local lines to bring coal from Mayport to his various holdings, and to access one resort at today’s Mayport base, and to the Continental Hotel in Atlantic Beach.

Mr. Gilbert convinced the Duval County Commission to construct Atlantic Boulevard to a little east of Pablo Creek. It was completed in 1910 at the request of Mr. Gilbert’s son’s Fred and John, to facilitate car races they sponsored on the beach. While Pablo Beach originally included today’s Atlantic Beach, the latter was incorporated in 1925. Atlantic Boulevard then and now bounded Atlantic Beach in the south.

Much of today’s Neptune Beach was platted in 1902, and replatted in 1911. A street in the location of Orange Street has been platted for over a century, along with today’s Midway.

³ While any certiorari appeal would be limited to the record, this Report goes outside of the record, to determine whether the development order was reasonable or unfairly burdens the Driver Parcel as dictated by s. 70.51. This involves analyzing the neighborhood, as well as two prior, related litigations. First, however, I address the town’s history. I relied on the City and the Beaches Museum websites, as well as my own memories.

Dan Wheeler next used the name “Neptune” in 1922. Wheeler lived on the future site of the Sea Turtle, now One Ocean. He built a nearby rail station, so he could stop having to walk home from the train station in Mayport after his daily commute to and from downtown Jacksonville.

The town arose from a 1931 tax revolt against the far-away city hall of Jacksonville Beach. Most of Neptune was residential, including many beach cottages for residents of Jacksonville.

Very little commercial existed for decades. Today’s Pete’s Bar lies at the northeast corner of First and Lemon. Peter Jensen opened his predecessor Jensen’s Market there over a century ago. Today’s Sea Horse Motel, east of First, west of the beach, south of Atlantic, and north of Lemon, dates from the 1950s. The landmark Silver’s/ formerly Langston’s Pharmacy, and future landmark Ellen’s Kitchen therein, were long located at the southwest corner of Atlantic and First.

Today’s commercial node near the ocean is scarcely larger than it was throughout the latter 20th century. While Silver’s Pharmacy is no more, and Ellen’s Kitchen moved, Pete’s remains just over a block away from the Driver parcel at 117 First Street.

Going north from Orange to Lemon, the uses on the east side of First Street are: (1) “1200 Mixed Use Res/Store/Off”; (2) “1700 Office 102 Story”; and (3) “1991 Office Medical.” These buildings are occupied, respectively, by single family and Jewels by Lubeck; M Body Yoga, Drift Boutique, and Reverie Bloom Wellness Spa & Beauty Bar; and Edward Ras, DDS. The facing west side of First Street is all commercial, with such highlights as the “new” Bookmark and the “original,” albeit expanded, Slider’s. As stated above, in i., most of the rest of Neptune Beach remains in low density, single family use.

B. COMPREHENSIVE PLAN AND ZONING

Orange Street is the zoning boundary between the Central Business District (CBD) to the north, and the R-4 Residential district to the south. The Town Center (TC) future land use category accompanies CD, except for one block lying between Second and Third that is zoned C-1 Commercial, and which is not directly relevant to this matter.

The facing R-4 district, beginning on the south side of Orange, is the remainder of Neptune Beach east of 3d Street/A-1-A. It is bounded by the beach to the east, Seagate Avenue, and the City of Jacksonville Beach to the south, and 3d Street / A-1-A to the west. The RC (Residential Conservation) Overlay, well, overlays this entire R-4 area. The accompanying FLU category is Traditional Residential II.

The CBD boundary has stood since 1959.

C. THE VENN BETWEEN THE CBD DISTRICT AND ACTUAL USES IN THE NEIGHBORHOOD

The exercise above shows that: (a) everything south of the Parcel to the Jacksonville Beach line is zoned and almost entirely used as residential; (b) the block the Parcel lies on is zoned CBD, but used for single family residential; (c) the first commercial use to the

north is the longstanding Sea Horse Hotel (and iconic Lemon Bar), covering the block bounded by Lemon on the south, Oceanfront Midway Street to the west, Atlantic to the north, and the beach to the east; and (d) going west from the Parcel, the west side of Midway between Orange and Lemon is transitional, multi-family, the east side of First, further transitional, to residential, office, and commercial, and the west side, mostly commercial (much of which, principally the original Slider's, has existed there for years).

1. Legal Implications

a. The Prior Two *Driver v. City* Cases

The Drivers, the City, and overlapping neighbors have twice litigated development rights to the Parcel. Once to a single-family home, and once to a B & B on the Parcel.

i. The Original B & B Application

On October 5, 2015, Mr. and Mrs. Driver first applied for a B & B. Their application for a Preliminary Development Order (#CBD 15-14) followed almost immediately on a September City approval of their application for a special exception for a single family home on the Parcel with the following conditions:

1. Front of house be oriented on Orange Street.
2. Set back (sic) on Midway be set at five (5) feet.
3. Setback on Orange be set at seven (7) feet.
4. Height limit be set at 28 feet and 2 stories.

As stated above, any single family residence existing when the CBD was established became a grandfathered, nonconforming use. The CBD ordinance lists such uses as allowable by special exception. The September, 2015, approval granted the Drivers the right to build a single family house, limited to 28-feet-height.⁴

The following month, the Drivers sought a 5,671 sq. ft., 3-story structure, with “5 rental/guest bedrooms and one owner’s suite.” The ground floor contained an enclosed garage and common spaces; the second, four guest rooms and bathrooms; and the third, one guest room and bath, as well as the owner suite. Balconies would cantilever four feet from the second and third floors. The height was 34’9”, with a screening five-foot parapet that was exempt from height limits. The B & B provided the 4 parking spaces required by the CBD.

Staff recommended approval, stating the B & B use was allowed by right in the CBD. Staff stated the Drivers sought no variances.

⁴ The Drivers first appealed this decision, but I put it behind the First B & B Application section because this appeal was not disposed of until 2022.

The minutes of the November 18, 2015, Community Development Board meeting reflect similar board questions of Mrs. Driver to those asked of her son in the hearing on the current application, with similar answers. Board members asked for details of the plans, and Mrs. Driver responded that the plans were not fully developed. Board members asked particularly about breakfast plans, and Mrs. Driver responded that they would likely provide vouchers to local restaurants.

Board members asked staff [Mrs. Askew] to differentiate B & Bs from a boarding house. Mrs. Askew recited the B & B definition, which remains the same today. She testified that B & Bs are “permissible” in CBD, but then and now they were permitted.⁵ She said boarding houses are not defined and not likely permitted in CBD.

Neighbor testimony followed. One spoke in favor, all else opposed. The testimony was similar to that opposing the current application. Scale, height, compatibility, failure to comply with B & B definition. The Board voted 3-4 to approve, so the application failed. (Nov. 18, 2015, CDB Minutes at pp 9-10) It might not have mattered, because the motion failed, but the minutes reflect the motion contained no proposed findings. *Id. See, e.g., Beck v. Littlefield*, 68 So.2d 889 (Fla. 1953) (a municipal corporation speaks through its records). *But see* Driver Notice of Supplemental Authority in the First B & B Case and in the Certiorari appeal addressed in (ii) below (April 5, 2016) (citing then-s. 166.033(2), which required a written notice of development permit denial with citations).

The Drivers were told to attend City Council for final development order. Nonetheless, they filed an alternative petition for certiorari or mandamus. (Case No. 2016-CA-966) (the First Petition) The record reflects that only Community Development Board recommendations of approval, not denials, would then go on to City Council.

The First Petition in the First B & B Case raised several issues. While it confused caselaw standards applicable to rezonings, special exceptions, and site plans, the Petition consistently hit the two high points. It alleged the B & B was allowed as of right in the CBD, and the opposition presented “*Apopka*” testimony (*City of Apopka v. Orange County*, 299 So.2d 657, 659-60 (Fla. 4th DCA 1974) (poll of neighborhood opinions is not competent substantial evidence necessary to deny a local government permit)).⁶

⁵ S. 27-226(k)(2)b. lists “[b]ed and breakfast” as a “[p]ermitted use.” Subsection (3) lists “uses permitted by special exception,” which includes in pertinent part: “a. Single-family, two-family (duplex) and multifamily structures.” S. 27-228 states the CBD “may review,” and the City Council “may permit” special exceptions. Article III, Div. 9, of the LDRs set forth the process for applying for and the City deciding on special exception applications. *See, e.g., Planning Commn of City of Jacksonville v. Brooks*, 579 So.2d 1991 (Fla. 1st DCA 1991) (explaining the process for determining if a proposed use listed as permissible should receive a zoning exception); and *Thomas v. City of Crescent City*, 503 So.2d 1299 (Fla. 5th DCA 1987) (use permitted by zoning code is entitled “as of right”).

⁶ The First Petition cites a case also relied on by the Drivers here, *Colonial Apts., L.P. v. City of DeLand*, 577 So.2d 593, 596 (Fla. 5th DCA 1991), but for general reliance on code criteria, rather than deference to specific, numeric standards over general objections.

The City first filed a terse response, followed by various motions and responses by intervenor neighbors, culminating in a lengthy intervenor response. The gist of the response was that neighbor testimony was fact based, addressed compatibility, as set forth in the LDRs, and was therefore competent and substantial.

The Drivers filed a terse reply to the City response. The Drivers' lengthy reply to the neighbor intervenors' brief cited *Colonial Apt. L.P. v. City of DeLand*, 577 So.2d 593, 596 (Fla. 5th DCA 1991) and numerous other authorities to argue the B & B was allowed of right, as was the height, in CBD. The Drivers contended the specific criteria were met, and could not be varied by general compatibility language in the LDRs.

The Circuit Court initially granted certiorari. Like the First Petition, the Court found the B & B was a permitted use, and the neighborhood testimony was insubstantial *Apopka* testimony.

The Court reversed itself on motion for rehearing by the intervenor neighbors. While the Court reiterated that B & Bs are permitted in the CBD, it held the Community Development Board must weigh compatibility under both ss. 27-82(e) [today's (f)] (1), (2) and (3), and s. 27-222(b)(2).⁷ On rehearing, the Court found that much of the citizen testimony was competent and substantial, related to the LDR section. *Id.* at K., citing *Metro Dade County v. Section 11 Property Corp.*, 719 So.2d 1204, 1205 (Fla. 3d DCA 1998) "(citizen testimony 'regarding the aesthetic incompatibility of the project with the surrounding neighborhood, coupled with the site plan, elevation drawings, and the aerial photograph constituted competent substantial evidence') (emphasis added [by Court])". The Florida First District of Appeal denied the Drivers' certiorari appeal.

ii. The 28-foot Height Limit on the Special Exception for Single-Family Residence

As stated in the preceding section, the Drivers received a special exception for a single-family home just before they first sought the B & B. They applied for a 35-foot-high, three story home, but received approval for a 28-foot-high, two story home.

They appealed the special exception as well. The Drivers' 2015 certiorari petition paralleled their B & B petition. They said that the City relied *Apopka* testimony of neighborhood wishes, not facts. They alleged that the 28-foot cap applied to residential structures in R-4, but buildings in the CBD are allowed up to 35-feet-high. They demanded the third story, because the code contains no limit to stories, only height. They stated that no one objected to the third story. They also objected to the setback resulting from switching the front from Midway to Orange.

Neighbors tried to intervene the following year. Judge Roberson denied their intervention in a brief order.

⁷ Which has similar language after 2022 amendment to the LDRs, but a number of additional subsections. PP 95-97 of Ord. 2022-03.

The Court issued an order to show cause three years later, in 2018. The City filed a response that adopted the concluding final order denying certiorari in the First B & B case.

The Drivers' reply in 2018 stated the specific criteria in the LDRs trumped general compatibility language, most particularly as to height.

While the case was then ripe under the Florida Rules of Appellate Procedure, the order denying certiorari was not entered until four years later, on November 30, 2022. The compatibility rationale in findings 5. and 6. of the order was parallel to the conclusions in the order denying certiorari in the First B & B Case. It differed, however, in focusing on the special exception criteria in ss. 27-160 and -161 of the LDRs. (*See Brooks, supra*, concerning burdens and evidence required to issue special exceptions)

The certiorari denial is relevant here, principally, for confirming the 28-foot-height condition for residential use of the Parcel.

b. The Current Application

I turn next to the current application. Mr. Driver applied to the Community Development Board (CDB) for a Preliminary Development Plan for:

- B & B
- 3,507 sq. ft.
- 3 story/35-feet-high
- 2 guest rooms/1 owner's suite/lobby/living area/kitchen/2 parking spaces.
- 53.7% lot coverage
- First floor façade 35% transparent; second floor, 40%

After substantial testimony and board discussion, the CDB recommended denial to the City Council, by a vote of 6-0. On August 19, 2024, City Council likewise voted unanimously against the Final Development Plan after extensive testimony and board discussion. The Petition followed.

As stated above, subsection 70.51(18) lists a series of nonexclusive factors for the special magistrate to use in determining whether the development order "is unreasonable or unfairly burdens the property." The statute does not define either "unreasonable" or "unfairly burdens." The special magistrate is intentionally given much latitude, and is not limited to certiorari criteria. First, I turn to the issues below and before me.

i. Commercial v. Residential

Much of the testimony before the City and the undersigned stated that a B & B was too intense a use for the neighborhood. While the block where the Parcel lies is used almost entirely for single family, we must acknowledge the City's legislative decision in 1959 to include it in the CBD District. The line between CBD and residential has lasted over a half-century. *See, Bd. of County Com'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993) ("[I]t is evident that comprehensive rezonings affecting a large portion of the public are

legislative in nature.”); *Bd. of County Com’rs v. Karp*, 662 So.2d 718, 720 (Fla. 4th DCA 1995) (“[A]lthough the corridor plan directly affected a finite number of parcels, the number was fairly substantial”). See, generally, *City of New Smyrna Beach v. Andover Dev. Corp.*, 672 So.2d 618, 620, fn. 2 (Fla. 5th DCA 1996), which asked if the “rezoning” of a fifty-acre parcel “that will affect many residents of the project who may have purchased in reliance on the original plans” was legislative.

The R-4 zoning district legislatively authorizes single family as a matter of right from Orange Street, south. Conversely, the CBD district allows single-family uses by special exception, not as of right. See, e.g., *Life Concepts v. Harden*, 562 So.2d 726 (Fla. 5th DCA 1990) (allowed if special use criteria are met).

The City was entitled to legislatively draw the boundary between R-4 and CBD at Orange. See, *Allapattah Comn’t’y Assn. v. City of Miami*, 379 So.2d 387, 394 (Fla. 3d DCA 1980) and numerous cases cited therein (“[A]s the courts have repeatedly said, boundary lines between zoning districts necessarily have to be placed somewhere, it is not only not poor planning, it is entirely appropriate for the divider to be a street.”) (c.o.); *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So.2d 364, 366 (1941) (same).

The City Council and then-City Attorney, discussed in “committee” prior City consideration of down-designating and down-zoning this block. They said the City did not do so out of fear of Bert J. Harris Act claims under s. 70.001, Fla. Stat., for “inordinate burden” on the owners’ property rights. T. 112, 1.16 – 116, 1.9. City Council also discussed with the Community Development Director that the State of Florida objected that down-designating and down-zoning would create Harris Act issues. T. 104, 1.14 – 107, 1.3.

The City and the neighbors understandably state that the Parcel use should match the longstanding residential uses surrounding it on the same block, and across the street to the west and the south. The *Allapattah* Court emphasized: “We start by stating the rule that those who own property and live in a residential area have a legitimate and protectible interest in the preservation of the character of their neighborhood which may not be infringed by an unreasonable or arbitrary act of their government.” *Allapattah*, 379 So.2d at 392.

There is a reasonable argument that initial rezoning of this Parcel to authorize a B & B would constitute “spot zoning” if the block were zoned consistent with its longstanding residential use, and across from single family use to the south and low density multi-family to the west. See, e.g., *Ocean & Inland*, 3 So.2d at 366.

Nonetheless, the City long ago made the legislative choice to include this less intensive block in the CBD. The City could have then excluded this block, but chose instead to defensibly set the CBD/residential zoning boundary at Orange Street (and extend that north-south district boundary at the same latitude in the middle of the first block across Third Street).

ii. Height and Use

The second principal argument is whether the B & B would be subject to the City's 35-foot maximum height for commercial structures, or the 28-foot residential cap imposed by the special exception. This requires two analyses. First, is this property a B & B? No one debates whether the Parcel lies in the CBD District. It undoubtedly does. The Drivers applied for a site plan approval as a B & B. As stated above, the CBD lists B & B as permitted by right. *See, Thomas, supra* ("permitted" use is allowed "as of right") Much testimony at City hearings, and then before me, stated that Mr. Driver's absence of a business plan, allegedly unrealistic rental rates, and other concerns demonstrated that the Drivers did not intend to open a B & B. Rather, opponents say the Drivers applied for a B & B only to get the extra seven feet of height.

We must analyze the City LDRs to determine whether the application meets the applicable B & B standards. *See, e.g., City of Naples v. Central Plaza*, 303 So.2d 423 Fla. 2d DCA 1974) (acknowledging some testimony that the use would affect city's ability to provide utilities and other services, but holding that "[t]he only criteria upon which the Council could legally base its decision were those set forth in its ordinance" (c.o.)).

No one presented, and I did not find, specific B & B standards in the code. The LDRs, however, define B & B at 27-15.

Bed and Breakfast means a commercial establishment housed in a building or part thereof, other than a motel or hotel, that offers overnight accommodations and a breakfast for a daily charge and which also serves as the primary residence of the operator or owner.

In *Cap's on the Water v. St. Johns County*, 841 So.2d 507, 508 (Fla. 5th DCA 2003), our Fifth District Court of Appeal held that the land use code definition of a term may constitute criteria applicable to zoning review. As applied:

- The applicant stated this will be a commercial establishment.
- It will not be a motel or hotel.
- The applicant stated the B & B will offer overnight accommodations.
- The applicant testified that the B & B would give guests a pass for breakfast elsewhere.
- Mr. Driver testified he would live upstairs.

The City and neighbors emphasized surrounding structure heights below 35-feet-high in stating that the proposed height was incompatible with the neighborhood. Our Fifth District Court of Appeal upheld code language requiring a proposal be "compatible with the neighborhood" and "in relation to the neighborhood" as sufficient criteria. *Life Concepts*, 562 So.2d at 727-28, and *Cap's*, 841 So.2d at 508, respectively. If

compatibility were the only criterion in the LDRs, the City would likely be upheld on that issue.

The Fourth District Court of Appeal buttresses that position in *Las Olas Tower Co. v. City of Ft. Lauderdale*, 742 So.2d 308, 313-14 (Fla. 4th DCA 1999). The code there expressly exempted that city's central business district from building height regulation. Nonetheless, another section that was not preempted required development to be compatible with and to preserve the character of adjacent neighborhoods. That section considered the scale, mass, location, size, and height proposed. The appellate court held compatibility was an adequate standard supporting denial because the project would be too tall.

Here, however, the LDRs expressly allow commercial buildings in the CBD up to 35-feet-high. *City of Tampa v. City Natl. Bank*, 974 So.3d 408 (Fla. 2nd DCA 2007), held that specific height limits trumped general compatibility language. See, *Andover*, 672 So.2d at 621, where our Fifth District held that a previously court ordered twenty story site plan bound the developer where the underlying zoning ordinance had no height restrictions.

Our Fifth District distinguished *Life Concepts in Colonial Apts. v. City of DeLand*, 577 So.2d 593, 597 (Fla. 5th DCA 1991). The *Colonial* Court held that a site plan could authorize density up to specific numerical caps set by ordinance. Acknowledging that *Life Concepts* allowed a city to set density based on compatibility with adjacent properties, *Colonial* quoted *Life Concepts*: "Had the ordinance provided a specific numerical cap on the occupancy of the home, the zoning board would have been prohibited from considering the actual impact of the proposed use." *Colonial*, 577 So.2d at 587, quoting *Life Concepts*, 562 So.2d at 728.

RES JUDICATA

At least one member of the public asked why the prior denial of the B & B did not control, or even bar the current application. The doctrine of administrative *res judicata* generally bars the refiling of an identical previously denied application. See generally, *St. Johns County v. Owings*, 554 So.2d 535, 537 (Fla. 5th DCA 1989). *Res judicata* should be "'applied cautiously in zoning matters.'" *Id.* (citations omitted) It should not bar refiling of zoning requests except in extraordinary cases. *Id.* (citations omitted). I can think of a few reasons why the prior decision on the B & B application was properly determined not to bar this one:

1. As the City stated, this application is for a substantially smaller structure than the Drivers sought in the First B & B Case.
2. The first appeal was from the Community Development Board, on a preliminary development order. This one appeals a final development order by City Council.
3. The Fifth District Court of Appeal's *Colonial* decision bound the reviewing circuit courts and the City in the two prior *Driver* cases when we lay in the First District Court of Appeal's jurisdiction, see *Pardo v. State*, 596 So.2d 665, 666-67 (Fla. 1992), *Colonial* is directly binding now that we sit in the Fifth District.

4. New criteria were added to s. 27-222(b)(2), which is now broader than the ordinance considered in the First B & B Case.
5. The proposed building in the current application covers almost 20% less of the Parcel than the First B & B did (53.7% and 71%, respectively).
6. The City Attorney instructed City Council to consider the current application, not the First B & B Case.

CONCLUSION

1. **Height**: If I were reviewing this on certiorari appeal, I would likely hold that the *Colonial* decision dictates applying the City's 35-foot cap. That said, even if the two prior Circuit Court decisions are not *res judicata*, their facts and issues have many similarities to this one. Also, the Drivers' counsel cited *Colonial* in both cases. City Attorney Zac Roth instructed the Council not to consider the First B & B Case. (T. 96, 1.19 – 24) If I were so limited, I would apply *Colonial*. Nonetheless, s. (18) says I must consider the history of use of the Parcel, including how use has been "proscribed" by land use controls. *Id.* at (c). The order denying certiorari in the First B & B Case due to the LDR's general compatibility criteria and specific "preliminary and final development orders" factors "proscribed" the proposed use.
2. **Use**: The opponents had two, inconsistent arguments. First, some argue that the B & B is not real. Rather, the B & B is an attempt to get the 35-foot height that was denied by the special exception for the residence. It will be called a B & B, but serve as a residence.

As stated above, the LDRs definition lists the only code criteria to determine what constitutes a B & B. Therefore, the code definition lists the only factors the City can weigh in determining whether the proposed use is a B & B under the code. The definition of B & B is all the City can look to. Parsed, this use: (a) is proposed to be a commercial establishment; (b) in a building that is not a hotel or motel; (c) offering overnight accommodations; (d) for a daily charge; and (e) serves as the primary residence of the operator or owner.

My issue is the continuing intent to provide vouchers for breakfast elsewhere. With nothing more, that might not meet the definition description "that [the B & B] offers ... breakfast". (emphasis added) Mr. Driver testified at Council (T. 109, 1.10 – 15) that someone might serve breakfast on-site.

The word "offers" generally means to present or to proffer something to someone, who may accept or reject. *See, e.g., merriam-webster.com/dictionary/offer* at 2.a. Black's Law Dictionary has a similar term.

In sum, the term "offers breakfast" seems to require that the B & B provide some breakfast on-site, even if a minimal Continental Breakfast. A voucher for an off-site, unrelated breakfast café does not seem to meet that requirement. A more definite commitment to serve on-site would address that.

The second argument is that a B & B is *per se* incompatible. I agree with the Drivers that the zoning code's listing of a use as permitted is a *per se* legislative determination that the underlying use is compatible. Again, however, Judge Beverly focused in the First B & B Case on the LDRs' compatibility language in the then-current ss. 27-82(e) [now (f)] (1), (2), and (3), and 27-222(2)(b), despite acknowledging that B & Bs are listed, approved uses in the CBD. I am not as troubled by the special exception case. Both the LDRs and Florida caselaw on special exceptions state such uses are not allowed as of right, but may be allowed on a case by case basis based on compliance with code requirements and any appropriate conditions. *See, Brooks, supra*.

3. **Frontage and Design:** The application complies with ss. 27-236 and -246, which require the new commercial structures in the CBD to meet design standards that might be appropriate in the Triangle, but not in the middle of decades-old beach cottage style residences. Here, it sticks out like a modernist thumb with the massive glass requirements saving it from being a bit brutalist. I recommend that any approval allow beach cottage or similar architecture. I recommend further that any approval consider waiving the CBD lobby requirement, to soften the use. Otherwise, the application's strict compliance with CBD design standards is, ironically, unreasonable and unfairly burdens the use of both the Parcel and the neighborhood.
4. **Compliance with s. 166.033(1), Fla. Stat:** Driver asserts in s. C.1. of the Parties' Joint Pre-Hearing Stipulation that the denial violates s. 166.033, Fla. Stat. I assume Driver means the following sentence: "An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the municipality's decision." No doubt the motion to deny carried no findings.⁸ Certiorari is limited to the record. *See, e.g. St. Johns County v. Smith*, 766 So.2d 1097 (Fla. 5th DCA 2000). No one objected to this omission. A judge might rule that issue is waived, because the City Council was "in committee," after the public hearing was closed. I don't, however, know which way a judge would rule. So, I mention this for completeness sake, without recommending anything on this point.

RECOMMENDATIONS

I now deliver my recommendations:

1. Approve the B & B if scale and appearance can be met consistent with s. 27-82(f). I discuss appearance at s. 3. above. I discuss scale below.
2. There is a real risk a reviewing court will follow *Colonial*, and say the B & B may be 35-feet-high. Nonetheless, s. 70.51(18)(c) means I cannot ignore the prior order denying certiorari, based in large part on s. 27-82(e) [today's (f)], for a larger, but similar B & B use on the same Parcel. Particularly not, where both Driver Counsel and City Counsel told City Council that s. 27-82 controls.

⁸ The motion also stated it "recommend[ed] denial of DP 24-04." T. at 143, 1 1-3 (emphasis added). But that appears to be harmless error.

3. Therefore, in order to address that schism, I recommend a reduction to 33-feet-high. Again, this relates to s. 70.51(18)(c) factors, which are broader than what a court would consider on certiorari. *See also*, the *Res Judicata* section at p. 11.
4. Finally, Driver should commit to serve some kind of breakfast on-site, to ensure compliance with B & B LDR criteria.

DONE this 20th day of November, 2024.

/s/Sidney F. Ansbacher

SPECIAL MAGISTRATE

SIDNEY F. ANSBACHER

cc: Counsel of Record
Florida Department of Legal Affairs

2. Final Order Letter of Denial

City of Neptune Beach
Heather Whitmore, AICP, PTP
Community Development Director
116 First Street • Neptune Beach, Florida 32266
(904) 270-2400 Ext. 34 • CDD@NBFL.US



September 13, 2024

Douglas Driver
1150 Florida Blvd
Neptune Beach, FL 32266

RE: Final Development Order Letter of Denial
DP24-04: 108 Orange St

Dear Applicant:

On August 19, 2024, the City Council for the City of Neptune Beach unanimously denied your request for a final development order approval as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach to permit a bed and breakfast for the property at 108 Orange St (RE# 172769-0000).

The findings of fact and conclusions of law, which are the basis of the City Council's decision in this matter, are found within the minutes of the meeting and in the agenda materials, which are hereby adopted and incorporated herein and made a part hereof by reference. The City Council of the City of Neptune Beach found;

On May 8, 2024, the Community Development Board voted to unanimously to recommend denial of the preliminary development order;

The final development order is inconsistent with LDC 27-82(f) (1) "characteristics of the site and surrounding area... the size and accessibility of the site, and surrounding land uses";

The final development order is inconsistent with LDC 27-82(f) (2) "the size and accessibility of the site, and surrounding land uses";

The final development order is inconsistent with LDC 27-82(f) (3) "the placement of proposed buildings and other improvements on the site;... proposed parking areas; the approximate total ground coverage of paved areas and structures";

The final development order is inconsistent with LDC 27-82(f) (6) the "concerns and desires of surrounding landowners and other persons";

No further action is required. If you should have any questions, please contact me at 904-270-2400 ext. 30 or clerk@nbfl.us.

Sincerely,



Catherine Ponson, C.M.C.
City Clerk/HR Generalist

3. Petition for Relief

September 18, 2024

VIA HAND DELIVERY

Mayor Elaine Brown
City of Neptune Beach, Florida
116 1st Street
Neptune Beach, FL 32266

Re: Petition for Relief Pursuant to Section 70.51, Florida Statutes (Special Magistrate Proceeding)

Dear Mayor Brown:

Enclosed herein is Petitioners' Request for Relief Pursuant to Section 71.82, Florida Statutes, regarding Final Development Order Letter of Denial DP24-04: 108 Orange St. dated September 17, 2024.

Petitioners Margaret R. Driver and Douglas L. Driver III file this request pursuant to Section 71.82, Florida Statutes, by service on you as the head of the governmental entity that issued the development order at issue.

A copy of this petition has also been furnished to Chairman Schwartzenberger as Chair of the Community Development Board and to the City Attorney.

Sincerely,



Cristine M. Russell

cc: Gregor Schwartzenberger, Chair, Community Development Board
Zachary R. Roth, City Attorney (*via email*)

IN AND BEFORE A SPECIAL MAGISTRATE
NEPTUNE BEACH, FLORIDA

MARGARET R. DRIVER AND DOUGLAS L. DRIVER, III,

Petitioners,

v.

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent.

PETITION FOR RELIEF PURSUANT TO SECTION 70.51, FLORIDA STATUTES
(SPECIAL MAGISTRATE PROCEEDING)

COME NOW, MARGARET R. DRIVER AND DOUGLAS L. DRIVER, III (collectively, "Petitioners"), by and through their undersigned attorneys, and petition the City of Neptune Beach, Florida (the "City") for the appointment of a Special Magistrate pursuant to Section 70.51, Florida Statutes.

Subject Property, Owner, and Statement of Proposed Use:

1. This is a request for relief pursuant to Section 70.51, Florida Statutes. The Petitioners allege that the development order in question, i.e., the denial of an application for a development plan ("Site Plan") for a proposed bed and breakfast, is unreasonable and unfairly and unreasonably burdens the use of their real property.

2. The property at issue is located at 108 Orange ST (RE# 172769-0000) on the Northeast corner of Orange Street and Midway Street (the "Property"). Petitioner Margaret R. Driver ("Mrs. Driver") holds legal title to the Property.

3. The Subject Property is zoned Central Business District ("CBD") pursuant to the City's Unified Land Development Code ("LDC") and has a Comprehensive Plan Town Center Land Use Designation. Under CBD zoning, a "bed and breakfast" is a use permitted *by right*. The Property is surrounded by CBD Zoning on the east, north and west. The properties to the south are zoned RC/R-4. Buildings in the CBD have a permitted height of up to 35 feet.

4. Mrs. Driver has owned the Property since 1989, and she wishes to develop the Property with her son, Petitioner Douglas L. Driver, III, as a bed and breakfast.

Summary of Development Order and Description of Proceedings:

5. On May 8, 2024, the City's Community Development Board ("Board") considered Petitioners' application for a preliminary development plan ("Site Plan") (DP 24-04, the "Application").

6. Section 27-82 of the LDC sets forth the procedures for applying for and issuing preliminary and final development orders and provides that the Board shall conduct a quasi-judicial public hearing and shall consider the following 7 factors: (1) characteristics of the site and surrounding area; (2) whether the proposed development meets concurrency requirements of the LDC; (3) the nature of the proposed development; (4) conformity with the City's Comprehensive Plan, the LDC and other applicable regulations; (5) Applicable regulations, review procedures and submission requirements; (6) concerns and desires of surrounding landowners and other persons; and (7) other applicable factors and criteria prescribed the comprehensive plan, the LDC or other law. LDC, Sec. 27-82 (f).

Upon review of these criteria, Board Staff recommended approval of the Application. A copy of draft minutes for the May 8, 2024 Board Meeting are appended hereto at Tab 1.¹

7. The draft minutes of the May 8, 2024 Board Meeting state as follows:

Staff recommends approval of the currently proposed application for DP24-04 Preliminary Development Plan for the property at 108 Orange ST (RE# 172769-0000) to permit a bed and breakfast (as presented).

* * *

The applicant provided a preliminary response to staff comments on May 3, 2024 and provided an updated revised site plan (see attached). The applicant responded to all Planning and Zoning comments on May 8, 2024 and provide [sic] a revised site plan, floor plan, and elevations. A revised proposed Preliminary Development Plan as updated on May 8, 2024 complies with all planning and zoning development standards.

Tab 1, p. 25.

8. The Board heard commentary from various members of the public who opposed Petitioners' proposed bed and breakfast on various grounds, including fears that a business would not fit within the residential character of the neighborhood, that the building was larger than residences in the area and would be "out of proportion" and that a proposed height of 35 feet is "not sensitive to surrounding neighbors." See Tab 1, pp. 26-28. Despite the fact that the Property is zoned Central Business District, which allows development of bed and breakfast establishments *by right* and permits buildings with a height up to 35 feet, the Board rejected Staff's recommended approval and voted to recommend denial of the Application to the City Council. See Tab 1, p. 30.

¹ Upon his request, Petitioner Douglas Driver was provided with a draft of the minutes for the May 8th Board meeting.

9. On August 19, 2024, the City Council considered Petitioners' Application. Minutes of the August 19, 2024 City Council meeting are attached hereto at Tab "2."

10. The City's Community Development Director, Heather Whitmore, explained that the request was for approval to permit a bed and breakfast and recommended that the City Council approve the Application. As set forth in the attached minutes, Ms. Whitmore explained that: "The building complies with setbacks, lot coverage, height, and frontage buildout requirements in the CBD. The building complies with the elevation frontage requirements and standards of the CBD." Ms. Whitmore further stated that "[t]he site is served by a total of two parking spaces" and that "the development requires two parking spaces." Tab 2, p. 2-3. Ms. Whitmore summarized: **"Staff recommends approval of the proposed application for DP24-04 for 108 Orange Street, as presented herein. The development plan complies with all planning and zoning development standards. It complies with all commercial building standards and commercial fire code standards."** Tab 2, p.3 (emphasis added).

11. The hearing was opened for public comments, and the City Council heard from members of the public, most of which opposed the bed and breakfast on the same grounds expressed at the Board meeting on May 8th. Tab 2, pp. 3-4. Members of the public again expressed their views that the proposed bed and breakfast would not fit the character of a residential neighborhood, that the area would become commercial, and that the proposed height of 35 feet would not fit the character of the neighborhood because it would be taller than many of the surrounding residences which are 28 feet. They also opined that a business might draw crime or create an increase in traffic. See Tab 2, pp. 3-4.

12. The City Council then debated the Petitioners' Application. Tab 2, pp. 5-9. Members of the City Council acknowledged that buildings up to 35 feet are permitted and that the area is zoned for commercial use. Tab 2, pp. 7-8. Members of the City Council also acknowledged that the Petitioners had met the requirements of the LDC. The City Council nonetheless denied Petitioners' application by Final Development Order Letter of Denial DP24-04: 108 Orange St. ("Final Development Order") dated September 13, 2024. The Final Development Order is attached at Tab "3".

13. Petitioners did not receive any written denial until September 17, 2024, nearly one month after the City Council's vote. See Tab 3.

14. The Final Development Order states that the proposed development is "inconsistent" with sub-sections 27-82(f)(1)(2)(3) & (6) of the LDC. The City's "findings" are not supported by competent substantial evidence. The Community Development Board's Staff has issued a report opining that the proposed bed and breakfast is consistent with these criteria. See Tab 4.

15. With regard to Sec. 27-82(1), the City's "finding" is not supported by an competent substantial evidence. Staff correctly opined that the use is consistent with the surrounding zoning and uses. The site is surrounded by majority residential uses, as well as commercial uses along First Street. The Property is in an area zoned CBD. It is not zoned for purely residential use. With regard to the second finding, Sec. 27-82(2) is incorrectly cited in the Final Development Order. It is unclear what subsection is at issue in that reference. The finding with regard to Sec. 27-82(3)

also is not supported by competent substantial evidence. As stated by Staff, the bed and breakfast is a use permitted *by right*, and the site plan complies with minimum development requirements, driveway access, and frontage treatment requirements. See Tab 4. Finally, the “finding” set forth with regard to LDC 27-82(f)(6), is not based on any lawful, measurable criteria. It is well established that a proposed development that complies with a local government’s written land development criteria cannot be rejected based on citizen opposition.

Statement of Impact of the Development Order

16. The Property is zoned CBD and was zoned CBD at the time Petitioners submitted the Application. The Property is not zoned residential. The City nonetheless treated Petitioners’ Application as if the Property were in a residentially zoned area and subject to such restrictions.

17. Due to the City’s denial of their Application, Petitioners cannot proceed with their proposed bed and breakfast development. The City departed from its own written criteria which are intended to provide notice to property owners of permissible uses and the permitted scope of development. The denial of Petitioners’ Application was arbitrary, unreasonable and unfairly burdens a use which is permitted by the LDC and the City’s Comprehensive Plan. The City is obligated by law to apply its regulations consistently and in a uniform manner. It failed to do so here.

WHEREFORE, Petitioners request relief pursuant to Section 70.51, Florida Statutes.

ROGERS TOWERS, P.A.

By: 

Emily G. Pierce

Florida Bar Number: 881139

Epierce@rtlaw.com

Cristine M. Russell

Florida Bar Number: 0157406

Crussell@rtlaw.com

1301 Riverplace Boulevard, Suite 1500

Jacksonville, Florida 32207

Telephone (904) 398-3911

Attorneys for Petitioners

MARGARET R. DRIVER AND DOUGLAS

L. DRIVER, III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the following by hand delivery this 18th day of September, 2024:

Elaine Brown
Mayor of the City of Neptune Beach
City Hall
116 First Street
Neptune Beach, FL 32266

Greg Schwartzenberger, Chair
Community Development Board
City Hall
116 First Street
Neptune Beach, FL 32266



Attorney



MINUTES
COMMUNITY DEVELOPMENT BOARD
MAY 8, 2024 AT 6:00 P.M.
COUNCIL CHAMBERS
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice a public hearing of the Community Development Board for the City of Neptune Beach was held in person May 8, 2024, at 6:00 p.m. in the Council Chambers.

Attendance

Board members were in attendance:

Greg Schwartzenberger, Chair
Rene Atayan, Vice-Chair
William Hilton, Member
Corrine Bylund, Member
Jonathan Raiti, Member
Marc Boran, Alternate Member

The following staff members were present:

Heather Whitmore, Community Development Director
Zachary Roth, City Attorney
Piper Turner, Code Compliance Supervisor

**Call to Order/Roll
Call**

Chair Schwartzenberger called the meeting to order at 6:01 p.m.

Pledge

Pledge of Allegiance.

Swearing in

Mr. Roth, City Attorney, asked anyone appearing before the board tonight to raise their right hand to be sworn in.

**Variance V24-02
450 Atlantic Blvd
LHV, LLC**

V24-02 Application for variance as outlined in Chapter 27 Article III Division 8 of the Unified Land Development Code of Neptune Beach for LHV, LLC for the property at 450 Atlantic Blvd (RE# 172395-0060).

The applicant requests a variance from Section 27-328 (a) (1) d. to permit air conditioning units to be located 1.8 feet from the western side yard property, rather than the required ten-foot side yard setback. The property is in the C-3 zoning district.

**DP24-02
Preliminary
Development
450 Atlantic Blvd
LHV, LLC**

DP24-02: Preliminary Development Plan for LHV, LLC for the property at 450 Atlantic Blvd (RE# 172395-0060) for approval to permit a mixed-use facility to include mixed martial arts training, racquetball, pickleball, karaoke bar, and pool tables.

Heather Whitmore, Community Development Director, presented the staff report.

I. BACKGROUND: A preliminary development application and associated variance for a mixed-use facility has been submitted for 450 Atlantic Blvd (RE# 172395-0060). The existing building is approximately 20,000 square feet and the lot is approximately 30,000 square feet with 38 parking spaces.

DP24-02 requires a concurrent review of associated variance V24-02 from Section 27-328 (a) (1) d. to permit air conditioning units to be located 1.8 feet from the western side yard property, rather than the required ten-foot side yard setback.

The property has a Comprehensive Plan Commercial II Land Use designation and is zoned Commercial-3 (C-3). Recreation, amusement, and entertainment uses are permitted uses in this district, including billiard and pool hall, indoor athletic and exercise facilities, tennis, handball or racquetball facility, night club, private club and bar/tavern.

II. DISCUSSION:

Chapter 27 Article III Administrative and Enforcement Procedures Division 2 Development Review of the Unified Land Development Code of Neptune Beach requires a preliminary and final development plan (development order) approval when "Changing or expanding any use of a site so that the need for off-street parking is increased." Section 27-76 states that "all development in non-residential districts" requires a development order.

The applicant requests to establish a mixed-use facility to include mixed martial arts training, racquetball, pickleball, karaoke bar, and pool tables in the existing building located at 450 Atlantic Blvd. The existing vacant 20,000 square foot two-story building was previously used as a sportsplex that included a wide variety of indoor recreational uses.

The Site:

The building is located off of the Lemon Steet access easement, immediately adjacent to the old Kmart and approximately 400 feet west of 3rd Street. The property is bound on the north by the 30-50-foot-wide driveway access easement provided to the City of Neptune Beach (Driveway Easement O.R.V. 4360, Pg. 929) attached. The site directly abuts the City of Neptune Beach owned stormwater retention area to the south.

Figure 1: 450 Atlantic Blvd, Neptune Beach, FL





Page 41 of 400

are south of the Lemon St driveway and four additional parallel parking spaces are north of the easement.

The change of use will include only minor exterior renovations, including significant landscape improvements and the replacement of air conditioning condensers on the west side of the building. The site currently has several air conditioning condensers in this location. The existing condensers are located less than two feet from the western property line and are not screened with a hard board or concrete screen.

Section 27-328 (a) (1) d. states "Air conditioning compressors serving central systems ...may be located in any required rear yards, but not in any front yard, and not less than ten (10) feet from any side lot line, except in the following instances: 1. *When any mechanical or electrical equipment is proposed within a yard and is enclosed by a masonry wall at least four (4) feet high, it may be located within two (2) feet of any side lot line.*"

The applicant will replace, improve, and expand these condensers. The new condensers will be located in the same location (less than two feet from the property line) and will be screened with a four-foot concrete wall. The applicant requests a variance (V24-02) from Section 27-328 (a) (1) d. to permit additional air conditioning units to be located less than feet from the western side yard property. As stated, these air conditioning units will be compliant with the required four-foot concrete wall enclosure.

The Building:

As stated, the applicant proposes a change of use to a mix of recreation, amusement, and entertainment uses. The applicant proposes a significant interior remodel of the existing 20,000 gross square foot building area. The interior will be converted to a mezzanine style layout with a full first floor, and a reduced floor area partial second floor overlooking the first floor.

The first floor will be the "The Gym" area, including four mixed martial arts combat training areas, three racquet ball courts, one pickleball court, and associated changing rooms. The first floor "Gym" will operate 6:00 a.m. to 8:00 p.m., seven days per week. Overlooking the first floor, the second floor "Bar" includes a karaoke lounge with six private karaoke rooms, one open bar seating area with stage, and three pool tables. The second floor "Bar" will operate 12:00 p.m. to 2:00 a.m., seven days per week.

Parking:

This change of use requires an increase in the required overall off-street parking. However, the interior uses qualify for an overall reduction in required off-street parking spaces for mixed or joint use of parking spaces.

Due to the variation in interior uses and operating hours, the interior uses were reviewed based on net floor area to determine required parking. Section 27-540 "Parking Requirements" were applied to each interior net use to determine required parking spaces by use as follows:

USE QUANTITY RATE SQ. FT. SPACES

FIRST FLOOR

EMPLOYEE 2 # EMPL/2 N/A 1

OFFICE 327 SF 1/400 SF 327 1

PACKAGE STORE 146 SF 1/300 SF 146 0

MMA TRAINING 2,776 SF 1/500 SF 2,776 6

RACQUETBALL/PICKLEBALL 4 COURTS 2 PER COURT 4,586 8

STORAGE 282 SF (employee above) 282 0

SECOND FLOOR

KARAOKE SEATING AREAS 120 SEATS 1 PER 4 SEATS 3,685 30

BILLIARD 3 TABLES 2 PER 3 TABLES 826 2

STORAGE 267 SF (employee above) 267 0

EMPLOYEE 3 # EMPL/2 N/A 2

PARKING SPACES REQUIRED: 50**EXISTING SPACES: 38**

The overall total required parking spaces based on interior net uses is 50 spaces. The site provides 38 parking spaces. A shared parking analysis was conducted by Kimley-Horn and Associates to evaluate the projected maximum parking demand for the proposed development, based on data published by ULI in Shared Parking, Third Edition. A memorandum detailing the analysis is attached as Exhibit F. The analysis finds that the proposed uses are projected to have a maximum parking need of thirty-five (35) spaces during both weekdays and weekends.

Section 27- 540(c)(3) provides for a reduction of off-street required minimum parking for mixed or joint use of parking spaces. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. The City Council, after review from the community development board, may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap.

III. V24-02 FINDINGS:

1. The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

Staff Response: There does appear to be a unique hardship. The existing building already has air conditioning equipment less than two feet from the property line. The new condensers will be located in the same location (less than two feet from the property line) and will be screened with the required four-foot concrete wall enclosure.

2. The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

Staff Response: Yes, the variance is the minimum necessary to permit the building reuse.

3. The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

Staff Response: The proposed variance would not adversely affect adjacent and nearby properties or the public in general. The existing building already has air conditioning equipment less than two feet from the property line. The new condensers will be screened with the required four-foot concrete wall enclosure.

4. The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.

Staff Response: The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.

5. The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

Staff Response: The variance request is in harmony with the general intent of the LDC.

6. The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

Staff Response: The proposed variance request for AC equipment setback is not created through the actions of the property owner.

7. Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

Staff Response: Granting the variance request for an AC equipment setback would not confer upon the applicant a special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

IV. DP24-02 FINDINGS:

Sec. 27-82. - Procedures for applying for and issuing preliminary and final development orders states the community development board shall conduct a quasi-judicial public hearing and shall consider the following factors when issuing a development order:

1. Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.

Staff Response: The use is consistent with the surrounding zoning and uses. The site is surrounded by commercial uses to the north, east, and west side.

2. Whether the concurrency requirements of article VI of this Code could be met if the development were built.

Staff Response:

Traffic: The proposed redevelopment will NOT generate more than 50 pm peak trips over the prior use; therefore, a traffic study is not required.

Water/Sewer: This project area has water and sewer.

School: Not applicable

Drainage: Not applicable. No new impervious surface will be added.

3. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.

Staff Response: The site contains an existing building and parking area. All uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. In accordance with 27-540 (c) 3, the City Council, after review from the community development board, may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap.

The property is serviced by a private lift station. The water main extends across the front of the property and ends at the hydrant just west of the lot.

4. Conformity of the proposed development with the comprehensive plan, this Code, and other applicable regulations.

Staff Response: The property has a Comprehensive Plan Commercial II Land Use designation and is zoned Commercial-3 (C-3) in the Neighborhood Commercial (NC) zoning district. Recreation, amusement, and entertainment uses are permitted uses in this district, including billiard and pool hall, indoor athletic and exercise facilities, tennis, handball or racquetball facility, night club, private club and bar/tavern. All proposed uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces.

5. Applicable regulations, review procedures, and submission requirements.

Staff Response: All proposed uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. There are no outstanding land development or public utility comments. There may be additional Fire or Building comments to address at permitting.

6. Concerns and desires of surrounding landowners and other persons.

Staff Response: The variance for development order request was noticed as required to property owners within 300 feet. A sign was posted on the property according to requirements. Staff has not received any comments from the public.

7. Other applicable factors and criteria prescribed by the comprehensive plan, this Code, or other law.

Staff Response: Nothing outstanding.

V. STAFF RECOMMENDATION

V24-02:

Staff recommends approval of V24-02 variance from Section 27-328 (a) (1) d. to permit air conditioning units to be located 1.8 feet from the western side yard property as presented.

DP24-02:

Staff recommends approval of the application for DP24-02 Preliminary Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for LHV, LLC for the property at 450 Atlantic Blvd (RE# 172395-0060) to permit a mixed-use facility to include mixed martial arts training, racquetball, pickleball, karaoke bar, and pool tables. All uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. In accordance with 27-540(c) 3, the City Council, after review from the community development board, may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap.

The developer shall submit a Final Development Plan that complies with staff conditions for review by the City Council. The Final Development Plan shall be consistent with the Preliminary Development Plan and staff comments and shall contain no land uses different than those approved in the Preliminary Development Plan.

VI. RECOMMENDED MOTION:

- a. I recommend approval of V24-02 and DP24-02
OR
b. I recommend denial of V24-02 and DP24-02



APPLICATION FOR DEVELOPMENT PLAN REVIEW

CITY OF NEPTUNE BEACH PLANNING AND DEVELOPMENT DEPARTMENT
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266-6140
PH: 270-2400 Ext 34 CDD@NBFL.US

Application Fee: \$400

Date Filed: _____

Name and address of the applicant requesting development review. (Note: if the applicant is other than all the legal owners of the property, notarized written consent signed by all the legal owners of the property shall be attached. In the case of corporate ownership, the authorized signature shall be accompanied by a notation of the signer's office in the corporation, and the embossed with the corporate seal). The undersigned hereby applies for a development review as follows:

Name & Address of Property Owner:	Telephone: (904) 301-1269
LHV, LLC, a New York limited liability company	E-Mail: ctrimmer@drivermcafee.com; sdiebenow@drivermcafee.com
8130 Baymeadows Way West, Suite 303 Jacksonville, Florida 32256	Real Estate #: 172395-0060
Property Address (if different from mailing):	Lot: Part of Government Lot 1
450 Atlantic Boulevard Neptune Beach, Florida 32266	Block: Section 21, Township 2 South, Range 29 East, Duval County, Florida.
	Subdivision: N/A
	Zoning District: Commercial C-3
Name and Address of Agent/Applicant:	Telephone: (904) 301-1269
Cyndy Trimmer and Steve Diebenow	E-Mail: ctrimmer@drivermcafee.com; sdiebenow@drivermcafee.com
One Independent Drive, Suite 1200 Jacksonville, Florida 32202	

Describe Request being made:

See attached.

PLEASE BE ADVISED THE COMMUNITY DEVELOPMENT BOARD CONDUCTS A PUBLIC HEARING TO CONSIDER CERTAIN FACTORS IN ORDER TO MAKE A RECOMMENDATION TO THE CITY COUNCIL FOR APPROVAL OR DISAPPROVAL OF THE DEVELOPMENT PLAN.

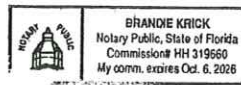
LHV, LLC, a New York limited liability company

Hao Li, Member

Dated: 1/12/2024

STATE OF Florida
COUNTY OF Duval

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 12th day of January, 2024, by Hao Li, as manager of LHV, LLC a New York limited liability company, on behalf of said company. S/he ☐ is personally known to me or ☒ has produced Florida Driver License as identification.



Brandie Kruck
Notary Public, State of Florida
Brandie Kruck

Notary's Printed Name
My Commission Expires: Oct. 6, 2026

OWNER'S AUTHORIZATION FOR AGENT/AFFIDAVIT OF ASSENT

THIS FORM MUST BE FILLED OUT IN THE CASE THAT THE APPLICANT IS NOT THE OWNER OF THE PREMISES UNDER WHICH THE PARTICULAR APPLICATION IS BEING FILED.

Driver, McAfee, Hawthorne & Diebenow is hereby authorized TO ACT ON BEHALF OF LHV, LLC, a New York limited liability company, the owner(s) of those lands described within the attached application, and as described in the attached deed or other such proof of ownership as may be required, in applying to Neptune Beach, Florida, for an application related to Development Permit or other action pursuant to a:

- | | |
|--------------------------------------|---|
| ☐ Rezoning | ☐ Special Exception |
| ☐ Replat | ☒ Commercial Development Order |
| ☐ Appeal | ☐ Comp. Plan Amendment |
| ☐ Concurrency | ☐ Other/ Champion or heritage tree removal |

BY:

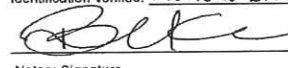
Signature of Owner

Hao Li

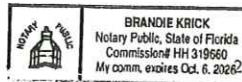
Print Name

Member

Its

Daytime Telephone Number: 1917 1478 - 2278State of Florida
County of DuvalSigned and sworn before me on this 12th day of January, 20 24
By Hao LiIdentification verified: Florida Driver License Oath sworn: ☒ Yes ☐ No

Notary Signature

My Commission expires: Oct. 6, 2026**APPLICATION FOR DEVELOPMENT PLAN REVIEW****PROJECT SUMMARY****450 ATLANTIC BOULEVARD****April 10, 2024**

LHV, LLC ("Applicant") files this Development Plan Review Application for the property located at 450 Atlantic Boulevard in Neptune Beach, Florida 32226 (RE# 172395 0060) (the "Property") for THE infill use of the existing, vacant building with a mixed-use development as depicted on the Site Plan, Floor Plans and Elevations filed herewith as Exhibits A(the "Project").

The proposed uses include training areas, indoor racquetball and pickleball courts locker rooms on the first floor, and a karaoke-themed bar on the second floor.

As a part of this Application, the Applicant requests a parking reduction pursuant to Section 27-540(c)(3) of the Neptune Beach Unified Land Development Code ("ULDC")

for joint use of Property's thirty-eight (38) parking spaces. The proposed Project includes a mix of uses on the first and second floors of the building, which are proposed to be managed by separate entities:

- Neptune Beach Sports and Recreation Center, Inc. will manage the first-floor operations, which include the MMA training areas, pickleball courts, and racquetball courts (the "Gym")
 - o First-floor hours of operation: 6:00 a.m. to 8:00 p.m., seven days per week.
 - Iron First Hospitality, LLC will manage the second-floor operations, which include the karaoke-themed bar, lounge, and pool tables ("the "Bar")
 - o Second-floor hours of operation: 12:00 p.m. to 2:00 a.m., seven days per week.
- A shared parking analysis was conducted by Kimley-Horn and Associates to evaluate the projected maximum parking demand for the Project, based on data published by ULI in *Shared Parking, Third Edition*. A memorandum detailing the analysis is attached as **Exhibit F**. The analysis finds that the proposed uses are projected to have a maximum parking need of thirty-five (35) spaces during both weekdays and weekends. Concurrently submitted with this Development Review Application is an Application for Variance, requesting a reduction in the accessory structure side yard requirements of 27-328(a)(1)(d) of the ULDC to allow for additional A/C Units located in the western side yard consistent with the existing units.

QUANTITATIVE DATA

March 6, 2024

I. GROSS FLOOR AREA BY USE

FIRST FLOOR

Office 327 sq. ft.
 Package Store 146 sq. ft.
 MMA Training 2,776 sq. ft.
 Racquetball/Pickleball 4,586 sq. ft.
 Storage
 282 sq. ft.

SECOND FLOOR

Karaoke Bar 3,685 sq. ft.
 Billiards 826 sq. ft.
 Storage 267 sq. ft.

II. PARKING SCHEDULE

QUANTITY RATE 1 SQ. FT. TOTAL

FIRST FLOOR

EMPLOYEE 2 # EMPL/2 N/A 1
 OFFICE 327 SF 1/400 SF 327 1
 PACKAGE STORE 146 SF 1/300 SF 146 0
 MMA TRAINING 2,776 SF 1/500 SF 2,776 6
 RACQUETBALL/PICKLEBALL 4 COURTS 2 PER COURT 4,586 8
 STORAGE 282 SF (employee above) 282 0

SECOND FLOOR

KARAOKE SEATING AREAS 120 SEATS 1 PER 4 SEATS 3,685 30
 BILLIARD 3 TABLES 2 PER 3 TABLES 826 2
 STORAGE 267 SF (employee above) 267 0

EMPLOYEE 3 # EMPL/2 N/A 2

PARKING SPACES REQUIRED: 50

EXISTING SPACES: 38

The overall total required parking spaces based on interior net uses is 50 spaces. The site provides 38 parking spaces. A shared parking analysis was conducted by Kimley-Horn and Associates to evaluate the projected maximum parking demand for the proposed development, based on data published by ULI in *Shared Parking, Third*

Edition. A memorandum detailing the analysis is attached as Exhibit F. The analysis finds that the proposed uses are projected to have a maximum parking need of thirty-five (35) spaces during both weekdays and weekends.

Section 27- 540(c)(3) provides for a reduction of off-street required minimum parking for mixed or joint use of parking spaces. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. The City Council, after review from the community development board, may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap.

III. V24-02 FINDINGS:

- 1. The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.**

Staff Response: There does appear to be a unique hardship. The existing building already has air conditioning equipment less than two feet from the property line. The new condensers will be located in the same location (less than two feet from the property line) and will be screened with the required four-foot concrete wall enclosure.

- 2. The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.**

Staff Response: Yes, the variance is the minimum necessary to permit the building reuse.

- 3. The proposed variance would not adversely affect adjacent and nearby properties or the public in general.**

Staff Response: The proposed variance would not adversely affect adjacent and nearby properties or the public in general. The existing building already has air conditioning equipment less than two feet from the property line. The new condensers will be screened with the required four-foot concrete wall enclosure.

- 4. The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.**

Staff Response: The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.

- 5. The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.**

Staff Response: The variance request is in harmony with the general intent of the LDC.

- 6. The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.**

Staff Response: The proposed variance request for AC equipment setback is not created through the actions of the property owner.

7. **Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**

Staff Response: Granting the variance request for an AC equipment setback would not confer upon the applicant a special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

IV. D24-02 FINDINGS:

Sec. 27-82. - Procedures for applying for and issuing preliminary and final development orders states the community development board shall conduct a quasi-judicial public hearing and shall consider the following factors when issuing a development order:

1. **Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.**

Staff Response: The use is consistent with the surrounding zoning and uses. The site is surrounded by commercial uses to the north, east, and west side.

2. **Whether the concurrency requirements of article VI of this Code could be met if the development were built.**

Staff Response:

Traffic: The proposed redevelopment will NOT generate more than 50 pm peak trips over the prior use; therefore, a traffic study is not required.

Water/Sewer: This project area has water and sewer.

School: Not applicable

Drainage: Not applicable. No new impervious surface will be added.

3. **The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.**

Staff Response: The site contains an existing building and parking area. All uses are approved by right. The shared parking use adheres to standards to permit reduction for mixed or joint use of parking spaces. In accordance with 27-540 (c) 3, the City Council, after review from the community development board, may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap.

The property is serviced by a private lift station. The water main extends across the front of the property and ends at the hydrant just west of the lot.

4. **Conformity of the proposed development with the comprehensive plan, this Code, and other applicable regulations.**

Staff Response: The property has a Comprehensive Plan Commercial II Land Use designation and is zoned Commercial-3 (C-3) in the Neighborhood Commercial (NC) zoning district. Recreation, amusement, and entertainment uses are permitted uses in this district, including billiard and pool hall, indoor athletic and exercise facilities, tennis, handball or racquetball facility, night club, private club and bar/tavern. All

proposed uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces.

5. Applicable regulations, review procedures, and submission requirements.

Staff Response: All proposed uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. There are no outstanding land development or public utility comments. There may be additional Fire or Building comments to address at permitting.

6. Concerns and desires of surrounding landowners and other persons.

Staff Response: The variance for development order request was noticed as required to property owners within 300 feet. A sign was posted on the property according to requirements. Staff has not received any comments from the public.

7. Other applicable factors and criteria prescribed by the comprehensive plan, this Code, or other law.

Staff Response: Nothing outstanding.

V. STAFF RECOMMENDATION

V24-02:

Staff recommends approval of V24-02 variance from Section 27-328 (a) (1) d. to permit air conditioning units to be located 1.8 feet from the western side yard property as presented.

DP24-02:

Staff recommends approval of the application for DP24-02 Preliminary Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for LHV, LLC for the property at 450 Atlantic Blvd (RE# 172395-0060) to permit a mixed-use facility to include mixed martial arts training, racquetball, pickleball, karaoke bar, and pool tables. All uses are approved by right. The shared use parking adheres to standards to permit reduction for mixed or joint use of parking spaces. In accordance with 27-540(c) 3, the City Council, after review from the community development board, may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap.

The developer shall submit a Final Development Plan that complies with staff conditions for review by the City Council. The Final Development Plan shall be consistent with the Preliminary Development Plan and staff comments and shall contain no land uses different than those approved in the Preliminary Development Plan.

VI. RECOMMENDED MOTION:

- a. I recommend approval of V24-02 and DP24-02
- OR
- b. I recommend denial of V24-02 and DP24-02

Cindy Trimmer, with Driver, McAfee, Hawthorn and Diebenow and representing the property owner, addressed the board.

This will be a mixed-use facility including a package store for liquor to go. A masonry wall will be added to screen the air conditioning units on the west side of the building. There are thirty-eight parking spaces on the site.

Questions from the board:

Mr. Raiti: Are there four parking spaces to the north part of the property? Staff's reply: Yes, they are north of the Lemon Street easement. This section is called Lemon Street however it is not a City owned right-of-way, it is a privately owned egress and ingress easement.

Mr. Raiti: Are the stairs to the second floor still on the south side of the building?

Mr. Dunlap, Architect, stated the stairs at the rear of the property had been removed when the building was remodeled in 2021.

Public Comments

Chairperson Schwarzenberger opened the floor for public comments.

Mr. Jean Bakkes, 2009 Marsh Point Road, stated that he understood the air conditioning units will create noise and is concerned about the residential neighborhood that is behind this building.

There being no comments, the public hearing was closed.

Board Discussion.

Ms. Bylund stated: The property is close to the Neptune By the Sea neighborhood, but the noise will be contained by the masonry wall.

Mr. Hilton stated: Noise from the second floor and roof can be heard. This may be a concern.

Mr. Boran stated: That pickleball is noisy.

Chairperson Schwarzenberger stated: It was a cool concept.

Made by Atayan, seconded by Hilton.

MOTION: MOVE TO RECOMMEND APPROVAL OF VARIANCE 24-02, AS SUBMITTED.

Roll Call Vote:

Ayes: 6-Bylund, Hilton, Raiti, Boran Atayan, Schwarzenberger

Noes: 0

MOTION APPROVED.

Made by Boran, seconded by Atayan.

MOTION: MOVE TO RECOMMEND APPROVAL OF PRELIMINARY DEVELOPMENT PLAN DP24-02.

Roll Call Vote:

Ayes: 6-Bylund, Hilton, Raiti, Boran Atayan, Schwarzenberger

Noes: 0

MOTION APPROVED.

The applicant's agent was informed that the board only makes recommendations and that these cases would be forwarded to the City Council for their final review on June 3, 2024 at 6:00 pm. They should attend this meeting.

Replat DP 24-03
2101 Bartolome
Rd (RE#173399-
0000) Jean
Bakkes

DP24-03: Application for a replat as outlined in Chapter 27, Article 3 of the Unified Land Development Code of Neptune Beach for Marshpoint Properties Three, LLC for the property is currently known as 2101 Bartolome Rd. Lot 1 Block 29 of Florida Beach Plat No. 2 (RE# 173399-0000). The applicant requests to subdivide one existing lot into three lots.

Background

This is a request for a subdivision plat approval as outlined in chapter 27, division 3. – "Platting Requirements" for a property currently known as 2101 Bartolome Rd, (PIN:173399 0000). The subject property is located on the north side of Marsh Point Road and Bartolome Road in the R-4 zoning district. The lot is .41 acre (17,859 square foot) and contains one two-family duplex.

The applicant is requesting to subdivide the .41-acre (17,859 square feet) parcel into three conforming lots. The granting of the subdivision would create three lots for a total of two additional lots.

The R-4 Zoning has a minimum lot size of 4,356 square feet. The front and rear yard setbacks are variable but must equal 35 feet total and neither can be less than 15 feet. The side interior setback is seven feet. The side street setback is eight feet. Duplexes comprised of two attached homes are exempt from the interior side setback where the units meet.

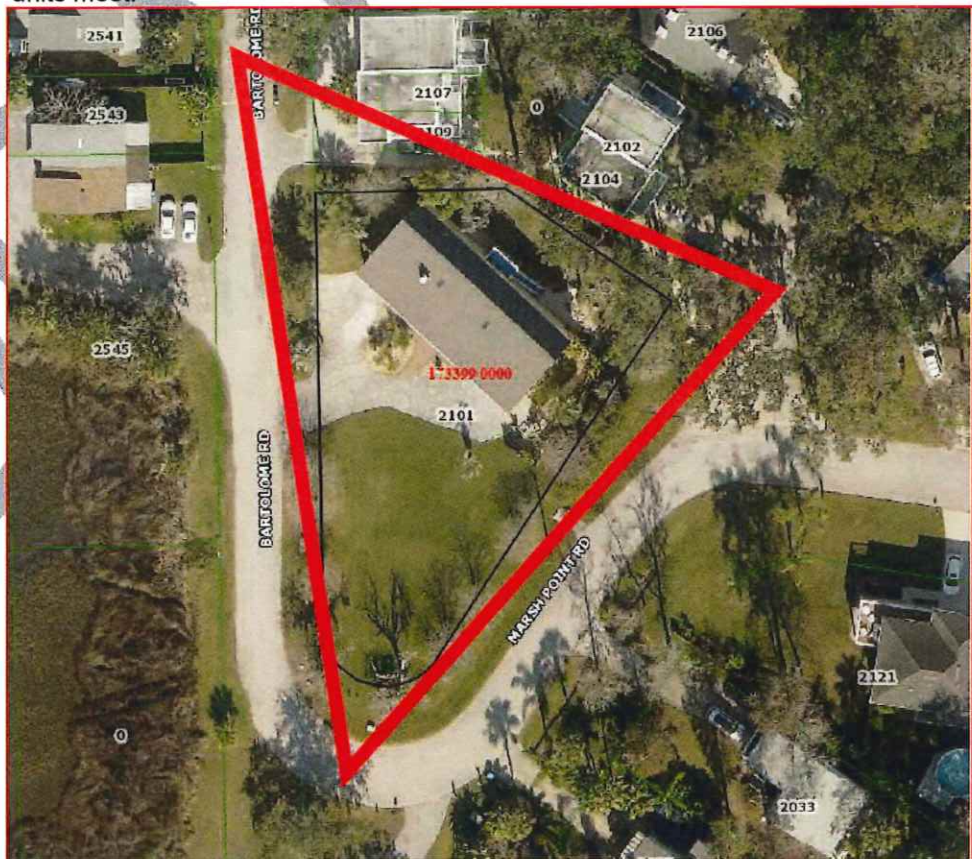


Figure 1: 2101 Bartolome Rd

Summary

The applicant is requesting to subdivide the .41-acre (17,859 square feet) parcel into three conforming lots. The granting of the subdivision would create three lots for a total of two additional lots. Each lot would meet the 4,356 square foot minimum lot size.

The existing lot contains one two-family duplex. The existing duplex will be divided into two lots along the shared wall, yielding a 5,566 square foot lot to the west (1A) and a 4,689 square foot lot to the east (1B). The balance of the parcel (1C) will be 7,297 square feet. The existing structure will adhere to all setbacks.

Staff Recommendation

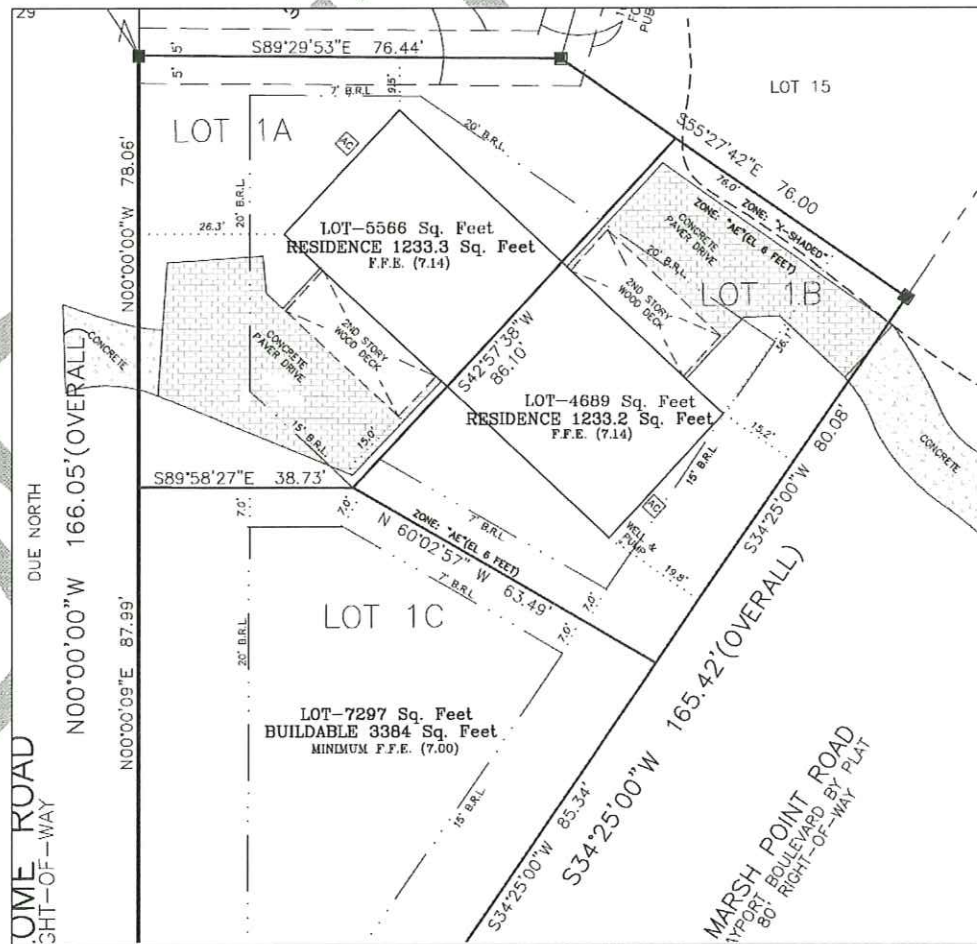
Staff recommends approval of application DP24-03 replat for 2101 Bartolome Rd.

Recommended Motion

I move to approve application DP24-03 replat for 2101 Bartolome Rd.

Or

I move to deny application DP24-03 replat for 2101 Bartolome Rd.



Mr. Jean Bakkes, 2009 Marsh Point Road and owner of the property addressed the board. Purchased the property in February of 2022. There was an existing house on the property that has recently been renovated into a two-unit townhouse. Each townhouse has 4 bedrooms and 3 baths with a firewall dividing them. Each townhouse

will be sold and owned separately. The remainder part of the lot will be used for a new single-family dwelling.

Public Comments

Chairperson Schwarzenberger opened the floor for public comments.

Gary Flagler, 2121 Bay Road, lives across the street from the property. Concerned about the multi-family versus a single-family dwelling. Stated he never received a notice. Was any traffic or flood studies done? Very concerned. Against the request due to the nature and the beauty.

Jessica Bradstreet, 2146 Acacia Road, stated her husband (Mr. Gibson) had sent an email to the board. No notification was sent either. The purpose of the ULDC is to protect natural beauty. The use is not specified.

Scott Mollan, 2102 Acacia Road, supports keeping the land together. Try to preserve the neighborhood. People watch the sunset from this property.

Also Mr. Wil Gibson. 2142 Acacia Road emailed a letter to be saved by each member. This email included in the minutes.

From: Will Gibson <gibson_w@outlook.com>
Sent: Monday, May 6, 2024 10:40:54 PM
To: cdb@nbfl.us <cdb@nbfl.us>
Cc: gflagler3@aol.com <gflagler3@aol.com>
Subject: May 8 CDB Meeting Agenda Item #7

Members of the Community Development Board,

I am writing in regard to agenda item #7 of the May 8, 2024 CDB meeting which reads, "DP24-03 Application for a replat as outlined in Chapter 27, Article 3 of the Unified Land Development Code of Neptune Beach for Marshpoint Properties Three, LLC for the property is currently known as 2101 Bartolome Rd. Lot 1 Block 29 of Florida Beach Plat No. 2 (RE# 173399- 0000). The applicants are requesting to subdivide one existing lot into 3 lots. The property is in the R-4 zoning district." I am unable to attend the meeting due to a schedule conflict but would like to register my concerns for the following reasons:

1. The application filed by Marshpoint Properties Three, LLC is either incorrect or out-of-date (as this matter was previously tabled). The application provided in the package, in the "Describe Request Being Made" section states, "Subdivide existing lot into 4 lots. No variances requested. Split duplex into 2 townhouses." All other documents say 3 lots, but the applicant requests 4 in the application provided as evidence. **The applicant should present a corrected application or be denied.**
2. Can the CDB confirm the height of the structure currently on the lot? Is it less than 28 ft. tall? I cannot find any documentation listing the height. If the structure is greater than 28 ft. tall, then subdividing the lot would make it non-compliant. As it stands on its current lot, it would be grandfathered under previous ordinances if it were greater than 28 ft., but subdividing into new lots would make it noncompliant if the height of the structure exceeds 28 ft. **Please investigate this and provide the height of the structure and deny the application if the structure will be non-compliant on the new lots.**
3. The property at 2101 Bartolome Rd. is zoned as a duplex, which is defined in the ULDC as "**Duplex** (two-family residence) means a building on a single lot

containing two (2) dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall. A common stairwell exterior to both dwelling units may be provided." The applicant requests that the duplex be split into 2 townhouses. The definition for a townhouse is "**Townhouse** means a single-family dwelling constructed in a series or group of attached units in which each unit has its own front and rear access to the outside and no unit is located over another unit, with property lines and fire walls as required by the Florida Building Code, separating each unit." Duplexes and townhouses are defined differently. No evidence has been provided that shows that these units conform to the definition of a townhouse, including property lines AND fire walls as required by the Florida Building Code. **Please provide evidence that these structures will be compliant as townhouses if the lot is split. Were development permits issued to convert this structure from a duplex to a townhouse? If so, please provide evidence. If not, this application should be denied.**

4. The applicant does not specify the land use for proposed LOT 1C as is required by the ULDC, other than it is buildable land. **What type of structure is proposed? If the proposed structure is something other than a single-family dwelling, would that type of dwelling be compliant on that parcel?**
5. Gary Flagler (Cc'd) is an adversely affected person in this matter, as the plot lies directly west of his property within a 300 ft. radius of the subject property. **He did not receive notice by mail of this hearing as is required.**
6. The intent of zoning rules in the ULDC includes "To regulate density of population and thus prevent the overcrowding of land in order to facilitate the provision of adequate community facilities and services such as water, sewerage, schools, parks and similar city functions." **Approving this application would increase population density and would deteriorate our already inadequate services in this neighborhood, including streets, sewers, water, and storm drainage.**
7. The ULDC states that the design goals and design objectives for new construction or improvements include:
 - a. To preserve the natural beauty of Neptune Beach and protect the residential character of the city from the effects of inharmonious and out of scale developments.
 - b. To conserve the city's natural beauty and visual character and charm by ensuring that structures and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of buildings, structures, and other improvements.
 - c. To protect and enhance the city's aesthetic and natural appeal.
 - d. To maintain and improve property values.
 - e. Neighborhood design. Site improvements should be compatible with structures existing on neighboring parcels and should be sensitive to their designs and property rights. *Designs which conflict with the use and enjoyment of any property should be avoided.* Buildings should be designed in scale with the neighborhood and should complement the character of the neighborhood, rather than conflict with it.

- f. **The proposed division of plots and resulting construction of additional dwelling(s) does not meet the above goals of the ULDC. This would allow a structure to be placed directly in front of the home of Gary Flagler and other nearby residents and block their access/views of the natural beauty of the intracoastal waterway and potentially diminish the value of the nearby properties as a result.**
8. The R-4 district is permitted for single-family residences and two-family (duplex) residences. It is not permitted for multi-family residences, which includes townhouses. The applicant has requested that the units be designated as townhouses, not duplexes. Therefore, they are not allowed in R-4. One reason why the applicant requests designation as a townhouse (multi-family residence) is that townhouses do not require side yards for interior units. In the Background section of the Staff Package it states, "The R-4 Zoning has a minimum lot size of 4,356 square feet. The front and rear yard setbacks are variable but must equal 35 feet total and neither can be less than 15 feet. The side interior setback is seven feet. The side street setback is eight feet. *Duplexes comprised of two attached homes are exempt from the interior side setback where the units meet.*" That is not correct – words have meaning, and duplexes and townhouses carry different definitions in the ULDC. The interior side setback rule does not apply to duplexes according to the ULDC – it applies to townhouses, which the applicant wants as a designation. **Apply the rules based on the definitions listed in the ULDC. Townhouses are not allowed in R-4 and this application should be denied.**

Based on the concerns listed above, I do not believe that this application should be approved, and I request that you reconsider your position on this matter. Thank you for your time and consideration.

Kind regards,
Will Gibson
2146 Acacia Rd., Neptune Beach

Mr. Bakkes stated that he understands their concerns, but he is the owner of the property.

Heather Whitmore, Community Development Director, cleared points made. This is a request for a replat and not a variance or special exception. The code does not require neighbors to be notified by mail for replats. The Code only requires that the property to be posted and a public notice to be published in the local newspaper.

There being no comments, the public hearing was closed

Board discussion:

Chairperson Schwarzenberger: Is this solely for a replat? Yes, it is.

Mr. Hilton: The City Council should look at changing this block from R-4 to single family zoning.

Made by Boran, seconded by Hilton.

MOTION: MOVE TO RECOMMEND APPROVAL OF THE REPLAT TO THE CITY COUNCIL, AS SUBMITTED.

Roll Call Vote:

Ayes: 6-Bylund, Raiti, Atayan, Boran, Hilton, Schwarzenberger

Noes: 0

MOTION APPROVED.

The applicants were informed that the City Council must make the final approval and they should attend the meeting on June 3, 2024 at 6:00 pm.

Replat DP 24-04
108 Orange Street
(RE#172769-0000)
Douglas Driver, III

DP24-04: Preliminary Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast.

I. BACKGROUND: A Preliminary Development Plan application for a Bed and Breakfast has been submitted for 108 Orange St (RE# 172769-0000). The property has a Comprehensive Plan Town Center Land Use designation and is zoned Central Business District (CBD). Bed and breakfast is a permitted use in this district.

In 2015, the Drivers made an application for a Special Exception application for a Single-Family Home for 108 Orange St. The City denied the application and the Drivers sued the City for a petition for writ of certiorari for the City denying their application. This writ of certiorari ordered the lower court (Neptune Beach) to deliver its record in a case so that the higher court (Circuit County of Duval County) may review it.

There were two separate items that were denied and for which the Drivers filed writs of certiorari. One was the Special Exception for the Single-Family Home and one was a variance for setbacks and height. In 2022 the Duval Court agreed that the City had sufficient competent substantial evidence on both to deny it, and the City prevailed (See attached Case No. 16-2022-AP-18 Final Order Denying Petition for Writ of Certiorari).

II. DISCUSSION:

Chapter 27 Article III Administrative and Enforcement Procedures Division 2 Development Review of the Unified Land Development Code of Neptune Beach requires a preliminary and final development plan (development order) approval when "Changing or expanding any use of a site so that the need for off-street parking is increased." Section 27-76 states that "all development in non-residential districts" requires a development order.

A Preliminary Development Plan application for a 3,507 square foot three story bed and breakfast has been submitted by the property owners for the property located at 108 Orange St. (RE # 172769-0000). The existing lot of record is 50' x 55'. The existing vacant property is located on the northeast corner of Orange St. and Midway St. The property is within the Central Business District (CBD) and is surrounded by CBD zoning on the east, north and west. The properties to the south are zoned RC/R-4. The immediate properties surrounding the vacant lot consist of single family and multi-family properties.



The proposed bed and breakfast has two rental/guest bedrooms and one owner's suite and provides a total of two parking spaces. The ground floor/1st floor consists of an interior parking garage for one parking space and guest bedroom, the 2nd floor consists of living area, lobby and kitchen, and the 3rd floor consists of a guest room and the owner's suite.

Site Plan/Building Plan:

Below is a chart showing development standards for the CDB are and the proposed bed and breakfast:

	Per Code	Proposed
Min. lot area	none	2,750 sq. ft.
Min. lot width	none	50 ft.
Min/Max front yard setback (Orange St.)	0/10 feet	10 feet
Min/Max corner yard setback (Midway)	5/15 feet	11 feet
Min. rear yard setback	5 feet	5 feet
Max. lot coverage	85%	53.7%
Max. building height	35 feet	35 feet
Min. Building frontage buildout	70%	74%

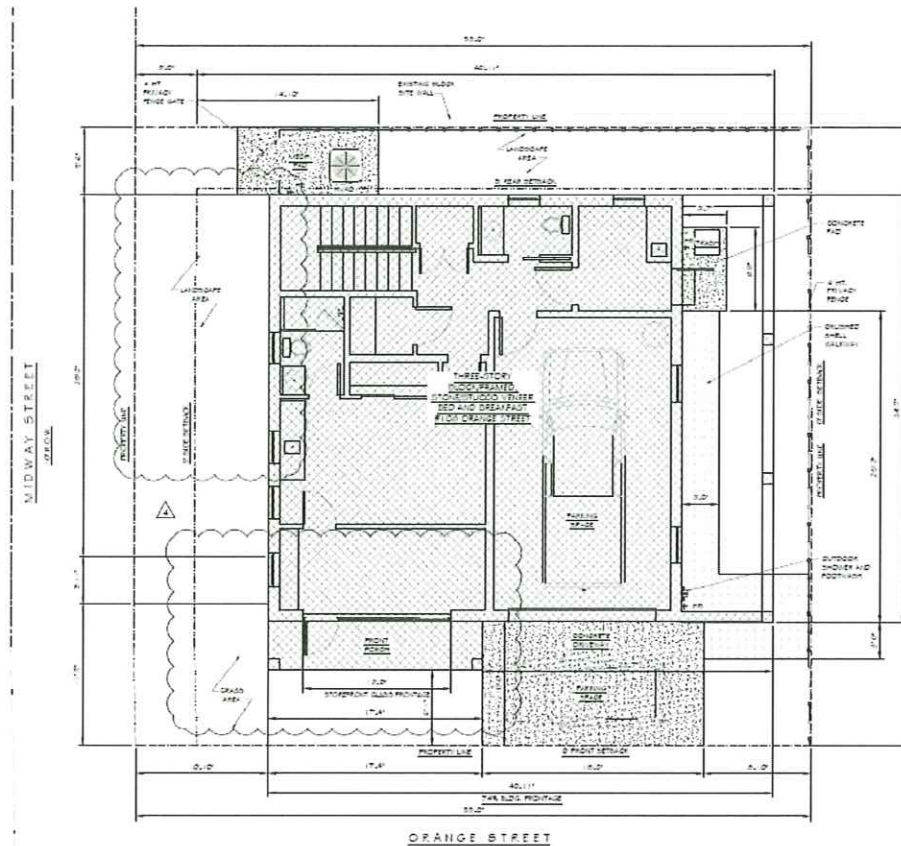


Figure 2: Proposed Site Plan 108 Orange St, Neptune Beach, FL

The building complies with setbacks, lot coverage, height, and frontage buildout requirements in the CBD.

The building complies with the elevation frontage requirements and standards of the CBD.

The building has one primary frontage on Orange St. The Orange St. first-floor frontage included a Lobby door and garage door. The building frontage is a Lobby style and an accessible front entry from the first floor at sidewalk level. The building's first floor façade is 35% transparent. The building's second floor façade is 40% transparent.



Figure 3: Proposed Frontage Elevation (Southern Elevation facing Orange St)
108 Orange St, Neptune Beach, FL

Sec. 27-236. – “Frontage requirements and standards” and Sec. 27-246. – “Central Business District (CBD) zoning district – special regulations” require all building frontages in the CBD to be either Storefront or Lobby with 30%-70% façade transparency. Storefronts and Lobby’s shall be accessible from the sidewalk level.

Section 27-246 (b) and (c) state:

(b) Commercial building frontage standards. New commercial development shall comply with the required frontage types and associated standards detailed in Section 27-236

(c) Commercial building design standards.

(1) Storefront design. The storefront is a frontage type along sidewalk level of the ground story, typically associated with commercial uses. Storefronts are required for the ground floor of all buildings located on streets designated with Required Retail Frontage and may be incorporated on any building in the Central Business District (CBD), Neighborhood Center Overlay (NC), and C1 districts. Storefronts are frequently shaded by awnings. Storefronts shall be directly accessible from sidewalks;

(2) Entrances and Access. All new buildings should have the main entrance oriented to and in full view from a street or public open space. Main entrances shall have design details that enhance the appearance and prominence of the entrance so that it is recognizable from the street and parking areas. Building on corner lots shall use design elements that emphasize the importance of both streets.

(3) Transparency. All building facades which face onto a street or public open space, shall meet the following minimum transparency requirements:

a. Buildings with Shopfronts (Figure 27-246-3)

i. Minimum building façade transparency for ground story: 70% and should allow a view of at least 5' of interior space

ii. Minimum building façade transparency for upper stories: 40%

b. Building without Shopfronts (Figure 27-246-4)

i. Minimum building façade transparency for ground story: 30%

ii Minimum building façade transparency for upper stories: 25%

Driveway/Parking:

The site is served by a total of two parking spaces, one parallel space and one garage space. Per the parking requirements in 27-540-1 the development is required to have one parking space per guest room and two parking spaces for the owner/operator for a total of four spaces.

Per, 27-540 (c) the CBD is given a 50% reduction in parking however; therefore the development requires two parking spaces. The site layout parking access configuration complies with driveway standards and maximum driveway apron width.

III. D24-04 FINDINGS:

Sec. 27-82. - Procedures for applying for and issuing preliminary and final development orders states the community development board shall conduct a quasi-judicial public hearing and shall consider the following factors when issuing a development order:

1. Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.

Staff Response: The use is consistent with the surrounding zoning and uses. The site is surrounded by majority residential uses, as well as commercial uses along First St.

2. Whether the concurrency requirements of article VI of this Code could be met if the development were built.

Staff Response:

Traffic: The proposed redevelopment will NOT generate more than 50 pm peak trips; therefore a traffic study is not required.

Water/Sewer: This project area will require water and sewer extensions (See attached Public Works Comments)

School: Not applicable

Drainage: Site may require stormwater permitting from Saint John's Water Management District (See attached Public Works Comments).

3. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

4. Conformity of the proposed development with the comprehensive plan, this Code, and other applicable regulations.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.
The site will require additional utility planning (See attached Public Works Comments).

5. Applicable regulations, review procedures, and submission requirements.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.
The site will require additional utility planning (See attached Public Works Comments).

See attached Fire review comments.

6. Concerns and desires of surrounding landowners and other persons.

Staff Response: A sign was posted on the property according to requirements. Staff has received comments from the public.

7. Other applicable factors and criteria prescribed by the comprehensive plan, this Code, or other law.

Staff Response: The site will require additional utility planning, See attached Public Works Comments See attached Fire review Comments

IV. STAFF RECOMMENDATION

Staff recommends approval of the currently proposed application for DP24-04 Preliminary Development Plan for the property at 108 Orange St (RE# 172769-0000) to permit a bed and breakfast (as presented).

See attached Planning and Zoning Comments

See attached Public Works Comments

See attached Fire Comments

The applicant provided a preliminary response to staff comments on May 3, 2024 and provided an updated revised site plan (see attached). The applicant responded to all Planning and Zoning comments on May 8, 2024 and provide a revised site plan, floor plan, and elevations. The revised proposed Preliminary Development Plan as updated on May 8, 2024 complies with all planning and zoning development standards.

The developer shall submit a Final Development Plan that complies with staff conditions for review by the City Council. The Final Development Plan shall be consistent with the Preliminary Development Plan and staff comments and shall contain no land uses different than those approved in the Preliminary Development Plan.

V. RECOMMENDED MOTION:

a. I recommend approval of DP24-04

OR

b. I recommend denial of DP24-04

Mr. Douglas Driver, III, 1150 Penman Road and owner of the property addressed the board. His family purchased the property in 1989. There was an existing duplex on the property that was demolished in 2007.

The property is being used for parking and dumping site by the neighbors and beach goers. Would like to build a bed and breakfast. Will generate revenue and increase property values for the neighbors. Legally allowed to build a bed and breakfast on the property.

Questions for Staff and applicant:

Ms. Atayan: The fire review had one question about tight turning since the curb has been removed.

Mr. Moran: How many B & B do we have? None

Mr. Hilton: There was originally 3 parking spaces. Where will the other guest park? Mr. Driver stated that they were only required to provide two. One will be in the garage and the other one in front of it. The extra parking space had to be removed, because of the allowable driveway width.

Mr. Hilton: Why is there no kitchenette in guest room number 2? We deemed that it was not necessary and removed it.

Is there a roof top deck planned? No, roof top deck.

Guest #1 will enter through the lobby and guest #2 will enter through the laundry area or garage. Mr. Driver stated that guest #1 will be the primary guest room. Mr. Kevin Solman, architect, the lobby is access to the first floor and the second guest room and owner's suite will be accessed by the side door through the laundry.

Public Comments

Chairperson Schwartzenberger opened the floor for public comments.

Henny Schoonover, 214 Oceanfront, opposes the application. Passed a drawing on how this property will compare in height to the surrounding buildings. Opposes the 35-foot-tall Bed and Breakfast beside my house and in my neighborhood. This proposed building will replace a 1268 square foot two-story house that once stood on that lot. The land development code includes Bed and Breakfasts as one of numerous "permitted uses" in the CBD along with Hotels, Motels, interior service restaurants, carry-out and delivery restaurants, government uses, utilities, public park, recreation, amusement, and entertainment, including billiard and pool halls and the list goes on. None of these permitted uses are compatible within the residential section of the CBD. Our established neighborhood is made up of single and two-family homes that are two-story, none being taller than 28 feet. The proposed building of 35-feet will stand and full story above all the other houses around it. It just does not fit.

According to Section 27-222 of the ULDC-Purpose and Intent of zoning district "this zoning article must impose certain appropriate restrictions on the use of land within the city limits of Neptune Beach to ensure that future development is in keeping with the existing development."

Regarding neighborhood design: The proposal as it stands now is not in scale or character with the neighborhood.

Regarding scale, mass and bulk: The ratio of square footage to land of this building is 1:.94 while existing homes in this neighborhood have a ratio anywhere from 1:1.8 to 1:4.14, further illustrating the fact that this proposed building is out of proportion and density with surrounding buildings.

Regarding privacy. The proposed height of 35 feet is not sensitive to the surrounding neighbors.

Allow this proposal to go forward will set a bad precedent for our neighborhood and the City of Neptune Beach. Regardless of zoning designation, the extra traffic created and parking hassles with a B&B is not fitting with our neighborhood ambience. Please listen to the concerns of the people living in this neighborhood. The City of Neptune Beach's own ULDC will not permit this land usage as proposed.

George Schoonover, 214 Oceanfront, opposes the applicant's request to build a B&B at 108 Orange Street. As outlined in Florida Statutes, the Community Development Board shall consider the following factors: The nature of the proposed development, including land use types and densities; proposed parking areas, "and the concerns and desires of surrounding landowners and other persons".

The following stated goals and objectives are taken directly from NB's codes. Purposes and Intent of Zoning districts. The design goals for new construction are; to preserve the natural beauty of NB and protect the residential character of the effects of inharmonious and out of scale developments in order to maintain and improve property values.

Site improvement should be compatible with structures existing on neighboring parcels and should be sensitive to their design and property rights. Designs which conflict with the use and enjoyment of any property should be avoided. Buildings should be designed in scale with the neighborhood and should complement the character of the neighborhood, rather than conflict with it.

Buildings should not present excess visual mass or build to public view or to adjoining properties. Large box-like buildings can appear massive. When viewed from the public right of way, excessive mass detracts from the character of NB's individual neighborhoods. When viewed from adjoining properties, excess mass can effectively act as a wall that dominates neighboring structures and interferes with the enjoyment of open space and the free passage of light and air.

Design should respect views enjoyed by neighboring parcels. It is the intent of this objective to balance the private rights to views from all parcels that will be affected by a proposed build or addition. No single parcel should enjoy a greater right than other parcels except for the natural advantages of each site's topography. Building which substantially eliminates an existing view enjoyed on another parcel should be avoided. A 35-foot-high flat wall certainly qualifies for that characterization.

Another consideration for a bed and breakfast on this parcel is the lack of surrounding infrastructure. The parcel is on Midway, a narrow one-way street to Lemon. There is no sidewalk or curb. There is one dim streetlight at the corner of Orange and Midway as well as confusing street signage. It would be harrowing for a driver or pedestrian to navigate these handicaps without prior knowledge. For these reasons, I oppose the application.

Dreanna Bane, 600 Second St, read a letter from Ronald and Diane Wingate of 700 Oceanfront: "Dear Neptune Beach Community Development Board, We are writing this letter in hopes that this committee will vote against the application to establish the Driver Inn at 108 Orange Street in Neptune Beach, FL. There is absolutely no parking for a business on that small section of Orange Street. Also, most people that live at the beach have many visitors because we live at a safe beach. This warm weather has already brought many people. We live at the end of Cedar Street (public access) and have never seen so many headed to the beach that we have we have never seen before. Sincerely Yours, Ronald and Diane Wingate.

Judy Williams, formerly owned 98 Orange St, it is crowded and asked the board to look at the plans closely.

Shellie Thole, 310 Oleander St., this is not the same packet that has been changed since it was originally sent out. How do you make a decision, if you have not had a change to look over it?

Ray Lin, 310 First St, I don't see how it will improve property values. It will diminish. It will not look like the old houses.

Heather Peters, 93 Orange St, lives across the street and as the owner stated, they can not control the parking as it is now. How are they going to control it in the future. How does a business become successful with only two parking spaces? Are we saying it's a business when its not? Does not want to see this happen. What is the logic behind the two parking spaces?

Dr. Juan Leoni, 111 Orange St, owns property diagonally from 108. Would like to have something to be built there. People are using the lot to hang out. The owners should use the lot to be neighborly and friendly.

Mr. Driver stated that he understands their concerns, and that the last two speaks made a point with the property being vacant and being used for drugs. This is why we want to build a house here and use it as a bed and breakfast. As for the reason why there is not a kitchenette on the third floor. There is a kitchen on the second floor with access to that room. In addition, we are primarily looking to just rent out the first floor bedroom, so two parking spots should be ample space for that.

I hear a lot of feelings from people say that don't like it, if they don't like it, then they should work towards changing the law. We are trying to meet all the rules and regulations. Putting all of his life savings into this house/bed and breakfast, whatever you want to call it. There will be security cameras, looking at building a gate in the future.

There being no comments, the public hearing was closed.

Board Discussion:

Ms. Bylund: This is not a replat and we do have factors to be considered. #1 Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses- this is zoned commercial and but people came in and built in this area. The land use is residential even though it is zoned commercial. Parking is a huge consideration. It is not realistic to have two parking spaces. There is the people living there, the people staying there, possibly people working there and people visiting the guests. The math do not add up at all. Has a problem will be contributing to the parking problem. Someone wants to have a 35-foot house that is out of keeping with all the other houses around it. Wonderful if there is something they could do differently. Especially the park.

Ms. Atayan: We look at the intensity of the businesses, it is too high of an intensity for this area. We may need to revisit the zoning district and redefine the uses. The height and size of it is out of nature of the surrounding area.

Mr. Raiti: The size and bulk of the building is not in keeping of the neighboring properties.

Mr. Schwartzenberger: Borders Seahorse, Lemon Bar and we will see changes coming in the futures. There is a permitted use, it would be a lovely area for someone to stay. A single-family is what everyone want, but a single-family house is not allowed by right.

Mr. Hilton: If someone were to come before the board to build a single-family dwelling on the property, what would the height be? Ms. Whitmore stated it would have to comply with the RC overlay requirements and the height of 28 feet.

Mr. Raiti: The mass of the building weighs on him. You don't have to overshadow the neighborhood.

Mr. Driver was given the floor again. He stated the intent is to rent this out and the intent is not to just have a house. As for the parking, there was 3 spaces originally planned but was told that he could not have more than an 18-foot wide driveway. Would be happy to reinstate that parking space. The goal is to have one couple come and stay at the B&B routinely as a vacation style rental. Does not want twenty-five plus people visiting the house. I will be living there, I don't want to see 25 people myself. In fact I would prefer not to see them at all. They will come in and out a separate entrance. That is the intent, just wanted to make that know.

Mr. Boran asked Mr. Driver: Who is the owner/operator? Mr. Driver stated that he would be the owner/operate but that he did not want to have undue interaction with the guest. They will have their own entrance for the first floor. They will have a bedroom and I will feed them, but not hanging out with them.

Ms. Atayan: You stated that you wanted limited contact with the guest on the first floor and you also have a guest room on the same floor as your bedroom. You will have direct contact with that guest and sharing facilities with them. Is a B&B guest or a family member? Mr. Driver stated it is just another room in the house and does not see if it is rented or not that it is relative.

Mr. Boran: So, your B&B is a one single bedroom with a kitchenette. Yes, I have a full time job and maybe in the future I will rent the other guest room.

Mr. Hilton: I'm confused. In my experience with Bed and Breakfasts, you typically go to someone's home, they have multiple bed and bathrooms, and they service you several meals and they interact with their guest. I don't normally go to B&B's because I am not comfortable with this. I'm confused about the model.

Becky Driver, the owner, stated that her son plans to come in and service the breakfast and that he plans to live there.

Ms. Atayan: There is a guest room on the third floor where he plans to live. For the transient guest, there will only one bedroom for guest? Yes.

Ms. Bylund: This seems to be not as what it has been presented and the parking. This a reason I would use to reject, and I believe it is a legal reason and would pass mustard.

Mr. Boran: Parking cannot accommodate the people coming in.

Mr. Raiti: The natural man-made features are not in coordinate with the design. The parking does comply with the 50% reduction.

Made by Bylund, seconded by Hilton.

MOTION: MOVE TO RECOMMEND DENIAL DP24-04 TO THE CITY COUNCIL.

Roll Call Vote:

Ayes: 6-Bylund, Raiti, Atayan, Boran, Hilton, Schwarzenberger

Noes: 0

MOTION APPROVED.

The applicants were informed that the City Council makes the final decision and the applicant should attend the meeting on June 3, 2024 at 6:00 pm.

The board discussed the need for a definition of "Historically Significate" before presenting anything to City Council.

Mr. Raiti asked about the non-conforming section of the code. In particular, you can not "enlarge or reduce" of a non-conforming.

Mr. Roth stated: Conforming is the only part that cannot be changed. The section only applies if it was built correctly but then the code changes after the fact. This second of the code is very poorly written and should be reviewed.

May 8, 2024

The non-conforming is very muddy and the board needs to look at it in the future.

Zack Roth, City Attorney, informed the board that he has given his resignation and will be leaving once a replacement has been found.

Greg Schwarzenberger, Chairperson

ATTEST:

Piper Turner, Board Secretary

DRAFT



MINUTES
SPECIAL CITY COUNCIL MEETING
AUGUST 19, 2024, 6:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice, a Special City Council Meeting of the City Council of the City of Neptune Beach was held on Monday, August 19, 2024, at 6:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida, 32266

IN ATTENDANCE:

Mayor Elaine Brown
 Vice Mayor Kerry Chin
 Councilor Lauren Key
 Councilor Nia Livingston
 Councilor Josh Messinger

STAFF:

City Manager Richard Pike
 City Attorney Zachary Roth
 Chief of Police Michael Key
 Chief Financial Officer Jaime Hernandez
 Community Development Director Heather Whitmore
 Public Works Director Deryle Calhoun
 Parks and Sustainability Director Colin Moore
 City Clerk Catherine Ponson

Call to Order/Roll
 Call/Pledge

Mayor Brown called the meeting to order at 6:00 p.m. and Councilor Key led the Pledge of Allegiance.

SWEARING-IN CEREMONY

Swearing-In
 Ceremony

Chief of Police Michael Key introduced Commander Gary Stucki and Sergeant Jason Haines, both recently promoted. He also introduced new Neptune Beach Police Officers Kellin Ronquille, Matthew Tanner, and Samuel Williams.

Mayor Brown administered the Oath of Office and congratulated all of them on their new positions.

Point of Order

Councilor Key called for a Point of Order. She stated that during the swearing in ceremony, someone made a snarky comment about integrity. The comment came from a female on the right side of the room [from the dais]. She would like to call for decorum and asked that this please not happen again and to do something like that while officers are being sworn in is completely inappropriate. She asked that the meeting not start out in such a manner where people are behaving this way.

CITY ATTORNEY APPLICANTS

City Attorney
 Applicants
 Presentation

Mayor Brown reported that the City of Neptune Beach is in the process of hiring a new City Attorney due to the current City Attorney submitted his resignation. Three attorneys responded to the RFP: Ian Brown, Clayton Knowles and Vose Law Firm. They were all invited to present to Council at this meeting.

After the attorneys presented to Council, Mayor Brown advised that the decision would be made at the Special Meeting scheduled for Wednesday, August 21, 2024, at 6:00 p.m.

VARIANCES / SPECIAL EXCEPTIONS / DEVELOPMENT ORDERS

108 Orange Street P24-04, Application for Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast. The property is in the CBD zoning district.

Break At 7:01 p.m., Mayor Brown advised there would be a short break. The meeting reconvened at 7:08 p.m.

City Attorney Zach Roth administered the oath for anyone wishing to speak during this item.

Staff Presentation Heather Whitmore, Community Development Director, explained this is a request for a Preliminary Development Plan as outlined in Chapter 27, Article III, Division 2, of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast. This item was heard at the May 8, 2024, Community Development Board Meeting.

Ms. Whitmore continued that the property has a Comprehensive Plan Town Center Land Use designation and is zoned Central Business District (CBD). Bed and breakfast is a permitted use in this district. Chapter 27, *Article III, Administrative and Enforcement Procedures, Division 2 Development Review*, of the Unified Land Development Code of Neptune Beach requires a preliminary and final development plan (development order) approval when "Changing or expanding any use of a site so that the need for off-street parking is increased." *Section 27-76* states that "all development in non-residential districts" requires a development order.

