Rezoning Application:	PD 22-0949
Zoning Hearing Master Date:	November 14, 2022
BOCC Land Use Meeting Date:	January 10, 2023

Hillsborough County Florida
Development Services Department

1.0 APPLICATION SUMMARY

Applicant:	David Singer; Schumaker, Loop & Kendrick, LLP
FLU Category:	Residential-4
Service Area:	Urban
Site Acreage:	Approximately 7.6 acres
Community Plan Area:	Brandon
Overlay:	None

Introduction Summary:
The applicant seeks to develop an approximately 7.6-acre unified development consisting of one folio. The request is for a rezoning from Agricultural Single-family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units.

Zoning:	Existing	Proposed
District(s)	ASC-1	Planned Development
Typical General Use(s)	Single-Family Residential/Agricultural	Single-family
Acreage	7.6 acres	7.6 acres
Density/Intensity	Minimum 1 acre per SF home	1.84 SF per acre

Development Standards:	Existing	Proposed
District(s)	ASC-1	PD
Setbacks/Buffering and Screening	Front: 50 ft. Side: 15 ft. Rear: 50 ft.	**Type A Lots:** Front / Rear Yard Min. 22 ft. Side Setback: Min. 7.5 ft. **Type B Lots:** Front / Rear Yard Min. 22 ft. Side Setback: Min. 5 ft. **Type C Lots (Corner Lot):** Front Min. 22 ft. Rear: NA, Side Setback: Min. 5 ft.
Height	50 ft. Max. Ht.	30 ft. Max. Ht.

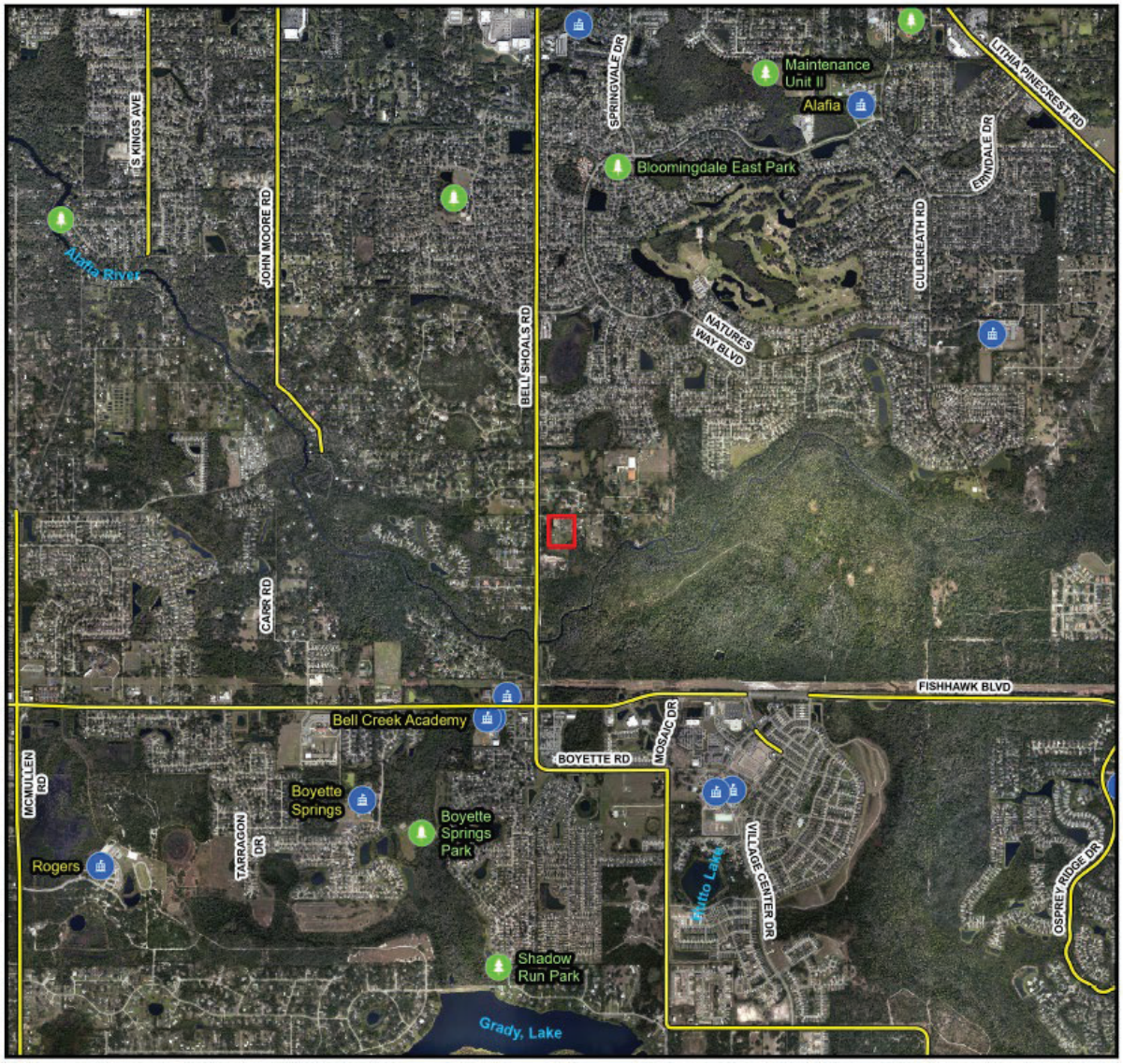
Additional Information:	
PD Variation(s)	None requested as part of this application
Waiver(s) to the Land Development Code	None requested as part of this application.

Planning Commission Recommendation:	**Development Services Recommendation:**
CONSISTENT	**APPROVABLE,** Subject to Conditions.

Created 8-17-21

2.0 LAND USE MAP SET AND SUMMARY DATA

2.1 Vicinity Map



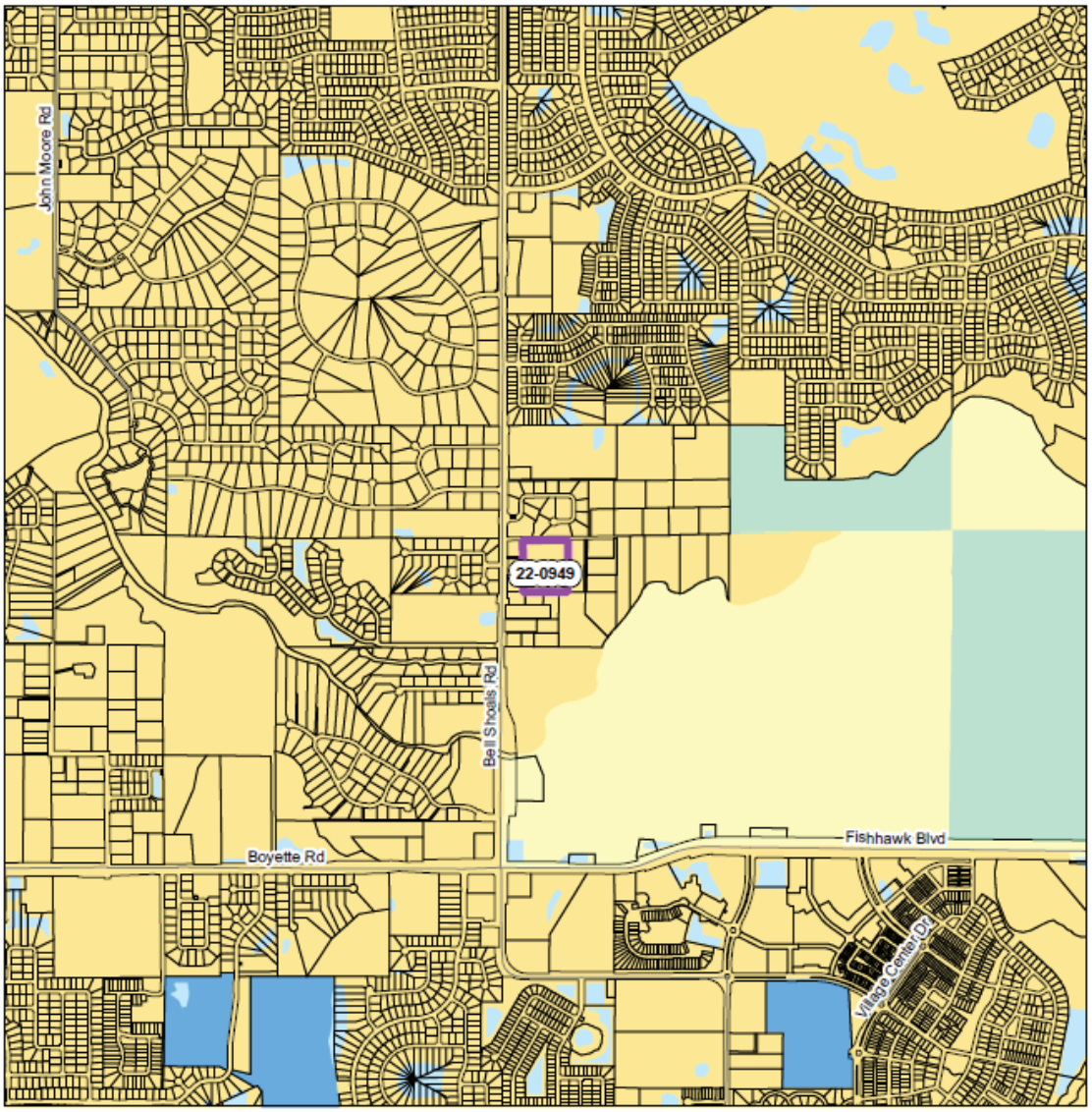
Context of Surrounding Area:

The site is located on the south side of Myrtle Road, approximately 200 feet east of Bell Shoals Road and approximately 3,800 feet north of Fishhawk Boulavard and is located in the Urban Service Area within the limits of the Brandon Community Plan. The immediate area surrounding the property is predominantly developed with residential and vacant. The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. To the north, northeast, east, and west is single-family development.

To the south, southeast and southwest is vacant land zoned for residential (ASC-1) and agricultural (AR). To the southwest across Bell Shoals Road is an Assisted Living Facility/Community Residential Home with a maximum of 260 places residents/beds.

2.0 LAND USE MAP SET AND SUMMARY DATA

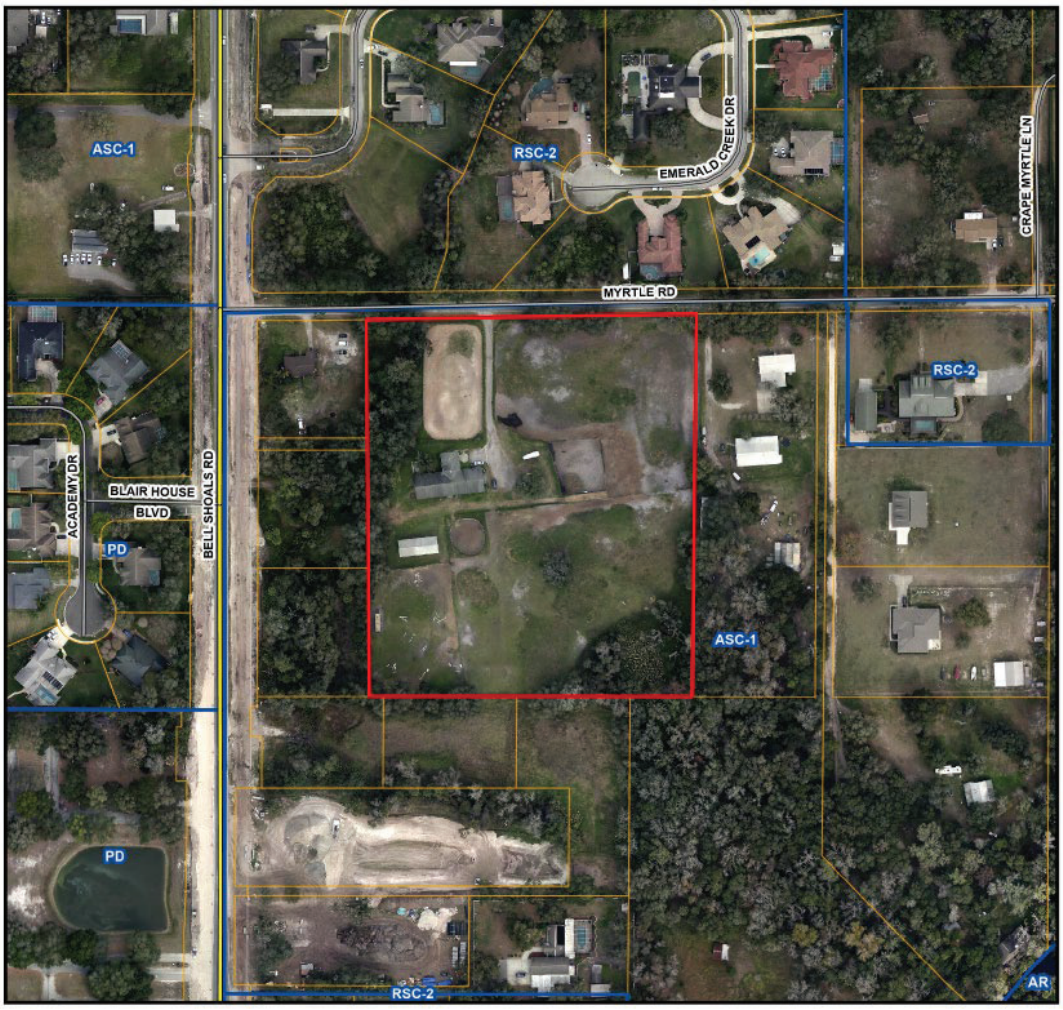
2.2 Future Land Use Map



Subject Site Future Land Use Category:	RES-4 (Residential - 4)
Maximum Density/F.A.R.:	4 dwelling per acre (R-20) / 0.25 Maximum FAR
Typical Uses:	Typical uses in the RES-4 include residential, suburban commercial, offices, multi-purpose.

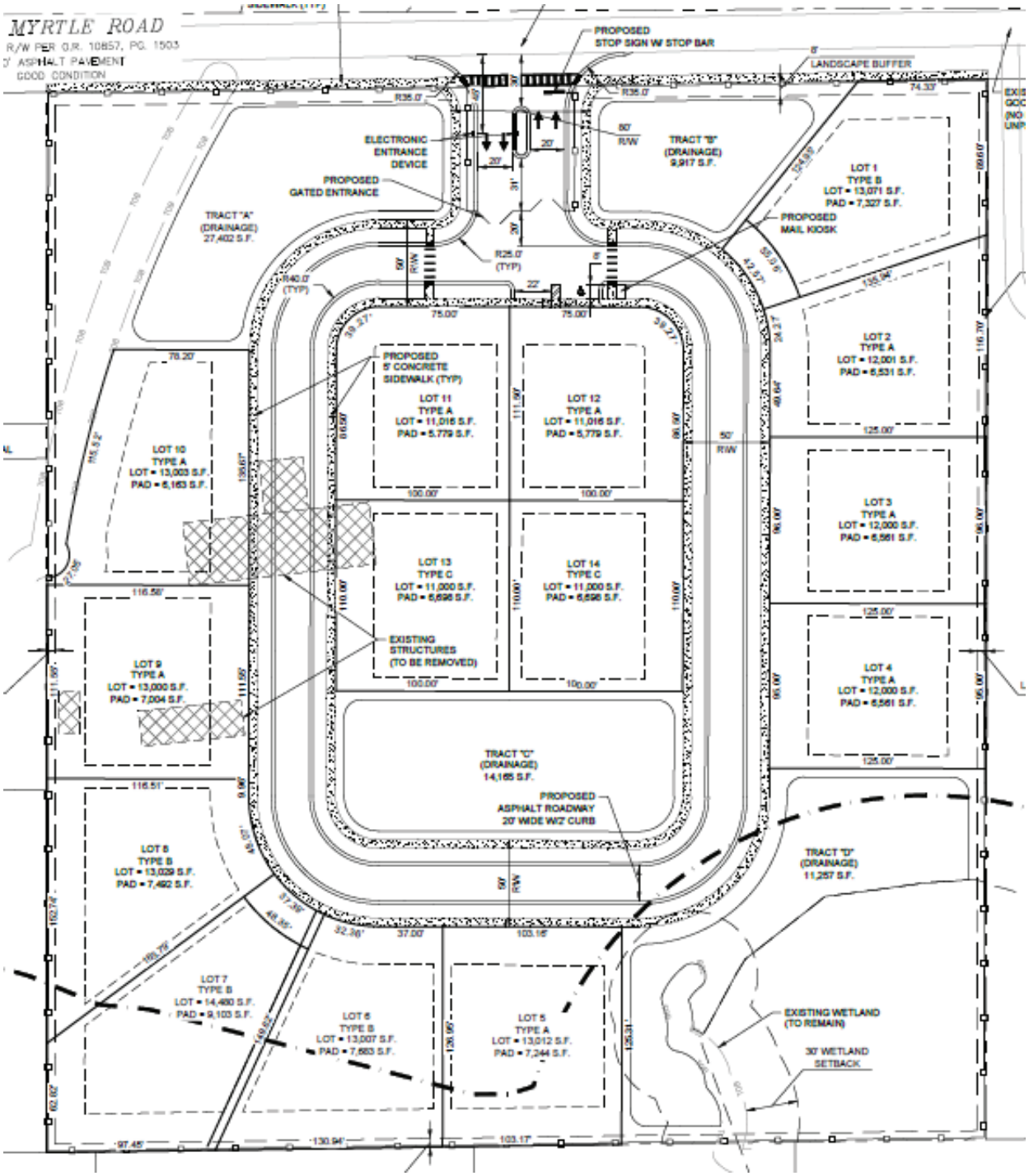
2.0 LAND USE MAP SET AND SUMMARY DATA

2.3 Immediate Area Map



Adjacent Zonings and Uses				
Location:	Zoning:	Maximum Density/F.A.R. Permitted by Zoning District:	Allowable Use:	Existing Use:
North	RSC-2	Min. 21,780 sq. ft.	Single-family (SF)	SF / Vacant
South	ASC-1 / AR	ASC-1: Min. 1 ac. AR: Min. 5 ac.	Single-family / Agricultural	SF / Vacant
East	ASC-1	Min. 1 ac.	Single-family	SF
West	ASC-1	Min. 1 ac.	Single-family	SF / Vacant

2.4 Proposed Site Plan (partial provided below for size and orientation purposes. See Section 8.0 for full site plan)



3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Myrtle Road	County Local - Urban	2 Lanes ☒ Substandard Road ☐ Sufficient ROW Width	☐ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐ Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	66	5	7
Proposed	132	10	14
Difference (+/-)	+66	+5	+7

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐ Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	None	Meets LDC
West		None	None	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒ Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Myrtle Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☐ Off-Site Improvements Provided	☐ Yes ☐ N/A ☒ No	☒ Yes ☐ No	See Staff Report.

4.0 ADDITIONAL SITE INFORMATION & AGENCY COMMENTS SUMMARY

INFORMATION/REVIEWING AGENCY				
Environmental:	**Comments Received**	**Objections**	**Conditions Requested**	**Additional Information/Comments**
Environmental Protection Commission	☒ Yes ☐ No	☐ Yes ☒ No	☒ Yes ☐ No	
Natural Resources	☒ Yes ☐ No	☐ Yes ☒ No	☒ Yes ☐ No	
Conservation & Environ. Lands Mgmt.	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	
Check if Applicable: ☒ Wetlands/Other Surface Waters ☐ Use of Environmentally Sensitive Land Credit ☐ Wellhead Protection Area ☒ Surface Water Resource Protection Area	☐ Potable Water Wellfield Protection Area ☒ Significant Wildlife Habitat ☐ Coastal High Hazard Area ☐ Urban/Suburban/Rural Scenic Corridor ☐ Adjacent to ELAPP property ☐ Other _____			
Public Facilities:	**Comments Received**	**Objections**	**Conditions Requested**	**Additional Information/Comments**
Transportation ☒ Design Exc./Adm. Variance Requested ☐ Off-site Improvements Provided	☒ Yes ☐ No	☐ Yes ☒ No	☒ Yes ☐ No	See Transportation Report.
Service Area/ Water & Wastewater ☒Urban ☐ City of Tampa ☐Rural ☐ City of Temple Terrace	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	
Hillsborough County School Board Adequate ☒ K-5 ☒6-8 ☐9-12 ☐N/A Inadequate ☐ K-5 ☐6-8 ☒9-12 ☐N/A	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	See Hillsborough County Public Schools "Adequate Facilities Analysis: Rezoning"

Impact/Mobility Fees
(Various use types allowed. Estimates are a sample of potential development)

Industrial (Per 1,000 s.f.)	Shopping Center (Per 1,000 s.f.)	Warehouse (Per 1,000 s.f.)
Mobility: $4,230	Mobility: $13,562	Mobility: $1,377
Fire: $57	Fire: $313	Fire: $34

Retail - Fast Food Townhouse (Fee estimate is based on a 1,500 s.f., 1-2 Story)

w/Drive Thru	Mobility: $6,661 * 60 = $399,660	*52 = $346,372
(Per 1,000 s.f.)	Parks: $1,957 * 60 = $117,420	*52 = $101,764
Mobility: $104,494	School: $7,027 * 60 = $421,620	*52 = $365,404
Fire: $313	Fire: $249 * 60 = $14,940	*52 = $12,948
	Total Townhouse: $953,640	total: $826,488

Urban Mobility, Central Fire - up to 20,000 s.f. Commercial General - non-specific, OR up to 60 townhomes
revised for fees as of Oct 1, 2022

Comprehensive Plan:	Comments Received	Findings	Conditions Requested	Additional Information/Comments
Planning Commission ☐ Meets Locational Criteria ☒N/A ☐ Locational Criteria Waiver Requested ☒ Minimum Density Met ☐ N/A	☒ Yes ☐ No	☐ Inconsistent ☒ Consistent	☐ Yes ☒ No	See Planning Commission Report

5.0 IMPLEMENTATION RECOMMENDATIONS

5.1 Compatibility

The applicant seeks to develop an approximately 7.6-acre unified development consisting of one folio. The request is for a rezoning from Agricultural Single-family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units.

The site is located on the south side of Myrtle Road, approximately 200 feet east of Bell Shoals Road and approximately 3,800 feet north of Fishhawk Boulavard and is located in the Urban Service Area within the limits of the Brandon Community Plan. The immediate area surrounding the property is predominantly developed with residential and vacant. The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. To the north, northeast, east, and west is single-family development.

While not required, the applicant is proposing a 5-foot-wide landscape easement with Type "A" screening to further ensure compatibility with the existing development surrounding the proposed development along adjacent east, west and south property boundaries. The applicant requests no variations for Site Design. The application does not request any variations to Land Development Code Parts 6.06.00 (Landscaping/Buffering). Myrtle Road is not a designated scenic roadway; however, the applicant also proposes an eight-foot (8') landscape area between the subdivision and Myrtle Road right-of-way. This 8-foot landscaped area along Myrtle Road will have landscaping equivalent to Land Development Code Section 6.06.03.I.2.C for Urban Scenic Roadways.

There are wetlands present on the subject property. The Environmental Protection Commission (EPC) Wetlands Division has reviewed the proposed rezoning and has determined a resubmittal is not necessary for the site plan's current configuration. However, a wetland survey must be submitted for review and formal approval by EPC staff prior to site and development. The applicant needs to submit surveys to EPC for approval and to complete the delineation process and determine the exact extent of the wetlands. The applicant confirmed via email to EPC staff on 10-7-2022 that the wetlands, both depicted and not shown, will not be impacted and will not be a part of the drainage easement. The property is also located in a Significant Wildlife Habitat area in the southeastern portion of the subject property.

A 12-inch water main exists approximately 250 feet from the site and is located west of the subject property within the east right-of-way of Bell Shoals Road. A 4-inch wastewater force main exists approximately 310 feet from the site and is located west of the subject property within the west right-of-way of Bell Shoals Road.

The site will comply with and conform to all other applicable policies and regulations, including but not limited to, the Hillsborough County Land Development Code.

The Planning Commission found that the proposed rezoning would be consistent with the Unincorporated Hillsborough County Comprehensive Plan.

Transportation Administrative Variance Overview:

Myrtle Road is a substandard local roadway, the applicant's Engineer of Record (EOR) submitted an Administrative Variance request (dated October 7, 2022). The Administrative Variance was found approvable by the County Engineer (on October 10, 2022). A full review may be found in the Transportation Agency Review Comment Sheet.

5.2 Recommendation

Based on the above consideration, including the existing development pattern, staff finds the request **APPROVABLE**.

Prior to site plan certification, the applicant shall complete the following:

- The labeling of the Significant Wildlife Habitat Conservation Area must be revised to clearly label this area of the site.
- The "…Type "A" Screening Landscape Buffer" shall be revised to "…Type "A" Landscape Easement" along the perimeter of the property.
- The "8' Landscape Buffer" shall be revised to "8' landscape easement".
- Include the sidewalk connection required per condition on the site plan and label it "Required sidewalk extension – See Conditions of Approval"

6.0 PROPOSED CONDITIONS

Approval of the request, subject to the conditions listed below, is based on the general site plan submitted September 13, 2022.

1. The development shall be limited to fourteen (14) single family dwelling units.

2. The buildings shall be developed to the standards described in this section. Buffer and screening shall be in accordance with the LDC, Part 6.06.00, unless otherwise specified herein.

a) **Type "A" Lots.** Lots 3, 4, 5, 9, 10, 11 and 14 shall be developed to the following standards:

Minimum Front Yard:	22 feet
Minimum Side Yard	7.5 feet
Minimum Rear Yard:	22 feet
Minimum Building Separation:	12.5 feet
Minimum Lot Width	90 feet
Minimum Lot Area	11,000 square feet
Maximum Height	35 feet

b) **Type "B" Lots.** 1, 2, 6, 7, 8, shall be developed to the following standards:

Minimum Front Yard:	22 feet
Minimum Side Yard	5 feet
Minimum Rear Yard:	22 feet
Minimum Building Separation:	10 feet
Minimum Lot Width	45 feet
Minimum Lot Area	12,000 square feet
Maximum Height	35 feet

c) **Type "C" Lots.** Lots 13, and 14 are corner lots and shall be developed to the following standards:

Minimum Front Yard:	22 feet
Minimum Side Yard	7.5 feet
Minimum Rear Yard:	N/A*
Minimum Building Separation:	15 feet
Minimum Lot Width	90 feet

Minimum Lot Area	11,000 square feet
Maximum Height	35 feet

* Per Hillsborough County Land Development Code, corner lots do not have rear yards.

3. The subject property shall be subject to the following landscaping and screening standards:

   a. An eight-foot (8') landscape easement shall be provided between the subdivision and Myrtle Road right of way. The 8-foot landscaped area along Myrtle Road will require landscaping equivalent to Land Development Code Section 6.06.03.I.2.C for Urban Scenic Roadways.

   b. A five-foot (5') type "A" landscape easement with six-foot (6') vinyl fence shall be provided along the western boundary of folio #076792-0000, which is the eastern boundary of the subject site.

   c. A five-foot (5') type "A" landscape easement shall be provided along the northern boundary of folios #076795-0100, 076800-0300, 076800-0000, and 076800-0100.

   d. A five-foot (5') type "A" landscape easement shall be provided along the eastern boundary of the following folios: 076793-0100, 076793-0000, 076794-0010, and 076794-0000.

   e. The landscape easements shall be depicted on the plat. When located on a lot, a Landscape Easement shall be recorded in the Official Records of Hillsborough County prior to the issuance of a building permit for the lot.

4. The project shall be accessed from Myrtle Road.

5. The areas designated as "Tract A," "Tract B," "Tract C" and Tract "D" shall be utilized for stormwater management.

6. The stormwater management system shall be designed to comply with the Stormwater Technical Manual, latest edition, and the water quality requirements of the Southwest Florida Water Management District (SWFWMD).

7. The labeling of the Significant Wildlife Habitat Conservation Area must be revised to clearly label this area of the site. The revision must be done prior to the submittal of the final site plan.

8. The construction plans submitted through the Subdivision Construction Review process must show the proposed drainage retention area in Tract D designed with no impact to the adjacent Wetland Conservation Area and the Significant Wildlife Habitat Conservation Area.

9. Wetlands or other surface waters are considered Environmentally Sensitive Areas and are subject to Conservation Area and Preservation Area setbacks. A minimum setback must be maintained around these areas which shall be designated on all future plan submittals. Proposed land alterations are restricted within the wetland setback areas.

10. The Developer shall construct a sidewalk in the right of way along Myrtle Rd.'s southern frontage to connect to the existing sidewalk along Bell Shoals Rd. Final form and design shall be subject to approval of the Administrator.

11. If PD 22-0949 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated October 7, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve Myrtle Road to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022).

12. At the time of plat/site/construction plan review, a site access analysis is required to assess if any turn lanes are found to be warranted pursuant to LDC Section 6.04.04.D using existing and project traffic trips. If any turn lane is required, construction will be required at the time of development.

13. Approval of this petition by Hillsborough County does not constitute a guarantee that Natural Resources approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impacts to trees, natural plant communities or wildlife habitat, and does not grant any implied or vested right to environmental approvals.

14. The construction and location of any proposed environmental impacts are not approved by this correspondence, but shall be reviewed by Natural Resources staff through the site and subdivision development plan process pursuant to the Land Development Code.

15. Approval of this zoning petition by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission of Hillsborough County (EPC) approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impact to wetlands, and does not grant any implied or vested right to environmental approvals.

16. The construction and location of any proposed wetland impacts are not approved by this correspondence, but shall be reviewed by EPC staff under separate application pursuant to the EPC Wetlands rule detailed in Chapter 1-11, Rules of the EPC, (Chapter 1-11) to determine whether such impacts are necessary to accomplish reasonable use of the subject property.

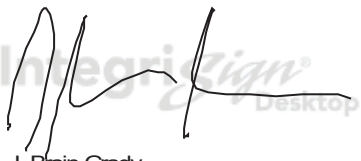
17. Prior to the issuance of any building or land alteration permits or other development, the approved wetland / other surface water (OSW) line must be incorporated into the site plan. The wetland/ OSW line must appear on all site plans, labeled as "EPC Wetland Line", and the wetland must be labeled as "Wetland Conservation Area" pursuant to the Hillsborough County Land Development Code (LDC).

18. Final design of buildings, stormwater retention areas, and ingress/egresses are subject to change pending formal agency jurisdictional determinations of wetland and other surface water boundaries and approval by the appropriate regulatory agencies

19. If the notes and/or graphic on the site plan are in conflict with specific zoning conditions and/or the Land Development Code (LDC) regulations, the more restrictive regulation shall apply, unless specifically conditioned otherwise. References to development standards of the LDC in the above stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan/plat approval, unless otherwise stated herein.

20. The development of the project shall proceed in strict accordance with the terms and conditions contained in the Development Order, the General Site Plan, the land use conditions contained herein, and all applicable rules, regulations, and ordinances of Hillsborough County.

21. In accordance with LDC Section 5.03.07.C, the certified PD general site plan shall expire for the internal transportation network and external access points, as well as for any conditions related to the internal transportation network and external access points, if site construction plans, or equivalent thereof, have not been approved for all or part of the subject Planned Development within 5 years of the effective date of the PD unless an extension is granted as provided in the LDC. Upon expiration, re-certification of the PD General Site Plan shall be required in accordance with provisions set forth in LDC Section 5.03.07.C

Zoning Administrator Sign Off:	 J. Brain Grady Fri Nov 4 2022 08:35:42

SITE, SUBDIVISION AND BUILDING CONSTRUCTION IN ACCORDANCE WITH HILLSBOROUGH COUNTY SITE DEVELOPMENT PLAN & BUILDING REVIEW AND APPROVAL.

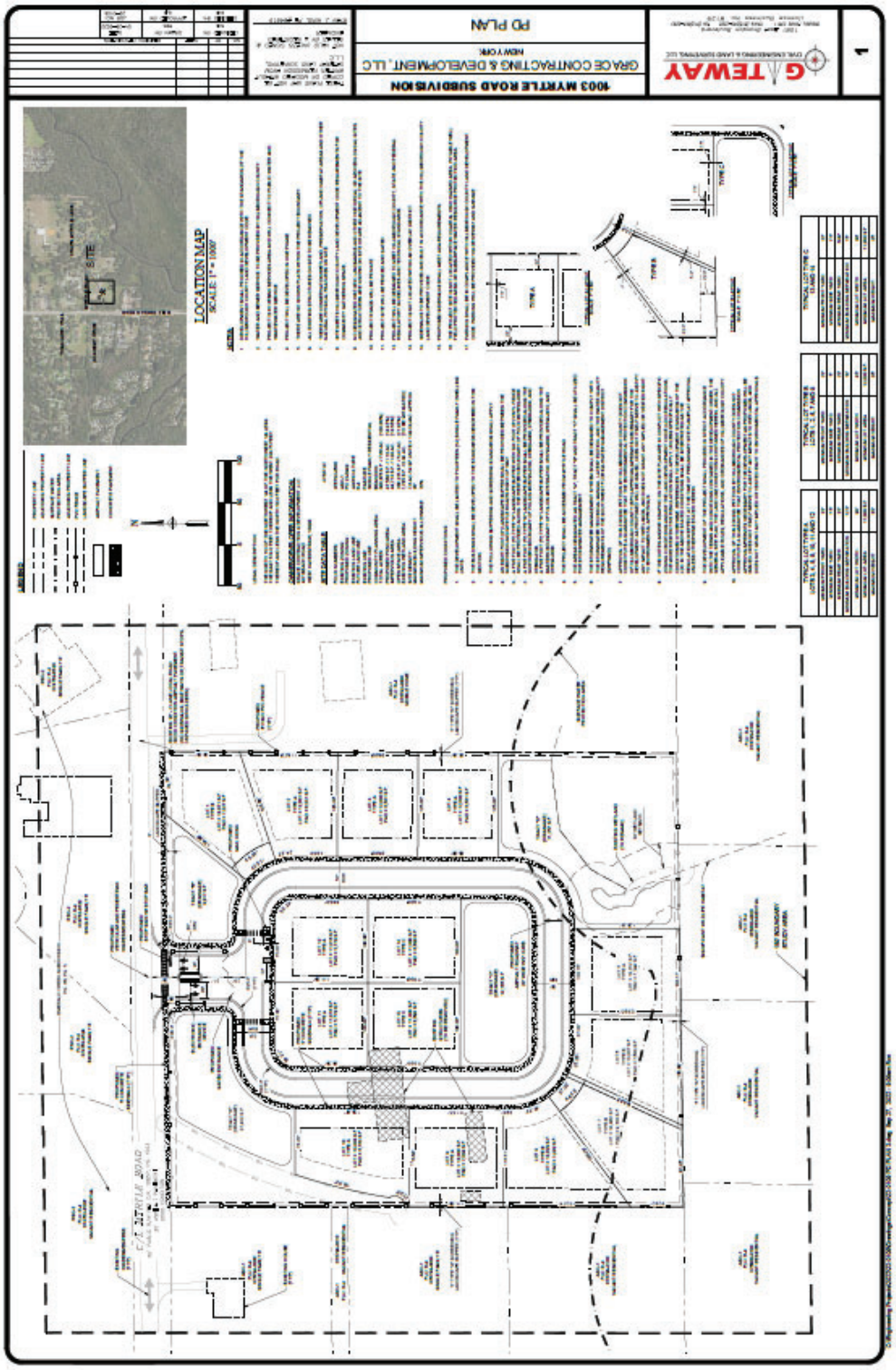
Approval of this re-zoning petition by Hillsborough County does not constitute a guarantee that the project will receive approvals/permits necessary for site development as proposed will be issued, nor does it imply that other required permits needed for site development or building construction are being waived or otherwise approved. The project will be required to comply with the Site Development Plan Review approval process in addition to obtain all necessary building permits for on-site structures.

SITE, SUBDIVISION AND BUILDING CONSTRUCTION IN ACCORDNACE WITH HILLSBOROUGH COUNTY SITE DEVELOPMENT PLAN & BUILDING REVIEW AND APPROVAL.

Approval of this re-zoning petition by Hillsborough County does not constitute a guarantee that the project will receive approvals/permits necessary for site development as proposed will be issued, nor does it imply that other required permits needed for site development or building construction are being waived or otherwise approved. The project will be required to comply with the Site Development Plan Review approval process in addition to obtain all necessary building permits for on-site structures.

7.0 ADDITIONAL INFORMATION AND/OR GRAPHICS

8.0 PROPOSED SITE PLAN (FULL)



9.0 FULL TRANSPORTATION REPORT (see following pages)

AGENCY REVIEW COMMENT SHEET

TO: Zoning Technician, Development Services Department	**DATE:** 10/10/2022
REVIEWER: Alex Steady, Senior Planner	**AGENCY/DEPT:** Transportation
PLANNING AREA/SECTOR: Brandon/Central	**PETITION NO:** PD 22-0949

	This agency has no comments.
	This agency has no objection.
X	This agency has no objection, subject to the listed or attached conditions.
	This agency objects for the reasons set forth below.

REPORT SUMMARY AND CONCLUSIONS

- The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 66 average daily trips, an increase of 5 trips in the a.m. peak hour, and a decrease in 7 trips in the p.m. peak hour.
- If PD 22-0949 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated October 7, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve Myrtle Road to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022).
- The Developer shall construct a sidewalk in the right of way along Myrtle Rd.'s southern frontage to connect to the existing sidewalk along Bell Shoals Rd. Final form and design shall be subject to approval of the Administrator.
- At the time of plat/site/construction plan review, a site access analysis is required to assess if any turn lanes are found to be warranted pursuant to LDC Section 6.04.04.D using existing and project traffic trips. If any turn lane is required, construction will be required at the time of development.
- Transportation Review Section staff has no objection to the proposed request, subject to the conditions of approval provided hereinbelow.

CONDITIONS OF APPROVAL

Staff is requesting the following conditions:

New Conditions:

- The Developer shall construct a sidewalk in the right of way along Myrtle Rd.'s southern frontage to connect to the existing sidewalk along Bell Shoals Rd. Final form and design shall be subject to approval of the Administrator.
- If PD 22-0949 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated October 7, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve Myrtle Road to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022).
- At the time of plat/site/construction plan review, a site access analysis is required to assess if any turn lanes are found to be warranted pursuant to LDC Section 6.04.04.D using existing and project traffic trips. If any turn lane is required, construction will be required at the time of development.

Other Conditions

Prior to PD site plan certification, the applicant shall revise the PD site plan to:

- Include the sidewalk connection required per condition on the site plan and label it "Required sidewalk extension – See Conditions of Approval"

PROJECT SUMMARY AND ANALYSIS

The applicant is requesting to rezone one parcel totaling +/- 7.58 acres from Agricultural Single Family Conventional -1 (ASC-1) to Planned Development (PD). The subject PD proposes 14 single family dwelling units. The site is located +/- 228 feet east of the intersection of Bell Shoals Road and Myrtle Road. The Future Land Use designation of the site is Residential – 4 (R-4).

Trip Generation Analysis

Staff has prepared a comparison of the trips potentially generated under the previously approved zoning and the proposed planned development including the additional residential units, utilizing a generalized worst-case scenario. Data presented below is based on the Institute of Transportation Engineer's Trip Generation Manual, 10th Edition.

Approved Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
ASC-1, 7 Single Family Dwelling Units (ITE code 210)	66	5	7

Proposed Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD, 14 Single Family Dwelling Units (ITE code 210)	132	10	14

Trip Generation Difference:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
Difference	**+66**	**+5**	**+7**

The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 66 average daily trips, an increase of 5 trips in the a.m. peak hour, and a decrease in 7 trips in the p.m. peak hour.

TRANSPORTATION INFRASTRUCTURE SERVING THE SITE

The subject property has frontage on Myrtle Road. Myrtle is a 2-lane, substandard Hillsborough County maintained, local roadway, characterized by +/-17 of pavement. The existing right-of-way on Myrtle Road is +/-50 ft. There are no sidewalks, curb, bike facilities, or shoulders on either both sides of Myrtle Road in the vicinity of the proposed project.

The subject property is located +/- 228 feet from the intersection of Bell Shoals Road and Myrtle Road. Bell Shoals is a Hillsborough County maintained collector roadway. The section of Bell Shoals Road that the subject property will connect to is currently included in a Capitol Improvement Project (CIP #

69112000). The CIP project includes widening the existing 2 lanes to four lanes with raised median, directional turn movements and turn lanes, a new signal at Starwood Avenue, and signal improvements at Glenhaven Drive, Rosemead Lane and Bloomingdale Avenue. The project is also planned to provide a bicycle lane and a sidewalk in each direction. This project is currently under construction and is estimated to Closeout in Mid-2023.

REQUESTED VARIANCE

Myrtle Road is a substandard road. The land development code indicates that a developer would need to improve the road up to county standards unless an Administrative Variance is submitted and found approvable. The applicant submitted a Section 6.04.02.B. Administrative Variance Request (dated October 7, 2022) to the Hillsborough County Land Development Code (LDC) Section 6.04.03.L requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022). If the rezoning is approved, the County Engineer will approve the above referenced Administrative Variance Request, upon which the developer will not be required to improve Myrtle Road to county standard.

SITE ACCESS

The project is proposing a full access connection to Myrtle Road. Cross Access was not required per section 6.04.03.Q of the Hillsborough County Land Development Code.

ROADWAY LEVEL OF SERVICE (LOS)

Level of Service (LOS) information is reported below. Myrtle Road is not a Hillsborough County Regulated Roadway and as such was not included in the Level of Service Report.

Transportation Comment Sheet

3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Myrtle Road	County Local - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☐ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	66	5	7
Proposed	132	10	14
Difference (+/-)	+66	+5	+7

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	None	Meets LDC
West		None	None	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Myrtle Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☒ Off-Site Improvements Provided	☐ Yes ☐N/A ☒ No	☒ Yes ☐ No	See Staff Report.

From: Williams, Michael
Sent: Monday, October 10, 2022 11:03 AM
To: Newton, Matt
Cc: Tirado, Sheida; Lampkin, Timothy; Steady, Alex; Morales, Cintia; PW-CEIntake
Subject: FW: PD 22-0949 Administrative Variance Review
Attachments: 22-0949 AVReq 10-07-22.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Matt,
I have found the attached Section 6.04.02.B. Administrative Variance (AV) for PD 22-0949 APPROVABLE ***subject to the Site Plan Attachment being modified to show the sidewalk extending to Bell Shoals Road***.

Please note that it is you (or your client's) responsibility to follow-up with my administrative assistant, Cintia Morales (moralescs@hillsboroughcounty.org or 813-307-1709) after the BOCC approves the PD zoning or PD zoning modification related to below request. This is to obtain a signed copy of the DE/AV.

If the BOCC denies the PD zoning or PD zoning modification request, staff will request that you withdraw the AV/DE. In such instance, notwithstanding the above finding of approvability, if you fail to withdraw the request, I will deny the AV/DE (since the finding was predicated on a specific development program and site configuration which was not approved).

Once I have signed the document, it is your responsibility to submit the signed AV/DE(s) together with your initial plat/site/construction plan submittal. If the project is already in preliminary review, then you must submit the signed document before the review will be allowed to progress. Staff will require resubmittal of all plat/site/construction plan submittals that do not include the appropriate signed AV/DE documentation.

Lastly, please note that it is critical to ensure you copy all related correspondence to PW-CEIntake@hillsboroughcounty.org

Mike

Michael J. Williams, P.E.
Director, Development Review
County Engineer
Development Services Department

P: (813) 307-1851
M: (813) 614-2190

E: Williamsm@HillsboroughCounty.org
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Facebook | Twitter | YouTube | LinkedIn | HCFL Stay Safe

From: Tirado, Sheida <TiradoS@hillsboroughcounty.org>
Sent: Sunday, October 9, 2022 6:20 PM
To: Williams, Michael <WilliamsM@HillsboroughCounty.ORG>
Cc: Morales, Cintia <MoralesCS@hillsboroughcounty.org>
Subject: PD 22-0949 Administrative Variance Review
Importance: High

Hello Mike,

The attached Administrative Variance is approvable to me, the developer agreed to construct a sidewalk that will connect this development's sidewalk to Bell Shoals Rd, this was added to criteria B of the AV and as a condition of the PD. Please include the following people in your response email:

mnewton@shumaker.com
lampkint@hillsboroughcounty.org
steadya@hillsboroughcounty.org

Best Regards,

Sheida L. Tirado, PE *(she/her/hers)*
Transportation Review Manager
Development Services Department

P: (813) 276-8364
E: tirados@HCFLGov.net
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

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Please note: All correspondence to or from this office is subject to Florida's Public Records law.

Received October 7, 2022
Development Services

Application Number RZ PD 22-0949

To: Mr. Michael J. Williams, P.E.
Development Review Director
County Engineer
Development Services Department
601 E. Kennedy Blvd., 20th Floor
Tampa, FL 33602

From: Matt Newton, Shumaker, Loop & Kendrick, LLP

Re: Request for Administrative Variance for Substandard Road Improvements | Folio No. 076792-0500

SCOPE OF REQUEST

The purpose of this letter is to request the following Section 6.04.02.B administrative variance:

1. Variance to Section 6.04.03.L of the Hillsborough County Land Development Code to allow 14 single family dwelling units to have access to a substandard local road.

BACKGROUND

RZ PD 22-0949 is an application to convert a 7.59 acre pasture to a single family neighborhood with 14 detached homes. Exclusive vehicular access to proposed neighborhood is Myrtle Road, a substandard undivided 2-lane urban local road:

MYRTLE RD. IMPACTED BY RZ PD 22-0949			
	TS-3 Requirement	Existing Road	Compliant
Right of Way Width	50'	50'	Yes
Surface	20' Asphalt	20' Asphalt[1]	Yes
Lane Width	10'	10'	Yes
Sidewalk Width	5'	N/A[2]	No
Curb	Required	No	No
Shoulders	N/A	None	No

[1] Measurement confirmed by Ryan King, PSM. See Exhibit B.
[2] Applicant will construct sidewalks on its property. See Exhibit A.

STANDARD OF REVIEW

In the consideration of the variance request, the issuing authority shall determine to the best of its ability if the following circumstances are met:

(a) there is an unreasonable burden on the applicant;

(b) the variance would not be detrimental to the public health, safety, and welfare; and,

(c) without the variance, reasonable access cannot be provided.

ANALYSIS

There is an unreasonable burden on the applicant. RZ PD 22-0949 limited to 14 new infill single family dwelling units. The 14 dwellings will generate only 11 new weekday AM peak hour trips, and weekday 14 PM peak hour trips (*see* Exhibit C).

The nature of the proposal and existing circumstances render a design exception impossible as offsite improvements are economically prohibitive under the circumstances. The applicant cannot contribute to an ongoing capital improvement project and no buffered bicycle lanes exist in the vicinity.

Furthermore, adding pavement markings to Myrtle Road would be a disproportionate improvement. Guidance from the Manual on Uniform Traffic Control Devices ("MUTCD") provides that center line markings are appropriate on urban arterials and collectors with an average daily trip generation ("ADT") of 4,000 trips per day or greater, or rural arterials and collectors with an ADT of 3,000 trips per day or greater. (*see* Exhibit F) Myrtle Road is classified as a local road (*see* Exhibit G). With approval of RZ PD 22-0949, the trip generators onto Myrtle Road are 33 single family homes, 2 mobile homes, and 24.57 AC of various agricultural uses (*see* Exhibit H). Generalized data from the Institute of Traffic Engineers does not suggest average daily trip generation will reach anywhere near 3,000 ADT:

LAND USE	UNITS	AVERAGE DAILY TRIPS	TOTAL
Single Family Homes (ITE 210)	33	9.44 per dwelling unit	311.52 ADT
Mobile Home Park (ITE 240)	2	5.0 per dwelling unit	10 ADT
Horse Stable[3]	10.87 AC	Unknown	N/A
Pasture[4]	13.7 AC	Unknown	N/A
		Total	**321.52 ADT**

[3] The Institute of Traffic Engineers' Trip Generation Manual (10th) ed. does not have catalogue trip generation for horse stables.
[4] The Institute of Traffic Engineers' Trip Generation Manual (10th) ed. does not have catalogue trip generation for pastures.

A variance would not be detrimental to the public health, safety, and welfare. Granting 14 infill homes access to a substandard section of Myrtle Road will not create or aggravate existing public safety concerns. The 20' existing asphalt is sufficient for emergency vehicle access. Data maintained by the Hillsborough County does not indicate the site's vicinity has a propensity for vehicular accidents:

TOP 100 ACCIDENT LOCATIONS BY MONTH		
MONTH	CRASH LOCATION	NUMBER OF CRASHES
August 2022	-	-
July 2022	-	-
June 2022	-	3
May 2022	-	-
April 2022	Bell Shoals / Glenhaven	3
March 2022	-	-
February 2022	-	-
January 2022	-	-
December 2021	-	-
November 2021	Bell Shoals/Boyette	5
October 2021	-	-
September 2021	-	-
August 2021	Bell Shoals/Boyette	5
July 2021	-	-

See Exhibit I. Permitting 14 infill homes access to a substandard section of Myrtle Road, as it exists, does not present safety concerns.

To enhance public safety, Applicant will commit to installing a sidewalk on the south side of Myrtle to create a safe pedestrian connection to Bell Shoals Road.

Without the variance, reasonable access cannot be provided. Access to Myrtle Road is the only vehicular access available to the site. Approval of this administrative variance is therefore necessary to provide reasonable access to this project.

Received October 7, 2022
Development Services

Accordingly, the Applicant requests that the following design exception be approved:

1. Variance to Section 6.04.03.L of the Hillsborough County Land Development Code to allow fourteen (14) single family dwellings access upon a substandard Local Road.

Respectfully submitted,

Matt Newton, B.C.S.
City, County & Local Government Law
Shumaker, Loop & Kendrick, LLP

Exhibits:

A. Site Plan, RZ PD 22-0949 (August 16, 2022);
B. Survey dated March 25, 2022, updated August 8, 2022.
C. ITE TripGen Data (Land Use Group No. 210 (Single-Family Detached Housing));
D. GIS Map of Surrounding Stormwater Infrastructure;
E. Street Condition Exhibits;
F. Manual on Uniform Traffic Control Devices §3B.01 Yellow Center Line Pavement Markings and Warrants;
G. GIS Map of Hillsborough County Road Inventory Classification;
H. Exhibit of ADT Generation in Vicinity.
I. Top 100 Traffic Accident Locations, July 2022 – July 2021, Hillsborough County Sheriff Office GIS Bureau.

Based on the information provided by the applicant, this request is

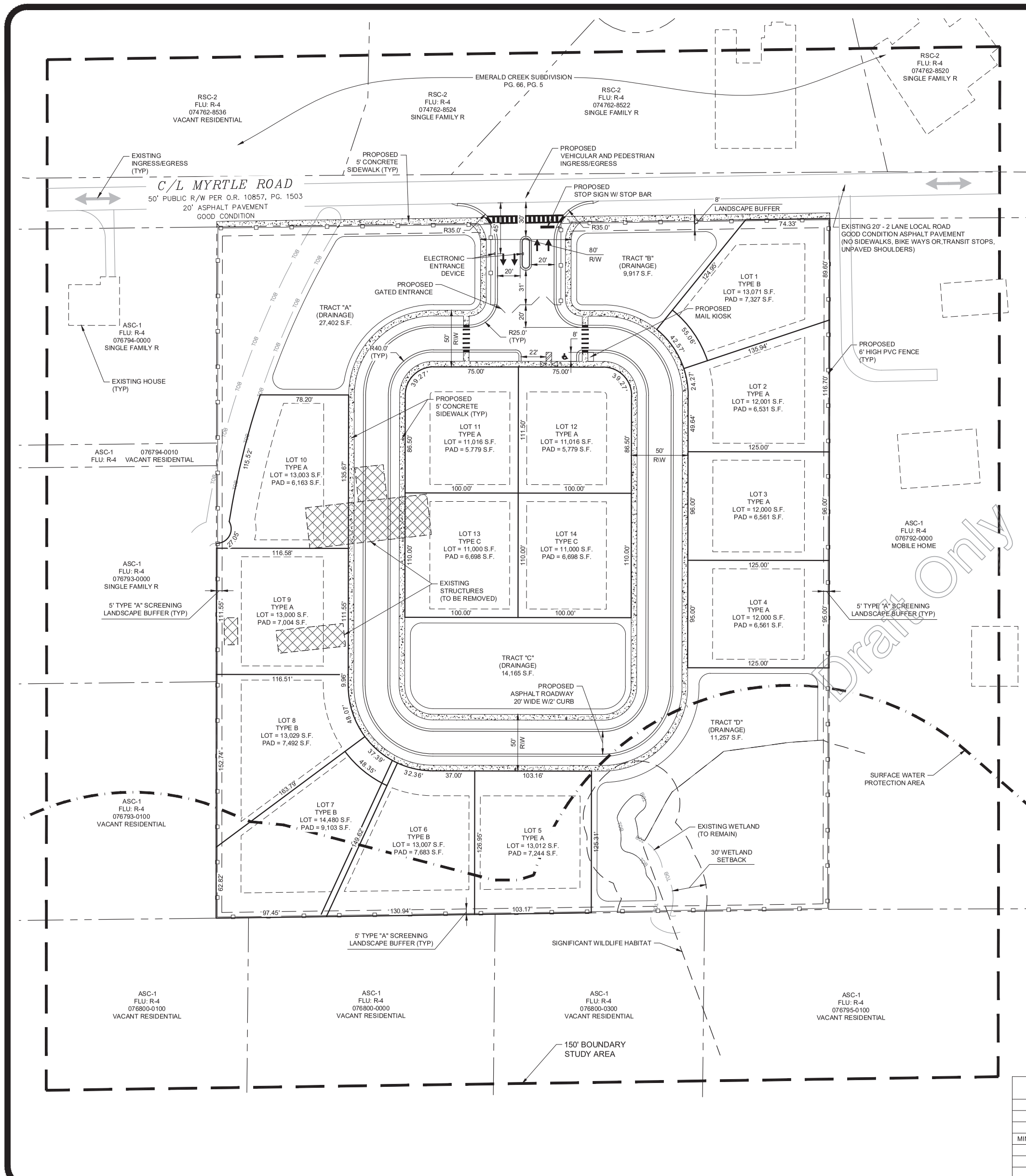
_____ Denied
_____ Approved with conditions
_____ Approved

If there are any questions or you need clarification, please contact Sheida L. Tirado, P.E. at 813-276-8364.

Sincerely,

Michael J. Williams, P.E.
Development Review Director
County Engineer

Received October 7, 2022
Development Services



LEGEND

- PROPERTY LINE
- ADJOINING PROPERTY LINE
- SURFACE WATER PROTECTION AREA
- ADJOINING PROPERTY LINE
- PVC FENCE
- LANDSCAPE BUFFER LINE
- ASPHALT PAVEMENT
- CONCRETE PAVEMENT

LOCATION MAP

SCALE: 1" = 1000'

N

50 0 50 100

LEGAL DESCRIPTION:

THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 LESS THE EAST 574.0 FEET THEREOF AND LESS THE WEST 238.75 FEET THEREOF AND LESS THE NORTH 50.0 FEET FOR ROAD.

OWNER/DEVELOPER INFORMATION:
GRACE CONTRACTING & DEVELOPMENT, LLC
427 BEACH ROAD
WEST HAVERSTRAW, 10993

SITE DATA TABLE: 47567.97

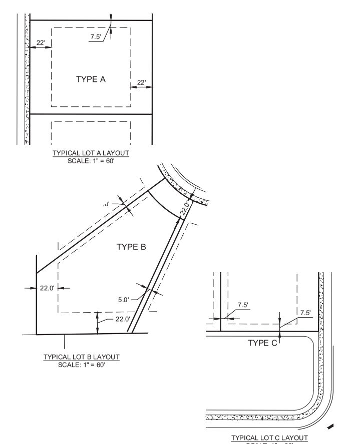
FOLIO NUMBERS:	076792-0500
EXISTING ZONING:	ASC-1
PROPOSED ZONING:	PD 22-0949
EXISTING LAND USE:	AGRICULTURE
FUTURE LAND USE:	R-4
EXISTING USE:	PASTURE
PROPOSED USE:	SINGLE FAMILY RESIDENTIAL
COMMUNITY PLANNING AREA:	BRANDON
TOTAL ACRES:	330,876 S.F. / 7.60 AC. (100.00%)
PROPOSED POND AREA:	47,568 S.F. / 1.10 AC. (14.47%)
IMPERVIOUS AREA:	44,713 S.F. / 1.03 AC. (13.55%)
OPEN SPACE AREA:	238,215 S.F. / 5.47 AC. (71.97%)
EXISTING WETLAND AREA:	1,785 S.F. / 0.04 AC. (TO BE MITIGATED)
SITE DENSITY:	7.6 AC./14 SF UNITS = 1.84 DU/AC. APPROX.
MAXIMUM BUILDING HEIGHT:	35'
MAXIMUM IMPERVIOUS ALLOWABLE:	70%

PROPOSED CONDITIONS:

1. THE DEVELOPMENT SHALL BE LIMITED TO FOURTEEN (14) SINGLE FAMILY DWELLING UNITS.
2. THE BUILDINGS SHALL BE DEVELOPED TO THE STANDARDS DESCRIBED IN THIS SECTION.
3. THE FOLLOWING BUFFERING AND SCREENING STANDARDS SHALL APPLY:
   a. AN EIGHT FOOT (8') LANDSCAPE BUFFER SHALL BE PROVIDED BETWEEN THE SUBDIVISION AND MYRTLE ROAD'S RIGHT OF WAY.
   b. A FIVE FOOT (5') TYPE "A" LANDSCAPE BUFFER WITH SIX FOOT (6') VINYL FENCE SHALL BE PROVIDED ALONG THE WESTERN BOUNDARY OF FOLIO #076792-0000.
   c. A FIVE FOOT (5') TYPE "A" LANDSCAPE BUFFER SHALL BE PROVIDED ALONG THE NORTHERN BOUNDARY OF FOLIOS #076795-0100, 076800-0300, 076800-0000, AND 076800-0100.
   d. A FIVE FOOT (5') TYPE "A" LANDSCAPE BUFFER SHALL BE PROVIDED ALONG THE EASTERN BOUNDARY OF FOLIOS #076793-0100, 076793-0000, 076794-0010, AND 076794-0000.
4. THE PROJECT SHALL BE ACCESSED FROM MYRTLE ROAD.
5. THE AREAS DESIGNATED AS TRACT "A", TRACT "B" AND TRACT "C" SHALL BE UTILIZED FOR STORMWATER MANAGEMENT.
6. THE STORMWATER MANAGEMENT SYSTEM SHALL BE DESIGNED TO COMPLY WITH THE STORMWATER TECHNICAL MANUAL, LATEST EDITION, AND THE WATER QUALITY REQUIREMENTS OF THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (SWFWMD).
7. APPROVAL OF THIS ZONING PETITION BY HILLSBOROUGH COUNTY DOES NOT CONSTITUTE A GUARANTEE THAT THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC) APPROVALS/PERMITS NECESSARY FOR THE DEVELOPMENT AS PROPOSED WILL BE ISSUED, DOES NOT ITSELF SERVE TO JUSTIFY ANY IMPACT TO WETLANDS, AND DOES NOT GRANT ANY IMPLIED OR VESTED RIGHT TO ENVIRONMENTAL APPROVALS.
8. IF THE NOTES AND/OR GRAPHIC ON THE SITE PLAN ARE IN CONFLICT WITH SPECIFIC ZONING CONDITIONS AND/OR THE LAND DEVELOPMENT CODE (LDC) REGULATIONS, THE MORE RESTRICTIVE REGULATION SHALL APPLY, UNLESS SPECIFICALLY CONDITIONED OTHERWISE. REFERENCES TO DEVELOPMENT STANDARDS OF THE LDC IN THE ABOVE STATED CONDITIONS SHALL BE INTERPRETED AS THE REGULATIONS IN EFFECT AT THE TIME OF PRELIMINARY SITE PLAN//PLAT APPROVAL, UNLESS OTHERWISE STATED HEREIN.
9. THE DEVELOPMENT OF THE PROJECT SHALL PROCEED IN STRICT ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE DEVELOPMENT ORDER, THE GENERAL SITE PLAN, THE LAND USE CONDITIONS CONTAINED HEREIN, AND ALL APPLICABLE RULES, REGULATIONS, AND ORDINANCES OF HILLSBOROUGH COUNTY.
10. APPROVAL OF THIS ZONING PETITION BY HILLSBOROUGH COUNTY DOES NOT CONSTITUTE A GUARANTEE THAT ENVIRONMENTAL PROTECTION COMMISSION APPROVALS/PERMITS NECESSARY FOR THE DEVELOPMENT AS PROPOSED WILL BE ISSUED, DOES NOT ITSELF SERVE TO JUSTIFY ANY IMPACTS TO WETLANDS, AND DOES NOT GRANT ANY IMPLIED OR VESTED RIGHT TO ENVIRONMENTAL APPROVALS.

NOTES:

1. DEVELOPMENT SHALL PROCEED IN ACCORDANCE WITH THE STANDARDS OF THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE.
2. WATER AND SEWER SERVICE TO BE PROVIDED BY HILLSBOROUGH COUNTY.
3. PROJECT IS IN URBAN SERVICES AREA AND WILL CONNECT TO PUBLIC WATER AND WASTEWATER SERVICE
4. PROJECT WILL BE DEVELOPED IN ONE PHASE.
5. THERE ARE NO KNOWN PLATS WITHIN THE PROJECT BOUNDARY.
6. ALL EXISTING STRUCTURES ON SITE TO BE REMOVED.
7. THERE ARE CONSERVATION/WETLAND, PRESERVATION, UPLAND HABITAT AREAS AND OTHER NATURAL PHYSICAL FEATURES ON SITE.
8. SITE MEETS HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE REQUIREMENTS FOR COMMUNITY GATHERING SPACE.
9. NO DESIGNATED HISTORIC LANDMARKS AND OTHER HISTORICAL OR ARCHEOLOGICAL SITES AND STRUCTURES ARE KNOWN ON SITE OR ARE ADJACENT TO THE SITE.
10. PROJECT ROADS WILL BE PRIVATE.
11. PROJECT SITE WILL BE FENCED AND GATED.
12. PROJECT WILL BE DESIGNED TO MEET HILLSBOROUGH COUNTY, STATE AND FEDERAL REGULATORY GUIDELINES AND TECHNICAL STANDARDS.
13. PROJECT IS NOT LOCATED WITHIN AN OVERLAY DISTRICT.
14. SIDEWALKS TO BE PROVIDED AND BUILT IN ACCORDANCE WITH THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE.
15. PROPOSED SIDEWALKS SHALL MEET ADA REQUIREMENTS.
16. THE PROJECT SITE IS NOT LOCATED WITHIN COASTAL HIGH HAZARD AREA, POTABLE WELL FIELD PROTECTED AREA OR SUBSURFACE WATER RESOURCE PROTECTION AREA.
17. PARKING SHALL BE IN COMPLIANCE WITH HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE. PARKING WILL BE PROVIDED VIA DRIVEWAY AND GARAGE.



TYPICAL LOT TYPE A LOTS 3, 4, 5, 9, 10, 11 AND 12	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	7.5'
MINIMUM REAR YARD	22'
MINIMUM BUILDING SEPARATION	12.5'
MINIMUM LOT WIDTH	90'
MINIMUM LOT AREA	11,000 S.F.
MAXIMUM HEIGHT	35'

TYPICAL LOT TYPE B LOTS 1, 2, 6, 7 AND 8	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	5'
MINIMUM REAR YARD	22'
MINIMUM BUILDING SEPARATION	10'
MINIMUM LOT WIDTH	45'
MINIMUM LOT AREA	12,000 S.F.
MAXIMUM HEIGHT	35'

TYPICAL LOT TYPE C 13 AND 14	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	7.5'
MINIMUM REAR YARD	N/A*
MINIMUM BUILDING SEPARATION	15'
MINIMUM LOT WIDTH	90'
MINIMUM LOT AREA	11,000 S.F.
MAXIMUM HEIGHT	35'

NO.	BY	DATE	REVISION DESCRIPTION

DESIGNED BY: RJK	DRAWN BY: RWS	DATE: 04-28-2022
CHECKED BY: RJK	APPROVED BY: RJK	JOB NO.: 22-0109

THESE PLANS MAY NOT BE COPIED OR MODIFIED WITHOUT WRITTEN PERMISSION FROM GATEWAY LAND SURVEYING, L.L.C.

NOT VALID UNLESS SIGNED & SEALED BY A REGISTERED ENGINEER

RYAN J. KING, PE #64619

1003 MYRTLE ROAD SUBDIVISION

GRACE CONTRACTING & DEVELOPMENT, LLC
NEW YORK

PD PLAN

GATEWAY
CIVIL ENGINEERING & LAND SURVEYING, LLC
1081 East Brandon Boulevard
Brandon, Florida 33511 Phone (813)643-2292 Fax (813)643-2293
License Business No. 8129

1

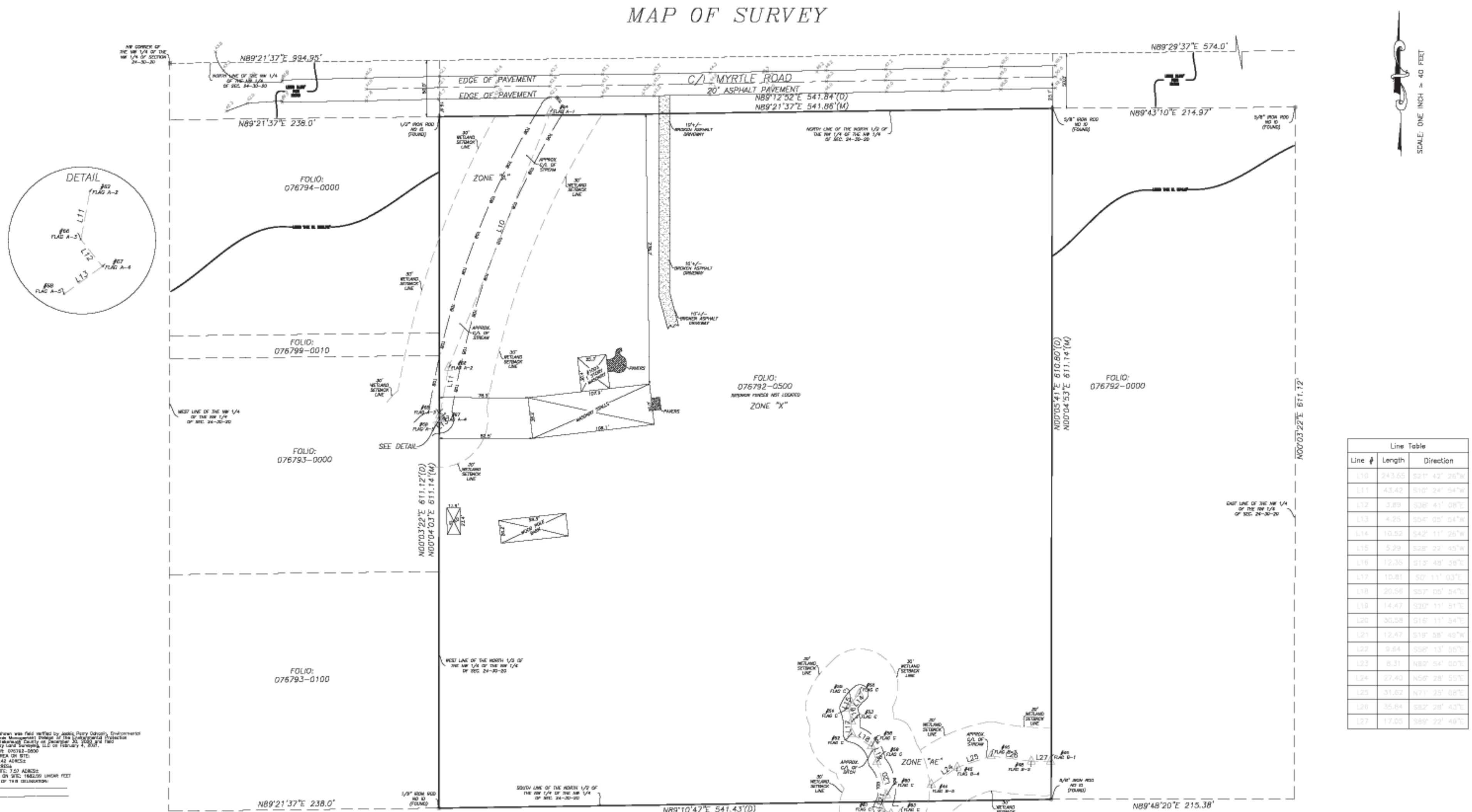
O:\Engineering Projects\2022\22-0109\Drawings\Concept\22-0109 PD PLAN 3.dwg Sep 27, 2022 - 9:09am Ron

EXHIBIT A

22-0949

Received August 19, 2022
Development Services

MAP OF SURVEY



Line Table		
Line #	Length	Direction
L10	243.65	S21° 42' 26"W
L11	43.42	S10° 24' 54"W
L12	3.89	S38° 41' 08"E
L13	4.25	S54° 05' 54"W
L14	10.52	S42° 11' 26"W
L15	5.29	S28° 22' 45"W
L16	12.35	S13° 48' 38"E
L17	10.81	S0° 11' 03"E
L18	20.56	S57° 05' 54"E
L19	14.47	S20° 11' 51"E
L20	30.58	S16° 11' 54"E
L21	12.47	S19° 58' 49"W
L22	9.64	S58° 13' 55"E
L23	8.31	N89° 54' 00"E
L24	27.40	N56° 28' 55"E
L25	31.62	N71° 25' 08"E
L26	35.84	S82° 28' 43"E
L27	17.05	S89° 22' 49"E

LEGAL DESCRIPTION:

THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 LESS THE EAST 574.0 FEET THEREOF AND LESS THE WEST 238.78 FEET THEREOF AND LESS THE NORTH 60.0 FEET FOR ROAD.

