



City of Palm Coast Minutes City Council Business

City Hall
160 Lake Avenue
Palm Coast, FL 32164
www.palmcoastgov.com

Mayor Michael Norris
Vice Mayor Theresa Pontieri
Council Member Charles Gambaro
Council Member Ty Miller
Council Member David Sullivan

Tuesday, November 4, 2025

6:00 PM

**City Hall - Jon Netts
Community Wing**

City Staff

Lauren Johnston, Acting City Manager

Marcus Duffy, City Attorney

Kaley Cook, City Clerk

- Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- Other matters of concern may be discussed as determined by City Council.
- If you wish to obtain more information regarding the City Council's agenda, please contact the City Clerk's Office at 386-986-3713.
- In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing a reasonable accommodation to participate in any of these proceedings or meeting should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- City Council Meetings are streamed live on YouTube at <https://www.youtube.com/@PalmCoastFL>.
- It is proper meeting etiquette to silence all electronic devices, including cell phones while Council is in session.
- Any person who decides to appeal any decision of the City Council with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose, may need to hire a court reporter to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

NOTICE: This meeting is being live streamed on the City of Palm Coast YouTube channel and audio recorded for public record and transparency.

A. PRESENTATIONS - 5:30 P.M.

1 PRESENTATION - PRESENT CERTIFICATES TO GRADUATING STUDENTS OF THE CITY OF PALM COAST'S CITIZENS ACADEMY CLASS

Ms. Johnston provided a brief overview of Citizens Academy.

Mayor Norris and Shannon Martin, Communications & Marketing Manager, presented the certificates to the graduates.

Angie, a Citizens Academy graduate, shared about what she learned through the program.

B. CALL TO ORDER THE BUSINESS MEETING - 6:00 P.M.

Mayor Norris called the meeting to order at 6:00 p.m.

C. PLEDGE OF ALLEGIANCE TO THE FLAG AND A MOMENT OF SILENCE

D. ROLL CALL

City Clerk Kaley Cook called the roll. All members were present with Council Member Gambaro appearing virtually.

E. PUBLIC PARTICIPATION

Public Participation shall be held in accordance with Section 286.0114 Florida Statutes. And pursuant to the City Council's Meeting Policies and Procedures:

- (1) This agenda item has a thirty (30) minute limit.
- (2) Each speaker shall at the podium, provide their name and may speak for up to 3 minutes.
- (3) The Public may provide comments to the City Council relative to matters not on the agenda at the times indicated in this Agenda. Following any comments from the public, there may be discussion by the City Council.
- (4) Public speakers may address their comments to the Council as a whole, the Mayor, or to an individual Council Member
- (5) When addressing the City Council on specific, enumerated Agenda items, speakers shall:
 - (a) make their comments concise and to the point;
 - (b) not speak more than once on the same subject;
 - (c) not, by speech or otherwise, delay or interrupt the proceedings or the peace of the City Council;
 - (d) obey the orders of the Mayor or the City Council; and
 - (e) not make any irrelevant, impertinent or slanderous comments while addressing the City Council; which pursuant to Council rules, shall be considered disorderly.
- (6) Any person who becomes disorderly or who fails to confine his or her comments to the identified subject or business, shall be cautioned by the Mayor and thereafter must conclude his or her remarks on the subject within the remaining designated time limit.

Any speaker failing to comply, as cautioned, shall be barred from making any additional comments during the meeting and may be removed, as necessary, for the remainder of the meeting.

Members of the public may make comments during the public comment portion of the meeting. Please be advised that public comment will only be permitted during the public comment portions of the agenda at the times indicated by the Chair during the meeting.

Mayor Norris provided the rules and procedures of public comment.

Jeani Duarte discussed a request for 20 years of water quality reports, audit of Palm Coast utilities, economy boosting, Charter Review Committee Meeting, requested that the Charter Review Committee be tabled until after the next election, that City Hall would make a great community center, and discussed a location that would be a great conversion to fields.

Chantal Preuninger discussed water and wastewater in Maryland versus Florida and asked if residents can have their own wells.

Bruce Stone discussed increased utility rates over the years and traffic concerns.

Bob Million shared concern for utility service, Old Kings Road Special Assessment District and funds paid, and provided a document which has been attached to these minutes.

Ms. Johnston asked Utility staff to assist Ms. Duarte and Ms. Preuninger, and shared details of the Old Kings Road Special Assessment District.

F. MINUTES

2 MINUTES OF THE CITY COUNCIL: OCTOBER 21, 2025, BUSINESS MEETING OCTOBER 28, 2025, WORKSHOP MEETING

Vice Mayor Pontieri looked to amend the October 21, 2025, meeting minutes to include her disclosure of an ex parte communication that would not affect her decision making, and to clarify discussion on the consent items regarding tightening parameters was associated with item 22 of the consent agenda.

Pass

**Motion made to approve as amended by Council Member Sullivan,
seconded by Council Member Miller**

**Approved - 5 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council
Member Charles Gambaro, Council Member David Sullivan, Council Member
Ty Miller**

G. ORDINANCES SECOND READ

3 ORDINANCE 2025-21 AMENDING CHAPTER 50 WATERWAYS, SECTION 50-31 DEFINITIONS AND CREATING A NEW SECTION 50-33 ANCHORING

Mayor Norris read the title into the record.

*Ms. Johnston shared that there were no updates to the Ordinance and Ms.
Grossman was available for questions.*

*Public Comment:
There were none.*

Pass

**Motion made to be adopted on second reading by Council Member Sullivan
and seconded by Council Member Miller**

Approved - 5 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council Member Charles Gambaro, Council Member David Sullivan, Council Member Ty Miller

4 ORDINANCE 2025-XX CHAPTER 44, TRAFFIC AND VEHICLES, ARTICLE II, STOPPING, STANDING, AND PARKING, BY AMENDING SUBSECTION 44-34(C) PARKING AND STORAGE OF VEHICLES GENERALLY, OF THE CITY CODE OF ORDINANCES

Mayor Norris read the title into the record and provided a background.

Ms. Johnston highlighted that the recommended changes were available in the agenda packet.

Mayor Norris asked what methodology was used to determine the height and size requirements and shared concern for the parameters.

Attorney Duffy shared the review and determination of the requirements based on similar city ordinances.

Mayor Norris discussed standard vehicle lengths and vehicles that would be restricted under the currently listed requirements and looked to amend the length to 20 feet and height.

City Council held discussion on the height and size requirements currently listed in the Ordinance and proposed new height and length.

Motion made to continue the item to the November 18, 2025, Business Meeting with amending the height to 20 feet and length to 9 feet in height, by Vice Mayor Pontieri and seconded by Council Member Miller

Public Comment:

Chantal Preuninger asked how staff will verify heights and asked about box trailers.

Vincent Ligouri shared concerns and enforcement challenges.

Tony Amaral discussed language in the ordinance and recommended updates.

Mayor Norris shared that he commissioned a survey on this matter and shared the survey results.

Council Member Miller asked if the Ordinance restricts the vehicle to the driveway and clarified that the exception does not allow swale parking.

Mayor Norris replied yes.

Mayor Norris discussed code enforcement and how to measure the vehicles in response to public comment.

Council Member Gambaro asked for the margin of error on the survey referenced by the Mayor.

Vice Mayor Pontieri highlighted items to update in section 1a, changing “or” to “and” to properly reflect the intent.

Pass

Approved - 3 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council Member Ty Miller

Denied - 2 - Council Member Charles Gambaro, Council Member David Sullivan

5 ORDINANCE 2025-24 VOLUNTARY ANNEXATION OF APPROXIMATELY 38.811 ACRES OF PROPERTY OWNED BY FLAGLER PINES PROPERTIES, LLC

Mayor Norris read the title into the record.

Discussion was held on if the item was quasi judicial.

Phong Nguyen, Planning Manager, was available for questions.

Vice Mayor Pontieri shared concern for the annexing of this property not being in the best interest of the community due to traffic concerns, asked for updates from the first reading, asked if the acres are buildable, and for any updates with the traffic concerns previously discussed.

Mr. Papa and Mr. Nguyen provided a response to Council comments and questions.

Council Member Sullivan shared the concerns and discussed the BJs development, Racetrac, and a parallel road as a critical factor.

Jay Livingston, on behalf of the applicant, addressed comments related to planning and provided a document to City Council which has been attached to these minutes, provided a history of the item, good planning practices, the BJs project and impact fees, and discussed unintended consequences of restricting future land use planning.

Council Member Miller discussed a turn lane or through lane to add capacity.

City Council held discussion on the following topics: options for a turn lane or through lane to add capacity, impact fees, diversifying the tax base, process utilized for the BJs development, concurrency, concern for not having a pre-annexation or traffic studies, lack of time to appropriately address traffic, land behind airport commons, and a stormwater easement.

Council Member Gambaro motioned to approve the voluntary annexation with the right to reserve an administrative review.

Discussion was held on if the motion is allowable as stated due to the condition of the administrative review.

Council Member Gambaro withdrew the motion and moved to approve the voluntary annexation of the 38.811 acres of property owned by Flagler Pines Properties, LLC.

Public comment:

Chantal Preuninger strongly opposed the annexation and rezoning as proposed, shared concerns for density, water and wastewater to process, traffic, affordable housing, parallel road, and impact fees.

Kent Safriet, Partner with Holtzman Vogel, on behalf of Florida Landmark Communities LLC and Palm Coast Holdings, shared grave concerns for any annexations to the City until the Utility capacity gets resolved, discussed vested rights, damages and inability to develop because of sewer and water capacity, meetings with the City, language within the Ordinance, and stated that there should be a moratorium on any kind of annexation until the utilities are fixed and provide municipal services to people within the city.

Council Member Miller replied to public comment to highlight that the property owner would be abandoning residential entitlements to have commercial property.

Vice Mayor Pontieri asked Mr. Livingston if his team analyzed the Ordinance language and whereas clause referenced in public comment.

Mr. Livingston replied yes, discussed the already available infrastructure, capacity and permitting process, and wanted to note that the site plan sets aside a section of the parcels for the potential need for a package plant if there are any capacity issues.

Council Member Miller asked when there is an expectation to break ground.

Kimberly Buck, Alann Engineering Group, shared that they are hoping to break ground in the first quarter of 2026 and that the project will take close to a year.

Pass

Motion made to be adopted on second reading by Council Member Gambaro and seconded by Vice Mayor Pontieri

Approved - 5 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council Member Charles Gambaro, Council Member David Sullivan, Council Member Ty Miller

6 ORDINANCE 2025- 22 FUTURE LAND USE MAP (FLUM) AMENDMENT FOR 38.8+/- ACRES FROM FLAGLER COUNTY COMMERCIAL: HIGH INTENSITY AND RESIDENTIAL: HIGH DENSITY TO CITY OF PALM COAST MIXED-USE

Mayor Norris read the title into the record.

Ms. Johnston shared that there have been no updates to the item.

Vice Mayor Pontieri highlighted that the allowable dwelling units would go down.

*Public comment:
There were none.*

Pass

Motion made to be adopted on second reading by Council Member Gambaro and seconded by Council Member Miller

Approved - 5 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council Member Charles Gambaro, Council Member David Sullivan, Council Member Ty Miller

7 ORDINANCE 2025-23 ZONING MAP AMENDMENT FOR 38.8+/- ACRES FROM FLAGLER COUNTY GENERAL COMMERCIAL (C-2) AND MULTI-FAMILY RESIDENTIAL (R-3B) TO CITY OF PALM COAST GENERAL COMMERCIAL (COM-2)

Mayor Norris read the title into the record.

Attorney Duffy called for any ex parte communication. There were none.

*Public comment:
There were none.*

Pass

Motion made to be adopted on second reading by Vice Mayor Pontieri and seconded by Council Member Sullivan

Approved - 5 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council Member Charles Gambaro, Council Member David Sullivan, Council Member Ty Miller

H. RESOLUTIONS

(None)

I. CONSENT

*Public Comment:
There were none.*

Pass

Motion made to be adopted on consent by Council Member Gambaro and seconded by Council Member Sullivan

Approved - 5 - Vice Mayor Theresa Pontieri, Mayor Michael Norris, Council Member Charles Gambaro, Council Member David Sullivan, Council Member Ty Miller

- 8 **RESOLUTION 2025-181 APPROVING A WORK ORDER WITH WRIGHT-PIERCE, INC., FOR ENGINEERING CONSULTANT SUPPORT SERVICES FOR HYDRAULIC MODELING OF THE CITY'S UTILITY INFRASTRUCTURE**
- 9 **RESOLUTION 2025-182 APPROVING MASTER SERVICE AGREEMENT WITH MULTIPLE CONTRACTORS FOR UTILITY CONSTRUCTION AND SEWER REPAIR SERVICES AS NEEDED**

J. PUBLIC PARTICIPATION

Remainder of Public Comments is limited to three (3) minutes each.

Chantal Preuninger shared an issue with Council Member Gambaro appearing virtually and asked about a permit status.

Mayor Norris advised that Ms. Preuninger email the City Manager for assistance.

K. DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA

Council Member Miller shared about the ceremony for Sheriff Staly's 50 years of service and shared appreciation for his service to the community, shared about the upcoming Veteran's Day parade and Marine Corps Birthday.