A Preliminary Development Plan application for a 3,507 square-foot three-story bed and breakfast has been submitted by the property owners for the property located at 108 Orange Street. The existing lot of record is 50' x 55'. The existing vacant property is located on the northeast corner of Orange Street and Midway Street. The property is within the CBD and is surrounded by CBD zoning on the east, north and west. The properties to the south are zoned RC/R-4. The immediate properties surrounding the vacant lot consist of single-family and multi-family properties. The proposed bed and breakfast has two rental/guest bedrooms and one owner's suite, and provides a total of two parking spaces. The ground floor/1st floor consists of an interior parking garage for one parking space and guest bedroom, the second floor consists of living area, lobby and kitchen, and the third floor consists of a guest room and the owner's suite.

The building complies with setbacks, lot coverage, height, and frontage buildout requirements in the CBD. The building complies with the elevation frontage requirements and standards of the CDB. The building has one primary frontage on Orange St. The Orange St. first-floor frontage included a lobby door and garage door. The building frontage is a Lobby style and an accessible front entry from the first floor at sidewalk level. The building's first floor façade is 35% transparent. The building's second floor façade is 40% transparent.

The site is served by a total of two parking spaces, one parallel spaces and one garage space. Per the parking requirements in 27-540-1 the development is required to have one parking space per guest room and two parking spaces for the owner/operator for a total of four spaces. Per, Section 27-540 (c) the CBD is given a 50% reduction in parking, therefore

the development requires two parking spaces. The site layout parking access configuration complies with driveway standards and maximum driveway apron width.

Staff recommends approval of the proposed application for DP24-04 for 108 Orange Street, as presented herein. The development plan complies with all planning and zoning development standards. It complies with all commercial building standards and commercial fire code standards.

Applicant
Presentation

Zach Miller, representing the applicant, 3203 Old Barn Court, Ponte Vedra Beach, stated the property is .06 acres and has been vacant for over a decade. He expressed that this is not a zoning, variance, or a special exception request. This is a development plan. It meets every part of the Code. It meets every part of the CBD. This is just whether the permit meets the Code. He pointed out the two interior parking spaces and stated that if this was a residence, the parking could be tandem. He stated if this was a way to get around the Code to do a single-family residence where the Code does not allow single-family residences except by exception, you would not go to the effort of having two parking spaces interior. That is a requirement for commercial zoning.

Mr. Miller stated that the property is zoned CBD and bed and breakfast is permitted, It is the least intensive use, other than public park, of all the uses that are allowed by right on the property. He also added that the definition of bed and breakfast states a person has to be occupying it for it to be a bed and breakfast. The owner has to live onsite as required by the definition in the Code. He pointed out the façade standards had been met.

Mr. Miller reported that a letter had been received from an attorney, Karl Sanders, representing the neighbors. An issue that had come up is that this had already been decided by a court. The previous application was for an over 5,500 square-foot bed and breakfast. The application that is before Council now is 3,500 square feet of air-conditioned space and the total including porches and garages is 3,900 square feet. This is a material difference in the application. The staff report contains the criteria, and it states the criteria has been met. As a matter of law, that is competent substantial evidence.

Public Hearing

Mayor Brown opened the public hearing.

Rosemary Naughton, 516 1st Street, Neptune Beach, stated unique Neptune Beach is respective of its old-fashioned village lifestyle, which is loved, and we want to protect and is very hard to find these days. The other homes in the area are 28 feet tall as required and to allow a 35-foot towering structure would diminish and compromise the rights of useful enjoyment of the existing homes. She also spoke regarding the congestion, parking and obstructed views of neighboring homes.

Judith Williams, 771 Providence Island Court, Jacksonville, stated she and her husband had lived at 98 Orange Street. She spoke regarding the "by right" clause and it does not apply. She added that the Code clearly states that one person's rights cannot supersede those of existing residents.

Henny Schoonover, 214 Oceanfront, Neptune Beach, spoke in opposition to the applicant's request to build a B&B at 108 Orange Street. The neighborhood is a happy mix of shingle, lap-sided and board and batten cottages, all are relative in scale to one another. The proposed B&B does not fit the scale and character of the neighborhood. She requested Council listed to the cares and concerns of the people living this neighborhood and to the recommendations of the Community Development Board.

Heather Peters, 99 Orange Street, Neptune Beach, spoke in opposition to the application. She stated that it would be nice to have a one- to two-story residential home that fits the residential neighborhood instead of a vacant lot. Her house sits directly adjacent to what

The submitted statements in their entirety are on file in the office of the City Clerk.

Applicant Rebuttal

Mr. Miller stated that regarding the LDC, the project meets the lot area, lot width, front yard setback, corner lot setback, rear yard setback, and the lot coverage is met by over 30%.

Mr. Miller reported that the Code sets the building height at 35 feet. The Code made this a commercial zone. This is the least intensive use allowed for this property. He explained that the staff report is competent substantial evidence. He pointed out that Code Section 27-222, Purpose and Intent of Zoning Districts, is not mentioned in that report. Section 27-222 is the overriding guidelines that the Code gives in drafting a particular code for each district. That was the guidepost for the drafting of Code Section 27-82, Procedures for Applying for and Issuing Preliminary and Final Development Orders, which is all the criteria that is applied and all the criteria very specific to the CBD. He reiterated per the staff report and the Code, this project meets all of that.

Mr. Miller addressed the issue that this is misplace business. The decision that is a business was made by the City when it was zoned that way as well as the 35-foot height restriction. There is no variance needed. The structure is 1.4 FAR (Floor Area Ratio). The property across the street is approximately 1.8 FAR. The Code sets what is appropriate for this area, including setback requirements, height requirements, the interior parking spaces, and the transparent façade. The applicant has met all of those.

Mr. Miller explained that the previous lawsuit in 2015-2016 was a different application. That was for 5,671 square feet. It was for a one-foot setback, six-foot setback, seven-foot setback, five-foot setback and 71% lot coverage. This is 53.7% lot coverage. He stated that if they can't do a B&B, they are no other uses for this property. He understands the residents might not like this, but this is unfair to the property rights of his client.

Council Questions/
Discussion

Vice Mayor Chin asked Mr. Roth regarding the applicability of Code Sections 27-222 or 27-82.

Mr. Roth remarked that he agreed with Mr. Miller's analysis that Section 27-222 is the guiding principle for how we create the rest of the Code. It is not a threshold test, which is why the word "should" is used, instead of "shall" or "must." He added that Section 27-82 is the operative provision for analyzing this application and making a determination, not 27-222.

Mr. Roth advised that this is a separate application. The fact there was a prior lawsuit has nothing to do with this application. The application should be analyzed on its own merits.

Vice Mayor Chin stated that based on the plans, there is unit on the first floor and also a lobby that fronts it. The lobby is isolated from the rest of the interior space. There are common areas on the backside of the first-floor unit and the stairs to reach the upper level are in that back section. With the lobby cut off from all of that, how would staff manning the lobby go upstairs?

Kevin Solomon, KES Architects, 678 Fort Williams Drive, St. Johns, Florida, 32259, answered that the process would be to check in at the lobby and go out into the garage and up to the second floor. He confirmed that staff would also have to go through the garage.

Vice Mayor Chin commented that at the CDB meeting, it seemed unclear how dedicated Mr. Driver was going to be to operating this as a full-fledged B&B. There was skepticism due to the layout and his own testimony. He also questioned how the staff parking would be accommodated.

Doug Driver, 1150 Florida Boulevard, Neptune Beach, stated that the parking is in accordance with the Code as discussed before. He commented he would find a way for staff to get there. He added that staff would find parking, whether it is paid parking or possibly commute together. He said that most guests would be coming from out of town. He also expressed he is fully dedicated to the B&B.

Vice Mayor Chin asked if the guests would have access to the garage. Mr. Driver related that the first-floor bedroom has an exterior entrance. They can come in from outside. As needed, they can come in the garage to go upstairs.

Mr. Miller addressed the criteria for parking. The City's Code sets out the amount of parking that is required. That has been met. If there needs to be more parking, the way to address that is to change the Code, not to require more parking for this particular applicant. This is analyzed in the staff report and local concurrency requirements have been met.

Mr. Roth clarified that Code Section 27-82(f)(3) states that one of the elements to be considered is "the nature of the proposed development," including the proposed parking areas. This states the nature of the proposed parking areas and not the amount. In his opinion, the nature of the proposed parking area in addition to the number of parking spaces is relevant for Council's analysis.

Mr. Miller commented that the Code does not make any differential on the amount of parking for each use, it just says two spaces.

Ms. Whitmore confirmed Councilor Key's statement that the block has been zoned CBD since the map was drawn in 1959.

Mr. Roth confirmed Councilor Key's statement that if the area was downgraded to residential, we would potentially open ourselves to Bert Harris claim as we would be taking away property rights.

Councilor Key reported the entire western side of that block is occupied with commercial uses, such as retail and office, or very high density residential. There are four to six units in an adjacent building. The eastern side of the block has six residential buildings, of those six, only three are single-family. The rest are duplexes and one triplex. There is one 35-foot building in the block at 101 Lemon Street, so the proposed building would not be the only 35-foot building on the block. Only the block to the south is composed of single-family residential neighborhood uses because that is where that zoning starts.

Councilor Livingston requested a short break to meet with Mr. Roth. Mayor Brown called for a short recess at 8:10 p.m. The meeting reconvened at 8:15 p.m.

Councilor Livingston asked Mr. Driver what areas of the home would guests have access to? She also asked about his contact with the guests, meal preparation and advertising.

Mr. Driver answered that they would have access to everything except the top floor, the owner's suite. He stated that he would interact with them as it is a B&B. It would be a professional relationship. The decision on meal preparation has not been made. It could be himself, his mother, or someone that they hire. They may give gift cards. They would advertise on the internet, Air B&B or other websites.

Mr. Roth pointed out that short-term rentals are not prohibited in the CBD, only in the residential districts.

Councilor Livingston remarked that normally people who start a business have a plan or a mission statement.

Mr. Driver commented that this has been in the works for a year and a half. He was not sure it was going to be approved, so he was not going to waste time and money into a plan until he has a permit. The building is going to take a year to construct. Now there are changes to comply with the Code. He has another job which is remote, so he can dedicate time and effort into this business.

Councilor Messinger reported that the CBD has been in line since 1959, and the boundaries have remained. The Charter referendum for height was passed in 2004 for the height of 35 feet in the CBD and the rest of the community is 28 feet. This has not changed.

Councilor Messinger reported there was an effort in 2015-2016, to see what it would take to modify some of the homes in the CBD to purely residential. He asked Mr. Roth to clarify a mechanism as to how this would be done by using a document that everyone would sign that would relinquish the property rights and value.

Mr. Roth clarified that everyone gives their permission in advance so they can't complain after because they authorized the change.

Councilor Messinger stated, in that process, multiple residents stated they would not sign anything that gave up their values and property rights. The height limits or removing the vested property rights could not be done legally. He also pointed out that the applicant would have to comply with all the fire codes and landscaping requirements.

Mayor Brown asked Mr. Driver to explain to her, as a guest, what the experience of staying at the B&B would be like.

Mr. Driver commented that the plan is still in progress. He has been focused on the design. The City has not asked for a plan for the actual operation of the B&B. He does have experience owning a rental property in South Carolina. He added that when a guest comes to stay, they will have breakfast in the morning. They will have access to the beach. They will have access to the amenities built in the house. People will bring money to the community.

Mayor Brown asked what the guest experience would be that Mr. Driver is envisioning?

Mr. Driver advised that there is a guest room on the first floor. There is a kitchenette in there and there is also access to the main kitchen. The second-floor room is next to the main kitchen. Guests will come and go as they want. There will be security cameras. He was flustered at the CDB meeting and may have spoken out of hand, but he is fully invested in running this B&B.

Councilor Livingston remarked that they are trying to get a better picture of what is going on. She asked how the different guests getting to the kitchen and the shared space? She also asked if there was a proposed name? What price range is he proposing?

Mr. Driver stated that the first-floor bedroom has an outside entrance and also has an interior door leading to the rest of the house. The only part of the house that is not available is the third floor. He commented that he has thought of a few names but has not gone through the official process of naming the business. He reported the rates would be between \$150-\$250 per night.

Discussion

Councilor Key commented that this is hard for her. Emotionally, she feels one way about it, but when she looks at the facts, she feels differently. They meet the requirements. She doesn't see how not approving this is not going to end up in a lawsuit. She believes in property rights and she thinks they are allowed to do this by right. She knows there are concerns regarding traffic. She has lived at a beach access. She does not know by denying

this, what it would improve. She struggles with this and she understands that this is not something that they would want. It is not something she would want either. She thinks it is important to apply our codes properly.

Vice Mayor Chin commented he sees both sides of the argument. He understands they have fulfilled technical requirements. He knows they are not compatible with the existing character. That is something Council needs to be able to take into account. That is part of Section 27-82 not 27-222. This has come before him when it first came through and had similar issues. There is something to be said for trying to fit into the context and be sensitive to the neighborhood. He thinks that our Code tries to guide us towards creating things that are sensitive to the context and this is one of those cases where we have to weigh that and judge what would be better for the development pattern of an area. He is not saying there can't be a B&B, but you have to do it in a way that is sensitive to the area and does not adversely impact the area. He has concerns about how they are handling the parking and safe pedestrian access around that area.

Councilor Livingston stated that she does not think a lawsuit is a reason to go with what is being presented. A B&B is an allowable right, but it also subject to the provisions of the Code. She looks at Section 27-82(f) and she goes through the analysis and it does not meet the criteria. It does not fit into the nature of the neighborhood. This is a 35-foot residence B&B compared to the 28-foot small bungalows surrounding it. She gets that they are meeting the requirements of a B&B, but it does not conform with what is around it and in the neighborhood. It does not conform with the Comprehensive Plan. The desire is to maintain the integrity of our residential small-town community. Although this is an allowable use, she does not think that what is presented tonight is the proper use under 27-82(f).

Councilor Messinger commented he struggles with this. The reason he brought up the history because is there is not a mechanism before Council to strip and make this a purely residential area. He pointed out that during the land use and zoning process, many people in this room did not want design restrictions put on properties. How do we help the CBD maintain its character without talking rights or ending up in litigation? He does think there are holes in the presentation and he has concerns. Does the concern outweigh potential litigation or taking of rights?

Councilor Livingston added there is a way to use the land and have a B&B. She suggested bringing something forward that is more in tune with the neighborhood. In her opinion, this is not it.

Councilor Key commented that when we are talking about the existing character, it is a modern looking building. While that might not be everyone's aesthetic, she believes it is within someone's right to build what they believe is beautiful for them. Part of that is what we went through with the Dover, Kohl process is that people stated they wanted to build what they wanted to build. The project is meeting the commercial design standards. She understands why everyone is upset and doesn't like it. However, she is empathetic that the applicant is following the rules that are prescribed by our Code. She does not know how to fix it. At the end of the day, what someone does with their property is their business. She is not sure if it is Constitutional to have conversations in taking into considerations certain things.

Vice Mayor Chin explained that when we are talking about character, we aren't talking about style. We are not going to be arguing about the look of a place. It has more to do with the scale, mass, and bulk of the structure. He has the same conflict as everyone else. At the end of the day, he thinks it is a matter of being out of scale compared to the surrounding area. He clarified that the previous application was not denied. It was approved with conditions.

Mayor Brown stated that this is hard. These are our neighbors. She understands meeting the criteria. It does not meet the character of the neighborhood. She has a hard time envisioning this as a true B&B. She also has concerns with the traffic and the parking.

Ex Parte
Communications

Councilor Livingston stated she had received emails. She spoke with the Schoonovers and staff. Jacksonville Councilor Rory Diamond also called her.

Councilor Messinger commented he received numerous phone calls. He spoke with the Schoonovers a few times and members in the room. Representatives of the applicant called to see if he had questions. He also spoke with staff and visited the site.

Vice Mayor Chin received numerous emails. He spoke with the Schoonovers and with Councilor Rory Diamond.

Councilor Key reported she received emails and visited the site. She spoke with the Schoonovers, Councilor Rory Diamond, other counsel, and staff.

Mayor Brown disclosed she visited the site. Several attorneys called her. She also received many emails.

Motion and Vote

Made by Livingston, seconded by Chin.

MOTION: TO DENY DP24-04

Roll Call Vote:

Ayes: 5-Key, Livingston, Messinger, Chin, and Brown.

Noes: 0

MOTION CARRIED

ORDINANCES

Ord. No. 2024-04,
Pension Ordinance

Ordinance No. 2024-04, First Read and Public Hearing, An Ordinance of the City of Neptune Beach, Florida, Amending Chapter 2, Administration, Article V, Employee Benefits, Division 4, Police Officers' Retirement System of the City of Neptune Beach, Section 2-349, Contributions, and Section 2-349.1, Benefit Amounts and Eligibility, to Provide for an Increase in the Member Contribution Rate; To Provide for an Annual Benefit Increase for Members Who Retired On or After October 1, 2020; To Provide for a One-Time Benefit Increase In Retroactive Benefits for Retirees and Beneficiaries Who Retired Before October 1, 2020; to Make October 1, the Effective Date of any Cost of Living Adjustments; Directing the City Clerk to File a Copy of this Ordinance with the Florida Department of Management Services, Division of Retirement; Providing for Severability of Provisions; Repealing All Ordinances in Conflict Herewith and Providing an Effective Date.

Public Hearing

Mayor Brown opened the public hearing. There being no comments, Mayor Brown closed the public hearing.

Pension Board
Presentation

Leona Sheddian, 2010 Shadow Lane, Neptune Beach, Police Officers' Retirement Fund Board Trustee, introduced other members of the board, Sergeant Dustin Kamppi, Officer Joe Dzamko, and Michael Phillips.

Ms. Sheddian reported that the Neptune Beach Pension is rated among the highest in the state, the Neptune Beach Police Officers pay among the highest contributions in the state, and the pension fund has a \$735,000 credit with the state. She then read the ordinance into the record.

Council Discussion Councilor Key announced she would be recusing herself from this item as it may have potential benefit to a relative. Pursuant to Florida Statutes Section 112.3143, Form 8B has been submitted and is incorporated as part of these minutes.

Councilor Livingston questioned how other officers felt about the increase in contribution.

Sergeant Kamppi stated there was a formal meeting and a vote passed for the increase. He has not heard anything noteworthy from those who did not attend.

Councilor Messinger commented he is supportive of this and knows this has been talked about it for some time. Ms. Sheddin has an extensive financial background is a testament to what is being reviewed.

Motion and Vote Made by Messinger, seconded by Livingston.

MOTION: TO APPROVE ORDINANCE NO. 2024-04 ON FIRST READ WITH THE CONDITION THAT THE CITY USE ITS CREDIT TO PAY ONE-HALF OF THE INCREASE AND THEN DRAW DOWN FROM THAT CREDIT AFTER THE FIRST YEAR AND EACH YEAR THEREAFTER CONTRIBUTING 10% TO THE CITY'S SHARE

Councilor Messinger explained that the goal of the motion is to spread the payments and be more sustainable. It is about doing this in a prudent way. Any change to this would have to be made in a separate meeting outside of the budget cycle.

Roll Call Vote:

Ayes: 4- Livingston, Messinger, Chin, and Brown.

Noes: 0

Abstain: Key

MOTION CARRIED

Gary Fiske, 2232 Jadestone Drive, Jacksonville, retired police officer, thanked the Pension Board and Council for working on this.

PURVIS GRAY EXTENSION

Purvis Gray
Contract Extension

Purvis Gray Contract Extension. Chief Financial Officer Jaime Hernandez explained that this is a request for the extension of the audit contract to process FY22-23 and FY23-24 audits. The audit for FY22-23 would begin around October 1, 2024. That audit should take around three months. The FY23-24 audit would begin in March 2025.

Mayor Brown reported that Purvis Gray has been with the City for seven years and the City has had changes with the CFO position. We need the continuity of this firm as we move forward.

Vice Mayor Chin stated that he agreed with Mayor Brown in maintaining continuity. Purvis Gray has institutional knowledge of what the City has experienced.

Councilor Key remarked that since she has been on Council there have been numerous conversations about getting a new auditor. She would like to see in the future, once this is caught up, a new auditor. We have had Purvis Gray for a long time. Even though she will not be on Council, it would be in the best interest of the City.

Mr. Hernandez advised there would be an RFP issued once the FY23-24 audit is complete.

Councilor Messinger commented he would like see Purvis Gray would dedicate more resources to speeding up the timeline. He would like to see a performance clause added.

Made by Messinger, seconded by Key.

MOTION: **TO EXTEND THE CONTRACT WITH PURVIS GRAY FOR AUDITING SERVICES UNDER THE CONDITION THAT THERE IS A PERFORMANCE OBLIGATION WITHIN THE CONTRACT AND AN RFP IS DONE FOR SUBSEQUENT AUDITS; TO CHANGE SUCH WOULD REQUIRE A SUPERMAJORITY OF THE COUNCIL**

Roll Call Vote:

Ayes: 5- Messinger, Key, Livingston, Chin, and Brown.

Noes: 0

MOTION CARRIED

PUBLIC WORKS ITEMS

Sewer Lateral Pipes

Sewer Lateral Pipes. Public Works Director Deryle Calhoun explained the City operates approximately 31 miles of gravity sanitary sewer of which about nine miles is constructed of vitrified clay (VC) pipe which was replaced as material of choice by plastics in the 1980s. VC is subject to leaking joints and failure due to cracking. Failing pipes introduce groundwater into the system which reduces treatment plant capacity.

Staff received a quote from BLD Services, LLC to clean and televise service laterals in Indian Woods utilizing pricing in a City of Boca Raton contract. The City Attorney has approved utilizing this contract as a piggyback. He is also requesting staff authorization for change orders be approved for 15% of the award.

Made by Messinger, seconded by Key.

MOTION: **TO APPROVE/AWARD TO BLD SERVICES, LLC IN THE AMOUNT OF \$48,050.00, FOR THE CLEANING AND TELEVISIONING OF VARIOUS SEWER LATERAL PIPES WITH 15% CHANGE ORDER VARIABLE**

Roll Call Vote:

Ayes: 5-Key, Livingston, Messinger, Chin, and Brown

Noes: 0

MOTION CARRIED

Sewer Main Pipes

Sewer Main Pipes. Mr. Calhoun stated this request is for the main larger lines. Staff received a quote from Insituform Technologies, LLC to clean and televise approximately 6,800 feet of pipe utilizing pricing in a City of St. Augustine contract. The City Attorney has approved utilizing this contract as a piggyback.

Made by Messinger, seconded by Key.

MOTION: **TO APPROVE/AWARD TO INSTITUFORM TECHNOLOGIES, LLC IN THE AMOUNT OF \$48,084.10 WITH STAFF AUTHORIZATION FOR CHANGE ORDERS UP TO 10% OF AWARD**

Roll Call Vote:

Ayes: 5- Livingston, Messinger, Key, Chin, and Brown.

Noes: 0

MOTION CARRIEDFence
Replacement

Wastewater Pump Station Fence Replacements. Mr. Calhoun stated fencing at various wastewater pump stations are currently in disrepair and require replacement. Armstrong Fence Company provided quotes utilizing a JEA contract,

Made by Messinger, seconded by Livingston.

MOTION: **TO APPROVE/AWARD TO ARMSTRONG FENCE COMPANY FOR REPLACEMENT OF FENCING IN THE AMOUNT OF \$30,453.01**

Roll Call Vote:

Ayes: 5- Messinger, Key, Livingston, Chin, and Brown.

Noes: 0

MOTION CARRIED

Adjournment

There being no further business, the Special Meeting adjourned at 9:37 p.m.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, CMC
City Clerk



Approved: 09/03/2024

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Key Lauren D		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Neptune Beach City Council	
MAILING ADDRESS [REDACTED]		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY Neptune Beach 1		☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
COUNTY Duval		NAME OF POLITICAL SUBDIVISION:	
DATE ON WHICH VOTE OCCURRED		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Lauren Key, hereby disclose that on August 19, 2024:

(a) A measure came or will come before my agency which (check one or more)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☒ inured to the special gain or loss of my relative, Michael Key;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Increase in police pension, 1st read
This vote may have a potential benefit to a relative

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

August 22, 2024
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

City of Neptune Beach
Heather Whitmore, AICP, PTP
Community Development Director
116 First Street • Neptune Beach, Florida 32266
(904) 270-2400 Ext. 34 • CDD@NBFL.US



September 13, 2024

Douglas Driver
1150 Florida Blvd
Neptune Beach, FL 32266

RE: Final Development Order Letter of Denial
DP24-04: 108 Orange St

Dear Applicant:

On August 19, 2024, the City Council for the City of Neptune Beach unanimously denied your request for a final development order approval as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach to permit a bed and breakfast for the property at 108 Orange St (RE# 172769-0000).

The findings of fact and conclusions of law, which are the basis of the City Council's decision in this matter, are found within the minutes of the meeting and in the agenda materials, which are hereby adopted and incorporated herein and made a part hereof by reference. The City Council of the City of Neptune Beach found;

On May 8, 2024, the Community Development Board voted to unanimously to recommend denial of the preliminary development order;

The final development order is inconsistent with LDC 27-82(f) (1) "characteristics of the site and surrounding area... the size and accessibility of the site, and surrounding land uses";

The final development order is inconsistent with LDC 27-82(f) (2) "the size and accessibility of the site, and surrounding land uses";

The final development order is inconsistent with LDC 27-82(f) (3) "the placement of proposed buildings and other improvements on the site;... proposed parking areas; the approximate total ground coverage of paved areas and structures";

The final development order is inconsistent with LDC 27-82(f) (6) the "concerns and desires of surrounding landowners and other persons";

No further action is required. If you should have any questions, please contact me at 904-270-2400 ext. 30 or clerk@nbfl.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Ponson".

Catherine Ponson, C.M.C.
City Clerk/HR Generalist

CITY OF NEPTUNE BEACH – COMMUNITY DEVELOPMENT DEPARTMENT



STAFF REPORT

MEETING DATE: May 8, 2024
BOARD/COMMITTEE: Community Development Board
APPLICATION NUMBER: DP24-04

TO: Community Development Board

FROM: Heather Whitmore, AICP, PTP, Community Development Director

DATE: Updated May 8, 2024

SUBJECT:

DP24-04: Preliminary Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast.

-
- I. BACKGROUND:** A Preliminary Development Plan application for a Bed and Breakfast has been submitted for 108 Orange St (RE# 172769-0000).

The property has a Comprehensive Plan Town Center Land Use designation and is zoned Central Business District (CBD). Bed and breakfast is a permitted use in this district.

In 2015, the Drivers made an application for a Special Exception application for a Single Family Home for 108 Orange St. The City denied the application and the Drivers sued the City for a petition for writ of certiorari for the City denying their application. This writ of certiorari ordered the lower court (Neptune Beach) to deliver its record in a case so that the higher court (Circuit County of Duval County) may review it.

There were two separate items that were denied and for which the Drivers filed writs of certiorari. One was the Special Exception for the Single Family Home and one was a variance for setbacks and height. In 2022 the Duval Court agreed that the City had sufficient competent substantial evidence on both to deny it, and the City prevailed (See attached Case No. 16-2022-AP-18 Final Order Denying Petition for Writ of Certiorari).

II. DISCUSSION:

Chapter 27 Article III Administrative and Enforcement Procedures Division 2 Development Review of the Unified Land Development Code of Neptune Beach requires a preliminary and final development plan (development order) approval when "Changing or expanding any use of a site so that the need for off-street parking is increased." Section 27-76 states that "all development in non-residential districts" requires a development order.

A Preliminary Development Plan application for a 3,507 square foot three story bed and breakfast has been submitted by the property owners for the property located at 108 Orange St. (RE # 172769-0000). The existing lot of record is 50' x 55'. The existing vacant property is located on the northeast corner of Orange St. and Midway St. The property is within the Central Business District (CBD) and is surrounded by CBD zoning on the east, north and west. The properties to the south are zoned RC/R-4. The immediate properties surrounding the vacant lot consist of single family and multi-family properties.



Figure 1: 108 Orange St, Neptune Beach, FL

The proposed bed and breakfast has two rental/guest bedrooms and one owner's suite, and provides a total of two parking spaces. The ground floor/1st floor consists of an interior parking garage for one parking space and guest bedroom, the 2nd floor consists of living area, lobby and kitchen, and the 3rd floor consists of a guest room and the owner's suite.

Site Plan/Building Plan:

Below is a chart showing development standards for the CDB are and the proposed bed and breakfast:

	Per Code	Proposed
Min. lot area	none	2,750 sq. ft.
Min. lot width	none	50 ft.
Min/Max front yard setback (Orange St.)	0/10 feet	10 feet
Min/Max corner yard setback (Midway)	5/15 feet	11 feet
Min. rear yard setback	5 feet	5 feet
Max. lot coverage	85%	53.7%
Max. building height	35 feet	35 feet
Min. Building frontage buildout	70%	74%

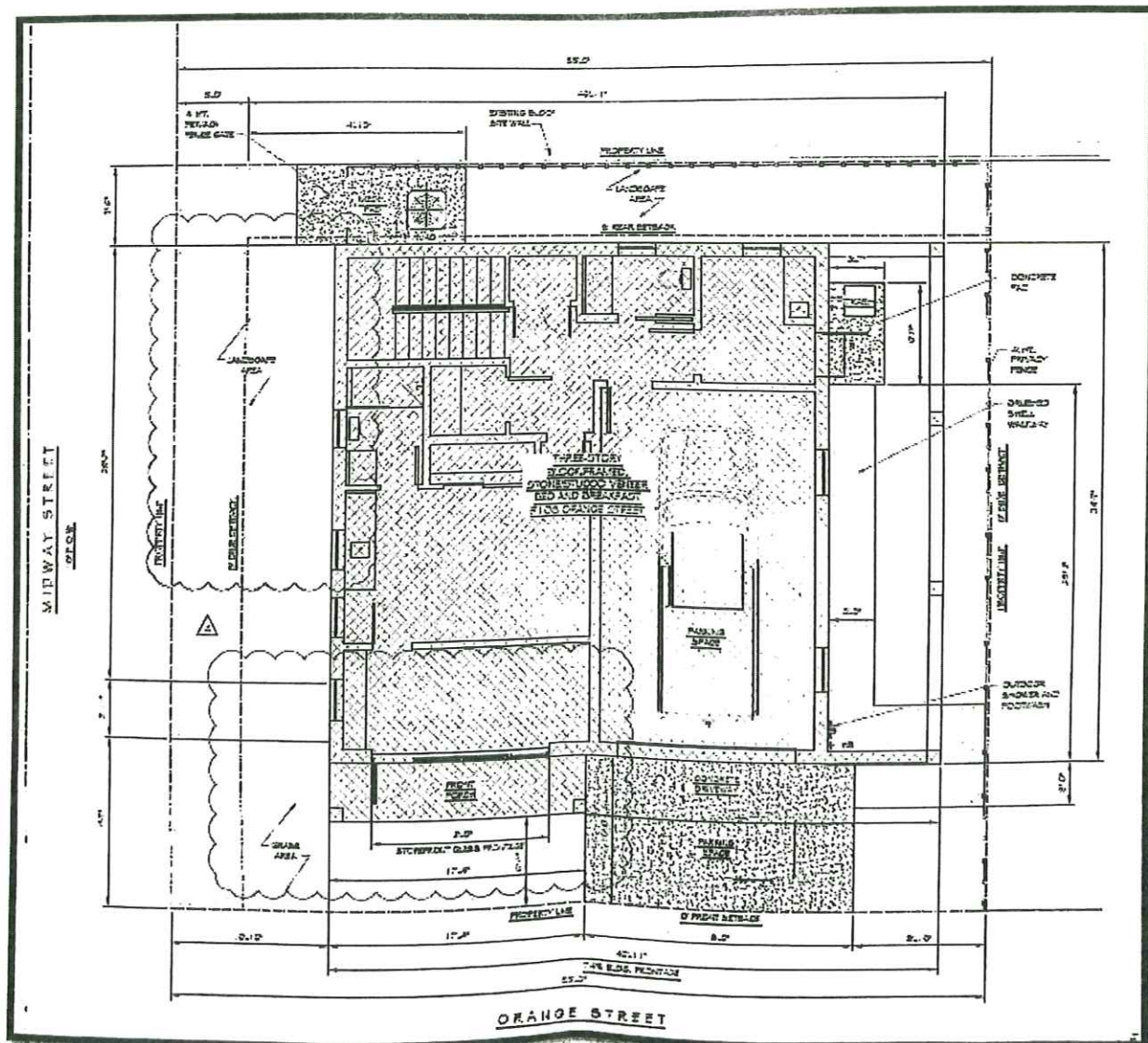


Figure 2: Proposed Site Plan 108 Orange St, Neptune Beach, FL

The building complies with setbacks, lot coverage, height, and frontage buildout requirements in the CBD.

The building complies with the elevation frontage requirements and standards of the CBD.

The building has one primary frontage on Orange St. The Orange St. first-floor frontage included a Lobby door and garage door. The building frontage is a Lobby style and an accessible front entry from the first floor at sidewalk level. The building's first floor façade is 35% transparent. The building's second floor façade is 40% transparent.



Figure 3: Proposed Frontage Elevation (Southern Elevation facing Orange St) 108 Orange St, Neptune Beach, FL

Sec. 27-236. – “Frontage requirements and standards” and Sec. 27-246. – “Central Business District (CBD) zoning district – special regulations” require all building frontages in the CBD to be either Storefront or Lobby with 30%-70% facade transparency. Storefronts and Lobby’s shall be accessible from the sidewalk level.

Section 27-246 (b) and (c) state:

(b) Commercial building frontage standards. New commercial development shall comply with the required frontage types and associated standards detailed in Section 27-236

(c) Commercial building design standards.

(1) Storefront design. The storefront is a frontage type along sidewalk level of the ground story, typically associated with commercial uses. Storefronts are required for the ground floor of all buildings located on streets designated with Required Retail Frontage and may be incorporated on any building in the Central Business District (CBD), Neighborhood Center Overlay (NC), and C1 districts. Storefronts are frequently shaded by awnings. Storefronts shall be directly accessible from sidewalks;

(2) Entrances and Access. All new buildings should have the main entrance oriented to and in full view from a street or public open space. Main entrances shall have design details that enhance the appearance and prominence of the entrance so that it is recognizable from the street and parking areas. Building on corner lots shall use design elements that emphasize the importance of both streets.

(3) Transparency. All building facades which face onto a street or public open space, shall meet the following minimum transparency requirements:

a. Buildings with Shopfronts (Figure 27-246-3)

i. Minimum building façade transparency for ground story: 70% and should allow a view of at least 5' of interior space

ii. Minimum building façade transparency for upper stories: 40%

b. Building without Shopfronts (Figure 27-246-4)

i. Minimum building façade transparency for ground story: 30% ii. Minimum building façade transparency for upper stories: 25%

Driveway/Parking:

The site is served by a total of two parking spaces, one parallel spaces and one garage space. Per the parking requirements in 27-540-1 the development is required to have one parking space per guest room and two parking spaces for the owner/operator for a total of four spaces. Per, 27-540 (c) the CBD is given a 50% reduction in parking however, therefore the development requires two parking spaces. The site layout parking access configuration complies with driveway standards and maximum driveway apron width.

III. D24-04 FINDINGS:

Sec. 27-82. - Procedures for applying for and issuing preliminary and final development orders states the community development board shall conduct a quasijudicial public hearing and shall consider the following factors when issuing a development order:

1. **Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.**

Staff Response: The use is consistent with the surrounding zoning and uses. The site is surrounded by majority residential uses, as well as commercial uses along First St.

2. **Whether the concurrency requirements of article VI of this Code could be met if the development were built.**

Staff Response:

Traffic: The proposed redevelopment will NOT generate more than 50 pm peak trips, therefore a traffic study is not required.

Water/Sewer: This project area will require water and sewer extensions (See attached Public Works Comments)

School: Not applicable

Drainage: Site may require stormwater permitting from Saint John's Water Management District (See attached Public Works Comments).

3. **The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.**

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

4. **Conformity of the proposed development with the comprehensive plan, this Code, and other applicable regulations.**

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

5. **Applicable regulations, review procedures, and submission requirements.**

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

See attached Fire review comments.

6. Concerns and desires of surrounding landowners and other persons.

Staff Response: A sign was posted on the property according to requirements. Staff has received comments from the public.

7. Other applicable factors and criteria prescribed by the comprehensive plan, this Code, or other law.

Staff Response:

The site will require additional utility planning, See attached Public Works Comments

See attached Fire review Comments

IV. STAFF RECOMMENDATION

Staff recommends approval of the currently proposed application for DP24-04 Preliminary Development Plan for the property at 108 Orange St (RE# 172769-0000) to permit a bed and breakfast (as presented).

See attached Planning and Zoning Comments

See attached Public Works Comments

See attached Fire Comments

The applicant provided a preliminary response to staff comments on May 3, 2024 and provided an updated revised site plan (see attached). The applicant responded to all Planning and Zoning comments on May 8, 2024 and provide a revised site plan, floor plan, and elevations. The revised proposed Preliminary Development Plan as updated on May 8, 2024 complies with all planning and zoning development standards.

The developer shall submit a Final Development Plan that complies with staff conditions for review by the City Council. The Final Development Plan shall be consistent with the Preliminary Development Plan and staff comments and shall contain no land uses different than those approved in the Preliminary Development Plan.

V. RECOMMENDED MOTION:

a. I recommend approval of DP24-04

OR

b. I recommend denial of DP24-04





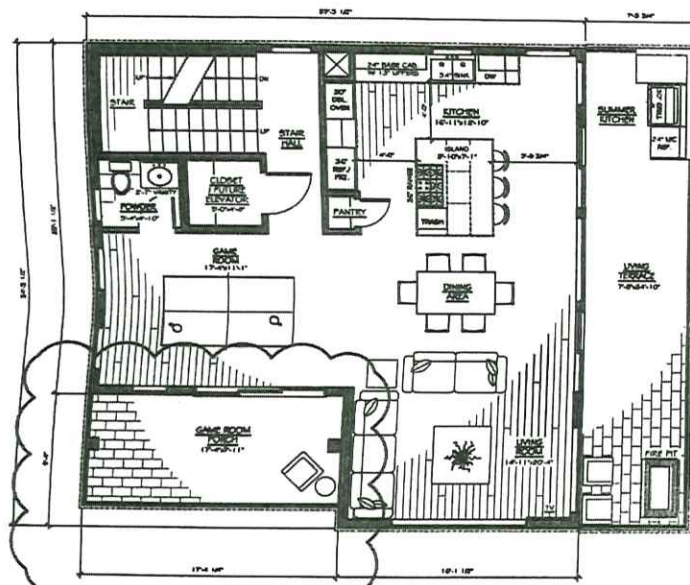


IMPERVIOUS SURFACE RATIO (ISR)	
SITE SOURCE FOOTPRINT (% OF SITE)	21.5%
IMPERVIOUS SURFACE AREA EXCLUDING DRIVEWAYS	1,196 SQUARE FEET
TOTAL COVERED BY	1,400
IMPERVIOUS SURFACE RATIO ((1,400 / 5,734) * 100)	24.4%
ALLOWED 20% MAX. OF AREA AS DESCRIBED IN SPEC	

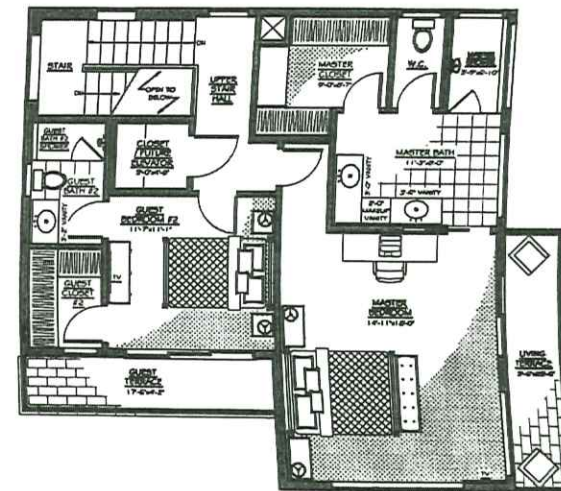


A-0.0

This floor plan shows a 2.5-story townhome with a total area of 821.11 sq. ft. The layout includes a front porch (11'-0" glass frontage), a lobby (10'-0" x 6'-0") with a staircase, a guest bedroom #1 (10'-0" x 10'-1") with a closet, a guest bedroom #2 (10'-0" x 11'-0") with a closet, a laundry room, a half bath, a full bathroom, a kitchen, a dining room, a living room, a front porch, and a garage (14'-0" x 20'-0") with a car lift. The plan also shows a staircase leading to the 2.5th floor and a staircase leading to the basement.



1 2ND FLOOR PLAN
SCALE: 1/8" = 1'-0"



2 3RD FLOOR PLAN
SCALE: 1/8" = 1'-0"

DRIVER BED & BREAKFAST

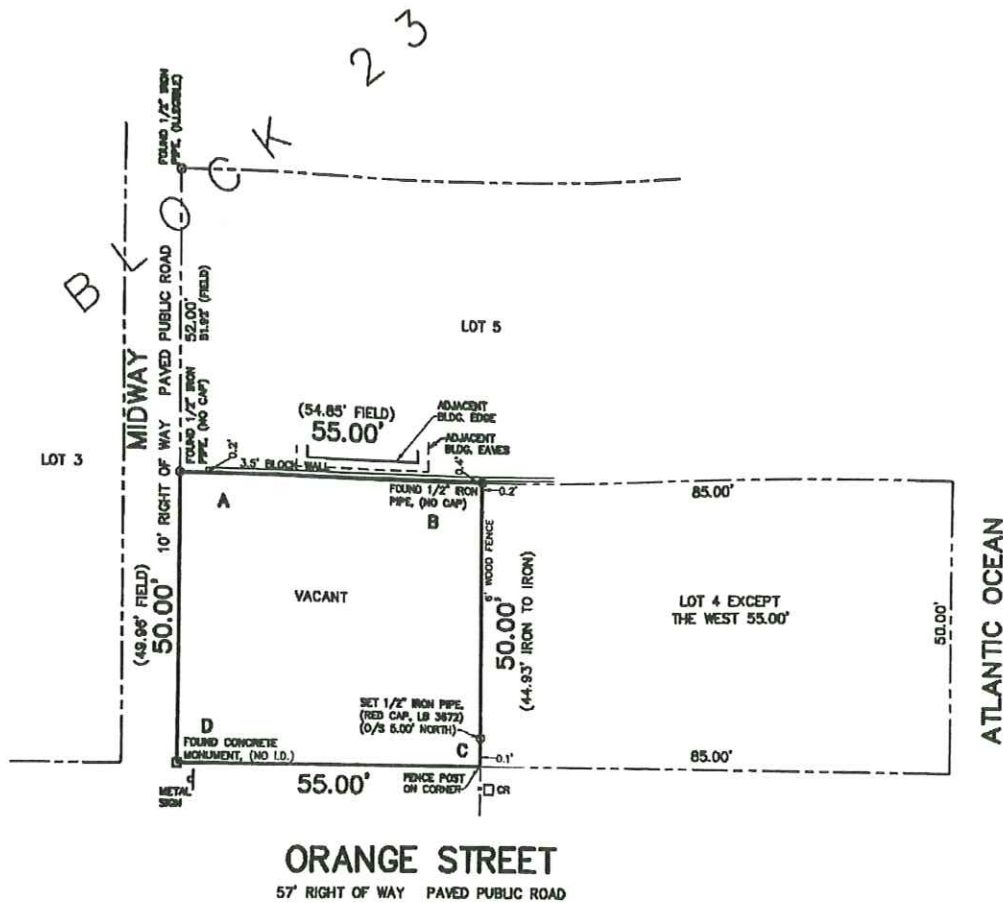
108 ORANGE STREET
NEPTUNE BEACH, FLORIDA 32266

KES ARCHITECTS, PLLC
P: 904.564.0099
WWW.KES-ARCHITECTS.COM

2ND & 3RD FLOOR PLANS
REVISED MAY 8TH, 2024
SCALE: 1/8" = 1'-0"

MAP SHOWING SURVEY OF

THE WEST 55.00 FEET OF LOT 4, BLOCK 23, REPLAT OF NEPTUNE AS RECORDED IN
PLAT BOOK 4, PAGE 48, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY,
FLORIDA.



INTERIOR ANGLES PER FIELD SURVEY AS FOLLOWS:

$\angle A = 89^{\circ}58'07''$
 $\angle B = 90^{\circ}12'17''$
 $\angle C = 89^{\circ}48'36''$
 $\angle D = 90^{\circ}00'00''$

SYMBOL LEGEND

X PIPE HYDRANT
 * LIGHT POLE
 GV GAS VALVE
 WV WATER VALVE
 C CLEAN OUT
 UTILITY POLE
 GUY ANCHOR
 BOLLARD
 WM WATER METER
 GR GAS RISER
 CR CABLE RISER
 ELB ELECTRIC BOX
 L SIGN
 T TRANSFORMER
 M MANHOLE

ABBREVIATION LEGEND

BPP BACK-PLAN PERIMETER
 (C) CALCULATED
 (F) FIELD MEASUREMENT
 IF IRON FENCE
 CLF CHAIN LINK FENCE
 VV VINYL FENCE
 CONC CONCRETE
 R/W RIGHT-OF-WAY
 PLAT ROAD
 ORD OFFICIAL RECORDS BOOK
 PAIR
 MFB METERS AND RECORDS
 CORR CORRUGATED METAL PIPE
 POLY POLYETHYLENE GLASS REINFORCED CONCRETE PIPE
 EL ELEVATION
 FFB FINISHED FLOOR ELEVATION
 FC POINT OF CURVATURE
 PC POINT OF BEGINNING OF CURVE
 POC POINT OF COMPOUND CURVE
 PBC POINT OF BEGINNING CURVE

GENERAL SURVEY NOTES

1. THIS IS A BOUNDARY SURVEY.
2. NORTH PROTRACTED FROM PLAT.
3. INTERIOR ANGLES ARE AS PER FIELD SURVEY.
4. NO BUILDING RESTRICTION LINES, AS PER PLAT.
5. THIS SURVEY WAS PREPARED WITHOUT AN ABSTRACT OF TITLE. THEREFORE THE UNDERSIGNED MAKES NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION SHOWN HEREON PERTAINING TO EASEMENTS, RIGHT OF WAYS, SETBACK LINES, AGREEMENTS, RESERVATIONS, OR OTHER SIMILAR MATTERS.
6. NO UNDERGROUND INSTALLATIONS, IMPROVEMENTS OR ENCROACHMENTS HAVE BEEN LOCATED EXCEPT THOSE SHOWN HEREON.
7. THE PROPERTY DESCRIBED HEREON LIES IN FLOOD ZONE "X" (AREA OF MINIMAL CHANCE FLOOD HAZARD), AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP No. 1203100408, EFFECTIVE NOVEMBER 2, 2018 FOR DUVAL COUNTY, FLORIDA.

CERTIFIED TO:
MCANENY BUILDERS INC.



JASON D. BOATWRIGHT, P.S.M.
 FLORIDA LICENSED SURVEYOR and MAPPER No. LS 7282
 FLORIDA LICENSED SURVEYING & MAPPING BUSINESS No. LS 3872
 "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER."

FILE: 2024-0499
 DRAWN BY: ADT
 SCALE: 1" = 20'

BOATWRIGHT LAND SURVEYORS, INC.
 1500 ROBERTS DRIVE, JACKSONVILLE BEACH, FLORIDA 32250 (PH) 904-241-8550

DATE:
APRIL 22, 2024
 SHEET 1 OF 1

4. Response of City to Petition for Relief

IN AND BEFORE A SPECIAL MAGISTRATE **CITY OF NEPTUNE BEACH, FLORIDA**

MARGARET R. DRIVER AND
DOUGLASS L. DRIVER, III,

Petitioners,
vs.

CITY OF NEPTUNE
BEACH, FLORIDA,

Respondent.

_____/

RESPONSE OF CITY OF NEPTUNE BEACH, FLORIDA **TO PETITION FOR REQUEST FOR RELIEF PURSUANT TO** **SECTION 70.51 FLORIDA STATUTES**

COMES NOW the Respondent, CITY OF NEPTUNE BEACH, FLORIDA (“City¹”), and files this Response to Petitioners MARGARET R. DRIVER AND DOUGLASS L. DRIVER, III, (“Petitioners” or “Applicant(s)”) for relief pursuant to the Florida Land Use and Environmental Dispute Resolution Act found in Section 70.51, Florida Statutes, for property located at 108 Orange Street, Neptune Beach, Florida, and states:

¹ Note that throughout this Response the term City shall mean the Community Development Board and the City Council

PRELIMINARY STATEMENT

The City's Land Development Code restricts residential buildings to 28 ft in height.² The Land Development Code allows commercial buildings like bed and breakfast to be constructed to 35 ft in height.³ Based on the Petitioners' own testimony during both the Community Development Board ("CDB") hearing and the hearing at the City Council ("Council") Meeting, it is evident that the Petitioners do not plan to build a bed and breakfast. Instead, the City believes they are attempting to take advantage of the enhanced height allowances allowed for bed and breakfast establishments and construct a 35-ft-tall residence.

Regardless of the City's beliefs regarding the Petitioners' intentions, the City's denial of the Petitioners' application for a development plan for a proposed bed and breakfast was based on clear and substantial evidence, which is clearly found within the record of the underlying proceedings before the Council and the CDB. The reasons stated by the City for denial of the Petitioners'

² City of Neptune Beach Land Development Code Section 27-239 (h). Building Height Limitations.

³ *Id.*

application for a development plan for a proposed bed and breakfast were because the Council and the CDB found that the Petitioners failed to meet the following factors found in Sec. 27-82. Procedures for applying for and issuing preliminary and final development orders.:

(f) *Quasi-judicial public hearing.* The community development board shall conduct a quasi-judicial public hearing as outlined in the Florida Statutes, and shall consider the following factors:

- (1) Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.; and,
- (2) Whether the concurrency requirements of article VI of this Code could be met if the development were built.; and,⁴**
- (3) The nature of the proposed development, including land use types and densities; the placement of proposed buildings and

⁴ Note: although cited in the Development Order, section (2) was not a reason for the denial. Petitioners should disregard citation to this provision.

other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.; and,

- (6) Concerns and desires of surrounding landowners and other persons.

Each of the above provisions will be addressed herein.

STANDARD OF REVIEW

If the parties are unable to reach a resolution through the instant proceeding, the matter will likely face judicial review. When reviewing a local governmental administrative action, there is a narrow three-prong standard of review applied by the courts: (1) whether procedural due process was accorded by the reviewing board; (2) whether the essential requirements of law have been observed; and (3) whether the governmental board's judgment is

supported by competent and substantial evidence.⁵ The Petitioners have not raised procedural due process arguments, nor have the Petitioners argued that the City failed to follow the essential requirements of law. Instead, the Petitioners argue that the City's denial is not supported by competent and substantial evidence. Therefore, only the "competent and substantial evidence" prong of the standard of review is addressed herein.

A Court cannot reweigh the evidence in the record, draw different inferences from the record, or otherwise substitute its factual determination for that of the City's.⁶ Even if only a fraction of the competent and substantial evidence offered supports the quasi-judicial decision, despite a significant amount of evidence to the contrary, the fact that some competent and substantial evidence exists in support of the decision requires that certiorari be denied.⁷

The Court simply needs to review the record and find some competent and substantial evidence to support the decision

⁵ *City of Deland v. Benline Process Color Co., Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986) (quoting *City of Deerfield Beach v. Valliant*, 419 So. 2d 624 (Fla. 1982)).

⁶ *See City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 205-06 (Fla. 3d DCA 2003); *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993).

⁷ *See Lantz v. Smith*, 106 So. 3d 518, 521-22 (Fla. 1st DCA 2013).

rendered.⁸ A review of the record clearly shows that the City relied on a plethora of competent and substantial evidence to reach its denial of Petitioners' application.

On a side, the Petitioners may argue that the facts discussed herein, which were the basis of the City's denial, were not specifically detailed in the Development Order. However, the fact that the City did not make factual findings in rendering its decision is not, in and of itself, dispositive. There is no case law that requires the basis for the City's decision to be stated in the City's order. The evidence to support the decision of the lower board needs only to be reflected in the record of the decision.⁹ This is clear from the court's scope of review. The standard of review does not require the court to review if the decision of City is accompanied with findings, but rather requires the court to determine whether the City's decision is supported by competent and substantial evidence in the record.¹⁰

⁸ See *Dusseau*, 794 So. 2d at 1276 ("As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful, and the court's job is ended").

⁹ See *Town of Ponce Inlet*, 627 So. 2d at 587.

¹⁰ *City of Deland*, 493 So. 2d at 28; *Town of Ponce Inlet*, 627 So. 2d at 587 ("The supreme court partially reversed *Snyder* in *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993) by specifically holding that an agency would not be required to make findings of fact but that on review of a quasi-judicial decision a circuit court must determine

ARGUMENT

Based on the Petitioners' own testimony, the intention is not to build a bed and breakfast. Instead, the intention is to circumvent the Land Development Code and build a 35-ft-high residence. Among other arguments, the Petitioners contend that the City failed to base its denial on competent and substantial evidence because it failed to follow staff's recommendation, which it is not obligated to do. The Petitioners further assert that the City should grant the Petitioners' application as matter of right because bed and breakfast establishments are permitted uses in the Commercial Business District. Bed and breakfast are permitted uses in the Commercial Business District, however; that does not create an automatic right to the Petitioners as they are still subject to other sections of the Land Development Code; specifically, Section 27-82, which as explained herein was the basis for the City's denial.

I. The Petitioners are not entitled to a bed and breakfast as a matter of right because they still must meet other sections of the Land Development Code.

whether there was competent substantial evidence presented to support the agency's decision")

Petitioners incorrectly argue they are entitled to approval as a “matter of right” because a bed and breakfast is a permitted use in the Commercial Business District under the City’s Land Development Code, Sec. 27-226. *Allowable uses within zoning districts.*; (k) *Central Business District (CBD)*; (2) *Permitted Uses*; b. *bed and breakfast*. Although bed and breakfast are permitted in the Commercial Business District, Petitioners’ application still must comply with other provisions of the Land Development Code.

Allowable uses in land development codes can be a matter of right, but this is contingent upon compliance with specific criteria and regulations set forth by local governments. Certain uses can be allowed by right under specific conditions. Case law supports this interpretation.¹¹ Therefore, while allowable uses in land development codes can be a matter of right, this is dependent on the development's compliance with other local regulations, namely the City’s criteria for

¹¹ In *BMS Enters., LLC v. City of Fort Lauderdale*, 929 So. 2d 9 (Fla. 4th DCA 2006), the court noted that a permitted use is allowed as a matter of right upon compliance with all other ordinances, distinguishing it from conditional uses which require additional approvals. Similarly, in *Westgate Tabernacle, Inc. v. Palm Beach County*, 14 So. 3d 1027 (Fla. 4th DCA 2009) the court explained that permitted uses are by right and require no prior approval, whereas conditional uses require additional procedures and approvals.

approval set forth in LDC Sec. 27-82. (f)(1), (3) and (6), which again was the basis for denial.

II. The City Council and the Community Development Board are not bound by staff recommendations.

Petitioners state throughout the petition that the Council failed to follow the staff's recommendation and therefore, its decision was not based on competent and substantial evidence. A city is not required to follow a staff recommendation in a quasi-judicial hearing.¹² Additionally, Florida statutes provide that the local government is not bound by preliminary decisions in quasi-judicial processes, and the final decision must be based on competent substantial evidence.¹³ Therefore, while staff recommendations are considered, the final decision rests with the governing body, which has the authority to approve, modify, or deny applications based on the evidence presented during the hearing.¹⁴

III. The City's Denial is Supported by Competent and Substantial Evidence.

¹² According to the case "*Howze v. Manatee County*, 2014 Fla. Cir. LEXIS 1389," the court agreed with Manatee County's assessment that the recommendations of the County Planning Director, Planning Commission, and staff are not binding on the Board when there is competent substantial evidence to support a rejection of such recommendations.

¹³ Section 163.3215, Florida Statutes.

¹⁴ *Id.*

A. Sec. 27-82 (f) (1): The proposed development does not fit the characteristics of the site and surrounding area.

The City's Commercial Business District allows bed and breakfast as a permitted use; however, it was imposed upon Orange Street, which is comprised of businesses and residential homes that existed long before the creation of the Commercial Business District.¹⁵ Any zoning use must fit the characteristics of the surrounding area under Sec. 27-82 (f) (1) of the Land Development Code. In other words, the city is not required to automatically grant an application for a bed and breakfast on Orange Street just because it is a permitted use. The City is certainly within its authority to deny the proposed bed and breakfast if it does not meet the character of the neighborhood. As Board Member Raiti pointed out during the CDB hearing, this project would be a significantly larger structure than the older cottage style buildings in the area (CBD Trans. page 166, lines 16-20). This sentiment was echoed by the City Council members. Vice Mayor Chin stated that the proposed project, "was not compatible with the existing character that's immediately around them" (City Comm. Trans. page 128 lines 16-19). Council Member

¹⁵ The Commercial Business District was created by ordinance in 2004 while the oldest home on Orange street was built in the 1920's

Key stated that, “It’s a modern looking building” (City Comm. Trans. page 135 lines 17-19). Although Council Member Key spoke to the importance of personal property rights, her statement shows the nonconformity with the existing character of the buildings around it. Vice Mayor Chin later reasoned that character also goes to scale, mass and bulk of the building (City Comm. Trans. page 137 lines 16-21). He further explained that a 35-ft-high bed and breakfast is out of scale with the surrounding buildings, all of which are below 28 ft in height (see City Comm. Trans. page 138 lines 3-10). Finally, the discussion of incompatibility of character was closed by Mayor Brown stating, “We have a lot of what this bed and breakfast really represents and the character and the incompatibility.”

B. Sec. 27-82 (f) (3): The nature of the proposed development is not acceptable.

The City’s Land Development Code restricts residences to 28 ft in height. The Land Development Code allows commercial buildings like bed and breakfasts to be constructed to 35 ft in height. Based on the Petitioners’ own testimony, the intention is not to build a bed and breakfast. Instead, the City believes the intention is to circumvent the Land Development Code and build a 35-ft-high residence.

The applicant made numerous vague and contradictory statements, which alone constitute competent and substantial evidence to base a denial upon. What constitutes “competent and substantial evidence” in the quasi-judicial context is quite broad and includes testimony from witnesses, including experts and even the applicant.¹⁶ The applicant’s numerous comments on the record caused the members of the CDB and the Council to doubt his intentions. Owning and operating a bed and breakfast requires frequent interaction with guests to provide services. Applicant Driver stated that he prefers not to see his guest and that they use a separate entrance (CDB Trans. Pg. 172 lines 16-21 and Pg. 175 lines 19-25).¹⁷ Despite not wanting to interact with his guests, the applicant has designed the bed and breakfast to have a guest room on the third floor, adjacent to his master bedroom (CDB Trans. Pg. 176 lines 1-5). Further testimony during the CDB hearing confused Board members and caused them to question the layout of the bed

¹⁶ see, e.g., *Miami-Dade County v. Walberg*, 739 So. 2d 115 (Fla. 3d DCA 1999); *Metropolitan Dade County v. Sportacres Development Group, Inc.*, 698 So. 2d 281 (Fla. 3d DCA 1997); *Riverside Group, Inc. v. Smith*, 497 So. 2d 988 (Fla. 5th DCA 1986).

¹⁷ The relevant portion of the transcript of the Community Development Board hearing is attached hereto as **Exhibit “A.”**

and breakfast and question whether the applicant's true intentions where to build a 35-ft-tall home under the guise of a bed and breakfast (*see generally* CDB Trans. Pg.'s 177, 178, 182, 183).

The Applicants' testimony at the City Council hearing further caused Council members to question his true intentions. Confusion arose concerning where the staff and guests would park, where the applicant would prepare the quests' food and even whether the guests would be fed on-site or given gift cards, whether the guests would share the applicant's living quarters, how the quests would enter the rooms and common areas, and lack of a business plan or business name (*see generally* City Council Trans. pages 99-100, 108-110, 118-125).¹⁸ Although the Applicants attempted to rehabilitate many of their contradictory and confusing statements, the CBD and the Council were not persuaded.

C. Sec. 27-82 (f) (6): Public comment may be considered competent and substantial evidence.

Petitioner's assertions that public comment is not considered competent and substantial evidence is misguided. As a general rule,

¹⁸ The relevant portion of the transcript of the City Council hearing is attached hereto as **Exhibit "B"**.

they are correct, the public's unsubstantiated opinions and statements do not constitute competent and substantial evidence. There are, however, two exceptions. First, if the public is presenting actual and specific facts, rather than generalizations, conjecture, or opinions, the public's statements may constitute competent and substantial evidence.¹⁹ Second, if the testimony is on subjective matters that do not require expertise such as the development's impact on the area's natural beauty the testimony may constitute competent and substantial evidence.²⁰ Here, the public's subjective comments were considered by the City and were part of the competent and substantial evidence that led to the denial. Specifically refer to Ms. Schoonover's remarks during the public comment portion of the CDB that "It just doesn't fit", "It's not in scale or character with the neighborhood", "Its height will obstruct the views and breezes", "Esthetically speaking, the proposal is oversized...", "Regarding privacy, the proposed height of 35-ft is not

¹⁹ *Miami-Dade Charter Foundation; Marion County v. Priest*, 786 So. 2d 623 (Fla. 5th DCA 2001).

²⁰ *Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19 (Fla. 1st DCA 2010); *Board of County Commissioners of Pinellas County v. City of Clearwater*, 440 So. 2d 497 (Fla. 2d DCA 1983). See also *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So. 2d 708 (Fla. 3d DCA 2000) (finding testimony must be relevant).

sensitive to the surrounding neighbors” and it goes against the neighborhood “ambiance”. She testified that the proposed bed and breakfast would stand a full story above the other buildings on the street (CDB Trans. pages 145-147). Citizen Ray Lynn said, “It’s going to look ugly in a residential neighborhood” (CDB Trans. page 154 lines 14-15). Heather Peters feared for her babies learning to ride bikes with a B & B across the street and complete strangers.” (CDB Trans. page 155 lines 21-24).

Similar subjective public comments were raised at the City Council hearing. Rosemary Naughton eloquently summarized the uniqueness and old-fashioned village lifestyle of Neptune Beach. She complained of privacy concerns and the proposed project’s incompatibility with the surrounding buildings (*see generally*, City Comm. Trans. pages 63-65). Similar comments were raised but will not be cited here to avoid unnecessary repetition. The City considered these subjective public comments, which form competent and substantial evidence to base a denial.

CONCLUSION

Based on the Petitioners’ own testimony, the intention is not to build a bed and breakfast. Instead, the intention is to circumvent the

Land Development Code and build a 35-ft-high residence. Regardless of those intentions, the record is clear that the City's denial of the application is supported by competent and substantial evidence to support the City's denial of the Petitioners' application. As such, Respondent respectfully requests this Honorable Special Magistrate to recommend that the City's denial of the Petitioners' application should be upheld.

Dated this 27th day of September 2024.

Respectfully Submitted,

/s/ Paul Waters

Paul Waters, Esq.

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Attorney for City of Neptune Beach

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 27, 2024, a true and correct copy of the foregoing was served by Electronic Mail, to all parties of record.

/s/ Paul Waters

PAUL WATERS, ESQ.

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EXHIBIT A

COMMUNITY DEVELOPMENT BOARD 050824 NEPTUNE BEACH COMMUNITY

September 13, 2024
125-128

Page 125 1 you can tie approval or denial of this application to 2 that. I think you could make a separate motion on 3 behalf of the Board that the Council consider, but I 4 don't think it can be tied to this motion. 5 WILL HILTON: So, I've seconded it. I don't 6 think we need to go into any more discussion about 7 that. 8 PIPER TURNER: At this point, we're, we're, 9 we're -- the motion is that -- to approve application 10 DP24-03 Replat for 2101 -- 11 MARC BORAN: Yes. 12 PIPER TURNER: -- Bartolome Road as 13 submitted. 14 UNIDENTIFIED MALE SPEAKER: Yes. 15 PIPER TURNER: Is that -- okay. Mr. Borland 16 [sic] Boran? 17 MARC BORAN: Yes. 18 PIPER TURNER: I don't know why I'm having -- 19 Mr. Raiti? 20 JONATHAN RAITI: Yes. 21 PIPER TURNER: Mr. Hilton? 22 WILL HILTON: Yes, but I -- yes. 23 PIPER TURNER: Ms. Bylund? 24 CORRINE BYLUND: Yes. Also problematic, but 25 yes.	Page 127 1 staff report. 2 RENE ATAYAN: Right here. 3 HEATHER WHITMORE: There are about 15 more 4 copies of (inaudible) 5 PIPER TURNER: You can take them into the 6 (inaudible) 7 GREG SCHWARTZENBERGER, CHAIRMAN: There's 8 still pertinent information, though, in the original 9 staff report. 10 HEATHER WHITMORE: The original staff report, 11 yes, sir, represents a different development plan than 12 they're bringing before you now. So the development 13 plan that we are reviewing is the one that's in your 14 handout. 15 GREG SCHWARTZENBERGER, CHAIRMAN: All right. 16 HEATHER WHITMORE: It has been in response 17 (inaudible) 18 ZACHARY ROTH, CITY ATTORNEY: Is it fair to 19 say, so they can to help them go along, if it was in 20 the prior report and it's still relevant, it's black? 21 HEATHER WHITMORE: Correct. 22 ZACHARY ROTH, CITY ATTORNEY: And if it's in 23 red, it's not. It's different because this is what's 24 been updated? So everything that's still relevant is 25 in this.
Page 126 1 PIPER TURNER: Ms. Atayan? 2 RENE ATAYAN: Yes. 3 PIPER TURNER: Mr. Schwarzenberger? 4 GREG SCHWARTZENBERGER, CHAIRMAN: Yes. 5 PIPER TURNER: It still has to go to Council. 6 Okay. Thank you. 7 GREG SCHWARTZENBERGER, CHAIRMAN: All right. 8 You guys ready for the last one? All right. So we're 9 going to move to DP24-03 application for a replat. 10 Excuse me, I'm sorry, DP24-04 Application for 11 Preliminary Development Plan as outlined in Chapter 27 12 Article 3 Division 2 of the ULDC of Neptune Beach for 13 Douglas Driver III for the property at 108 Orange 14 Street. 15 HEATHER WHITMORE: Yes, sir. (inaudible) 16 copy of the updated staff report. As staff stated 17 earlier, we've had response to comment by the 18 applicant to all comments received, and they have 19 resubmitted a site plan and elevation set of floor 20 plan. So staff has presented an updated staff report 21 based on the new information we've received that -- 22 that's what we would be looking at tonight. 23 GREG SCHWARTZENBERGER, CHAIRMAN: The staff 24 report in a separate -- 25 HEATHER WHITMORE: I've handed out separate	Page 128 1 GREG SCHWARTZENBERGER, CHAIRMAN: Okay. So 2 we can -- 3 HEATHER WHITMORE: It's the same staff 4 report. 5 GREG SCHWARTZENBERGER, CHAIRMAN: We can flip 6 to this. 7 HEATHER WHITMORE: Yes, sir. 8 GREG SCHWARTZENBERGER, CHAIRMAN: Fully. 9 HEATHER WHITMORE: Yes, sir. 10 GREG SCHWARTZENBERGER, CHAIRMAN: Okay. 11 HEATHER WHITMORE: You see red is what has 12 been updated. 13 GREG SCHWARTZENBERGER, CHAIRMAN: Okay, cool. 14 HEATHER WHITMORE: Moving forward. 15 GREG SCHWARTZENBERGER, CHAIRMAN: Yes, ma'am. 16 HEATHER WHITMORE: The updated staff report 17 and development plan as submitted, everybody's got 18 that? 19 WILL HILTON: Yes. 20 HEATHER WHITMORE: So this is a Preliminary 21 Development Plan request as outlined in 27 -- Chapter 22 27 Division 2 of the Land Development Code for Douglas 23 Driver for the property located at 108 Orange Street. 24 The applicant requests the development plan approval 25 to permit a bed and breakfast.

EXHIBIT A

COMMUNITY DEVELOPMENT BOARD 050824 NEPTUNE BEACH COMMUNITY

September 13, 2024
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Page 129 1 Background on the case. Preliminary. 2 There's a preliminary development plan. Application 3 was submitted for a bed and breakfast. The property 4 has a Comprehensive Plan Town Center Land Use 5 designation is zoned Central Business District. Bed 6 and breakfast is permitted by right in the district. 7 We've got -- there's -- was, was some case 8 history with the property that's mentioned here in the 9 background. That has not changed. Discussion here. 10 Preliminary Development Plan for the application 11 submitted before you is a -- is now a 3,507 square 12 foot, three-story bed and breakfast for the property 13 located at 108 Orange. 14 This is an existing lot of record, 50 by 55 15 feet. This is an existing vacant property located at 16 the northeast corner of Orange and Midway. The 17 property is within the Central Business District, 18 surrounded by Central Business District zoning on the 19 east, north, and west. Properties to the south are 20 zoned RC, R-4. 21 Properties -- the immediate properties 22 surrounding the big lot consist of single family and 23 multifamily. The proposed bed and breakfast has two 24 guest bedrooms and one owner's suite, and provides for 25 a total of two parking spaces, which is updated from	Page 131 1 This is how we would measure it along the 2 frontage building line. There's a minimum and a 3 maximum front yard setback of ten feet. Zero -- 4 there's a zero minimum and a ten-foot maximum. This 5 has got a ten-foot setback. So it, it adheres. 6 There's a minimum and a maximum corner setback as 7 well. So it would be 5 foot is the minimum, 15 is the 8 maximum on a corner. 9 And this is 11. So it's within that. Rear 10 yard setback is five, and this is five. Maximum lot 11 coverage in this district is 85%. And this current 12 configuration is a 53.7% lot coverage with impervious. 13 Maximum building height allowed is 35 feet and this is 14 35 feet. 15 And what's called the minimum building 16 frontage, which this is the only district that has 17 this, but it basically requires that the building 18 itself be a certain amount of frontage along the front 19 setback line, if that makes sense. So you have to 20 have 70% of your building built out to the lot width, 21 if that makes sense. 22 You can't have like a building that's narrow 23 and small. It has to be at least 70%. So this one is 24 74%. So this meets that. A copy of your site plan is 25 shown here. This is an updated site plan receipt from
Page 130 1 the prior plan, which is the reduction of one. 2 Initially they had three and this is going to be two. 3 The ground floor consists of an interior parking 4 garage for one parking space and a guest bedroom. 5 Second floor consists of a living area, 6 lobby, and a kitchen. And the third floor is a guest 7 room and an owner's suite. There's a chart outlining 8 here showing the development standards for the Central 9 Business District for the proposed bed and breakfast, 10 and how they compare. 11 So minimum lot width. There's -- excuse me, 12 minimum lot area here. This -- there's none -- it's 13 relevant. This is -- well, I shouldn't say -- this is 14 an existing lot of record. So we're not creating a 15 new parcel. This one is 2,750. So we're not going to 16 be evaluating it for lot area. It's an existing lot 17 of record. The minimum lot width in this district, 18 there's none actually. 19 So -- I'm sorry. You know what? So there 20 is no minimum lot area. I keep thinking that it's R- 21 4. It's not. Central Business District. That's 22 where I was going with -- so yeah, there's no minimum 23 lot area in the Central Business District. I think 24 the proposed is 2,750. There's no minimum lot width. 25 This one has got 50 feet along the frontage.	Page 132 1 the applicant and that's also in the packet. The 2 building complies with all setback, lot coverage, 3 height, and frontage building requirements in the 4 Central Business District. 5 The building complies with the elevation and 6 frontage requirements for the Central Business 7 District as well. The building has one primary 8 frontage on Orange Street. Orange Street has a first- 9 floor frontage, including a lobby door and a garage 10 door, which that's, as you can see, that's a change. 11 It is -- initially the last configuration we 12 had, they did not have the lobby frontage and that's 13 required. So they now have a lobby frontage. The 14 building frontage lobby style is accessible from the 15 first floor at the sidewalk level. So that's a 16 modification to the plan. 17 And the building's first floor facade is 35% 18 transparent, and the second floor is 40% transparent. 19 That's an update from what there was before. So you 20 can see in your plans what the updated facade is, as 21 long as it's along the (inaudible). 22 I've got just the language here because for 23 what the frontage requirements and standards are in 24 the Central Business District that we're looking at, 25 and they have complied with all of those regarding the

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1 store front or the lobby design, the entrances, and
2 access off of, off of the frontage of the building is
3 accessible off of the street front, as well as
4 transparency requirements of 30% on the ground floor
5 and at least 25% on the second floor.
6 So what is proposed now and updated as
7 received today does comply with all those standards.
8 The driveway and parking, the site is served by now
9 two parking spaces. Initially it had three. Now it
10 has two. One parallel space and one garage space.
11 Per the parking requirements in our development code,
12 you can have -- you need one parking space per guest
13 room and two parking spaces per operator room.
14 So this would need a total of four spaces.
15 But the Central Business District is given a 50%
16 reduction for parking. That's, that's given to
17 everything in the Central Business District, bringing
18 the required spaces down to two. So they need their
19 two. The site layout parking access configuration
20 complies with driveway standards and maximum driveway
21 width apron.
22 So that speaks to the prior iteration they
23 had. They had had two aprons, one off of Midway and
24 one off of Orange that exceeded the maximum allowable
25 apron width that you can have. So it was 18 and 18.

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1 They were asking for 36. They've taken one away, now
2 it complies. It's an 18-foot-wide driveway on Orange.
3 So, findings here.
4 When staff reviews a preliminary and final
5 development plan or the Board reviews it, you have to
6 conduct a quasijudicial hearing and review the
7 following factors. These are the ones that we looked
8 at in the last case. Consideration of the site and
9 surrounding area, including important natural or
10 manmade features.
11 Staff's response is the use is consistent
12 with the surrounding zoning and uses. The site is
13 surrounded by majority residential, but it is adjacent
14 to commercial along First Street. Whether the
15 concurrency requirements would be met in terms of
16 traffic, the proposed development does not generate
17 more than 50 p.m. peak hours, so traffic study is not
18 warranted.
19 Water and sewer. The -- as with the other,
20 the other item we had, we did get public utility
21 review. The project will have -- will require water
22 and sewer extension. So you'll see that there's
23 Public Works comments there. So there are lines
24 available. But they are going to need to be extended
25 along the frontage.

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1 School concurrency is not relevant.
2 Drainage, the site may require a stormwater permitting
3 from Saint, Saint John s Water Management District or
4 an exemption. And that's one of staff's requirements,
5 is that they provide that as we move forward, either
6 they get a determination of exemption or if they need
7 to provide retention up.
8 Looking at the site now with, with about 53%
9 lot coverage, they probably are going to get an
10 exemption because it's now a pretty significant green
11 space on it. But we're going to -- we've already
12 requested that of the applicant. The nature of the
13 proposed development, including land uses, placement
14 of the buildings and internal traffic or parking
15 areas, and sewer and, sewer and water access.
16 Staff's response is that the bed and
17 breakfast is permitted by right. So the development
18 plan does -- and the development plan now, as
19 presented, does comply with all development
20 requirements, driveway access and frontage treatment
21 requirements. As stated, the site will require
22 additional utility planning. You can see the public
23 works comments there.
24 As would any site that were to develop that
25 lot, they would need to comply with the same standards

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1 to extend the utilities. Does the project conform
2 with the Comprehensive Plan of the code? And again,
3 the bed and breakfast is, is permitted by right in the
4 district, in the Central Business District.
5 And they have complied with all minimum
6 development requirements. Reviewing applicable
7 regulations. This is where the staff work starts to
8 just repeat itself. Bed and breakfast is permitted by
9 right. They have -- they they've actually done
10 several iterations again to make sure that it complies
11 with all development standards.
12 They have received copies of the fire review
13 comments, and typically we don't get that big of a
14 set. But we did get a nice thorough fire review, and
15 they have acknowledged what would need to be done to
16 meet the commercial standards of a bed and breakfast.
17 Concerns from property owners. The sign was posted on
18 the property, and as we, we talked about before, we
19 didn't really get into the weeds on it.
20 But the only thing that we need to send
21 notices out are special exceptions and variances. So
22 for development plans and plats, we post a sign and we
23 advertise it in the paper that's been done here. In
24 this instance we have received comments. None of them
25 were in writing. So I didn't give you anything.

Page 137 1 But I had had folks come in and ask for 2 copies of the plan set, so. But no one submitted 3 anything formal. But just I'd like to let you know I 4 have had people come in. And all applicable other 5 standards by the Comp Plan. All of the planning and 6 zoning comments have been addressed. 7 The site plan will require additional 8 utility planning. Fire comments will need to be 9 addressed. Staff's recommendation has been revised, 10 as you can see in red from what it was prior to is 11 approval of the proposed application. (inaudible) 12 stop. So you can read that there. We've gotten 13 preliminary revisions and responses to all the staff's 14 comments and the current plan you have right now, we 15 recommend approval. 16 GREG SCHWARTZENBERGER, CHAIRMAN: Thank you. 17 Is the applicant here? 18 APPLICANT DOUG DRIVER: Yes. 19 GREG SCHWARTZENBERGER, CHAIRMAN: Come up. 20 APPLICANT DOUG DRIVER: Thank you. We've got 21 a big crowd. I think we have a lot of architecture 22 fans here. It's going to be a beautiful house, so I'm 23 sure that's why. So, yeah. So, good evening. My 24 name is Doug Driver. My family's owned 108 Orange 25 Street since 1989. When we first purchased it, there	Page 139 1 RENE ATAYAN: Oh, actually, I did have one 2 question. 3 GREG SCHWARTZENBERGER, CHAIRMAN: Yes. 4 RENE ATAYAN: There -- 5 GREG SCHWARTZENBERGER, CHAIRMAN: For the 6 applicant? 7 RENE ATAYAN: No. 8 GREG SCHWARTZENBERGER, CHAIRMAN: For 9 Heather? 10 RENE ATAYAN: For Heather. 11 GREG SCHWARTZENBERGER, CHAIRMAN: Okay. 12 RENE ATAYAN: Sorry. The fire department has 13 its recommendations. There was one notice in there 14 about the tight turning radiuses and so forth, because 15 he has done away with that apron issue. Does that -- 16 that gives more wiggle room in that area. Okay. 17 MARC BORAN: I have a couple questions for, 18 for Heather as well. 19 GREG SCHWARTZENBERGER, CHAIRMAN: For the 20 applicant or Heather? 21 MARC BORAN: Heather. How many Airbnbs do we 22 know that we have? 23 HEATHER WHITMORE: We don't allow Airbnbs. 24 MARC BORAN: Not Airbnb. I'm sorry, not 25 Airbnbs. Bed and breakfasts.
Page 138 1 was a duplex on the lot. It's since been torn down. 2 Now it's used by neighbors and visitors 3 alike as a trash dumping site. And illegal parking 4 occurs on a daily basis there on the lot. We've tried 5 to stop it as best we can. So our plan is to invest a 6 substantial sum of money in a bed and breakfast that 7 will generate revenue for the city and improve the 8 property values for the benefit of all the neighbors. 9 My family and our architect have worked 10 closely with, with Heather over the last year to 11 ensure we meet all city ordinances and we are well 12 within our legal rights to build this. There's no 13 question about that at all. So, thank you for your 14 time, and I look forward to working with you on this 15 project. Thank you. 16 GREG SCHWARTZENBERGER, CHAIRMAN: I should 17 have asked before. Questions for Heather? 18 CORRINE BYLUND: I don't have any at this 19 time. 20 GREG SCHWARTZENBERGER, CHAIRMAN: Questions 21 for the applicant? 22 CORRINE BYLUND: Not at this time. 23 JONATHAN RAITI: Not at this time. 24 GREG SCHWARTZENBERGER, CHAIRMAN: Not at this 25 time? All right.	Page 140 1 HEATHER WHITMORE: I'm not aware of any. Are 2 you? 3 PIPER TURNER: We used to have one. We 4 don't. It's no longer working. 5 MARC BORAN: Thanks. 6 WILL HILTON: I have a question for the 7 applicant. 8 GREG SCHWARTZENBERGER, CHAIRMAN: Do you want 9 to come back up? 10 APPLICANT DOUG DRIVER: Sure. 11 WILL HILTON: Originally there were three 12 parking spaces. Now we're down to two. Where's the 13 other guest park? 14 APPLICANT DOUG DRIVER: So we're only 15 required to have 50% for the code. 16 WILL HILTON: I didn't ask that. I said 17 where's -- where do you -- where did the other guest - 18 - where does the other guest park? 19 APPLICANT DOUG DRIVER: Sorry. I mean, okay. 20 Yeah. I mean, they're going -- there's somebody going 21 to be in the garage. There's the apron right in front 22 of it, so. (background talking) 23 WILL HILTON: Why don't you have a 24 kitchenette in the guest room two? 25 GREG SCHWARTZENBERGER, CHAIRMAN: Hang on,

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Page 141 1 guys. Give him a chance to answer the questions, 2 please. 3 WILL HILTON: Yeah, yeah. 4 GREG SCHWARTZENBERGER, CHAIRMAN: Thank you. 5 WILL HILTON: Why no kitchenette in the guest 6 room two? 7 APPLICANT DOUG DRIVER: Okay, so to answer 8 your first question, we did have an extra parking 9 space, but we were told we had to remove it because it 10 wasn't in compliance. The apron was, was too big of 11 an apron, so we removed it. And then why no 12 kitchenette? 13 WILL HILTON: Yeah. It looks like there's a 14 kitchenette in guest room one, but not two. 15 APPLICANT DOUG DRIVER: Right. Because we 16 just deemed that we didn't need one in there. 17 WILL HILTON: And then you're not proposing a 18 rooftop deck, correct? It's just the -- 19 APPLICANT DOUG DRIVER: No. 20 WILL HILTON: - there's no rooftop deck. 21 APPLICANT DOUG DRIVER: There's no rooftop 22 deck, no. 23 WILL HILTON: Okay. And then guest number -- 24 looks like the guests would -- I was a little 25 confused. Just -- I'm just trying to figure out the	Page 143 1 Driver? 2 APPLICANT DOUG DRIVER: Sure. 3 GREG SCHWARTZENBERGER, CHAIRMAN: Okay, let's 4 start over. I think all those questions are probably 5 better for the architect. 6 WILL HILTON: Sure. 7 GREG SCHWARTZENBERGER, CHAIRMAN: Let's just 8 go ahead and start over so we can all get the same, 9 the same answer. 10 WILL HILTON: So -- 11 KEVIN SOLOMON: Good morning. Hi. Kevin 12 Solomon, architect for 108. 13 WILL HILTON: So I'm just trying to figure 14 out the lay of the land -- 15 KEVIN SOLOMON: Sure. 16 WILL HILTON: -- and to get it -- if you're - 17 - I notice there's a lobby which looks like the front 18 door. Am I mistaken on that or? 19 KEVIN SOLOMON: No, that's, that's correct. 20 That's, that's for -- the lobby is accessing that 21 first bedroom. The second bedroom and the owner's 22 suite will be accessed through the, the side door. 23 WILL HILTON: The laundry. 24 KEVIN SOLOMON: Correct. 25 WILL HILTON: Okay. I think that's all I
Page 142 1 lay of the property. So it looks like there's a lobby 2 that goes into guest room one. So guest two, if there 3 was an occupancy in guest one, they would come in 4 through the laundry or the garage? 5 APPLICANT DOUG DRIVER: Well, I mean, we're 6 really planning for guest number one on the first 7 floor to be the primary guest room. And the second 8 one is probably going to be (inaudible) -- 9 WILL HILTON: I guess, how do you get in? 10 How do you get in to, to the property? If you're the 11 owner or the -- if someone's occupying guest room one, 12 how do you get into the property? 13 APPLICANT DOUG DRIVER: Go through the front 14 door. 15 WILL HILTON: I thought that was the lobby. 16 No? Am I'm missing that? 17 APPLICANT DOUG DRIVER: The lobby goes -- so 18 there's a door into the lobby, and then behind that, 19 there's another door into the guest room. 20 WILL HILTON: Right. I'm saying the other 21 folks that are coming in and out of the property. How 22 do you get in and out? 23 APPLICANT DOUG DRIVER: Yeah, my architect's 24 here, so (inaudible) answer that question? 25 HEATHER WHITMORE: Do you want a copy, Mr.	Page 144 1 have for now. 2 GREG SCHWARTZENBERGER, CHAIRMAN: While he's 3 up, do you guys have anything else for architect? You 4 can obviously bring it back up if you want. Thank 5 you. 6 KEVIN SOLOMON: You're welcome. 7 GREG SCHWARTZENBERGER, CHAIRMAN: All right. 8 Do we have anyone speaking on behalf of the applicant? 9 Anyone speaking against the applicant? 10 PIPER TURNER: Yes. 11 WILL HILTON: (inaudible) intervening? 12 GREG SCHWARTZENBERGER, CHAIRMAN: Any party 13 intervening? 14 UNIDENTIFIED MALE SPEAKER: No. 15 GREG SCHWARTZENBERGER, CHAIRMAN: Okay. 16 Anyone? 17 PIPER TURNER: I have, Mrs. Schoonover, 18 you're first. 19 MS. SCHOONOVER: Can I come around to give 20 you copies? 21 GREG SCHWARTZENBERGER, CHAIRMAN: Yeah, 22 absolutely. 23 RENE ATAYAN: We can share. 24 HEATHER WHITMORE: Did you get a copy? 25 PIPER TURNER: That's okay, I can get one at

Page 145 1 the end. I'll pick one up for the pile. 2 MS. SCHOONOVER: Good evening. I've been 3 sworn in. My name is Henny Schoonover. I live at 214 4 Oceanfront, and I oppose the applicant's request to 5 build a B&B at 108 Orange Street. Deja vu. I am 6 opposed to having a 35-foot bed and breakfast beside 7 my house and in my neighborhood. The proposed 8 building replaces a 1,268 square foot, two-story house 9 that once stood on that lot. 10 The land development code includes bed and 11 breakfast, as one of numerous permitted uses in the 12 Central Business District, along with hotels, motels, 13 interior service, restaurants, carryout and delivery 14 restaurants. Government uses. Buildings and 15 utilities, public parks, recreation areas, libraries, 16 museums, art galleries, recreation, amusement and 17 entertainment, including billiard and pool halls, and 18 the list goes on. 19 None of these permitted uses are compatible 20 within the residential section of the CBD. Our 21 established neighborhood is made up of single and two- 22 family homes that have two stories, none taller than 23 28 feet. This proposed building at 35 feet will stand 24 a full story above all the other houses around it. It 25 just doesn't fit. That's what it looks like.	Page 147 1 other car is gone -- 2 GREG SCHWARTZENBERGER, CHAIRMAN: How much 3 more do you have? 4 MS. SCHOONOVER: Oh, just a few more seconds. 5 Esthetically speaking, the proposal is oversized and 6 already discouraged by the City of Neptune Beach. 7 Regarding privacy, the proposed height of 35 feet is 8 not sensitive to the surrounding neighbors. 9 Allowing this proposal to go forward will 10 set a bad precedent for our neighborhood and the city 11 of Neptune Beach. Regardless of zoning designation, 12 the extra traffic created and parking hassles with a 13 B&B is not fitting with our neighborhood ambiance. 14 Please listen to the concerns of the people 15 living in this neighborhood. The City of Neptune 16 Beach's own Unified Land Development Regulations will 17 not permit this land usage as proposed. Thank you. 18 PIPER TURNER: Mr. Schoonover. 19 MR. SCHOONOVER: I've been sworn in. My name 20 is George Schoonover. I live at 214 Oceanfront. And 21 I oppose the applicant's request to build a B&B on 108 22 Orange Street. We are a neighboring property to the 23 north. As outlined in the Florida Statutes, the 24 Community Development Board shall consider the 25 following factors.
Page 146 1 According to section 27-222 of the Unified 2 Land Development Regulations Purpose and Intent of 3 Zoning Districts, this is very important, what I'm 4 going to say, and this is in quotes from the Unified 5 Land Development Regulations Purpose and Intent of 6 Zoning Districts. 7 Quote, this zoning article must impose 8 certain appropriate restrictions on the use of land 9 within the city limits of Neptune Beach to ensure that 10 future development is in keeping with the existing 11 development. Regarding neighborhood design, the 12 proposal, as it stands now, is not in scale or 13 character with the neighborhood. 14 Regarding scale, mass, and bulk, the ratio 15 of square footage to land of this building is 1 to 16 0.94, while existing homes in this neighborhood have a 17 ratio anywhere from 1 to 1.8 to 1 to 4.14, further 18 illustrating the fact that this proposed building is 19 out of proportion and density with surrounding 20 buildings. 21 The building proportion -- the building will 22 stand a story taller than surrounding homes. Its 23 height will obstruct the views and breezes for homes 24 in all directions. A car sitting on the proposed 25 driveway will block the car in the garage and the	Page 148 1 The nature of the proposed development, 2 including land use types and densities, proposed 3 parking areas, and further concerns and desires of 4 surrounding landowners and other persons. These are 5 the stated goals and objectives of Neptune Beach's 6 Code of Ordinance. 7 Purpose and Intent of Zoning District, the 8 design goals for new construction are to preserve the 9 natural beauty of Neptune Beach and protect, and 10 protect the residential character of the effects of 11 inharmonious and out of scale developments. Site 12 improvements should be compatible with structures 13 existing on neighborhood parcels, and should be 14 sensitive to their designs and property rights. 15 Designs which conflict with the use and enjoyment of 16 any property should be avoided. 17 Buildings should be designed to -- in scale 18 with the neighborhood, and should complement the 19 character of the neighborhood, rather than conflict 20 with it. Buildings should not present excessive 21 visual mass or bulk to public view or to adjoining 22 properties. Large box-like buildings can appear 23 massive. When viewed from the public right of way, 24 excessive mass detracts from the character of Neptune 25 Beach's individual neighborhoods.

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Page 149 1 When viewed from adjoining properties, which 2 would be our property, excess mass can effectively, 3 effectively act as a wall that dominates neighboring 4 structures and interferes with enjoyment of open space 5 and the free passage of light and air. The design 6 should respect views enjoyed by neighboring parcels. 7 It is the intent of this objective to balance the 8 rights -- private rights to views from all parcels 9 that will be affected by a proposed building or 10 addition. 11 No single parcel should enjoy a greater 12 right than other parcels, except for the natural 13 advantages of each site's topography. Buildings which 14 substantially eliminate an existing view enjoyed on 15 another parcel should be avoided. Certainly, a 35- 16 foot-high flat wall certainly qualifies for that 17 characterization. 18 Another consideration for a bed and 19 breakfast on this parcel is the lack of surrounding 20 infrastructure. The parcels on Midway Street at 21 Orange and Midway is a narrow one-way street to Lemon 22 Street. There's no sidewalk, no curb. There's one 23 dim street light at the corner of Orange and Midway, 24 as well as confusing street signage with Do Not Enter. 25 It would be, it would be harrowing for a	Page 151 1 pleasure of living in the house directly in front of 2 the proposed building site for 43 years. We fought 3 this battle before, and fortunately were able to 4 overcome obstacles that were thrown in our faces as 5 far as nightmares that would propose to come in and 6 take over that little lot. 7 Unless you live there, you can't really 8 appreciate how crowded everybody is. And if you've 9 never been down Midway, you have no idea of how busy 10 it is. It's kind of maniacal down there. So anyway, 11 I would ask you all to use your wisdom in looking at 12 these plans. The dearth of parking that will be 13 available and is even shown and all the other things 14 that Mrs. Schoonover said and Mr. Schoonover said, 15 and I'm sure that somebody else will say. Thank you. 16 PIPER TURNER: Shelly Thull. 17 SHELLY THULL: My name is Shelly Thull, 310 18 Oleander Street. And I have not been sworn in. 19 ZACHARY ROTH, CITY ATTORNEY: Raise your 20 right hand. Do you swear or affirm the testimony you 21 give will be the truth, the whole truth, and nothing 22 but the truth? 23 SHELLY THULL: I do. So, I didn't plan on 24 speaking today, but when I received this packet, it 25 made me pretty mad. Every single page has been
Page 150 1 driver or pedestrian to navigate these handicaps 2 without prior knowledge. For these reasons, I oppose 3 the proposed application. 4 PIPER TURNER: Thank you. Miss Bane. 5 MS. BANE: Hi. My name is Julianna Bane. 6 I've been sworn in. I'm writing -- reading a letter 7 from a -- from Ronald and Diane Wingate at 700 8 Oceanfront. Dear Neptune Beach Community Development 9 Board, we are writing this letter in hopes that this 10 committee will vote against the application to 11 establish the Driver Inn at 108 Orange Street in 12 Neptune Beach. 13 There is absolutely no parking for a 14 business on that small section of Orange Street. 15 Also, most people that live at that beach have many 16 visitors because we live at a safe beach. This warm 17 weather has already brought many people. We live at 18 the end of Cedar Street public access, and have never 19 seen so many headed to the beach than we have now. 20 Sincerely yours. Ronald and Diane Wingate. So, thank 21 you. 22 GREG SCHWARTZENBERGER, CHAIRMAN: Thank you. 23 PIPER TURNER: Judy Williams. 24 JUDY WILLIAMS: Hi. I've been sworn in. I 25 don't live here anymore, but my husband and I had the	Page 152 1 changed in this packet. It's not the same packet we 2 all read. Heather, she is very competent and no one 3 can argue this is a really important decision, but I 4 bet you were surprised when you got the packet and 5 every single page was changed. 6 The point of the board and the city attorney 7 spoke today was for the board to decide if what 8 Heather recommends is you agree with. How can you 9 know if you agree with it if you had no time to even 10 read the packet? When you were at work today, this 11 was being changed. 12 So my point is, how can you make an educated 13 decision on this packet? I think it should be delayed 14 till next month. And one other point about this, and 15 I don't know about the code, but I do know that the 16 code for residential has been changed, that our 17 garages have to be, I believe, 12 inches behind the 18 front of the house. 19 I don't know if that it -- also applies to 20 CBD, but it is definitely -- might be a problem. But 21 my biggest problem is, we can't be doing this. We 22 can't be changing a packet. You guys are supposed to 23 be making educated decision when you don't have time 24 to even understand what the packet is about. Thank 25 you.

Page 153 1 PIPER TURNER: That's the last speaker 2 request I have. 3 RAY LYNN: Can I speak? I have not been 4 sworn in yet. 5 GREG SCHWARTZENBERGER, CHAIRMAN: Come on up, 6 sir. 7 RAY LYNN: I have not been sworn in. 8 ZACHARY ROTH, CITY ATTORNEY: Raise your 9 right hand. Do you swear or affirm the testimony you 10 give will be the truth, the whole truth, and nothing 11 but the truth? 12 RAY LYNN: I do. My name is Ray Lynn. I 13 live in 316 First Street. I've lived in Neptune Beach 14 for 25 years. I've lived right there for 18 years. I 15 work with Chief Ricky to get the parking between 16 Orange and Cherry taken off a year ago because of the 17 parking hazard we have. 18 We still have an issue crossing over. I was 19 not planning on speaking here at all, but the way it 20 was presented, that all -- of that needed to be done 21 was a sign needed to be posted. No packets needed to 22 go out. I heard about this because a friend sent me a 23 picture of it. I'd never seen any of the packets, so 24 the bare minimum was done. And then quickly it said, 25 we can do this, we can do this.	Page 155 1 the, the guns and stuff. The year before that, 2022, 2 there was someone celebrating like 35th birthday. 3 What was that at? 4 A short-term rental. They were killed. I 5 bought in Neptune Beach 25 years ago and not in Jax 6 Beach for a reason. I want to keep it in Neptune 7 Beach. That's all I got. 8 PIPER TURNER: I have another one, Heather 9 Peters. 10 HEATHER PETERS: I've been sworn in. My name 11 is Heather Peters. I live directly across the street 12 from this lot. As the applicant stated, they can't 13 even control the parking right now on the lot that 14 they own. So how are they going to control the people 15 that are coming in? 16 I'll tell you that I'm a native. I grew up 17 in Ocean Walk, and now my husband and I live right 18 across the street. We love it here, but the issue is, 19 as I love -- I loved living here and loved growing up 20 here, and I want to raise my babies. 21 We want to start our family later this year, 22 and I can't imagine teaching my babies how to ride 23 their bikes when there's a B&B across the street and 24 complete strangers. The other part of this I can tell 25 you all the reasons why I don't want it. But like
Page 154 1 And then also quote unquote improved 2 property value. I don't see that. Has the study been 3 done? What will happen if a B&B goes next to it? 4 I've been in risk management for over 30 years, and I 5 can tell you when something happens, you know, you 6 look at something, you start doing a slippery slope. 7 You let one B&B in there. And I really love what the 8 one lady said about all her reasons why not to. 9 RAY LYNN: But if you let a B&B come in, then 10 someone comes, hey, we want to put an Airbnb. I know 11 it's completely different. I'm not an attorney. I'm 12 a risk management guy. And if you let one thing 13 happen, it starts to slide. 14 And the bottom line is it's going to look 15 ugly in a residential neighborhood. It's going to 16 depreciate property value, not appreciate property 17 value. It's going to depreciate it. And we don't 18 want that around here. I mean the existing house that 19 was there, this looks nothing like it. 20 And I walk on that road every day and I see 21 the golf carts come flying by and the electric bikes 22 coming all through here, and you're going to have 23 somebody from out of town come in here. Also thinking 24 about 2023. You had a short-term rental in 25 Jacksonville Beach. The feds busted in and found all	Page 156 1 from a logical perspective, how is a business going to 2 be successful with two parking spots? Like what -- 3 that doesn't make any sense. 4 So my question is, are we saying that we're 5 going to do this B&B, but we're actually really going 6 to live here? There's so many questions that are 7 going off in my head, because you're not going to 8 spend all this money and have no profit. So let's say 9 we're going to have two parking spots so the family 10 can live there. 11 But we got approved as a business. So 12 that's something that's in the back of my head, 13 because if I was running a business -- I'm a realtor, 14 everybody has to make money. I totally understand 15 that. But two parking spots will not make a 16 successful business. And right now, when we moved in, 17 there was a huge issue. 18 I have on record how many times I've called 19 the non-emergency line. Drugs, people in my front 20 yard on a Sunday morning blocking my driveway. We've 21 had multiple reports with police having to come out. 22 But my question really to you all is how can you look 23 at these plans and say, oh yeah, a B&B and two parking 24 places. (inaudible) the issues that we have right 25 now.