According to Flood Insurance Rate Map Community Panel Number 12057C 0507H, Dated 08/28/2008 issued by the Federal Emergency Management Agency, the property **shown and described hereon appears to lie within Zone "X","A","AE".**

NOTE:
Unless noted, this survey has been prepared without the benefit of a title search or title commitment, and therefore is subject to any dedications, restrictions, easements and/or other such items of record that a commitment or search may reveal. Building setback lines have not been shown on this map of survey, unless otherwise noted. To determine setback requirements, inquiries need to be made by the certified holders to the county or city zoning department.

Surveyor's Report and Additional Notes

1. No underground installations or improvements have been located except as shown hereon.
2. Easements, other than shown on this map of survey, may also exist over, upon or across the land surveyed.
3. Unless otherwise shown hereon, no jurisdictional Wetland Areas or other physical topographic features have been located.
4. This survey does not reflect nor determine ownership.
5. Basis of Bearings as shown hereon.
6. Vertical Datum as shown hereon.
7. Fences shown hereon may or may not meander along property lines; specific fence ties, as shown, are from specific locations. This surveyor makes no guarantee of the fence meander.

This Survey does not represent a determination of whether this land will or will not flood or be subject to flooding.

Note:
The signing surveyor or Gateway Land Surveying, LLC cannot be responsible for any additions, deletions or alterations to the subject property, to the improvements thereon, or to the survey monuments that may occur after he/she leaves the site. This survey map or report is the property of Gateway Land Surveying, LLC and any additions, deletions or alterations by any other than the signing surveyor is strictly prohibited. The re-use of this survey by any third party for purposes other than which it was intended is strictly prohibited without the written consent or verification of the original signing surveyor. Any re-user will be at sole risk and without any liability to the signing surveyor or their representing firm.

LEGEND

- PC: POINT OF CURVATURE
- PCP: PERMANENT CONTROL POINT
- PRM: PERMANENT REFERENCE MONUMENT
- O.R.: OFFICIAL RECORDS
- R/W: RIGHT OF WAY
- CONC: CONCRETE
- (C): CALCULATED
- L.B.: LICENSED BUSINESS
- (P): PER PLAT
- P.K.: PARKER KALON NAIL
- PSM: PROFESSIONAL SURVEYOR AND MAPPER
- (M): FIELD MEASURED
- (R): RECORD

GATEWAY LAND SURVEYING, LLC
1081 East Brandon Boulevard
Brandon, Florida 33511 Phone (813)643-2292 Fax (813)643-2293
License Business No. 8129

SURVEYOR'S CERTIFICATE
I hereby certify that the survey represented hereon meets the requirements of Chapter 5J-17, Florida Administrative code pursuant to Chapter 472.027 of the Florida Statutes. Unless it bears the signature and the original raised seal of a Florida licensed surveyor and mapper this drawing, sketch, plat or map is for informational purposes only and is not valid.

Signature ______ Ryan J. King, PSM
Florida Registration No. 6753

REVISIONS: DATE & DESCRIPTION
08/08/2022 UPDATE SURVEY TOPOGRAPHIC SHOTS

SCALE: 1" = 40' | FIELD DATE: 03/25/22 | DWG NO: 22-0109 | DRAWN BY: KMF

CERTIFIED TO:
GRACE CONTRACTING & DEVELOPMENT, LLC

EXHIBIT B

22-0949

Single-Family Detached Housing
(210)

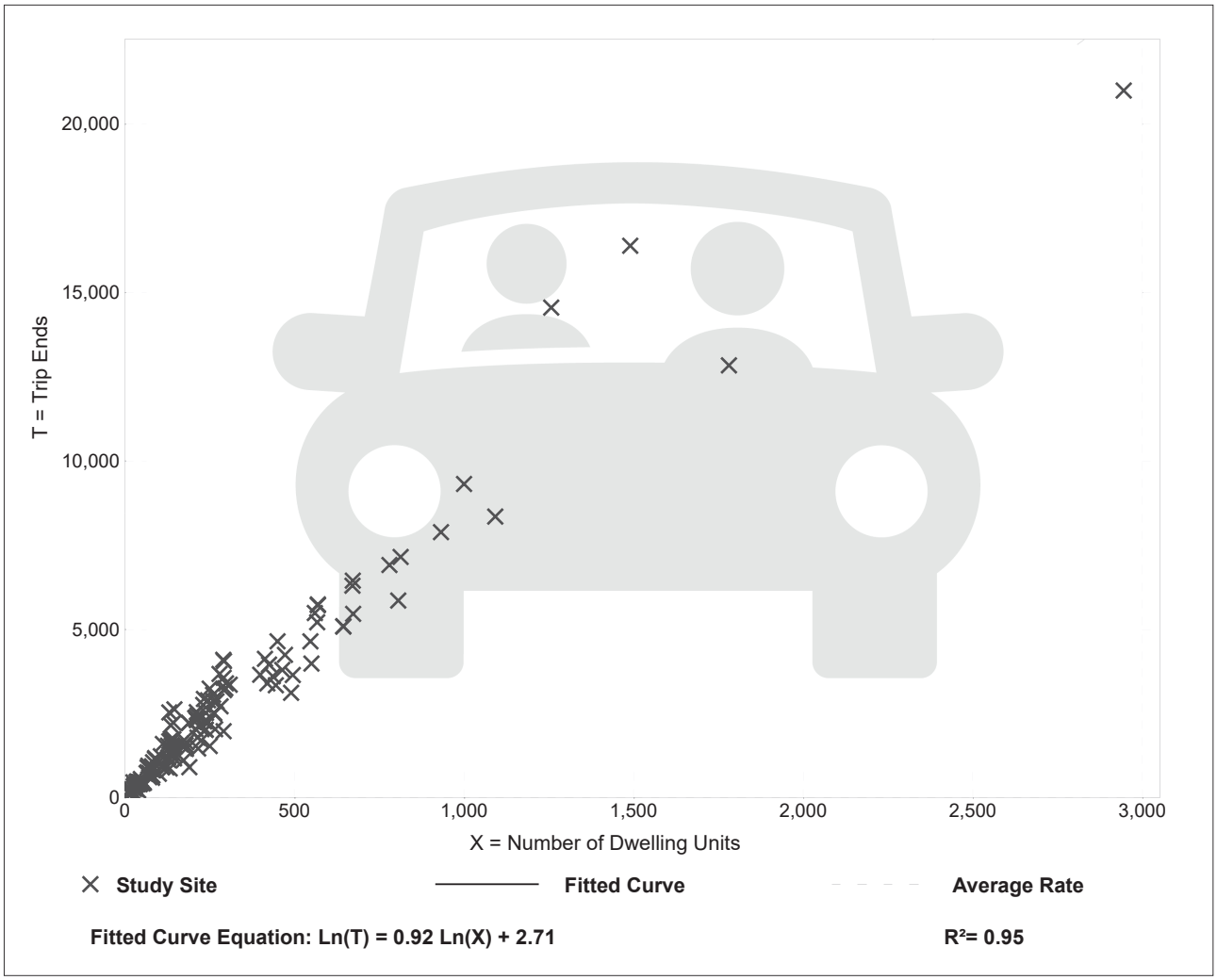
Vehicle Trip Ends vs: **Dwelling Units**
On a: **Weekday**

Setting/Location: **General Urban/Suburban**
Number of Studies: 159
Avg. Num. of Dwelling Units: 264
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Dwelling Unit

Average Rate	Range of Rates	Standard Deviation
9.44	4.81 - 19.39	2.10

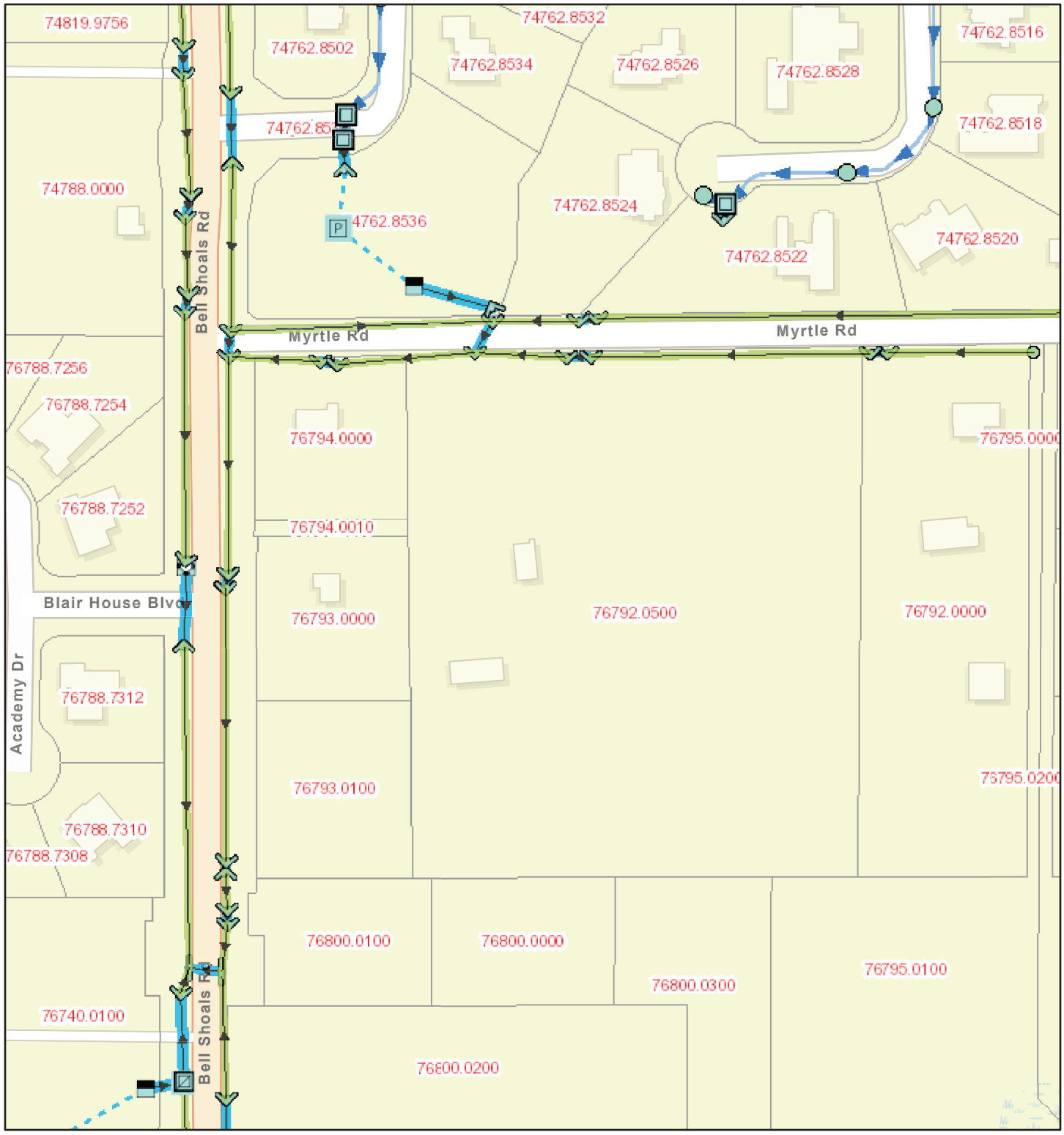
Data Plot and Equation



Trip Gen Manual, 10th Ed + Supplement • Institute of Transportation Engineers

EXHIBIT C
22-0949

Map of Surrounding Stormwater Infrastructure



8/18/2022, 5:56:41 PM

1:1,997

0 0.01 0.03 0.06 mi
0 0.03 0.06 0.11 km

- VirtualPoints Not an Asset
- VirtualLines Not an Asset
- Underdrains
- FORCE MAIN
- SeaWalls
- PS PumpStations
- PollutionControlBoxes
- MitigationSite

StormDrains
- PIPE
- CULVERT

Ponds
- DETENTION POND
- RETENTION POND

MitigationAreas
- MESIC
- ONE TIME MONITOR
- OPEN WATER

RS

EXHIBIT D

22-0949

View of Myrtle Road Facing West from Site

EXHIBIT E-1

Received August 19, 2022
Development Services

View of Myrtle Road Facing East from Site

EXHIBIT E-2

View of Myrtle Road facing East from Intersection with Bell Shoals

EXHIBIT E-3

View of Myrtle Road facing West Across Street from Myrtle
Emphasizing Trees North of Myrtle

EXHIBIT E-4

View of Myrtle Road facing East from Intersection with Bell Shoals
Emphasizing Trees North of Myrtle

EXHIBIT E-5

View of Myrtle Road facing East from Intersection with Bell Shoals
Emphasizing Stormwater Infrastructure South of Myrtle

EXHIBIT E-6

View of Myrtle Road facing West Near Intersection with Bell Shoals
Emphasizing Stormwater Infrastructure South of Myrtle

EXHIBIT E-7

View of Myrtle Road facing West from Site
Emphasizing Stormwater Infrastructure South of Myrtle

EXHIBIT E-8

CHAPTER 3B. PAVEMENT AND CURB MARKINGS

Section 3B.01 Yellow Center Line Pavement Markings and Warrants

Standard:

01 **Center line pavement markings, when used, shall be the pavement markings used to delineate the separation of traffic lanes that have opposite directions of travel on a roadway and shall be yellow.**

Option:

02 Center line pavement markings may be placed at a location that is not the geometric center of the roadway.

03 On roadways without continuous center line pavement markings, short sections may be marked with center line pavement markings to control the position of traffic at specific locations, such as around curves, over hills, on approaches to grade crossings, at grade crossings, and at bridges.

Standard:

04 **The center line markings on two-lane, two-way roadways shall be one of the following as shown in Figure 3B-1:**

- **A. Two-direction passing zone markings consisting of a normal broken yellow line where crossing the center line markings for passing with care is permitted for traffic traveling in either direction;**
- **B. One-direction no-passing zone markings consisting of a double yellow line, one of which is a normal broken yellow line and the other is a normal solid yellow line, where crossing the center line markings for passing with care is permitted for the traffic traveling adjacent to the broken line, but is prohibited for traffic traveling adjacent to the solid line; or**
- **C. Two-direction no-passing zone markings consisting of two normal solid yellow lines where crossing the center line markings for passing is prohibited for traffic traveling in either direction.**

05 **A single solid yellow line shall not be used as a center line marking on a two-way roadway.**

06 **The center line markings on undivided two-way roadways with four or more lanes for moving motor vehicle traffic always available shall be the two-direction no-passing zone markings consisting of a solid double yellow line as shown in Figure 3B-2.**

Guidance:

07 *On two-way roadways with three through lanes for moving motor vehicle traffic, two lanes should be designated for traffic in one direction by using one- or two-direction no-passing zone markings as shown in Figure 3B-3.*

Support:

08 Sections 11-301(c) and 11-311(c) of the "Uniform Vehicle Code (UVC)" contain information regarding left turns across center line no-passing zone markings and paved medians, respectively. The UVC can be obtained from the National Committee on Uniform Traffic Laws and Ordinances at the address shown on Page i.

Standard:

09 **Center line markings shall be placed on all paved urban arterials and collectors that have a traveled way of 20 feet or more in width and an ADT of 6,000 vehicles per day or greater. Center line markings shall also be placed on all paved two-way streets or highways that have three or more lanes for moving motor vehicle traffic.**

Guidance:

10 *Center line markings should be placed on paved urban arterials and collectors that have a traveled way of 20 feet or more in width and an ADT of 4,000 vehicles per day or greater. Center line markings should also be placed on all rural arterials and collectors that have a traveled way of 18 feet or more in width and an ADT of 3,000 vehicles per day or greater. Center line markings should also be placed on other traveled ways where an engineering study indicates such a need.*

11 *Engineering judgment should be used in determining whether to place center line markings on traveled ways that are less than 16 feet wide because of the potential for traffic encroaching on the pavement edges, traffic being affected by parked vehicles, and traffic encroaching into the opposing traffic lane.*

Option:

12 Center line markings may be placed on other paved two-way traveled ways that are 16 feet or more in width.

13 If a traffic count is not available, the ADTs described in this Section may be estimates that are based on engineering judgment.

Figure 3B-1. Examples of Two-Lane, Two-Way Marking Applications

A - Typical two-lane, two-way marking with passing permitted in both directions

B - Typical two-lane, two-way marking with no-passing zones

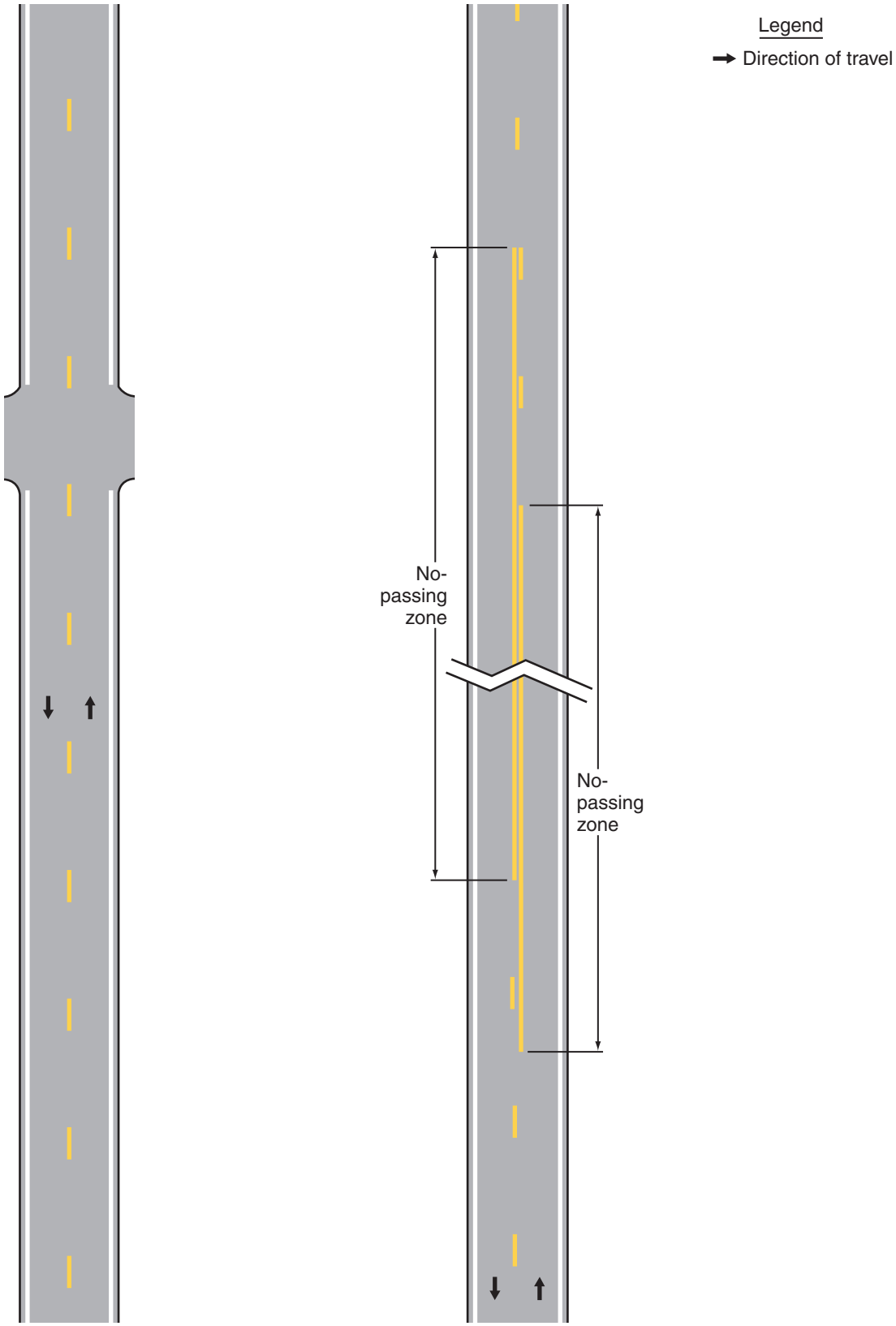


Figure 3B-2. Examples of Four-or-More Lane, Two-Way Marking Applications

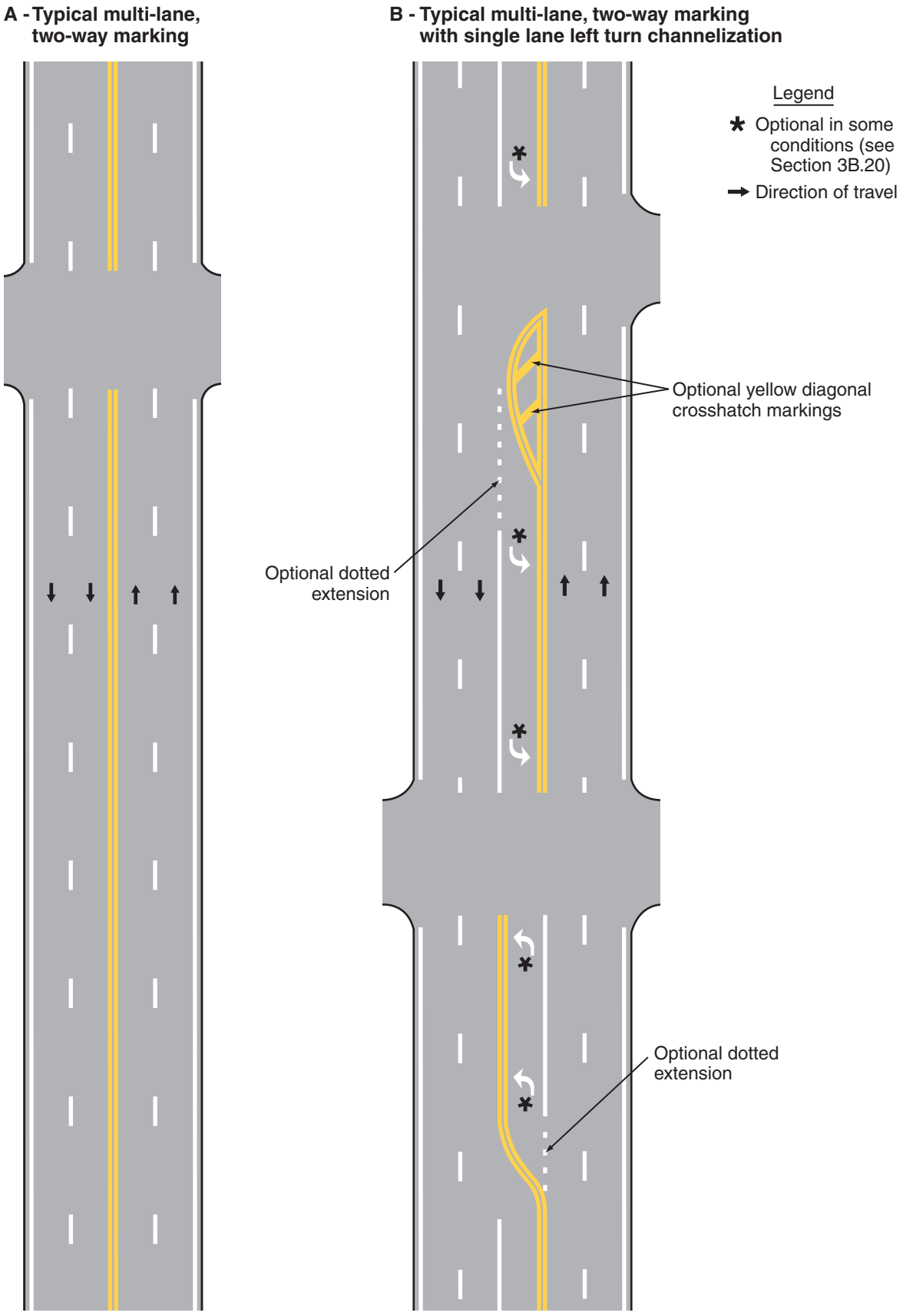
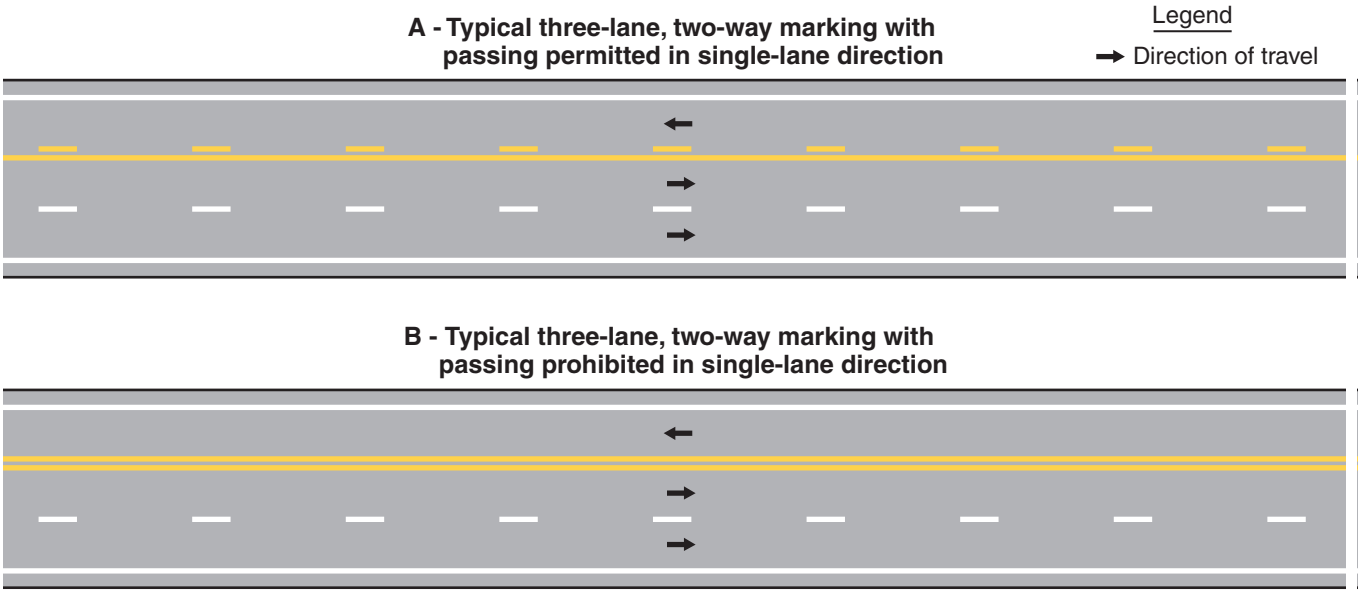


Figure 3B-3. Examples of Three-Lane, Two-Way Marking Applications



Section 3B.02 No-Passing Zone Pavement Markings and Warrants

Standard:

01 **No-passing zones shall be marked by either the one direction no-passing zone pavement markings or the two-direction no-passing zone pavement markings described in Section 3B.01 and shown in Figures 3B-1 and 3B-3.**

02 **When center line markings are used, no-passing zone markings shall be used on two-way roadways at lane-reduction transitions (see Section 3B.09) and on approaches to obstructions that must be passed on the right (see Section 3B.10).**

03 **On two-way, two- or three-lane roadways where center line markings are installed, no-passing zones shall be established at vertical and horizontal curves and other locations where an engineering study indicates that passing must be prohibited because of inadequate sight distances or other special conditions.**

04 **On roadways with center line markings, no-passing zone markings shall be used at horizontal or vertical curves where the passing sight distance is less than the minimum shown in Table 3B-1 for the 85th-percentile speed or the posted or statutory speed limit. The passing sight distance on a vertical curve is the distance at which an object 3.5 feet above the pavement surface can be seen from a point 3.5 feet above the pavement (see Figure 3B-4). Similarly, the passing sight distance on a horizontal curve is the distance measured along the center line (or right-hand lane line of a three-lane roadway) between two points 3.5 feet above the pavement on a line tangent to the embankment or other obstruction that cuts off the view on the inside of the curve (see Figure 3B-4).**

Support:

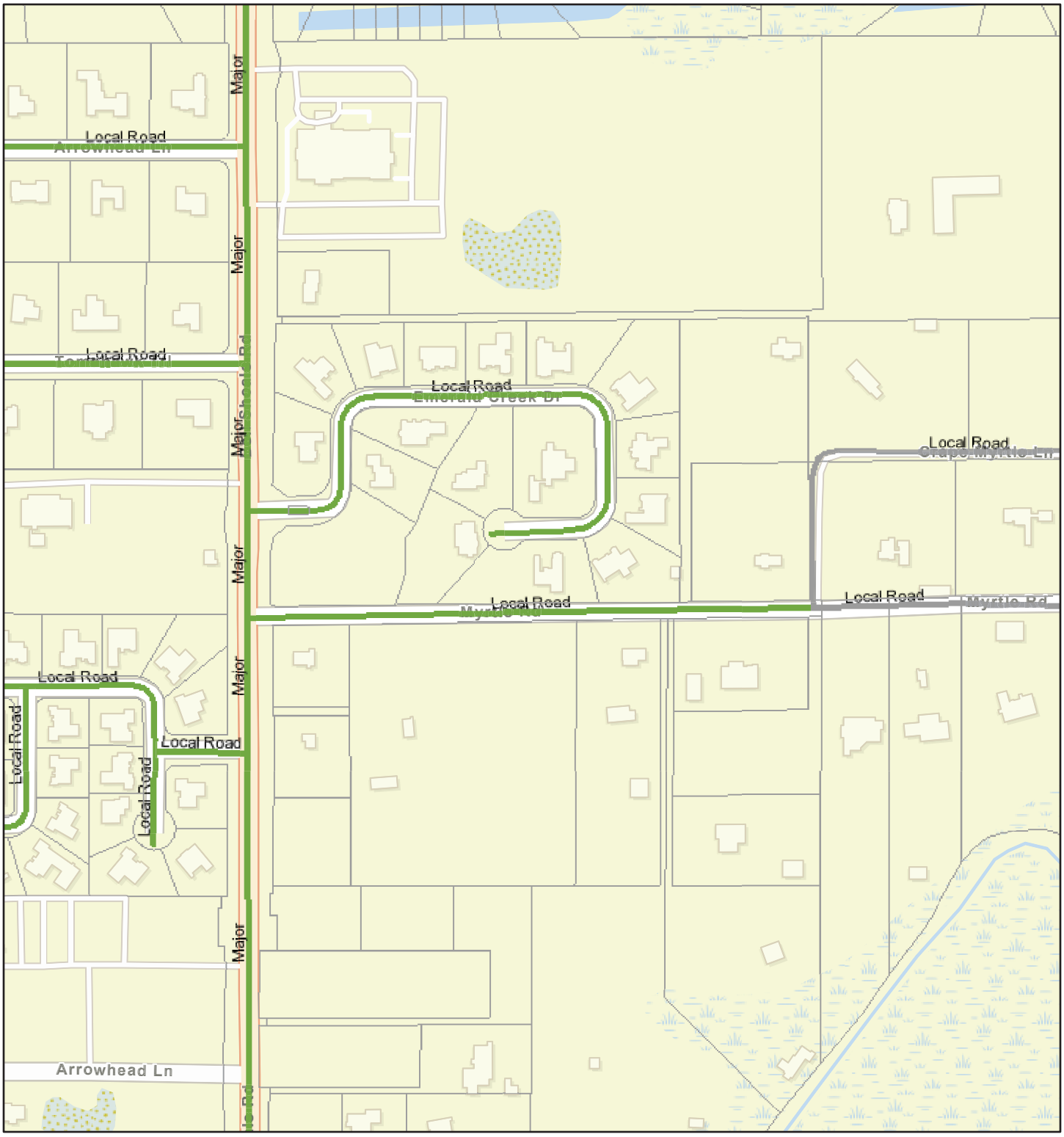
05 The upstream end of a no-passing zone at point "a" in Figure 3B-4 is that point where the sight distance first becomes less than that specified in Table 3B-1. The downstream end of the no-passing zone at point "b" in Figure 3B-4 is that point at which the sight distance again becomes greater than the minimum specified.

06 The values of the minimum passing sight distances that are shown in Table 3B-1 are for operational use in marking no-passing zones and are less than the values that are suggested for geometric design by the AASHTO Policy on Geometric Design of Streets and Highways (see Section 1A.11).

Table 3B-1. Minimum Passing Sight Distances for No-Passing Zone Markings

85th-Percentile or Posted or Statutory Speed Limit	Minimum Passing Sight Distance
25 mph	450 feet
30 mph	500 feet
35 mph	550 feet
40 mph	600 feet
45 mph	700 feet
50 mph	800 feet
55 mph	900 feet
60 mph	1,000 feet
65 mph	1,100 feet
70 mph	1,200 feet

Hillsborough County Road Inventory Classification



8/18/2022, 5:37:06 PM

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0 0.03 0.07 0.13 mi

0 0.05 0.1 0.2 km

Parcels

Roadway Jurisdiction

City of Tampa

Hillsborough County

Manatee

Pasco

Pinellas

Plant City

Polk

Private

State of Florida

Temple Terrace

Roadway Classification

RS

EXHIBIT G

Myrtle Road

Crepe Myrtle Lane

Folio 074754-1100
Private Drive

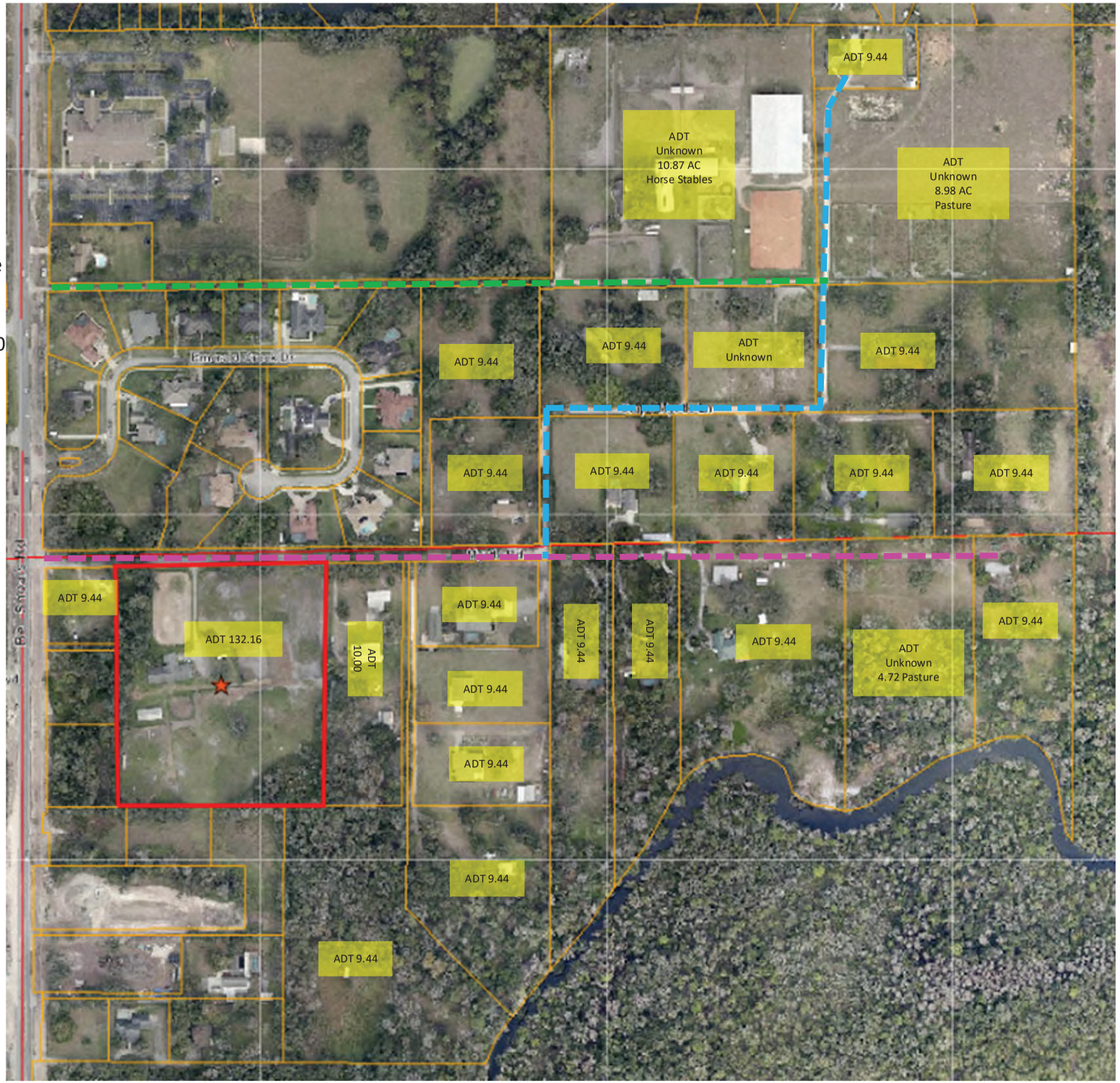

EXHIBIT H

22-0949

Hillsborough County Top 100 Accident Locations

August 2022

August 18, 2022

1:16,000

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0 0.2 0.4 0.8 km

Legend

EXHIBIT I

22-0949

Hillsborough County Top 100 Accident Locations

July 2022

July 26, 2022

1:16,000

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0 0.2 0.4 0.8 km

Legend

22-0949

Hillsborough County Top 100 Accident Locations

June 2022

July 26, 2022

1:16,000

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Legend

22-0949

Hillsborough County Top 100 Accident Locations

May 2022

July 26, 2022

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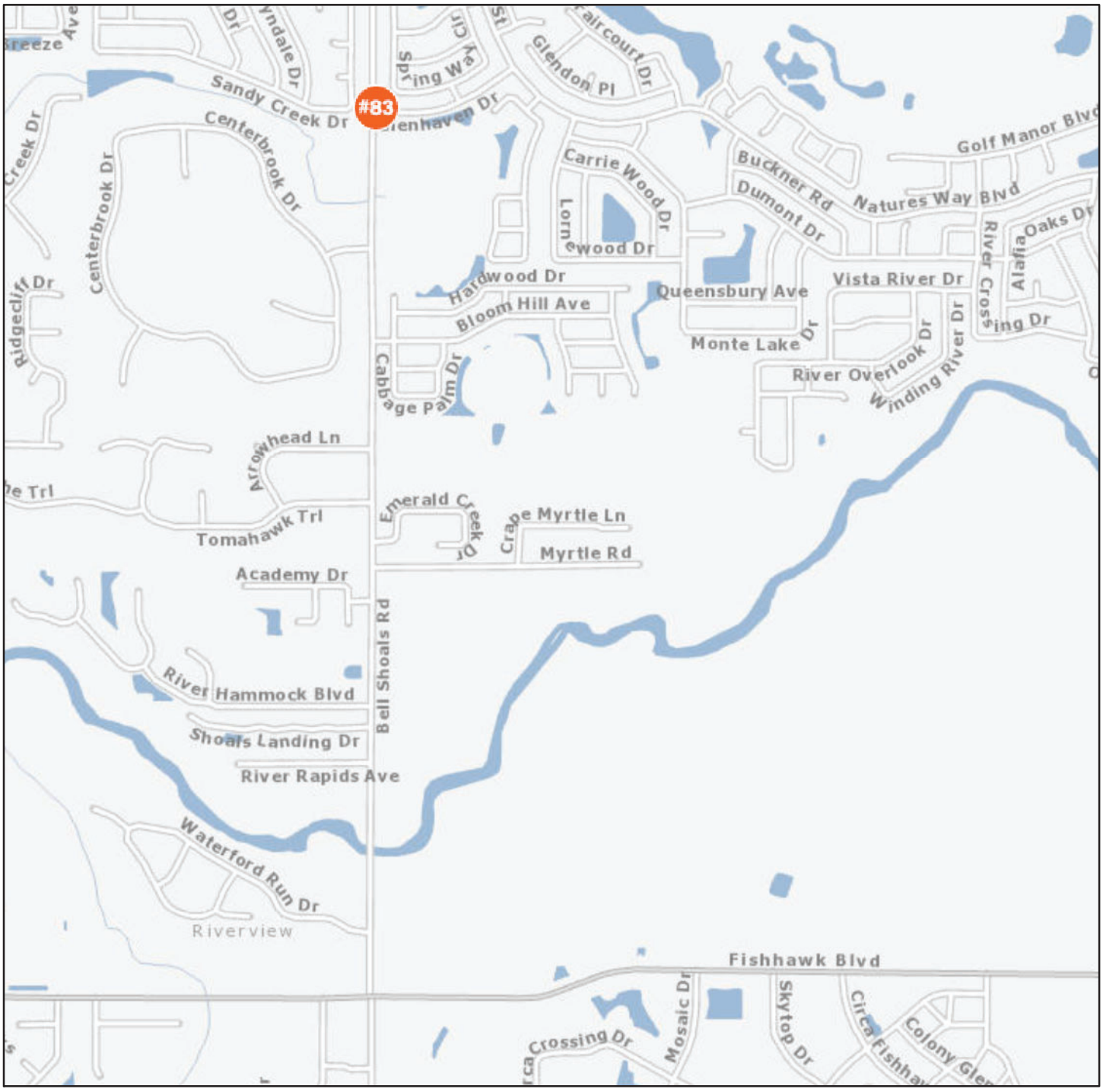
Legend

22-0949

Hillsborough County Top 100 Accident Locations

April 2022



July 26, 2022

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22-0949

Hillsborough County Top 100 Accident Locations

March 2022

July 26, 2022

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22-0949

Hillsborough County Top 100 Accident Locations

February 2022

July 26, 2022

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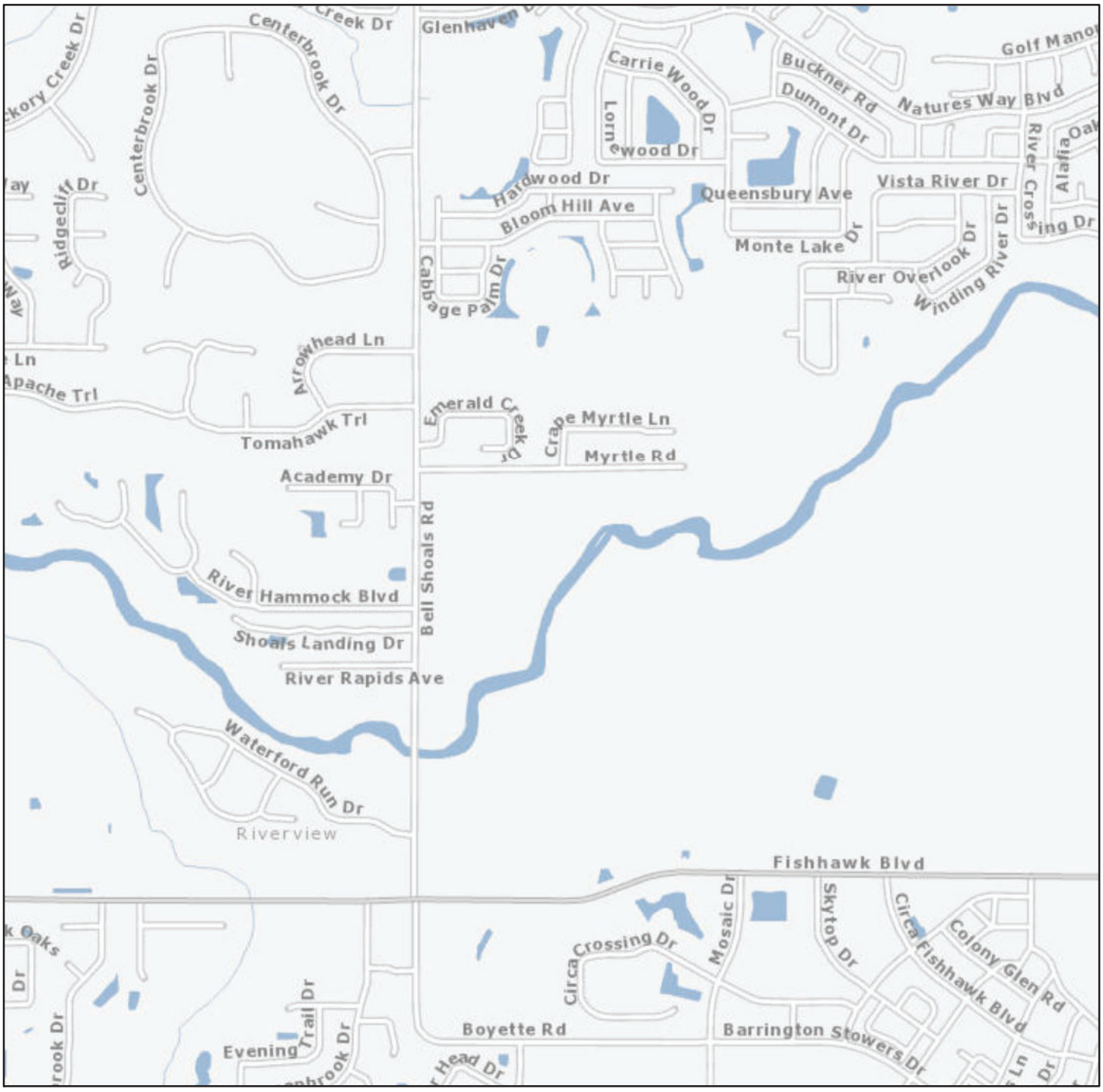
22-0949

Hillsborough County Top 100 Accident Locations

January 2022



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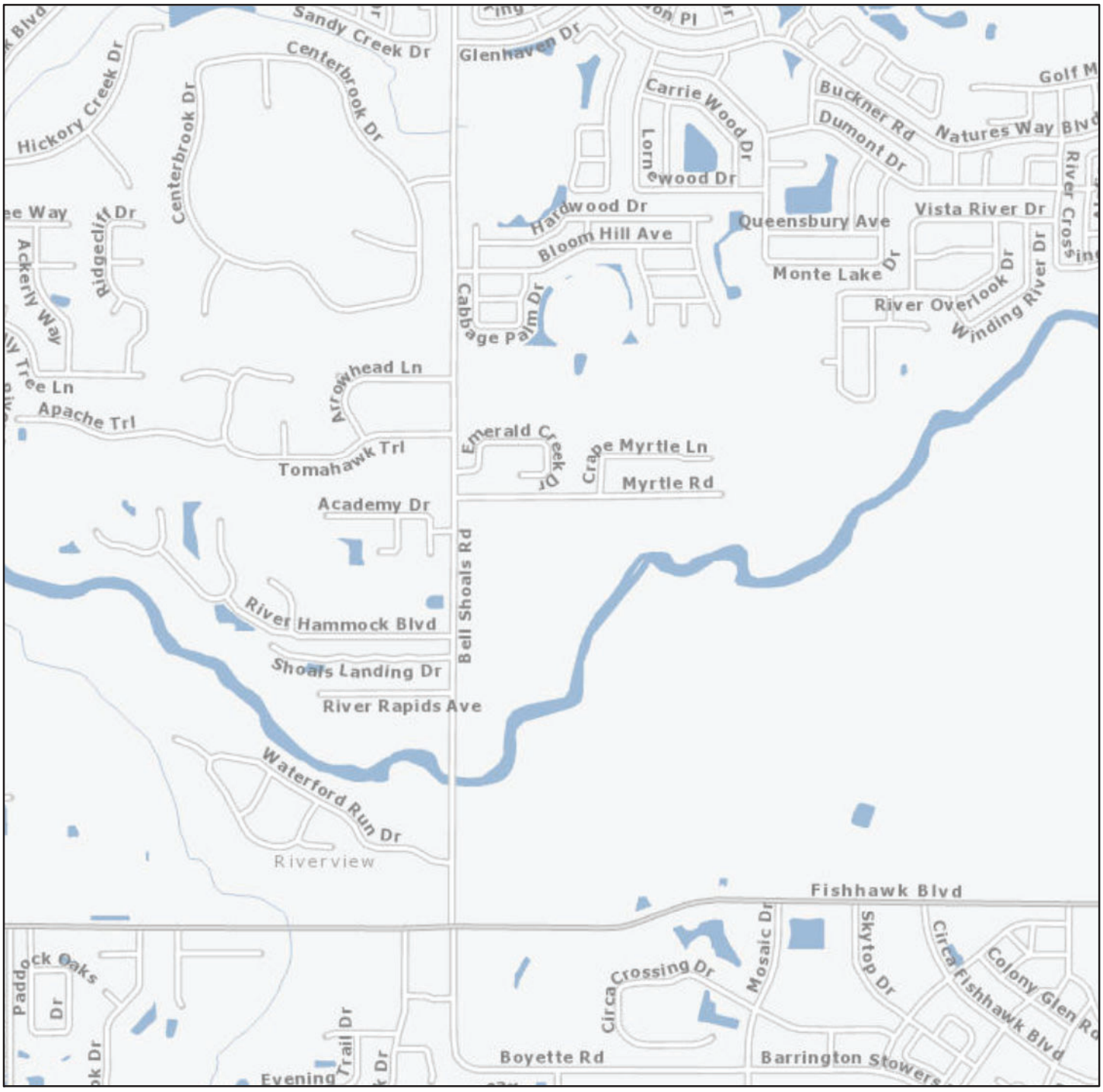
22-0949

Hillsborough County Top 100 Accident Locations

December 2021



July 26, 2022

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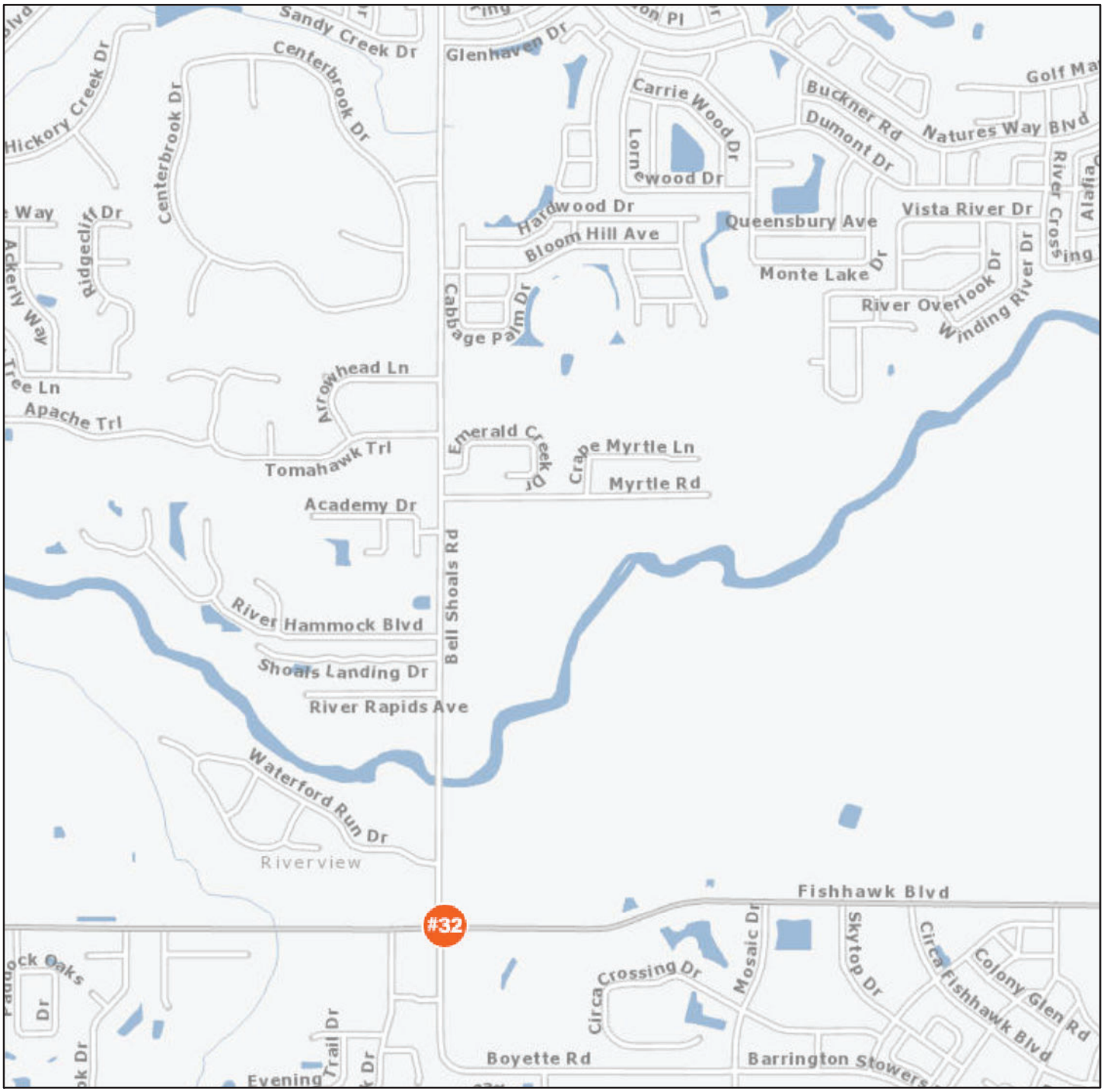
22-0949

Hillsborough County Top 100 Accident Locations

November 2021



July 26, 2022

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22-0949

Hillsborough County Top 100 Accident Locations

October 2021

July 26, 2022

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22-0949

Hillsborough County Top 100 Accident Locations

September 2021

July 26, 2022

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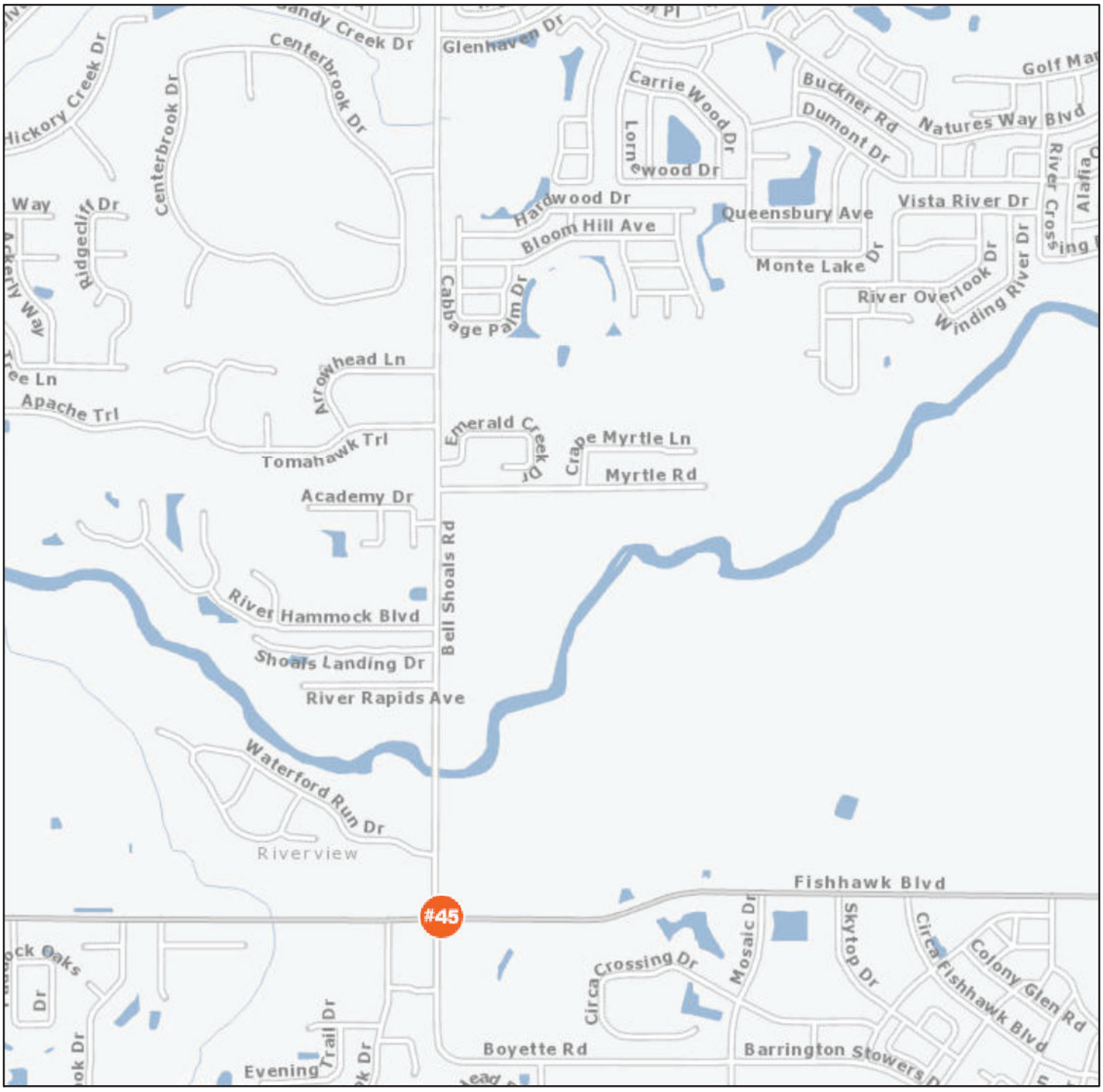
Legend

22-0949

Hillsborough County Top 100 Accident Locations

August 2021



July 26, 2022

1:16,000

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22-0949

Hillsborough County Top 100 Accident Locations

July 2021

July 26, 2022

1:16,000

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0 0.2 0.4 0.8 km

Legend

22-0949

COUNTY OF HILLSBOROUGH

RECOMMENDATION OF THE LAND USE HEARING OFFICER

APPLICATION NUMBER:	RZ PD 22-0949
DATE OF HEARING:	November 14, 2022
APPLICANT:	Grace Contracting & Development, LLC
PETITION REQUEST:	A request to rezone property from ASC-1 to PD to permit 14 single-family homes
LOCATION:	1003 Myrtle Road
SIZE OF PROPERTY:	7.6 acres, m.o.l.
EXISTING ZONING DISTRICT:	ASC-1
FUTURE LAND USE CATEGORY:	RES-4
SERVICE AREA:	Urban
COMMUNITY PLAN:	Brandon

DEVELOPMENT REVIEW STAFF REPORT

*__Note__: Formatting issues prevented the entire Development Services Department staff report from being copied into the Hearing Master's Recommendation. Therefore, please refer to the Development Services Department web site for the complete staff report.

1.0 APPLICATION SUMMARY

Applicant: David Singer; Schumaker, Loop & Kendrick, LLP

FLU Category: Residential-4

Service Area: Urban

Site Acreage: Approximately 7.6 acres

Community Plan Area: Brandon

Overlay: None

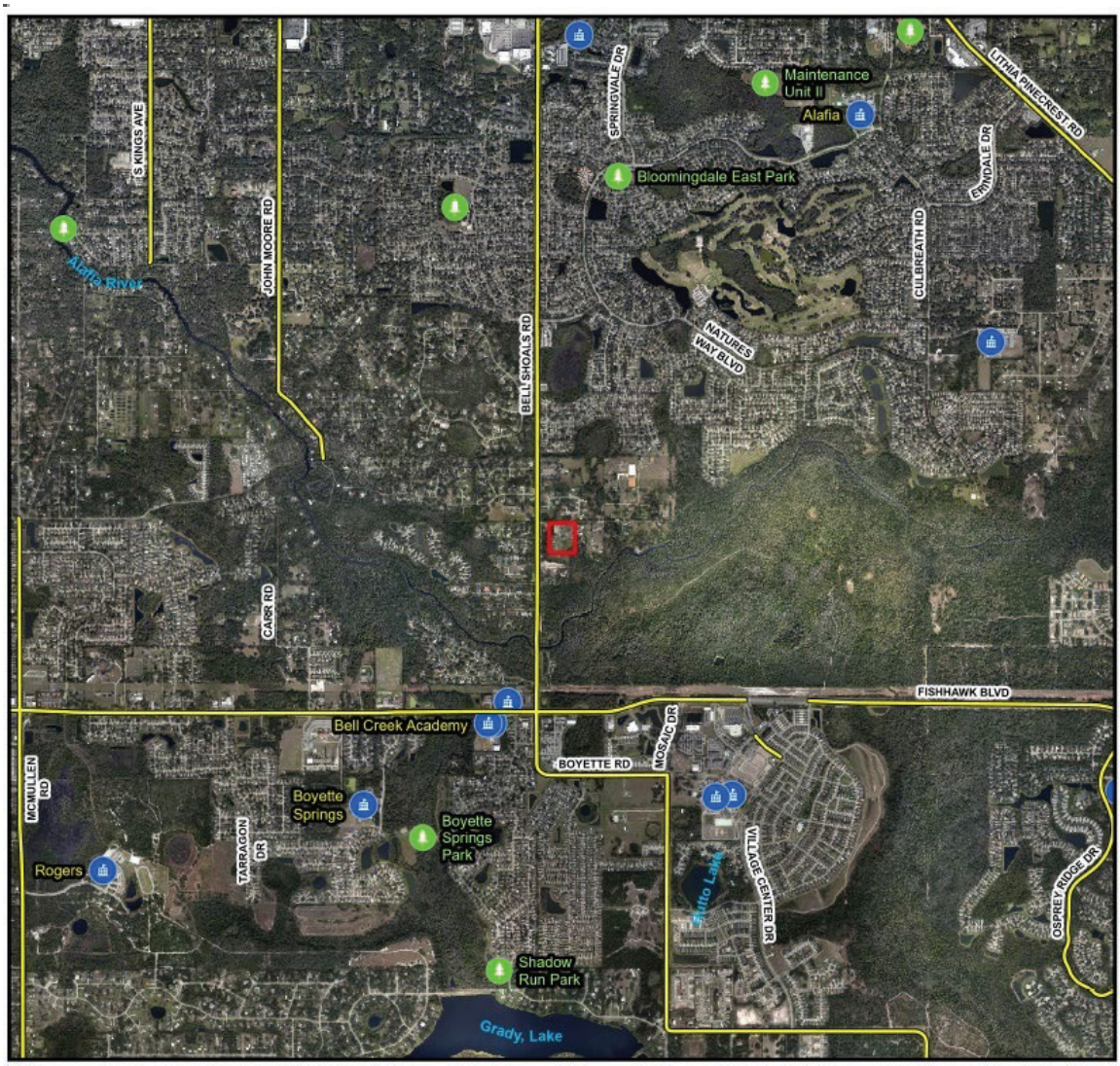
Introduction Summary:		
The applicant seeks to develop an approximately 7.6-acre unified development consisting of one folio. The request is for a rezoning from Agricultural Single-family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units.		
Zoning:	Existing Proposed	
District(s)	ASC-1	Planned Development
Typical General Use(s)	Single-Family Residential/Agricultural	Single-family
Acreage	7.6 acres	7.6 acres
Density/Intensity	Minimum 1 acre per SF home	1.84 SF per acre

Development Standards: Existing Proposed		
District(s)	ASC-1	PD
Setbacks/Buffering and Screening	Front: 50 ft. Side: 15 ft. Rear: 50 ft.	**Type A Lots:** Front / Rear Yard Min. 22 ft. Side Setback: Min. 7.5 ft. **Type B Lots:** Front / Rear Yard Min. 22 ft. Side Setback: Min. 5 ft. **Type C Lots (Corner Lot):** Front Min. 22 ft. Rear: NA, Side Setback: Min. 5 ft.
Height	50 ft. Max. Ht.	30 ft. Max. Ht.

Additional Information:	
PD Variation(s)	None requested as part of this application
Waiver(s) to the Land Development Code	None requested as part of this application.

Planning Commission Recommendation: CONSISTENT	**Development Services Recommendation: APPROVABLE,** Subject to Conditions.

2.0 LAND USE MAP SET AND SUMMARY DATA 2.1 Vicinity Map



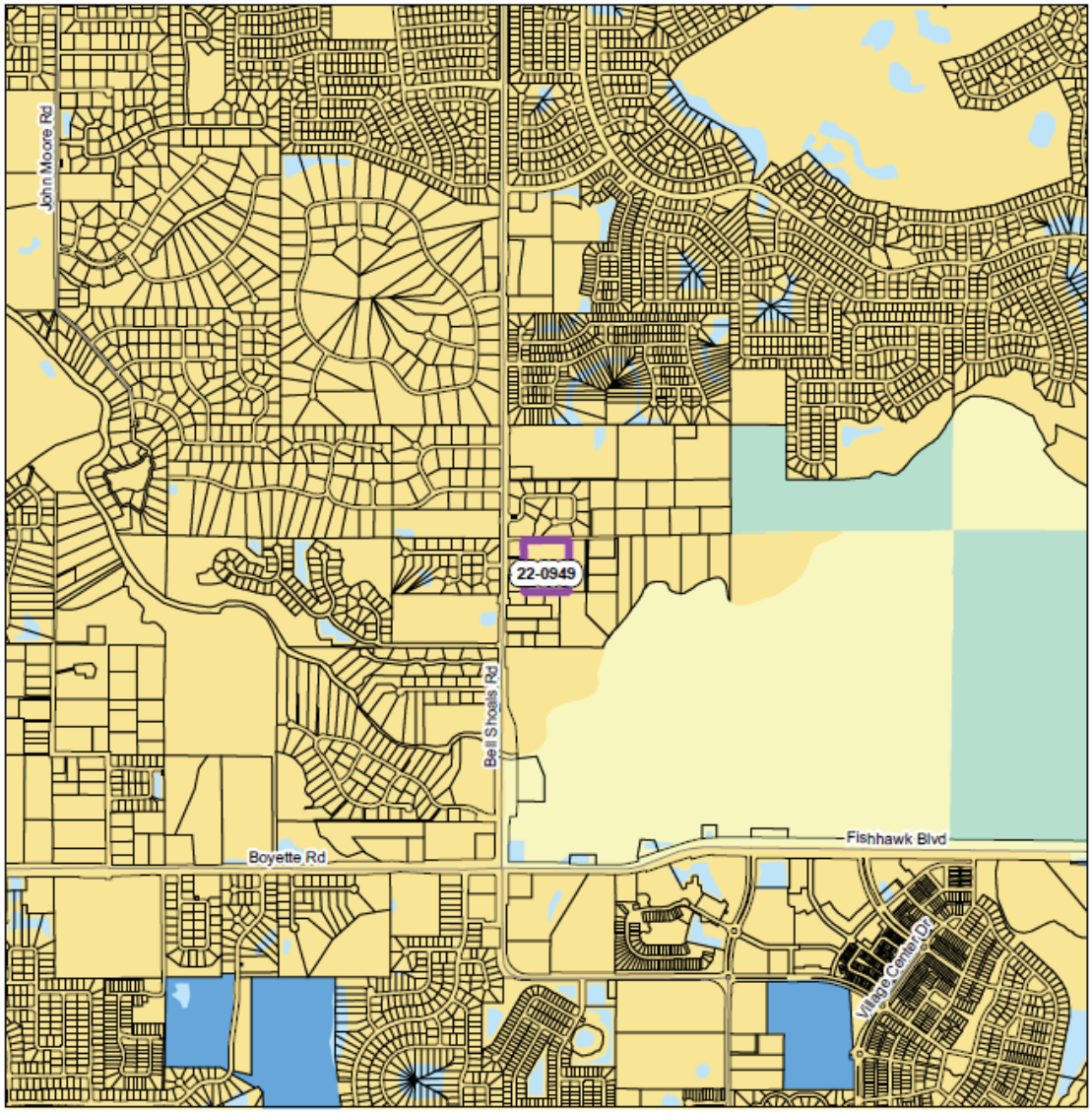
Context of Surrounding Area:

The site is located on the south side of Myrtle Road, approximately 200 feet east of Bell Shoals Road and approximately 3,800 feet north of Fishhawk Boulevard and is located in the Urban Service Area within the limits of the Brandon Community Plan. The immediate area surrounding the property is predominantly

developed with residential and vacant. The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. To the north, northeast, east, and west is single-family development.