Vice Mayor Pontieri echoed the comments regarding the ceremony for the Sheriff, was thankful the Sheriff's Office, was honored that the city presented him a key to the city, and also highlighted the upcoming Veteran's Day parade.

Mayor Norris shared that city offices will be closed on Veteran's Day.

Council Member Sullivan shared that the Sheriff went to extremes to share the support from the city and county and his thanks.

Council Member Gambaro shared that he wasn't able to be there for the Sheriff's ceremony, recognized the contributions of all veterans, and looked forward to the celebration next week.

Mayor Norris shared that the legislature may do something on e-bikes and potential amendments, and shared congratulations to Sheriff Staly.

L. DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA

Attorney Duffy highlighted that everyone on the dais has a military connection and wished veterans and their families a happy Veteran's Day.

M. DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA

Ms. Johnston shared a reminder that city offices will be closed on Veteran's Day, that City Manager interviews will be held next Thursday and that a meet and greet will follow.

Mayor Norris shared about an upcoming Veteran's Day service at Shepherd of the Coast Lutheran Church.

N. ADJOURNMENT

The meeting was adjourned at 7:34 p.m.

*Respectfully submitted by: Kaley Cook, CMC, FCRM
City Clerk*

This document outlines the challenges and efforts of Kings Business Center (KBC) regarding infrastructure improvements within the Old Kings Road Special Assessment District (OKRSAD) in Palm Coast and emphasizes the immediate need for the City to resolve utility provision issues to avoid potential financial burdens and support ongoing development efforts.

Summary

Old Kings Road Special Assessment District (OKRSAD)

- Established by the City of Palm Coast to improve Old Kings Road, fulfilling transportation concurrency requirements for the Town Center Development.
- Phase 1 improvements created a 4-lane roadway from SR 100 to Town Center Boulevard, funded initially by an inter-fund loan.
- A 2013 Funding Agreement between the City and landowners allowed for special assessments to cover future transportation impact fees, with the City responsible for utility improvements.
- Delays in the project have necessitated redesigns, increasing costs and hindering development.

Kings Business Center's Efforts

- KBC, which acquired 200 acres in 2018, has actively sought solutions to infrastructure issues caused by City delays.
- KBC proposed a Development Agreement to construct a critical water line and address stormwater issues, but progress has stalled despite multiple meetings and significant investments.
- Key milestones include securing easements, obtaining environmental permits, and submitting drafts of the Development Agreement, yet the City has not acted on the final agreement.

Critical Infrastructure Needs

- Potable water is unavailable for certain parcels within OKRSAD, preventing development.
- KBC's offer to construct the water line at its expense remains unaddressed, risking liability for the City as development approvals are in place without necessary utilities.
- The urgency is heightened by the approval of a 216-unit residential development, which requires water service to proceed.

Stormwater Management and Land Exchange

- KBC has agreements for stormwater management within an FP&L easement and has purchased mitigation credits for wetland impacts.
- A Land Exchange Agreement with the City facilitated a more logical development plan, reducing infrastructure costs and environmental impacts.

A Benefit to the City and Community

- By providing city water service to a large section of the Old Kings Road corridor, this project will unlock the development potential of numerous properties providing new investment, job creation, a significant expansion of the City's tax base, and the collection of impact fees. These fees will provide a direct funding source to help pay for future improvements in the corridor, including Phase 2 of the Old Kings Road 4-laning project.

City of Palm Coast

Old Kings Road Special Assessment District

The Old Kings Road Special Assessment District (OKRSAD) was adopted by the City of Palm Coast, as Ordinance 2005-10 to provide for improvement of Old Kings Road between SR 100 and Palm Coast Parkway satisfying certain transportation concurrency requirements of the Town Center Development of Regional Impact (DRI) Ordinance 2003-32.

Old Kings Road Phase 1 improvements designed as a 4-lane urban roadway extends from SR 100 to the intersection of Old Kings Road and Town Center Boulevard. Initial cost to acquire, construct and install Phase 1 was provided on an interim basis by an inter-fund loan from the Utility Fund. Upon completion of Phase 1 the City and Landowners entered into a Funding Agreement (2013 Funding Agreement) based on mutual covenants of the parties, defining terms and condition to repay the inter-fund loan. Landowners agreed to prepay future transportation impact fees by allowing the City to impose a special assessment on their properties in exchange for the City's promise to pay all costs for design and construction of utility improvements. The City also agreed to issue permits for construction within the OKRSAD prior to completion of Phase 2.

The 2013 Funding Agreement referenced and relied upon construction plans developed for Phase 2 by Ayers Associates in 2009, identified in the Agreement as "construction plans that are 60% completed". The 60% plans defined roadway location and proposed stormwater storage/treatment sites. **City staff subsequently allowed permits issued for the 60% plans to expire in 2021.** Promised roadway and utility improvements must now be redesigned to meet current requirements delaying construction, adding millions of dollars of unnecessary cost and unfairly burdening use of Landowners property.

Kings Business Center's Efforts to Find a Solution

Kings Business Center (KBC) purchased approximately 200 acres of undeveloped land within the OKRSAD in 2018 and began the process of master planning an area extending 1.7 miles along both sides of Old Kings Road. For years, KBC has been proactively working with City staff to find a solution to the infrastructure problems created by the City's project delays. **KBC proposed a Development Agreement that allows KBC to construct, at it's own expense, the critical water line that was promised in the 2013 Funding Agreement and resolve legacy stormwater issues.**

Despite KBC's good-faith efforts and significant financial investment KBC's Development Agreement has not been adopted by the City and no alternative solution has been proposed. The following is a timeline of KBC's efforts to date:

- **2020-2025:** KBC held multiple meetings with City staff relating to the Right-of-Way design and potential solutions.

- **April 2021:** KBC secured an FP&L Easement Use Agreement to allow for stormwater treatment from the road right-of-way and KBC future parcel development within the FP&L easement.
- **June 2022:** KBC entered into a Land Exchange Agreement with the City for a partial relocation of a flyover which bifurcated a 32-acre KBC parcel, allowing for a more logical development plan and a rezoning to MFR-2. This new location is substantially less expensive for the City to construct and reduced wetland impacts by 80%.
- **August 2022:** KBC purchased mitigation credits for a 78-acre KBC parcel, which **included credits for the wetland impacts proposed by the City's 2009 road design**. KBC covered this cost, which was the City's responsibility and valued at over \$250,000.
- **March 2023:** KBC successfully obtained an SJRWMD Environmental Resource Permit for a 78-acre KBC parcel.
- **October 2023:** KBC successfully obtained an FDEP 404 permit for a 78-acre KBC parcel.
- **February 2, 2024:** KBC submitted the first draft of the Development Agreement to City staff.
- **March 28, 2024:** After initial meetings, City staff provided comments on the draft agreement.
- **January 17, 2025:** KBC's engineers submitted the initial Technical Site Plan application for the Old Kings Road Watermain Extension.
- **May 2, 2025:** A team meeting was held with City staff to review a revised Development Agreement; staff requested final revisions.
- **May 7, 2025:** KBC submitted the final revised Development Agreement, incorporating all of staff's comments.
- **May 8, 2025:** KBC's engineer submitted the FDEP permit application for the water line to the City for the required owner sign-off. To date, no action has been taken by the City.
- **May 28, 2025:** The City's Utility Development Manager confirmed via email that his comments on the Development Agreement were addressed. No further comments were received.
- **June 20, 2025:** The City issued a Development Order for our watermain extension.
- **June 24, 2025:** KBC's attorney emailed staff regarding minor clerical corrections to the Development Order. Staff issued a revised Order, which was signed and returned. No response was received regarding the Development Agreement.
- **July 2, 2025:** Having received no response on the Agreement, KBC's attorney wrote to the City Manager requesting assistance in getting the item scheduled for Council consideration.
- **September 26, 2025** Letters addressed to the Mayor and each Council Member were hand delivered to City Hall. The letters detailed an urgency to take action on this issue. To date, no response received.

Attachments

Location Map of KBC Properties

Proposed Waterline Extension

Permitted Storm Water Management System

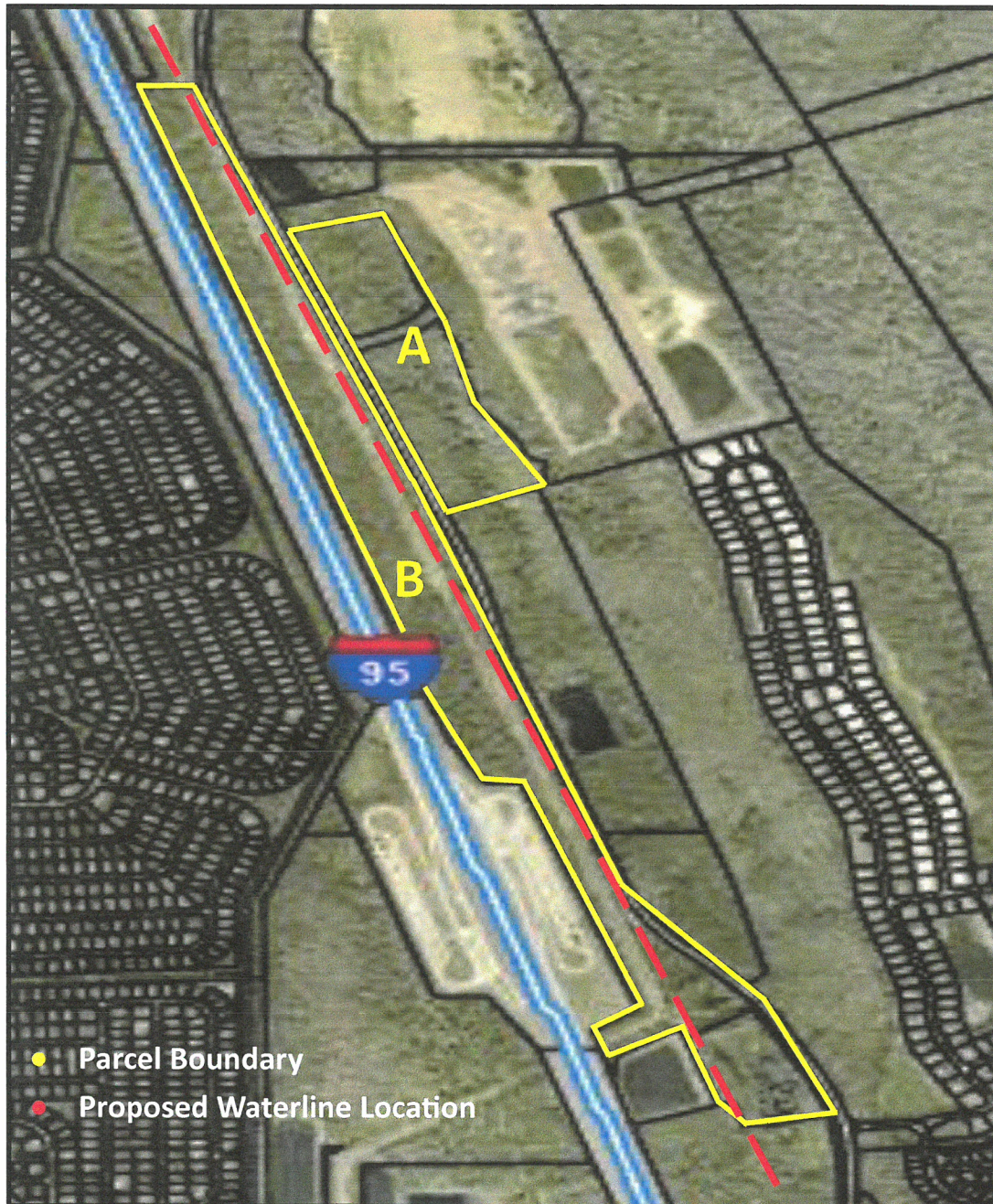
Permitted Wetland Mitigation

Whiteview Parkway Flyover Relocation

2013 Funding Agreement

Proposed Development Agreement

Kings Business Center Properties
Old Kings Road between Oak Trails Blvd and Town Center Blvd



Parcel A - 29.24 acres FCPA# 29-11-31-0000-01010-0050

Old Kings Multifamily Master Site Plan Application #5447 216 residential units. Construction scheduled for early 2026.

Parcel B - 88.14 acres FCPA# 20-11-31-0000-01020-0000, 32-11-31-0000-01010-0012

COM3, OFC1, OFC2 Provides 1 million +/- SF of commercial building pads. SJRWM and FDEP 404 permits issued.

Proposed Waterline Extension

Old Kings Road between Oak Trails Blvd and Town Center Blvd



Potable water is not available to certain parcels within the Old Kings Road Special Assessment District (OKRSAD) restricting development of those properties. Based on the 2013 Funding Agreement between the City and owners of property within the OKRSAD, the City is responsible for design and construction of utility improvements necessary to allow development of the properties. The Agreement requires the City to issue permits for construction within the OKRSAD prior to completion of utility and roadway improvements. Currently, development has been approved, and construction is scheduled on parcels not served by City utilities. Failure to provide water to those parcels prior to construction start may result in liability to the City.