Page 157 1 And you had mentioned earlier when you were 2 discussing other plans that you really try to talk 3 about parking. We still have a major issue. Even the 4 applicant's, like, hey, I can't even control people 5 parking in the lot. We've tried to help them. We'll 6 call the non-emergency line. 7 I've been told because I don't own the lot 8 or I don't own the neighboring house that I can't call 9 anymore. So I only call when people park in my 10 parking spot. Like, this is going to be so bad for us 11 in our community. And growing up here, I've seen it 12 excel. 13 And it's great, we love it, but this is not 14 something that I want to see happen. And my question 15 is for all of you right now, what is the logic behind 16 the two parking spots. Do we have any? Has anybody 17 discussed any of that? 18 CORRINE BYLUND: We'll discuss it. 19 HEATHER PETERS: Okay. Thank you. 20 GREG SCHWARTZENBERGER, CHAIRMAN: Would the 21 applicant like to respond? 22 WILL HILTON: Yes, absolutely. 23 MARC BORAN: We have one more. 24 CORRINE BYLUND: Oh, is there another 25 speaker?	Page 159 1 be developed. I do commend the architect for making a 2 single home look like a bed and breakfast. And in 3 this case, I really want the owners of the lot to make 4 an effort to use the lot. 5 I mean, we all want that. I think that's 6 valuable for the, for the community and for the people 7 who live in that street, but make a use of this lot to 8 be responsible and neighborly friendly. So that's all 9 I have to say. Thank you. 10 APPLICANT DOUG DRIVER: So the last two 11 people that just spoke sort of made my point. With 12 all the drugs and people going over on the lot, 13 parking there and everything. That's why we want to 14 build a house here and use it as a bed and breakfast. 15 All right? 16 To the point that was mentioned earlier by 17 you, sir. You were talking about why we didn't have a 18 kitchenette in the second floor or the third floor, 19 excuse me. We do have the kitchen on the second 20 floor, which is access to that room. In addition, 21 we're primarily going to just look to rent out the 22 first-floor bedroom. So, I mean, two parking spots 23 should be ample space for that. 24 WILL HILTON: So why are you renting if you 25 have a B&B?
Page 158 1 PIPER TURNER: Yes. 2 PIPER TURNER: Dr. Leoni, everybody, this is 3 the gentleman that saved my husband's life. 4 DR. JUAN LEONI: I just come as a citizen. 5 Juan Leoni, 111 Orange Street. You know, I live 6 diagonal to the -- 7 ZACHARY ROTH, CITY ATTORNEY: You've been 8 sworn in already? 9 DR. JUAN LEONI: Yeah. Oh, I haven't, no. 10 ZACHARY ROTH, CITY ATTORNEY: Do you swear or 11 affirm the testimony you give will be the truth, the 12 whole truth, and nothing but the truth? 13 DR. JUAN LEONI: I swear. So, anyways, I 14 live diagonal to the property, and, you know, I've 15 been there for seven years and definitely I would like 16 to have something filled there, you know. And, you 17 know, it's an empty lot. 18 We see people putting their, their dogs 19 there, cars coming around sometimes at night. And 20 I'll see people just parking there for unknown 21 reasons. So definitely it's a, it's a, a bit of an 22 eyesore. And you know, I'm the only neighbor I think, 23 that have kids in that street. 24 So I do feel that that transit there, it's 25 a, it's a problem. So I do, I do want the property to	Page 160 1 APPLICANT DOUG DRIVER: That's, that's what 2 should I call it? 3 UNIDENTIFIED FEMALE SPEAKER: That's a VRBO. 4 APPLICANT DOUG DRIVER: Okay. It's a -- 5 UNIDENTIFIED FEMALE SPEAKER: No. 6 UNIDENTIFIED FEMALE SPEAKER: Yes. 7 GREG SCHWARTZENBERGER, CHAIRMAN: Hey, guys, 8 the gentleman's at the podium (inaudible) 9 APPLICANT DOUG DRIVER: Okay. Sounds pretty 10 combative. All right. Yeah, so I'm hearing a lot of 11 feelings from people talking about how they don't like 12 it. If they don't like it, they should work to change 13 the laws and the ordinances that the City has. 14 I mean, you guys have ordinances in place 15 for a reason, and we're just trying to follow those. 16 We've been meeting with Heather for the last year. 17 Yes, there have been some changes. That's because 18 we're trying to just do everything we can to meet, to 19 meet all the rules and regulations that you all have 20 in place. It's a very complex build. 21 This is going to be a \$2 million property. 22 So to hear people say that it's going to be ugly is a 23 joke. It's \$2 million. We're putting all of my life 24 savings into this house -- into this bed and 25 breakfast, whatever you want to call it. We'll have

Page 161 1 security cameras. We're going to look at building a 2 gate down the road. So we're not going to have people 3 just randomly parking on our property. It's not 4 something that's going to happen. So that's all I 5 have. Thank you. 6 GREG SCHWARTZENBERGER, CHAIRMAN: Thank you. 7 RENE ATAYAN: I think we have to get the 8 nomenclature down correctly. Okay? Because a B&B 9 doesn't rent out a room. You handle a hotel, you're - 10 - you reserve a room for a period of time unless 11 you're a residential hotel. So I think we have to 12 just be careful that we're using the correct 13 terminology. 14 ZACHARY ROTH, CITY ATTORNEY: (inaudible) 15 between transient and non-transient. 16 RENE ATAYAN: Right. 17 ZACHARY ROTH, CITY ATTORNEY: And so VRBO, 18 that kind of stuff is non transient. Under the 19 definitions, transient is talking about basically 20 where you're booking it a day at a time like a hotel. 21 GREG SCHWARTZENBERGER, CHAIRMAN: Let's move 22 to floor discussion. Do you want to start it? 23 CORRINE BYLUND: Sure. So, unlike the 24 replat, here we have factors to consider. So we do 25 have discretion in this case. This is not just a	Page 163 1 to all the people who reside in that area. And that 2 is another one of the factors. You heard me beating 3 on the parking drum before. 4 I think that that's a huge consideration. I 5 come from a family that was in the hospitality 6 industry, and I do not think it's realistic at all to 7 have two parking spots for an Airbnb. It's just not. 8 You're going to have the people coming to stay there. 9 You're going to have people who live there, you say. 10 Possibly you're going to have people working 11 there, and then you're going to have people who are 12 going to want to visit the people who are staying 13 there. That math doesn't jive at all. At all. 14 And I have a real problem with contributing 15 to the parking problem that's already existing in our 16 city. It's, it's a serious problem. And I, for that 17 reason, have a huge problem with this. Also, you 18 know, we were talking about people, you know, asking 19 for a variance or an approval and then changing the 20 use of the property. 21 And we were talking about it in the 22 Historical Subcommittee earlier. You know, somebody 23 receives this permission to do something, and then 24 they go on and they do something else. What I see 25 here is somebody who wants to have a 35-foot house.
Page 162 1 black and white situation at all. I take this very 2 seriously considering all of the factors. Under 3 factor number one, characteristics of the site and 4 surrounding area, including important natural and man- 5 made features, the size and accessibility of the site 6 and surrounding land uses. 7 So my understanding is that this area of the 8 city was and is zoned commercial, but people came in 9 and built residences in that area. 10 HEATHER WHITMORE: Residences are allowed 11 with a special exception. But, you know, my 12 assumption is just that they were probably preexisting 13 and the commercial business district was just 14 established in that area. 15 ZACHARY ROTH, CITY ATTORNEY: I think that's 16 a better description, is there were existing 17 residential properties and then the commercial -- the 18 Central Business District was imposed upon that area. 19 CORRINE BYLUND: Later, okay. 20 GREG SCHWARTZENBERGER, CHAIRMAN: Like the 21 (inaudible) 22 CORRINE BYLUND: Exactly. So the land use 23 right now is residential despite being zoned 24 commercial. So I think that we need to consider that. 25 And I think that we need to give proper consideration	Page 164 1 UNIDENTIFIED FEMALE SPEAKER: Yes, 2 absolutely. 3 CORRINE BYLUND: And although it's zoned 4 commercial and they could do a B&B out of that 5 property right now, if, if that were even realistic, I 6 -- what, what I see happening is that it's not going 7 to be realistic to have a B&B there. 8 That -- it'll just be a 35-foot house that's 9 out of keeping with all the other houses that are 10 around it. So those are really my biggest issues with 11 this application. 12 RENE ATAYAN: So my comments are going, going 13 to dovetail with Corri's in the sense that this, this 14 -- it is a commercial district, but we also look at 15 the intensity of businesses quite often. And that can 16 affect whether or not we grant a permit. 17 This seems to me to be too high of an 18 intensity application, whether it's for its use and 19 also just its physical nature for the area. We, we 20 kind of went down this path with the prior application 21 of whether we were going to revisit the zoning for an 22 area of town. For this area of town, I would suggest 23 maybe we do revisit the zoning for it and maybe define 24 -- more, more finely define the nature of the 25 commercial use.

Page 165 1 And an example that I'd like to give that I 2 think has been nice for people is what Pete's did. 3 You know, they, they kept the historic nature of the 4 bar area, but they also purchased the two cottages 5 next to them. And instead of knocking them down and 6 putting up a 35-foot building, they maintained the 7 small footprint, the quaint nature of the 8 architecture. 9 The architecture is complementary to the 10 other neighboring homes. So I understand that -- and 11 I understand that this is a dream of yours to, to 12 build this home. The, the height and size of it, 13 however, is something that does give me pause in terms 14 of being out of keeping with the nature of, of that 15 part of town. It's just very tight there. 16 And so I -- you know, that's what gives me 17 pause. And I would also like to just think forward in 18 possibly revisiting that part of the Central Business 19 District for what we do there, because we've got some 20 really nice things happening down there right now. 21 GREG SCHWARTZENBERGER, CHAIRMAN: Will? 22 WILL HILTON: I don't have anything at the 23 present time. 24 GREG SCHWARTZENBERGER, CHAIRMAN: Marc? 25 MARC BORAN: I don't have anything at the	Page 167 1 think you mentioned that. This, this borders 2 Seahorse. So this (inaudible) house is between 3 Seahorse Lemon Bar and then this empty lot. 4 So this is obviously a very desirable swath 5 of land for people who are going to end up developing 6 whatever happens to go at Seahorse, right? I mean, 7 we're all going to see changes there in the probably 8 near future. I mean, I think that's inevitable. 9 Just kind of something I'm just saying out 10 loud to think about. When I look at permitted uses in 11 the, in the CBD bed and breakfast hotel motel, if 12 it's, if it's done right, I think it'd be a very 13 desirable place to host people from out of town. I 14 say that from someone who works day to day hosting 15 people from out of town (inaudible). 16 Now, I'm not speaking on design or esthetics 17 because it's not really my intention to, to, to opine 18 on design and esthetics. I'm just saying the area, 19 there is a permitted use there, and it would be a 20 lovely place to stay for someone who's from out of 21 town. There's no doubt about that in my mind. So I 22 know the parking is problematic. 23 I have a business, the parking is 24 problematic. I'm in a neighborhood, too. Just 25 talking out loud, guys. People figure out how to get
Page 166 1 moment. 2 GREG SCHWARTZENBERGER, CHAIRMAN: Jon? 3 JONATHAN RAITI: I mean, I tend to agree with 4 some of the general comments that have been made that 5 the, the size and bulk of the building seems to be 6 very much not in keeping with the other neighboring 7 properties. And I think when we look at the, the 8 characteristics for assessment here, size, man-made 9 features and surrounding land uses apply. 10 Whether or not it's consistent with the 11 Comprehensive Plan is an issue because there it comes 12 into, into -- scale with the neighborhood comes into 13 consideration. And I think that we have a very 14 special corner of the downtown Central Business 15 District. 16 It is the residential corner of the Central 17 Business District, and that's more characterized by 18 these older cottage style houses, whereas this would 19 be a much larger structure you know, by, by at least 20 one calculation, you know, significantly larger. 21 GREG SCHWARTZENBERGER, CHAIRMAN: So this is 22 a tough one. For many reasons. And I just wrote down 23 some thoughts. I was just going to talk about that 24 for the purposes of board discussion. One thing when 25 you talk about the zoning, revisiting the zoning, I	Page 168 1 to good places. That's, that's just the way it is. 2 You know, what would we like to see there? Well, 3 maybe you guys would like to see a single-family home 4 built there. Well, that's not allowed. 5 That's a special exception. That's not even 6 a permitted use. So that's just something else to 7 point out. There are other things you could, you 8 could put there and go through this same process with 9 the development plan. 10 So going back to what Rene said, this is a 11 tricky zoned area that it's hard to make sense of this 12 particular swath. In this same area, there are a 13 couple really cool things. We pointed out the Pete's 14 (inaudible), like Lubeck's Jewelry Store is right 15 there too, in an older home. 16 He doesn't have an older home to work with. 17 He's got a piece of land. He owns it. He's trying to 18 get creative to develop that, so I can respect that. 19 So those are just my thoughts as we continue our board 20 discussion. So does anybody have anything else? 21 CORRINE BYLUND: I do want to say that I 22 think that it's good that they're wanting to build on 23 and improve the lot. I do like that. I just wonder 24 if there's something that they could do differently to 25 take care of that parking issue and maybe, even, maybe

Page 169 1 even the height, although the height is conforming at 2 35. 3 GREG SCHWARTZENBERGER, CHAIRMAN: We'll -- 4 hey, we'll bring, we'll bring you back up. 5 APPLICANT DOUG DRIVER: Okay. 6 CORRINE BYLUND: But with the parking, if 7 there's something that they could do about the 8 parking, that, that could be a game changer. 9 WILL HILTON: Heather, if a, if a -- I'm not 10 sure that -- I just feel like I need to ask this 11 question. If someone were to get a -- come before us 12 to get a special exception to put a residential home, 13 how -- what would the height be for that? 14 HEATHER WHITMORE: It has to conform to the 15 R-4/RC overlay standards (inaudible) 16 JONATHAN RAITI: And also, Heather, when we 17 look at the commercial nature of this development, 18 you're looking -- normally when you have this 50% 19 parking reduction, that's normally thinking about 20 stores, retail establishments. Is that also 21 considering hotel usage and overnight parking? 22 HEATHER WHITMORE: It applies to all the 23 Central Business District. There is public parking 24 less than 200 feet away. I mean, I'm just -- that's 25 just a fact.	Page 171 1 a difference. 2 Even when you look at the architectural 3 renderings, you can see the surrounding buildings are 4 lower. So I think that the density or the mass itself 5 of the building weighs on my mind is a consideration. 6 I mean, you could have -- I mean, you have the right 7 to have a bed and breakfast. 8 That is in the CBD. But it doesn't 9 necessarily have to be that size. You don't have to 10 fill out the maximum envelope area and kind of 11 overwhelm or overshadow the neighborhood. I mean, 12 prior to this discussion for these four variances, 13 there was a historic preservation meeting. 14 And I think as we consider the, the value of 15 having neighborhoods which have a, a certain 16 characteristic something to bear in mind. We have one 17 small Central Business District, many of which have 18 retail establishments that have used what would 19 probably now be deemed historic buildings. 20 GREG SCHWARTZENBERGER, CHAIRMAN: You guys 21 (inaudible) bring the applicant back up? I know that 22 he has a comment. 23 CORRINE BYLUND: Sure. 24 GREG SCHWARTZENBERGER, CHAIRMAN: You guys 25 good with that? All right. Would you like to come
Page 170 1 JONATHAN RAITI: Sometimes when there's a 2 development, there'll be a separate parking agreement 3 that's done, which designates where like overflow 4 parking goes. 5 HEATHER WHITMORE: There -- by zoning -- I 6 mean, what you're asking for in positions that go 7 beyond the zoning code. So that's going to be -- you 8 know, we don't have a demand for them to have more 9 than two parking spaces. 10 So I'm not -- we don't -- we wouldn't have 11 a, a right to ask for the development of something 12 like overflow parking. I mean, I don't, I don't 13 (inaudible) you know, we can't impose standards that 14 aren't in the zoning. I can't. You (inaudible) 15 ZACHARY ROTH, CITY ATTORNEY: We can't 16 unilaterally do that. The, the Board can evaluate the 17 proposal, even in compliance with the code to 18 determine if it meets these factors. But staff can't 19 say even though it meets these factors, we as staff 20 want to require this additional obligation, staff. 21 That's not within discretion staff has. 22 JONATHAN RAITI: And in terms of just kind of 23 assessing the degree to which it fits with the, the 24 characteristics of the site, of the site and the 25 surrounding area, I mean, it seems to me that there is	Page 172 1 back up, sir? 2 APPLICANT DOUG DRIVER: Yeah. So I just 3 wanted to speak to the intent, the question posed 4 there. So we absolutely intend to rent this out and, 5 you know, have someone occupy the bed and breakfast. 6 It's not just going to be a house. We did have an 7 extra parking space, but we were told we needed to 8 remove that to comply with the ordinance. 9 So that's been our goal the whole time is 10 just try to meet every ordinance that's laid before 11 us. I mean, if we need, we're -- I'm happy to add 12 that parking space back. We would prefer that, 13 actually. The goal really is to have one couple, you 14 know, come in and stay there routinely as a, you know, 15 and as a vacation-style rental day in and day out. 16 So I'm not going to have 25 plus people, you 17 know, visiting the house. I live there. I don't want 18 to see 25 people myself. I would prefer not to see 19 them at all and have them come in and out a separate 20 entrance. So that's, that's, that's the intent. So I 21 just wanted to make that known. 22 GREG SCHWARTZENBERGER, CHAIRMAN: Thank you. 23 Well, guys, we have a tricky one here. 24 JONATHAN RAITI: Is anyone ready to make a 25 motion?

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1 WILL HILTON: I would propose that -- I mean, 2 like we've done in the past, I would propose to 3 approve it, and then -- I've not made that motion yet. 4 But then if you were to vote against that, you would 5 obviously say denied rather than doing the 6 alternative, rather than making a motion to deny it. 7 I think we should make a motion to approve it, and 8 then we can either say yes if you approve it or no if 9 you don't approve. 10 JONATHAN RAITI: So keep in mind, if you make 11 that motion, then you are obligated to vote in favor 12 of (inaudible) 13 ZACHARY ROTH, CITY ATTORNEY: (inaudible) 14 motion to approve must vote. 15 MARC BORAN: I guess I have another question. 16 GREG SCHWARTZENBERGER, CHAIRMAN: Yeah, for 17 who? 18 MARC BORAN: Well, for the applicant, because 19 he keeps talking about rental, then he -- 20 GREG SCHWARTZENBERGER, CHAIRMAN: Do you mind 21 coming back up? 22 APPLICANT DOUG DRIVER: Oh, sure. 23 MARC BORAN: Then you, then you mentioned 24 maybe you're going to have somebody there for a long 25 period of time to take care of it. You're going to	1 properties. So I may be using the incorrect 2 terminology, but I have plenty of experience to get in 3 to the B&B. 4 WILL HILTON: And where are you planning on 5 living? 6 APPLICANT DOUG DRIVER: In the property. 7 WILL HILTON: Okay. 8 APPLICANT DOUG DRIVER: Yes. 9 WILL HILTON: You're not -- you're -- you're 10 no longer a resident of North Carolina? 11 APPLICANT DOUG DRIVER: South Carolina, but 12 no. No, sir. 13 RENE ATAYAN: So the other guest room 14 upstairs is like a family guest. 15 APPLICANT DOUG DRIVER: I mean, that will 16 probably just be, I mean, empty for the most part. I 17 don't expect -- I expect the first-floor guest, you 18 know, someone to stay in the first floor and -- 19 RENE ATAYAN: Okay, so, so now you've brought 20 up something that's causing me a question. So you're 21 living on the property and you've stated that you 22 would prefer to have limited contact with whoever is 23 utilizing the property as a B&B for their privacy and 24 for your privacy. 25 APPLICANT DOUG DRIVER: Okay.
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1 live there. So bed and breakfast is a commercial 2 establishment housing a building or part thereof, 3 other than a motel or hotel that offers overnight 4 accommodations and a breakfast for a daily charge of 5 which also serves as the primary residence of the 6 operator or owner. So who is the operator or owner? 7 APPLICANT DOUG DRIVER: That's me. 8 MARC BORAN: You? 9 APPLICANT DOUG DRIVER: Yes. 10 MARC BORAN: Okay. 11 APPLICANT DOUG DRIVER: I meant, I didn't 12 want to have undue interaction with guests. They'll 13 have a separate entrance for that first-floor bedroom 14 and then, you know, obviously feed them. I'm not 15 going to avoid that, but I'm just saying I'm not going 16 to be hanging out with people. 17 MARC BORAN: Yeah, I mean, I understand that, 18 but I just -- because I think you've -- when you 19 talked about renting it, you sort of just caused 20 confusion. And as Rene said, we -- whether we needed 21 to define that or not, as long as I understand what 22 your intent is, which I -- 23 APPLICANT DOUG DRIVER: So, so yes, I had a 24 long term -- I owned a house in South Carolina that I 25 rented out. So I have experience with rental	1 RENE ATAYAN: Correct? But then you also 2 have a guest room up on the floor where your bedroom 3 is. So you're sharing a floor. You're in direct 4 contact now with someone who is also a guest, who is, 5 who is a B&B guest or a family guest or friend? 6 APPLICANT DOUG DRIVER: It's just -- it's 7 just another room in the house. I mean, you know, 8 whether or not it's rented, I don't understand how 9 that's relevant. 10 MARC BORAN: So your Airbnb is a one-bedroom 11 Airbnb. It's a -- 12 APPLICANT DOUG DRIVER: It's a bed and 13 breakfast. 14 WILL HILTON: With a kitchenette. 15 MARC BORAN: Bed and Breakfast. 16 BECKY DRIVER: May I come up? May I come up 17 and talk? 18 GREG SCHWARTZENBERGER, CHAIRMAN: Yeah. One 19 second. 20 BECKY DRIVER: Okay. 21 GREG SCHWARTZENBERGER, CHAIRMAN: Sorry, 22 ma'am, one second. So we're kind of bringing up 23 Airbnb. Now, just to, just to say, hotels can list on 24 Airbnb. Okay? 25 MARC BORAN: I'm sorry. I don't mean to say.

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1 GREG SCHWARTZENBERGER, CHAIRMAN: No, no, 2 it's okay. 3 MARC BORAN: I don't mean to say Airbnb. I 4 mean a bed and breakfast. 5 WILL HILTON: I think B&B and Airbnb are 6 getting mixed up. 7 MARC BORAN: Sorry. Your bed and breakfast 8 is going to have one single room that you plan on. 9 APPLICANT DOUG DRIVER: I have a full-time 10 job. This is going to be in addition to my regular 9- 11 5, so. 12 MARC BORAN: I'm not, I'm not -- I'm just 13 curious. I just want to make sure I understand the 14 layout because I originally understood this as you 15 know, typically multi-room. When I think -- 16 APPLICANT DOUG DRIVER: Right, it is, it is, 17 it is an option. Right. I can always do that. 18 Absolutely. 19 MARC BORAN: Okay. 20 APPLICANT DOUG DRIVER: And you know maybe 21 down the road I'll decide to start renting out the 22 second room, so. 23 WILL HILTON: I guess I get a little confused 24 because -- and I'm trying not to overtake this, I'm 25 trying to -- in my experience, bed and breakfast are	1 dry. My son intends to live in the property and also 2 rent out the bedrooms. Perhaps the -- and the one 3 downstairs as bed and breakfast. He will also hire 4 someone to come in and prepare the breakfast in the 5 kitchen area that's on the second floor. 6 Same place as the bedroom. So there will be 7 that atmosphere, but his room is going to be on the 8 third floor, so he can come down and have breakfast or 9 whatever in the kitchen with the guest. But if his 10 job takes him where he's not going to be living here 11 anymore, he's going to be moved away, then he could 12 possibly hire someone to be the manager of the bed and 13 breakfast and prepare breakfast, and they would live 14 there. So, sorry. 15 GREG SCHWARTZENBERGER, CHAIRMAN: Okay. 16 BECKY DRIVER: Does that explain some of the 17 things? 18 RENE ATAYAN: It sort of, it sort of does. 19 But I keep getting back to there is a guest room on 20 the third floor. 21 BECKY DRIVER: That's the owner's suite on 22 the third floor. 23 RENE ATAYAN: No. 24 BECKY DRIVER: That's the owner's suite. 25 RENE ATAYAN: Yes. There's a guest room on
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1 typically a place where you go and you stay within the 2 home, and the person that owns the home does serve you 3 multiple meals generally. 4 And there is -- I don't stay at bed and 5 breakfasts because it is a little bit uncomfortable 6 for me to be involved with the owner of the home that 7 I -- me personally, I don't enjoy that as much. And 8 so that's where I guess I'm getting a little confused 9 because what I view as a bed and breakfast is 10 typically where the owner of the home has multiple 11 rooms where someone stays and they congregate, and 12 they serve a nice dinner and you eat with the person 13 that owns, you converse, you have conversations with 14 the people. 15 The bed and breakfast owner typically enjoys 16 that. That's why they do it, invite people in their 17 home. So I'm, I'm just -- I'm getting a little 18 confused on the model. 19 BECKY DRIVER: May I? 20 GREG SCHWARTZENBERGER, CHAIRMAN: (inaudible) 21 legitimate analysis. 22 BECKY DRIVER: May I come up? 23 GREG SCHWARTZENBERGER, CHAIRMAN: Yes, ma'am. 24 BECKY DRIVER: Okay. So I'm Becky Driver and 25 I have been sworn in, thank you. My mouth is very	1 the third floor. This is where I'm getting -- 2 BECKY DRIVER: Okay. 3 RENE ATAYAN: -- I'm getting mixed up. 4 BECKY DRIVER: Okay. 5 RENE ATAYAN: There's a guest room on the 6 third floor. 7 BECKY DRIVER: So he can, he can use that. 8 So, family -- 9 RENE ATAYAN: I'm just listening to what is 10 being said. I don't have problems with people wanting 11 to conduct business, I don't. But I'm listening to 12 things that have been said. But then there are things 13 that contradict. 14 I'm trying to sort through it so that, you 15 know, if it's a misunderstanding on my part, fine. 16 But what was said was you were going to live on the 17 third floor. You preferred to have the guests on the 18 first floor where you would have minimal contact with 19 them. There is another guest room on the third floor 20 next to the master suite. Is that being rented out as 21 another commercial guest room? 22 BECKY DRIVER: Only if he relocates somewhere 23 else and then rents the entire building as -- and 24 someone, and someone runs it for him. Perhaps someone 25 manages it, has kids, and that's where their kids will

Page 181 1 stay. I don't know, but we -- 2 CORRINE BYLUND: I think (inaudible) 3 BECKY DRIVER: Yeah. The lot coverage is a 4 minimum of 70%. We're at 72. 5 CORRINE BYLUND: Yes, ma'am. So what I 6 understand is that those third-floor rooms -- 7 BECKY DRIVER: Right. 8 CORRINE BYLUND: -- are meant to be the 9 owner's suite. 10 BECKY DRIVER: Yes. 11 CORRINE BYLUND: They're not meant to be 12 rented out to third parties. 13 BECKY DRIVER: Not starting out. But if 14 something happens and he gets -- 15 CORRINE BYLUND: But if something happens, 16 then the entire third floor would be rented out to a 17 third party as the manager. 18 BECKY DRIVER: Yes, ma'am, it could. 19 CORRINE BYLUND: I understand you. 20 BECKY DRIVER: Absolutely. Yes. 21 CORRINE BYLUND: Did I -- 22 RENE ATAYAN: The transient, the transient 23 guest, there's only one bedroom that is for a 24 transient guest. Is that what we're saying? The one 25 on the bottom, on the bottom floor.	Page 183 1 CORRINE BYLUND: And I do understand, you 2 know, Covid -- 3 GREG SCHWARTZENBERGER, CHAIRMAN: Okay, so 4 we're in board discussion. Keep going. But we're in 5 board discussion. 6 CORRINE BYLUND: Sure. And so for me, I -- 7 this is -- just seems like it is, it is not what it's 8 presented. And the parking, I think is the reason 9 that I would use to reject it. And that is a legal 10 reason, and I think that that would pass muster. 11 RENE ATAYAN: I have nothing more to say. 12 MARC BORAN: I wholeheartedly agree. I think 13 it's a facade of putting up a big home and (inaudible) 14 but presenting it as a bed and breakfast. And 15 parking, the -- you know, he mentioned, you know, two 16 or three other people coming in just to provide the 17 services because he works as well. And so parking to 18 accommodate those people as well becomes very 19 difficult. 20 JONATHAN RAITI: I think I've expressed my, 21 my feelings before. I think that when we look at the 22 character of the site and the surrounding area, that 23 important natural and man-made features are not kind 24 of comporting with the design of the, of the 25 structure.
Page 182 1 BECKY DRIVER: (inaudible) Oh, no, just the 2 first and the third. Okay. 3 GREG SCHWARTZENBERGER, CHAIRMAN: So 4 (inaudible) floor discussion. 5 CORRINE BYLUND: Yeah. 6 GREG SCHWARTZENBERGER, CHAIRMAN: Thank you. 7 Thank you. 8 CORRINE BYLUND: So, more than ever, I feel 9 like this is a request to make a 35-foot home that you 10 want to have a legalized Airbnb. Because a bed and 11 breakfast, you check in the guest, they, they come and 12 they check in. They see you. 13 Maybe there's a happy hour, then there's 14 some breakfast in the morning. Sandwiches. That's 15 what a bed and breakfast is. I mean, people have been 16 to bed and breakfasts. 17 BECKY DRIVER: Right. But then Covid hit and 18 a lot of things changed. A whole lot of things 19 changed. 20 CORRINE BYLUND: Okay. But -- 21 WILL HILTON: I think we should move into 22 (inaudible) 23 GREG SCHWARTZENBERGER, CHAIRMAN: Hey, we'll 24 bring you back up for, for more questions. We do 25 respect --	Page 184 1 I, I respectfully disagree about the 2 parking. I think that the parking has been addressed 3 because of the nature of the 50% reduction. So, I 4 mean, they intend to have as many as four spaces, but 5 only required to have two. 6 So I don't think that gives a suitable 7 grounds for, for that. But I think there's, there's 8 other issues that present themselves here, which I've 9 addressed. 10 GREG SCHWARTZENBERGER, CHAIRMAN: All right. 11 Do we have a motion? 12 CORRINE BYLUND: I'll motion -- I'll make a 13 motion to deny the application. I'm looking for the 14 number. 15 PIPER TURNER: DB24-04. 16 CORRINE BYLUND: DB? 17 PIPER TURNER: 24-04. 18 CORRINE BYLUND: DP24-04. 19 UNIDENTIFIED MALE SPEAKER: Yeah, I'll second 20 it. 21 ZACHARY ROTH, CITY ATTORNEY: I always like 22 to do the reminder. A yes vote means denied. A no 23 vote means approved. So if you vote yes, you're 24 voting to deny. If you vote no, you're voting to 25 approve.

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Page 185 1 WILL HILTON: Motion to deny. Gotcha. 2 PIPER TURNER: Mr. Raiti? 3 JONATHAN RAITI: Yes. 4 PIPER TURNER: Mr. Borland [sic]? 5 MARC BORAN: Yes. 6 PIPER TURNER: Ms. Atayan? 7 RENE ATAYAN: Yes. 8 PIPER TURNER: Ms. Bylund? 9 CORRINE BYLUND: Yes. 10 PIPER TURNER: Mr. Hilton? 11 WILL HILTON: Yes. 12 PIPER TURNER: And Mr. Schwarzenberger? 13 GREG SCHWARTZENBERGER, CHAIRMAN: Yes. 14 PIPER TURNER: So it was 6 to 0 to deny the 15 application. It still has to go to City Council. 16 ZACHARY ROTH, CITY ATTORNEY: Guys, 17 (inaudible) should gavel down the discussion and the 18 Board should speak where everyone can hear. 19 WILL HILTON: It's getting late, so I hope we 20 don't have to stay very long, but I do -- I want -- 21 that one was very long. So can we go back to just 22 talking about the other one? Because that one -- 23 GREG SCHWARTZENBERGER, CHAIRMAN: The plat? 24 WILL HILTON: The plat. 25 GREG SCHWARTZENBERGER, CHAIRMAN: Yes.	Page 187 1 WILL HILTON: Do you all think that there's a 2 problem for -- enough of a problem over there that 3 (inaudible) 4 RENE ATAYAN: It's just, you want to know 5 why? Well, here's the reason why. It's because so 6 many of them are already there. 7 WILL HILTON: Yeah. 8 RENE ATAYAN: So then you're -- I mean, what 9 do you do with them? That's my only question about 10 that. 11 WILL HILTON: Well, I don't, I don't have 12 anything else. Oh, other than I'm happy to help if -- 13 I can't help. If, if we wanted to schedule -- I'd say 14 if we wanted to, I would volunteer to attend another 15 meeting if we were to schedule one before you talk to 16 Council if we wanted to work on that code provision. 17 I would be willing to go to another meeting 18 for an hour or so if we wanted to try to have a -- if 19 we wanted to try to have another -- I don't know if we 20 need it. I'm just saying I -- 21 GREG SCHWARTZENBERGER, CHAIRMAN: I think she 22 goes with what she's got because we can -- they're not 23 -- they're going to kick start that anyways. You know 24 what I mean? 25 WILL HILTON: Well, that's fine. I'm just
Page 186 1 WILL HILTON: So and we obviously have voted 2 to approve that. I didn't feel great about that in a 3 sense, because he basically was trying to -- I mean, 4 it seems like the only thing that's going to be left 5 over for that lot is probably another smaller home 6 that he's probably going to be renting. So instead of 7 putting three on a, on a property, there's a loophole 8 to get three basically in and -- 9 GREG SCHWARTZENBERGER, CHAIRMAN: So, what 10 you're saying is you would let the two (inaudible) 11 single family home (inaudible) other? 12 WILL HILTON: Well, I think it seemed like he 13 couldn't get three in by right. So we obviously 14 allowed three by subdivision. So I don't think that - 15 - that's still not going to be a huge single-family 16 home on that other lot, I don't think, when you when 17 you finally configure it, because of the way the lot 18 shape is. 19 It's going to be very difficult to figure 20 that. So anyways, I'm just saying that, that to me -- 21 there was a situation where three (inaudible) 22 RENE ATAYAN: And that's part of why I was 23 asking these weird, oblique questions. 24 GREG SCHWARTZENBERGER, CHAIRMAN: Okay, well, 25 do you think --	Page 188 1 saying I would, I would -- if we thought it was 2 necessary, I'd be happy to get together. 3 RENE ATAYAN: They're telling me that I'm 4 allowed to talk to City Council members, and I'm 5 allowed to talk to Zach. 6 WILL HILTON: Yeah. 7 RENE ATAYAN: So I'm going to try to do that. 8 I have a -- kind of a tight schedule. I'm flying to 9 New Mexico on the 14th, and I'm scheduled to be back I 10 think on the 17th or the 18th. I tried not to do it 11 on the 19th for fear I'd missed the 20th. So there's 12 only a couple of days for me to hopefully do that, but 13 the direction that Zach gave earlier on, I think will 14 be helpful. 15 ZACHARY ROTH, CITY ATTORNEY: Yeah, just 16 along those lines, my schedule is I'm virtually 17 unavailable the remainder of the month. 18 RENE ATAYAN: You are or you are not? 19 ZACHARY ROTH, CITY ATTORNEY: I am not 20 available. So I'm taking my first vacation in five 21 years. And because I'm doing that, I'm being punished 22 by everything. I have more closings between next 23 Friday and when I get back from my vacation than I've 24 had the entire year combined. 25 RENE ATAYAN: Okay. Well, here's -- let me

Page 189 1 just throw this out then. Since we have a lot on the 2 line, when's the next -- because I'm not looking at 3 the calendar, when's their next workshop? The 20th? 4 When's the one in June? 5 ZACHARY ROTH, CITY ATTORNEY: 17th. 6 RENE ATAYAN: 17th of June? 7 GREG SCHWARTZENBERGER, CHAIRMAN: If we go to 8 May, though, there's no reason we can't go again in 9 June. 10 RENE ATAYAN: Well, I don't know -- I don't 11 want to get them angry. 12 ZACHARY ROTH, CITY ATTORNEY: You can go as 13 much as they'll tolerate it. 14 RENE ATAYAN: They might not like it. 15 GREG SCHWARTZENBERGER, CHAIRMAN: In the 16 spirit of (inaudible) to try to get it done, to try to 17 work with them. 18 WILL HILTON: I personally think you should 19 have a definition ready to go. But that's me. 20 PIPER TURNER: If you wait until June, you'll 21 have your meeting prior to that. This meeting, you 22 could hash everything out (inaudible) 23 ZACHARY ROTH, CITY ATTORNEY: You could have 24 a proposed definition for the committee and the Board 25 to evaluate. So then you feel very confident going	Page 191 1 Grease the skids. 2 GREG SCHWARTZENBERGER, CHAIRMAN: I won't be 3 here, June, for either this or that. 4 RENE ATAYAN: Okay. 5 JONATHAN RAITI: Greg -- 6 RENE ATAYAN: Thank you. 7 JONATHAN RAITI: -- I know it's been a really 8 long meeting, and maybe something we want to push off 9 to the next one, but there is an item that came up two 10 meetings ago, and I tried to have it added to today's, 11 which is about the nonconforming code and 12 interpretation of a particular aspect of that. It's 13 probably too late. 14 ZACHARY ROTH, CITY ATTORNEY: I have it open 15 if you want to ask the specific question. 16 JONATHAN RAITI: Okay, maybe you can read it 17 out and it should be fairly clear. 18 HEATHER WHITMORE: What passage? 19 UNIDENTIFIED MALE SPEAKER: What are you 20 talking about? 21 HEATHER WHITMORE: I want to make sure we're 22 talking about the same passage. 23 ZACHARY ROTH, CITY ATTORNEY: When we look at 24 the nonconforming code, you can rebuild something 25 which is nonconforming. And as the code says it,
Page 190 1 into your meeting with the Council, which is what I 2 think the Council will receive better. 3 RENE ATAYAN: I'd rather push it, guys. 4 CORRINE BYLUND: Yeah, I agree with you. 5 RENE ATAYAN: Like I've been trying to move 6 this along. 7 UNIDENTIFIED MALE SPEAKER: (inaudible) tell 8 Alison. 9 RENE ATAYAN: Dude, I will tell her. I will 10 tell her. I've been trying to move this along but -- 11 ZACHARY ROTH, CITY ATTORNEY: I think what 12 you should tell her is pretty simple, would you rather 13 that the Council shut you down because you came too 14 quick or would you rather the Council listen? 15 MARC BORAN: Tell her you're taking a trip to 16 New Mexico to do some more research. (inaudible) 17 appreciate that. 18 WILL HILTON: I mean, I was the one that was 19 in front of the Council, and it was a hot bench. 20 RENE ATAYAN: No, I was sitting in the back 21 watching. 22 GREG SCHWARTZENBERGER, CHAIRMAN: We can talk 23 to some of them individually in the couple of months 24 leading up anyways. 25 RENE ATAYAN: Yeah. Grease the skids, guys.	Page 192 1 right now, you can neither expand nor reduce the size 2 of the nonconformity. So if something's 3 nonconforming, so, for example, it's whatever a wing 4 of a house, height, a balcony, something like this. 5 And it's been nonconforming and it was -- 6 and somebody has to rebuild that, it doesn't 7 necessarily have to come before us if they don't 8 either expand or reduce it. They just rebuild exactly 9 whatever it is. If you have, if you have, for example 10 -- 11 WILL HILTON: They would get a reroof then. 12 HEATHER WHITMORE: This is a particularly 13 about the deck. 14 JONATHAN RAITI: Well that was the example 15 that raised. But it could be applied to many -- 16 ZACHARY ROTH, CITY ATTORNEY: So the 17 situation you're talking about only applies if it was 18 conforming and then subsequently made nonconforming. 19 JONATHAN RAITI: Is that that's the situation 20 there. It was once upon a time conforming? 21 ZACHARY ROTH, CITY ATTORNEY: No. What I'm 22 telling you is the provision that you're referring to 23 only applies in situations where it was conforming and 24 then we changed the code and make it nonconforming. 25 JONATHAN RAITI: Okay.

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Page 193 1 ZACHARY ROTH, CITY ATTORNEY: It doesn't 2 apply in any other situation. 3 JONATHAN RAITI: Right. 4 ZACHARY ROTH, CITY ATTORNEY: So if it's 5 already nonconforming, it doesn't apply. It's only if 6 there are future changes to the code that make it 7 nonconforming. 8 WILL HILTON: So if someone got a valid 9 building permit to build a building and they built it, 10 and then something in the code changed and now they 11 come, they want to get a reroof, for example, then 12 they don't have to come to get a variance to get a new 13 roof put on their house. 14 ZACHARY ROTH, CITY ATTORNEY: And what it 15 says is you can't change, you can't increase or 16 decrease the nonconformity, but you can change 17 everything else. The nonconformity has to stay the 18 same. You can't use the excuse of you wanted to 19 change other things to change the nonconforming. The 20 nonconformity has to remain what it is. 21 JONATHAN RAITI: So just taking the example 22 of a deck. The deck is nonconforming. It wasn't 23 originally. We changed the code and then there's such 24 and such a setback. And there you go. Now it's 25 nonconforming. So we wanted to reduce the size of the	Page 195 1 talked about this back and forth when we've had 2 nonconforming structures not unlike the ACs, but the 3 ACs. They were trying to intensify the ACs. Right? 4 Nonconforming situation. Nonconforming 5 structure. The deck was nonconforming. They wanted 6 to replace a nonconformity. We had them get a 7 variance to replace the nonconformity because they 8 want to replace the deck one for one. 9 So I guess the question to us is, are we 10 misinterpreting the code? Should we allow them? 11 Should we allow -- because it starts to get dicey. 12 ZACHARY ROTH, CITY ATTORNEY: What I can say 13 is it's a very poorly drafted provision. I mean, I'm 14 reading it eight times to get to this analysis, and 15 I'm still not going to tell you I would bet my 16 daughter's life on it. 17 I mean, because it says thereafter -- change 18 shall thereafter be made in such characteristics of 19 use, which increases or -- no change shall thereafter 20 be made in such characteristics of use, which 21 increases nonconformity with the regulations set out 22 in this chapter. 23 However, changes may be made that do not 24 increase, or that -- actually, no, we're reading it 25 wrong. You can do it if it does not increase it or
Page 194 1 deck, but still wanted to have a deck, that would not 2 be permitted. 3 ZACHARY ROTH, CITY ATTORNEY: If they're only 4 changing the deck, that's right. Unless they 5 eliminate the nonconforming. Can't change the 6 nonconformity, but you can eliminate it. 7 JONATHAN RAITI: Okay. 8 ZACHARY ROTH, CITY ATTORNEY: So, keep in 9 mind, many situations of what you're talking about, 10 there's a decent chance that the nonconformity is 11 gonna have to be gotten rid of entirely, because in a 12 lot of those cases you're talking about C coming into 13 play where you have, you know, substantial damage to 14 the structure or something like that, where you're 15 hitting that threshold of substantial change, which 16 requires the nonconformity to go away. 17 But yeah, so I'm using the deck as an 18 example, the deck has to remain the same size. If it 19 was, if it was conforming and then made nonconforming, 20 or you have to get rid of it. You can't say, well, we 21 want a nonconformity, but we want it to be a different 22 nonconformity. 23 JONATHAN RAITI: Okay. 24 HEATHER WHITMORE: So then the question was 25 with the deck and this is what we -- remember we	Page 196 1 you can do it if it decreases it. That's actually 2 what it says. 3 RENE ATAYAN: Yeah, you can. Which is much 4 more logical. 5 ZACHARY ROTH, CITY ATTORNEY: Yes, correct. 6 You just have to read it ten times to figure it out. 7 HEATHER WHITMORE: So then the interpretation 8 is I'm going to use the deck for example. Right? 9 This was that deck -- 10 ZACHARY ROTH, CITY ATTORNEY: So they could 11 have made it half the size. They could have made it 12 smaller -- 13 HEATHER WHITMORE: And they would not have 14 needed a variance. 15 ZACHARY ROTH, CITY ATTORNEY: Correct. 16 HEATHER WHITMORE: That was the question. 17 Okay. We had them go through the variance, which is 18 what we've done traditionally. Same thing if you have 19 a preexisting garage that's right on the property line 20 to replace, we've had you go through variance. 21 ZACHARY ROTH, CITY ATTORNEY: Yeah, the 22 reason is because of this extra word that there. 23 HEATHER WHITMORE: Yeah. 24 ZACHARY ROTH, CITY ATTORNEY: It says changes 25 may be made that do not increase or that decrease such

Page 197 1 conformity. So if it said do not increase or 2 decrease, that would be a different grammatical 3 interpretation because it says that do not increase or 4 that decrease means you can do either. 5 JONATHAN RAITI: That makes -- that's what I 6 recall when we went through this code rewrite. But 7 then on that particular day when we were looking at it 8 -- 9 HEATHER WHITMORE: Yeah. 10 JONATHAN RAITI: -- I think that -- 11 HEATHER WHITMORE: We've had -- we've talked 12 about this before. I don't know if you've got a 13 consistent, you know, determination on it. 14 JONATHAN RAITI: But I ask in part because 15 people come before us. It takes their time, it takes 16 your time. But this is actually a bunch of things 17 that we probably don't need to hear that staff could - 18 - 19 HEATHER WHITMORE: So this means if we've got 20 a garage that is on the property line zero property 21 line 0 to 0, we're going to let them replace it. If 22 they do it one for one, the same (inaudible) or -- 23 ZACHARY ROTH, CITY ATTORNEY: If it was 24 conforming and then made nonconforming. If it's 25 always been nonconforming.	Page 199 1 The zoning code. Not this exact 2022 version. 2 Correct. Yeah. 3 HEATHER WHITMORE: Okay, so that changes -- I 4 mean, that really changes the way that our office has 5 operated for historically ever. So, I mean, just to 6 be clear, if that's what we're you know -- if that's 7 the interpretation we're going to make right now, 8 which is fine. 9 I mean, I don't really care one way or 10 another. I -- you know, I don't want to make people's 11 lives harder, but we have never permitted the 12 replacement of a nonconforming structure. 13 ZACHARY ROTH, CITY ATTORNEY: So when you 14 replace the structure, that's different. The entire 15 structure is different. If you're replacing the deck, 16 that's one thing, but C comes into play if the 17 principal structure has been destroyed, which you have 18 to do to replace it, then you have to bring it into 19 conformity. You don't get (inaudible) 20 HEATHER WHITMORE: But I'm using an example 21 of like the garage. That's what I mean by structure. 22 I don't mean principal. I mean just, you know, or 23 even I mean, if we had a single-family home, they'd be 24 right on the property line. I don't know (inaudible) 25 ZACHARY ROTH, CITY ATTORNEY: If a single-
Page 198 1 HEATHER WHITMORE: The question is -- 2 ZACHARY ROTH, CITY ATTORNEY: So if they got 3 a variance from the beginning, there's not (inaudible) 4 HEATHER WHITMORE: But there's no date 5 effective on this, right? I mean, to, to that point, 6 I would say that the deck example or the garage 7 example, both of those examples were nonconforming 8 prior to the adoption of this (inaudible) 9 ZACHARY ROTH, CITY ATTORNEY: 90% of the 10 things that we have are going to be in East to Third, 11 because that's where all the problems are. 12 HEATHER WHITMORE: Correct. And they've been 13 there well before this -- the last code. 14 ZACHARY ROTH, CITY ATTORNEY: Pretty much all 15 those buildings were there before the code. So absent 16 evidence that we've granted a variance for it, it's -- 17 I think you're safe to assume that it was conforming 18 and made nonconforming. 19 GREG SCHWARTZENBERGER, CHAIRMAN: Yeah. 20 JONATHAN RAITI: Just one other question. 21 ZACHARY ROTH, CITY ATTORNEY: Because there 22 was no code. So it means it's conforming. 23 HEATHER WHITMORE: You just mean before the 24 code is in capital code, capital -- 25 ZACHARY ROTH, CITY ATTORNEY: That's right.	Page 200 1 family home is destroyed, that's the principal 2 structure. You don't get it back. 3 HEATHER WHITMORE: Yes. But this is -- I 4 find -- okay -- I just -- maybe we need more help in 5 how to interpret it, but this would be replacing a 6 garage or a deck or -- but not a principal structure? 7 JONATHAN RAITI: Correct. An attached 8 bedroom, for example. Something that could be. 9 Somebody could remove it and move it back. 10 Potentially. 11 ZACHARY ROTH, CITY ATTORNEY: Well and -- or 12 substantially damaged as defined in section 2715. I 13 don't have 2715 in front of me to determine what 14 substantially damaged is. 15 PIPER TURNER: That's, that's the definition. 16 ZACHARY ROTH, CITY ATTORNEY: I'm assuming 17 it's the 50% threshold? 18 HEATHER WHITMORE: Yeah. That actually 19 should have been probably removed. Characteristics of 20 a user may not conform by this code adopted or 21 amended. No change shall thereafter be made in such 22 characteristics of use, which increase the 23 nonconformity with the regulations set out in the 24 chapter. However, changes may be made that do not 25 increase or that decrease. So, somebody can replace a

Page 201 1 nonconforming garage. 2 ZACHARY ROTH, CITY ATTORNEY: Unless it's 3 destroyed, substantially damaged, or falls under the 4 other categories of C. 5 CORRINE BYLUND: That just doesn't make any 6 sense. 7 HEATHER WHITMORE: So if it's, if it's 8 damaged, they can't replace it? But if they want to 9 replace it, they can replace it? 10 ZACHARY ROTH, CITY ATTORNEY: If the 11 principal structure. 12 HEATHER WHITMORE: Okay. Are you following 13 this, Piper? I'm not following it. We'll have to 14 talk about it more because I'm not following. 15 JONATHAN RAITI: The reason I raised this in 16 part is, Greg, do you remember when we went through 17 all the code rewrite? You and I talked a lot about 18 the need to get the nonconforming code section 19 correct? 20 GREG SCHWARTZENBERGER, CHAIRMAN: We talked 21 in here about it. 22 JONATHAN RAITI: Yeah, so, I mean, it seems 23 like it's still a little bit muddy. So I don't know 24 if the guys in the code -- I forgot what the -- what 25 that subcommittee is.	Page 203 1 ZACHARY ROTH, CITY ATTORNEY: Yeah, because 2 the logic is that if it's substantially damaged, now 3 is an opportunity to come into conformity because 4 you're going to have to do significant renovations 5 anyway. 6 But if you just have an accessory structure 7 or a deck or something like that, then you can do that 8 because that's not -- doesn't require you to 9 completely tear down the building and restart, and you 10 don't have an opportunity to bring it into conformity 11 in the same way. 12 GREG SCHWARTZENBERGER, CHAIRMAN: All right. 13 ZACHARY ROTH, CITY ATTORNEY: (inaudible) 14 dovetail into all of this. I don't know how many of 15 you -- any of you watched Monday night's meeting, but 16 I submitted my resignation on Monday. 17 GREG SCHWARTZENBERGER, CHAIRMAN: So how long 18 will you be with us still? 19 ZACHARY ROTH, CITY ATTORNEY: It's TBD. 20 UNIDENTIFIED MALE SPEAKER: Based on the 21 replacement? 22 ZACHARY ROTH, CITY ATTORNEY: Correct. 23 JONATHAN RAITI: Well, thank you, Zach, for 24 all the time -- 25 ZACHARY ROTH, CITY ATTORNEY: (inaudible)
Page 202 1 JONATHAN RAITI: It might be worth, you know, 2 having us take a look at and at least understand that 3 the -- how it's written right now. 4 ZACHARY ROTH, CITY ATTORNEY: Structure as a 5 whole. 6 JONATHAN RAITI: All right. I didn't want to 7 have, like, a long discussion. 8 PIPER TURNER: Structurally altered, is that 9 the definition? 10 ZACHARY ROTH, CITY ATTORNEY: Substantially 11 damaged. 12 PIPER TURNER: Substantially. 13 JONATHAN RAITI: And it's, it's something 14 that staff needs to do frequently. 15 ZACHARY ROTH, CITY ATTORNEY: Probably 16 doesn't even have a definition. 17 PIPER TURNER: There's nothing under 18 substantially. 19 HEATHER WHITMORE: Yeah. 27-706-B4. 20 ZACHARY ROTH, CITY ATTORNEY: But then C1 21 refers to or is substantially damaged as that term is 22 defined in 27-15. (inaudible) defined. 23 HEATHER WHITMORE: I just don't understand. 24 But you can replace it if you want to. But if it's 25 substantially damaged, it can't be replaced/	Page 204 1 staying until we have a replacement in place. 2 ZACHARY ROTH, CITY ATTORNEY: It took me all 3 of one day to draft the RFP to try to find a new 4 attorney, if that gives you an idea. So I'm asking 5 the Council to vote on that on the 20th so that that 6 can be published and applications received at the 7 beginning of July and then start that process. So I'm 8 going to guess end of summer. 9 JONATHAN RAITI: Okay. Well thanks for all 10 your help. 11 RENE ATAYAN: Thank you. 12 UNIDENTIFIED MALE SPEAKER: It's been a great 13 resource. 14 ZACHARY ROTH, CITY ATTORNEY: I am not 15 moving. I'm staying in the exact same place and just 16 not doing this. 17 JONATHAN RAITI: So you want to do something 18 else in your free time? 19 ZACHARY ROTH, CITY ATTORNEY: If I build 20 private clients, I can make more money and work half 21 as much. Like, they pay twice as much as the City 22 pays. 23 JONATHAN RAITI: You can officiate more 24 games. 25 ZACHARY ROTH, CITY ATTORNEY: Well that's

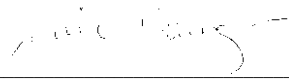
Page 205 1 part of it. I have a 20-month-old daughter and I'm 2 traveling every weekend. My first nine games were in 3 nine different states last year. And so I'd rather 4 spend Monday and Wednesday nights with my family than 5 here. 6 GREG SCHWARTZENBERGER, CHAIRMAN: 7 Congratulations. 8 ZACHARY ROTH, CITY ATTORNEY: Appreciate it. 9 Looking forward to just being a resident again. 10 PIPER TURNER: Then he can come to the 11 meetings and complain. 12 ZACHARY ROTH, CITY ATTORNEY: I gave a small 13 piece of how I felt about things on Monday night, but 14 I said once it cools down, then may come as a resident 15 and give my true opinion. 16 GREG SCHWARTZENBERGER, CHAIRMAN: You have 17 way more than three minutes. Yeah. 18 PIPER TURNER: He's the only one that can do 19 the clock, so he's got it made. 20 ZACHARY ROTH, CITY ATTORNEY: Despite the 21 fact that it says push these buttons in this order, 22 I'm the only one that knows how to do it. 23 GREG SCHWARTZENBERGER, CHAIRMAN: All right, 24 everyone else, we all good? So we'll gavel out at 25 9:02.	Page 207 1 CERTIFICATE OF TRANSCRIPTIONIST 2 3 I, JAMIE YOUNG, hereby certify that I was 4 authorized to and did transcribe the provided 5 recording and that the foregoing transcript is a true 6 transcript of said electronic recording to the best of 7 my ability. 8 I FURTHER CERTIFY that I am not a relative, 9 employee, attorney, or counsel of any of the parties, 10 nor am I a relative or employee of any of the parties' 11 attorneys or counsel connected with the action, nor am 12 I financially interested in the action. 13 14 DATED this 24th day of September, 2024. 15 16  17 18 Jamie Young 19 20 21 22 23 24 25
Page 206 1 (End of recording) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	

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Page 53 1 a P24-04. Heather, would you come on up and we'll 2 continue? 3 HEATHER WHITMORE: Yes, ma'am. Heather 4 Whitmore, Community Development Director this is DP- 5 24-04. This is a request for a development plan as 6 outlined in chapter 24. 7 VICE MAYOR KERRY CHIN: Mayor, if I can 8 interrupt, we should probably just swear witnesses in 9 now. 10 MAYOR ELAINE BROWN: You what, I'm sorry? 11 VICE MAYOR KERRY CHIN: We should swear 12 witnesses in now rather than having to do it one at a 13 time. 14 MAYOR ELAINE BROWN: Oh, okay. 15 VICE MAYOR KERRY CHIN: So I guess everyone 16 who plans to speak on this application, can you please 17 stand and be sworn in? 18 MAYOR ELAINE BROWN: If you're going to 19 speak, please stand. All right. 20 VICE MAYOR KERRY CHIN: Raise your right 21 hand. Do you swear or affirm the testimony you give 22 will be the truth, the whole truth, and nothing but 23 the truth? There you go. 24 MAYOR ELAINE BROWN: Okay, thank you. Okay, 25 Heather, you're eventually going to get to speak here, Page 54 1 honey. 2 HEATHER WHITMORE: I'm looking forward to it. 3 So this is a request for a development plan as 4 outlined in chapter 27, article three, division two of 5 the LDC of Neptune Beach for Douglas Driver for the 6 property at 108 Orange. The applicant requests the 7 development plan approval to permit a bed and 8 breakfast. This item was seen at the May 8th 9 Community Development Board meeting May 8th, 2024 10 Community Development Board meeting. 11 I am not going to read the staff report in 12 its entirety. I'm going to run through the highlights 13 of it. If you have specific questions about staff 14 report, the request, findings of fact, or any other 15 site context issues, I'm happy to answer them. So you 16 can interrupt me or you can ask me later. So 17 development plan application for a bed and breakfast 18 has been submitted for 108 Orange. 19 Property has a comprehensive plan town 20 center land use designation and zoned central Business 21 district. Bed and breakfast is a permitted use by 22 right in the district. Chapter 27, article three 23 Administrative Enforcement Procedures of the LDC 24 states that a preliminary and final Development Plan 25 approval must be obtained when changing or expanding	Page 55 1 any use of a site. The preliminary development Plan 2 application for a 3500 square foot, approximately 3 three-story bed and breakfast was submitted by the 4 property owners, as indicated here at 108 Orange. 5 The existing is a lot of record 50 by 55. 6 It's vacant property northeast corner of Orange and 7 Midway. As stated before, Central Business District 8 zoning and is surrounded by Central Business District 9 to the east, north and west. The properties to the 10 south are zoned RC, R-4 overlay. The immediate 11 properties surrounding the vacant lot consist of a 12 single family to the east, and multifamily and 13 commercial properties to the west. 14 The proposed bed and breakfast has two 15 rental guest bedrooms, and one owner's suite provides 16 a total of two parking spaces. Ground floor consists 17 of the interior parking, two parking spaces, and a 18 guest bedroom. Second floor consists of a living 19 area, lobby, and kitchen. The third floor consists of 20 a guest bedroom and an owner's suite. The building 21 complies with all setbacks, lot coverage, height, 22 frontage building requirements of the central business 23 district. 24 The building complies with all of the 25 elevation and frontage requirements for the central Page 56 1 business district. The building has one primary 2 frontage on Orange. A first-floor frontage lobby with 3 a garage door, has a lobby style entrance to the front 4 at sidewalk level. It has a 35% facade, a glass 5 facade, transparent facade on the first floor, 40% on 6 the second floor. It meets all of the frontage 7 requirements in the central business district. 8 I won't go through all of them, but they 9 include things like storefront design, entrances and 10 access, lot width, and transparency. The site is 11 served by two parking spaces, which are interior 12 garage spaces per the parking requirements of 27-540. 13 The development is required to have one parking space 14 for the guest room and two parking spaces for the 15 owner, for a total of four. 16 In the central business district, there is a 17 50% reduction of parking, however, therefore the site 18 requires two parking spaces and the site provides 19 those two parking spaces as interior garage spaces. 20 The site layout. Parking access configuration 21 complies with driveway standards. Maximum driveway 22 width lot coverage. Staff recommends approval of the 23 proposed application for DP-24-04. 24 For the development plan of 108 Orange, as 25 presented herein. Development plan complies with all
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Page 57 1 planning and Zoning development standards. Complies 2 with all commercial building standards and all 3 commercial fire code standards. If you have any 4 questions, I'm happy to answer them. 5 MAYOR ELAINE BROWN: Okay. And I open this 6 up -- I'm just going to open it up. If anybody has a 7 question for Heather. 8 VICE MAYOR KERRY CHIN: No, not at this time. 9 MAYOR ELAINE BROWN: Okay. Councilwoman, 10 Key? 11 COUNCILOR LAUREN KEY: Sorry. Can we -- can 12 I know the order again? Can I see the order again so 13 I'm making sure that I'm asking -- 14 MAYOR ELAINE BROWN: Heather and then the 15 applicant, and then we'll take three minutes each from 16 the public. And I'd also like to let you know, 17 public, that if someone says exactly what you were 18 going to say and 2 or 3 people have, you're welcome to 19 say, you know, I disagree or I agree with having this, 20 you can make it as short as you wish. 21 HEATHER WHITMORE: I also have a copy of the 22 site plan available for review. First floor, second, 23 and third floor if you'd like to see those. 24 MAYOR ELAINE BROWN: Okay. And just to 25 conclude, the staff will have a rebuttal after the Page 58 1 applicant and the public. And then the applicant will 2 have the final rebuttal and then it will come back to 3 the commission. 4 COUNCILOR LAUREN KEY: Okay. I'll probably 5 save my questions for then. Thank you. 6 MAYOR ELAINE BROWN: Okay. Okay. And the 7 applicant. Hi, come on up. Name and address for the 8 record. 9 ZACH MILLER: Good evening. Zach Miller, 10 3203 Old Barn Court. I have a very brief 11 presentation. 12 MAYOR ELAINE BROWN: Okay. 13 ZACH MILLER: Thank you. Again, Zach Miller 14 representing the applicant. The drivers who own the 15 property at 108 Orange Street. You're probably all 16 familiar with this. I've probably done a few hundred 17 of these zonings. This is easily the only time where 18 we've been within 1000ft of the location while I'm 19 giving a presentation on that zoning. 20 Everyone knows this property. It's not that 21 far away. In fact, I think we parked closer to the 22 site tonight than we parked to the city hall. The 23 property is approximately 0.06 acres. It's been 24 vacant for probably over a decade. It is in the 25 central business district for Neptune Beach. A couple	Page 59 1 points. This is not a zoning. This is not a 2 variance. This is not a special exception. 3 This is a development plan. It meets every 4 part of your code. It meets every part of your 5 central business district. This is just whether the 6 permit meets the code. I put up this slide because if 7 you notice that there's two parking spaces interior. 8 If this were just a residence, the parking could be 9 tandem. If this was just a way to try to get around 10 your code to do a single-family residence when your 11 code does not allow a single-family residence except 12 by exception, you wouldn't go to the effort of having 13 two parking spaces interior. 14 That is a requirement for commercial zoning. 15 This is what the property is zoned at. These are all 16 the uses allowed by right. We're not rezoning the 17 property. We're not asking for a variance. We're not 18 asking for an exception. You've got hotel/motel, 19 you've got restaurant, you've got professional office, 20 you've got library, you've got recreation, amusement, 21 entertainment, billiards, theater, nightclub, private 22 club, bar and tavern. 23 The reason I bring this up is that bed and 24 breakfast is easily the least intensive use other than 25 public park, and even though this was entreated by Page 60 1 some people as such, this is not public, of all the 2 uses that are allowed by right on the property. I 3 also bring up the definition of bed and breakfast 4 because I know this came up during the CBD meeting. 5 There has to be a person actually occupying it for it 6 to be a bed and breakfast. So the owner actually has 7 to live on site. 8 That is part of your requirements and the 9 definitions of your code. This is a view. This is 10 sort of facing northeast. That's the southwestern 11 exposure of the property. The road to your right 12 would be Orange and Midway, which I believe is only 13 about 10 to 12ft wide. The reason I show this picture 14 is because it's a commercial development. 15 We had to comply with the facade standards 16 in your central business district. Meaning that, and 17 I think Heather read this into the record, we had to 18 have a certain percentage of transparency on the first 19 floor at a certain amount of transparency on the 20 second floor. We also have a certain setback reliefs 21 on different floors. 22 These are things you wouldn't have to do if 23 it was just a single-family residential. Again, this 24 is why your staff recommended approval on it, because 25 the applicant has bent over backwards to try to comply
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Page 61 1 with your code for the uses allowed. This is just 2 another view. You can see those transparent facades 3 of the street level on Orange, and then you can see 4 them going up. 5 This is just another view of the property. 6 I actually received late a letter from an attorney 7 representing one of the neighbors, Mr. Carl Sanders. 8 I work with Mr. Sanders a lot, and obviously respect 9 him a lot. But one issue that might come up and that 10 your attorney might address was, well, has this 11 already been issued, been come up before you? And is 12 this issue already been decided by a court? That 13 previous application was for over 5,500 square feet of 14 a bed and breakfast. 15 The property that's -- the application 16 that's before you is 3,500 square feet of air 17 conditioning space. And then the total when you 18 include the porches and the garages are 39. That is a 19 material difference in the application. And I think 20 that's very important and something that your attorney 21 will talk to you about. There's been a lot of 22 discussion I've seen on what is the appropriate 23 criteria. 24 Your staff read to you what the appropriate 25 criteria. And that's in your staff report. They have Page 62 1 said that we meet the criteria. As a matter of law, 2 that is competent substantial evidence. We have the 3 applicant here. We have the architect. I'm happy to 4 try to answer any questions you have. Otherwise, I'll 5 try to address any concerns the public has. 6 MAYOR ELAINE BROWN: Okay. And we may have 7 questions. I'll start with our vice mayor. And these 8 are questions that can be directed to you or the 9 applicant? 10 ZACH MILLER: Or the, or the architect. 11 MAYOR ELAINE BROWN: Okay. 12 ZACH MILLER: Who have all been sworn in. 13 MAYOR ELAINE BROWN: Okay. 14 VICE MAYOR KERRY CHIN: Okay. I think that 15 I'm going to hold my questions until I've heard from 16 all parties. 17 MAYOR ELAINE BROWN: Okay. All right. 18 VICE MAYOR KERRY CHIN: Thank you. 19 MAYOR ELAINE BROWN: Councilwoman, same? 20 COUNCILOR LAUREN KEY: Same. 21 MAYOR ELAINE BROWN: Okay. All right. Thank 22 you. 23 ZACH MILLER: Thank you very much. 24 MAYOR ELAINE BROWN: I appreciate it. All 25 right. We are now going to go to the public, and we	Page 63 1 have about 11 people that wish to speak. And you're 2 going to have three minutes to, you know, state what 3 you need and what you need to say. And then we will 4 go back to the staff for rebuttal or any corrections, 5 and then the applicant come at the end. All right. 6 Before we get into the council. 7 CATHERINE PONSON: Candy Sullivan. 8 MAYOR ELAINE BROWN: Candy Sullivan? 9 UNIDENTIFIED FEMALE SPEAKER: She had to 10 leave. She left. 11 MAYOR ELAINE BROWN: Oh. 12 CATHERINE PONSON: Rosemary Naughton. 13 MAYOR ELAINE BROWN: Rosemary? Hi, Rosemary 14 come on up and state your name for the record. Name 15 and address. 16 ROSEMARY NAUGHTON: Okay. I'm Rosemary 17 Naughton, 516 First Street in Neptune. I'm Rosemary 18 Naughton. I live at 516 First Street. I'm a third- 19 generation 77-year native of Neptune. My grandfather, 20 a McCollum, was actually the first mayor, and the lot 21 that I live on, he actually gave to my mother and 22 daddy for \$200. I thought that was interesting in 23 1935. 24 As my roots run very deep to the core of 25 Neptune, my commitment is more concerned than ever as Page 64 1 a citizen. Our very unique Neptune is respected for 2 its old-fashioned village lifestyle. Which we all 3 love, we want to protect, and which is very hard to 4 find these days. That's why we all choose to live 5 here. We take pride in our family-focused 6 neighborhoods. 7 We care about each other. We live in homes, 8 not houses. We know our neighbors. Many of our 9 neighbors become friends. Neptune is a real community 10 of homes. To surrender any of these qualities due to 11 a misplaced business in the midst of these family 12 homes would be a mistake. To even permit a storefront 13 business sitting precisely contiguous to two 14 residential homes and only steps from countless other 15 homes would be a violation that just makes no sense. 16 Zoning criteria repeatedly states that a 17 property is to be consistent and compatible with 18 surrounding homes, and not invade or violate the 19 privacy of the surrounding properties. While a 3705 20 square foot B&B may meet some of these legal criteria, 21 it is not compatible with, not in harmony with, not 22 befitting of, or appropriate to this neighborhood. 23 The other homes in the area are 28 feet, 28 24 feet tall as required by Neptune, and to allow a 35- 25 foot towering structure would diminish and compromise
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Page 65 1 the rights of useful enjoyment of the existing homes. 2 Ongoing congestion is already a major issue and 3 getting worse by the day. 4 The parking situation in that area is awful, 5 much less on weekends and summer months. Let's assume 6 that the guests and the owner each have only one car, 7 and even if they only rent one of the two guest 8 quarters as purported, still, where do they park when, 9 heaven forbid they have a family member or a guest 10 come to visit? And what about any ancillary customary 11 recurring persons like a cleaning service or a food 12 prep person? 13 All of this congested area would become 14 overbearingly a nightmare. The actual 35-foot 15 structure would significantly impede the views of 16 neighboring homes. Looking at the side or the back of 17 a business is certainly obtrusive. Oh, on a final 18 note, we, the residents of Neptune Beach, count on 19 you, our City Council, to listen to our voice. We 20 voted for you, so you'll listen to us and help us 21 preserve Neptune so we can maintain the treasure that 22 it is. 23 MAYOR ELAINE BROWN: We appreciate it. 24 ROSEMARY NAUGHTON: Please. Thank you. 25 CATHERINE PONSON: Judith Williams.	Page 67 1 So I left Neptune Beach, but my heart stayed 2 there with my neighbors and my friends. So that's why 3 I'm here. First of all, there's one thing that was 4 flashed again before my face, and I feel like I have 5 to bring it up because it's very important. It's 6 called the by-right phrase that you've heard, and I 7 don't know if it's in your packet. It was in the 8 original packet that was distributed. 9 The term by-right actually refers to a 10 procedure that is not under the auspices of any other 11 Governmental control, meaning a quasi or judicial 12 proceeding. Just the fact that we are here tonight, 13 the fact that we were at a community development 14 meeting before, knocks out that by-right, right off 15 the bat. So the by-right is by wrong. Does not apply 16 to these situations. Throw that out of the way, I 17 agree with everything that Rosemary said. 18 It's very succinct and to the point. And I 19 know you've received a lot of information regarding 20 the request to build the B&B. They've got now is a 21 two bedroom but in the last meeting, Mr. Driver 22 actually stated that it was going to be a one unit, 23 one unit for rental. You'll hear or you'll hear the 24 codes 27-222, 27-160, and 27-161 many times tonight, 25 probably. These codes and how they relate to existing
Page 66 1 MAYOR ELAINE BROWN: I'm sorry? 2 CATHERINE PONSON: Judith Williams. 3 MAYOR ELAINE BROWN: You just wanted to say 4 that you agreed with what she said. Okay. Thank you. 5 All right. 6 CATHERINE PONSON: Henny Schoonover. 7 UNIDENTIFIED FEMALE SPEAKER: You called Judy 8 Williams. I thought I heard Williams. 9 UNIDENTIFIED FEMALE SPEAKER: She did. 10 MAYOR ELAINE BROWN: Oh, we did. 11 UNIDENTIFIED MALE SPEAKER: Yeah. 12 MAYOR ELAINE BROWN: Okay, maybe there's two 13 in the whole room, I don't know. Here we go. Who do 14 we have next? 15 CATHERINE PONSON: So Judith Williams. 16 MAYOR ELAINE BROWN: Okay. Come on up, 17 Judith. We were not overlooking you, come on. All 18 right. Name and address for the record. 19 JUDITH WILLIAMS: Okay. My name is Judith 20 Williams. My address is 771 Providence Island Court, 21 32225. So you've got my name and everything. And my 22 husband Craig and I lived at 98 Orange Street for 40 23 years. This is the property directly adjacent to and 24 in front of the property that we're speaking of 25 tonight.	Page 68 1 structures of the neighboring properties are not just 2 numbers. 3 They're considered the essential elements in 4 considering any new structure, be it a commercial 5 structure or a residence in the CBD. This is a very 6 sensitive area. It is surrounded by residences and it 7 abuts the true R4 residential zone. This isn't just 8 any area. And by the way, none of the houses that are 9 in there, they were never under a special exception. 10 They have been there for decades. They are 11 not interlopers. The houses were there before the CBD 12 was ever formed, and the special exception was never 13 thought about and they all refer to the same thing. 14 To the height, the scale, the architectural style, the 15 mass, the sensitivity to the surrounding neighbors' 16 existing views. 17 And it clearly state -- the codes clearly 18 state that one person's right cannot supersede those 19 of existing residents, nor may they ask for more than 20 existing residents or current residents are allowed. 21 Nobody there was allowed over 28ft. Thank you very 22 much for your time. Please go with the 23 recommendation. Vote it down six to nothing. Thank 24 you. 25 MAYOR ELAINE BROWN: Thank you.

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Page 69 1 CATHERINE PONSON: Now, Henny Schoonover. 2 MAYOR ELAINE BROWN: Schoonover? Henny? 3 Henny, come on up and give your name and address for 4 the record, please. 5 HENNY SCHOONOVER: I have some information to 6 give to you. 7 MAYOR ELAINE BROWN: To pass out? Just hand 8 it over here to the clerk and we'll -- or Heather, 9 thank you -- get it passed out. 10 HENNY SCHOONOVER: Okay. Good evening. My 11 name is Henny Schoonover. I live at 214 Oceanfront, 12 and I oppose the applicant's request to build a B&B at 13 108 Orange Street. Currently, our neighborhood is a 14 happy mix of shingle, lopsided, and board and batten 15 cottages. All are relative in scale to one another. 16 While most homes were built before 1940, no 17 one ever had to file for a special exception to build 18 a house. Houses are allowed in the CBD, with a 19 special exception, and we welcome houses that fit the 20 scale and character of the neighborhood. The proposed 21 B&B does not fit the scale or character of the 22 neighborhood, and I've included the years the houses 23 were built in your packet. 24 Compare and contrast the proposed B&B with 25 the existing neighborhood homes. With its three	Page 71 1 Buildings should be in scale with the neighborhood and 2 should complement the character of the neighborhood 3 rather than conflict with it. And I have a scale 4 drawing of the size of it compared to the homes on 5 either side. Number two scale, mass, and bulk. 6 The ratio of square footage to land of this 7 building is upside down. The building is out of 8 proportion in scale with surrounding homes and will 9 stand a story taller than surrounding homes. And 10 there's a comparison chart for you to look at. And 11 it's just obvious if you look at it. Private views. 12 Can I finish? 13 MAYOR ELAINE BROWN: No, your time is up. 14 HENNY SCHOONOVER: Okay. I just want to say, 15 no single parcel should enjoy a greater right than 16 other parcels, except the natural advantages of each 17 site's topography. Thank you. 18 MAYOR ELAINE BROWN: Thank you. 19 CATHERINE PONSON: Heather Peters. 20 MAYOR ELAINE BROWN: Heather? Hi, Heather. 21 HEATHER PETERS: Hi. 22 MAYOR ELAINE BROWN: Name and address for the 23 record, please. 24 HEATHER PETERS: My name is Heather Peters 25 and I live at 99 Orange Street, directly across the
Page 70 1 stories, 35-foot height, and storefront design, this 2 building follows the commercial building standards for 3 the CBD and Neptune Beach. On the other hand, 4 acknowledging the neighborhood's historic development 5 pattern, the residential conservation, or RC overlay 6 in the CBD, limits residences to two stories and 7 heights of 28ft. 8 The proposed commercial build of a B&B of 9 this B&B is simply incompatible with the existing 10 single-family homes and residential uses that surround 11 it. Purpose and intent of zoning districts states, 12 and this is very important, this zoning article must 13 impose certain appropriate restrictions on the use of 14 land within the city limits of Neptune Beach to ensure 15 that future development is in keeping with the 16 existing development. 17 All one needs to know to deny application 18 for this B&B can be found in the City of Neptune 19 Beach's Land Development Code, section 27-222. Number 20 one neighborhood design. Site improvements should be 21 compatible with structures existing on neighboring 22 parcels, and should be sensitive to their designs and 23 property rights. 24 Designs which conflict with the use and 25 enjoyment of any property should be avoided.	Page 72 1 street from the vacant proposed lot. As a native of 2 Atlantic Beach who grew up in Ocean Walk, I cherish my 3 childhood memories of biking to Shelby's and enjoying 4 our small beach town. 5 Over the years, I've witnessed significant 6 changes in our community. During the busy summer 7 months, beachgoers often block our driveway to drop 8 off their belongings, leading to frequent non- 9 emergency calls to authorities. It feels like I'm 10 calling every weekend since we received the news of 11 this proposed B&B, the experience has been less than 12 neighborly. Many residents before me have fought to 13 keep our (inaudible) of a city the way that it is 14 today, and I plan to do the same. After learning that 15 this is not the first time this has been proposed. 16 I'm so hurt by this. 17 This is not who we are in Neptune Beach. 18 We're a tight-knit community and this is very 19 unfortunate for all of us. I'm not going to stand 20 here today in front of you all and say that I do not 21 think these owners should have their rights taken away 22 to develop their land. I have a photograph I want to 23 show you all of a man relieving himself at the lot. 24 This happens more often than not and people are there 25 and do not belong there, all of the time.

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Page 73 1 There are days that I have been so 2 uncomfortable walking outside to walk our dogs because 3 of the people hanging out in the lot that clearly do 4 not belong there. I can't speak for everyone here 5 today, but I do think it would be nice to have a 1 to 6 2-story residential home that fits our neighborhood 7 instead of a vacant lot. 8 My husband and I plan to grow our family in 9 the next year, and the prospect of having a business 10 across the street raises concerns about our family's 11 well-being. At the last meeting, the owner stated 12 that he had no intention of interacting with guests. 13 This lack of oversight is troubling, especially 14 considering the incidence of Airbnb related gang like 15 violence in Jacksonville Beach. 16 When we purchased our home, we believed we 17 would be in a residential neighborhood. Our house 18 sits directly adjacent to what we now know as a part 19 of the CBD, but the area appears residential, with 20 single and two-family residents and no visible 21 businesses. This is a residential part of the CBD. 22 As neighboring residents, we must defend our right to 23 not have a 35-foot high, massive out of character B&B 24 squeezed into a tiny parcel of land. 25 The City of Neptune Beach allowance as a	Page 75 1 rest of my life, okay? I bought this home. I paid it 2 off. I plan on staying here forever. Okay. 3 I also have another property, one street 4 over 99 Cherry Street, which is a triplex. And then 5 I've got another property off of Lower Street, which 6 is a duplex. So in saying this, I've been here for 20 7 years. I own those properties. I'm also a 8 firefighter for JFRD. I'm a small business owner at 9 the beach. 10 I have unique viewpoints as this as an 11 entrepreneur, and also as a firefighter. Short term 12 rentals are statistically higher on crime, drugs, 13 overdoses, working firsthand in Jacksonville Beach and 14 Neptune Beach as a firefighter. These are real 15 issues. Normal people don't see this, and I do. And 16 I've been to -- I was at two drug overdoses just last 17 week in Jacksonville Beach. 18 I've worked in Neptune Beach, and I could 19 tell you how many times I've called the public line to 20 get drug deals. You can pull all this up as public 21 record. You can also pull up the call volume for 22 these properties and obviously in the district of the 23 town center. These people staying here at the bed and 24 breakfast are not background checked and they're a 25 higher abundance of traffic booking two blocks away
Page 74 1 business imposes on our community. Anyone reviewing 2 the plans would see this as a residence with a small 3 downstairs rental unit, complete with a kitchenette. 4 Calling this a business is baffling as the rental unit 5 occupies a minimal portion of the residence. This 6 bedroom takes up 1/13 of the entire house, and with 7 its kitchenette, it resembles a short-term rental more 8 than a traditional Airbnb. 9 Common sense tells me that after we heard 10 the owners at the last meeting without saying it, 11 they're simply trying to get ocean views. I do not 12 think a business will be ran here, and who is going to 13 be responsible for making sure that it is? I urge you 14 to consider the impact of the development will have on 15 our neighborhood, and to protect the character and 16 safety of our community that I so dearly love. Thank 17 you. 18 MAYOR ELAINE BROWN: Thank you. 19 CATHERINE PONSON: Russell Peters. 20 MAYOR ELAINE BROWN: Russell. Welcome. Name 21 and address for the record, please. 22 RUSSELL PETERS: Hi. My name is Russell 23 Peters. I live at 99 Orange Street, so I'll be one of 24 the individuals that wakes up to this 35-foot property 25 right in front of my house every single day for the	Page 76 1 from Pete's and obviously the strip. 2 If this bed and breakfast shows two parking 3 spots on the front that said, facing my house directly 4 and if just like they said, if there's four rooms and 5 if me and my wife are there staying there, there's 6 possibly 1 or 2 cars per parking lot. Then what also 7 -- you have the cleaning lady, you have the obviously 8 the chef or the person that's booking. 9 So we have a huge parking problem there in 10 itself. It's been addressed here in multiple things. 11 Nothing's really been done about it. It just says 12 call the nonpublic line. So I say this, I say, hey, 13 if I got this property that's literally five houses, I 14 can walk away. That's a triplex. 15 Why don't I just follow this and say, hey, 16 let me run a short-term rental there and along with my 17 other property that's there too. So it opens up a can 18 of worms and saying, you know, why can't we just stick 19 with the long-term rentals that are there? I said, 20 how would you feel as a homeowner with young kids 21 playing outside every week you're getting a new random 22 person in front of the standing in front of this 35- 23 foot towering building? 24 Okay, so remember every week you're getting 25 -- or it could be every day you're getting new people

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Page 77 1 because it's not a 30-day minimum. So that's really, 2 really important. As stated under the policies that 3 everyone else went through to, I don't want to go 4 through a lot of other things. I'll end with this. 5 How many people are here to actually promote this? I 6 think everyone's here for against it. 7 And then so we talk about this. Besides the 8 owners, look at how many people here don't want this. 9 They have changed this meeting so many times. I can't 10 even count how many times this is -- I've had to try 11 and reschedule and try and be here for numerous 12 reasons. They've submitted multiple plans. This has 13 gone again. So now we're fighting something that was 14 denied multiple times in the past. 15 So the direct neighborhood with the property 16 line the neighbor that's on the east side, this would 17 be massively over theirs and then obviously would be 18 looking at ours and we'd be huge of looking at that. 19 So you look at 3,500 square feet. 20 If you look at when we looked at the, the 21 property, it's a 12-foot road that goes from north to 22 south. And if you ever try and put a fire truck 23 through there, it'll be really tough. So in saying 24 that, I do obviously deny. 25 MAYOR ELAINE BROWN: Thank you. Appreciate	Page 79 1 detrimental and non-compatible land uses, also to 2 increase the safety and security of home life and 3 preserve and create a more favorable living 4 environment. 5 Approving a bed and breakfast in this 6 neighborhood block would not preserve the pleasant 7 environment, or be conducive to the retaining the 8 quality of the existing neighborhood. It would allow 9 for the encroachment of a non-compatible land use. 10 Residents do not want to live next to a bed and 11 breakfast. 12 Living next to a bed and breakfast where 13 strangers are coming and going does not increase a 14 resident's feeling of safety and security of home 15 life. It definitely does not create a more favorable 16 living environment. 17 Building a bed and breakfast in this section 18 of Neptune Beach could be cause for residents in this 19 area to move away, and it could deter people from 20 buying a home in this part of Neptune Beach in the 21 future. Thus, the erosion of this section of the 22 neighborhood begins, allowing commercial properties to 23 be built next to residential properties can slowly 24 kill a neighborhood. 25 Also, this property sits on Midway and I
Page 78 1 it. 2 CATHERINE PONSON: Alison Ronzon. 3 MAYOR ELAINE BROWN: Alison. Hi, Alison. 4 ALISON RONZON: Hi. Alison Ronzon. Yeah. 5 221 South Street. I have to talk fast here. I'm 6 strongly opposed to approving the property at 108 7 Orange Street for a bed and breakfast. Yes, it's 8 zoned commercial residential. 9 However, a bed and breakfast does not fit in 10 with the other residences in the neighborhood block in 11 which it is proposed. The bordering properties are 12 all residential. Residents in this area are 13 neighbors, not tourists. There's a sense of community 14 that would be disrupted. The CDB has already denied 15 this variance request and with good reason. 16 I have been to every CDB meeting for the 17 past 20 months. They do not take variance requests 18 lightly. They look at them from every angle and have 19 serious discussions before making any decision that 20 they want what's best for Neptune Beach and its 21 residents. I thoroughly trust this CDBs judgment. 22 One of the primary goals of the Land 23 Development Code of Neptune Beach is to retain the 24 quality of our existing residential neighborhoods, 25 protect these areas from the encroachment of	Page 80 1 won't go into the tight congested area that that is 2 because someone's already done that. I don't 3 understand why this property owner does not ask to 4 build a private residence here. That would surely be 5 approved. There once was a private residence on this 6 property. 7 I'm confused about why he is so adamant 8 about spending \$2 million to build a bed and breakfast 9 when he clearly stated at a prior CDB meeting, which I 10 was there, to hear his last variance request, that he 11 wanted absolutely no contact with the guests that 12 would be staying in his bed and breakfast. It 13 confuses me that he's asked repeatedly to have a bed 14 and breakfast approved that he wants nothing to do 15 with. 16 Again, why not build a private residence? 17 What's the difference between the two? Private 18 residence can only be built to 28ft, while a bed and 19 breakfast, which is zoned commercial, can be built to 20 35ft. There is also a two-story private residence 21 directly in front of this property to the east. 22 The property owner's bedroom or suite would 23 be on the third floor of the B&B. Make your own 24 inference about why he is so adamant on building a bed 25 and breakfast instead of a private residence, although

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Page 81 1 his request has been denied several times and he lost 2 a lawsuit over it. 3 Please deny this variance request. The City 4 council can reject a commercial property that is out 5 of character, and a bed and breakfast in this 6 neighborhood block most certainly is out of character. 7 If approved, it would set a dangerous precedent. 8 Approving a bed and breakfast for an owner 9 that clearly stated he wants absolutely nothing to do 10 with that business, and opening the door for possibly 11 more of the same in this block. If you approve this 12 variance, it will be to the detriment of all the 13 neighbors who live in the vicinity of this property, 14 and to the future of that neighborhood block. 15 In general, your job as city Council is to 16 consider the rights of all residents of Neptune Beach 17 and not just one. Thank you. 18 MAYOR ELAINE BROWN: Thank you. 19 CATHERINE PONSON: Amy Wolfson. 20 MAYOR ELAINE BROWN: Amy. Hi, Amy. Welcome. 21 AMY WOLFSON: Hi. 22 MAYOR ELAINE BROWN: Name and address for the 23 record, please. 24 AMY WOLFSON: I apologize. A question of 25 order. I signed in as myself. I am a resident, 215	Page 83 1 that this is an insidious maneuver to create a, a 2 large residence, and they're trying to go through the 3 proper channels. I can respect that. 4 But this has already been voted down by the 5 Community Development Board. I don't think there is 6 much more to discuss. And as a resident, I'm 7 adamantly opposed, and I appreciate everybody that 8 came out tonight to express their grievances. Thank 9 you. 10 MAYOR ELAINE BROWN: Thank you. 11 CATHERINE PONSON: Brian Flaherty. 12 MAYOR ELAINE BROWN: Brian? 13 BRIAN FLAHERTY: Good evening. 14 MAYOR ELAINE BROWN: Good evening, Brian. 15 Come on up. Give us your name and address for the 16 record. 17 BRIAN FLAHERTY: Yes, ma'am. I'm Brian 18 Flaherty. I live at 501 Second Street here in Neptune 19 Beach. All the prior speakers have really articulated 20 some really interesting thoughts. I won't try to 21 repeat them. I'll just share this. 22 I've been here in Neptune Beach for 26 23 years. I've lived in other places. I grew up in 24 Boston. This is a unique place. It's blessed. 25 Truly, I'm very happy here. Hopefully spend the rest
Page 82 1 Midway Street. But I wanted to read a letter from 2 another resident. Can I still go on the record as 3 just echoing the sentiment of the protest? 4 MAYOR ELAINE BROWN: You can submit the 5 letter to the clerk and it will become part of the 6 record. 7 AMY WOLFSON: Oh, wonderful. 8 MAYOR ELAINE BROWN: You can go ahead and 9 talk. 10 AMY WOLFSON: Oh, great. Okay. Sorry. 11 Thank you. I would just like to really echo 12 everything what Heather and her husband said. I feel 13 like this is a bit of a scam. It's been voted on. 14 It's been discussed. I also have a young son. 15 Again, I live at 215 Midway Street, so Cob 16 Corner. I feel like the level of traffic, drug abuse, 17 drunken revelers that I have seen, the increase of 18 that over the past three years, is alarming. And I've 19 only lived here for three years. And I have grave 20 concerns about essentially expanding what is a tourist 21 district into the residential part of the 22 neighborhood. 23 In addition, we live in kind of a historic 24 part of Neptune Beach. The oldest house in Neptune 25 Beach is just 1000ft from my house. I just feel like	Page 84 1 of my life here. So I appreciate the changes I've 2 seen over the years. 3 I want to see this city preserve as much of 4 its ability to preserve the residential flavor that 5 has been here for 26 years I've been here as a 6 resident. And I would ask that this petition be 7 denied because I don't think that the construction of 8 this particular project is consistent with the 9 development and the best interest of the city and the 10 residents of the city of Neptune Beach. 11 And I just wanted to share that thought. 12 And I know there are some people have some very 13 emotional things about this, and I can respect that. 14 But I think the residential character, a lot of times 15 you won't appreciate what you've lost until it's gone, 16 truly. 17 And I don't want to see that change because 18 I've seen the changes over the years. I just want to 19 see the continuation of the residential flavor that 20 I've had the blessing of experiences over the last 26 21 years. Thank you. 22 MAYOR ELAINE BROWN: Thanks, Brian. 23 CATHERINE PONSON: I can't read the first 24 name, Mr. Sherouse? 25 MAYOR ELAINE BROWN: Sherouse?

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Page 85 1 CATHERINE PONSON: He's speaking for Mr. 2 Schoonover 3 GLENN SHEROUSE: Oh, that's me. Sherouse. 4 I'm sorry. 5 MAYOR ELAINE BROWN: Glenn? 6 GLENN SHEROUSE: I was a doctor in a past 7 life. 8 MAYOR ELAINE BROWN: Name and address for the 9 record. 10 GLENN SHEROUSE: Well, I'm the stunt double 11 for George Schoonover. My name is George Schoonover. 12 I live at 214 Oceanfront, and I oppose the applicant's 13 request to build a B&B on 108 Orange Street. We are a 14 neighboring property to the north. Judicial 15 precedence has already been established. 16 The case for a three-story B&B was 17 adjudicated in 2015. The applicant filed for a 18 preliminary development order for a three-story B&B at 19 108 Orange Street. The application was denied on 20 grounds of incompatibility. The applicant then sued 21 the city of Neptune Beach. 22 The City of Neptune Beach prevailed in both 23 civil and circuit civil court and in appellate court. 24 As outlined in section 27-82 of the Land Development 25 Code, the Community Development Board shall consider	Page 87 1 duplex. Homes built on Orange Street were built long 2 before the CB designation was imposed on the 3 neighborhood. It was then and is now residential. 4 There has never been a business on this block of 5 Midway nor Orange Street. 6 In section 27-243 special requirements in 7 the RC Residential Conservation Overlay acknowledged 8 the historic development pattern of our neighborhood, 9 and that new development should be sensitive to the 10 character and history of the surrounding neighborhood. 11 Allowing a 35-foot-high business to tower over a 12 neighborhood of houses capped at 28ft would be 13 negligent. 14 The proposed commercial development is 15 simply incompatible with the surrounding residential 16 developments. The council is required to consider and 17 follow the specific facts, along with numerous 18 references to the provisions of the city's land 19 development codes. 20 Allowing this proposal to go forward would 21 set a bad precedent for our neighborhood and the city 22 of Neptune Beach. Regardless of zoning designation, 23 the extra traffic created, and parking hassles with a 24 B&B is not fitting with our neighborhood ambiance or 25 our land development codes. For these reasons. In
Page 86 1 the following factors. 2 Quote, the nature of the proposed 3 development, including land use types and densities, 4 proposed parking areas, and the concerns and desires 5 of the surrounding landowners and other persons, I 6 don't know what that means, but anyway, from the 7 stated goals and objectives in the Neptune Beach's 8 Code of Ordinances, purposes and Intent of Zoning 9 districts, the design goals for new construction are 10 to preserve the natural beauty of Neptune Beach and 11 protect the residential character from the effects of 12 inharmonious and out of scale development. 13 Found in section 27-222 under Neighborhood 14 Design. Quote, buildings should not present excess 15 visual mass or bulk to public view or to adjoining 16 properties when viewed from the public right of way, 17 excessive mass detracts from the character of Neptune 18 Beach's individual neighborhoods when viewed from 19 adjoining properties, excess mass can effectively act 20 as a wall that dominates neighboring structures and 21 interferes with the enjoyment of open spaces and free 22 passage of light and air. 23 108 Orange Street is located in the 24 residential area of the CBD. Until 2007, this non- 25 conforming lot held a 1268 square foot, two-story	Page 88 1 summary, I oppose the B&B at 108 Orange Street. 2 MAYOR ELAINE BROWN: Thank you. 3 GLENN SHEROUSE: And I got five seconds. 4 CATHERINE PONSON: Shellie Thole. 5 MAYOR ELAINE BROWN: Shellie? 6 CATHERINE PONSON: Mayor, I'm not sure if Ms. 7 Thole was sworn in. 8 SHELLIE THOLE: I did not swear in. I'm so 9 sorry. 10 MAYOR ELAINE BROWN: You were not sworn in? 11 SHELLIE THOLE: I was not. 12 VICE MAYOR KERRY CHIN: Do you swear or 13 affirm the testimony you give will be the truth, the 14 whole truth, and nothing but the truth? 15 SHELLIE THOLE: I do. 16 MAYOR ELAINE BROWN: Name and address for the 17 record. 18 SHELLIE THOLE: Oh, I'm so sorry. Shellie 19 Thole, 310 Oleander Street. So the words that keep 20 coming to my brain. I'm sure we all heard it many 21 times. Is competent, substantial evidence. This 22 House already went to court. This whole thing has 23 already gone to court. And the court found it was not 24 in character with the neighborhood. 25 So I really -- I'm kind of confused why

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Page 89 1 we're standing here and they're getting another look 2 back there taking notes and they're getting another 3 bite at the apple. And I really don't understand it. 4 But the other issue I have with what's going on here 5 today is we have a community Development Board meeting 6 of people seven, I think it's seven people, that use 7 their time. They're smart people. 8 We have an attorney who's in the room. 9 She's on the board. And unanimously they said this is 10 a no-go. So the fact that we're standing here and we 11 have seven people that said that who we volunteer 12 their time, I really hope that you all will see that 13 these are the correct things and it's unanimous. I 14 did not plan on speaking. I hate when I do that 15 because I'm never eloquent, but there is zero things 16 that say that this should be approved legally. Thank 17 you. 18 MAYOR ELAINE BROWN: Thank you. 19 CATHERINE PONSON: Andreina Zubizarreta. 20 ANDREINA ZUBIZARRETA: Thank you. 21 MAYOR ELAINE BROWN: Andreina. Welcome. 22 Hope we didn't destroy that last name too bad. Name 23 and address for the record. 24 ANDREINA ZUBIZARRETA: Yep. Andreina 25 Zubizarreta, 111 Orange Street. So, dear sirs, I'm	Page 91 1 ideal. It just needs to comply with existing code and 2 zoning that specifically says section 27-222 number 3 one, the design goals for new construction or 4 improvement are as follows. 5 A, to preserve the natural beauty of Neptune 6 Beach and protect the residential character of the 7 city from the effects of Inharmonious and Out-of-scale 8 developments. 2, B, neighborhood design. Site 9 improvements should be compatible with the structures 10 existing on neighboring parcels, and should be 11 sensitive to their designs and property rights. 12 Designs which conflict with the use and enjoyment of 13 any property should be avoided. 14 Buildings should be designed in scale of the 15 neighborhood and should complement the character of 16 the neighborhood, rather than conflict with it. 17 Please deny this request. Thank you. 18 MAYOR ELAINE BROWN: Thank you. 19 CATHERINE PONSON: I don't have anymore. 20 MAYOR ELAINE BROWN: No? Okay. Public 21 hearing is closed, and we're going to now go back to 22 Heather. And Heather, the applicant or anything that 23 was brought up that you would like to correct or make 24 sure that is clear to the council and to the audience. 25 HEATHER WHITMORE: I have nothing to correct.
Page 90 1 supportive of all my neighbors and their opinions. My 2 name is Andreina Zubizarreta. I'm a resident of 3 Neptune Beach since 2016. My house is located at 111 4 Orange Street. 5 I'm strongly opposed to the construction of 6 a bed and breakfast across my house at 108 Orange 7 Street. It will be very disruptive for our lovely 8 residential neighborhood. The design, height, and 9 scale doesn't match the look and feel of our area. I 10 have two small kids, ages four and six years old, that 11 enjoy playing outside our house on a daily basis. 12 If this massive scale bed and breakfast is 13 built, it will have an enormous impact on our quality 14 of life as our usually quiet, residential, and family- 15 friendly street will turn into a commercial space with 16 random people visiting and struggling to secure 17 parking spots for their cars. Neptune Beach has a 18 land development code that was created for a reason 19 and should be enforced to avoid these types of 20 problems that will negatively impact our residential 21 neighborhood. 22 We would love to see a house built there 23 that is harmonious with the neighborhood, instead of 24 the empty lot that we have now that our neighbors have 25 explained things that happened there that are not	Page 92 1 MAYOR ELAINE BROWN: Okay. 2 HEATHER WHITMORE: If I have questions, happy 3 to answer them. 4 MAYOR ELAINE BROWN: Okay, great. Thank you. 5 And the applicant has a rebuttal time. 6 ZACH MILLER: Yes. Can I have my PowerPoint 7 put up? I just wanted to show a couple of items. The 8 nice lady who just spoke. I couldn't agree with her 9 more. She says you have a land development code and 10 we should apply that. 11 I agree on your land development code lot 12 area. We meet it lot width. We meet it. Front yard 13 setback. We meet it. Corner lot setback. We meet 14 it. Rear yard setback. We meet it. Lot coverage. 15 We meet it by over 30%. Building height. There's 16 been a lot of talk about that. Your code made 35ft 17 the building height for this property. Your code made 18 it a commercial zoning. This is the least intense use 19 allowed for this property. 20 My understanding is, is that this entire 21 area was proposed to be rezoned out of the CBD to 22 residential, and there was a concern for property 23 rights that the residents would sue because they would 24 lose value if they could only build residences on this 25 property. It's stayed. It's community development.