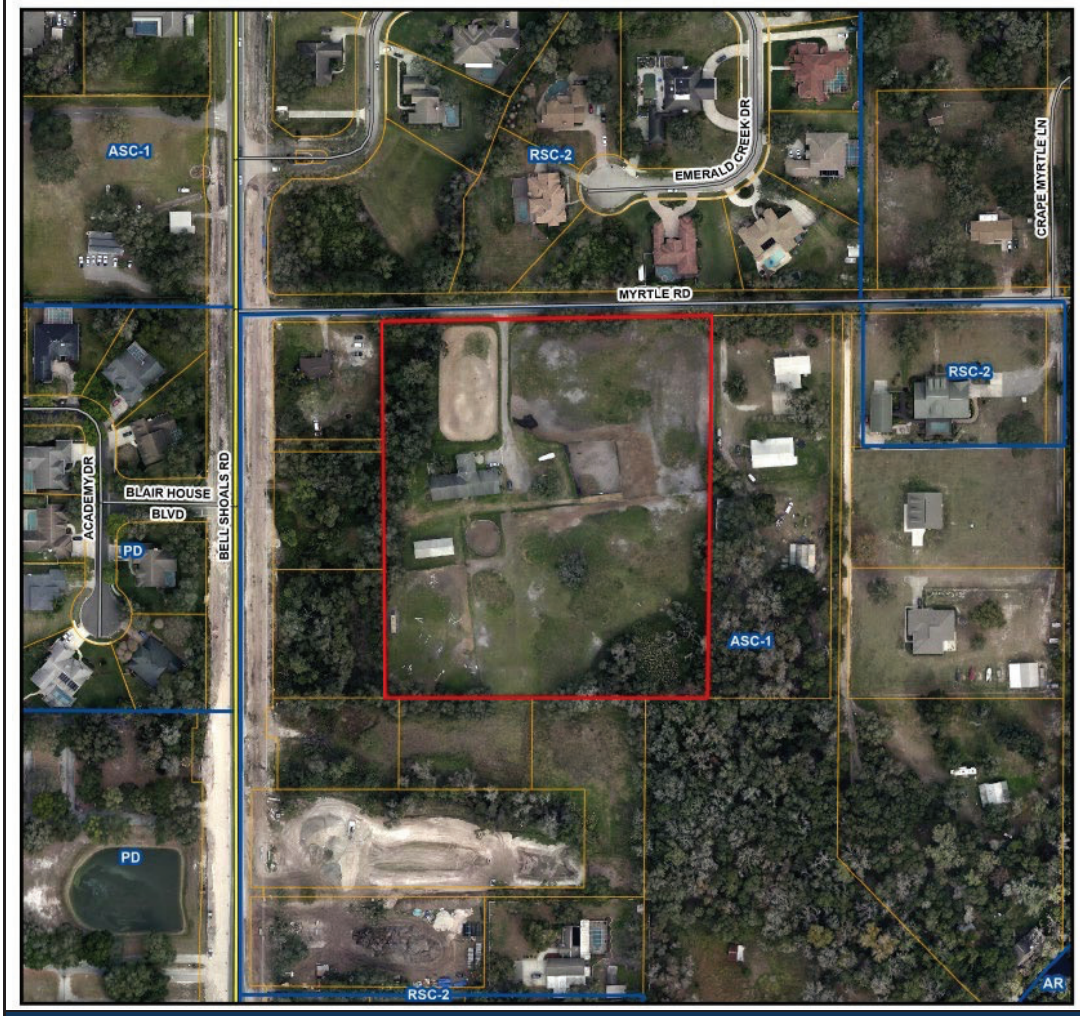
To the south, southeast and southwest is vacant land zoned for residential (ASC-1) and agricultural (AR). To the southwest across Bell Shoals Road is an Assisted Living Facility/Community Residential Home with a maximum of 260 places residents/beds.

2.0 LAND USE MAP SET AND SUMMARY DATA 2.2 Future Land Use Map



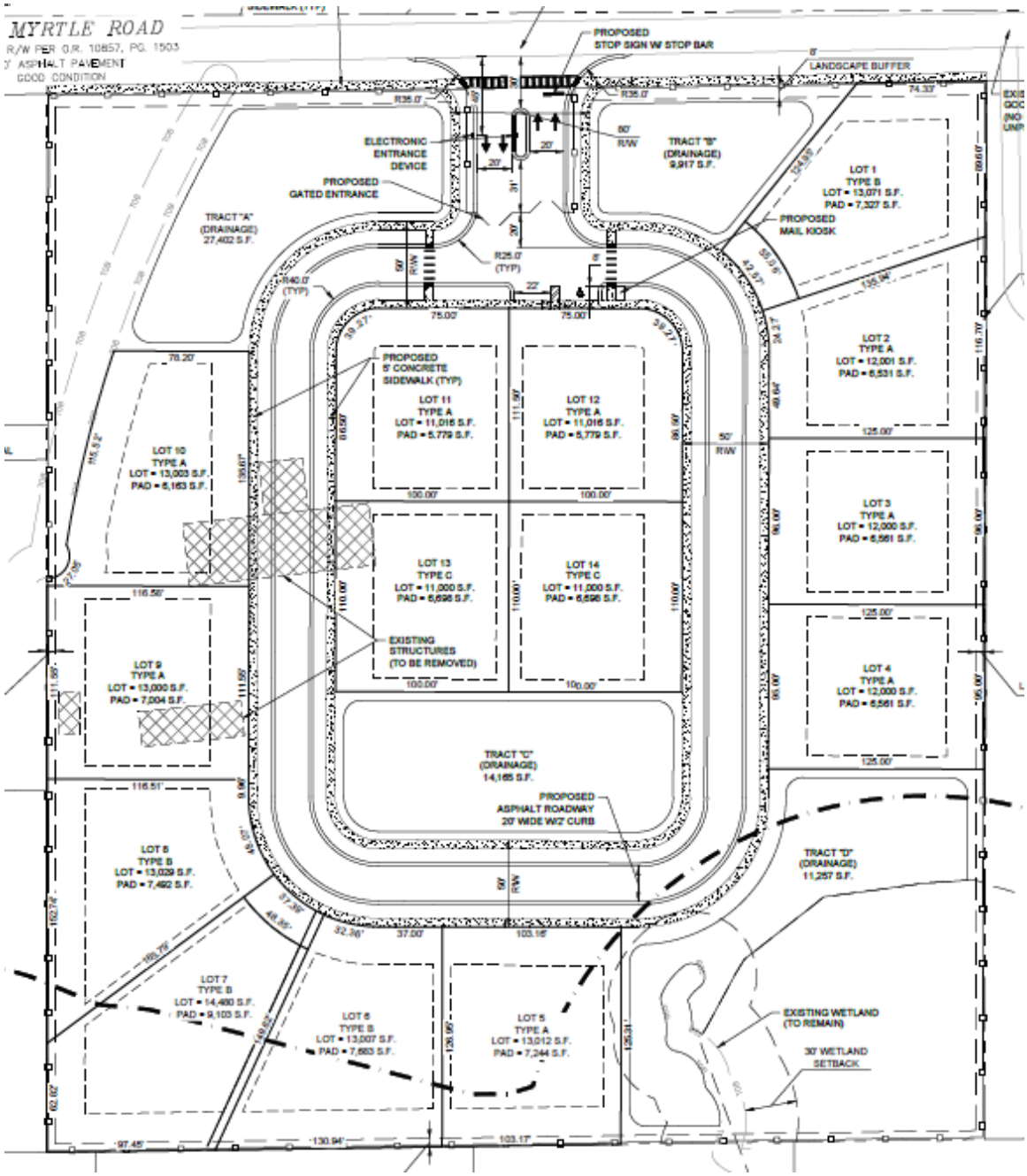
Subject Site Future Land Use Category:	RES-4 (Residential - 4)
Maximum Density/F.A.R.:	4 dwelling per acre (R-20) / 0.25 Maximum FAR
Typical Uses:	Typical uses in the RES-4 include residential, suburban commercial, offices, multi-purpose.

2.0 LAND USE MAP SET AND SUMMARY DATA 2.3 Immediate Area Map



Adjacent Zonings and Uses				
Location:	Zoning:	Maximum Density/F.A.R. Permitted by Zoning District:	Allowable Use:	Existing Use:
North	RSC-2	Min. 21,780 sq. ft.	Single-family (SF)	SF / Vacant
South	ASC-1 / AR	ASC-1: Min. 1 ac. AR: Min. 5 ac.	Single-family / Agricultural	SF / Vacant
East	ASC-1	Min. 1 ac.	Single-family	SF
West	ASC-1	Min. 1 ac.	Single-family	SF / Vacant

2.4 Proposed Site Plan (partial provided below for size and orientation purposes. See Section 8.0 for full site plan)



3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Myrtle Road	County Local - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☐ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	66	5	7
Proposed	132	10	14
Difference (+/-)	+66	+5	+7

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	None	Meets LDC
West		None	None	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Myrtle Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☐ Off-Site Improvements Provided	☐ Yes ☐N/A ☒ No	☒ Yes ☐ No	See Staff Report.

4.0 ADDITIONAL SITE INFORMATION & AGENCY COMMENTS SUMMARY

Environmental:

Environmental Protection Commission

☐ Yes ☒No ☒ Yes ☐No

Conservation & Environ. Lands Mgmt.

☒ Yes ☐No

:
☒ Wetlands/Other Surface Waters

☐ Use of Environmentally Sensitive Land Credit

☐ Wellhead Protection Area
☒ Surface Water Resource Protection Area

☐ Potable Water Wellfield Protection Area ☒ Significant Wildlife Habitat
☐ Coastal High Hazard Area
☐ Urban/Suburban/Rural Scenic Corridor ☐ Adjacent to ELAPP property

Transportation

☒ Design Exc./Adm. Variance Requested ☐ Off-site Improvements Provided

Service Area/ Water & Wastewater

☒Urban ☐ City of Tampa
☐Rural ☐ City of Temple Terrace

See Transportation Report.

Hillsborough County School Board

Adequate ☒ K-5 ☒6-8 ☐9-12 ☐N/A Inadequate ☐ K-5 ☐6-8 ☒9-12 ☐N/A

Impact/Mobility Fees

(Various use types allowed. Estimates are a sample of potential development)

Industrial
(Per 1,000 s.f.) Mobility: $4,230 Fire: $57

Retail - Fast Food

Shopping Center (Per 1,000 s.f.) Mobility: $13,562

Fire: $313
Townhouse (Fee estimate is based on a 1,500 s.f., 1-2 Story)

Warehouse
(Per 1,000 s.f.) Mobility: $1,377

Fire: $34

See Hillsborough County Public Schools “Adequate Facilities Analysis: Rezoning”

w/Drive Thru (Per 1,000 s.f.) Mobility: $104,494 Fire: $313 Mobility: $6,661 * 60 = $399,660 Parks: $1,957 * 60 = $117,420 School: $7,027 * 60 = $421,620 Fire: $249 * 60 = $14,940 Total Townhouse: $953,640 *52 = $346,372 *52 = $101,764 *52 = $365,404 *52 = $12,948 total: $826,488 Urban Mobility, Central Fire - up to 20,000 s.f. Commercial General - non-specific, OR up to 60 townhomes *revised for fees as of Oct 1, 2022*

Comprehensive Plan:	Comments Received	Findings	Conditions Requested	Additional Information/Comments
Planning Commission ☐ Meets Locational Criteria ☒N/A ☐ Locational Criteria Waiver Requested ☒ Minimum Density Met ☐ N/A	☒ Yes ☐No	☐ Inconsistent ☒ Consistent	☐ Yes ☒No	See Planning Commission Report

5.0 IMPLEMENTATION RECOMMENDATIONS

5.1 Compatibility

The applicant seeks to develop an approximately 7.6-acre unified development consisting of one folio. The request is for a rezoning from Agricultural Single-family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units.

The site is located on the south side of Myrtle Road, approximately 200 feet east of Bell Shoals Road and approximately 3,800 feet north of Fishhawk Boulevard and is located in the Urban Service Area within the limits of the Brandon Community Plan. The immediate area surrounding the property is predominantly developed with residential and vacant. The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. To the north, northeast, east, and west is single-family development.

While not required, the applicant is proposing a 5-foot-wide landscape easement with Type “A” screening to further ensure compatibility with the existing development surrounding the proposed development along adjacent east, west and south property boundaries. The applicant requests no variations for Site Design. The application does not request any variations to Land Development Code Parts 6.06.00 (Landscaping/Buffering). Myrtle Road is not a designated scenic roadway; however, the applicant also proposes an eight-foot (8') landscape area between the subdivision and Myrtle Road right-of-way. This 8-foot landscaped area along Myrtle Road will have landscaping equivalent to Land Development Code Section 6.06.03.I.2.C for Urban Scenic Roadways.

There are wetlands present on the subject property. The Environmental Protection Commission (EPC) Wetlands Division has reviewed the proposed rezoning and has determined a resubmittal is not necessary for the site plan’s current configuration. However, a wetland survey must be submitted for review and formal approval by EPC staff prior to site and development. The applicant needs to submit surveys to EPC for approval and to complete the delineation process and determine the exact extent of the wetlands. The applicant confirmed via email to EPC staff on 10-7-2022 that the wetlands, both depicted and not shown, will not be impacted and will not be a part of the drainage easement. The property is also located in a Significant Wildlife Habitat area in the southeastern portion of the subject property.

A 12-inch water main exists approximately 250 feet from the site and is located west of the subject property within the east right-of-way of Bell Shoals Road. A 4-inch wastewater force main exists approximately 310 feet from the site and is located west of the subject property within the west right-of-way of Bell Shoals Road.

The site will comply with and conform to all other applicable policies and regulations, including but not limited to, the Hillsborough County Land Development Code.

The Planning Commission found that the proposed rezoning would be consistent with the Unincorporated Hillsborough County Comprehensive Plan.

Transportation Administrative Variance Overview:

Myrtle Road is a substandard local roadway, the applicant's Engineer of Record (EOR) submitted an Administrative Variance request (dated October 7, 2022). The Administrative Variance was found approvable by the County Engineer (on October 10, 2022). A full review may be found in the Transportation Agency Review Comment Sheet.

5.2 Recommendation
Based on the above consideration, including the existing development pattern, staff finds the request **APPROVABLE**.

Zoning conditions, which were presented Zoning Hearing Master hearing, were reviewed and are incorporated by reference as a part of the Zoning Hearing Master recommendation.

SUMMARY OF HEARING

THIS CAUSE came on for hearing before the Hillsborough County Land Use Hearing Officer on November 14, 2022. Mr. Brian Grady of the Hillsborough County Development Services Department introduced the petition.

Mr. Colin Rice 101 East Kennedy Blvd. Suite 100 Tampa testified on behalf of the applicant. Mr. Rice introduced his colleague Ms. Elizabeth Keller and stated that the request is to rezone from ASC-1 to Planned Development for the construction of 14 single-family dwelling units. He showed a graphic to describe the location of the property and discussed the RES-4 land use category which permits a density of up to four dwelling units per acre. Mr. Rice stated that based on the size of the 7.6 acre parcel, a maximum of 30 dwelling units could be considered. He showed a copy of the proposed site plan and stated that the 14 lots are laid out in a cul-de-sac configuration. Each lot will be between 11,000 and 14,000 square feet. The size is specified in the proposed zoning conditions. The lots are not proposed to be larger in size due to an effort to preserve the natural resources on-site. Mr. Rice testified that there is area in the southwest portion of the property that has significant wildlife habitat and a wetland. This area will be completely preserved. The request for 14 lots does not meet Future Land Use Policy 1.2 regarding minimum density. The requirement encourages development up to 75 percent of the allowable maximum which in this case would be 22 dwelling units. Mr. Rice stated that the Planning Commission supports the request for 14 dwelling units in consideration of the environmental features and to ensure compatibility with the surrounding area. He noted that a small portion of the sidewalk will encroach into the wetland setback area which is allowable as the sidewalk will be pervious. Mr. Rice discussed several design features that will be provided but are not required by the Land Development Code. A 5-foot wide landscaped easement with Type A screening will be provided along the eastern, western and southern property boundaries. An 8-

foot landscaped area will be installed along the Myrtle Road frontage. The sidewalk will be constructed along Myrtle Road to Bell Shoals. Mr. Rice testified that a neighborhood meeting was held on September 14th however no one was in attendance. The invitation to the meeting was included in the adjacent property owner notice mailing. He stated that there are no objections from reviewing agencies. Regarding transportation, Mr. Rice testified that there is a minimal increase in traffic for the 14 homes when compared to the approved 7 dwelling units under the existing zoning. He concluded his presentation by stating that the proposed density is approximately 2 dwelling units per acre and the request is consistent with numerous Comprehensive Plan policies.

Mr. Tim Lampkin, Development Services Department testified regarding the County's staff report. Mr. Lampkin stated that the request is to rezone from Agricultural Single-Family Conventional to Planned Development to permit the development of 14 single-family dwelling units. He described the location of the property and stated that the surrounding area is predominately developed with single-family residential homes. He described the design features detailed by the applicant. An Administrative Variance was submitted by the applicant pertaining to the substandard Myrtle Road. Mr. Lampkin concluded his remarks by stating that staff find the request approvable.

Ms. Andrea Papandrew of the Planning Commission staff stated that the property is designated Residential-4 Future Land Use category and located in the Urban Service Area and the Brandon Community Planning Area. She stated that the request met Policy 1.4 regarding growth in the Urban Service Area. Ms. Papandrew stated that the density does not meet Policy 1.2 regarding minimum density however the project does meet two exemptions which address compatibility with the surrounding area and protection of environmental features. The project meets Policy 1.4 regarding comparable densities. She concluded her remarks by listing Comprehensive Plan policies that are met by the proposed development and stated that the Planning Commission staff finds the request consistent with the Brandon Community Plan and the Comprehensive Plan.

Hearing Master Finch asked Ms. Papandrew to confirm the two exemptions the project meets regarding the required minimum density. Ms. Papandrew replied that the project would not be required to provide the minimum 2 lots due to compatibility with the surrounding lot sizes and the protection of environmental features.

Hearing Master Finch asked audience members if there were any proponents of the application. None replied.

Hearing Master Finch asked audience members if there were any opponents of the application.

Mr. Christopher Jordan 1133 Myrtle Road Valrico testified in opposition. Mr. Jordan stated that he was not aware of the September 14th neighborhood

meeting mentioned by the applicant's representative. He stated that homeowners both in person and on-line with numerous signatures on petitions who are in opposition. He added that the County allows over population in areas and then tries to work on the infrastructure and road widening that is needed after to the inconvenience to all. Mr. Jordan testified that Myrtle Road is a small country road and sometimes it can take 20 to 30 minutes to go two or three miles on Bell Shoals. He referenced a letter regarding the widening of Bell Shoals. Myrtle Road is not wide enough for two cars to pass each other therefore adding 14 homes worth of traffic is going to be a danger and a safety concern for emergency vehicles. Mr. Jordan testified that he is a real estate broker and can attest to the block change and its negative impact on real estate values. He concluded his remarks by stating that after three years of widening Bell Shoals, he does not want another two plus year road project.

Mr. David Shern 1141 Myrtle Road testified in opposition. Mr. Shern stated that the project is inconsistent with the neighborhood. He added that most of the existing homes are on a minimum of two acres of land resulting in a country setting. There are large lot subdivisions in the area. Mr. Shern stated that they do not have a homeowners association therefore they were not consulted. He does not remember being invited to a neighborhood meeting. He believes that an additional 14 homes will make it difficult to get in and out of his neighborhood. He discussed the amount of traffic generated by the 14 homes and stated that he would like to see a project more compatible with the area.

Ms. Joan Alagood 4802 Crape Myrtle Lane testified in opposition. Ms. Alagood stated that Myrtle Road is narrow and has 19 homes that access it. She discussed the traffic congestion in the area and stated that the additional 14 homes will increase the traffic by 74 percent. She listed animals in the area such as wild hogs, coyotes and an eagle that was recently seen by a neighbor. She concluded her remarks by stating that she would like one-acre lots for the subject property.

Mr. Vincent Robinson 4820 Crape Myrtle Road testified in opposition. Mr. Robinson stated that he moved to the area approximately two years ago because of the country life. He stated that Myrtle Road is narrow and requires one to pull over to the side of road to let a car pass. He supports the approved 7 homes on the subject property. He is concerned about the traffic and that there is no turn lane into the neighborhood.

Mr. Attila Nagy 4814 Crape Myrtle Road testified in opposition. Mr. Nagy asked how someone would feel if the traffic was increased by almost 100 percent. He asked why the applicant chose 14 homes to develop.

County staff did not have additional comments.

Hearing Master Finch asked County transportation staff about the status of Myrtle Road and possible improvements. Mr. Alex Steady of County

Transportation review testified that an Administrative Variance has been applied for Myrtle Road. The applicant was required to show the existing geometry of the road and found that the pavement is 20 feet in width which meets County standards. The applicant is required to provide a sidewalk from their site to Bell Shoals Road as part of the Administrative Variance.

Mr. Colin Rice testified during the rebuttal period. Mr. Rice showed a copy of the adjacent property owner notice that was mailed which included the invitation to the September 14th neighborhood meeting. He stated that the data cited by citizens in opposition is incorrect regarding the increase in traffic as the property is currently permitted to develop 7 dwelling units and an additional 7 units is being requested. Mr. Rice testified that the zoning conditions include a requirement to provide a turn lane when warranted. He added that the testimony of lay persons is not competent substantial evidence. He referenced case law that he would be submitting into the record which details competent substantial evidence. The Planning Commission found the rezoning for 14 dwelling units consistent with the Comprehensive Plan. He concluded his testimony by requesting approval of the rezoning.

Hearing Master Finch asked Mr. Rice how the number of dwelling units determined. Mr. Rice replied that issues such as compatibility, the protection of the natural resources, viability, lot size and project feasibility resulted in the requested number of dwelling units. He added that 7 units does not work but 14 units met the factors that were considered.

Hearing Master Finch asked Mr. Rice to address the neighbor's concern regarding an increase in traffic. Mr. Rice replied that there is an increase of 5 am peak hour trips and 7pm peak hour trips over what is currently approved. If the turn lane is warranted, it will be installed at the site development approval stage.

The hearing was then concluded.

EVIDENCE SUBMITTED

Mr. Rice submitted a copy of his PowerPoint presentation and copies of case law regarding competent substantial evidence into the record.

PREFACE

All matters that precede the Summary of Hearing section of this Decision are hereby incorporated into and shall constitute a part of the ensuing Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The subject site is 7.60 acres in size and is zoned Agricultural Single-Family Conventional-1 (ASC-1) and designated Residential-4 (RES-4) by the Comprehensive Plan. The property is located in the Urban Service Area and the Brandon Community Plan.

2. The PD rezoning is requested to develop 14 single family homes.

3. No Planned Development Variations or waivers are requested.

4. The Planning Commission staff testified that the request met Policy 1.4 regarding growth in the Urban Service Area. Staff stated that the proposed density does not meet Policy 1.2 regarding minimum density however the project does meet two exemptions which address lot size compatibility with the surrounding area and protection of environmental features. Staff also found that the project meets Policy 1.4 regarding comparable densities. The Planning Commission staff found the request consistent with the Brandon Community Plan and the Comprehensive Plan.

5. The surrounding area is zoned RSC-2 to the north, AR and ASC-1 to the south, ASC-1 to the east and ASC-1 to the west. The properties are developed with large lot residential and vacant land uses. It is noted that the subdivision to the west on the west side of Bell Shoals Road is zoned Planned Development and developed with single-family residential lots comparable to the subject Planned Development project.

6. The current ASC-1 zoning district would permit the development of up to 7 single-family homes on the subject property.

7. The adopted RES-4 Future Land Use category permits residential density up to 4 dwelling units per acre. The subject property is 7.6 acres in size therefore up to 30 dwelling units could be requested. Policy 1.2 of the Comprehensive Plan states that the minimum density in the Urban Service Area should be at least 75 percent of the maximum number of units which would be 22 dwelling units. The Planning Commission supports an exemption of Policy 1.2 for 14 single-family units based on the protection of the existing on-site wetland and wildlife area as well the compatibility issues that would be created if the number of lots were increased which would result in significantly smaller lots.

8. Testimony in opposition was presented at the Zoning Hearing Master hearing and 3 letters in opposition were filed with the County. The testimony was from neighbors who questioned the applicant's representative assertion that a neighborhood meeting was scheduled and held but no one attended. Additionally, concerns were expressed regarding the proposed lot sizes being

incompatible with the surrounding lots, the additional traffic associated with the proposed 14 single-family homes and the condition of Myrtle Road.

The applicant's representative showed a copy of the invitation to the neighborhood meeting which was included in the adjacent property owner notice.

The lot sizes are conditioned to be a minimum of 11,000 or 12,000 square feet depending upon the proposed lot type.

County transportation staff testified that Myrtle Road meets the County's standard for road width and that the zoning conditions include a requirement that at the time of plat/site/construction plan review, a site access analysis will be conducted to determine if turn lanes are warranted; and if so, be constructed at the time of development.

9. The rezoning to Planned Development for the development of 14 single-family homes is consistent with the parcel's location within the Urban Service Area. The increase from the currently permitted 7 dwelling units to 14 dwelling units is compatible with the surrounding zoning and land use pattern as well as the Land Development Code and Comprehensive Plan.

FINDINGS OF COMPLIANCE/NON-COMPLIANCE WITH THE HILLSBOROUGH COUNTY COMPREHENSIVE PLAN

The rezoning request is in compliance with and does further the intent of the Goals, Objectives and the Policies of the Future of Hillsborough Comprehensive Plan.

CONCLUSIONS OF LAW

Based on the Findings of Fact cited above, there is substantial competent evidence to demonstrate that the requested Planned Development rezoning is in conformance with the applicable requirements of the Land Development Code and with applicable zoning and established principles of zoning law.

SUMMARY

The request is to rezone 7.6 acres from ASC-1 to Planned Development is to develop 14 single-family homes.

The current ASC-1 zoning district would permit the development of up to 7 single-family homes on the subject property.

The Planning Commission testified that the request met Policy 1.4 regarding growth in the Urban Service Area. Staff stated that the proposed density does not meet Policy 1.2 regarding minimum density however the project does meet two exemptions which address lot size compatibility with the surrounding area and protection of environmental features. Staff also found that the project meets Policy 1.4 regarding comparable densities. The Planning Commission staff found the request consistent with the Brandon Community Plan and the Comprehensive Plan.

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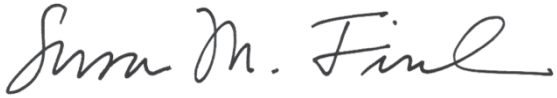
The rezoning to Planned Development for the development of 14 single-family homes is consistent with the parcel's location within the Urban Service Area. The increase from the currently permitted 7 dwelling units to 14 dwelling units is compatible with the surrounding zoning and land use pattern as well as the Land Development Code and Comprehensive Plan.

RECOMMENDATION

Based on the foregoing, this recommendation is for **APPROVAL** of the Planned Development rezoning request as indicated by the Findings of Fact and Conclusions of Law stated above subject to the zoning conditions prepared by the Development Services Department.



December 7, 2022

Susan M. Finch, AICP **Date**
Land Use Hearing Officer

Hillsborough County
City-County
Planning Commission

Unincorporated Hillsborough County Rezoning	
Hearing Date: November 14, 2022 **Report Prepared:** November 2, 2022	**Petition: PD 22-0949** ***1003 Myrtle Road*** *South of Myrtle Road, east of Bell Shoals Road, and north of Fishhawk Boulevard*
Summary Data:	
Comprehensive Plan Finding:	**CONSISTENT**
Adopted Future Land Use:	**Residential-4 (4 du/ga; 0.25 FAR)**
Service Area	**Urban Service Area**
Community Plan:	Brandon
Request:	Rezoning from Agricultural Single-family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units
Parcel Size (Approx.):	7.6 +/- acres
Street Functional Classification:	Myrtle Road – **Local** Bell Shoals Road– **County Collector** Fishhawk Boulevard- **Principal Arterial**
Locational Criteria:	N/A
Evacuation Zone:	D

Plan Hillsborough
planhillsborough.org
planner@plancom.org
813 – 272 – 5940
601 E Kennedy Blvd
18th floor
Tampa, FL, 33602

Context

- The subject property is 7.6± acres located at 1003 Myrtle Road, south of Myrtle Road, east of Bell Shoals Road, and north of Fishhawk Boulevard. The property is located within the Urban Service Area (USA) and is located within the limits of the Brandon Community Plan.

- The subject site has a Future Land Use category of Residential-4 (RES-4) which is intended to designate areas that are suitable for low density residential development. In addition, other typical uses include suburban scale neighborhood commercial, office, multi-purpose and mixed-use projects serving the area. RES-4 has a maximum density of four (4) dwelling units per gross acre and 0.25 Floor Area Ratio (FAR). The property is surrounded mainly by the RES-4 Future Land Use category with the Natural Preservation (N) and Residential Planned-2 (RP-2) Future Land Use categories located to the southeast of the site.

- The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. According to the Hillsborough County Property Appraiser data, the subject property currently contains an agricultural use. To the north, northeast, east, and west are single-family residential lots. To the northwest, south, southeast and southwest are vacant/undeveloped parcels and a church.

- The southeastern portion of the subject property contains Significant Wildlife Habitat.

- The applicant is requesting a rezoning from Agricultural Single-family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units.

Compliance with Comprehensive Plan:

The following Goals, Objectives and Policies apply to this rezoning request and are used as a basis for a consistency finding.

FUTURE LAND USE ELEMENT

Urban Service Area (USA)

Objective 1: *Hillsborough County shall pro-actively direct new growth into the urban service area with the goal that at least 80% of all population growth will occur within the USA during the planning horizon of this Plan. Within the Urban Service Area, Hillsborough County will not impede agriculture. Building permit activity and other similar measures will be used to evaluate this objective.*

Policy 1.2: *Minimum Density*
All new residential or mixed-use land use categories within the USA shall have a density of 4 du/ga or greater unless environmental features or existing development patterns do not support those densities.

Within the USA and in categories allowing 4 units per acre or greater, new development or redevelopment shall occur at a density of at least 75% of the allowable density of the land use category, unless the development meets the criteria of Policy 1.3.

Policy 1.3: *Within the USA and within land use categories permitting 4 du/ga or greater, new rezoning approvals for residential development of less than 75% of the allowable density of the land use category will be permitted only in cases where one or more of the following criteria are found to be meet:*

- *Development at a density of 75% of the category or greater would not be compatible (as defined in Policy 1.4) and would adversely impact with the existing development pattern within a 1,000 foot radius of the proposed development;*
- *Infrastructure (Including but not limited to water, sewer, stormwater and transportation) is not planned or programmed to support development.*
- *Development would have an adverse impact on environmental features on the site or adjacent to the property.*
- *The site is located in the Coastal High Hazard Area.*
- *The rezoning is restricted to agricultural uses and would not permit the further subdivision for residential lots*

Policy 1.4: *Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.*

Environmental Considerations

Objective 13: *New development and redevelopment shall not adversely impact environmentally sensitive areas and other significant natural systems as described and required within the Conservation and Aquifer Recharge Element and the Coastal Management Element of the Comprehensive Plan.*

Policy 13.6: *The County shall protect significant wildlife habitat, and shall prevent any further net loss of essential wildlife habitat in Hillsborough County, consistent with the policies in the Conservation and Aquifer Recharge Element and Land Development Code.*

Neighborhood/Community Development

Objective 16: Neighborhood Protection *The neighborhood is a functional unit of community development. There is a need to protect existing neighborhoods and communities and those that will emerge in the future. To preserve, protect and enhance neighborhoods and communities, all new development must conform to the following policies.*

Policy 16.2: *Gradual transitions of intensities between different land uses shall be provided for as new development is proposed and approved, through the use of professional site planning, buffering and screening techniques and control of specific land uses.*

Policy 16.3: *Development and redevelopment shall be integrated with the adjacent land uses through:*

a) the creation of like uses; or
b) creation of complementary uses; or
c) mitigation of adverse impacts; and
d) transportation/pedestrian connections

Policy 16.8: *The overall density and lot sizes of new residential projects shall reflect the character of the surrounding area, recognizing the choice of lifestyles described in this Plan.*

Policy 16.10: *Any density increase shall be compatible with existing, proposed or planned surrounding development. Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as". Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.*

Community Design Component

5.0 NEIGHBORHOOD LEVEL DESIGN
5.1 COMPATIBILITY

GOAL 12: *Design neighborhoods which are related to the predominant character of the surroundings.*

OBJECTIVE 12-1: *New developments should recognize the existing community and be designed in a way that is compatible (as defined in FLUE policy 1.4) with the established character of the surrounding neighborhood.*

ENVIRONMENTAL AND SUSTAINABILITY SECTION

Objective 3.5: *Apply adopted criteria, standards, methodologies and procedures to manage and maintain wetlands and/or other surface waters for optimum fisheries and other environmental values in consultation with EPC.*

Policy: 3.5.1 *Collaborate with the EPC to conserve and protect wetlands and/or other surface waters from detrimental physical and hydrological alteration. Apply a comprehensive planning-based approach to the protection of wetland ecosystems assuring no net loss of ecological values provided by the functions performed by wetlands and/or other surface waters authorized for projects in Hillsborough County.*

Policy 3.5.2: *Collaborate with the EPC through the land planning and development review processes to prohibit unmitigated encroachment into wetlands and/or other surface waters and maintain equivalent functions.*

Policy 3.5.4: *Regulate and conserve wetlands and/or other surface waters through the application of local rules and regulations including mitigation during the development review process.*

LIVABLE COMMUNITIES ELEMENT: BRANDON COMMUNITY PLAN

Goal 6: *Re-establish Brandon's historical, hospitable, and family oriented character through thoughtful planning and forward thinking development practices by concentrating density in certain areas to preserve the semi-rural lifestyle of other areas. Attempt to buffer and transition uses in concentric circles where possible with most intense uses in an area at a node (intersection) and proceeding out from there. Create a plan for how areas could be developed and redeveloped for the future. Each of these areas would have potential for different building heights, parking configurations, fencing, buffering, landscape requirements, special use limitations, and design standards. These standards apply to new construction on infill property, redevelopment of undesirable areas and renovation of existing buildings. The primary consideration of all changes should be compatibility with existing structures to ensure neighborhood preservation.*

Strategies:

3. *Implement Brandon Character Districts to protect established neighborhoods and historic patterns of development.*

4. *Consistent with the Brandon Character Districts Map, develop design guidelines for the Brandon Character Districts to address at a minimum building height, density and intensity, building types, bulk, mass, parking location, access, frontage, setbacks, buffers, landscape, streetscape and signage. Consistent with the general design characteristics listed in the Brandon Community Plan document, develop specific standards for adoption into the Land Development Code.*

5. *General design characteristics for each Brandon Character District are described below. The design characteristics are descriptive as to the general nature of the vicinity and its surroundings and do not affect the Future Land Use or zoning of properties in effect at the time of adoption of the Brandon Community Plan. Any proposed changes to the zoning of property may proceed in accordance with the Land Development Code.*

e. Garden Estates *– Usually adjacent to "Suburban" districts or agriculturally zoned properties including a few small working farms. These areas consist predominantly of single-family homes with lot sizes of at least half-acre. They may retain agricultural zoning including related horse and farm animal ownership rights, giving the feel of a semi-rural lifestyle. Blocks may be large and the roads irregular to accommodate existing site conditions such as flag lots or large, grand oak trees. Although located within the Urban Service Area, homes may have been constructed with private wells and septic systems so that County water may or may not be available in these areas. Demand for neighborhood serving uses like Childcare and Adult Day Care is minimal. As a result, special uses should be located at intersections and would not be deemed compatible unless they meet the locational criteria for a neighborhood serving commercial use in the Land Development Code.*

Staff Analysis of Goals, Objectives and Policies:

The applicant is seeking to rezone 7.6± acres from Agricultural Single-Family Conventional-1 (ASC-1) to Planned Development (PD) to allow for the development of 14 single-family residential dwelling units. The property is located south of Myrtle Road, east of Bell Shoals Road, and north of Fishhawk Boulevard. The property is within the Urban Service Area (USA) and is within the limits of the Brandon Community Plan.

The subject site has a Future Land Use designation of Residential-4 (RES-4), which is intended to designate areas that are suitable for low density residential development. In addition, typical uses also include suburban scale neighborhood commercial, office, multi-purpose and mixed-use projects. The RES-4 Future Land Use category has a maximum density of four (4) dwelling units an acre and 0.25 Floor Area Ratio (FAR). The property is surrounded by the RES-4 Future Land Use category, with Natural Preservation (N) and Residential Planned-2 (RP-2) located to the southeast of the site.

The proposal meets the intent of Objective 1 and Policy 1.4 of the Future Land Use Element (FLUE) by providing growth within the Urban Service Area. The maximum number of units that can be considered for the property is 30 units (7.6 acres * 4 du/ga). Per FLUE Policy 1.2, the minimum density required is 22 dwelling units (0.75 * 30 du). With 14 dwelling units, the proposed development will not meet minimum density requirements as outlined under FLUE Policy 1.2. However, the project does meet two exception to minimum density requirements per FLUE Policy 1.3. If the development proposed 75% of the maximum density allowed by the Future Land Use category (22 units), the development would not be compatible with, and would adversely impact, the surrounding development pattern. In addition, the sight contains Significant Wildlife Habitat on the southeastern portion of the property, which meets the exception to minimum density regarding adverse impact to environmental features. Therefore the proposed density of 14 total dwelling units meets the exception to minimum density and is consistent with FLUE Policies 1.2 and 1.3. The proposal also meets the compatibility requirements of FLUE Policy 1.4 as the predominant character of the area is single-family residential dwellings at comparable densities.

The Environmental Protection Commission (EPC) has identified wetlands present on the subject site. The EPC Wetlands Division has reviewed the proposed site plan and has provided revised agency comments dated October 7, 2022. The revised comments indicates that a resubmittal is not necessary for the site plan's current configuration. Planning Commission staff finds this request consistent with Objective 13 and associated policies in the FLUE and Objective 3.5 and associated policies in the Environmental and Sustainability Section (ESS) of the Comprehensive Plan based upon the technical review provided by the EPC. The subject property contains Significant Wildlife Habitat (SWH) in the southeast corner of the property. FLUE Policy 13.6 indicates that Significant Wildlife Habitat shall be protected. The Natural Resources department has issued a revised agency letter dated October 5, 2022, indicating no objections, though subject to three conditions. The details of these three conditions are found in the Natural Resources agency comments.

The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. The subject property currently contains agricultural uses. To the north, northeast, east, and west is single-family residential development. To the northwest, south, southeast and southwest is vacant land and a church. The proposal meets the intent of Objective 16 and its accompanying Policies 16.2, 16.3, 16.8 and 16.10 that require new development, infill, and redevelopment to be compatible with the surrounding area in

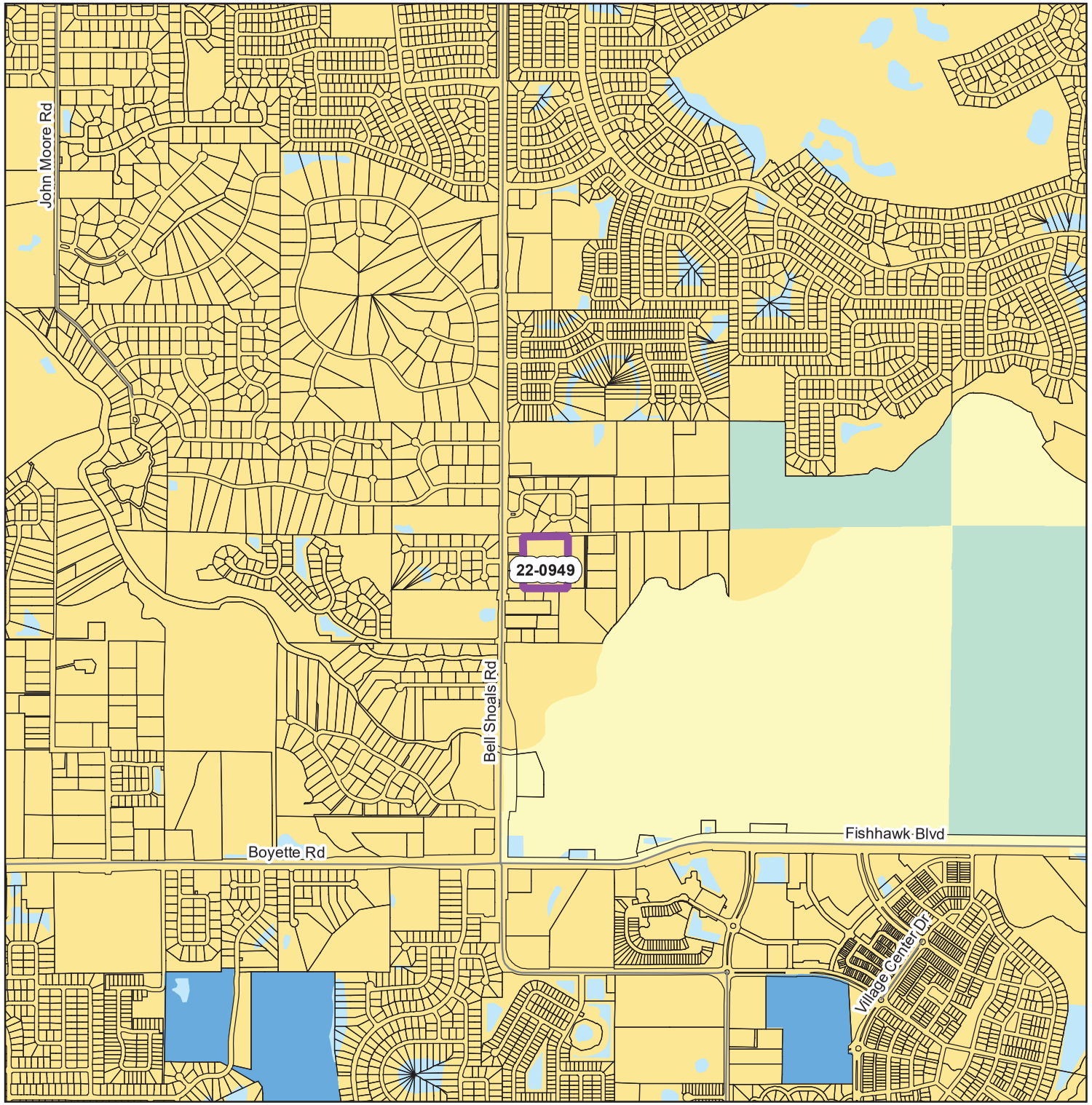
character, lot size and density. In this case, the proposal is consistent with the general character of the surrounding area which is low-density single-family residential dwellings.

Goal 12 and Objective 12-1 of the Community Design Component (CDC) in the FLUE requires new developments to recognize the existing community and be designed to relate to and be compatible with the predominant character of the surrounding area. The proposed development of 14 lots is consistent with this policy direction based on the surrounding development pattern.

Goal 6 and Strategies 3, 4, and 5 of the Brandon Community Plan require each of the character districts to follow a specific development pattern and be compatible with the surrounding area. The subject property is located within the Garden Estates district of the Brandon community Plan where the predominant residential style is dwellings on half acre lots or more. The surrounding residential development pattern includes a predominate lot size of 10,000 square feet or larger. The proposed site plan indicates an average lot size between 11,000-14,000 square feet which is compatible with the surrounding densities and is compatible with the vision of the Garden Estates Character District.

Recommendation

Based upon the above considerations, the Planning Commission staff finds the proposed Planned Development **CONSISTENT** with the *Unincorporated Hillsborough County Comprehensive Plan,* subject to the conditions proposed by the Hillsborough County Development Services Department.



HILLSBOROUGH COUNTY FUTURE LAND USE

RZ PD 22-0949

Rezonings

- <all other values>

STATUS

- APPROVED
- CONTINUED
- DENIED
- WITHDRAWN
- PENDING

- Tampa Service
- Urban Service
- Shoreline
- County Boundary
- Jurisdiction Boundary
- Major Roads
- Parcels
- wam.NATURAL.LULC_Wet_Poly
- AGRICULTURAL/MINING-1/20 (.25 FAR)
- PEC PLANNED ENVIRONMENTAL COMMUNITY-1/2 (.25 FAR)
- AGRICULTURAL-1/10 (.25 FAR)
- AGRICULTURAL/RURAL-1/5 (.25 FAR)
- AGRICULTURAL ESTATE-1/2.5 (.25 FAR)
- RESIDENTIAL-1 (.25 FAR)
- RESIDENTIAL-2 (.25 FAR)
- RESIDENTIAL PLANNED-2 (.35 FAR)
- RESIDENTIAL-4 (.25 FAR)
- RESIDENTIAL-6 (.25 FAR)
- RESIDENTIAL-9 (.35 FAR)
- RESIDENTIAL-12 (.35 FAR)
- RESIDENTIAL-16 (.35 FAR)
- RESIDENTIAL-20 (.35 FAR)
- RESIDENTIAL-35 (1.0 FAR)
- NEIGHBORHOOD MIXED USE-4 (3) (.35 FAR)
- SUBURBAN MIXED USE-6 (.35 FAR)
- COMMUNITY MIXED USE-12 (.50 FAR)
- URBAN MIXED USE-20 (1.0 FAR)
- REGIONAL MIXED USE-35 (2.0 FAR)
- OC-20
- RESEARCH CORPORATE PARK (1.0 FAR)
- ENERGY INDUSTRIAL PARK (.50 FAR USES OTHER THAN RETAIL, .25 FAR RETAIL/COMMERCE)
- LIGHT INDUSTRIAL PLANNED (.50 FAR)
- LIGHT INDUSTRIAL (.50 FAR)
- HEAVY INDUSTRIAL (.50 FAR)
- PUBLIC/QUASI-PUBLIC
- NATURAL PRESERVATION
- WIMAUMA VILLAGE RESIDENTIAL-2 (.25 FAR)
- CITRUS PARK VILLAGE

N W E S

0 920 1,840 2,760 3,680 Feet

Map Printed from Rezoning System: 5/25/2022

Author: Beverly F. Daniels

File: G:\RezoningSystem\MapProjects\HC\Greg_hcRezoning - Copy.mxd

Hillsborough County City-County Planning Commission

GENERAL
SITE PLAN
FOR
CERTIFICATION

Hillsborough County Florida

DEVELOPMENT SERVICES
PO Box 1110, Tampa, FL 33601-1110
(813) 272-5600

HILLSBOROUGH COUNTY
DEVELOPMENT SERVICES DEPARTMENT

GENERAL SITE PLAN REVIEW/CERTIFICATION

Project Name: RZ-PD (22-0949)

Zoning File: RZ-PD (22-0949) **Modification:** None

Atlas Page: None **Submitted:** 12/21/22

To Planner for Review: 12/21/22 **Date Due:** ASAP

Contact Person: P. Colin Rice **Phone:** 813-676-7226/ crice@shumaker.com

Right-Of-Way or Land Required for Dedication: **Yes** ☐ **No** ☑

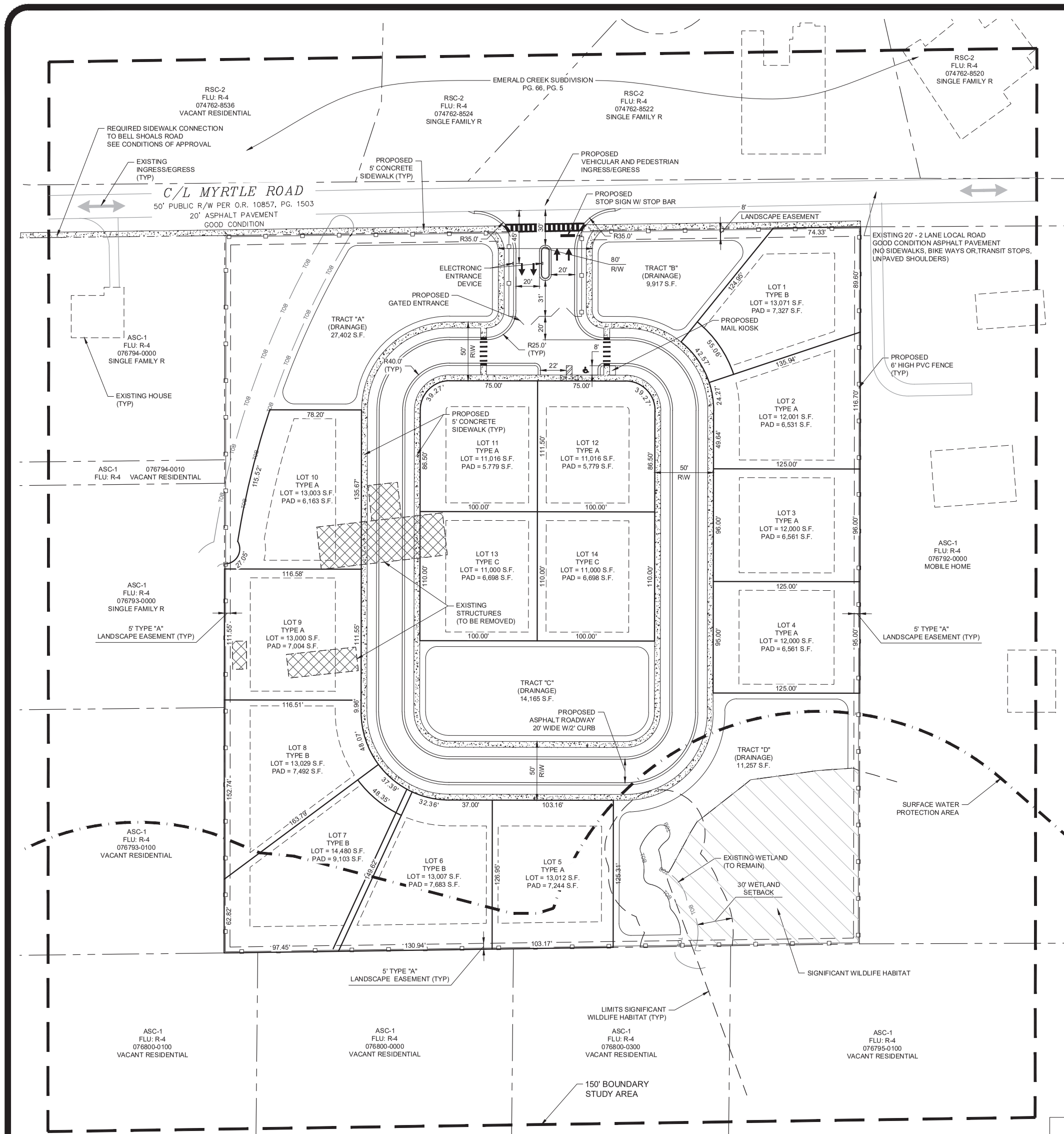
☑ The Development Services Department HAS NO OBJECTION to this General Site Plan.

☐ The Development Services Department RECOMMENDS DISAPPROVAL of this General Site Plan for the following reasons:

Reviewed by: Tim Lampkin Date: 12-21-22

Date Agent/Owner notified of Disapproval: _____

Received
December 21, 2022
Development
Services



LEGEND

- PROPERTY LINE
- ADJOINING PROPERTY LINE
- SURFACE WATER PROTECTION AREA
- ADJOINING PROPERTY LINE
- PVC FENCE
- LANDSCAPE BUFFER LINE
- ASPHALT PAVEMENT
- CONCRETE PAVEMENT

50 0 50 100

LOCATION MAP
SCALE: 1" = 1000'

LEGAL DESCRIPTION:

THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 LESS THE EAST 574.0 FEET THEREOF AND LESS THE WEST 238.75 FEET THEREOF AND LESS THE NORTH 50.0 FEET FOR ROAD.

OWNER/DEVELOPER INFORMATION:
GRACE CONTRACTING & DEVELOPMENT, LLC
427 BEACH ROAD
WEST HAVERSTRAW, 10993

SITE DATA TABLE: 47567.97

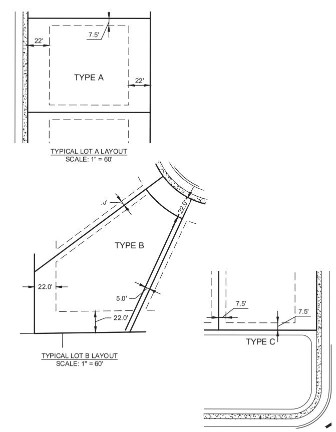
FOLIO NUMBERS:	076792-0500
EXISTING ZONING:	ASC-1
PROPOSED ZONING:	PD 22-0949
EXISTING LAND USE:	AGRICULTURE
FUTURE LAND USE:	R-4
EXISTING USE:	PASTURE
PROPOSED USE:	SINGLE FAMILY RESIDENTIAL
COMMUNITY PLANNING AREA:	BRANDON
TOTAL ACRES:	330,876 S.F. / 7.60 AC. (100.00%)
PROPOSED POND AREA:	47,568 S.F. / 1.10 AC. (14.47%)
IMPERVIOUS AREA:	44,713 S.F. / 1.03 AC. (13.55%)
OPEN SPACE AREA:	238,215 S.F. / 5.47 AC. (71.97%)
EXISTING WETLAND AREA:	1,785 S.F. / 0.04 AC. (TO BE MITIGATED)
SITE DENSITY:	7.6 AC./14 SF UNITS = 1.84 DU/AC. APPROX.
MAXIMUM BUILDING HEIGHT:	35'
MAXIMUM IMPERVIOUS ALLOWABLE:	70%

PROPOSED CONDITIONS

SEE CONDITIONS OF APPROVAL FOR PD 22-0949.

NOTES:

1. DEVELOPMENT SHALL PROCEED IN ACCORDANCE WITH THE STANDARDS OF THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE.
2. WATER AND SEWER SERVICE TO BE PROVIDED BY HILLSBOROUGH COUNTY.
3. PROJECT IS IN URBAN SERVICES AREA AND WILL CONNECT TO PUBLIC WATER AND WASTEWATER SERVICE
4. PROJECT WILL BE DEVELOPED IN ONE PHASE.
5. THERE ARE NO KNOWN PLATS WITHIN THE PROJECT BOUNDARY.
6. ALL EXISTING STRUCTURES ON SITE TO BE REMOVED.
7. THERE ARE CONSERVATION/WETLAND, PRESERVATION, UPLAND HABITAT AREAS AND OTHER NATURAL PHYSICAL FEATURES ON SITE.
8. SITE MEETS HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE REQUIREMENTS FOR COMMUNITY GATHERING SPACE.
9. NO DESIGNATED HISTORIC LANDMARKS AND OTHER HISTORICAL OR ARCHEOLOGICAL SITES AND STRUCTURES ARE KNOWN ON SITE OR ARE ADJACENT TO THE SITE.
10. PROJECT ROADS WILL BE PRIVATE.
11. PROJECT SITE WILL BE FENCED AND GATED.
12. PROJECT WILL BE DESIGNED TO MEET HILLSBOROUGH COUNTY, STATE AND FEDERAL REGULATORY GUIDELINES AND TECHNICAL STANDARDS.
13. PROJECT IS NOT LOCATED WITHIN AN OVERLAY DISTRICT.
14. SIDEWALKS TO BE PROVIDED AND BUILT IN ACCORDANCE WITH THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE.
15. PROPOSED SIDEWALKS SHALL MEET ADA REQUIREMENTS.
16. THE PROJECT SITE IS NOT LOCATED WITHIN COASTAL HIGH HAZARD AREA, POTABLE WELL FIELD PROTECTED AREA OR SUBSURFACE WATER RESOURCE PROTECTION AREA.
17. PARKING SHALL BE IN COMPLIANCE WITH HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE. PARKING WILL BE PROVIDED VIA DRIVEWAY AND GARAGE.



TYPICAL LOT A LAYOUT
SCALE: 1" = 60'

TYPICAL LOT B LAYOUT
SCALE: 1" = 60'

TYPICAL LOT C LAYOUT
SCALE: 1" = 60'

TYPICAL LOT TYPE A LOTS 3, 4, 5, 9, 10, 11 AND 12	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	7.5'
MINIMUM REAR YARD	22'
MINIMUM BUILDING SEPARATION	12.5'
MINIMUM LOT WIDTH	90'
MINIMUM LOT AREA	11,000 S.F.
MAXIMUM HEIGHT	35'

TYPICAL LOT TYPE B LOTS 1, 2, 6, 7 AND 8	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	5'
MINIMUM REAR YARD	22'
MINIMUM BUILDING SEPARATION	10'
MINIMUM LOT WIDTH	45'
MINIMUM LOT AREA	12,000 S.F.
MAXIMUM HEIGHT	35'

TYPICAL LOT TYPE C 13 AND 14	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	7.5'
MINIMUM REAR YARD	N/A*
MINIMUM BUILDING SEPARATION	15'
MINIMUM LOT WIDTH	90'
MINIMUM LOT AREA	11,000 S.F.
MAXIMUM HEIGHT	35'

NO.	BY	DATE	REVISION DESCRIPTION

DESIGNED BY: RJK | DRAWN BY: RWS | DATE: 04-28-2022
CHECKED BY: RJK | APPROVED BY: RJK | JOB NO.: 22-0109

THESE PLANS MAY NOT BE COPIED OR MODIFIED WITHOUT WRITTEN PERMISSION FROM GATEWAY LAND SURVEYING, L.L.C.

NOT VALID UNLESS SIGNED & SEALED BY A REGISTERED ENGINEER

RYAN J. KING, PE #64619

1003 MYRTLE ROAD SUBDIVISION

GRACE CONTRACTING & DEVELOPMENT, LLC
NEW YORK

PD PLAN

GATEWAY
CIVIL ENGINEERING & LAND SURVEYING, LLC
1081 East Brandon Boulevard
Brandon, Florida 33511 Phone (813)643-2292 Fax (813)643-2293
License Business No. 8129

1

22-0949

AGENCY COMMENTS

AGENCY REVIEW COMMENT SHEET

TO: Zoning Technician, Development Services Department	**DATE:** 10/10/2022
REVIEWER: Alex Steady, Senior Planner	**AGENCY/DEPT:** Transportation
PLANNING AREA/SECTOR: Brandon/Central	**PETITION NO:** PD 22-0949

	This agency has no comments.
	This agency has no objection.
X	This agency has no objection, subject to the listed or attached conditions.
	This agency objects for the reasons set forth below.

REPORT SUMMARY AND CONCLUSIONS

- The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 66 average daily trips, an increase of 5 trips in the a.m. peak hour, and a decrease in 7 trips in the p.m. peak hour.
- If PD 22-0949 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated October 7, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve Myrtle Road to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022).
- The Developer shall construct a sidewalk in the right of way along Myrtle Rd.'s southern frontage to connect to the existing sidewalk along Bell Shoals Rd. Final form and design shall be subject to approval of the Administrator.
- At the time of plat/site/construction plan review, a site access analysis is required to assess if any turn lanes are found to be warranted pursuant to LDC Section 6.04.04.D using existing and project traffic trips. If any turn lane is required, construction will be required at the time of development.
- Transportation Review Section staff has no objection to the proposed request, subject to the conditions of approval provided hereinbelow.

CONDITIONS OF APPROVAL

Staff is requesting the following conditions:

New Conditions:

- The Developer shall construct a sidewalk in the right of way along Myrtle Rd.'s southern frontage to connect to the existing sidewalk along Bell Shoals Rd. Final form and design shall be subject to approval of the Administrator.
- If PD 22-0949 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated October 7, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve Myrtle Road to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022).
- At the time of plat/site/construction plan review, a site access analysis is required to assess if any turn lanes are found to be warranted pursuant to LDC Section 6.04.04.D using existing and project traffic trips. If any turn lane is required, construction will be required at the time of development.

Other Conditions

Prior to PD site plan certification, the applicant shall revise the PD site plan to:

- Include the sidewalk connection required per condition on the site plan and label it "Required sidewalk extension – See Conditions of Approval"

PROJECT SUMMARY AND ANALYSIS

The applicant is requesting to rezone one parcel totaling +/- 7.58 acres from Agricultural Single Family Conventional -1 (ASC-1) to Planned Development (PD). The subject PD proposes 14 single family dwelling units. The site is located +/- 228 feet east of the intersection of Bell Shoals Road and Myrtle Road. The Future Land Use designation of the site is Residential – 4 (R-4).

Trip Generation Analysis

Staff has prepared a comparison of the trips potentially generated under the previously approved zoning and the proposed planned development including the additional residential units, utilizing a generalized worst-case scenario. Data presented below is based on the Institute of Transportation Engineer's Trip Generation Manual, 10th Edition.

Approved Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
ASC-1, 7 Single Family Dwelling Units (ITE code 210)	66	5	7

Proposed Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD, 14 Single Family Dwelling Units (ITE code 210)	132	10	14

Trip Generation Difference:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
Difference	**+66**	**+5**	**+7**

The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 66 average daily trips, an increase of 5 trips in the a.m. peak hour, and a decrease in 7 trips in the p.m. peak hour.

TRANSPORTATION INFRASTRUCTURE SERVING THE SITE

The subject property has frontage on Myrtle Road. Myrtle is a 2-lane, substandard Hillsborough County maintained, local roadway, characterized by +/-17 of pavement. The existing right-of-way on Myrtle Road is +/-50 ft. There are no sidewalks, curb, bike facilities, or shoulders on either both sides of Myrtle Road in the vicinity of the proposed project.

The subject property is located +/- 228 feet from the intersection of Bell Shoals Road and Myrtle Road. Bell Shoals is a Hillsborough County maintained collector roadway. The section of Bell Shoals Road that the subject property will connect to is currently included in a Capitol Improvement Project (CIP #

69112000). The CIP project includes widening the existing 2 lanes to four lanes with raised median, directional turn movements and turn lanes, a new signal at Starwood Avenue, and signal improvements at Glenhaven Drive, Rosemead Lane and Bloomingdale Avenue. The project is also planned to provide a bicycle lane and a sidewalk in each direction. This project is currently under construction and is estimated to Closeout in Mid-2023.

REQUESTED VARIANCE

Myrtle Road is a substandard road. The land development code indicates that a developer would need to improve the road up to county standards unless an Administrative Variance is submitted and found approvable. The applicant submitted a Section 6.04.02.B. Administrative Variance Request (dated October 7, 2022) to the Hillsborough County Land Development Code (LDC) Section 6.04.03.L requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on October 10, 2022). If the rezoning is approved, the County Engineer will approve the above referenced Administrative Variance Request, upon which the developer will not be required to improve Myrtle Road to county standard.

SITE ACCESS

The project is proposing a full access connection to Myrtle Road. Cross Access was not required per section 6.04.03.Q of the Hillsborough County Land Development Code.

ROADWAY LEVEL OF SERVICE (LOS)

Level of Service (LOS) information is reported below. Myrtle Road is not a Hillsborough County Regulated Roadway and as such was not included in the Level of Service Report.

Transportation Comment Sheet

3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Myrtle Road	County Local - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☐ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	66	5	7
Proposed	132	10	14
Difference (+/-)	+66	+5	+7

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	None	Meets LDC
West		None	None	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Myrtle Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☒ Off-Site Improvements Provided	☐ Yes ☐N/A ☒ No	☒ Yes ☐ No	See Staff Report.

From: Williams, Michael
Sent: Monday, October 10, 2022 11:03 AM
To: Newton, Matt
Cc: Tirado, Sheida; Lampkin, Timothy; Steady, Alex; Morales, Cintia; PW-CEIntake
Subject: FW: PD 22-0949 Administrative Variance Review
Attachments: 22-0949 AVReq 10-07-22.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Matt,
I have found the attached Section 6.04.02.B. Administrative Variance (AV) for PD 22-0949 APPROVABLE ***subject to the Site Plan Attachment being modified to show the sidewalk extending to Bell Shoals Road***.

Please note that it is you (or your client's) responsibility to follow-up with my administrative assistant, Cintia Morales (moralescs@hillsboroughcounty.org or 813-307-1709) after the BOCC approves the PD zoning or PD zoning modification related to below request. This is to obtain a signed copy of the DE/AV.

If the BOCC denies the PD zoning or PD zoning modification request, staff will request that you withdraw the AV/DE. In such instance, notwithstanding the above finding of approvability, if you fail to withdraw the request, I will deny the AV/DE (since the finding was predicated on a specific development program and site configuration which was not approved).

Once I have signed the document, it is your responsibility to submit the signed AV/DE(s) together with your initial plat/site/construction plan submittal. If the project is already in preliminary review, then you must submit the signed document before the review will be allowed to progress. Staff will require resubmittal of all plat/site/construction plan submittals that do not include the appropriate signed AV/DE documentation.

Lastly, please note that it is critical to ensure you copy all related correspondence to PW-CEIntake@hillsboroughcounty.org

Mike

Michael J. Williams, P.E.
Director, Development Review
County Engineer
Development Services Department

P: (813) 307-1851
M: (813) 614-2190

E: Williamsm@HillsboroughCounty.org
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Facebook | Twitter | YouTube | LinkedIn | HCFL Stay Safe

From: Tirado, Sheida <TiradoS@hillsboroughcounty.org>
Sent: Sunday, October 9, 2022 6:20 PM
To: Williams, Michael <WilliamsM@HillsboroughCounty.ORG>
Cc: Morales, Cintia <MoralesCS@hillsboroughcounty.org>
Subject: PD 22-0949 Administrative Variance Review
Importance: High

Hello Mike,

The attached Administrative Variance is approvable to me, the developer agreed to construct a sidewalk that will connect this development's sidewalk to Bell Shoals Rd, this was added to criteria B of the AV and as a condition of the PD. Please include the following people in your response email:

mnewton@shumaker.com
lampkint@hillsboroughcounty.org
steadya@hillsboroughcounty.org

Best Regards,

Sheida L. Tirado, PE *(she/her/hers)*
Transportation Review Manager
Development Services Department

P: (813) 276-8364
E: tirados@HCFLGov.net
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Facebook | Twitter | YouTube | LinkedIn | HCFL Stay Safe

Please note: All correspondence to or from this office is subject to Florida's Public Records law.

Received October 7, 2022
Development Services

Application Number RZ PD 22-0949

To: Mr. Michael J. Williams, P.E.
Development Review Director
County Engineer
Development Services Department
601 E. Kennedy Blvd., 20th Floor
Tampa, FL 33602

From: Matt Newton, Shumaker, Loop & Kendrick, LLP

Re: Request for Administrative Variance for Substandard Road Improvements | Folio No. 076792-0500

SCOPE OF REQUEST

The purpose of this letter is to request the following Section 6.04.02.B administrative variance:

1. Variance to Section 6.04.03.L of the Hillsborough County Land Development Code to allow 14 single family dwelling units to have access to a substandard local road.

BACKGROUND

RZ PD 22-0949 is an application to convert a 7.59 acre pasture to a single family neighborhood with 14 detached homes. Exclusive vehicular access to proposed neighborhood is Myrtle Road, a substandard undivided 2-lane urban local road:

MYRTLE RD. IMPACTED BY RZ PD 22-0949			
	TS-3 Requirement	Existing Road	Compliant
Right of Way Width	50'	50'	Yes
Surface	20' Asphalt	20' Asphalt[1]	Yes
Lane Width	10'	10'	Yes
Sidewalk Width	5'	N/A[2]	No
Curb	Required	No	No
Shoulders	N/A	None	No

[1] Measurement confirmed by Ryan King, PSM. See Exhibit B.
[2] Applicant will construct sidewalks on its property. See Exhibit A.