Kings Business Center (KBC), owner of multiple properties not served by City utilities has been proactively working with City staff since 2020 to resolve issues preventing development. KBC offered to construct at its own expense, the critical waterline that was promised in the 2013 Funding Agreement. KBC would be reimbursed by offset to impact fees due upon development of properties within OKRSAD. Despite KBC's good-faith efforts and significant financial investment, development remains stalled.

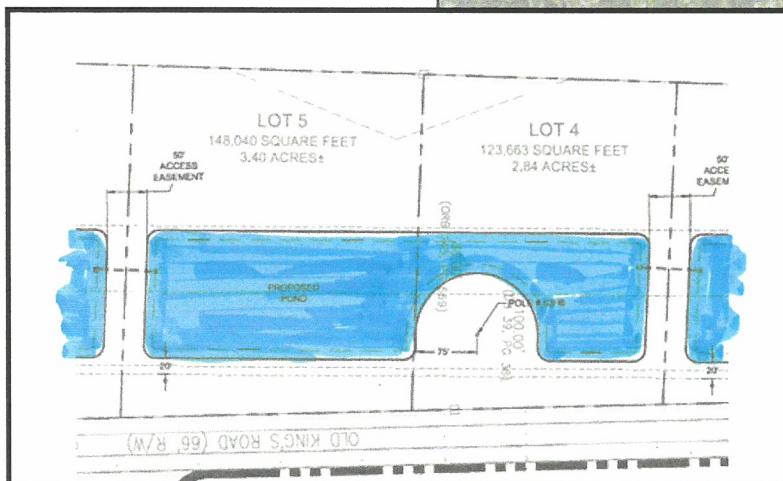
Failure to provide utilities as required by the 2013 Funding Agreement has reached a critical juncture. Master Site Plan Approval for a 216 unit residential development has been issued by the City. The property is not currently served by, and cannot be developed without potable water service. It is imperative for the City to resolve this issue before it escalates into a major financial burden.

Stormwater Storage and Treatment FP&L Easement

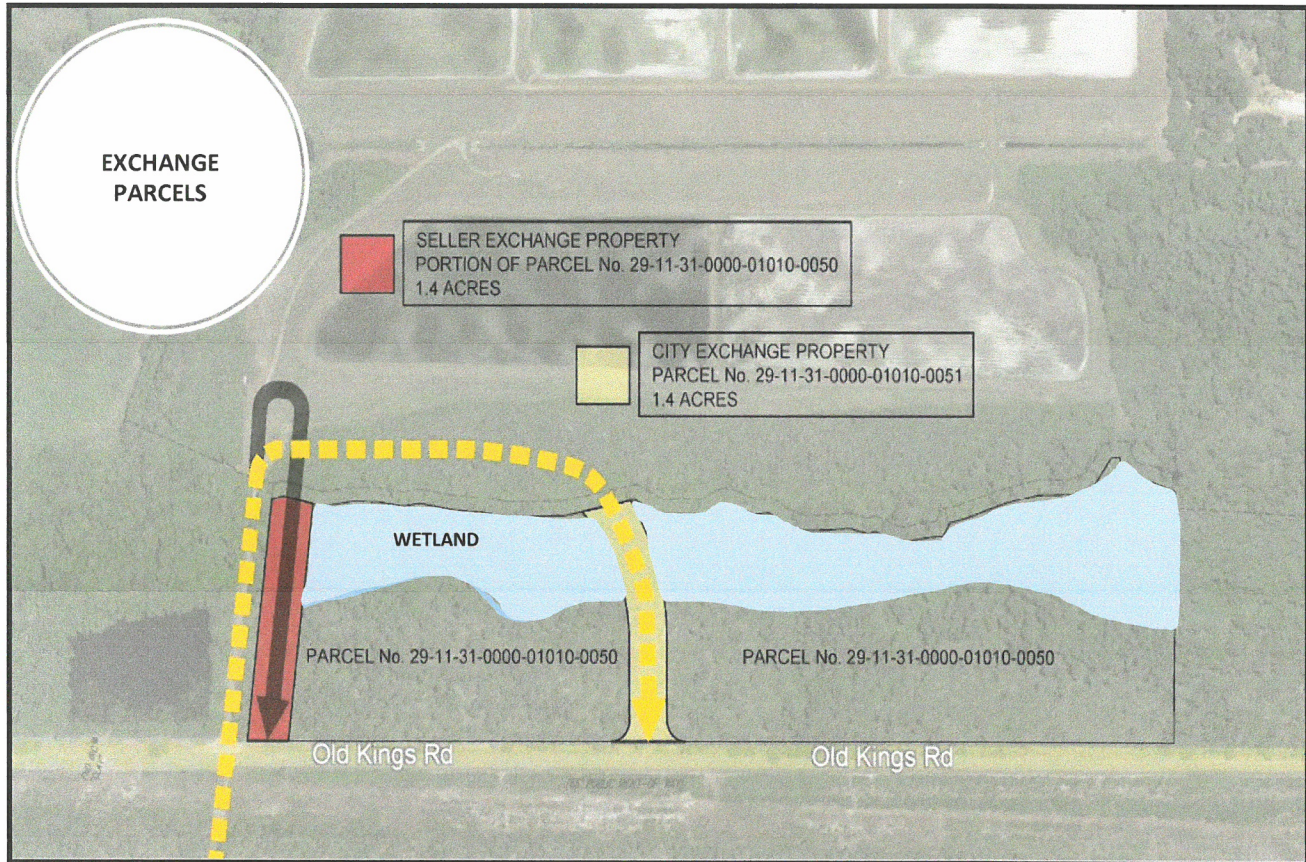
Land Use Agreement and Permits

Kings Business Center owns a commercially zoned parcel of 88 acres on the west side of Old Kings Road which is restricted by a 180' x 1.5 mile, 32 acre FP&L easement. KBC entered into an agreement with Florida Power & Light allowing stormwater storage and treatment within the FP&L easement on KBC property. SJRWMD issued Permit #18-0414191-001 authorizing construction of a storm water management system consisting of multiple interconnected dry retention ponds within the FP&L easement.

FDEP issued a State 404 Program Permit authorizing unavoidable impact to wetlands. Mitigation credits have been purchased from Fish Tail Swamp Mitigation Bank. A portion of the storm water system is available for City use as needed to accommodate requirements of storm water management for future improvements to Old Kings Road.



Whiteview Parkway Flyover Easement Relocation



Land Exchange Agreement

Early planning for Palm Coast traffic included a proposed flyover connecting Whiteview Parkway west of I-95 to Old Kings Road east of I-95. The western point of origin logically coincided with the termination of Whiteview Parkway, the eastern location of the proposed flyover appeared to ignore topography, impacting wetlands unnecessarily and bifurcating property now owned by Kings Business Center.

Working with City staff a realignment of the proposed flyover was defined reducing construction cost and impact to wetlands. Based on the realignment, KBC and City entered into a Land Exchange Agreement in 2021 accommodating the proposed future traffic and allowing for a more logical development. No gain or loss of land area to the City or KBC.

KBC's property has since been approved for a 216 unit residential development generating approximately \$2 million in impact fees for OKRSAD and the City.

Return to:

City of Palm Coast, City Clerk
160 Cypress Point Pkwy. Ste B-106
Palm Coast, Florida 32164

Inst No: 2013033331 09/25/2013
08:38AM Book: 1967 Page: 63 Total Pgs: 36

GAIL WADSWORTH, FLAGLER Co.

This instrument prepared by :

Kenneth R. Artin
Bryant Miller Olive P.A.
135 West Central Boulevard
Suite 700
Orlando, FL 32801

**FUNDING AGREEMENT
RELATED TO
OLD KINGS ROAD**

THIS FUNDING AGREEMENT is made and entered into this 17th day of July, 2013, by and among the City of Palm Coast, Florida, a municipal corporation (hereinafter "City"), and the owners of the certain real property interests listed on Exhibit A hereto, and their successors and assigns (hereinafter, collectively, the "Landowners").

RECITALS

WHEREAS, through adoption of Ordinance No. 2005-10 (as amended and supplemented from time to time, and particularly as amended and supplemented by Ordinance No. 2008-09, the "Ordinance") on March 1, 2005, and with the approval of affected landowners, the City Council of the City created the Old Kings Road Special Assessment District (the "District") in order to provide for the widening and improvement of Old Kings Road between Highway 100 and Palm Coast Parkway (the "Project"); and

WHEREAS, the Project will satisfy certain transportation concurrency requirements that are a condition precedent to development approvals, establish significant development entitlement benefits and advantages for the real property comprising the District, and is necessary to facilitate development of such property; and

WHEREAS, after creating the District, the City advanced \$1,405,164 (the "Advance") from transportation impact fees to pay various expenses, including design, associated with the Project; and

WHEREAS, the Project was designed in two phases, the first of which extends from Highway 100 to the intersection of Old Kings Road and Town Center Boulevard ("Phase 1"), and the second of which extends from the northern terminus of Phase 1 to Palm Coast Parkway ("Phase 2"); and

WHEREAS, on June 17, 2008, the City Council adopted Resolution No. 2008-97 (as amended and supplemented from time to time, and particularly as supplemented by Resolution No. 2009-01, the "Assessment Resolution") which, among other things, approved an assessment apportionment methodology, imposed non-ad valorem special assessments ("Special Assessments") against real property within the District (the "Assessed Property") to pay a

portion of the costs associated with the Project, and established a maximum "Project Cost" to be recovered through Special Assessments of \$50,090,000; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the Ordinance or Assessment Resolution; and

WHEREAS, the Special Assessments, including the apportionment methodology approved by the Assessment Resolution, were developed with the written consent of all or substantially all of the owners of the real property comprising the District; and

WHEREAS, such assessment apportionment methodology provides that the real property comprising the Hidden Lakes and Toscana subdivisions (collectively, "Hidden Lakes/Toscana") would be assessed for approximately 9.375% of the Project Cost, with the balance allocated on a developable acreage basis against the remaining real property in the District; and

WHEREAS, in order to facilitate long-term financing of the Project Costs, the City Council adopted Resolution No. 2008-98 which authorized issuance of the City of Palm Coast, Florida Special Assessment Bonds, Series 2008 (Old Kings Road Special Assessment District), in an aggregate principal amount not to exceed \$50,090,000 (the "Bonds") secured by Special Assessments; and

WHEREAS, in July, 2008, the City successfully obtained judicial validation of its authority to issue the Bonds, to levy the Special Assessments in accordance with the Ordinance, the Assessment Resolution and the landowner consents; and

WHEREAS, thereafter, in light of the national economic downturn, uncertainty in the financial markets and other considerations related to the market for special assessment bonds at that time, the City was unable to issue the Bonds and therefore postponed collection of the Special Assessments; and

WHEREAS, Flagler Pioneer Group, LLC, Kings Pointe Developers, LLC, and Old Kings Interchange, Inc. (collectively, including successors and assigns, the "Tri-Party Landowners") advised the City that construction of the Project was critical to the development of their lands within the District and that several projects then pending were dependent on at least Phase 1 of the Project being constructed before such development could proceed, including the development of a Wal-Mart facility; and

WHEREAS, at the request of the Tri-Party Landowners, the City Council adopted Resolution No. 2009-01 which approved an inter-fund loan from the Utility Fund, on an interim basis (the "Bond Anticipation Loan"), to provide funding for the costs to acquire, construct and install Phase 1; and

WHEREAS, the Tri-Party Landowners induced the City to provide the Bond Anticipation Loan by entering into that certain Funding Agreement dated February 13, 2009, and pledging therein to make certain interest payments on the Bond Anticipation Loan to the City until such time as the City issues the Bonds or commences collection of the Special Assessments against the Assessed Properties; and

WHEREAS, acquisition and construction of Phase 1 of the Project is now complete; and

WHEREAS, Landowners are the respective owners of certain real property located within the District and described in Appendix A attached hereto (the "Subject Property"); and

WHEREAS, the City and Landowners enter into this Agreement in order to set forth the terms and conditions pursuant to which the City will be repaid the Advance and the principal amount of the Bond Anticipation Loan through Special Assessments imposed against Assessed Property, and to provide for the funding and construction of Phase 2 in one or more sub-phases.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. INCORPORATION OF RECITALS AND APPENDICES. The recitals stated above are true and correct and, together with the appendices attached hereto, are incorporated by reference herein as a material part of this Agreement.

SECTION 2. ACKNOWLEDGEMENTS. The City and the Landowners agree and acknowledge the following:

(A) The parties acknowledge, agree, ratify and confirm that the District consists of the real property described in the Ordinance. Although the general boundaries of the District have remained the same, ownership of the various properties comprising the District has changed since enactment of Ordinance No. 2005-10 and will likely continue to change in the normal course of business affairs.

(B) In accordance with the percentage share established in the Assessment Resolution, the lots comprising Hidden Lakes/Toscana are responsible for 9.375% of the Bond Anticipation Loan which is \$495,378. Such lots will receive a credit for transportation impact fees previously paid, such that the amount due from Hidden Lakes/Toscana on the effective date of this Agreement with respect to the Bond Anticipation Loan is \$168,522 to be allocated at the rate of \$355 per undeveloped residential lot. The balance of the Bond Anticipation Loan (\$4,788,658) will be repaid by Special Assessments levied against real property within the District other than Hidden Lakes/Toscana at the rate of \$6,697 per developable acre.