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Page 93 1 It's a central business district. 2 The RC area is to the south of this 3 property. Our property is not in that. Our property 4 is zoned for bed and breakfast. On competent 5 substantial evidence, your staff report by law is 6 competent substantial evidence. If you note in your 7 staff report, 27-222 is not listed anywhere in there. 8 Why is that? You've heard a lot about that 9 section. 222 is the overriding guidelines that your, 10 that your code gives you in drafting the particular 11 code for each district. That was the guidepost for 12 the drafting of 27.82, which is the criteria you're 13 supposed to apply, and all the criteria that is very 14 specific to the CBD. 15 And again, per your staff report, per your 16 code, we meet all of that. There was some discussion 17 about misplaced that this shouldn't be a business. 18 Again, the decision that this has to be a business was 19 made by the city when it was zoned that way. 35ft is 20 allowed by code. 21 Again, that wasn't a decision my clients 22 made that was a decision the city made. That 35ft is 23 appropriate for this area. For people that have lived 24 in the area for over 40 years, and I understand I'm a 25 beach resident, I'm actually, I think, fifth	Page 95 1 seven-foot setback, a five-foot setback, and 71% lot 2 coverage. 3 We're currently at 53.7%. We are a 4 materially different application than was before you 5 before. I touched on 222, if you look in your staff 6 report again, you're not going to see any reference to 7 that because your code is what effectuates 222. 8 Respectfully, this is what we're left with. 9 If we can't do a bed and breakfast. We have 10 no other uses for this property. We're stuck with 11 what is essentially a taking by the city of Neptune 12 Beach of a vacant property that we can't do anything 13 with. I understand residents might like that, but 14 that is not fair to the property rights of my client. 15 With that, I'm happy to answer any questions 16 that you might have or you might have for the 17 applicant or you might have for our architect. 18 MAYOR ELAINE BROWN: Okay. Thank you. I'm 19 going to start with our vice mayor, and we'll go 20 around and the applicant can come forward if needed 21 for any of the questions. And I'll start with our 22 vice mayor. 23 VICE MAYOR KERRY CHIN: Okay. Thank you. 24 Mayor. I guess since there's been so much talk about 25 these specific sections of code, I'm going to ask our
Page 94 1 generation. 2 My grandfather served on the City of 3 Jacksonville Beach Planning Commission. Respectfully, 4 he would look at this and say, what does the code say? 5 He would look to staff. What does the code say? We 6 meet code. There's no requirements there. There was 7 some discussion of whether we need a variance or not. 8 We don't need a variance at all. 9 Is this not the right scale for the 10 property? Respectfully we're at 1.4 Florida area 11 ratio. The property across the street is at 12 approximately 1.8 Florida area ratio. Your code sets 13 what is appropriate for the massing. Your code sets 14 what's appropriate for this area. I didn't write 15 that. My client didn't write that. 16 That was the city's decision to make this 17 property, have this zoning requirements, to have these 18 setback requirements, to have these height 19 requirements, to have the two parking spaces inside, 20 to have the transparent facade. 21 That's what your code requires and my client 22 has bent over backwards to meet it. There is some 23 discussion about the lawsuit in 2015 and 2016. Again, 24 this is a different application. That was for 5671ft. 25 That was for a one-foot setback, a six-foot setback, a	Page 96 1 city attorney if he's ready to weigh in on the 2 applicability of, say, 27-222, or even 27-82. 3 CITY ATTORNEY ZACHARY ROTH: Yeah, I agree 4 with counsel's analysis of 222, that it's really this 5 is the guiding principle for how we create the rest of 6 our code. It's not a threshold test in and of itself. 7 That's why it uses the word should and not shall or 8 must. So I believe that it is 27-82 that is the 9 operative provision for analyzing this application and 10 making a determination, not 222. 11 COUNCILOR LAUREN KEY: And by counsel you 12 mean counsel. 13 CITY ATTORNEY ZACHARY ROTH: S-E-L, yes, not 14 C-I-L. 15 COUNCILOR LAUREN KEY: Just wanted to clarify 16 that for anyone who may be confused. 17 ZACH MILLER: For the record, the other Zack, 18 who is not as good as your Zack. 19 CITY ATTORNEY ZACHARY ROTH: And I will say 20 too, since it's related to that, I guess this is a 21 separate application. The fact that there was a prior 22 lawsuit has nothing to do with this. You should 23 analyze this application on its own merits and not 24 consider what happened in the prior application. 25 VICE MAYOR KERRY CHIN: All right. Thank

Page 97 1 you. Now, I do have a question for the architect. 2 ZACH MILLER: Okay. 3 MAYOR ELAINE BROWN: Welcome. And name and 4 address for the record, please. 5 KEVIN SOLOMON: Kevin Solomon, 678 Fort 6 Williams Drive, Saint John's County. 7 VICE MAYOR KERRY CHIN: Okay. Thank you for 8 coming tonight. You know, my questions surround the 9 plans for this bed and breakfast. And I see that you 10 have a unit on the first floor, but there is also a 11 lobby that fronts it. 12 KEVIN SOLOMON: Correct. 13 VICE MAYOR KERRY CHIN: Now, the lobby is 14 isolated from the rest of the interior space because 15 it looks like there's some common areas that are on 16 the back side of that first-floor unit, and the stairs 17 to reach the upper levels are in that back section, 18 but the lobby is totally cut off from all of that. 19 The staff who is manning the lobby, what are they 20 going to do if they have to go upstairs? Describe 21 that process to me. 22 KEVIN SOLOMON: The process would be to go in 23 the lobby, check-in, and do that, that -- have that 24 business, and then go out into the garage to go 25 through that up to the second floor.	Page 99 1 VICE MAYOR KERRY CHIN: Okay. Mr. Driver, 2 thank you for coming. You've heard some of the 3 testimony where people were questioning, you know, the 4 parking situation, you know, because you're going to 5 have two units plus your own unit there. 6 And normally the parking would require one 7 vehicle per, you know, guest unit plus two for you, 8 but there's a 50% reduction in the CDB. But there are 9 also concerns with staff. How are you going to 10 accommodate staff parking? 11 DOUG DRIVER: The parking is in accordance 12 with all the code as was discussed before. So, I 13 mean, we'll find a way, you know, to get the staff 14 there to take care of business. So, you know, we're I 15 mean, I don't know what more to say to than that. 16 Your requirements were met as far as parking. 17 VICE MAYOR KERRY CHIN: Okay. But -- so you 18 won't have like a concern that they may not, you know, 19 your staff may not actually find parking. 20 CATHERINE PONSON: The staff will find 21 parking. So whether it's, you know, paid parking in 22 the in the city, I mean, there are open parking spaces 23 that you can put money down and park there for 24 reserved amount of time. They'll commute together, 25 you know, if there's cleaners coming together,
Page 98 1 VICE MAYOR KERRY CHIN: So like the staff 2 member would, if they needed to go upstairs for some 3 particular reason, they'd have to go through the 4 garage. 5 KEVIN SOLOMON: Correct. 6 VICE MAYOR KERRY CHIN: And then to the 7 interior space go upstairs. Okay. Now. Listening to 8 the testimony from the Community Development Board, it 9 seemed unclear how dedicated, you know, Mr. Driver was 10 going to be to operating this as a full-fledged bed 11 and breakfast. There is, I'll admit to you some 12 skepticism just because of the layout and his own 13 testimony. 14 MAYOR ELAINE BROWN: Do you want him to come 15 up? 16 VICE MAYOR KERRY CHIN: Sure. 17 MAYOR ELAINE BROWN: Okay. Would the 18 applicant come up, please? Name and address for the 19 record. 20 DOUG DRIVER: Doug Driver. What'd you say, 21 sorry? 22 MAYOR ELAINE BROWN: And your address. 23 DOUG DRIVER: Address? 1150 Florida 24 Boulevard. 25 MAYOR ELAINE BROWN: Thank you.	Page 100 1 multiple of them will ride in one car. And that's so. 2 PAUL WATERS: And your guests who are -- I 3 assume you're going to have them both parking in the 4 garage? And then where would you be parking? 5 DOUG DRIVER: So I will park there because 6 I'm going to be living there. And I just wanted to 7 say, every square inch of this is going to be used as 8 a bed and breakfast. I know, you know, you're trying 9 to use my testimony against me. 10 But, you know, I was badgered last time, and 11 I understand that I may have said or misspoke, but 12 this is going to be operated as a bed and breakfast 13 100%. And so I'm fully dedicated to that. And 14 that's, you know, it is what it is. As far as parking 15 is concerned, I would imagine that most guests are 16 going to be coming from out of town, probably from, 17 you know, other places. It's, you know, it's going to 18 --it's essentially a vacation spot, right? The beach 19 is highly sought after. So I think parking will be 20 fine. 21 VICE MAYOR KERRY CHIN: Okay. And how -- 22 DOUG DRIVER: Can I say one thing, actually? 23 I want to rebut. So he just spoke out and said we can 24 park at his house, but he actually asked our family to 25 use that lot. So for the last year or two --

Page 101 1 MAYOR ELAINE BROWN: Wait hold on. No, we're 2 not going to (inaudible) the audience. 3 DOUG DRIVER: Okay, well he spoke out. 4 MAYOR ELAINE BROWN: And I'm going to ask the 5 audience one more time, please, you know, try to just 6 refrain from saying things while someone is speaking 7 and please treat people the way you want to be 8 treated. So don't rebut him, but go ahead and say 9 what you need to say, okay? 10 DOUG DRIVER: Thank you. So yeah, I mean, 11 neighbors have asked us to park there on the lot. 12 They've been using that property as if it was their 13 own. And I can see why they're upset that we're 14 trying to build something there. 15 MAYOR ELAINE BROWN: Okay. 16 VICE MAYOR KERRY CHIN: So your guests would 17 have to have access to the garage. I mean, you would 18 -- you're going to have like a code or are you going 19 to give everyone a controller or something like that? 20 DOUG DRIVER: So the first-floor bedroom has 21 an exterior entrance so they can come in from outside 22 and then also if they need to, yes, we'll get them in 23 the garage as needed to go upstairs. 24 VICE MAYOR KERRY CHIN: Okay. The same 25 garage that you share?	Page 103 1 quasi-judicial hearing, so bear with. 2 ZACH MILLER: I understand. Just on the 3 criteria, on parking. Again, your code sets out the 4 amount of parking that is required. Here we meet 5 that. If it's supposed to be more parking, the way to 6 address that is to change your code, not to require 7 more parking for this particular applicant. 8 There was some discussion of traffic. Your 9 staff actually analyzes that in the staff report. You 10 meet your local concurrency requirements. Again we 11 meet all parts of your code. If you don't like the 12 fact that there's not enough parking, if you don't 13 like the traffic, if you don't like the setbacks, 14 there's a way to address it. You can vote to change 15 it at any time. Thank you. 16 CITY ATTORNEY ZACHARY ROTH: Mayor, can I say 17 something to clarify on that point? That ignores the 18 87 -- 827.82(f)(3), it talks about one of the elements 19 that you consider is the nature of the proposed 20 development, including proposed parking areas. 21 So that says the nature of it, not just the 22 amount of it. So in my opinion, the nature of the 23 proposed parking area, in addition to the number of 24 spaces, is relevant for your analysis. 25 ZACH MILLER: I respect your attorney greatly
Page 102 1 DOUG DRIVER: Correct. 2 VICE MAYOR KERRY CHIN: Okay. 3 MAYOR ELAINE BROWN: Are you good for now? 4 VICE MAYOR KERRY CHIN: Yeah, I'm good for 5 now. I'll have a follow-up, probably. 6 MAYOR ELAINE BROWN: Okay. Councilwoman? 7 COUNCILOR LAUREN KEY: I don't have any 8 questions of the applicant. 9 MAYOR ELAINE BROWN: Okay. Do you have 10 questions for -- 11 COUNCILOR LAUREN KEY: Yes. 12 MAYOR ELAINE BROWN: Would you like to? 13 COUNCILOR LAUREN KEY: I have questions of 14 Heather. Just confirmation questions of Heather. No, 15 it's still their time, right? Sorry. 16 MAYOR ELAINE BROWN: Yeah, well. 17 COUNCILOR LAUREN KEY: I'm trying to follow 18 the procedure. 19 MAYOR ELAINE BROWN: This is open for you, 20 ma'am, you can go ahead and ask whatever questions, we 21 want you to get your answers. 22 COUNCILOR LAUREN KEY: Well, I'll wait -- 23 I'll let you guys wrap up your portion. And then I 24 have just more confirmation questions for Heather, and 25 I'll ask those at that time. Sorry. This is my first	Page 104 1 on it. Your code doesn't make any differential on you 2 need to have this amount of parking for this kind of 3 use and this amount of parking for this kind of use 4 here, it just says two spaces. 5 MAYOR ELAINE BROWN: Okay. 6 ZACH MILLER: Thank you. 7 MAYOR ELAINE BROWN: All right. And, 8 Councilwoman, did you have any other questions at this 9 time for anyone? 10 COUNCILOR LAUREN KEY: Yes. 11 MAYOR ELAINE BROWN: Okay. 12 COUNCILOR LAUREN KEY: Heather? 13 HEATHER WHITMORE: Yes, ma'am. 14 COUNCILOR LAUREN KEY: Can you confirm that 15 that block has been zoned in the central business 16 district since the map was drawn, which I believe was 17 in 1959? 18 HEATHER WHITMORE: Correct. And that was 19 confirmed this morning. We did a little bit of 20 research on that because the question has come up, how 21 long is this property been central business district? 22 COUNCILOR LAUREN KEY: And if we were to take 23 away the property rights of -- or change the zoning 24 and downgrade it to just residential only, we would 25 open ourselves up to a Bert Harris claim, is that

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Page 105 1 correct? 2 UNIDENTIFIED MALE SPEAKER: Potentially. 3 COUNCILOR LAUREN KEY: Because we would be 4 taking away a property right? 5 UNIDENTIFIED MALE SPEAKER: Potentially. 6 COUNCILOR LAUREN KEY: Okay. My second 7 question is, my understanding is there was an attempt 8 to rezone this property back in the 90s? 9 HEATHER WHITMORE: Between 1991 and 1994. 10 COUNCILOR LAUREN KEY: And it failed. 11 HEATHER WHITMORE: And it failed, correct. 12 COUNCILOR LAUREN KEY: And then there was a 13 time in our history in which we changed the zoning and 14 we heard from the state. 15 HEATHER WHITMORE: It was during that period. 16 Piper and I did the research, and she's trying to find 17 the exact files. But we -- the state intervened and 18 actually submitted a letter of objection that it was a 19 Bert Harris claim during that same review. 20 So it was that same review. It was it was 21 initially going to be passed and then it was revoked. 22 It was never adopted. 23 COUNCILOR LAUREN KEY: So I think kind of 24 where I'm at on this is like the thought of making it 25 a residential opens a new can of worms, essentially.	Page 107 1 HEATHER WHITMORE: Correct. 2 COUNCILOR LAUREN KEY: Okay. So that's all I 3 have for Heather right now. Thank you. 4 HEATHER WHITMORE: Thank you. 5 MAYOR ELAINE BROWN: All right. Councilwoman 6 Livingston? 7 COUNCILOR NIA LIVINGSTON: I actually have a 8 question for Zach. If we could -- 9 MAYOR ELAINE BROWN: Go right ahead. 10 COUNCILOR NIA LIVINGSTON: If we could break 11 for a few minutes I might be able to just ask him in 12 private. 13 MAYOR ELAINE BROWN: Oh, I'm sorry. 14 COUNCILOR NIA LIVINGSTON: I'll be very 15 brief. 16 MAYOR ELAINE BROWN: We've been asked to have 17 a break for two minutes while the discussion is made 18 with the council member and our attorney. So I'm 19 going to a two-minute recess. All right. 20 Councilwoman Livingston, you have the floor. 21 COUNCILOR NIA LIVINGSTON: Thank you. I 22 think -- one of my questions, I think, was for the 23 applicant. I know as you've heard, we've -- most of 24 us right now, like I have also listened to, you know, 25 the community development board meeting and whatnot.
Page 106 1 But I have put a lot of energy into researching this 2 entire thing because I know it's very concerning for a 3 lot of residents, but the entire western side of that 4 block is occupied with commercial uses such as retail 5 and office or very high-density residential. There 6 are 4 to 6 units in an adjacent building. 7 HEATHER WHITMORE: Correct. 8 COUNCILOR LAUREN KEY: The eastern side of 9 the block is six residential buildings. Of those six, 10 only three are single family and the rest are duplexes 11 and one triplex. Is that correct? 12 HEATHER WHITMORE: Correct. 13 COUNCILOR LAUREN KEY: And only three single 14 family units in the subject block. 15 HEATHER WHITMORE: Correct. 16 COUNCILOR LAUREN KEY: Okay. There's one 35- 17 foot building in the block, which is at 101 Lemon. 18 HEATHER WHITMORE: Correct. 19 COUNCILOR LAUREN KEY: So it wouldn't be the 20 only 35-foot property on the block. 21 HEATHER WHITMORE: Correct. 22 COUNCILOR LAUREN KEY: And then the only 23 block -- only the block to the south is composed of 24 single-family residential neighborhood uses and that 25 is because that's where that zoning starts.	Page 108 1 But you're here in front of us now, so also 2 just in line, I think you touched on this earlier, but 3 just to, to double check, like we kind of talked with 4 the architecture about the architect, how people would 5 be entering the residence where the lobby is. So, 6 like, what areas of the home would they have access 7 to? 8 DOUG DRIVER: Well, so essentially everything 9 except the top floor, it's the owner's suite. So. 10 COUNCILOR NIA LIVINGSTON: So like if you're 11 living there, then like the kitchen that you would be 12 using for your, like everyday meal prep or whatnot is 13 the same kitchen that I guess the guests would have 14 access to. 15 DOUG DRIVER: Yes. 16 COUNCILOR NIA LIVINGSTON: Okay. Living room 17 like I mean, I guess it's also, I mean, I guess it's 18 the top floor like you would be leaving them alone, I 19 guess, essentially. I mean, I guess if you want to 20 address kind of some of your past comments about the 21 whole not have contact with them, things like that. 22 DOUG DRIVER: Right, I mean, I'm obviously 23 going to see them, interact with them, but I'm not 24 going to do is, you know, become best friends and, you 25 know, that sort of thing. I mean, it's, it's, it's a

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Page 109 1 business, you know, it's a bed and breakfast. 2 So I'm going to operate it as such. I'm 3 going to, you know, maintain it. I'm going to, you 4 know, take care of the guests, be friendly with them, 5 and do it, you know, from that perspective. And it's 6 going to be a professional relationship. So that's 7 how I plan to operate it. 8 COUNCILOR NIA LIVINGSTON: Who's preparing 9 the breakfast? 10 DOUG DRIVER: That decision hasn't been made 11 yet. I mean, it could be myself. It could be my 12 mother. It could be someone that we hire. We've also 13 thought about maybe giving gift cards to go to 14 Southern Grounds, for instance. So there's different 15 options on the table there. 16 COUNCILOR NIA LIVINGSTON: And like, how 17 would you be advertising? 18 DOUG DRIVER: Internet most likely. 19 COUNCILOR NIA LIVINGSTON: I mean internet 20 like you can apply to be on Travelocity. Are you -- 21 is it just your own website? Word of mouth? Sort of 22 -- 23 DOUG DRIVER: Well, I mean, there's, there's 24 multiple options. So I'm just trying to get -- we'll 25 get there, you know. So there's like I said, we could	Page 111 1 there's right, we're not sure if it's going to get 2 approved. 3 So I'm not going to waste time, money, and 4 energy doing all these things that you're talking 5 about now until I have the permit in hand and then 6 move forward. The building itself is going to take a 7 year minimum to construct. We have builders that have 8 given us quotes. We're going to have to go back now 9 and get another quote because we've made all these 10 changes to comply with code. 11 I mean, we like I said, we, you know, the 12 lawyer said, we've been working hand in hand with, 13 with Heather to try to meet code as much as we can. I 14 mean, we've been thrown different things left and 15 right, constantly changing the plans. 16 I've spent so much money trying to update 17 the plans to get them right by you all, so that we 18 could build this. And so that's been my focus up 19 until now. And then, you know, from here moving 20 forward, obviously, it'll be the business. So. 21 COUNCILOR NIA LIVINGSTON: And then I guess, 22 is this going to be then like, let's say this all gets 23 approved and everything, and then you figure out your 24 business plan and whatnot. Is this going to be your 25 full-time job or are you -- do you travel often for
Page 110 1 do, you know, Airbnb or other such websites that allow 2 for short-term vacation rentals. And obviously this 3 is a bed and breakfast, but it could still be 4 presented on, you know, business websites like that. 5 So. 6 COUNCILOR NIA LIVINGSTON: I guess the 7 question then with Zach, I mean, advertising as an 8 Airbnb that's -- 9 CITY ATTORNEY ZACHARY ROTH: The short-term 10 rentals are not prohibited in the central business 11 district, only in the residential districts. 12 COUNCILOR NIA LIVINGSTON: Okay. I mean, I 13 guess I'm also just trying to get at, normally people 14 that are planning on starting a business, they have a 15 business plan, they have a business model, a mission 16 statement, whatnot. 17 They have some of these ideas, a plan for 18 them. So I get that like you're going to put it on 19 the internet, but like this is a business you need to, 20 you know, I'm assuming be able to rent it out X amount 21 of times a month in order to probably like cover 22 certain costs and things like that. So. 23 DOUG DRIVER: Right, I understand. So yeah, 24 just to give you a bit more perspective. So this has 25 been in the works for a year and a half. Obviously,	Page 112 1 work? Do you have like, you know, another job? 2 DOUG DRIVER: I do have another job. I work 3 remote 100% of the time. So I'm able to dedicate, you 4 know, a lot of time and effort into this business and, 5 you know, nights, weekends, whatever it takes. 6 COUNCILOR NIA LIVINGSTON: I don't have any 7 other questions right this moment, but. 8 MAYOR ELAINE BROWN: Okay. Councilman 9 Messinger? 10 COUNCILOR JOSH MESSINGER: I don't have any 11 questions for the applicant at this time, but I would 12 like to continue the kind of line or thread that 13 Councilwoman Key had started with Heather. 14 MAYOR ELAINE BROWN: Did you have any 15 questions for anyone you want to bring any of them up? 16 COUNCILOR JOSH MESSINGER: Yeah, Heather. 17 Yeah. Thank you. And thanks, Heather and Zach, I'll 18 kind of piggyback because we talked about this earlier 19 to a degree, but it's something Councilwoman Key 20 brought up. So I started researching this very 21 heavily. I followed the last case very closely as 22 well. So the central business district has been in 23 line since 1959. 24 And the boundaries of the central business 25 district or the term they used for it has remained

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Page 113 1 static. It hasn't expanded beyond those boundaries 2 from 1959. Okay. And then the height that we passed 3 as a charter amendment in 2004, The central business 4 district was 35ft and the rest of the community was 5 28ft, and that has remained static. 6 We have not made those -- we have not 7 changed the height at all since 2004, which is when we 8 capped it. And before that, the -- and we made the 9 central business district 35ft, and the rest of the 10 community 28ft and the central business district has 11 been in place since 1959. Do I have those data points 12 correct? 13 HEATHER WHITMORE: The central business 14 district, along with the C1, C2. 15 CITY ATTORNEY ZACHARY ROTH: Commercial 16 districts. 17 COUNCILOR JOSH MESSINGER: Commercial 18 districts. Okay. So I wanted to level set that, and 19 then there's been a lot of discussion about why didn't 20 this area get rezoned during Dover, Kohl to purely 21 residential. We want to keep the area residential, 22 which I mean I respect that mightily. 23 Our character is what makes us what we are. 24 That's what makes us special. I understand that even 25 before the Dover, Kohl code rewrites that in give or	Page 115 1 you're not going to have a Bert Harris claim. 2 COUNCILOR JOSH MESSINGER: Okay. So -- but 3 as there's been so much discussion about why can't we 4 go back and make this residential. It was looked at 5 in the 90s, attempted to be approved, and the state 6 preempted it, and the state struck it down. 7 And then before the Dover, Kohl process in, 8 you know, around 2015/16, the board had conversations 9 about it, looked at all the mechanisms, and even in 10 that process, multiple residents said, we're not going 11 to sign that type of document and give up our values 12 to change, you know, what we're allowed to build in 13 that space. So I think that's just very important 14 history and context for, you know, that street line 15 and then everything really to the north of it. 16 The south is where we hit residential and 17 then north of that, where this parcel is in the CD, 18 Central Business District, CBD. Okay. So I just 19 wanted to clarify all of, all of those points as I 20 understand them. Okay. So even if we wanted to, we 21 could not change the height limits in that area or 22 remove the vested property rights. I guess this is 23 for Zach now, without having a Bert Harris claim filed 24 against -- 25 CITY ATTORNEY ZACHARY ROTH: (inaudible)
Page 114 1 take 2015/16, around that time, there was an effort 2 where when we had the previous attorney that the board 3 looked at what it would take to modify some of the 4 homes in the central business district to purely 5 residential. 6 And the Bert Harris claim was the first item 7 that anyone would say you're downgrading the value of 8 my property, sue, we would lose because it's pretty 9 cut and dry. 10 But there was one mechanism, as I understand 11 it, and Zach, if you could provide a little color to 12 that, there would be a way to provide basically a 13 foreign document to the neighborhood and say, if you 14 sign this and give up your property rights, you have 15 to sign this, notarize this, and then that is the only 16 way that and the whole area has to agree to relinquish 17 the property rights and the value without the city 18 being a taking entity. Can you give a little color 19 around that? 20 CITY ATTORNEY ZACHARY ROTH: Yeah, I mean, 21 it's basically a scenario where you get everyone's 22 permission in advance so then they can't complain 23 afterwards because they said they were okay with it. 24 I mean, that is essentially what you're talking about. 25 That's the only way you can do it and feel comfortable	Page 116 1 legal exposure. 2 COUNCILOR JOSH MESSINGER: Yeah, we couldn't 3 do it legally. Okay, those are -- that's what I 4 wanted to ask with Heather. I had my research -- we 5 talked, but I just wanted to have that for the 6 edification is that's, that's very important 7 information that we have to weigh in all of this 8 because with Bert Harris claims that isn't something 9 covered by our insurance for liability coverage. 10 That isn't something -- some case legal 11 cases it's a \$2,500 deductible for the city. Others 12 were paying the hourly that we heard all the attorneys 13 talk about, you know, earlier. So that's all I have 14 for Heather at this time. Oh no, one other point, 15 Heather, I'm sorry. There's been certain items in the 16 plan that don't necessarily comply with landscaping as 17 of today or certain items, but they're allowed to 18 submit those designs right before construction starts 19 and be in compliance. 20 Like, I know there was conversation and I 21 looked at fire suppression. Do they have to put in 22 fire suppression? Do they have to put in commercial 23 building standards for kitchens and things of that 24 nature? 25 And correct me if I'm wrong, but you

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Page 117 1 mentioned that yes, they will have to comply with all 2 the fire codes. They're going to have to comply with 3 the commercial requirements of planning X number of 4 trees. All of that still has to be done. 5 HEATHER WHITMORE: Correct. And many of 6 those comments have been provided to the architect, 7 wherever he is, I saw there has been a building review 8 and a fire review with notations of everything they're 9 going to need to do to be able to make sure that the 10 building -- when it comes to permit time, is going to 11 meet the standards. 12 COUNCILOR JOSH MESSINGER: Okay, thank you. 13 MAYOR ELAINE BROWN: All right. A lot of my 14 questions have been answered, but I'd like to ask the 15 applicant if you don't mind coming back up again. 16 COUNCILOR LAUREN KEY: Through the chair, I 17 just have a quick question, if you don't mind. 18 MAYOR ELAINE BROWN: I'm sorry? 19 COUNCILOR LAUREN KEY: I just have a quick 20 question, if you don't mind. 21 MAYOR ELAINE BROWN: For? 22 COUNCILOR LAUREN KEY: For Zach. 23 MAYOR ELAINE BROWN: Oh, for Zach. 24 COUNCILOR LAUREN KEY: Was our height -- was 25 that -- when we put a cap on the height limit was that	Page 119 1 actual operation of it. 2 I have, I have experience owning a rental 3 property in South Carolina that I, that I worked on, I 4 owned for five years. So I have experience in this 5 space. Not necessarily, obviously bed and breakfast, 6 but, you know, when a guest comes to stay, obviously 7 they're going to get treated very well. They're going 8 to go into their room, you know, they're going to get 9 made breakfast in the morning. 10 They're going to have access to the beach 11 right there. You know, they're going to have all the 12 amenities that this house provides that we have built 13 in. I think Heather did mention that, you know, we 14 have to meet fire code and all that, and that's 15 absolutely going to be the case. So I'm not sure what 16 else I would need to say, but I think that, you know, 17 people are going to want to stay there and it's going 18 to be, you know, quality individuals. 19 We're not going to bring in hoodlums or, you 20 know, anyone. People are going to want to stay there 21 that have money and are going to, you know, bring 22 money to the community. So it's going to definitely 23 be beneficial for all my neighbors and everyone in the 24 area. 25 MAYOR ELAINE BROWN: Would you go back
Page 118 1 done by a resolution? 2 CITY ATTORNEY ZACHARY ROTH: It was done by 3 referendum. The charter amendment. 4 COUNCILOR LAUREN KEY: Okay, thank you. 5 MAYOR ELAINE BROWN: Okay. A lot of 6 technical questions have been answered. We have a 7 great planner that works for us, and she and our 8 attorney are people I truly believe in. However, I 9 would just like to say that I'd like for you to 10 explain to me as a guest coming to stay with you just 11 what it would really entail. 12 In other words, I've got my husband, I've 13 got my two kids, I've got my suitcases, and I'm 14 expecting breakfast in the morning, it's a bed and 15 breakfast. And who was going to cook the breakfast? 16 I mean, just kind of tell me, I know you have a plan 17 for running this. I'd like to hear it. 18 DOUG DRIVER: Right. So I mentioned that 19 earlier to Ms. Livingston. 20 MAYOR ELAINE BROWN: I heard that, yeah. 21 DOUG DRIVER: But yeah, the plan's still in 22 progress. Like I said, I've been working on this for 23 a year and a half, you know, making the designs and 24 everything, I've been solely focused on that. The 25 city hasn't asked for a requirement for a plan for the	Page 120 1 through when you appeared before the Community 2 Development Board? It was pretty clear that you 3 really didn't want to interact. And a lot of us in 4 this room, myself included, I've been to a lot of 5 B&Bs. 6 Saint Augustine right down the street, and a 7 couple of others that I've really fell in love with, 8 like in Cedar Key. The owner is usually there for a 9 while or greets guests. And then there's the staff. 10 And the staff usually is the people that are taking 11 care of it with changing sheets and, you know, making 12 sure the rooms are good. 13 And then you have those that are doing the 14 cooking. A lot of times it's the owner that, you 15 know, does it. Then they come in early and they 16 prepare the breakfast and get it ready for the guests. 17 It looks to me as though your kitchen is your personal 18 kitchen. It's the only kitchen in there. 19 And that your guest would be on the bottom 20 floor. And where are they eating? Where are they 21 having breakfast? Kind of, you know, just tell me 22 this guest experience that you're envisioning. 23 DOUG DRIVER: Okay. Well, there's a guest 24 room on the first floor. That's true. They do have a 25 kitchenette in there, but there's also access for them

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Page 121 1 to go upstairs if they'd like to access the main 2 kitchen. 3 The second floor is going to have a bedroom. 4 It's right next to the kitchen actually. So they have 5 access there. They're not going to have a kitchenette 6 in that second-floor bedroom. So they're going to 7 only be able to use the main kitchen in the house. 8 So guests are going to come and go as they 9 want. They're going to have access to the house with 10 a key separate for them. You know, there's going to 11 be security. I'm going to have cameras. So you know, 12 that's definitely -- if that's a concern. I know 13 that, you know, obviously I want to -- yeah, all 14 right, so yeah, I mean that's it's going to be it's 15 going to operate as a typical bed and breakfast. 16 The CBD, when I met before them, they were 17 very hostile. Members of the CBD were staring at me 18 like they wanted to fight me. So I got flustered. I 19 may have said some things out of hand. But, you know, 20 like I said, I'm fully invested in this to run the bed 21 and breakfast. 22 MAYOR ELAINE BROWN: And I just kind of see 23 it as you're really going to be just renting the 24 bottom floor and, you know, then they'll be -- they'll 25 have access to your kitchen, you know, the owner's	Page 123 1 piggybacking on that. I mean, we're not trying to be 2 hostile towards you, we're just trying to get a bigger 3 picture of what's going on. So, like, kind of 4 piggybacking on that. And I don't know if this is a 5 question for the architect or yourself. 6 I think you described earlier that the 7 entrance, like you would go check into the lobby, and 8 then you'd go back out to the garage, and then you'd 9 go into the first-floor bedroom. 10 And then I think the second-floor bedroom, 11 if I, I don't know if you mentioned or the plans, 12 there's a separate -- you'd go to the lobby and then 13 there's some separate entrance to go to the back. So 14 like, how are they getting to this kitchen and this 15 shared space to be able to enjoy that? 16 DOUG DRIVER: Okay. So the first-floor 17 bedroom, it has an outside entrance, but it also has 18 an indoor interior door leading to the rest of the 19 house. So they will still have access to the full, 20 the full house, whether they want to go into the 21 living room, watch TV, or go in the kitchen or 22 whatever the case is. 23 So, you know, it's going to all be 24 available. Like I said, the only part of the house 25 that's not really going to be available is where I'm
Page 122 1 kitchen upstairs, and you're going to have a breakfast 2 there for them. Is that kind of your thoughts? 3 DOUG DRIVER: So I'm under oath right, sir? 4 And I said that I'm going to be using the whole, the 5 whole house, so. Are you telling me that my testimony 6 is not accurate here? Because I'm saying that -- 7 MAYOR ELAINE BROWN: I'm not telling you, I'm 8 asking you. 9 DOUG DRIVER: Okay, well, I'm saying. 10 MAYOR ELAINE BROWN: I'm asking you my 11 experience coming to your bed and breakfast. It's 12 important to me that if it were to be a bed and 13 breakfast, that that's what it is. And that's why I 14 just want to hear that guest experience from you, the 15 owner, and the person who's going to be running it. 16 DOUG DRIVER: Okay. I think I've mentioned 17 it a few times. Is there any other aspect that you'd 18 like me to talk about around that? 19 MAYOR ELAINE BROWN: No, that's okay. All 20 right. So I have no further questions. 21 COUNCILOR NIA LIVINGSTON: I have some. 22 MAYOR ELAINE BROWN: And I'm going to back 23 around. You'll be first and then anybody else. Just 24 let me know. Go right ahead. 25 COUNCILOR NIA LIVINGSTON: Well, just	Page 124 1 staying on the third floor, the owner's suite. 2 COUNCILOR NIA LIVINGSTON: And like, do you 3 have you said you've been like working on this for a 4 year and a half? Like, do you have a proposed name? 5 DOUG DRIVER: I've thought about a few names, 6 all probably Neptune related. So -- but yeah, I mean, 7 I don't have anything right now to say so, I don't 8 know, I haven't, you know, met with anyone for 9 reviewing those names and actually putting them, you 10 know, through like a business, whatever the state 11 requires to maintain and operate a business. 12 I know I have to go through that process to 13 find a name, so I can't just, you know, say like, I 14 don't want to just say anything because I don't know 15 what's already acquired by other companies or, you 16 know, who owns what in terms of naming but. 17 COUNCILOR NIA LIVINGSTON: And I know you 18 mentioned earlier, like, we're not going to be just 19 like renting it to Riff Raff and stuff like I it's 20 kind of hard to say because you don't know, like who 21 the other person on the other end of the computer is, 22 but like, what sort of price range are you thinking 23 of, of like how much by the night or something that 24 this would, would go for? 25 DOUG DRIVER: Sure. So it will absolutely be

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Page 125 1 between \$150 to \$250 a night. So you know, that's 2 going to be upper end. It's not going to be low- 3 income. You know, people are going to have to be able 4 to afford it to stay there. So. 5 COUNCILOR NIA LIVINGSTON: I don't have any 6 other questions. 7 MAYOR ELAINE BROWN: Are you finished? Okay. 8 All right. Go back around. Does anyone have 9 questions? No further questions? No further 10 questions. All right. Thank you very much. We 11 appreciate it. 12 DOUG DRIVER: Thank you. 13 MAYOR ELAINE BROWN: Okay. We are back now 14 on item 4A P24-04. I would like to certainly open 15 this up for a motion, and we will move from there. A 16 motion to approve. 17 COUNCILOR JOSH MESSINGER: I have one 18 clarification, Mayor. 19 MAYOR ELAINE BROWN: Certainly. 20 COUNCILOR JOSH MESSINGER: From the outline 21 of the procedures laid out earlier, is this now a time 22 for discussion? 23 VICE MAYOR KERRY CHIN: Yeah. You're in 24 council discussion. 25 COUNCILOR JOSH MESSINGER: We're still in	Page 127 1 the facts of the case, I feel a different way about 2 it. 3 So you know, I think that they meet, I think 4 they meet the requirements and I don't see how not 5 approving this is not going to end up in a lawsuit. 6 But I believe in property rights. I think they're 7 allowed to do this by right. 8 I know there was a statement earlier that 9 they can't, but it is -- they meet all of their 10 requirements. And I know one of the things that was 11 discussed was, you know, it would block a view or it 12 would create a, you know, no one's entitled to a view 13 for their property. Property owner is not entitled to 14 somebody else's view like it's that way. 15 And I know that there's concern about the 16 amount of traffic in the neighborhood. I've lived at 17 a beach access before, and they're filled with 18 individuals all the time now. I live on First Street. 19 It's like if you live east of third, there's just a 20 lot of people. 21 And in the eight, almost nine years I've 22 lived here, there's more and more people. It's 23 something I don't know that denying this would 24 improve. But you know, like I said, I struggle with 25 it because I feel for the neighbors, and I understand
Page 126 1 council discussion. 2 MAYOR ELAINE BROWN: We can discuss first. 3 COUNCILOR JOSH MESSINGER: Okay. 4 MAYOR ELAINE BROWN: A lot of times we can 5 get in order and go. But if you have more questions, 6 let's go ahead and get them out. 7 COUNCILOR JOSH MESSINGER: Well, I think I 8 was just wondering if this is now just council 9 discussion amongst ourselves. 10 MAYOR ELAINE BROWN: It is. 11 COUNCILOR JOSH MESSINGER: Before making -- 12 having to make a motion because I know in other items 13 we have to procedurally -- 14 MAYOR ELAINE BROWN: No. It is time for you 15 to ask any more questions. 16 COUNCILOR JOSH MESSINGER: I don't have any 17 more questions. It's just for discussion. 18 MAYOR ELAINE BROWN: Do you have discussion? 19 COUNCILOR JOSH MESSINGER: I don't want to 20 kick it off. I just wanted to make sure we were in 21 proper procedure. 22 MAYOR ELAINE BROWN: Any discussion amongst? 23 COUNCILOR LAUREN KEY: I'll kick it off. 24 This is hard for me because, like, emotionally, I feel 25 one way about it. But when I take -- when I look at	Page 128 1 that it's not something that that they would want, and 2 it's not something that I would want either, 3 necessarily. 4 But, you know, I live, I live next to 5 single-family homes in a, in a district where that is. 6 So it's not, you know, it's kind of it just is what it 7 is like. I don't know. I feel bad, but I also think 8 that it's important to apply, apply our codes 9 properly. 10 MAYOR ELAINE BROWN: Okay. Thank you. 11 VICE MAYOR KERRY CHIN: I see, I see both 12 sides of the argument. You know, I understand that, 13 you know, from a technical standpoint, you know, they 14 fulfill, you know, some technical requirements. 15 But on the other hand, I know that they, 16 they also don't -- they're not compatible with the 17 existing character that's immediately around them. So 18 that's something that we need to be able to take into 19 account, you know, and that's part of 27-82, not the 20 222. 21 This has come before me a couple of times. 22 You know, I was on the planning board, I think, when 23 it was, when it first came through and it had some, 24 you know, similar issues. You know, there's, there's 25 something to be said for trying to fit into the

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Page 129 1 context and to be sensitive to the neighborhood. And 2 I think that our code tries to guide us towards 3 creating things that are sensitive to the context. 4 And I think this is one of those cases where 5 we really do have to weigh that and judge what will be 6 better for the development pattern of an area. And, 7 you know, to Councilor Messinger's earlier points 8 about the efforts to convert the zoning of this area 9 to something more residential. And, you know, I 10 understand that we're not taking away a usage here. 11 We're not saying that you can't do a bed and 12 breakfast, but you have to do it that's in a way 13 that's sensitive to the area and that doesn't 14 adversely impact the area. You know, like I said, I 15 have some concerns about how they're handling the 16 parking. I have concerns about, you know, safe 17 pedestrian access around that area. 18 You know, with a private home, you know, you 19 don't have to worry about that. But with a, you know, 20 something that's considered part of the public space, 21 you're going to have to worry about safe pedestrian 22 access or even like, you know, people being able to 23 get around that safely. So those are the kind of 24 things that I worry about and that I'm struggling 25 with.	Page 131 1 I mean, number six, concerns and desires of 2 surrounding landowners and other persons. We heard 3 from 11 people tonight. That's not including the 4 emails that we've received, phone calls, and 5 everything else over the last few weeks or months that 6 this has been pending. I mean, I, I have my own 7 comments about whether this is actually going to act 8 as a bed and breakfast or not, but that's not looking 9 at, you know, what these findings are. 10 I just don't believe that it necessarily 11 conforms with the proposed -- this doesn't conform 12 with the comprehensive plan as number four the desire 13 is to, you know, maintain the integrity of our 14 residential small-town community. 15 And although this is an allowable use, I 16 just don't think that this what is presented in front 17 of us tonight is the proper use under 27-82F. I don't 18 think it meets the criteria, and a lot of that is 19 echoing things that Vice Mayor Chin has already 20 brought up. 21 MAYOR ELAINE BROWN: Councilman, Messinger? 22 COUNCILOR JOSH MESSINGER: Perfect. Thank 23 you, Mayor. So I really, I really struggle with this. 24 Because I look at the history and I look at a lot of 25 the concerns from the community and the reason I
Page 130 1 MAYOR ELAINE BROWN: Okay. Councilwoman, 2 Livingston? 3 COUNCILOR NIA LIVINGSTON: I mean, I know 4 that councilor Key already touched on this, but I feel 5 like I've already been all but, I mean, told that if 6 we don't vote for this, this is going to be a lawsuit. 7 But I don't think that that's a reason to 8 just go with what they're saying. I do believe that, 9 yes, a bed and breakfast is an allowable right, but it 10 is also subject to the provisions of the code. And I 11 look at 27-82F and I go through the analysis and I 12 don't think it meets the criteria. 13 And I will be very short and brief with what 14 I say, just because this is all going to be looked at 15 and scrutinized when this lawsuit happens. I don't 16 believe that it fits in with the nature of the, of the 17 neighborhood. This is a 35-foot residence bed and 18 breakfast compared to the 28-foot small bungalows that 19 are surrounding it. 20 The frontage compared to the other housing. 21 And I get that they are meeting the requirement of a 22 bed and breakfast in the sense of the, I forget the 23 word used, it's been a long night, I'm sorry, but all 24 of the windows, but it doesn't conform with what is 25 around it, what is in the neighborhood.	Page 132 1 brought up the history is because there is not a 2 mechanism before us to strip and make that purely a 3 residential area. 4 It's not, it's not possible. We -- it can't 5 be done. The state of Florida has stopped it before. 6 Bert Harris claims would arise. Multiple residents, 7 when it was discussed, who still lived there and still 8 reside in those homes. And I'm not going to shame 9 them because then you'd have people picketing, have 10 said we want the CDB designation we don't want that to 11 leave our property because there's more value in it. 12 On the other hand, I see a lot of the points 13 raised by Vice Mayor Chin and Councilwoman Livingston 14 about compatibility and design. But I then go back 15 and go, well, in the, in the land use and zoning 16 process, many people in the room tonight didn't want 17 design restrictions put on properties. They didn't 18 want character restrictions put on properties. 19 The statement was we don't want to be an 20 HOA. Don't tell us how to build or what to build. So 21 I struggle with which, kind of which, which is it? Do 22 we prescribe more and put more design restrictions in 23 that block? Because I agree and I feel for that area. 24 People are really concerned about an esthetic and the 25 design and a feel and a place of character. So how do

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Page 133 1 we, how do we achieve that? 2 I mean, if we vote no tonight on this and it 3 ends up in a lawsuit, it'll either -- they'll either 4 prevail and we'll lose a lot of money and it'll still 5 get built or will win, but it'll still be an empty lot 6 that has vagrants on it at times. And, you know, the 7 neighbors who came in and spoke said they see public 8 urination there. 9 So and they want to see it developed. So 10 it's how do we, how do we help that district remain -- 11 maintain its character without, without taking rights 12 and without us getting in litigation, without, you 13 know, the state preempting us again. So those are the 14 struggles that are going back and forth in my head 15 right now. 16 And I do think there's some holes in the 17 presentation. And I do believe, you know, I've stayed 18 in plenty of Airbnbs but there is a concern there. 19 But does that concern outweigh the potential 20 litigation and does it outweigh potentially taking of 21 rights. Those are the things -- I have not made up my 22 decision yet. But those are the things that, you 23 know, for the edification of the rest of the board. 24 It's something we weigh on very heavily. 25 And the history of this, you know, that's, that's why	Page 135 1 that they were asking for in association with that. 2 This looking at 27-82F, it's, it's not 3 saying I mean they can have a bed and breakfast, but 4 it's not this bed and breakfast. I think that there's 5 a way that you can go about using the land and 6 building on it and being a bed and breakfast, but 7 maybe coming forward with something that conforms 8 better to the neighborhood. 9 We can't just always say no because it's a 10 bed and breakfast and we don't want that based off of 11 the history and everything that you've described. But 12 there's a way of, of doing it that still falls under 13 27-82F complies with it, and is more in tune with the 14 neighborhood. And this just in my opinion, this just 15 isn't it. 16 MAYOR ELAINE BROWN: Councilwoman Key? 17 COUNCILOR LAUREN KEY: When we're talking 18 about the existing character, it's a modern-looking 19 building. And while that might not be everyone's 20 esthetic, I believe that it's within someone's right 21 to build what they believe is beautiful for them. And 22 part of that is that we didn't -- and maybe they don't 23 think it's beautiful, I don't know, but part of that 24 is what we went through with the whole Dover, Kohl 25 thing.
Page 134 1 I go back and say we can't make it 28ft. I know a lot 2 of people would like that, but it's not possible. So 3 when we, when we come to roadblocks where we can't do 4 something, it's what is, what is a solution? Because 5 something needs to be built there. 6 And, and we can't take the 35-foot height 7 requirement away there because it's always been a 8 vested right under certain applications. So is it the 9 applicant comes back and all cedar shake and looks 10 like a nice cottage, but it's still the same height is 11 that then -- there's so many what, what ifs. And 12 those are what we all have to weigh. So I hope that 13 was helpful to some of my fellow councilors. 14 MAYOR ELAINE BROWN: I think that many of us 15 are struggling. Did you have something else that you 16 would -- was your hand waving at me or? 17 COUNCILOR NIA LIVINGSTON: I mean, I guess 18 just briefly, I guess just to add on, I think you, 19 Councilmember, you bring up a good point. I think 20 that it's also just though. I know we've talked a lot 21 about the history and the prior litigation. I know 22 that has nothing to do with this, but it's, it's also, 23 though to look back and say, okay, you know, they did 24 try and bring forward a single-family home. It was 25 denied. But there were a lot of special exceptions	Page 136 1 I mean, how many people said that they did 2 not want restrictions on -- they didn't infringe their 3 property rights. They didn't -- they wanted to be 4 able to build what they wanted to build. Well, people 5 do that. And like if you're spending your hard-earned 6 money on building a home or a business or whatever it 7 may be like, you kind of get to choose what you want 8 that to look like, and your neighbors may not like it 9 if you paint your house hot pink, but unless the city 10 says you can't, you're kind of allowed to. 11 So like I go back and forth, I know one of 12 the things is and when we're talking about the 13 frontage and how this home looks, is it -- I just need 14 further clarification there meeting commercial design 15 standards. So it's like we're saying, well, this 16 house doesn't fit because it -- but it's meeting the 17 commercial design standards. 18 I'm like I'm having a hard time 19 understanding why -- I understand why everyone's upset 20 and they don't like it, I get that, but I'm also 21 empathetic to the fact that they're trying to do what 22 they believe is correct, and they're following the 23 rules that are prescribed in our code, and yet they're 24 kind of being dumped on for it. So I don't, I don't 25 know how to fix this.

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Page 137 1 But I do, you know, like I said, I don't 2 think it's anyone's place to tell other people what to 3 do with their property in terms of how it looks. I 4 also think that it's important to understand and take 5 into consideration the concerns and desires of 6 surrounding landowners. 7 But at the end of the day, what someone does 8 with their property is their business. And you might 9 not like the hot pink house, but it's their right to 10 paint it hot pink. So I'm not so sure that it's even 11 constitutional for us to have conversations and taking 12 into consideration certain things like that. So, you 13 know, I'm a big property rights person. 14 MAYOR ELAINE BROWN: Are you finished? Okay. 15 Vice mayor? 16 VICE MAYOR KERRY CHIN: I think that when 17 we're talking about character, we're not really 18 talking about style. So I think that, you know, we're 19 not going to be arguing about, you know, the look of a 20 place. I think it has more to do with the scale, 21 mass, and bulk of the, of the structure. 22 You know, that it's definitely going to be 23 different than the, the square footage or the size of 24 things that are adjacent to it. I think that that's 25 probably what people are objecting to. You know, I	Page 139 1 the community in any way. And I do understand meeting 2 the criteria. I am -- I don't believe it meets the 3 character of the neighborhood. 4 I have -- I'm having a real hard time 5 envisioning this as a true bed and breakfast in the 6 true sense. It's convoluted and, you know, sharing 7 the owner's kitchen and going through the garages. 8 There's so much about it that says to me, Airbnb or 9 short-term rental and not really a bed and breakfast 10 and the compatibility with the neighborhood. 11 And you know, I again, you do have that 12 right. And would I love to have you have your dream 13 great bed and breakfast that kind of fits in and our 14 community. I would love that, but I'm struggling as 15 the rest of this council is. We have a lot of what 16 this bed and breakfast really represents and the 17 character and the incompatibility. 18 And I'm also struggling a lot in B&Bs, you 19 know, you have a lot of people that work there. You 20 have people that come in that are doing a lot of the 21 cleaning and the bed changing, and there's laundry to 22 be done. I haven't seen that kind of look, you know, 23 to take care of all that. 24 Parking for all of them, traffic for all of 25 them, it's very worrisome for me. So again, I think
Page 138 1 do, you know, I have this -- I have the same conflict 2 that everyone else feels. 3 But at the end of the day, I think it, I 4 think it really is a matter of it being out of scale 5 compared to the surrounding area. You know, just for 6 clarification, I don't think that they were denied the 7 exception for residents. I think it was just that the 8 condition was applied, that you can have the private 9 residence, but it has to be 28ft to match the 10 surroundings, right? 11 CITY ATTORNEY ZACHARY ROTH: Yeah. That's 12 correct. It was approved with conditions. 13 PAUL WATERS: Right. So it was approved. 14 They weren't denied that. So they could have built 15 that first application, the residents but they -- in 16 the end I think ultimately want 35ft. So that's the 17 real question. 18 MAYOR ELAINE BROWN: Are we good over here on 19 this side? Anything else? All right. 20 COUNCILOR NIA LIVINGSTON: I just think Vice 21 Mayor Chin kind of, I think was able to articulate 22 what I was trying to say a lot better than myself. 23 MAYOR ELAINE BROWN: And this is rough. This 24 is our neighbors. These are the things that, you 25 know, we have hoped that would never come to divide	Page 140 1 we're all struggling with it. I think that all of us 2 know that, you know, the criteria, the attorney has 3 explained it very well. Applicant, you have explained 4 what you're doing very well, and I just agree with 5 every one of the council members here that the sad 6 part about this is that, you know, it's divisive. 7 People have been angry, a lot of emails, 8 etc. and we are going to have a vote shortly. And 9 again, I'm going to ask all of you just to, you know, 10 please, you know, be those good neighbors that you 11 really are. 12 And I'd like to have you conduct yourself in 13 that way. So is there any more discussion? Are there 14 any more questions? Because I don't want to limit 15 this in any way. 16 CITY ATTORNEY ZACHARY ROTH: Just before you 17 asked for a motion, we need to disclose ex parte 18 communications. Just make sure we do that before we. 19 MAYOR ELAINE BROWN: I'm sorry we what? 20 CITY ATTORNEY ZACHARY ROTH: You need to 21 disclose any ex parte communications that council 22 members have had. So did you talk to the applicant 23 and received emails? That kind of stuff. You need to 24 disclose that. 25 MAYOR ELAINE BROWN: Okay. Has anyone had

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Page 141 1 any ex parte with the applicant? 2 CITY ATTORNEY ZACHARY ROTH: Or anyone else? 3 MAYOR ELAINE BROWN: Or anyone else? 4 CITY ATTORNEY ZACHARY ROTH: If you've gone 5 to the site to look at it or anything like that. 6 Anything you've done outside of this room that could 7 impact your decision? 8 MAYOR ELAINE BROWN: Okay, declare what 9 anything that you've done, yeah. 10 COUNCILOR NIA LIVINGSTON: I've received 11 emails. I believe I spoke with the Schoonover's. I'm 12 not sure if I pronounce that right. Councilor Diamond 13 called me about it. I think that was all. 14 MAYOR ELAINE BROWN: Okay. 15 COUNCILOR JOSH MESSINGER: Yeah. I've 16 received numerous phone calls against the property. I 17 know we've spoken with the Schoonover's a few times. 18 Other members within the room. I know representatives 19 from the applicant have called to ask if I had 20 questions and things of that nature, and then I 21 obviously spoke with staff. 22 MAYOR ELAINE BROWN: Okay, fine. Vice mayor? 23 VICE MAYOR KERRY CHIN: I received numerous 24 emails. I spoke with the Schoonover's and with 25 Councilor Rory Diamond.	Page 143 1 COUNCILOR NIA LIVINGSTON: I would make a 2 motion and make a motion to recommending denial of 3 DP24-04. 4 MAYOR ELAINE BROWN: Okay. Do I have a 5 second? 6 COUNCILOR JOSH MESSINGER: Second. 7 MAYOR ELAINE BROWN: Okay. I have a motion 8 and a second. And I'll now go into discussion and I 9 will start with our vice mayor. And vice mayor, we 10 have a motion and we have a second on the floor. 11 VICE MAYOR KERRY CHIN: I don't have anything 12 further to add. I think we've made, you know, 13 everything that we could. 14 MAYOR ELAINE BROWN: Okay. Councilwoman Key, 15 anything? No? Okay. I have a motion and a second. 16 Please call the roll. 17 CITY ATTORNEY ZACHARY ROTH: And before we 18 do, I'd just like to remind on these backward ones 19 that yes means no and no means yes. So, if you want 20 to deny it -- 21 MAYOR ELAINE BROWN: You would be saying yes 22 to the motion to deny. 23 CITY ATTORNEY ZACHARY ROTH: -- you'd vote 24 yes. If you want to approve it, you vote no. 25 COUNCILOR LAUREN KEY: Can we reframe the
Page 142 1 MAYOR ELAINE BROWN: Okay. 2 COUNCILOR LAUREN KEY: I've received emails. 3 I visited the site I spoke with the Schoonovers, I've 4 spoken with Councilor Diamond and I've had 5 conversations with counsel. Not this council. Sorry. 6 COUNCILOR NIA LIVINGSTON: Oh, I guess I've 7 spoken with staff too. 8 COUNCILOR LAUREN KEY: And staff and staff. 9 MAYOR ELAINE BROWN: Okay. I'll declare ex 10 parte visiting the site. Several attorneys have 11 called me and I've received a lot of emails. Is there 12 anything that I need to define any more than that? 13 Okay. All right. Is there -- 14 COUNCILOR JOSH MESSINGER: I've also visited 15 the site just so we're level set here. Okay. Thank 16 you. 17 MAYOR ELAINE BROWN: Get them all out. 18 COUNCILOR JOSH MESSINGER: Yep. Got them 19 all. 20 MAYOR ELAINE BROWN: Get them all out there. 21 COUNCILOR JOSH MESSINGER: We're good. 22 MAYOR ELAINE BROWN: All right. And are we 23 now on posture? Okay. And I will entertain a motion. 24 All right. Could I have a motion to approve? Could I 25 have a motion to decline this applicant?	Page 144 1 motion to just be a motion to approve and then let it 2 go through? 3 CITY ATTORNEY ZACHARY ROTH: The motion on 4 the table would have to be -- 5 MAYOR ELAINE BROWN: The motion on the table 6 is to deny. And so if you go along with -- 7 CITY ATTORNEY ZACHARY ROTH: Just vote yes if 8 you want to deny it, no if you want to approve. 9 COUNCILOR LAUREN KEY: All right. 10 MAYOR ELAINE BROWN: Understand? If you go 11 along with the motion, it's a yes. 12 COUNCILOR LAUREN KEY: Yes. 13 MAYOR ELAINE BROWN: Okay, all right. 14 COUNCILOR LAUREN KEY: Yes. 15 MAYOR ELAINE BROWN: Kind of reversed from 16 what we usually have before us. Please call the roll. 17 CATHERINE PONSON: Councilor key? 18 COUNCILOR LAUREN KEY: Yes. 19 CATHERINE PONSON: Councilor Livingston? 20 COUNCILOR NIA LIVINGSTON: Yes. 21 CATHERINE PONSON: Councilor Messenger? 22 COUNCILOR JOSH MESSINGER: Yes. 23 CATHERINE PONSON: Vice Mayor Chin. 24 VICE MAYOR KERRY CHIN: Yes. 25 CATHERINE PONSON: And Mayor Brown.

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Page 145 1 VICE MAYOR KERRY CHIN: Yes. 2 MAYOR ELAINE BROWN: The application has been 3 denied. All right. We're going to move on now. And 4 I know it's been a late night, but we have item number 5 five, ordinance number 2024. 6 And this is the ordinance for the City of 7 Neptune Beach for the pension fund. And there is a 8 public hearing. I'm opening the public hearing right 9 now. Do we have people -- anybody? Name and address 10 for the record. 11 LEONA SHEDDAN: Leona Sheddin, 2010 Shadow 12 Lane. 13 MAYOR ELAINE BROWN: Okay. Let's let whoever 14 wants to leave. And if you'll be quiet, if you're 15 leaving, just kind of -- we have more business to 16 attend to. 17 LEONA SHEDDAN: Yeah. This one's going to be 18 fun. Okay, first. 19 COUNCILOR LAUREN KEY: Let's let everyone -- 20 COUNCILOR JOSH MESSINGER: Yeah, let them -- 21 let everybody clear out. 22 MAYOR ELAINE BROWN: You won't be heard. 23 We're ready for you, Leona. Go right ahead. Name and 24 address for the record. 25 LEONA SHEDDAN: Leona Sheddin, 2010 Shadow	Page 147 1 beneficiaries who retired before October 1, 2020, to 2 make October 1st the effective date of any cost of 3 living adjustment, directing the City Clerk to file a 4 copy of this ordinance with the Florida Department of 5 Management Services, Division of Retirement, providing 6 for the severability of provisions, repealing all 7 ordinances and conflict herewith, and providing an 8 effective date. 9 Whereas the Board of Trustees of the Neptune 10 Beach Police Officers Retirement Systems desires to 11 provide an annual cost of living adjustment benefit 12 for all members who retire on or after October 1, 13 2020. Under normal early disability and pre- 14 retirement death. 15 Whereas the Board of Trustees of the City of 16 Neptune Beach Police Officers Retirement System 17 desires to provide a one-time cost of living 18 adjustment benefit for all retirees. Disability, 19 retirees and beneficiaries who retired on or before 20 October 1, 2020, based on their respective credited 21 service periods. 22 Whereas the Board of Trustees of the City of 23 Neptune Beach Officers Retirement System desires to 24 make the effective date of any cost-of-living 25 adjustments October 1. Whereas an amendment to the
Page 146 1 Lane. I am a trustee on the Neptune Beach Police 2 Pension Board and have been for four years. Before 3 we, before we go any further, I'd like to introduce 4 the other members of the pension board. 5 Sergeant Dustin Campi, wave your hand. 6 There you go. Officer Joe Dzamko. There you are. 7 And Michael Phillips, trustee. There you go. Okay. 8 I want you to remember three things. One, the Neptune 9 Beach Police Pension Board is rated amongst the 10 highest in the state of Florida. 11 Two, that the officers of Neptune Beach 12 Police pay the -- among the highest contributions in 13 the state also. And lastly, just a note to remember 14 that the pension board, the pension fund, has a 15 \$735,000 credit with the state. Now, I'm going to 16 read you the ordinance that's proposed. An ordinance 17 of the City of Neptune Beach, Florida, amending 18 chapter two administration article five Employee 19 Benefits Division for Police Officers Retirement 20 System of the City of Neptune Beach. Section 2-349. 21 Contributions provide for an increase in the 22 member contribution rate to provide for an annual 23 benefit increase for members who retired on or after 24 October 1st, 2020, to provide for a one-time benefit 25 increase in retroactive benefits for retirees and	Page 148 1 City Code is necessary to permit such new conditions. 2 Whereas the Board of Trustees of the City of Neptune 3 Beach Police Officers Retirement System have requested 4 and approved such an amendment as being in the best 5 interest of the participants and beneficiaries, as 6 well as serving to improve the administration of the 7 retirement system. 8 Whereas the City Council has received and 9 reviewed an actuarial impact statement related to this 10 change and attached as such, whereas the City Council 11 deems it to be in the public interest to provide this 12 change to the retirement system for its police 13 officers and Whereas the City Council of Neptune 14 Beach, Florida has determined that it is necessary to 15 amend the following. 16 Now, therefore, be it ordained by the City 17 Council of the City of Neptune Beach, that, section 18 one, that, Chapter 2 Administration Article 5 Employee 19 Benefits Division for Police Officers Retirement 20 System of the Code of Ordinances of the City of 21 Neptune Beach is hereby amended by amending section 2- 22 349 contribution subparagraph A, member contributions 23 by adding the following underlined language and 24 deleting the stricken-through language as follows. 25 Section 2-349. Contributions.

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Page 149 1 Member contributions. Amount. Effective 2 October 1, 2020, for each member of the system shall 3 be required to make regular contributions to the fund 4 in the amount of 9% of their salary. Member 5 contributions withheld by the City on behalf of the 6 member shall be deposited with the Board immediately 7 after each pay period. 8 The contributions made by each member to the 9 fund shall be designated as Employer Contributions 10 pursuant to Section 414H of the code. Such 11 designation is contingent upon the contributions being 12 excluded from the member's gross income for federal 13 income tax purposes. For all other purposes of the 14 system, such contributions shall be considered to be 15 member contributions. 16 Section two. That Chapter 2 Administration 17 Article 5 Employee Benefits Division for Police 18 Officers Retirement System of the Code of Ordinances 19 of the City of Neptune Beach is hereby amended by 20 amending section 2-349.1. Benefit amounts and 21 Eligibility subparagraph E, cost of Living adjustment 22 by adding the following underlined language and 23 deleting the stricken-through language as follows. 24 Section 2-349.1 benefit amounts and 25 eligibility. Cost of living adjustment. Effective	Page 151 1 subsection, sentences, clauses or phrases under the 2 application shall not be affected thereby. Section 3 six. That this ordinance shall become effective 4 immediately upon its passage and adoption by the City 5 Council. 6 MAYOR ELAINE BROWN: Thank you. And I'm 7 going to open this up for any questions. I'll 8 certainly start to my left with the Vice Mayor, if you 9 have any questions for Leona. 10 VICE MAYOR KERRY CHIN: Not exactly a 11 question for Leona, but a question for Zach. You 12 know, in the paragraph labeled E1 where it talks about 13 establishing the COLA. I know that in previous 14 language it would say, you know, provide the COLA cost 15 of living adjustment to their monthly benefits. Do we 16 need to add that language to be more specific here, 17 adding it to their monthly benefits, or do you think 18 it's okay as it exists? 19 CITY ATTORNEY ZACHARY ROTH: I don't think 20 it's necessary. 21 VICE MAYOR KERRY CHIN: Okay. 22 CITY ATTORNEY ZACHARY ROTH: But I would 23 defer as to the substantive question to the Pension 24 Board's attorney. 25 VICE MAYOR KERRY CHIN: Okay.
Page 150 1 October 1, 2024, provide an annual automatic cost of 2 living adjustment, COLA, for all who retired on and 3 after October 1, 2020 under normal early disability 4 and pre-retirement death, according to the schedule 5 below. Beginning 10/1/2024, 1%; 10/1/2025, 1.225%; 6 and increasing by 0.25% for the next years until it 7 reaches 3% in the year 10/1/2032. 8 Effective October 1, 2024, all retirees, 9 disability retirees, and beneficiaries who retired 10 prior to October 1, 2020 shall receive a one-time 11 increase of 2% to their monthly benefits for each full 12 year of retirement as of that date, with a maximum 13 increase of 10%. Effective October 1, 2024, an 14 increase in the member contribution rate from 8 to 9%. 15 Section three specific authority is hereby granted to 16 codify and incorporate this ordinance in the existing 17 Code of Ordinances of the City of Neptune Beach. 18 Section four. 19 All ordinances or parts of ordinances in 20 conflict herewith be and the same are hereby repealed. 21 Section five. If any section, subsection, sentence, 22 clause, phrase of this ordinance, or the particular 23 application thereof shall be held invalid by any 24 court, administrative agency, or other body with 25 appropriate jurisdiction, the remaining section,	Page 152 1 CITY ATTORNEY ZACHARY ROTH: As a separate 2 attorney, but from a form perspective, I don't think 3 it's necessary. I think it renders it ambiguous. 4 VICE MAYOR KERRY CHIN: Okay. All right. 5 And, and I see that we're ending at 3% at 2032. Do we 6 need any language to say that it caps at, at 3%? Or 7 is it just pretty much self-explanatory? 8 CITY ATTORNEY ZACHARY ROTH: I think it's -- 9 I don't think it's ambiguous. 10 VICE MAYOR KERRY CHIN: Okay. That's it. 11 MAYOR ELAINE BROWN: Okay. Councilwoman? 12 COUNCILOR LAUREN KEY: I'm going to recuse 13 myself out of an abundance of caution, because I have 14 a family member that may potentially benefit from this 15 vote. 16 MAYOR ELAINE BROWN: Okay, and Councilwoman? 17 COUNCILOR NIA LIVINGSTON: My question is not 18 necessarily for Leona, but maybe for the officers that 19 are on the pension board. May I ask them a question? 20 MAYOR ELAINE BROWN: Absolutely. 21 COUNCILOR NIA LIVINGSTON: Sergeant Campi, or 22 whoever wants to come up. Sorry to put you on the 23 spot. 24 SERGEANT DUSTIN CAMPI: No problem. 25 COUNCILOR NIA LIVINGSTON: I mean, it's just

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1 -- I think it's so great that here you are. You are 2 an -- you guys are officers. So, like what -- I'm 3 assuming you've talked to other people in the police 4 department -- I don't know if -- I can ask this, 5 right, about what the consensus is? Like what, what 6 are you -- how do you guys feel about this? 7 I mean, I know you're on the board, so it's, 8 it's a lot, you know -- it may not seem like that 9 much, you know, 9%, but overall, it kind of is when 10 it's your paycheck and these are your paychecks, not 11 mine. So I just want to ask, like, what are your -- 12 are you getting a lot of pushback from other officers, 13 or is this generally seen as like a -- everyone's 14 excited about this because of the benefits in the 15 future? 16 SERGEANT DUSTIN CAMPI: Yes, ma'am. So we 17 did hold a -- our, our union which the union president 18 is Officer Dzamko. We did hold a formal meeting and 19 took a vote for, for what you asked for and I believe 20 it was a unanimous vote that we did have -- we did 21 have a quorum, so. 22 COUNCILOR NIA LIVINGSTON: Okay, and so -- 23 SERGEANT DUSTIN CAMPI: And outside of those, 24 those that did not attend, nothing noteworthy. 25 COUNCILOR NIA LIVINGSTON: Okay. Thank you.	1 so. 2 CITY ATTORNEY ZACHARY ROTH: It's not an 3 amendment to the ordinance. 4 COUNCILOR JOSH MESSINGER: It's a condition 5 of approval. 6 CITY ATTORNEY ZACHARY ROTH: It's a 7 condition, yeah. 8 COUNCILOR JOSH MESSINGER: So I motion to 9 approve ordinance number 24-04, under the condition 10 that the City use its credit to pay one-half of the 11 increase and then draw down that credit after the 12 first year and each year thereafter, contributing 10% 13 to the City's share. 14 MAYOR ELAINE BROWN: Okay. And tell me what 15 that does. Certainly, maybe you have discussed this 16 or were you aware of it? 17 COUNCILOR JOSH MESSINGER: Well, do we -- 18 hang on. Do I need a second before we can go into 19 discussion? 20 CITY ATTORNEY ZACHARY ROTH: Probably want 21 to, just to have it on the table so we don't have a 22 motion floating out there. 23 MAYOR ELAINE BROWN: We don't have a motion 24 yet. Well, we do have a motion. 25 CITY ATTORNEY ZACHARY ROTH: We made a
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1 That was it. 2 MAYOR ELAINE BROWN: Okay. Thank you. 3 Council Messenger? 4 COUNCILOR JOSH MESSINGER: I'm good. I'm 5 supportive of this. I know the, the Board has been 6 talking about this, something of this nature for a 7 long time. 8 LEONA SHEDDAN: For years. 9 COUNCILOR JOSH MESSINGER: Yeah. And so I'm 10 glad that you're able to stand here before us. I know 11 you're quite passionate about this. And for those in 12 the audience or those that are not aware, Ms. Shedd 13 has a very extensive financial background. 14 So the fact that she's up here presenting 15 this and has, you know, family within law enforcement 16 is just, I think, a testament to what we're reviewing 17 tonight. And I don't take any of that lightly. So 18 I'm, I'm fully supportive of what's been done and 19 presented before us tonight. I do have a conditional 20 motion that I'm going to make that if Mayor -- if 21 you're okay, I'd like to make a motion that we approve 22 -- 23 MAYOR ELAINE BROWN: Is this an amendment? 24 COUNCILOR JOSH MESSINGER: Well, it's -- yes, 25 as prescribed, but I have talked about it with Zach,	1 motion. We just need -- we don't have a second. 2 MAYOR ELAINE BROWN: All right. I have a 3 motion. Do I have a second? 4 COUNCILOR NIA LIVINGSTON: Second, I -- 5 MAYOR ELAINE BROWN: Right. So, I have a 6 motion and a second. And -- 7 LEONA SHEDDAN: By using half of the increase 8 from the credit and the City anteing up, so to speak, 9 the other half for the first year, the second year, 10 the half gets increased by 10% and 10% each following 11 year until the end, and you've reached 3%. Having 12 said that, at the end, the financial impact will be 13 negligible to the, to, to the City. 14 COUNCILOR JOSH MESSINGER: Yeah, the whole, 15 the whole goal of the amendment and the motion and 16 I've had conversations about this is what I expressed 17 in the last meeting. There was conversations about 18 using the whole chunk immediately, and then you're 19 stuck with the big bill versus this way you're 20 spreading those payments out, you're elongating that. 21 You're being more sustainable with your 22 payment methodology. And then by the time it comes to 23 term, you ultimately are having a very negligible 24 impact from a financial standpoint. So really what it 25 is, is it's about doing this, but it's about doing

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Page 157 1 this in a very prudent and sustainable way, so there's 2 not a few years down the road when none of us are on 3 this board, a shock to the system that the other 4 boards have to clean up. 5 So that's why I made it, that's why I made 6 it. And the spirit of that is or, Zach, I don't know 7 if I have to state this, but that any change to that 8 would have to be voted on in a separate meeting 9 outside of the budget cycle. 10 MAYOR ELAINE BROWN: Okay. We have a motion 11 and a second. Discussion, questions? Vice Mayor. 12 VICE MAYOR KERRY CHIN: Can you go over that 13 whole 10% thing again? 14 COUNCILOR JOSH MESSINGER: So we have a 15 credit sitting out there that's an overpayment. So 16 you would take -- you'd lop half of that payment now. 17 You'd take half of that and put that towards the plan. 18 And then you would steadily do a 10% year increase 19 year over year because you had that credit sitting out 20 there. You're not burning that credit all at once. 21 And then the City's general fund is slowly 22 making up the other part. So it's not a large chunk 23 shock to the general fund. It's a low, gradual 24 increase. 25 VICE MAYOR KERRY CHIN: 10% is increasing --	Page 159 1 MAYOR ELAINE BROWN: Okay. And Councilman 2 Livingston, anything? Okay, so we have a motion and a 3 second. And just to be clear, will this motion be 4 embedded into the, the ordinance? Is this going to 5 take care of it, or is this a motion that is separate 6 from the ordinance as stated? 7 CITY ATTORNEY ZACHARY ROTH: This would take 8 care of it. 9 MAYOR ELAINE BROWN: Okay. So we have a 10 motion and a second. Any further discussion on the 11 motion as stated? And please call the roll. 12 CATHERINE PONSON: Councilor Livingston? 13 COUNCILOR NIA LIVINGSTON: Yes. 14 CATHERINE PONSON: Councilor Messinger? 15 COUNCILOR JOSH MESSINGER: Yes. 16 CATHERINE PONSON: Vice Mayor Chin? 17 VICE MAYOR KERRY CHIN: Yes. 18 CATHERINE PONSON: Mayor Brown? 19 MAYOR ELAINE BROWN: Yes. 20 MAYOR ELAINE BROWN: Thank you. And to the 21 pension board, to everyone that has put so much work - 22 - for coming back with this plan. We appreciate it. 23 We appreciate our police officers so much. So thank 24 you. 25 LEONA SHEDDAN: Thank you.
Page 158 1 LEONA SHEDDAN: Annually. 2 VICE MAYOR KERRY CHIN: -- of that -- 3 COUNCILOR JOSH MESSINGER: Annually, yes. 4 VICE MAYOR KERRY CHIN: (inaudible) So it's 5 50 first year, 60, 70. 6 COUNCILOR JOSH MESSINGER: Yes. And then -- 7 VICE MAYOR KERRY CHIN: Of whatever's left. 8 COUNCILOR JOSH MESSINGER: Within that 9 credit. And then the whole goal is to not have that 10 changed with just a standard budgetary process. So, 11 so many things happen within the budget. You don't 12 want them to say, oh, well, we're not going to do that 13 anymore. It passes in the budget. 14 People don't realize or don't see that it's 15 passed in the budget and the Council doesn't have a 16 discussion. So if they're to change it, it should 17 come back to the Council in a whole separate meeting 18 and be discussed if we're going to modify how we are 19 funding that. 20 It's just all to put guardrails on it, 21 protect it and be financially prudent in doing this 22 because it is an increase to the membership. But it 23 is also a, you know, long-term sustainable item that 24 we want to be conscious of for our budget. And that's 25 why.	Page 160 1 GARY FISK: Can I say one thing, please? 2 MAYOR ELAINE BROWN: I'm sorry? 3 GARY FISK: Can I say one thing? 4 MAYOR ELAINE BROWN: Of course you can. Get 5 up here, but make it short. 6 GARY FISK: Gary Fisk, 2232 Jadestone Drive, 7 32246. I just want to thank the pension board, Leona. 8 I've been dealing with her, and this has been going on 9 for years. Believe me, I've been to just about every 10 pension board meeting we've ever had here in City 11 Hall. And I just want to thank the Council. 12 I want to thank our board, Joe and Dustin, 13 thank you guys for pushing. I know Dustin gets tired, 14 you know, on the phone with him. But you know it's 15 been well, well done. I mean, I retired in 20 or not 16 20, but 1994 and hadn't had anything. And I'm the 17 second oldest still living police officer in Neptune 18 Beach. Dr. Harding has got me beat by, what, six -- 19 UNIDENTIFIED MALE SPEAKER: 20 years? 20 GARY FISK: Yeah, probably. But I just want 21 to thank the council. You know, it's been rough when 22 you retire on 42% of your salary. And we follow the 23 guidelines of the Florida State Pension Plan. So I 24 just want to thank everybody up here. Thank you all. 25 MAYOR ELAINE BROWN: Gary, thank you. Thank

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Page 161 1 you for your service, too. All right. So moving 2 along here and we are on item number six. And Purvis 3 Gray, they've been -- please come up to the podium, 4 our CFO and I think that you're asking to go ahead and 5 continue with their contract (inaudible) 6 JAIME F. HERNANDEZ: Request a -- an 7 extension on their contract for them to perform the 8 audit for fiscal year '22-'23 and '23-'24. They're 9 going to start on October 1st of this year or around, 10 around that date. 11 The, the audit is supposed to be conducted 12 in about three months, presented to the, to the City 13 Council in January and then start the other audit in 14 March. So basically the two-year extension will go 15 ahead and be covered in, in about nine months. 16 MAYOR ELAINE BROWN: And they've been with us 17 seven years. Let's see. We've gone through Covid 18 with them. We've gotten through, you know, certainly 19 changes in our CFO a couple of times now, and I 20 certainly -- I trust your judgment. 21 We need to have the continuity right now as 22 we're moving forward. So I'm going to open this up 23 for any questions that the council might have. And 24 this is questions for Jaime. 25 VICE MAYOR KERRY CHIN: No questions. I	Page 163 1 COUNCILOR LAUREN KEY: Perfect. Because it's 2 -- you don't want to have the same auditor for too 3 long. And I think it would be in the City's best 4 interest to have someone new. 5 JAIME F. HERNANDEZ: I agree. 6 CLAYTON KNOWLES: And that's why they're 7 usually rotated every six to seven years. And -- but 8 in this case we asked the council. 9 COUNCILOR LAUREN KEY: Yeah, which makes 10 sense. So I'm good with it. But you know, looking 11 forward as, as I said I won't have a say, but I would 12 like to put it out there that I think it would be in 13 the City's best interest. Thank you. 14 JAIME F. HERNANDEZ: Absolutely. 15 (inaudible) 16 MAYOR ELAINE BROWN: Okay. Thank you. Nia, 17 any questions? 18 COUNCILOR NIA LIVINGSTON: I think Councilman 19 Key just took it out of my mouth, so. 20 CLAYTON KNOWLES: Okay, Josh? 21 JAIME F. HERNANDEZ: Thank you. 22 COUNCILOR JOSH MESSINGER: One question. 23 Don't, don't run off yet. So I know we're trying to 24 get caught up, and there are -- you explained the 25 timeline. Would there be any way. And I know it's --
Page 162 1 agree with you about maintaining that continuity. And 2 of course, Purvis Gray already has the institutional 3 knowledge of, you know, what we've been through. So, 4 you know, it seems prudent. 5 MAYOR ELAINE BROWN: Okay. Councilwoman? 6 COUNCILOR LAUREN KEY: Since I've been on 7 council, we've had numerous conversations about 8 getting a new auditor. I think for the sake of 9 continuity and probably too much to do an RFP and all 10 that stuff right now to get going on this next audit. 11 I'll be off council by the time it comes 12 back around, but I would like to see in the future 13 this next go-around, even though I won't be here for 14 us to -- I think it's really important. We've had 15 them for a long time. 16 JAIME F. HERNANDEZ: Yeah, the goal is to 17 just go ahead and have an RFP right after they finish 18 the -- 19 COUNCILOR LAUREN KEY: Perfect. 20 JAIME F. HERNANDEZ: -- with their audit. 21 So (inaudible) 22 COUNCILOR LAUREN KEY: I get that. I just 23 want to make sure. 24 JAIME F. HERNANDEZ: In the fall of next 25 year.	Page 164 1 half the time it's firms throwing bodies at this when 2 it comes to audits. 3 And it's how much bandwidth is the firm 4 going to give you, right? Because they have to do a 5 lot. I know there is some complications related to 6 this, but is there any way to expedite these, pay a 7 type of fee to where we get priority and they, you 8 know, speed up the timeline in which we can get out 9 from underneath you know, the -- some of the items 10 related to the audit? That's, that's just a question 11 for either Jaime or -- 12 JAIME F. HERNANDEZ: By the end of the, the, 13 the, the second audit, which is going to be around 14 June 30th -- 15 COUNCILOR JOSH MESSINGER: Okay. 16 JAIME F. HERNANDEZ: -- will be caught up. 17 And will we be able to just go ahead and provide the 18 State with the reporting that they require for us to 19 be in compliance. 20 COUNCILOR JOSH MESSINGER: Okay. I would 21 just like to say -- so I would like to see, a) if they 22 are able to dedicate more resources to, to reduce that 23 timeline, that would be ideal. But I understand we 24 have our own bandwidth issues. So that's just one 25 item I want to bring up.

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1 Second item is I would like a performance 2 clause in this because I know Purvis Gray, we were 3 slow with some items, but they also had turnover and 4 they had issues related to serving as our audit. And 5 I don't want to see a situation happen again where 6 they don't dedicate the right resources to us and that 7 causes issues for us. 8 So I would like to see this is -- you know, 9 we're effectively giving them two audit contracts. So 10 I'd like to have a performance item in there that 11 states that if they don't meet their timelines and if 12 we can speed these timelines up a little bit, that'd 13 be great. But if they don't meet them, there's 14 clawbacks related to the fee structure. So that's the 15 first item. 16 And then second item is I'm wondering, Zach, 17 if this is appropriate, but since it is in June and 18 we're passing this and there is a -- you know, 19 Councilwoman Key has been passionate about these items 20 in the past, I'm wondering if we can't make a motion 21 that says, yes, here's the two-year contract. But 22 that this council is making a motion that we have to 23 go out to RFP for a new audit or at the conclusion. 24 And that's done right here as we pass this, 25 I put a condition on the passage that this is it, and	1 change? 2 COUNCILOR JOSH MESSINGER: To no longer do an 3 RFP and keep it with Purvis Gray would require a 4 supermajority vote of the council versus a simple 5 majority. 6 PAUL WATERS: All right, maybe I'm 7 misinterpreting, but it's curious that -- is this 8 resolution kind of like trying to impose a -- 9 COUNCILOR JOSH MESSINGER: An RFP. 10 VICE MAYOR KERRY CHIN: A rule on ourselves? 11 COUNCILOR JOSH MESSINGER: Yes. 12 VICE MAYOR KERRY CHIN: Kind of thing? 13 COUNCILOR JOSH MESSINGER: Yes. 14 VICE MAYOR KERRY CHIN: So what's to, what's 15 to hold our own feet to the fire? If we just -- if it 16 lapse? 17 COUNCILOR JOSH MESSINGER: (inaudible) 18 supermajority for us to go back on what we're doing 19 tonight. 20 COUNCILOR LAUREN KEY: Most of us won't be 21 here then. 22 COUNCILOR JOSH MESSINGER: I'm of the 23 opinion, I'm of the opinion that we have kept Purvis 24 Gray too long, and they have not performed well. But 25 I understand the need to keep them from a logical
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1 we, we have to go put it out to (inaudible) 2 CITY ATTORNEY ZACHARY ROTH: I don't know why 3 you couldn't. The council could in the future choose 4 not to follow it by a majority vote. 5 COUNCILOR JOSH MESSINGER: Really? Okay. So 6 it would just be -- 7 CITY ATTORNEY ZACHARY ROTH: I mean, it's 8 just like with anything, they can -- you can overrule 9 what you did last week when the majority vote 10 (inaudible) 11 COUNCILOR JOSH MESSINGER: That's true. I 12 just like some type of mechanism where it happens we 13 don't -- okay, so motion to approve agenda item number 14 six under the condition that there is a performance 15 obligation within the contract, and that an RFP is 16 done for subsequent audits, and to change such would 17 require a supermajority of the council. 18 MAYOR ELAINE BROWN: Okay. We have a motion. 19 Do we have a second? 20 COUNCILOR LAUREN KEY: Second. 21 MAYOR ELAINE BROWN: Okay. We have a motion 22 and we have a second. And now discussion. Any 23 questions we might have, Vice Mayor? 24 VICE MAYOR KERRY CHIN: Well, why were we 25 having the requirement to have a supermajority to	1 standpoint to get through this final part. If we went 2 to an RFP now, it would elongate this and be a bigger, 3 bigger issue. 4 I don't think they're not a competent firm. 5 I think they had an issue related to staffing. Plenty 6 of businesses have that. But I also know changing 7 your auditors on a, on a certain level of intervals is 8 just prudent. 9 And so I don't want to see come June if the 10 makeup of the body changes and people go, well, let's 11 just keep on with Purvis Gray, I just want to put that 12 protection in now. That's, that's my motivation. 13 VICE MAYOR KERRY CHIN: Okay. 14 MAYOR ELAINE BROWN: Councilwoman Key. 15 COUNCILOR LAUREN KEY: I think there are 16 standards, right, like that are prescribed from some 17 organization that like does accounting practices that 18 says every X amount of years you should. 19 JAIME F. HERNANDEZ: Years and (inaudible) 20 years extension. (inaudible) 21 COUNCILOR LAUREN KEY: Okay, so right, we've 22 had them -- I mean we've had Purvis Gray for I don't 23 want to speak out of line here, but I'm -- close to -- 24 I think it's longer than that. But, but I -- you 25 know, if you're saying it's seven, it's seven. That's

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Page 169 1 too long. But seven today, and then we're extending 2 it for another two. So that makes it nine, right? 3 JAIME F. HERNANDEZ: Yeah, for, for -- yeah. 4 It's one year basically extended to (inaudible) 5 COUNCILOR LAUREN KEY: So either way we're 6 going over. So like I think -- I understand, you know 7 -- we haven't been able to, to change them since I've 8 been on council. There were conversations because 9 it's always been so far behind. So I understand what 10 you're saying and I agree with it. 11 MAYOR ELAINE BROWN: Okay. Councilwoman 12 Livingston. Nothing? All right, so -- and you've 13 already spoken. You've given the motion. We're here. 14 All right. So, so that I am clear on the performance 15 clause and the RFP stating the supermajority. And it 16 was stated very well by the councilman, and I think we 17 are in a position to call the roll. 18 CATHERINE PONSON: Councilor Messinger? 19 COUNCILOR JOSH MESSINGER: Yes, 20 CATHERINE PONSON: Councilor Key? 21 COUNCILOR LAUREN KEY: Yes. 22 CATHERINE PONSON: Councilor Livingston? 23 COUNCILOR NIA LIVINGSTON: Yes. 24 CATHERINE PONSON: Vice Mayor Chin? 25 VICE MAYOR KERRY CHIN: Yes.	Page 171 1 So we obviously have an inflow and 2 infiltration problem there. The second slide, and 3 this was perfect timing for my request. But we had 4 Hurricane Debby come through. Oops. 5 CATHERINE PONSON: Sorry. 6 DERYLE CALHOUN: You're good. Should just 7 arrow down maybe? It was a two-page. There you go. 8 So we had a relatively dry period before Hurricane 9 Debby. And again, you can see August -- what is that, 10 5 or so, and then August 6th we had almost three 11 inches of rain. So the wastewater plant flow is in 12 the green. And you can see prior, we averaged about 13 725,000 gallons a day through the wastewater plant. 14 And we hit a peak a few days after Debby of 15 1.3 million. And as of this morning, we're finally 16 down to about 760,000 gallons. So it's taken us about 17 two weeks to get back to, quote unquote, normal. We 18 believe there might be as much as 200,000 gallons a 19 day of inflow and infiltration that are coming into 20 the system. So let's start with item seven. 21 We have about 31 miles of gravity sanitary 22 sewer in the system, and about nine miles of that is 23 vitrified clay, which was replaced as material of 24 choice by plastics in the 80s. Vitrified clay is 25 subject to leaking joints, cracks, and so on and so
Page 170 1 CATHERINE PONSON: Mayor Brown? 2 MAYOR ELAINE BROWN: Yes. The only thing 3 that I was unclear on that to all of you was, is it 4 going to be an amendment to this or what have you? So 5 I was taking the high road and just saying, let's go 6 with it. And we did. So thank you. And thank you 7 for your input, I appreciate that. All right. And 8 now, all right (inaudible) (background talking) 9 Brevity is appreciated. 10 DERYLE CALHOUN: (inaudible) Catherine to 11 bring up the slides, please. I got -- I have two 12 slides to support item seven and eight. Pretty 13 graphical there for you. So this is a, a plot of -- 14 the big bars are rainfall and this is January through 15 June. 16 The blue line is our potable water sales. 17 And then green is the wastewater that we're treating 18 at the wastewater plant. And so typically, just use 19 January as an example there, we sold about 18 million 20 gallons of water, and we treated about 23 million 21 gallons of sewer. You wouldn't expect that normally, 22 because the water that you run through your potable 23 meter gets -- you know, your car wash, you fill your 24 pool, you might irrigate if you don't have an 25 irrigation meter.	Page 172 1 forth. And of course, it's getting, it's getting old. 2 We've had Saltus Engineering assisting us in support 3 of our consent order with DEP for some overflows that 4 we had a few years back with looking at sources of 5 inflow and infiltration. 6 And we've looked at pump station runtimes 7 and other things. And if you recall, the council 8 approved some manhole monitors a number of months 9 back. We deployed two of those to the Indian Woods 10 subdivision and identified that as, as an area that we 11 would want to focus on. Just as a reminder, there are 12 two state statutes that deal with inflow and 13 infiltration. 14 403.086 is sewage disposal facilities, which 15 requires I&I studies and action plans. And then there 16 is 403.9301 wastewater services projections, which is 17 the 20-year look that gets updated every five years on 18 needs and funding sources. 19 So this request is to look at about 97 20 service laterals and I'll back up there. I missed 21 part of that. I gave you an EPA document that's 22 attached to the agenda that notes a Water Environment 23 Research Foundation study that found about 50% of 24 private sewer laterals are vitrified clay, and that 25 it's estimated to contribute laterals or about 40% of

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Page 173 1 the system's inflow and infiltration. 2 This request, as I said, is for about 97 3 laterals in the Indian Wood subdivision. And if you 4 think about 30 feet a piece in the public right of 5 way, we're going to be looking at about 2,800 feet or 6 just over half a mile of service laterals. Indian 7 Woods is also in the 10 to 12 foot deep range. And of 8 course, it's right there near the intracoastal and we 9 know we have leaky manholes. 10 We've already looked at those, brick and 11 mortar. So this will be -- this company build, and I 12 gave you their history. They deploy a camera system 13 from the main line up into the lateral and give us the 14 video information that we need to then make decisions 15 about any potential rehab, either on our side or the 16 customer's side. 17 I've given you the budget information, the 18 repair and maintenance line is upside down at the 19 moment, but we are proposing a budget transfer from 20 Sewer Professional Services. And then one addition I 21 would make here, I asked for a 10% authorization for 22 change orders and went back and looked at some 23 footages, and I would request that that be increased 24 to 15% for this particular item. 25 There's also information in that EPA	Page 175 1 COUNCILOR LAUREN KEY: Second. 2 MAYOR ELAINE BROWN: All right. I have a 3 motion and a second. And please call the roll. 4 CATHERINE PONSON: Councilor Key? 5 COUNCILOR LAUREN KEY: Yes. 6 CATHERINE PONSON: Councilor Livingston? 7 COUNCILOR NIA LIVINGSTON: Yes. 8 CATHERINE PONSON: Councilor Messenger? 9 COUNCILOR JOSH MESSINGER: Yes. 10 CATHERINE PONSON: Vice Mayor Chin? 11 VICE MAYOR KERRY CHIN: Yes. 12 CATHERINE PONSON: Mayor Brown? 13 MAYOR ELAINE BROWN: Yes. Thank you. Good 14 presentation, too. 15 DERYLE CALHOUN: Thank you. Appreciate that. 16 Item eight is actually the main lines, the pipes that 17 -- the larger pipes that run essentially in the 18 street. This is a request to award to Insituform 19 Technologies, LLC for cleaning and televising 20 approximately 60 hundred -- 6,800 feet in the Indian 21 Woods subdivision, just over a significant -- about 22 1.3 miles, I should say. 23 Same situation, mostly clay pipe, as I 24 mentioned before, 10 to 12 feet deep. We believe that 25 there's quite a bit of I&I just from the two manhole
Page 174 1 document about examples of other Government models for 2 funding lining of private laterals or replacement of 3 private laterals. And so we'll be thinking about that 4 as we start to gain more information about what those 5 laterals look like. 6 In terms of, of rehabbing of our laterals, 7 BLD does CIPD lining at \$4,700 apiece. And so, you 8 know, if we just, just -- if we had to do all 97, 9 that's about half a million dollars. So there's, 10 there's a lot on the table here as we start to start 11 to look into the I&I problem. 12 MAYOR ELAINE BROWN: All right, so your 13 request is for \$48,050 with authorization to change 14 orders up to 15%? 15 DERYLE CALHOUN: Yes, ma'am. 16 MAYOR ELAINE BROWN: Okay. You've heard the 17 request. You've heard the presentation. Any 18 questions that anyone might have for Mr. Calhoun? 19 Seeing none, please call the roll. Oh, I need a 20 motion. Can I have a motion to approve? 21 COUNCILOR JOSH MESSINGER: Motion to approve 22 agenda item number seven with a 15% change order 23 variable. 24 MAYOR ELAINE BROWN: Second. Could I have a 25 second?	Page 176 1 monitors that were deployed and studied for a period 2 of time and then inspecting the brick-and-mortar 3 manholes. There's a piggyback contract with City of 4 St. Augustine that we've previously used. And I gave 5 you that information. Same, same budget area. And we 6 would do the same budget transfer from Sewer 7 Professional Services. 8 And I'll note for FY25, which we'll be 9 talking about Wednesday night, budgeting another 10 \$25,000 for cleaning and tv'ing of additional main 11 line footage, and then \$40,000 for rehab of 20 12 manholes and about \$120,000 for actual lining of main 13 line pipes. So if we find after we review the video 14 evidence, we have problems in this area, that will get 15 us significantly towards rehabbing Indian woods. 16 MAYOR ELAINE BROWN: Okay. Thank you. And 17 so the ask tonight is -- and you're sticking with the 18 10%? 19 DERYLE CALHOUN: Yes, ma'am, on this one, 20 10%. Thank you. 21 MAYOR ELAINE BROWN: Okay, so it's approval 22 to award Insituform Technologies in the amount of 23 \$42,084.10 with staff authorization for change orders 24 up to 10%. Could I have a motion to approve? 25 COUNCILOR JOSH MESSINGER: Said motion.

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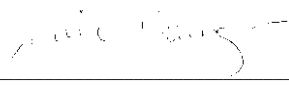
Page 177 1 MAYOR ELAINE BROWN: Okay, I have a motion. 2 Could I have a second? 3 COUNCILOR LAUREN KEY: Second. 4 MAYOR ELAINE BROWN: I have a motion and a 5 second. Discussion or comments or questions? Seeing 6 none, please call the roll. 7 CATHERINE PONSON: Councilor Livingston? 8 COUNCILOR NIA LIVINGSTON: Yes. 9 CATHERINE PONSON: Councilor Messinger? 10 COUNCILOR JOSH MESSINGER: Yes. 11 CATHERINE PONSON: Councilor Key? 12 COUNCILOR LAUREN KEY: Yes. 13 CATHERINE PONSON: Vice Mayor Chin? 14 VICE MAYOR KERRY CHIN: Yes. 15 CATHERINE PONSON: Mayor Brown? 16 MAYOR ELAINE BROWN: Yes. And -- 17 DERYLE CALHOUN: Thank you. And item nine. 18 This is to replace various fencing at Lighty Lane ump 19 station, Camellia Terrace pump station and Oceanwood. 20 Lighty Lane will be an eight-foot stockade fence and 21 consult, and consult with a neighbor. 22 And Camellia Terrace and Oceanwood will have 23 the black-coated chain link with the privacy slats in 24 it. I gave you a photo showing the pretty poor 25 condition of, of all those fences that we'll be	Page 179 1 CATHERINE PONSON: Mayor Brown? 2 DERYLE CALHOUN: Thank you all. 3 MAYOR ELAINE BROWN: Yes. And thank you, 4 Deryle, as always. And some of those things were very 5 badly needed. And we're hoping for the best as the 6 cameras go down. Yeah. Okay. All right. 7 Public comment? Do we have any cards? No 8 cards. All right. Public comment closed. And we are 9 adjourning this meeting and we are going into our 10 workshop meeting and I am calling the workshop to 11 order. Please call the roll. 12 CATHERINE PONSON: Councilor Key? 13 COUNCILOR LAUREN KEY: Yes. Here. 14 CATHERINE PONSON: Councilor Livingston? 15 COUNCILOR LAUREN KEY: Sorry. 16 CATHERINE PONSON: Councilor Messinger? 17 COUNCILOR JOSH MESSINGER: Here. 18 CATHERINE PONSON: Vice Mayor Chin? 19 VICE MAYOR KERRY CHIN: Here. 20 CATHERINE PONSON: Mayor Brown? 21 MAYOR ELAINE BROWN: Yes. Thank you. And we 22 are going to go right to any public comment. Do we 23 have any cards? All right. Public comment is closed 24 and we are going right to the Public Works expenditure 25 and project update.
Page 178 1 replacing. Budget is fine. We'll be awarding, or if 2 you approve, we'll award to Armstrong Fence Company 3 for \$30,453.01. We've, we've previously used 4 Armstrong and using a JEA piggyback contract. 5 MAYOR ELAINE BROWN: You've heard the 6 request. \$30,453.01 to Armstrong Fence Company. 7 Those fences needed to be replaced. 8 DERYLE CALHOUN: Yes, ma'am. 9 MAYOR ELAINE BROWN: And could I have a 10 motion to approve? 11 COUNCILOR JOSH MESSINGER: Said motion. 12 MAYOR ELAINE BROWN: I have a motion. Can I 13 have a second? 14 COUNCILOR LAUREN KEY: Second. 15 MAYOR ELAINE BROWN: I have a motion and a 16 second. Further discussion, comments? Seeing none, 17 please call the roll. 18 CATHERINE PONSON: Councilor Messinger? 19 COUNCILOR JOSH MESSINGER: Yes. 20 CATHERINE PONSON: Councilor Key? 21 COUNCILOR LAUREN KEY: Yes. 22 CATHERINE PONSON: Councilor Livingston? 23 COUNCILOR NIA LIVINGSTON: Yes. 24 CATHERINE PONSON: Vice Mayor Chin? 25 VICE MAYOR KERRY CHIN: Yes.	Page 180 1 DERYLE CALHOUN: Catherine's got a couple of 2 slides for us here. City Manager Pike asked me to 3 take a look at what we've, what we've done over the 4 last 16 months or so, and I'm not going to read that, 5 obviously. Can you go up to the first page, 6 Catherine? We'll start with the general fund. There 7 you go. 8 So I looked at the three main buckets and 9 general fund. We've spent about \$1 million. The 10 three big ones were the City Hall, roof replacement, 11 senior center completion, and the City Hall exterior, 12 which I think turned out really, really nice. And, 13 and then also the milling and paving of various 14 streets that you all approved. I guess it was last 15 council meeting now. Over in the stormwater fund, 16 about \$600,000. 17 We're wrapping up the city-wide stormwater 18 model with, with Jones Edmonds, which will lead to 19 Colin being able to go pursue grants for us. Florida 20 Boulevard culvert, which began and finished before I 21 got here in March of '23. But that was a big project. 22 We cleaned, televised and lined with CIPP large pipes 23 in Bal Harbor, the ones that needed them anyway. 24 And we've also procured a new street 25 sweeper. Next slide. And then water and sewer, which

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Page 181 1 I've worn y'all out with. There you go. That was a 2 separate document of Wellfield, now that I think about 3 it. There you go. Water and sewer. Water and sewer. 4 No, no. Go with water and sewer. There you go. 5 Right there. Water and Sewer Fund. We've done a lot 6 of work over the last 16 months to, to get in, in 7 nearly permit compliance. 8 We should be rolling into permit compliance 9 in October for total nitrogen and then early spring 10 for phosphorus. Lots of work there. Again, I won't 11 read them all, but I'll point out for the wastewater 12 plant, the two big ones were the grip system 13 replacement and the fine bubbles. The fine bubble 14 system, which will be installed early October. 15 That was about \$330,000 total between those 16 two projects alone. But lots of work that was done 17 to, to get those plants back and functioning properly. 18 We're really doing well. On the wastewater pipe and 19 pump stations, we're fully in engineering, actually 20 completed engineering for the redundant crossing of 21 3rd Street. 22 The permit packages into D.O.T. We expect 23 to bid that and construct in FY25. And then on that 24 second line there, the force main extension down 25 Forest Avenue to take the load off of that trunk line. Page 182 1 We've had one small overflow at Hopkins Creek during 2 one of the heavy rain events, because that trunk line 3 gets so full during heavy rain events. 4 Again, back to the I&I situation. Both 3rd 5 Street Crossing and the force main extension down 6 Forest are both over \$1 million each. And again, 7 we'll talk about that on Wednesday night. The last 8 bullet there, the water plant pipes. We haven't done 9 anything on water because we've been so focused on 10 permit compliance and consent order compliance on the 11 wastewater side. 12 But the big, big takeaways here are we've 13 upgraded variable speed drives at the, at the 14 wastewater -- or at the water plant. Excuse me. 15 We've got the water tower back online after a 16 significant rehab period and then rolling into the 17 next topic, we've completed the design for well number 18 five. Now you can bring up the potable well, 19 Catherine. 20 Let's see, as a reminder, we've had -- we 21 have two wells that were drilled in the 1930s. Wells 22 three and four were drilled in the 1970s. And these 23 aren't your, your grandfather's wells. Municipal 24 wells are deep. The geology is complex. Our wells 25 are 10-inch and 12-inch diameter steel casings.	Page 183 1 And total depths range between 600 feet and 2 1200 feet deep into the Floridan aquifer. Our recent 3 history is that well number two was removed for 4 service back in 2020 due to significant yield 5 decrease. And they think that was due to calcium and 6 magnesium build-up inside the, the casing and also 7 sand was found. 8 If you recall, I came here and asked for you 9 to approve some rehab on well number one, which is 10 also from the 30s. We pulled that failed well pump, 11 video logged it. They said, well, it's not the best 12 of shape, but you can put it back into service and 13 basically sit on it until we get well five fully 14 designed and constructed. 15 A number of weeks ago, we had a problem with 16 that well number one, pump would not rotate. They had 17 to bring a crane in and use a significant amount of 18 force to pull the, the pump out of the casing and it's 19 got sand in the volute, which is not a good sign. So 20 as the pump sits idle, sand has fallen down the casing 21 into the pump and filled it up. So the geologist is 22 concerned that we've had a failure of that casing. So 23 we video logged it. 24 I think I put it in there when we video 25 logged, but we didn't find anything earth shattering. Page 184 1 But there's something going on where they're saying 2 they are suggesting that we take well number one out 3 of service. The recent history too was they looked 4 at, this was before my time, but they looked at 5 rehabilitating well number two, through a process 6 called acidification, where they put acid down the 7 main and they, you know, scour away the calcium, 8 magnesium and put it back into service. 9 But the concern is, is that the acid would 10 get slurped up by the other functioning wells, because 11 they're all in such close proximity. They also looked 12 at lining. If you line it, you got to scour the, the, 13 the casing. And they were worried that would destroy 14 the casing. 15 Plus the casing would, would be reduced from 16 a ten down to a six inch, which is effectively not 17 worth it. So based upon the condition of, of well 18 one, when we video logged it last year and knowing 19 that two was out of service, you all approved moving 20 forward with well five design to replace one and two. 21 Next slide. I already went through. 22 There it is. I'm so tired, I got, got out 23 of, got out of sync here. But we video logged, we 24 video logged well number one on July 29 after the, the 25 failure of the well. So just to be transparent here.
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Page 185 1 Well production capacity bullet there. Each of the 2 existing wells from the 1970s can serve our needs. 3 Just for perspective, we do about 800,000 gallons a 4 day at the most. 5 And during the drought period, maybe a 6 million gallons a day, that 1,200 to 2,100 gallons per 7 minute equates to 1.7 million gallons a day and 3 8 million gallons a day. So wells three and four can 9 serve our needs. But we, we know that there have been 10 failures. 11 And City of Atlantic Beach just went through 12 a replacement of two wells that failed, one from 1982 13 and one from 1993. 93. And of course, ours are from 14 the 70s. We budgeted \$1.4 million for well five 15 construction engineering support. And then the grout 16 filling of wells one and two, the abandonment of, of 17 the two that have failed. 18 And so what I'm, what I'm here to do tonight 19 is to make sure you're good with proceeding with, with 20 procuring services for well number five. We are 21 looking at me talking to Zach about it, but Atlantic 22 Beach, because of the few number of folks that do well 23 drilling, there's, there's five. 24 I called one today that has gotten rid of 25 their larger rig. They're only doing residential.	Page 187 1 MAYOR ELAINE BROWN: As usual, great 2 presentation. Thank you. 3 DERYLE CALHOUN: Appreciate it. 4 MAYOR ELAINE BROWN: A lot of work. And we 5 appreciate, you know, the goals that you have and 6 where we're headed. 7 DERYLE CALHOUN: Absolutely. Thank you. 8 MAYOR ELAINE BROWN: All right. Well, I'll 9 open this up for any questions that any of the council 10 members may have. Councilman Messinger? 11 COUNCILOR JOSH MESSINGER: Just one, one 12 quick question for you, Deryle. And, you know, we 13 trust you implicitly on this. 14 DERYLE CALHOUN: Thank you. 15 COUNCILOR JOSH MESSINGER: But with the, with 16 the two contractors that are local that would be able 17 to do it, and I definitely see the value of kind of 18 building our own proposal through applicable 19 contracts. But is the quality of the two companies, 20 would you say they're very similar and -- 21 DERYLE CALHOUN: Absolutely. They've been in 22 the business forever. They, they service -- JAJ has 23 over 100 -- was 135 wells when I left. But, but, but 24 it's basically these two, these two main, main folks 25 that do that work.
Page 186 1 One says it would be cost advantage for us. We 2 couldn't compete to come up this way. So we're left - 3 - I've got one other to call tomorrow. And then there 4 are two that do work in this area. 5 Atlantic Beach called those two and said, 6 give us a price for, for drilling the well. Then they 7 went to the continuing services contractor (inaudible) 8 for the mechanical portion and Limbaugh Electric for 9 the, for the electrical, and they put the package 10 together themselves versus going out on the street for 11 30 days, you know, and having, having the two 12 essentially respond. 13 So we'll be talking to Zach about that. And 14 I'm not so sure that that 1.4 million is accurate, 15 based upon what I've heard to what I've heard from 16 Atlantic Beach's experience. They were significantly 17 less expensive. This is our engineer maybe being a 18 little aggressive on the pricing expectation. And 19 then the other nice thing was one of the drillers has 20 a rig immediately available, and they, they popped the 21 hole in the ground for Atlantic Beach. 22 Within six months, they were up and running. 23 So we could, in theory, get this, this new well online 24 relatively soon. So just wanted to give that update 25 and I'll be happy to answer any questions.	Page 188 1 COUNCILOR JOSH MESSINGER: Okay. 2 DERYLE CALHOUN: Yeah. And the third, as I 3 said, I'm going to call tomorrow. I just didn't get 4 around to it today. But my point is I think we're 5 going to get the same response -- responders, even if 6 we put it out for formal bid and we could save, save 7 some time, you know, going with a request for quotes. 8 COUNCILOR JOSH MESSINGER: Okay. 9 DERYLE CALHOUN: Yes, sir. Thank you. 10 MAYOR ELAINE BROWN: Questions? Comments? 11 VICE MAYOR KERRY CHIN: How soon -- let's, 12 let's just say, you know, we, we approve and go ahead 13 with getting well five done. And you said that one of 14 the drillers can say that they can get the job done 15 within, like, say, six months. What does that 16 timeline look like? 17 DERYLE CALHOUN: So the six-month experience 18 was with, with Atlantic Beach. We have relationships 19 with GRU. And may we piggyback off of Atlantic 20 Beach's contract with Gruhn May. Gruhn May has been 21 very responsive to us on the work at the wastewater 22 plant. They are basically your heavy maintenance crew 23 for, for Neptune Beach. 24 Great relationship. They have availability. 25 I talked to Gordon Gruhn. They have -- they've had

Page 189 1 some work fall through, so I feel good about 2 mechanical electrical. We use Limbaugh. They're 3 homegrown. They service us. We pick up the phone 4 when they call. I have not spoken with them yet about 5 taking a look at the plan set or their availability, 6 but we could also fall back on Miller Electric. It's 7 a JEA piggyback that we've reached out to a few times. 8 But yeah, having that drill rig available and that, 9 that driller is supposed to come out and see us this 10 week. He looked -- he got the plan sets last week. 11 He's going to come visit the site this week. 12 So, so to answer your question, if we were to go 13 solicit quotes over the next couple of weeks, then 14 maybe four weeks to get, you know, all the contracts 15 inked, and then let's just go with the six months, the 16 same experience that Atlantic Beach has or had, so 17 let's say seven, eight, something along that line. 18 VICE MAYOR KERRY CHIN: Okay. So then by 19 mid-summer next year. 20 DERYLE CALHOUN: At worst. I would hope, I 21 would hope sooner. I'm naturally conservative. It 22 spooks me to think that we've got two wells from the 23 70s. And we don't -- as far as we know, they've never 24 been video logged, and I'm, I'm hesitant to take one 25 out of service and video log it and be just running on	Page 191 1 But I think it might be a prudent use of 2 everyone's time moving forward if there was -- you 3 know, if that was -- if anybody -- if everyone was 4 open to that to doing consent agenda for Deryle's 5 stuff. 6 MAYOR ELAINE BROWN: We will take that into 7 consideration, although I just love the long words 8 that you throw in there from time to time. And I have 9 to go back and look them up, not at 10:00 at night. 10 All right. Anything else for the good of the order? 11 Seeing none, meeting adjourned. 12 (End of recording) 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 190 1 one well. 2 The inner ties with Atlantic Beach and Jax 3 Beach would not, would not provide our full needs. So 4 -- and we are discussing about moving forward with the 5 grout filling of one and two sooner rather than later. 6 But the concern for the geologist is if you have a 7 catastrophic failure of the, of the casing of, of -- 8 we've got a lot of artesian pressure in those wells 9 that you would have a lot of water escaping what was 10 otherwise contained within that casing. So, yeah, one 11 day I'm going to get out of operations and do 12 something less stressful. 13 MAYOR ELAINE BROWN: Any other questions or 14 comments from council members? Mr. Calhoun, we thank 15 you very much. We appreciate it. All right. Public 16 comments? Do we have anyone? No? Public comments 17 closed. Council comments? 18 COUNCILOR LAUREN KEY: I -- sorry. Sorry 19 because I know everyone wants to leave, but I was 20 going to see if -- I know it's up to you, Mayor Brown, 21 if we could start doing maybe Deryle's items on a 22 consent agenda since we've never said no, and then he 23 can do his write-up of what it is, and then if there's 24 questions or things we can pull them for, you know, we 25 can pull them for discussion.	Page 192 1 CERTIFICATE OF TRANSCRIPTIONIST 2 3 I, JAMIE YOUNG, hereby certify that I was 4 authorized to and did transcribe the provided 5 recording and that the foregoing transcript is a true 6 transcript of said electronic recording to the best of 7 my ability. 8 I FURTHER CERTIFY that I am not a relative, 9 employee, attorney, or counsel of any of the parties, 10 nor am I a relative or employee of any of the parties' 11 attorneys or counsel connected with the action, nor am 12 I financially interested in the action. 13 14 DATED this 24th day of September, 2024. 15 16  17 18 Jamie Young 19 20 21 22 23 24 25

5. Initial Order

**MARGARET R. DRIVER and
DOUGLAS R. DRIVER, III,**

Petitioners,

v.