STANDARD OF REVIEW

In the consideration of the variance request, the issuing authority shall determine to the best of its ability if the following circumstances are met:

(a) there is an unreasonable burden on the applicant;

(b) the variance would not be detrimental to the public health, safety, and welfare; and,

(c) without the variance, reasonable access cannot be provided.

ANALYSIS

There is an unreasonable burden on the applicant. RZ PD 22-0949 limited to 14 new infill single family dwelling units. The 14 dwellings will generate only 11 new weekday AM peak hour trips, and weekday 14 PM peak hour trips (*see* Exhibit C).

The nature of the proposal and existing circumstances render a design exception impossible as offsite improvements are economically prohibitive under the circumstances. The applicant cannot contribute to an ongoing capital improvement project and no buffered bicycle lanes exist in the vicinity.

Furthermore, adding pavement markings to Myrtle Road would be a disproportionate improvement. Guidance from the Manual on Uniform Traffic Control Devices ("MUTCD") provides that center line markings are appropriate on urban arterials and collectors with an average daily trip generation ("ADT") of 4,000 trips per day or greater, or rural arterials and collectors with an ADT of 3,000 trips per day or greater. (*see* Exhibit F) Myrtle Road is classified as a local road (*see* Exhibit G). With approval of RZ PD 22-0949, the trip generators onto Myrtle Road are 33 single family homes, 2 mobile homes, and 24.57 AC of various agricultural uses (*see* Exhibit H). Generalized data from the Institute of Traffic Engineers does not suggest average daily trip generation will reach anywhere near 3,000 ADT:

LAND USE	UNITS	AVERAGE DAILY TRIPS	TOTAL
Single Family Homes (ITE 210)	33	9.44 per dwelling unit	311.52 ADT
Mobile Home Park (ITE 240)	2	5.0 per dwelling unit	10 ADT
Horse Stable[3]	10.87 AC	Unknown	N/A
Pasture[4]	13.7 AC	Unknown	N/A
		Total	**321.52 ADT**

[3] The Institute of Traffic Engineers' Trip Generation Manual (10th) ed. does not have catalogue trip generation for horse stables.
[4] The Institute of Traffic Engineers' Trip Generation Manual (10th) ed. does not have catalogue trip generation for pastures.

A variance would not be detrimental to the public health, safety, and welfare. Granting 14 infill homes access to a substandard section of Myrtle Road will not create or aggravate existing public safety concerns. The 20' existing asphalt is sufficient for emergency vehicle access. Data maintained by the Hillsborough County does not indicate the site's vicinity has a propensity for vehicular accidents:

TOP 100 ACCIDENT LOCATIONS BY MONTH		
MONTH	CRASH LOCATION	NUMBER OF CRASHES
August 2022	-	-
July 2022	-	-
June 2022	-	3
May 2022	-	-
April 2022	Bell Shoals / Glenhaven	3
March 2022	-	-
February 2022	-	-
January 2022	-	-
December 2021	-	-
November 2021	Bell Shoals/Boyette	5
October 2021	-	-
September 2021	-	-
August 2021	Bell Shoals/Boyette	5
July 2021	-	-

See Exhibit I. Permitting 14 infill homes access to a substandard section of Myrtle Road, as it exists, does not present safety concerns.

To enhance public safety, Applicant will commit to installing a sidewalk on the south side of Myrtle to create a safe pedestrian connection to Bell Shoals Road.

Without the variance, reasonable access cannot be provided. Access to Myrtle Road is the only vehicular access available to the site. Approval of this administrative variance is therefore necessary to provide reasonable access to this project.

Received October 7, 2022
Development Services

Accordingly, the Applicant requests that the following design exception be approved:

1. Variance to Section 6.04.03.L of the Hillsborough County Land Development Code to allow fourteen (14) single family dwellings access upon a substandard Local Road.

Respectfully submitted,

Matt Newton, B.C.S.
City, County & Local Government Law
Shumaker, Loop & Kendrick, LLP

Exhibits:

A. Site Plan, RZ PD 22-0949 (August 16, 2022);
B. Survey dated March 25, 2022, updated August 8, 2022.
C. ITE TripGen Data (Land Use Group No. 210 (Single-Family Detached Housing));
D. GIS Map of Surrounding Stormwater Infrastructure;
E. Street Condition Exhibits;
F. Manual on Uniform Traffic Control Devices §3B.01 Yellow Center Line Pavement Markings and Warrants;
G. GIS Map of Hillsborough County Road Inventory Classification;
H. Exhibit of ADT Generation in Vicinity.
I. Top 100 Traffic Accident Locations, July 2022 – July 2021, Hillsborough County Sheriff Office GIS Bureau.

Based on the information provided by the applicant, this request is

_____ Denied
_____ Approved with conditions
_____ Approved

If there are any questions or you need clarification, please contact Sheida L. Tirado, P.E. at 813-276-8364.

Sincerely,

Michael J. Williams, P.E.
Development Review Director
County Engineer

Received October 7, 2022
Development Services

1003 MYRTLE ROAD SUBDIVISION

GRACE CONTRACTING & DEVELOPMENT, LLC
NEW YORK

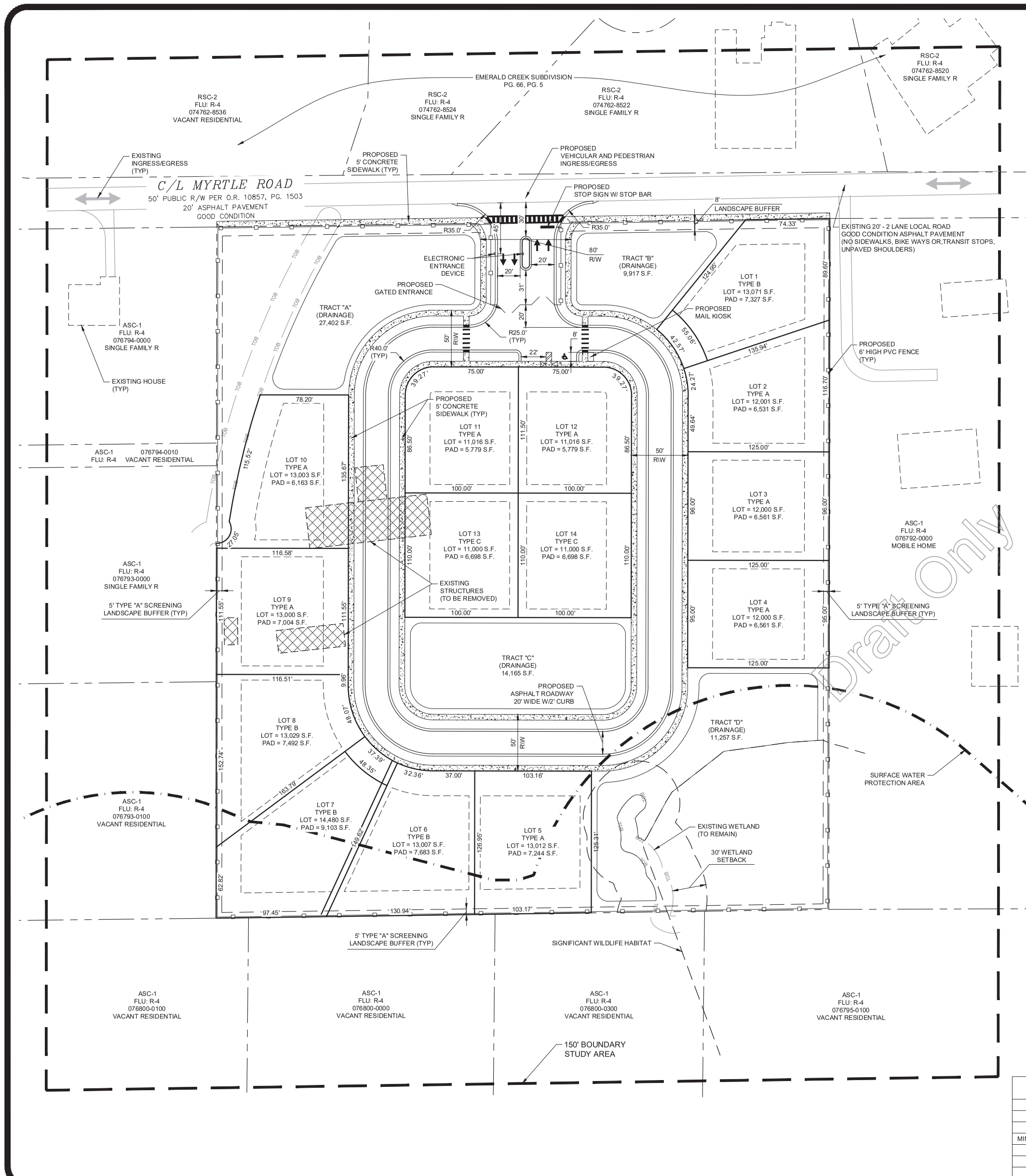
PD PLAN

GATEWAY
CIVIL ENGINEERING & LAND SURVEYING, LLC
1081 East Brandon Boulevard
Brandon, Florida 33511 Phone (813)643-2292 Fax (813)643-2293
License Business No. 8129

RYAN J. KING, PE #64619

NO.	BY	DATE	REVISION DESCRIPTION

DESIGNED BY: RJK	DRAWN BY: RWS	DATE: 04-28-2022
CHECKED BY: RJK	APPROVED BY: RJK	JOB NO.: 22-0109



LEGEND

- PROPERTY LINE
- ADJOINING PROPERTY LINE
- SURFACE WATER PROTECTION AREA
- ADJOINING PROPERTY LINE
- PVC FENCE
- LANDSCAPE BUFFER LINE
- ASPHALT PAVEMENT
- CONCRETE PAVEMENT

LOCATION MAP
SCALE: 1" = 1000'

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OWNER/DEVELOPER INFORMATION:
GRACE CONTRACTING & DEVELOPMENT, LLC
427 BEACH ROAD
WEST HAVERSTRAW, 10993

SITE DATA TABLE: 47567.97

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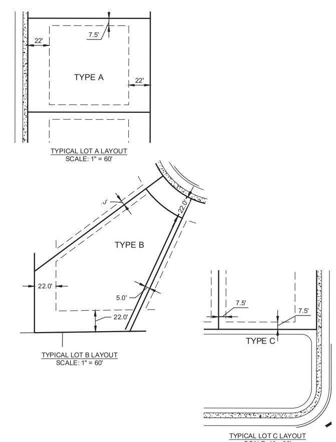
PROPOSED ZONING:	PD 22-0949
EXISTING LAND USE:	AGRICULTURE
FUTURE LAND USE:	R-4
EXISTING USE:	PASTURE
PROPOSED USE:	SINGLE FAMILY RESIDENTIAL
COMMUNITY PLANNING AREA:	BRANDON
TOTAL ACRES:	330,876 S.F. / 7.60 AC. (100.00%)
PROPOSED POND AREA:	47,568 S.F. / 1.10 AC. (14.47%)
IMPERVIOUS AREA:	44,713 S.F. / 1.03 AC. (13.55%)
OPEN SPACE AREA:	238,215 S.F. / 5.47 AC. (71.97%)
EXISTING WETLAND AREA:	1,785 S.F. / 0.04 AC. (TO BE MITIGATED)
SITE DENSITY:	7.6 AC./14 SF UNITS = 1.84 DU/AC. APPROX.
MAXIMUM BUILDING HEIGHT:	35'
MAXIMUM IMPERVIOUS ALLOWABLE:	70%

PROPOSED CONDITIONS:

1. THE DEVELOPMENT SHALL BE LIMITED TO FOURTEEN (14) SINGLE FAMILY DWELLING UNITS.
2. THE BUILDINGS SHALL BE DEVELOPED TO THE STANDARDS DESCRIBED IN THIS SECTION.
3. THE FOLLOWING BUFFERING AND SCREENING STANDARDS SHALL APPLY:
   a. AN EIGHT FOOT (8') LANDSCAPE BUFFER SHALL BE PROVIDED BETWEEN THE SUBDIVISION AND MYRTLE ROAD'S RIGHT OF WAY.
   b. A FIVE FOOT (5') TYPE "A" LANDSCAPE BUFFER WITH SIX FOOT (6') VINYL FENCE SHALL BE PROVIDED ALONG THE WESTERN BOUNDARY OF FOLIO #076792-0000.
   c. A FIVE FOOT (5') TYPE "A" LANDSCAPE BUFFER SHALL BE PROVIDED ALONG THE NORTHERN BOUNDARY OF FOLIOS #076795-0100, 076800-0300, 076800-0000, AND 076800-0100.
   d. A FIVE FOOT (5') TYPE "A" LANDSCAPE BUFFER SHALL BE PROVIDED ALONG THE EASTERN BOUNDARY OF FOLIOS #076793-0100, 076793-0000, 076794-0010, AND 076794-0000.
4. THE PROJECT SHALL BE ACCESSED FROM MYRTLE ROAD.
5. THE AREAS DESIGNATED AS TRACT "A", TRACT "B" AND TRACT "C" SHALL BE UTILIZED FOR STORMWATER MANAGEMENT.
6. THE STORMWATER MANAGEMENT SYSTEM SHALL BE DESIGNED TO COMPLY WITH THE STORMWATER TECHNICAL MANUAL, LATEST EDITION, AND THE WATER QUALITY REQUIREMENTS OF THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (SWFWMD).
7. APPROVAL OF THIS ZONING PETITION BY HILLSBOROUGH COUNTY DOES NOT CONSTITUTE A GUARANTEE THAT THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC) APPROVALS/PERMITS NECESSARY FOR THE DEVELOPMENT AS PROPOSED WILL BE ISSUED, DOES NOT ITSELF SERVE TO JUSTIFY ANY IMPACT TO WETLANDS, AND DOES NOT GRANT ANY IMPLIED OR VESTED RIGHT TO ENVIRONMENTAL APPROVALS.
8. IF THE NOTES AND/OR GRAPHIC ON THE SITE PLAN ARE IN CONFLICT WITH SPECIFIC ZONING CONDITIONS AND/OR THE LAND DEVELOPMENT CODE (LDC) REGULATIONS, THE MORE RESTRICTIVE REGULATION SHALL APPLY, UNLESS SPECIFICALLY CONDITIONED OTHERWISE. REFERENCES TO DEVELOPMENT STANDARDS OF THE LDC IN THE ABOVE STATED CONDITIONS SHALL BE INTERPRETED AS THE REGULATIONS IN EFFECT AT THE TIME OF PRELIMINARY SITE PLAN//PLAT APPROVAL, UNLESS OTHERWISE STATED HEREIN.
9. THE DEVELOPMENT OF THE PROJECT SHALL PROCEED IN STRICT ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE DEVELOPMENT ORDER, THE GENERAL SITE PLAN, THE LAND USE CONDITIONS CONTAINED HEREIN, AND ALL APPLICABLE RULES, REGULATIONS, AND ORDINANCES OF HILLSBOROUGH COUNTY.
10. APPROVAL OF THIS ZONING PETITION BY HILLSBOROUGH COUNTY DOES NOT CONSTITUTE A GUARANTEE THAT ENVIRONMENTAL PROTECTION COMMISSION APPROVALS/PERMITS NECESSARY FOR THE DEVELOPMENT AS PROPOSED WILL BE ISSUED, DOES NOT ITSELF SERVE TO JUSTIFY ANY IMPACTS TO WETLANDS, AND DOES NOT GRANT ANY IMPLIED OR VESTED RIGHT TO ENVIRONMENTAL APPROVALS.

NOTES:

1. DEVELOPMENT SHALL PROCEED IN ACCORDANCE WITH THE STANDARDS OF THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE.
2. WATER AND SEWER SERVICE TO BE PROVIDED BY HILLSBOROUGH COUNTY.
3. PROJECT IS IN URBAN SERVICES AREA AND WILL CONNECT TO PUBLIC WATER AND WASTEWATER SERVICE
4. PROJECT WILL BE DEVELOPED IN ONE PHASE.
5. THERE ARE NO KNOWN PLATS WITHIN THE PROJECT BOUNDARY.
6. ALL EXISTING STRUCTURES ON SITE TO BE REMOVED.
7. THERE ARE CONSERVATION/WETLAND, PRESERVATION, UPLAND HABITAT AREAS AND OTHER NATURAL PHYSICAL FEATURES ON SITE.
8. SITE MEETS HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE REQUIREMENTS FOR COMMUNITY GATHERING SPACE.
9. NO DESIGNATED HISTORIC LANDMARKS AND OTHER HISTORICAL OR ARCHEOLOGICAL SITES AND STRUCTURES ARE KNOWN ON SITE OR ARE ADJACENT TO THE SITE.
10. PROJECT ROADS WILL BE PRIVATE.
11. PROJECT SITE WILL BE FENCED AND GATED.
12. PROJECT WILL BE DESIGNED TO MEET HILLSBOROUGH COUNTY, STATE AND FEDERAL REGULATORY GUIDELINES AND TECHNICAL STANDARDS.
13. PROJECT IS NOT LOCATED WITHIN AN OVERLAY DISTRICT.
14. SIDEWALKS TO BE PROVIDED AND BUILT IN ACCORDANCE WITH THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE.
15. PROPOSED SIDEWALKS SHALL MEET ADA REQUIREMENTS.
16. THE PROJECT SITE IS NOT LOCATED WITHIN COASTAL HIGH HAZARD AREA, POTABLE WELL FIELD PROTECTED AREA OR SUBSURFACE WATER RESOURCE PROTECTION AREA.
17. PARKING SHALL BE IN COMPLIANCE WITH HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE. PARKING WILL BE PROVIDED VIA DRIVEWAY AND GARAGE.



TYPICAL LOT TYPE A LOTS 3, 4, 5, 9, 10, 11 AND 12	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	7.5'
MINIMUM REAR YARD	22'
MINIMUM BUILDING SEPARATION	12.5'
MINIMUM LOT WIDTH	90'
MINIMUM LOT AREA	11,000 S.F.
MAXIMUM HEIGHT	35'

TYPICAL LOT TYPE B LOTS 1, 2, 6, 7 AND 8	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	5'
MINIMUM REAR YARD	22'
MINIMUM BUILDING SEPARATION	10'
MINIMUM LOT WIDTH	45'
MINIMUM LOT AREA	12,000 S.F.
MAXIMUM HEIGHT	35'

TYPICAL LOT TYPE C 13 AND 14	
MINIMUM FRONT YARD	22'
MINIMUM SIDE YARD	7.5'
MINIMUM REAR YARD	N/A*
MINIMUM BUILDING SEPARATION	15'
MINIMUM LOT WIDTH	90'
MINIMUM LOT AREA	11,000 S.F.
MAXIMUM HEIGHT	35'

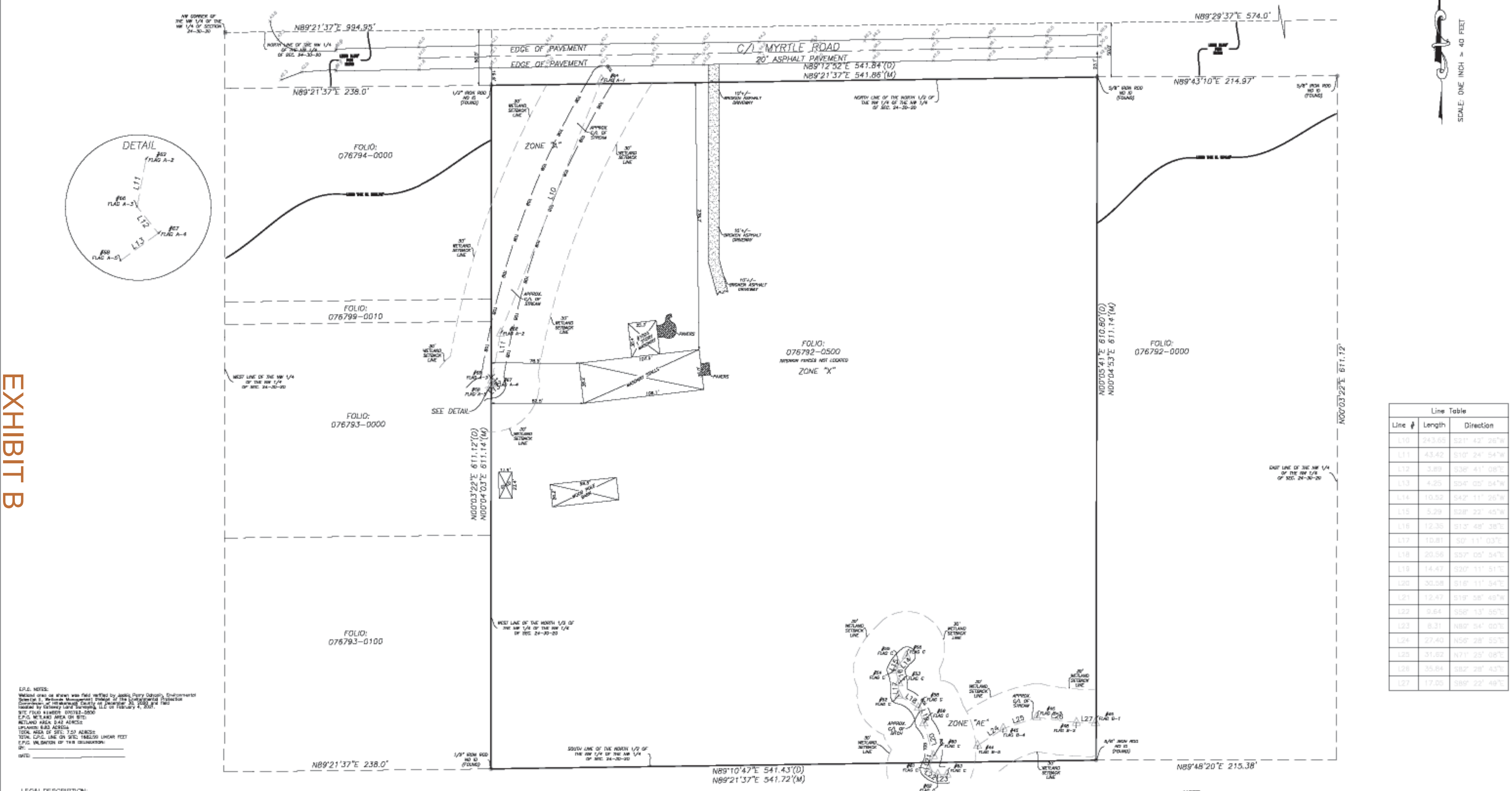
1

O:\Engineering Projects\2022\22-0109\Drawings\Concept\22-0109 PD PLAN 3.dwg Sep 27, 2022 - 9:09am Ron

EXHIBIT A

22-0949

MAP OF SURVEY



Line Table		
Line #	Length	Direction
L10	243.65	S21° 42' 26"W
L11	43.42	S10° 24' 54"W
L12	3.89	S38° 41' 08"E
L13	4.25	S54° 05' 54"W
L14	10.52	S42° 11' 26"W
L15	5.29	S28° 22' 45"W
L16	12.35	S13° 48' 38"E
L17	10.81	S0° 11' 03"E
L18	20.56	S57° 05' 54"E
L19	14.47	S20° 11' 51"E
L20	30.58	S16° 11' 54"E
L21	12.47	S19° 58' 49"W
L22	9.64	S58° 13' 55"E
L23	8.31	N89° 54' 00"E
L24	27.40	N56° 28' 55"E
L25	31.62	N71° 25' 08"E
L26	35.84	S82° 28' 43"E
L27	17.05	S89° 22' 49"E

LEGAL DESCRIPTION:

THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 LESS THE EAST 574.0 FEET THEREOF AND LESS THE WEST 238.75 FEET THEREOF AND LESS THE NORTH 50.0 FEET FOR ROAD.

According to Flood Insurance Rate Map Community Panel Number 12057C 0507H, Dated 08/28/2008 issued by the Federal Emergency Management Agency, the property **shown and described hereon appears to lie within Zone "X","A","AE".**

NOTE:
Unless noted, this survey has been prepared without the benefit of a title search or title commitment, and therefore is subject to any dedications, restrictions, easements and/or other such items of record that a commitment or search may reveal. Building setback lines have not been shown on this map of survey, unless otherwise noted. To determine setback requirements, inquiries need to be made by the certified holders to the county or city zoning department.

Surveyor's Report and Additional Notes

1. No underground installations or improvements have been located except as shown hereon.
2. Easements, other than shown on this map of survey, may also exist over, upon or across the land surveyed.
3. Unless otherwise shown hereon, no jurisdictional Wetland Areas or other physical topographic features have been located.
4. This survey does not reflect nor determine ownership.
5. Basis of Bearings as shown hereon.
6. Vertical Datum as shown hereon.
7. Fences shown hereon may or may not meander along property lines; specific fence ties, as shown, are from specific locations. This surveyor makes no guarantee of the fence meander.

This Survey does not represent a determination of whether this land will or will not flood or be subject to flooding.

Note:
The signing surveyor or Gateway Land Surveying, LLC cannot be responsible for any additions, deletions or alterations to the subject property, to the improvements thereon, or to the survey monuments that may occur after he/she leaves the site. This survey map or report is the property of Gateway Land Surveying, LLC and any additions, deletions or alterations by any other than the signing surveyor is strictly prohibited. The re-use of this survey by any third party for purposes other than which it was intended is strictly prohibited without the written consent or verification of the original signing surveyor. Any re-user will be at sole risk and without any liability to the signing surveyor or their representing firm.

LEGEND

PC: POINT OF CURVATURE
PCP: PERMANENT CONTROL POINT
PRM: PERMANENT REFERENCE MONUMENT
O.R.: OFFICIAL RECORDS
R/W: RIGHT OF WAY
CONC: CONCRETE
(C): CALCULATED
L.B.: LICENSED BUSINESS
(P): PER PLAT
P.K.: PARKER KALON NAIL
PSM: PROFESSIONAL SURVEYOR AND MAPPER
(M): FIELD MEASURED
(R): RECORD

GATEWAY LAND SURVEYING, LLC
1081 East Brandon Boulevard
Brandon, Florida 33511 Phone (813)643-2292 Fax (813)643-2293

License Business No. 8129

SURVEYOR'S CERTIFICATE
I hereby certify that the survey represented hereon meets the requirements of Chapter 5J-17, Florida Administrative code pursuant to Chapter 472.027 of the Florida Statutes. Unless it bears the signature and the original raised seal of a Florida licensed surveyor and mapper this drawing, sketch, plat or map is for informational purposes only and is not valid.

Signature ____ Ryan J King 2022.08.08 12:48:38-04'00'
Ryan J. King, PSM
Florida Registration No. 6753

REVISIONS: DATE & DESCRIPTION
08/08/2022 UPDATE SURVEY TOPOGRAPHIC SHOTS

SCALE: 1" = 40' | FIELD DATE: 03/25/22 | DWG NO: 22-0109 | DRAWN BY: KMF

CERTIFIED TO:
GRACE CONTRACTING & DEVELOPMENT, LLC

EXHIBIT B

22-0949

Single-Family Detached Housing
(210)

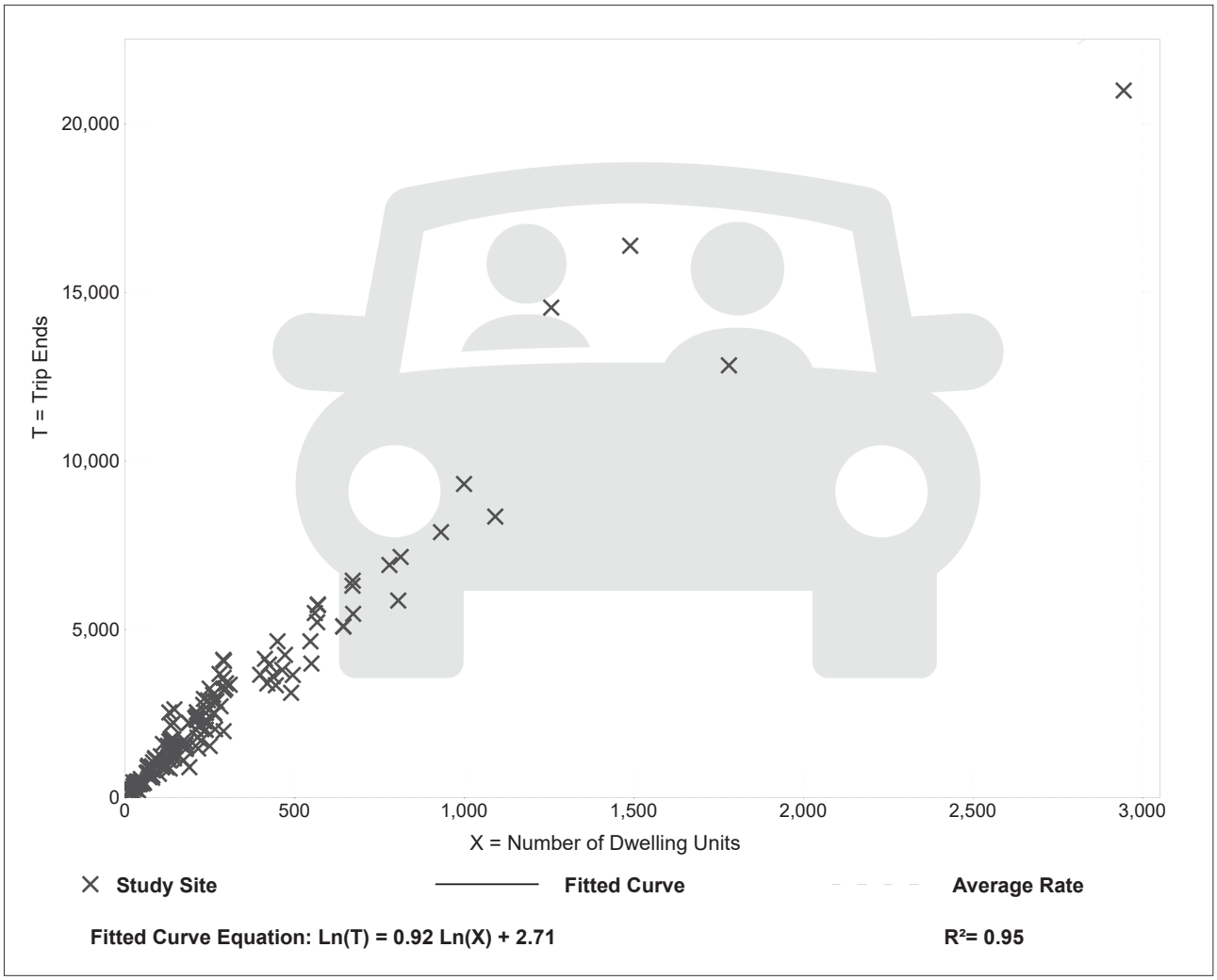
Vehicle Trip Ends vs: **Dwelling Units**
On a: **Weekday**

Setting/Location: **General Urban/Suburban**
Number of Studies: 159
Avg. Num. of Dwelling Units: 264
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Dwelling Unit

Average Rate	Range of Rates	Standard Deviation
9.44	4.81 - 19.39	2.10

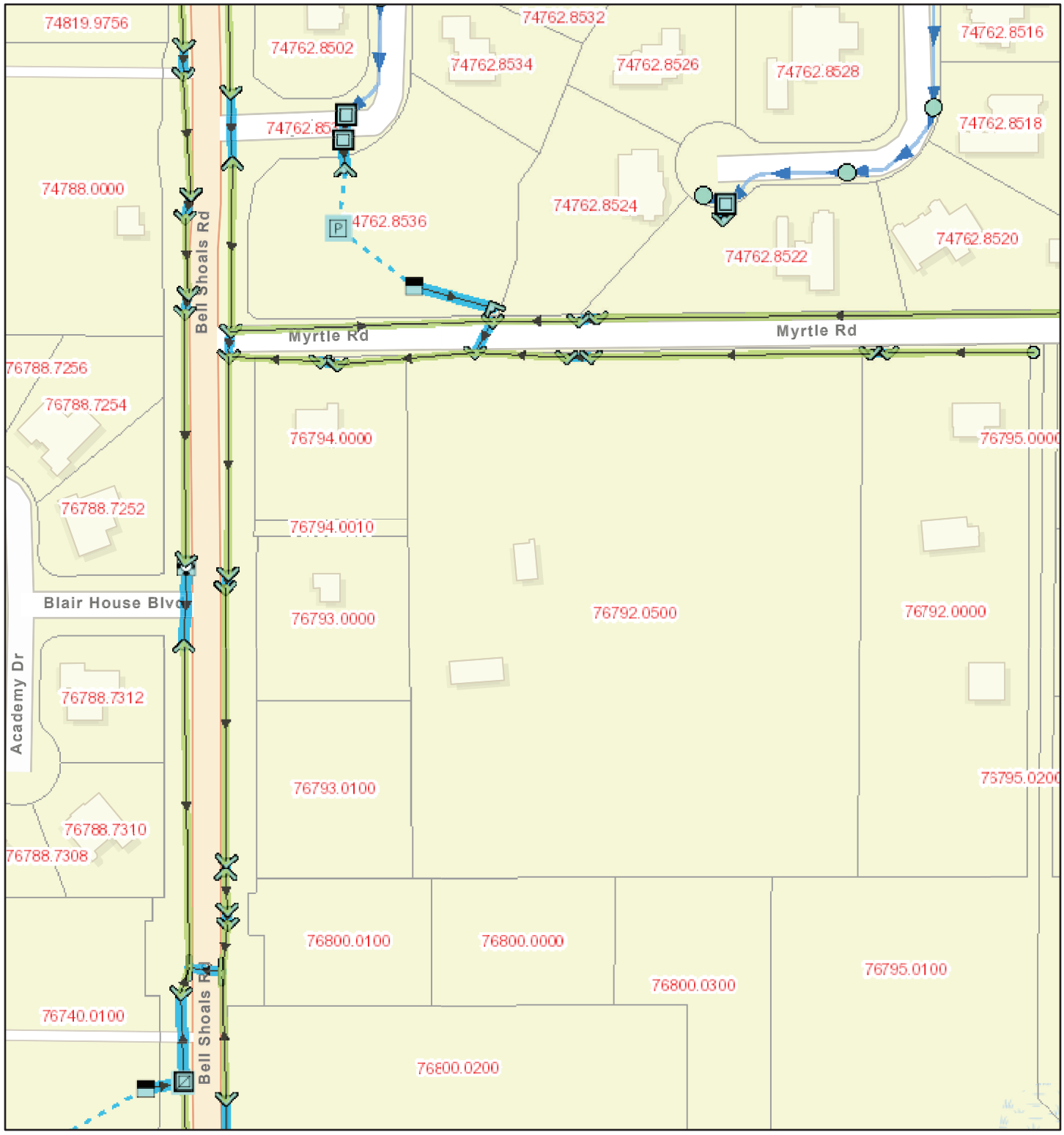
Data Plot and Equation



Trip Gen Manual, 10th Ed + Supplement • Institute of Transportation Engineers

EXHIBIT C
22-0949

Map of Surrounding Stormwater Infrastructure



8/18/2022, 5:56:41 PM

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0 0.01 0.03 0.06 mi
0 0.03 0.06 0.11 km

- VirtualPoints Not an Asset
- VirtualLines Not an Asset
- Underdrains
- FORCE MAIN
- SeaWalls
- PS PumpStations
- PollutionControlBoxes
- MitigationSite

StormDrains
- PIPE
- CULVERT

Ponds
- DETENTION POND
- RETENTION POND

MitigationAreas
- MESIC
- ONE TIME MONITOR
- OPEN WATER

RS

EXHIBIT D

22-0949

View of Myrtle Road Facing West from Site

EXHIBIT E-1

Received August 19, 2022
Development Services

View of Myrtle Road Facing East from Site

EXHIBIT E-2

View of Myrtle Road facing East from Intersection with Bell Shoals

EXHIBIT E-3

View of Myrtle Road facing West Across Street from Myrtle
Emphasizing Trees North of Myrtle

EXHIBIT E-4

View of Myrtle Road facing East from Intersection with Bell Shoals
Emphasizing Trees North of Myrtle

EXHIBIT E-5

View of Myrtle Road facing East from Intersection with Bell Shoals
Emphasizing Stormwater Infrastructure South of Myrtle

EXHIBIT E-6

View of Myrtle Road facing West Near Intersection with Bell Shoals
Emphasizing Stormwater Infrastructure South of Myrtle

EXHIBIT E-7

View of Myrtle Road facing West from Site
Emphasizing Stormwater Infrastructure South of Myrtle

EXHIBIT E-8

CHAPTER 3B. PAVEMENT AND CURB MARKINGS

Section 3B.01 Yellow Center Line Pavement Markings and Warrants

Standard:

01 **Center line pavement markings, when used, shall be the pavement markings used to delineate the separation of traffic lanes that have opposite directions of travel on a roadway and shall be yellow.**

Option:

02 Center line pavement markings may be placed at a location that is not the geometric center of the roadway.

03 On roadways without continuous center line pavement markings, short sections may be marked with center line pavement markings to control the position of traffic at specific locations, such as around curves, over hills, on approaches to grade crossings, at grade crossings, and at bridges.

Standard:

04 **The center line markings on two-lane, two-way roadways shall be one of the following as shown in Figure 3B-1:**

- **A. Two-direction passing zone markings consisting of a normal broken yellow line where crossing the center line markings for passing with care is permitted for traffic traveling in either direction;**
- **B. One-direction no-passing zone markings consisting of a double yellow line, one of which is a normal broken yellow line and the other is a normal solid yellow line, where crossing the center line markings for passing with care is permitted for the traffic traveling adjacent to the broken line, but is prohibited for traffic traveling adjacent to the solid line; or**
- **C. Two-direction no-passing zone markings consisting of two normal solid yellow lines where crossing the center line markings for passing is prohibited for traffic traveling in either direction.**

05 **A single solid yellow line shall not be used as a center line marking on a two-way roadway.**

06 **The center line markings on undivided two-way roadways with four or more lanes for moving motor vehicle traffic always available shall be the two-direction no-passing zone markings consisting of a solid double yellow line as shown in Figure 3B-2.**

Guidance:

07 *On two-way roadways with three through lanes for moving motor vehicle traffic, two lanes should be designated for traffic in one direction by using one- or two-direction no-passing zone markings as shown in Figure 3B-3.*

Support:

08 Sections 11-301(c) and 11-311(c) of the "Uniform Vehicle Code (UVC)" contain information regarding left turns across center line no-passing zone markings and paved medians, respectively. The UVC can be obtained from the National Committee on Uniform Traffic Laws and Ordinances at the address shown on Page i.

Standard:

09 **Center line markings shall be placed on all paved urban arterials and collectors that have a traveled way of 20 feet or more in width and an ADT of 6,000 vehicles per day or greater. Center line markings shall also be placed on all paved two-way streets or highways that have three or more lanes for moving motor vehicle traffic.**

Guidance:

10 *Center line markings should be placed on paved urban arterials and collectors that have a traveled way of 20 feet or more in width and an ADT of 4,000 vehicles per day or greater. Center line markings should also be placed on all rural arterials and collectors that have a traveled way of 18 feet or more in width and an ADT of 3,000 vehicles per day or greater. Center line markings should also be placed on other traveled ways where an engineering study indicates such a need.*

11 *Engineering judgment should be used in determining whether to place center line markings on traveled ways that are less than 16 feet wide because of the potential for traffic encroaching on the pavement edges, traffic being affected by parked vehicles, and traffic encroaching into the opposing traffic lane.*

Option:

12 Center line markings may be placed on other paved two-way traveled ways that are 16 feet or more in width.

13 If a traffic count is not available, the ADTs described in this Section may be estimates that are based on engineering judgment.

Figure 3B-1. Examples of Two-Lane, Two-Way Marking Applications

A - Typical two-lane, two-way marking with passing permitted in both directions

B - Typical two-lane, two-way marking with no-passing zones

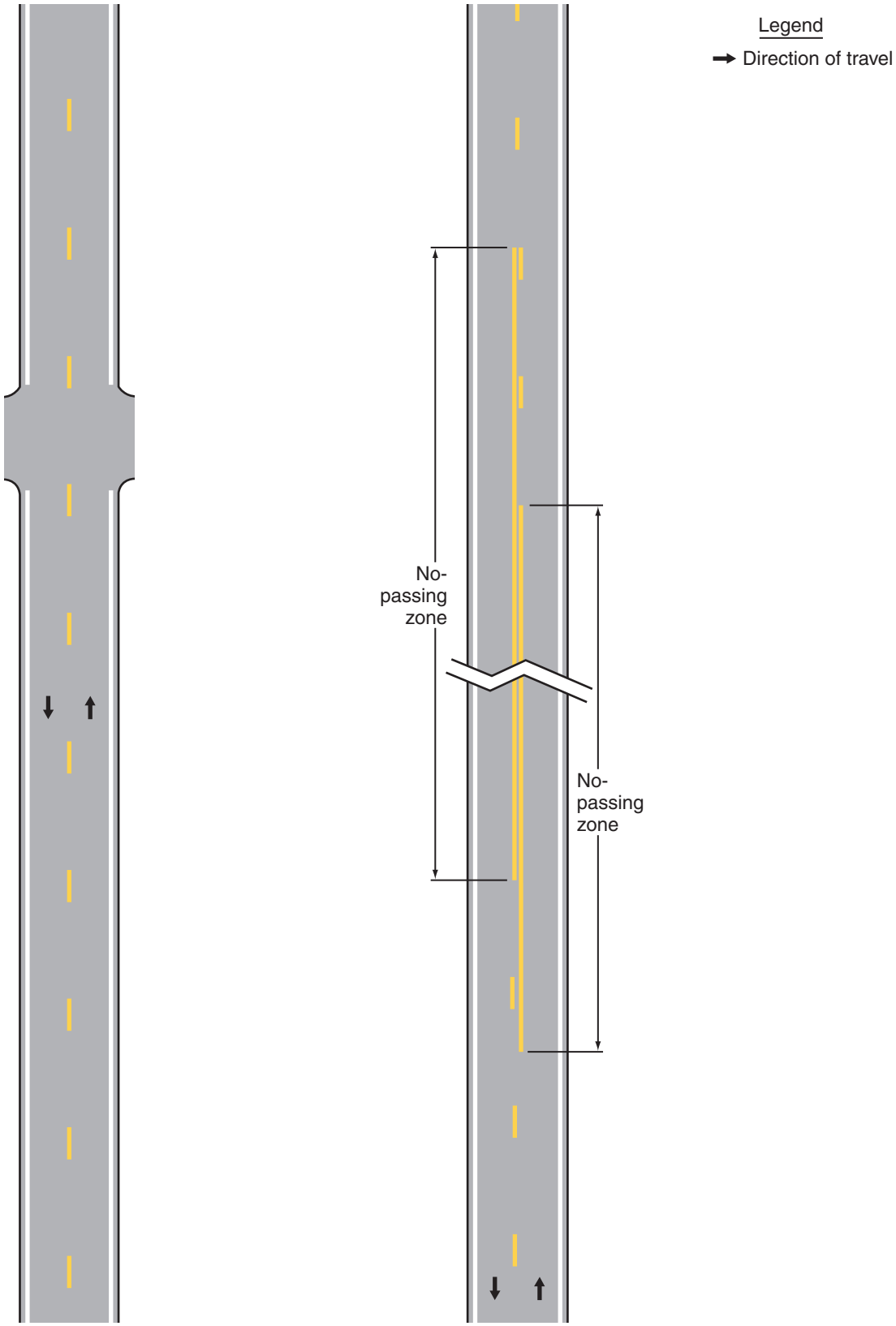


Figure 3B-2. Examples of Four-or-More Lane, Two-Way Marking Applications

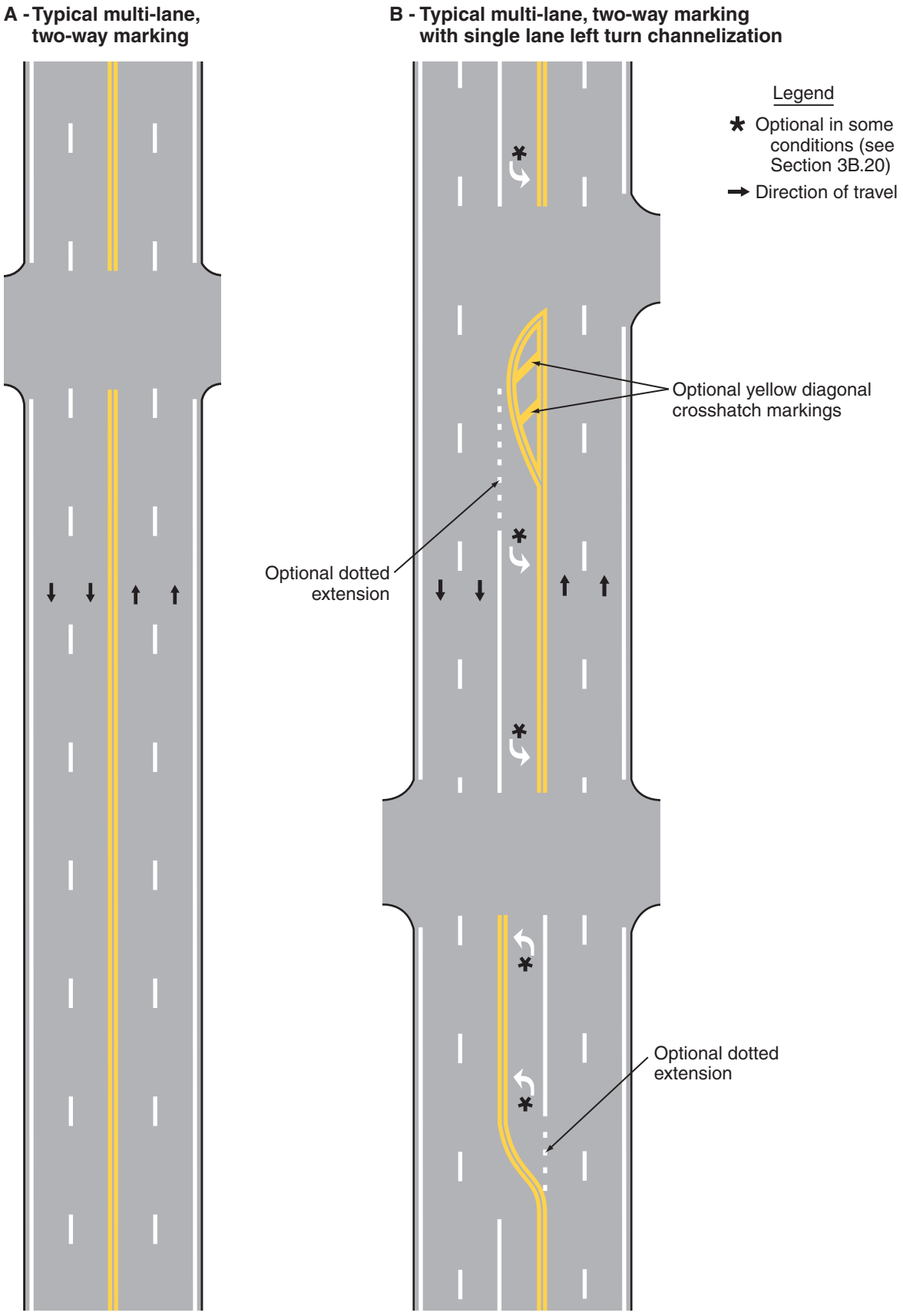
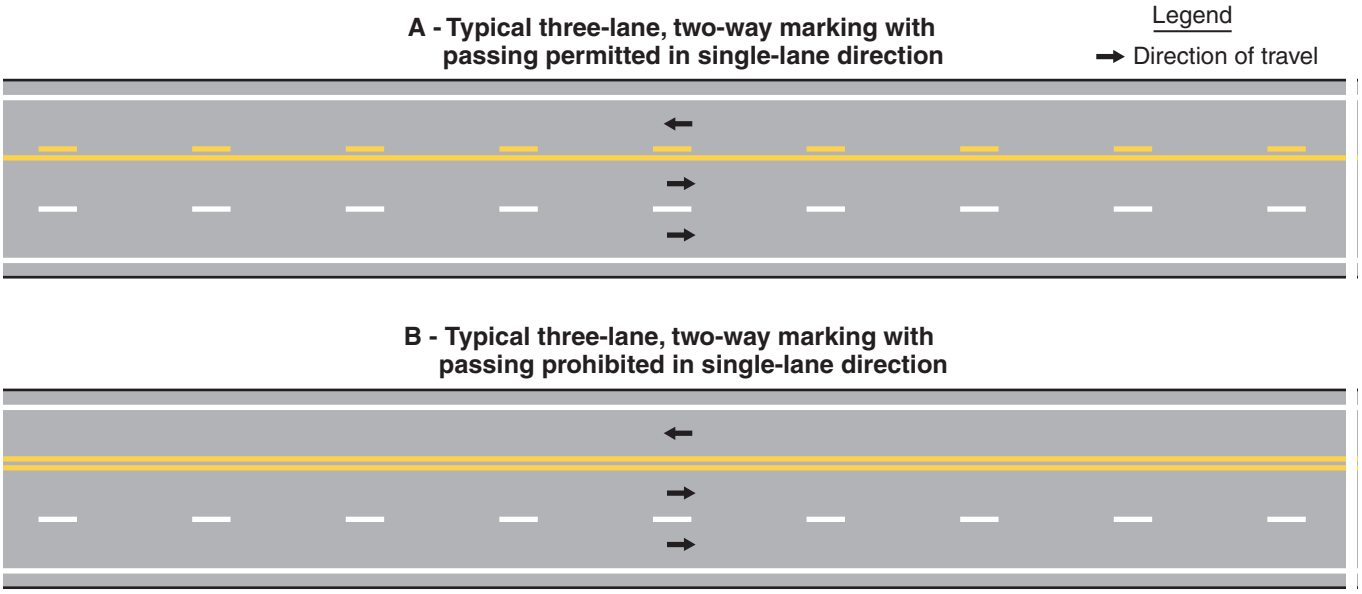


Figure 3B-3. Examples of Three-Lane, Two-Way Marking Applications



Section 3B.02 No-Passing Zone Pavement Markings and Warrants

Standard:

01 **No-passing zones shall be marked by either the one direction no-passing zone pavement markings or the two-direction no-passing zone pavement markings described in Section 3B.01 and shown in Figures 3B-1 and 3B-3.**

02 **When center line markings are used, no-passing zone markings shall be used on two-way roadways at lane-reduction transitions (see Section 3B.09) and on approaches to obstructions that must be passed on the right (see Section 3B.10).**

03 **On two-way, two- or three-lane roadways where center line markings are installed, no-passing zones shall be established at vertical and horizontal curves and other locations where an engineering study indicates that passing must be prohibited because of inadequate sight distances or other special conditions.**

04 **On roadways with center line markings, no-passing zone markings shall be used at horizontal or vertical curves where the passing sight distance is less than the minimum shown in Table 3B-1 for the 85th-percentile speed or the posted or statutory speed limit. The passing sight distance on a vertical curve is the distance at which an object 3.5 feet above the pavement surface can be seen from a point 3.5 feet above the pavement (see Figure 3B-4). Similarly, the passing sight distance on a horizontal curve is the distance measured along the center line (or right-hand lane line of a three-lane roadway) between two points 3.5 feet above the pavement on a line tangent to the embankment or other obstruction that cuts off the view on the inside of the curve (see Figure 3B-4).**

Support:

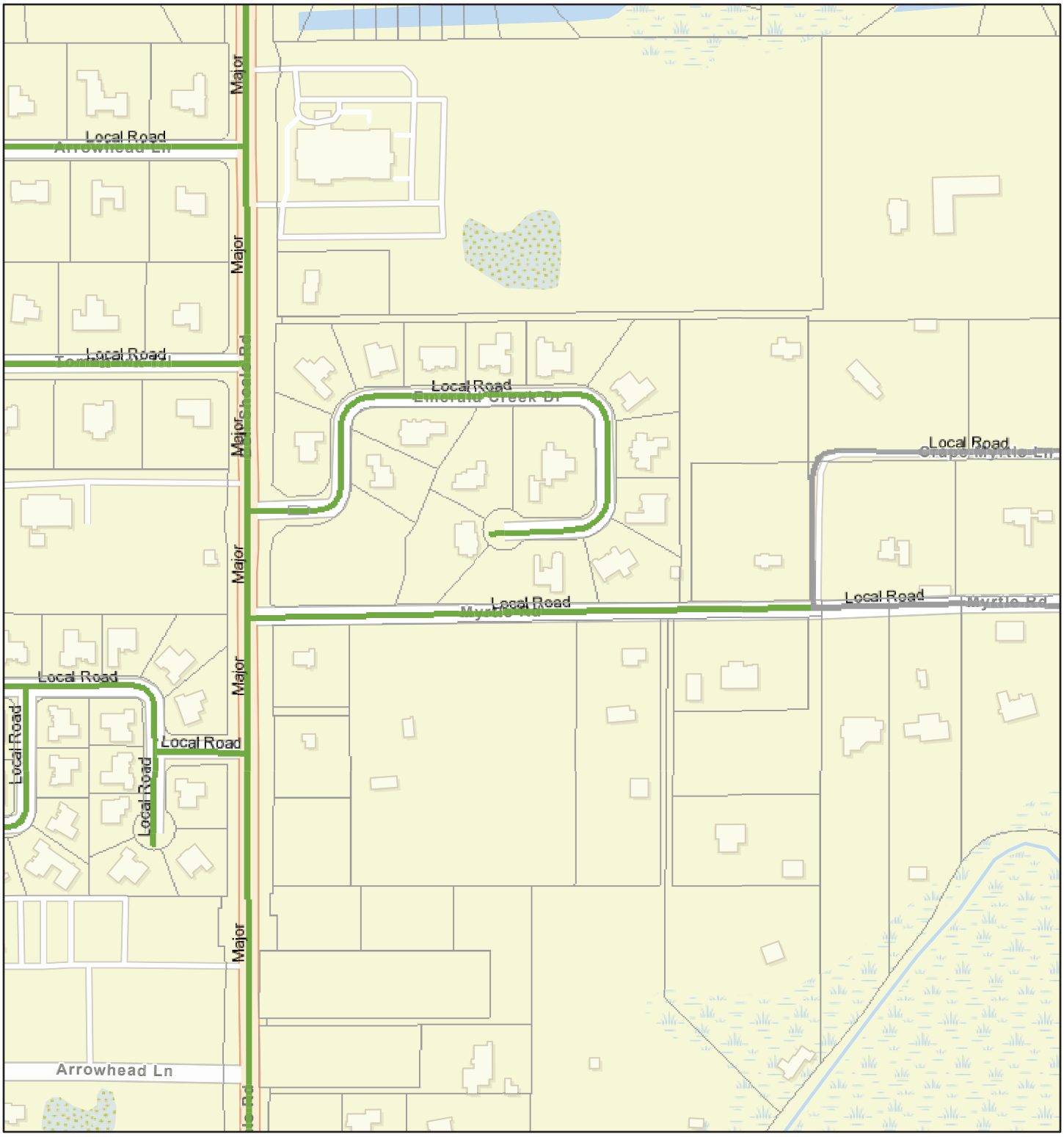
05 The upstream end of a no-passing zone at point "a" in Figure 3B-4 is that point where the sight distance first becomes less than that specified in Table 3B-1. The downstream end of the no-passing zone at point "b" in Figure 3B-4 is that point at which the sight distance again becomes greater than the minimum specified.

06 The values of the minimum passing sight distances that are shown in Table 3B-1 are for operational use in marking no-passing zones and are less than the values that are suggested for geometric design by the AASHTO Policy on Geometric Design of Streets and Highways (see Section 1A.11).

Table 3B-1. Minimum Passing Sight Distances for No-Passing Zone Markings

85th-Percentile or Posted or Statutory Speed Limit	Minimum Passing Sight Distance
25 mph	450 feet
30 mph	500 feet
35 mph	550 feet
40 mph	600 feet
45 mph	700 feet
50 mph	800 feet
55 mph	900 feet
60 mph	1,000 feet
65 mph	1,100 feet
70 mph	1,200 feet

Hillsborough County Road Inventory Classification



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0 0.05 0.1 0.2 km

Parcels

Roadway Jurisdiction

City of Tampa

Hillsborough County

Manatee

Pasco

Pinellas

Plant City

Polk

Private

State of Florida

Temple Terrace

Roadway Classification

RS

EXHIBIT G

Myrtle Road

Crepe Myrtle Lane

Folio 074754-1100
Private Drive

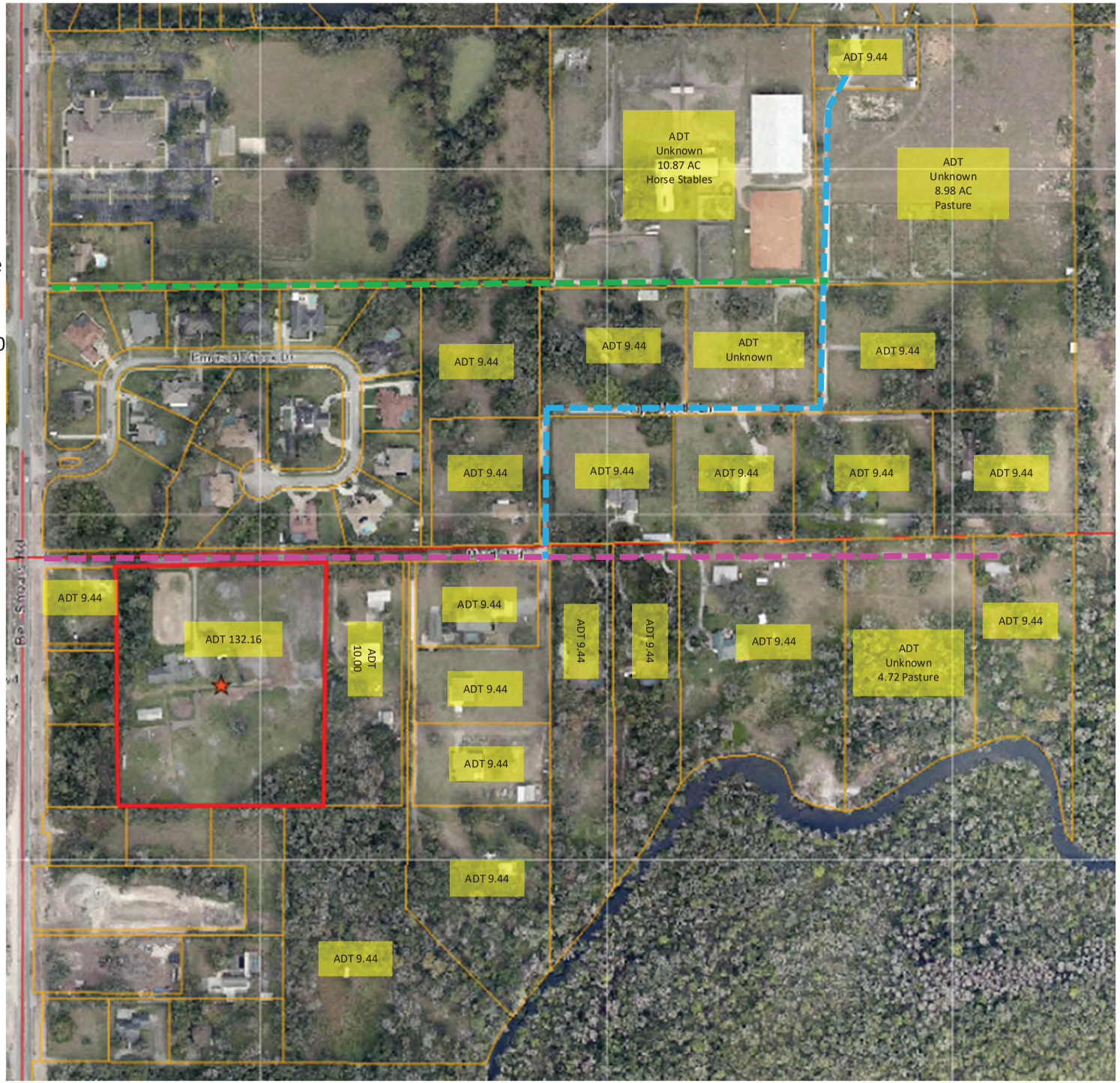

EXHIBIT H

22-0949

Hillsborough County Top 100 Accident Locations

August 2022

August 18, 2022

1:16,000

0 0.125 0.25 0.5 mi

0 0.2 0.4 0.8 km

Legend

EXHIBIT I

22-0949

Hillsborough County Top 100 Accident Locations

July 2022

July 26, 2022

1:16,000

0 0.125 0.25 0.5 mi

0 0.2 0.4 0.8 km

Legend

22-0949

Hillsborough County Top 100 Accident Locations

June 2022

July 26, 2022

1:16,000

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0 0.2 0.4 0.8 km

Legend

22-0949

Hillsborough County Top 100 Accident Locations

May 2022

July 26, 2022

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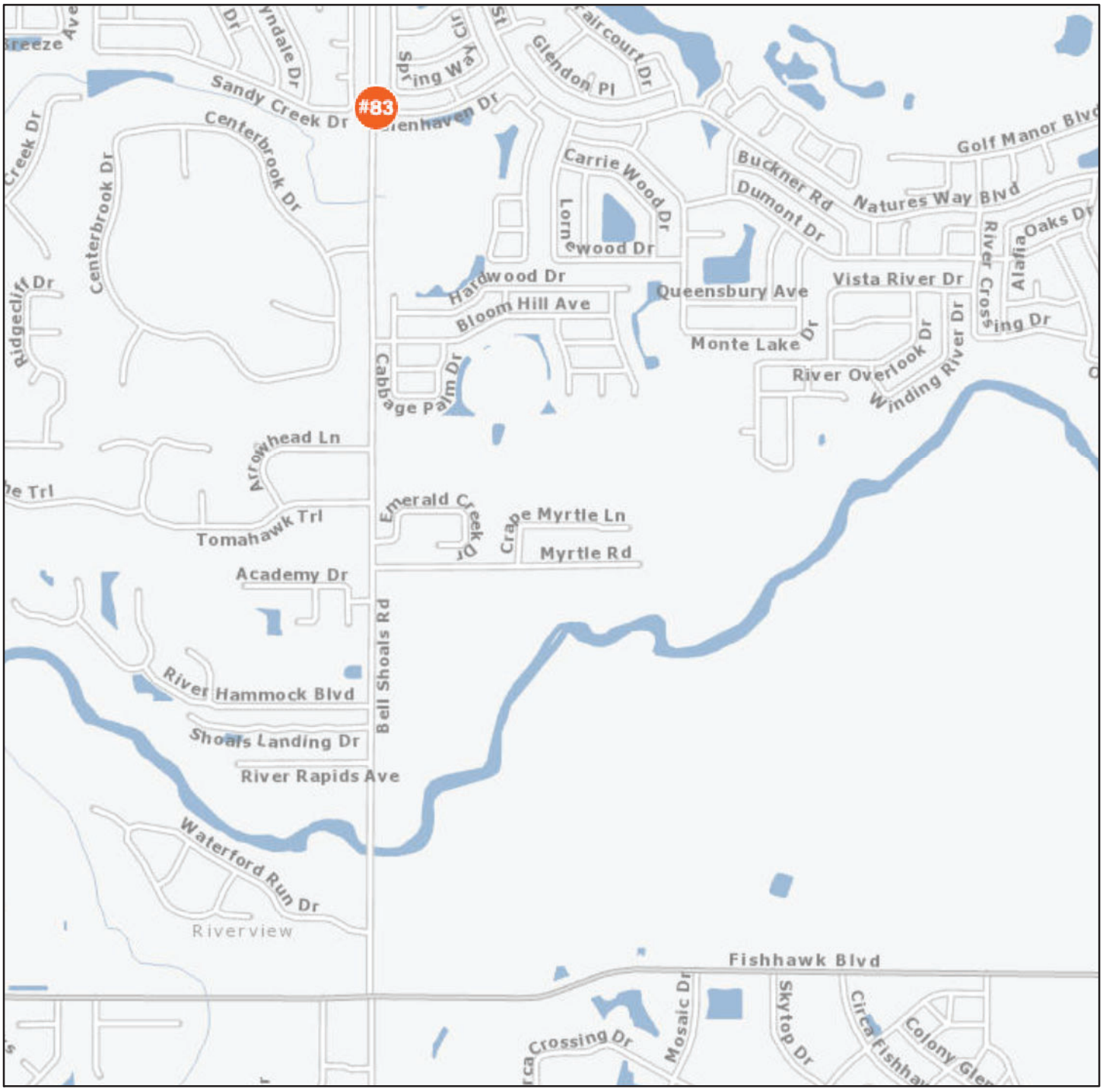
Legend

22-0949

Hillsborough County Top 100 Accident Locations

April 2022



July 26, 2022

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Legend

22-0949

Hillsborough County Top 100 Accident Locations

March 2022

July 26, 2022

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Legend

22-0949

Hillsborough County Top 100 Accident Locations

February 2022

July 26, 2022

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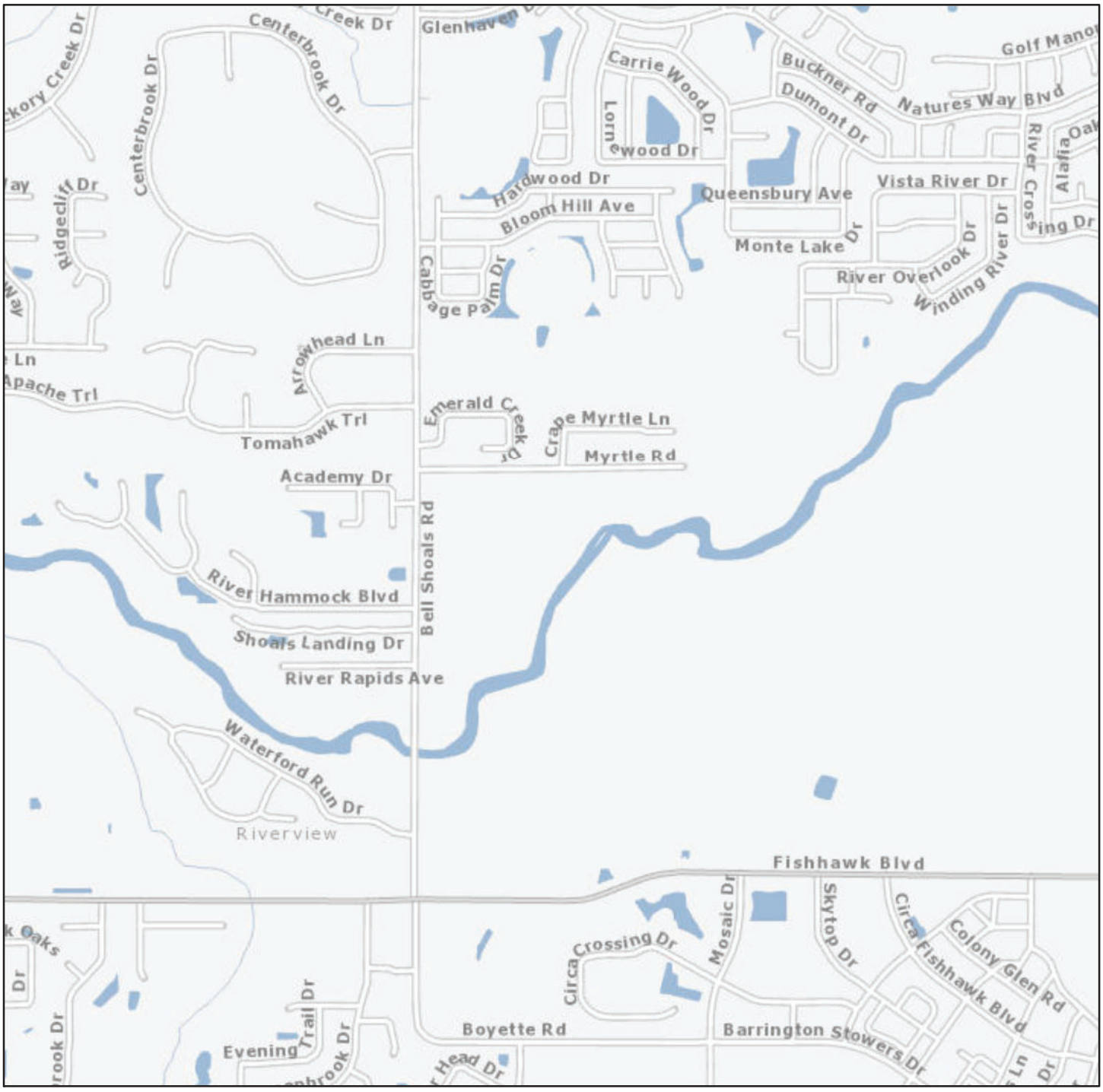
Legend