(C) The amount of developable/assessable land within the District is approximately 715 acres, excluding Hidden Lakes/Toscana, as described in the schedule of developable acreage set forth in Appendix B attached hereto.

(D) Special Assessments imposed by the City upon the Subject Property in accordance herewith shall constitute a legal, valid, binding and enforceable lien upon the Subject Property, co-equal with the lien of all state, county, district and municipal taxes, and superior in dignity to all other liens, titles and claims until paid.

SECTION 3. REPAYMENT OF BOND ANTICIPATION LOAN. The City and the Landowners hereby agree that the Bond Anticipation Loan will be repaid through Special Assessments as follows:

(A) All of the real property within the District will be assessed to repay the Bond Anticipation Loan over a term of thirty (30) years (the "Repayment Term"). To date, the owners of Hidden Lakes/Toscana have paid approximately \$326,856 in transportation impact fees on 105 lots. The City will credit Hidden Lakes/Toscana for the transportation impact fees already paid. As a result, the Special Assessments imposed within the District to repay the Bond Anticipation Loan will be allocated as follows: \$168,522 to Hidden Lakes/Toscana (\$355 per undeveloped residential lot) and \$4,788,658 to the remaining approximate 715 developable acres in the District \$6,697 per developable acre.

(B) The City will begin collection of initial Special Assessments from Assessed Property by the tax bill collection method commencing with the tax bill to be mailed in November, 2013 (the "Initial Assessments"). The Initial Assessments will be collected at the following rates to pay interest only on the Bond Anticipation Loan for a period not to exceed three (3) years:

(1) Approximately \$18 per year, per undeveloped residential lot in Hidden Lakes/Toscana (representing 5% annual interest only).

(2) Approximately \$335 per year per developable acre for all other Assessed Property within the District, with secondary allocation as provided in the Assessment Resolution (representing 5% annual interest only).

(C) The City will undertake efforts to issue debt obligations secured solely by Special Assessments collected from Assessed Property (the "Reimbursement Bonds"), the proceeds of which will be used to repay the Bond Anticipation Loan. Such Reimbursement Bonds will mature within the Repayment Term over a period no less than 27 years and will bear interest at an annual rate not to exceed six percent (6%). If the City is unable to issue the Reimbursement Bonds on those terms within three (3) years of the date hereof, the assessment per developable acre will increase to an amount sufficient to amortize the Bond Anticipation Loan over the remainder of the Repayment Term at an annual interest rate of five percent (5%), in which case the City will not thereafter issue Reimbursement Bonds if the result would be to increase the annual Special Assessment levied against Assessed Property. To amortize the Bond Anticipation Loan over the Repayment Term, the Special Assessments collected each year would increase to the following approximate amounts:

(1) Approximately \$25.00 per year, per undeveloped residential lot in Hidden Lakes/Toscana (representing principal and 5% annual interest).

(2) Approximately \$458.00 per year per developable acre for all other Assessed Property within the District, with secondary allocation as provided in the Assessment Resolution (representing principal and 5% annual interest).

(D) Notwithstanding anything herein to the contrary, it is the intent of the parties hereto that the Special Assessments will be collected over a term of thirty (30) years, with interest only payments during a period not to exceed the first three years, and principal and interest payments amortized over the balance of the thirty (30) year term.

(E) The Special Assessment rates set forth above may be increased as necessary to account for the early payment discount associated with the tax bill collection method (4%) and fees and costs imposed by the Tax Collector and Property Appraiser, if any.

SECTION 4. TRANSPORTATION IMPACT FEES; CONSTRUCTION OF PHASE 2.

(A) The City imposes transportation impact fees pursuant to City Ordinance No. 2004-17, as amended, which is currently codified in Chapter 29, Article II of the City's Code of Ordinances. The City covenants to segregate, earmark or show as restricted, all transportation impact fees paid to the City (including any proportionate share payments paid to the City as provided in subsection 4 (D) below) after the effective date hereof in connection with development of real property within the District, and use the proceeds thereof in furtherance of the Project, including design and construction of Phase 2, as provided herein.

(B) Phase 2 may be constructed in two or more sub-phases. The first sub-phase ("Phase 2A") will begin at the northern terminus of Phase 1 and shall include a south bound left turn lane into the property comprising the SR100 Development of Regional Impact, widening of the bridge over the Lehigh Canal and four-laning northerly to the entrance of the Hidden Lakes subdivision. Whenever the balance of restricted transportation impact fees (and any proportionate share payments, as provided in subsection 4(A) above) is sufficient to construct Phase 2A, the City will commence construction thereof. Whenever the balance of restricted transportation impact fees (and any proportionate share payments, as provided in subsection 4(A) above) is sufficient to construct another sub-phase of the Project, the City will commence construction thereof. The parties hereto agree and acknowledge that time is of the essence with respect to the construction of Phase 2 of the Project. The City covenants that at such time as funding is available to construct either Phase 2 in total or in sub-phases as described herein, the City will proceed with due diligence to either construct or cause the construction of such improvements. The City covenants and agrees to consider all methods or manner to construct Phase 2 improvements in the most efficient and economic manner, including using the Town Center at Palm Coast Community Development District ("CDD") to provide construction management services pursuant to the existing Interlocal Agreement between the City and the CDD, assuming the CDD continues to have the expertise and capacity to provide those services.

(C) Notwithstanding anything herein to the contrary, proceeds of transportation impact fees restricted or earmarked as provided herein shall be applied as follows:

(1) To prepay Special Assessments with respect to the land being developed for which a transportation impact fee is collected in order to pay down the respective shares of the principal of and interest on the Bond Anticipation Loan.

(2) To reimburse Special Assessments (including principal and interest) previously paid by a landowner, if any, related to development of real property within the District for which the impact fee has been paid.

(3) Following the payment of amounts described in subparagraphs (1) and (2) above, 100% of transportation impact fees will be earmarked for construction of Phase 2A, until such time as Phase 2A is fully funded; and thereafter, 20% of transportation impact fees will be applied to restore the Advance and 80% will be earmarked to complete construction of Phase 2B, and after the Advance is fully restored, 100% will again be earmarked to complete construction of Phase 2B.

(4) As soon as the contract to construct Phase 2A has been awarded, the Tri-Party Landowners will be entitled to transportation impact fee credits in the amount of interest paid on the Bond Anticipation Loan prior to March 31, 2012. However, the credits will only be applicable to development on land the Tri-Party Landowners owned as of March 1, 2005. Until all the credits are sold, the exclusive method of paying transportation impact fees by developers of projects on that land acquired from any of the Tri-Party Landowners will be to provide the City with a voucher evidencing purchase of credits from any of the Tri-Party Landowners.

(5) After earmarked funds in the Impact Fee Fund are sufficient to fund the construction of Phase 2, or construction of Phase 2 is completed, or otherwise fully funded, 100% of additional impact fees will be deposited in the Impact Fee Fund for use in accordance with the City's adopted priority for transportation improvements City-wide.

(6) Subject to the limitations set forth in Section 3 (C) herein, the City may elect to fund construction of Phase 2, including sub-phases thereof, in whole or in part through special assessments in accordance with the Assessment Resolution; provided, however, that affected Landowners shall receive a credit against such assessments in the amount of transportation impact fees paid for the Assessed Property.

(D) The City covenants to segregate, earmark or show as restricted, all proportionate share payments paid to the City after the effective date hereof in connection with development of real property within the District regarding the Project, and only use the proceeds thereof in furtherance of the Project, including design and construction of Phase 2, as provided herein.

(E) As in the case of Phase 1, the City will pay all costs for design and construction of water, sewer and reuse utility improvements in connection with Phase 2, including relocations and upgrades, and will also use funds from its Impact Fee Fund to pay 20% of the cost to design and construction Phase 2, with credit for amounts previously advanced from its Impact Fee Fund for design and permitting of Phase 2.

SECTION 5. GRANT FUNDING. The City agrees to make a good faith effort to obtain grant funding to assist with the costs of designing and constructing Phase 2. Although the City cannot commit to a construction schedule for Phase 2, or any part thereof, it will use reasonable efforts to accumulate sufficient funds with which to commence construction of Phase 2 as soon as possible.

SECTION 6. LANDOWNER CONTRIBUTIONS. Landowners will convey, transfer and donate, or cause to be conveyed, transferred or donated all necessary rights-of-way and sites for drainage retention ponds to the City as needed to construct Phase 2 and any sub-phase thereof based upon the construction plans that are currently over 60% completed. Any land donated will not be subject to Special Assessments.

Owners of property located north of Phase 1 and adjacent to Old Kings Road have the option of paying for, acquiring and constructing improvements related to four-laning that portion of Old Kings Road fronting their respective properties at any time. In the event any such owner constructs a portion of Phase 2 in accordance with the City's overall widening plans, such owner will receive a credit for those expenditures to apply against transportation impact fees which would otherwise be due; provided, however, that such credit shall not exceed the amount of transportation impact fees which would otherwise be due.

SECTION 7. TRANSPORTATION CONCURRENCY. The City will issue permits for construction within the District prior to completion of Phase 2, provided the permittee pays its proportionate share to mitigate traffic impacts which typically is satisfied through payment of transportation impact fees. If any proportionate share payment is made to offset transportation impacts on Old Kings Road within the District prior to payment of the applicable transportation impact fee, the proportionate share payment will be segregated, earmarked and restricted as provided for in Subsection (A) of Section 4 above, and will be credited to the transportation impact fee that is payable when construction is permitted.

SECTION 8. AMENDMENTS TO ORDINANCES AND RESOLUTIONS. (A) The City will undertake such amendments to the Ordinance and the Assessment Resolution, if any, as may be necessary to ensure conformance thereof with, and effectuate the intent of, this Agreement. Such amendments may include, but are not limited to, adjusting the amount of Developable Acreage attributable to the District.

(B) The parties acknowledge that the City cannot contract to approve specific comprehensive plan amendments, zoning map amendments, variances, nonconforming uses, development orders, or development permits. The City's only obligation with respect to

comprehensive plan amendments, zoning map amendments, variances, nonconforming uses, development orders or development permits is to process the applications expeditiously, consider all evidence presented in support of and in opposition to the applications, and make decisions to approve or deny the applications based upon the legal standards that govern actions by local governments when considering comprehensive plan amendments, zoning map amendments, variances, nonconforming uses, development orders, or development permits. The City will diligently initiate and employ such processes with respect to any items or actions contemplated by or in furtherance of this Agreement.

(C) Nothing herein shall be construed as an amendment to or modification of the provisions of the Town Center at Palm Coast DRI or SR 100 Development Orders with respect to impact fee credits or otherwise.

(D) The City covenants and agrees that during the term of this Agreement the City will not reduce or impose a moratorium on transportation impact fees levied within the District.

SECTION 9. REMOVAL OF SPECIAL ASSESSMENT LIENS. The following procedures shall apply in connection with the removal of Special Assessment liens:

(A) Any Landowner may, at its option, require the City to release and extinguish the lien upon its property by virtue of the levy of the Special Assessments contemplated hereunder by paying to the City the entire amount of such Special Assessment on such property, including principal and interest, or an equivalent amount of transportation impact fees.

(B) Upon receipt of a prepayment as described in (A) above, the City shall take such action as is necessary to record in the official records of Flagler County an affidavit or affidavits, as the case may be, executed by an authorized officer of the City, to the effect that the Special Assessment has been paid and that such Special Assessment lien is thereby released and extinguished.

SECTION 10. DEFAULT. (A) If any Landowner defaults in the due and punctual performance of any obligation or covenant herein and such default continues for sixty (60) days after written notice requiring the same to be remedied shall have been given to such Landowner by the City, then the City shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right of damages, injunctive relief and/or specific performance.

(B) Landowners and their successors and assigns shall be entitled, by mandamus, or other suit, action or proceeding at law or in equity, which may include, but not be limited to, the right of actual damages, injunctive relief and/or specific performance, to enforce all rights of the Landowners arising hereunder; provided, however, that the parties acknowledge and agree that neither party shall, in any event, be liable to the other, for any reason, for any consequential, incidental, special, punitive or indirect damages, including, without limitation, loss of profits, revenue, data, use of money or business opportunities, regardless of whether notice has been given or there is an awareness that such damages have been or may be incurred.



SECTION 11. CREATION OF COMMITTEE. The City and the Landowners will form a Special Assessment District Project Committee (the "Committee") consisting of City representatives appointed by the City Manager. The Landowners will appoint two members consisting of one Landowner from the land south of Lehigh Canal and one Landowner north of Lehigh Canal. The Committee will meet not less frequently than once every 60 days, or as determined by the committee members, to:

- a) Review the District's fund balance, engineering and permitting status and bidding and construction status of Phase 2.
- b) Advance the construction of all Phase 2 subphases at the maximum speed possible permitted by retained transportation impact fees.
- c) Determine the limits of all phases subsequent to Phase 2A so as to spend all collected transportation impact fees within the time limits set by Florida Statutes or Administrative Rules.
- d) Review the application of all transportation impact fees and proportionate share payments collected to insure that they are being allocated in accordance with the Agreement.