In re: S. 70.51, F.S., proceeding

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent,

INITIAL ORDER

The undersigned, acting as the Special Magistrate chosen by the Parties, issues this Initial Order pursuant to the terms of s. 70.51, F.S., and his initial telephone conferences with the Parties on September 20, 23, and 24, 2024.

BACKGROUND

1. The Drivers filed a request for relief with the City of Neptune Beach (the City) on or about September 18, 2024 (the Request).

2. The Request alleged a development order denial by the City on September 17, 2024, triggered the 70.51, F.S. process.

3. S. 70.51 applies to both “enforcement actions” and “development order[s].” *Id.* at (3).

4. The City denial of a bed and breakfast site plan on the subject property constitutes a development “order ... which is or will have the effect of ... denying ... an application for a development permit” *Id.* at (2)(a). In turn, a “development permit” “means any ... zoning permit, ... special exception, variance, or any other similar action of local government, ... which has the effect of authorizing the development of real

property” *Id.* at (2)(b). S. 380.04, F.S., defines “development”: “[T]he carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land” *Id.* at (1).

PROCEDURAL POSTURE

5. S. 70.51 is a useful tool to try to take a time-out from potential litigation and to resolve land use disputes if possible. The following describes: (a) the statutory process; (b) problems with strict compliance; and (c) how we will proceed.¹

6. Subsection (3) is facially met by the filing of the Request.

7. Once the Request is filed, *id.* at (4) required the City to participate. The City is doing so.

8. The City forwarded the Request to the Special Magistrate on September 20, 2024. *See, id.* at (4).

9. I am treating September 20, 2024, as the date the Request was forwarded, and will calendar everything off of that date.

10. Subsection (5) requires the City to serve copies of the Request to:

(a) Owners of real property contiguous to the owner’s property at the address on the latest county tax roll; [and]

(b) Any substantially affected party who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objecting to or support for any development order at issue *Id.* Subsection (b) limits

¹ The statute contemplates a strict, somewhat internally inconsistent set of timelines. Nonetheless, it contemplates variances to accommodate the specific facts of the proceeding. I make a few such tweaks in this order.

notice to persons who “indicated desire to receive notice of any subsequent special magistrate proceedings occurring on the development order” *Id.* at (b).

11. The City served notices on all owners of neighboring property to the property at issue, as well as on those nonparties who attended the site plan proceedings.

12. While subsection (5)(b) mandates notice only for a “party [who] indicated a desire to receive notice of any subsequent special magistrate proceedings,” I am operating on the assumption that few if any members of the public even know s. 70.51 exists.

13. The Petitioners filed an extensive petition, which the City forwarded to me. I anticipate the City will submit whatever it deems appropriate in response. I ask the City to file any response pursuant to subsection (16)(a) by October 3, 2024.

14. The Parties should file a joint prehearing statement not later than seven (7) days prior to the proceeding. That statement should contain: (a) issues for hearing; (b) names of party representatives who will attend; and (c) stipulated v. disputed facts. I want brief (2 pages maximum) statements by each Party stating its position on the principal issues raised in the Petition. I ask each Party to please explain what uses remain for the property due to the denial.

15. This Initial Order notifies the Parties that I plan to view the Property prior to the hearing consistent with subsection (9).

16. I am waiving the requirements of subsection (12) that adjacent owners or public participants below notify me as a condition to participate in the s. 70.51 process. I further waive the limitations on their testimony set forth in that subsection, provided that

their testimony must be relevant to the underlying development order, the relief requested in this proceeding, or both. I will limit public participants to ten (10) minutes each, will ask that their testimony not be cumulative, and, per subsection (12), will not grant them party or intervenor status. I will allow notified third parties to donate their time to a representative, subject to the above.

17. As we discussed at the initial conference calls, s. 70.51 is ambiguous concerning the role of the mediation. I will proceed in an abundance of caution to protect the statutory mediation process. This means we will do the following:

- a. Opening statement by the Petitioners.
- b. Opening statement by the City.
- c. Public comments.
- d. Break into caucus, first with Petitioners, then with the City, and repeat as necessary until we have resolution or impasse.
- e. If we cannot resolve in the mediation phase under subsection (17)(a), I will return to the full, plenary proceeding under subsection (17)(b). I will ask respective counsel and party representatives questions I believe necessary to answer my remaining questions.
- f. If we impasse, I will determine within fourteen (14) days after the proceeding whether the development order “is unreasonable or unfairly burdens use of the property” pursuant to subsection (18), and issue my written recommendation to the City.

18. I emphasize subsection (20), which reads:

(20) The special magistrate's recommendation is a public record under chapter 119. However, actions or statements of all participants to the special magistrate proceeding are evidence of an offer to compromise and inadmissible in any proceeding, judicial or administrative.

(e.a.)

19. I am available for one day hearing on any day during the week of October 28, 2024. These dates are within 45 days of my receipt of the Petition on September 20, 2024, consistent with subsection (15)(a). Please advise me if any date is mutually convenient. I want to set asap. I understand the City is trying to find a location, so we will be flexible as needed.

Dated this 25th day of September, 2024.



Sidney F. Ansbacher

6. City's Notice of Participating Parties

IN AND BEFORE A SPECIAL MAGISTRATE
CITY OF NEPTUNE BEACH, FLORIDA

MARGARET R. DRIVER AND
DOUGLASS L. DRIVER, III,

Petitioners,
vs.

CITY OF NEPTUNE
BEACH, FLORIDA,

Respondent.
_____/

CITY'S NOTICE OF PARTICIPANTS IN
S. 70.51 PROCEEDING

COMES NOW the Respondent, CITY OF NEPTUNE BEACH,
FLORIDA, and files this Notice of the Participants in the Section 70.51,
proceeding scheduled for October 31, 2024:

1. Lead counsel for the City shall be Paul Waters of the Vose
Law Firm. Other members of the firm may attend to observe. Their
participation is not anticipated unless necessary:

Wade Vose, Partner
Becky Vose, Partner
Nancy Stuparich, Partner
Chloe Berryman, Attorney
Garrett Olsen, Attorney
Stephanie Vejo, Attorney
Maria Rondel, Attorney

2. The following staff members from the City will attend and participate as needed / if needed:

Richard Pike, City Manager
Heather Whitmore, Community Development Director
Catherine Ponson, City Clerk
Piper Turner, Code Compliance Supervisor

3. The following individuals were notified of the Petition as required by Sect. 70.51 (5) (a) and (b), F.S., as being owners of property contiguous to the owner's property or substantially affected parties who submitted oral or written testimony of a substantial nature during the underlying proceedings. Copies of the notices and any responses thereto shall be provided to the Petitioner and the Special Magistrate upon request.

Bane, Dreanna
Beathard, Casey
Bodinus, Jeff
Cobb, Dekel
Driver III, Douglas
Driver, Margaret
Flaherty, Brian
Jachem, Sharon
Len, Raymond
Leoni, Juan
Naughton, Rosemary
Ornstein, Matthew

Peters. Heather
Peters, Russell
Ronzon, Alison
Schoonover, Henny
Schoonover, George
Shealy, Marvin
Thole Shellie
Thurson, Ginny
Waters, Michael
Williams, Judith
Wolfson, Amy
Zubizaretta, Adreina

CITY'S NOTICE OF PARTICIPANTS
DRIVER V. CITY
SIGNATURE PAGE / CERT OF SERVICE

Dated this 27th day of September 2024.

Respectfully Submitted,

/s/ Paul Waters

Paul Waters, Esq.

Florida Bar No. 817651

324 W. Morse Blvd.

Winter Park, FL 32789

Telephone (407) 645-3735

Facsimile (407) 628-5670

paul@voselaw.com

cdarcy@voselaw.com

service@voselaw.com

Attorney for City of Neptune Beach

CERTIFICATE OF SERVICE

. **I HEREBY CERTIFY** that on September 27, 2024, a true and correct copy of the foregoing was served by email to all parties of record

/s/ Paul Waters

PAUL WATERS, ESQ.

Florida Bar No.:817651

Vose Law Firm, LLP

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Telephone (407) 645-3735

Facsimile (407) 628-5670

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cdarcy@voselaw.com

service@voselaw.com

7. Notice of Proceeding

**MARGARET R. DRIVER and
DOUGLAS R. DRIVER, III,**

Petitioners,

v.

In re: S. 70.51, F.S., proceeding

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent,

NOTICE OF S. 70.51 PROCEEDING

This will confirm that a s. 70.51, F.S. Special Magistrate proceeding has been scheduled in connection with the above-referenced matter for October 31, 2024, beginning at 9:00 a.m. This location of the proceeding has yet to be determined.

Please furnish me with a brief prehearing stipulation as set forth in paragraph 18 of the Initial order not later than seven (7) days before hearing. Also, please provide the names of any other counsel, parties and representatives who will be participating in the matter.

Dated this 26th day of September, 2024.

/s/Sidney F. Ansbacher

Sidney F. Ansbacher, as Special Magistrate
Florida Bar No. 0611300
780 N. Ponce de Leon Boulevard
St. Augustine, Florida 32084
Telephone No. (904) 829-9066
Facsimile No. (904) 825-4862
Primary Email: sfansbacher@ubulaw.com
Secondary Email: cindy@ubulaw.com

8. Amended Notice of Proceeding

**MARGARET R. DRIVER and
DOUGLAS R. DRIVER, III,**

Petitioners,

v.

In re: S. 70.51, F.S., proceeding

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent,

AMENDED* NOTICE OF S. 70.51 PROCEEDING

This will confirm that a s. 70.51, F.S. Special Magistrate proceeding has been scheduled in connection with the above-referenced matter for October 31, 2024, beginning at 9:00 a.m. This proceeding will be held in City of Neptune Beach Council Chambers located at 116 First Street, Neptune Beach, Florida 32266.

Please furnish me with a brief prehearing stipulation as set forth in paragraph 18 of the Initial Order not later than seven (7) days before hearing. Also, please provide the names of any other counsel, parties and representatives who will be participating in the matter.

Dated this 27th day of September, 2024.

/s/Sidney F. Ansbacher

Sidney F. Ansbacher, as Special Magistrate

Florida Bar No. 0611300

780 N. Ponce de Leon Boulevard

St. Augustine, Florida 32084

Telephone No. (904) 829-9066

Facsimile No. (904) 825-4862

Primary Email: sfansbacher@ubulaw.com

Secondary Email: cindy@ubulaw.com

*Amended to add location of proceeding.

9. City of NB Memo - Quasi-Judicial Hearings

Drivers v. City of Neptune Beach; In re: S. 70.51, F.S., proceeding

CITY'S MEMORANDUM OF LAW REGARDING QUASI-JUDICIAL HEARINGS

The Driver hearing was clearly quasi-judicial in nature because it applies the City's Code to a specific request / application; it specifically impacted the Drivers; and it derived from specific facts presented at a hearing with due process. Florida Courts have routinely considered hearings such as building and site plan reviews by advisory boards and legislative bodies (such as City Councils) as quasi-judicial in nature.

The Florida Supreme Court has listed four characteristics of a quasi-judicial decision: (1) quasi-judicial action results in the application of a general rule of policy; (2) a quasi-judicial decision has an impact on a limited number of persons or property owners and on identifiable parties and interests; (3) a quasi-judicial decision is contingent on facts arrived at from distinct alternatives presented at a hearing; and (4) a "quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions." Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993).

Quasi-judicial decisions are judicial inquiries that investigate, declare, and enforce rights and liabilities based on specific facts and existing laws. Lee County v. Sunbelt Equities, II, Limited Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993). These decisions enforce or apply the law to a specific situation, but they do not create new laws. Id. Quasi-judicial decisions tend to answer questions such as, "Does the law authorize a party to do what it requests?" Id.

The Third District Court of Appeal emphasized that when notice and a hearing are required, and the judgment is contingent on the showing made at the hearing, the action is quasi-judicial Miami-Dade Cty. v. City of Miami, 315 So. 3d 115 (3d DCA 2020). This principle was reiterated by the Second District Court of Appeal, where the court stated that decisions on building permits, site plans, and other development orders are quasi-judicial actions Braden Woods Homeowners Ass'n v. Mavard Trading, Ltd., 277 So. 3d 664 at 672 (2nd DCA 2019) (citing Snyder).

For other examples of Florida courts classifying development decisions that require hearings as quasi-judicial in nature that include granting or denying site-plan reviews and approvals, site-specific rezoning requests, and vested rights determinations, see generally, City of Jacksonville Beach v. Marisol Land Development, Inc., 706 So. 2d 354 (Fla. 1st DCA 1998); Park of Commerce Associates v. City of Delray Beach, 636 So. 2d 12 (Fla. 1994); Key Biscayne Gateway Partners, LTD v. Village of Key Biscayne, 172 So. 3d 499 (Fla. 3d DCA 2015); Stranahan House, Inc. v. City of Fort Lauderdale, 967 So. 2d 1121 (Fla. 4th DCA 2007; and, Alger v. United States, 300 So. 3d 274 (Fla. 3d DCA 2020).

In Summary, the Driver hearing was clearly a quasi-judicial proceeding. As such, on certiorari review, a Court will apply the standard of review applicable to quasi-judicial hearings, which is highly favorable to the City.¹

¹ The standards of review for quasi-judicial hearings are not addressed herein.

DATED this 2nd day of November, 2024.

/s/ Paul Waters

PAUL WATERS, ESQ.

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*Attorney for City of Neptune Beach,
Florida*

10. City of NB - Memo-Maximum Height Allowances

Drivers v. City of Neptune Beach; In re: S. 70.51, F.S., proceeding

CITY'S MEMORANDUM OF LAW REGARDING THE CRITERIA FOR MAXIMUM HEIGHT ALLOWANCES

Section 4.07 of the City of Neptune Beach's Charter by referendum sets a building height limitation of 35 feet. Under 4.07 (a), the stated purpose of the building height limitation is to protect the public health, safety, general welfare and aesthetics. Under 4.07 (e), the City Council may impose lower height limits in individual zoning districts. Under Section 27-239 of the Code of Ordinances, residential buildings shall not exceed 28 feet, and commercial buildings shall not exceed 35 feet anywhere in the City, including in the Central Business Zoning District, which is where the subject property is located.

The purpose and intent of the City's zoning districts are found in Section 27-222 of the Code. This Section describes the design objectives for new construction. Under Sec. 27-222 (2) (b), site improvements should be compatible with structures existing on neighboring parcels and should be sensitive to their designs and property rights. Designs which conflict with the use and enjoyment of any property should be avoided. Buildings should be designed in scale with the neighborhood and should complement the character of the neighborhood, rather than conflict with it. Under Sec. 27-222 (2) (c) Buildings should not present excess visual mass or bulk to public view or to adjoining properties. Sec. 27-222 (2) (j) emphasizes that design should not interfere with the private views enjoyed by neighboring parcels. No single parcel should enjoy a greater right than other parcels. Finally, buildings which substantially eliminate an existing view enjoyed on another parcel should be avoided. All of the above criteria relate to maximum height allowances.

In summary, although the City's Charter allows a maximum height of 35 feet for commercial buildings, new construction in the Central Business Zoning District should meet the purpose and intent of the Code. The City is within its authority under the Code to deny an application for development plan that builds to the maximum height if the development fails to meet scale, compatibility or conflicts with the other structures in the neighborhood, or if its height interferes with others' private views, which is certainly the case with the height of the Petitioners' proposed development. It must be noted that the maximum height allowance is only relevant to the settlement discussions in this proceeding. If the City's denial is challenged in certiorari, the maximum height allowance will not be at issue but rather whether competent and substantial evidence existed in the record to base the City Council's denial. Here, that evidence is found in the Petitioners' and public's testimony and failure to meet the characteristics of the surrounding area as well as other evidence in the record.

DATED this 2nd day of November, 2024.

/s/ Paul Waters

PAUL WATERS, ESQ.

Florida Bar No.: 817651

Vose Law Firm, LLP

324 W. Morse Blvd.

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*Attorney for Neptune Beach,
Florida*

11. Petitioners' Memo - Height

Driver v. City of Neptune Beach Section 70.51, Florida Statutes, Proceeding

Petitioners' Memorandum of Law Regarding the Controlling Criteria for Maximum Height During Site Plan Review

The Controlling Criteria are set forth in o Sections 4.07, 27-239 and Table 27-239 of the City of Neptune Beach Land Development Code ("LDC"), which govern commercial uses within the CBD zoning district and provide for a maximum building height of thirty-five (35') feet and a maximum of three (3) stories. Petitioners' property is located at 108 Orange Street and is within the Central Business District zoning category ("CBD"). Petitioners submitted an application for site plan review for a bed and breakfast. While the City failed to comply with the requirements of Section 166.033(1), Florida Statutes, which requires written findings of fact supporting the denial of the site plan, it appears that with regard to height, the denial was likely based upon concerns by citizens and the Board as to whether a thirty-five-foot building is "compatible" with the surrounding uses. This is not a valid criteria for denial.

First, "it is axiomatic that if an area is zoned for a particular use, that use is **deemed compatible** with surrounding uses." *Ocean Concrete, Inc. v. Indian River Cty.*, 241 So. 3d 181, 188 (Fla. 4th DCA 2018) (quoting *Nostimo, Inc. v. City of Clearwater*, 594 So. 2d 779, 781 (Fla. 2d DCA 1992) (emphasis added)); see also *Irvine v. Duval Cty. Planning Comm.*, 466 So. 2d 357, 365 (Fla. 1st DCA 1985) (Zehmer, J., dissent adopted in 504 So.2d 1265, 1267 (Fla. 1st DCA 1986)) (where a use is permitted under applicable zoning regulations, the use cannot be deemed "contrary to the public interest"). The development criteria governing the use such as setbacks, height, and density, are likewise legislatively **deemed compatible**. *Colonial Apts., L.P., City of DeLand*, 577 So. 2d 593, 597 (Fla. 5th DCA 1991) (when a law establishes a specific allowable density, the permitted density cannot be reduced during site plan review even if the city no longer believes the density is appropriate; a reduction must be addressed in legislative action).

Second, ordinances restricting the lawful use of property must establish meaningful and definitive standards and criteria for the guidance of staff and applicants. *Drexel v. City of Miami Beach*, 64 So. 2d 317, 319-20 (Fla. 1953). As explained in more detail in *Petitioners' Memorandum of Law Regarding Whether Quasi-Judicial Factors Apply to Site Plan Review*, Florida law recognizes that plat review and site plan review, as distinguished from zoning and land use amendments, are ministerial or administrative activities. Site plan approval cannot be withheld once the legislatively adopted requirements have been met. *Park of Commerce Assocs. v. City of Delray*, 606 So. 2d 633, 634 (Fla. 4th DCA 1992). When a local government establishes standards and criteria by ordinance, owners are entitled to rely on those standards and criteria. When the local government establishes a specific allowable height "its clear terms cannot be varied by a forced interpretation of intent." *Colonial Apts., L.P.* 577 So. 2d at 598. In other words, the City cannot use generalized statements of intent to disregard its own stated criteria and effectively down-zone Petitioners' property. *City of Miami v. Save Brickell Ave., Inc.*, 426 So. 2d 1100, 1105 (Fla. 3d DCA 1983).

The City put Petitioners property into the CBD zoning district. At the time of these decisions, the City made a legislative determination that a bed and breakfast, at a height of thirty-five feet, was compatible with the surrounding uses. While the City may now wish to change its prior compatibility determination, it cannot subject Petitioners to *ad hoc* legislation in the form of a denial of Petitioners' site plan based upon a height that is permitted on that site under the City's own LDC development criteria.

DATED this 8th day of November, 2024.

ROGERS TOWERS, P.A.

/s/ Cristine M. Russell

Emily G. Pierce

Florida Bar Number: 881139

Cristine M. Russell

Florida Bar Number: 0157406

Courtney P. Gaver

Florida Bar Number: 121847

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Attorney for Petitioner

12. Petitioners' Memo - Site Plan Review

Driver v. City of Neptune Beach Section 70.51, Florida Statutes, Proceeding

Petitioners' Memorandum of Law Regarding Whether Quasi-judicial Factors Apply to Site Plan Review

Florida law recognizes that site plan review and plat review, as distinguished from zoning and land use amendments, are **administrative in nature**. *Broward Cty. v. Narco Realty, Inc.*, 359 So. 2d 509, 510-511 (Fla. 4th DCA 1978) (consideration of a plat or site plan is “an administrative act”); *Colonial Apts., L.P. v. City of DeLand*, 577 So. 2d 593, 598 (Fla. 5th DCA 1991) (site plan review is an “administrative decision”). This distinction is significant because while discretionary determinations such as what constitutes an appropriate use for property are relevant in rezoning determinations, site plan review involves the mere application of facts to specific established criteria. *Park of Comm. Assocs. v. City of Delray Beach*, 606 So. 2d 633, 636 (Fla. 4th DCA 1992) (Farmer, J. concurring) (when a local government “conducts site plan or plat review, it merely applies established rules of law to existing and uncontested facts.”); *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239, 242 (Fla. 4th DCA 1983) (approval of a site plan is administrative and “no element of discretion remains once the legal requirements have been met”). The Florida Supreme Court has held that site plan review decisions “are quasi-judicial in nature and thus subject to certiorari review by courts.” *Park of Commerce Associates v. City of Delray Beach*, 636 So. 2d 12, 15 (Fla. 1994). However, the City appears to be taking this holding out of context in advancing the argument that because the hearing was quasi-judicial in nature, the City had unfettered discretion to decide whether it believed a use otherwise permitted on the property pursuant to the controlling zoning designation and/or the height permitted under the zoning designation was “compatible” with the surrounding uses.

With regard to site plan (or plat) review, the City’s quasi-judicial administrative proceeding is limited to a **factual** determination as to whether the site plan (or plat) “conforms to the specific requirements set out in the administrative regulations governing the erection of improvements on the property.” *Park of Commerce Assocs.*, 606 So. 2d at 635. The criteria that can be considered is only that which is specific and “capable of objective determination.” *Id.*; *Drexel v. City of Miami Beach*, 64 So. 2d 317, 319-20 (Fla. 1953). General statements of intent cannot serve as independent authority to deny a site plan. *Southern Coop. Dev. Fund v. Driggers*, 696 F.2d 1347, 1351-52 (11th Cir. Ct. 1983) (prefatory language cannot be used to reserve discretion in site plan review); *City of Miami v. Save Brickell Ave., Inc.*, 426 So. 2d 1100, 1104 (Fla. 3d DCA 1983) (questions “of what is good or bad for the city and the public” are legislative). “Quasi-judicial boards **do not have** the power to **ignore** ... the legislated criteria they utilize in making their quasi-judicial determinations.” *Verizon Wireless Personal Comms., L.P. v. Sanctuary at Wulfert Pt. Cmt’y Ass’n, Inc.*, 916 So. 2d 850, 855 (Fla. 2d DCA 2005) (emphasis in original).

As explained further in *Petitioners’ Memorandum of Law Regarding the Controlling Criteria for Maximum Height During Site Plan Review*, use and height (and similar development criteria) were deemed compatible by the City when it legislatively created the CBD zoning category and when it zoned Petitioners’ property as CBD. The quasi-judicial administrative proceeding conducted by the City was limited **only** to a determination of whether the facts presented demonstrated compliance or noncompliance with the specific, objective site plan criteria. *Blair Nurseries, Inc. v. Baker Cty.*, 199 So. 3d 534, 537 (Fla. 1st DCA 2016) (no unbridled discretion; local government had “legal responsibility” to grant plat vacation upon a showing that applicant met published criteria). The City had no discretion to deny the site plan when Petitioners demonstrated that the plan met the specific objective criteria governing development of a non-residential use on the subject parcel and the “facts” presented by the opponents did not demonstrate otherwise.

DATED this 8th day of November, 2024.

ROGERS TOWERS, P.A.

/s/ Cristine M. Russell

Emily G. Pierce

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Cristine M. Russell

Florida Bar Number: 0157406

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Attorney for Petitioner

13. Joint Pre-Hearing Stipulation

MARGARET R. DRIVER and
DOUGLAS R. DRIVER, III,

Petitioners,

v.

In re: S. 70.51, F.S., proceeding

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent.

_____/

JOINT PRE-HEARING STIPULATION

Pursuant to the Initial Order dated September 25, 2024, Petitioners, MARGARET R. DRIVER and DOUGLAS R. DRIVER, III (together “Petitioner” or the “Applicant”), and Respondent, the CITY OF NEPTUNE BEACH, FLORIDA (“Respondent” or “City”), hereby file this Joint Pre-Hearing Stipulation, and state:

APPEARANCES

For Petitioner/Applicant:

Emily G. Pierce, Esquire
Cristine M. Russell Esquire
Courtney P. Gaver, Esquire
Rogers Towers, PA
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

For Respondent/City:

Paul Waters, Esquire
Vose Law Firm LLLP
324 W. Morse Blvd.
Winter Park, Florida 32789

A. Concise Statement of the Nature of the Controversy

The Petitioner is challenging whether the City’s denial of an application for development plan DP 24-04 (the “Application”) for a proposed bed and breakfast, is arbitrary, and unreasonably and unfairly burdens the use of the subject property. Each party’s statement of issues including remaining uses of the subject property is attached hereto as **Exhibit “A”** and **Exhibit “B”** hereto.

B. Statement of Stipulated Facts

1. The property at issue is located at 108 Orange Street, Neptune Beach, Duval County, Florida (RE # 172769-0000) (the “Property”).
2. The Property is a vacant lot located at the northeast corner of Orange Street and Midway Street within the corporate limits of the City.
3. Petitioner, Margaret R. Driver (“Mrs. Driver”), holds legal title to the Property and has owned the Property since 1989.
4. The Property is zoned Central Business District (“CBD”) pursuant to the City's Unified Land Development Code (“LDC”).
5. The Property has a Future Land Use Map (“FLUM”) designation of Town Center pursuant to the City’s 2021-2046 Comprehensive Plan (“Comprehensive Plan”).
6. The Property is surrounded by properties having the CBD zoning designation on the east, north, and west. The properties to the south are zoned RC/R-4.
7. The immediate properties surrounding the Property consist of single-family and multi-family residential properties.
8. Pursuant to the Application, Mrs. Driver proposes to develop the Property with her son, Petitioner Douglas L. Driver, III (“Mr. Driver”) as a bed and breakfast (the “B&B”).
9. As shown on the Application, the proposed B&B is a 3,507 square foot three-story structure with two rental/guest bedrooms and one owner’s suite, providing two parking spaces. As proposed in the Application, the ground/first floor consists of an interior parking garage (for one parking space) and guest bedroom, the second floor consists of a lobby and common living areas including a kitchen, and the third/top floor consists of one guest room and the owner’s suite.
10. On April 10, 2024, Mr. Driver filed the Application with the City.
11. City professional staff provided comments to the Applicant on May 3, 2024.
12. On May 8, 2024, the Applicant provided a revised site plan (“Site Plan”), floor plan, and elevations of the proposed B&B in response to City staff comments on the Application.
13. City professional staff issued a staff report prior to the Community Development Board (“Board”) meeting on May 8, 2024 (the “Staff Report”) that recommended approval of the Site Plan.
14. In the Staff Report, City professional staff determined that the proposed B&B was permitted by right under the LDC and that the Site Plan complied with all applicable LDC standards and technical requirements of the CBD zoning district.

15. The Application proposed the following:

- A lot area of 2,750 square feet
- A lot width of 50 feet
- A front yard setback (Orange Street) of 10 feet
- A corner yard setback (Midway) of 11 feet
- A rear yard setback of 5 feet
- A maximum lot coverage of 53.7%
- A maximum building height of 35 feet
- A minimum building frontage buildout of 74%
- A Lobby design styled frontage with an accessible front entry from the first floor at the sidewalk level
- The buildings first floor façade is 45% transparent
- The buildings second and third floor façades are 40% transparent
- A total of two parking spaces (one garage, and one driveway) based upon one parking space per guest room and two parking spaces for the owner/operator less 50%

16. On May 8, 2024, the Board considered Petitioner's Application.

17. City professional staff opined that the proposed B&B was consistent with the criteria of LDC 27-82(f) and recommended approval.

18. The Board heard public comments from members of the public who opposed the Application on various grounds.

19. The Board rejected the staff's recommendation of approval and voted to recommend denial of the Application to the City Council.

20. On August 19, 2024, the City Council considered Petitioner's Application.

21. The City's Community Development Director, Heather Whitmore, presented the Application, and confirmed that City professional staff determined the Application sought by Petitioner for the Property was consistent with the LDC and recommended approval of the Site Plan.

22. The hearing on the Application included public comments from neighbors who opposed the B&B.

23. Following a public hearing, the City Council unanimously denied the Application by Final Development Order Letter of Denial DP24-04: 108 Orange St. (“Final Development Order”) dated September 13, 2024.

24. Petitioners received the written denial of the Final Development Order on September 17, 2024.

25. The Final Development Order states that “The findings of fact and conclusions of law, which are the basis of the City Council’s decision in this matter, are found within the minutes of the meeting and in the agenda materials, which are hereby adopted and incorporated herein and made a part hereof by reference,” and then states that the “final development order is inconsistent” with LDC 27-82(f)(1), (2), (3), and (6).

26. On September 18, 2024, the Petitioner filed its Petition for Relief Pursuant to Section 70.51, Florida Statutes (Special Magistrate Proceeding) (“Petition”), to trigger the statutory process.

27. On September 27, 2024, Respondent filed its Response to the Petition.

C. Issues of Law that Remain to be Litigated

1. Whether under Section 166.033(1), Florida Statutes, the City’s failure to set forth findings of fact in its Final Development Order constitutes a departure from the essential requirements of the law.

2. Whether a bed and breakfast is a permitted use “by right” within the CBD zoning district.

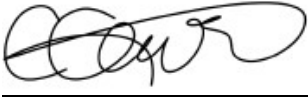
3. Whether Petitioner met its burden of demonstrating by competent substantial evidence that the proposed site plan meets all applicable LDC criteria.

4. Whether the public comment in the record of this case constitutes competent and substantial evidence to support the City’s denial of the Application.

[SIGNATURES ON THE FOLLOWING PAGE]

DATED this 24th day of October, 2024.

ROGERS TOWERS, P.A.



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EXHIBIT “A”
PETITIONER’S STATEMENT

MARGARET R. DRIVER and
DOUGLAS R. DRIVER, III,

Petitioners,

v.

In re: S. 70.51, F.S., proceeding

CITY OF NEPTUNE BEACH, FLORIDA,

Respondent.

_____ /

PETITIONERS' STATEMENT OF ISSUES

Pursuant to the Initial Order dated September 25, 2024, Petitioners, MARGARET R. DRIVER and DOUGLAS R. DRIVER, III (together "Petitioner" or the "Applicant") hereby file their statements on the principal issues raised in the Petition:

1. The City's failure to set forth findings of fact in its Final Development Order constitutes a departure from the essential requirements of the law. Florida Statute §166.033(1) mandates that any denial of a development permit or order must include written findings supporting the municipality's decision.

2. Petitioner met its burden of proof, showing through competent substantial evidence that the proposed site plan complied with all applicable criteria, leaving the City without discretion to deny the application. The City's role in reviewing the site plan is administrative, not legislative, and the process is quasi-judicial where the City must determine if the site plan conforms to regulatory requirements governing the development of improvements on the site.¹ Petitioner had the burden to demonstrate that the application for site plan approval complied with the applicable ordinances.²

The City's Community Development Director's staff report and testimony³ provided competent substantial evidence of the site plan's compliance with all relevant provisions of the Land Development Code (LDC) as follows: § 27-82(f)(1)-(7) (factors considered for final development plan approval); § 27-237(9) and Table 27-239 (free-standing building cannot exceed a gross floor area of 25,000 square feet); Table 27-239 (maximum height for non-residential buildings located within the CBD zoning district is 35 feet and the maximum stories is three); § 27-238(a)(9) and Table 27-239 (maximum lot coverage for uses in the CBD zoning district is 85% of the gross site area); Table 27-239 (minimum front yard setback of zero feet, maximum front yard setback of ten feet, minimum rear yard setback of five feet, minimum side yard (internal) setback of zero feet, minimum side yard (street) setback of five feet, and maximum side yard (street) set back of fifteen feet); Table 27-239 (minimum primary street frontage buildout of 70%); and §§ 27-236 and 27-246 (frontage requirements and standards and special regulations applicable to subject site).

¹ *Park of Com. Assocs. v. City of Delray Beach*, 606 So. 2d 633 (Fla. 4th DCA 1992), decision clarified on denial of reh'g (Nov. 18, 1992), approved, 636 So. 2d 12 (Fla. 1994).

² *Bd. of Cnty. Commr's of Brevard Cnty v. Snyder*, 27 So. 2d 469, 472 (Fla. 1993).

³ *Payne v. City of Miami*, 53 So. 3d 258, 312 n. 19 (Fla. 3d DCA 2010). See *Vill. of Palmetto Bay v. Palmer Trinity Priv. Sch., Inc.*, 128 So. 3d 19, 27 (Fla. 3d DCA 2012); *Payne v. City of Miami*, 52 So. 3d 707 (Fla. 3d DCA 2010); *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 204-205 (Fla. 3d DCA 2003).

Because Petitioner presented competent substantial evidence of compliance with the applicable criteria, the burden shifted to the City to prove by competent substantial evidence that the application failed to meet the criteria and was adverse to the public interest.⁴

3. There is no competent substantial evidence in the record to support the City's denial of the site plan. Florida courts recognize that lay opinion testimony can be considered competent substantial evidence in certain circumstances, but such opinion must be fact-based.⁵ Even where a municipality's zoning criteria considers the opinions of surrounding owners, the opinions of neighbors, even if numerous, do not constitute sufficient grounds to deny a development order.⁶ Here, the subject property is zoned for the proposed use, making it inherently compatible with surrounding uses.⁷ Thus, any "findings" that the proposed use did not fit the characteristics of the neighborhood or was otherwise incompatible with the surrounding uses and homes contravenes Florida law.⁸

Florida law makes clear that where all legal requirements are met, the City has no discretion to deny site plan approval based solely on subjective neighborhood concerns.⁹ Here, the record demonstrates that all of the LDC criteria had been met and that denial rose from subjective neighborhood opinion that the proposed plan did not meet "the characteristic of the surrounding area" and that Petitioner was attempting to build a 35-foot-tall single-family residence and not a bed and breakfast. Opinions and fear of neighbors will not constitute competent substantial evidence to support a denial.¹⁰ Likewise, the "objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit."¹¹

The City also cannot deny the application based on the presumption that Petitioner will violate the law, as it is presumed that applicants will comply with legal standards.¹²

⁴ See *Rural New Town, Inc. v. Palm Beach Cty.*, 315 So. 2d 478, 480 (Fla. 4th DCA 1975); *Snyder*, 627 So. 2d at 476.

⁵ *Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 30 (Fla. 1st DCA 2010)

⁶ *Colonial Apartments, L.P. v. City of DeLand*, 577 So. 2d 593, 596 (Fla. 5th DCA 1991); *BML Invs. v. City of Casselberry*, 476 So. 2d 713 (Fla. 5th DCA 1985). E.g. *Katherine's Bay, LLC*, 52 So. 3d at 30 (explaining lay witnesses cannot speculate about potential traffic problems, light and noise pollution or that a proposed use would devalue neighboring homes).

⁷ *Ocean Concrete, Inc. v. Indian River Cnty., Bd. of Cnty. Commissioners*, 241 So. 3d 181, 188 (Fla. 4th DCA 2018) ("It is axiomatic that if an area is zoned for a particular use, that use is deemed compatible with surrounding uses."); *Nostimo, Inc. v. City of Clearwater*, 594 So. 2d 779, 781 (Fla. 2d DCA 1992) (finding that if the area is zoned for the proposed use, the use is compatible with surrounding uses).

⁸ *B. S. Enterprises, Inc. v. Dade County*, 342 So.2d 117, 118 (Fla.3d DCA 1977); *Rural New Town, Inc.*, 315 So.2d at 480.

⁹ *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239 (Fla. 4th DCA 1983) ("No element of discretion remains once legal requirements have been met.").

¹⁰ *Flowers Baking Co. v. City of Melbourne*, 537 So. 2d 1040, 1041 (Fla. 5th DCA 1989) (fears as to increased traffic do not constitute competent substantial evidence); *Pollard v. Palm Beach County*, 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990) (opinions as to traffic, light and noise are not factual evidence and cannot form the basis for a denial of a zoning change); *Metropolitan Dade County v. Blumenthal*, 675 So.2d 598, 607 (Fla. 3d DCA 1995), *rev. dismissed*, 680 So.2d 421 (Fla.1996); *Jesus Fellowship, Inc.*, 752 So. 2d at 710 (expert testimony is required to address traffic); *BML Invs.*, 476 So. 2d at 715 (Fla. 5th DCA 1985) (traffic concerns without evidence in support cannot support a denial).

¹⁰ *City of Apopka v. Orange Cnty.*, 299 So. 2d 657, 659 (Fla. 4th DCA 1974).

¹¹ *Id.*

¹² *McMillan v. Dax & Trin Dev. Corp.*, Case No. 85-0120 RO ¶ 19 (Fla. DOAH July 14, 1985; Fla. DER July 30, 1985) (quoting *Atlantic Coast Line R.R. Co. v. Mack*, 57 So. 2d 447 (Fla. 1952)).

EXHIBIT “B”
RESPONDENT’S STATEMENT

IN AND BEFORE A SPECIAL MAGISTRATE
CITY OF NEPTUNE BEACH, FLORIDA

MARGARET R. DRIVER AND
DOUGLASS L. DRIVER, III,

Petitioners,

vs.

CITY OF NEPTUNE BEACH,
FLORIDA,

Respondent.

_____ /

CITY’S STATEMENT OF ISSUES RAISED IN THE PETITION AND REMAINING
USES OF THE SUBJECT PROPERTY

Pursuant to the Special Magistrate’s Initial Order dated September 25, 2024, Respondent, the CITY OF NEPTUNE BEACH, FLORIDA, hereby files this Statement:

I. CITY’S POSITION OF PRINCIPAL ISSUES RAISED IN THE PETITION

1. The Petitioners are not entitled to a bed and breakfast as a “matter of right” because they still must meet other sections of the City’s Land Development Code (“LDC”). Although bed and breakfasts are “allowable uses” in the Commercial Business District, the Petitioner’s application is still subject to compliance with other provisions of the LDC, namely the criteria set forth for approval in LDC Sec. 27-82. (f) (1), (3) and (6) which are outlined in the City’s Response to the Petition.

2. Although the Petitioners suggest otherwise, the City Council is not bound by staffs’ recommendations to approve the application. Staff recommendations may be considered but the final decision rests with the governing body, which relies on competent and substantial evidence presented during the hearing.

3. The City's denial is supported by competent and substantial evidence. Evidence presented during the hearing demonstrates that; The proposed development does not meet the characteristics of the surrounding area; The nature of the proposed development is not acceptable because based on the Petitioner's own testimony the intentions are not to build a bed and breakfast but rather to circumvent the LDC and build a 35-foot-tall residence; and, Public comment that is based on subjective matters that do not require expertise may be considered competent and substantial evidence.

II. USES REMAING FOR THE SUBJECT PROPERTY

The remaining uses for the property include all permitted uses and uses by special exception in the Commercial Business District found in the City's LDC Section 27-227 (k) (2) and (3).

Dated this 19th day of October 2024.

Respectfully Submitted,

/s/ Paul Waters

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Attorney for City of Neptune Beach

CERTIFICATE OF SERVICE

. I HEREBY CERTIFY that on October 19, 2024, a true and correct copy of the foregoing was served by email to all parties of record

/s/ Paul Waters

PAUL WATERS, ESQ.

Sec. 27-226. Allowable uses within zoning districts.

- (a) All uses shall conform to the standards for each zoning district as provided below:
- (1) Because the lists of permissible uses are not exclusive, those uses not listed shall be prohibited. If a proposed use might fall within more than one (1) group of uses identified in section 27-226, the city manager or designee will determine which most closely and most specifically matches the proposed use, taking into account the reasonably expected land-use impacts from the proposed use.
 - (2) Parcels with the following designations on the adopted future land use map have typically been assigned the same zoning district as comparable abutting land:
 - a. Government and public utilities.
 - b. Education.
 - c. Recreation and open space.
- (b) *Conservation (CON):*
- (1) *Intent.* The CON zoning district is intended to provide for protection for environmentally sensitive lands. This district corresponds to the conservation designation on the adopted future land use map.
 - (2) *Permitted uses.* The uses permitted within the CON zoning district shall be:
 - a. Single-family residence by special exception;
 - b. Docks;
 - c. Retaining walls.
- (c) *Residential-1 (R-1):*
- (1) *Intent.* The R-1 zoning districts are intended to provide for single-family residences. This district corresponds to portions of the Suburban Residential I designation on the adopted future land use map.
 - (2) *Permitted uses.* The uses permitted within the R-1 zoning district shall be:
 - a. Single-family residence;
 - b. Public park/recreation area;
 - c. Family day care home, as defined by F.S. §§ 402.26—402.319;
 - d. Accessory structures and uses as defined by article V.
 - (3) *Uses by special exception.* The uses permitted by special exception within the R-1 zoning district shall be:
 - a. Government uses, buildings and utilities;
 - b. Primary/secondary education facilities;
 - c. Worship facility and childcare associated with facility.
- (d) *Residential-2 (R-2):*
- (1) *Intent.* The R-2 zoning districts are intended to provide for single-family residences. This district corresponds to portions of the Suburban Residential I designation on the adopted future land use map.
 - (2) *Permitted uses.* The use permitted within the R-2 zoning district shall be:
 - a. Single-family residence;

-
- b. Public park/recreation area;
 - c. Family day care home, as defined by F.S. §§ 402.26—402.319;
 - d. Accessory structures and uses as defined by article V.
- (3) *Uses by special exception.* The uses permitted by special exception within the R-2 zoning district shall be:
- a. Government uses, buildings and utilities;
 - b. Primary/secondary education facilities;
 - c. Worship facility and childcare associated with facility.
- (e) *Residential-3 (R-3):*
- (1) *Intent.* The R-3 zoning districts are intended to provide for single-family residences. This district corresponds to the Traditional Residential I designation on the adopted future land use map.
- (2) *Permitted uses.* The use permitted within the R-3 zoning district shall be:
- a. Single-family residence;
 - b. Public park/recreation area;
 - c. Family day care home, as defined by F.S. §§ 402.26—402.319;
 - d. Accessory structures and uses as defined by article V.
- (3) *Uses by special exception.* The uses permitted by special exception within the R-3 zoning district shall be:
- a. Government uses, buildings and utilities;
 - b. Primary/secondary education facilities;
 - c. Worship facility and childcare associated with facility.
- (f) *Residential-4 (R-4):*
- (1) *Intent.* The R-4 zoning district is intended to provide for single-family and two-family (duplex) residences with densities not to exceed ten (10) dwelling units per acre. This district corresponds to the Suburban Residential II designation and the Traditional Residential II designation on the adopted future land use map. The residential conservation (RC) overlay applies to R-4 land east of 3rd Street, which has been assigned to the Traditional Residential II designation on the adopted future land use map.
- (2) *Permitted uses.* The uses permitted within the R-4 zoning district shall be:
- a. Single-family residence;
 - b. Two-family (duplex) residence;
 - c. Public park/recreation area;
 - d. Family day care home, as defined by F.S. §§ 402.26—402.319;
 - e. Accessory structures and uses as defined by article V.
- (3) *Uses by special exception.* The uses permitted by special exception within the R-4 zoning district shall be:
- a. Government uses, buildings and utilities;
 - b. Primary/secondary education facilities;

-
- c. Worship facility and childcare associated with facility.
- (g) *Residential-5 (R-5)*:
- (1) *Intent*. The R-5 zoning districts are intended to provide for single-family residences, two-family (duplex) residences and multifamily residences with densities not to exceed seventeen (17) dwelling units per acre. This district corresponds to the Suburban Residential III and Traditional Residential III designations on the adopted future land use map.
- (2) *Permitted uses*. The uses permitted within the R-5 zoning district shall be:
- a. Single-family residence;
 - b. Two-family (duplex) residence;
 - c. Multifamily residence;
 - d. Public park/recreation area;
 - e. Family day care home, as defined by F.S. §§ 402.26—402.319;
 - f. Accessory structures and uses as defined by article V.
- (3) *Uses by special exception*. The uses permitted by special exception within the R-5 zoning district shall be:
- a. Government uses, buildings and utilities;
 - b. Primary/secondary education facilities;
 - c. Worship facility and childcare associated with facility;
 - d. Adult day care;
 - e. Child day care;
 - f. Nursing home;
 - g. Adult congregate living facility.
- (h) *Commercial-1 (C-1)*:
- (1) *Intent*. The C-1 zoning districts are intended to provide for office, retail sales, and professional services. This district corresponds to the walkable commercial corridor designation on the adopted future land use map.
- (2) *Permitted uses*. The uses permitted within the C-1 zoning district shall be:
- a. Business and professional offices including, architects, accountants, doctors, dentists, miscellaneous health offices and clinics, veterinary clinic, and legal services;
 - b. Financial institution, insurance, and real estate offices;
 - c. Personal service establishments as follows: laundry, cleaning and garment services; photographic studios; beauty and barber shops, day spa, nail and waxing salon; shoe repair and miscellaneous personal services (not including tattoo establishments); cleaning and janitorial services (no outdoor storage of vehicles, materials, equipment or supplies);
 - d. Travel agencies;
 - e. Photographic studios;
 - f. Public Park/recreation area;

-
- g. Library, museum, and art gallery.
- (3) *Uses by special exception.* The uses permitted by special exception within the C-1 zoning district shall be:
- a. Retail sales;
 - b. Parking lot (not associated with any business); excluding parking structures;
 - c. Government uses, buildings and utilities;
 - d. Primary/secondary education facilities;
 - e. Dance, art, dramatic, gymnastics and music studio;
 - f. Worship facility and childcare associated with facility;
 - g. Miscellaneous personal services;
 - h. Accessory structures and uses for storage as defined by article V.
- (i) *Commercial-2 (C-2):*
- (1) *Intent.* The C-2 zoning districts are intended to provide for retail sales and service for one (1) or more neighborhoods. This district corresponds to the Commercial I and neighborhood center designations on the adopted future land use map.
- (2) *Permitted uses.* The uses permitted within the C-2 zoning district shall be:
- a. Interior service restaurant, carry-out and delivery restaurant, fast-food restaurant, drive-in restaurant;
 - b. Outdoor seating/dining for restaurant on private property (see subsection 27-227(b)(5));
 - c. Business and professional offices as follows: Building contractors and subcontractors (no outdoor storage of vehicles, materials, equipment or supplies), architects, accountants, doctors, dentists, miscellaneous health offices and clinics, veterinary clinic, and legal services;
 - d. Financial institution, insurance and real estate offices;
 - e. Travel agencies;
 - f. Retail sales, shopping center, wholesale sales (no on-site storage of stock), furniture and appliance sales, package liquor store and pharmacy;
 - g. Personal service establishments as follows: Laundry, cleaning, and garment services; photographic studios; beauty and barber shops, day spa, nail and waxing salon; shoe repair and miscellaneous personal services (not including tattoo establishments); cleaning and janitorial services (no outdoor storage of vehicles, materials, equipment or supplies);
 - h. Dance, art, dramatic, gymnastics and music studio;
 - i. Library, museum, and art gallery;
 - j. Public park/recreation area;
 - k. Recreation, amusement, and entertainment (including, bowling alley, skating rink, billiard and pool hall, arcade, miniature golf, indoor athletic and exercise facilities, tennis, handball, or racquetball facility);
 - l. Radio and television broadcasting studio;
 - m. Adult congregate living facilities;

-
- n. Funeral establishment;
 - o. Social, fraternal club, lodge, and union hall;
 - p. Medical marijuana treatment center.
- (3) *Uses by special exception.* The uses permitted by special exception within the C-2 zoning district shall be:
- a. Outdoor seating/dining for restaurant on public property (see subsection 27-227(b)(5));
 - b. Motor vehicle service;
 - c. Parking lot/structure (not associated with any business);
 - d. Moving business (no mini-warehouses);
 - e. Government uses, buildings and utilities;
 - f. Recycling collection center;
 - g. Primary/secondary education facilities;
 - h. Worship facility and childcare associated with facility;
 - i. Recreation, amusement, and entertainment (including, theater, night club, private club, and bar/tavern);
 - j. Light manufacturing;
 - k. Wholesale sales (on-site storage of stock);
 - l. Day care facilities;
 - m. Accessory structures and uses for storage as defined by article V.

(j) *Commercial-3 (C-3):*

- (1) *Intent.* The C-3 zoning districts are intended to provide for retail sales and service that serve the overall community. This district corresponds to the Commercial II designation on the adopted future land use map.
- (2) *Permitted uses.* The uses permitted within the C-3 zoning district shall be:
- a. Hospital;
 - b. Hotel/motel;
 - c. Interior service restaurant, carry-out and delivery restaurant, fast-food restaurant, drive-in restaurant;
 - d. Outdoor seating/dining for restaurant on private property (see subsection 27-227(b)(5));
 - e. Business and professional offices as follows: Building contractors and subcontractors (no outdoor storage of vehicles, materials, equipment, or supplies), architects, accountants, doctors, dentists, miscellaneous health offices and clinics, veterinary clinic, and legal services;
 - f. Financial institution, insurance and real estate offices;
 - g. Indoor athletic and exercise facility;
 - h. Personal service establishments as follows: Laundry, cleaning and garment services; photographic studios; beauty and barber shops, day spa, nail and waxing salon; shoe repair and miscellaneous

personal services (not including tattoo establishments); cleaning and janitorial services (no outdoor storage of vehicles, materials, equipment or supplies);

- i. Retail sales, shopping center wholesale sales (no on-site storage of stock), furniture and appliance sales, package liquor store, pharmacy;
 - j. Parking lot/structure (not associated with any business);
 - k. Trade business or vocational school, college, community college or university;
 - l. Dance, art, dramatic, gymnastics and music studio;
 - m. Library, museum, and art gallery;
 - n. Public park/recreation area;
 - o. Recreation, amusement, and entertainment (including, bowling alley, skating rink, billiard and pool hall, arcade, miniature golf, indoor athletic and exercise facilities, tennis, handball or racquetball facility, theater, night club, private club and bar/tavern);
 - p. Radio and television broadcasting studio;
 - q. Nursing home;
 - r. Adult congregate living facility;
 - s. Funeral establishment;
 - t. Medical marijuana treatment center.
- (3) *Uses by special exception.* The uses permitted by special exception within the C-3 zoning district shall be:
- a. Outdoor seating/dining for restaurant on public property (see subsection 27-227(b)(5));
 - b. Wholesale sales (on-site storage of stock);
 - c. Adult entertainment and service;
 - d. Bus or other transportation terminal;
 - e. Motor vehicle services;
 - f. Moving business (no mini-warehouses);
 - g. Government uses, buildings and utilities;
 - h. Recycling collection center;
 - i. Worship facility and childcare associated with facility;
 - j. Social, fraternal club, lodge, and union hall;
 - k. Light manufacturing;
 - l. Day care facilities;
 - m. Accessory structures and uses for storage as defined by article V.

(k) Central business district (CBD):

- (1) Intent.** The CBD zoning district is intended to allow a mix of commercial uses and compatible residential uses that will encourage an urban intensive, pedestrian oriented, neighborhood ambiance. The CBD is further established to encourage the continuation of the present unique Central Business District of Neptune Beach, as well as, the continuation of its present aesthetically pleasing environment, to

provide areas for the concentration of compatible land uses, to provide sufficient space for appropriate commercial, miscellaneous service activities and residences which will strengthen the city's economic base, and to prevent the intrusion of objectionable land uses. This district corresponds to the town center designation on the adopted future land use map.

(2) *Permitted uses.* The uses permitted within the CBD zoning district shall be:

- a. Hotel/motel;
- b. Bed and breakfast;
- c. Interior service restaurant, carry-out and delivery restaurant;
- d. Outdoor seating/dining for restaurant on private property (see subsection 27-227(b)(5));
- e. Professional offices (including, architects, accountants, doctors, dentists, home health care services, legal services, realtors, veterinary clinic);
- f. Financial institution, insurance and real estate offices;
- g. Personal service establishments limited to the following: photographic studios, beauty and barber shops, day spa, nail, and waxing salon;
- h. Retail sales, wholesale sales (including on-site storage of stock), package liquor store, and pharmacy;
- i. Government uses, buildings and utilities;
- j. Dance, art, dramatic, gymnastics and music studio;
- k. Library, museum, and art gallery;
- l. Public park/recreation area;
- m. Recreation, amusement, and entertainment (including, billiard and pool hall, arcade, miniature golf, theater, night club, private club, and bar/tavern).

(3) *Uses by special exception.* The uses permitted by special exception within the CBD zoning district shall be:

- a. Single-family, two-family (duplex) and multifamily residences;
- b. Outdoor seating/dining for restaurant on public property (see subsection 27-227(b)(5));
- c. Parking lot/structure (not associated with any business);
- d. Social, fraternal club, lodge, and union hall;
- e. Indoor athletic and exercise facility;
- f. Accessory structures and uses for storage as defined by article V.

(Ord. No. 2004-10, § 1, 10-4-04; Ord. No. 2004-18, 12-6-2004; Ord. No. 2011-13, § 1, 9-12-11; Ord. No. 2016-07, § 3, 7-6-16; Ord. No. 2017-32, § 3, 1-8-18; Ord. No. 2018-04, § 1, 6-4-18; Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

14. August 19, 2024 Council Agenda Materials



AGENDA

Special and Workshop City Council Meeting Monday, August 19, 2024, 6:00 P.M. Council Chambers, 116 First Street, Neptune Beach, Florida

1. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE
2. NEPTUNE BEACH POLICE DEPARTMENT SWEARING-IN AND PROMOTION RECOGNITION CEREMONY
3. CITY ATTORNEY APPLICANT PRESENTATIONS *p. 3*
4. VARIANCES / SPECIAL EXCEPTIONS / DEVELOPMENT ORDERS
 - A. **P24-04**, Application for Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast. The property is in the CBD zoning district. *p. 88*
5. ORDINANCES
 - A. ORDINANCE NO. 2024-04, FIRST READ AND PUBLIC HEARING, An Ordinance of the City of Neptune Beach, Florida, Amending Chapter 2, Administration, Article V, Employee Benefits, Division 4, Police Officers' Retirement System of the City of Neptune Beach, Section 2-349, Contributions, and Section 2-349.1, Benefit Amounts and Eligibility, to Provide for an Increase in the Member Contribution Rate; To Provide for an Annual Benefit Increase for Members Who Retired On or After October 1, 2020; To Provide for a One-Time Benefit Increase In Retroactive Benefits for Retirees and Beneficiaries Who Retired Before October 1, 2020; To Make October 1, the Effective Date of any Cost of Living Adjustments; Directing the City Clerk to File a Copy of this Ordinance with the Florida Department of Management Services, Division of Retirement; Providing for Severability of Provisions; Repealing All Ordinances in Conflict Herewith and Providing an Effective Date. *p. 117*
6. CONSIDERATION OF APPROVAL OF EXTENSION OF PURVIS GRAY AUDITING SERVICES CONTRACT *p. 139*
7. CONSIDERATION OF APPROVAL OF CLEANING AND TELEVISIONING VARIOUS SANITARY SEWER LATERAL PIPES *p. 140*
8. CONSIDERATION OF APPROVAL OF CLEANING AND TELEVISIONING VARIOUS SANITARY SEWER MAIN PIPES *p. 178*
9. CONSIDERATION OF APPROVAL OF FENCE REPLACEMENTS AT WASTEWATER PUMP STATIONS *p. 219*
10. PUBLIC COMMENTS
11. ADJOURN

PH

WORKSHOP CITY COUNCIL MEETING IMMEDIATELY FOLLOWING THE ABOVE SPECIAL MEETING

1. CALL TO ORDER / ROLL CALL
2. AWARDS / PRESENTATIONS / RECOGNITION OF GUEST / NONE
3. COMMITTEE REPORTS
 - A. Charter Review
 - B. Finance
 - C. Land Use and Parks
 - D. Transportation and Infrastructure Planning
4. PUBLIC COMMENTS
5. PROPOSED ORDINANCES / NONE
6. CONTRACTS / AGREEMENTS / NONE
7. ISSUE DEVELOPMENT
 - A. Public Works Expenditures and Project Update
8. PUBLIC COMMENTS
9. COUNCIL COMMENTS
10. ADJOURN



Residents attending public meetings can use the code **DD14** to validate their parking session at no cost. After 5:30 on the date of the meeting, follow these steps:

Make sure you are parked in a North Beaches public parking space – we can't validate valet parking or parking in private lots.

- **To use a kiosk:** Using a nearby kiosk, press the Start button and then select 2 to enter your plate and the validation code.
- **To use the Flowbird app:** Tap the nearest yellow balloon and tap "Park here." From the payment screen, select "Redeem a code" at the top. Confirm your information and tap "Purchase" – the price will show "Free."

CITY OF NEPTUNE BEACH – COMMUNITY DEVELOPMENT DEPARTMENT



STAFF REPORT

MEETING DATE: May 8, 2024
BOARD/COMMITTEE: Community Development Board
APPLICATION NUMBER: DP24-04

TO: Community Development Board

FROM: Heather Whitmore, AICP, PTP, Community Development Director

DATE: Updated May 8, 2024

SUBJECT:

DP24-04: Preliminary Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast.

-
- I. **BACKGROUND:** A Preliminary Development Plan application for a Bed and Breakfast has been submitted for 108 Orange St (RE# 172769-0000).

The property has a Comprehensive Plan Town Center Land Use designation and is zoned Central Business District (CBD). Bed and breakfast is a permitted use in this district.

In 2015, the Drivers made an application for a Special Exception application for a Single Family Home for 108 Orange St. The City denied the application and the Drivers sued the City for a petition for writ of certiorari for the City denying their application. This writ of certiorari ordered the lower court (Neptune Beach) to deliver its record in a case so that the higher court (Circuit County of Duval County) may review it.

There were two separate items that were denied and for which the Drivers filed writs of certiorari. One was the Special Exception for the Single Family Home and one was a variance for setbacks and height. In 2022 the Duval Court agreed that the City had sufficient competent substantial evidence on both to deny it, and the City prevailed (See attached Case No. 16-2022-AP-18 Final Order Denying Petition for Writ of Certiorari).

II. DISCUSSION:

Chapter 27 Article III Administrative and Enforcement Procedures Division 2 Development Review of the Unified Land Development Code of Neptune Beach requires a preliminary and final development plan (development order) approval when “Changing or expanding any use of a site so that the need for off-street parking is increased.” Section 27-76 states that “all development in non-residential districts” requires a development order.

A Preliminary Development Plan application for a 3,507 square foot three story bed and breakfast has been submitted by the property owners for the property located at 108 Orange St. (RE # 172769-0000). The existing lot of record is 50' x 55'. The existing vacant property is located on the northeast corner of Orange St. and Midway St. The property is within the Central Business District (CBD) and is surrounded by CBD zoning on the east, north and west. The properties to the south are zoned RC/R-4. The immediate properties surrounding the vacant lot consist of single family and multi-family properties.

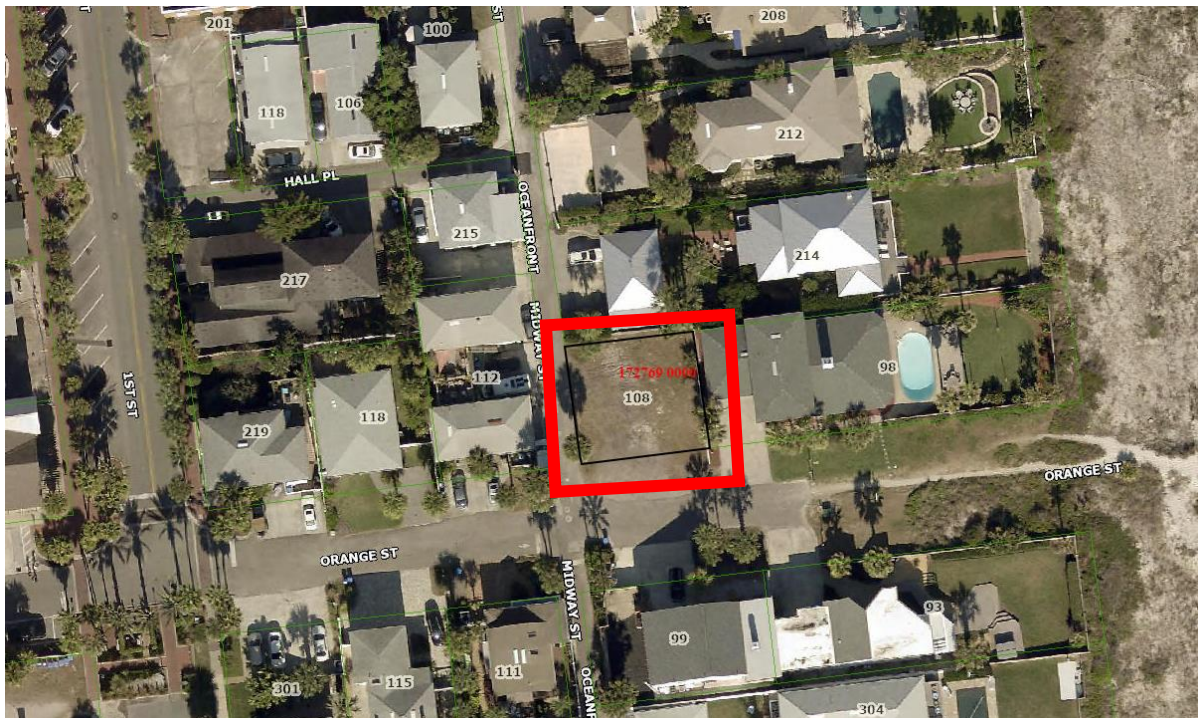


Figure 1: 108 Orange St, Neptune Beach, FL

The proposed bed and breakfast has two rental/guest bedrooms and one owner's suite, and provides a total of two parking spaces. The ground floor/1st floor consists of an interior parking garage for one parking space and guest bedroom, the 2nd floor consists of living area, lobby and kitchen, and the 3rd floor consists of a guest room and the owner's suite.

Site Plan/Building Plan:

Below is a chart showing development standards for the CDB are and the proposed bed and breakfast:

	Per Code	Proposed
Min. lot area	none	2,750 sq. ft.
Min. lot width	none	50 ft.
Min/Max front yard setback (Orange St.)	0/10 feet	10 feet
Min/Max corner yard setback (Midway)	5/15 feet	11 feet
Min. rear yard setback	5 feet	5 feet
Max. lot coverage	85%	53.7%
Max. building height	35 feet	35 feet
Min. Building frontage buildout	70%	74%

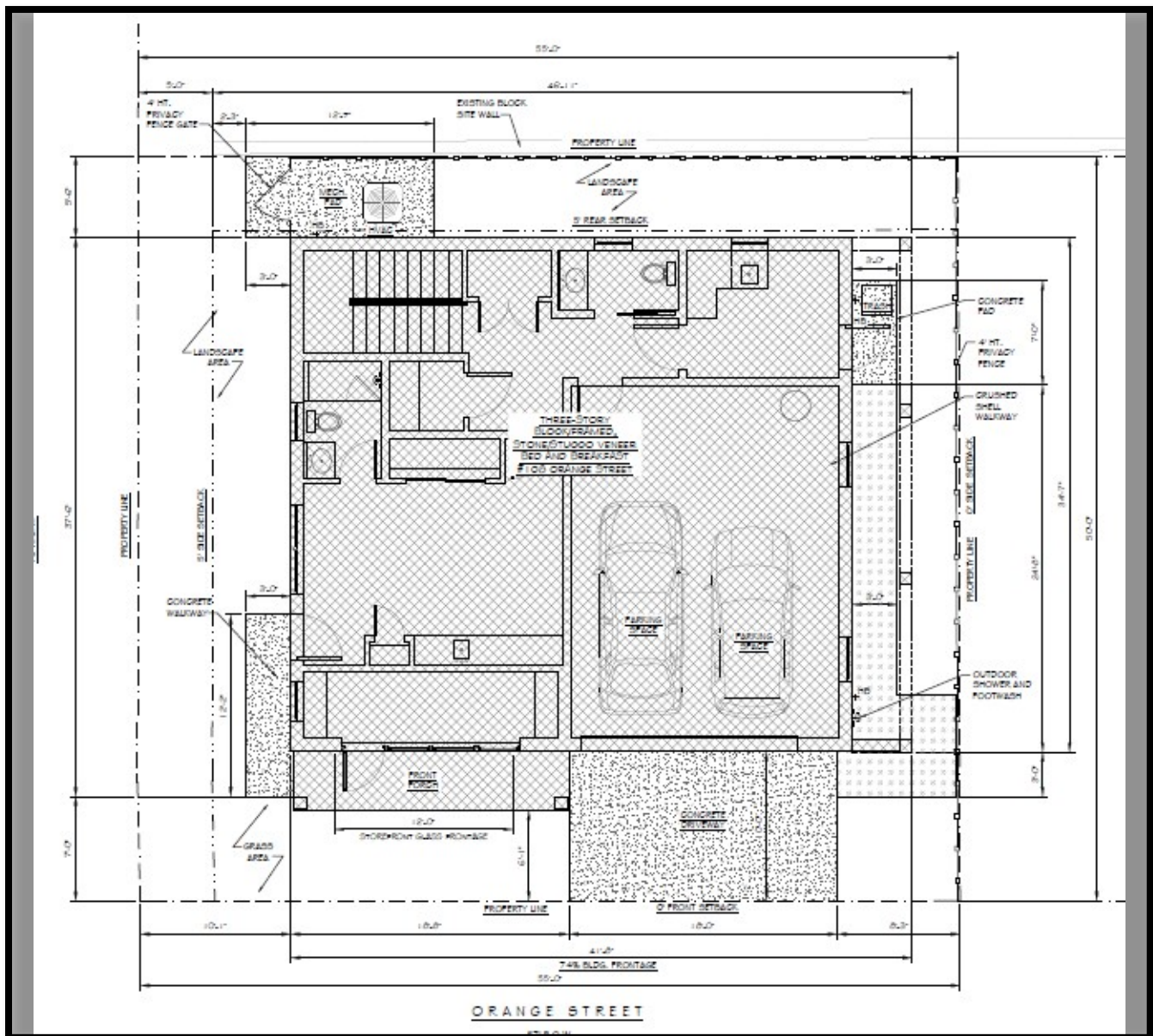


Figure 2: Proposed Site Plan 108 Orange St, Neptune Beach, FL

The building complies with setbacks, lot coverage, height, and frontage buildout requirements in the CBD.

The building complies with the elevation frontage requirements and standards of the CBD.

The building has one primary frontage on Orange St. The Orange St. first-floor frontage included a Lobby door and garage door. The building frontage is a Lobby style and an accessible front entry from the first floor at sidewalk level. The building's first floor façade is 35% transparent. The building's second floor façade is 40% transparent.



Figure 3: Proposed Frontage Elevation (Southern Elevation facing Orange St) 108 Orange St, Neptune Beach, FL

Sec. 27-236. – “Frontage requirements and standards” and Sec. 27-246. – “Central Business District (CBD) zoning district – special regulations” require all building frontages in the CBD to be either Storefront or Lobby with 30%-70% facade transparency. Storefronts and Lobby’s shall be accessible from the sidewalk level.

Section 27-246 (b) and (c) state:

(b) Commercial building frontage standards. New commercial development shall comply with the required frontage types and associated standards detailed in Section 27-236

(c) Commercial building design standards.

(1) Storefront design. The storefront is a frontage type along sidewalk level of the ground story, typically associated with commercial uses. Storefronts are required for the ground floor of all buildings located on streets designated with Required Retail Frontage and may be incorporated on any building in the Central Business District (CBD), Neighborhood Center Overlay (NC), and C1 districts. Storefronts are frequently shaded by awnings. Storefronts shall be directly accessible from sidewalks;

(2) Entrances and Access. All new buildings should have the main entrance oriented to and in full view from a street or public open space. Main entrances shall have design details that enhance the appearance and prominence of the entrance so that it is recognizable from the street and parking areas. Building on corner lots shall use design elements that emphasize the importance of both streets.

(3) Transparency. All building facades which face onto a street or public open space, shall meet the following minimum transparency requirements:

a. Buildings with Shopfronts (Figure 27-246-3)

i. Minimum building façade transparency for ground story: 70% and should allow a view of at least 5' of interior space

ii. Minimum building façade transparency for upper stories: 40%

b. Building without Shopfronts (Figure 27-246-4)

i. Minimum building façade transparency for ground story: 30% ii. Minimum building façade transparency for upper stories: 25%

Driveway/Parking:

The site is served by a total of two parking spaces, one parallel spaces and one garage space. Per the parking requirements in 27-540-1 the development is required to have one parking space per guest room and two parking spaces for the owner/operator for a total of four spaces. Per, 27-540 (c) the CBD is given a 50% reduction in parking however, therefore the development requires two parking spaces. The site layout parking access configuration complies with driveway standards and maximum driveway apron width.

III. D24-04 FINDINGS:

Sec. 27-82. - Procedures for applying for and issuing preliminary and final development orders states the community development board shall conduct a quasijudicial public hearing and shall consider the following factors when issuing a development order:

1. Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.

Staff Response: The use is consistent with the surrounding zoning and uses. The site is surrounded by majority residential uses, as well as commercial uses along First St.

2. Whether the concurrency requirements of article VI of this Code could be met if the development were built.

Staff Response:

Traffic: The proposed redevelopment will NOT generate more than 50 pm peak trips, therefore a traffic study is not required.

Water/Sewer: This project area will require water and sewer extensions (See attached Public Works Comments)

School: Not applicable

Drainage: Site may require stormwater permitting from Saint John's Water Management District (See attached Public Works Comments).

3. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

4. Conformity of the proposed development with the comprehensive plan, this Code, and other applicable regulations.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

5. Applicable regulations, review procedures, and submission requirements.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

See attached Fire review comments.

6. Concerns and desires of surrounding landowners and other persons.

Staff Response: A sign was posted on the property according to requirements. Staff has received comments from the public.

7. Other applicable factors and criteria prescribed by the comprehensive plan, this Code, or other law.

Staff Response:

The site will require additional utility planning, See attached Public Works Comments

See attached Fire review Comments

IV. STAFF RECOMMENDATION

Staff recommends approval of the currently proposed application for DP24-04 Preliminary Development Plan for the property at 108 Orange St (RE# 172769-0000) to permit a bed and breakfast (as presented).

See attached Planning and Zoning Comments

See attached Public Works Comments

See attached Fire Comments

The applicant provided a preliminary response to staff comments on May 3, 2024 and provided an updated revised site plan (see attached). The applicant responded to all Planning and Zoning comments on May 8, 2024 and provide a revised site plan, floor plan, and elevations. The revised proposed Preliminary Development Plan as updated on May 8, 2024 complies with all planning and zoning development standards.

The developer shall submit a Final Development Plan that complies with staff conditions for review by the City Council. The Final Development Plan shall be consistent with the Preliminary Development Plan and staff comments and shall contain no land uses different than those approved in the Preliminary Development Plan.

V. RECOMMENDED MOTION:

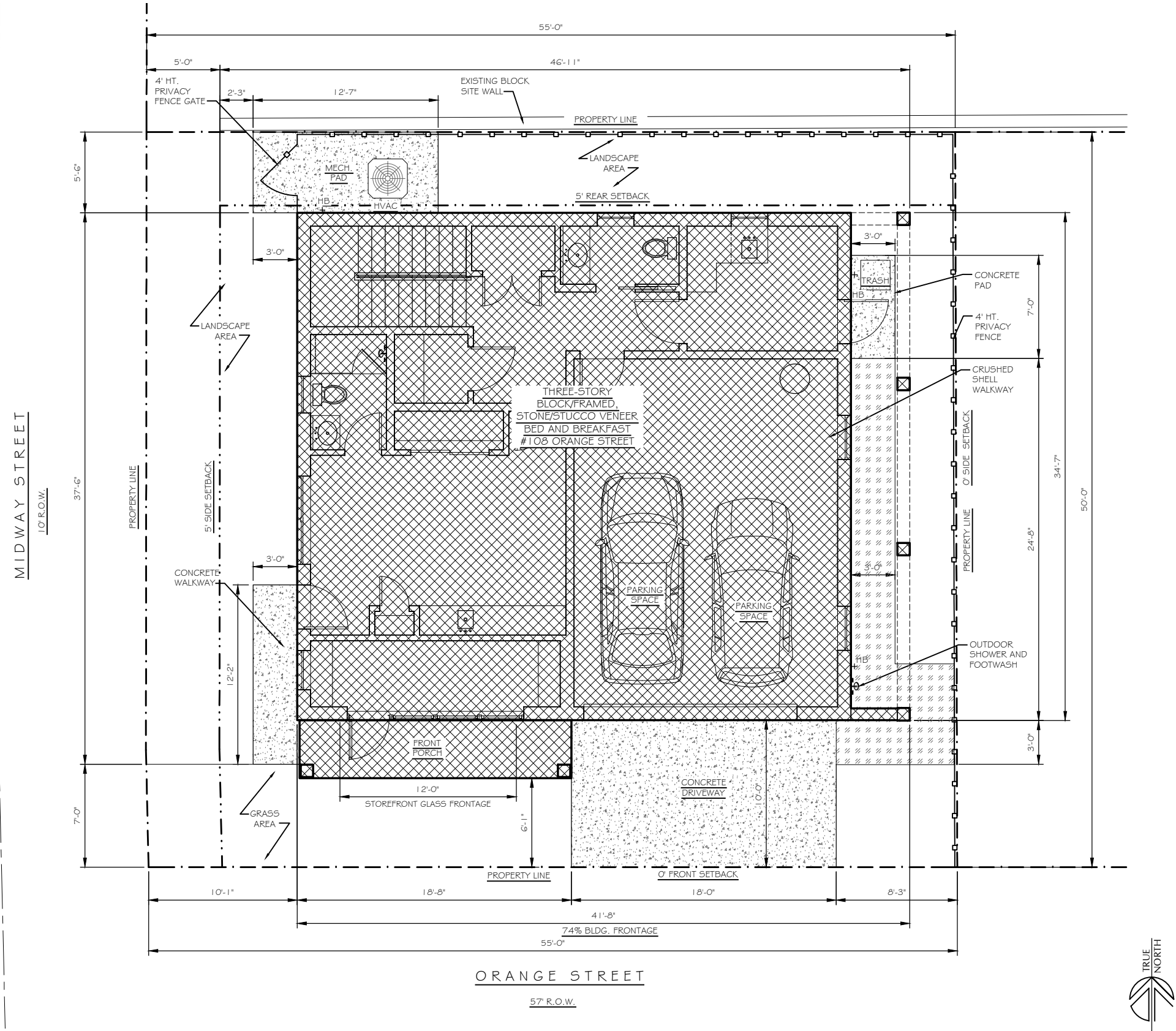
a. I recommend approval of DP24-04

OR

b. I recommend denial of DP24-04

SQUARE FOOTAGE	
SQUARE FOOTAGE:	
1ST FLOOR CONDITIONED	836 SF
1ST FLOOR (UNCONDITIONED):	463 SF
1ST FLOOR PORCHES:	73 SF
2ND FLOOR CONDITIONED:	1,055 SF
2ND FLOOR TERRACES:	319 SF
3RD FLOOR CONDITIONED:	996 SF
3RD FLOOR TERRACES:	224 SF
TOTAL CONDITIONED SF:	
2,887 SF	
TOTAL UNCONDITIONED SF:	
463 SF	
TOTAL PORCH/TERRACE SF:	
616 SF	
TOTAL SF:	
3,966 SF	

IMPERVIOUS SURFACE RATIO (ISR)	
SITE SQUARE FOOTAGE (PER DEED):	
2,754 SF	
IMPERVIOUS SURFACE:	
MAIN STRUCTURE:	1,376 SF
HARDSCAPE:	308 SF
TOTAL COVERAGE SF:	
1,684 SF	
IMPERVIOUS SURFACE RATIO (1,684 / 2,754):	
61.1%	
ALLOWED 85% MAX. OF AREA AS DESCRIBED IN DEED	

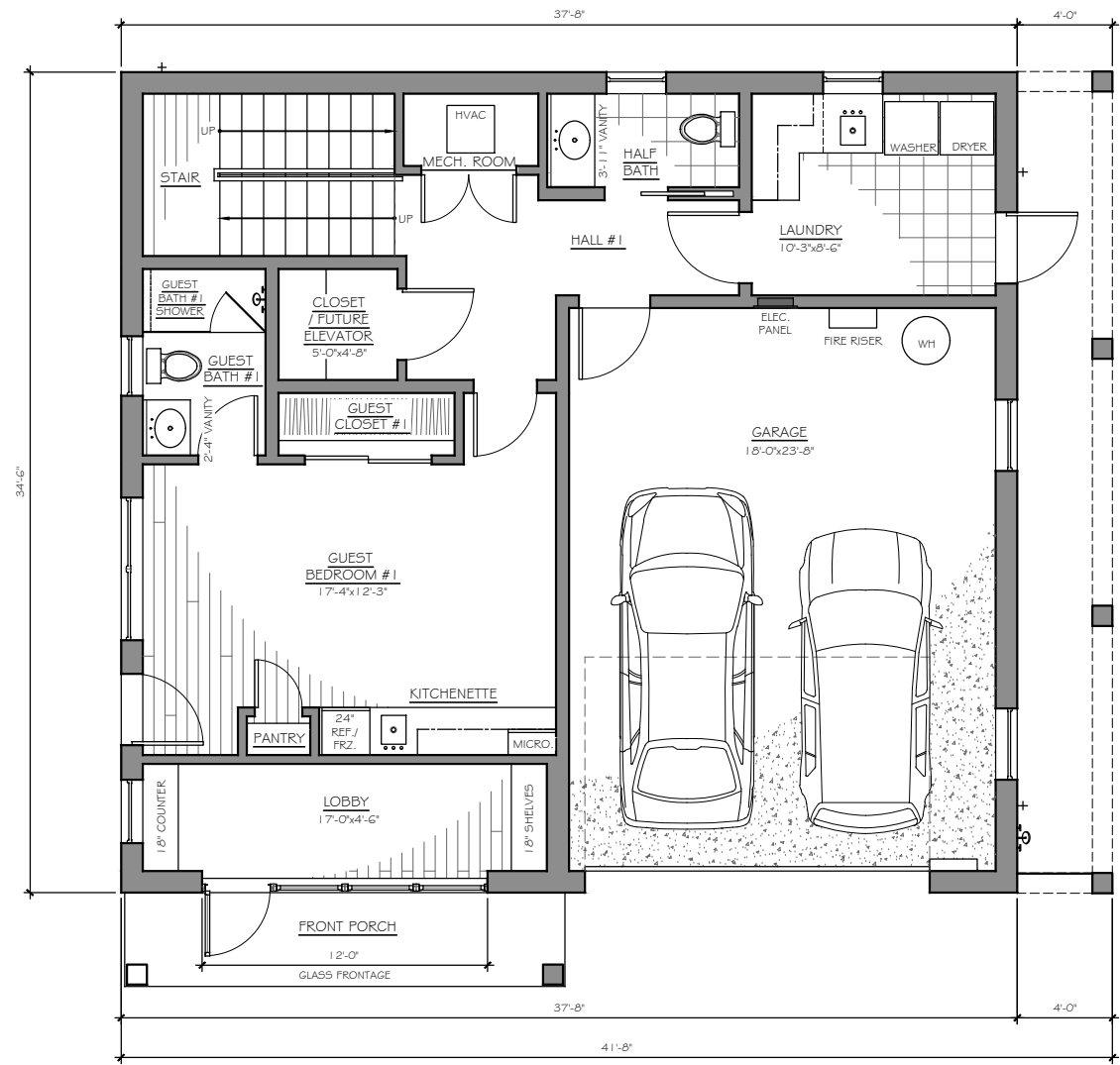


DRIVER BED & BREAKFAST

108 ORANGE STREET
NEPTUNE BEACH, FLORIDA 32266

SITE PLAN
REVISED MAY 31ST, 2024
SCALE: 1/8" = 1'-0"
Page 219 of 400

SQUARE FOOTAGE	
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1ST FLOOR CONDITIONED	836 SF
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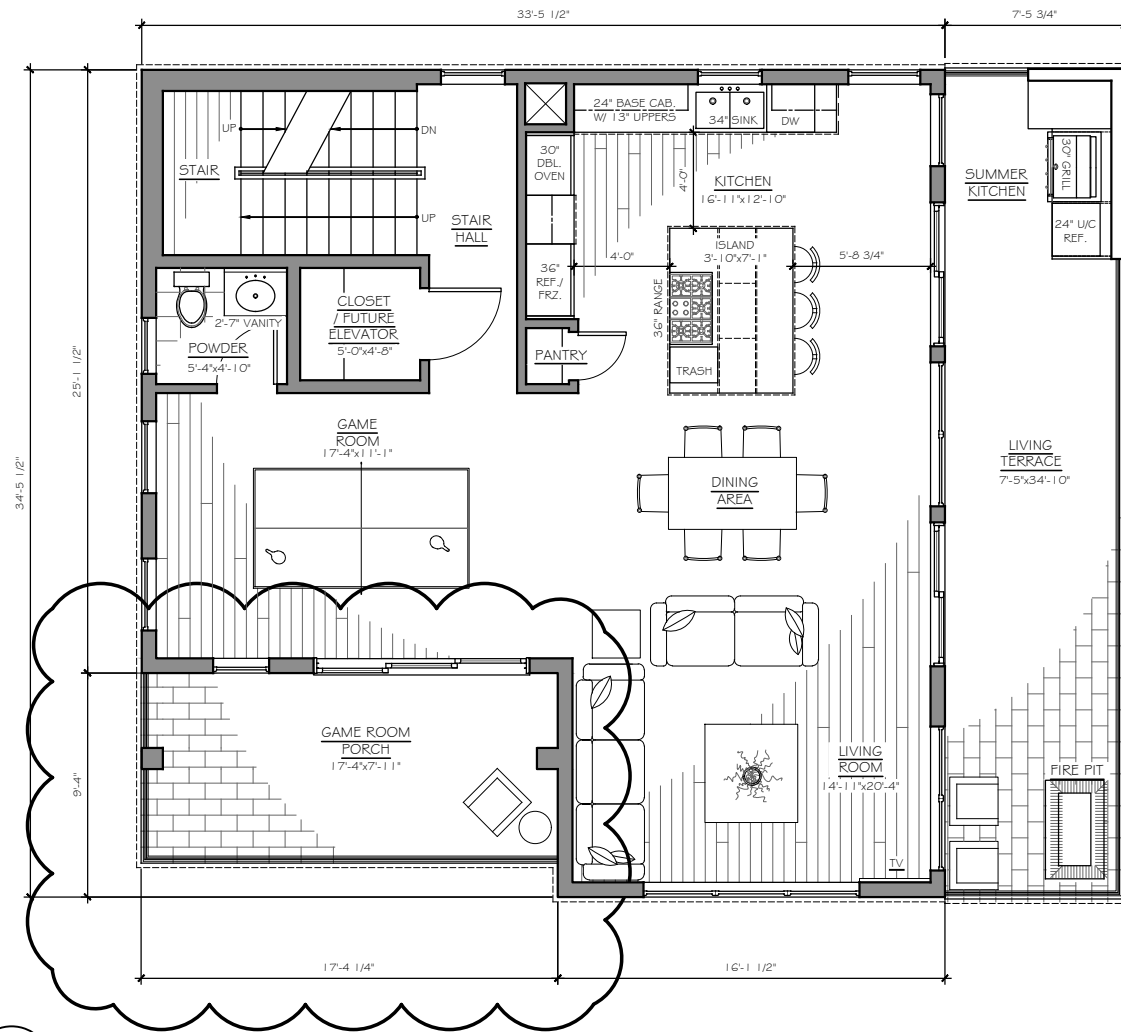


1 1ST FLOOR PLAN
SCALE: 1/8" = 1'-0"

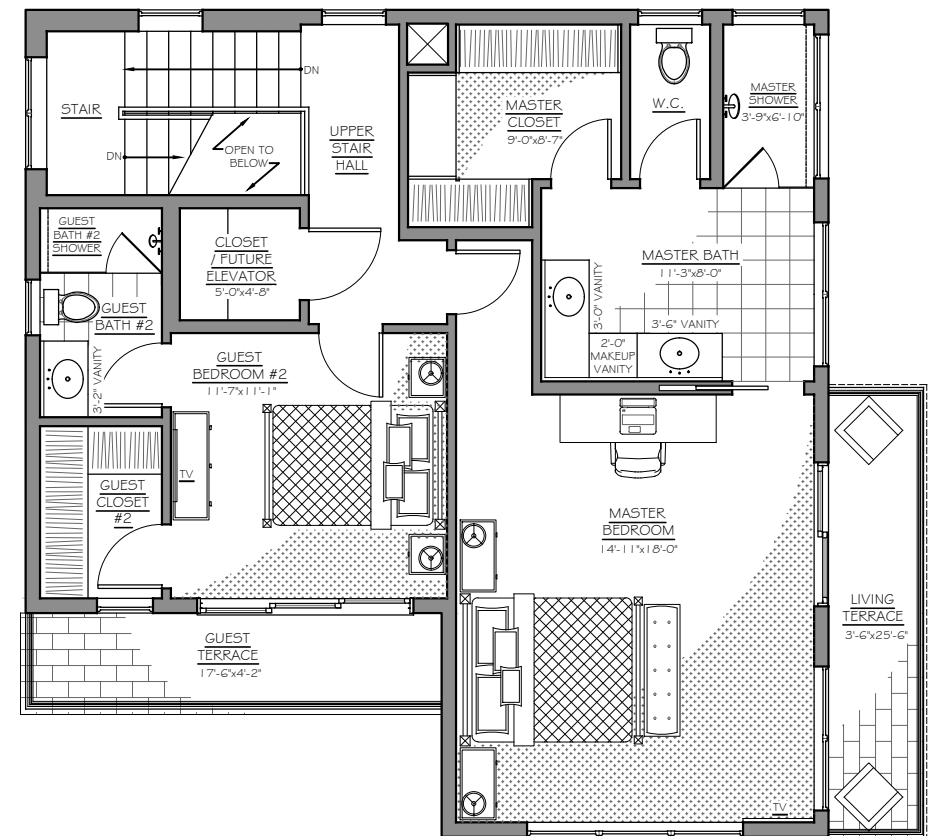
DRIVER BED & BREAKFAST

108 ORANGE STREET
NEPTUNE BEACH, FLORIDA 32266

1ST FLOOR PLAN
REVISED MAY 31ST, 2024
SCALE: 1/8" = 1'-0"



1 2ND FLOOR PLAN
SCALE: 1/8" = 1'-0"



2 3RD FLOOR PLAN
SCALE: 1/8" = 1'-0"

DRIVER BED & BREAKFAST

108 ORANGE STREET
NEPTUNE BEACH, FLORIDA 32266

2ND & 3RD FLOOR PLANS

REVISED MAY 8TH, 2024

SCALE: 1/8" = 1'-0"

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APPLICATION FOR DEVELOPMENT PLAN REVIEW

CITY OF NEPTUNE BEACH PLANNING AND DEVELOPMENT DEPARTMENT
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266-6140
PH: 270-2400 Ext 34 CDD@NBFL.US

Application Fee: **\$400**

Date Filed: 4/10/24

Name and address of the applicant requesting development review: (Note: if the applicant is other than all the legal owners of the property, notarized written consent signed by all the legal owners of the property shall be attached. In the case of corporate ownership, the authorized signature shall be accompanied by a notation of the signer's office in the corporation, and the embossed with the corporate seal). The undersigned hereby applies for a development review as follows:

Name & Address of Property Owner:	Telephone: <u>904.502.8775</u>
<u>DOUGLAS L. DRIVER</u>	E-Mail: <u>DLDRIVER47@gmail.com</u>
<u>1150 FLORIDA BLVD NEPTUNE BEACH, FL 32206</u>	Real Estate #: <u>172769-0000</u>
Property Address (if different from mailing):	Lot <u>4</u> Block: <u>23</u>
<u>108 ORANGE STREET</u>	Subdivision: <u>03151 NEPTUNE R/P</u>
<u>NEPTUNE BEACH, FL 32206</u>	Zoning District:

Name and Address of Agent/Applicant:	Telephone: <u>904.374.1736</u>
<u>MCAUGHEY BUILDERS, LLC</u>	E-Mail: <u>LWM@MCAUGHEYBUILDERS.COM</u>
<u>650 PARK ST JACKSONVILLE, FL 32204</u>	

Describe Request being made:
<u>ADU CONSTRUCTION BED AND BREAKFAST.</u>

PLEASE BE ADVISED THE COMMUNITY DEVELOPMENT BOARD CONDUCTS A PUBLIC HEARING TO CONSIDER CERTAIN FACTORS IN ORDER TO MAKE A RECOMMENDATION TO THE CITY COUNCIL FOR APPROVAL OR DISAPPROVAL OF THE DEVELOPMENT PLAN.

Signature of the Owner

State of Florida
County of Duval

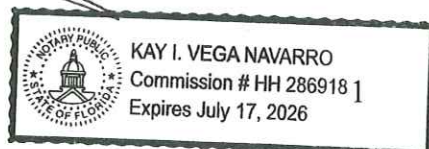
Signed and sworn before me on this 12th day of April, 2024.

By Douglas L. Driver

Identification verified: Personally Known Oath sworn: ☒ Yes ☐ No

Notary Signature

My Commission expires: 7/17/26



OWNER'S AUTHORIZATION FOR AGENT/AFFIDAVIT OF ASSENT

THIS FORM MUST BE FILLED OUT IN THE CASE THAT THE APPLICANT IS NOT THE OWNER OF THE PREMISES UNDER WHICH THE PARTICULAR APPLICATION IS BEING FILED.

LEONARD W. MCAULEY, MCAULEY BUILDERS is hereby authorized TO ACT ON BEHALF OF DOUGLAS DRIVER, the owner(s) of those lands described within the attached application, and as described in the attached deed or other such proof of ownership as may be required, in applying to Neptune Beach, Florida, for an application related to Development Permit or other action pursuant to a:

☐

Rezoning

☐

Special Exception

☐

Replat

☐

Commercial
Development Order

☐

Appeal

☐

Comp. Plan Amendment

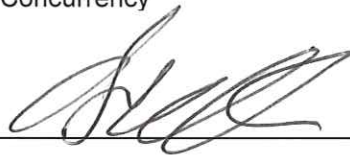
☐

Concurrency

☐

Other/ Champion or
heritage tree removal

BY:



Signature of Owner

Douglas C. Driver III

Print Name

Signature of Owner

Print Name

Daytime Telephone Number

State of Florida

County of Duval

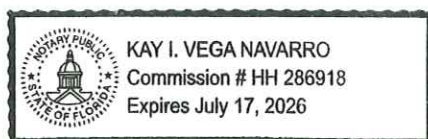
Signed and sworn before me on this 12 day of April, 2024

By Douglas C. Driver III

Identification verified: Personally Known Oath sworn: Yes No

Notary Signature

My Commission expires: 7/17/2026



CHECKLIST FOR DEVELOPMENT PLAN REVIEW

Application Type:

Preliminary Development Plan Commercial Preliminary Development Plan Residential
Development Plan Commercial Development Plan Residential
Champion/Heritage Tree Removal Replat

For the complete list of requirements see Article III in Chapter 27 of the Code of Ordinances.

Commonly required items for preliminary development review.

Material required: (check applicable items)

- ☐ Site Plan
- Floor Plan
- Elevation (four sides)
- Landscape Plan/ Existing Tree Survey
- Surveys (sometimes including Tree and/or Soils)
- Parking Plan (may be included on another plan)
- Impervious Surface Calculations
- Stormwater and drainage plan
- Lighting Plan (exterior only)
- Wetland Buffer
- Signage Plan
- Current Legal Survey
- Utility Plan
- Existing and proposed easements
- Existing and proposed easements

Disclaimer: This helpful guide is not intended to replace any or all of the Unified Land Development Regulations of the City of Neptune Beach, requirements for application and review procedures required for development orders and certain types of permits. The guide is meant to assist in the facilitation of the review process only. For a complete description of requirements, refer to Chapter 27 of the Unified Land Development Regulations.

May 8, 2024

Replat DP 24-04
108 Orange Street
(RE#172769-0000)
Douglas Driver, III

DP24-04: Preliminary Development Plan as outlined in Chapter 27 Article III Division 2 of the Unified Land Development Code of Neptune Beach for Douglas Driver III for the property at 108 Orange St (RE# 172769-0000). The applicant requests a Development Plan approval to permit a bed and breakfast.

I. BACKGROUND: A Preliminary Development Plan application for a Bed and Breakfast has been submitted for 108 Orange St (RE# 172769-0000). The property has a Comprehensive Plan Town Center Land Use designation and is zoned Central Business District (CBD). Bed and breakfast is a permitted use in this district.

In 2015, the Drivers made an application for a Special Exception application for a Single-Family Home for 108 Orange St. The City denied the application and the Drivers sued the City for a petition for writ of certiorari for the City denying their application. This writ of certiorari ordered the lower court (Neptune Beach) to deliver its record in a case so that the higher court (Circuit County of Duval County) may review it.

There were two separate items that were denied and for which the Drivers filed writs of certiorari. One was the Special Exception for the Single-Family Home and one was a variance for setbacks and height. In 2022 the Duval Court agreed that the City had sufficient competent substantial evidence on both to deny it, and the City prevailed (See attached Case No. 16-2022-AP-18 Final Order Denying Petition for Writ of Certiorari).

II. DISCUSSION:

Chapter 27 Article III Administrative and Enforcement Procedures Division 2 Development Review of the Unified Land Development Code of Neptune Beach requires a preliminary and final development plan (development order) approval when "Changing or expanding any use of a site so that the need for off-street parking is increased." *Section 27-76* states that "all development in non-residential districts" requires a development order.

A Preliminary Development Plan application for a 3,507 square foot three story bed and breakfast has been submitted by the property owners for the property located at 108 Orange St. (RE # 172769-0000). The existing lot of record is 50' x 55'. The existing vacant property is located on the northeast corner of Orange St. and Midway St. The property is within the Central Business District (CBD) and is surrounded by CBD zoning on the east, north and west. The properties to the south are zoned RC/R-4. The immediate properties surrounding the vacant lot consist of single family and multi-family properties.



The proposed bed and breakfast has two rental/guest bedrooms and one owner's suite and provides a total of two parking spaces. The ground floor/1st floor consists of an interior parking garage for one parking space and guest bedroom, the 2nd floor consists of living area, lobby and kitchen, and the 3rd floor consists of a guest room and the owner's suite.

Site Plan/Building Plan:

Below is a chart showing development standards for the CDB are and the proposed bed and breakfast:

	Per Code	Proposed
Min. lot area	none	2,750 sq. ft.
Min. lot width	none	50 ft.
Min/Max front yard setback (Orange St.)	0/10 feet	10 feet
Min/Max corner yard setback (Midway)	5/15 feet	11 feet
Min. rear yard setback	5 feet	5 feet
Max. lot coverage	85%	53.7%
Max. building height	35 feet	35 feet
Min. Building frontage buildout	70%	74%

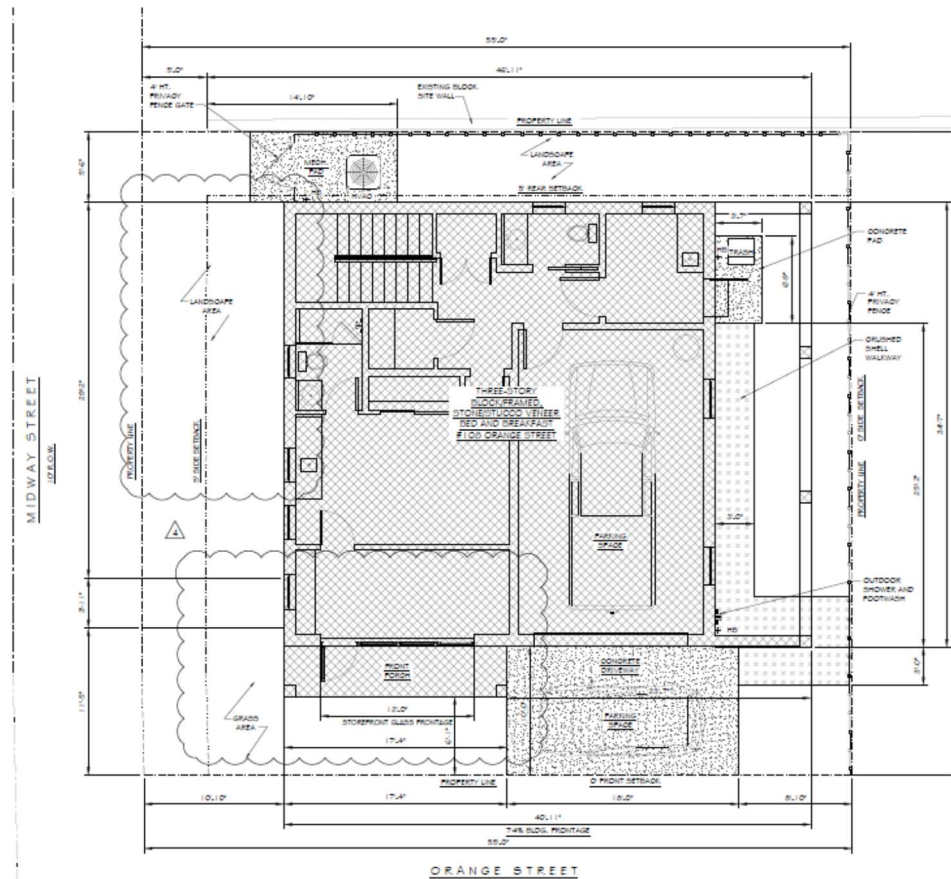


Figure 2: Proposed Site Plan 108 Orange St, Neptune Beach, FL

The building complies with setbacks, lot coverage, height, and frontage buildout requirements in the CBD.