22-0949

Hillsborough County Top 100 Accident Locations

January 2022



July 26, 2022

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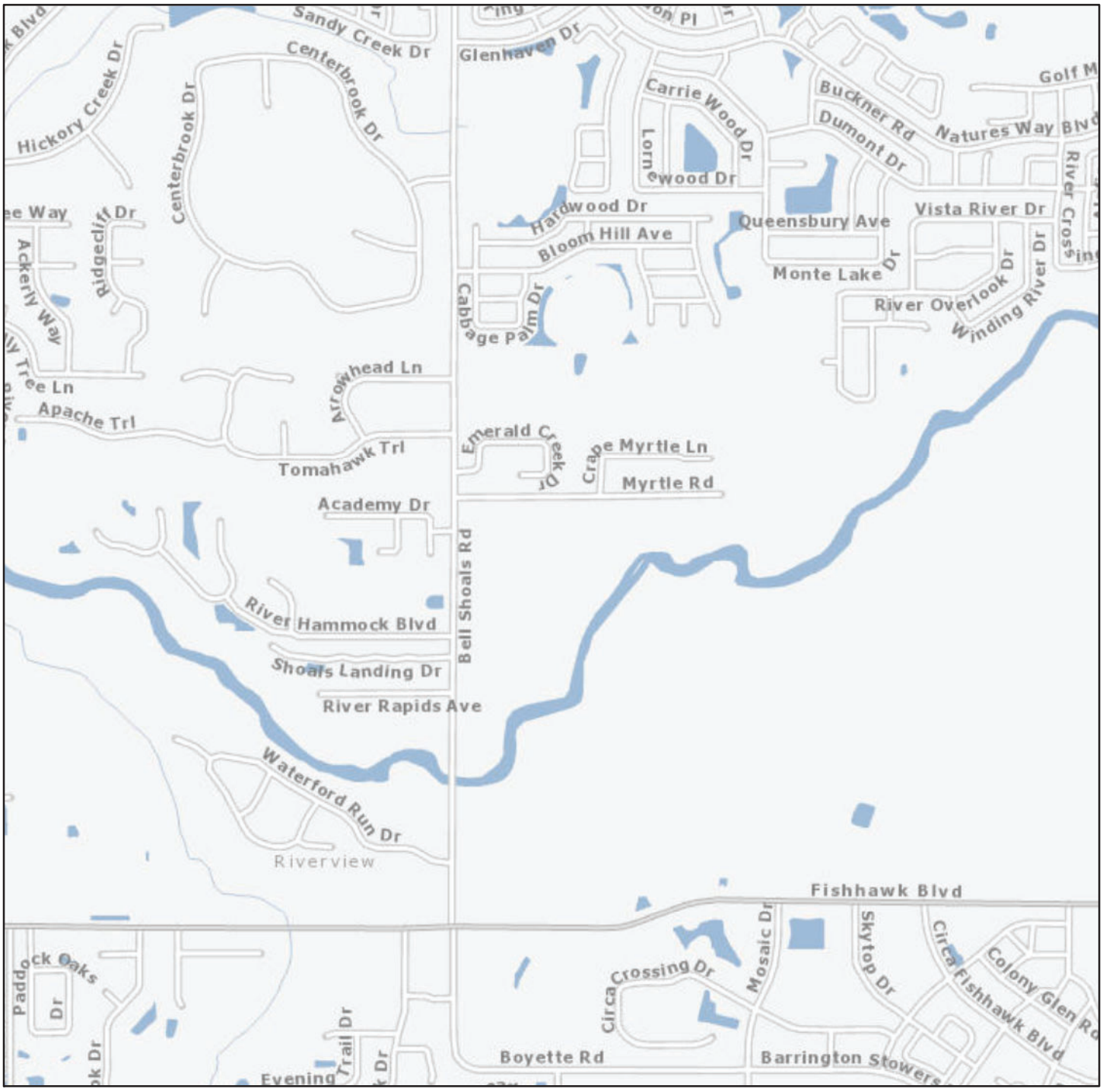
22-0949

Hillsborough County Top 100 Accident Locations

December 2021



July 26, 2022

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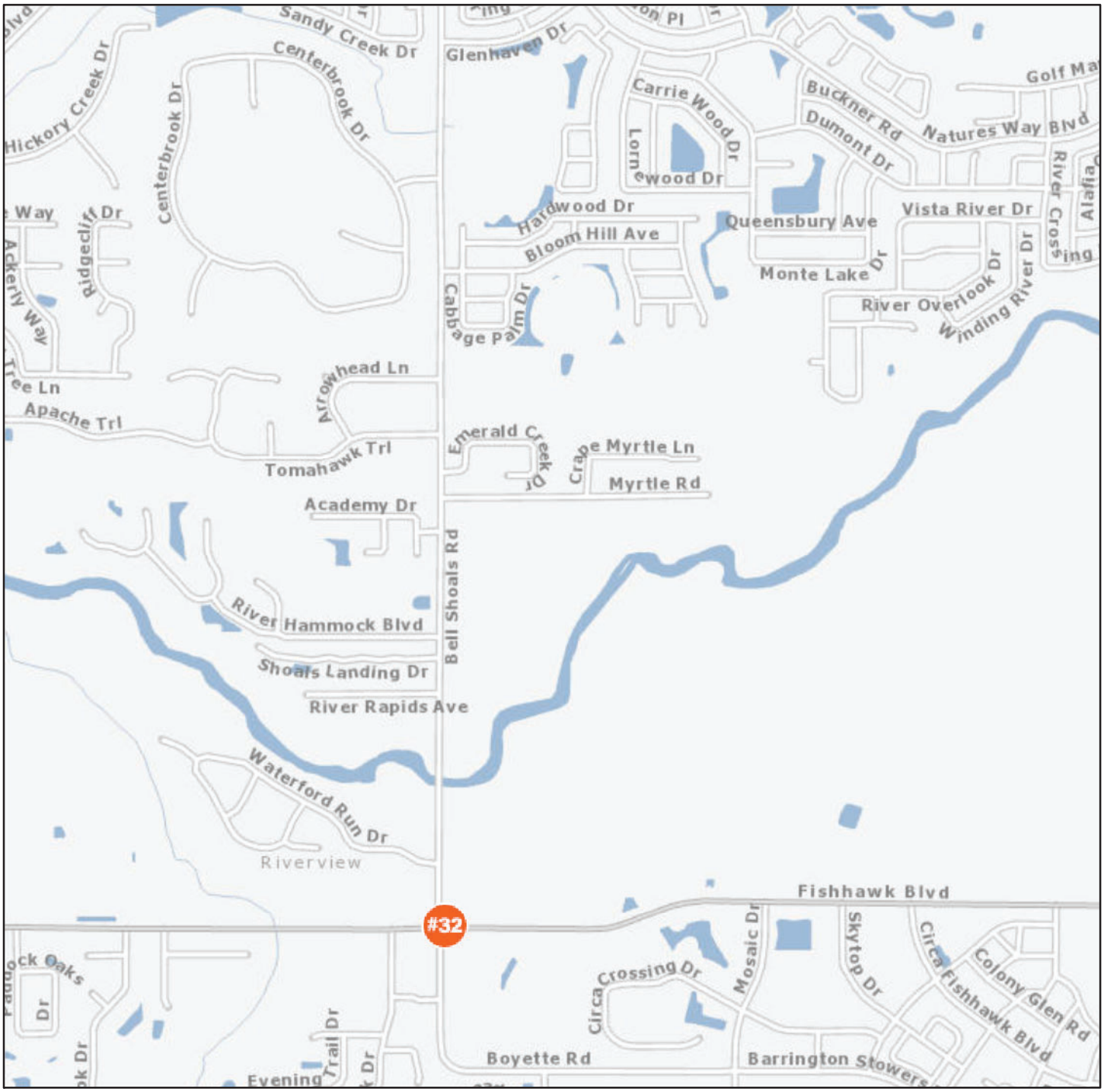
Legend

22-0949

Hillsborough County Top 100 Accident Locations

November 2021



July 26, 2022

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Legend

22-0949

Hillsborough County Top 100 Accident Locations

October 2021

July 26, 2022

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Legend

22-0949

Hillsborough County Top 100 Accident Locations

September 2021

July 26, 2022

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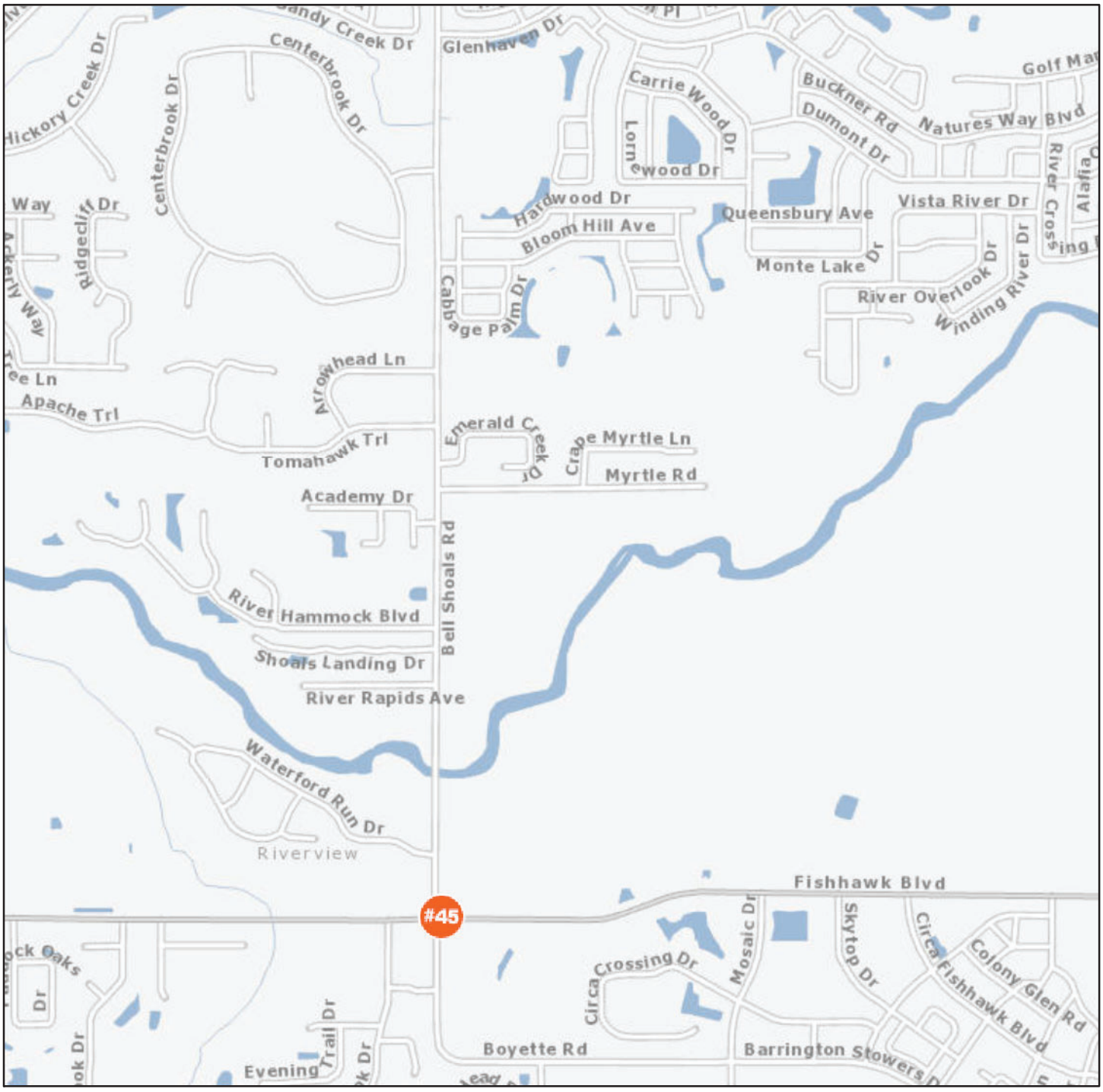
Legend

22-0949

Hillsborough County Top 100 Accident Locations

August 2021



July 26, 2022

1:16,000

0 0.125 0.25 0.5 mi

0 0.2 0.4 0.8 km

Legend

22-0949

Hillsborough County Top 100 Accident Locations

July 2021

July 26, 2022

1:16,000

0 0.125 0.25 0.5 mi

0 0.2 0.4 0.8 km

Legend

22-0949

AGENCY COMMENT SHEET

REZONING	
HEARING DATE: TBD **PETITION NO.:** 22-0949 **EPC REVIEWER:** Jackie Perry Cahanin **CONTACT INFORMATION:** (813) 627-2600 X 1241 **EMAIL:** cahaninj@epchc.org	**COMMENT DATE:** October 7, 2022 **PROPERTY ADDRESS:** 1003 Myrtle Road, Valrico, FL 33596 **FOLIO #:** 076792.0500 **STR:** 24-30S-20E
REQUESTED ZONING: ASC-1 to PD	

FINDINGS	
WETLANDS PRESENT	YES
SITE INSPECTION DATE	03/17/2022
WETLAND LINE VALIDITY	Not valid and not accurate on the plan
WETLANDS VERIFICATION (AERIAL PHOTO, SOILS SURVEY, EPC FILES)	Wetlands located in NW and SE corners of property. OSW located in south central portion of property.

The EPC Wetlands Division has reviewed the proposed rezoning. In the site plan's current configuration, a resubmittal is not necessary. If the zoning proposal changes and/or the site plans are altered, EPC staff will need to review the zoning again. This project as submitted is conceptually justified to move forward through the zoning review process as long as the following conditions are included:

- Approval of this zoning petition by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission of Hillsborough County (EPC) approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impact to wetlands, and does not grant any implied or vested right to environmental approvals.

- The construction and location of any proposed wetland impacts are not approved by this correspondence, but shall be reviewed by EPC staff under separate application pursuant to the EPC Wetlands rule detailed in Chapter 1-11, Rules of the EPC, (Chapter 1-11) to determine whether such impacts are necessary to accomplish reasonable use of the subject property.

- Prior to the issuance of any building or land alteration permits or other development, the approved wetland / other surface water (OSW) line must be incorporated into the site plan. The wetland/

OSW line must appear on all site plans, labeled as "EPC Wetland Line", and the wetland must be labeled as "Wetland Conservation Area" pursuant to the Hillsborough County Land Development Code (LDC).

- Final design of buildings, stormwater retention areas, and ingress/egresses are subject to change pending formal agency jurisdictional determinations of wetland and other surface water boundaries and approval by the appropriate regulatory agencies.

INFORMATIONAL COMMENTS:

The following specific comments are made for informational purposes only and to provide guidance as to the EPC review process. However, future EPC staff review is not limited to the following, regardless of the obviousness of the concern as raised by the general site plan and EPC staff may identify other legitimate concerns at any time prior to final project approval.

- The subject property contains wetland/other surface waters (OSW) areas, which were delineated by EPC staff on March 17, 2022. A survey was submitted June 10, 2022, and a request for additional information was sent on July 6, 2022. To date, surveys have not been received and must be submitted for review and formal approval by EPC staff. The extents of the wetlands onsite do not appear accurately depicted and/or are do not appear on the site plan. Please submit surveys to EPC for approval and to complete the delineation process (EPC# 74190).

- Email confirmation was provided 10-7-2022 that the wetlands, both depicted and not shown, will not be impacted and will not be a part of the drainage easement.

- Chapter 1-11, prohibits wetland impacts unless they are necessary for reasonable use of the property. Staff of the EPC recommends that this requirement be taken into account during the earliest stages of site design so that wetland impacts are avoided or minimized to the greatest extent possible. The size, location, and configuration of the wetlands may result in requirements to reduce or reconfigure the improvements depicted on the plan.

- The Hillsborough County Land Development Code (LDC) defines wetlands and other surface waters as Environmentally Sensitive Areas. Pursuant to the LDC, wetlands and other surface waters are further defined as Conservation Areas or Preservation Areas and these areas must be designated as such on all development plans and plats. A minimum setback must be maintained around the Conservation/Preservation Area and the setback line must also be shown on all future plan submittals.

- Any activity interfering with the integrity of wetland(s) or other surface water(s), such as clearing, excavating, draining or filling, without written authorization from the Executive Director of the EPC or authorized agent, pursuant to Section 1-11.07, would be a violation of Section 17 of the Environmental Protection Act of Hillsborough County, Chapter 84-446, and of Chapter 1-11.

Jpc/cb

cc: mnewton@shumaker.com
r.king@gatewaylandsurveying.com
LampkinT@hillsboroughcounty.org

Hillsborough County PUBLIC SCHOOLS
Preparing Students for Life

Adequate Facilities Analysis: Rezoning

Date: October 10, 2022

Acreage: ±7.59 acres

Jurisdiction: Hillsborough County

Proposed Zoning: PD

Case Number: RZ-PD-22-0949

Future Land Use: R-4

HCPS #: RZ-475

Maximum Residential Units: 14 Units

Address: 1003 Myrtle Road, Valrico

Residential Type: Single-Family, Detached

Parcel Folio Number(s): 076792.0500

School Data	Cimino Elementary	Burns Middle	Bloomingdale High
FISH Capacity Total school capacity as reported to the Florida Inventory of School Houses (FISH)	*1,002*	*1,398*	*2,088*
2021-22 Enrollment K-12 enrollment on 2021-22 40th day of school. This count is used to evaluate school concurrency per Interlocal Agreements with area jurisdictions	*783*	*1,294*	*2,322*
Current Utilization Percentage of school capacity utilized based on 40th day enrollment and FISH capacity	*78%*	*93%*	*111%*
Concurrency Reservations Existing concurrency reservations due to previously approved development. Source: CSA Tracking Sheet as of 10/10/2022	*4*	*26*	*0*
Students Generated Estimated number of new students expected in development based on adopted generation rates. Source: Duncan Associates, School Impact Fee Study for Hillsborough County, Florida, Dec. 2019	*2*	*1*	*2*
Proposed Utilization School capacity utilization based on 40th day enrollment, existing concurrency reservations, and estimated student generation for application	*79%*	*94%*	*111%*

Notes: Valrico Elementary, and Burns Middle School have adequate capacity for the residential impact of the proposed development. Bloomingdale High School does not have adequate capacity for the residential impact of the proposed development. **In these cases, the school district is required by state law to consider whether additional capacity exists in adjacent concurrency service areas (i.e., school attendance boundaries). At this time additional capacity does not exist in adjacent service areas at the high school level. At this time, adjacent school capacity** at the high school level exists in the adjacent service areas to accommodate the proposed project.

This is an analysis for adequate facilities only and is NOT a determination of school concurrency. A school concurrency review will be issued PRIOR TO preliminary plat or site plan approval.

Renée M. Kamen, AICP, Manager, Planning & Siting
Growth Management Department
Hillsborough County Public Schools
e: renee.kamen@hcps.net
p: 813-272-4083

AGENCY COMMENT SHEET

TO: **Zoning/Code Administration**, **Development Services Department**

FROM: **Reviewer:** Carla Shelton Knight **Date:** October 5, 2022

Agency: Natural Resources **Petition #:** 22-0949

( ) This agency has **no comment**

( ) This agency has **no objections**

(X) This agency has **no objections, subject to listed or attached conditions**

( ) This agency **objects, based on the listed or attached issues.**

1. The labeling of the Significant Wildlife Habitat Conservation Area must be revised to clearly label this area of the site. The revision must be done prior to the submittal of the final site plan. **This will be a condition of the rezoning.**

2. The 8' landscape buffer along Myrtle Road will require landscaping equivalent to Land Development Code Section 6.06.03.I.2.C for Urban Scenic Roadways. **This will be a condition of the rezoning.**

3. The construction plans submitted through the Subdivision Construction Review process must show the proposed drainage retention area in Tract D designed with no impact to the adjacent Wetland Conservation Area and the Significant Wildlife Habitat Conservation Area. **This will be a condition of the rezoning.**

4. Wetlands or other surface waters are considered Environmentally Sensitive Areas and are subject to Conservation Area and Preservation Area setbacks. A minimum setback must be maintained around these areas which shall be designated on all future plan submittals. Proposed land alterations are restricted within the wetland setback areas.

5. Approval of this petition by Hillsborough County does not constitute a guarantee that Natural Resources approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impacts to trees, natural plant communities or wildlife habitat, and does not grant any implied or vested right to environmental approvals.

6. The construction and location of any proposed environmental impacts are not approved by this correspondence, but shall be reviewed by Natural Resources staff through the site and subdivision development plan process pursuant to the Land Development Code.

7. If the notes and/or graphic on the site plan are in conflict with specific zoning conditions and/or the Land Development Code (LDC) regulations, the more restrictive regulation shall apply, unless specifically conditioned otherwise. References to development standards of the LDC in the above stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan/plat approval.

Hillsborough County Florida
Development Services

AGENCY REVIEW COMMENT SHEET

NOTE: THIS IS ONLY FOR ESTIMATE PURPOSES, BASED ON THE FEES AT THE TIME THE REVIEW WAS MADE. ACTUAL FEES WILL BE ASSESSED BASED ON PERMIT APPLICATIONS RECEIVED AND BASED ON THE FEE SCHEDULE AT THE TIME OF BUILDING PERMIT APPLICATION.

TO:	Zoning Review, Development Services	**DATE:**	08/04/2022
REVIEWER:	Ron Barnes, Impact & Mobility Fee Coordinator		
APPLICANT:	Grace Contracting & Development LLC	**PETITION NO:**	22-0949
LOCATION:	1003 Myrtle Rd		
FOLIO NO:	76792.0500		

Estimated Fees:

(Fee estimate is based on a 2,000 square foot, Single Family Detached)
Mobility: $9,183 * 14 units = $128,562
Parks: $2,145 * 14 units = $ 30,030
School: $8,227 * 14 units = $115,178
Fire: $335 * 14 units = $ 4,690
Total Single Family Detached = $278,460

Project Summary/Description:

Urban Mobility, Central Park, Central Fire - 14 Single Family Units

AGENCY REVIEW COMMENT SHEET

TO: ZONING TECHNICIAN, Planning Growth Management **DATE:** 9 June 2022

REVIEWER: **Bernard W. Kaiser, Conservation and Environmental Lands Management**

APPLICANT: David Singer **PETITION NO:** RZ-PD 22-0949

LOCATION: Not listed

FOLIO NO: 76792.0500 **SEC:** _____ **TWN:** _____ **RNG:** _____

☒ This agency has no comments.

☐ This agency has no objection.

☐ This agency has no objection, subject to listed or attached conditions.

☐ This agency objects, based on the listed or attached conditions.

COMMENTS: _____.

WATER RESOURCE SERVICES
REZONING REVIEW COMMENT SHEET: WATER & WASTEWATER

PETITION NO.: PD22-0949 **REVIEWED BY:** **Randy Rochelle** **DATE:** 12/15/2022

FOLIO NO.: 76792.0500

WATER

☐ The property lies within the _____ Water Service Area. The applicant should contact the provider to determine the availability of water service.

☒ A 12 inch water main exists ☐ (adjacent to the site), ☒ (approximately 250 feet from the site) and is located west of the subject property within the east Right-of-Way of Bell Shoals Road . This will be the likely point-of-connection, however there could be additional and/or different points-of-connection determined at the time of the application for service. This is not a reservation of capacity.

☐ Water distribution system improvements will need to be completed prior to connection to the County's water system. The improvements include _____ and will need to be completed by the _____ prior to issuance of any building permits that will create additional demand on the system.

WASTEWATER

☐ The property lies within the _____ Wastewater Service Area. The applicant should contact the provider to determine the availability of wastewater service.

☒ A 4 inch wastewater force main exists ☐ (adjacent to the site), ☒ (approximately 310 feet from the site) and is located west of the subject property within the west Right-of-Way of Bell Shoals Road . This will be the likely point-of-connection, however there could be additional and/or different points-of-connection determined at the time of the application for service. This is not a reservation of capacity.

☐ Wastewater collection system improvements will need to be completed prior to connection to the County's wastewater system. The improvements include _____ and will need to be completed by the _____ prior to issuance of any building permits that will create additional demand on the system.

COMMENTS: The subject rezoning includes parcels that are within the Urban Service Area and would require connection to the County's potable water and wastewater systems .

VERBATIM TRANSCRIPT

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

ZONE HEARING MASTER HEARINGS

ZONING HEARING MASTER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: Susan Finch, Zoning Hearing Master
Land Use Hearing Master

DATE: Monday, November 14, 2022

TIME: Commencing at 6:00 p.m.
Concluding at 10:13 p.m.

Reported via Cisco Webex Videoconference by:
LaJon Irving, CER No. 1256

MR. GRADY: Nothing further.

HEARING MASTER: All right. We'll go back to the applicant. Nothing? All right. Then with that, we'll close rezoning 22-0943 and go to the next case.

MR. GRADY: The next item is Item D.4, Rezoning PD 22-0949. The applicant's Grace Contracting Development, LLC. The request is a rezone from ASC-1 to a plan development. Tim Lampkin will provide staff recommendation after presentation by the applicant.

HEARING MASTER: All right. Is the applicant here? Good evening.

MR. RICE: Good evening. Colin Ricehere for the applicants. Law Firm of Shumaker, Loop & Kendrick, here with my colleague Elizabeth Keller, 101 East Kennedy Boulevard, Suite 2800, Tampa, Florida 33609. I've got some visuals for you, use the overhead. So here for PD Rezoning 22 -- 22-0949 at 1003 Myrtle Road. The request is to rezone from ASC-1 agricultural single-family residential to plan development for the construction of 14 single-family residential dwelling units.

To orient you, we are in Valerico (phonetically) north of Boyette Road, south of Bloomingdale and just east of Bell Shoals Road. I'll zoom in a little. Zoom in. I can't zoom in. All right.

So zooming in we're in the Residential-4 future land use designation, which permits up to four dwelling units per

acre. The site is 7.6 acres, that would result in a maximum of 30 dwelling units in this future land use designation. So our request for 14 units is significantly lower than the maximum. We're also within the urban service area in the Garden Estates District Brandon Community Plan.

So I'm showing you here our site plan. We've got a cul-de-sac configuration with the 14 unit layout. Each lot will be between 11,000, 14,000 square feet and that's in the conditions included with the staff report. The reason these lots aren't bigger is due to part in efforts to preserve the natural resources onsite, so that the southeast portion is a significant wild life habitat and a wetland. All of these will be completely preserved. There will be no impacts to either. So as a result, the lots are just a little bit smaller than maybe they would have been originally, but it was important to preserve these environmental features.

I do want to point out Future Land Use Policy 1.2 addresses minimum density within the urban service area. Without more they want to encourage density up to 75% of the allowable maximum, which in this case it would be 22 units, we're seeking 14. That's more appropriate. Planning Commission Staff agrees that 14 is appropriate in consideration of the environmental features in the surrounding compatible area.

There also would be a small portion of the sidewalk here that will just barely encroach into the wetland setback

area, but we'll use pervious paving and that's an allowable exception.

I want to point out a couple of features that weren't required by the code, but were important for the applicants. We'll be implementing a five-foot wide landscape easement with Type A screening along the east, west and south property lines. We'll also be implementing an eight-foot landscape area along Myrtle Road, landscaping equivalent to the urban scenic roadway standard. We'll also be constructing a sidewalk along Myrtle Road two Bell Shoals. And again, protecting the -- the whole of the significant wild life habitat and the wetlands. We held a volunteer neighborhood meeting on September 14th, unfortunately, nobody was in attendance. That invitation went out with the notice mailing for -- for this case this evening.

During a highlight, the agents review here were greatful for Mr. Lampkin and -- and staff across the board for their review and time and support. No objections from -- from any agent review. We're in agreement with all proposed conditions on the site plan. Again, Development Services finds the request approvable. The Planning Commission Staff finds the proposal consistent with the comprehensive plan. So we've -- we've demonstrated that this rezoning is approvable.

I do want to touch on transportation briefly. There is an administrative variance request because Myrtle is a substandard road. That request has been found approvable if the

rezoning is approved. That's all part of the staff report in the transportation comments. Very, very minimal increase in traffic here. We're entitled for seven units as-is, so we're looking for seven additional units. About two per acre will result in five a.m./p.m. peak hour trip increases and seven p.m. hour trip increases. So very, very minimal. There's an ongoing expansion of Bell Shoals as well, Project Number 69112000. This is detailed in the staff report, as well. So to the extent that there are concerns about traffic, there's a lot going on in Valrico in the area outside of our control. This will result in a very minimal increase.

Just to reiterate, a whole host of comprehensive plan categories were considered found consistent. I won't belabor all of them, just for your reference here.

And then just some concluding points and then I'll let staff get to it. If we've met our burden consistent with Land Development Code and the comprehensive plan. No objections. And at the end of the day, this is proposed to be about two dwelling units per acre. Comprehensive plan, encourages entire density within the urban service area, the sidewalk, the natural resources, all good things for the community.

We appreciate your time this evening. I'll -- I'll close with that and if appropriate, reserve for rebuttal. I'm happy to answer any questions.

HEARING MASTER: No questions of this time.

MR. RICE: Thank you.

HEARING MASTER: If you could please sign-in.

MR. RICE: Sure.

HEARING MASTER: Development Services.

MR. RICE: Oh, and we've got copies for the record.

HEARING MASTER: Oh, thank you so much. Yeah, it'd be appropriate to file them at this time.

MR. LAMPKIN: Good evening. Tim Lampkin, Development Services for case 22-0949. The applicant is seeking to develop an approximately 7.6 acre unified development, consisting of one folio. The request is for rezoning from agricultural single-family conventional one to plan development to allow for the development of 14 single-family residential dwelling units.

The site is located on the south side of Myrtle Road, approximately 200 feet east of Bell Shoals Road and approximately 3,800 feet north of Fishhawk Boulevard within the urban service area and within the limits of the Brandon Community Plan. The immediate area surrounding the property is predominantly developed for the residential and is also vacant. The surrounding area contains mostly single-family homes, agriculture uses and public institutional uses to the north, northeast, east and west is single-family development. To the south, southeast and southwest is vacant land zoned for residential ASC-1 and agricultural AR. To the southwest across Bell Shoals and -- an assisted living facility/a community

residential home with a maximum of 260 placed residents or beds.

As the applicant stated, while not required, the applicant is proposing a five-foot landscape easement with Type A screening to further ensure compatibility with the existing development surrounding the proposed development along adjacent east, west and south property boundaries. The applicant requests no variations for site design. The applicant does not request any variations to Land Development Code Part 6.06.00 regarding landscaping and buffering. Staff notes that Myrtle Road is not a designated scenic roadway, however the applicant is also proposing an eight-foot landscape area between the subdivision and the Myrtle Road right-of-way. This eight-foot landscape area along Myrtle Road will have landscaping equivalent to Land Development Code Section 6.06.03 I.2.C, which is for urban scenic roadways. The future land use is RES-4, Residential-4, allowing up to four dwelling units an acre and I just noticed a typo on page three of 17 of the staff report. And it looks like it's a carryover. It says R-20. I will change that. It is RES-4, Residential-4. There are wetlands present on the subject site. The Environmental Protection Commissions EPC Wetlands Division has reviewed the proposed rezoning and determined a resubmital is not necessary for the site plan's current configuration. However,a wetland survey must be submitted for review and formal approval by EPC staff prior to site and development. The applicant needs to submit

the surveys to EPC for the approval and to complete the delineation process of the exact extent of wetlands. And the property is also located in a significant wildlife habitat area and that the applicant pointed out in the southeastern portion of the property. Myrtle Road is also a substandard local roadway. The applicant's engineer of record submitted an administrative variance. This administrative variance was found approvable and a full review is in the transportation agency review comment sheet. The site will comply with and conform to all applicable policies and regulations, including but not limited to the Hillsborough County of Land Development Code. The Planning Commission has found that the proposed rezoning would be consistent with the unincorporated Hillsborough County Comprehensive Plan based upon the above considerations and staff finds the approvable.

And that concludes presentation unless there are any questions.

HEARING MASTER: No questions, but thank you. I appreciate it. Planning Commission.

MS. PAPANDREW: Andrea Papandrew, Planning Commission Staff. The subject property is within the Residential-4 future land use category. The site is in the Urban service area and within the limits of the Brandon Community Plan. The site has a land use designation of Residential-4 which is intended to designate areas that are suitable for low density residential

development.

In addition, typical uses also includes suburban scale neighborhood commercial office, multipurpose and mixed use project. The Residential-4 category has a maximum density of four dwelling units an acre and a .25 floor ratio. The property is surrounded by the Residential-4 future land use category with natural preservation and residential plan to locate to the southeast of the site.

The proposal meets the intent of Objective one, Policy 1.4 of the future land use element by providing growth within the urban service area. The maximum number of units that can be served in the property is 30 units. Per Policy 1.2, minimum density required is 22 dwelling units. With 14 dwelling units, the proposed development will not meet minimum density requirements. However, the project does meet two exemptions to minimum density as outlined in Policy 1.3. Those include the development proposed 75% of the maximum density allowed by the future land use category. The development would not be compatible with and would adversely impact the surrounding development pattern. In addition, the site contains a significant wild life habitat on the southeastern portion of the property, which meets the exemption to minimum density regarding adverse impacts to environmental feature. The site is consistent with Policies 1.2 and 1.3. It is also compatible with Policy 1.4 as the predominant character of the area,

single-family residential dwellings at comparable densities. As even by Development Services, The Environmental Protection Commission has reviewed the proposed site plan and indicates that a re-submittal is not necessary for the plan's current configuration.

Based on this, the Planning Commission Staff finds the request consistent with Objective 13 and associated policies in the Future Land Use Element and Objective 3.5 and Policies in the Environmental and Sustainability Section of the comprehensive plan. The property contains significant wildlife habitat in the southeastern corner of the property. Policy 13.6 indicates that this habitat shall be protected and the Natural Resources Department has issued a revised agency letter dated October 5, 2022, indicating no objections subject to conditions proposed by Natural Resources Staff.

The surrounding area contains mostly single-family homes, agricultural uses and public institutional uses. The subject property currently contains agricultural uses into the north, northeast, east and west or single family residential developments. To the northwest, south, southeast and southwest is vacant land and a church. The proposal meets the intent of Objective 16 and Policy 16.2, 16.3, 16.8 and 16.10 that required new development, infill and redevelopment to be compatible with the surrounding area in character, lot size and density. The proposal is consistent with the gener -- general character of

the area, which is low density, single-family residential dwellings. It is also consistent with policy direction on Goal 12 and Objective 12-1 of the Community Design Component, which requires new developments to recognize existing community and be designed to be related to a compatible with the predominant character of the surrounding area.

The property is located within the Garden States District of the Brandon Community Plan. The predominant residential style is dwelling in half acre lots or more and the surrounding residential development pattern indicates a lot size of 10,000 square feet or larger. The proposed site plan indicates an average lights -- lot size between 11,000 to 14,000 square feet and it's compatible with the vision of the Garden Estates character district.

Based upon the above considerations, Planning Commission Staff find the proposed plan development consistent with the Unincorporated Hillsborough County Comprehensive Plan, subject to the conditions proposed by the Hillsborough County and Development Services Department.

HEARING MASTER: Ms. Papandrew, let me just confirm something before you go regarding your presentation to make sure that I understand it for the record. So the maximum number of units that could be considered under the comprehensive plan is 30, but the density -- the minimum density per the policy, I believe it's 1.2 says 22 units, is that correct?

MS. PAPANDREW: Yes, that is correct.

HEARING MASTER: Okay. And then this project meets those two exceptions to go below 22 based on the environmental issue and what was the other exception?

MS. PAPANDREW: Yeah. So there -- at 14 units, they meet to the two exemptions for the environmental issue. And because going above the 14 units to the 22 units, which is the minimum density, would mean lot sizes are not compatible with the development in the surrounding area.

HEARING MASTER: Okay. That's what I needed. Thank you so much. I appreciate it. All right. We'll turn to anyone that would like to speak in support. Is there anyone in the audience or online that would be in favor of this project? I'm seeing no one. And anyone in opposition? All right. How many people would like to speak? Okay. Raise your hand if you'd like to speak. So I see one -- sir, you're blocking my view. So I have four, is that correct? Five. Five. And is there anyone online? Okay. So we have 15 minutes total, so we'll track you at three minutes a piece. If you take less than that, then terrific. But whoever would like to start, if you want to come forward and give us your name and address. When you're done speaking, you can -- when you sign-in with the clerk's office, you can give your materials to her and it'll be a part off the record.

MR. JORDAN: Okay. Good evening.

HEARING MASTER: Good evening.

MR. JORDAN: Good evening. How you are doing, ma'am?

HEARING MASTER: I'm good.

MR. JORDAN: My name is Christopher Jordan of 1133 Myrtle Road, Velrico. Could I actually ask the gentleman a question on something he had said to you about a meeting on September 14th, is that?

HEARING MASTER: How we'll do this is, we'll go ahead and take your testimony.

MR. JORDAN: Okay.

HEARING MASTER: And then he has an opportunity for rebuttal at the end where he can answer your question. So if you could just put it out there and then when he comes --

MR. JORDAN: Okay.

HEARING MASTER: -- up for rebuttal, he -- he'll address it.

MR. JORDAN: Okay. So I'd just like to start off by saying I had heard something about a September 14th meeting with anybody that may have been in opposition, but none of us are aware of that and we would never contacted for any sort of meeting. So I just want to put that out there.

As you could see here, we have a small group of homeowners in person and online, numerous more signed oppositions and positions and petitions, which I have to turn in. We completely and understand the necessity of monetary

value for the County that comes with a residential growth. I'm sure there are many ch -- oh, I'm sorry. I'm sure there are many charts of such growth in Hillsborough in the last few years. My question is, does the County also monitor the -- the chart and chart the loss of lifelong residents that are now moving away to avoid such congestions and excessive traffic and noise and change streets?

It seems that currently the -- the County has had a habit of allowing a gross over population to a particular area and then trying to work on an infrastructure and road widening to help offset, thus results in several years of mass traffic and inconvenience to all. Currently, to get to our small country Myrtle Road, it takes sometimes between 20 to 30 minutes to go two to three miles on Bell Shoals as a result of this horrible road -- road widening. My provider letter will go more into depth on the mistakes of the County with the egress and ingress of our road. I'll leave that in there. These small lots absolutely do not conform with any of our two to three acre lot homes and horse farms on Myrtle Road and Crate Myrtle Road. This street is not wide enough for two cars to pass each other. Currently, one of us pulls off the road onto the grass to allow another vehicle to pass. So adding 14 homes worth of cars is going to be a danger and should be a safety concern, as well as emergency vehicles to come in and out of the block.

Some of the lifelong residents of Myrtle Road could

attest to how allowing development of small homes in small lots can change the dynamics of our country style setting that we all cherish. As a real estate broker, I can attest that a gross change to a block such as this could negatively affect our real estate values. And homes in private neighborhood such as ours. May not be a concern to the county and staff, but it is devastating to us. We as a group advised the County and the builder's rep that if they proposed a more conforming seven home, one acre home site subdivision, we would have no objections. I wish that zoning and planning process included staff actually coming out and visiting the sites, including seeing the surrounding homes, neighbors, the wild life, the beauty of the country life block that will be gone here.

After three years of craziness on Bell Shoals, we would not want another two-plus year project on our small block to be -- and I thank you for listening.

HEARING MASTER: Thank you, sir. If you could sign-in and then you can submit your documents. Next please. Good evening.

MR. SHERN: Good evening. My name is David Shern and I live at 1141 Myrtle Road. And I'm speaking in opposition to the proposal. And essentially, I think that the -- the crux of the argument has two or three major components. Perhaps the most important one initially is that this development is inconsistent with the overall context of -- of our neighborhood.

As Chris mentioned, you know, most of the homes in the neighborhood are on a minimum of two acres of land and it's a very much a country -- a country setting. This is a proposed redevelopment of an equestrian farm on -- on Myrtle Road. In addition to our two to three acre lots, there are also Emerald Creek, which has large homes on large lots and Indian Creek, which is large homes on large lots. So this is really incompatible with the general characteristics of our neighborhood.

Secondly, I think as Chris also mentioned, there was some -- there's some grave confusion. We don't have a homeowner's association and so when the Bell Shoals redevelopment was being proposed, we were never consulted. And we were also not consulted, as Chris mentioned at a meeting on September 14th. None of us remember ever being invited to that. It gets into kind of a technical question. We worked with the -- the County Commissioner White to try to get permission to eliminate a median so that we could turn left out of our development. They underestimated the traffic patterns in our area and the number of units there. And now adding 14 additional units further disadvantages us with regard to our ability to -- to get in and to get out of the -- of the area. And I think that there are definitely safety concerns and certainly traffic density concerns. I haven't reviewed recently some of the documentation with regards to the development, but

initial review, the number of cars coming in and out at various times of day seemed to -- not to be credible to me. If you're talking 14 units, I would guess an average of maybe 1.5 cars per unit. So you're talking about adding a significant amount of traffic onto -- onto Myrtle Road. This -- this area and I think my neighbor John will probably speak to this, historically has been a country island surrounded by Fishhawk and lots of residential development. I understand the need for the continued development. The housing pressures in the community. If we could have had something that was more compatible with the area, such as one acre plots with the -- with houses on it, as Chris said, there would be no objection. The current plan, in addition to the 14 units, has a clubhouse and a pool. It also takes up square footage and increases the density of the overall operation.

So thank you for your consideration. We hope that ultimately the plan is modified to accommodate larger homes on larger lots. Thanks.

HEARING MASTER: Thank you, sir. If you could please sign-in with the clerk's office. Next, please. Good evening.

MS. ALAGOOD: Good evening. My name is Joan Alagood and I live at 4802 Crape Myrtle Lane. The property that is described here is a quarter mile of a paved road, which is -- we've -- you've mentioned doesn't fit the requirements for today. It is a narrower road than would be accepted today.

It's a quarter mile of paved and a quarter mile of a crushed asphalt. So we have 19 homes on those two areas.

As was mentioned before, we spent two years on zoom calls trying to get access from our road to Bell Shoals. And we unfortunately we're not successful. And it could be because we didn't have a homeowner's association. But now you're going to add -- they're asking to add 14 more homes. That's a 74% increase in traffic on this little narrow road with the asphalt road, too. So traffic is a definite problem.

We also have an environmental situation. We have have wild hogs. We have coyotes. We had an eagle that a neighbor saw recently. And this is going to change the whole atmosphere of the road here. So we implore you, please reconsider. We're -- we're not unreasonable people. We understand progress, but if you would switch it to one acre, I think we could handle that. If not, we need a better access to Bell Shoals Road. Thank you.

HEARING MASTER: Thank you for coming down. If you could please sign -- in with the clerk's office, next, please. Good evening.

MR. ROBERSON: Good evening. My name is Vincent Roberson, 4820 Crape Myrtle Road -- Crape Myrtle Lane in Valrico. Second my -- my neighbors have mentioned, the proposed new subdivision doesn't necessarily meet the lifestyle. I lived -- I moved to Crape Myrtle Lane about two years ago

because of the -- the country life. And there is the -- there is coyotes. There is -- but there's also horse farm and trailers and things of that sort. Myrtle -- Myrtle Road is a very narrow road. And one of my neighbors just mentioned I don't know how they're going to, you know, build this massive road with sidewalks and all this kind of stuff, because we already have to pull off the side of the road to let someone come through. There's no way two cars can go down the -- the road. So we're -- we're not opposed to change. And we had no real complaints of -- what fits the area would be the original application of the seven homes. You know, we had no real opposition about that. But when they increased it, you know, that's more traffic. And we don't have a -- a lane that turns. We don't have a -- a turn in lane. We -- we can -- we can't turn left into our neighborhood and things of that sort. We lost that battle. And so now, you know, we have to go up and we have to make a -- a bump out to turn. So that's kind of like making a U-turn on 60, you know, that's very dangerous. And so now you're adding, at a minimum, 14 or 28 extra cars turning in and out, that's creating danger. And I think no one ever, you know, looked at that.

So thank you for hearing this.

HEARING MASTER: Thank you for coming down. If you could please sign-in. Was that the last person? One more. Okay. Yes, sir. Good evening.

MR. NAGY: Good evening. My name is Attila, 4814 Crape Myrtle Lane. Thank you for being here after hours and serving us. Thank you so much. Two questions I have. We moved to the Crape Myrtle Lane ten years ago. Its markets, that was one of the biggest reason we moved there. And on the top of what we told about safety and the other issues and the envi -- environment and the size of the land, let me ask you, how would you to feel to increase the traffic by almost 100%? That's one of the question.

Another question is sorry, I'm so emotional on this.

HEARING MASTER: If you want --

MR. NAGY: There must be a reason for the number of 14 houses. So we would like to know why is the number 14. We understand the -- the -- today's market, how the economy is going, the interest rates are higher, there are still demand for the housing. And that's an interesting question by this 14.

HEARING MASTER: All right.

MR. NAGY: Thank you so much.

HEARING MASTER: Thank you so much. If you could please sign-in. All right. I'm seeing no one else that would like to speak in opposition. We'll close that portion of the hearing. We'll go back to Development Services, Mr. Grady.

MR. GRADY: No. Nothing further, unless you have questions.

HEARING MASTER: All right. I would like to touch

base, if it's someone from Transportation, just real quick to answer -- get their feedback on the Myrtle Road issue.

Good evening. So if you could just comment. I'm looking at the Transportation comment sheet and it talks about administrative variance and so forth, but can you enlighten us about the status of Myrtle and any possible improvements?

MR. STEADY: Yes. The -- so for the record, Alex Steady, Development Services Transportation review. So there is in this -- there is an administrative variance. Myrtle Road is a substandard road. But as a part of the administrative variance, they were required to demonstrate the existing -- geometry of the road. And based off of the measurements, they were measuring 20 feet wide of pavement included by their -- by their engineers and that does meet our requirements for the road. They will be required to, as they by condition to include a sidewalk from their -- from their proposed site all the way to Bell Shoals as a -- as a part of their administrative variance.

HEARING MASTER: Okay. So Myrtle Road, the 20-foot wide pavement, meets county standards, but the --

MR. STEADY: Correct.

HEARING MASTER: -- improvement will be adding sidewalks, correct?

MR. STEADY: Yes and -- yes. Yes.

HEARING MASTER: Okay. All right. Thank you for that. I appreciate it. All right. Now we'll go back to the

applicant who has time for rebuttal.

MR. RICE: Colin Rice again, 11 East Kennedy, Suite 2800 for the applicant on rebuttal. A lot there, so I'll try to be brief with my points and try to address everything.

So point one, this is the notice mailing an affidavit submitted as part of the record for what was mailed for notice of this hearing. I'm going to bring to your attention -- so this is the County's letter. Included within this mailing is the affidavit of notice was this. So in the County's required notice mailing to all the residents, and the mailing list is here and certified by the U.S. Postal Office, was included the September 14th, 5:30 p.m. Zoom meaning. I -- I was on the meeting. Nobody attended. So we -- we tried. This is already in the record.

I think there is some conflation between the conditions of Bell Shoals Road and this project. We're entitled for seven units now, what we're asking for is for seven additional units. So these percentage increases in the traffic account just aren't factually true from what's approved there now. I just want to make that clear for the record.

There -- in -- in the staff report conditions, there is also a turn warrant cond -- turn lane warrant condition. If at site development it is warranted to install a turn lane, were obligated to do that. And we agreed to that condition. I do want to remind Madam Hearing Master tonight, that both staff and

Planning Commission found this proposal consistent and approvable. That is by law competent substantial evidence in the record. While we're sympathetic to traffic impacts in -- in the overall community, what we heard is a lot of lay opinion testimony. For purposes of what is legally sufficient for this approval tonight, I do want to bring to your attention the case law that we're all bound by here.

And we have copies for the cases also, I'll provide for the record too. Staff recommendation -- recommendations are considered competent and substantial evidence. And I'll just read it into the record. Village of Palmetto Bay v. Plummer Trinity Private School Incorporated, 128 So.3d 19. Report recommendations constitute competent, substantial evidence. That will be submitted into the record as well. I'm sorry. My time is short on rebuttal. I just need to protect our record. Planning Commission Staff has found 14 units specifically consistent. Suggestions of different unit counts tonight are not supported by cons -- competent substantial evidence.

And lastly, it is -- it is our burden as the applicant to demonstrate compliance with the comprehensive plan and Land Development Code. We -- we have done that buttressed by staff support, the burden then shifts to opponents for the local government agency to show that approval would results in some kind of substantial harm. That decision then must also be supported by subcon -- competent substantial evidence. I'm --

our opinion is, it is not.

We respectfully request your approval. I'm happy to answer any questions you have about the project, but I will submit to the record the three cases that I had cited.

HEARING MASTER: Thank you. You -- you address the neighborhood meeting question and the 14, I presume, was what you could -- what you could fit on the property, how that number was derived. That was one question from the opposition. How was the 14 derived?

MR. RICE: Compatibility, protection of the natural resources, viable, lot size and project feasibility, frankly. Seven doesn't work. 14 does.

HEARING MASTER: All right. And then the last question that a gentleman asked about the increase in traffic. So I think you've addressed that through the comments not only from yourself but also from county staff.

MR. RICE: Sure. I'll -- I'll just reiterate. Again, it's five a.m. peak hour increases, seven p.m. peak hour increases over what's already entitled. And again, there's a turn lane warrant. If it's appropriate, it'll be installed at site development.

HEARING MASTER: All right. Perfect. Okay. Does that conclude your rebuttal?

MR. RICE: It does.

HEARING MASTER: Thank you so much.

MR. RICE: Thank you.

HEARING MASTER: Then we will close Rezoning 22-0949. We're going to take a five minute break at this point, so we'll come back let's just say 8:40 we'll come back.

(OFF THE RECORD)

(ON THE RECORD)

HEARING MASTER: All right. Welcome back, everyone. We're going to reconvene the meeting. If you could please have a seat. We're going to get ready to call the next case. Mr. Grady.

MR. GRADY: The next case is Agenda Item D.5 Rezoning PD 22-1103. The applicant is Jacob Egan. The request is rezone from agricultural rural to plan development. Sam Ball with County Staff will provide staff recommendation after presentation by the applicant.

HEARING MASTER: All right. Good evening.

MS. CORBETT: Good evening. Kami Corbett with the Law Firm of Hill Ward and Henderson. I'm -- in the interest of time, I'm just going to launch right into our planning presentation and ask our planner to come up with you.

HEARING MASTER: Thank you so much. If you could please sign-in. Good evening.

MR. SPOSATO: Good evening. Thank you. We have a Powerpoint presentation. My name is Steven Sposato. I'm a certify planner with Level Up Consulting, 505 East Jackson

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

LAND USE HEARING OFFICER HEARINGS

LAND USE HEARING OFFICER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: PAMELA JO HATLEY
Land Use Hearing Master

DATE:
Monday, October 17, 2022

TIME:
Commencing at 6:00 p.m.
Concluding at 9:10 p.m.

PLACE: Robert W. Saunders, Sr. Public Library
Ada T. Payne Community Room
1505 N. Nebraska Avenue
Tampa, Florida 33602

Reported via Zoom Videoconference by:

Julie Desmond, Court Reporter
U.S. Legal Support

Planning Commission, Karla Llanos, and from the County Attorney's Office, Mary Dorman.

We do have four changes to the published agenda. The first change is on Page 9 of the agenda, Item D.2, Rezoning PD92-0943 [PD22-0943]. Staff is requesting a continuance of this item until November 14th, 2022. Zoning Hearing Master, reason for the continuance is some late filed issues and concerns raised by Transportation Staff that requires some additional review and, therefore, the staff is requesting a continuance to allow for that additional review to occur.

HEARING MASTER HATLEY: Is there anyone here who wishes to speak on Item -- this is Rezoning PD 22-0943? Anyone in the audience or online who wishes to speak to the continuance of this item?

All right. I don't hear anyone. So Rezoning PD 22-0943 is continued to the November 14, 2022, Zoning Hearing Master Meeting.

MR. GRADY: The next change on the agenda is on Page 9, Item D.3, Rezoning PD 22-00949, the -- Grace Contracting and &, LLC. Staff is requesting a continuance of this item to the November 14, 2022, Zoning Hearing Master Hearing. Madam Hearing Master, the reason for the

continuance, it was brought to our attention from a resident that the sign on the property had fallen down. In discussions with the applicant, the applicant was agreeable to continuance out of caution just to avoid any potential due process concerns or issues with that. Again, it wasn't that it was not necessarily out of order for that issue, but again, the applicant was amenable to continuing given the concerns raised by residents regarding having proper notice for the applicant's hearing dates since the sign had fallen down. So staff is requesting continuance to the November 14, 2022, for this item.

HEARING MASTER HATLEY: All right. Thank you. Is there anyone here in the audience or online who wishes to speak to Rezoning PD 22-0949?

All right. I don't hear anyone. All right. Rezoning PD 22-0949 is continued to the November 14, 2022, Zoning Hearing Master Meeting.

MR. GRADY: The next change is on Page 5 of the agenda, item A.16 Rezoning Standard 22-1027. This was shown as a continuance, but it is now being withdrawn from the Zoning Hearing Master process. Again, that's item on Page 5, item A.16 Rezoning Standard 22-1027, and it's being withdrawn

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

ZONE HEARING MASTER HEARINGS

ZONING HEARING MASTER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: PAMELA JO HATLEY
Land Use Hearing Master

DATE: Monday, September 19, 2022

TIME: Commencing at 6:00 p.m.
Concluding at 8:34 p.m.

PLACE: Robert W. Saunders, Sr. Public Library
Ada T. Payne Community Room
1505 N. Nebraska Avenue
Tampa, Florida 33602

Reported via Cisco Webex Videoconference by:

Christina M. Walsh, RPR
Executive Reporting Service
Ulmerton Business Center
13555 Automobile Blvd., Suite 130
Clearwater, FL 33762
(800) 337-7740

This application is out of order to be heard and is being continued to the October 17, 2022, Zoning Hearing Master Hearing.

Item A-17, Rezoning-Standard 22-0926. This application is out of order to be heard and is being continued to the October 17, 2022, Zoning Hearing Master Hearing.

Item A-18, Rezoning-PD 22-0943. This application is being continued by staff to the October 17, 2022, Zoning Hearing Master Hearing.

Item A-19, Rezoning-Standard 22-0945. This application is out of order to be heard and is being continued to the October 17, 2022, Zoning Hearing Master Hearing.

Item A-20, Rezoning-PD 22-0948. This application is being continued by the applicant to the October 17, 2022, Zoning Hearing Master Hearing.

Item A-21, Rezoning-PD 22-0949. This application is being continued by the applicant to the October 17, 2022, Zoning Hearing Master Hearing.

Item A-22, Rezoning-Standard 22-1027. This application is out of order to be heard and is being continued to the October 17, 2022, Zoning

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

ZONE HEARING MASTER HEARINGS

ZONING HEARING MASTER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: SUSAN FINCH
Land Use Hearing Master

DATE: Monday, August 15, 2022

TIME: Commencing at 6:00 p.m.
Concluding at 10:09 p.m.

PLACE: Robert W. Saunders, Sr. Public Library
Ada T. Payne Community Room
1505 N. Nebraska Avenue
Tampa, Florida 33602

Reported via Cisco Webex Videoconference by:

Christina M. Walsh, RPR
Executive Reporting Service
Ulmerton Business Center
13555 Automobile Blvd., Suite 130
Clearwater, FL 33762
(800) 337-7740

application is being continued by the applicant to the September 19, 2022, Zoning Hearing Master Hearing.

Item A-25, Rezoning-Standard 22-0945. This application is out of order to be heard and is being continued to the September 19, 2022, Zoning Hearing Master Hearing.

Item A-26, Rezoning-PD 22-0948. This application is being continued by the applicant to the September 19, 2022, Zoning Hearing Master Hearing.

Item A-27, Rezoning-PD 22-0949. This application is out of order to be heard and is being continued to the September 19, 2022, Zoning Hearing Master Hearing.

Item A-28, Rezoning-PD 22-0950. This application is being withdrawn from the Zoning Hearing Master process.

Item A-29, Rezoning-Standard 22-1027. This application is being continued by the applicant to the September 19, 2022, Zoning Hearing Master Hearing.

Item A-30, Rezoning-Standard 22-1039. This application is being continued by staff to the September 19, 2022, Zoning Hearing Master Hearing.

EXHIBITS SUBMITTED

DURING THE ZHM HEARING

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 1 OF 6

DATE/TIME: 11/14/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY,** THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT
RZ 22-0698 V.S.	NAME David Wright MAILING ADDRESS P.O. Box 273417 CITY Tampa STATE FL ZIP 33688 PHONE
APPLICATION #	PLEASE PRINT
RZ 22-1303	NAME David W Mullen MAILING ADDRESS 625 E. North Broadway CITY Columbus STATE Oh ZIP 43214 PHONE 614.936.6557
APPLICATION #	PLEASE PRINT
RZ 22-1303	NAME Taner Taylor MAILING ADDRESS 2112 Crosby Rd CITY Valrico STATE FL ZIP 33594 PHONE 813 625 9182
APPLICATION #	PLEASE PRINT
RZ 22-1449 V.S.	NAME Kelli Conte MAILING ADDRESS P.O. Box 34 CITY Wimauma STATE FL ZIP 33598 PHONE
APPLICATION #	PLEASE PRINT
RZ 22-1452	NAME Richard Koson MAILING ADDRESS 330 Pauls Drive, Suite 100 CITY Brandon STATE FL ZIP 33511 PHONE 813-653-3800
APPLICATION #	PLEASE PRINT
RZ 22-0461	NAME J. Truett Gordon MAILING ADDRESS 400 N. Ashley Drive, Suite 1100 CITY Tampa STATE FL ZIP 33602 PHONE 813-221-9600

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 2 OF 6

DATE/TIME: 11/14/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT
RZ 22-0461	NAME Addie Clark MAILING ADDRESS 400 N. Ashley Dr. Ste. 1100 CITY Tampa STATE FL ZIP 33602 PHONE 561-319-4759
APPLICATION #	PLEASE PRINT
RZ 22-0461	NAME Steve Henry MAILING ADDRESS 5023 W. Laurel CITY Tampa STATE FL ZIP 33607 PHONE 813-289 0039
APPLICATION #	PLEASE PRINT
MM 22-0860	NAME Willim Molloy MAILING ADDRESS 325 South Blvd CITY Tampa STATE FL ZIP 33606 PHONE 813 629-8752
APPLICATION #	PLEASE PRINT
MM 22-0860	NAME STEVEN HENRY MAILING ADDRESS 5023 W. LAUREL ST CITY TPA STATE FL ZIP 33607 PHONE 813-289 0039
APPLICATION #	PLEASE PRINT
RZ 22-0943	NAME Isabelle Albert MAILING ADDRESS 1000 N. Ashley Dr. CITY Tampa STATE FL ZIP 33602 PHONE 813-331 0974
APPLICATION #	PLEASE PRINT
RZ 22-0949	NAME Colin Rice MAILING ADDRESS 101 E Kennedy Blvd Ste 2800 CITY Tampa STATE FL ZIP 33609 PHONE 813-676-7226

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO

DATE/TIME: 11/14/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT
RZ 22-0949	NAME Christopher Jordan MAILING ADDRESS 1133 Myrtle Rd. CITY Valrico STATE Fl ZIP 33596 PHONE 813 523-1301
RZ 22-0949	NAME DAVID SHERN MAILING ADDRESS 1141 MYRTLE ROAD CITY VALRICO STATE FL ZIP 33596 PHONE 813-373-8873
RZ 22-0949	NAME Joan Alegood MAILING ADDRESS 4802 Crape Myrtle Ln CITY Valrico STATE FL ZIP 33596 PHONE 813-245-2414
RZ 22-0949	NAME [illegible] MGent D Robersv MAILING ADDRESS 4820 CRAPE MYRTLE LANE CITY Valrico STATE FL ZIP 33596 PHONE (813) 480-1213
RZ 22-0949	NAME ATTILA NAGY (Nagy) MAILING ADDRESS 4814 CRAPE MYRTLE LN CITY VALRICO STATE FL ZIP 33596 PHONE 941-356-3140
RZ 22	NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd Ste 3700 CITY TAMPA STATE FL ZIP 33602 PHONE 813-227-8421

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 4 OF 6

DATE/TIME: 11/14/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY.** THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	
RZ 22-1103	PLEASE PRINT NAME Stephen Sposato MAILING ADDRESS 505 E Jackson St. CITY Tampa STATE FL ZIP 33602 PHONE 813-375-0616
APPLICATION #	
RZ 22-1103	PLEASE PRINT NAME STEVE HENRY MAILING ADDRESS 5023 W. LAUREL ST CITY TPA STATE FL ZIP 33607 PHONE 813-289-6039
APPLICATION #	
MM 22-1112	PLEASE PRINT NAME William Malloy MAILING ADDRESS 325 South Blvd. CITY Tampa STATE FL ZIP 33606 PHONE
APPLICATION #	
MM 22-1112	PLEASE PRINT NAME Jason Kendall MAILING ADDRESS 708 Lithia Pinecrest Rd CITY Brandon STATE FL ZIP 33511 PHONE 813-361-7378
APPLICATION #	
MM 22-1112	PLEASE PRINT NAME John Sykes (Sullivan) MAILING ADDRESS PO Box 2638 CITY Brid STATE Fr ZIP 33[illegible] PHONE 8136014375
APPLICATION #	
MM 22-1112	PLEASE PRINT NAME Steven Griffin MAILING ADDRESS 6143 Cliffhouse Ln CITY Riverview STATE FL ZIP 33578 PHONE

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 5 OF 6

DATE/TIME: 11/14/22, 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT
RZ 22-1223	NAME Jalee Cremer MAILING ADDRESS 401 E Jackson St #2100 CITY Tampa STATE FL ZIP 33601 PHONE 813-222-5051
RZ 22-1223	NAME David M. Smith MAILING ADDRESS 401 E. Jackson Street Suite 2100 CITY Tampa STATE FL ZIP 33601 PHONE 813 222 5040
RZ 22-1224	NAME Jalee Cremer MAILING ADDRESS 401 E Jackson St #2100 CITY Tampa STATE FL ZIP 33601 PHONE 813-222-5051
RZ 22 1224	NAME David M. Smith MAILING ADDRESS 401 E. Jackson St #2100 CITY Tampa STATE FL ZIP 33601 PHONE 813-222-5016
RZ 22-1301	NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd 3700 CITY TAMPA STATE FL ZIP 33602 PHONE 813-227-8421
RZ 22-1301	NAME Isabella Albert MAILING ADDRESS 1000 N. Ashley Dr. CITY Tampa STATE FL ZIP 33602 PHONE 813-331-0976

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 6 OF 6

DATE/TIME: 11/14/22, 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY.** THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT
RZ 22-1301	NAME Steve Henry MAILING ADDRESS 5023 W. Laurel CITY Tampa STATE FL ZIP 33607 PHONE
APPLICATION #	PLEASE PRINT NAME MAILING ADDRESS CITY STATE ZIP PHONE
APPLICATION #	PLEASE PRINT
SU 22-1222	NAME DOUG DENBOER MAILING ADDRESS 5953 MOHR LOOP CITY TAMPA STATE FL ZIP 33615 PHONE 760-250-4191
APPLICATION #	PLEASE PRINT NAME MAILING ADDRESS CITY STATE ZIP PHONE
APPLICATION #	PLEASE PRINT NAME MAILING ADDRESS CITY STATE ZIP PHONE
APPLICATION #	PLEASE PRINT NAME MAILING ADDRESS CITY STATE ZIP PHONE

HEARING TYPE: ZHM, PHM, VRH, LUHO **DATE: November 14, 2022**

HEARING MASTER: Susan Finch **PAGE: _1_ OF 1**

APPLICATION #	SUBMITTED BY	EXHIBITS SUBMITTED	HRG. MASTER YES OR NO
MM 22-1301	Rosa Timoteo	1. Revised staff report	Yes (Copy)
MM 22-1301	Kami Corbett	2. Applicant presentation packet	No
MM 22-1301	Isabelle Albert	3. Applicant presentation packet	No
MM 22-0860	Rosa Timoteo	1. Revised staff report	Yes (Copy)
RZ 22-0943	Isabelle Albert	1. Applicant presentation packet	No
RZ 22-0949	Colin Rice	1. Applicant presentation packet	No
RZ 22-0949	Christopher Jordan	2. Applicant presentation packet	Yes (Copy)
RZ 22-1103	Stephen Sposato	1. Applicant presentation packet	No
RZ 22-1103	Steve Henry	2. Applicant presentation packet	No
RZ 22-1223	David M. Smith	1. Applicant presentation packet	No
RZ 22-1224	David M. Smith	1. Opponent presentation packet	No

NOVEMBER 14, 2022 – ZONING HEARING MASTER

The Zoning Hearing Master (ZHM), Hillsborough County, Florida, met in Regular Meeting, scheduled for Monday, November 14, 2022, at 6:00 p.m., in the Ada T. Payne Community Room, Robert W. Saunders Sr. Public Library, Tampa, Florida, and held virtually.

Susan Finch, ZHM, calls the meeting to order and leads in the pledge of allegiance to the flag.

A. WITHDRAWALS AND CONTINUANCES

Brian Grady, Development Services, introduces staff and reviews withdrawals/continuances.

Susan Finch, ZHM, overview of ZHM process.

Senior Assistant County Attorney Mary Dorman, overview of oral argument/ZHM process.

Susan Finch, ZHM, oath.

B. REMANDS

None.

C. REZONING STANDARD (RZ-STD):

C.1. RZ 22-0698

Brian Grady, Development Services, calls RZ 22-0698.

David Wright, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

David Wright, applicant rep, answers ZHM questions.

Isis Brown, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0698.

C.2. RZ 22-1303

Brian Grady, Development Services, calls RZ 22-1303.

David Mullen, applicant rep, presents testimony.

Isis Brown, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Isis Brown, Development Services, answers ZHM questions.

Alex Steady, Development Services Transportation, answers ZHM questions.

Brian Grady, Development Services, answers ZHM questions.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep.

Taner Tavlan, applicant rep, gives rebuttal.

Susan Finch, ZHM, closes RZ 22-1303.

C.3. RZ 22-1449

Brian Grady, Development Services, calls RZ 22-1449.

Kelli Conte, applicant rep, presents testimony.

Brian Grady, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-1449

C.4. RZ 22-1452

Brian Grady, Development Services, calls RZ 22-1452.

Richard Kosan, applicant rep, presents testimony.

Isis Brown, Development Services, staff report

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-1452.

D. REZONING-PLANNED DEVELOPMENT (RZ-PD) & MAJOR MODIFICATION (MM):

D.1. RZ 22-0461

Brian Grady, Development Services, calls RZ 22-0461.

Truett Gardner, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

Truett Gardner, applicant rep, answers ZHM questions.

Susan Finch, ZHM, questions to applicant rep.

Truett Gardner, applicant rep, answers ZHM questions.

Addie Clark, applicant rep, continues testimony.

Steve Henry, applicant rep, continues testimony.

Susan Finch, ZHM, questions to applicant rep.

Steve Henry, applicant rep, answers ZHM questions.

Truett Gardner, applicant rep, continues testimony.

Michelle Heinrich, Development Services, staff report.

Susan Finch, ZHM, questions to development Services.

Michelle Heinrich, Development Services, answers ZHM questions/continues staff report.

James Ratliff, Development Services Transportation, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep.

Truett Gardner, applicant rep, answers ZHM questions.

Susan Finch, ZHM, closes RZ 22-0461.

D.2. MM 22-0860

Brian Grady, Development Services, calls MM 22-0860.

William Molloy, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

William Molloy, applicant rep, answers ZHM questions.

Steve Henry, applicant rep, continues testimony.

Susan Finch, ZHM, questions to applicant rep.

Steve Henry, applicant rep, answers ZHM questions.

William Molly, applicant rep, continues testimony.

Susan Finch, ZHM, questions to applicant rep.

William Molloy, applicant rep, answers ZHM questions.

Sam Ball, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Sam Ball, Development Services, answers ZHM questions.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep.

William Molloy, applicant rep, corrects record.

Susan Finch, ZHM, closes MM 22-0860.