The Committee will distribute the minutes of each meeting to all Landowners.

SECTION 12. ENFORCEMENT OF AGREEMENT. In the event that a party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 13. AGREEMENT. This instrument shall constitute the final and complete expression of this Agreement between the parties relating to the subject matter of this Agreement.

SECTION 14. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto.

SECTION 15. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

SECTION 16. NOTICES.

(A) All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

(1) If to the Landowners: at the notice address listed on Exhibit A hereto.

(2) If to City:

City of Palm Coast
160 Cypress Point Parkway
Suite B 106
Palm Coast, Florida 32164
Attn: City Manager

(B) Except as otherwise provided herein, any notice shall be deemed received only upon actual delivery at the address set forth herein. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 17. THIRD PARTY BENEFICIARIES. Nothing herein contained shall confer any right upon any person or corporation other than the parties hereto.

SECTION 18. ASSIGNMENT. The Landowners agree to cause their interests and obligations under this Agreement to be assigned to any third party entity, primarily engaged in land development or a related industry, as a result of a transfer of any developable lands within the District owned by any of the Landowners. The Special Assessments provided for herein touch, concern and run with the Subject Property and are binding upon each successive owner thereof.

SECTION 19. CONTROLLING LAW. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

SECTION 20. EFFECTIVE DATE. The Agreement shall be effective after execution by all parties hereto and shall remain in effect unless terminated by either of the parties hereto.

SECTION 21. PUBLIC RECORDS. Landowners understand and agree that all documents of any kind provided to the City or to City staff in connection with the work contemplated under this Agreement may be public records and may be treated as such in accordance with Florida law.

SECTION 22. TIME IS OF THE ESSENCE. The time of the performance of all of the covenants, conditions, and agreements of this Agreement is of the essence.

In witness whereof, the parties execute this Agreement the day and year first written above.

Attest:

CITY OF PALM COAST, FLORIDA

Virginia A. Smith

By: Virginia A. Smith
Its: City Clerk

Jim Landon

By: Jim Landon
Its: City Manager

7/17/13

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 17th day of July 2013, by Jim Landon, as City Manager of the City of Palm Coast, Florida. He is personally known to me or has produced _____ as identification

Virginia K. Norberg
Notary Public, State of Florida
Name: _____

My Commission Expires: _____

My Commission Number is: _____

VIRGINIA K NORBERG
NOTARY PUBLIC STATE OF FLORIDA
MY COMM EXP AUGUST 29, 2013
COMM NO DD098256

Q

Prepared By:
Jay W. Livingston, Esq.
Livingston & Sword, P.A.
391 Palm Coast Parkway SW #1
Palm Coast, FL 32137

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this ____ day of _____, 2025 by and between KINGS BUSINESS CENTER, LLC, a Florida limited liability company, having an address at P.O. Box 670, Torrington, WY 82240 ("KBC"), and the CITY OF PALM COAST, a Florida municipal corporation, having an address at 160 Lake Avenue, Palm Coast, Florida 32164 (the "City").

RECITALS

WHEREAS, KBC is the owner of certain real property located in the municipal boundaries of the City as generally described in **EXHIBIT "A"** and legally described in **EXHIBIT "B"** (the "Property");

WHEREAS, the Property is within the Old Kings Road Special Assessment District and subject to special assessments as created and imposed by that certain Funding Agreement Related to Old Kings Road as recorded in Official Records Book 1967, Page 63, of the Public Records of Flagler County, Florida (the "OKR SAD Agreement");

WHEREAS, the OKR SAD Agreement established a funding mechanism through the payment of special assessments and transportation impact fees to pay back funds loaned by the City for the construction of Phase 1 and to provide funding to complete the design and construct Phase 2 of the Old Kings Road 4-Laning Project (the "OKR Project");

WHEREAS, Ayers Associates completed final 60% plans for Phase 2 of the OKR Project on September 22, 2009 ("60% Plans"), which included identification of needed right-of-way, stormwater ponds, and utility easements required for completion of the OKR Project;

WHEREAS, pursuant to the 60% plans, the City received environmental resource permit # 89550-4 (the "OKR Stormwater Permit") from the St. Johns River Water Management District ("SJRWMD") for Phase 2 of the OKR Project on May 27, 2011;

WHEREAS, Section 6 of the OKR SAD Agreement provides:

Landowners will convey, transfer and donate, or cause to be conveyed, transferred or donated all necessary rights-of-way and sites for drainage retention ponds to the City as needed to construct Phase 2 and any sub-phase thereof based upon the construction plans that are currently over 60% completed. Any land donated will not be subject to Special Assessments.

Owners of property located north of Phase 1 and adjacent to Old Kings Road have the option of paying for, acquiring and constructing improvements related to four-laning that portion of Old Kings Road fronting their respective properties at any time. In the event any such owner constructs a portion of Phase 2 in accordance with the City's overall widening plans, such owner will receive a credit for those expenditures to apply against transportation impact fees which would otherwise be due; provided, however, that such credit shall not exceed the amount of transportation impact fees which would otherwise be due.

WHEREAS, the 60% Plans show two (2) stormwater ponds ("Pond 6" and "Pond 7") located on the Property, as permitted by the OKR Stormwater Permit and depicted on the attached **EXHIBIT "C"**;

WHEREAS, KBC, or a predecessor in interest to the Property, has not conveyed, transferred or donated the land necessary for Pond 6 and Pond 7 to the City;

WHEREAS, the OKR Stormwater Permit has expired and is no longer valid;

WHEREAS, Section 4(E) of the OKR SAD Agreement provides:

As in the case of Phase 1, the City will pay all costs for design and construction of water, sewer and reuse utility improvements in connection with Phase 2, including relocations and upgrades, and will also use funds from its Impact Fee Fund to pay 20% of the cost to design and construction Phase 2, with credit for amounts previously advanced from its Impact Fee Fund for design and permitting of Phase 2.

WHEREAS, the City has not designed, nor caused to be designed, the portion of the water main main extension in Phase 2 of the OKR Project that will provide water service to the Property ("Water Main Extension");

WHEREAS, KBC desires to move forward with development of the Property before completion of the OKR Project by the City;

WHEREAS, KBC notified the City of its intent to design, permit and construct the Water Main Extension pursuant to Section 6 of the OKR SAD Agreement;

WHEREAS, on January 17, 2025, KBC submitted to the City an application for Technical Site Plan Tier 1 for the Water Main Extension ("KBC Water Main Plans");

WHEREAS, on June 20, 2025 the City issued a Development Order approving KBC's Technical Site Plan Tier 1, Old Kings Road Watermain Extension as recorded in Official Records Book 2982, Page 1629, of the Public Records of Flagler County, Florida;

WHEREAS, on February 4, 2025, the City Council adopted Resolution 2025-21, which approved a design contract with CPH, Inc. ("CPH") for the design of Phases 2A, 2B, and 2C of the OKR Project (the "CPH Contract");

WHEREAS, pursuant to Section 5 of the CPH Contract, the City engaged CPH to perform, *inter alia*, the design and prepare the final construction plans to 100% for Phase 2C and a portion of Phase 2A, and to perform the design and prepare the design for Phase 2A to 100% and Phase 2B to 60%, as those phases of the OKR Project are defined in the CPH Contract;

WHEREAS, pursuant to Section 11 of the CPH Contract, CPH will also prepare design documents for certain water utility improvements, except for a 12-inch water main that is part of the KBC Water Main Design; and

WHEREAS, KBC also intends to design, permit and construct a stormwater management system on the Property that will accommodate and serve both the development on the Property and the portion of Phase 2A adjacent to the Property, in coordination with CPH, that would have been served by Pond 6 and Pond 7.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter stated and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above Recitals are hereby adopted and incorporation into this Agreement.
2. Design and Extension of Water Main Extension.
 - a. KBC has completed the KBC Water Main Design, which has been approved by the City, and shall be responsible for the construction and installation of the water main according to the final approved plans. The location of the water main is generally depicted on the attached **EXHIBIT "D"**.
 - b. Within five (5) days of the Effective Date of this Agreement the City shall sign and submit KBC's permit application for the KBC Water Main Design to the Florida Department of Environmental Protection and shall issue any other required development permits authorizing construction of the Water Main Extension in an expeditious manner.
 - c. Upon completion of construction, KBC's engineer of record shall submit a signed and sealed certification of completion certifying to the City that the construction of the Water Main Extension is complete, that the Water Main Extension has been constructed in accordance with the approved KBC Water Main Design and applicable requirements of law, and, as constructed, the Water Main Extension will function for the purpose for which it was designed. At least seven (7) days prior to final inspection, KBC, or KBC's engineer shall also provide the City "as-built" surveys prepared and sealed by the engineer of record showing the location of all installations as constructed. KBC shall provide proof satisfactory to the City that the installation of the Water Main Extension and all contractors, subcontractors, materialmen and laborers have been paid in full together with the engineer's certification of the total cost of the design and construction of the Water Main Extension.
 - d. Within thirty (30) days of the City's acceptance of the Water Main Extension, KBC shall convey all of its interest in the Water Main Extension, including, but not

IN WITNESS WHEREOF, the parties executed this Agreement the day and year first written above.

WITNESSES:

KINGS BUSINESS CENTER, LLC
A Florida Limited Liability Company

Print Name: _____

By: _____
Shawn G. Madden, Manager

Address: _____

Print Name: _____

Address: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 2025 by Shawn G. Madden, Manager of Kings Business Center, LLC, a Florida Limited Liability Company, on behalf of the company. He is ___ personally known to me or ___ who has produced _____ as identification.

Notary Public – State of Florida
Print Name: _____
My Commission Expires: _____

CITY OF PALM COAST, FLORIDA

By: _____
Mike Norris, Mayor

ATTEST:

Kaley Cook, City Clerk

STATE OF FLORIDA

COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ___ day of _____, 2025 by Mike Norris, Mayor of the City of Palm Coast, Florida, on behalf of the City. He ___ is personally known to me or ___ has produced _____ as identification.

Notary Public – State of Florida
Print Name: _____
My Commission Expires: _____

EXHIBIT "A"



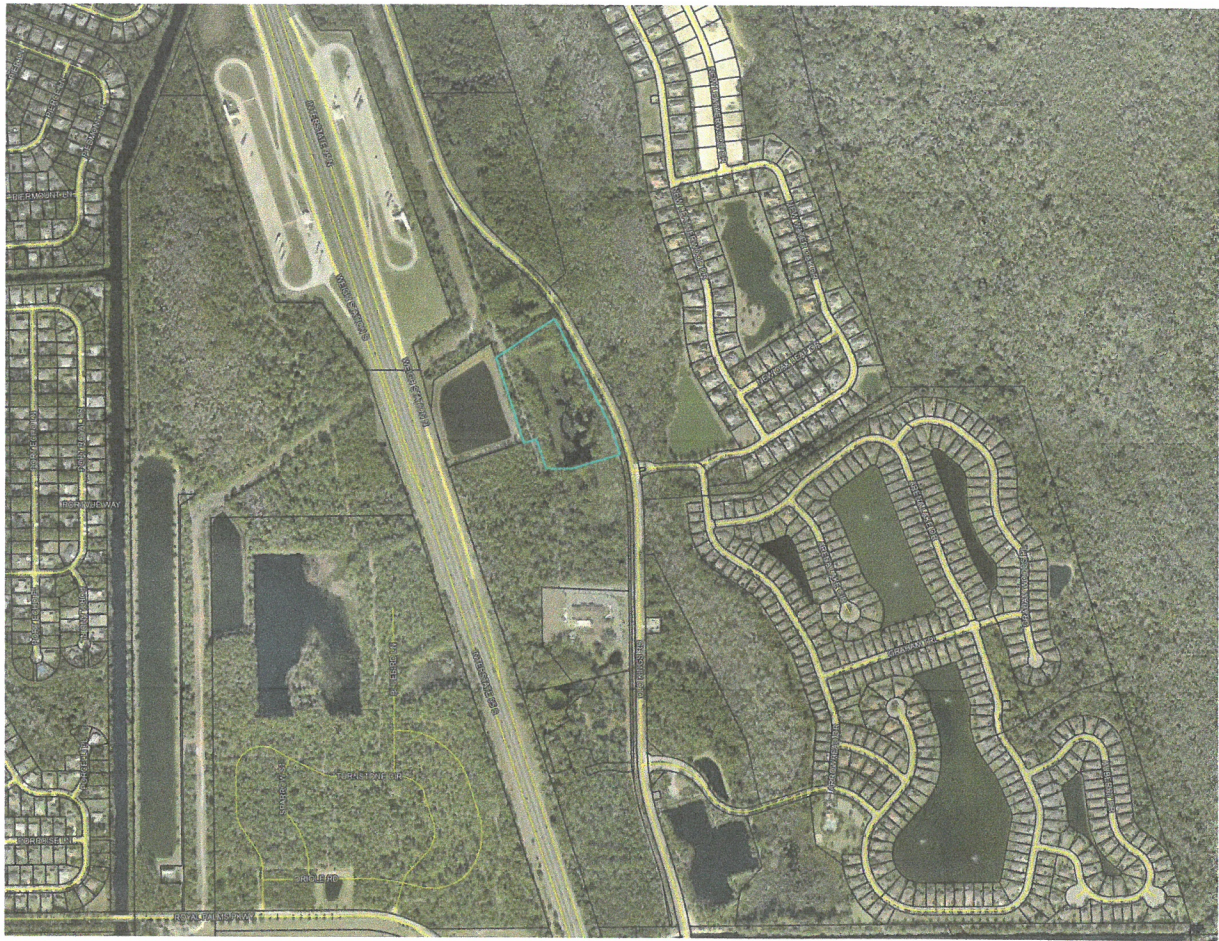


EXHIBIT "B"