The building complies with the elevation frontage requirements and standards of the CDB.

The building has one primary frontage on Orange St. The Orange St. first-floor frontage included a Lobby door and garage door. The building frontage is a Lobby style and an accessible front entry from the first floor at sidewalk level. The building's first floor façade is 35% transparent. The building's second floor façade is 40% transparent.



*Figure 3: Proposed Frontage Elevation (Southern Elevation facing Orange St)
108 Orange St, Neptune Beach, FL*

Sec. 27-236. – “Frontage requirements and standards” and Sec. 27-246. – “Central Business District (CBD) zoning district – special regulations” require all building frontages in the CBD to be either Storefront or Lobby with 30%-70% façade transparency. Storefronts and Lobby’s shall be accessible from the sidewalk level.

Section 27-246 (b) and (c) state:

(b) Commercial building frontage standards. New commercial development shall comply with the required frontage types and associated standards detailed in Section 27-236

(c) Commercial building design standards.

(1) Storefront design. The storefront is a frontage type along sidewalk level of the ground story, typically associated with commercial uses. Storefronts are required for the ground floor of all buildings located on streets designated with Required Retail Frontage and may be incorporated on any building in the Central Business District (CBD), Neighborhood Center Overlay (NC), and C1 districts. Storefronts are frequently shaded by awnings. Storefronts shall be directly accessible from sidewalks;

(2) Entrances and Access. All new buildings should have the main entrance oriented to and in full view from a street or public open space. Main entrances shall have design details that enhance the appearance and prominence of the entrance so that it is recognizable from the street and parking areas. Building on corner lots shall use design elements that emphasize the importance of both streets.

(3) Transparency. All building facades which face onto a street or public open space, shall meet the following minimum transparency requirements:

a. Buildings with Shopfronts (Figure 27-246-3)

i. Minimum building façade transparency for ground story: 70% and should allow a view of at least 5’ of interior space

ii. Minimum building façade transparency for upper stories: 40%

b. Building without Shopfronts (Figure 27-246-4)

i. Minimum building façade transparency for ground story: 30%

ii Minimum building façade transparency for upper stories: 25%

Driveway/Parking:

The site is served by a total of two parking spaces, one parallel space and one garage space. Per the parking requirements in 27-540-1 the development is required to have one parking space per guest room and two parking spaces for the owner/operator for a total of four spaces.

Per, 27-540 (c) the CBD is given a 50% reduction in parking however; therefore the development requires two parking spaces. The site layout parking access configuration complies with driveway standards and maximum driveway apron width.

III. D24-04 FINDINGS:

Sec. 27-82. - Procedures for applying for and issuing preliminary and final development orders states the community development board shall conduct a quasi-judicial public hearing and shall consider the following factors when issuing a development order:

1. Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses.

Staff Response: The use is consistent with the surrounding zoning and uses. The site is surrounded by majority residential uses, as well as commercial uses along First St.

2. Whether the concurrency requirements of article VI of this Code could be met if the development were built.

Staff Response:

Traffic: The proposed redevelopment will NOT generate more than 50 pm peak trips; therefore a traffic study is not required.

Water/Sewer: This project area will require water and sewer extensions (See attached Public Works Comments)

School: Not applicable

Drainage: Site may require stormwater permitting from Saint John's Water Management District (See attached Public Works Comments).

3. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and types of water and sewage treatment systems.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.

The site will require additional utility planning (See attached Public Works Comments).

4. Conformity of the proposed development with the comprehensive plan, this Code, and other applicable regulations.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.
The site will require additional utility planning (See attached Public Works Comments).

5. Applicable regulations, review procedures, and submission requirements.

Staff Response: The Bed and Breakfast use is permitted by right, the development plan complies with minimum development requirements, driveway access, frontage treatment requirements.
The site will require additional utility planning (See attached Public Works Comments).

See attached Fire review comments.

6. Concerns and desires of surrounding landowners and other persons.

Staff Response: A sign was posted on the property according to requirements. Staff has received comments from the public.

7. Other applicable factors and criteria prescribed by the comprehensive plan, this Code, or other law.

Staff Response: The site will require additional utility planning, See attached Public Works Comments See attached Fire review Comments

IV. STAFF RECOMMENDATION

Staff recommends approval of the currently proposed application for DP24-04 Preliminary Development Plan for the property at 108 Orange St (RE# 172769-0000) to permit a bed and breakfast (as presented).

See attached Planning and Zoning Comments
See attached Public Works Comments
See attached Fire Comments

The applicant provided a preliminary response to staff comments on May 3, 2024 and provided an updated revised site plan (see attached). The applicant responded to all Planning and Zoning comments on May 8, 2024 and provide a revised site plan, floor plan, and elevations. The revised proposed Preliminary Development Plan as updated on May 8, 2024 complies with all planning and zoning development standards.

The developer shall submit a Final Development Plan that complies with staff conditions for review by the City Council. The Final Development Plan shall be consistent with the Preliminary Development Plan and staff comments and shall contain no land uses different than those approved in the Preliminary Development Plan.

V. RECOMMENDED MOTION:

- a. I recommend approval of DP24-04
- OR
- b. I recommend denial of DP24-04

Mr. Douglas Driver, III, 1150 Penman Road and owner of the property addressed the board. His family purchased the property in 1989. There was an existing duplex on the property that was demolished in 2007.

The property is being used for parking and dumping site by the neighbors and beach goers. Would like to build a bed and breakfast. Will generate revenue and increase property values for the neighbors. Legally allowed to build a bed and breakfast on the property.

Questions for Staff and applicant:

Ms. Atayan: The fire review had one question about tight turning since the curb has been removed.

Mr. Moran: How many B & B do we have? None

Mr. Hilton: There was originally 3 parking spaces. Where will the other guest park? Mr. Driver stated that they were only required to provide two. One will be in the garage and the other one in front of it. The extra parking space had to be removed, because of the allowable driveway width.

Mr. Hilton: Why is there no kitchenette in guest room number 2? We deemed that it was not necessary and removed it.

Is there a roof top deck planned? No, roof top deck.

Guest #1 will enter through the lobby and guest #2 will enter through the laundry area or garage. Mr. Driver stated that guest #1 will be the primary guest room. Mr. Kevin Solman, architect, the lobby is access to the first floor and the second guest room and owner's suite will be accessed by the side door through the laundry.

Public Comments

Chairperson Schwartzenberger opened the floor for public comments.

Henny Schoonover, 214 Oceanfront, opposes the application. Passed a drawing on how this property will compare in height to the surrounding buildings. Opposes the 35-foot-tall Bed and Breakfast beside my house and in my neighborhood. This proposed building will replace a 1268 square foot two-story house that once stood on that lot. The land development code includes Bed and Breakfasts as one of numerous "permitted uses" in the CBD along with Hotels, Motels, interior service restaurants, carry-out and delivery restaurants, government uses, utilities, public park, recreation, amusement, and entertainment, including billiard and pool halls and the list goes on. None of these permitted uses are compatible within the residential section of the CBD. Our established neighborhood is made up of single and two-family homes that are two-story, none being taller than 28 feet. The proposed building of 35-feet will stand and full story above all the other houses around it. It just does not fit.

According to Section 27-222 of the ULDC-Purpose and Intent of zoning district "this zoning article must impose certain appropriate restrictions on the use of land within the city limits of Neptune Beach to ensure that future development is in keeping with the existing development."

Regarding neighborhood design: The proposal as it stands now is not in scale or character with the neighborhood.

Regarding scale, mass and bulk: The ratio of square footage to land of this building is 1:.94 while existing homes in this neighborhood have a ratio anywhere from 1:1.8 to 1:4.14, further illustrating the fact that this proposed building is out of proportion and density with surrounding buildings.

Regarding privacy. The proposed height of 35 feet is not sensitive to the surrounding neighbors.

Allow this proposal to go forward will set a bad precedent for our neighborhood and the City of Neptune Beach. Regardless of zoning designation, the extra traffic created and parking hassles with a B&B is not fitting with our neighborhood ambience. Please listen to the concerns of the people living in this neighborhood. The City of Neptune Beach's own ULDC will not permit this land usage as proposed.

George Schoonover, 214 Oceanfront, opposes the applicant's request to build a B&B at 108 Orange Street. As outlined in Florida Statutes, the Community Development Board shall consider the following factors: The nature of the proposed development, including land use types and densities; proposed parking areas, "and the concerns and desires of surrounding landowners and other persons".

The following stated goals and objectives are taken directly from NB's codes. Purposes and Intent of Zoning districts. The design goals for new construction are; to preserve the natural beauty of NB and protect the residential character of the effects of inharmonious and out of scale developments in order to maintain and improve property values.

Site improvement should be compatible with structures existing on neighboring parcels and should be sensitive to their design and property rights. Designs which conflict with the use and enjoyment of any property should be avoided. Buildings should be designed in scale with the neighborhood and should complement the character of the neighborhood, rather than conflict with it.

Buildings should not present excess visual mass or build to public view or to adjoining properties. Large box-like buildings can appear massive. When viewed from the public right of way, excessive mass detracts from the character of NB's individual neighborhoods. When viewed from adjoining properties, excess mass can effectively act as a wall that dominates neighboring structures and interferes with the enjoyment of open space and the free passage of light and air.

Design should respect views enjoyed by neighboring parcels. It is the intent of this objective to balance the private rights to views from all parcels that will be affected by a proposed build or addition. No single parcel should enjoy a greater right than other parcels except for the natural advantages of each site's topography. Building which substantially eliminates an existing view enjoyed on another parcel should be avoided. A 35-foot-high flat wall certainly qualifies for that characterization.

Another consideration for a bed and breakfast on this parcel is the lack of surrounding infrastructure. The parcel is on Midway, a narrow one-way street to Lemon. There is no sidewalk or curb. There is one dim streetlight at the corner of Orange and Midway as well as confusing street signage. It would be harrowing for a driver or pedestrian to navigate these handicaps without prior knowledge. For these reasons, I oppose the application.

Dreanna Bane, 600 Second St, read a letter from Ronald and Diane Wingate of 700 Oceanfront: "Dear Neptune Beach Community Development Board, We are writing this letter in hopes that this committee will vote against the application to establish the Driver Inn at 108 Orange Street in Neptune Beach, FL. There is absolutely no parking for a business on that small section of Orange Street. Also, most people that live at the beach have many visitors because we live at a safe beach. This warm weather has already brought many people. We live at the end of Cedar Street (public access) and have never seen so many headed to the beach that we have we have never seen before. Sincerely Yours, Ronald and Diane Wingate.

Judy Williams, formerly owned 98 Orange St, it is crowded and asked the board to look at the plans closely.

Shellie Thole, 310 Oleander St., this is not the same packet that has been changed since it was originally sent out. How do you make a decision, if you have not had a change to look over it?

Ray Lin, 310 First St, I don't see how it will improve property values. It will diminish. It will not look like the old houses.

Heather Peters, 93 Orange St, lives across the street and as the owner stated, they can not control the parking as it is now. How are they going to control it in the future. How does a business become successful with only two parking spaces? Are we saying it's a business when its not? Does not want to see this happen. What is the logic behind the two parking spaces?

Dr. Juan Leoni, 111 Orange St, owns property diagonally from 108. Would like to have something to be built there. People are using the lot to hang out. The owners should use the lot to be neighborly and friendly.

Mr. Driver stated that he understands their concerns, and that the last two speaks made a point with the property being vacant and being used for drugs. This is why we want to build a house here and use it as a bed and breakfast. As for the reason why there is not a kitchenette on the third floor. There is a kitchen on the second floor with access to that room. In addition, we are primarily looking to just rent out the first floor bedroom, so two parking spots should be ample space for that.

I hear a lot of feelings from people say that don't like it, if they don't like it, then they should work towards changing the law. We are trying to meet all the rules and regulations. Putting all of his life savings into this house/bed and breakfast, whatever you want to call it. There will be security cameras, looking at building a gate in the future.

There being no comments, the public hearing was closed.

Board Discussion:

Ms. Bylund: This is not a replat and we do have factors to be considered. #1 Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site, and surrounding land uses- this is zoned commercial and but people came in and built in this area. The land use is residential even though it is zoned commercial. Parking is a huge consideration. It is not realistic to have two parking spaces. There is the people living there, the people staying there, possibly people working there and people visiting the guests. The math do not add up at all. Has a problem will be contributing to the parking problem. Someone wants to have a 35-foot house that is out of keeping with all the other houses around it. Wonderful if there is something they could do differently. Especially the park.

Ms. Atayan: We look at the intensity of the businesses, it is too high of an intensity for this area. We may need to revisit the zoning district and redefine the uses. The height and size of it is out of nature of the surrounding area.

Mr. Raiti: The size and bulk of the building is not in keeping of the neighboring properties.

Mr. Schwartzenberger: Boarders Seahorse, Lemon Bar and we will see changes coming in the futures. There is a permitted use, it would be a lovely area for someone to stay. A single-family is what everyone want, but a single-family house is not allowed by right.

Mr. Hilton: If someone were to come before the board to build a single-family dwelling on the property, what would the height be? Ms. Whitmore stated it would have to comply with the RC overlay requirements and the height of 28 feet.

Mr. Raiti: The mass of the building weighs on him. You don't have to overshadow the neighborhood.

Mr. Driver was given the floor again. He stated the intent is to rent this out and the intent is not to just have a house. As for the parking, there was 3 spaces originally planned but was told that he could not have more than an 18-foot wide driveway. Would be happy to reinstate that parking space. The goal is to have one couple come and stay at the B&B routinely as a vacation style rental. Does not want twenty-five plus people visiting the house. I will be living there, I don't want to see 25 people myself. In fact I would prefer not to see them at all. They will come in and out a separate entrance. That is the intent, just wanted to make that know.

Mr. Boran asked Mr. Driver: Who is the owner/operator? Mr. Driver stated that he would be the owner/operate but that he did not want to have undue interaction with the guest. They will have their own entrance for the first floor. They will have a bedroom and I will feed them, but not hanging out with them.

Ms. Atayan: You stated that you wanted limited contact with the guest on the first floor and you also have a guest room on the same floor as your bedroom. You will have direct contact with that guest and sharing facilities with them. Is a B&B guest or a family member? Mr. Driver stated it is just another room in the house and does not see if it is rented or not that it is relative.

Mr. Boran: So, your B&B is a one single bedroom with a kitchenette. Yes, I have a full time job and maybe in the future I will rent the other guest room.

Mr. Hilton: I'm confused. In my experience with Bed and Breakfasts, you typically go to someone's home, they have multiple bed and bathrooms, and they service you several meals and they interact with their guest. I don't normally go to B&B's because I am not comfortable with this. I'm confused about the model.

Becky Driver, the owner, stated that her son plans to come in and service the breakfast and that he plans to live there.

Ms. Atayan: There is a guest room on the third floor where he plans to live. For the transient guest, there will only one bedroom for guest? Yes.

Ms. Bylund: This seems to be not as what it has been presented and the parking. This a reason I would use to reject, and I believe it is a legal reason and would pass mustard.

Mr. Boran: Parking cannot accommodate the people coming in.

Mr. Raiti: The natural man-made features are not in coordinate with the design. The parking does comply with the 50% reduction.

Made by Bylund, seconded by Hilton.

MOTION: MOVE TO RECOMMEND DENIAL DP24-04 TO THE CITY COUNCIL.

Roll Call Vote:

Ayes: 6-Bylund, Raiti, Atayan, Boran, Hilton, Schwarzenberger

Noes: 0

MOTION APPROVED.

The applicants were informed that the City Council makes the final decision and the applicant should attend the meeting on June 3, 2024 at 6:00 pm.

The board discussed the need for a definition of "Historically Significate" before presenting anything to City Council.

Mr. Raiti asked about the non-conforming section of the code. In particular, you can not "enlarge or reduce" of a non-conforming.

Mr. Roth stated: Conforming is the only part that cannot be changed. The section only applies if it was built correctly but then the code changes after the fact. This second of the code is very poorly written and should be reviewed.

The non-conforming is very muddy and the board needs to look at it in the future.

Zack Roth, City Attorney, informed the board that he has given his resignation and will be leaving once a replacement has been found.

Greg Schwarzenberger, Chairperson

ATTEST:

Piper Turner, Board Secretary



**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

AGENDA ITEM:	Marshpoint Properties Two, LLC- Purchase and Sale Agreement
SUBMITTED BY:	Paul Waters, City Attorney
DATE:	January 6, 2025
BACKGROUND:	Marshpoint Properties Two, LLC wishes to purchase the City owned property under the following material conditions: 1) Submittal of Conceptual Site Plan (Note- as mentioned below, formal site plan approval will be required prior to closing.) 2) The total Purchase Price is \$70,000, with a \$7,000 escrow deposit 3) Statutory Development Agreement and Site Plan Approval Processes are required prior to closing 4) Certain restrictive covenants shall be included in the deed and shall "run with the land" and be binding upon subsequent purchasers.
RECOMMENDATION:	To execute the purchase and sale agreement and allow the transaction to proceed
ATTACHMENT:	Purchase and Sale Agreement Conceptual Site Plan Staff Analysis

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

I. PARTIES. This Contract (sometimes referred to herein as this "Agreement") is made by and between the CITY OF NEPTUNE BEACH ("Seller") and MARSHPOINT PROPERTIES TWO, LLC ("Buyer"). For good and valuable consideration paid and received, Seller agrees to sell and Buyer agrees to buy the lands and personal property described below pursuant to the terms and conditions of this *Contract for Sale and Purchase* including the all riders, addenda, and exhibits (the "Contract").

II. PROPERTY. The property that is being purchased and sold under this Contract includes the below-described lands, together with all fixtures, and improvements, if any (the "Property"): The Property is located in Neptune Beach, Duval County, Florida. The legal description of the Property is described in **Exhibit 'A'**. The Property also includes (i) strips or gores, if any, between any of said lands and/or any abutting properties; and (ii) any land lying in or under the bed of any street, alley, road or right-of-way, opened or proposed, abutting or adjacent to the specifically described lands (the "Additional Real Property").

III. PURCHASE PRICE. The total "Purchase Price" for the Property is payable as follows: The Balance due at Closing (subject to adjustment for costs and prorations) is **\$63,000**. The total Purchase Price is **\$70,000**.

IV. FINANCING: This is a cash transaction. Buyer may still finance the acquisition through a mortgage loan, (the "Loan") through a third-party lender (the "Lender") but there is no contingency for financing and Buyer will be required to close regardless of whether the Loan is approved or funded.

V. ESCROW DEPOSIT. The Buyer shall pay an initial deposit, which shall be held in escrow, in the amount of ten percent (10%) or seven thousand dollars (\$7,000) within five (5) days of the Effective Date. The deposit shall be applicable to the purchase price at Closing. In the event of an uncured default of any provision contained herein, Buyer shall forfeit said deposit to the Seller in accordance with the terms of this Contract.

VI. CLOSING COSTS. Buyer shall pay any and all closing costs whatsoever. All Closing Cost, including brokerage commission (if any), shall be paid by the Buyer. As the Property is currently within the right of way, no real estate taxes are assessed against it. Accordingly, there shall be no prorations of any kind on the settlement statement.

VII. REAL ESTATE BROKERAGE. Seller and Buyer acknowledge that transaction was not procured by a real estate broker.

VIII. PROPERTY CONDITION AND BUYER WAIVER OF CLAIMS. Buyer waives any claims against Seller for any defects or other damage to the Property and except for any explicit representations or warranties provided for in this Contract, accepts the Property in its 'AS IS' CONDITION AND SUBJECT TO ALL FAULTS, and BUYER WAIVES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except as expressly set forth in this Contract, Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability, zoning, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. Buyer acknowledges that, except as expressly set forth in this Contract, (i) Buyer is not relying on any warranties or representations with respect to the physical condition of the Property, (ii) Seller does not warrant the completeness or accuracy of any documents, reports (including, without limitation, any environmental reports), studies or other items furnished to Buyer hereunder, and (iii) Buyer is not relying on any materials or information provided by Seller (provided, however, that Seller represents that, to its actual knowledge, it has provided true, correct and complete copies of all items delivered to Buyer), and that Buyer has made, or will make prior to the Closing Date, an independent investigation of all matters relating to the Property and the ownership and operation of the Property. The terms and covenants of this Section shall survive the Closing and the delivery of the deed for the Property or any termination of this Contract. No representation, warranty, covenant, agreement or condition not expressed in this Contract shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Contract.

IX. CLOSING.

- A. **Closing Agent.** The party ("Closing Agent") responsible for preparing the closing statement, coordinating the execution and delivery of the documents and disbursement of funds (the "Closing") shall be Ansbacher Law, 8818 Goodbys Executive Drive, Suite 100, Jacksonville, Florida 32217-4605.
- B. **Time and Place of Closing.** The Closing shall take place at the offices of Closing Agent no later than one hundred and twenty (120) days after the Effective Date (the "Closing Date"). Seller may extend the Closing Date as it reasonably deems necessary to permit all conditions to its transfer of the Property to be completed. In the event Seller delays the Closing Date by ninety (90) days or more, either Buyer or Seller may terminate this Contract, in which case the deposit will be returned to the Buyer and each will be relieved of all responsibility of any kind to the other.
- C. **At the Closing.**
 - 1. Seller shall transfer title to the Property to Buyer using the legal description from the survey of the Property prepared by Boatwright Land Surveyors, Inc. dated May 16, 2022 and bearing file number 2023-1246 (the "Survey") by Special Warranty Deed; provided however, Seller is not required to

warrant title to the Additional Real Property. Seller shall convey any Additional Real Property by quit claim deed.

2. Seller shall deliver such title affidavits and other documents as the Closing Agent shall reasonably require to allow deletion of the standard exceptions from the owner's title insurance policy to be issued in conjunction with the Closing, including without limitation, a no change affidavit relating to the Survey..
3. Seller will vacate any existing right of way.
4. A fully executed development agreement shall be required prior to Closing. The development agreement shall be in accordance with Section 163.3227, Florida Statutes and shall approved by the City Commission.
5. A site plan approved by the Seller shall be required prior to Closing and shall be reviewed by the Seller's Community Development Board and approved by the City Commission.
6. Seller shall surrender possession of the Property free of any tenants, lessees, or occupants.
7. Seller shall provide such evidence of the authority and capacity of Seller and Seller's representatives to execute and deliver this Contract and to consummate the transactions contemplated hereunder as Buyer and/or the Title Company may reasonably require.
8. Buyer shall deliver to Seller the balance of the Purchase Price and pay Buyer's Closing cost.
9. Buyer shall provide such evidence of the authority and capacity of Buyer and Buyer's representatives to execute and deliver this Contract and to consummate the transactions contemplated hereunder as Seller and/or the Title Company may reasonably require.
10. Each party shall execute the Closing statement and any other instruments prepared by the Closing Agent or required by the Title Company which are necessary and customary to consummate the transaction contemplated by this Contract.

X. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants, to the best of Seller's knowledge —or if Seller is not a natural person to the best personal knowledge of the party signing below on behalf of Seller that as of the Effective Date, and as of the Closing Date, there is no party in possession of the Property or portion thereof other than Seller. Seller has full right, power and authority to execute, perform and consummate this Contract without further consent from any other person, or entity and doing so will not violate any provisions of law or result in a breach of any entity governing document or constitute a default under any agreement to which Seller is a party or Seller and/or the Property may be bound.

XI. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer represents and warrants, to the best of Buyer's knowledge —or if Buyer is not a natural

person to the best personal knowledge of the party signing below on behalf of Buyer—that as of the Effective Date, and as of the Closing Date:

- A. Buyer has full right, power and authority to execute, perform and consummate this Contract without any further consent from any other person, or entity and doing so will not violate any provisions of law, or entity governing document or result in a breach of or constitute a default under any agreement to which Buyer is a party.
- B. Buyer has the funds available to pay the balance of the Purchase Price.
- C. There is no action, suit, proceeding or claim affecting Buyer, which would preclude Buyer from consummating the Closing of the Property.

XII. TITLE AND SURVEY.

- A. **Title Binder.** Buyer shall within fifteen (15) days after the Effective Date obtain from the Closing Agent a current standard Florida form of Commitment for Owner's Policy of Title Insurance (the "Title Binder") —underwritten by a title insurance company (the "Title Company") licensed to underwrite title insurance in the State of Florida— and shall furnish a copy thereof to the other party together with legible copy of the vesting deed and of all instruments referred to in the Title Binder. The Title Binder and title insurance policies shall be procured through Ansbacher Law.
- B. **Intentionally Deleted..**
- C. **Title Objections.** Seller will execute only such documents as necessary for a title insurance policy to be issued in Buyer's name at closing without the standard title exceptions.. In the event that the Title Binder reveals any additional title matters which are unacceptable to the Buyer, then Buyer's sole recourse shall be to terminate this Contract within ten (10) days of receipt of the Title Binder, in which event the deposit shall be returned to the Buyer and the parties will have no further obligations to each other hereunder except those that expressly survive termination.

XIII. RESTRICTIVE COVENANTS. Buyer acknowledges and agrees that, as a condition to Closing, Seller will include in the deed the following restrictive covenant: "In the event of any development involving or including the property described herein, at least a cumulative 2,547 square feet of the gross floor area of all buildings must be used for one or more of the following uses:

- A. Interior service restaurant, carry-out and delivery restaurant, fast-food restaurant, drive-in restaurant;
- B. Outdoor seating/dining for restaurant on private property;
- C. Retail sales, shopping center, wholesale sales (no on-site storage of stock), furniture and appliance sales, and pharmacy;
- D. Personal service establishments as follows: Laundry, cleaning, and garment services; photographic studios; beauty and barber shops, day spa, nail and waxing salon; shoe repair and miscellaneous

personal services (not including tattoo establishments); cleaning and janitorial services (no outdoor storage of vehicles, materials, equipment or supplies);

- E. Dance, art, dramatic, gymnastics and music studio;
- F. Library, museum, and art gallery; or
- G. Recreation, amusement, and entertainment (including, bowling alley, skating rink, billiard and pool hall, arcade, miniature golf, indoor athletic and exercise facilities, tennis, handball, or racquetball facility).

Failure to comply with this covenant after sixty (60) days' notice and opportunity to cure given by Grantor or its successors to Grantee or its successors shall be deemed a violation of the Code of Ordinances of the City of Neptune Beach, as may be amended, supplemented, or replaced, entitling the Grantor or its successors to the maximum daily damage permitted by law. Further, such failure shall render any development of which the property is a part non-conforming under the applicable zoning code and Grantor or its successors shall be entitled to all remedies associated therewith. Any amounts owed for violation of this provision shall constitute a lien against the property described herein when recorded, which may be foreclosed to the same extent as a mortgage. This restrictive covenant shall expire on the date which is thirty (30) years from the date of this Special Warranty Deed."

XIV. TERMINATION DEFAULT AND REMEDIES

- A. **Permitted Termination.** If this Contract is terminated or allowed to terminate by either party pursuant to a termination right specified in this Contract, (herein referred to as a "Permitted Termination"), then (i) the deposit shall be returned to the Buyer; (ii) intentionally deleted; (iii) Buyer shall relinquish any claims to the Property; (iv) Seller shall relinquish any claims against Buyer, except for any damage to the Property or persons caused by Buyer's inspections; and (v) the obligations under the Contract shall otherwise terminate.
- B. **Default by Seller Prior to Closing.**
 - 1. Seller shall be in default upon the occurrence of any one or more of the following events:
 - (i) Any of Seller's warranties or representations are untrue or inaccurate in any material respect;
 - (ii) Seller is in material default of any of Seller's obligations under this Contract and fails to cure such default within **5** business days after demand from Buyer; or
 - (iii) Seller refuses or is unable to close in accordance with the provisions of this Contract, other than due to Title Objections not caused by Seller's willful act or neglect, provided Buyer is not in default.
 - 2. In the event of a default by Seller, Buyer may, at Buyer's option, do any of the following:

- (i) terminate this Contract by written notice delivered to Seller and receive the return of the deposit;
- (ii) enforce specific performance of this Contract against Seller; or
- (iii) if specific performance is not available due to the conveyance of the Property by Seller to a third party, to recover Buyer's damages incurred due to Seller's willful default.

C. Default by Buyer Prior to Closing.

1. Buyer shall be in default upon the occurrence of any one or more of the following events:
 - (i) Any of Buyer's warranties or representations are untrue or inaccurate in any material respect;
 - (ii) Buyer is in material default of any of Buyer's obligations under this Contract and fails to cure such default within **5** business days after demand from Seller;
 - (iii) Buyer fails to close the purchase of the Property, for any reason other than a Permitted Termination or an uncured default by Seller.
2. In the event of a default by Buyer, Seller, as Seller's sole and exclusive remedy for such default, shall be entitled to terminate this Contract by written notice to Buyer and receive from Escrow Agent or retain, as the case may be, the Deposit and any Extension Fees due under this Contract, whether paid or not.

- D. Default After Closing.** If after Closing, either party defaults in any obligation under this Contract which survives Closing, then the other party shall have all rights and remedies available at law or in equity.

XV. Misc. Provisions.

- A. Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon gas that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.
- B. Further Assurances, Estoppel Letter.** In addition to the documents and payments required of the parties as described above, each party shall fully cooperate and execute such documents and instruments as may be reasonably necessary or useful to effect the intent of this Contract.
- C. Contract Not Recordable.** Neither this Contract nor any notice of it shall be recorded in any public records.

- D. **Escrow.** The Closing Agent or Escrow Agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, Fla. Stat. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorneys' fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.
- E. **Time.** In computing time periods of less than six (6) days, Saturdays, Sundays and legal holidays shall be excluded. In computing all other time periods, all calendar days shall be included. However, any time periods which end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. Time is of the essence in this Contract. A legal holiday is any day which is a "statutory holiday" applicable to Florida banking institutions pursuant to §655.89 Fla.Stat. A "business day" is any day other than a Saturday, Sunday or legal holiday.
- F. **Force Majeure.** In the event of a force majeure, the following matters in this Contract shall be extended: Closing. A "force majeure" shall mean any period when a state of emergency has been declared by the Governor of Florida pursuant to sec. 252.36, Fla. Stat., when the offices of the Clerk of Court of the jurisdiction in which the property lies are closed for emergency or Act of God, or, if the transaction is funded by a mortgage pursuant to Section IV(B), when a state of emergency in any jurisdiction which hinders the ability of the Lender to issue Loan Approval or close the transaction. Any such force majeure may extend the matters provided in this paragraph for a period of up to fourteen (14) days.

In the event that the force majeure is not resolved after such fourteen (14) day period, either party may terminate this Contract, in which event the buyer shall receive the return of the deposit and the parties shall thereafter have no further obligations to each other hereunder except those that expressly survive such termination.

- G. **Notices.** All required or permitted notices, demands, requests and other communications must be in writing, and will be deemed to be delivered and received upon the earlier to occur of (i) confirmed facsimile delivery or personal delivery, (ii) five (5) days after mailing U.S. Mail by registered or certified, return receipt requested, postage fully prepaid, or (iii) 1 day after sending by Federal Express delivery or UPS Delivery (Next Day Delivery), addressed to the addressee at its address set forth below or at such other address as such party may have specifically theretofore by notice delivered in accordance with this section. If delivery is made by facsimile (i) delivery will be effective on the next business day if the transmission is not completed by 5:00 p.m. at the destination location on the day sent, and (ii) a copy of the notice must also be delivered by other means. If no address for notices is specified for a party in this Contract, then notices to such party may be delivered to (i) the address of the current or last known registered agent of such party on record with the Florida Division of Corporations, (ii) the last known place of business for the party, or (iii) the last known residence of the party. If a party is represented in this transaction by an attorney then notices to the party may be delivered to the party's attorney, at their principal offices, instead of delivery to the party.
- H. **Governing Law, Venue, Waiver of Jury Trial.** The laws of the State of Florida shall govern the validity, enforcement, and interpretation of the Contract. The parties' obligations are performable, and the venue for any legal action arising out of this Contract shall lie in the county where the Property is situated. Each party waives their right to a trial by jury for any action arising out of or relating to this Contract. Each party agrees that jurisdiction and venue will be in the Circuit Court of said County irrespective of any diversity of citizenship and regardless of Florida law pertaining to conflict of laws that would otherwise allow for an alternate jurisdiction. Each party waives the right to assert federal diversity jurisdiction. The provisions of this section shall apply to any assignees. The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement.
- I. **Construction, Integration, Modification, Waiver.** This Contract shall be construed as drafted mutually by Buyer and Seller. This Contract constitutes the complete and final expression of the agreement of the parties relating to the Property and supersedes all previous contracts, agreements, and understandings of the parties,

either oral or written, relating to the Property. This Contract cannot be modified, or any of the terms hereof waived, except by an instrument in writing executed by both parties. This Contract shall bind and inure to the benefit of the parties and their successors in interest. If a party is designated as responsible for payment of an expense in Section VI, such as, for example, a survey, but the other section in the Contract indicates that the service will not be provided by either party (i.e., in the example, the survey box is unchecked) then the allocation of the expense shall not impose the obligation to deliver same. The Contract may; however, provide that one party will be responsible for procuring a service and holding the other party responsible for payment. Whenever the context permits, the singular shall include the plural and one gender shall include all. The verbiage of any section or subsection shall not be limited by the preceding titles or captions. Whenever the term "shall" is used in this Contract, such term means such matters are mandatory and is to be interpreted the same as the term "must."

- J. **Counterpart Execution, Facsimile, & Definition of Effective Date.** This Contract may be executed in several counterparts, each of which shall be fully effective as originals and all of which together shall constitute one and the same instrument. A facsimile, digital image or electronic reproduction of this Contract shall be treated as an original for all purposes. The "Effective Date" is the date last signed by the Buyer and Seller, and if applicable the last date signed of any final counter-offers. Unless a different time is specified in the Contract or by separate writing, a party will have 3 days after delivery to accept this Contract or counter-offer, to notify the other party and Escrow Agent of acceptance and to furnish a copy of the fully executed agreement or the offering party may withdraw their offer.
- K. **Conditions Precedent.** The following matters are conditions precedent to the parties' obligations under this Agreement: vacation of the right of way as required by Section IX(C)(3) of this Contract; execution of a mutually approved development agreement as required by Section IX(C)(4) of this Contract; and site plan approval as required by Section IX(C)(5) of this Contract. The parties agree to use good faith efforts and reasonable diligence to satisfy these conditions. In the event that these conditions are not satisfied prior to Closing, this Contract shall terminate, the buyer shall receive the return of the deposit, and the parties shall have no further obligations to each other hereunder except those that expressly survive termination.
- L. **Intentionally Deleted.**
- M. **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.

- N. **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
- O. **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
- P. **Public Records.** This transaction and any documents related thereto shall be subject to Florida's Public Records Laws in Section 119, Florida Statutes. If Seller asserts any exemptions to the requirements of Chapter 119, Florida Statutes and related laws, Seller will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
- Q. **Assignment of Rights.** Buyer may not assign rights under this Agreement.
- R. **Notices.** For Purposes of notice under this agreement the Buyer's address and contact information is 2300 Marsh Point Road, Unit 301, Neptune Beach, Florida 32266, Attn: Jean Bakkes, (407) 217-3255, jean@skyenterprises.com. The Seller's address and contact information is 116 First Street, Neptune Beach Florida 32266, Attn: City Clerk, (904) 270-2400, clerk@nbfl.us

(SIGNATURE PAGES FOLLOW)

THIS IS A LEGALLY BINDING AGREEMENT. IF YOU DO NOT FULLY UNDERSTAND THE TERMS OF THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY BEFORE YOU SIGN. IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement the date last written below.

SELLER:

CITY OF NEPTUNE BEACH, FLORIDA
a political subdivision of the State of Florida

By:

Mayor Cori Bylund, Chairman
City Council

ATTEST:

(SEAL)

_____, CMC, City Clerk

Date executed by CITY: _____

THIS IS A LEGALLY BINDING AGREEMENT. IF YOU DO NOT FULLY UNDERSTAND THE TERMS OF THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY BEFORE YOU SIGN. IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement the date last written below.

BUYER:

MARSHPOINT PROPERTIES TWO, LLC,
a Delaware limited liability company

By:

J. Bakkes
Jean Bakkes, Manager, Director and
Authorized Agent

Witness:
Printed Name:
Address:

Cassandra M. English

50 A1A North, Suite 108

Ponte Vedra Beach, FL 32082

Witness:
Printed Name:
Address:

Ruth McDonald

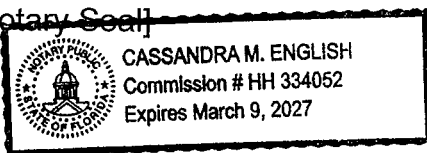
50 A1A North, Suite 108

Ponte Vedra Beach, FL 32082

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 12 day of December, 2024, by Jean Bakkes, as authorized agent of Marshpoint Properties Two, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me or has produced Valid DL as identification.

[Notary Seal]



Notary Public

Cassandra M. English

Name typed, printed or stamped

My Commission Expires: March 9, 2027

EXHIBIT "A" – LEGAL DESCRIPTION

THAT PART OF THE ALLEY WITHIN BLOCK 2, PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 61 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE EASTERNMOST CORNER OF LOT 8, OF SAID BLOCK 2; THENCE RUN NORTH 55°35'00" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT 8, A DISTANCE OF 31.62 FEET TO THE SOUTHERNMOST CORNER OF LOT 9 OF SAID BLOCK 2; THENCE NORTH 34°25'00" EAST ALONG THE SOUTHEASTERLY LINE OF LOTS 9 THROUGH 11 INCLUSIVE OF SAID BLOCK 2, A DISTANCE OF 60.00 FEET TO THE EASTERNMOST CORNER OF SAID LOT 11; THENCE RUN SOUTH 55°35'00" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 12 AND LOT 16 OF SAID BLOCK 2, A DISTANCE OF 23.39 FEET TO THE WESTERNMOST CORNER OF LOT 17 OF SAID BLOCK 2; THENCE RUN SOUTH 21°10'00" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 17 AND LOT 18 OF SAID BLOCK 2, A DISTANCE OF 40.00 FEET TO THE SOUTHERNMOST CORNER OF SAID LOT 18; THENCE RUN SOUTH 67°55'46" WEST, A DISTANCE OF 44.85 FEET TO THE POINT OF BEGINNING.



LAND USE SUMMARY	
BUILDINGS	
1	- 7,300 sq. ft.
2	- 3,300 sq. ft.
TOTAL	- 10,600 sq. ft.
PARKING	
ON SITE	- 59 spaces

NEPTUNE BEACH GATEWAY

SKY ENTERPRISES LLC

October 7, 2024

Conceptual Site Plan



THIS MATERIAL REPRESENTS DEVELOPMENT CONCEPTS AND ARCHITECTURAL AND OTHER DESIGN CONCEPTS BEING CONSIDERED AT THE TIME IT WAS PRODUCED. THIS INFORMATION IS SUBJECT TO REVISIONS AND MODIFICATIONS WITHOUT NOTICE. ALL ORALS AND WRITTEN INFORMATION, DESCRIPTIONS, PLANS, COPY, GRAPHICS, PHOTOGRAPHY, CHARTS, GRAPHS AND RENDERINGS MAY BE ADAPTED AT ANY TIME AND SHOULD NOT BE RELIED UPON AS FINAL.

planning
architecture
landscape architecture
urban design
visual communication



STAFF REPORT

**Staff Analysis for
Agenda Item # 9B**

MEETING DATE: January 6, 2025
BOARD/COMMITTEE: City Council

TO: City Council

FROM: Heather Whitmore, AICP, PTP, Community Development Director

DATE: December 30, 2024

SUBJECT: Request to purchase a section of Right-of-Way (Kings Circle S/Marsh Point Rd/Florida Blvd)

I. BACKGROUND:

Mr. Jean Bakkes approached staff requesting to purchase a portion of right-of-way adjacent to properties along Marsh Point Rd and Florida Blvd, also known in correspondence as the “weird alley” (Exhibit A).

Staff received a formal request in August and all required documentation (see attached application) to present the applicant’s request to purchase the right-of-way to City Council. Based on direction from the City Attorney, staff requests City Council provide direction to agree to proceed with Mr. Bakkes request to purchase the right-of-way.

The applicant requests to purchase a portion of the right-of-way identified by the survey in Exhibit B of the packet. This is a 2,547 square foot portion of right-of-way adjacent to the six vacant parcels all currently owned by Mr. Bakkes, as well as 2311 Marsh Point Rd and 2230 Florida Blvd, both owned by Mr. Bakkes. The right-of-way is located in the rear yards as shown on the map. The 2,547 square foot portion of the right-of-way is completely unimproved. The alley does not serve any traffic or dedicated public utilities.

Lastly, a portion of the adjacent right-of-way not subject to this vacation contains eight parking spaces behind the Monahan Building. These eight spaces are leased from the City to the Monahan Building (please see attached existing lease agreement). These spaces will not be impacted by the vacation of the subject right-of-way.

Supplementary Information

This request was seen by the Council on September 5, 2023. The Council requested additional information regarding the appraised comparable value and the proposed future use. The applicant provided the requested additional information to Council at the November 6, 2023 meeting.

The applicant has provided an updated appraisal (Exhibit C) showing the market value of the subject right-of-way to be \$70,000.

The Appraisal Report was prepared to conform with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). The initial appraisal compared four similarly sized and situated property sales within a one-mile vicinity of the subject right-of-way. The comparable sites were selected based on the following similarities: vacant land parcels with similar zoning, utility, and location to the subject property. Several land value adjustments were applied: property rights, financing terms, conditions or motivations surrounding the sale, market condition changes, location, zoning/intended use, utilities, and topography.

The appraiser used a very small adjustment factor to the comparables to account for variations between the sites, typically in the 6% range. The subject property was broken into two sections for the purpose of valuation: a Florida Boulevard frontage and a Marsh Point Road frontage. The Florida Boulevard frontage portion of the subject area was assigned a higher value per square foot than the Marsh Point Road frontage.

The property appraisal was prepared competently and in a manner that is independent, impartial, and objective. The appraisal used the most appropriate unit of comparison for this analysis which was price per square foot. The property appraisal provided a price per square foot based on potential land value of location. The final value per square foot of the appraisal used a figure consistent with the average land value per square foot of comparable sales.

At the request of the Council, the appraisal was revised to include three supplemental land sales from the subject's local market area. These three sales were not used in the initial appraisal as they are not considered directly comparable to the subject based on the following similarities: vacant land parcels with similar zoning, utilities, and location to the subject property.

At the September 5, 2023 meeting, Council also requested more information on the site's proposed future use. The applicant has provided two renderings of the proposed future buildout of the site (Exhibit D).



Figure 1: Aerial Photograph of subject right-of-way vacation

EXHIBIT A

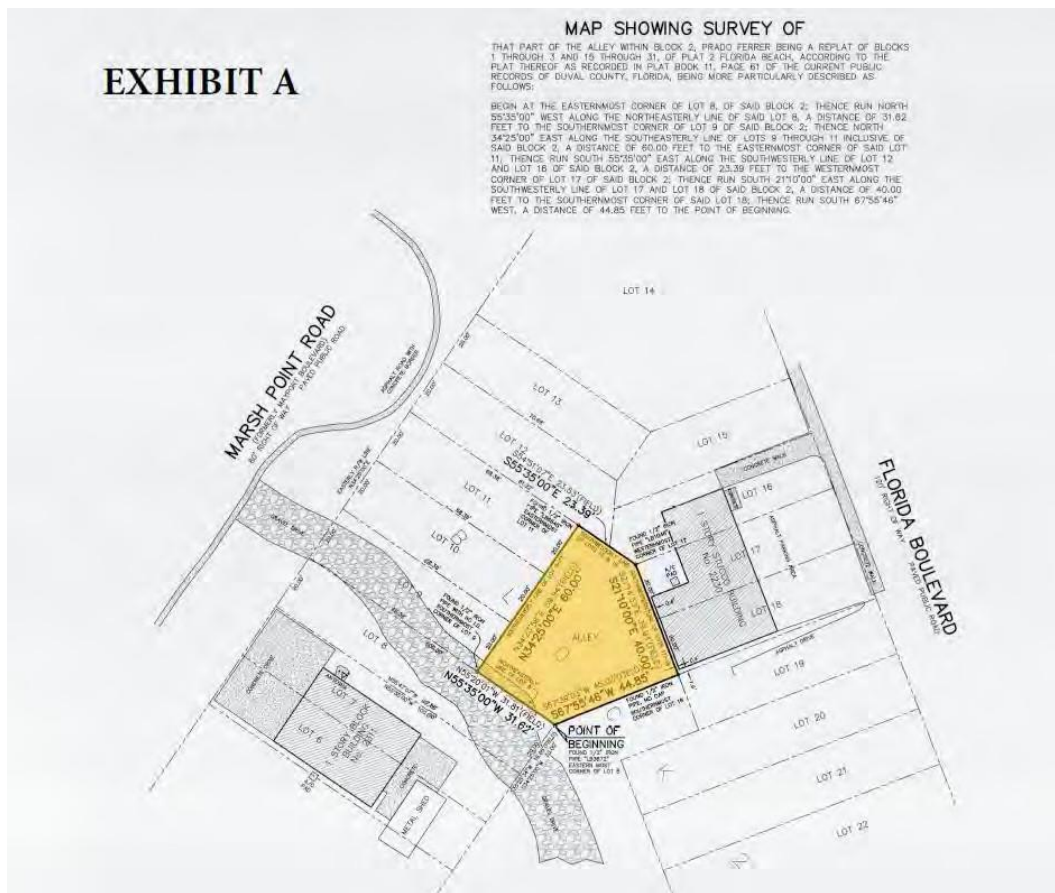


Figure 2: Exhibit A Survey of right-of-way to be vacated

II. DISCUSSION/RECOMMENDATIONS:

LDC Sec. 27-478 (d). “Dedication of right-of-way” states the conditions under which a right-of-way can be vacated.

(d) Vacations of right-of-way. Applications to vacate a right-of-way may be approved upon a finding that all of the following conditions are met:

- (1) The request is consistent with the transportation circulation element of the comprehensive plan.*
- (2) The right-of-way does not provide the sole access to any property. Remaining access shall not be by easement.*
- (3) The vacation would not jeopardize the current or future location of any utility.*

This portion of right-of-way is not identified in the transportation circulation element of the comprehensive plan and is not used for vehicular traffic.

The right-of-way is adjacent to parcels all currently owned by Mr. Bakkes, therefore all of the right-of-way can be dedicated to Mr. Bakkes (as shown in ownership map attached in the application). The right-of-way does not provide sole access to any property.

The right-of-way does not have impacts to current or future location of any utilities, water or sewer infrastructure in the area. The applicant has contacted the only public utility serving the area (Waste Pro) and they have no objections to the request (see attached application including letter from Waste Pro).

Sec. 18-5:

(a)The permanent abandonment of public property or rights-of-way should not be authorized unless an overriding public interest is served by said abandonment and/or the city is compensated in some material way equivalent to the market value of said property at the time of abandonment. Public property or rights-of-way should only be abandoned to promote the public welfare and not for the benefit of a private person or corporation.

The “and/or” likely should be interpreted to mean that one or the other is acceptable, so to satisfy the first prong, we would need either an overriding public interest or to receive market value compensation.

If the purchase is authorized by City Council, the portion of right-of-way purchased will need to be re-platted into the applicant’s property. The applicant will pay for all costs associated with the vacation and replating, as well obtaining appraisals, title work, and other encumbrances related to real estate transactions.

III. CONCLUSION:

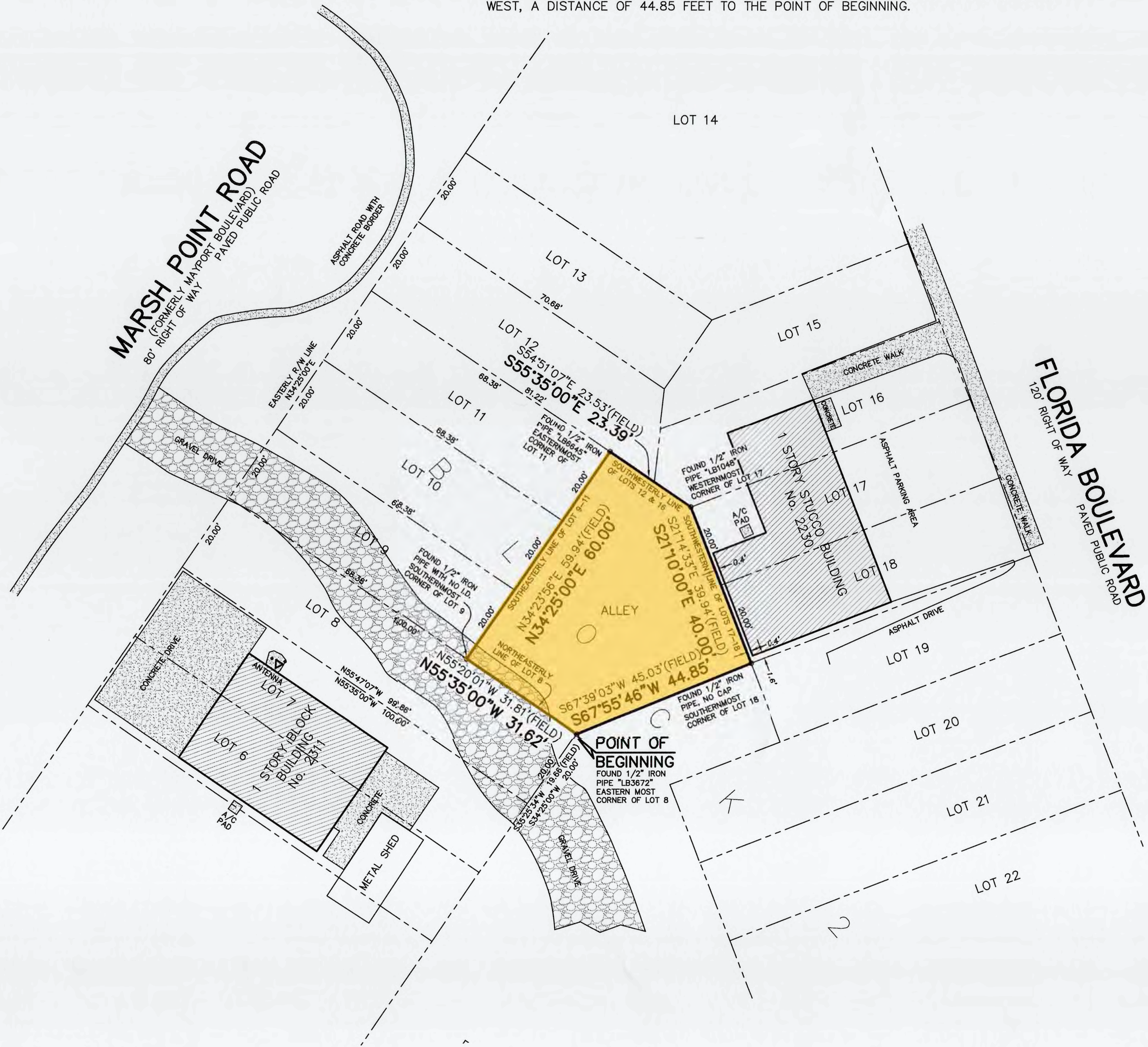
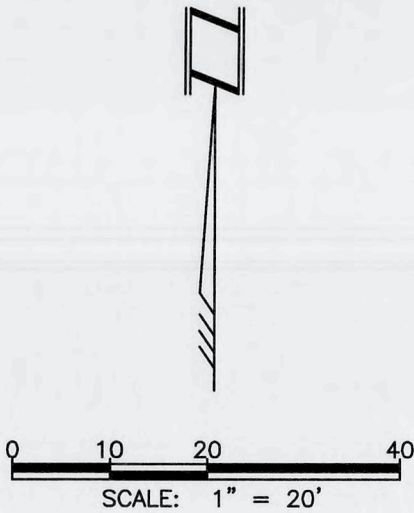
To execute the purchase and sale agreement and allow the transaction to proceed. The Conceptual Site Plan as attached to this agreement has not been reviewed by Community Development or Public Works staff for consistency with Land Development Regulations, public utilities, or access management. Any development of the subject property will require a Development Order review and approval, including staff analysis, Community Development Board review, and City Council approval.

EXHIBIT A

MAP SHOWING SURVEY OF

THAT PART OF THE ALLEY WITHIN BLOCK 2, PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 61 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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NOTES:

1. THIS IS A BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE SOUTHEAST RIGHT-OF-WAY LINE OF MARSH POINT ROAD, BEING NORTH 34°25'00" EAST, AS PER PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, AS SHOWN.
3. THIS SURVEY WAS PREPARED WITHOUT AN ABSTRACT OF TITLE; THEREFORE THE UNDERSIGNED MAKES NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION SHOWN HEREON PERTAINING TO EASEMENTS, RIGHT OF WAYS, SETBACK LINES, AGREEMENTS, RESERVATIONS, OR OTHER SIMILAR MATTERS.
4. NO UNDERGROUND INSTALLATIONS, IMPROVEMENTS OR ENCROACHMENTS HAVE BEEN LOCATED EXCEPT THOSE SHOWN HEREON.
5. NO BUILDING RESTRICTION LINES, AS PER PLAT.
6. THE PROPERTY DESCRIBED HEREON LIES IN FLOOD ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP No. 12031C0408J, REVISED NOVEMBER 2, 2018 FOR DUVAL COUNTY, FLORIDA.

THIS SURVEY IS CERTIFIED TO:
MARSHPOINT PROPERTIES TWO, LLC.

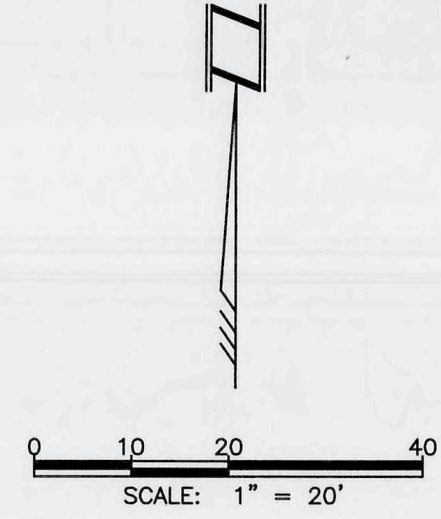
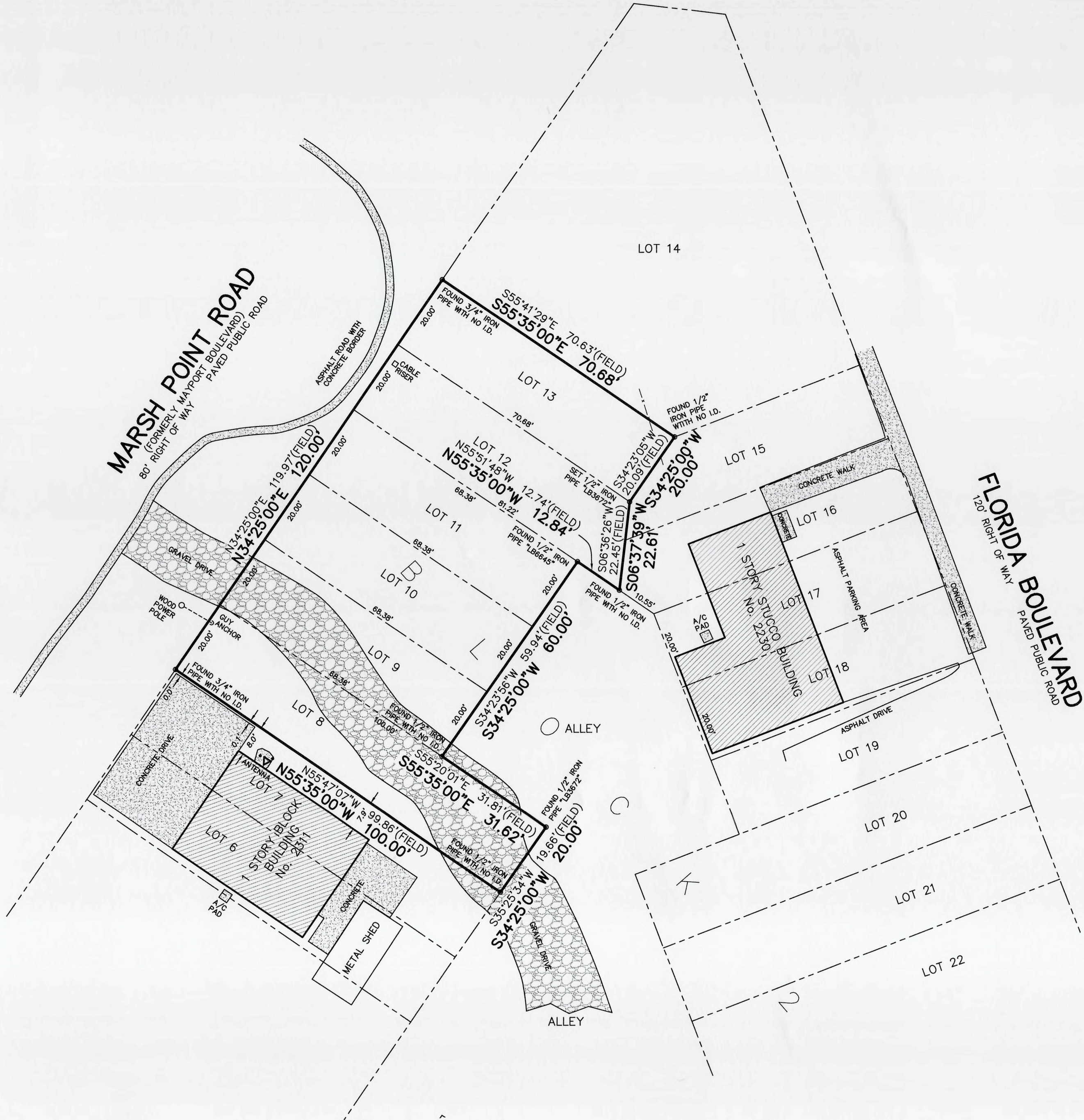

JASON D. BOATWRIGHT, P.S.M.
FLORIDA LICENSED SURVEYOR and MAPPER No. LS 7292
FLORIDA LICENSED SURVEYING & MAPPING BUSINESS No. LB 3672

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

EXHIBIT B

MAP SHOWING SURVEY OF

LOTS 8, 9, 10, 11, 12 AND 13, BLOCK 2, PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 61 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.



NOTES:

1. THIS IS A BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE SOUTHEAST RIGHT-OF-WAY LINE OF MARSH POINT ROAD, BEING NORTH 34°25'00" EAST, AS PER PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, AS SHOWN.
3. THIS SURVEY WAS PREPARED WITHOUT AN ABSTRACT OF TITLE; THEREFORE THE UNDERSIGNED MAKES NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION SHOWN HEREON PERTAINING TO EASEMENTS, RIGHT OF WAYS, SETBACK LINES, AGREEMENTS, RESERVATIONS, OR OTHER SIMILAR MATTERS.
4. NO UNDERGROUND INSTALLATIONS, IMPROVEMENTS OR ENCROACHMENTS HAVE BEEN LOCATED EXCEPT THOSE SHOWN HEREON.
5. NO BUILDING RESTRICTION LINES, AS PER PLAT.
6. THE PROPERTY DESCRIBED HEREON LIES IN FLOOD ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP No. 12031C0408J, REVISED NOVEMBER 2, 2018 FOR DUVAL COUNTY, FLORIDA.

THIS SURVEY IS CERTIFIED TO:
MARSHPOINT PROPERTIES TWO, LLC.


JASON D. BOATWRIGHT, P.S.M.
FLORIDA LICENSED SURVEYOR and MAPPER No. LS 7292
FLORIDA LICENSED SURVEYING & MAPPING BUSINESS No. LB 3672

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



APPRAISAL REPORT



The insight you need. The independence you trust.

Marsh Point Road Alleyway

2,547± SF Vacant Commercial Alleyway
Located between Florida Boulevard and Marsh Point Road
Neptune Beach, Florida 32266-1601

BBG File #0123111229

Prepared For

Mr. Jean Bakkes
Marshpoint Properties Two LLC
2300 Marsh Point Road, No. 301
Neptune Beach, FL 32266-1646

Report Date

October 2, 2023

Prepared By

BBG, Inc., Ponte Vedra Beach Office
13000 Sawgrass Village Circle
Ponte Vedra Beach, FL 32082

Client Manager: Kyle Catlett, MAI
kcatlett@bbgres.com

BBG Website

bbgres.com

October 2, 2023

Mr. Jean Bakkes
Marshpoint Properties Two LLC
2300 Marsh Point Road, No. 301
Neptune Beach, FL 32266-1646

Re: Appraisal of Real Property
Marsh Point Road Alleyway
Located between Florida Boulevard and Marsh Point Road
Neptune Beach, Florida 32266-1601
BBG File #0123111229

Dear Mr. Bakkes:

In accordance with your authorization (per the engagement letter found in the *Addenda* of this report), an Appraisal Report of the above-referenced property has been prepared. The purpose of this appraisal assignment is to render an opinion of the "As Is" Market Value of the Fee Simple Interest in the subject property.

The subject property is a portion of a commercial alleyway located between Florida Boulevard and Marsh Point Road in Neptune Beach Duval County, Florida. The subject site contains approximately 2,547 SF of land and abuts parcels zoned C-2 by the City of Neptune Beach.

Inasmuch, the appropriate method of valuing this alleyway would be the "Across the Fence" Method. This concept is that each square foot of land in the corridor/alleyway has the same value as, or could best be estimated by considering, the value of the land adjacent, or "Across the Fence."

The intended users of this appraisal assignment include the Client, Marshpoint Properties Two, LLC as well as legal counsel and designated representatives. A secondary user may also include the City of Neptune Beach. The intended use of this appraisal is to assist in evaluation and potential acquisition of the subject by Marshpoint Properties Two, LLC. No other intended users or uses are known or presumed in our analysis. The appraisers have not performed any prior services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment. Moreover, the appraisers have no personal interest in the subject, nor do we have any bias with respect to the properties or parties involved.

This Appraisal Report was prepared to conform with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). This report has been written in accordance with the Code of Ethics and the Standards of Professional Practice of the Appraisal Institute. This report is intended to be used by the intended user(s) named herein; no other party may rely upon the opinions presented in this report.

EXTRAORDINARY ASSUMPTION(S) AND HYPOTHETICAL CONDITION(S)

The values presented within this appraisal report are subject to the extraordinary assumptions and hypothetical conditions listed below. Pursuant to the requirement within Uniform Standards of Professional Appraisal Practice Standards, it is stated here that the use of any extraordinary assumptions and/or hypothetical conditions might have affected the assignment results.

Extraordinary Assumption(s)	The property is currently not zoned by the City of Neptune Beach. We contacted the City of Neptune Beach who indicated the zoning of this parcel to be C-2, which is assumed to be correct. If the zoning utilized in this analysis were to change, this may impact our analysis and conclusions.
Hypothetical Condition(s)	This appraisal employs no hypothetical conditions.

Based on the analysis undertaken, the following value opinion has been developed.

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value - As Is	Fee Simple	May 10, 2023	\$70,000

This letter must remain attached to the report, which should be transmitted in its entirety, in order for the value opinion(s) set forth above to be relied upon by the intended user(s).

BBG, Inc. appreciates the opportunity to have performed this appraisal assignment on your behalf. If we may be of further service, please contact the Client Manager.

Sincerely,



Kyle Catlett, MAI
State-Certified General Real Estate Appraiser
RZ3875
kcatlett@bbgres.com



Drake DeRango
State-Certified General Real Estate Appraiser
RZ4058
dderango@bbgres.com

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SUBJECT PROPERTY



AERIAL PHOTOGRAPH



SUMMARY OF SALIENT FACTS

APPRAISAL INFORMATION

Client	Marshpoint Properties Four LLC 2300 Marsh Point Road, No. 301 Neptune Beach, FL 32266-1646
Intended User(s)	The intended users of this appraisal assignment include the Client, Marshpoint Properties Two, LLC as well as legal counsel and designated representatives. A secondary user may also include the City of Neptune Beach.
Intended Use	The intended use of this appraisal is to assist in evaluation and potential acquisition of the subject by Marshpoint Properties Two, LLC
Property Rights Appraised	As Is Market Value - Fee Simple
Effective Date of Value	May 10, 2023
Date of Inspection	May 10, 2023
Report Date	October 2, 2023
Marketing Time	Less than 12 months
Exposure Time	Less than 12 months
Owner of Record	City of Neptune Beach
Most Probable Purchaser	Adjacent Property Owner
Highest and Best Use, As Vacant	Assemblage for commercial use

PROPERTY DATA

Property Name	Marsh Point Road Alleyway
Address	Located between Florida Boulevard and Marsh Point Road Neptune Beach, Florida 32266-1601
Location	Alleyway east of Marsh Point Road and west of Florida Boulevard
Property Description	Land (Commercial) A 2,547± SF commercial alleyway
County	Duval County
Parcel Number	No Parcel ID Assigned
Census Tract No.	0140.02
Legal Description	See Survey
Site Area	2,547 square feet (0.06 acres)
Zoning	The site is currently not zoned. Surrounding sites are zoned C-2/Commercial and some parcels are also located in the NC overlay district.
Flood Status	Zone X Unshaded (Outside 500Y) is a Non-Special Flood Hazard Area (NSFHA) of minimal flood hazard, usually depicted on Flood Insurance Rate Maps (FIRM) as above the 500-year flood level. This is an area in a low to moderate risk flood zone that is not in any immediate danger from flooding caused by overflowing rivers or hard rains. In communities that participate in the National Flood Insurance Program (NFIP), flood insurance is available to all property owners and renters in this zone.

VALUE INDICATIONS			
1) As Is as of May 10, 2023			
Sales Comparison Approach	\$70,000	\$27.48	Per Square Foot of Land
Approach Reliance	Sales Comparison/Across the Fence		
Value Conclusion - As Is	\$70,000	\$27.48	Per Square Foot of Land
Exposure Time (Months)	Less than 12 months		
Marketing Time (Months)	Less than 12 months		

EXTRAORDINARY ASSUMPTION(S) AND HYPOTHETICAL CONDITION(S)	
The values presented within this appraisal report are subject to the extraordinary assumptions and hypothetical conditions listed below. Pursuant to the requirement within Uniform Standards of Professional Appraisal Practice Standards, it is stated here that the use of any extraordinary assumptions and/or hypothetical conditions might have affected the assignment results.	
Extraordinary Assumption(s)	The property is currently not zoned by the City of Neptune Beach. We contacted the City of Neptune Beach who indicated the zoning of this parcel to be C-2, which is assumed to be correct. If the zoning utilized in this analysis were to change, this may impact our analysis and conclusions.
Hypothetical Condition(s)	This appraisal employs no hypothetical conditions.

PROPERTY OWNERSHIP AND TRANSACTION HISTORY

The property is right of way owned by the city of Neptune Beach. The Client of this report has approached the city about acquiring a portion of the subject cul de sac. The client owns several properties abutting the subject along Florida Boulevard and Marsh Point Road. There have been no other known transactions of the subject property within the three years prior to the effective date of this appraisal.

SCOPE OF WORK

The scope of work best defines the needs of the client(s) and intended user(s) of the report and dictates what factors an appraiser considered during the valuation process. The scope of work summarized below has been deemed acceptable as it meets or exceeds both the expectations of parties who are regularly intended users for similar assignments and what an appraiser's peers' actions would be in performing the same or a similar assignment. As such, the scope of work summarized below is deemed appropriate for this assignment based on its parameters and will produce credible assignment results. Additional scope details are included in appropriate sections of this report.

SCOPE OF THE INVESTIGATION															
General and Market Data Analyzed	- Regional economic data and trends - Market analysis data specific to the subject property type - Published survey data - Neighborhood demographic data - Comparable commercial land sales data - Floodplain status - Zoning and Future Land Use information - Property Appraiser and Tax Collector information - Interviewed professionals knowledgeable about the subject's property type and market														
Inspection Details	An onsite inspection of the property was made by Kyle Catlett, MAI, and Drake DeRango on May 10, 2023.														
Property Specific Data Requested and Received	<table> <tr> <th colspan="2">PROPERTY DATA RECEIVED</th></tr> <tr> <td colspan="2">Survey</td></tr> </table>	PROPERTY DATA RECEIVED		Survey											
PROPERTY DATA RECEIVED															
Survey															
Data Requested, but not Provided	<table> <tr> <th colspan="2">DATA REQUESTED, BUT NOT PROVIDED</th></tr> <tr> <td colspan="2">None noted</td></tr> </table>	DATA REQUESTED, BUT NOT PROVIDED		None noted											
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Data Sources	<table> <tr> <th colspan="2">DATA SOURCES</th></tr> <tr> <td>Site Size</td><td>Survey</td></tr> <tr> <td>Tax Data</td><td>Duval County Tax Collector</td></tr> <tr> <td>Zoning Information</td><td>City of Neptune Beach</td></tr> <tr> <td>Flood Status</td><td>FEMA</td></tr> <tr> <td>Demographics Reports</td><td>Spotlight</td></tr> <tr> <td>Comparable Land Sales</td><td>Local brokerage community</td></tr> </table>	DATA SOURCES		Site Size	Survey	Tax Data	Duval County Tax Collector	Zoning Information	City of Neptune Beach	Flood Status	FEMA	Demographics Reports	Spotlight	Comparable Land Sales	Local brokerage community
DATA SOURCES															
Site Size	Survey														
Tax Data	Duval County Tax Collector														
Zoning Information	City of Neptune Beach														
Flood Status	FEMA														
Demographics Reports	Spotlight														
Comparable Land Sales	Local brokerage community														

VALUATION METHODOLOGY

Most Probable Buyer	To apply the most relevant valuation methods and data, the appraiser must first determine the most probable buyer of the subject property. Based on the analyses presented, the most probable buyer of the subject property would be an adjoining property owner.
Valuation Methods Utilized	This appraisal employs only the Sales Comparison Approach. In estimating the Market Value of the Fee Simple Interest in the subject area a lack of private-party sales of alleyways and cul de sac's requires use of the "Across-The-Fence" ("ATF") method of value, commonly used in corridor valuation. This method is based on the premise that corridor land is at least as valuable as the land it passes through. This value method is supported by comparison with adjacent lands including the consideration of adjustment factors such as market conditions, real property rights conveyed and location. Sales of comparable vacant commercial land from the area have been gathered, verified, and included in this report in support of the Fee Simple Market Value estimate. This is typical of how the appraisers' peers would answer this particular appraisal problem.

DEFINITIONS

Pertinent definitions, including the definition of market value, are included in the glossary, located in the *Addenda* of this report. The following definition of market value is used by agencies that regulate federally insured financial institutions in the United States:

Market Value

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. ^[1]

LEVEL OF REPORTING DETAIL

Standards Rule 2-2 (Real Property Appraisal, Reporting) contained in USPAP requires each written real property appraisal report to be prepared as either an Appraisal Report or a Restricted Appraisal Report.

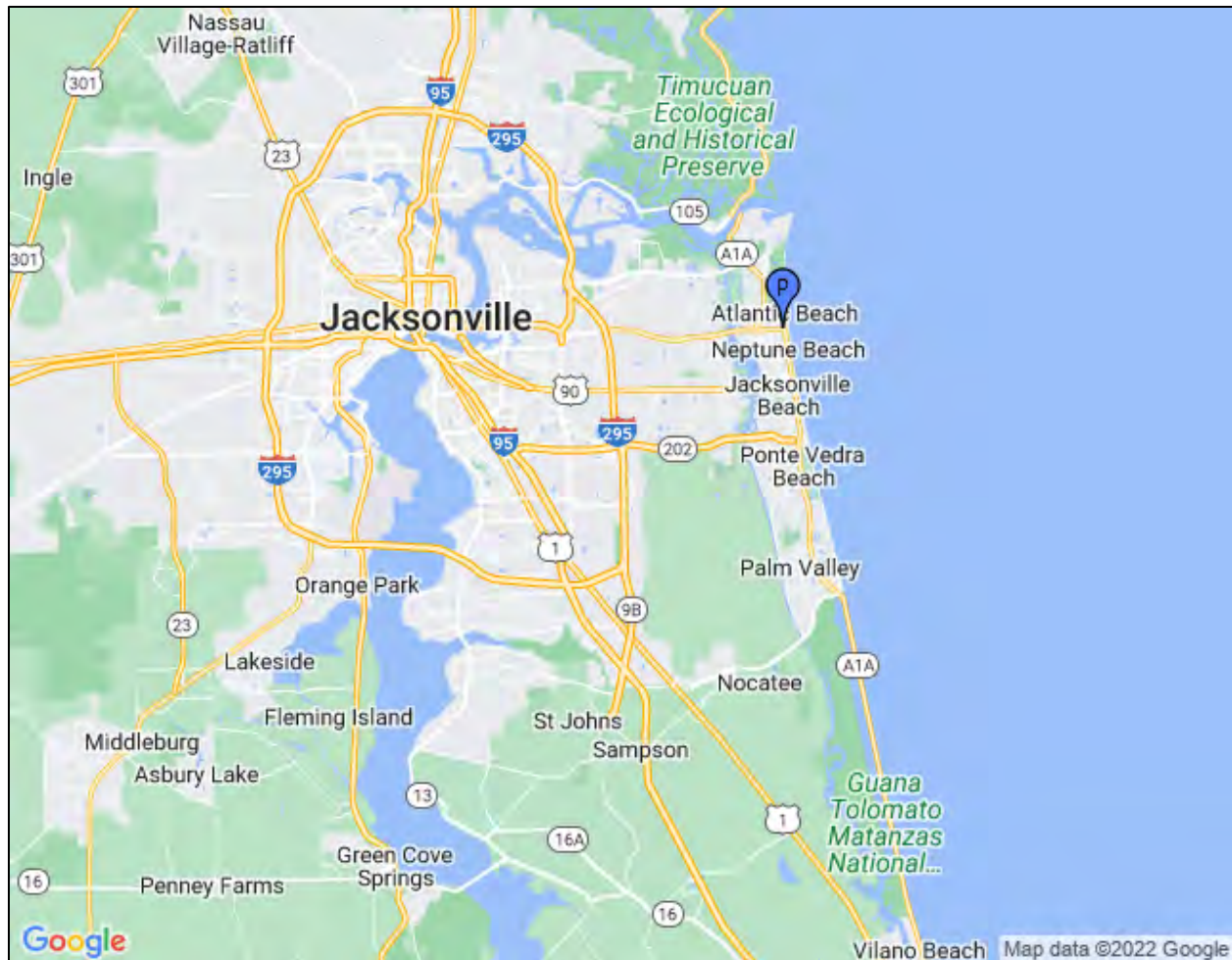
This report is prepared as an **Appraisal Report**. An Appraisal Report must at a minimum summarize the appraiser's analysis and the rationale for the conclusions.

^[1] (Interagency Appraisal and Evaluation Guidelines; December 10, 2010, Federal Register, Volume 75 Number 237, Page 77472)

REGIONAL OVERVIEW

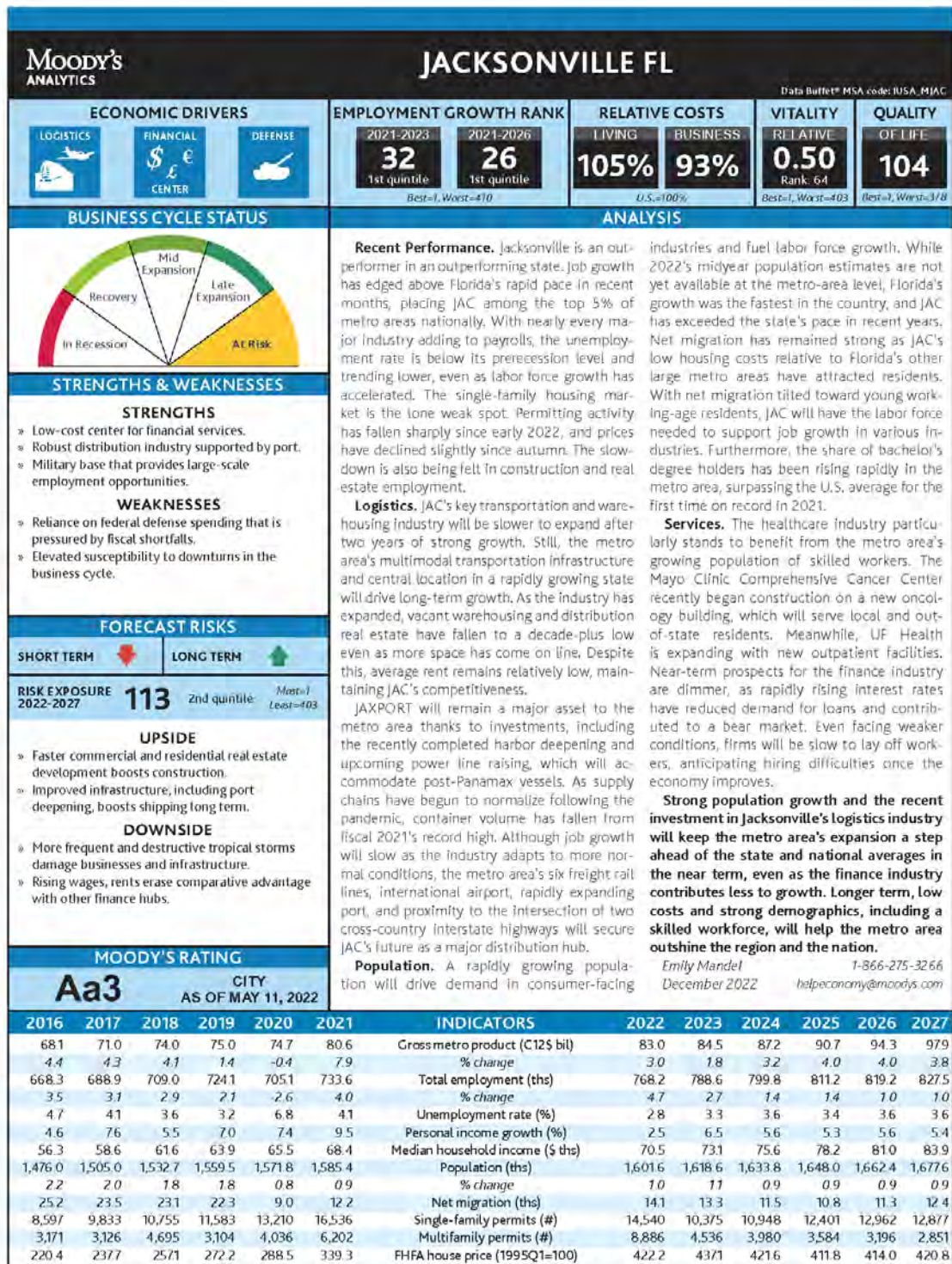
The short- and long-term value of real estate is influenced by a variety of factors and forces that interact within a given region. Regional analysis serves to identify those forces that affect property value, and the role they play within the region. The four primary forces that influence real property value include environmental characteristics, governmental forces, social factors, and economic trends. These forces determine the supply and demand for real property, which, in turn, affect market value.

REGIONAL MAP



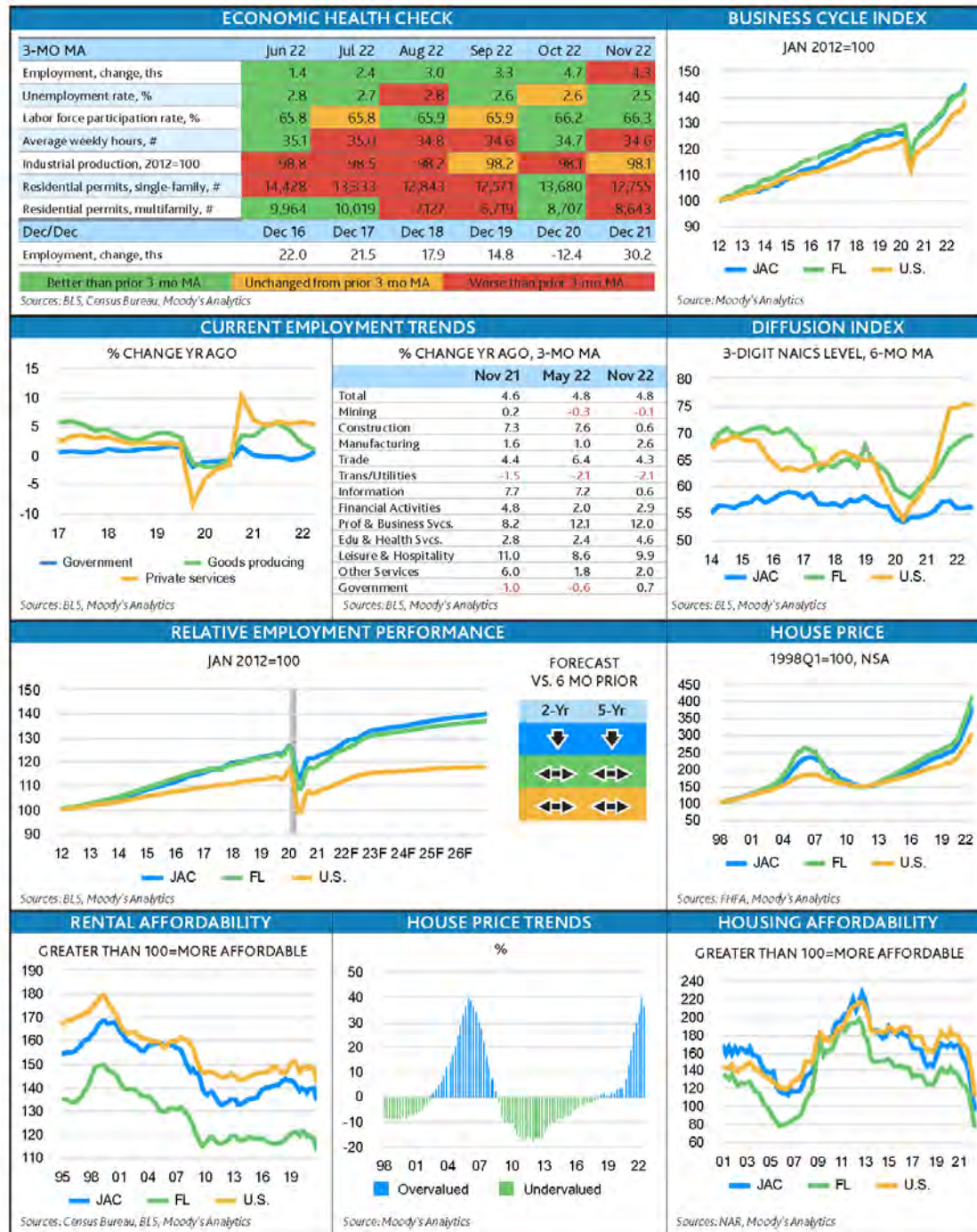
ECONOMIC & DEMOGRAPHIC PROFILE

The following profile of the Jacksonville MSA was provided by Economy.com, a leading provider of economic, financial, and industry information. The following data was most applicable as of the effective date of value.



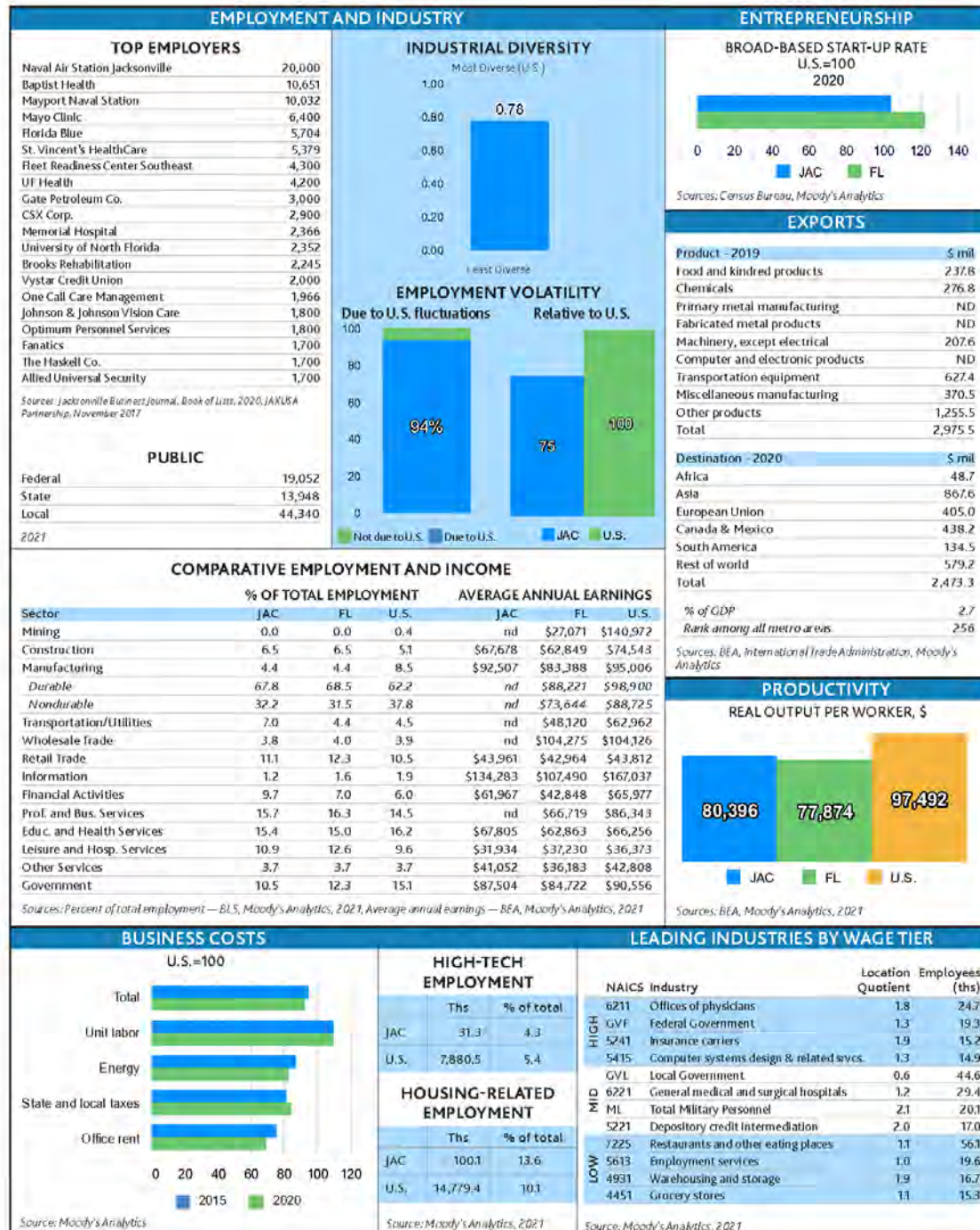
MOODY'S ANALYTICS | Fitch® U.S. MSA | December 2022

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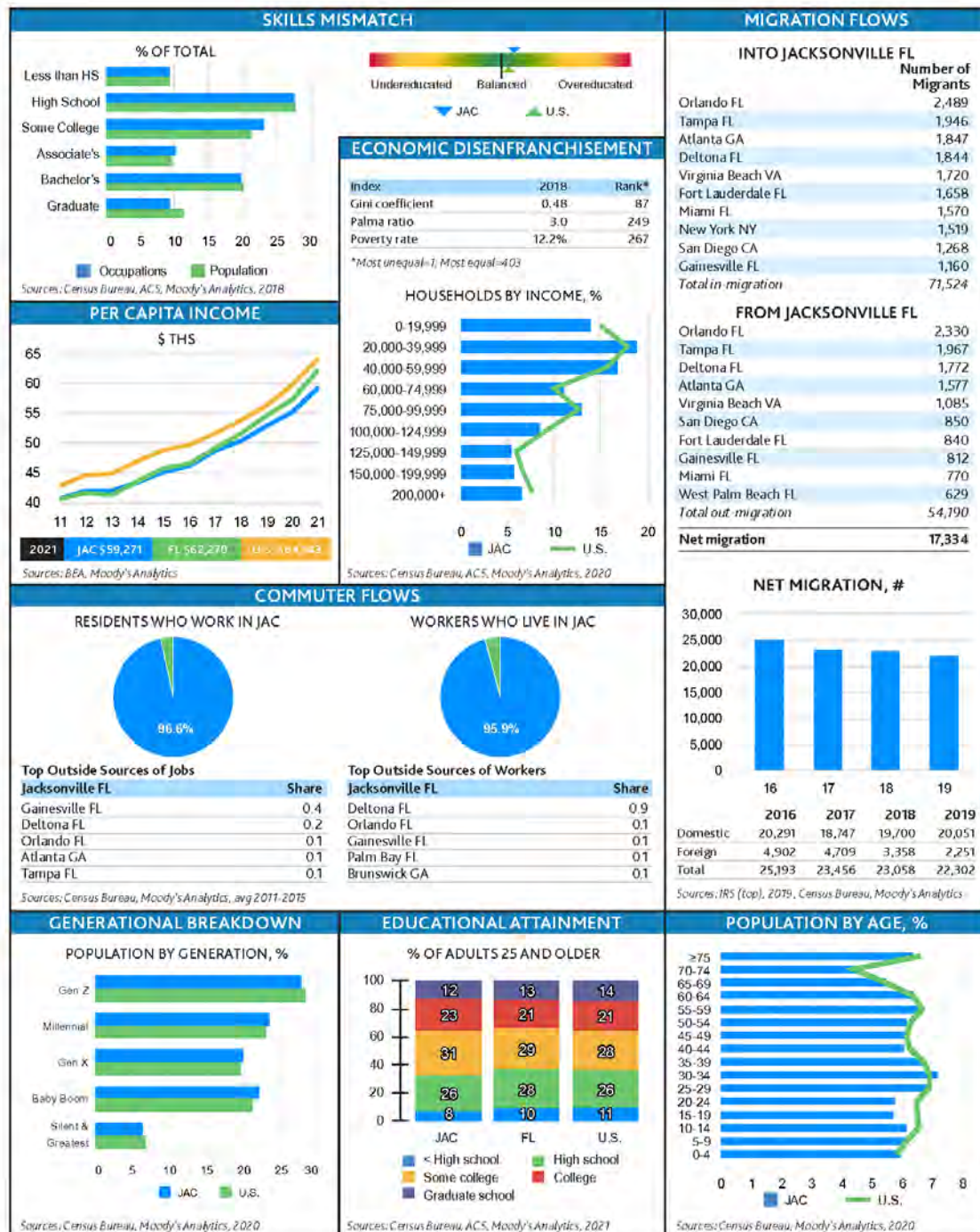
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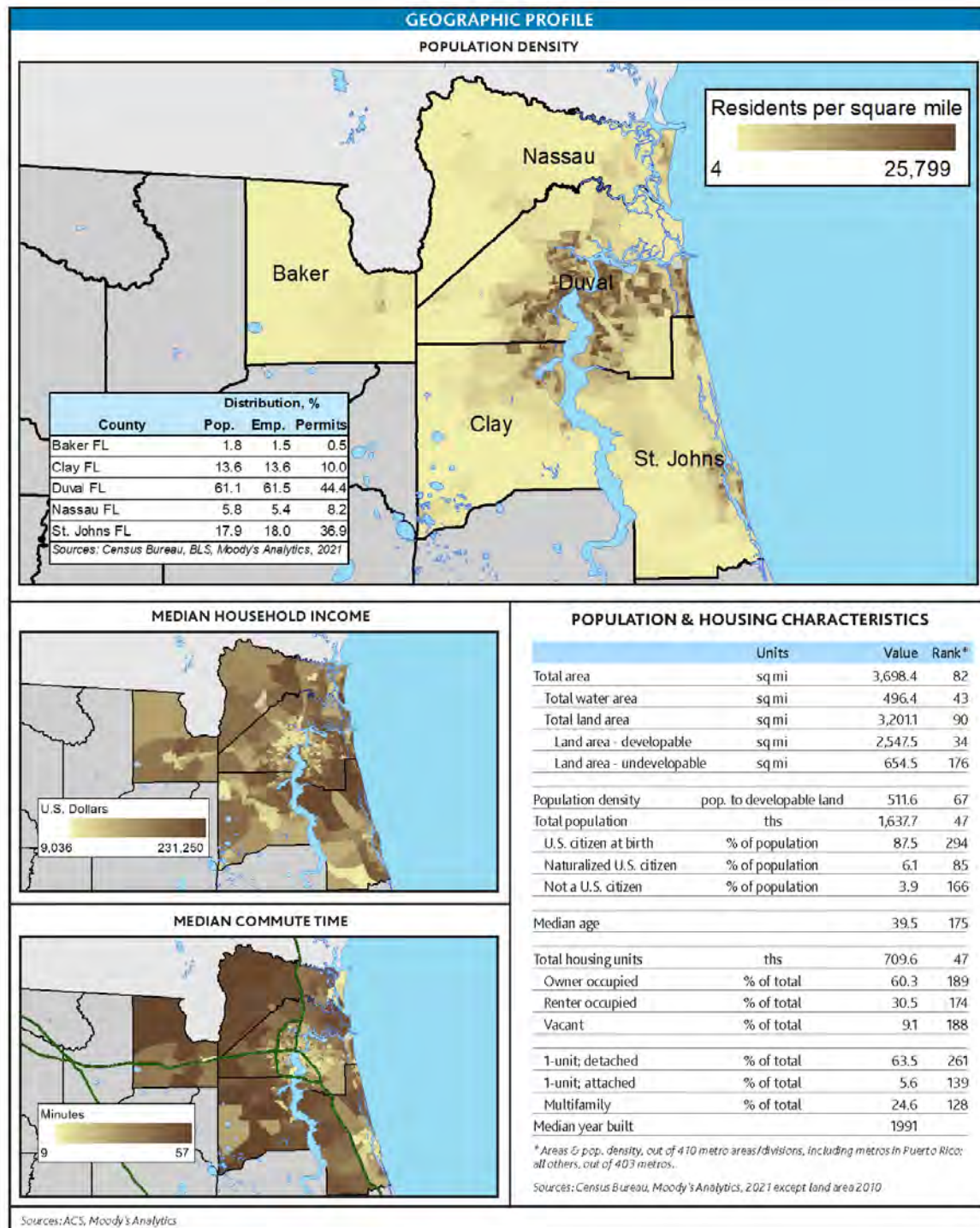
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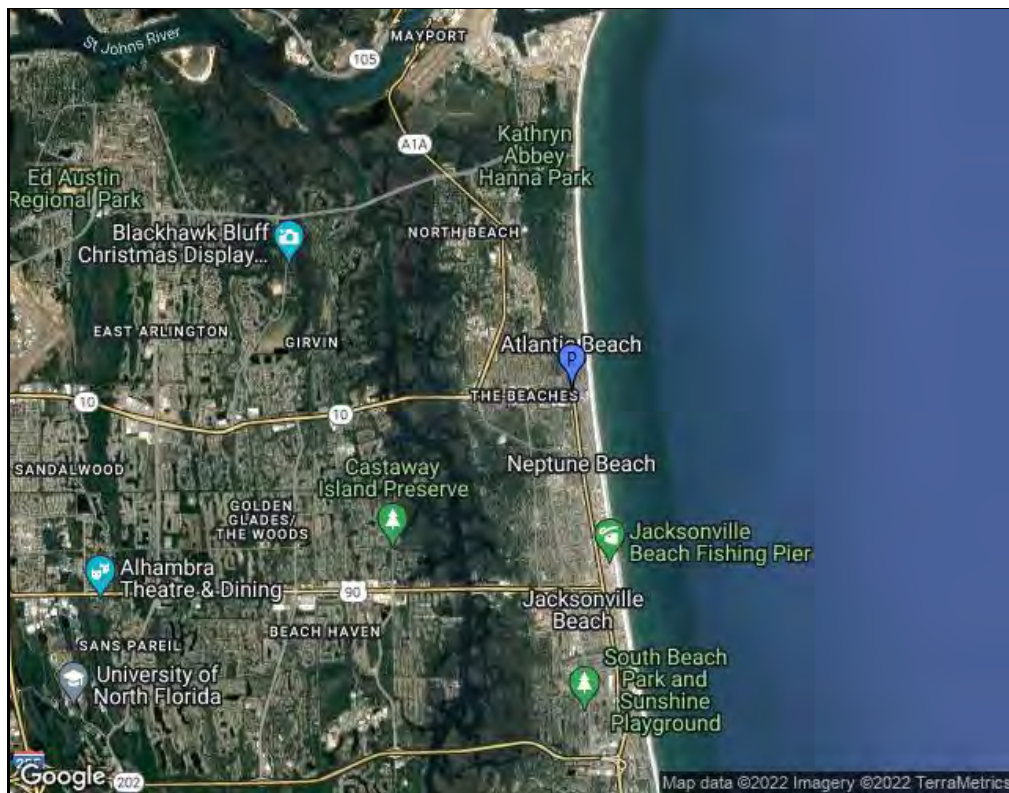
NEIGHBORHOOD OVERVIEW

MARKET AREA BOUNDARIES

The subject is located in Atlantic Beach, a part of the Beaches submarket of Jacksonville. The market area boundaries are generally:

North	Atlantic Boulevard
South	J. Turner Butler Boulevard/Hwy 202
East	Atlantic Ocean
West	Intracoastal Waterway

MARKET AREA MAP



ACCESS AND MAJOR ROADWAYS

The subject is located in the northwest portion of Neptune Beach, Florida. Access to the immediate area is provided by Florida Boulevard, which begins at 3rd Street east of the subject and crosses underneath Atlantic Boulevard before becoming Mayport Road to the north of Atlantic Boulevard. Atlantic Boulevard provides east/west access through the Jacksonville market area. 3rd Street provides north/south access to Jacksonville Beach and Ponte Vedra Beach to the south, while Mayport Road provides access to the north to Atlantic Beach and Mayport. Beach Boulevard is about 2.5 miles south of the subject along 3rd Street, and JTB is located another 2.5 miles to the south.

NEARBY LAND USES

The property is situated in the southwest quadrant of Atlantic Boulevard and Florida Boulevard in Neptune Beach. This area has a mixture of warehouse/light industrial uses, residential uses, and neighborhood commercial uses. Uses immediately surrounding the subject are small single occupant buildings including a staffing company office building, a convenience store, and several warehouse/flex buildings. Further west across Marsh Point Road there is a 20,000± SF two story exterior corridor office condominium building. To the south and east of the subject, there is a residential neighborhood with a mix of single and multifamily residential uses. Across Florida Boulevard to the east, there are more flex/warehouse buildings fronting Florida Boulevard. Brewhound Dog Park is located east of Florida Boulevard and is a popular bar and recreational area.

DOWNTOWN JACKSONVILLE BEACH

The subject property is located about three miles northwest of the Downtown area of Jacksonville Beach. This area contains a variety of bars, restaurants, and shops as well as the Jacksonville Beach Pier. The area has historically been a focal point of nightlife and dining in the area and has experienced increased development activity over the past 10 years. In 2016 the former Freebird Live building on 2nd Avenue North was redeveloped into a Surfer the Bar location. The Margaritaville Beach Hotel and Landshark Bar and Grill opened in January 2021 on 1st Street North just north of the Jacksonville Beach Pier. The eight story, 202-room hotel was a \$50 million project and features three restaurants, ocean view outdoor seating, 1,050 SF of retail space and a 1,700 SF meeting room. A new beachfront Springhill Suites was completed in 2022 with 136 rooms as well as a public restaurant and bar.

Two former restaurant buildings along 2nd Avenue have been redeveloped with Jax Beach Town Center, a 19,000 SF development including a restaurant, rooftop lounge, and retail space. Along 1st Street North just north of Latham Plaza, a dated mixed use building has been demolished to make way for development of a newer 25,000 SF mixed use building with boutique hotel space, 6,000 SF of retail and 8,000 SF of office space. The former Bo's Coral Reef building is currently undergoing a renovation and rebranding along 5th avenue North which will bring an additional 5,700 SF of redeveloped retail space to the area.

Additional bars and restaurants within the downtown area include Mango's Beach Bar, V Pizza, Lynch's Irish Pub, Delicomb, Casa Marina Hotel and Restaurant, The Ritz, Brix Taphouse, The Wine Bar, Habibi Bar and Café, Hoptinger Bier Garden, The Shim Sham Room and Tavern on 1st Street.

CONCLUSION

The subject is well located in Neptune Beach, Florida. Market conditions have been strengthening in the local market area over the past several years, and redevelopment of older structures is becoming more common. Vacancy rates remained relatively low in the subject's submarket even throughout the COVID-19 pandemic. We anticipate conditions to remain strong over the foreseeable future.

DEMOGRAPHICS

The following data highlights the market area demographics for the 1, 3, and 5-mile radii from the subject, as provided by *Claritas Inc.*

COMPARATIVE DEMOGRAPHIC ANALYSIS FOR PRIMARY TRADE AREA			
Description	1 Mile Radius Totals	3 Mile Radius Totals	5 Mile Radius Totals
Population			
2028 Projection	7,965	67,317	147,638
2023 Estimate	7,789	65,019	141,507
2020 Census	7,711	63,872	138,328
2010 Census	7,362	60,076	124,908
2023 Est. Median Age	40.23	41.14	38.75
2023 Est. Average Age	40.86	41.70	39.88
Households			
2028 Projection	3,454	29,342	60,917
2023 Estimate	3,355	28,210	58,199
2020 Census	3,301	27,592	56,730
2010 Census	2,956	24,501	49,454
2023 Est. Average Household Size	2.32	2.29	2.37
2023 Est. Households by Household Income (%)			
Household Income < \$15,000	5.19	5.31	5.24
Household Income \$15,000 - \$24,999	3.82	4.59	4.40
Household Income \$25,000 - \$34,999	7.75	6.87	5.94
Household Income \$35,000 - \$49,999	11.30	9.93	9.51
Household Income \$50,000 - \$74,999	17.32	17.48	16.36
Household Income \$75,000 - \$99,999	12.79	12.36	13.22
Household Income \$100,000 - \$124,999	10.67	10.71	11.18
Household Income \$125,000 - \$149,999	9.66	9.00	8.84
Household Income \$150,000 - \$199,999	10.31	9.87	10.22
Household Income \$200,000 - \$249,999	5.60	5.49	5.87
Household Income \$250,000 - \$499,999	4.50	5.85	6.21
Household Income \$500,000+	1.07	2.55	3.03
2023 Est. Average Household Income	\$107,701	\$117,871	\$123,119
2023 Est. Median Household Income	\$83,266	\$85,934	\$90,636
2023 Est. Tenure of Occupied Housing Units (%)			
Owner Occupied	69.21	63.95	66.25
Renter Occupied	30.79	36.06	33.75
2023 Est. Median All Owner-Occupied Housing Value	\$424,953	\$445,947	\$420,063
Source: 2023 Claritas, Inc.			