D.3. RZ 22-0943

Brian Grady, Development Services, calls RZ 22-0943.

Isabelle Albert, applicant rep, presents testimony/submits exhibits.

Susan Finch, ZHM, questions to applicant rep.

Isabelle Albert, applicant rep, answers ZHM questions.

Tania Chapela, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0943.

D.4. RZ 22-0949

Brian Grady, Development Services, calls RZ 22-0949.

Colin Rice, applicant rep, presents testimony/submits exhibits.

Tim Lampkin, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, questions to Planning Commission.

Andrea Papandrew, Planning Commission, answers ZHM questions.

Susan Finch, ZHM, calls proponents/opponents.

Christopher Jordan, opponent, presents testimony/submits exhibits.

David Shern, opponent, presents testimony.

Joan Alagood, opponent, presents testimony.

Vincent Roberson, opponent, presents testimony.

Attila Nagy, opponent, presents testimony.

Susan Finch, ZHM, questions to Development Services Transportation.

Alex Steady, Development Services Transportation, answers ZHM questions.

Susan Finch, ZHM, questions to Development Services Transportation.

Alex Steady, Development Services Transportation, answers ZHM questions.

Colin Rice, applicant rep, gives rebuttal.

Susan Finch, ZHM, questions to applicant rep.

Colin Rice, applicant rep, answers ZHM questions.

Susan Finch, ZHM, closes MM 22-0949.

Susan Finch, ZHM, breaks.

Susan Finch, ZHM, resumes meeting.

D.5. RZ 22-1103

Brian Grady, Development Services, calls RZ 22-1103.

Kami Corbett, applicant rep, presents testimony.

Steven Sposato, applicant rep, presents testimony/submits exhibits.

Steve Henry, applicant rep, continues testimony.

Kami Corbett, applicant rep, concludes testimony.

Sam Ball, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep closes RZ 22-1103.

D.6. MM 22-1112

Brian Grady, Development Services, calls MM 22-1112.

William Molloy, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

William Molloy, applicant rep, answers ZHM questions.

Jason Kendal, applicant rep, continues testimony.

Susan Finch, ZHM, questions to applicant rep

Jason Kendall, applicant rep, answers ZHM questions.

William Molloy, applicant rep, presents testimony.

John Sullivan, applicant rep, presents testimony.

Michelle Heinrich, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents.

Steven Griffin, opponent, presents testimony.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep.

William Molloy, applicant rep, gives closing remarks.

Susan Finch, ZHM, closes MM 22-1112.

D.7. RZ 22-1223

Brian Grady, Development Services, calls RZ 22-1223.

Jacob Cremer, applicant rep, presents testimony.

David Smith, applicant rep, presents testimony/submits exhibits.

Sam Ball, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-1223.

D.8. RZ 22-1224

Brian Grady, Development Services, calls RZ 22-1224.

Jacob Cremer, applicant rep, presents testimony.

David Smith, applicant rep, presents testimony/submits exhibit.

Tim Lampkin, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-1224.

D.9. MM 22-1301

Brian Grady, Development Services, calls MM 22-1301.

Kami Corbett, applicant rep, presents testimony/submits exhibits.

Isabelle Albert, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

Isabelle Albert, applicant rep, answers ZHM questions.

Kami Corbett, applicant rep, continues testimony.

Susan Finch, ZHM, questions to applicant rep.

Isabelle Albert, applicant rep, answers ZHM questions.

Kami Corbett, applicant rep, answers ZHM questions.

Michelle Heinrich, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Michelle Heinrich, Development Services, answers ZHM questions.

James Ratliff, Development Services Transportation, staff report.

Susan Finch, ZHM, questions to Development Services Transportation.

James Ratliff, Development Services Transportation, answers ZHM questions.

Brian Grady, Development Services, answers ZHM questions.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep.

Kami Corbett, applicant rep, questions to ZHM.

Susan Finch, ZHM, answers to applicant rep.

James Ratliff, Development Services Transportation, answers ZHM questions.

Susan Finch, ZHM, questions to Development Services Transportation.

James Ratliff, Development Services Transportation, answers ZHM questions.

Kami Corbett, applicant rep, answers ZHM questions.

Steve Henry, applicant rep, closing remarks.

Susan Finch, ZHM, closes MM 22-1301.

E. ZHM SPECIAL USE

E.1. SU 22-1222

Brian Grady, Development Services, calls SU 22-1222.

Doug Denboer, applicant rep, presents testimony.

Michelle Heinrich, Development Services, staff report.

Andrea Papandrew, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes SU 22-1222.

ADJOURNMENT

Susan Finch, ZHM, adjourns the meeting.

Application No. RZ 22-0949
Name: Colin Rice
Entered at Public Hearing: ZHM
Exhibit # 1 Date: 11/14/22

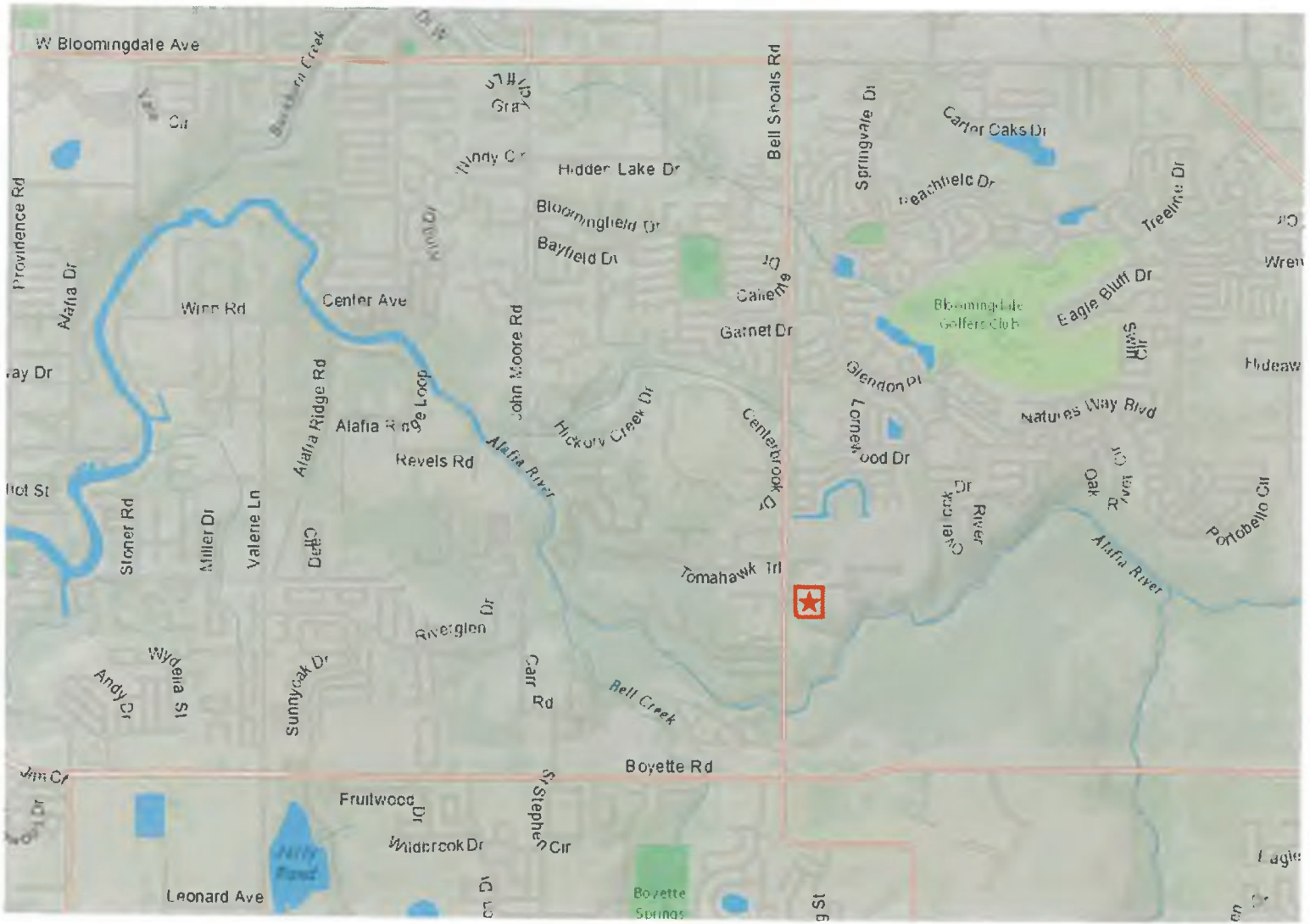
PD 22-0949
1003 Myrtle Road

November 14, 2022

Hillsborough County Zoning Hearing Master

Request

- Rezone from ASC-1 (Agricultural Single-Family Residential)
- To Planned Development, 14 single-family residential dwelling units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Peachtree Dr
Treeline Dr
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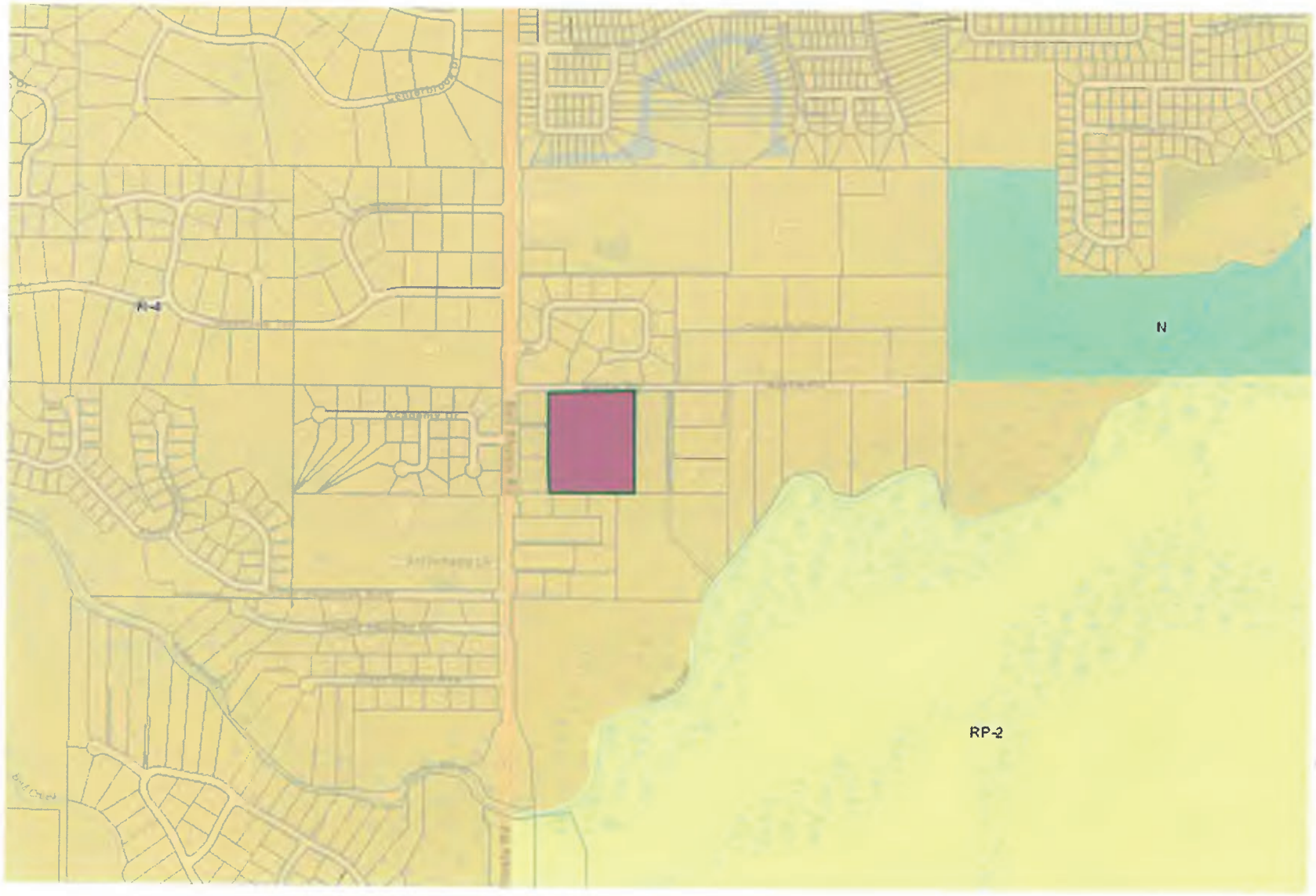
Bloomingdale Golfers Club
Glendon Dr
Natures Way Blvd
Alafia Ridge Rd
Alafia Ridge Loop
Revels Rd
Alafia River
Hickory Creek Dr
Centerbrook Dr
Stoner Rd
Miller Dr
Valerie Ln
Tomahawk Trl
Riverglen Dr
Wydella St
Sunnycak Dr
Carr Rd
Bell Creek
Boyette Rd
Fruitwood Dr
Wildbrook Dr
St Stephens Cir
Leonard Ave
Boyette Springs
Portobello Cir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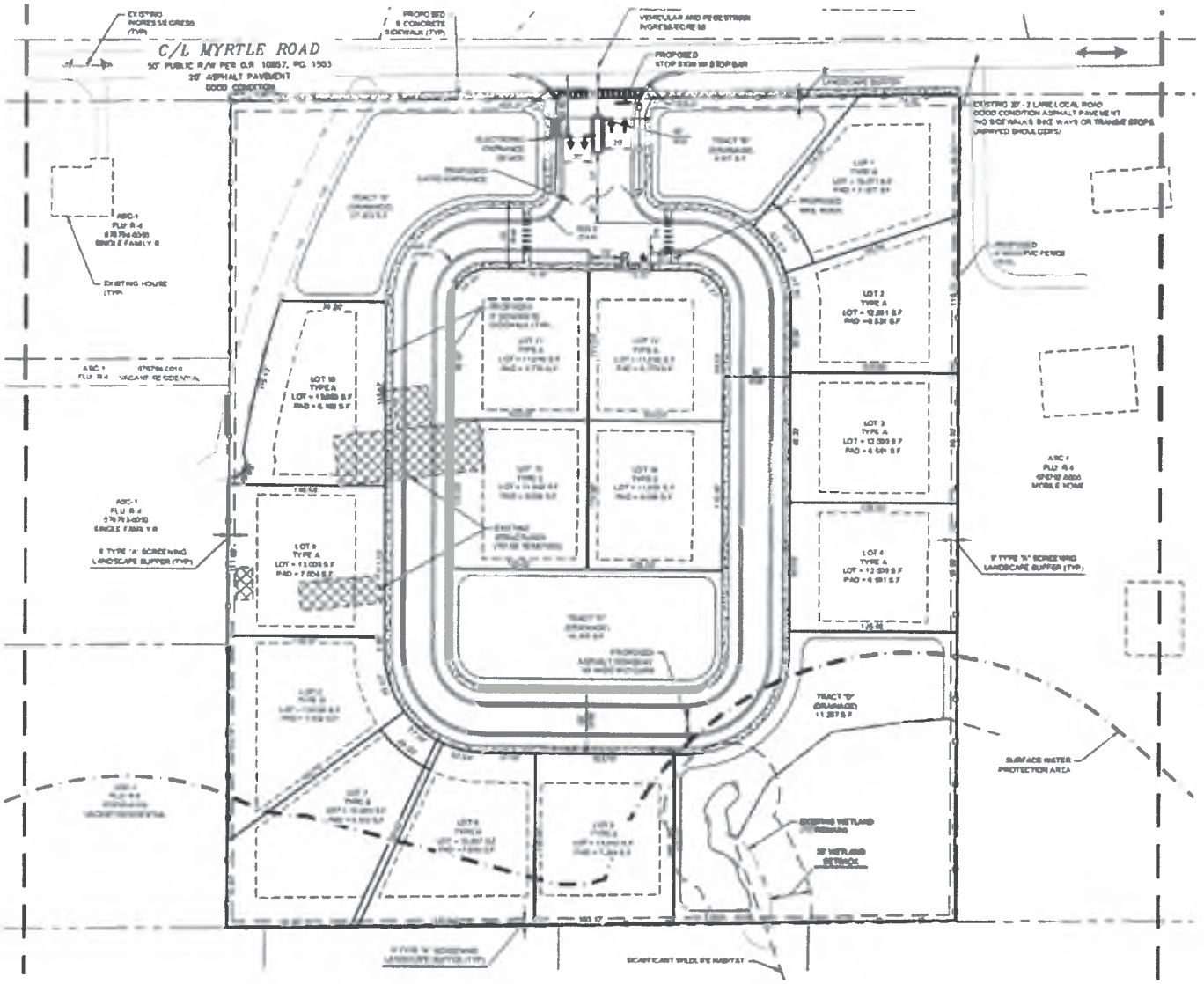
RP-2


C/L MYRTLE ROAD
50' PUBLIC R/W PER O.R. 10857, PG. 1503
20' ASPHALT PAVEMENT
GOOD CONDITION
PROPOSED
5' CONCRETE
SIDEWALK (TYP.)
PROPOSED
STOP SIGN W/ STOP BAR
EXISTING 20' - 2 LANE LOCAL ROAD
GOOD CONDITION ASPHALT PAVEMENT
NO SIDEWALKS, BIKE WAYS OR TRANSIT STOPS
UNPAVED SHOULDERS
EXISTING HOUSE
(TYP.)
LOT 10
TYPE A
LOT = 11,888 S.F.
PAD = 6,168 S.F.
LOT 9
TYPE A
LOT = 13,009 S.F.
PAD = 7,204 S.F.
LOT 3
TYPE A
LOT = 12,000 S.F.
PAD = 6,591 S.F.
LOT 4
TYPE A
LOT = 12,000 S.F.
PAD = 6,591 S.F.
TRACT "D"
(DRAINAGE)
11,357 S.F.
5' TYPE "A" SCREENING
LANDSCAPE BUFFER (TYP.)
SURFACE WATER
PROTECTION AREA
EXISTING WETLAND
REMAIN
25' WETLAND
SETBACK
SIGNIFICANT WILDLIFE HABITAT

Project Features

- 5-foot wide landscape easement with Type A screening along East, West and South Property Lines
- 8-foot landscaped area along Myrtle Road, landscaping equivalent to LCD Sec. 6.06.03.I.2.C for Urban Scenic Roadways
- Sidewalk will be constructed along Myrtle to Bell Shoals Rd.
- 100% protection of Significant Wildlife Habitat
- 100% protection of wetlands on site
- Voluntary neighborhood meeting held 9/14/22

Agency Review

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- ✓ Hillsborough County Planning Commission Staff
- ✓ Hillsborough County Environmental Protection Commission
- ✓ Hillsborough County Transportation
- ✓ Hillsborough County Natural Resources

Comprehensive Plan

- Future Land Use Element Objective 1
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- Policy 1.3
- Policy 1.4
- Environmental Objective 13
- Policy 13.6
- Neighborhood/Community Development Objective 16
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- Policy 16.3
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- Policy 16.10
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- Policy 3.5.2
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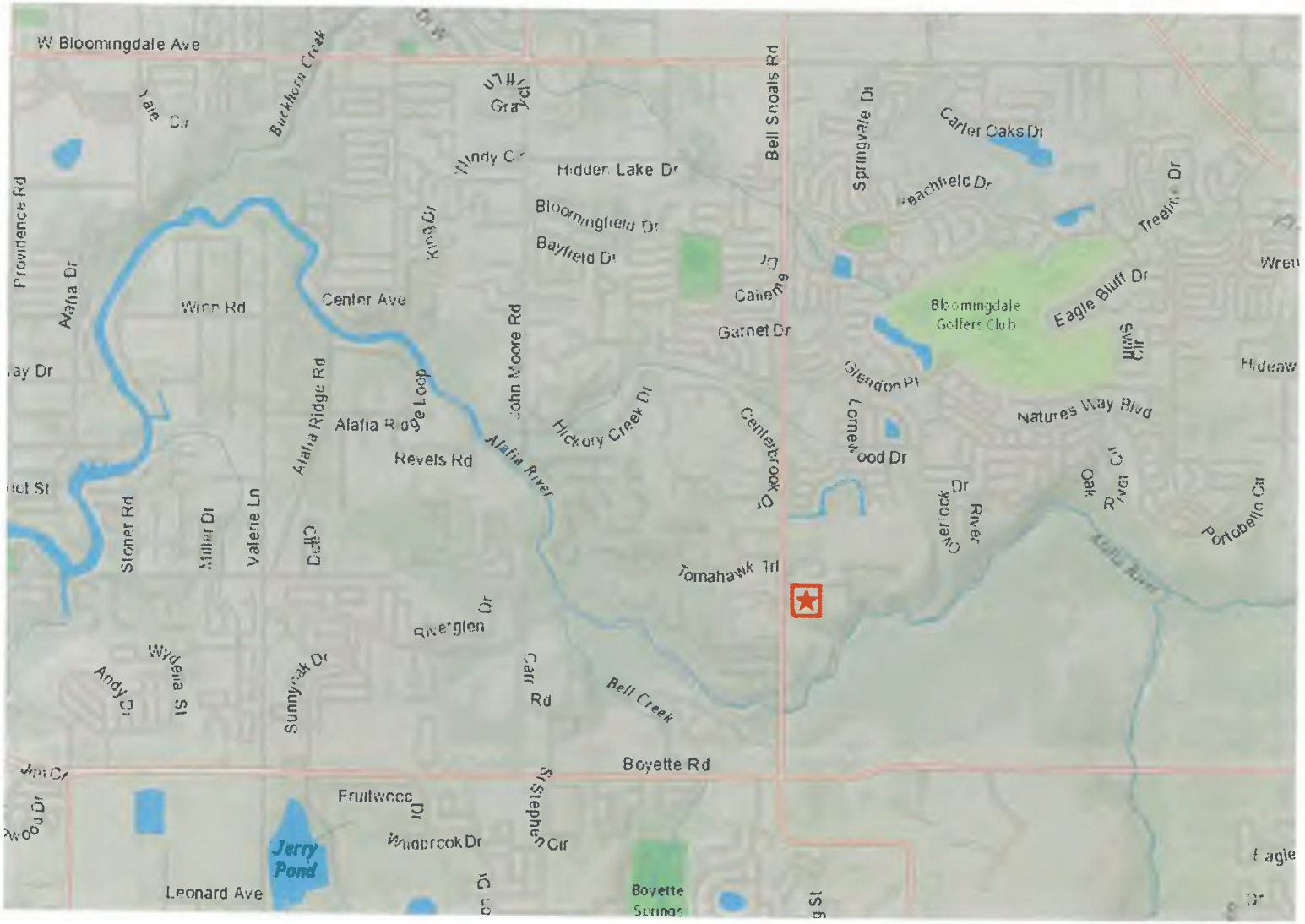
PD 22-0949
1003 Myrtle Road

November 14, 2022

Hillsborough County Zoning Hearing Master

Request

- Rezone from ASC-1 (Agricultural Single-Family Residential)
- To Planned Development, 14 single-family residential dwelling units


W Bloomingdale Ave
Buckhorn Creek
Bell Shoals Rd
Springvale Dr
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Bloomingfield Dr
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Alafia Dr
Winn Rd
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Garnet Dr
Bloomingdale Golfers Club
Eagle Bluff Dr
Natures Way Blvd
Alafia Ridge Loop
Alafia Ridge Rd
Revels Rd
Alafia River
Hickory Creek Dr
Stoner Rd
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Tomahawk Trl
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Windbrook Dr
St Stephen Cir
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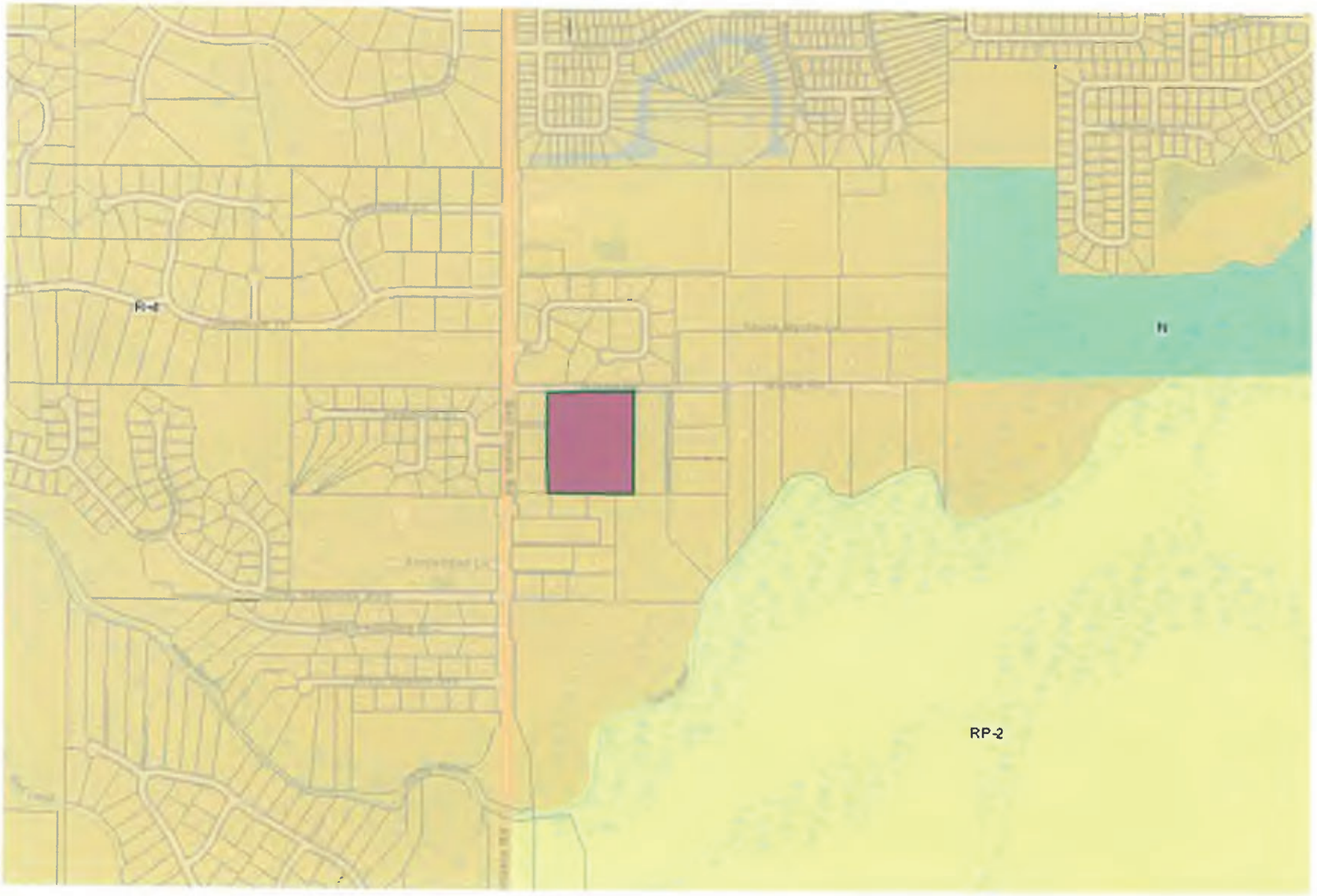
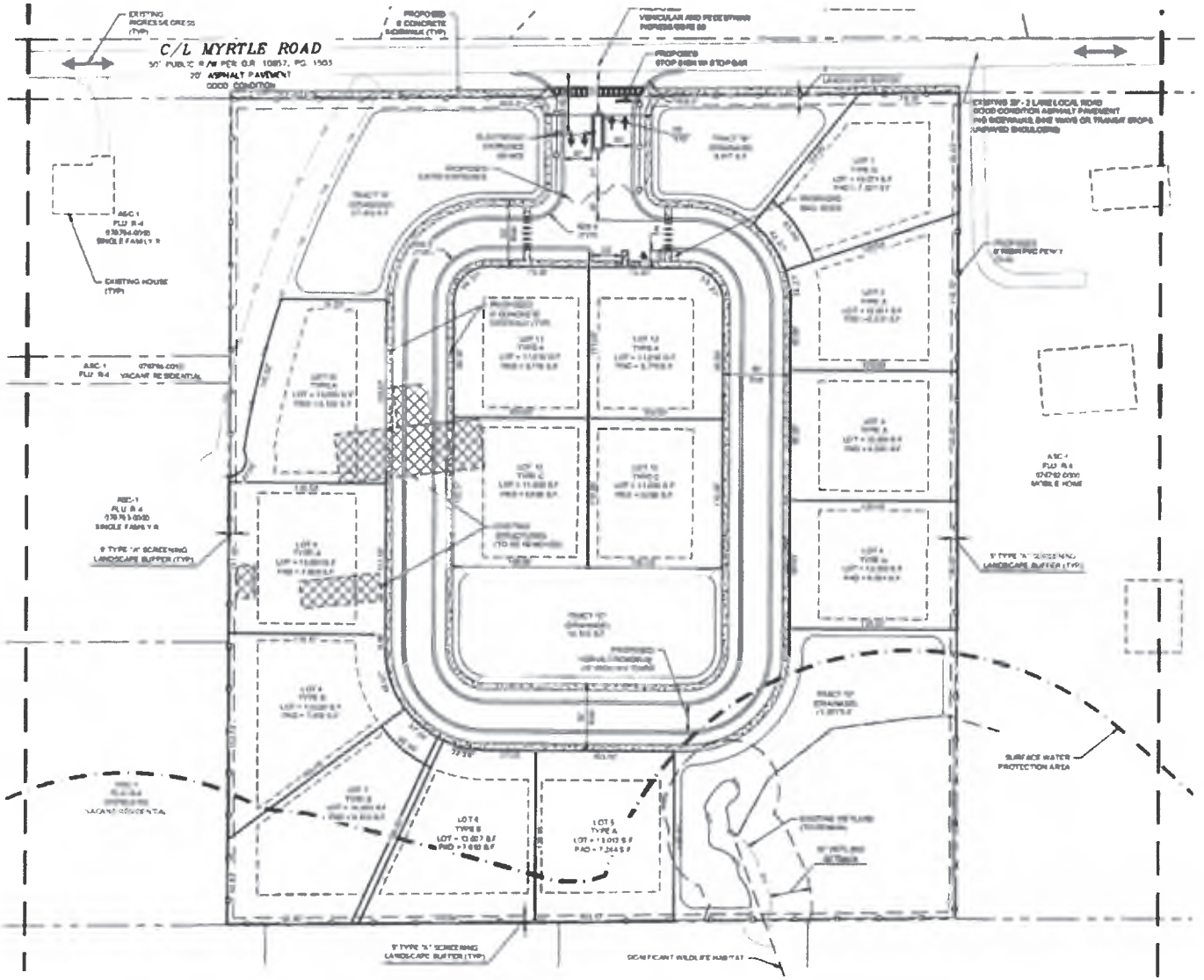
Portobello Cir


R-E
RP-2


C/L MYRTLE ROAD
70' ASPHALT PAVEMENT
GOOD CONDITION
EXISTING HOUSE (TYP)
9' TYPE 'A' SCREENING LANDSCAPE BUFFER (TYP)
SURFACE WATER PROTECTION AREA
LOT 6 TYPE B
LOT 5 TYPE A

Project Features

- 5-foot wide landscape easement with Type A screening along East, West and South Property Lines
- 8-foot landscaped area along Myrtle Road, landscaping equivalent to LCD Sec. 6.06.03.I.2.C for Urban Scenic Roadways
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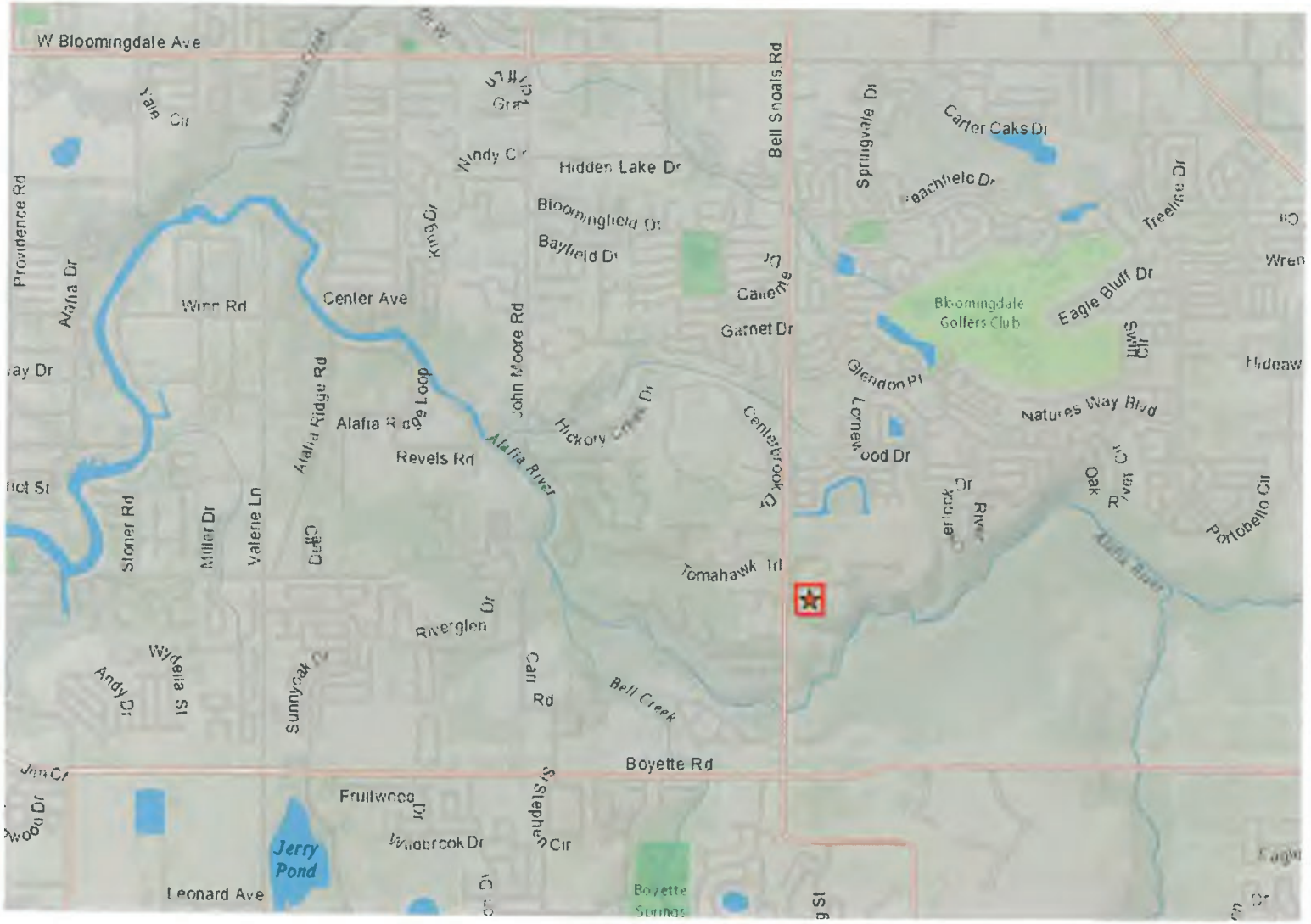
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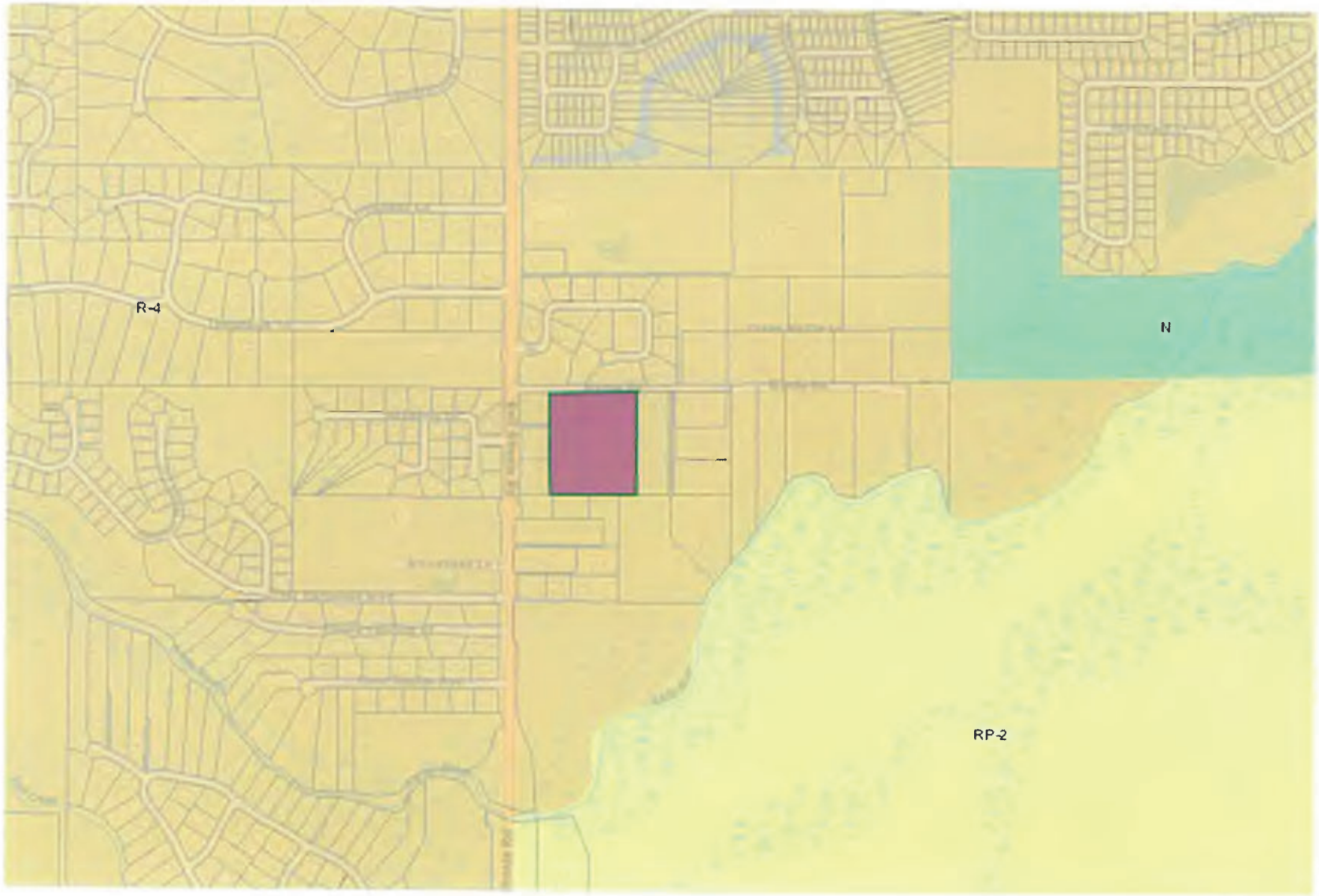
R-4
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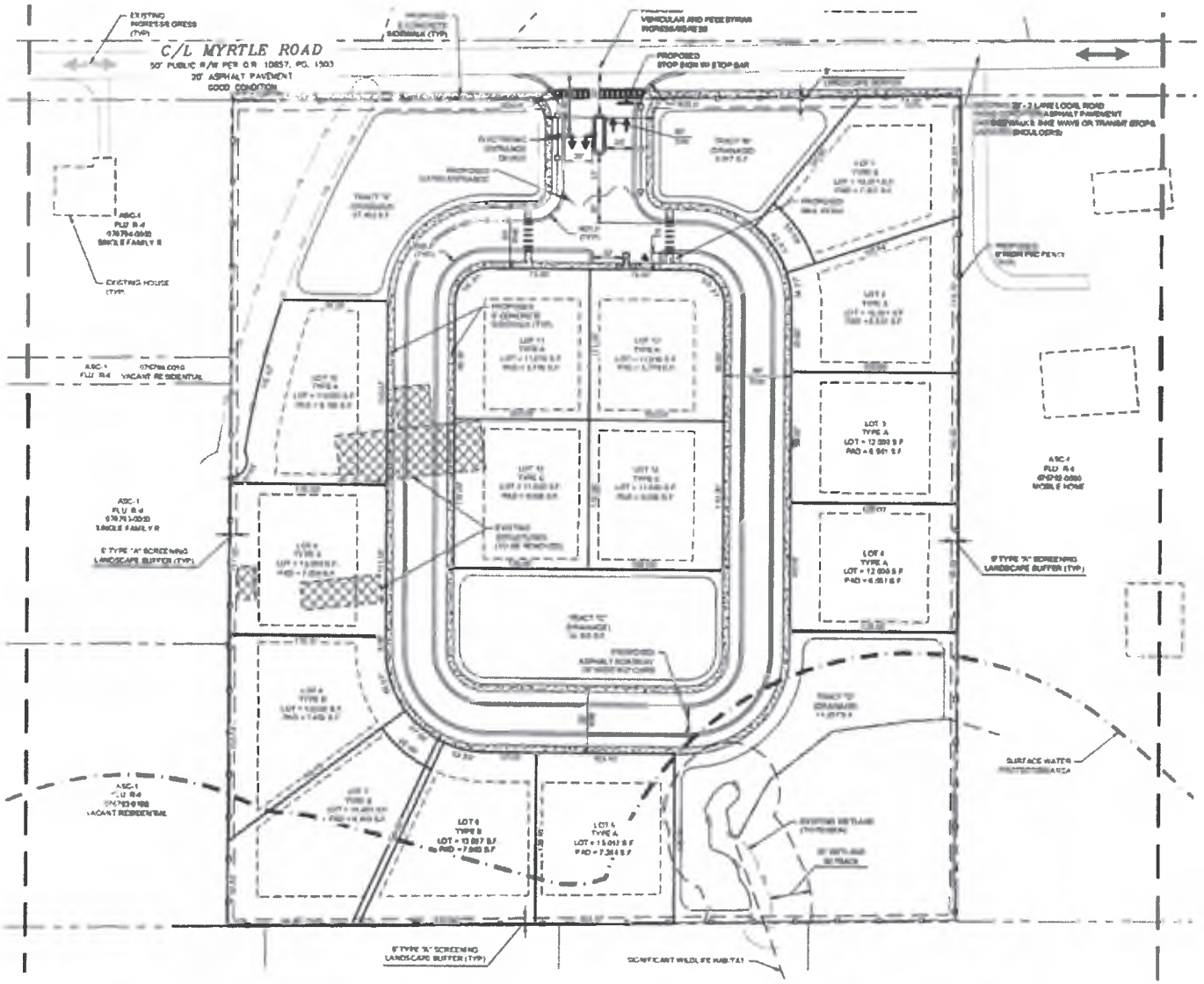
RP-2


C/L MYRTLE ROAD
50' PUBLIC R/W PER O.R. 10857, PG. 1503
20' ASPHALT PAVEMENT
GOOD CONDITION
EXISTING HOUSE (TYP.)
8' TYPE "A" SCREENING LANDSCAPE BUFFER (TYP.)
SURFACE WATER
SIGNIFICANT WILDLIFE HABITAT

Project Features

- 5-foot wide landscape easement with Type A screening along East, West and South Property Lines
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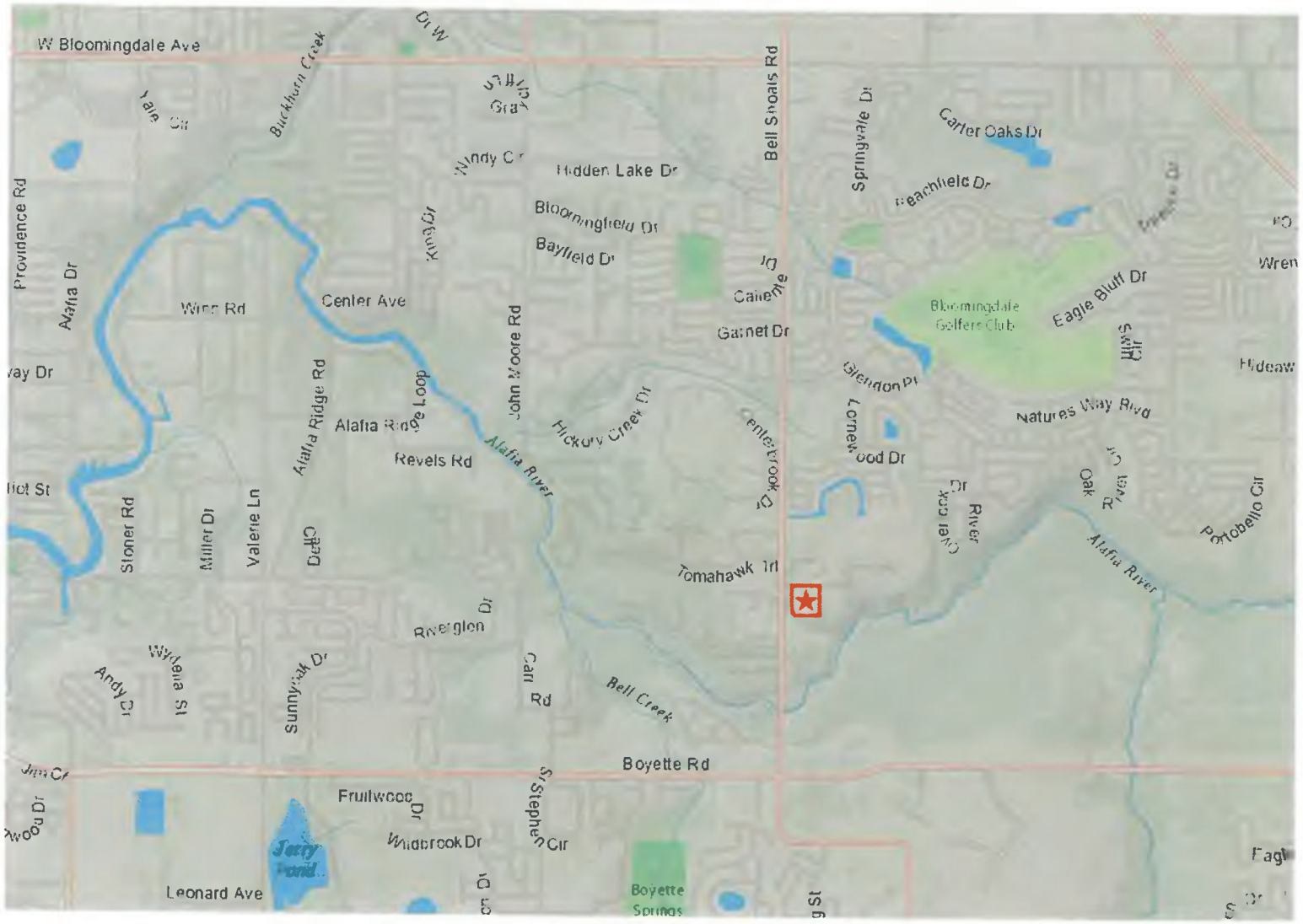
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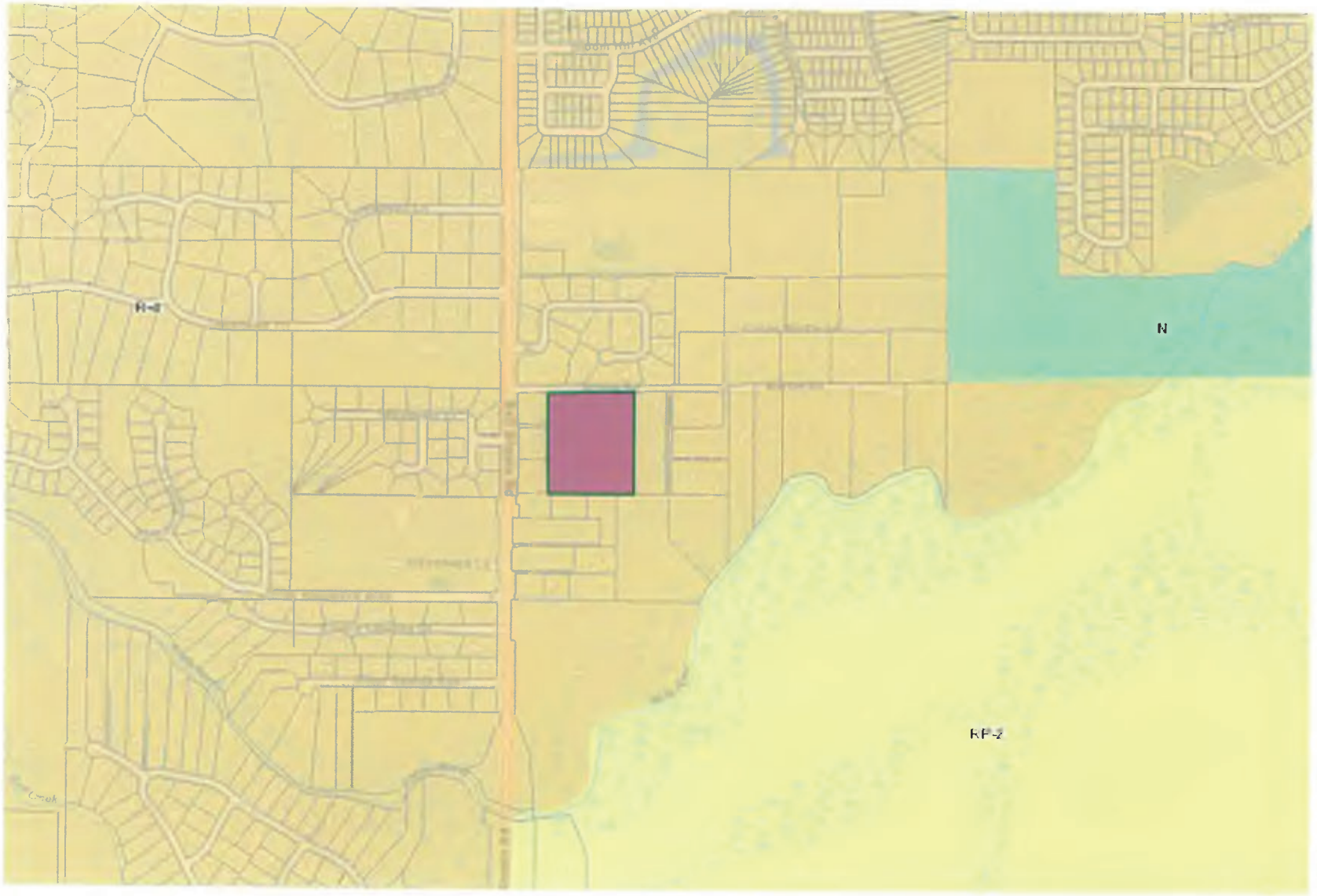
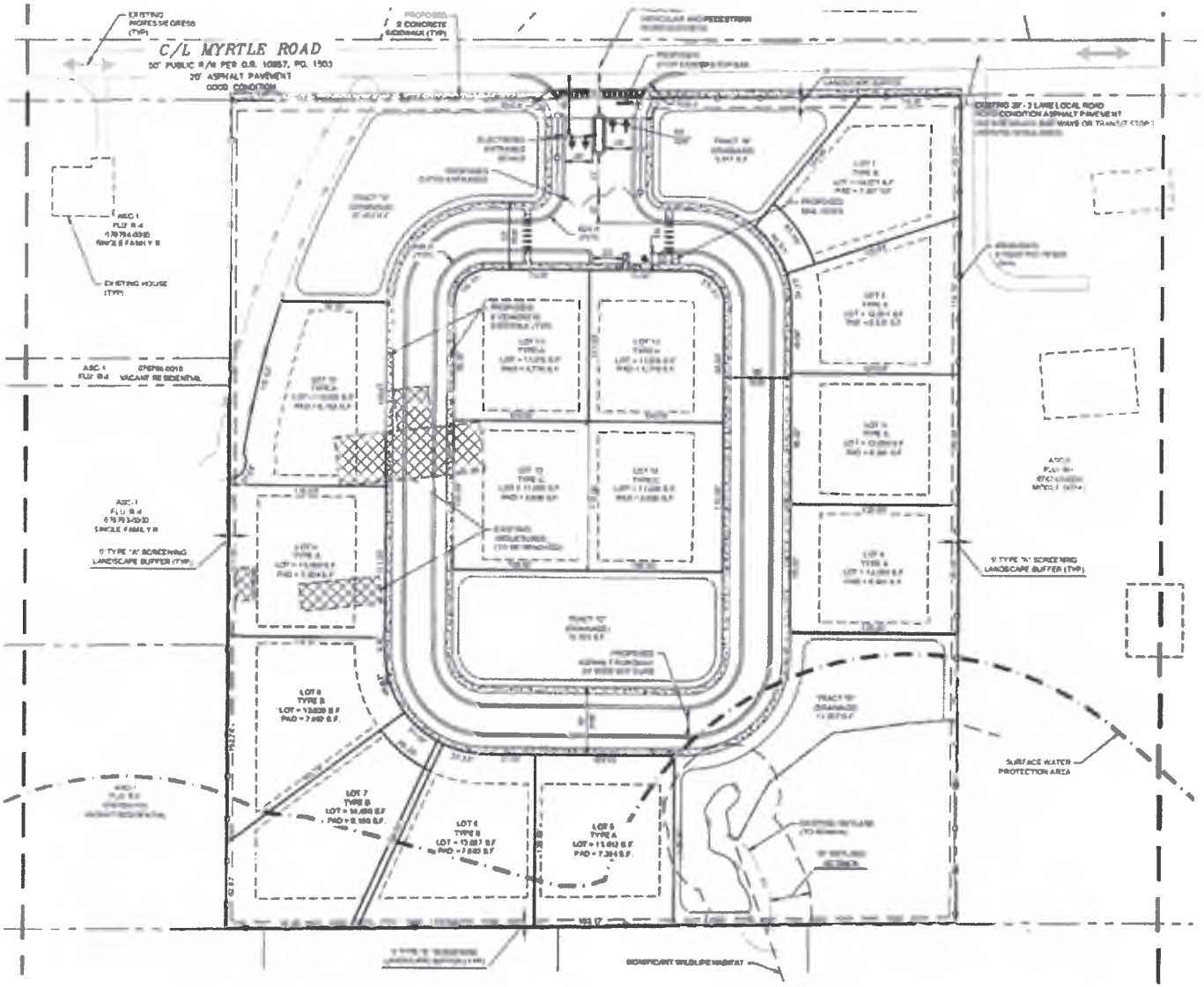

R-8
N
RP-2


C/L MYRTLE ROAD
20' PUBLIC R/W PER O.R. 10857, PG. 1503
20' ASPHALT PAVEMENT
GOOD CONDITION
EXISTING 20' - 2 LANE LOCAL ROAD
POOR CONDITION ASPHALT PAVEMENT
EXISTING HOUSE (TYP)
ASC. 1
FLU: R-4
076786-0010
SINGLE FAMILY R
ASC. 1
FLU: R-4
076786-0010
VACANT RESIDENTIAL
9' TYPE 'A' SCREENING LANDSCAPE BUFFER (TYP)
9' TYPE 'A' SCREENING LANDSCAPE BUFFER (TYP)
SURFACE WATER PROTECTION AREA
SIGNIFICANT WILDLIFE HABITAT

Project Features

- 5-foot wide landscape easement with Type A screening along East, West and South Property Lines
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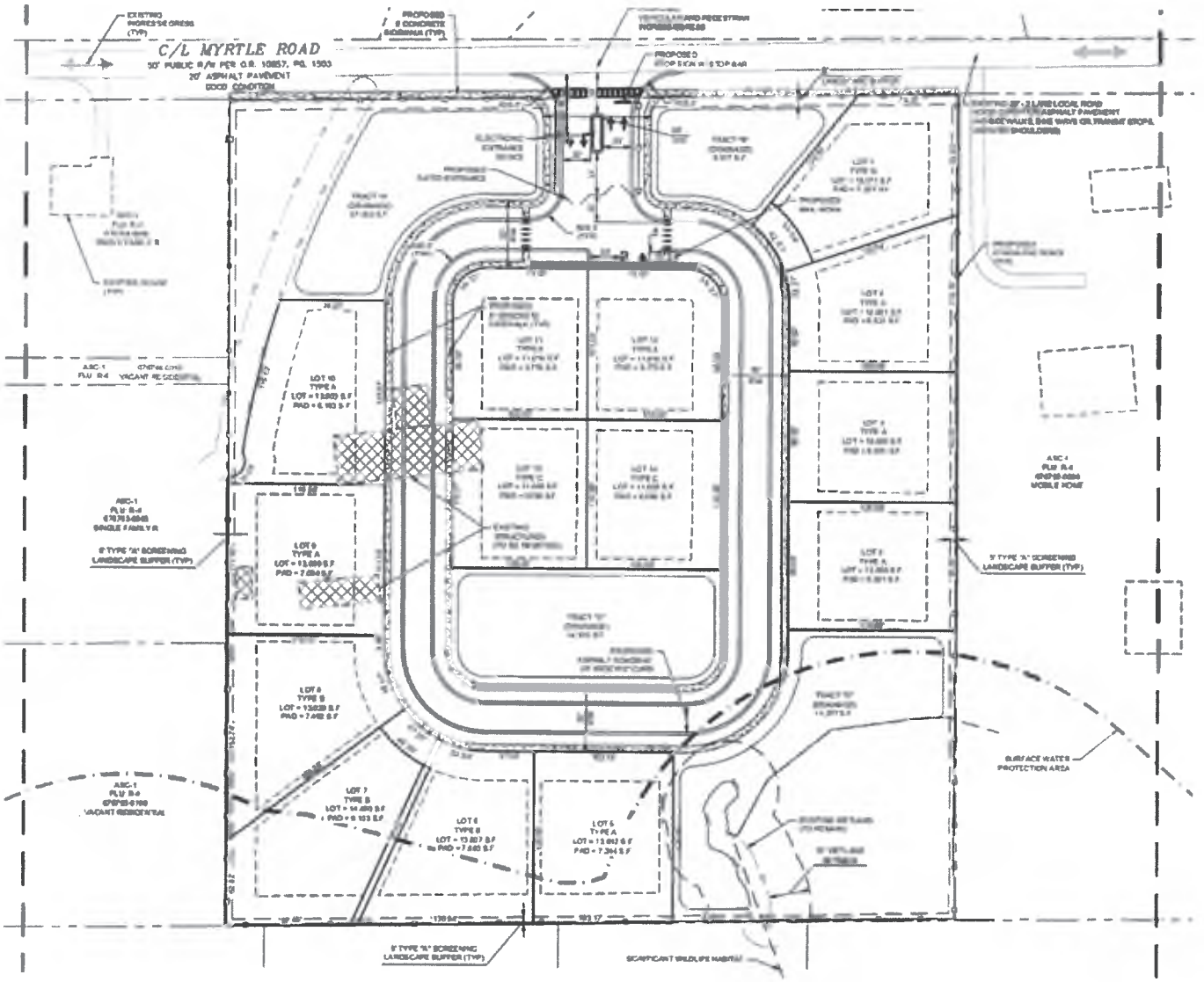
Portobello Cir


R-4
N
RP-2


C/L MYRTLE ROAD
50' PUBLIC R/W PER O.R. 10857, PG. 1503
20' ASPHALT PAVEMENT
GOOD CONDITION
PROPOSED 6' CONCRETE SIDEWALK (TYP)
PROPOSED STOP SIGN W/ STOP BAR
EXISTING 20' - 22' WIDE LOCAL ROAD ASPHALT PAVEMENT
SIDEWALKS, BIKE WAYS OR SWALE STOPS SHOULDERS
LOT 10 TYPE A LOT = 13,920 S.F. PAD = 6,163 S.F.
LOT 9 TYPE A LOT = 13,896 S.F. PAD = 7,084 S.F.
LOT 8 TYPE B LOT = 13628 S.F. PAD = 7,462 S.F.
LOT 7 TYPE B LOT = 14,480 S.F. PAD = 8,163 S.F.
LOT 6 TYPE B LOT = 13,807 S.F. PAD = 7,645 S.F.
LOT 5 TYPE A LOT = 13,862 S.F. PAD = 7,394 S.F.
ASC-1 PLU R-4 VACANT RESIDENTIAL
ASC-1 PLU R-4 SINGLE FAMILY R
ASC-1 PLU R-4 VACANT RESIDENTIAL
ASC-1 PLU R-4 MOBILE HOME
5' TYPE "A" SCREENING LANDSCAPE BUFFER (TYP)
5' TYPE "A" SCREENING LANDSCAPE BUFFER (TYP)
5' TYPE "A" SCREENING LANDSCAPE BUFFER (TYP)
SURFACE WATER PROTECTION AREA
SCARIFICANT WILDLIFE HABITAT

Project Features

- 5-foot wide landscape easement with Type A screening along East, West and South Property Lines
- 8-foot landscaped area along Myrtle Road, landscaping equivalent to LCD Sec. 6.06.03.I.2.C for Urban Scenic Roadways
- Sidewalk will be constructed along Myrtle to Bell Shoals Rd.
- 100% protection of Significant Wildlife Habitat
- 100% protection of wetlands on site
- Voluntary neighborhood meeting held 9/14/22

Agency Review

- ✓ Hillsborough County Development Services
- ✓ Hillsborough County Planning Commission Staff
- ✓ Hillsborough County Environmental Protection Commission
- ✓ Hillsborough County Transportation
- ✓ Hillsborough County Natural Resources

Comprehensive Plan

- Future Land Use Element Objective 1
- Policy 1.2
- Policy 1.3
- Policy 1.4
- Environmental Objective 13
- Policy 13.6
- Neighborhood/Community Development Objective 16
- Policy 16.2
- Policy 16.3
- Policy 16.8
- Policy 16.10
- Community Design Component 5.0
- Goal 12
- Objective 12-1
- Environmental and Sustainability Section
- Objective 3.5
- Policy 3.5.1
- Policy 3.5.2
- Policy 3.5.4
- Livable Communities Element: Brandon Community Plan
- Goal 6

128 So.3d 19
District Court of Appeal of Florida,
Third District.

The VILLAGE OF PALMETTO BAY, Florida, Petitioner,
v.
PALMER TRINITY PRIVATE SCHOOL, INC., Respondent.

No. 3D12–190.
|
July 5, 2012.

Synopsis

Background: Village filed petition for writ of certiorari seeking review of an order of the Circuit Court, Miami-Dade County, Appellate Division, Joel H. Brown, C.J., Joseph Farina and Norma Lindsey, JJ., granting private school's motion to enforce a prior order striking portions of a village zoning resolution.

The District Court of Appeal, Wells, C.J., held that circuit court's appellate division did not depart from the essential requirements of the law by ordering village to comply with court's previous order.

Petition denied.

Schwartz, Senior Judge, filed concurring opinion.

Attorneys and Law Firms

***20** White & Case, Raoul G. Cantero, Evan M. Goldenberg and Elizabeth Coppolecchia; Figueredo & Boutsis and Eve A. Boutsis, for petitioner; W. Tucker Gibbs, for Intervenor, Concerned Citizens of Old Cutler.

Bilzin Sumberg Baena Price & Axelrod, Stanley B. Price, Eileen Ball Mehta and Eric Singer, for respondent.

Before WELLS, C.J., and LAGOA, J., and SCHWARTZ, Senior Judge.

Opinion

WELLS, Chief Judge.

The Village of Palmetto Bay petitions for certiorari relief from an order of the circuit court appellate division granting a motion to enforce its mandate in *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011)*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011). [1] Both Palmetto Bay and Palmer Trinity maintain, and we agree, that this order is subject to "first tier" certiorari review. *See Ramirez v. United Auto. Ins. Co.,* 67 So.3d 1174, 1175–76 (Fla. 3d DCA 2011) (confirming that a "first ruling on [a] question" by an appellate division of a circuit court is properly reviewed by the district court as a "first tier" appellate review); *see also City of Indian Rocks Beach v. Tomalo,* 834 So.2d 341, 341 (Fla. 2d DCA 2003) (treating a petition for second tier certiorari review of an order enforcing a circuit court appellate division mandate as an appeal).

To justify certiorari relief, a petition must demonstrate a departure from the essential requirements of law resulting in a material injury that cannot be remedied on appeal. *See Fortune Int'l Hospitality, LLC v. M Resort Residences Condo. Ass'n,* 77 So.3d 741, 743 (Fla. 3d DCA 2011) (citing *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987)). A departure from the essential requirements of the law that will justify issuance of this extraordinary writ requires significantly more than a demonstration of legal error:

> [T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review ***only*** when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885, 889 (Fla.2003) (citing *Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 682 (Fla.2000)). ***21** As Chief Justice Boyd made clear in *Jones v. State,* 477 So.2d 566, 569 (Fla.1985) (Boyd, C.J., concurring specially):

> The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

See also Haines City Cmty. Dev. v. Heggs, 658 So.2d 523, 527–28 (Fla.1995) (observing that Chief Justice Boyd in *Jones* had "captured the essence of the standard" for determining whether a departure from the essential requirements of the law existed).

Under these parameters, the order of the circuit court appellate division granting Palmer Trinity's motion to enforce its prior mandate neither merits nor permits issuance of the writ sought. The circuit court appellate division did no more than order compliance with its now long final decision in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. There is no question that it is within the circuit court's authority to enforce its decisions and orders. *See Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp.,* 328 So.2d 825, 827 (Fla.1975) (observing generally that a court may "take any steps or issue any appropriate writ necessary to give effect to its judgment"). The order itself does not then constitute a departure from the essential requirements of the law.

The compliance mandated by the order also does not constitute a departure from the essential requirements of the law. The order (or opinion) being enforced here struck portions of a zoning resolution addressing Palmer Trinity's special exception request to expand its school and to increase its student enrollment from 600 to 1150 students. The resolution being reviewed "approved" Palmer Trinity's special exception request for an increase in its student enrollment to 1150 but then limited that approval to permit only 900 students:

> ***Section 4.*** *Order.*
>
> A. ***The Council,*** pursuant to section 33–311(A)(7), and 33–151, et seq., of the Miami Dade County Code as applied by the Village, ***approves with conditions ... Applicants request[ ] for a special exception ... for*** ... [an increase in] ***number of students [to 1150] as to the plans entitled*** Palmer Trinity School Campus Master Plan....
>
> B. The Village Council ***conditions ... the special exception as follows:***
>
> ---
>
> 3. The request to increase the non-public school number of students to *1150 is denied.* The condition to allow expansion to 900 students is granted.

(Resolution No. 2010–48 adopted May 17, 2010) (some emphasis added).

In a thorough and well reasoned opinion on first tier certiorari review, the appellate division of the circuit court struck the 900 student condition or "cap" leaving approval of the 1150 special exception request standing:

> (PER CURIAM) This appeal arises out of the adoption of Zoning Resolution No. 2010–48 (the "Resolution") by the Village of Palmetto Bay (the "Village"). Petitioner, Palmer Trinity Private School, Inc. ("Palmer Trinity"), seeks by way of certiorari review to quash and remove two provisions incorporated into Condition 4.4 of the Resolution, specifically: (1) the cap on the permissible number of students at the school at 900; and (2) the imposition of a thirty-year (30) prohibition on the filing of any applications ***22** for development approvals on the school's 55–acre site. We have jurisdiction pursuant to Article V, Section 5, Florida Constitution, and Rules 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.
>
> Palmer Trinity argues that the above provisions are unlawful and should be quashed and removed from the Resolution in that: (1) the cap on the number of students permitted at the school was arbitrary, not supported by competent substantial evidence, and departed from the essential requirements of law; and (2) the thirty-year prohibition on future development applications violated Palmer Trinity's due process rights because it constituted a de facto moratorium for which neither notice nor opportunity to be heard was given, that the Village departed from the essential requirements of law in approving the

prohibition, and that the Village failed to support the thirty-year prohibition with substantial competent evidence.

The Village disagrees and seeks to dismiss Palmer Trinity's Petition. For the reasons set forth below, we QUASH the two provisions contained in the Resolution, as set forth above, adopted by the Village and REMAND to the Village with instructions to conduct further proceedings on this matter in accordance with this decision.

Procedural and Factual Background

Palmer Trinity has owned and operated a private school on 22.5 acres of land [now] located within the Village ("Parcel A") for almost five decades. In 1988, Palmer Trinity applied for and obtained approval of a modification of its site plan for the purpose of increasing its enrollment to 600 students. In 2003, Palmer Trinity purchased an additional 32.5 acres also located within the Village ("Parcel B") that was zoned half Agricultural ("AU") and half Estate Single Family per Five Acres ("EU–2"). Parcel B had an Estate Density Residential ("EDR") future land use designation, allowing for less than 2.5 dwelling units per acre. In 2006, Palmer Trinity filed an application (the "Application") under the Miami–Dade County Code to rezone Parcel B to Estate Modified Single Family allowing for one home per 15,000 square feet ("EU–M"). As part of the Application, Palmer Trinity also sought a special exception to increase the student enrollment from 600 to 1400 and certain variances concerning further development on both Parcel A and B. As a result of the incorporation of the Village as a municipality, the Application was transferred from the County to the Village.