Legal Description of the Property

PROPERTY APPRAISER'S PARCEL ID # 20-11-31-0000-01020-0000

PART OF GOVERNMENT SECTIONS 20, 29 AND 32, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, LYING EAST OF INTERSTATE 95 AND WEST OF OLD KINGS ROAD (66 FOOT WIDE RIGHT OF WAY) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE SOUTHWEST CORNER OF SAID SECTION 20, THENCE N88°57'37"E, FOR A DISTANCE OF 1677.36 FEET TO THE POINT OF BEGINNING ON THE EASTERLY RIGHT OF WAY LINE OF INTERSTATE 95 (A 300 FOOT WIDE RIGHT OF WAY AT THIS POINT); THENCE N18°20'58"W ALONG SAID EASTERLY RIGHT OF WAY LINE, FOR A DISTANCE OF 708.07 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE AND RUN N87°21'58"W FOR A DISTANCE OF 371.88 TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF OLD KINGS ROAD (A 66 FOOT WIDE RIGHT OF WAY AS DESCRIBED IN OFFICIAL RECORDS BOOK 596, PAGES 712-715) SAID POINT BEING ON A NON-TANGENT CURVE; THENCE RUN SOUTHERLY ALONG SAID WESTERLY RIGHT OF WAY OF OLD KINGS ROAD FOR THE FOLLOWING TWELVE (12) COURSES: (1) THENCE SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 08°18'32", A RADIUS OF 1460.18 FEET, AN ARC LENGTH OF 211.75, A CHORD BEARING OF S14°39'14"E AND A CHORD DISTANCE OF 211.57 FEET TO A POINT OF TANGENCY; (2) THENCE S18°48'30"E FOR A DISTANCE OF 230.74 FEET TO A POINT OF CURVATURE; (3) THENCE SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 02°44'57", A RADIUS OF 5935.37 FEET, AN ARC LENGTH OF 284.79 FEET, A CHORD BEARING OF S20°10'58"E AND A CHORD DISTANCE OF 284.76 FEET TO A POINT OF TANGENCY; (4) THENCE S21°33'27"E, FOR A DISTANCE OF 3279.89 FEET TO A POINT OF CURVATURE; (5) THENCE SOUTHERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 07°33'32", A RADIUS OF 2831.56 FEET, AN ARC LENGTH OF 373.56 FEET, A CHORD BEARING OF S17°46'41"E AND A CHORD DISTANCE OF 373.29 FEET TO A POINT OF TANGENCY; (6) THENCE S13°59'55"E, FOR A DISTANCE OF 346.05 FEET TO A POINT OF CURVATURE; (7) THENCE SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 05°53'04", A RADIUS OF 2897.91 FEET, AN ARC LENGTH OF 297.63 FEET, A CHORD BEARING OF S16°56'27"E AND A CHORD DISTANCE OF 297.50 FEET TO A POINT OF TANGENCY; (8) THENCE S19°52'59"E, FOR A DISTANCE OF 521.87 FEET; (9) THENCE SOUTHERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 01°09'30", A RADIUS OF 11428.18 FEET, AN ARC LENGTH OF 231.06 FEET, A CHORD BEARING OF S19°18'14"E AND A CHORD DISTANCE OF 231.06 FEET TO A POINT OF TANGENCY; (10) THENCE S18°43'29"E, FOR A DISTANCE OF 912.23 FEET TO A POINT OF CURVATURE; (11) THENCE SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 33°30'22", A RADIUS OF 1462.49 FEET, AN ARC LENGTH OF 855.25 FEET, A CHORD BEARING OF S35°28'40"E AND A CHORD DISTANCE OF 843.12 FEET TO A POINT OF REVERSE CURVATURE; (12) THENCE SOUTHERLY ALONG A CURVE

TO THE RIGHT HAVING A CENTRAL ANGLE OF 19°42'46", A RADIUS OF 1374.80 FEET, AN ARC LENGTH OF 473.00 FEET, A CHORD BEARING OF S42°22'28"E AND A CHORD DISTANCE OF 470.67 FEET; THENCE DEPART SAID WESTERLY RIGHT-OF-WAY OF OLD KINGS ROAD RUN S56°22'09"W AND ALONG THE SOUTH LINE OF AN EASEMENT FOR ACCESS RECORDED IN OFFICIAL RECORDS BOOK 939, PAGES 1751 THROUGH 1753, FOR A DISTANCE OF 471.21 FEET; THENCE DEPARTING SAID SOUTH LINE RUN N18°20'58"W ALONG THE EAST LINE OF FDOT PARCEL RECORDED IN OFFICIAL RECORDS BOOK 939, PAGES 1746-1750, FOR A DISTANCE OF 95.65 FEET TO THE NORTHEAST CORNER OF SAID FDOT PARCEL, THENCE S56°22'09"W ALONG THE NORTH LINE OF SAID FDOT PARCEL, FOR A DISTANCE OF 428.78 FEET, THENCE S04°46'15"W ALONG THE NORTHWEST BOUNDARY LINE OF SAID FDOT PARCEL, FOR A DISTANCE OF 193.09 FEET TO A POINT ON THE EAST LINE OF ADDITIONAL LANDS FOR INTERSTATE-95 LIMITED ACCESS RIGHT OF WAY RECORDED IN OFFICIAL RECORDS BOOK 490, PAGES 716-718 TO A POINT ON THE EASTERLY LIMITED ACCESS RIGHT-OF-WAY LINE OF INTERSTATE-95; THENCE ALONG THE EASTERLY LINE OF SAID LIMITED ACCESS RIGHT OF WAY OF INTERSTATE-95 THE FOLLOWING SIX (6) COURSE, (1) N16°03'24"W, FOR A DISTANCE OF 401.51 FEET, (2) THENCE N03°20'58"W, FOR A DISTANCE OF 22.60 FEET, (3) THENCE N56°02'17"E, FOR A DISTANCE OF 303.76 FEET, (4) THENCE N19°42'04"W, FOR A DISTANCE OF 1911.00 FEET, (5) THENCE S89°57'13"W, FOR A DISTANCE OF 197.00 FEET, (6) THENCE N30°29'16"W, FOR A DISTANCE OF 441.85 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE 300 FOOT WIDE RIGHT OF WAY OF INTERSTATE 95; THENCE N18°20'58"W ALONG SAID EASTERLY RIGHT OF WAY LINE, FOR A DISTANCE OF 4829.49 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING 89.43 ACRES OF LAND MORE OR LESS.

AND

PROPERTY APPRAISER'S PARCEL ID # 32-11-31-0000-01010-0012

A PARCEL OF LAND BEING A PORTION OF PARCEL 524, RECORDED IN OFFICIAL RECORDS BOOK 553, PAGE 1539 THROUGH 1840, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, SAID PARCEL LYING IN THE NORTHEAST QUARTER (1/4) OF GOVERNMENT SECTION 32, AND IN SECTION 33, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER (1/4) OF SECTION 32, TOWNSHIP 11 SOUTH, RANGE 31 EAST, THENCE SOUTH 89°08'14" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 1054.22 FEET TO A POINT ON THE EASTERLY LINE OF THE LIMITED ACCESS RIGHT OF WAY OF INTERSTATE 95, THENCE DEPARTING THE SOUTH LINE OF THE NORTHEAST QUARTER, RUN NORTH 18°20'58" WEST ALONG SAID EASTERLY RIGHT OF WAY LINE OF INTERSTATE 95 A DISTANCE OF 308.77 FEET TO A POINT BEING THE SOUTHWEST CORNER OF FLORIDA DEPARTMENT OF TRANSPORTATION'S (FDOT) TRACT OF

LAND RECORDED IN OFFICIAL RECORDS BOOK 939, PAGES 1751 THROUGH 1753, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, THENCE DEPARTING INTERSTATE 95 RUN NORTH 71°39'02" EAST ALONG THE SOUTH LINE OF SAID FDOT LAND A DISTANCE OF 500.00 FEET, THENCE NORTH 18°20'58" WEST ALONG A LINE PARALLEL WITH INTERSTATE 95 A DISTANCE OF 562.45 FEET, THENCE DEPARTING SAID FDOT'S TRACT OF LAND NORTH 56°22'09" EAST ALONG THE SOUTH LINE OF AN EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 939, PAGES 1751 THROUGH 1753, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, A DISTANCE OF 471.21 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF OLD KINGS ROAD (66' R/W) SAID POINT BEING ON A CURVE, THENCE SOUTHERLY ALONG SAID RIGHT OF WAY LINE 104.30 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, (CONCAVE SOUTHWESTERLY), HAVING A CENTRAL ANGLE OF 04°20'48", A RADIUS OF 1374.80 FEET, A CHORD BEARING OF SOUTH 30°20'41" EAST A CHORD DISTANCE OF 104.27 FEET TO A POINT OF TANGENCY, THENCE SOUTH 28°10'17" EAST ALONG SAID WESTERLY RIGHT OF WAY LINE OF OLD KINGS ROAD A DISTANCE OF 552.96 FEET, TO A POINT OF CURVATURE, THENCE 679.58 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, (CONCAVE WESTERLY), HAVING A CENTRAL ANGLE OF 27°17'47", A RADIUS OF 1426.46 FEET, A CHORD BEARING OF SOUTH 14°31'23" EAST AND A CHORD DISTANCE OF 673.17 FEET TO A POINT OF TANGENCY, THENCE DEPARTING OLD KINGS ROAD SOUTH 89°08'14" WEST ALONG THE NORTH LINE OF PARCEL 543, RECORDED IN OFFICIAL RECORDS BOOK 637, PAGE 889 THROUGH 898, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, A DISTANCE OF 21.10 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT ANY PORTION OF THE ABOVE REAL PROPERTY THAT IS INCLUDED IN THE FOLLOWING:

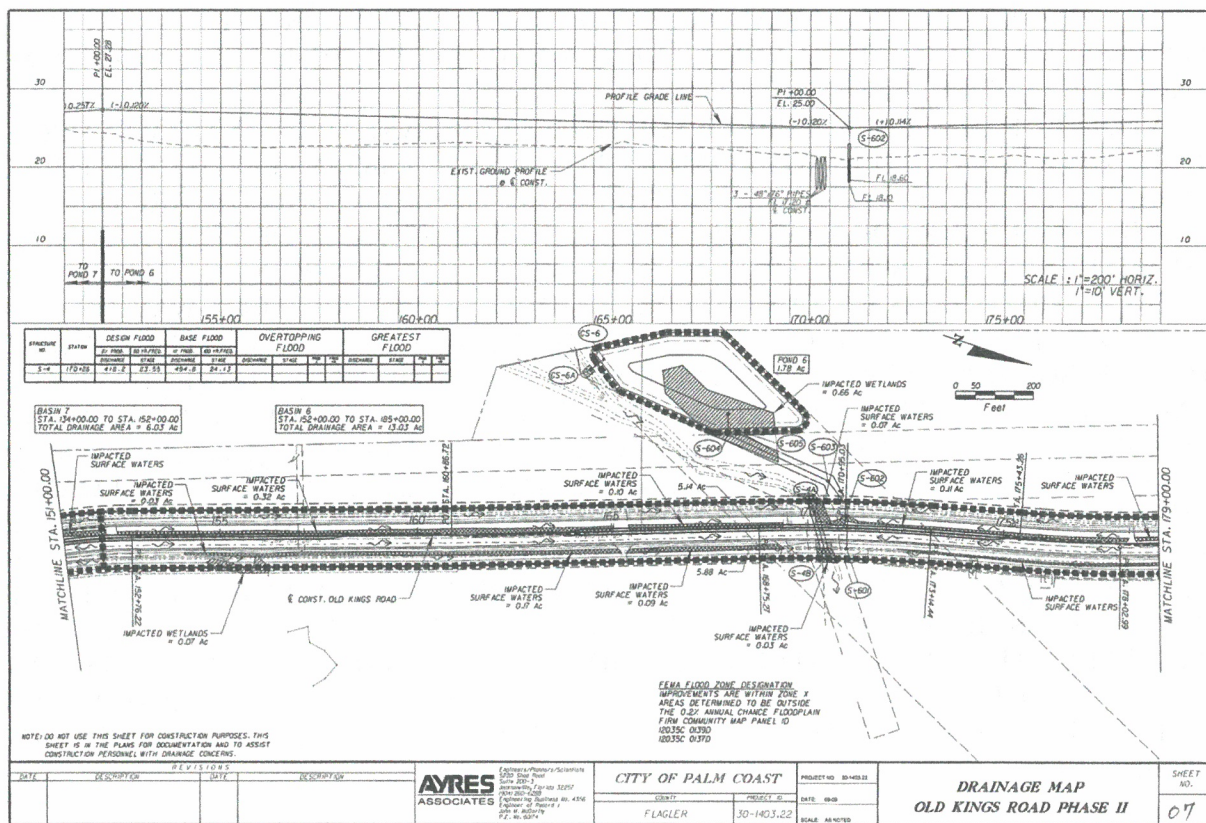
A PARCEL OF LAND LYING IN GOVERNMENT SECTION 32 AND SECTION 33, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 32, THENCE SOUTH 88°46'16" WEST ALONG THE SOUTH LINE OF SAID SECTION 32 A DISTANCE OF 213.45 FEET TO A POINT ON THE EASTERLY LINE OF THE 300 FOOT LIMITED ACCESS RIGHT-OF-WAY OF INTERSTATE 95; THENCE DEPARTING THE SOUTH LINE OF SECTION 32, RUN NORTH 18°20'58" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 95 A DISTANCE OF 3105.44 FEET TO A POINT BEING THE SOUTHWEST CORNER OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TRACT OF LAND RECORDED IN OFFICIAL RECORDS BOOK 939, PAGE 1751 THROUGH 1753 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE DEPARTING INTERSTATE 95 RUN NORTH 71°39'02" EAST ALONG THE SOUTH LINE OF SAID FDOT LAND A DISTANCE OF 500.00 FEET; THENCE DEPARTING SAID FDOT TRACT OF LAND RUN NORTH 71°39'02" EAST A DISTANCE OF 81.00 FEET; THENCE SOUTH 18°20'58" EAST A DISTANCE OF 195.71 FEET; THENCE NORTH 87°46'51" EAST A DISTANCE OF 163.94 FEET; THENCE NORTH 73°39'45" EAST A DISTANCE OF 318.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF OLD KINGS ROAD (A VARIABLE RIGHT-