SITE DESCRIPTION

GENERAL SITE DESCRIPTION OVERVIEW

Location	Alleyway east of Marsh Point Road and west of Florida Boulevard		
Parcel Number	No Parcel ID Assigned		
Legal Description	See Survey		
Latitude, Longitude	30.323323, -81.419762		
Site Area	2,547 square feet (0.06 acres)		
Configuration	Irregular		
Topography	Generally level		
Drainage	Appears adequate		
Utilities/Municipal Services	No utilities available to the site. Utilities located along Florida Boulevard and Kings Circle		
Floodplain	<u>Zone</u>	<u>Map</u>	<u>Date</u>
	Zone X (Unshaded)	12031C0408J	November 2, 2018
	Zone X Unshaded (Outside 500Y) is a Non-Special Flood Hazard Area (NSFHA) of minimal flood hazard, usually depicted on Flood Insurance Rate Maps (FIRM) as above the 500-year flood level. This is an area in a low to moderate risk flood zone that is not in any immediate danger from flooding caused by overflowing rivers or hard rains. In communities that participate in the National Flood Insurance Program (NFIP), flood insurance is available to all property owners and renters in this zone.		
Census Tract No.	0140.02		
Soil/Subsoil Conditions	We did not receive nor review a soil report. However, we assume that the soil's load-bearing capacity is sufficient to support a structure. We did not observe any evidence to the contrary during our physical inspection of the property.		
Environmental Concerns	The inspecting appraiser did not observe any environmental issues and for the purpose of this appraisal, it is specifically assumed that none exist. No independent environmental studies were provided. This appraisal assignment was engaged to determine the market value of the property, independent of any potential environmental issues. In the event the property is determined to be impacted by environmental concerns, it could affect our appraisal conclusions.		
Easements, Encroachments and Deed Restrictions	There are no known detrimental easements, encroachments or other restrictions that would adversely affect the site's use or marketability.		
Hazards Nuisances	None noted		
Frontage	No road frontage		
Access	From Kings Circle South via gravel alleyway. Neighboring sites front Florida Boulevard and Marsh Point Road		
Visibility	Fair		
Surrounding Land Uses	Office, flex/warehouse, convenience store		
Opportunity Zone	No		
Traffic Counts	17,000 AADT (Florida Boulevard)		
Site Utility	Poor		
Comments	This is a portion of an abutting cul de sac off of Kings Circle South and abuts 6 properties. The site is irregular in shape and has a size of only 2,547 square feet. The site has limited utility and could not be developed as a stand alone parcel.		

ZONING OVERVIEW

The subject is not currently zoned, and discussions with the Neptune Beach Planning and Zoning Department indicate that the subject will be zoned C-2 consistent with the surrounding parcels. According to the Neptune Beach Community Development Director, the parcels located on the west side of the property are zoned C-2 with no additional overlay district, and the parcels on the east side along Florida Boulevard are located within the C-2 zoning district as well as the NC overlay district.

Applicable zoning regulations for the C-2 district and NC overlay are shown below.

ZONING	
Designation	C-2
Description	Commercial
Zoning Intent	The commercial C-2, zoning district is intended to provide for retail sales and services for one (1) or more neighborhoods. This district corresponds to the Commercial I and neighborhood center designations on the adopted future land use map.
ZONING REQUIREMENTS - C-2 ZONING DISTRICT	
Permitted Uses	Variety of commercial and retail uses
Minimum Lot Size	10,000 SF
Maximum Lot Size	N/A
Minimum Lot Width	80'
Maximum Coverage Ratio	70%
Minimum Open Space	N/A
Front (min. ft.)	25'
Rear, alley/no alley (min. ft.)	15'
Side (min. ft.) interior	10' min, 25' max
Maximum Building Floor Area	60,000 SF
Maximum Density	N/A
Maximum Height	35'
Required No. Parking Spaces	0
Subject's Total Parking Spaces	0
ZONING REQUIREMENTS - NC OVERLAY DISTRICT	
Permitted Uses	Uses permitted within C-2 zoning district
Minimum Lot Size	7,500 SF
Maximum Lot Size	N/A
Minimum Lot Width	50'
Maximum Coverage Ratio	70%
Minimum Open Space	N/A
Front (min. ft.)	5' min, 15' max
Rear, alley/no alley (min. ft.)	10'
Side (min. ft.) interior	10' min, 25' max
Maximum Building Floor Area	20,000 SF
Maximum Density	N/A
Maximum Height	35'

A zoning map follows.

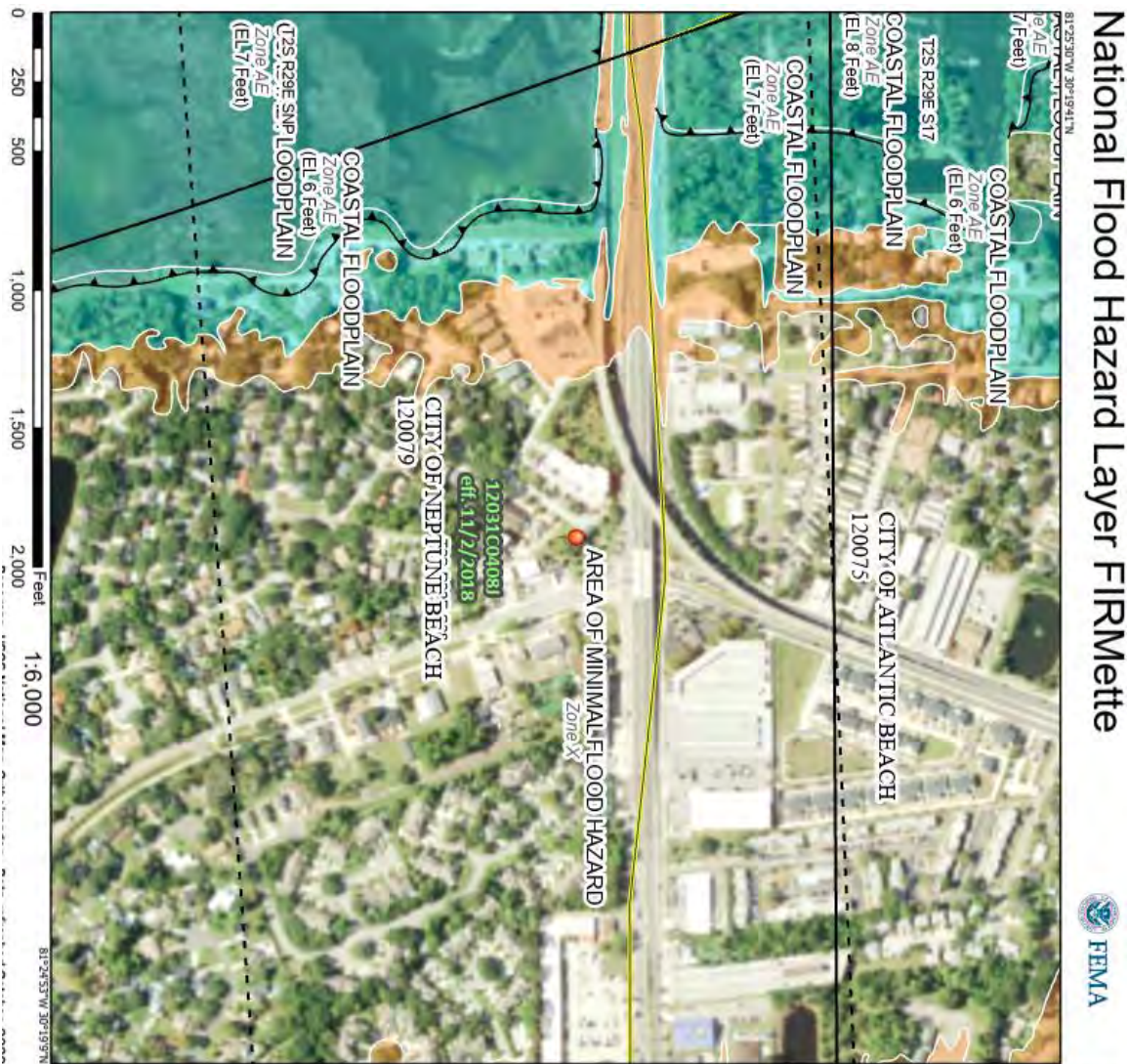
ZONING MAP



SITE SURVEY



FLOOD MAP



National Flood Hazard Layer FIRMeTte

Legend

SEE THIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LOCATION

	Without Base Flood Elevation (BFE) Zone A, V, AE9
	With BFE or Depth Zone AE, AO, AH, VE, AR
	Regulatory Floodway

	0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
	Future Conditions 1% Annual Chance Flood Hazard Zone X
	Area with Reduced Flood Risk due to Levee, See Notes, Zone X
	Area with Flood Risk due to Levee Zone D

	NO SCREEN Area of Minimal Flood Hazard Zone X
	Effective LOMRs
	Area of Undetermined Flood Hazard Zone D
	Channel, Culvert, or Storm Sewer
	Levee, Dike, or Floodwall

	Cross Sections with 1% Annual Chance
	Water Surface Elevation
	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature

	Digital Data Available
	No Digital Data Available
	Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards. The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 9/26/2023 at 10:25 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time. This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRMeTte panel number, and FIRMeTte effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



FDOT TRAFFIC COUNT MAP



PROPERTY ASSESSMENT AND TAX ANALYSIS

Real estate taxes are due March 31st of each year. In the State of Florida, any property owner can realize a 4% pre-payment discount in their total liability if taxes are paid by November 30th. As is commonplace in the market, prudent investors take advantage of this, and our analysis includes the discount.

Assessment levels are impacted by the following primary factors:

- Re-assessment without a transaction
- Re-assessment following a transaction

WITHOUT A TRANSACTION

Re-assessment occurs annually in Florida; however, in the event that there is not a recorded sale, all taxing authorities with the exception of schools have a 10% cap on assessment increases per year for non-homestead property and a 3% cap on homestead property. This commonly results in a difference between the County's estimated *Market Value* (also called *Just Value*) and the *Assessed Value* as it applies to the other taxing authorities. For this reason, properties that have not sold and been subsequently re-assessed in recent history tend to have assessments that lag actual market value considerably.

FOLLOWING A TRANSACTION

The sale of a property can and usually does, trigger re-assessment for the following year in Florida. However, the property will not necessarily be re-assessed at the sale price. In our experience, it is common for assessment levels lag sale prices. In the event of a recorded, arm's length transaction, we generally see re-assessment as a percentage of the purchase price the following January 1. The re-assessment rate varies significantly by county, asset type and class and conditions of sale.

At this point in the cycle when Counties have had the benefit of capturing increases on post-sale re-assessments for many years, we are seeing that while there may be a substantial increase in the year following acquisition, assessments can be relatively flat the year following the initial increase (Year 2). Additionally, in some cases, owners have been successful in appealing the increases, which varies county-to-county. Since 2009 Assessor's no longer have the Presumption of Correctness, rather the Preponderance of Evidence. This increased the burden on the Assessor's office to support assessments if contested and as a result, some have been more conservative in increasing assessments.

SUMMARY

For all the reasons discussed, projecting future real estate tax assessment levels, and resultant tax liability can be subjective. The contributing factors are:

- Timing in the cycle
- Lag that occurs based on the timing of re-assessment following a sale
- Variability in how counties are handling re-assessment following a sale
- In an up-market, assessments lagging in the years following a re-set either due to assessments being held flat, or further market improvement as a result of market trends overall, or property improvements completed by new ownership following acquisition

SUBJECT PROPERTY TAXES

The subject is owned by a governmental agency and is not subject to property taxes. However, in the event of acquisition by a Private Party that is not exempt, the property will be assessed by the Duval County property Appraiser's Office and will more than likely will result in an increased tax burden.

HIGHEST AND BEST USE

INTRODUCTION

The highest and best use is the reasonable, probable, and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible and that results in the highest value. These criteria are often considered sequentially. The tests of legal permissibility and physical possibility must be applied before the remaining tests of financial feasibility and maximal productivity. A financially feasible use is precluded if it is legally prohibited or physically impossible. If a reasonable possibility exists that one of the prior, unacceptable conditions can be changed, is it appropriate to proceed with the analysis with such an assumption.

HIGHEST AND BEST USE CRITERIA

The site's highest and best use is analyzed both as vacant and as improved, and if improvements are proposed then an as proposed analysis is required. In all cases, the property's highest and best use must meet four criteria: (1) legally permissible; (2) physically possible; (3) financially feasible; and (4) maximally productive.

HIGHEST AND BEST USE AS VACANT

LEGALLY PERMISSIBLE

Legal restrictions include deed restrictions, CC&R's, lease encumbrances, zoning requirements, building codes, historic district controls and environmental regulations, and were previously analyzed to determine legally permitted uses. Legally, the subject is zoned C-2, Commercial, by the City of Neptune Beach. No other legal restrictions have been identified that would limit development of the property beyond the development standards stipulated by municipal code.

PHYSICALLY POSSIBLE

Size, shape, topography, soil condition, availability of utilities, transportation access, surrounding uses, and locational characteristics were previously analyzed to determine which legal land uses are physically possible and which are best to conform to the physical and locational aspects of the site and its setting with respect to the neighborhood and community.

The site does not meet the minimum lot size requirements of the C-2 zoning district and therefore, there are no physically possible uses of the site.

FINANCIALLY FEASIBLE/MAXIMALLY PRODUCTIVE

In that the subject property does not meet the minimum lot size requirements under the C-2 zoning, the Highest and Best Use would be for assemblage with an adjacent property.

VALUATION PROCESS

In estimating the Market Value of the Fee Simple Interest in the subject area a lack of private-party sales of alleyways and cul de sac's requires use of the "Across-The-Fence" ("ATF") method of value, commonly used in corridor valuation. This method is based on the premise that corridor land is at least as valuable as the land it passes through. This value method is supported by comparison with adjacent lands including the consideration of adjustment factors such as market conditions, real property rights conveyed and location.

Sales of comparable vacant commercial land from the area have been gathered, verified, and included in this report in support of the Fee Simple Market Value estimate. This is typical of how the appraisers' peers would answer this particular appraisal problem.

FEE SIMPLE LAND VALUATION

In the Sales Comparison Approach, market value is estimated by comparing the subject property to similar properties that have sold. A major premise of the Sales Comparison Approach is that the market value of a property is directly related to the prices of comparable competitive properties.

The principles of supply and demand, substitution, balance, and externalities are the basis of this approach. When there is sufficient data to include value trends, the Sales Comparison Approach may provide the most direct and accurate approach to value.

The following system or procedure is used to apply the Sales Comparison Approach:

- Research the market to locate data on sales that are similar to the subject property.
- Verify the data for accuracy and arm's length considerations.
- Select the units of comparison most commonly used by buyers and sellers.
- Using the elements of comparison and physical characteristics, compare and adjust the comparable sales to the subject property.
- Reconcile the values produced by the different units of comparison into a single value or range.

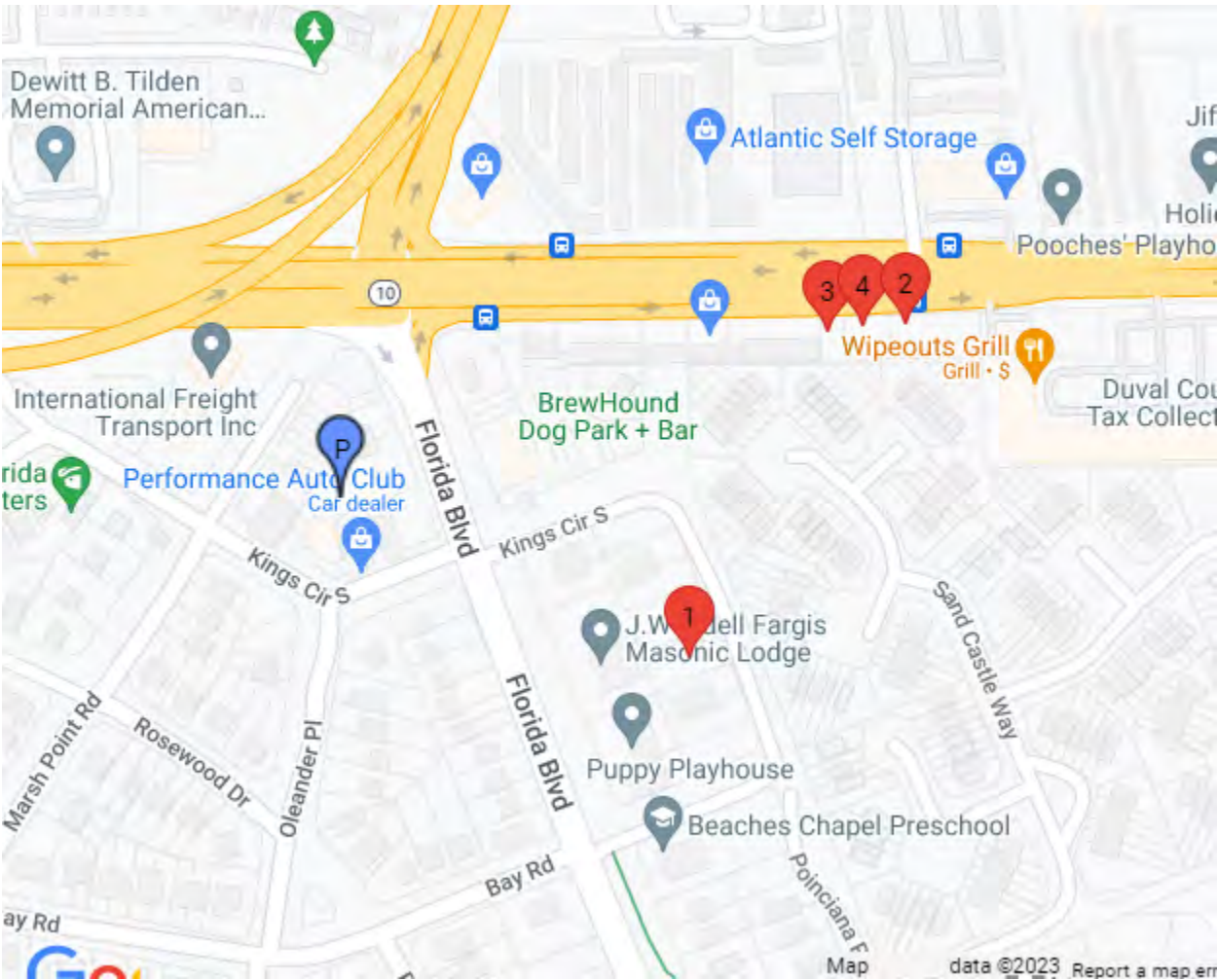
COMPARABLE LAND SALES

The subject of this appraisal is a 2,547 square foot alleyway/cul de sac. The "Across the Fence" method is based on the premise that corridor land is at least as valuable as the land it passes through. Our search for comparables focused on vacant land parcels with similar zoning, utility, and location to the subject located in Neptune Beach, Florida. Four commercial land sales have been presented in support of the land value.

UNIT OF COMPARISON

Based on market behavior observed, the most appropriate unit of comparison for this analysis is price per square foot.

COMPARABLE LAND SALES MAP



COMPARABLE LAND SALES SUMMARY

SUMMARY OF LAND SALES							
Comp No.	Property / Location	Date of Sale	Transaction Status	Site Size (Net Acres)	Zoning	Sale Price	Price per SF (Net)
1	Poinciana Lot Poinciana Road Neptune Beach, FL	Mar-22	Closed	0.15	C-2, Commercial	\$150,000	\$22.56
2	Atlantic Boulevard Site Atlantic Boulevard Neptune Beach, FL HOS Properties Site	Apr-21	Closed	0.13	C-2, Commercial	\$150,000	\$26.49
3	Atlantic Boulevard Neptune Beach, FL Portion of HOS Properties Site	Apr-21	Closed	0.08	C-2, Commercial	\$100,000	\$27.78
4	Atlantic Boulevard Neptune Beach, FL	Apr-21	Closed	0.04	C-2, Commercial	\$50,000	\$28.70
Subj.	Marsh Point Road Alleyway Located between Florida Boulevard and Marsh Point	—	—	0.06	C-2, Commercial	—	—

COMMENTS

1 - Sale of a parcel of commercial land zoned C-2 in Neptune Beach, Florida. The property is located along a dirt road one block east of Florida Boulevard.

2 - Sale of a parcel of vacant land on the south side of Atlantic Boulevard. The site is only accessible via Florida Boulevard and is situated along an on-ramp for eastbound Atlantic Boulevard.

3 - Sale of a parcel of vacant land zoned C-2 in Neptune Beach, Florida. The site is only accessible via Florida Boulevard and is situated along an on-ramp for Atlantic Boulevard eastbound.

4 - Sale of a small parcel of land located along the south side of Atlantic Boulevard in Neptune Beach. The property was purchased alongside an adjacent property from separate sellers for the development of an office building.

COMPARABLE LAND SALES ADJUSTMENT GRID

COMPARABLE LAND SALE ADJUSTMENTS					
	Subject	Comp 1	Comp 2	Comp 3	Comp 4
Property / Location	Marsh Point Road Alleyway Located between Florida Boulevard and Marsh Point	Poinciana Lot Poinciana Road Neptune Beach, FL	Atlantic Boulevard Site Atlantic Boulevard Neptune Beach, FL	HOS Properties Site Atlantic Boulevard Neptune Beach, FL	Portion of HOS Properties Site Atlantic Boulevard Neptune Beach, FL
Transaction Status	-----	Closed	Closed	Closed	Closed
Date of Sale	-----	Mar-22	Apr-21	Apr-21	Apr-21
Site Size (Acres)	0.06	0.15	0.13	0.08	0.04
Site Size (SF)	2,547	6,650	5,663	3,600	1,742
Sale Price	-----	\$150,000	\$150,000	\$100,000	\$50,000
Zoning	C-2	C-2	C-2	C-2	C-2
Unadjusted Price per SF	-----	\$22.56	\$26.49	\$27.78	\$28.70
Transactional Adjustments					
Property Rights Conveyed		<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>
Adjustment		\$0.00	\$0.00	\$0.00	\$0.00
Financing Terms					
Adjustment		\$0.00	\$0.00	\$0.00	\$0.00
Conditions of Sale					
Adjustment		\$0.00	\$0.00	\$0.00	\$0.00
Market Conditions	<i>May-23</i>	<i>Mar-22</i>	<i>Apr-21</i>	<i>Apr-21</i>	<i>Apr-21</i>
Adjustment		3.00%	6.00%	6.00%	6.00%
Total Transactional Adjustments		\$0.68	\$1.59	\$1.67	\$1.72
Adjusted Price per SF		\$23.23	\$28.08	\$29.44	\$30.42
Property Adjustments					
Location		<i>Similar</i>	<i>Similar</i>	<i>Similar</i>	<i>Similar</i>
		0%	0%	0%	0%
Zoning / Intended Use	<i>C-2</i>	<i>C-2</i>	<i>C-2</i>	<i>C-2</i>	<i>C-2</i>
		0%	0%	0%	0%
Utilities / Infrastructure		<i>Similar</i>	<i>Similar</i>	<i>Similar</i>	<i>Similar</i>
		0%	0%	0%	0%
Topography	<i>Generally level</i>	<i>Similar</i>	<i>Similar</i>	<i>Similar</i>	<i>Similar</i>
		0%	0%	0%	0%
Total Property Adjustments		0%	0%	0%	0%
Indication for Subject per SF		\$23.23	\$28.08	\$29.44	\$30.42

ADJUSTMENT PROCESS

The sales that we have utilized represent the best available information that could be compared to the subject property. The major elements of comparison for an analysis of this type include the property rights conveyed, the financial terms incorporated into a particular transaction, the conditions or motivations surrounding the sale, changes in market conditions since the sale, the location of the real estate, its physical traits, and the economic characteristics of the property.

DISCUSSION OF ADJUSTMENTS

TRANSACTIONAL ADJUSTMENTS

PROPERTY RIGHTS CONVEYED

This adjustment accounts for any impact that the property rights transferred to the buyer may have on sale price. For leased fee properties, the length of leases in place and the relationship of market to contract rent could impact value. Some properties may have stronger appeal to an owner-user or an investor, resulting in a premium or discount associated with fee simple property rights. If a buyer acquires the leasehold interest in a comparable, then an adjustment may be necessary that accounts for the impact to the of ground rent and/or risk associated with the expiration of the ground lease to the sale price.

Each comparable reflected a transfer of the Fee Simple estate and no adjustment is needed for this category.

FINANCING TERMS

This category accounts for differences in financing terms associated with the transaction. Financing arrangements that may require an adjustment include mortgage assumptions (at favorable interest rates), seller buydowns, installment sales, wrap-around loans, or any other atypical financing arrangements that do not represent cash-equivalent terms.

No atypical financing was reported for any sales and no adjustment is needed for this category.

TERMS/CONDITIONS OF SALE

Adjustments for conditions of sale typically reflect various motivations of the buyer and/or seller. This may include such factors as seller distress (short sale, REO, auction) or buyer motivation (assemblage, etc.). In some situations, the conditions of sale may significantly affect transaction prices. Properties that are listed for sale may require adjustments herein to account for any disparity between asking prices and the achievable sale price anticipated.

No atypical sale conditions were reported for any sales and no adjustment is needed for this category.

MARKET CONDITIONS

This adjustment category accounts for differences in economic conditions between the effective date of appraisal and the transaction date of the comparable, such as may be caused by changing supply and demand factors, rental rates, vacancy rates and/or capitalization rates.

The sales transacted between April of 2021 and March of 2022. Market conditions were generally strengthening over this period and an upward adjustment of 3.0% per year has been applied.

PROPERTY ADJUSTMENTS

LOCATION

The appeal of a property's location to users of and/or investors in a particular property type can influence value significantly. This factor broadly considers the impact of demographics, geographical attributes, access to transportation networks and local land use trends on pricing. Comparisons of location can often be derived, or even quantified, by examining rent, vacancy, capitalization rate, and land value trends in the subject and directly competitive areas.

Each of the comparables are located in the subject's immediate area and no adjustment for location is necessary.

ZONING / INTENDED USE

The value of vacant land is largely contingent upon its potential use. This factor considers the uses permitted by the applicable development standards, per the subject's zoning designation. The maximum density to which a property can be developed typically impacts total value positively; however, depending upon property type, location, and type of construction higher permitted densities can have an inverse relationship to pricing on a per-unit or per-square-foot basis.

All of the comparables were considered similar to the subject and no adjustments were required for this category.

UTILITIES / INFRASTRUCTURE

Infrastructure adjustments may reflect differences in utility availability/capacity, developmental plans, or other outside influences.

None of the comparables have utilities to the site and no adjustment is necessary for this category.

TOPOGRAPHY

Topography characteristics can influence pricing, as sites with more radical elevation changes typically increase site preparation/development costs when compared to a level site.

All of the comparables were considered similar to the subject and no adjustments were required for this category.

LAND VALUE CONCLUSION

SALES SUMMARY	UNADJUSTED	ADJUSTED
Minimum	\$22.56	\$23.23
Maximum	\$28.70	\$30.42
Average	\$26.38	\$27.79
Median	\$27.13	\$28.76
Standard Deviation	\$2.34	\$2.76

After adjustments, the comparable land sales reflect a relatively narrow range from \$23.23 to \$30.42 per square foot, with an average of \$27.79 per square foot. Roughly half of the site abuts parcels having frontage along Marsh Point Road, and the other half abutting parcels with frontage along Florida Boulevard. We have allocated a slightly lower value to the portion of the subject that fronts Marsh Point Road as this ROW is a dead-end street, and it lacks the visibility and exposure of the parcels having frontage along Florida Boulevard that has an AADT of 17,000 vehicles according to the FDOT.

Based on the data available and the analyses presented, the indicated value of the land by the Sales Comparison is calculated in the following tables.

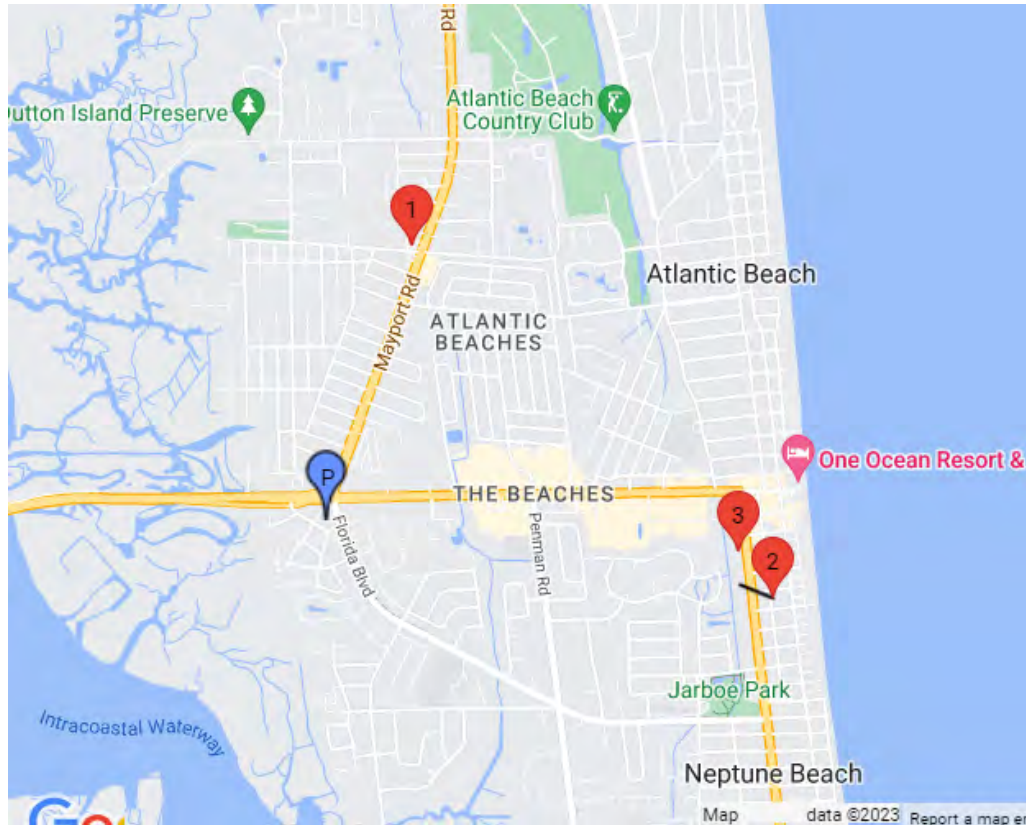
LAND VALUE CONCLUSION - MARSH POINT ROAD FRONTAGE	
Indicated Value per SF	\$25.00
Land Area (SF)	x 1,274
Indicated Value	\$31,838
Rounded to nearest \$1,000	\$32,000

LAND VALUE CONCLUSION - FLORIDA BOULEVARD FRONTAGE	
Indicated Value per SF	\$30.00
Land Area (SF)	x 1,273
Indicated Value	\$38,190
Rounded to nearest \$1,000	\$38,000

LAND VALUE CONCLUSION - OVERALL PROPERTY	
Value Indication - Marsh Point Road Frontage	\$32,000
Value Indication - Florida Boulevard Frontage	\$38,000
Indicated Value	\$70,000

SUPPLEMENTAL LAND SALE DATA

At the request of the client, we have included the following supplemental land sales from the subject's local market area. The following commercial land sales were not analyzed in the Sales Comparison Approach as they are not considered directly comparable to the subject.



SUMMARY OF SUPPLEMENTAL LAND SALES									
Comp No.	Property / Location	Date of Sale	Transaction Status	Site Size (Net Acres)	Site Size (Net SF)	Zoning	Property Use	Sale Price	Price per SF (Net)
1	Car Wash Site 1500 Mayport Road Atlantic Beach, FL	Feb-22	Closed	0.94	40,946	CG, Commercial General	Commercial	\$1,275,000	\$31.14
2	Neptune Beach Redevelopment Site 500 3rd Street Neptune Beach, FL	May-21	Closed	1.51	65,776	C-1, Commercial	Commercial	\$2,500,000	\$38.01
3	Neptune Beach Office Site 310 3rd Street Neptune Beach, FL	Nov-20	Closed	0.74	32,234	C-1, Commercial	Commercial	\$1,400,000	\$43.43
Subj.	Marsh Point Road Alleyway Located between Florida Boulevard and Marsh Point Road Neptune Beach, Florida	—	—	0.06	2,547	C-2, Commercial	Commercial	—	—

RECONCILIATION AND FINAL VALUE

The subject property is a portion of a commercial alleyway located between Florida Boulevard and Marsh Point Road in Neptune Beach Duval County, Florida. The subject site contains approximately 2,547 SF of land and abuts parcels zoned C-2 by the City of Neptune Beach. The “Across the Fence” method of valuation was utilized. In the case of commercial vacant land, the Sales Comparison Approach is considered the most reliable and is utilized by the market participants in the market. The comparables utilized are commercial vacant tracts within close proximity to the subject and each being zoned C-2 and are considered to be the best data available for comparison.

Based on the inspection of the property and the investigation and the analysis undertaken, we have developed the following value opinion.

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value - As Is	Fee Simple	May 10, 2023	\$70,000

CERTIFICATION

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved with this assignment.
4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
8. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as well as the requirements of the state of Florida.
9. The reported analyses, opinions, and Value Indications were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics, the Standards of Professional Practice of the Appraisal Institute.
10. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
11. As of the date of this report, Kyle Catlett, MAI has completed the continuing education program for Designated Members of the Appraisal Institute.
12. As of the date of this report, Drake DeRango has completed the Standards and Ethics Education Requirements for Candidates of the Appraisal Institute.
13. Kyle Catlett, MAI has and Drake DeRango has made a personal inspection of the property that is the subject of this report.
14. No one provided significant real property appraisal assistance to the person signing this certification.
15. Kyle Catlett, MAI has not and Drake DeRango has not provided services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding the agreement to perform this assignment.
16. The use of this report is subject to the requirements of the Florida Real Estate Appraisal Board relating to review by its duly authorized representatives. As of the date of this report, Kyle Catlett, MAI, and Drake DeRango, is a State Certified Appraiser and has completed the continuing education requirements for the State of Florida.

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STANDARD ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal report has been made with the following general assumptions:

- 1) Notwithstanding that Appraiser may comment on, analyze or assume certain conditions in the appraisal, BBG, Inc. shall have no monetary liability or responsibility for alleged claims or damages pertaining to: (a) title defects, liens or encumbrances affecting the property; (b) the property's compliance with local, state or federal zoning, planning, building, disability access and environmental laws, regulations and standards; (c) building permits and planning approvals for improvements on the property; (d) structural or mechanical soundness or safety; (e) contamination, mold, pollution, storage tanks, animal infestations or other hazardous conditions affecting the property; and (f) other conditions and matters for which licensed real estate appraisers are not customarily deemed to have professional expertise. Accordingly:
 - a) The Appraiser has not conducted any engineering or architectural surveys in connection with this appraisal assignment. Information reported pertaining to dimensions, sizes, and areas is either based on measurements taken by the Appraiser or the Appraiser's staff or was obtained or taken from referenced sources and is considered reliable. The Appraiser and BBG, Inc. shall not be monetarily liable or responsible for or assume the costs of preparation or arrangement of geotechnical engineering, architectural, or other types of studies, surveys, or inspections that require the expertise of a qualified professional.
 - b) Unless otherwise stated in the report, only the real property is considered, so no consideration is given to the value of personal property or equipment located on the premises or the costs of moving or relocating such personal property or equipment. Further, unless otherwise stated, it is assumed that there are no subsurface oil, gas or other mineral deposits or subsurface rights of value involved in this appraisal, whether they are gas, liquid, or solid. Further, unless otherwise stated, it is assumed that there are no rights associated with extraction or exploration of such elements considered. Unless otherwise stated it is also assumed that there are no air or development rights of value that may be transferred.
 - c) Any legal description or plats reported in the appraisal are assumed to be accurate. Any sketches, surveys, plats, photographs, drawings or other exhibits are included only to assist the intended user to better understand and visualize the subject property, the environs, and the competitive data. BBG, Inc. has made no survey of the property and assumes no monetary liability or responsibility in connection with such matters.
 - d) Title is assumed to be good and marketable, and in fee simple, unless otherwise stated in the report. The property is considered to be free and clear of existing liens, easements, restrictions, and encumbrances, except as stated. Further, BBG, Inc. assumes there are no private deed restrictions affecting the property which would limit the use of the subject property in any way.
 - e) The appraisal report is based on the premise that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in the appraisal report; additionally, that all applicable zoning, building, and use regulations and restrictions of all types have been complied with unless otherwise stated in the appraisal report. Further, it is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state, federal and/or private entity or organization have been or can be obtained or renewed for any use considered in the value opinion. Moreover, unless otherwise stated herein, it is assumed that there are no encroachments or violations of any zoning or other regulations affecting the subject property, that the utilization of the land and improvements is within the boundaries or property lines of the property described, and that there are no trespasses or encroachments.

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- f) The American Disabilities Act (ADA) became effective January 26, 1992. The Appraiser has not made a specific compliance survey or analysis of the property to determine whether or not it is in conformity with the various detailed requirements of ADA. It is possible that a compliance survey of the property and a detailed analysis of the requirements of the ADA would reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative impact upon the value of the property. Since the Appraiser has no direct evidence relating to this issue, possible noncompliance with the requirements of ADA was not considered in estimating the value of the property.
 - g) No monetary liability or responsibility is assumed for conformity to specific governmental requirements, such as fire, building, safety, earthquake, or occupancy codes, except where specific professional or governmental inspections have been completed and reported in the appraisal report.
 - h) It is assumed the subject property is not adversely affected by the potential of floods; unless otherwise stated herein. Further, it is assumed all water and sewer facilities (existing and proposed) are or will be in good working order and are or will be of sufficient size to adequately serve any proposed buildings.
 - i) Unless otherwise stated within the appraisal report, the depiction of the physical condition of the improvements described therein is based on visual inspection. No monetary liability or responsibility is assumed for (a) the soundness of structural members since no engineering tests were conducted; (b) the condition of mechanical equipment, plumbing, or electrical components, as complete tests were not made; and (c) hidden, unapparent or masked property conditions or characteristics that were not clearly apparent during the Appraiser's inspection.
 - j) If building improvements are present on the site, it is assumed that no significant evidence of termite damage or infestation was observed during physical inspection, unless so stated in the appraisal report. Further, unless so stated in the appraisal report, no termite inspection report was available. No monetary liability or responsibility is assumed for hidden damages or infestation.
 - k) Unless subsoil opinions based upon engineering core borings were furnished, it is assumed there are no subsoil defects present, which would impair development of the land to its maximum permitted use or would render it more or less valuable. No monetary liability or responsibility is assumed for such conditions or for engineering which may be required to discover them.
 - l) BBG, Inc., excepting employees of BBG Assessment, Inc., and the appraiser(s) are not experts in determining the presence or absence of hazardous substances toxic materials, wastes, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, or other raw materials or chemicals) used in construction or otherwise present on the property. BBG, Inc. and the appraiser(s) assume no monetary liability or responsibility for the studies or analyses which would be required to determine the presence or absence of such substances or for loss as a result of the presence of such substances. The Client is free to retain an expert on such matters in this field; however, Client retains such expert at Client's own discretion, and any costs and/or expenses associated with such retention are the responsibility of Client.
 - m) BBG, Inc. is not an expert in determining the habitat for protected or endangered species, including, but not limited to, animal or plant life (such as bald eagles, gophers, tortoises, etc.) that may be present on the property. BBG, Inc. assumes no monetary liability or responsibility for the studies or analyses which would be required to determine the presence or absence of such species or for loss as a result of the presence of such species. The Appraiser hereby reserves the right to alter, amend, revise, or rescind any of the value opinions contained within the appraisal report based upon any subsequent endangered species impact studies, research, and investigation that may be provided. However, it is assumed that no environmental impact studies were either requested or made in conjunction with this analysis, unless otherwise stated within the appraisal report.
- 2) If the Client instructions to the Appraiser were to inspect only the exterior of the improvements in the appraisal process, the physical attributes of the property were observed from the street(s) as of the
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inspection date of the appraisal. Physical characteristics of the property were obtained from tax assessment records, available plans, if any, descriptive information, and interviewing the client and other knowledgeable persons. It is assumed the interior of the subject property is consistent with the exterior conditions as observed and that other information relied upon is accurate.

- 3) If provided, the estimated insurable value is included at the request of the Client and has not been performed by a qualified insurance agent or risk management underwriter. This cost estimate should not be solely relied upon for insurable value purposes. The Appraiser is not familiar with the definition of insurable value from the insurance provider, the local governmental underwriting regulations, or the types of insurance coverage available. These factors can impact cost estimates and are beyond the scope of the intended use of this appraisal. The Appraiser is not a cost expert in cost estimating for insurance purposes.
- 4) The dollar amount of any value opinion herein rendered is based upon the purchasing power and price of the United States Dollar as of the effective date of value. This appraisal is based on market conditions existing as of the date of this appraisal.
- 5) The value opinions reported herein apply to the entire property. Any proration or division of the total into fractional interests will invalidate the value opinions, unless such proration or division of interests is set forth in the report. Any division of the land and improvement values stated herein is applicable only under the program of utilization shown. These separate valuations are invalidated by any other application.
- 6) Any projections of income and expenses, including the reversion at time of resale, are not predictions of the future. Rather, they are BBG, Inc.'s best estimate of current market thinking of what future trends will be. No warranty or representation is made that such projections will materialize. The real estate market is constantly fluctuating and changing. It is not the task of an appraiser to estimate the conditions of a future real estate market, but rather to reflect what the investment community envisions for the future in terms of expectations of growth in rental rates, expenses, and supply and demand. The forecasts, projections, or operating estimates contained herein are based on current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes with future conditions.
- 7) The Appraiser assumes no monetary liability or responsibility for any changes in economic or physical conditions which occur following the effective date of value within this report that would influence or potentially affect the analyses, opinions, or conclusions in the report. Any subsequent changes are beyond the scope of the report.
- 8) Any proposed or incomplete improvements included in the appraisal report are assumed to be satisfactorily completed in a workmanlike manner or will be thus completed within a reasonable length of time according to plans and specifications submitted.
- 9) If the appraisal report has been prepared in a so-called "public non-disclosure" state, real estate sales prices and other data, such as rents, prices, and financing, are not a matter of public record. If this is such a "non-disclosure" state, although extensive effort has been expended to verify pertinent data with buyers, sellers, brokers, lenders, lessors, lessees, and other sources considered reliable, it has not always been possible to independently verify all significant facts. In these instances, the Appraiser may have relied on verification obtained and reported by appraisers outside of our office. Also, as necessary, assumptions and adjustments have been made based on comparisons and analyses using data in the report and on interviews with market participants. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- 10) Although the Appraiser has made, insofar as is practical, every effort to verify as factual and true all information and data set forth in this report, no responsibility is assumed for the accuracy of any information furnished the Appraiser either by the Client or others. If for any reason, future investigations should prove any data to be in substantial variance with that presented in this report, the Appraiser reserves the right to alter or change any or all analyses, opinions, or conclusions and/or opinions of value.

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- 11) The right is reserved by the Appraiser to make adjustments to the analyses, opinions, and conclusions set forth in the appraisal report as may be required by consideration of additional or more reliable data that may become available. No change of this report shall be made by anyone other than the Appraiser. The Appraiser shall have no monetary liability or responsibility for any unauthorized change(s) to the report.
 - 12) The submission of the appraisal report constitutes completion of the services authorized and agreed upon. Such appraisal report is submitted on the condition the Client will provide reasonable notice and customary compensation, including expert witness fees, relating to any subsequent required attendance at conferences, depositions, or judicial or administrative proceedings. In the event the Appraiser is subpoenaed for either an appearance or a request to produce documents, a best effort will be made to notify the Client immediately. The Client has the sole responsibility for obtaining a protective order, providing legal instruction not to appear with the appraisal report and related work files, and will answer all questions pertaining to the assignment, the preparation of the report, and the reasoning used to formulate the opinion of value. Unless paid in whole or in part by the party issuing the subpoena or by another party of interest in the matter, the Client is responsible for all unpaid fees resulting from the appearance or production of documents regardless of who orders the work.
 - 13) Client shall not disseminate, distribute, make available or otherwise provide any Appraisal Report prepared hereunder to any third party (including without limitation, incorporating or referencing the Appraisal Report, in whole or in part, in any offering or other material intended for review by other parties) except to (a) any third party expressly acknowledged in a signed writing by Appraiser as an "Intended User" of the Appraisal Report provided that either Appraiser has received an acceptable release from such third party with respect to such Appraisal Report or Client provides acceptable indemnity protections to Appraiser against any claims resulting from the distribution of the Appraisal Report to such third party, (b) any third party service provider (including rating agencies and auditors) using the Appraisal Report in the course of providing services for the sole benefit of an Intended User, or (c) as required by statute, government regulation, legal process, or judicial decree. In the event Appraiser consents, in writing, to Client incorporating or referencing the Appraisal Report in any offering or other materials intended for review by other parties, Client shall not distribute, file, or otherwise make such materials available to any such parties unless and until Client has provided Appraiser with complete copies of such materials and Appraiser has approved all such materials in writing. Client shall not modify any such materials once approved by Appraiser. In the absence of satisfying the conditions of this paragraph with respect to a party who is not designated as an Intended User, the receipt of an Appraisal Report by such party shall not confer any right upon such party to use or rely upon such report, and Appraiser shall have no liability for such unauthorized use or reliance upon such report. In the event Client breaches the provisions of this paragraph, Client shall indemnify, defend and hold Appraiser, and its affiliates and their officers, directors, employees, contractors, agents and other representatives (Appraiser and each of the foregoing an "Indemnified Party" and collectively the "Indemnified Parties"), fully harmless from and against all losses, liabilities, damages and expenses (collectively, "Damages") claimed against, sustained or incurred by any Indemnified Party arising out of or in connection with such breach, regardless of any negligence on the part of any Indemnified Party in preparing the Appraisal Report.

Overview

BBG OVERVIEW

BBG is one of the nation's largest real estate due diligence firms with more than 45 offices across the country serving more than 3,000 clients. We deliver best-in-class valuation, advisory and assessment services with a singular focus of meeting our clients' needs.

Our professional team offers broad industry expertise and deep market knowledge to help clients meet their objectives throughout the real estate life cycle.

BBG clients include commercial real estate professionals, investors, lenders, attorneys, accountants and corporations.

THE BBG DIFFERENCE

National Footprint. BBG is one of only two national firms offering in-house valuation and environmental and property condition assessment services for all commercial property types.

Customer-focused Growth. BBG is one of the largest national due diligence firms because we deliver best-in-class work product and provide excellent customer care.

Qualified Team. Over 50 percent of BBG appraisers are MAI designated and offer deep industry expertise gained through real-world experience.

Unbiased Independence. By focusing exclusively on due diligence services, BBG guarantees an independent perspective free from potential conflicts of interest.

Innovative Technology. BBG has made significant analytics and IT investments to continually improve our data and report quality.

SERVICES

Valuation

- + Single Asset Valuation
- + Portfolio Valuation
- + Institutional Asset Valuation
- + Appraisal Review
- + Appraisal Management
- + Lease and Cost Analysis
- + Insurance Valuation
- + Arbitration & Consulting
- + Feasibility Studies
- + Highest and Best Use Studies
- + Evaluation
- + Investment analysis
- + Tax appeals
- + Litigation Support
- + Manufactured Housing and Campgrounds

Advisory

- + ASC 805 Business combinations
- + ASC 840 Leases
- + Purchase Price Allocations
- + Portfolio Valuations for reporting net asset values (NAV)
- + Public and non-traded REIT valuations
- + Valuations for litigation and litigation support
- + Sale-leaseback valuation analysis
- + Valuations for bankruptcy/fresh start accounting
- + Cost segregation analysis

Assessment

- + Environmental due diligence
- + Property condition consulting
- + Small loan services
- + Energy consulting
- + Environmental consulting
- + Zoning
- + ALTA Surveys

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GLOSSARY

Appraisal: (noun) the act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.⁷

Appraisal Practice: valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.⁷

Appraisal Review: (noun) the act or process of developing an opinion about the quality of another appraiser's work (i.e., a report, part of a report, a workfile, or some combination of these), that was performed as part of an appraisal or appraisal review assignment, (adjective) of or pertaining to an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.⁷

Appraiser: one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.⁷

Appraiser's Peers: other appraisers who have expertise and competency in a similar type of assignment.⁷

Assessed Value: The value of a property according to the tax rolls in ad valorem taxation; may be higher or lower than market value, or based on an assessment ratio that is a percentage of market value. ¹

- Asset:**
1. Any item, the rights to which may have economic value, including financial assets (cash or bonds), business interests, intangible assets (copyrights and trademarks), and physical assets (real estate and personal property).
 2. In general business usage, something owned by a business and reflected in the owner's business sheet.

Asset: A resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity. ²

Assignment: a valuation service that is provided by an appraiser as a consequence of an agreement with a client.⁷

Assignment Conditions: Assumptions, extraordinary assumptions, hypothetical conditions, laws and regulation, jurisdictional exceptions, and other conditions that affect the scope of work.⁷

Assignment Elements: Specific information needed to identify the appraisal or appraisal review problem: client and any other intended users, intended use of the appraiser's opinions and conclusions, type and definition of value; effective date of the appraiser's opinions and conclusions; subject of the assignment and its relevant characteristics; and assignment conditions.⁷

Assignment Results: An appraiser's opinions or conclusions, not limited to value, that were developed when performing an appraisal assignment, an appraisal review assignment, or a valuation service other than an appraisal or appraisal review.⁷

Bias: a preference or inclination that precludes an appraiser's impartiality, independence, or objectivity in an assignment.⁷

Business Enterprise: an entity pursuing an economic activity.⁷

Business Equity: the interests, benefits, and rights inherent in the ownership of a business enterprise or a part thereof in any form (including, but not necessarily limited to, capital stock, partnership interests, cooperatives, sole proprietorships, options, and warrants).⁷

Capital Expenditure: Investments of cash (or the creation of liability) to acquire or improve an asset, e.g., land, buildings, building additions, site improvements, machinery, equipment; as distinguished from cash outflows for expense items that are normally considered part of the current period's operations. Also referred to as Cap Ex.¹

Cash Equivalency Analysis: An analytical process in which the sale price of a transaction with nonmarket financing or financing with unusual conditions or incentives is converted into a price expressed in terms of cash or its equivalent.¹

Client: the party or parties (i.e., individual, group or entity) who engage an appraiser by employment or contract in a specific assignment, whether directly or through an agent.⁷

Condominium Ownership: A form of fee ownership of separate units or portions of multiunit buildings that provides for formal filing and recording of a divided interest in real estate.¹

Confidential Information:

- 1:** information that is either:
- Identified by the client as confidential when providing it to a valuer and that is not available from any other source, or
 - Classified as confidential or private by applicable law or regulation.
- 2:** Information that is either
- Identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or
 - Classified as confidential or private by applicable law or regulation *
 - NOTICE: For example, pursuant to the passage of the Gramm-Leach-Bliley Act in November 1999, some public agencies have adopted privacy regulations that affect appraisers. The Federal Trade Commission (FTC) issued two rules. The first rule (16 CFR 313) focuses on the protection of "non-public personal information" provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities include "appraising real or personal property." The second rule (16 CFR 314) requires appraisers to safeguard customer non-public personal information. Significant liability exists for appraisers should they fail to comply with these FTC rules. ⁷

Cost: the actual or estimated amount required to create, reproduce, replace or obtain a property.⁷

Cost Approach: A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive, deducting depreciation from the total cost, and adding the estimated land value. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised. ¹

Credible: worthy of belief.⁷

Deferred Maintenance: Items of wear and tear on a property that should be fixed now to protect the value or income-producing ability of the property, such as a broken window, a dead tree, a leak in the roof, or a faulty roof that must be completely replaced. These items are almost always curable.¹

Disposition Value: The most probable price that a specified interest in real property should bring under the following conditions: 1) Consummation of a sale within a specific time, which is short than the typical exposure time for such a property in that market. 2) The property is subjected to market conditions prevailing as of the date of valuation. 3) Both the buyer and seller are acting prudently and knowledgeably. 4) The seller is under compulsion to sell. 5) The buyer is typically motivated. 6) Both parties are acting in what they consider to be their best interests. 7) An adequate marketing effort will be made during the exposure time. 8) Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto. 9) The price represents the normal consideration of the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. This definition can also be modified to provide for valuation with specified financing terms. ¹

Economic Life: The period over which improvements to real estate contribute to property value. ¹

Effective Date: the date to which the appraiser's analysis, opinions and conclusions apply, also referred to as date of value.⁷

Effective Gross Income Multiplier (EGIM): The ratio between the sale price (or value) of a property and its effective gross income.¹

Effective Rent: Total base rent, or minimum rent stipulated in a lease, over the specified lease term minus rent concessions, the rent that is effectively paid by a tenant net of financial concessions provided by a landlord. ¹

Exposure Time: an opinion, based on supporting market data, of the length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at the market value on the effect date of the appraisal.⁷

Extraordinary Assumption: an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions.⁷

Fair Market Value:

1. In nontechnical usage, a term that is equivalent to the contemporary usage of market value.
2. As used in condemnation, litigation, income tax, and property tax situations, a term that is similar in concept to market value but may be defined explicitly by the relevant agency. For example, one definition of *fair market value* provided by the Internal Revenue Service for certain purposes is as follows: The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. (IRS Regulation §20.2031-1)¹

Fair Share:

1. A share of a fund or deposit that is divided or distributed proportionately.
2. A share of a burden or obligation that is divided proportionately; e.g., a tenant in a multitenant building or development may be required to pay a pro rata share of the building's operating expenses based on the number of square feet the tenant occupies. In a shopping center, the tenant's share of operating costs is often stated as a fraction, with the gross leasable area of the tenant's premises as the numerator and the gross leasable area or gross leased area of the entire shopping center as the denominator.
3. The share of a trade area that a retail facility is likely to capture; assumes that capture is a function of property size as a proportion of the overall inventory of competitive space in the trade area, i.e., that the facility captures a "fair share" of the trade area.¹

Fair Value:

1. The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. (FASB)
2. The estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties. (This does not apply to valuations for financial reporting.) (IVS).¹
3. The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.²

Feasibility Analysis: a study of the cost benefit relationship of an economic endeavor.¹

Fee Simple Estate: Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.¹

Floor Area Ratio (FAR): The relationship between the above-ground floor area of a building, as described by the zoning or building code, and the area of the plot on which it stands; in planning and zoning, often expressed as a decimal, e.g., a ratio of 2.0 indicates that the permissible floor area of a building is twice the total land area.¹

Going Concern:

1. An established and operating business having an indefinite future life.
2. An organization with an indefinite life that is sufficiently long that, over time, all currently incomplete transformations [transforming resources from one form to a different, more valuable form] will be completed.¹

Gross Building Area (GBA):

1. Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls of the above-grade area. This includes mezzanines and basements if and when typically included in the market area of the type of property involved.
2. Gross leasable area plus all common areas.
3. For residential space, the total area of all floor levels measured from the exterior of the walls and including the super structure and substructure basement; typically does not include garage space.¹

Highest and Best Use:

1. The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.
2. The use of an asset that maximizes its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid. (IVS).
3. [The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions)¹

Hypothetical Condition: a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.⁷

Income Capitalization Approach: Specific appraisal techniques applied to develop a value indication for a property based on its earning capability and calculated by the capitalization of property income.¹

Inspection: Personal observation of the exterior or interior of the real estate that is the subject of an assignment performed to identify the property characteristics that are relevant to the assignment, such as amenities, general physical condition, and functional utility. Note that this is not the inspection process performed by a licensed or certified building inspector.¹

Insurable Value: A type of value for insurance purposes.¹

Intangible Property (intangible Assets): Nonphysical assets, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities, and contracts as distinguished from physical assets such as facilities and equipment.⁷

Intended Use: the user(s) of an appraiser's reported appraisal or appraisal review assignment results, as identified by the appraiser based on communication with the client at the time of the assignment.⁷

Intended User: the client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser, based on communication with the client at the time of the assignment.⁷

Internal Rate of Return ("IRR"): The annualized yield rate or rate of return on capital that is generated or capable of being generalized within an investment of portfolio over a period of ownership. Alternatively, the indicated return of capital associated with a projected or pro forma income stream. The discount rate that equates the present value of the net cash flows of a project with the present value of the capital investment. It is the rate at which the Net Present Value (NPV) equals zero. The IRR reflects both the return on invested capital and the return of the original investment, which are basic considerations of potential investors. Therefore, deriving the IRR from analysis of market transactions of similar properties having comparable income patterns is a proper method for developing market discount rates for use in valuations to arrive at Market Value. Used in discounted cash flow analysis to find the implied or expected rate of return of the project, the IRR is the rate of return which gives a zero net present value (NPV). See also equity yield rate (YE); financial management rate of return (FMRR); modified internal rate of return (MIRR); yield rate (Y).¹

Investment Value: 1) The value of a property to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment criteria that are not necessarily typical of the market. 2) The value of an asset to the owner or a prospective owner for individual investment or operational objectives. (IVS)¹

Jurisdictional Exception: an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.⁷

Leasehold Interest: The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.¹

Leased Fee Interest: The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires.¹

Liquidation Value: The most probable price that a specified interest in real

property should bring under the following conditions: 1) Consumption of a sale within a short time period; 2) The property is subjected to market conditions prevailing as of the date of valuation; 3) Both the buyer and seller are acting prudently and knowledgeably; 4) The seller is under extreme compulsion to sell; 5) The buyer is typically motivated. 6) Both parties are acting in what they consider to be their best interests. 7) A normal marketing effort is not possible due to the brief exposure time 8) Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto. 9) The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. This definition can also be modified to provide for valuation with specified financing terms.¹

Load Factor: A measure of the relationship of common area to useable area and therefore the quality and efficiency of building area layout, with higher load factors indicating a higher percentage of common area to overall rentable space than lower load factors; calculated by subtracting the amount of usable area from the rentable area and then dividing the difference by the usable area:¹

Load Factor =

$$\frac{(\text{Rentable Area} - \text{Useable Area})}{\text{Useable Area}}$$

Market Value: a type of value stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the value definition that is identified by the appraiser as applicable in an appraisal.⁷

Market Value "As If Complete" On The Appraisal Date: Market value as if complete on the effective date of the appraisal is an estimate of the market value of a property with all construction, conversion, or rehabilitation hypothetically completed, or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value should reflect the market value of the property as if complete and prepared for occupancy by tenants.

Market Value "As Is" On The Appraisal Date: Value As Is -The value of specific ownership rights to an identified parcel of real estate as of the effective date of the appraisal; relates to what physically exists and is legally permissible and excludes all assumptions concerning hypothetical market conditions or possible rezoning. See also effective date; prospective value opinion.

Market Value of the Total Assets of the Business: The market value of the total assets of the business is the market value of all of the tangible and intangible assets of a business as if sold in aggregate as a going concern. This assumes that the business is expected to continue operations well into the future.⁴

Marketing Time: An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Appraisal Standards Board of The Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property Market Value Opinions" address the determination of reasonable exposure and marketing time.).³

Mass Appraisal: the process of valuing a universe of properties as of a given date using standard methodology, employing common data and allowing for statistical testing.⁷

Mass Appraisal Model: a mathematical expression of how supply and demand factors interact in a market.⁷

Misleading: intentionally or unintentionally misrepresenting, misstating or concealing relevant facts or conclusions.⁷

Net Lease: A lease in which the landlord passes on all expenses to the tenant. See also lease.¹

Net Rentable Area (NRA): 1) The area on which rent is computed. 2) The

Rentable Area of a floor shall be computed by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor. No deductions shall be made for columns and projections necessary to the building. Include space such as mechanical room, janitorial room, restrooms, and lobby of the floor.⁵

Penetration Ratio (Rate): The rate at which stores obtain sales from within a trade area or sector relative to the number of potential sales generated; usually applied to existing facilities. Also called: penetration factor.¹

Personal Inspection: a physical observation performed to assist in identifying relevant property characteristics in a valuation service.⁷

Personal Property: any tangible or intangible article that is subject to ownership and not classified as real property, including identifiable tangible objects that are considered by the general public as being "personal", such as furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment, and intangible property that is created and stored electronically such as plans for installation art, choreography, emails or designs for digital tokens.⁷

Physical Characteristics: attributes of a property that are observable or measurable as a matter of fact, as distinguished from opinions and conclusions, which are the result of some level of analysis or judgement.⁷

Price: the amount asked, offered or paid for a property.⁷

Prospective opinion of value. A value opinion effective as of a specified future date. The term does not define a type of value. Instead it identifies a value opinion as being effective at some specific future date. An opinion of value as of a prospective date is frequently sought in connection with projects that are proposed, under construction, or under conversion to a new use, or those that have not yet achieved sellout or a stabilized level of long-term occupancy.¹

Real Estate: an identified parcel or tract of land, including improvements, if any.⁷

Real Property: the interests, benefits and rights inherent in the ownership of real estate.⁷

Reconciliation: A phase of a valuation assignment in which two or more value indications are processed into a value opinion, which may be a range of value, a single point estimate, or a reference to a benchmark value.¹

Relevant Characteristics: features that may affect a property's value or marketability such as legal, economic or physical characteristics.⁷

Reliable Measurement: [The IAS/IFRS framework requires that] neither an asset nor a liability is recognized in the financial statements unless it has a cost or value that can be measured reliably.²

Remaining Economic Life: The estimated period over which existing improvements are expected to contribute economically to a property; an estimate of the number of years remaining in the economic life of a structure or structural components as of the effective date of the appraisal; used in the economic age-life method of estimating depreciation.¹

Replacement Cost: The estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised, using modern materials and current standards, design, and layout.¹

Report: any communication, written or oral, of an appraisal or appraisal review that is transmitted to the client or a party authorized by the client upon completion of an assignment.⁷

Retrospective Value Opinion: A value opinion effective as of a specified historical date. The term retrospective does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion."¹

Sales Comparison Approach: The process of deriving a value indication for the subject property by comparing sales of similar properties to the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant when an adequate supply of comparable sales is available.¹

Scope of Work: the type and extent of research and analyses in an appraisal or appraisal review assignment.⁷

Signature: personalized evidence indicating authentication of the work performed by the appraiser and the acceptance of the responsibility for content, analyses and the conclusions in the report.⁷

Stabilized value: A value opinion that excludes from consideration any abnormal relationship between supply and demand such as is experienced in boom periods when cost and sale price may exceed the long-term value, or during periods of depression, when cost and sale price may fall short of long-term value. It is also a value opinion that excludes from consideration any transitory condition that may cause excessive construction costs, e.g., a premium paid due to a temporary shortage of supply.

Substitution: The principle of substitution states that when several similar or commensurate commodities, goods, services are available, the one with the lowest price will attract the greatest demand and widest distribution. This is the primary principle upon which the cost and sales comparison approaches are based.³

Total Assets of a Business: Total assets of a business is defined by the Appraisal Institute as “the tangible property (real property and personal property, including inventory and furniture, fixtures and equipment) and intangible property (cash, workforce, contracts, name, patents, copyrights, and other residual intangible assets, to include capitalized economic profit).”

Use Value:

The value of a property assuming a specific use, which may or may not be the property’s highest and best use on the effective date of the appraisal. Use value may or may not be equal to market value but is different conceptually.¹

Valuation Service: a service pertaining to an aspect of property value, regardless of the type of service and whether it is performed by appraisers or by others.⁷

Value: the monetary relationship between properties and those who buy and sell, or use those properties, expressed as an opinion of the worth of a property at a given time.⁷

Workfile: data, information and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP.⁷

¹Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 6th ed. (Chicago: Appraisal Institute 2010). ²Appraisal Institute, *International Financial Reporting Standards for Real Property Appraiser*, IFRS Website, www.ifrs-ebooks.com/index.html. ³Appraisal Institute, *The Appraisal of Real Estate*, 13th ed. (Chicago: Appraisal Institute 2008). ⁴ This definition is taken from “Allocation of Business Assets Into Tangible and Intangible Components: A New Lexicon,” *Journal of Real Estate Appraisal*, January 2002, Volume LXX, Number 1. This terminology is to replace former phrases such as: value of the going concern. ⁵Financial Publishing Company, *The Real Estate Dictionary*, 7 ed. ⁶ U.S. Treasury Regulations. ⁷USPAP 2020-2021

LETTER OF ENGAGEMENT

May 10, 2023

Mr. Jean Bakkes
Marshpoint Properties Two, LLC
2300 Marsh Point Road
Neptune Beach, FL 32266

Phone: 904-853-6801
Email: Jean@skyenterprises.com

RE: Appraisal of city-owned right of way located on east side of Marsh Point Road, Neptune Beach, Florida

Dear Mr. Bakkes:

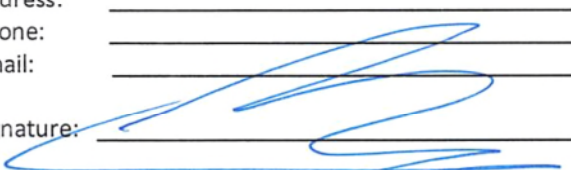
We are pleased to submit this proposal and our Terms and Conditions for the appraisal of the above referenced real estate.

PROPOSAL SPECIFICATIONS

Valuation Premise:	Form an opinion of the market value of a portion of an unnamed alleyway as shown on the survey provided by Marshpoint Properties Two, LLC.
Property Rights Appraised:	Fee Simple
Intended Use:	Property valuation for a potential acquisition by Marshpoint Properties Two, LLC
Intended Users:	Marshpoint Properties Two, LLC as well as egal counsel and designated representatives. A secondary user may also include the City of Neptune Beach.
Scope of Work:	"ATF" Across the Fence Methodology. Sales Comparison Approach.
Inspection:	Onsite inspection by a BBG Appraiser. TBD
Appraisal Standards:	Uniform Standards of Professional Appraisal Practice (USPAP) and Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
Delivery Date:	12 business days from date of acceptance
Report Delivery Recipients:	If any other person(s) are authorized to be included on delivery of the report, please include their information in the space below:
Name(s):	
Email(s):	
Acceptance Date:	Date of Execution
Report Type:	Appraisal Report
Fee:	\$4000. Fee includes up to two hours of consultation time after delivery of the final reports. Any time incurred thereafter will be billed at an hourly rate.

Please indicate below who is responsible for payment:

Name: Marshpoint Properties Two, LLC
Company: _____
Address: _____
Phone: _____
Email: _____

Signature: 

Retainer:

50% at engagement

Wire Payment/ACH Information Below:

Bank of America

Acct#: 488038497058

Wire Payment Routing#: 026009593

ACH Payment Routing#: 111000025

Payment Terms:

Balance is due and payable upon delivery of the final report or within 30 days of your receipt of our draft report, whichever is sooner. If a draft report is requested, the fee is considered earned upon delivery of our draft report.

Report Copies:

1 email PDF to the client with hard copies available upon request

The attached Terms and Conditions of the Engagement are deemed part of this Appraisal Services Agreement and are incorporated fully herein by reference and shall apply to any appraisal reports, contract or orders into which they are incorporated. In addition, with respect to any appraisal report, any use of or reliance on the appraisal by any party, regardless of whether the use or reliance is authorized or known by BBG, Inc. and its agents, servants, employees, principals, affiliated companies and all those in privity with them, constitutes acceptance of such Terms and Conditions of the Engagement, as well as acceptance of all other appraisal statements, limiting conditions and assumptions stated in the appraisal report. Use of this appraisal report constitutes acknowledgement and acceptance of the Terms and Conditions of the Engagement, special assumptions (if any), extraordinary assumptions (if any), and hypothetical conditions (if any) on which this estimate of market value is based. This appraisal report has been prepared for the exclusive benefit of the client. It may not be used or relied upon by any other party. Any other party who is not the identified client within this report who uses or relies upon any information in this report does so at their own risk.

Client acknowledges and agrees that BBG may anonymize all property and operational information ("Client Data") provided and aggregate with other anonymized data from other Clients and/or other sources and use such aggregated, anonymized Client Data in existing or future BBG product offerings. BBG shall process the Client Data in a manner that renders the form and source of the Client Data unidentifiable to any other Client or third party. We appreciate this opportunity to be of service to you on this assignment. If you have additional questions, please contact us.



As Agent for BBG, Inc.

Kyle Catlett, MAI

Director

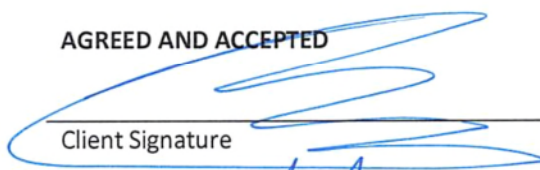
Valuation

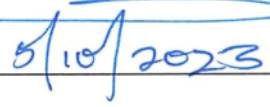
Cert Gen RZ3875

P 813-212-1286 **C** 813-833-1986

E kcatlett@bbgres.com

AGREED AND ACCEPTED



Client Signature

Date

Terms and Limiting Conditions of the Engagement

The Terms and Conditions of the Engagement are deemed part of the attached Proposal Specifications and Appraisal and Consulting Services Agreement and are incorporated fully therein, and shall apply to any appraisal services, consulting services, oral testimony, reports, contracts, or orders into which they may be incorporated.

A) Definitions. In the Terms and Conditions of the Engagement:

1. "BBG, Inc." means BBG, Inc. and its agents, successors, assigns, servants, employees, principals, affiliated companies and all those in privity with them.
2. "Appraiser" means the appraiser(s) performing part or all of the appraisal services and/or signing an appraisal report. "Appraiser" may also mean "Consultant" in a consulting assignment.
3. "Appraisal and Consulting Services Agreement" means any written agreement with Client for performance of the appraisal services by Appraiser, including any agreement entered into electronically.
4. "Client" means any party identified expressly as a client in an Appraisal and Consulting Services Agreement and also any party identified expressly as a client by the Appraiser in an appraisal report.
5. "Appraisal" means any appraisal or consulting report(s) prepared by or oral report and/or testimony presented by BBG, Inc.
6. "Report" means a written or oral report prepared by and/or oral testimony presented by BBG, Inc.

B) Venue and Jurisdiction

THIS APPRAISAL AND CONSULTING SERVICES AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC SUBSTANTIVE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION. IF ANY ACTION RELATING TO THIS APPRAISAL AND CONSULTING SERVICES AGREEMENT OR THE CONTEMPLATED TRANSACTIONS IS BROUGHT BY A PARTY HERETO AGAINST ANY OTHER PARTY HERETO, THE PREVAILING PARTY IN SUCH ACTION WILL BE ENTITLED TO RECOVER ALL REASONABLE EXPENSES RELATING THERETO (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES) FROM THE NON-PREVAILING PARTY.

Each party to this Appraisal and Consulting Services Agreement (a) hereby irrevocably submits to the exclusive jurisdiction and venue of the state courts located in Dallas County, Texas (or, if but only if such court lacks jurisdiction, the United States District Court for the Northern District of Texas) for the purpose of any Action between any of the parties hereto arising in whole or in part under or in connection with this Appraisal and Consulting Services Agreement, any Ancillary Agreement, or the Contemplated Transactions, (b) hereby waives and agrees not to assert any claim that he, she or it is not subject personally to the jurisdiction of the above-named courts or that any such Action brought in the above-named courts should be dismissed on grounds of forum non conveniens. Notwithstanding the foregoing, a party hereto may commence any Action in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by the above-named courts.

C) Limitations of Liability

It is expressly agreed that in any action which may be brought against BBG, Inc., arising out of, relating to, or in any way pertaining to this engagement, this Appraisal and Consulting Services Agreement, or any services, reports, information, or opinions contained therein or presented, BBG, Inc. shall not be responsible or liable for any incidental or consequential losses, unless the same was fraudulent or prepared with gross negligence. It is further agreed that the collective liability of BBG, Inc. in any such action shall not exceed the fees paid for the preparation of the respective report or services unless the same was fraudulent or prepared with gross negligence. Finally, it is agreed that the fees charged herein are in reliance upon the foregoing limitations of liability.

Client hereby agrees to indemnify, defend, protect, and hold BBG, Inc. harmless from and against all claims, damages, losses and expenses, including attorneys' fees, expenses and costs, incurred upon investigating and defending any claim, action or proceeding arising from, or in any way connected to, relating to, or in any way pertaining to this engagement, this Appraisal and Consulting Services Agreement, or any services, reports, information, or opinions contained therein or presented.

Further, you acknowledge that any opinions and conclusions expressed by professionals employed by BBG, Inc. related to this agreement are representations made by them as employees and not as individuals. BBG, Inc.'s responsibility is limited to you as a Client. The use of BBG, Inc.'s product by third parties is not intended unless

Terms and Limiting Conditions of the Engagement

expressly stated and shall be solely at the risk of you and/or third parties. BBG, Inc. acknowledges that Client will be the end-user of, and can rely upon, the opinion and conclusions of BBG, Inc.

D) Confidentiality

The parties agree that (i) this Appraisal and Consulting Services Agreement and the terms contained herein, (ii) opinions or valuation conclusions, (iii) the identity of the analyst or the firm and any reference to the professional organization of which the appraiser is affiliated or to the designations thereof, and (iv) all information regarding the property of whatever nature made available to either party by the other (including all versions of BBG, Inc.'s final report and all prior drafts of same) and methods of each party revealed during the performance of the Services (altogether, collectively, the "Confidential Information") shall be treated as strictly confidential. Accordingly, neither party nor any employee, agent or affiliate thereof shall disclose the same to any third party without the written consent of other party and approval of Appraiser; provided, however, that, a party shall not hereby be precluded from disclosure of Confidential Information that may be compelled by legal requirements, or from disclosing this Appraisal and Consulting Services Agreement (and the terms contained herein) to its attorneys, accountants, auditors, lenders, and other professionals who may be bound to that party by duties of confidence.

Do not provide Personally Identifiable Information (PII) to BBG, Inc. or any of its agents. PII is any piece of information meant to identify a specific individual. This includes data such as a Social Security number, driver's license number and financial account numbers.

E) General Assumptions and Limiting Conditions

Appraisal services have been provided with the following general assumptions:

1. Notwithstanding that the Appraiser may comment on, analyze or assume certain conditions in the appraisal or consulting assignment, BBG, Inc. shall have no monetary liability or responsibility for alleged claims or damages pertaining to: (a) title defects, liens or encumbrances affecting the property; (b) the property's compliance with local, state or federal zoning, planning, building, disability access and environmental laws, regulations and standards; (c) building permits and planning approvals for improvements on the property; (d) structural or mechanical soundness or safety; (e) contamination, mold, pollution, storage tanks, animal infestations or other hazardous conditions affecting the property; and (f) other conditions and matters for which licensed real estate appraisers are not customarily deemed to have professional expertise. Accordingly:
 - a) The Appraiser has not conducted any engineering or architectural surveys in connection with this appraisal or consulting assignment. Information reported pertaining to dimensions, sizes, and areas is either based on measurements taken by the Appraiser or the Appraiser's staff or was obtained or taken from referenced sources and is considered reliable. The Appraiser and BBG, Inc. shall not be monetarily liable or responsible for or assume the costs of preparation or arrangement of geotechnical engineering, architectural, or other types of studies, surveys, or inspections that require the expertise of a qualified professional.
 - b) Unless otherwise stated in the written report or oral report, only the real property is considered, so no consideration is given to the value of personal property or equipment located on the premises or the costs of moving or relocating such personal property or equipment. Further, unless otherwise stated, it is assumed that there are no subsurface oil, gas or other mineral deposits or subsurface rights of value involved in this appraisal, whether they are gas, liquid, or solid. Further, unless otherwise stated, it is assumed that there are no rights associated with extraction or exploration of such elements considered. Unless otherwise stated it is also assumed that there are no air or development rights of value that may be transferred.
 - c) Any legal description or plats reported in the appraisal are assumed to be accurate. Any sketches, surveys, plats, photographs, drawings or other exhibits are included only to assist the intended user to better understand and visualize the subject property, the environs, and the competitive data. BBG, Inc. has made no survey of the property and assumes no monetary liability or responsibility in connection with such matters.
 - d) Title is assumed to be good and marketable, and in fee simple, unless otherwise stated in the report. The property is considered to be free and clear of existing liens, easements, restrictions, and encumbrances, except as stated. Further, BBG, Inc. assumes there are no private deed restrictions affecting the property which would limit the use of the subject property in any way, except as stated.

Terms and Limiting Conditions of the Engagement

- e) The appraisal report is based on the premise that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in the report; additionally, that all applicable zoning, building, and use regulations and restrictions of all types have been complied with unless otherwise stated in the report. Further, it is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state, federal and/or private entity or organization have been or can be obtained or renewed for any use considered in the value opinion. Moreover, unless otherwise stated herein, it is assumed that there are no encroachments or violations of any zoning or other regulations affecting the subject property, that the utilization of the land and improvements is within the boundaries or property lines of the property described, and that there are no trespasses or encroachments.
- f) The American Disabilities Act (ADA) became effective January 26, 1992. The Appraiser has not made a specific compliance survey or analysis of the property to determine whether it is in conformity with the various detailed requirements of ADA. It is possible that a compliance survey of the property and a detailed analysis of the requirements of the ADA would reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative impact upon the value of the property. Since the Appraiser has no direct evidence relating to this issue, possible noncompliance with the requirements of ADA was not considered in estimating the value of the property.
- g) No monetary liability or responsibility is assumed for conformity to specific governmental requirements, such as fire, building, safety, earthquake, or occupancy codes, except where specific professional or governmental inspections have been completed and reported in the appraisal report or oral report.
- h) It is assumed the subject property is not adversely affected by the potential of floods unless otherwise stated herein. Further, it is assumed all water and sewer facilities (existing and proposed) are or will be in good working order and are or will be of sufficient size to adequately serve any existing or proposed buildings.
- i) Unless otherwise stated within the appraisal report or oral report, the depiction of the physical condition of the improvements described therein is based on visual inspection. No monetary liability or responsibility is assumed for (a) the soundness of structural members since no engineering tests were conducted; (b) the condition of mechanical equipment, plumbing, or electrical components, as complete tests were not made; and (c) hidden, unapparent or masked property conditions or characteristics that were not clearly apparent during the Appraiser's or Consultant's inspection.
- j) If building improvements are present on the site, it is assumed that no significant evidence of termite damage or infestation was observed during physical inspection, unless so stated in the appraisal report or oral report. Further, unless so stated in the report or oral report, no termite inspection report was available. No monetary liability or responsibility is assumed for hidden damages or infestation.
- k) Unless subsoil opinions based upon engineering core borings were furnished, it is assumed there are no subsoil defects present, which would impair development of the land to its maximum permitted use or would render it more or less valuable. No monetary liability or responsibility is assumed for such conditions or for engineering which may be required to discover them.
- l) BBG, Inc., excepting employees of BBG Assessment, Inc., and the appraiser(s) are not experts in determining the presence or absence of hazardous substances toxic materials, wastes, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, or other raw materials or chemicals) used in construction or otherwise present on the property. BBG, Inc. and the appraiser(s) assume no monetary liability or responsibility for the studies or analyses which would be required to determine the presence or absence of such substances or for loss as a result of the presence of such substances. The Client is free to retain an expert on such matters in this field; however, Client retains such expert at Client's own discretion, and any costs and/or expenses associated with such retention are the responsibility of Client.
- m) BBG, Inc. is not an expert in determining the habitat for protected or endangered species, including, but not limited to, animal or plant life (such as bald eagles, gophers, tortoises, etc.) that may be present on the property. BBG, Inc. assumes no monetary liability or responsibility for the studies or analyses which would be required to determine the presence or absence of such species or for loss as a result of the presence of such species. The Appraiser hereby reserves the right to alter, amend, revise, or rescind any of the value opinions contained within the appraisal report based upon any subsequent endangered species impact studies, research, and investigation that may be provided. However, it is assumed that no environmental impact studies were either requested or made in conjunction with this analysis, unless otherwise stated within the report.

Terms and Limiting Conditions of the Engagement

2. If the Client instructions to the Appraiser were to inspect only the exterior of the improvements in the appraisal process, the physical attributes of the property were observed from the street(s) as of the inspection date of the appraisal. Physical characteristics of the property were obtained from tax assessment records, available plans, if any, descriptive information, and interviewing the client and other knowledgeable persons. It is assumed the interior of the subject property is consistent with the exterior conditions as observed and that other information relied upon is accurate.
3. If provided, the estimated insurable value or cost is included at the request of the Client and has not been performed by a qualified insurance agent or risk management underwriter. This cost estimate should not be solely relied upon for insurable value or cost purposes. The Appraiser is not familiar with the definition of insurable value from the insurance provider, the local governmental underwriting regulations, or the types of insurance coverage available. These factors can impact cost estimates and are beyond the scope of the intended use of this appraisal. The Appraiser is not a cost expert in cost estimating for insurance purposes.
4. The dollar amount of any value opinion herein rendered is based upon the purchasing power and price of the United States Dollar as of the effective date of value. Any appraisal report is based on market conditions existing as of the effective date.
5. Any value opinions reported or expressed apply to the entire property. Any proration or division of the total into fractional interests will invalidate the value opinions, unless such proration or division of interests is set forth in the report. Any division of the land and improvement values stated herein is applicable only under the program of utilization shown. These separate valuations are invalidated for any other application.
6. Any projections of income and expenses, including the reversion at time of resale, are not predictions of the future. Rather, they are BBG, Inc.'s best estimate of current market thinking of what future trends will be. No warranty or representation is made that such projections will materialize. The real estate market is constantly fluctuating and changing. It is not the task of an appraiser to estimate the conditions of a future real estate market, but rather to reflect what the investment community envisions for the future in terms of expectations of growth in rental rates, expenses, and supply and demand. The forecasts, projections, or operating estimates contained herein are based on current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes with future conditions.
7. The Appraiser assumes no monetary liability or responsibility for any changes in economic or physical conditions which occur following the effective date of value within this report that would influence or potentially affect the analyses, opinions, or conclusions in the report. Any subsequent changes are beyond the scope of the report.
8. Any proposed or incomplete improvements included in the appraisal report are assumed to be satisfactorily completed in a workmanlike manner or will be thus completed within a reasonable length of time according to plans and specifications submitted.
9. If the appraisal report has been prepared in a so-called "public non-disclosure" state, real estate sales prices and other data, such as rents, prices, and financing, are not a matter of public record. If this is such a "non-disclosure" state, although extensive effort has been expended to verify pertinent data with buyers, sellers, brokers, lenders, lessors, lessees, and other sources considered reliable, it has not always been possible to independently verify all significant facts. In these instances, the Appraiser may have relied on verification obtained and reported by appraisers outside of our office. Also, as necessary, assumptions and adjustments have been made based on comparisons and analyses using data in the report and on interviews with market participants. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
10. Although the Appraiser has made, insofar as is practical, every effort to verify as factual and true all information and data set forth in this report, no responsibility is assumed for the accuracy of any information furnished the Appraiser either by the Client or others. If for any reason, future investigations should prove any data to be in substantial variance with that presented in this report, the Appraiser reserves the right to alter or change any or all analyses, opinions, or conclusions and/or opinions of value.
11. The right is reserved by the Appraiser to make adjustments to the analyses, opinions, and conclusions set forth in the appraisal report as may be required by consideration of additional or more reliable data that may become available. No change of this report shall be made by anyone other than the Appraiser or Consultant. The Appraiser shall have no monetary liability or responsibility for any unauthorized change(s) to the report.
12. The submission of the appraisal report constitutes completion of the services authorized and agreed upon unless other services are provided for in this agreement. Such report is submitted on the condition the Client will provide reasonable notice and customary compensation, including expert witness fees, relating to any

Terms and Limiting Conditions of the Engagement

subsequent required attendance at conferences, depositions, or judicial or administrative proceedings, unless otherwise defined herein. In the event the Appraiser is subpoenaed for either an appearance or a request to produce documents, a best effort will be made to notify the Client immediately. Unless paid in whole or in part by the party issuing the subpoena or by another party of interest in the matter, the Client is responsible for all unpaid fees resulting from the appearance or production of documents regardless of who orders the work. A payment agreement must be reached in advance of the Appraiser providing such services.

13. Client shall not disseminate, distribute, make available or otherwise provide any appraisal report prepared hereunder to any third party (including without limitation, incorporating or referencing the report, in whole or in part, in any offering or other material intended for review by other parties) except to (a) any third party expressly acknowledged in a signed writing by Appraiser as an "Intended User" of the report provided that either Appraiser has received an acceptable release from such third party with respect to such report or Client provides acceptable indemnity protections to Appraiser against any claims resulting from the distribution of the report to such third party, (b) any third party service provider (including rating agencies and auditors) using the report in the course of providing services for the sole benefit of an Intended User, or (c) as required by statute, government regulation, legal process, or judicial decree. In the event Appraiser consents, in writing, to Client incorporating or referencing the report in any offering or other materials intended for review by other parties, Client shall not distribute, file, or otherwise make such materials available to any such parties unless and until Client has provided Appraiser with complete copies of such materials and Appraiser has approved all such materials in writing. Client shall not modify any such materials once approved by Appraiser. In the absence of satisfying the conditions of this paragraph with respect to a party who is not designated as an Intended User, the receipt of a report by such party shall not confer any right upon such party to use or rely upon such report, and Appraiser shall have no liability for such unauthorized use or reliance upon such report. In the event Client breaches the provisions of this paragraph, Client shall indemnify, defend and hold Appraiser, and its affiliates and their officers, directors, employees, contractors, agents and other representatives (Appraiser and each of the foregoing an "Indemnified Party" and collectively the "Indemnified Parties"), fully harmless from and against all losses, liabilities, damages and expenses (collectively, "Damages") claimed against, sustained or incurred by any Indemnified Party arising out of or in connection with such breach, regardless of any negligence on the part of any Indemnified Party in preparing the report.

COMPARABLE LAND SALES

Sale Comparable #1

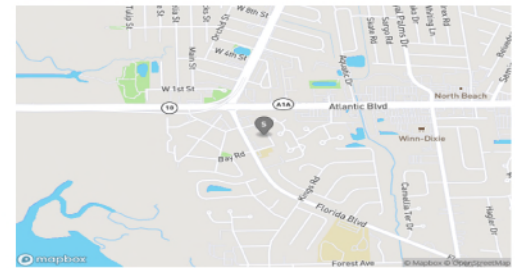
Poinciana Lot

Poinciana Road

Neptune Beach, FL 32266

Duval County

BBG Property #734259



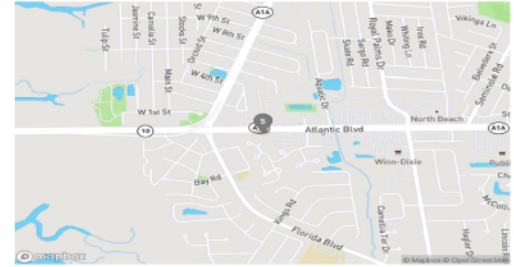
Property Data

Property Type/Use	Land Commercial	Lat/Long	30.322560 / -81.4179
Parcel ID #	173341 0000	Census Tract	0140.02
Opportunity Zone	No	Frontage	50 feet along Poinciana Road
Gross Land Area	6,650 SF 0.15 Acres	Net Land Area	6,650 SF 0.15 Acres
Flood Designation	Zone X (Unshaded)	Flood Panel	12031C0408J Dated November 2, 2018
Utilities		Terrain / Topography	
Easements / Encroachments	There are no known detrimental easements, encroachments or other restrictions that would adversely affect the site's use or marketability.	Zoning	C-2 Commercial

Sale Transaction Data for BBG Event #855567 on 3/17/2022

Sale Transaction Data for BBG Event #855567 on 3/17/2022					Net Area	Gross Area
Transaction Date	3/17/2022	Consideration	\$150,000	Price PSF	\$22.56	\$22.56
Sale Status	Closed	Adjustments	\$0	Price Per Acre	\$982,556	\$982,556
		Cash Equivalent Price	\$150,000			
Property Rights	Fee Simple					
Grantor	Carlos J. and Ernesto Jose Vargas					
Grantee	Derek and Darnice O'Leary					
Comments	Sale of a parcel of commercial land zoned C-2 in Neptune Beach, Florida. The property is located along a dirt road one block east of Florida Boulevard.					
Verification	5/17/2023 Local Broker					

Sale Comparable #2
Atlantic Boulevard Site
 Atlantic Boulevard
 Neptune Beach, FL
 Duval County
 BBG Property #734285

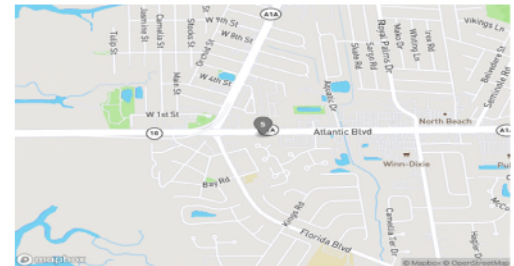


Property Data

Property Type/Use	Land Commercial	Lat/Long	30.324150 / -81.4167
Parcel ID #	173323-0150	Census Tract	0140.02
Opportunity Zone	No	Frontage	
Gross Land Area	5,663 SF 0.13 Acres	Net Land Area	5,663 SF 0.13 Acres
Flood Designation	Zone X (Shaded)	Flood Panel	12031C0408J Dated November 2, 2018
Utilities		Terrain / Topography	
Easements / Encroachments		Zoning	C-2 Commercial
Comments	Site is generally rectangular with adequate utility		

Sale Transaction Data for BBG Event #855589 on 4/22/2021					Net Area	Gross Area
Transaction Date	4/22/2021	Consideration	\$150,000	Price PSF	\$26.49	\$26.49
Sale Status	Closed	Adjustments	\$0	Price Per Acre	\$1,153,805	\$1,153,805
		Cash Equivalent Price	\$150,000			
Property Rights	Fee Simple					
Grantor	Ashland Investments, Inc.					
Grantee	Feral Cat Enterprises, LL					
Comments	Sale of a parcel of vacant land on the south side of Atlantic Boulevard. The site is only accessible via Florida Boulevard and is situated along an on-ramp for eastbound Atlantic Boulevard.					
Verification	5/17/2023 Local Broker					

Sale Comparable #3
HOS Properties Site
 Atlantic Boulevard
 Neptune Beach, FL
 Duval County
 BBG Property #734289



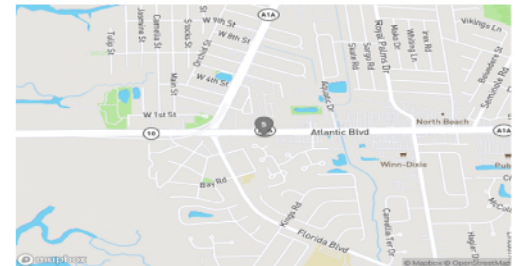
Property Data

Property Type/Use	Land Commercial	Lat/Long	30.324111 / -81.4171
Parcel ID #	173322-0100 173323-0100	Census Tract	0140.02
Opportunity Zone	No	Frontage	
Gross Land Area	3,600 SF 0.08 Acres	Net Land Area	3,600 SF 0.08 Acres
Flood Designation	Zone X (Unshaded)	Flood Panel	12031C0408J Dated November 2, 2018
Utilities		Terrain / Topography	Generally level
Easements / Encroachments		Zoning	C-2 Commercial

Sale Transaction Data for BBG Event #855596 on 4/22/2021

Sale Transaction Data for BBG Event #855596 on 4/22/2021					Net Area	Gross Area
Transaction Date	4/22/2021	Consideration	\$100,000	Price PSF	\$27.78	\$27.78
Sale Status	Closed	Adjustments	\$0	Price Per Acre	\$1,210,000	\$1,210,000
		Cash Equivalent Price	\$100,000			
Property Rights	Fee Simple					
Grantor	Ashland Investments Inc.					
Grantee	HOS Properties LLC					
Comments	Sale of a parcel of vacant land zoned C-2 in Neptune Beach, Florida. The site is only accessible via Florida Boulevard and is situated along an on-ramp for Atlantic Boulevard eastbound.					
Verification	5/17/2023 Local Broker					

Sale Comparable #4
Portion of HOS Properties Site
 Atlantic Boulevard
 Neptune Beach, FL
 Duval County
 BBG Property #734420



Property Data

Property Type/Use	Land Commercial	Lat/Long	30.324134 / -81.4169
Parcel ID #	173323-0100	Census Tract	0140.02
Opportunity Zone	No	Frontage	
Gross Land Area	1,742 SF 0.04 Acres	Net Land Area	1,742 SF 0.04 Acres
Flood Designation	Zone X (Unshaded)	Flood Panel	12031C0408J Dated November 2, 2018
Utilities		Terrain / Topography	
Easements / Encroachments		Zoning	C-2 Commercial
Comments	Site is generally rectangular and level with adequate utility		

Sale Transaction Data for BBG Event #855763 on 4/22/2021					Net Area	Gross Area
Transaction Date	4/22/2021	Consideration	\$50,000	Price PSF	\$28.70	\$28.70
Sale Status	Closed	Adjustments	\$0	Price Per Acre	\$1,250,287	\$1,250,287
		Cash Equivalent Price	\$50,000			
Property Rights	Fee Simple					
Grantor	Ashland Investments Inc					
Grantee	HOS Properties, LLC					
Comments	Sale of a small parcel of land located along the south side of Atlantic Boulevard in Neptune Beach. The property was purchased alongside an adjacent property from separate sellers for the development of an office building.					
Verification	5/17/2023 Local Broker					

APPRAISER QUALIFICATIONS AND LICENSES

QUALIFICATIONS Kyle A. Catlett	
APPRAISAL COMPETENCY	Fee Simple Interest, Leased Fee Interest, Leasehold Interest, Condominium Interest, Going-Concern Value, Ground Lease, Utility/Access Easement, Conservation Easement, Corridor Valuation, Timeshare Estate, Fractional/Partial Interest, Insurable Valuation, Condemnation, Transfer Development Rights
PROPERTY TYPE PROFICIENCY	Acreage, Agricultural (Ranches, Row Crop, Citrus, Timberlands) Assisted Living, Auto Dealerships, Billboards, Borrow Pits, Churches, Conservation Easements, Estates, Governmental, Hotel/Motel, Industrial, Island/Coastal, Manufacturing, Marina, Mines, Multi-family, Multiunit Retail, Residential, Natural Resource, Office, Parking, Reservoirs, Restaurant, Retail, Right-of-Way, Rock Mining, RV/MH Park, Salvage Yard, Schools, Self-storage, Subdivisions, Submerged Land, Wetland, Water Rights, Natural Springs, Air Rights
PROFESSIONAL EXPERIENCE	2021-Current- Director, BBG Real Estate Services 2020-2021 – President, <i>Trigg, Catlett & Associates</i> 2012-2020 – Executive Vice President, <i>Trigg Catlett & Associates</i>
LICENSES & CERTIFICATIONS	State-Certified General Real Estate Appraiser <i>Florida-RZ 3875</i> <i>North Carolina- A8353</i> <i>South Carolina- 8250</i> <i>Alabama- G01451</i> <i>Tennessee- 5689</i> <i>Louisiana- G4113</i> Licensed Florida Real Estate Sales Associate <i>SL 3293620</i>
PROFESSIONAL AFFILIATIONS	MAI designation of the Appraisal Institute National Association of REALTORS® Florida Association of REALTORS® Mid-Florida Regional MLS Greater Tampa Association of REALTORS®
GENERAL EDUCATION	University of Alabama, 2012 Bachelor of Science in Commerce & Business Administration Minor: Spanish Language
SPECIALIZED EDUCATION	Courses completed under the direction of the Appraisal Institute • Basic Appraisal Principles (2013) • Basic Appraisal Procedures (2013) • 15 Hour National USPAP Course (2013) • Residential Report Writing & Case Studies (2013) • General Appraiser Sales Comparison Approach (2013)

	• General Appraiser Income Approach/Part I (2013) • General Appraiser Income Approach/Part II (2014) • 15 Hour Florida Rules & Law (2013) • Real Estate Finance, Statistics & Valuation Modeling (2013) • General Appraiser Market Analysis and Highest& Best Use (2014) • General Appraiser Report Writing & Case Studies (2015) • General Appraiser Site Valuation & Cost Approach (2015) • Business Practices and Ethics (2015) • Quantitative Analysis (2016) • Advanced Market Analysis and Highest and Best Use (2017) • Advanced Income Capitalization (2017) • Valuation of Conservation Easements (2017) • Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) (2017) • Advanced Concepts and Case Studies (2018) • Evaluating Commercial Leases: The Tenant and the Terms Both Matter (2019) • Raise Your Appraiser IQ (2019) • Appraising Convenience Stores (2020) • Cool Tools: New Technology for Real Estate Appraisers (2020) • Review Theory General (2020) • Artificial Intelligence, AVMs, and Blockchain: Implications for Valuation (2020) • Eminent Domain and Condemnation (2021) • The Valuation of Water and Wastewater Utility Systems (2021)
EXPERT WITNESS EXPERIENCE	• Manatee County, Florida Valuation Adjustment Hearings • Hillsborough County, Florida Valuation Adjustment Hearings • Pasco County, Florida Valuation Adjustment Hearings



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

CATLETT, KYLE AUSTIN

3800 W BAY TO BAY BOULEVARD

SUITE 23

TAMPA

FL 33629

LICENSE NUMBER: RZ3875

EXPIRATION DATE: NOVEMBER 30, 2024

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Profile

Drake DeRango is an Appraiser at BBG in the Jacksonville office. He has experience in the valuation of a variety of property types including medical and professional office buildings, retail buildings, distribution centers, hotels, shopping centers, restaurants, and special use properties.

Prior to joining BBG, Mr. DeRango was a Senior Analyst at JLL Valuation and Advisory Services where he performed commercial appraisal and advisory services for a variety of clients including lenders, private sector developers, and governmental entities for mortgage underwriting and portfolio valuation purposes.

Preceding his time at JLL, Mr. DeRango was an Analyst at Integra Realty Resources – Jacksonville where assignments included working with a team of appraisers on multiple property portfolios for right-of-way acquisition cases including eminent domain condemnation cases for the Florida Department of Transportation. Mr. DeRango has also worked with DeRango, Best and Associates in Orlando, Florida as an Analyst performing market rent studies and feasibility analysis for private sector developers as well as appraisal assignments for banking clients.

Professional Affiliations

Appraisal Institute

Candidate for MAI Designation

General Certified Appraiser:

State of Florida, Certified General Real Estate Appraiser (License No. RZ 4058)

Education

Bachelor of Science Finance, Financial Services, University of North Florida

Coursework

Appraisal Institute Courses:

General Appraiser Site Valuation and Cost Approach
General Appraiser Income Approach
General Appraiser Sales Comparison Approach
General Appraiser Report Writing and Case Studies
Florida Appraisal Laws and Regulations
Appraisal of Fast Food Facilities
Basic Hotel Appraising – Limited Service Hotels
Managing Appraiser Liability



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

DERANGO, DRAKE WALLACE

6278 DUPONT STATION COURT

UNIT 2

JACKSONVILLE FL 32217

LICENSE NUMBER: RZ4058

EXPIRATION DATE: NOVEMBER 30, 2024

Always verify licenses online at [MyFloridaLicense.com](https://myfloridalicense.com)



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City of Neptune Beach

116 First Street • Neptune Beach, Florida 32266-6140
(904) 270-2400 ext. 4 • PIPERTURNER@NBFL.US



Application for vacating public rights-of-way, streets and easements

Date Received _____

Applicant Information

Applicant's Name Marshpoint Properties 2 LLC Phone 904-853-6801
Business Address 2300 Marsh Point Road suite#301
City Neptune Beach State Florida Zip Code 32266
Mailing Address 2300 Marsh Point Road suite#301 Email address Jean@marshpointproperties.com
City Neptune Beach State Florida Zip Code 32266

Is applicant property owner? ☐ Yes ☒ No

If applicant **DOES NOT** own property, please provide the
following:

Property Owner/Name City of Neptune Beach Phone 904-270-2400
Address 116 1st street Fax _____
City Neptune Beach State Florida Zip Code 32266

Property Information

Address _____
The subject property is located on the N E S (W) side of Florida Blvd
(Circle one)
Approximately 140 (feet) miles from its intersection with Atlantic Blvd.
(Circle one)
Parcel # NONE Acres _____
Property Zoning Classification Alleyway not zoned.
Legal Description See attached annex A.

Current Use of Property (Check all that apply)	☒ Vacant	☐ Developed	☒ Undeveloped
	☐ Residential	☐ Non-Residential	☐ Partially Developed

Reason for requesting the vacation Area sits as unusable extension of alleyway.

Vacated property will be used for
Combination with adjacent parcels to develop new office building.

Public purpose and benefit will result from the vacation

Otherwise vacant land serving no purpose made useful. This new building development will fill a gap in current supply of office space at the beach. Increase tax collection on developed property, and could reduce traffic and increase quality of life providing an office option for residents currently crossing the ditch to get to work.

Notarization

Date 8/25/2023

Property Owner's Signature

Property Owner's Printed Name

STATE OF FLORIDA

COUNTY OF Duval

SWORN TO AND SUBSCRIBED before me, an officer duly authorized in the State of Florida to take acknowledgements, appeared JEAN BAKKES (property

owner),

☐ by means of physical presence or ☐ online notarization; and ☒ who is personally known to me or ☐ who has produced _____ as identification, and who executed the foregoing instrument and sworn an oath on this 25th day of August, 2023.