In 2008, the Village held a hearing on the Application. Consideration of the rezoning request was bifurcated from the other requests in the Application. At the 2008 hearing, the Village adopted Ordinance 08–06 denying the requested rezoning. Palmer Trinity appealed this denial in a petition for certiorari review to the Circuit Court, acting in its appellate capacity, which upheld, without opinion, the Village's decision. Palmer Trinity then took an appeal to the Third District Court of Appeal which reversed the Circuit Court, thereby overturning the Village's denial of the rezoning request. *See* *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 31 So.3d 260 (Fla. 3d DCA 2010) ("*Palmer I* ").

After the Third District issued the decision in *Palmer I,* Palmer Trinity revised its plans, eliminating some of the previously requested non-use variances and reducing its requested student enrollment from 1400 to 1150. Palmer Trinity also voluntarily offered to expand its ***23** student population from 600 to 1150 in gradual increments over a fifteen year period. In addition, the proposed site plan was modified to reflect the reduced student enrollment request of 1150, the proposed new development on Parcel B was redesigned and relocated toward the center, setbacks were increased and additional landscaping was added.

On April 28, 2010, the Village conducted a public hearing on the first reading of the rezoning component of the Application. On May 4, 2010, the Village conducted a public hearing on second reading of the rezoning request and approved the rezoning by adopting Ordinance 2010–09. Also at that hearing, the Village heard the request for the special exceptions and site plan modification components of the Application.

Prior to the hearing, the professional staff of the Village (the "Village Staff") reviewed the Application and recommended approval with certain conditions (the "Recommendation"). The ... ***Village Staff specifically recommended that Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150 be approved.*** The 900 number, which the Village later adopted, was not mentioned in the Recommendation.

....

At the May 4, 2010 hearing, the Village's Planning Director (the "Director") presented the Recommendation.... With respect to the 1150 student cap on enrollment, the ***Village's expert traffic consultant, Joseph Corradino, reviewed the traffic study included in Palmer Trinity's Application and recommended approval, finding that, based on 1150 students,*** the Application satisfied the relevant traffic level of service standards.

The Village Attorney presented an Overview of Zoning Law as a guide to the Village Council. The County Manager also engaged special council who addressed the Village Council regarding their duties and obligations

as quasi-judicial officers. The attorney for Concerned Citizens of Old Cutler, Inc. ("CCOCI") and Betty Ingram, Intervenors, presented argument and testimony from several individuals and introduced, Mr. Mark Alvarez, a planner, as an expert. Other individual witnesses spoke both for and against the Application. The Village Council then allowed Palmer Trinity an opportunity for rebuttal.

At the conclusion of the evidentiary portion of the hearing, the Village Council began its deliberations. Several amendments to the conditions recommended by the Village Staff were made. ***Council Person Stanczyk made a motion to reduce the number of students permitted to 900. This was the first time the number 900 was ever mentioned at the public hearing or in the entire record preceding the public hearing.*** Thereafter, the Mayor and Council Person Stanczyk had a brief discussion as to whether the 900 number was arbitrary. At the conclusion of the hearing on May 4, 2010, the Village adopted the Resolution with conditions, including the reduction in the number of students from 1150 to 900, with Council Member Stanczyk voting against. The only modification to the language of the version of Condition 4.4 contained in the Recommendation to the language in the version of Condition 4.4, as included in the Resolution, was the reduction in the number of students permitted from 1150 to 900....

Subsequent to the Village's adoption of the Resolution, Palmer Trinity filed its ***24** timely Petition to invoke this Court's jurisdiction.

Conclusions of Law

First tier certiorari review of a quasi-judicial zoning decision, such as the Resolution at issue here, is a matter of right. *Miami–Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 198 (Fla.2003). A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Id.* at 199.

....

B. The 900 Student Cap on Enrollment

Palmer Trinity argues that the 900 student cap contained in Condition 4.4 of the Resolution is not supported by competent substantial evidence and constitutes a departure from the essential requirements of law. We agree. The record contains no mention of the 900 number at the May 4, 2010 hearing until after the close of public comment when the Mayor, Council, and Village Counsel had the following exchange:

COUNCIL MEMBER STANCZYK: Yeah and I'm having a little trouble again. The original student number that was listed as a recommendation was 1150, and I would like to reduce it to 900, staged incrementally over the entire term of the project. I'd like to make that as a motion.

MAYOR FLINN: That's a tough one. I mean, I don't know how we can just arbitrarily do that, but—

COUNCIL MEMBER STANCZYK: Well, 1150 was an arbitrary number.

MAYOR FLINN: Well, 1150 is what they voluntarily dropped to, but—

COUNCIL MEMBER STANCZYK: Well—

MAYOR FLINN: But, anyway, is there a second for that?

VICE MAYOR PARISER: I'll second it.

MAYOR FLINN: All right, it's been seconded. Any discussions on it?

COUNCIL MEMBER FELLER: Read the motion.

MAYOR FLINN: Reduce to 900 students.

COUNCIL MEMBER FELLER: In discussion by—I had gotten a number, by state number or by density or some numbers. Theoretically, what is the maximum the school would be allowed to by the total acreage? Is there such a thing, Eve?

MS. BOUTSIS: Under the special exception process, they have to meet certain numbers. The answer is over 2,000.

COUNCIL MEMBER FELLER: It's over 2,000.

> MAYOR FLINN: I think it was 2100 at one point. All right all in favor indicate by saying aye.
>
> COUNCIL MEMBERS: Aye.
>
> MAYOR FLINN: Any opposed?
>
> COUNCIL MEMBER FELLER: Nay.
>
> COUNCIL MEMBER TENDRICH: Nay.
>
> MAYOR FLINN: Three/two. All right next item.

See Transcript of May 4, 2010, Hearing at pp. 297:16–299:12.

The Village relies upon the testimony of Mr. Mark Alvarez, the planner retained by the Intervenors, and the comments by neighboring residents with respect to traffic and noise. The only specific testimony ***25** offered by Mr. Alvarez' [sic] that could arguably support the Village's position is his statement that "[t]he school, and what I'm going to point out, is I believe that the use, as a school, is not consistent with what the Village's comprehensive plan says." *See* May 4, 2010 Hearing Transcript at p. 168. He further testified that school would be "increasing the population density of Parcel B well above "what's expected for that zoning category." *Id.* at 183:7–17. Palmer Trinity contends that Mr. Alvarez' testimony does meet the standard for competent substantial evidence.

The Florida Supreme Court has defined competent substantial evidence as follows:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial evidence should also be 'competent.'

De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1957).

An applicant seeking a special exception must demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. *See Jesus Fellowship v. Miami–Dade County, Florida,* 752 So.2d 708, 710.[sic] (Fla. 3d DCA 2000). If an applicant meets this burden, then the request must be granted unless the opponent carries its burden to demonstrate that the applicant's request does not meet the standards and are in fact adverse to the public interest. *Id.*

The facts herein are analogous to those presented in *Jesus Fellowship.* In that case, the Third District quashed a circuit court decision which affirmed a decision of the Miami–Dade County Commission denying a portion of a church's zoning application. In the zoning application at issue therein, the church sought to rezone land in a residential area to permit expansion of the church's religious facilities and to permit a private school and day care center. Although the County Staff had recommended approval of 524 students, the Commission approved the rezoning but limited the number of students to 150 as a result of a "suggestion" by the opponents' attorney after the close of the evidentiary hearing.

Here, as in *Jesus Fellowship,* the first mention of even the reduction in the number of students permitted occurred after the close of the evidentiary portion of the public hearing. And like the "suggestion" by the opponent's counsel in *Jesus Fellowship,* the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid. Other than the brief discussion between the Mayor and Council Person Stanczyk, wherein the 900 number was admittedly arbitrary, there is no mention of that number, nor any mathematical ***26** calculation from which it could have been derived, contained in either the record or transcript preceding the adoption of the Resolution. Neither the testimony of Mr. Alvarez, nor of any of the individuals living in the neighborhood surrounding the school, provides a competent substantial basis for the 900 student cap on enrollment. Accordingly,

> this Court holds that the 900 student cap is not supported by competent substantial evidence. For the reasons set forth above, the provisions contained in Resolution 2010–48 relating to the ... 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision.
>
> *Palmer Trinity Private Sch., Inc.*, 18 Fla. L. Weekly Supp. at 342a*Palmer Trinity Private Sch., Inc.*, 18 Fla. L. Weekly Supp. at 342a (some emphasis added).

Palmetto Bay correctly sought no second tier review of this decision. Palmetto Bay applies the Miami–Dade County Zoning Code to special exception requests. *See* *Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay*, 31 So.3d 260, 263 n. 2 (Fla. 3d DCA 2010) ("The Village's Planning and Zoning Powers Ordinance states that '[c]hapter 33 of the Miami–Dade Code entitled 'Zoning' ... shall be applied within the municipal boundaries of the Village of Palmetto Bay....' *See* § 31–1(d) of the Village of Palmetto Bay Planning and Zoning Powers Ordinance."). In *Metropolitan Dade County v. Fuller*, 497 So.2d 1322, 1322 (Fla. 3d DCA 1986), this court confirmed that under the Miami–Dade County Code a special exception request "is subject only to the test enunciated in section 33–311(d) [now section 33–311(A)(3)] of the [Miami–Dade County] Code, which is essentially whether the proposal serves the public interest." (Footnote omitted). An application satisfies this requirement once consistency with a zoning authority's land use plan and code criteria have been demonstrated. Once this burden is met, "the application must be granted unless the opposition carries its burden, which is to demonstrate [by competent, substantial evidence] that the applicant's request[does] not meet the standards and are in fact adverse to the public interest." *Jesus Fellowship, Inc. v. Miami–Dade Cnty.*, 752 So.2d 708, 709 (Fla. 3d DCA 2000); *see Irvine v. Duval Cnty. Planning Comm'n*, 495 So.2d 167, 167 (Fla.1986) ("[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' " (quoting *Irvine v. Duval Cnty. Planning Comm'n*, 466 So.2d 357, 364 (Fla. 1st DCA 1985) (Zehmer, J., dissenting))); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.*, 857 So.2d 202, 204 (Fla. 3d DCA 2003) ("Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meet code criteria, the decision-making body may deny the request only where 'the party opposing the application ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria.' " (quoting *Fla. Power & Light Co. v. City of Dania*, 761 So.2d 1089, 1092 (Fla.2000))).

There is no dispute that Palmer Trinity met its burden of demonstrating compliance with the standards imposed by the Miami–Dade County Zoning Code for securing a special exception. As the circuit court noted in its opinion, prior to the public hearing on Palmer Trinity's special exception request, Palmetto Bay's professional ***27** staff reviewed Palmer Trinity's request for compliance and "specifically recommended ... Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150." *Palmer Trinity Private Sch., Inc.*, 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private Sch., Inc.*, 18 Fla. L. Weekly Supp. at 342a. This recommendation came after a thorough thirty-nine page review of all applicable criteria and constitutes competent substantial evidence establishing that the request serves the public interest. *See City of Hialeah Gardens*, 857 So.2d at 205 (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co.*, 547 So.2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller*, 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence); *Dade Cnty. v. United Res., Inc.*, 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff "is probative").

Based on this record, the burden shifted to the opponents of the request to introduce competent substantial evidence demonstrating that the application for 1150 students "did not meet [the] standards and was, in fact, adverse to the public interest." *Irvine*, 495 So.2d at 167; *City of Hialeah Gardens*, 857 So.2d at 206. As the circuit court expressly found, no such evidence was adduced. In fact, the circuit court concluded that the testimony of the only competent witness to testify in opposition to the request, Mr. Alvarez, did not testify as to whether the 1150 student request was adverse to the

public interest. Rather he testified only that he believed that the "***use*** " of the property as a school was not consistent with Palmetto Bay's comprehensive plan and that the school would increase the population density of the parcel involved above that allowed. Use of the property for a school is not at issue here since no one claims it is not a permitted use. And in light of Council Member Feller and Mayor Flinn's concession at the commission hearing that the regulations governing this parcel would allow up to 2100 students, it is clear that the circuit court's conclusion that his testimony was not substantially related to the issue was correct.

Based on this record, the circuit court clearly was correct in striking the 900 student "cap." Under our ruling in *Jesus Fellowship, Inc.,* 752 So.2d at 711, it also had no choice but to strike the restriction, leaving intact Palmer Trinity's entitlement to a special exception allowing 1150 students. There, as here, an applicant (a church) sought a special exception for a private school and a day care center for a specific number of students (524) but was restricted by the county commission to fewer students (150). There, as here, professional staff recommended approval of the request. There, as here, neighbors and a professional engineer appeared to oppose the request. There, as here, the opposition witness testimony, proved not to be competent substantial evidence on the issue of the church's student request. There, as here, removal of the unsupported condition mandated approval of the evidentiary-supported request:

> In summary, the Church presented sufficient evidence to carry its burden; the objectors presented only testimony and documents that support the Church's application or which the courts have held not to be evidence. When the circuit court decided there was ***evidence*** (substantial, competent) to support the ***28** Commission's denial of the application, it failed to apply the correct law as to the granting or denial of special exceptions and unusual uses, and failed to apply the correct law as to what constitutes competent evidence in such cases. As a result we quash the circuit court's order and remand the case with instructions to the circuit court to direct the Commission to remove the limitation to K–6 and 150 students and to grant the application with grades K–12 and 524 students.

Id. at 711 (footnote omitted).

The special exception for 1150 students should, therefore, have been summarily enforced by Palmetto Bay. Despite the circuit court's citation to and reliance on *Jesus Fellowship,* which required approval of Palmer Trinity's 1150 student request, and its mandate, Palmetto Bay remained intransigent. On remand, Palmetto Bay decided to reconsider the application from scratch. On April 12, 2011, Palmer Trinity sought to preclude such action, filing a motion to enforce mandate in the circuit court. On May 5, 2011, the same three-judge circuit court panel which heard the underlying appeal granted the motion. Palmetto Bay then sought clarification of the order enforcing the mandate, contending that it believed that it was being ordered to "hold a public hearing, the record of which shall include but not be limited to all the evidence already in the record for a final decision as to the entire application—not just as to the two items litigated on appeal." On June 1, 2011, the same three-judge circuit court panel rejected this notion ordering Palmetto Bay to remove the "cap" on the number of students requested and to take no further action inconsistent with its May 5, 2011 order and its present order, effectively precluding additional hearings and mandating approval of the 1150 request. This did not happen.

Again on July 12, 2011, Palmer Trinity filed a Renewed Emergency Motion to Enforce Mandate or Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of [the] Court, wherein it argued that Palmetto Bay intended to violate the court's orders at a public hearing scheduled for July 19, 2011. That emergency motion was denied. On July 19, 2011, Palmetto Bay held a public hearing and adopted Resolution 2011–53, amending and incorporating Resolution 2010–48, interpreting each of the circuit court's prior determinations and rulings to mean that since Palmetto Bay had rejected the 1150 student enrollment requested in favor of a 900 student "cap," and that cap had now been rejected, no increase in student enrollment above the existing 600 students would be allowed. Thereafter, on August 26, 2011, Palmer Trinity filed the Motion to Enforce Mandate, or in the Alternative for Extraordinary Relief, which resulted in the December 22, 2011 order here under review. In that order, the same three-judge panel of the Eleventh Judicial Circuit Court Appellate Division once again

ordered enforcement of its mandate in *Palmer Trinity Private School, Inc.*, 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.*, 18 Fla. L. Weekly Supp. at 342a. This time the court clearly stated that "in order to strictly adhere to the Mandate's plain language, the Village must remove or otherwise render ineffectual all of the provisions in the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900." This conclusion is expressly predicated on the court's extensive quotation from and reliance on *Jesus Fellowship;* on its conclusion that there is no dispute that Palmer Trinity's request for 1150 students was "approved ... with a condition that capped student enrollment at 900"; and that removal of the cap entitled Palmer Trinity to approval of its 1150 student request. ***29** These conclusions are fully supported by the record and applicable law and do not in any manner depart from the essential requirements of the law.

Conclusion

In sum, Palmer Trinity sought a special exception which would permit expanding its student enrollment to 1150. At the public hearing which followed, Palmer Trinity adduced competent substantial evidence to support its 1150 student request; no competent substantial evidence was submitted to support either denying or limiting the school's enrollment request. Palmetto Bay nonetheless denied the 1150 number, lowered the acceptable number to 900 students, and granted the exception. Based on its finding of the lack of competent substantial evidence supporting a "cap" below 1150, the circuit court appellate division ordered the limitation deleted. Palmetto Bay claimed that its compliance with that ruling required only that it delete the 900 student figure, making it free to leave its "denial" of special exception for 1150 students in place. A simple straight forward reading of the circuit court's ruling contradicts that conclusion. When Palmetto Bay amended Resolution 2010–48, on July 19, 2011, that resolution should have reflected acceptance and incorporation of the circuit court's decision rejecting any "cap" below 1150. In other words, Palmetto Bay is wrong in arguing its denial of the special exception for 1150 students could remain in place after the circuit court's February 11, 2011 ruling. Palmetto Bay's denial of the special exception for 1150 students should have been excised from its Amended Resolution, just as was the 900 student "cap." Any other interpretation of the circuit court's February 11, 2011 ruling amounted to wishful thinking at best, and more likely a willful disobedience of that court's instructions. The circuit court's order enforcing its earlier mandate was therefore entirely proper and in no way justifies the issuance of the writ sought herein.

For these reasons, the petition for writ of certiorari is denied.

SCHWARTZ, Senior Judge (concurring).

Although I had (and have) some misgivings about the posture in which this case presents itself, Chief Judge Wells' opinion has convinced me that, as often happens, any departure from the procedural niceties which may have occurred makes no difference. As her opinion demonstrates, on the basis of what was presented to the Commission, it had no option under the law but to grant the special exception in full. *See Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[W]e agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' "); *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *Metro. Dade Cnty. v. Fuller,* 497 So.2d 1322 (Fla. 3d DCA 1986).

In essence, therefore, everything in the circuitous legal journey which followed was an exercise in superfluousness and futility. Since the effect of the order now under review, however fashioned, was to require what was required from the beginning, I concur in denying the petition.

All Citations

128 So.3d 19, 37 Fla. L. Weekly D1599

Footnotes

1 The order On Motion to Enforce Mandate or in the Alternative, for Extraordinary Relief was issued on December 22, 2011.

128 So.3d 19
District Court of Appeal of Florida,
Third District.

The VILLAGE OF PALMETTO BAY, Florida, Petitioner,
v.
PALMER TRINITY PRIVATE SCHOOL, INC., Respondent.

No. 3D12–190.
|
July 5, 2012.

Synopsis

Background: Village filed petition for writ of certiorari seeking review of an order of the Circuit Court, Miami-Dade County, Appellate Division, Joel H. Brown, C.J., Joseph Farina and Norma Lindsey, JJ., granting private school's motion to enforce a prior order striking portions of a village zoning resolution.

The District Court of Appeal, Wells, C.J., held that circuit court's appellate division did not depart from the essential requirements of the law by ordering village to comply with court's previous order.

Petition denied.

Schwartz, Senior Judge, filed concurring opinion.

Attorneys and Law Firms

***20** White & Case, Raoul G. Cantero, Evan M. Goldenberg and Elizabeth Coppolecchia; Figueredo & Boutsis and Eve A. Boutsis, for petitioner; W. Tucker Gibbs, for Intervenor, Concerned Citizens of Old Cutler.

Bilzin Sumberg Baena Price & Axelrod, Stanley B. Price, Eileen Ball Mehta and Eric Singer, for respondent.

Before WELLS, C.J., and LAGOA, J., and SCHWARTZ, Senior Judge.

Opinion

WELLS, Chief Judge.

The Village of Palmetto Bay petitions for certiorari relief from an order of the circuit court appellate division granting a motion to enforce its mandate in *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011)*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011). [1] Both Palmetto Bay and Palmer Trinity maintain, and we agree, that this order is subject to "first tier" certiorari review. *See Ramirez v. United Auto. Ins. Co.,* 67 So.3d 1174, 1175–76 (Fla. 3d DCA 2011) (confirming that a "first ruling on [a] question" by an appellate division of a circuit court is properly reviewed by the district court as a "first tier" appellate review); *see also City of Indian Rocks Beach v. Tomalo,* 834 So.2d 341, 341 (Fla. 2d DCA 2003) (treating a petition for second tier certiorari review of an order enforcing a circuit court appellate division mandate as an appeal).

To justify certiorari relief, a petition must demonstrate a departure from the essential requirements of law resulting in a material injury that cannot be remedied on appeal. *See Fortune Int'l Hospitality, LLC v. M Resort Residences Condo. Ass'n,* 77 So.3d 741, 743 (Fla. 3d DCA 2011) (citing *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987)). A departure from the essential requirements of the law that will justify issuance of this extraordinary writ requires significantly more than a demonstration of legal error:

> [T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review ***only*** when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885, 889 (Fla.2003) (citing *Ivey v. Allstate Ins. Co.*, 774 So.2d 679, 682 (Fla.2000)). ***21** As Chief Justice Boyd made clear in *Jones v. State,* 477 So.2d 566, 569 (Fla.1985) (Boyd, C.J., concurring specially):

> The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

See also Haines City Cmty. Dev. v. Heggs, 658 So.2d 523, 527–28 (Fla.1995) (observing that Chief Justice Boyd in *Jones* had "captured the essence of the standard" for determining whether a departure from the essential requirements of the law existed).

Under these parameters, the order of the circuit court appellate division granting Palmer Trinity's motion to enforce its prior mandate neither merits nor permits issuance of the writ sought. The circuit court appellate division did no more than order compliance with its now long final decision in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.*, 18 Fla. L. Weekly Supp. at 342a. There is no question that it is within the circuit court's authority to enforce its decisions and orders. *See Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp.*, 328 So.2d 825, 827 (Fla.1975) (observing generally that a court may "take any steps or issue any appropriate writ necessary to give effect to its judgment"). The order itself does not then constitute a departure from the essential requirements of the law.

The compliance mandated by the order also does not constitute a departure from the essential requirements of the law. The order (or opinion) being enforced here struck portions of a zoning resolution addressing Palmer Trinity's special exception request to expand its school and to increase its student enrollment from 600 to 1150 students. The resolution being reviewed "approved" Palmer Trinity's special exception request for an increase in its student enrollment to 1150 but then limited that approval to permit only 900 students:

> ***Section 4.*** *Order.*
>
> A. ***The Council,*** pursuant to section 33–311(A)(7), and 33–151, et seq., of the Miami Dade County Code as applied by the Village, ***approves with conditions ... Applicants request[ ] for a special exception*** ... ***for*** ... [an increase in] ***number of students [to 1150] as to the plans entitled*** Palmer Trinity School Campus Master Plan....
>
> B. The Village Council ***conditions ... the special exception as follows:***
>
> ....
>
> 3. The request to increase the non-public school number of students to *1150 is denied.* The condition to allow expansion to 900 students is granted.

(Resolution No. 2010–48 adopted May 17, 2010) (some emphasis added).

In a thorough and well reasoned opinion on first tier certiorari review, the appellate division of the circuit court struck the 900 student condition or "cap" leaving approval of the 1150 special exception request standing:

> (PER CURIAM) This appeal arises out of the adoption of Zoning Resolution No. 2010–48 (the "Resolution") by the Village of Palmetto Bay (the "Village"). Petitioner, Palmer Trinity Private School, Inc. ("Palmer Trinity"), seeks by way of certiorari review to quash and remove two provisions incorporated into Condition 4.4 of the Resolution, specifically: (1) the cap on the permissible number of students at the school at 900; and (2) the imposition of a thirty-year (30) prohibition on the filing of any applications ***22** for development approvals on the school's 55–acre site. We have jurisdiction pursuant to Article V, Section 5, Florida Constitution, and Rules 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.
>
> Palmer Trinity argues that the above provisions are unlawful and should be quashed and removed from the Resolution in that: (1) the cap on the number of students permitted at the school was arbitrary, not supported by competent substantial evidence, and departed from the essential requirements of law; and (2) the thirty-year prohibition on future development applications violated Palmer Trinity's due process rights because it constituted a de facto moratorium for which neither notice nor opportunity to be heard was given, that the Village departed from the essential requirements of law in approving the

prohibition, and that the Village failed to support the thirty-year prohibition with substantial competent evidence.

The Village disagrees and seeks to dismiss Palmer Trinity's Petition. For the reasons set forth below, we QUASH the two provisions contained in the Resolution, as set forth above, adopted by the Village and REMAND to the Village with instructions to conduct further proceedings on this matter in accordance with this decision.

Procedural and Factual Background

Palmer Trinity has owned and operated a private school on 22.5 acres of land [now] located within the Village ("Parcel A") for almost five decades. In 1988, Palmer Trinity applied for and obtained approval of a modification of its site plan for the purpose of increasing its enrollment to 600 students. In 2003, Palmer Trinity purchased an additional 32.5 acres also located within the Village ("Parcel B") that was zoned half Agricultural ("AU") and half Estate Single Family per Five Acres ("EU–2"). Parcel B had an Estate Density Residential ("EDR") future land use designation, allowing for less than 2.5 dwelling units per acre. In 2006, Palmer Trinity filed an application (the "Application") under the Miami–Dade County Code to rezone Parcel B to Estate Modified Single Family allowing for one home per 15,000 square feet ("EU–M"). As part of the Application, Palmer Trinity also sought a special exception to increase the student enrollment from 600 to 1400 and certain variances concerning further development on both Parcel A and B. As a result of the incorporation of the Village as a municipality, the Application was transferred from the County to the Village.

In 2008, the Village held a hearing on the Application. Consideration of the rezoning request was bifurcated from the other requests in the Application. At the 2008 hearing, the Village adopted Ordinance 08–06 denying the requested rezoning. Palmer Trinity appealed this denial in a petition for certiorari review to the Circuit Court, acting in its appellate capacity, which upheld, without opinion, the Village's decision. Palmer Trinity then took an appeal to the Third District Court of Appeal which reversed the Circuit Court, thereby overturning the Village's denial of the rezoning request. *See* *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 31 So.3d 260 (Fla. 3d DCA 2010) ("*Palmer I* ").

After the Third District issued the decision in *Palmer I,* Palmer Trinity revised its plans, eliminating some of the previously requested non-use variances and reducing its requested student enrollment from 1400 to 1150. Palmer Trinity also voluntarily offered to expand its ***23** student population from 600 to 1150 in gradual increments over a fifteen year period. In addition, the proposed site plan was modified to reflect the reduced student enrollment request of 1150, the proposed new development on Parcel B was redesigned and relocated toward the center, setbacks were increased and additional landscaping was added.

On April 28, 2010, the Village conducted a public hearing on the first reading of the rezoning component of the Application. On May 4, 2010, the Village conducted a public hearing on second reading of the rezoning request and approved the rezoning by adopting Ordinance 2010–09. Also at that hearing, the Village heard the request for the special exceptions and site plan modification components of the Application.

Prior to the hearing, the professional staff of the Village (the "Village Staff") reviewed the Application and recommended approval with certain conditions (the "Recommendation"). The ... ***Village Staff specifically recommended that Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150 be approved.*** The 900 number, which the Village later adopted, was not mentioned in the Recommendation.

....

At the May 4, 2010 hearing, the Village's Planning Director (the "Director") presented the Recommendation.... With respect to the 1150 student cap on enrollment, the ***Village's expert traffic consultant, Joseph Corradino, reviewed the traffic study included in Palmer Trinity's Application and recommended approval, finding that, based on 1150 students,*** the Application satisfied the relevant traffic level of service standards.

....

The Village Attorney presented an Overview of Zoning Law as a guide to the Village Council. The County Manager also engaged special council who addressed the Village Council regarding their duties and obligations

as quasi-judicial officers. The attorney for Concerned Citizens of Old Cutler, Inc. ("CCOCI") and Betty Ingram, Intervenors, presented argument and testimony from several individuals and introduced, Mr. Mark Alvarez, a planner, as an expert. Other individual witnesses spoke both for and against the Application. The Village Council then allowed Palmer Trinity an opportunity for rebuttal.

At the conclusion of the evidentiary portion of the hearing, the Village Council began its deliberations. Several amendments to the conditions recommended by the Village Staff were made. ***Council Person Stanczyk made a motion to reduce the number of students permitted to 900. This was the first time the number 900 was ever mentioned at the public hearing or in the entire record preceding the public hearing.*** Thereafter, the Mayor and Council Person Stanczyk had a brief discussion as to whether the 900 number was arbitrary. At the conclusion of the hearing on May 4, 2010, the Village adopted the Resolution with conditions, including the reduction in the number of students from 1150 to 900, with Council Member Stanczyk voting against. The only modification to the language of the version of Condition 4.4 contained in the Recommendation to the language in the version of Condition 4.4, as included in the Resolution, was the reduction in the number of students permitted from 1150 to 900....

Subsequent to the Village's adoption of the Resolution, Palmer Trinity filed its ***24** timely Petition to invoke this Court's jurisdiction.

Conclusions of Law

First tier certiorari review of a quasi-judicial zoning decision, such as the Resolution at issue here, is a matter of right. *Miami–Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 198 (Fla.2003). A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Id.* at 199.

....

B. The 900 Student Cap on Enrollment

Palmer Trinity argues that the 900 student cap contained in Condition 4.4 of the Resolution is not supported by competent substantial evidence and constitutes a departure from the essential requirements of law. We agree. The record contains no mention of the 900 number at the May 4, 2010 hearing until after the close of public comment when the Mayor, Council, and Village Counsel had the following exchange:

COUNCIL MEMBER STANCZYK: Yeah and I'm having a little trouble again. The original student number that was listed as a recommendation was 1150, and I would like to reduce it to 900, staged incrementally over the entire term of the project. I'd like to make that as a motion.

MAYOR FLINN: That's a tough one. I mean, I don't know how we can just arbitrarily do that, but—

COUNCIL MEMBER STANCZYK: Well, 1150 was an arbitrary number.

MAYOR FLINN: Well, 1150 is what they voluntarily dropped to, but—

COUNCIL MEMBER STANCZYK: Well—

MAYOR FLINN: But, anyway, is there a second for that?

VICE MAYOR PARISER: I'll second it.

MAYOR FLINN: All right, it's been seconded. Any discussions on it?

COUNCIL MEMBER FELLER: Read the motion.

MAYOR FLINN: Reduce to 900 students.

COUNCIL MEMBER FELLER: In discussion by—I had gotten a number, by state number or by density or some numbers. Theoretically, what is the maximum the school would be allowed to by the total acreage? Is there such a thing, Eve?

MS. BOUTSIS: Under the special exception process, they have to meet certain numbers. The answer is over 2,000.

COUNCIL MEMBER FELLER: It's over 2,000.

> MAYOR FLINN: I think it was 2100 at one point. All right all in favor indicate by saying aye.
>
> COUNCIL MEMBERS: Aye.
>
> MAYOR FLINN: Any opposed?
>
> COUNCIL MEMBER FELLER: Nay.
>
> COUNCIL MEMBER TENDRICH: Nay.
>
> MAYOR FLINN: Three/two. All right next item.

See Transcript of May 4, 2010, Hearing at pp. 297:16–299:12.

The Village relies upon the testimony of Mr. Mark Alvarez, the planner retained by the Intervenors, and the comments by neighboring residents with respect to traffic and noise. The only specific testimony ***25** offered by Mr. Alvarez' [sic] that could arguably support the Village's position is his statement that "[t]he school, and what I'm going to point out, is I believe that the use, as a school, is not consistent with what the Village's comprehensive plan says." *See* May 4, 2010 Hearing Transcript at p. 168. He further testified that school would be "increasing the population density of Parcel B well above "what's expected for that zoning category." *Id.* at 183:7–17. Palmer Trinity contends that Mr. Alvarez' testimony does meet the standard for competent substantial evidence.

The Florida Supreme Court has defined competent substantial evidence as follows:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial evidence should also be 'competent.'

De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1957).

An applicant seeking a special exception must demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. *See* *Jesus Fellowship v. Miami–Dade County, Florida,* 752 So.2d 708, 710.[sic] (Fla. 3d DCA 2000). If an applicant meets this burden, then the request must be granted unless the opponent carries its burden to demonstrate that the applicant's request does not meet the standards and are in fact adverse to the public interest. *Id.*

The facts herein are analogous to those presented in *Jesus Fellowship.* In that case, the Third District quashed a circuit court decision which affirmed a decision of the Miami–Dade County Commission denying a portion of a church's zoning application. In the zoning application at issue therein, the church sought to rezone land in a residential area to permit expansion of the church's religious facilities and to permit a private school and day care center. Although the County Staff had recommended approval of 524 students, the Commission approved the rezoning but limited the number of students to 150 as a result of a "suggestion" by the opponents' attorney after the close of the evidentiary hearing.

Here, as in *Jesus Fellowship,* the first mention of even the reduction in the number of students permitted occurred after the close of the evidentiary portion of the public hearing. And like the "suggestion" by the opponent's counsel in *Jesus Fellowship,* the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid. Other than the brief discussion between the Mayor and Council Person Stanczyk, wherein the 900 number was admittedly arbitrary, there is no mention of that number, nor any mathematical ***26** calculation from which it could have been derived, contained in either the record or transcript preceding the adoption of the Resolution. Neither the testimony of Mr. Alvarez, nor of any of the individuals living in the neighborhood surrounding the school, provides a competent substantial basis for the 900 student cap on enrollment. Accordingly,

> this Court holds that the 900 student cap is not supported by competent substantial evidence. For the reasons set forth above, the provisions contained in Resolution 2010–48 relating to the ... 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision.
>
> *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a (some emphasis added).

Palmetto Bay correctly sought no second tier review of this decision. Palmetto Bay applies the Miami–Dade County Zoning Code to special exception requests. *See* *Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay,* 31 So.3d 260, 263 n. 2 (Fla. 3d DCA 2010) ("The Village's Planning and Zoning Powers Ordinance states that '[c]hapter 33 of the Miami–Dade Code entitled 'Zoning' ... shall be applied within the municipal boundaries of the Village of Palmetto Bay....' *See* § 31–1(d) of the Village of Palmetto Bay Planning and Zoning Powers Ordinance."). In *Metropolitan Dade County v. Fuller,* 497 So.2d 1322, 1322 (Fla. 3d DCA 1986), this court confirmed that under the Miami–Dade County Code a special exception request "is subject only to the test enunciated in section 33–311(d) [now section 33–311(A)(3)] of the [Miami–Dade County] Code, which is essentially whether the proposal serves the public interest." (Footnote omitted). An application satisfies this requirement once consistency with a zoning authority's land use plan and code criteria have been demonstrated. Once this burden is met, "the application must be granted unless the opposition carries its burden, which is to demonstrate [by competent, substantial evidence] that the applicant's request[does] not meet the standards and are in fact adverse to the public interest." *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *see Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' " (quoting *Irvine v. Duval Cnty. Planning Comm'n,* 466 So.2d 357, 364 (Fla. 1st DCA 1985) (Zehmer, J., dissenting))); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.,* 857 So.2d 202, 204 (Fla. 3d DCA 2003) ("Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meet code criteria, the decision-making body may deny the request only where 'the party opposing the application ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria.' " (quoting *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1092 (Fla.2000))).

There is no dispute that Palmer Trinity met its burden of demonstrating compliance with the standards imposed by the Miami–Dade County Zoning Code for securing a special exception. As the circuit court noted in its opinion, prior to the public hearing on Palmer Trinity's special exception request, Palmetto Bay's professional ***27** staff reviewed Palmer Trinity's request for compliance and "specifically recommended ... Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150." *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a. This recommendation came after a thorough thirty-nine page review of all applicable criteria and constitutes competent substantial evidence establishing that the request serves the public interest. *See City of Hialeah Gardens,* 857 So.2d at 205 (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co.,* 547 So.2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller,* 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence); *Dade Cnty. v. United Res., Inc.,* 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff "is probative").

Based on this record, the burden shifted to the opponents of the request to introduce competent substantial evidence demonstrating that the application for 1150 students "did not meet [the] standards and was, in fact, adverse to the public interest." *Irvine,* 495 So.2d at 167; *City of Hialeah Gardens,* 857 So.2d at 206. As the circuit court expressly found, no such evidence was adduced. In fact, the circuit court concluded that the testimony of the only competent witness to testify in opposition to the request, Mr. Alvarez, did not testify as to whether the 1150 student request was adverse to the

public interest. Rather he testified only that he believed that the "***use*** " of the property as a school was not consistent with Palmetto Bay's comprehensive plan and that the school would increase the population density of the parcel involved above that allowed. Use of the property for a school is not at issue here since no one claims it is not a permitted use. And in light of Council Member Feller and Mayor Flinn's concession at the commission hearing that the regulations governing this parcel would allow up to 2100 students, it is clear that the circuit court's conclusion that his testimony was not substantially related to the issue was correct.

Based on this record, the circuit court clearly was correct in striking the 900 student "cap." Under our ruling in *Jesus Fellowship, Inc.*, 752 So.2d at 711, it also had no choice but to strike the restriction, leaving intact Palmer Trinity's entitlement to a special exception allowing 1150 students. There, as here, an applicant (a church) sought a special exception for a private school and a day care center for a specific number of students (524) but was restricted by the county commission to fewer students (150). There, as here, professional staff recommended approval of the request. There, as here, neighbors and a professional engineer appeared to oppose the request. There, as here, the opposition witness testimony, proved not to be competent substantial evidence on the issue of the church's student request. There, as here, removal of the unsupported condition mandated approval of the evidentiary-supported request:

> In summary, the Church presented sufficient evidence to carry its burden; the objectors presented only testimony and documents that support the Church's application or which the courts have held not to be evidence. When the circuit court decided there was ***evidence*** (substantial, competent) to support the ***28** Commission's denial of the application, it failed to apply the correct law as to the granting or denial of special exceptions and unusual uses, and failed to apply the correct law as to what constitutes competent evidence in such cases. As a result we quash the circuit court's order and remand the case with instructions to the circuit court to direct the Commission to remove the limitation to K–6 and 150 students and to grant the application with grades K–12 and 524 students.

Id. at 711 (footnote omitted).

The special exception for 1150 students should, therefore, have been summarily enforced by Palmetto Bay. Despite the circuit court's citation to and reliance on *Jesus Fellowship,* which required approval of Palmer Trinity's 1150 student request, and its mandate, Palmetto Bay remained intransigent. On remand, Palmetto Bay decided to reconsider the application from scratch. On April 12, 2011, Palmer Trinity sought to preclude such action, filing a motion to enforce mandate in the circuit court. On May 5, 2011, the same three-judge circuit court panel which heard the underlying appeal granted the motion. Palmetto Bay then sought clarification of the order enforcing the mandate, contending that it believed that it was being ordered to "hold a public hearing, the record of which shall include but not be limited to all the evidence already in the record for a final decision as to the entire application—not just as to the two items litigated on appeal." On June 1, 2011, the same three-judge circuit court panel rejected this notion ordering Palmetto Bay to remove the "cap" on the number of students requested and to take no further action inconsistent with its May 5, 2011 order and its present order, effectively precluding additional hearings and mandating approval of the 1150 request. This did not happen.

Again on July 12, 2011, Palmer Trinity filed a Renewed Emergency Motion to Enforce Mandate or Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of [the] Court, wherein it argued that Palmetto Bay intended to violate the court's orders at a public hearing scheduled for July 19, 2011. That emergency motion was denied. On July 19, 2011, Palmetto Bay held a public hearing and adopted Resolution 2011–53, amending and incorporating Resolution 2010–48, interpreting each of the circuit court's prior determinations and rulings to mean that since Palmetto Bay had rejected the 1150 student enrollment requested in favor of a 900 student "cap," and that cap had now been rejected, no increase in student enrollment above the existing 600 students would be allowed. Thereafter, on August 26, 2011, Palmer Trinity filed the Motion to Enforce Mandate, or in the Alternative for Extraordinary Relief, which resulted in the December 22, 2011 order here under review. In that order, the same three-judge panel of the Eleventh Judicial Circuit Court Appellate Division once again

ordered enforcement of its mandate in *Palmer Trinity Private School, Inc.*, 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.*, 18 Fla. L. Weekly Supp. at 342a. This time the court clearly stated that "in order to strictly adhere to the Mandate's plain language, the Village must remove or otherwise render ineffectual all of the provisions in the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900." This conclusion is expressly predicated on the court's extensive quotation from and reliance on *Jesus Fellowship;* on its conclusion that there is no dispute that Palmer Trinity's request for 1150 students was "approved ... with a condition that capped student enrollment at 900"; and that removal of the cap entitled Palmer Trinity to approval of its 1150 student request. ***29** These conclusions are fully supported by the record and applicable law and do not in any manner depart from the essential requirements of the law.

Conclusion

In sum, Palmer Trinity sought a special exception which would permit expanding its student enrollment to 1150. At the public hearing which followed, Palmer Trinity adduced competent substantial evidence to support its 1150 student request; no competent substantial evidence was submitted to support either denying or limiting the school's enrollment request. Palmetto Bay nonetheless denied the 1150 number, lowered the acceptable number to 900 students, and granted the exception. Based on its finding of the lack of competent substantial evidence supporting a "cap" below 1150, the circuit court appellate division ordered the limitation deleted. Palmetto Bay claimed that its compliance with that ruling required only that it delete the 900 student figure, making it free to leave its "denial" of special exception for 1150 students in place. A simple straight forward reading of the circuit court's ruling contradicts that conclusion. When Palmetto Bay amended Resolution 2010–48, on July 19, 2011, that resolution should have reflected acceptance and incorporation of the circuit court's decision rejecting any "cap" below 1150. In other words, Palmetto Bay is wrong in arguing its denial of the special exception for 1150 students could remain in place after the circuit court's February 11, 2011 ruling. Palmetto Bay's denial of the special exception for 1150 students should have been excised from its Amended Resolution, just as was the 900 student "cap." Any other interpretation of the circuit court's February 11, 2011 ruling amounted to wishful thinking at best, and more likely a willful disobedience of that court's instructions. The circuit court's order enforcing its earlier mandate was therefore entirely proper and in no way justifies the issuance of the writ sought herein.

For these reasons, the petition for writ of certiorari is denied.

SCHWARTZ, Senior Judge (concurring).

Although I had (and have) some misgivings about the posture in which this case presents itself, Chief Judge Wells' opinion has convinced me that, as often happens, any departure from the procedural niceties which may have occurred makes no difference. As her opinion demonstrates, on the basis of what was presented to the Commission, it had no option under the law but to grant the special exception in full. *See Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[W]e agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' "); *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *Metro. Dade Cnty. v. Fuller,* 497 So.2d 1322 (Fla. 3d DCA 1986).

In essence, therefore, everything in the circuitous legal journey which followed was an exercise in superfluousness and futility. Since the effect of the order now under review, however fashioned, was to require what was required from the beginning, I concur in denying the petition.

All Citations

128 So.3d 19, 37 Fla. L. Weekly D1599

Footnotes

1 The order On Motion to Enforce Mandate or in the Alternative, for Extraordinary Relief was issued on December 22, 2011.

End of Document

128 So.3d 19
District Court of Appeal of Florida,
Third District.

The VILLAGE OF PALMETTO BAY, Florida, Petitioner,
v.
PALMER TRINITY PRIVATE SCHOOL, INC., Respondent.

No. 3D12–190.
|
July 5, 2012.

Synopsis

Background: Village filed petition for writ of certiorari seeking review of an order of the Circuit Court, Miami-Dade County, Appellate Division, Joel H. Brown, C.J., Joseph Farina and Norma Lindsey, JJ., granting private school's motion to enforce a prior order striking portions of a village zoning resolution.

The District Court of Appeal, Wells, C.J., held that circuit court's appellate division did not depart from the essential requirements of the law by ordering village to comply with court's previous order.

Petition denied.

Schwartz, Senior Judge, filed concurring opinion.

Attorneys and Law Firms

***20** White & Case, Raoul G. Cantero, Evan M. Goldenberg and Elizabeth Coppolecchia; Figueredo & Boutsis and Eve A. Boutsis, for petitioner; W. Tucker Gibbs, for Intervenor, Concerned Citizens of Old Cutler.

Bilzin Sumberg Baena Price & Axelrod, Stanley B. Price, Eileen Ball Mehta and Eric Singer, for respondent.

Before WELLS, C.J., and LAGOA, J., and SCHWARTZ, Senior Judge.

Opinion

WELLS, Chief Judge.

The Village of Palmetto Bay petitions for certiorari relief from an order of the circuit court appellate division granting a motion to enforce its mandate in *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011)*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011). [1] Both Palmetto Bay and Palmer Trinity maintain, and we agree, that this order is subject to "first tier" certiorari review. *See Ramirez v. United Auto. Ins. Co.,* 67 So.3d 1174, 1175–76 (Fla. 3d DCA 2011) (confirming that a "first ruling on [a] question" by an appellate division of a circuit court is properly reviewed by the district court as a "first tier" appellate review); *see also City of Indian Rocks Beach v. Tomalo,* 834 So.2d 341, 341 (Fla. 2d DCA 2003) (treating a petition for second tier certiorari review of an order enforcing a circuit court appellate division mandate as an appeal).

To justify certiorari relief, a petition must demonstrate a departure from the essential requirements of law resulting in a material injury that cannot be remedied on appeal. *See Fortune Int'l Hospitality, LLC v. M Resort Residences Condo. Ass'n,* 77 So.3d 741, 743 (Fla. 3d DCA 2011) (citing *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987)). A departure from the essential requirements of the law that will justify issuance of this extraordinary writ requires significantly more than a demonstration of legal error:

> [T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review ***only*** when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885, 889 (Fla.2003) (citing *Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 682 (Fla.2000)). ***21** As Chief Justice Boyd made clear in *Jones v. State,* 477 So.2d 566, 569 (Fla.1985) (Boyd, C.J., concurring specially):

> The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

See also Haines City Cmty. Dev. v. Heggs, 658 So.2d 523, 527–28 (Fla.1995) (observing that Chief Justice Boyd in *Jones* had "captured the essence of the standard" for determining whether a departure from the essential requirements of the law existed).

Under these parameters, the order of the circuit court appellate division granting Palmer Trinity's motion to enforce its prior mandate neither merits nor permits issuance of the writ sought. The circuit court appellate division did no more than order compliance with its now long final decision in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. There is no question that it is within the circuit court's authority to enforce its decisions and orders. *See Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp.,* 328 So.2d 825, 827 (Fla.1975) (observing generally that a court may "take any steps or issue any appropriate writ necessary to give effect to its judgment"). The order itself does not then constitute a departure from the essential requirements of the law.

The compliance mandated by the order also does not constitute a departure from the essential requirements of the law. The order (or opinion) being enforced here struck portions of a zoning resolution addressing Palmer Trinity's special exception request to expand its school and to increase its student enrollment from 600 to 1150 students. The resolution being reviewed "approved" Palmer Trinity's special exception request for an increase in its student enrollment to 1150 but then limited that approval to permit only 900 students:

> ***Section 4.*** *Order.*
>
> A. ***The Council,*** pursuant to section 33–311(A)(7), and 33–151, et seq., of the Miami Dade County Code as applied by the Village, ***approves with conditions*** ... ***Applicants request[ ] for a special exception*** ... ***for*** ... [an increase in] ***number of students [to 1150] as to the plans entitled*** Palmer Trinity School Campus Master Plan....
>
> B. The Village Council ***conditions*** ... ***the special exception as follows:***
>
> ....
>
> 3. The request to increase the non-public school number of students to *1150 is denied.* The condition to allow expansion to 900 students is granted.

(Resolution No. 2010–48 adopted May 17, 2010) (some emphasis added).

In a thorough and well reasoned opinion on first tier certiorari review, the appellate division of the circuit court struck the 900 student condition or "cap" leaving approval of the 1150 special exception request standing:

> (PER CURIAM) This appeal arises out of the adoption of Zoning Resolution No. 2010–48 (the "Resolution") by the Village of Palmetto Bay (the "Village"). Petitioner, Palmer Trinity Private School, Inc. ("Palmer Trinity"), seeks by way of certiorari review to quash and remove two provisions incorporated into Condition 4.4 of the Resolution, specifically: (1) the cap on the permissible number of students at the school at 900; and (2) the imposition of a thirty-year (30) prohibition on the filing of any applications ***22** for development approvals on the school's 55–acre site. We have jurisdiction pursuant to Article V, Section 5, Florida Constitution, and Rules 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.
>
> Palmer Trinity argues that the above provisions are unlawful and should be quashed and removed from the Resolution in that: (1) the cap on the number of students permitted at the school was arbitrary, not supported by competent substantial evidence, and departed from the essential requirements of law; and (2) the thirty-year prohibition on future development applications violated Palmer Trinity's due process rights because it constituted a de facto moratorium for which neither notice nor opportunity to be heard was given, that the Village departed from the essential requirements of law in approving the

prohibition, and that the Village failed to support the thirty-year prohibition with substantial competent evidence.

The Village disagrees and seeks to dismiss Palmer Trinity's Petition. For the reasons set forth below, we QUASH the two provisions contained in the Resolution, as set forth above, adopted by the Village and REMAND to the Village with instructions to conduct further proceedings on this matter in accordance with this decision.

Procedural and Factual Background

Palmer Trinity has owned and operated a private school on 22.5 acres of land [now] located within the Village ("Parcel A") for almost five decades. In 1988, Palmer Trinity applied for and obtained approval of a modification of its site plan for the purpose of increasing its enrollment to 600 students. In 2003, Palmer Trinity purchased an additional 32.5 acres also located within the Village ("Parcel B") that was zoned half Agricultural ("AU") and half Estate Single Family per Five Acres ("EU–2"). Parcel B had an Estate Density Residential ("EDR") future land use designation, allowing for less than 2.5 dwelling units per acre. In 2006, Palmer Trinity filed an application (the "Application") under the Miami–Dade County Code to rezone Parcel B to Estate Modified Single Family allowing for one home per 15,000 square feet ("EU–M"). As part of the Application, Palmer Trinity also sought a special exception to increase the student enrollment from 600 to 1400 and certain variances concerning further development on both Parcel A and B. As a result of the incorporation of the Village as a municipality, the Application was transferred from the County to the Village.

In 2008, the Village held a hearing on the Application. Consideration of the rezoning request was bifurcated from the other requests in the Application. At the 2008 hearing, the Village adopted Ordinance 08–06 denying the requested rezoning. Palmer Trinity appealed this denial in a petition for certiorari review to the Circuit Court, acting in its appellate capacity, which upheld, without opinion, the Village's decision. Palmer Trinity then took an appeal to the Third District Court of Appeal which reversed the Circuit Court, thereby overturning the Village's denial of the rezoning request. *See* *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 31 So.3d 260 (Fla. 3d DCA 2010) ("*Palmer I* ").

After the Third District issued the decision in *Palmer I,* Palmer Trinity revised its plans, eliminating some of the previously requested non-use variances and reducing its requested student enrollment from 1400 to 1150. Palmer Trinity also voluntarily offered to expand its *23 student population from 600 to 1150 in gradual increments over a fifteen year period. In addition, the proposed site plan was modified to reflect the reduced student enrollment request of 1150, the proposed new development on Parcel B was redesigned and relocated toward the center, setbacks were increased and additional landscaping was added.

On April 28, 2010, the Village conducted a public hearing on the first reading of the rezoning component of the Application. On May 4, 2010, the Village conducted a public hearing on second reading of the rezoning request and approved the rezoning by adopting Ordinance 2010–09. Also at that hearing, the Village heard the request for the special exceptions and site plan modification components of the Application.

Prior to the hearing, the professional staff of the Village (the "Village Staff") reviewed the Application and recommended approval with certain conditions (the "Recommendation"). The ... ***Village Staff specifically recommended that Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150 be approved.*** The 900 number, which the Village later adopted, was not mentioned in the Recommendation.

....

At the May 4, 2010 hearing, the Village's Planning Director (the "Director") presented the Recommendation.... With respect to the 1150 student cap on enrollment, the ***Village's expert traffic consultant, Joseph Corradino, reviewed the traffic study included in Palmer Trinity's Application and recommended approval, finding that, based on 1150 students,*** the Application satisfied the relevant traffic level of service standards.

....

The Village Attorney presented an Overview of Zoning Law as a guide to the Village Council. The County Manager also engaged special council who addressed the Village Council regarding their duties and obligations

as quasi-judicial officers. The attorney for Concerned Citizens of Old Cutler, Inc. ("CCOCI") and Betty Ingram, Intervenors, presented argument and testimony from several individuals and introduced, Mr. Mark Alvarez, a planner, as an expert. Other individual witnesses spoke both for and against the Application. The Village Council then allowed Palmer Trinity an opportunity for rebuttal.

At the conclusion of the evidentiary portion of the hearing, the Village Council began its deliberations. Several amendments to the conditions recommended by the Village Staff were made. ***Council Person Stanczyk made a motion to reduce the number of students permitted to 900. This was the first time the number 900 was ever mentioned at the public hearing or in the entire record preceding the public hearing.*** Thereafter, the Mayor and Council Person Stanczyk had a brief discussion as to whether the 900 number was arbitrary. At the conclusion of the hearing on May 4, 2010, the Village adopted the Resolution with conditions, including the reduction in the number of students from 1150 to 900, with Council Member Stanczyk voting against. The only modification to the language of the version of Condition 4.4 contained in the Recommendation to the language in the version of Condition 4.4, as included in the Resolution, was the reduction in the number of students permitted from 1150 to 900....

Subsequent to the Village's adoption of the Resolution, Palmer Trinity filed its ***24** timely Petition to invoke this Court's jurisdiction.

Conclusions of Law

First tier certiorari review of a quasi-judicial zoning decision, such as the Resolution at issue here, is a matter of right. *Miami–Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 198 (Fla.2003). A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Id.* at 199.

....

B. The 900 Student Cap on Enrollment

Palmer Trinity argues that the 900 student cap contained in Condition 4.4 of the Resolution is not supported by competent substantial evidence and constitutes a departure from the essential requirements of law. We agree. The record contains no mention of the 900 number at the May 4, 2010 hearing until after the close of public comment when the Mayor, Council, and Village Counsel had the following exchange:

COUNCIL MEMBER STANCZYK: Yeah and I'm having a little trouble again. The original student number that was listed as a recommendation was 1150, and I would like to reduce it to 900, staged incrementally over the entire term of the project. I'd like to make that as a motion.

MAYOR FLINN: That's a tough one. I mean, I don't know how we can just arbitrarily do that, but—

COUNCIL MEMBER STANCZYK: Well, 1150 was an arbitrary number.

MAYOR FLINN: Well, 1150 is what they voluntarily dropped to, but—

COUNCIL MEMBER STANCZYK: Well—

MAYOR FLINN: But, anyway, is there a second for that?

VICE MAYOR PARISER: I'll second it.

MAYOR FLINN: All right, it's been seconded. Any discussions on it?

COUNCIL MEMBER FELLER: Read the motion.

MAYOR FLINN: Reduce to 900 students.

COUNCIL MEMBER FELLER: In discussion by—I had gotten a number, by state number or by density or some numbers. Theoretically, what is the maximum the school would be allowed to by the total acreage? Is there such a thing, Eve?

MS. BOUTSIS: Under the special exception process, they have to meet certain numbers. The answer is over 2,000.

COUNCIL MEMBER FELLER: It's over 2,000.

> MAYOR FLINN: I think it was 2100 at one point. All right all in favor indicate by saying aye.
>
> COUNCIL MEMBERS: Aye.
>
> MAYOR FLINN: Any opposed?
>
> COUNCIL MEMBER FELLER: Nay.
>
> COUNCIL MEMBER TENDRICH: Nay.
>
> MAYOR FLINN: Three/two. All right next item.

See Transcript of May 4, 2010, Hearing at pp. 297:16–299:12.

The Village relies upon the testimony of Mr. Mark Alvarez, the planner retained by the Intervenors, and the comments by neighboring residents with respect to traffic and noise. The only specific testimony ***25** offered by Mr. Alvarez' [sic] that could arguably support the Village's position is his statement that "[t]he school, and what I'm going to point out, is I believe that the use, as a school, is not consistent with what the Village's comprehensive plan says." *See* May 4, 2010 Hearing Transcript at p. 168. He further testified that school would be "increasing the population density of Parcel B well above "what's expected for that zoning category." *Id.* at 183:7–17. Palmer Trinity contends that Mr. Alvarez' testimony does meet the standard for competent substantial evidence.

The Florida Supreme Court has defined competent substantial evidence as follows:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial evidence should also be 'competent.'

De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1957).

An applicant seeking a special exception must demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. *See Jesus Fellowship v. Miami–Dade County, Florida,* 752 So.2d 708, 710.[sic] (Fla. 3d DCA 2000). If an applicant meets this burden, then the request must be granted unless the opponent carries its burden to demonstrate that the applicant's request does not meet the standards and are in fact adverse to the public interest. *Id.*

The facts herein are analogous to those presented in *Jesus Fellowship.* In that case, the Third District quashed a circuit court decision which affirmed a decision of the Miami–Dade County Commission denying a portion of a church's zoning application. In the zoning application at issue therein, the church sought to rezone land in a residential area to permit expansion of the church's religious facilities and to permit a private school and day care center. Although the County Staff had recommended approval of 524 students, the Commission approved the rezoning but limited the number of students to 150 as a result of a "suggestion" by the opponents' attorney after the close of the evidentiary hearing.

Here, as in *Jesus Fellowship,* the first mention of even the reduction in the number of students permitted occurred after the close of the evidentiary portion of the public hearing. And like the "suggestion" by the opponent's counsel in *Jesus Fellowship,* the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid. Other than the brief discussion between the Mayor and Council Person Stanczyk, wherein the 900 number was admittedly arbitrary, there is no mention of that number, nor any mathematical ***26** calculation from which it could have been derived, contained in either the record or transcript preceding the adoption of the Resolution. Neither the testimony of Mr. Alvarez, nor of any of the individuals living in the neighborhood surrounding the school, provides a competent substantial basis for the 900 student cap on enrollment. Accordingly,

> this Court holds that the 900 student cap is not supported by competent substantial evidence. For the reasons set forth above, the provisions contained in Resolution 2010–48 relating to the ... 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision.

Palmer Trinity Private Sch., Inc., 18 Fla. L. Weekly Supp. at 342a*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a (some emphasis added).

Palmetto Bay correctly sought no second tier review of this decision. Palmetto Bay applies the Miami–Dade County Zoning Code to special exception requests. *See Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay,* 31 So.3d 260, 263 n. 2 (Fla. 3d DCA 2010) ("The Village's Planning and Zoning Powers Ordinance states that '[c]hapter 33 of the Miami–Dade Code entitled 'Zoning' ... shall be applied within the municipal boundaries of the Village of Palmetto Bay....' *See* § 31–1(d) of the Village of Palmetto Bay Planning and Zoning Powers Ordinance."). In *Metropolitan Dade County v. Fuller,* 497 So.2d 1322, 1322 (Fla. 3d DCA 1986), this court confirmed that under the Miami–Dade County Code a special exception request "is subject only to the test enunciated in section 33–311(d) [now section 33–311(A)(3)] of the [Miami–Dade County] Code, which is essentially whether the proposal serves the public interest." (Footnote omitted). An application satisfies this requirement once consistency with a zoning authority's land use plan and code criteria have been demonstrated. Once this burden is met, "the application must be granted unless the opposition carries its burden, which is to demonstrate [by competent, substantial evidence] that the applicant's request[does] not meet the standards and are in fact adverse to the public interest." *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *see Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' " (quoting *Irvine v. Duval Cnty. Planning Comm'n,* 466 So.2d 357, 364 (Fla. 1st DCA 1985) (Zehmer, J., dissenting))); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.,* 857 So.2d 202, 204 (Fla. 3d DCA 2003) ("Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meet code criteria, the decision-making body may deny the request only where 'the party opposing the application ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria.' " (quoting *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1092 (Fla.2000))).

There is no dispute that Palmer Trinity met its burden of demonstrating compliance with the standards imposed by the Miami–Dade County Zoning Code for securing a special exception. As the circuit court noted in its opinion, prior to the public hearing on Palmer Trinity's special exception request, Palmetto Bay's professional ***27** staff reviewed Palmer Trinity's request for compliance and "specifically recommended ... Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150." *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a. This recommendation came after a thorough thirty-nine page review of all applicable criteria and constitutes competent substantial evidence establishing that the request serves the public interest. *See City of Hialeah Gardens,* 857 So.2d at 205 (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co.,* 547 So.2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller,* 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence); *Dade Cnty. v. United Res., Inc.,* 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff "is probative").

Based on this record, the burden shifted to the opponents of the request to introduce competent substantial evidence demonstrating that the application for 1150 students "did not meet [the] standards and was, in fact, adverse to the public interest." *Irvine,* 495 So.2d at 167; *City of Hialeah Gardens,* 857 So.2d at 206. As the circuit court expressly found, no such evidence was adduced. In fact, the circuit court concluded that the testimony of the only competent witness to testify in opposition to the request, Mr. Alvarez, did not testify as to whether the 1150 student request was adverse to the

public interest. Rather he testified only that he believed that the "***use*** " of the property as a school was not consistent with Palmetto Bay's comprehensive plan and that the school would increase the population density of the parcel involved above that allowed. Use of the property for a school is not at issue here since no one claims it is not a permitted use. And in light of Council Member Feller and Mayor Flinn's concession at the commission hearing that the regulations governing this parcel would allow up to 2100 students, it is clear that the circuit court's conclusion that his testimony was not substantially related to the issue was correct.

Based on this record, the circuit court clearly was correct in striking the 900 student "cap." Under our ruling in *Jesus Fellowship, Inc.*, 752 So.2d at 711, it also had no choice but to strike the restriction, leaving intact Palmer Trinity's entitlement to a special exception allowing 1150 students. There, as here, an applicant (a church) sought a special exception for a private school and a day care center for a specific number of students (524) but was restricted by the county commission to fewer students (150). There, as here, professional staff recommended approval of the request. There, as here, neighbors and a professional engineer appeared to oppose the request. There, as here, the opposition witness testimony, proved not to be competent substantial evidence on the issue of the church's student request. There, as here, removal of the unsupported condition mandated approval of the evidentiary-supported request:

> In summary, the Church presented sufficient evidence to carry its burden; the objectors presented only testimony and documents that support the Church's application or which the courts have held not to be evidence. When the circuit court decided there was ***evidence*** (substantial, competent) to support the ***28** Commission's denial of the application, it failed to apply the correct law as to the granting or denial of special exceptions and unusual uses, and failed to apply the correct law as to what constitutes competent evidence in such cases. As a result we quash the circuit court's order and remand the case with instructions to the circuit court to direct the Commission to remove the limitation to K–6 and 150 students and to grant the application with grades K–12 and 524 students.

Id. at 711 (footnote omitted).

The special exception for 1150 students should, therefore, have been summarily enforced by Palmetto Bay. Despite the circuit court's citation to and reliance on *Jesus Fellowship,* which required approval of Palmer Trinity's 1150 student request, and its mandate, Palmetto Bay remained intransigent. On remand, Palmetto Bay decided to reconsider the application from scratch. On April 12, 2011, Palmer Trinity sought to preclude such action, filing a motion to enforce mandate in the circuit court. On May 5, 2011, the same three-judge circuit court panel which heard the underlying appeal granted the motion. Palmetto Bay then sought clarification of the order enforcing the mandate, contending that it believed that it was being ordered to "hold a public hearing, the record of which shall include but not be limited to all the evidence already in the record for a final decision as to the entire application—not just as to the two items litigated on appeal." On June 1, 2011, the same three-judge circuit court panel rejected this notion ordering Palmetto Bay to remove the "cap" on the number of students requested and to take no further action inconsistent with its May 5, 2011 order and its present order, effectively precluding additional hearings and mandating approval of the 1150 request. This did not happen.

Again on July 12, 2011, Palmer Trinity filed a Renewed Emergency Motion to Enforce Mandate or Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of [the] Court, wherein it argued that Palmetto Bay intended to violate the court's orders at a public hearing scheduled for July 19, 2011. That emergency motion was denied. On July 19, 2011, Palmetto Bay held a public hearing and adopted Resolution 2011–53, amending and incorporating Resolution 2010–48, interpreting each of the circuit court's prior determinations and rulings to mean that since Palmetto Bay had rejected the 1150 student enrollment requested in favor of a 900 student "cap," and that cap had now been rejected, no increase in student enrollment above the existing 600 students would be allowed. Thereafter, on August 26, 2011, Palmer Trinity filed the Motion to Enforce Mandate, or in the Alternative for Extraordinary Relief, which resulted in the December 22, 2011 order here under review. In that order, the same three-judge panel of the Eleventh Judicial Circuit Court Appellate Division once again

ordered enforcement of its mandate in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. This time the court clearly stated that "in order to strictly adhere to the Mandate's plain language, the Village must remove or otherwise render ineffectual all of the provisions in the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900." This conclusion is expressly predicated on the court's extensive quotation from and reliance on *Jesus Fellowship;* on its conclusion that there is no dispute that Palmer Trinity's request for 1150 students was "approved ... with a condition that capped student enrollment at 900"; and that removal of the cap entitled Palmer Trinity to approval of its 1150 student request. ***29** These conclusions are fully supported by the record and applicable law and do not in any manner depart from the essential requirements of the law.

Conclusion

In sum, Palmer Trinity sought a special exception which would permit expanding its student enrollment to 1150. At the public hearing which followed, Palmer Trinity adduced competent substantial evidence to support its 1150 student request; no competent substantial evidence was submitted to support either denying or limiting the school's enrollment request. Palmetto Bay nonetheless denied the 1150 number, lowered the acceptable number to 900 students, and granted the exception. Based on its finding of the lack of competent substantial evidence supporting a "cap" below 1150, the circuit court appellate division ordered the limitation deleted. Palmetto Bay claimed that its compliance with that ruling required only that it delete the 900 student figure, making it free to leave its "denial" of special exception for 1150 students in place. A simple straight forward reading of the circuit court's ruling contradicts that conclusion. When Palmetto Bay amended Resolution 2010–48, on July 19, 2011, that resolution should have reflected acceptance and incorporation of the circuit court's decision rejecting any "cap" below 1150. In other words, Palmetto Bay is wrong in arguing its denial of the special exception for 1150 students could remain in place after the circuit court's February 11, 2011 ruling. Palmetto Bay's denial of the special exception for 1150 students should have been excised from its Amended Resolution, just as was the 900 student "cap." Any other interpretation of the circuit court's February 11, 2011 ruling amounted to wishful thinking at best, and more likely a willful disobedience of that court's instructions. The circuit court's order enforcing its earlier mandate was therefore entirely proper and in no way justifies the issuance of the writ sought herein.

For these reasons, the petition for writ of certiorari is denied.

SCHWARTZ, Senior Judge (concurring).

Although I had (and have) some misgivings about the posture in which this case presents itself, Chief Judge Wells' opinion has convinced me that, as often happens, any departure from the procedural niceties which may have occurred makes no difference. As her opinion demonstrates, on the basis of what was presented to the Commission, it had no option under the law but to grant the special exception in full. *See Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[W]e agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' "); *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *Metro. Dade Cnty. v. Fuller,* 497 So.2d 1322 (Fla. 3d DCA 1986).

In essence, therefore, everything in the circuitous legal journey which followed was an exercise in superfluousness and futility. Since the effect of the order now under review, however fashioned, was to require what was required from the beginning, I concur in denying the petition.

All Citations

128 So.3d 19, 37 Fla. L. Weekly D1599

Footnotes

1 The order On Motion to Enforce Mandate or in the Alternative, for Extraordinary Relief was issued on December 22, 2011.

End of Document

128 So.3d 19
District Court of Appeal of Florida,
Third District.

The VILLAGE OF PALMETTO BAY, Florida, Petitioner,
v.
PALMER TRINITY PRIVATE SCHOOL, INC., Respondent.

No. 3D12–190.
|
July 5, 2012.

Synopsis

Background: Village filed petition for writ of certiorari seeking review of an order of the Circuit Court, Miami-Dade County, Appellate Division, Joel H. Brown, C.J., Joseph Farina and Norma Lindsey, JJ., granting private school's motion to enforce a prior order striking portions of a village zoning resolution.