OF-WAY) AS RECORDED IN OFFICIAL RECORDS BOOK 1369, PAGE 870 AND OFFICIAL RECORDS BOOK 596, PAGE 712, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG SAID RIGHT-OF-WAY LINE FOR 375.78 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1,392.46 FEET, A CENTRAL ANGLE OF 15°27'44", AND A CHORD BEARING OF SOUTH 08°36'23" EAST, 374.64 FEET TO A POINT OF TANGENCY; THENCE SOUTH 00°49'45" EAST ALONG SAID WESTERLY RIGHT-OF-WAY OF OLD KINGS ROAD A DISTANCE OF 1,489.88 FEET TO THE POINT OF CURVE TO THE LEFT; THENCE SOUTHERLY 460.86 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1,499 FEET, A CENTRAL ANGLE OF 17°36'41", AND A CHORD BEARING OF SOUTH 09°38'45" EAST, 459.05 FEET TO A POINT OF TANGENCY; THENCE SOUTH 18°25'49" EAST ALONG SAID WESTERLY RIGHT-OF-WAY OF OLD KINGS ROAD A DISTANCE OF 231.07 FEET TO A POINT OF CURVE TO THE RIGHT; THENCE SOUTHERLY 390.47 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 3,357.02 FEET, A CENTRAL ANGLE OF 06°39'52", AND A CHORD BEARING OF SOUTH 15°05'54" EAST, 390.25 FEET TO A POINT OF TANGENCY; THENCE SOUTH 11°45'58" EAST ALONG SAID WESTERLY RIGHT-OF-WAY OF OLD KINGS ROAD A DISTANCE OF 35.96 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 78°14'02" WEST FOR A 4.33 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE OF SOUTH 10°06'19" EAST FOR A DISTANCE OF 13.38 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE SOUTH 89°13'53" WEST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF SAID SECTION 33 A DISTANCE OF 227.13 FEET TO THE EAST LINE OF SAID SECTION 32; THENCE SOUTH 00°51'13" EAST ALONG SAID EAST LINE OF SECTION 32 A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING 27.85 ACRES OF LAND MORE OR LESS.

Pond 6 Detail



Pond 7 Detail

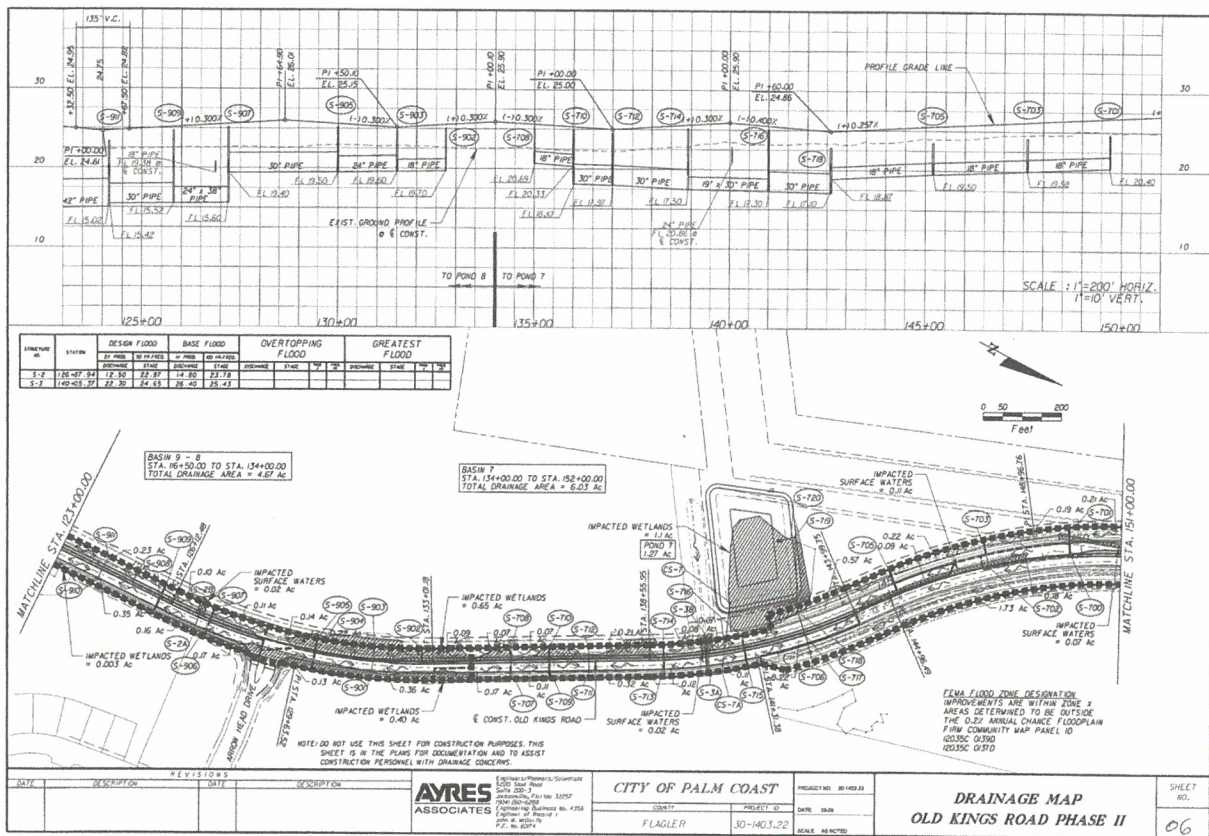
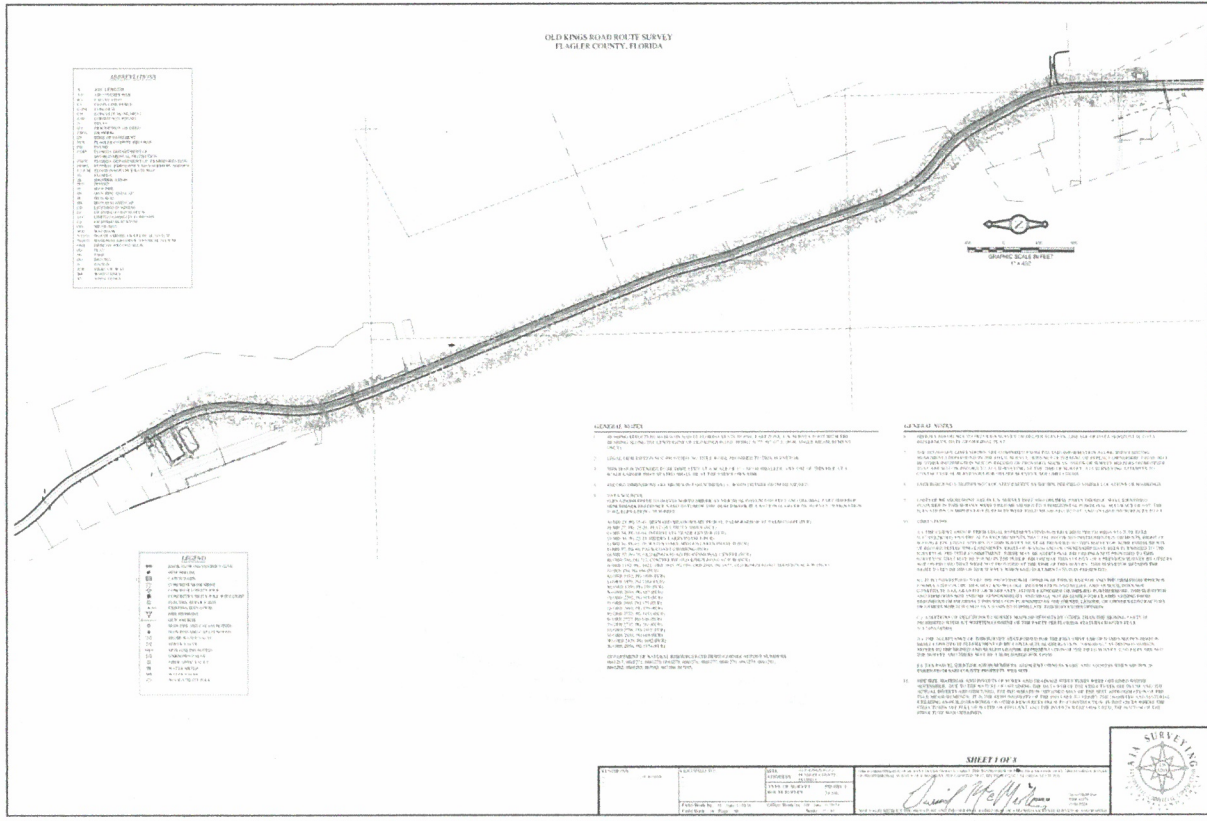


EXHIBIT "D"





STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

October 3, 2008

RECEIVED

OCT 07 2008

FLAGLER COUNTY
PLANNING & ZONING

The Honorable James O'Connell
Chairman, Flagler County Board of Commissioners
1769 East Moody Boulevard, Building 2, Suite 302
Bunnell, Florida 32110

Dear Chairman O'Connell:

The Department has reviewed the proposed Comprehensive Plan Amendment for Flagler County (DCA No. 08-2), which was received on August 6, 2008. Based on Chapter 163, Part II, Florida Statutes, Rule 9J-5, Florida Administrative Code, and the adopted Flagler County Comprehensive Plan, we have prepared the attached report that outlines our findings concerning the amendment. Flagler County is proposing two Future Land Use Map Amendments and text amendments to the Recreation and Open Space Element to update the Comprehensive Plan.

The Department is raising three objections to the Flagler Pines Properties, LLC and Iroquois, LLC amendments relating to the demonstration of adequate public facilities and one objection to the Iroquois, LLC amendment regarding the demonstration of adequate public school facilities for the five-year planning timeframe.

The attached Objections, Recommendations, and Comments Report is intended to assist the County in responding to the issues we have raised in a manner that is in compliance with state growth management requirements. We have also included a copy of local, regional and state agency comments for your consideration. Within the next 60 days, the County should act by choosing to adopt, adopt with changes or not adopt the proposed amendments. For your assistance, our report outlines procedures for the final adoption and transmittal.

The Department's staff is available to assist the County in responding to the report. If you have questions regarding this matter, please call Jeannette Hallock-Solomon, Senior Planner, at (850) 922-1809.

Sincerely,

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/jhs

Enclosures

cc: Mr. Adam Mengel, AICP, Planning and Zoning Director, Flagler County
Mr. Ed Lehman, Growth Management Director, Northeast Florida Regional Council

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

available facility capacity to meet the demand generated by the max development potential of the proposed land use designation.

Objection 3: Impacts to Transportation Facilities (amendments #2747 and #2785):

The County submitted transportation data and analysis for each of the amendments that analyzed the short and long-range impacts based on maximum development potential for the proposed land use designation; however, the methodologies were not professionally acceptable due to the reasons listed below by amendment. Since the amendments' data and analysis was not professionally acceptable, the proposed Future Land Use Map amendments are not supported by an adequate transportation analysis addressing the following (1) the impact of the vehicle trips on the projected operating level of service of roadways for the short-term (5-year) and long-term (10-year) planning timeframes; (2) the need for road improvements (scope, timing and cost of improvements) to maintain the adopted level of service standards for roadways; (3) coordination of the road improvements with the Transportation and Capital Improvements Elements, including implementation through the Five-year Schedule of Capital Improvements; and (4) coordination of road improvements with the Florida Department of Transportation. Therefore, since both proposed amendments fail to demonstrate that the affected roadways' level of service standards will be achieved and maintained, they are inconsistent with the County's comprehensive plan Transportation Element Objective 1.1 that requires the provision of a safe and efficient roadway system by maintaining adopted roadway level of service standards.