Notary Public

Information Required to Accompany this Application

☒ Letters from all utility providers stating they have no objection to vacating requested right-of-way, road or easement

☒ Subject Property Appraisal

☒ 2 copies of a Sketch and Legal Description of the easement, rights-of-way, or street to be vacated.

☒ Electronic copies (PDF) of all documents

☒ Other Annex A and Proposed Site Layout



Tuesday, June 7, 2022

The Honorable Mayor Elaine Brown
And The Neptune Beach City Council
116 First Street
Neptune Beach, FL 32266
Phone: (904) 270-2400

RE: Offer to Purchase "The Weird Alley"

Dear Mayor and City Council,

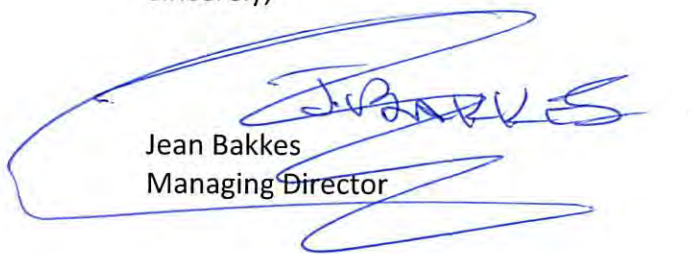
Further to our discussion in respect of the irregular alley behind my property on Marsh Point Road, lots 8-13, I write to request the purchase of the alley as described on the attached survey.

1. No utilities are known to exist on "the weird alley" or indicated on the survey.
2. By allowing the sale of "the weird alley", the city will be relinquished of maintenance of the unpaved area. Said sale would eliminate set back issues on the adjacent properties and thereby reduce non-conformities.
3. Upon approval from the City Council to abandon the right of way, the applicant will bear the city's burden of cost to complete the transaction.
4. Sale of "the weird alley" would not be a detriment to the public interest because all adjacent land is owned by the applicant and no other property owners would be affected by the sale.

The Offer price would be based on an independent appraiser's valuation.

We thank you for your considerations of our requests.

Sincerely,



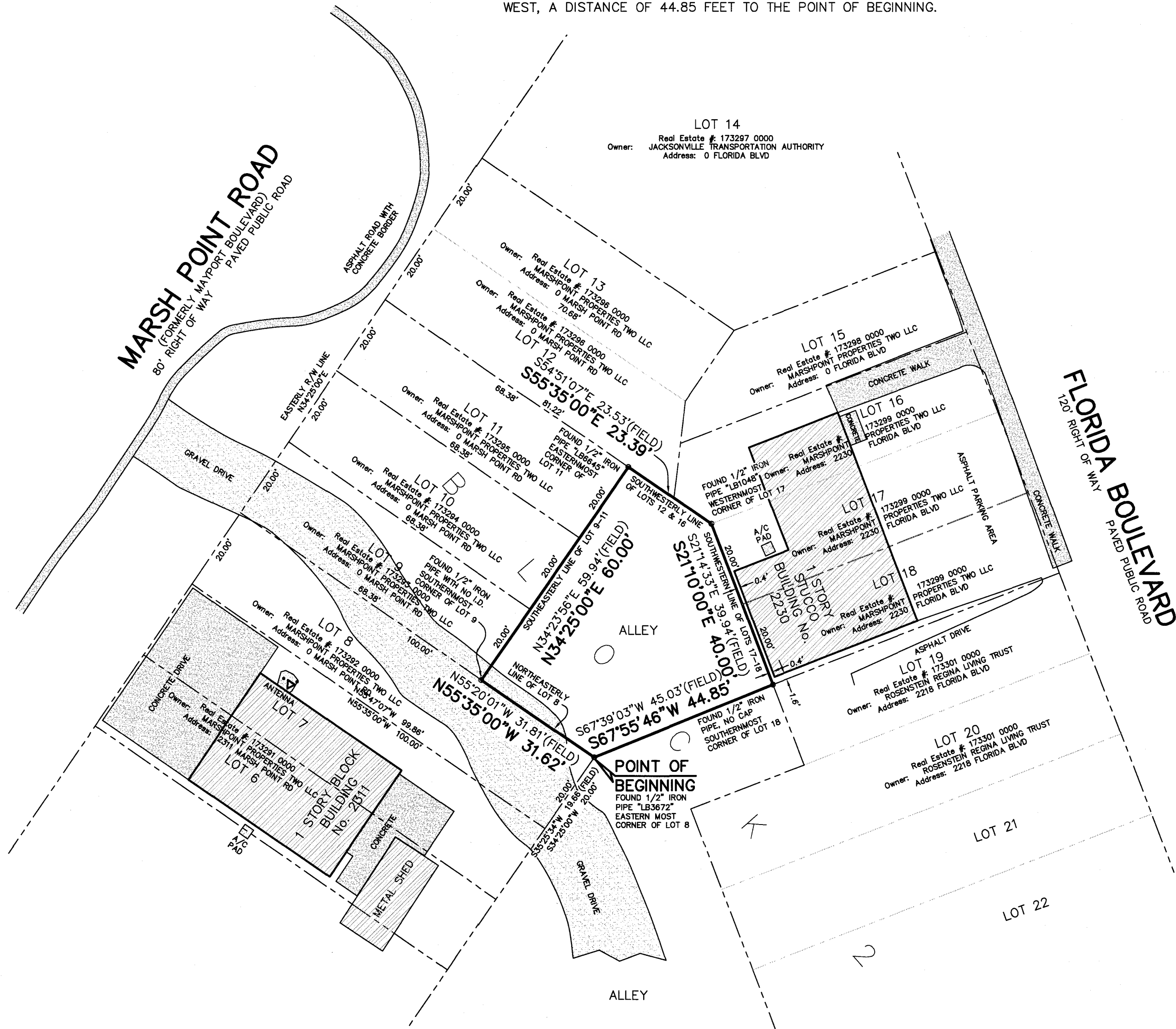
Jean Bakkes
Managing Director

(904)-853-6801
2300 Marsh Point Rd. #301
Neptune Beach, FL 32266

MAP SHOWING SURVEY OF

THAT PART OF THE ALLEY WITHIN BLOCK 2, PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 61 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

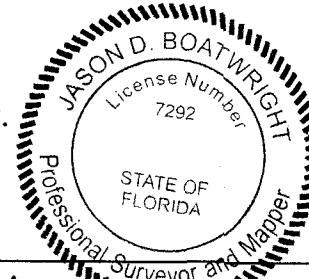
BEGIN AT THE EASTERNMOST CORNER OF LOT 8, OF SAID BLOCK 2; THENCE RUN NORTH 55°35'00" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT 8, A DISTANCE OF 31.62 FEET TO THE SOUTHERNMOST CORNER OF LOT 9 OF SAID BLOCK 2; THENCE NORTH 34°25'00" EAST ALONG THE SOUTHEASTERLY LINE OF LOTS 9 THROUGH 11 INCLUSIVE OF SAID BLOCK 2, A DISTANCE OF 60.00 FEET TO THE EASTERNMOST CORNER OF SAID LOT 11; THENCE RUN SOUTH 55°35'00" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 12 AND LOT 16 OF SAID BLOCK 2, A DISTANCE OF 23.39 FEET TO THE WESTERNMOST CORNER OF LOT 17 OF SAID BLOCK 2; THENCE RUN SOUTH 21°10'00" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 17 AND LOT 18 OF SAID BLOCK 2, A DISTANCE OF 40.00 FEET TO THE SOUTHERNMOST CORNER OF SAID LOT 18; THENCE RUN SOUTH 67°55'46" WEST, A DISTANCE OF 44.85 FEET TO THE POINT OF BEGINNING.



NOTES:

1. THIS IS A BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE SOUTHEAST RIGHT-OF-WAY LINE OF MARSH POINT ROAD, BEING NORTH 34°25'00" EAST, AS PER PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, AS SHOWN.
3. THIS SURVEY WAS PREPARED WITHOUT AN ABSTRACT OF TITLE; THEREFORE THE UNDERSIGNED MAKES NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION SHOWN HEREON PERTAINING TO EASEMENTS, RIGHT OF WAYS, SETBACK LINES, AGREEMENTS, RESERVATIONS, OR OTHER SIMILAR MATTERS.
4. NO UNDERGROUND INSTALLATIONS, IMPROVEMENTS OR ENCROACHMENTS HAVE BEEN LOCATED EXCEPT THOSE SHOWN HEREON.
5. NO BUILDING RESTRICTION LINES, AS PER PLAT.
6. THE PROPERTY DESCRIBED HEREON LIES IN FLOOD ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP No. 12031C0408J, REVISED NOVEMBER 2, 2018 FOR DUVAL COUNTY, FLORIDA.

THIS SURVEY IS CERTIFIED TO:
MARSHPOINT PROPERTIES TWO, LLC.



JASON D. BOATWRIGHT, P.S.M.
FLORIDA LICENSED SURVEYOR and MAPPER No. LS 7292
FLORIDA LICENSED SURVEYING & MAPPING BUSINESS No. LB 3672

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

REVISED 8/23/23; ADDED PARCEL I.D. INFORMATION

August 25th, 2023

Additional Document for Application for Vacating Public Right-Of-Way, Streets, and Easements.

REF: ANNEX A Attachment

THAT PART OF THE ALLEY WITHIN BLOCK 2, PRADO FERRER BEING A REPLAT OF BLOCKS 1 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 61 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE EASTERNMOST CORNER OF LOT 8, OF SAID BLOCK 2; THENCE RUN NORTH 55°35'00" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT 8, A DISTANCE OF 31.62 FEET TO THE SOUTHERNMOST CORNER OF LOT 9 OF SAID BLOCK 2; THENCE NORTH 34°25'00" EAST ALONG THE SOUTHEASTERLY LINE OF LOTS 9 THROUGH 11 INCLUSIVE OF SAID BLOCK 2, A DISTANCE OF 60.00 FEET TO THE EASTERNMOST CORNER OF SAID LOT 11; THENCE RUN SOUTH 55°35'00" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 12 AND LOT 16 OF SAID BLOCK 2, A DISTANCE OF 23.39 FEET TO THE WESTERNMOST CORNER OF LOT 17 OF SAID BLOCK 2; THENCE RUN SOUTH 21°10'00" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 17 AND LOT 18 OF SAID BLOCK 2, A DISTANCE OF 40.00 FEET TO THE SOUTHERNMOST CORNER OF SAID LOT 18; THENCE RUN SOUTH 67°55'46" WEST, A DISTANCE OF 44.85 FEET TO THE POINT OF BEGINNING.





July 21st, 2023

City of Neptune Beach
116 First Street,
Neptune Beach, FL 32266

Ref: Waste Collection on Kings Circle (alleyway) and Marshpoint Road.

To Whom it May Concern:

Further to our visit on July 18th, 2023 with Mr. Jean Bakkes of Marshpoint Properties and the information provided to us, we confirm that the existing alley way would provide sufficient access for Waste Pro of Florida LLC to service all of the businesses for waste management & collection.

The access from Marshpoint Road is not required to service the businesses that need to be services on the alleyway.

We were shown a survey (attached) that indicates the existing versus the proposed route and that would be acceptable for service as indicated.

If you need any further information, please contact me, thank you.

Todd Howard
Commercial Route Supervisor

A handwritten signature in blue ink, appearing to be "T. Howard", written over the printed name and title.

MAP SHOWING SURVEY OF
 LOTS 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, BLOCK 2, PRADO FERRER BEING A REPLAT OF BLOCKS 1
 THROUGH 3 AND 15 THROUGH 31, OF PLAT 2 FLORIDA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED
 IN PLAT BOOK 11, PAGE 61 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA TOGETHER WITH LOT
 18, BLOCK 2, FIRST REPLAT OF PART OF PRADO FERRER, FLORIDA BEACH ACCORDING TO THE PLAT THEREOF
 RECORDED IN PLAT BOOK 16, PAGE 27 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

-- Present
... Proposed
□ Existing Dumpster
□ Relocated Dumpster
■ Dumpster to remain in same location



NOTES
 1. THIS IS A BOUNDARY SURVEY.
 2. BEARINGS ARE BASED ON A LINE FROM THE
 NORTHEAST CORNER OF LOT 13 TO THE SOUTHEAST
 CORNER OF LOT 18, BLOCK 2, BEING SOUTH 21°00'00"
 EAST AS PER PLAT BOOK 11, PAGE 61.
 3. NO BUILDING RESTRICTION LINES PER PLATS.

THE PROPERTY DESCRIBED HEREON LIES IN FLOOD
 ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS
 WELL CAN BE DETERMINED FROM THE FLOOD
 INSURANCE RATE MAP No. 1203100400L, EFFECTIVE
 NOVEMBER 2, 2018 FOR DUVAL COUNTY, FLORIDA.

THIS SURVEY WAS MADE FOR THE BENEFIT OF THE TERRY LEE
 PETERSON TRUST.

[Signature]

DONN W. BOATWRIGHT, P.S.M.
 FLA. L.C. SURVEYOR AND MAPPER No. LS 3295
 FLORIDA LICENSED SURVEYING AND MAPPING BUSINESS No. LB 3672

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

AMENDED AND RESTATED REVOCABLE LICENSE AGREEMENT

This Amended and Restated Revocable License Agreement (“Amended Agreement”) is made and effective on **January 1, 2023**, between the City of Neptune Beach, a municipal corporation, (the “City”), and Tom Monahan, as record owner of 2050 Kings Circle S. (“Licensee”).

BACKGROUND

A. Licensee is the owner of the property located at 2050 Kings Circle S., Neptune Beach, FL 32266 and further identified as Duval County Property Appraiser No. 173307-0000 (the “Property”).

B. The City and Licensee are parties to that certain *Revocable License Agreement* dated December 17, 2018 (the “Agreement”) for the grant of an exclusive license for on-street parking adjacent to the Property by the City to Licensee as granted in the Agreement.

C. Pursuant to the Agreement, Licensee received the exclusive right to utilize sixteen (16) parking spaces.

D. Licensee has requested the right to utilize three (3) additional spaces.

E. In consideration of the City’s agreement to grant the use of such spaces, the City requires certain additional terms be included in the Agreement.

WHEREFORE, the City and Licensee, intending to be bound, enter into this *Amended and Restated Revocable License Agreement* as follows:

1. **Superiority.** The terms of this Amended Agreement shall replace in full the terms of the Agreement. This Amended Agreement shall be the sole agreement between the parties regarding these matters.

2. **License.** The City agrees to grant an exclusive license for on-street parking, to Licensee for that portion of the City's property, more particularly described on **Exhibit “A”** (the “License Area”).

3. **Term.** The term of this Amended Agreement shall be for a period of one (1) year from the above date unless earlier terminated in accordance with the terms of this Amended Agreement.

4. **Renewal.** Subject to the following sentence, this Amended Agreement will automatically renew. on the anniversary dates hereof for additional one (1) year periods and under the same terms hereof, unless otherwise terminated, in writing, by the City or Licensee, no later than thirty (30) days prior to the expiration of the original term of this License Agreement or any

extension thereto, or otherwise terminated in accordance with this Amended Agreement. Licensee must, no less than thirty (30) days prior to the expiration of the term, provide evidence to the City that the use of the Property has not changed or that any new use, after inclusion of the parking spaces granted herein, complies with the City's Code of Ordinances regarding parking requirements.

5. **Rent.** In consideration of the City's authorization to use the License Area, Licensee shall pay to the City annual rent in the amount of nine thousand, nine hundred dollars (\$9,900.00), payable in twelve installments due on the first of each month in the amount of eight hundred and twenty-five dollars (\$825.00) per month. In the event this Amended Agreement is not effective on the first of the month, rent for the initial partial month shall be a prorated amount, due on execution. On each anniversary of the effective date of this Amended Agreement, the rent amount shall increase by three percent (3%) over the rental rate of the prior year.

6. **City Improvements.** The City Manager, or its designee, may revoke or suspend this agreement to remove any of the improvements on the License Area for necessary utility construction, maintenance and/or repair for any emergency purposes, as determined by the City; provided, however, the City shall provide the Licensee with thirty (30) days prior written notice.

7. **Insurance.** Licensee must furnish evidence of general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per person and at least two million dollars (\$2,000,000.00) per occurrence with the City as additional named insured by specific endorsement for the elements placed in or upon the License Area. Licensee shall have no right to utilize the License Area until evidence of such insurance, including a copy of the required endorsement, is provided to the City.

8. **Maintenance.** Licensee further agrees to maintain and keep the License Area in good repair and a clean state at the Licensee's expense. The City shall have the sole discretion, through the City Manager, to direct any reasonable maintenance or repair to the License Area to be performed by the Licensee during the term of this Amended Agreement. If Licensee fails to perform any such maintenance, the City may cause such maintenance to be performed, charging all costs, including the City's labor, to Licensee.

9. **Expense.** All obligations of Licensee under this Amended Agreement shall be at Licensee's sole expense.

10. **Restoration.** Upon termination of this Amended Agreement, the City, in its sole discretion, may give written notice to Licensee that it must remove the improvements from the License Area and restore the License Area back to a sodded area within ninety (90) days from the date of the notice. If the Licensee does not remove such improvements and sod the License Area within the ninety (90) day time period, the City conduct such removal and sodding at Licensee's expense, including the right to place a lien on Licensee's property, in accordance with the section titled "Liens".

11. **Liens.** Should Licensee fail to reimburse the City within thirty (30) days of demand for payment for any amounts owed pursuant to this Amended Agreement, the City shall have the right to record a lien against the Property to secure payment, which shall be perfected by the filing of a lien in the official records of Duval County, Florida. Licensee acknowledges that this Amended Agreement touches and concerns the Property because it relates to Licensee's rights to operate the Property as intended in compliance with the City's Code of Ordinances.

12. **City Ordinances.** It shall be a default of this Amended Agreement if Owner or any other party occupying or using the Property permits a violation of the City's Code of Ordinances to exist on the Property and fails to cure same following notice from the City of such violation.

13. **Assignment.** Licensee shall not assign any rights under the Amended Agreement or sublease any portion of the License Area without approval of the City. Any attempt to do so shall constitute a default under this Amended Agreement.

14. **No Further Improvements.** Other than maintenance and repair of the License Area for use as parking spaces and directly associated improvements, the Licensee shall not be entitled to make any improvements to the License Area without the consent of the City, pursuant to the City's Code of Ordinances.

15. **Americans with Disabilities Act.** Licensee is at all times solely responsible for ensuring its use of the License Area is in compliance with the American with Disabilities Act. Failure to comply with such provisions and any other applicable law shall be a default under this Amended Agreement.

16. **Default.** In the event of a default by the Licensee of any of the terms and conditions of this Amended Agreement, including all incorporated terms and conditions hereof, and such default is not cured within a reasonable time period from receipt of written notice from the City, then the City, in addition to the rights described in the section titled "Liens", (a) shall have the absolute right, without notice to Licensee, to declare due all conditions under this Amended Agreement; and (b) may immediately terminate Licensee's right of possession under this Amended Agreement without prior written notice to Licensee.

17. **Venue.** In the event that any dispute arises concerning the terms of this Amended Agreement, this Amended Agreement shall be interpreted and governed by the laws of the State of Florida without regarding to any provisions regarding conflict of laws. In the event that any litigation is initiated relating to this Amended Agreement, venue for any such litigation shall be in the state courts located in Jacksonville, Duval County, Florida.

18. **Liability and Indemnity.** Except for the negligent or intentional acts or omissions of the City performed pursuant to this Amended Agreement, the City shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from any use of any building, structure, paved area, equipment, facility, sidewalk or other improvement on the License Area, or caused by or arising from any act or omission of Licensee, or any of its agents or

employees, licensees or invitees, or by or from any accident, fire or other casualty, on the premises of the Licensee or the described area or occasioned by the failure of Licensee to maintain the License Area in safe condition or by any other cause. Except for the negligent or intentional acts or omissions of the City performed pursuant to this Amended Agreement, Licensee waives all claims and demands on its behalf against the City for any loss, damage or injury related to the License Area and the property of the Licensee and agrees to indemnify and hold the City entirely free and harmless from all liability for any loss, damage, cost (including attorney's fees, and expenses) or injury of other persons related to the License Area or the property of the Licensee. Regarding such indemnity and duty to defend:

- a. *Indemnity.* Licensee agrees to indemnify and hold harmless the City, and its elected officials, agents, consultants, employees, heirs, successors, and assigns, and other affiliated persons (the "Covered Parties") for the costs of litigation, attorneys' fees, and damages incurred by the Covered Parties as a result of acts or omissions described in the preceding paragraph (the "Covered Claims") in accordance with this Amended Agreement.
- b. *Duty to Defend.* Licensee shall defend, to the fullest extent permitted by law, any action, claim, proceeding, or any other assertion against the Covered Parties, arising from or in any way related to Covered Claims, by and through attorneys and other professionals selected by the Covered Parties. This duty to defend is separate and independent of any indemnity provided to the Covered Parties in this Amended Agreement. The duty to defend includes claims for which any of the Covered Parties may be liable without fault or may be strictly liable. Such duty to defend applies immediately, regardless of whether any of the Covered Parties have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any claims covered by this duty. It is the express intention of Licensee and the City that the Covered Parties shall be entitled to obtain summary adjudication regarding the duty to defend at any assertion of any claim covered by this section. Notwithstanding the foregoing, any of the Covered Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist it, and, at the option of the Covered Parties, their attorneys shall control the resolution of the claim or proceeding. Upon demand, the indemnifying party shall pay or, in the sole and absolute discretion of the Covered Parties, reimburse, the Covered Parties for the payment of reasonable fees and disbursements of attorneys, experts, and other professionals in connection therewith.
- c. *Interpretation.* The duties of this Section 17 shall be broadly construed so as to give them effect and any rules of interpretation which provide against a requirement to extend a duty of indemnification or to defend shall be ignored.

19. **Attorneys' Fees.** In any action filed by the City to enforce Licensee's obligations under this Amended Agreement, the losing party must pay the prevailing party's costs and expenses in action. Such expenses include, attorneys' fees and costs (i) upon default or anticipated

default, both prior to and after instituting proceedings, (ii) at trial, (iii) in mediation, arbitration, bankruptcy proceedings and administrative proceedings, (iv) upon appeal, (v) in determining amount and entitlement to attorneys' fees, (vi) for "in-house" or general counsel's fees relating to the dispute in addition to trial counsel; (vii) for deposition appearance and video recording and transcription fees reasonably necessary to prepare for the action, whether or not used at trial or hearing; (viii) for expert witnesses reasonably retained to prepare for the action, whether or not used at trial or hearing, and (ix) for all other fees and costs, reasonably incurred, whether or not, absent this provision, such costs would otherwise be awarded pursuant to the *Statewide Uniform Guidelines for Taxation of Costs in Civil Actions* promulgated by the Florida Supreme Court. The City and Licensee agree that each party shall bear their own attorneys' fees in any other action filed by either party arising from or relating to this Amended Agreement.

20. **Agreement Interpretation.** The City Attorney will be responsible for any needed interpretations of this Amended Agreement.

21. **Joint Drafting.** For the purposes of any interpretation of this Amended Agreement, this Amended Agreement shall be considered as having been authored, drawn and written by both the City and Licensee and, in the interpretation of this Amended Agreement, there shall be no presumption of vagueness, ambiguity or unfairness against the City or the Licensee. Any doctrines construing provisions against the drafter shall be ignored.

22. **Time of the Essence.** The parties hereto agree and understand that time is of the essence as to the performance of all terms and conditions of this Amended Agreement.

23. **Notice.** All notices, pursuant to this Amended Agreement, shall be sent to the City c/o City Manager, City of Neptune Beach, 116 First Street, Neptune Beach, FL 32266 and to Licensee c/o Tom Monahan, 2050 Kings Circle S., Neptune Beach, FL 32266. Notices shall not be effective unless delivered by certified mail, return receipt requested. Either party may change their address for notice by written notice to the other.

24. **Independent Counsel.** The City and Licensee acknowledge that each has had the opportunity to have this Amended Agreement reviewed by independent legal counsel of their choosing and that they have either done so or waived such opportunity. Licensee expressly agrees that the City Attorney for the City has not given any legal advice to Licensee and does not represent the interests of Licensee.

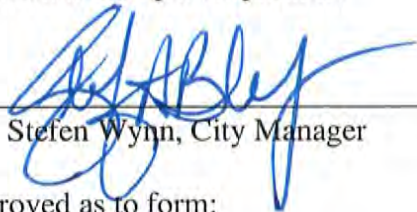
25. **Sovereign Immunity.** Nothing in this Amended Agreement or in the Licensee's authorization to use the License Area shall be construed to waive or otherwise affect the protections of sovereign immunity and/or Section 768.28, Florida Statutes, otherwise enjoyed by the City.

Signatures to Follow on Next Page

Dated as of the Effective Date.
CITY:

City of Neptune Beach, FL,
a Florida municipal corporation

By:



Stefan Wynn, City Manager

Approved as to form:


Zachary Roth, City Attorney

LICENSEE:


Tom Monahan



BIRD'S EYE VIEW



AERIAL VIEW OF EXISTING SITE



GARY R.
CRUMLEY
LANDSCAPE ARCHITECT
GRC

LA 1362

2002 HAVE CHARGES FOR
SEPTEN 11 1553
1905 233-4495

PR. NO. 210624
ISSUED 6-24-21
REVISED 7-9-21
REVISED 7-21-21

GARY R.
CRUMLEY
Digitally signed by
Gary R. Crumley
Date: 2021.07.21
09:13:00Z
DIGITAL SEAL

1 2 SAND LIME CLAY 2-1/2" - 3" CAL. 1/2" - 1/2" #3 GRAVEL
OVERSIC'S DRAINAGE

PLANT GARDEN: PLANT TREE 10'X10' TO 3' 6" TYP.
CATOR BROS. ON ALL TREES TIL ESTABLISHED
3 #3 BEARS AT 1' IN. LADDER 8'X 10' FEET OF 88 TIE
CALL 811 72 HOURS BEFORE DOING
VERIFY UTILITIES AND SITE CONDITIONS
COORDINATE WORK WITH CITY PUBLIC WORKS PRIOR TO COMMENCEMENT

EX. TREES

PROPOSED PARKING PLAN - THOMAS L. MONAHAN
IMPROVEMENTS TO EXISTING ALLEY WAYS
2050 KING CIRCLE SOUTH NEPTUNE BEACH FL 32266 210609
SURVEY DATA FROM BOATWRIGHT LAND SURVEYORS, INC. JAN 19, 2021

EXHIBIT A

Agenda Item #10A
Res. No. 2025-01
Penman Road
Bridge Transfer



CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT

AGENDA ITEM:	Resolution 2025-01- Penman Road Bridge Transfer
SUBMITTED BY:	Paul Waters, City Attorney
DATE:	January 6, 2025
BACKGROUND:	The FDOT previously acquired certain portions of real property located within the jurisdictional boundaries of COJ in the area of Penman Road between 12 Oaks Lane North and Lighty Lane. The purposes of this Resolution and Agreement are to provide a means of conveying the Bridge from the FDOT to COJ, conveying the Pedestrian Bridge from the FDOT to CONB, and providing for the operation, maintenance, and repair responsibilities of COJ and CONB. COJ shall own, operate, maintain, and repair the Bridge and any improvements contained thereon; and CONB shall own, operate, maintain, and repair the Pedestrian Bridge and any improvements contained thereon; and the FDOT shall retain the existing drainage easement. A recent engineering study (which is exempt from public records disclosure under Chapter 119, F.S.) found no structural concerns with the Bridge.
RECOMMENDATION:	Accept the transfer of the pedestrian bridge by adopting resolution 2025-01 and executing the Transfer and Maintenance Agreement
ATTACHMENT:	Resolution 2025-01 Transfer and Maintenance Agreement



RESOLUTION NO. 2025-01

A RESOLUTION OF THE CITY OF NEPTUNE BEACH, FLORIDA, ACCEPTING THE CONVEYANCE OF THE PEDESTRIAN BRIDGE, LOCATED ON THE WEST SIDE OF PENMAN ROAD, AND WHICH PERTAINS TO THE BRIDGE NUMBER 724393, AND APPROVING THE TRANSFER AND MAINTENANCE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, THE CITY OF JACKSONVILLE, AND THE CITY OF NEPTUNE BEACH

WHEREAS, the **State of Florida Department of Transportation** ("FDOT"), wishes to convey the Pedestrian Bridge, located on the west side of Penman Road, and which pertains to the Bridge Number 724393 ("Pedestrian Bridge"), to the City of Neptune Beach, Florida; and

WHEREAS, the FDOT further wishes to transfer the operation, maintenance, and repair responsibilities over the Pedestrian Bridge as well as any improvements thereon to the City of Neptune Beach; and

WHEREAS, the FDOT finds it is necessary for the City of Neptune Beach to accept the conveyance of the Pedestrian Bridge, to provide the maintenance of the Pedestrian Bridge, and to execute and deliver to the FDOT the agreement identified as the Transfer and Maintenance Agreement ("Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA:

That Richard Pike, City Manager, be directed to deliver the Agreement, signed by the City Council of the City of Neptune Beach, to the FDOT.

That Richard Pike, City Manager, be authorized and directed to execute any and all documents pertaining to the Agreement as may be necessary, in accordance with Resolution 2018-15, which authorized the City Manager to enter into and execute any binding documents on behalf of the City of Neptune Beach.

A certified copy of this Resolution be forwarded to the FDOT along with the executed Agreement.

The above Resolution was introduced and adopted by the **CITY OF NEPTUNE BEACH** on the 6th day of January, 2025.

Corrine A. Bylund, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

TRANSFER AND MAINTENANCE AGREEMENT

THIS TRANSFER AND MAINTENANCE AGREEMENT is made and entered into this ____ day of _____, 2025, between and among the State of Florida Department of Transportation ("Department"), City of Jacksonville ("COJ"), and the City of Neptune Beach ("CONB"), Duval County, Florida.").

-RECITALS-

1. The Department previously acquired certain portions of real property located within the jurisdictional boundaries of COJ in the area of Penman Road between 12 Oaks Lane North and Lighty Lane ("Property"), as more specifically shown and highlighted in red on **Exhibit A, Composite 1**; and
2. Acquisition of the above-referenced Property was accomplished for and pursuant to FIN 209457-1-52-01 on March 1, 1984, for the purpose of constructing certain improvements for the benefit of COJ, inclusive of Bridge Number 724393 ("Bridge"), as more particularly shown and highlighted in green, and a Pedestrian Bridge located on the west side of Penman Road ("Pedestrian Bridge) in **Exhibit A, Composite 2**; and
3. While the underlying fee and other improvements remained in or were transferred to COJ's possession, the actual Bridge structure and Pedestrian Bridge inadvertently remained in the Department's inventory; and
4. CONB has reached out to COJ and expressed an interest in assuming the responsibilities of operation, maintenance, and repair of the Pedestrian Bridge, as indicated in the attached email between COJ and CONB attorneys, attached as **Exhibit B**, and
5. The purposes of this Agreement are to provide a means of conveying the Bridge from the Department to COJ, conveying the Pedestrian Bridge from the Department to CONB, and providing for the operation, maintenance, and repair responsibilities of COJ and CONB; and
6. Upon execution of this Agreement, the Department will convey the Bridge to COJ and the Pedestrian Bridge assets to CONB; and
7. COJ shall own, operate, maintain, and repair the Bridge and any improvements contained thereon; and
8. CONB shall own, operate, maintain, and repair the Pedestrian Bridge and any improvements contained thereon; and
9. The Department shall retain the existing drainage easement within the Property, as shown in yellow in **Exhibit C**; and
10. CONB shall own, operate, maintain, and repair the Pedestrian Bridge and any improvements contained thereon; and
11. COJ, by Resolution _____ dated _____, has authorized its representative to execute and enter this Agreement on behalf of COJ. See **Exhibit D**.
12. CONB, by Resolution _____ dated _____, has authorized its representative to execute and enter this Agreement on behalf of the CONB. See **Exhibit E**.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement and in consideration of the recitals and mutual covenants and conditions contained herein, the parties, intending to be legally bound, acknowledge and agree as follows:

1. RECITALS AND EXHIBITS

The above recitals and attached exhibits are specifically incorporated by reference and made part of this Agreement.

2. EFFECTIVE DATE

The Effective Date of this Agreement will be the date the last of the parties to be charged executes the Agreement.

3. ACCESS

This Agreement authorizes the Department to access the Property for the limited purpose of performing this Agreement.

4. E-VERIFY

COJ and CONB shall (A) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by COJ and CONB during the term of the Agreement; and, (B) expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement.

5. COMPLIANCE

COJ and CONB shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety, and environmental laws, codes, ordinances, rules, regulations, policies, procedures, guidelines, standards, specifications, and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection divisions of COJ and CONB, Army Corps of Engineers, United States Coast Guard, and local governmental entities ("Governmental Law").

6. PERMITS

In the performance of the Agreement, COJ and CONB may be required to obtain one or more Department permits, which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior, express, and written consent of the Department. Should any term, provision, or requirement of the Agreement conflict with any term, provision, or requirement of any Department permit, the terms, provisions, and requirements of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement, which may be required for permanent improvements installed within the Department's right-of-way.

7. CONVEYANCE OF PROPERTY

COJ agrees to accept and receive ownership of the Bridge from the Department via map transfer or any other means of conveyance as allowed by law. CONB agrees to accept and received ownership of the Pedestrian Bridge from the Department via map transfer or any other means of conveyance as allowed by law.

8. OPERATION, MAINTENANCE & REPAIR OF BRIDGE (COJ)

A. COJ shall own, operate, maintain, and repair the Bridge after conveyance from the Department at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement, including applicable Governmental Law.

B. COJ agrees that it will be solely responsible for the operation, maintenance, and repair of the Bridge following completion of the Conveyance from the Department. Should COJ fail to operate, maintain, and repair the Bridge in accordance with the terms, provisions, and requirements of this Agreement and applicable Governmental Law, and should the Department be required to perform such operation, maintenance, or repair pursuant to the requirements and directives of 23 USC § 116, COJ agrees that it shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Bridge. The Department shall invoice COJ for any operation, maintenance, or repair expenses charged to the Department, and COJ shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve COJ of its financial obligations to the Department should this occur.

C. COJ further agrees to allow the Department access to the Bridge should the events described in Paragraph B occur.

9. OPERATION, MAINTENANCE & REPAIR OF PEDESTRIAN BRIDGE (CONB)

A. CONB shall own, operate, maintain, and repair the Pedestrian Bridge after conveyance by the Department

at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement, including applicable Governmental Law.

B. CONB agrees that it will be solely responsible for the operation, maintenance, and repair of the Pedestrian Bridge following completion of the Conveyance from the Department. Should CONB fail to operate, maintain, and repair the Pedestrian Bridge in accordance with the terms, provisions, and requirements of this Agreement and applicable Governmental Law, and should the Department be required to perform such operation, maintenance, or repair pursuant to the requirements and directives of 23 USC § 116, CONB agrees that it shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Pedestrian Bridge. The Department shall invoice CONB for any operation, maintenance, or repair expenses charged to the Department, and CONB shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve CONB of its financial obligations to the Department should this occur.

C. CONB further agrees to allow the Department access to the Pedestrian Bridge should the events described in Paragraph B occur.

10. UTILITIES

COJ and CONB shall be responsible for locating, removing, and relocating utilities, both aerial and underground, if required for COJ and CONB to perform this Agreement. COJ and CONB shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final as-built plans. All utility conflicts shall be resolved by COJ and CONB directly with the applicable utility at COJ's and CONB's cost and expense.

11. EMINENT DOMAIN AND DAMAGES

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest, or estate entitling COJ or CONB to full and just compensation from the Department either through inverse condemnation, eminent domain laws, or any similar laws regarding the taking of property for public purposes. COJ and CONB forever waive and relinquish all legal rights and monetary claims which they have, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically include all damages flowing from adjacent properties owned, leased, or otherwise controlled by COJ or CONB as a result of the Department's exercise of any right provided in this Agreement.

12. PAYMENT

All Department invoices submitted for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full (past due principal and accrued interest shall be collectively referred to as "Past Due Sums").

13. INDEMNIFICATION

A. COJ and CONB shall promptly defend, indemnify, hold the Department harmless from, and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs/penalties, expenses, attorneys' fees, and suits of any nature or kind whatsoever caused by, arising out of, or related to COJ's or CONB's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly, under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA"), and the Clean Water Act ("CWA"). COJ's and CONB's respective duties to defend, indemnify, and hold the Department harmless specifically do not encompass indemnifying the Department for its negligence, intentional wrongful acts, omissions, or breach of contract.

B. The COJ and CONB shall notify the Department in writing immediately upon becoming aware of any Liabilities. COJ's and CONB's obligations to defend, indemnify, and hold the Department harmless from any Liabilities, or, at the Department's option, to participate and associate with the Department in the defense

and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to COJ or CONB. The inability of either COJ or

CONB to evaluate their respective liabilities, or their evaluation of liabilities, shall not excuse performance of the provisions of this paragraph.

14. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving any party's sovereign immunity protections or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Florida Statutes, as the same may be amended from time to time.

15. NOTICE

All notices, communications, and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation
Attention: Jacksonville Maintenance Engineer
Jacksonville Maintenance Office
838 Ellis Road
Jacksonville, Florida 32205

Agencies: City of Jacksonville Public Works
Attention: Gary Goldsberry
214 North Hogan Street, 10th Floor
Jacksonville, FL 32202

City of Neptune Beach
Attention: Leon Smith
2010 Forest Avenue
Neptune Beach, FL 32266

16. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of Florida.

17. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance, or breach of the Agreement.

18. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance, or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. COJ, CONB, and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance, or breach of this Agreement.

19. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance, or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

20. ASSIGNMENT

Neither COJ nor CONB shall assign, pledge, or transfer any of the rights, duties, and obligations provided

to them in this Agreement without the prior written consent of the Department's District Secretary or his or her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent either COJ or CONB from delegating their respective duties hereunder, but such delegation shall not release the COJ or CONB from their respective obligations to perform the Agreement.

21. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for herein.

22. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other that (i) it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and, (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

23. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made parts hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement and any parts hereof are waived, merged herein, and superseded hereby.

24. EXECUTION OF DOCUMENTS

The parties agree that each shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

25. SUFFICIENCY OF CONSIDERATION

By their signatures below, the parties hereby acknowledge the receipt, adequacy, and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

26. WAIVER

The failure of any party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

27. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

28. CAPTIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend, or describe the scope of the Agreement or any provision hereof.

29. SEVERANCE

If any section, paragraph, clause, or provision of the Agreement is adjudged by a court or authority of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

30. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

31. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

32. FEDERAL NON-PARTICIPATING ITEMS

A. The parties agree that Improvements added to the Bridge or the Pedestrian Bridge are only compensable via this FIN if such items are deemed to be federal participating as determined in accordance with the CFR.

B. Any items, in the Department's sole discretion and without limitation in accordance with the CFR, deemed to be federal non-participating items shall be funded at the sole expense of COJ or CONB.

33. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvements is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to COJ or CONB if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

34. PUBLIC RECORDS

COJ and CONB shall comply with Chapter 119, Florida Statutes. Specifically, COJ and CONB shall:

A. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.

B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if COJ and CONB do not transfer their respective records to the Department.

D. Upon completion of this Agreement, transfer, at no cost to the Department, all public records in their possession or keep and maintain public records required by the Department to perform this Agreement. If COJ or CONB transfers all public records to the public upon completion of this Agreement, COJ and CONB shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If COJ and CONB keep and maintain public records upon completion of this Agreement, they shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department upon request from the Department's custodian of public records in a format that is compatible with the information technology systems of the Department.

Failure by either COJ or CONB to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. COJ and CONB shall promptly provide the Department with copies of any requests to inspect or copy public records in possession of COJ or CONB and shall promptly provide the Department copies of their responses to each such request.

IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, IT SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 2
386-758-3727
D2prcustodian@ dot.State.FL.us
Florida Department of Transportation
District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement, consisting of sixteen (16) pages.

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Greg Evans

Printed Name: Elizabeth Engle

Title: District Two Secretary

Title: Office of the District Two Secretary

Date: _____

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

SIGNATURES CONTINUE ON NEXT PAGE

City of Jacksonville

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: James R. McCain, Jr.

Title: Corporation Secretary

Date: _____

Legal Review:

By: _____
Legal Counsel for Agency

City of Neptune Beach

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____
Legal Counsel for Agency

SIGNATURES CONTINUE ON NEXT PAGE

EXHIBIT "A"
Composite 1

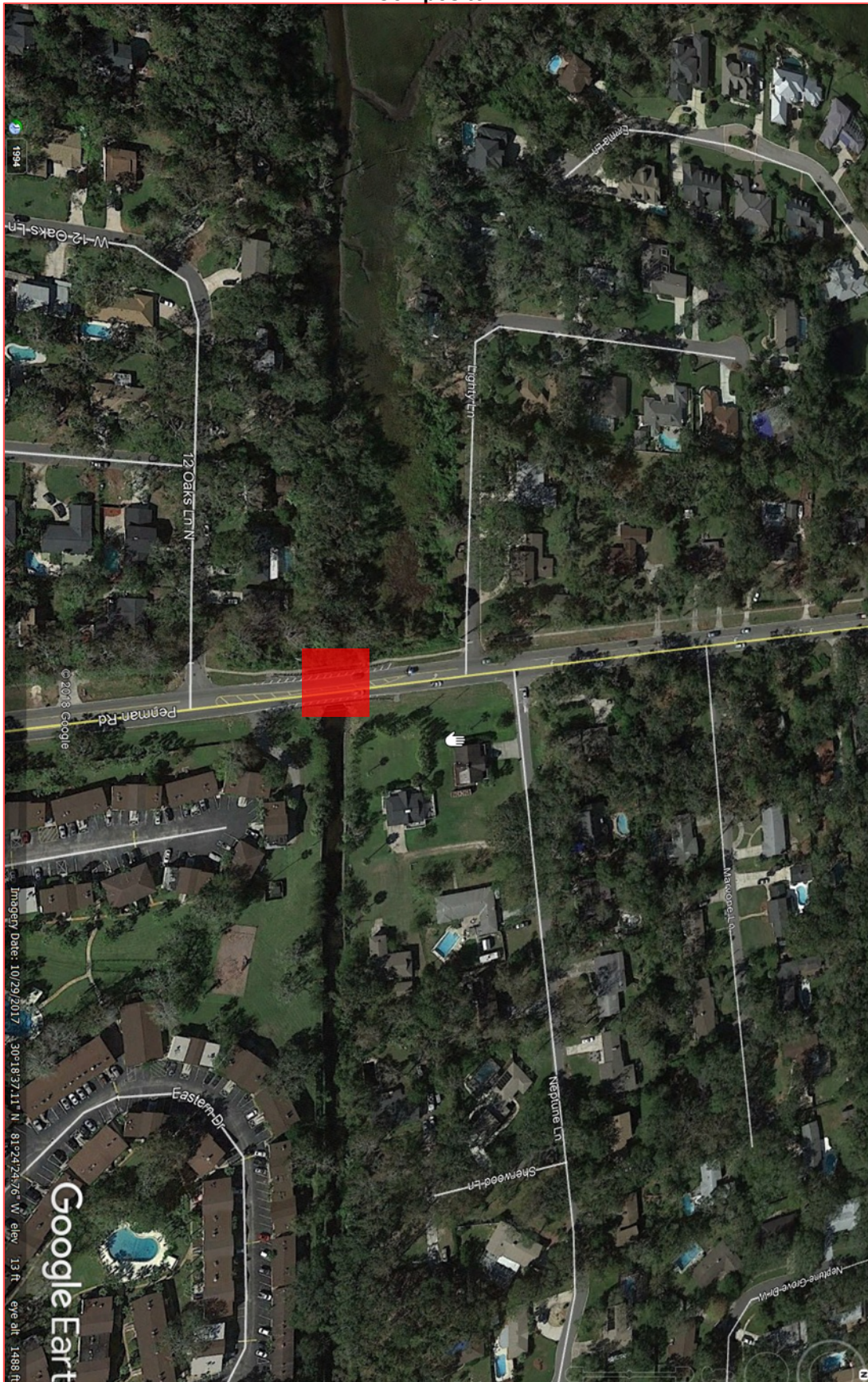


EXHIBIT "A"
Composite 2

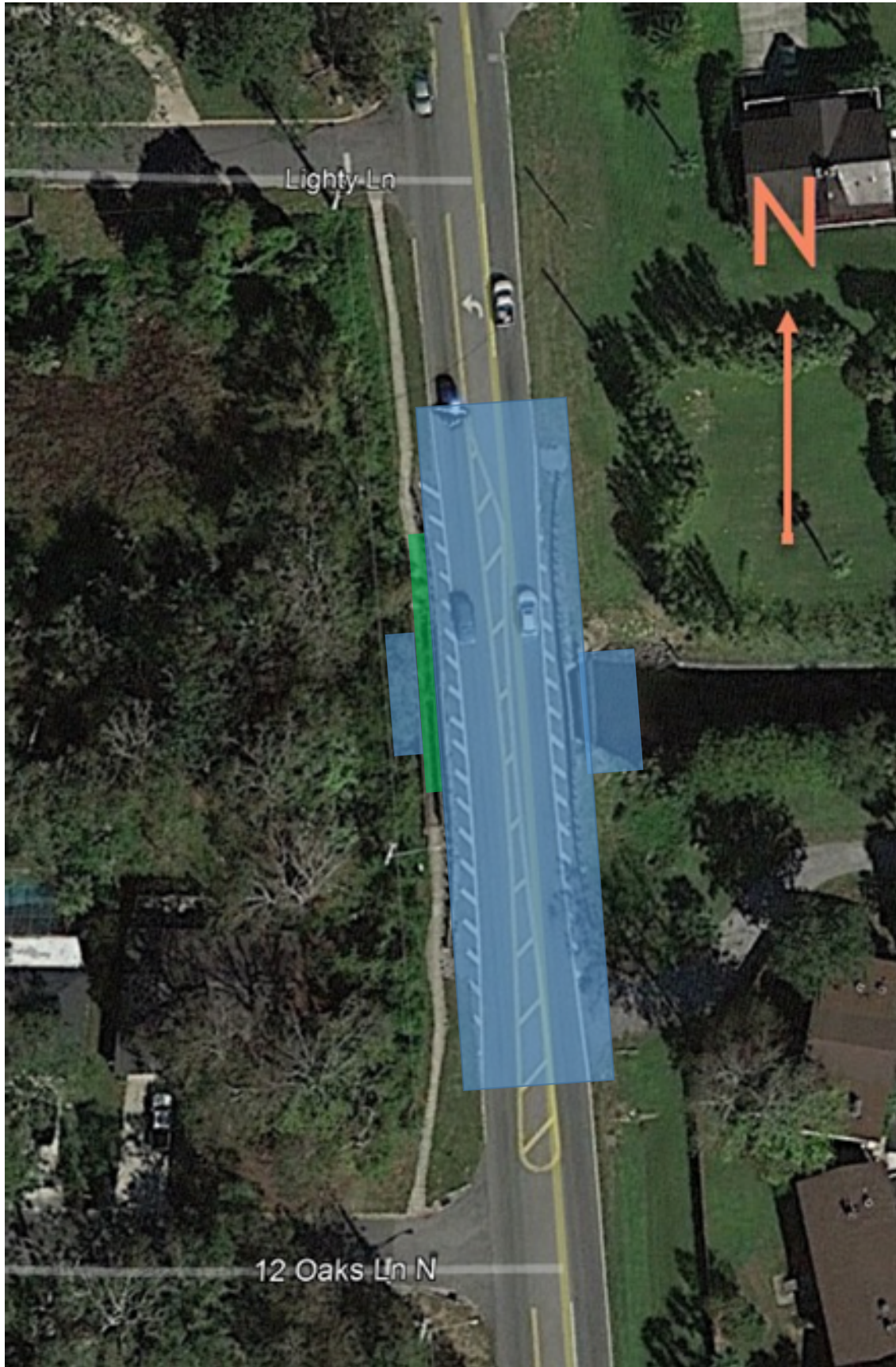


EXHIBIT "B"
CONB Interest in Pedestrian Bridge

From: [Zachary Roth](#)
To: [Pierre-Louis, Robert](#)
Subject: FW: Penman Road/FDOT Transfer
Date: Tuesday, July 21, 2020 12:19:36 PM

EXTERNAL SENDER: Use caution with links and attachments.

Here is the email we discussed where Neptune agreed on the bridge.

Zachary R. Roth
Board Certified Real Estate Attorney

Zachary.Roth@ansbacher.net
904.737.4600 ext 159

ANSBACHER LAW
REAL ESTATE · CONSTRUCTION · PERSONAL INJURY
CONDOMINIUMS · HOMEOWNER ASSOCIATIONS
WWW.ANSBACHER.NET

Jacksonville: 904.737.4600
Orange Park: 904.385.3444
St. Augustine: 904.429.4833
Collections: 904.416.1511
Personal Injury: 904.737.4700

Ansbacher Law strives to provide the highest level of service. If you have any comments or concerns, please send a note to our [CARE CENTER](#) or contact our COO Tina Bryan at 904.737.4600 x113

From: Zachary Roth
Sent: Monday, July 20, 2020 2:25 PM
To: Staffopoulos, Mary <MStaff@coj.net>
Subject: RE: Penman Road/FDOT Transfer

Hi Mary,

I was looking back because I need to get in touch with someone at FDOT about this and didn't see that Gary ever sent over his contact at FDOT. Do you have that or should I reach out to him directly? Even with a big city like COJ, I'm always wary of communicating directly with the client.

Zach

EXHIBIT "B" Cont'd CONB Interest in Pedestrian Bridge

From: Staffopoulos, Mary <MStaff@coj.net>
Sent: Tuesday, February 11, 2020 11:09 AM
To: Goldsberry, Gary <GGoldsberry@coj.net>
Cc: Zachary Roth <Zachary.Roth@ansbacher.net>; Hodges, Lawsikia <LHodges@coj.net>
Subject: Penman Road/FDOT Transfer

Gary,

I just spoke with Zachary Roth, City Attorney for Neptune Beach. He informed me that Neptune Beach is prepared to take over the pedestrian bridge portion of Penman Road on the condition that FDOT perform some maintenance work prior to the transfer.

Please provide your contact at FDOT with Zach's information so he can communicate directly with FDOT to confirm the maintenance Neptune Beach would like to see done before the transfer occurs. I previously forwarded Zach the FDOT bridge inspection report for the pedestrian bridge and I believe Neptune Beach would mainly be looking for FDOT to address the items identified in that report.

Based on this, I'm assuming FDOT will prepare the appropriate transfer documents for COJ and Neptune Beach. Once you've had an opportunity to review COJ's please send them to my attention as a Request for Legal Services and I will conduct OGC review.

Feel free to call me if you have any questions.

Thanks,

Mary E. Staffopoulos

Assistant General Counsel
City of Jacksonville
Office of General Counsel
117 W. Duval Street, Suite 480
Jacksonville, FL 32202
(904)255-5062
[www.MStaff@coj.net](mailto:MStaff@coj.net)

Disclaimer regarding Uniform Electronic Transactions Act (UETA) (Florida Statutes Section 668.50): If this communication concerns negotiation of a contract or agreement, UETA does not apply to this communication; contract formation in this matter shall occur only with manually-affixed original signatures on original documents.

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EXHIBIT "B" Cont'd
CONB Interest in Pedestrian Bridge (New Attorney)



December 11, 2024

VIA ELECTRONIC MAIL

robert.pierre-louis@dot.state.fl.us

B. Robert Pierre-Louis, E.I.

Engineer II, Department

Florida Department of Transportation

District Two GEC - ATKINS

Re: City of Neptune Beach - Pedestrian Bridge at 724393 Penman Road

Dear Mr. Pierre-Louis:

Pursuant to your request, I am writing to formally acknowledge and accept the transfer of the pedestrian bridge located at 724393 Penman Road from the Florida Department of Transportation to the City of Neptune Beach.

Please be advised that any formal agreement or documentation request to successfully transfer the pedestrian bridge to the City of Neptune Beach (contract, deed, etc.) will require the review and approval of the City Council. If you have any questions, please feel free to contact our office.

Sincerely,

Paul Waters

City Attorney for City of Neptune Beach

COUNSEL TO EXTRAORDINARY GOVERNMENTS & LEADERS THROUGHOUT FLORIDA SINCE 1973

324 W. MORSE BOULEVARD • WINTER PARK, FLORIDA 32789

TELEPHONE: (407) 645-3735 • FACSIMILE: (407) 628-5670 • TOLL FREE: (866) 789-VOSE

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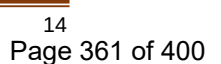


EXHIBIT “D”
(COJ Resolution)

EXHIBIT “E”
(CONB Resolution)



Agenda Item #10B
Res. No. 2025-02
Updated Interlocal
Agreement (CDBG Program)

CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT

AGENDA ITEM:	A Resolution of the City of Neptune Beach, Florida, Authorizing the Mayor to Execute an Updated Interlocal Cooperation Agreement with the City of Jacksonville for the Community Development Block Grant Program for Fiscal Years 2025, 2026, and 2027, and any Renewal Periods; and Providing for an Effective Date.
SUBMITTED BY:	Paul Waters, City Attorney Maria Rondel, Assistant City Attorney
DATE:	January 6, 2025
BACKGROUND:	On August 26, 2015, the City of Jacksonville and the City of Neptune Beach entered into a Community Development Block Grant ("CDBG") Interlocal Cooperation Agreement ("2015 Agreement"), which was approved by the City of Neptune Beach Resolution 2015-09. The 2015 Agreement has allowed the City of Neptune Beach to participate in the City of Jacksonville's CDBG and HOME Investment Partnership ("HOME") Programs, which played a vital role in the implementation of local housing and urban development programs within the City of Neptune Beach. Although, the City of Neptune Beach has been included in Duval County's urban county entitlement since the execution of the 2015 Agreement, and Duval County has already requalified for fiscal years 2025, 2026, and 2027 with the City of Neptune Beach included as part of the urban county entitlement allocation, the United States Department of Housing and Urban Development ("U.S. HUD") recently requested additional language be added to the Urban County Intergovernmental Agreements to include the Emergency Shelter Grant ("ESG") in addition to the other grant programs already listed in such agreements. The Updated Interlocal Cooperation Agreement contains such additional language, as requested by U.S. HUD. This proposed Resolution approves the Updated Interlocal Cooperation Agreement and provides for the City of Neptune Beach's continuing participation in the Duval County's community development programs (<i>i.e.</i> CDBG, HOME and ESG) during Fiscal Years 2025-2027.
RECOMMENDATION:	The Council should adopt the Resolution.
ATTACHMENT(S):	Resolution 2025-02 Updated Interlocal Cooperation Agreement



RESOLUTION NO. 2025-02

A RESOLUTION OF THE CITY OF NEPTUNE BEACH, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN UPDATED INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF JACKSONVILLE FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR FISCAL YEARS 2025, 2026, AND 2027, AND ANY RENEWAL PERIODS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Housing and Community Development Act of 1974, as amended, and the Urban Rural Recovery Act of 1983 make provisions whereby counties may enter into cooperation agreements with certain units of local government to undertake or assist in undertaking essential activities pursuant to Community Development Block Grants; and

WHEREAS, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 2001 was enacted on October 27, 2000, of which Section 217 of the Act provides for authority for the consolidated city/county government of Jacksonville (hereinafter the "City of Jacksonville") to qualify as an urban county under the Community Development Block Grant ("CDBG") program; and

WHEREAS, on the 26th day of August 2015, the City of Jacksonville and the City of Neptune Beach entered into a Community Development Block Grant Interlocal Cooperation Agreement ("2015 Agreement"), which was approved by the City of Neptune Beach Resolution 2015-09; and

WHEREAS, the U.S. Department of Housing and Urban Development ("U.S. HUD") calculated the City of Jacksonville's entitlement allocations as an urban county and determined the City of Jacksonville qualifies based on the participating population in the county, which included the City of Neptune Beach; and

WHEREAS, although, the City of Neptune Beach has been included in Duval County's urban county entitlement since the execution of the 2015 Agreement, and Duval County has already requalified for Fiscal Years 2025-2027, with the City of Neptune Beach included as part of the urban county entitlement allocation, U.S. HUD recently requested additional language be added to the Urban County Intergovernmental Agreements to include the Emergency Shelter Grant ("ESG") in addition to the other grant programs already listed in such agreements; and

WHEREAS, the provisions contained within the Updated Interlocal Cooperation Agreement, a copy of which is attached as Exhibit "A," are consistent with guidelines promulgated by the U.S. HUD; and

WHEREAS, this Updated Interlocal Cooperation Agreement provides for the City of Neptune Beach's continuing participation in both the CDBG and HOME Investment Partnership Programs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA:

Section 1. The Mayor of the City of Neptune Beach is authorized to execute the Updated Interlocal Cooperation Agreement between the City of Jacksonville and the City of Neptune Beach, attached as Exhibit "A," to continue its participation in the CDBG and HOME Programs for Fiscal Years 2025-2027, and any successive three-year qualification periods pursuant to the Updated Interlocal Cooperation Agreement.

Section 2. Effective Date. This Resolution shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

This Resolution was adopted by the City Council of the City of Neptune Beach at the regular meeting held on the 6th day of January, 2025.

Corrine A. Bylund, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk



A NEW DAY.

City of Jacksonville, Florida

Donna Deegan, Mayor

Neighborhoods Department
Housing Community Development Division
214 N. Hogan Street, 7th Floor
Jacksonville, Florida 32202
(904) 255-8200
www.coj.net

December 13, 2024

Attn: City Manager Richard Pike
City of Neptune Beach
116 First Street
Neptune Beach, FL 32266
E: cop@nbfl.us

RE: New Interlocal Agreement for Urban County Entitlement participation for Fiscal Years 2025-2027

Dear City Manager Pike:

The City of Neptune Beach is currently included in Duval County's urban county entitlement for fiscal years (FY) 2025-2027, per the intergovernmental agreement that has been auto-renewing since its execution in 2015. However, the Department of Housing & Urban Development (HUD) recently requested additional language be added to our Urban County Intergovernmental Agreements to include the Emergency Shelter Grant (ESG) in addition to the other grant programs already listed. A new agreement has been drafted and is attached.

Although Duval County has already requalified for fiscal years (FY) 2025-2027 with the City of Neptune Beach included as part of the urban county entitlement allocation, we are requesting that the City of Neptune Beach review this updated agreement and consider it for adoption. **If the City of Neptune Beach chooses to adopt the new agreement, please have three copies of the document signed and returned to the City of Jacksonville for execution.**

Once fully executed, this will replace the current interlocal agreement in place for FY2025-2027. As with the previous agreement, this does include an auto-renew clause for future requalification periods.

If you have any questions, please contact me at 255-8227.

Sincerely,

Travis Jeffrey
Chief, Housing & Community Development Division

INTERLOCAL COOPERATION AGREEMENT (City of Neptune Beach)

This Interlocal Cooperation Agreement (this “**Agreement**”) is made and entered into on _____, 2024, by and between the CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (“**COJ**”), and the CITY OF NEPTUNE BEACH, a municipal corporation in Duval County, Florida (“**NB**”).

WHEREAS, the parties have the common power to perform Community Development Block Grant (CDBG) program, Emergency Solutions Grant (ESG) program, and Home Investment Partnerships (HOME) program activities within their jurisdictions, said common powers being pursuant to Section 125.01, Florida Statutes, and Chapter 163, Part III, Florida Statutes; and

WHEREAS, Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act,” authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Title I of the Housing and Community Development Act of 1974, as amended, mandates that a county must enter into interlocal cooperation agreements with municipalities in its jurisdiction for the purposes of implementing CDBG activities within said municipalities; and

WHEREAS, such interlocal cooperation agreements are also required to implement the HOME program under Title II of the National Affordable Housing Act of 1990, as amended, and the ESG program under the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act); and

WHEREAS, COJ desires to join with NB in order to carry out the planning and professional services necessary to implement the CDBG, ESG and HOME programs during federal fiscal years 2025, 2026, and 2027, and during subsequent federal fiscal years; and

WHEREAS, COJ and NB agree to cooperate to undertake or assist in undertaking community renewal and lower income housing assistance activities; and

WHEREAS, COJ and NB wish to cooperate in the implementation of the goals and objectives of COJ’s Consolidated Plan, as approved by the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, NB desires to cooperate with COJ for the purpose of implementing the CDBG, ESG, and HOME programs; and

WHEREAS, the governing bodies of COJ and NB have each authorized this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

1. This Agreement covers the CDBG, ESG, and HOME programs and pertains to funds that COJ is qualified to receive from HUD under said programs for federal fiscal years 2025, 2026, and 2027, which cover the three-year urban county qualification period beginning on October 1, 2024, and ending on September 30, 2027 (the “**Qualification Period**”). This Agreement shall remain in effect until the CDBG, ESG, and HOME funds and program income received (with respect to activities carried out during the Qualification Period and during any subsequent three-year qualification period covered by any renewal of this Agreement) are expended and the funded activities are completed. Neither NB nor COJ may terminate, or withdraw from, this Agreement while it remains in effect.
2. This Agreement shall be automatically renewed for a three-year qualification period at the end of the Qualification Period and at the end of each subsequent qualification period unless either party provides the other party a written notice in which it elects not to participate in a new qualification period. If such notice is given, the party electing not to participate shall also send a copy of the written notice to the HUD field office with jurisdiction over COJ.

COJ shall, by the date specified in HUD’s Urban County Qualification Notice for the next qualification period, notify NB in writing of its right not to participate, and COJ shall provide a copy of such written notice to the HUD field office with jurisdiction over COJ by the date specified in the Urban County Qualification Notice.

3. While this Agreement is in full force and effect, during the Qualification Period and during any subsequent three-year qualification period covered by any renewal of this Agreement, COJ and NB agree to amend this Agreement to incorporate any changes necessary to meet the requirements for cooperation agreements as set forth by HUD in its Urban County Qualification Notices applicable to all subsequent three-year qualification periods, and to provide HUD such amendments as provided in the Urban County Qualification Notices. Failure to comply with the aforesaid shall void the automatic renewal of this Agreement.
4. NB, by executing this Agreement, understands that:
 - (a) It may not apply for any grants from appropriations under the State of Florida CDBG program for fiscal years during the period in which it participates in COJ’s CDBG program.
 - (b) It may receive a formula allocation under the HOME program only through COJ. Even if COJ does not receive a HOME formula allocation, NB understands that it may not receive HOME program funds from a HOME consortium with other local governments. This, however, does not preclude COJ or NB from applying to the State of Florida for HOME program funds if the State of Florida so allows.

- (c) It may receive a formula allocation under the ESG program only through COJ. This, however, does not preclude COJ or NB from applying to the State of Florida for ESG program funds if the State of Florida so allows.
5. This Agreement is contingent upon COJ's qualification as an "urban county" under the CDBG program as determined by HUD, as well as HUD's award of funds under the CDBG, ESG, and HOME programs.
 6. COJ and NB agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities. COJ and NB also agree to cooperate to enable COJ to expend CDBG, ESG, and HOME program funds on eligible activities within NB's jurisdiction during the Qualification Period and during any subsequent qualification period covered by the renewal of this Agreement.
 7. NB shall assist and cooperate with COJ in the preparation of the HUD required Consolidated Plan for the use of CDBG, ESG, and HOME program funds. COJ shall prepare the Consolidated Plan application and other necessary documents and shall take full responsibility and assume all obligations as the applicant. COJ and NB agree to comply with said Consolidated Plan and implement activities as outlined in the Action Plan approved by HUD for the use of CDBG, ESG, and HOME program funds. COJ and NB agree that COJ is hereby permitted to undertake or assist in undertaking essential community development and housing assistance activities within NB's jurisdiction.
 8. COJ shall assist NB in undertaking all professional and administrative services necessary for the purposes of implementing activities of the CDBG, ESG, and HOME programs, including preparation of all applications and other necessary documents, planning and other administrative activities, as required.
 9. Pursuant to 24 CFR § 570.501(b), NB is subject to the same requirements applicable to subrecipients, including the requirements of a written agreement as described in 24 CFR § 570.503.
 10. NB may not sell, trade, or otherwise transfer all or any portion of CDBG program funds to another metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG program funds in exchange for any other funds, credits, or non-federal considerations, but must use such CDBG program funds for activities under Title I of the Housing and Community Development Act of 1974, as amended.
 11. COJ and NB shall take all actions necessary to assure compliance with COJ's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing. COJ and NB shall comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section

3 of the Housing and Urban Development Act of 1968, and other applicable laws. COJ shall not fund any activities in, or in support of, NB should NB not affirmatively further fair housing within its jurisdiction or should NB impede COJ's actions to comply with COJ's fair housing certification.

12. NB has adopted, and is enforcing, a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and the Municipality has adopted, and is enforcing, a policy of enforcing applicable State and local laws against physically barring entrance to, or exit from, a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.
13. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employee of COJ or NB.
14. Nothing contained in this Agreement shall be deemed to authorize the delegation of the constitutional or statutory duties of the state, county, or municipal officers.
15. This Agreement may be executed electronically and in several counterparts each of which will be deemed an original and all of which will constitute one instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials.

ATTEST

CITY OF JACKSONVILLE, a
consolidated political subdivision and
municipal corporation existing under the
laws of the State of Florida

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Donna Deegan
Mayor

ATTEST

CITY OF NEPTUNE BEACH, a
municipal corporation in Duval County,
Florida

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

The terms and provisions of the agreement are fully authorized under state and local law and the agreement provides the legal authority for the county to undertake, or assist in undertaking, essential community renewal and lower-income housing assistance activities.

Approved as to form:

City of Jacksonville, Office of General Counsel

Agenda Item #10C
Res. No. 2025-03
Public Nuisance
630 Atlantic



CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT

AGENDA ITEM:	Resolution 2025-03- A Resolution of the City of Neptune Beach, Florida, upholding Affidavits of City Manager and Chief of Police.
SUBMITTED BY:	Paul Waters, City Attorney
DATE:	January 6, 2025
BACKGROUND:	On November 4, 2024, the City Council of Neptune Beach adopted Emergency Ordinance 2024-08 and on November 18, 2024 the City Council adopted Ordinance 2024-08 creating Chapter 27; Article III; Section 27-127 of the Neptune Beach Code of Ordinances mandating that no development permit or building permit shall be approved if the Fire Marshall, Chief of Police, Building Official or City Manager determines that a condition exists anywhere on the parcel that is a threat to human life, health, and safety, or the welfare of the public. Said determination shall be reviewed by the City Council and upheld, denied or upheld or denied with conditions by a majority vote. On November 13, 2024, Richard Pike, City Manager of the City of Neptune Beach, swore and attested by affidavit and on November 18, 2024 Michael J. Key, Jr., Chief of Police swore and attested by affidavit that certain bollards located on the property at 630 Atlantic Blvd., Neptune Beach, Florida 32266-4000 serve as an obstacle and impede the ingress and egress of emergency vehicles and motorists between adjacent parking lots which pose a threat human life, health, and safety, and the welfare of the public.
RECOMMENDATION:	The Council should adopt the Resolution and uphold the Affidavits.
ATTACHMENT(S):	Resolution 2025-03 Exhibits "A-D" to Resolution 2025-03



RESOLUTION NO. 2025-03

A RESOLUTION OF THE CITY OF NEPTUNE BEACH, FLORIDA, DETERMINING THE EXISTENCE OF AN UNSAFE CONDITION LOCATED AT 630 ATLANTIC BOULEVARD, NEPTUNE BEACH FLORIDA 32266-4000, PARCEL I.D. NUMBER 1723941700, WHICH POSES A THREAT TO HUMAN HEALTH, LIFE, SAFETY AND THE WELFARE OF THE PUBLIC; PROHIBITING DEVELOPMENT AND BUILDING PERMITS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, On November 4, 2024, the City Council of Neptune Beach adopted Emergency Ordinance 2024-08 creating Chapter 27; Article III; Section 27-127 of the Neptune Beach Code of Ordinances mandating that no development permit or building permit shall be approved if the Fire Marshall, Chief of Police, Building Official or City Manager determines that a condition exists anywhere on the parcel that is a threat to human life, health, and safety, or the welfare of the public. Said determination shall be reviewed by the City Council and upheld, denied or upheld or denied with conditions by a majority vote. A true and correct copy of Emergency Ordinance 2024-08 is attached hereto and made a part hereof as **Exhibit “A”**; and

WHEREAS, on November 18, 2024, the City Council of Neptune Beach adopted Ordinance 2024-09 also creating Chapter 27; Article III; Section 27-127 of the Neptune Beach Code of Ordinances mandating that no development permit or building permit shall be approved if the Fire Marshall, Chief of Police, Building Official or City Manager determines that a condition exists anywhere on the parcel that is a threat to human life, health, and safety, or the welfare of the public. Said determination shall be reviewed by the City Council and upheld, denied or upheld or denied with conditions by a majority vote. A true and correct copy of Ordinance 2024-09 is attached hereto and made a part hereof as **Exhibit “B”**; and

WHEREAS, on November 13, 2024, Richard Pike, City Manager of the City of Neptune Beach, swore and attested by affidavit that certain bollards located on the property at 630 Atlantic Blvd., Neptune Beach, Florida 32266-4000 serve as an obstacle and impede the ingress and egress of emergency vehicles and motorists between adjacent parking lots which pose a threat human life, health, and safety, and the welfare of the public. A true and correct copy of City Manager Pike’s Affidavit is attached hereto and made a part hereof as **Exhibit “C”**; and

WHEREAS, on November 18, 2024, Michael J. Key, Jr., Chief of Police of the City of Neptune Beach, swore and attested by affidavit that certain bollards located on the property at 630 Atlantic Blvd., Neptune Beach, Florida 32266-4000 serve as an obstacle and impede the ingress and egress of emergency vehicles and motorists between adjacent parking lots which pose a threat human life, health, and safety, and the welfare of the public. A true and correct copy of Chief Key's Affidavit is attached hereto and made a part hereof as **Exhibit "D"**.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA:

Section 1. Recitals. The above recitals are true and correct and are made a part hereof.

Section 2. Determination Upholding Affidavits. City Manager Pike's Affidavit dated November 13, 2024, which is attached hereto as **Exhibit "C"** and Chief Key's Affidavit dated November 18, 2024, which is attached hereto as **Exhibit "D"** are hereby upheld by the City Council. The bollards at issue serve as an obstacle and impede the ingress and egress of emergency vehicles and motorists between adjacent parking lots and pose a threat human life, health, and safety, and the welfare of the public.

Section 3. Prohibition of Development and Building Permits. No development permit or building permit shall be approved while the unsafe condition exists on the property. Nothing in this Resolution shall effect an applicant's right to challenge any formal denial of a building permit through any means allowed by law.

Section 4. Effective Date. This Resolution shall become effective upon approval by majority vote of the City Council and signature by the Mayor.

This Resolution was adopted by the City Council of the City of Neptune Beach at the regular meeting held on the 6th day of January, 2025.

Corrine Bylund, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

EXHIBIT 'A'

**SPONSORED BY:
COUNCILOR JOSH
MESSINGER**



ORDINANCE NO. 2024-08

**CO-SPONSORED BY:
COUNCILOR LAUREN
KEY**

AN EMERGENCY BILL TO BE ENTITLED

AN EMERGENCY ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA REGARDING THE PROTECTION OF THE PUBLIC HEALTH, SAFETY, AND WELFARE BY ELIMINATING HAZARDOUS CONDITIONS, CREATING CHAPTER 27-127; ARTICLE III; SECTION 27-127, WHICH PROHIBITS APPROVAL OF CERTAIN DEVELOPMENT AND BUILDING PERMITS ON PROPERTIES WHERE CERTAIN CONDITIONS EXIST, AND AMENDING CHAPTER 28; ARTICLE II; SECTION 28-.4 BY AMENDING THE DEFINITION OF NUISANCE; PROVIDING FOR CONFLICTS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Neptune Beach, established Chapter 27 of the Code of Ordinances, which creates building regulations within the City, including development and building permit requirements; and

WHEREAS, the City Council of the City of Neptune Beach, established Chapter 28 of the Code of Ordinances, which regulates nuisances within the City; and

WHEREAS, Section 166.041 (3) (b), Florida Statutes, allows the governing body of a municipality, by a two-thirds vote, to enact an emergency ordinance while foregoing certain formalities; and

WHEREAS, this Emergency Ordinance does not establish or amend the actual zoning map designation of a parcel or parcels of land or change the actual list of permitted, conditional, or prohibited uses within a zoning category; and

WHEREAS, the City Council of the City of Neptune Beach finds that these emergency revisions to the City of Neptune Beach's Code will preserve, promote, and protect the health, safety, and welfare of its citizens.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL ON BEHALF OF THE PEOPLE OF THE CITY OF NEPTUNE BEACH, FLORIDA that:

SECTION 1. Chapter 27; Article III, Section 27-127 of the Code of Ordinances of the City of Neptune Beach is hereby created as follows (~~striketrough~~ text shall mean deletions and underlined / highlighted text shall mean additions):

Sec. 27-127. – Prohibited Approval of Development Permits.

No development permit or building permit shall be approved if the Fire Marshal, Chief of Police, Building Official or City Manager determines that a condition exists anywhere on the parcel that is a threat to human life, health, and safety, or the welfare of the public. Said determination shall be reviewed by the City Council and upheld, denied or upheld or denied with conditions by a majority vote. A development permit or building permit to correct said hazardous conditions may be approved by the Fire Marshal, Chief of Police, Building Official or City Manager without review the City Council.

SECTION 2. The definition of Nuisance in Chapter 28; Article II; Section 28-4 of the Code of Ordinances of the City of Neptune Beach is hereby amended as follows (strikethrough text shall mean deletions and underlined / highlighted text shall mean additions):

Nuisance means any one (1) or a combination of the following:

- (1) Any public nuisance known at common law or in equity, jurisprudence or as provided by statute, administrative rule or ordinance of the city, including this chapter;
- (2) Allowing to exist or constructing any attractive nuisance which may be prove detrimental a threat to health or safety human life, health and safety, or the welfare of the public;
- (3) Physical Allowing to exist or constructing any structure, object or collection of water that is a threat to human life, health and safety, welfare of the public, or property, or detrimental to the health or detrimental to property values;
- (4) Allowing to exist or constructing any conditions relating to private or public property which impede the free passage of persons on a public or private sidewalk or right of way, or that impedes the free passage of motorists or bicyclists in a commercial parking lot, or which impede ingress or egress to property or which impede the safe passage of vehicles on a public alley, or street or parking lot, [and/or];
- (5) The existence of statutorily defined hazardous materials, substances or wastes in or around any building or structure;
- (6) Allowing to exist or constructing any structure or obstacle that impedes the ingress or egress of emergency response vehicles onto one's property, or onto a neighboring property, or that delays the response time of emergency response vehicles;
- (7) Allowing to exist or constructing any structure or obstacle that causes confusion, delay or hazardous conditions to motorists or bicyclists. Speed bumps or traffic signs installed to slow traffic are exempt from this Part.
- (8) Blocking the interconnectivity of adjoining commercial parking lots by allowing to exist or constructing any structure or obstacle that impedes the ingress or egress of any pedestrian, motorists or bicyclists.
- (9) For this part, motorists shall mean a person traveling in any motorized vehicle that requires gasoline, diesel fuel, electricity or any alternative fuel source to operate.

(10) The Building Official and the Code Enforcement Officer are responsible for the enforcement of this Chapter only on private property.

SECTION 3. Conflict. All ordinances, resolutions, official determinations, or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this ordinance are repealed to the extent inconsistent herewith.

SECTION 4. Severability. If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which shall remain in full force and intact.

SECTION 5. Effective Date. This ordinance shall immediately take effect upon reading and approval.

(SIGNATURE AND ADOPTION PAGE FOLLOWS)

VOTE RESULTS OF FIRST READING:

Mayor Elaine Brown	YES
Vice Mayor Kerry Chin	YES
Councilor Nia Livingston	YES
Councilor Lauren Key	YES
Councilor Josh Messinger	YES

Passed on this 4th day of November, 2024


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, City Clerk



Approved as to form and content:



Paul Waters, City Attorney

EXHIBIT "B"

**SPONSORED BY:
COUNCILOR JOSH
MESSINGER**



ORDINANCE NO. 2024-09

**CO-SPONSORED BY:
COUNCILOR LAUREN
KEY**

A BILL TO BE ENTITLED

AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA REGARDING THE PROTECTION OF THE PUBLIC HEALTH, SAFETY, AND WELFARE BY ELIMINATING HAZARDOUS CONDITIONS, CREATING CHAPTER 27-127; ARTICLE III; SECTION 27-127, WHICH PROHIBITS APPROVAL OF CERTAIN DEVELOPMENT AND BUILDING PERMITS ON PROPERTIES WHERE CERTAIN CONDITIONS EXIST, AND AMENDING CHAPTER 28; ARTICLE II; SEC. 28-4 BY AMENDING THE DEFINITION OF NUISANCE; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Neptune Beach, established Chapter 27 of the Code of Ordinances, which creates building regulations within the City, including building permit requirements; and

WHEREAS, the City Council of the City of Neptune Beach, established Chapter 28 of the Code of Ordinances, which regulates nuisances within the City; and

WHEREAS, Emergency Ordinance 2024-08 was previously adopted in accordance with Section 166.041 (3) (b), Florida Statutes, allows the governing body of a municipality, by a two-thirds vote, to enact an emergency ordinance while foregoing certain formalities. This Ordinance 2024-09 is identical in effect and will have a first and second reading and otherwise follow the procedures for adoption of ordinances found in Section 166.041(3)(a), Florida Statutes and Section 1-9, Chapter 1 of the City's Code of Ordinances.; and

WHEREAS, the City Council of the City of Neptune Beach finds that these revisions to the City of Neptune Beach's Code will preserve, promote, and protect the health, safety, and welfare of its citizens.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL ON BEHALF OF THE PEOPLE OF THE CITY OF NEPTUNE BEACH, FLORIDA that:

SECTION 1. The Code of Ordinances, City of Neptune Beach, Florida is hereby amended by adding a section to be numbered Section 27-127 of Chapter 27; Article III, which Section reads as follows:

Sec. 27-127. – Prohibited Approval of Development Permits.

No development permit or building permit shall be approved if the Fire Marshal, Chief of Police, Building Official or City Manager determines that a condition exists anywhere on the parcel that is a threat to human life, health, and safety, or the welfare of the public. Said determination shall be reviewed by the City Council and upheld, denied or upheld or denied with conditions by a majority vote. A development permit or building permit to correct said hazardous conditions may be approved by the Fire Marshal, Chief of Police, Building Official or City Manager without review the City Council.

SECTION 2. The definition of Nuisance found in that Section 28-4 of Chapter 28; Article II; of the Code of Ordinances, City of Neptune Beach, Florida is hereby amended to read as follows:

Nuisance means any one (1) or a combination of the following:

- (1) Any public nuisance known at common law or in equity, jurisprudence or as provided by statute, administrative rule or ordinance of the city, including this chapter;
- (2) Allowing to exist or constructing any attractive nuisance which may be a threat to human life, health and safety, or the welfare of the public;
- (3) Allowing to exist or constructing any structure, object or collection of water that is a threat to human life, health and safety, welfare of the public, or detrimental to property values;
- (4) Allowing to exist or constructing any conditions relating to private or public property which impede the free passage of persons on a public sidewalk or right of way, or that impedes the free passage of motorists or bicyclists in a commercial parking lot;
- (5) The existence of statutorily defined hazardous materials, substances or wastes in or around any building or structure;
- (6) Allowing to exist or constructing any structure or obstacle that impedes the ingress or egress of emergency response vehicles onto one's property, or onto a neighboring property, or that delays the response time of emergency response vehicles;
- (7) Allowing to exist or constructing any structure or obstacle that causes confusion, delay or hazardous conditions to motorists or bicyclists. Speed bumps or traffic signs installed to slow traffic are exempt from this Part.
- (8) Blocking the interconnectivity of adjoining commercial parking lots by allowing to exist or constructing any structure or obstacle that impedes the ingress or egress of any pedestrian, motorists or bicyclists.
- (9) For this part, motorists shall mean a person traveling in any motorized vehicle that requires gasoline, diesel fuel, electricity or any alternative fuel source to operate.

- (10) The building official and the code enforcement officer are responsible for the enforcement of this Part and the safety and maintenance of this Chapter only on private property.

SECTION 3: Codification. The provisions of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of Neptune Beach, Florida* and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Three, Four, Five, and Six shall not be codified.

SECTION 4. Conflict. All ordinances, resolutions, official determinations, or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this ordinance are repealed to the extent inconsistent herewith.

SECTION 5. Severability. If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which shall remain in full force and intact.

SECTION 6. Effective Date. This ordinance shall immediately take effect upon second reading and approval.

(SIGNATURE AND ADOPTION PAGE FOLLOWS)

VOTE RESULTS OF FIRST READING:

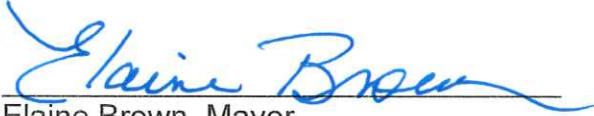
Mayor Elaine Brown	YES
Vice Mayor Kerry Chin	YES
Councilor Nia Livingston	YES
Councilor Lauren Key	YES
Councilor Josh Messinger	YES

Passed on First Reading this 4th day of November, 2024.

VOTE RESULTS OF SECOND READING:

Mayor Elaine Brown	YES
Vice Mayor Kerry Chin	YES
Councilor Nia Livingston	YES
Councilor Lauren Key	YES
Councilor Josh Messinger	YES

Passed on Second and Final Reading this 18th day of November, 2024.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, City Clerk



Approved as to form and content:



Paul Waters, City Attorney

EXHIBIT "C"

RE: SEMINOLE SHOPPES
630 ATLANTIC BLVD.
NEPTUNE BEACH, FLORIDA 32266-4000
PARCEL IDENTIFICATION NUMBER: 1723941700

AFFIDAVIT OF UNSAFE CONDITION

STATE OF FLORIDA
COUNTY OF DUVAL

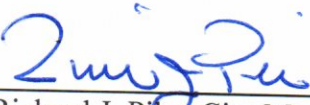
BEFORE ME, the undersigned authority, personally appeared Richard J. Pike, who is the City Manager for the City of Neptune Beach, Florida who being by me first duly sworn, on oath, deposes and says the following:

1. My name is Richard J. Pike. I am over 18 years of age and am competent to testify to the matters set forth herein. I make this Affidavit based upon my personal knowledge of the facts of the unsafe conditions referenced herein.
2. The above referenced property contains an unsafe condition which poses a threat to human health life, health and safety and the welfare of public.
3. The unsafe condition consists of four yellow bollards which serve as an obstacle and impede the ingress and egress of emergency vehicles and motorists between adjacent parking lots. True and accurate photographs of the bollards are attached hereto and made a part hereof and labeled collectively as **Exhibit "A"**.
4. I have been granted authority to make this Affidavit by Emergency Ordinance 2024-08, adopted by the Neptune Beach City Counsel on November 4, 2024.
5. By making this determination of the unsafe condition, the City of Neptune Beach has authority to deny any development or building permit requested on the property / parcel.

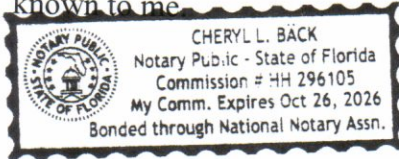
(SIGNATURE AND ATTESTATION PAGE FOLLOWS)

Affidavit of Unsafe Condition
Richard J. Pike, City Manager
630 Atlantic Blvd., Neptune Beach Florida 32266-4000
Parcel I.D., No.: 1723941700

SWORN AND ATTESTED BY:


Richard J. Pike, City Manager
City of Neptune Beach

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of personal presence this 13th day of November, 2024, by Richard J. Pike who is personally known to me



[Notary Seal]

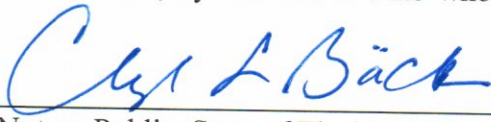

Notary Public, State of Florida
Print Name: Cheryl L. Back
My Commission Expires: 10/26/2026

EXHIBIT "A" 1 of 2



EXHIBIT "A" 2 of 2



EXHIBIT 'D'

RE: SEMINOLE SHOPPES
630 ATLANTIC BLVD.
NEPTUNE BEACH, FLORIDA 32266-4000
PARCEL IDENTIFICATION NUMBER: 1723941700

AFFIDAVIT OF UNSAFE CONDITION

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared Michael J. Key, Jr., who is the Chief of Police for the City of Neptune Beach, Florida who being by me first duly sworn, on oath, deposes and says the following:

1. My name is Michael J. Key, Jr. I am over 18 years of age and am competent to testify to the matters set forth herein. I make this Affidavit based upon my personal knowledge of the facts of the unsafe conditions referenced herein.

2. The above referenced property contains an unsafe condition which poses a threat to human health life, health and safety and the welfare of public.

3. The unsafe condition consists of four yellow bollards which serve as an obstacle and impede the ingress and egress of emergency vehicles and motorists between adjacent parking lots. True and accurate photographs of the bollards are attached hereto and made a part hereof and labeled collectively as **Exhibit "A"**.

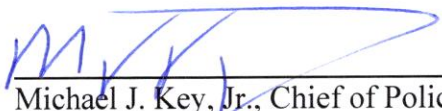
4. I have been granted authority to make this Affidavit by Emergency Ordinance 2024-08, adopted by the Neptune Beach City Counsel on November 4, 2024.

5. By making this determination of the unsafe condition, the City of Neptune Beach has authority to deny any development or building permit requested on the property / parcel.

(SIGNATURE AND ATTESTATION PAGE FOLLOWS)

Affidavit of Unsafe Condition
Michael J. Key, Jr., Chief of Police
630 Atlantic Blvd., Neptune Beach Florida 32266-4000
Parcel I.D., No.: 1723941700

SWORN AND ATTESTED BY:



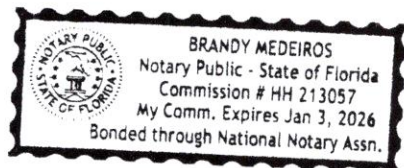
Michael J. Key, Jr., Chief of Police
City of Neptune Beach

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of personal presence this 18 day of November, 2024, by Michael J. Key, Jr., who is personally known to me.

[Notary Seal]



Notary Public, State of Florida
Print Name: Brandy Medeiros
My Commission Expires: 3 Jan 2026





Agenda Item #10D
Res. No. 2025-04
CDB Appointments

CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT

AGENDA ITEM:	Agenda Item #10D , Resolution No. 2025-04, CDB Appointments
SUBMITTED BY:	City Clerk Catherine Ponson
DATE:	December 26, 2024
BACKGROUND:	Current CDB members René Atayan and Greg Schwartzenberger's first three-year terms expire on January 4, 2025. They both have requested to be reappointed for their 2nd three-year terms as regular members. The election of Cori Bylund as Mayor has created a vacancy of a regular member on the CDB. Section 27-38(a) of the Code of Ordinances states, "The board shall have seven (7) members appointed by the mayor subject to confirmation by resolution of the city council."
RECOMMENDATION:	Consider Resolution No. 2025-04
ATTACHMENT:	Resolution No. 2025-04, Appointing members to the Community Development Board



RESOLUTION NO. 2025-04

**A RESOLUTION APPOINTING MEMBERS TO THE COMMUNITY
DEVELOPMENT BOARD (CDB)**

RESOLVED, the City Council of the City of Neptune Beach, Florida, hereby confirms the following CDB members:

COMMUNITY DEVELOPMENT BOARD

Member	Type	Term	Begins	Ends
René Atayan	Regular Member	2 nd 3-year	01/04/2025	01/04/2028
Greg Schwarzenberger	Regular Member	2 nd 3-year	01/04/2025	01/04/2028
Lynda Padrta	Regular Member	Fill Unexpired Term of Corrine Bylund	10/16/2023	10/16/2026

This Resolution adopted by the City Council of Neptune Beach, Florida, at the Regular Council Meeting held this ____ day of _____, 2025.

Corrine A. Bylund, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk



**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

AGENDA ITEM:	Agenda Item 10E – 911 User Fee Distribution Agreement
SUBMITTED BY:	Deidra Baines, Procurement Manager Jacksonville Sheriff's Office Budget Division
DATE:	December 17, 2024
BACKGROUND:	This is the annual Interlocal Agreement between JSO and Neptune Beach for the purpose of distributing proceeds collected and set aside via the 911 user fee to be used to pay a portion of the salaries and related expenses for Neptune Beach Emergency Communications Officers.
RECOMMENDATION:	Consider Approval of the 911 User Fee Agreement
ATTACHMENT:	Agreement for 911 User Fee Distribution

AGREEMENT FOR 911 USER FEE DISTRIBUTION
(City of Neptune Beach)

This Agreement for 911 User Fee Distribution (this “**Agreement**”) is dated _____, 2024, and is between the **Jacksonville Sheriff’s Office**, an office organized and existing under the charter and ordinance code of the City of Jacksonville (“**JSO**”), and the **City of Neptune Beach**, a municipal corporation in Duval County, Florida (“**Neptune Beach**”).

Whereas, the parties want to enter into this Agreement for the purpose of distributing proceeds collected and set aside via the 911 user fee to be used to pay a portion of the salaries and related expenses for 911 call takers for that portion of their time spent answering and handling 911 calls under the provisions of section 365.172, Florida Statutes, as authorized to be imposed by the governing body of Duval County, Florida.

Whereas, the City of Jacksonville’s City Council, acting as the governing body of Duval County, Florida, has authorized the fees collected to be used to fund this Agreement wherein Neptune Beach will receive its pro rata share, to be used for lawful purposes.

Now, therefore, the parties agree as follows:

1. Calculation of Distribution.

- (a) Neptune Beach shall receive a distribution proportion of the 911 user fee (the “**Distribution**”) calculated by taking the total call taker salary from Neptune Beach, multiplying that amount by the portion attributed to 911 calls versus administration calls not to include dispatching calls (if not available, the JSO percentage will be utilized), and multiplying that amount by the five-year weighted average of 911 calls (if calls are not segregated by emergency/non-emergency, then the JSO average will be utilized).
- (b) If the available net revenues (total 911 revenue less 911 administration salaries and benefits and operating expenses) are greater than or equal to the total calculated Distributions of the five public safety answering points, that is JSO, the City of Jacksonville Fire Department, the City of Atlantic Beach, the City of Jacksonville Beach, and the City of Neptune Beach (collectively, the “**PSAPs**”), then the entire Distribution will be available to Neptune Beach. If the available net revenues are less than the total calculated Distributions of the PSAPs, then Neptune Beach will receive its pro rata share based on the percentage of its Distribution to the total calculated Distribution of the PSAPs.
- (c) The maximum amount to be distributed by JSO to Neptune Beach as a result of this calculation for fiscal year 2024–2025 is EIGHTY-FOUR THOUSAND SIXTY AND 45/100 DOLLARS (\$84,060.45).
- (d) The Distribution shall be remitted to the respective city manager or finance director or their designee on a quarterly basis.
- (e) The salary period covered under this Agreement shall be retroactive to October 1, 2024, and shall continue through September 30, 2025.

2. **Use of Distribution.**

(a) The 911 user fees collected and distributed as provided in this Agreement shall be utilized only for call taker salaries and associated expenses, in accordance with section 365.172, Florida Statutes.

(b) By accepting funds, Neptune Beach hereby agrees to provide an audit or accounting of such funds and the manner in which they were expended in accordance with section 11.45, Florida Statutes.

(c) Neptune Beach hereby acknowledges full payment and performance under all prior agreements on this subject and hereby waives any right to assert any claim for failure of performance in prior years.

3. **Termination.** Either party may terminate this Agreement at any time and for any reason by notifying the non-terminating party in writing, at which point this Agreement will terminate 30 days after the non-terminating party receives the notice.

4. **Relationship of Parties.** Nothing in this Agreement delegates any constitutional or statutory duty of one party to the other party. Except as set forth in this Agreement, neither party shall have any responsibility with respect to services provided or the contractual obligations of the other party. Nothing in this Agreement shall be deemed to constitute that the party is a partner, agent, or local representative of the other party or to create any type of fiduciary responsibility or relationship of any kind whatsoever between the parties.

5. **Recitals.** The recitals are accurate and true and are hereby incorporated in and made a part of this Agreement.

6. **Severability.** The invalidity or unenforceability of any clause or provision in this Agreement shall in no way affect the validity or enforceability of any other clause or provision.

7. **Amendment; Waiver.** No amendment or modification of this Agreement will be effective unless it is in writing and signed by the parties. No waiver under this Agreement will be effective unless it is in writing and signed by the party granting the waiver.

8. **Governing Law; Venue.** This Agreement is governed by the laws of the State of Florida and the ordinances of the City of Jacksonville. Venue for any action arising under this Agreement lies exclusively in the appropriate court in Duval County, Florida.

9. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the parties.

10. **Counterparts.** This Agreement may be executed electronically and in several counterparts each of which will be deemed an original and all of which will constitute one instrument.

In witness whereof, the parties are signing this Agreement the day and year first written above.

Witness

Jacksonville Sheriff's Office

Pursuant to section 37.101(m), Jacksonville Ordinance Code

By: _____
Name: _____

By: _____
T.K. Waters
Sheriff

Witness

City of Neptune Beach

By: _____
Name: _____

By: _____
Name: _____
Title: _____

Encumbrance and funding information for internal City use:

Account or PO Number:

1Cloud Account for Certification of Funds	Amount

The above stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the contract. It shall be encumbered by one or more subsequently issued purchase orders that must reference the contract. All financial examinations and funds control checking will be made at the time such purchase orders are issued.

In accordance with section 24.103(e), Jacksonville Ordinance Code, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing contract; provided, however, this certification is not, nor shall it be interpreted as, an encumbrance of funding under the contract. Actual encumbrances shall be made by subsequent purchase orders as specified in the contract.

Director of Finance
City Contract #: _____

Form Approved:

Office of General Counsel



Agenda Item #10F The Southern Group, Inc. Agreement

CITY OF NEPTUNE BEACH CITY COUNCIL MEETING STAFF REPORT

AGENDA ITEM:	Agenda Item #10F – Contract for Lobbying Services between the City of Neptune Beach and The Southern Group of Florida, Inc.
SUBMITTED BY:	The Southern Group, LLC
DATE:	December 27, 2024
BACKGROUND:	This is a renewal of the contract agreement between the City of Neptune Beach and The Southern Group, Inc. for lobbying services. The first agreement was signed in June, 2023. Please see the attached agreement for scope of work included in the agreement.
BUDGET:	\$3,500 per month
RECOMMENDATION:	Consider renewal of the contract between the City and The Southern Group, Inc.
ATTACHMENT:	Contract for services – City of Neptune Beach and The Southern Group, Inc.

**JACKSONVILLE OFFICE**

208 N. Laura St. Suite 710
Jacksonville, FL 32202

O: 904.425.8765
thesoutherngroup.com

CONTRACT FOR SERVICES

This is a contract for lobbying services between The Southern Group of Florida, Inc., a Florida corporation, ("TSG") and City of Neptune Beach, a municipal corporation organized and existing under the laws of the State of Florida, ("Client") (the "Contract"). The Contract is entered into on this 24th day of October 2024. The services to be provided by TSG to Client under this Contract shall begin on November 1, 2024 ("Start Date") and shall continue for twelve (12) months (the "Engagement Period").

1. SCOPE OF WORK.

The lobbying services set forth in this Scope of Work will be performed by the lobbyists and employees of TSG. Client acknowledges that the distribution of effort by TSG may be uneven over the course of the Engagement Period, in that some periods may require more hours and effort than others.

The Scope of Work contemplated by this Contract is as follows:

TSG will represent Client to identify, vet, and pursue funding mechanisms. Services will include, but not be limited to, the following:

- Assist in identifying funding mechanisms for Client Infrastructure needs from the City of Jacksonville.
- Track infrastructure grant opportunities from the State of Florida for funds coming from the federal infrastructure bill that will flow through the State.
- Identify grant opportunities for resiliency that may flow through the City of Jacksonville.
- Develop and implement a plan to secure the City of Jacksonville funding support from the new administration and the new City Council.
- Procure and prepare infrastructure support plan from COJ prepared and ready to discuss prior to the spring elections.

While TSG's lobbyists and employees will execute the Scope of Work, Client's primary point of contact will be Jim Gilmore. In the event that Jim is not available, please contact Chris Hagan or Karis Lockhart. Their contact information can be found in the attached TSG Contact Information form. Client agrees that TSG designated lobbyists should use all their relationships with elected officials and key decision-makers at all levels of government to aid the Client's stated goals and interests. Therefore, TSG will register to lobby on Client's behalf with the Florida Legislative and Executive branches of government, in addition to registering with any other applicable government entity that may be required to perform the Scope of

Work. TSG is a lobbying firm subject to the laws and rules of the State of Florida and other jurisdictions within the state, as applicable. Client agrees that it will complete any forms necessary to comply with lobbyist registration requirements during the Engagement Period, or after this Contract's termination, should reporting periods overlap.

2. CONFIDENTIALITY.

TSG acknowledges and agrees that during the course of the performance of services for Client that Client may furnish, disclose or make available confidential and proprietary information to TSG. TSG agrees to keep non-public information designated confidential by the Client confidential unless disclosure is approved by the Client.

3. INVOICES AND/OR PAYMENTS.

Consideration for the work performed under this Contract is a flat fee of \$42,000 (the "Fee"). For the convenience of the Client, the total amount owed under this Contract will be billed monthly in twelve (12) equal installments over the Engagement Period in the amount of \$3,500. TSG will provide the installment invoice on the first day of each month during the Engagement Period. **Payment is due upon receipt of the invoice.**

Costs directly attributable to the performance of this work will be billed in addition to the Fee. Costs may include travel, conference registration fees, and other expenses incurred on behalf of the Client. Any cost(s) that exceed \$500 per month in the aggregate will not be billed without Client's written approval.

Payment should be made payable to or addressed to The Southern Group of Florida, Inc. ACH or wire transfer is preferred. If payment is made by check, then payment(s) should be remitted to P.O. Box 10570, Tallahassee, FL 32302. Payments received more than sixty (60) days after their due date shall be charged a \$100 per day late fee for each day that payment is overdue. If an invoice is unpaid for ninety (90) days or more, work towards completion of the Scope of Work will pause until Client brings all amounts due and owing current.

4. RENEWAL.

This Contract will automatically renew for a subsequent period(s) equal to the length of the Engagement Period unless Client provides written notice to TSG Managing Partner Chris Hagan at Hagan@TheSouthernGroup.com no less than thirty (30) days prior to the end of the applicable Engagement Period. Upon payment of the final invoice, there shall be no further obligations of the Parties under this Contract.

5. NO TERMINATION FOR CONVENIENCE.

In the event that the Client chooses to end the Contract before the end of the applicable Engagement Period, the Fee and any approved, outstanding costs shall be due in their entirety. TSG will provide a final invoice for all amounts due under this Contract which shall be paid within thirty (30) days of being sent by TSG.

6. RELATIONSHIP OF THE PARTIES.

Both the Client and TSG are free to enter into other contracts with other parties for similar services, subject to certain limitations set forth herein and in Section 2 above. TSG agrees that it will not engage new clients for matters that would result in a direct conflict of interest between the position of the Client and the new client during Engagement Period and all renewals. TSG represents that no current conflict of interest exists among its current clients by bringing on Client. TSG's conflict policy does not extend beyond the term of the Contract and its subsequent renewals.

7. ASSIGNMENT.

TSG shall not assign, delegate, or otherwise transfer its rights or obligations except as set forth in Section 1 above.

8. FORCE MAJEURE.

Notwithstanding any provisions of this Contract to the contrary, the Parties shall not be held in breach of the Contract as a result of any failure or delay in the performance of this Contract that arises from fires, floods, strikes, unusually severe weather, or restrictions as a result of declared public health emergencies. Failure to perform shall be excused during the continuance of such circumstances, but this Contract shall otherwise remain in effect.

9. AMENDMENTS.

The Contract may be amended only when reduced to writing and signed by Client and TSG Managing Partner Chris Hagan.

10. ENTIRE AGREEMENT.

This Contract states the entire understanding and agreement between the Parties. No course of prior dealing or use of parol evidence shall be relevant to supplement, vary or explain any term used with respect to this Contract. The acceptance of any course of performance rendered under this Contract will not constitute a waiver of any of the Contract's provisions.

11. SEVERABILITY OF PROVISIONS.

The Parties intend this Contract to be enforced as written. The Parties agree, however, that each provision herein shall be treated as a separate and independent clause, unless otherwise specified. Thus, the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses in this Contract and each portion and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

12. APPLICABLE LAW AND VENUE.

The laws of the State of Florida shall govern this Contract. In the event it is necessary for either Party to initiate a legal claim arising from this Contract, the venue for such claims shall

be Leon County, Florida. In the event of a dispute over the Contract, the terms of this Contract will not be construed by the applicable court against the drafter of the Contract.

13. PREVAILING PARTY ATTORNEY'S FEES AND COSTS.

In the event of any legal action arising out of, or relating to, this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in connection with such action. For purposes of this provision, "prevailing party" shall mean the party that obtains a favorable judgment against whom such action is initiated or obtains a final dismissal on the merits of such action by the Court.

14. AUTHORITY.

The individual signing below on behalf of the Client hereby represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of Client and that this Contract is binding upon the Client in accordance with its terms.

SIGNED:

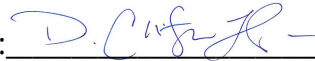
City of Neptune Beach

Signed: _____

Printed Name: Richard Pike

Title: City Manager

The Southern Group of Florida, Inc.

Signed: 

Printed Name: Chris Hagan

Title: Managing Partner