A. Amendment #2747

The traffic analysis for amendment # 2747 identified roadway deficiencies (including SR 100, an emerging SIS facility), but the amendment does not identify needed improvements to correct the deficiencies nor incorporate the improvements needed to address deficiencies identified in the short-term (five-year) planning timeframe in the County's five-year schedule of capital improvements.

Also, the County did not base the traffic impact analysis on a professionally acceptable methodology as required under Rule 9J-5, F.A.C., as detailed in the Florida Department of Transportation's comment letter attached to this ORC Report. The methodology was not professionally acceptable because: (1) an incorrect trip generation rate was used (the analysis identified the land use change as light industrial but used the heavy industrial generation rate); (2) the K(100) factors on SIS facilities (SR 100 and I-95) that were used are lower than the FDOT minimum; (3) the 2012 and 2025 peak hour two-way traffic was incorrectly calculated using the K factors instead of rates published by ITE, and (4) it is unclear whether the 2012 total volumes shown in Table 5 depict the 2011 or 2012 volumes because the analysis indicates that the 2012 total volumes were developed using Year 2011 existing plus committed volumes, instead of using the Year 2012 existing plus committed volumes.

B. Amendment #2785

The traffic analysis for amendment #2785 was not based on a professionally acceptable methodology as required under Rule 9J-5, F.A.C., as detailed in the Florida Department of

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

DECEMBER 15, 2008

REGULAR MEETING

Present: Chair Milissa Holland, Vice Chair George Hanns, Commissioners Bob Abbott, Barbara Revels and Alan Peterson, Clerk Gail Wadsworth, County Administrator Craig Coffey, County Attorney Al Hadeed and Board Secretary Linda Sanita

Chair Holland called the meeting to order at 4:30 p.m.

Pledge to the Flag led by Commissioner Abbott

Chair Holland requested a moment of silence for the troops in harm's way, especially those serving in the Middle East, and their families for the sacrifices made during the holiday season and all year long.

ANNOUNCEMENTS BY THE CHAIR

Chair Holland made the following announcements:

- Monday, December 15, 2008 at 3:30 p.m. – BCC officially dedicated the Lehigh Trail from Belle Terre Parkway to Colbert Lane. Commented it was a great example of Federal, County, State and Municipal governments and Flagler County citizens working together for a common goal
- Friday, December 19, 2008 at 3:00 p.m. – Third Flagler County Drug Court Graduation Ceremony at the Kim C. Hammond Justice Center
- Saturday, December 20, 2008 from 10:00 a.m. to 2:00 p.m. and 4:00 p.m. to 8:00 p.m. – Florida Agricultural Museum Christmas in the Country Event
- Monday, January 26, 2008 from 4:00 p.m. to 6:00 p.m. – Flagler County Legislative Delegation Meeting and Public Forum at the Government Services Building in the Board Chambers. Anyone wishing to file a local bill or be placed on the agenda should contact Hilda Quintero in the office of Pat Patterson
- Thank you from Florido Bulacon, of the Philippines, for a Technology Center in the community
- Thank you from Carl Hamp, Director of Economic Development at Marineland, for the River-to-Sea Preserve upgrades and improvements
- Addendum to Agenda adding Items 2a, 5c, 12, 12a and backup for Items 17 and 18
- Addition to Item 19 – Flagler County's legislative list – 6a relating to Stewart Marchman

Note: The agenda items were renumbered as noted in hand on the staff cover memos due to the revisions/additions to the originally published agenda.

December 15, 2008
Regular Meeting

ITEM 14 - APPLICATION #2747 - ADOPTION OF FUTURE LAND USE MAP AMENDMENT FROM AGRICULTURE AND TIMBERLANDS (A&T) TO INDUSTRIAL (I) FOR 54.05± ACRES LYING SOUTH OF STATE ROAD 100, NORTH OF AND ADJACENT TO THE FLAGLER COUNTY AIRPORT AND FUTURE LAND USE POLICY 1.10(G); OWNERS: FLAGLER PINES PROPERTIES, LLC AND FLAGLER AIRPORT INDUSTRIAL, LLC AND APPLICANT: MICHAEL D. CHIUMENTO, III

The following information was provided by Adam Mengel, Planning and Zoning Director:

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
PUBLIC HEARING / AGENDA ITEM # ~~15~~ 14**

SUBJECT: Application #2747 – Adoption of Future Land Use Map Amendment from Agriculture and Timberlands (A&T) to Industrial (I) for 54.05± Acres Lying South of State Road 100, North of and Adjacent to the Flagler County Airport and Future Land Use Policy 1.10(g); Owners: Flagler Pines Properties, LLC and Flagler Airport Industrial, LLC and Applicant: Michael D. Chiumento, III

DATE OF MEETING: December 15, 2008

OVERVIEW/SUMMARY: The request is for adoption of a Future Land Use Map Amendment for approximately 54.05 acres from Agriculture & Timberlands designation to Industrial. If approved, this amendment will be transmitted for inclusion in the second amendment cycle of 2008. The Board is reviewing this request in your capacity as Local Planning Agency for Flagler County.

The applicant, Flagler Pines Properties LLC and Flagler Airport Industrial LLC, is seeking the re-designation of lands currently vacant to provide areas for future limited industrial activities, with the overall goal of providing for increased economic development opportunities. The subject property is located south of State Road 100 and adjacent to the Flagler County Airport and in close proximity to other commercially-designated lands. The applicant, through their agent, asserts that the requested amendment is consistent with the Flagler County Comprehensive Plan and compatible with surrounding land uses. Additionally, the requested amendment is consistent with the adopted Airport Master Plan.

The Department of Community Affairs (DCA) reviewed the transmittal documents for this request and issued their Objections, Recommendations and Comments (ORC) report on October 3, 2008. Issues raised on this request relate to adequate public facilities such as:

- Demonstration of water supply
- Potable Water and Sewer Facilities
- Impacts to Transportation Facilities

Flagler County's responses are generally stated as follows:

- Demonstration of water supply
 - The subject site is located within the City of Palm Coast service area as identified in the Settlement Agreement recorded at Official Records Book 1560, Page 471, Public Records of Flagler County, Florida. The applicant asserts that due to the provision of water by the City of Palm Coast, any deficiencies in the County's water supply plan should not affect the subject amendment. The City of Palm Coast presently has insufficient capacity

December 15, 2008
Regular Meeting

(Item 14 – continued)

available under their existing Consumptive Use Permit (CUP), but anticipate more than sufficient capacity to serve the subject property to be permitted in 2009, (pending CUP expansion to 11.407 MGD).

- Potable Water and Sewer Facilities
 - The DCA has indicated concern that the subject request is inconsistent with Future Land Use Policy 8.1 regarding allowing higher densities and intensities in the urban service areas only where public facilities are available and with Section 163.3177(6)(a), Florida Statutes which states that the future land use plan shall be based on data regarding the availability of public facilities and services. The applicant asserts that the amendment includes a letter from the City of Palm Coast indicating that it would be the service provider for potable water and sewer. A St. Johns River Water Management District Potable Water Availability Worksheet is included as "Exhibit B" of the applicant's response and indicates that sufficient wastewater capacity is available with infrastructure nearby to serve the subject property. The water treatment plant identified to service the subject property has a permitted capacity of 15.384 MGD, an amount in excess of the demands of the subject property.
- Impacts to Transportation Facilities
 - The applicant's response recognizes that the maximum development potential of the subject amendment would result in impacts to surrounding transportation facilities. The applicants propose adoption of a parcel specific limiting policy of the Future Land Use Element to ensure that the amendment does not increase traffic beyond that existing under the currently adopted Future Land Use Map. The parcel specific limiting policy would limit the entire 89± acre parcel wholly owned by the applicants of which the subject amendment affects 54 acres. According to the applicants' representative current trip generation of the 89 acres is as follows:

Future Land Use designation	Acreage	Maximum Daily Trips	Maximum Peak Hour Trips
Ag & Timberlands (subject of amendment)	54.05	96	10
Commercial High Intensity	35.443	17,070	1,603
Total	89	17,166	1,613

The limiting policy would read as follows:

Policy 1.10(g) FLUM Application #2747, Flagler Airport Industrial, LLC and Flagler Pines Properties, L.L.C., approximately 89.493 acres designated as Industrial (54.05 acres) and Commercial High Intensity (35.443 acres) is limited to 17,166 daily trips and 1,613 peak hour trips. The 2008 tax

December 15, 2008
Regular Meeting

(Item 14 – continued)

parcel numbers of the subject properties are 08-12-31-0650-0000-0070, 08-12-31-0650-000B0-0071, and 08-12-31-0650-000D0-0050.

The applicants' representative, through their written response to the ORC, maintains that the subject amendment inclusive of the parcel specific limiting policy is consistent with the Comprehensive Plan of Flagler County.

Comprehensive plan amendments are legislative actions and a local government is provided broad latitude to determine the applicability of one land use category versus another. The standards of Chapter 163, F.S. and Rule 9J-5, F.A.C. form the basis for review, along with existing objectives and policies of the Comprehensive Plan. Proposed land uses are considered relative to topographical and soil conditions, the availability of services and facilities, environmental factors, and the existing and desired character of the surrounding community, especially its boundaries adjoining the Airport.

BCC review authority: Chapter 163.3174(4), Florida Statutes requires that the local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. The Flagler County Board of County Commissioners is the local planning agency for Flagler County.

This agenda item is:

- ☐ quasi-judicial, requiring disclosure of ex-parte communication; or
☒ legislative, not requiring formal disclosure of ex-parte communication.

PLANNING BOARD RECOMMENDATION: The Planning Board held a public hearing on January 15, 2008 and unanimously (4-0) recommended that the Board of County Commissioners adopt Application #2747, Large Scale Future Land Use Map Amendment and finds that the proposed amendment is consistent with the Goals, Objectives, and Policies of the Comprehensive Plan.

TRANSMITTAL BY BCC: July 21, 2008 the Board unanimously voted to transmit Application #2747 to the Department of Community Affairs.

PARTIES OF RECORD: None.

DEPT./CONTACT/PHONE #: Planning & Zoning / Adam Mengel / 386-313-4065

OPTIONS: The possible actions for the Commission include:

1. Approve transmittal of the requested Future Land Use Map Amendment; or
2. Deny the request; or
3. Table the request until a time certain.

December 15, 2008
Regular Meeting

(Item 14 – continued)

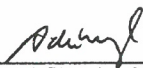
Analysis of options:

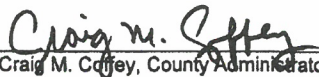
- Approval of the request allows amendment of the Future Land Use Map for the property subject of the application to Industrial and transmittal of the adoption to the Department of Community Affairs as part of the second amendment cycle for Flagler County for 2008.
- Denial of the request would maintain the current Future Land Use Map designation of Agriculture & Timberlands.
- Tabling the request would likely be for a specific purpose, typically to permit additional analysis or resolution of issues. Tabling the request would likely delay adoption of the County's second cycle amendments.

RECOMMENDATIONS: Request the Board adopt Application #2747, Large Scale Future Land Use Map Amendment, and find that the proposed amendment is consistent with the Goals, Objectives, and Policies of the Comprehensive Plan with the prescribed parcel specific limiting policy.

ATTACHMENTS:

1. Adoption Ordinance
2. Objections, Recommendations and Comments (ORC)
3. Applicant's response to ORC
4. BCC Meeting Notice


Adam Mengel, Planning & Zoning Director
11-26-08
Date


Craig M. Coffey, County Administrator
4 DEC 2008
Date

December 15, 2008
Regular Meeting

(Item 14 – continued)

Adam Mengel, Planning and Zoning Director, gave the presentation. Stated there were questions and concerns and staff felt the applicant had provided the justification that showed the concerns had been met. Staff's recommendation was for approval. Noted the sign up sheet was in the back of the room for any notice of intent.

Commissioner Peterson asked staff to explain the procedure utilized to determine the maximum peak hour and daily trips.

Mr. Mengel explained the FDOT's initial review applied the highest and best use type methodology; it was a result of traffic studies that applied the standard within the Institute of Traffic Engineers most recent trip generation manual. Commented staff agreed with the study.

Commissioner Revels stated she was on the Planning Board in January 2008 and reviewed the application. Asked if it was appropriate for her to vote again.

County Attorney Hadeed replied it would not impair her ability to vote on it again.

Chair Holland recommended coming up with a joint City and County plan for the roadway system.

County Administrator Coffey replied it would come together through the TPO/MPO, but they had to have Palm Coast involved.

Michael Chiumento, speaking for the applicant, stated they had been working on this for a year or more and had satisfied the issues with the FDOT. Advised after dealing with the Comp Plan amendments the limiting factors would keep development to about 700,000 square feet.

Chair Holland requested public comments.

There were no public comments.

A motion was made by Commissioner Revels to approve. Seconded by Commissioner Peterson.

Chair Holland called the question. Motion carried unanimously.