The District Court of Appeal, Wells, C.J., held that circuit court's appellate division did not depart from the essential requirements of the law by ordering village to comply with court's previous order.

Petition denied.

Schwartz, Senior Judge, filed concurring opinion.

Attorneys and Law Firms

***20** White & Case, Raoul G. Cantero, Evan M. Goldenberg and Elizabeth Coppolecchia; Figueredo & Boutsis and Eve A. Boutsis, for petitioner; W. Tucker Gibbs, for Intervenor, Concerned Citizens of Old Cutler.

Bilzin Sumberg Baena Price & Axelrod, Stanley B. Price, Eileen Ball Mehta and Eric Singer, for respondent.

Before WELLS, C.J., and LAGOA, J., and SCHWARTZ, Senior Judge.

Opinion

WELLS, Chief Judge.

The Village of Palmetto Bay petitions for certiorari relief from an order of the circuit court appellate division granting a motion to enforce its mandate in *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011)*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011). [1] Both Palmetto Bay and Palmer Trinity maintain, and we agree, that this order is subject to "first tier" certiorari review. *See Ramirez v. United Auto. Ins. Co.,* 67 So.3d 1174, 1175–76 (Fla. 3d DCA 2011) (confirming that a "first ruling on [a] question" by an appellate division of a circuit court is properly reviewed by the district court as a "first tier" appellate review); *see also City of Indian Rocks Beach v. Tomalo,* 834 So.2d 341, 341 (Fla. 2d DCA 2003) (treating a petition for second tier certiorari review of an order enforcing a circuit court appellate division mandate as an appeal).

To justify certiorari relief, a petition must demonstrate a departure from the essential requirements of law resulting in a material injury that cannot be remedied on appeal. *See Fortune Int'l Hospitality, LLC v. M Resort Residences Condo. Ass'n,* 77 So.3d 741, 743 (Fla. 3d DCA 2011) (citing *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987)). A departure from the essential requirements of the law that will justify issuance of this extraordinary writ requires significantly more than a demonstration of legal error:

> [T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review ***only*** when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885, 889 (Fla.2003) (citing *Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 682 (Fla.2000)). ***21** As Chief Justice Boyd made clear in *Jones v. State,* 477 So.2d 566, 569 (Fla.1985) (Boyd, C.J., concurring specially):

> The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

See also Haines City Cmty. Dev. v. Heggs, 658 So.2d 523, 527–28 (Fla.1995) (observing that Chief Justice Boyd in *Jones* had "captured the essence of the standard" for determining whether a departure from the essential requirements of the law existed).

Under these parameters, the order of the circuit court appellate division granting Palmer Trinity's motion to enforce its prior mandate neither merits nor permits issuance of the writ sought. The circuit court appellate division did no more than order compliance with its now long final decision in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. There is no question that it is within the circuit court's authority to enforce its decisions and orders. *See Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp.,* 328 So.2d 825, 827 (Fla.1975) (observing generally that a court may "take any steps or issue any appropriate writ necessary to give effect to its judgment"). The order itself does not then constitute a departure from the essential requirements of the law.

The compliance mandated by the order also does not constitute a departure from the essential requirements of the law. The order (or opinion) being enforced here struck portions of a zoning resolution addressing Palmer Trinity's special exception request to expand its school and to increase its student enrollment from 600 to 1150 students. The resolution being reviewed "approved" Palmer Trinity's special exception request for an increase in its student enrollment to 1150 but then limited that approval to permit only 900 students:

> ***Section 4.*** *Order.*
>
> A. ***The Council,*** pursuant to section 33–311(A)(7), and 33–151, et seq., of the Miami Dade County Code as applied by the Village, ***approves with conditions*** ... ***Applicants request[ ] for a special exception*** ... ***for*** ... [an increase in] ***number of students [to 1150] as to the plans entitled*** Palmer Trinity School Campus Master Plan....
>
> B. The Village Council ***conditions*** ... ***the special exception as follows:***
>
> ...
>
> 3. The request to increase the non-public school number of students to *1150 is denied.* The condition to allow expansion to 900 students is granted.

(Resolution No. 2010–48 adopted May 17, 2010) (some emphasis added).

In a thorough and well reasoned opinion on first tier certiorari review, the appellate division of the circuit court struck the 900 student condition or "cap" leaving approval of the 1150 special exception request standing:

> (PER CURIAM) This appeal arises out of the adoption of Zoning Resolution No. 2010–48 (the "Resolution") by the Village of Palmetto Bay (the "Village"). Petitioner, Palmer Trinity Private School, Inc. ("Palmer Trinity"), seeks by way of certiorari review to quash and remove two provisions incorporated into Condition 4.4 of the Resolution, specifically: (1) the cap on the permissible number of students at the school at 900; and (2) the imposition of a thirty-year (30) prohibition on the filing of any applications ***22** for development approvals on the school's 55–acre site. We have jurisdiction pursuant to Article V, Section 5, Florida Constitution, and Rules 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.
>
> Palmer Trinity argues that the above provisions are unlawful and should be quashed and removed from the Resolution in that: (1) the cap on the number of students permitted at the school was arbitrary, not supported by competent substantial evidence, and departed from the essential requirements of law; and (2) the thirty-year prohibition on future development applications violated Palmer Trinity's due process rights because it constituted a de facto moratorium for which neither notice nor opportunity to be heard was given, that the Village departed from the essential requirements of law in approving the

prohibition, and that the Village failed to support the thirty-year prohibition with substantial competent evidence.

The Village disagrees and seeks to dismiss Palmer Trinity's Petition. For the reasons set forth below, we QUASH the two provisions contained in the Resolution, as set forth above, adopted by the Village and REMAND to the Village with instructions to conduct further proceedings on this matter in accordance with this decision.

Procedural and Factual Background

Palmer Trinity has owned and operated a private school on 22.5 acres of land [now] located within the Village ("Parcel A") for almost five decades. In 1988, Palmer Trinity applied for and obtained approval of a modification of its site plan for the purpose of increasing its enrollment to 600 students. In 2003, Palmer Trinity purchased an additional 32.5 acres also located within the Village ("Parcel B") that was zoned half Agricultural ("AU") and half Estate Single Family per Five Acres ("EU–2"). Parcel B had an Estate Density Residential ("EDR") future land use designation, allowing for less than 2.5 dwelling units per acre. In 2006, Palmer Trinity filed an application (the "Application") under the Miami–Dade County Code to rezone Parcel B to Estate Modified Single Family allowing for one home per 15,000 square feet ("EU–M"). As part of the Application, Palmer Trinity also sought a special exception to increase the student enrollment from 600 to 1400 and certain variances concerning further development on both Parcel A and B. As a result of the incorporation of the Village as a municipality, the Application was transferred from the County to the Village.

In 2008, the Village held a hearing on the Application. Consideration of the rezoning request was bifurcated from the other requests in the Application. At the 2008 hearing, the Village adopted Ordinance 08–06 denying the requested rezoning. Palmer Trinity appealed this denial in a petition for certiorari review to the Circuit Court, acting in its appellate capacity, which upheld, without opinion, the Village's decision. Palmer Trinity then took an appeal to the Third District Court of Appeal which reversed the Circuit Court, thereby overturning the Village's denial of the rezoning request. *See* *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 31 So.3d 260 (Fla. 3d DCA 2010) ("*Palmer I* ").

After the Third District issued the decision in *Palmer I,* Palmer Trinity revised its plans, eliminating some of the previously requested non-use variances and reducing its requested student enrollment from 1400 to 1150. Palmer Trinity also voluntarily offered to expand its ***23** student population from 600 to 1150 in gradual increments over a fifteen year period. In addition, the proposed site plan was modified to reflect the reduced student enrollment request of 1150, the proposed new development on Parcel B was redesigned and relocated toward the center, setbacks were increased and additional landscaping was added.

On April 28, 2010, the Village conducted a public hearing on the first reading of the rezoning component of the Application. On May 4, 2010, the Village conducted a public hearing on second reading of the rezoning request and approved the rezoning by adopting Ordinance 2010–09. Also at that hearing, the Village heard the request for the special exceptions and site plan modification components of the Application.

Prior to the hearing, the professional staff of the Village (the "Village Staff") reviewed the Application and recommended approval with certain conditions (the "Recommendation"). The ... ***Village Staff specifically recommended that Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150 be approved.*** The 900 number, which the Village later adopted, was not mentioned in the Recommendation.

....

At the May 4, 2010 hearing, the Village's Planning Director (the "Director") presented the Recommendation.... With respect to the 1150 student cap on enrollment, the ***Village's expert traffic consultant, Joseph Corradino, reviewed the traffic study included in Palmer Trinity's Application and recommended approval, finding that, based on 1150 students,*** the Application satisfied the relevant traffic level of service standards.

....

The Village Attorney presented an Overview of Zoning Law as a guide to the Village Council. The County Manager also engaged special council who addressed the Village Council regarding their duties and obligations

as quasi-judicial officers. The attorney for Concerned Citizens of Old Cutler, Inc. ("CCOCI") and Betty Ingram, Intervenors, presented argument and testimony from several individuals and introduced, Mr. Mark Alvarez, a planner, as an expert. Other individual witnesses spoke both for and against the Application. The Village Council then allowed Palmer Trinity an opportunity for rebuttal.

At the conclusion of the evidentiary portion of the hearing, the Village Council began its deliberations. Several amendments to the conditions recommended by the Village Staff were made. ***Council Person Stanczyk made a motion to reduce the number of students permitted to 900. This was the first time the number 900 was ever mentioned at the public hearing or in the entire record preceding the public hearing.*** Thereafter, the Mayor and Council Person Stanczyk had a brief discussion as to whether the 900 number was arbitrary. At the conclusion of the hearing on May 4, 2010, the Village adopted the Resolution with conditions, including the reduction in the number of students from 1150 to 900, with Council Member Stanczyk voting against. The only modification to the language of the version of Condition 4.4 contained in the Recommendation to the language in the version of Condition 4.4, as included in the Resolution, was the reduction in the number of students permitted from 1150 to 900....

Subsequent to the Village's adoption of the Resolution, Palmer Trinity filed its ***24** timely Petition to invoke this Court's jurisdiction.

Conclusions of Law

First tier certiorari review of a quasi-judicial zoning decision, such as the Resolution at issue here, is a matter of right. *Miami–Dade County v. Omnipoint Holdings, Inc.,* 863 So.2d 195, 198 (Fla.2003). A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Id.* at 199.

B. The 900 Student Cap on Enrollment

Palmer Trinity argues that the 900 student cap contained in Condition 4.4 of the Resolution is not supported by competent substantial evidence and constitutes a departure from the essential requirements of law. We agree. The record contains no mention of the 900 number at the May 4, 2010 hearing until after the close of public comment when the Mayor, Council, and Village Counsel had the following exchange:

COUNCIL MEMBER STANCZYK: Yeah and I'm having a little trouble again. The original student number that was listed as a recommendation was 1150, and I would like to reduce it to 900, staged incrementally over the entire term of the project. I'd like to make that as a motion.

MAYOR FLINN: That's a tough one. I mean, I don't know how we can just arbitrarily do that, but—

COUNCIL MEMBER STANCZYK: Well, 1150 was an arbitrary number.

MAYOR FLINN: Well, 1150 is what they voluntarily dropped to, but—

COUNCIL MEMBER STANCZYK: Well—

MAYOR FLINN: But, anyway, is there a second for that?

VICE MAYOR PARISER: I'll second it.

MAYOR FLINN: All right, it's been seconded. Any discussions on it?

COUNCIL MEMBER FELLER: Read the motion.

MAYOR FLINN: Reduce to 900 students.

COUNCIL MEMBER FELLER: In discussion by—I had gotten a number, by state number or by density or some numbers. Theoretically, what is the maximum the school would be allowed to by the total acreage? Is there such a thing, Eve?

MS. BOUTSIS: Under the special exception process, they have to meet certain numbers. The answer is over 2,000.

COUNCIL MEMBER FELLER: It's over 2,000.

> MAYOR FLINN: I think it was 2100 at one point. All right all in favor indicate by saying aye.
>
> COUNCIL MEMBERS: Aye.
>
> MAYOR FLINN: Any opposed?
>
> COUNCIL MEMBER FELLER: Nay.
>
> COUNCIL MEMBER TENDRICH: Nay.
>
> MAYOR FLINN: Three/two. All right next item.

See Transcript of May 4, 2010, Hearing at pp. 297:16–299:12.

The Village relies upon the testimony of Mr. Mark Alvarez, the planner retained by the Intervenors, and the comments by neighboring residents with respect to traffic and noise. The only specific testimony ***25** offered by Mr. Alvarez' [sic] that could arguably support the Village's position is his statement that "[t]he school, and what I'm going to point out, is I believe that the use, as a school, is not consistent with what the Village's comprehensive plan says." *See* May 4, 2010 Hearing Transcript at p. 168. He further testified that school would be "increasing the population density of Parcel B well above "what's expected for that zoning category." *Id.* at 183:7–17. Palmer Trinity contends that Mr. Alvarez' testimony does meet the standard for competent substantial evidence.

The Florida Supreme Court has defined competent substantial evidence as follows:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial evidence should also be 'competent.'

De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1957).

An applicant seeking a special exception must demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. *See* *Jesus Fellowship v. Miami–Dade County, Florida,* 752 So.2d 708, 710.[sic] (Fla. 3d DCA 2000). If an applicant meets this burden, then the request must be granted unless the opponent carries its burden to demonstrate that the applicant's request does not meet the standards and are in fact adverse to the public interest. *Id.*

The facts herein are analogous to those presented in *Jesus Fellowship.* In that case, the Third District quashed a circuit court decision which affirmed a decision of the Miami–Dade County Commission denying a portion of a church's zoning application. In the zoning application at issue therein, the church sought to rezone land in a residential area to permit expansion of the church's religious facilities and to permit a private school and day care center. Although the County Staff had recommended approval of 524 students, the Commission approved the rezoning but limited the number of students to 150 as a result of a "suggestion" by the opponents' attorney after the close of the evidentiary hearing.

Here, as in *Jesus Fellowship,* the first mention of even the reduction in the number of students permitted occurred after the close of the evidentiary portion of the public hearing. And like the "suggestion" by the opponent's counsel in *Jesus Fellowship,* the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid. Other than the brief discussion between the Mayor and Council Person Stanczyk, wherein the 900 number was admittedly arbitrary, there is no mention of that number, nor any mathematical ***26** calculation from which it could have been derived, contained in either the record or transcript preceding the adoption of the Resolution. Neither the testimony of Mr. Alvarez, nor of any of the individuals living in the neighborhood surrounding the school, provides a competent substantial basis for the 900 student cap on enrollment. Accordingly,

> this Court holds that the 900 student cap is not supported by competent substantial evidence. For the reasons set forth above, the provisions contained in Resolution 2010–48 relating to the ... 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision.
>
> *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a (some emphasis added).

Palmetto Bay correctly sought no second tier review of this decision. Palmetto Bay applies the Miami–Dade County Zoning Code to special exception requests. *See* *Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay,* 31 So.3d 260, 263 n. 2 (Fla. 3d DCA 2010) ("The Village's Planning and Zoning Powers Ordinance states that '[c]hapter 33 of the Miami–Dade Code entitled 'Zoning' ... shall be applied within the municipal boundaries of the Village of Palmetto Bay....' *See* § 31–1(d) of the Village of Palmetto Bay Planning and Zoning Powers Ordinance."). In *Metropolitan Dade County v. Fuller,* 497 So.2d 1322, 1322 (Fla. 3d DCA 1986), this court confirmed that under the Miami–Dade County Code a special exception request "is subject only to the test enunciated in section 33–311(d) [now section 33–311(A)(3)] of the [Miami–Dade County] Code, which is essentially whether the proposal serves the public interest." (Footnote omitted). An application satisfies this requirement once consistency with a zoning authority's land use plan and code criteria have been demonstrated. Once this burden is met, "the application must be granted unless the opposition carries its burden, which is to demonstrate [by competent, substantial evidence] that the applicant's request[does] not meet the standards and are in fact adverse to the public interest." *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *see Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' " (quoting *Irvine v. Duval Cnty. Planning Comm'n,* 466 So.2d 357, 364 (Fla. 1st DCA 1985) (Zehmer, J., dissenting))); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.,* 857 So.2d 202, 204 (Fla. 3d DCA 2003) ("Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meet code criteria, the decision-making body may deny the request only where 'the party opposing the application ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria.' " (quoting *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1092 (Fla.2000))).

There is no dispute that Palmer Trinity met its burden of demonstrating compliance with the standards imposed by the Miami–Dade County Zoning Code for securing a special exception. As the circuit court noted in its opinion, prior to the public hearing on Palmer Trinity's special exception request, Palmetto Bay's professional ***27** staff reviewed Palmer Trinity's request for compliance and "specifically recommended ... Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150." *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a. This recommendation came after a thorough thirty-nine page review of all applicable criteria and constitutes competent substantial evidence establishing that the request serves the public interest. *See City of Hialeah Gardens,* 857 So.2d at 205 (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co.,* 547 So.2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller,* 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence); *Dade Cnty. v. United Res., Inc.,* 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff "is probative").

Based on this record, the burden shifted to the opponents of the request to introduce competent substantial evidence demonstrating that the application for 1150 students "did not meet [the] standards and was, in fact, adverse to the public interest." *Irvine,* 495 So.2d at 167; *City of Hialeah Gardens,* 857 So.2d at 206. As the circuit court expressly found, no such evidence was adduced. In fact, the circuit court concluded that the testimony of the only competent witness to testify in opposition to the request, Mr. Alvarez, did not testify as to whether the 1150 student request was adverse to the

public interest. Rather he testified only that he believed that the "***use*** " of the property as a school was not consistent with Palmetto Bay's comprehensive plan and that the school would increase the population density of the parcel involved above that allowed. Use of the property for a school is not at issue here since no one claims it is not a permitted use. And in light of Council Member Feller and Mayor Flinn's concession at the commission hearing that the regulations governing this parcel would allow up to 2100 students, it is clear that the circuit court's conclusion that his testimony was not substantially related to the issue was correct.

Based on this record, the circuit court clearly was correct in striking the 900 student "cap." Under our ruling in *Jesus Fellowship, Inc.*, 752 So.2d at 711, it also had no choice but to strike the restriction, leaving intact Palmer Trinity's entitlement to a special exception allowing 1150 students. There, as here, an applicant (a church) sought a special exception for a private school and a day care center for a specific number of students (524) but was restricted by the county commission to fewer students (150). There, as here, professional staff recommended approval of the request. There, as here, neighbors and a professional engineer appeared to oppose the request. There, as here, the opposition witness testimony, proved not to be competent substantial evidence on the issue of the church's student request. There, as here, removal of the unsupported condition mandated approval of the evidentiary-supported request:

> In summary, the Church presented sufficient evidence to carry its burden; the objectors presented only testimony and documents that support the Church's application or which the courts have held not to be evidence. When the circuit court decided there was ***evidence*** (substantial, competent) to support the ***28** Commission's denial of the application, it failed to apply the correct law as to the granting or denial of special exceptions and unusual uses, and failed to apply the correct law as to what constitutes competent evidence in such cases. As a result we quash the circuit court's order and remand the case with instructions to the circuit court to direct the Commission to remove the limitation to K–6 and 150 students and to grant the application with grades K–12 and 524 students.

Id. at 711 (footnote omitted).

The special exception for 1150 students should, therefore, have been summarily enforced by Palmetto Bay. Despite the circuit court's citation to and reliance on *Jesus Fellowship,* which required approval of Palmer Trinity's 1150 student request, and its mandate, Palmetto Bay remained intransigent. On remand, Palmetto Bay decided to reconsider the application from scratch. On April 12, 2011, Palmer Trinity sought to preclude such action, filing a motion to enforce mandate in the circuit court. On May 5, 2011, the same three-judge circuit court panel which heard the underlying appeal granted the motion. Palmetto Bay then sought clarification of the order enforcing the mandate, contending that it believed that it was being ordered to "hold a public hearing, the record of which shall include but not be limited to all the evidence already in the record for a final decision as to the entire application—not just as to the two items litigated on appeal." On June 1, 2011, the same three-judge circuit court panel rejected this notion ordering Palmetto Bay to remove the "cap" on the number of students requested and to take no further action inconsistent with its May 5, 2011 order and its present order, effectively precluding additional hearings and mandating approval of the 1150 request. This did not happen.

Again on July 12, 2011, Palmer Trinity filed a Renewed Emergency Motion to Enforce Mandate or Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of [the] Court, wherein it argued that Palmetto Bay intended to violate the court's orders at a public hearing scheduled for July 19, 2011. That emergency motion was denied. On July 19, 2011, Palmetto Bay held a public hearing and adopted Resolution 2011–53, amending and incorporating Resolution 2010–48, interpreting each of the circuit court's prior determinations and rulings to mean that since Palmetto Bay had rejected the 1150 student enrollment requested in favor of a 900 student "cap," and that cap had now been rejected, no increase in student enrollment above the existing 600 students would be allowed. Thereafter, on August 26, 2011, Palmer Trinity filed the Motion to Enforce Mandate, or in the Alternative for Extraordinary Relief, which resulted in the December 22, 2011 order here under review. In that order, the same three-judge panel of the Eleventh Judicial Circuit Court Appellate Division once again

ordered enforcement of its mandate in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. This time the court clearly stated that "in order to strictly adhere to the Mandate's plain language, the Village must remove or otherwise render ineffectual all of the provisions in the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900." This conclusion is expressly predicated on the court's extensive quotation from and reliance on *Jesus Fellowship;* on its conclusion that there is no dispute that Palmer Trinity's request for 1150 students was "approved ... with a condition that capped student enrollment at 900"; and that removal of the cap entitled Palmer Trinity to approval of its 1150 student request. ***29** These conclusions are fully supported by the record and applicable law and do not in any manner depart from the essential requirements of the law.

Conclusion

In sum, Palmer Trinity sought a special exception which would permit expanding its student enrollment to 1150. At the public hearing which followed, Palmer Trinity adduced competent substantial evidence to support its 1150 student request; no competent substantial evidence was submitted to support either denying or limiting the school's enrollment request. Palmetto Bay nonetheless denied the 1150 number, lowered the acceptable number to 900 students, and granted the exception. Based on its finding of the lack of competent substantial evidence supporting a "cap" below 1150, the circuit court appellate division ordered the limitation deleted. Palmetto Bay claimed that its compliance with that ruling required only that it delete the 900 student figure, making it free to leave its "denial" of special exception for 1150 students in place. A simple straight forward reading of the circuit court's ruling contradicts that conclusion. When Palmetto Bay amended Resolution 2010–48, on July 19, 2011, that resolution should have reflected acceptance and incorporation of the circuit court's decision rejecting any "cap" below 1150. In other words, Palmetto Bay is wrong in arguing its denial of the special exception for 1150 students could remain in place after the circuit court's February 11, 2011 ruling. Palmetto Bay's denial of the special exception for 1150 students should have been excised from its Amended Resolution, just as was the 900 student "cap." Any other interpretation of the circuit court's February 11, 2011 ruling amounted to wishful thinking at best, and more likely a willful disobedience of that court's instructions. The circuit court's order enforcing its earlier mandate was therefore entirely proper and in no way justifies the issuance of the writ sought herein.

For these reasons, the petition for writ of certiorari is denied.

SCHWARTZ, Senior Judge (concurring).

Although I had (and have) some misgivings about the posture in which this case presents itself, Chief Judge Wells' opinion has convinced me that, as often happens, any departure from the procedural niceties which may have occurred makes no difference. As her opinion demonstrates, on the basis of what was presented to the Commission, it had no option under the law but to grant the special exception in full. *See Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[W]e agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' "); *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *Metro. Dade Cnty. v. Fuller,* 497 So.2d 1322 (Fla. 3d DCA 1986).

In essence, therefore, everything in the circuitous legal journey which followed was an exercise in superfluousness and futility. Since the effect of the order now under review, however fashioned, was to require what was required from the beginning, I concur in denying the petition.

All Citations

128 So.3d 19, 37 Fla. L. Weekly D1599

Footnotes

1 The order On Motion to Enforce Mandate or in the Alternative, for Extraordinary Relief was issued on December 22, 2011.

End of Document

128 So.3d 19
District Court of Appeal of Florida,
Third District.

The VILLAGE OF PALMETTO BAY, Florida, Petitioner,
v.
PALMER TRINITY PRIVATE SCHOOL, INC., Respondent.

No. 3D12–190.
|
July 5, 2012.

Synopsis

Background: Village filed petition for writ of certiorari seeking review of an order of the Circuit Court, Miami-Dade County, Appellate Division, Joel H. Brown, C.J., Joseph Farina and Norma Lindsey, JJ., granting private school's motion to enforce a prior order striking portions of a village zoning resolution.

The District Court of Appeal, Wells, C.J., held that circuit court's appellate division did not depart from the essential requirements of the law by ordering village to comply with court's previous order.

Petition denied.

Schwartz, Senior Judge, filed concurring opinion.

Attorneys and Law Firms

***20** White & Case, Raoul G. Cantero, Evan M. Goldenberg and Elizabeth Coppolecchia; Figueredo & Boutsis and Eve A. Boutsis, for petitioner; W. Tucker Gibbs, for Intervenor, Concerned Citizens of Old Cutler.

Bilzin Sumberg Baena Price & Axelrod, Stanley B. Price, Eileen Ball Mehta and Eric Singer, for respondent.

Before WELLS, C.J., and LAGOA, J., and SCHWARTZ, Senior Judge.

Opinion

WELLS, Chief Judge.

The Village of Palmetto Bay petitions for certiorari relief from an order of the circuit court appellate division granting a motion to enforce its mandate in *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011)*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 18 Fla. L. Weekly Supp. 342a (Fla. 11th Jud.Cir.Ct. Feb. 11, 2011).[1] Both Palmetto Bay and Palmer Trinity maintain, and we agree, that this order is subject to "first tier" certiorari review. *See Ramirez v. United Auto. Ins. Co.,* 67 So.3d 1174, 1175–76 (Fla. 3d DCA 2011) (confirming that a "first ruling on [a] question" by an appellate division of a circuit court is properly reviewed by the district court as a "first tier" appellate review); *see also City of Indian Rocks Beach v. Tomalo,* 834 So.2d 341, 341 (Fla. 2d DCA 2003) (treating a petition for second tier certiorari review of an order enforcing a circuit court appellate division mandate as an appeal).

To justify certiorari relief, a petition must demonstrate a departure from the essential requirements of law resulting in a material injury that cannot be remedied on appeal. *See Fortune Int'l Hospitality, LLC v. M Resort Residences Condo. Ass'n,* 77 So.3d 741, 743 (Fla. 3d DCA 2011) (citing *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987)). A departure from the essential requirements of the law that will justify issuance of this extraordinary writ requires significantly more than a demonstration of legal error:

> [T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review ***only*** when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885, 889 (Fla.2003) (citing *Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 682 (Fla.2000)). ***21** As Chief Justice Boyd made clear in *Jones v. State,* 477 So.2d 566, 569 (Fla.1985) (Boyd, C.J., concurring specially):

> The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

See also Haines City Cmty. Dev. v. Heggs, 658 So.2d 523, 527–28 (Fla.1995) (observing that Chief Justice Boyd in *Jones* had "captured the essence of the standard" for determining whether a departure from the essential requirements of the law existed).

Under these parameters, the order of the circuit court appellate division granting Palmer Trinity's motion to enforce its prior mandate neither merits nor permits issuance of the writ sought. The circuit court appellate division did no more than order compliance with its now long final decision in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. There is no question that it is within the circuit court's authority to enforce its decisions and orders. *See Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp.,* 328 So.2d 825, 827 (Fla.1975) (observing generally that a court may "take any steps or issue any appropriate writ necessary to give effect to its judgment"). The order itself does not then constitute a departure from the essential requirements of the law.

The compliance mandated by the order also does not constitute a departure from the essential requirements of the law. The order (or opinion) being enforced here struck portions of a zoning resolution addressing Palmer Trinity's special exception request to expand its school and to increase its student enrollment from 600 to 1150 students. The resolution being reviewed "approved" Palmer Trinity's special exception request for an increase in its student enrollment to 1150 but then limited that approval to permit only 900 students:

> ***Section 4.*** *Order.*
>
> A. ***The Council,*** pursuant to section 33–311(A)(7), and 33–151, et seq., of the Miami Dade County Code as applied by the Village, ***approves with conditions*** ... ***Applicants request[ ] for a special exception*** ... ***for*** ... [an increase in] ***number of students [to 1150] as to the plans entitled*** Palmer Trinity School Campus Master Plan....
>
> B. The Village Council ***conditions*** ... ***the special exception as follows:***
>
> ....
>
> 3. The request to increase the non-public school number of students to *1150 is denied.* The condition to allow expansion to 900 students is granted.

(Resolution No. 2010–48 adopted May 17, 2010) (some emphasis added).

In a thorough and well reasoned opinion on first tier certiorari review, the appellate division of the circuit court struck the 900 student condition or "cap" leaving approval of the 1150 special exception request standing:

> (PER CURIAM) This appeal arises out of the adoption of Zoning Resolution No. 2010–48 (the "Resolution") by the Village of Palmetto Bay (the "Village"). Petitioner, Palmer Trinity Private School, Inc. ("Palmer Trinity"), seeks by way of certiorari review to quash and remove two provisions incorporated into Condition 4.4 of the Resolution, specifically: (1) the cap on the permissible number of students at the school at 900; and (2) the imposition of a thirty-year (30) prohibition on the filing of any applications ***22** for development approvals on the school's 55–acre site. We have jurisdiction pursuant to Article V, Section 5, Florida Constitution, and Rules 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.
>
> Palmer Trinity argues that the above provisions are unlawful and should be quashed and removed from the Resolution in that: (1) the cap on the number of students permitted at the school was arbitrary, not supported by competent substantial evidence, and departed from the essential requirements of law; and (2) the thirty-year prohibition on future development applications violated Palmer Trinity's due process rights because it constituted a de facto moratorium for which neither notice nor opportunity to be heard was given, that the Village departed from the essential requirements of law in approving the

prohibition, and that the Village failed to support the thirty-year prohibition with substantial competent evidence.

The Village disagrees and seeks to dismiss Palmer Trinity's Petition. For the reasons set forth below, we QUASH the two provisions contained in the Resolution, as set forth above, adopted by the Village and REMAND to the Village with instructions to conduct further proceedings on this matter in accordance with this decision.

Procedural and Factual Background

Palmer Trinity has owned and operated a private school on 22.5 acres of land [now] located within the Village ("Parcel A") for almost five decades. In 1988, Palmer Trinity applied for and obtained approval of a modification of its site plan for the purpose of increasing its enrollment to 600 students. In 2003, Palmer Trinity purchased an additional 32.5 acres also located within the Village ("Parcel B") that was zoned half Agricultural ("AU") and half Estate Single Family per Five Acres ("EU–2"). Parcel B had an Estate Density Residential ("EDR") future land use designation, allowing for less than 2.5 dwelling units per acre. In 2006, Palmer Trinity filed an application (the "Application") under the Miami–Dade County Code to rezone Parcel B to Estate Modified Single Family allowing for one home per 15,000 square feet ("EU–M"). As part of the Application, Palmer Trinity also sought a special exception to increase the student enrollment from 600 to 1400 and certain variances concerning further development on both Parcel A and B. As a result of the incorporation of the Village as a municipality, the Application was transferred from the County to the Village.

In 2008, the Village held a hearing on the Application. Consideration of the rezoning request was bifurcated from the other requests in the Application. At the 2008 hearing, the Village adopted Ordinance 08–06 denying the requested rezoning. Palmer Trinity appealed this denial in a petition for certiorari review to the Circuit Court, acting in its appellate capacity, which upheld, without opinion, the Village's decision. Palmer Trinity then took an appeal to the Third District Court of Appeal which reversed the Circuit Court, thereby overturning the Village's denial of the rezoning request. *See* *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay,* 31 So.3d 260 (Fla. 3d DCA 2010) ("*Palmer I* ").

After the Third District issued the decision in *Palmer I,* Palmer Trinity revised its plans, eliminating some of the previously requested non-use variances and reducing its requested student enrollment from 1400 to 1150. Palmer Trinity also voluntarily offered to expand its ***23** student population from 600 to 1150 in gradual increments over a fifteen year period. In addition, the proposed site plan was modified to reflect the reduced student enrollment request of 1150, the proposed new development on Parcel B was redesigned and relocated toward the center, setbacks were increased and additional landscaping was added.

On April 28, 2010, the Village conducted a public hearing on the first reading of the rezoning component of the Application. On May 4, 2010, the Village conducted a public hearing on second reading of the rezoning request and approved the rezoning by adopting Ordinance 2010–09. Also at that hearing, the Village heard the request for the special exceptions and site plan modification components of the Application.

Prior to the hearing, the professional staff of the Village (the "Village Staff") reviewed the Application and recommended approval with certain conditions (the "Recommendation"). The ... ***Village Staff specifically recommended that Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150 be approved.*** The 900 number, which the Village later adopted, was not mentioned in the Recommendation.

....

At the May 4, 2010 hearing, the Village's Planning Director (the "Director") presented the Recommendation.... With respect to the 1150 student cap on enrollment, the ***Village's expert traffic consultant, Joseph Corradino, reviewed the traffic study included in Palmer Trinity's Application and recommended approval, finding that, based on 1150 students,*** the Application satisfied the relevant traffic level of service standards.

....

The Village Attorney presented an Overview of Zoning Law as a guide to the Village Council. The County Manager also engaged special council who addressed the Village Council regarding their duties and obligations

as quasi-judicial officers. The attorney for Concerned Citizens of Old Cutler, Inc. ("CCOCI") and Betty Ingram, Intervenors, presented argument and testimony from several individuals and introduced, Mr. Mark Alvarez, a planner, as an expert. Other individual witnesses spoke both for and against the Application. The Village Council then allowed Palmer Trinity an opportunity for rebuttal.

At the conclusion of the evidentiary portion of the hearing, the Village Council began its deliberations. Several amendments to the conditions recommended by the Village Staff were made. ***Council Person Stanczyk made a motion to reduce the number of students permitted to 900. This was the first time the number 900 was ever mentioned at the public hearing or in the entire record preceding the public hearing.*** Thereafter, the Mayor and Council Person Stanczyk had a brief discussion as to whether the 900 number was arbitrary. At the conclusion of the hearing on May 4, 2010, the Village adopted the Resolution with conditions, including the reduction in the number of students from 1150 to 900, with Council Member Stanczyk voting against. The only modification to the language of the version of Condition 4.4 contained in the Recommendation to the language in the version of Condition 4.4, as included in the Resolution, was the reduction in the number of students permitted from 1150 to 900....

Subsequent to the Village's adoption of the Resolution, Palmer Trinity filed its ***24** timely Petition to invoke this Court's jurisdiction.

Conclusions of Law

First tier certiorari review of a quasi-judicial zoning decision, such as the Resolution at issue here, is a matter of right. *Miami–Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 198 (Fla.2003). A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Id.* at 199.

....

B. The 900 Student Cap on Enrollment

Palmer Trinity argues that the 900 student cap contained in Condition 4.4 of the Resolution is not supported by competent substantial evidence and constitutes a departure from the essential requirements of law. We agree. The record contains no mention of the 900 number at the May 4, 2010 hearing until after the close of public comment when the Mayor, Council, and Village Counsel had the following exchange:

COUNCIL MEMBER STANCZYK: Yeah and I'm having a little trouble again. The original student number that was listed as a recommendation was 1150, and I would like to reduce it to 900, staged incrementally over the entire term of the project. I'd like to make that as a motion.

MAYOR FLINN: That's a tough one. I mean, I don't know how we can just arbitrarily do that, but—

COUNCIL MEMBER STANCZYK: Well, 1150 was an arbitrary number.

MAYOR FLINN: Well, 1150 is what they voluntarily dropped to, but—

COUNCIL MEMBER STANCZYK: Well—

MAYOR FLINN: But, anyway, is there a second for that?

VICE MAYOR PARISER: I'll second it.

MAYOR FLINN: All right, it's been seconded. Any discussions on it?

COUNCIL MEMBER FELLER: Read the motion.

MAYOR FLINN: Reduce to 900 students.

COUNCIL MEMBER FELLER: In discussion by—I had gotten a number, by state number or by density or some numbers. Theoretically, what is the maximum the school would be allowed to by the total acreage? Is there such a thing, Eve?

MS. BOUTSIS: Under the special exception process, they have to meet certain numbers. The answer is over 2,000.

COUNCIL MEMBER FELLER: It's over 2,000.

> MAYOR FLINN: I think it was 2100 at one point. All right all in favor indicate by saying aye.
>
> COUNCIL MEMBERS: Aye.
>
> MAYOR FLINN: Any opposed?
>
> COUNCIL MEMBER FELLER: Nay.
>
> COUNCIL MEMBER TENDRICH: Nay.
>
> MAYOR FLINN: Three/two. All right next item.

See Transcript of May 4, 2010, Hearing at pp. 297:16–299:12.

The Village relies upon the testimony of Mr. Mark Alvarez, the planner retained by the Intervenors, and the comments by neighboring residents with respect to traffic and noise. The only specific testimony ***25** offered by Mr. Alvarez' [sic] that could arguably support the Village's position is his statement that "[t]he school, and what I'm going to point out, is I believe that the use, as a school, is not consistent with what the Village's comprehensive plan says." *See* May 4, 2010 Hearing Transcript at p. 168. He further testified that school would be "increasing the population density of Parcel B well above "what's expected for that zoning category." *Id.* at 183:7–17. Palmer Trinity contends that Mr. Alvarez' testimony does meet the standard for competent substantial evidence.

The Florida Supreme Court has defined competent substantial evidence as follows:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial evidence should also be 'competent.'

De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1957).

An applicant seeking a special exception must demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. *See* *Jesus Fellowship v. Miami–Dade County, Florida,* 752 So.2d 708, 710.[sic] (Fla. 3d DCA 2000). If an applicant meets this burden, then the request must be granted unless the opponent carries its burden to demonstrate that the applicant's request does not meet the standards and are in fact adverse to the public interest. *Id.*

The facts herein are analogous to those presented in *Jesus Fellowship.* In that case, the Third District quashed a circuit court decision which affirmed a decision of the Miami–Dade County Commission denying a portion of a church's zoning application. In the zoning application at issue therein, the church sought to rezone land in a residential area to permit expansion of the church's religious facilities and to permit a private school and day care center. Although the County Staff had recommended approval of 524 students, the Commission approved the rezoning but limited the number of students to 150 as a result of a "suggestion" by the opponents' attorney after the close of the evidentiary hearing.

Here, as in *Jesus Fellowship,* the first mention of even the reduction in the number of students permitted occurred after the close of the evidentiary portion of the public hearing. And like the "suggestion" by the opponent's counsel in *Jesus Fellowship,* the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid. Other than the brief discussion between the Mayor and Council Person Stanczyk, wherein the 900 number was admittedly arbitrary, there is no mention of that number, nor any mathematical ***26** calculation from which it could have been derived, contained in either the record or transcript preceding the adoption of the Resolution. Neither the testimony of Mr. Alvarez, nor of any of the individuals living in the neighborhood surrounding the school, provides a competent substantial basis for the 900 student cap on enrollment. Accordingly,

> this Court holds that the 900 student cap is not supported by competent substantial evidence. For the reasons set forth above, the provisions contained in Resolution 2010–48 relating to the ... 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision.
>
> *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a (some emphasis added).

Palmetto Bay correctly sought no second tier review of this decision. Palmetto Bay applies the Miami–Dade County Zoning Code to special exception requests. *See* *Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay,* 31 So.3d 260, 263 n. 2 (Fla. 3d DCA 2010) ("The Village's Planning and Zoning Powers Ordinance states that '[c]hapter 33 of the Miami–Dade Code entitled 'Zoning' ... shall be applied within the municipal boundaries of the Village of Palmetto Bay....' *See* § 31–1(d) of the Village of Palmetto Bay Planning and Zoning Powers Ordinance."). In *Metropolitan Dade County v. Fuller,* 497 So.2d 1322, 1322 (Fla. 3d DCA 1986), this court confirmed that under the Miami–Dade County Code a special exception request "is subject only to the test enunciated in section 33–311(d) [now section 33–311(A)(3)] of the [Miami–Dade County] Code, which is essentially whether the proposal serves the public interest." (Footnote omitted). An application satisfies this requirement once consistency with a zoning authority's land use plan and code criteria have been demonstrated. Once this burden is met, "the application must be granted unless the opposition carries its burden, which is to demonstrate [by competent, substantial evidence] that the applicant's request[does] not meet the standards and are in fact adverse to the public interest." *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *see Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' " (quoting *Irvine v. Duval Cnty. Planning Comm'n,* 466 So.2d 357, 364 (Fla. 1st DCA 1985) (Zehmer, J., dissenting))); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.,* 857 So.2d 202, 204 (Fla. 3d DCA 2003) ("Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meet code criteria, the decision-making body may deny the request only where 'the party opposing the application ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria.' " (quoting *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1092 (Fla.2000))).

There is no dispute that Palmer Trinity met its burden of demonstrating compliance with the standards imposed by the Miami–Dade County Zoning Code for securing a special exception. As the circuit court noted in its opinion, prior to the public hearing on Palmer Trinity's special exception request, Palmetto Bay's professional ***27** staff reviewed Palmer Trinity's request for compliance and "specifically recommended ... Palmer Trinity's request for a special exception to expand the school onto Parcel B and to increase the student enrollment from 600 to 1150." *Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private Sch., Inc.,* 18 Fla. L. Weekly Supp. at 342a. This recommendation came after a thorough thirty-nine page review of all applicable criteria and constitutes competent substantial evidence establishing that the request serves the public interest. *See City of Hialeah Gardens,* 857 So.2d at 205 (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co.,* 547 So.2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller,* 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence); *Dade Cnty. v. United Res., Inc.,* 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff "is probative").

Based on this record, the burden shifted to the opponents of the request to introduce competent substantial evidence demonstrating that the application for 1150 students "did not meet [the] standards and was, in fact, adverse to the public interest." *Irvine,* 495 So.2d at 167; *City of Hialeah Gardens,* 857 So.2d at 206. As the circuit court expressly found, no such evidence was adduced. In fact, the circuit court concluded that the testimony of the only competent witness to testify in opposition to the request, Mr. Alvarez, did not testify as to whether the 1150 student request was adverse to the

public interest. Rather he testified only that he believed that the "***use*** " of the property as a school was not consistent with Palmetto Bay's comprehensive plan and that the school would increase the population density of the parcel involved above that allowed. Use of the property for a school is not at issue here since no one claims it is not a permitted use. And in light of Council Member Feller and Mayor Flinn's concession at the commission hearing that the regulations governing this parcel would allow up to 2100 students, it is clear that the circuit court's conclusion that his testimony was not substantially related to the issue was correct.

Based on this record, the circuit court clearly was correct in striking the 900 student "cap." Under our ruling in *Jesus Fellowship, Inc.*, 752 So.2d at 711, it also had no choice but to strike the restriction, leaving intact Palmer Trinity's entitlement to a special exception allowing 1150 students. There, as here, an applicant (a church) sought a special exception for a private school and a day care center for a specific number of students (524) but was restricted by the county commission to fewer students (150). There, as here, professional staff recommended approval of the request. There, as here, neighbors and a professional engineer appeared to oppose the request. There, as here, the opposition witness testimony, proved not to be competent substantial evidence on the issue of the church's student request. There, as here, removal of the unsupported condition mandated approval of the evidentiary-supported request:

> In summary, the Church presented sufficient evidence to carry its burden; the objectors presented only testimony and documents that support the Church's application or which the courts have held not to be evidence. When the circuit court decided there was ***evidence*** (substantial, competent) to support the ***28** Commission's denial of the application, it failed to apply the correct law as to the granting or denial of special exceptions and unusual uses, and failed to apply the correct law as to what constitutes competent evidence in such cases. As a result we quash the circuit court's order and remand the case with instructions to the circuit court to direct the Commission to remove the limitation to K–6 and 150 students and to grant the application with grades K–12 and 524 students.

Id. at 711 (footnote omitted).

The special exception for 1150 students should, therefore, have been summarily enforced by Palmetto Bay. Despite the circuit court's citation to and reliance on *Jesus Fellowship,* which required approval of Palmer Trinity's 1150 student request, and its mandate, Palmetto Bay remained intransigent. On remand, Palmetto Bay decided to reconsider the application from scratch. On April 12, 2011, Palmer Trinity sought to preclude such action, filing a motion to enforce mandate in the circuit court. On May 5, 2011, the same three-judge circuit court panel which heard the underlying appeal granted the motion. Palmetto Bay then sought clarification of the order enforcing the mandate, contending that it believed that it was being ordered to "hold a public hearing, the record of which shall include but not be limited to all the evidence already in the record for a final decision as to the entire application—not just as to the two items litigated on appeal." On June 1, 2011, the same three-judge circuit court panel rejected this notion ordering Palmetto Bay to remove the "cap" on the number of students requested and to take no further action inconsistent with its May 5, 2011 order and its present order, effectively precluding additional hearings and mandating approval of the 1150 request. This did not happen.

Again on July 12, 2011, Palmer Trinity filed a Renewed Emergency Motion to Enforce Mandate or Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of [the] Court, wherein it argued that Palmetto Bay intended to violate the court's orders at a public hearing scheduled for July 19, 2011. That emergency motion was denied. On July 19, 2011, Palmetto Bay held a public hearing and adopted Resolution 2011–53, amending and incorporating Resolution 2010–48, interpreting each of the circuit court's prior determinations and rulings to mean that since Palmetto Bay had rejected the 1150 student enrollment requested in favor of a 900 student "cap," and that cap had now been rejected, no increase in student enrollment above the existing 600 students would be allowed. Thereafter, on August 26, 2011, Palmer Trinity filed the Motion to Enforce Mandate, or in the Alternative for Extraordinary Relief, which resulted in the December 22, 2011 order here under review. In that order, the same three-judge panel of the Eleventh Judicial Circuit Court Appellate Division once again

ordered enforcement of its mandate in *Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a.*Palmer Trinity Private School, Inc.,* 18 Fla. L. Weekly Supp. at 342a. This time the court clearly stated that "in order to strictly adhere to the Mandate's plain language, the Village must remove or otherwise render ineffectual all of the provisions in the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900." This conclusion is expressly predicated on the court's extensive quotation from and reliance on *Jesus Fellowship;* on its conclusion that there is no dispute that Palmer Trinity's request for 1150 students was "approved ... with a condition that capped student enrollment at 900"; and that removal of the cap entitled Palmer Trinity to approval of its 1150 student request. ***29** These conclusions are fully supported by the record and applicable law and do not in any manner depart from the essential requirements of the law.

Conclusion

In sum, Palmer Trinity sought a special exception which would permit expanding its student enrollment to 1150. At the public hearing which followed, Palmer Trinity adduced competent substantial evidence to support its 1150 student request; no competent substantial evidence was submitted to support either denying or limiting the school's enrollment request. Palmetto Bay nonetheless denied the 1150 number, lowered the acceptable number to 900 students, and granted the exception. Based on its finding of the lack of competent substantial evidence supporting a "cap" below 1150, the circuit court appellate division ordered the limitation deleted. Palmetto Bay claimed that its compliance with that ruling required only that it delete the 900 student figure, making it free to leave its "denial" of special exception for 1150 students in place. A simple straight forward reading of the circuit court's ruling contradicts that conclusion. When Palmetto Bay amended Resolution 2010–48, on July 19, 2011, that resolution should have reflected acceptance and incorporation of the circuit court's decision rejecting any "cap" below 1150. In other words, Palmetto Bay is wrong in arguing its denial of the special exception for 1150 students could remain in place after the circuit court's February 11, 2011 ruling. Palmetto Bay's denial of the special exception for 1150 students should have been excised from its Amended Resolution, just as was the 900 student "cap." Any other interpretation of the circuit court's February 11, 2011 ruling amounted to wishful thinking at best, and more likely a willful disobedience of that court's instructions. The circuit court's order enforcing its earlier mandate was therefore entirely proper and in no way justifies the issuance of the writ sought herein.

For these reasons, the petition for writ of certiorari is denied.

SCHWARTZ, Senior Judge (concurring).

Although I had (and have) some misgivings about the posture in which this case presents itself, Chief Judge Wells' opinion has convinced me that, as often happens, any departure from the procedural niceties which may have occurred makes no difference. As her opinion demonstrates, on the basis of what was presented to the Commission, it had no option under the law but to grant the special exception in full. *See Irvine v. Duval Cnty. Planning Comm'n,* 495 So.2d 167, 167 (Fla.1986) ("[W]e agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' "); *Jesus Fellowship, Inc. v. Miami–Dade Cnty.,* 752 So.2d 708, 709 (Fla. 3d DCA 2000); *Metro. Dade Cnty. v. Fuller,* 497 So.2d 1322 (Fla. 3d DCA 1986).

In essence, therefore, everything in the circuitous legal journey which followed was an exercise in superfluousness and futility. Since the effect of the order now under review, however fashioned, was to require what was required from the beginning, I concur in denying the petition.

All Citations

128 So.3d 19, 37 Fla. L. Weekly D1599

Footnotes

1 The order On Motion to Enforce Mandate or in the Alternative, for Extraordinary Relief was issued on December 22, 2011.

End of Document

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Cabana v. Kenai Peninsula Borough, Alaska, April 27, 2001

627 So.2d 469
Supreme Court of Florida.

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, Florida, Petitioner,
v.
Jack R. SNYDER, et ux., Respondents.

No. 79720.
|
Oct. 7, 1993.
|
Rehearing Denied Dec. 23, 1993.

Synopsis

Property owners brought original action seeking writ of certiorari after county board denied their application for rezoning of property from general use to medium density multiple-family dwelling use. The District Court of Appeal, 595 So.2d 65, granted petition. On review for direct conflict of decisions, the Supreme Court, Grimes, J., held that: (1) rezoning action which entails application of general rule or policy to specific individuals, interests or activities is quasi-judicial in nature, subject to strict scrutiny on certiorari review; (2) landowner who demonstrates that proposed use of property is consistent with comprehensive plan is not presumptively entitled to such use; (3) landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan, and burden thereupon shifts to zoning board to demonstrate that maintaining existing zoning classification accomplishes legitimate public purpose; and (4) although board is not required to make findings of fact in denying application of rezoning, upon review by certiorari in the circuit court it must be shown there was competent substantial evidence presented to board to support its ruling.

Decision of District Court of Appeal quashed.

Shaw, J., dissented.

Attorneys and Law Firms

***470** Robert D. Guthrie, County Atty., and Eden Bentley, Asst. County Atty., Melbourne, for petitioner.

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Thomas G. Pelham, Holland & Knight, Tallahassee, amicus curiae, pro se.

Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners,* 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla. 1st DCA1984), *review denied,* 469 So.2d 749 (Fla.1985); and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA1987), *review denied,* ***471** 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

After the application for rezoning was filed, the Brevard County Planning and Zoning staff reviewed the application and completed the county's standard "rezoning review worksheet." The worksheet indicated that the proposed multifamily use of the Snyders' property was consistent with all aspects of the comprehensive plan except for the fact that it was located in the one-hundred-year flood plain in which a maximum of only two units per acre was permitted. For this reason, the staff recommended that the request be denied.

At the planning and zoning board meeting, the county planning and zoning director indicated that when the property was developed the land elevation would be raised to the point where the one-hundred-year-flood plain restriction would no longer be applicable. Thus, the director stated that the staff no longer opposed the application. The planning and zoning board voted to approve the Snyders' rezoning request.

When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The Snyders filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and denied it by a two-to-one decision. The Snyders then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners,* 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

> (4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.
>
> (5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned ***472** lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable

comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County,* 589 So.2d 1337 (Fla. 3d DCA1991), *review denied,* 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

The Snyders respond that the decision below should be upheld in all of its major premises. They argue that the rationale for the early decisions that rezonings are legislative in nature has been changed by the enactment of the Growth Management Act. Thus, in order to ensure that local governments follow the principles enunciated in their comprehensive plans, it is necessary for the courts to exercise stricter scrutiny than would be provided under the fairly debatable rule. The Snyders contend that their rezoning application was consistent with the comprehensive plan. Because there are no findings of fact or reasons given for the denial by the board of county commissioners, there is no basis upon which the denial could be upheld. Various amici curiae have also submitted briefs in support of their several positions.

Historically, local governments have exercised the zoning power pursuant to a broad delegation of state legislative power subject only to constitutional limitations. Both federal and state courts adopted a highly deferential standard of judicial review early in the history of local zoning. In *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), the United States Supreme Court held that "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." 272 U.S. at 388, 47 S.Ct. at 118. This Court expressly adopted the fairly debatable principle in *City of Miami Beach v. Ocean & Inland Co.,* 147 Fla. 480, 3 So.2d 364 (1941).

Inhibited only by the loose judicial scrutiny afforded by the fairly debatable rule, local zoning systems developed in a markedly inconsistent manner. Many land use experts and practitioners have been critical of the local zoning system. Richard Babcock deplored the effect of "neighborhoodism" and ***473** rank political influence on the local decision-making process. Richard F. Babcock, *The Zoning Game* (1966). Mandelker and Tarlock recently stated that "zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits." Daniel R. Mandelker and A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law,* 24 Urb.Law. 1, 2 (1992).

Professor Charles Harr, a leading proponent of zoning reform, was an early advocate of requiring that local land use regulation be consistent with a legally binding comprehensive plan which would serve long range goals, counteract local pressures for preferential treatment, and provide courts with a meaningful standard of review. Charles M. Harr, "*In Accordance With A Comprehensive Plan,*" 68 Harv.L.Rev. 1154 (1955). In 1975, the American Law Institute adopted the Model Land Development Code, which provided for

procedural and planning reforms at the local level and increased state participation in land use decision-making for developments of regional impact and areas of critical state concern.

Reacting to the increasing calls for reform, numerous states have adopted legislation to change the local land use decision-making process. As one of the leaders of this national reform, Florida adopted the Local Government Comprehensive Planning Act of 1975. Ch. 75-257, Laws of Fla. This law was substantially strengthened in 1985 by the Growth Management Act. Ch. 85-55, Laws of Fla.

Pursuant to the Growth Management Act, each county and municipality is required to prepare a comprehensive plan for approval by the Department of Community Affairs. The adopted local plan must include "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development" of the local government's jurisdictional area. Section 163.3177(1), Fla.Stat. (1991). At the minimum, the local plan must include elements covering future land use; capital improvements generally; sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer protection specifically; conservation; recreation and open space; housing; traffic circulation; intergovernmental coordination; coastal management (for local government in the coastal zone); and mass transit (for local jurisdictions with 50,000 or more people). *Id.*, § 163.3177(6).

Of special relevance to local rezoning actions, the future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the "proposed future general distribution, location, and extent of the uses of land" for various purposes. *Id.*, § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. *Id.*, § 163.3177(6)(a).

The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. *Id.* § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. *Id.*, § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

> (a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3164, Florida Statutes (1991), reads in pertinent part:

> (6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.
>
> ***474** (7) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs,* 578 So.2d 415 (Fla. 2d DCA1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic,* 419 So.2d 1041 (Fla.1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by

substantial competent evidence. *De Groot v. Sheffield,* 95 So.2d 912 (Fla.1957).

Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale,* 354 So.2d 57 (Fla.1978); *County of Pasco v. J. Dico, Inc.,* 343 So.2d 83 (Fla. 2d DCA1977). In *Schauer v. City of Miami Beach,* this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So.2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs,* 461 So.2d at 163; *Tinnerman,* 517 So.2d at 700.

It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648 (Fla. 3d DCA1982). Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy. Carl J. Peckingpaugh, Jr., Comment, *Burden of Proof in Land Use Regulations: A Unified Approach and Application to Florida,* 8 Fla.St.U.L.Rev. 499, 504 (1980). In *West Flagler Amusement Co. v. State Racing Commission,* 122 Fla. 222, 225, 165 So. 64, 65 (1935), we explained:

> A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful. But even so, quasi-legislative and quasi-executive orders, after they have already been entered, may have a quasi-judicial attribute if capable of being arrived at and provided by law to be declared by the administrative agency only after express statutory notice, hearing and consideration of evidence to be adduced as a basis for the making thereof.

Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and ***475** properly reviewable by petition for certiorari. [1]

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership,* 619 So.2d 996 (Fla. 2d DCA1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. *Compare Snyder v. Board of County Comm'rs,* 595 So.2d 65, 75-76 (Fla. 5th DCA1991) (land use), *and Machado v. Musgrove,* 519 So.2d 629, 632 (Fla. 3d DCA1987), *review denied,* 529 So.2d 693 (Fla.1988), and *review denied,* 529 So.2d 694

(Fla.1988) (land use), *with* *In re Estate of Greenberg,* 390 So.2d 40, 42-43 (Fla.1980) (general discussion of strict scrutiny review in context of fundamental rights), *appeal dismissed,* 450 U.S. 961, 101 S.Ct. 1475, 67 L.Ed.2d 610 (1981), *Florida High Sch. Activities Ass'n v. Thomas,* 434 So.2d 306 (Fla.1983) (equal protection), *and* *Department of Revenue v. Magazine Publishers of America, Inc.,* 604 So.2d 459 (Fla.1992) (First Amendment).

At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the *future* use of land, which contemplates a gradual and ordered growth. *See* *City of Jacksonville Beach,* 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose,* 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

> [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in *Lee County v. Sunbelt Equities II, Limited Partnership:*

> [A]bsent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.
>
> ....
>
> Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict ***476** scrutiny" of *Machado* to insure this does not happen.

619 So.2d at 1005-06.

This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris,* 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.,* 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the

board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

While they may be useful, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant,* 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

All Citations

627 So.2d 469, 18 Fla. L. Weekly S522

Footnotes

1 One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County,* 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

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627 So.2d 469
Supreme Court of Florida.

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v.

Jack R. SNYDER, et ux., Respondents.

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Synopsis

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Decision of District Court of Appeal quashed.

Shaw, J., dissented.

Attorneys and Law Firms

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Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners,* 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla. 1st DCA1984), *review denied,* 469 So.2d 749 (Fla.1985); and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA1987), *review denied,* ***471** 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

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The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners,* 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

> (4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.
>
> (5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned ***472** lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable

> comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County,* 589 So.2d 1337 (Fla. 3d DCA1991), *review denied,* 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

The Snyders respond that the decision below should be upheld in all of its major premises. They argue that the rationale for the early decisions that rezonings are legislative in nature has been changed by the enactment of the Growth Management Act. Thus, in order to ensure that local governments follow the principles enunciated in their comprehensive plans, it is necessary for the courts to exercise stricter scrutiny than would be provided under the fairly debatable rule. The Snyders contend that their rezoning application was consistent with the comprehensive plan. Because there are no findings of fact or reasons given for the denial by the board of county commissioners, there is no basis upon which the denial could be upheld. Various amici curiae have also submitted briefs in support of their several positions.

Historically, local governments have exercised the zoning power pursuant to a broad delegation of state legislative power subject only to constitutional limitations. Both federal and state courts adopted a highly deferential standard of judicial review early in the history of local zoning. In *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), the United States Supreme Court held that "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." 272 U.S. at 388, 47 S.Ct. at 118. This Court expressly adopted the fairly debatable principle in *City of Miami Beach v. Ocean & Inland Co.,* 147 Fla. 480, 3 So.2d 364 (1941).

Inhibited only by the loose judicial scrutiny afforded by the fairly debatable rule, local zoning systems developed in a markedly inconsistent manner. Many land use experts and practitioners have been critical of the local zoning system. Richard Babcock deplored the effect of "neighborhoodism" and ***473** rank political influence on the local decision-making process. Richard F. Babcock, *The Zoning Game* (1966). Mandelker and Tarlock recently stated that "zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits." Daniel R. Mandelker and A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law,* 24 Urb.Law. 1, 2 (1992).

Professor Charles Harr, a leading proponent of zoning reform, was an early advocate of requiring that local land use regulation be consistent with a legally binding comprehensive plan which would serve long range goals, counteract local pressures for preferential treatment, and provide courts with a meaningful standard of review. Charles M. Harr, "*In Accordance With A Comprehensive Plan,*" 68 Harv.L.Rev. 1154 (1955). In 1975, the American Law Institute adopted the Model Land Development Code, which provided for

procedural and planning reforms at the local level and increased state participation in land use decision-making for developments of regional impact and areas of critical state concern.

Reacting to the increasing calls for reform, numerous states have adopted legislation to change the local land use decision-making process. As one of the leaders of this national reform, Florida adopted the Local Government Comprehensive Planning Act of 1975. Ch. 75-257, Laws of Fla. This law was substantially strengthened in 1985 by the Growth Management Act. Ch. 85-55, Laws of Fla.

Pursuant to the Growth Management Act, each county and municipality is required to prepare a comprehensive plan for approval by the Department of Community Affairs. The adopted local plan must include "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development" of the local government's jurisdictional area. Section 163.3177(1), Fla.Stat. (1991). At the minimum, the local plan must include elements covering future land use; capital improvements generally; sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer protection specifically; conservation; recreation and open space; housing; traffic circulation; intergovernmental coordination; coastal management (for local government in the coastal zone); and mass transit (for local jurisdictions with 50,000 or more people). *Id.,* § 163.3177(6).

Of special relevance to local rezoning actions, the future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the "proposed future general distribution, location, and extent of the uses of land" for various purposes. *Id.,* § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. *Id.,* § 163.3177(6)(a).

The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. *Id.* § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. *Id.,* § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

> (a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3164, Florida Statutes (1991), reads in pertinent part:

> (6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.
>
> ***474** (7) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs,* 578 So.2d 415 (Fla. 2d DCA1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic,* 419 So.2d 1041 (Fla.1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by

substantial competent evidence. *De Groot v. Sheffield,* 95 So.2d 912 (Fla.1957).

Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale,* 354 So.2d 57 (Fla.1978); *County of Pasco v. J. Dico, Inc.,* 343 So.2d 83 (Fla. 2d DCA1977). In *Schauer v. City of Miami Beach,* this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So.2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs,* 461 So.2d at 163; *Tinnerman,* 517 So.2d at 700.

It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648 (Fla. 3d DCA1982). Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy. Carl J. Peckingpaugh, Jr., Comment, *Burden of Proof in Land Use Regulations: A Unified Approach and Application to Florida,* 8 Fla.St.U.L.Rev. 499, 504 (1980). In *West Flagler Amusement Co. v. State Racing Commission,* 122 Fla. 222, 225, 165 So. 64, 65 (1935), we explained:

> A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful. But even so, quasi-legislative and quasi-executive orders, after they have already been entered, may have a quasi-judicial attribute if capable of being arrived at and provided by law to be declared by the administrative agency only after express statutory notice, hearing and consideration of evidence to be adduced as a basis for the making thereof.

Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and ***475** properly reviewable by petition for certiorari. [1]

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership,* 619 So.2d 996 (Fla. 2d DCA1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. *Compare Snyder v. Board of County Comm'rs,* 595 So.2d 65, 75-76 (Fla. 5th DCA1991) (land use), *and Machado v. Musgrove,* 519 So.2d 629, 632 (Fla. 3d DCA1987), *review denied,* 529 So.2d 693 (Fla.1988), and *review denied,* 529 So.2d 694

(Fla.1988) (land use), *with* *In re Estate of Greenberg,* 390 So.2d 40, 42-43 (Fla.1980) (general discussion of strict scrutiny review in context of fundamental rights), *appeal dismissed,* 450 U.S. 961, 101 S.Ct. 1475, 67 L.Ed.2d 610 (1981), *Florida High Sch. Activities Ass'n v. Thomas,* 434 So.2d 306 (Fla.1983) (equal protection), *and* *Department of Revenue v. Magazine Publishers of America, Inc.,* 604 So.2d 459 (Fla.1992) (First Amendment).

At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the *future* use of land, which contemplates a gradual and ordered growth. *See* *City of Jacksonville Beach,* 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose,* 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

> [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in *Lee County v. Sunbelt Equities II, Limited Partnership:*

> [A]bsent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.
>
> ....
>
> Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict ***476** scrutiny" of *Machado* to insure this does not happen.

619 So.2d at 1005-06.

This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris,* 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.,* 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the

board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

While they may be useful, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

All Citations

627 So.2d 469, 18 Fla. L. Weekly S522

Footnotes

1 One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County*, 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

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627 So.2d 469
Supreme Court of Florida.

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, Florida, Petitioner,

v.

Jack R. SNYDER, et ux., Respondents.

No. 79720.
|
Oct. 7, 1993.
|
Rehearing Denied Dec. 23, 1993.

Synopsis

Property owners brought original action seeking writ of certiorari after county board denied their application for rezoning of property from general use to medium density multiple-family dwelling use. The District Court of Appeal, 595 So.2d 65, granted petition. On review for direct conflict of decisions, the Supreme Court, Grimes, J., held that: (1) rezoning action which entails application of general rule or policy to specific individuals, interests or activities is quasi-judicial in nature, subject to strict scrutiny on certiorari review; (2) landowner who demonstrates that proposed use of property is consistent with comprehensive plan is not presumptively entitled to such use; (3) landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan, and burden thereupon shifts to zoning board to demonstrate that maintaining existing zoning classification accomplishes legitimate public purpose; and (4) although board is not required to make findings of fact in denying application of rezoning, upon review by certiorari in the circuit court it must be shown there was competent substantial evidence presented to board to support its ruling.

Decision of District Court of Appeal quashed.

Shaw, J., dissented.

Attorneys and Law Firms

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Paul R. Gougelman, III, and Maureen M. Matheson, Reinman, Harrell, Graham, Mitchell & Wattwood, P.A., Melbourne, amicus curiae, for Space Coast League of Cities, Inc., City of Melbourne, and Town of Indialantic.

Richard E. Gentry, FL Home Builders Ass'n, and Robert M. Rhodes and Cathy M. Sellers, Steel, Hector and Davis, Tallahassee, amicus curiae, for FL Home Builders Ass'n.

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David J. Russ and Karen Brodeen, Asst. Gen. Counsels, Tallahassee, amicus curiae, for FL Dept. of Community Affairs.

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Neal D. Bowen, County Atty., Kissimmee, amicus curiae, for Osceola County.

M. Stephen Turner and David K. Miller, Broad and Cassel, Tallahassee, amicus curiae, for Monticello Drug Co.

John J. Copelan, Jr., County Atty., and Barbara S. Monahan, Asst. County Atty. for Broward County, Fort Lauderdale, and Emeline Acton, County Atty. for Hillsborough County, Tampa, amici curiae, for Broward County, Hillsborough County and FL Ass'n of County Attys., Inc.

Thomas G. Pelham, Holland & Knight, Tallahassee, amicus curiae, pro se.

Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners,* 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla. 1st DCA1984), *review denied,* 469 So.2d 749 (Fla.1985); and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA1987), *review denied,* ***471** 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

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When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The Snyders filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and denied it by a two-to-one decision. The Snyders then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners,* 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

> (4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.
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> (5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned ***472** lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable

> comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County,* 589 So.2d 1337 (Fla. 3d DCA1991), *review denied,* 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

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The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. *Id.* § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. *Id.*, § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

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Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs,* 578 So.2d 415 (Fla. 2d DCA1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic,* 419 So.2d 1041 (Fla.1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by

substantial competent evidence. *De Groot v. Sheffield,* 95 So.2d 912 (Fla.1957).

Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale,* 354 So.2d 57 (Fla.1978); *County of Pasco v. J. Dico, Inc.,* 343 So.2d 83 (Fla. 2d DCA1977). In *Schauer v. City of Miami Beach,* this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So.2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs,* 461 So.2d at 163; *Tinnerman,* 517 So.2d at 700.

It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648 (Fla. 3d DCA1982). Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy. Carl J. Peckingpaugh, Jr., Comment, *Burden of Proof in Land Use Regulations: A Unified Approach and Application to Florida,* 8 Fla.St.U.L.Rev. 499, 504 (1980). In *West Flagler Amusement Co. v. State Racing Commission,* 122 Fla. 222, 225, 165 So. 64, 65 (1935), we explained:

> A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful. But even so, quasi-legislative and quasi-executive orders, after they have already been entered, may have a quasi-judicial attribute if capable of being arrived at and provided by law to be declared by the administrative agency only after express statutory notice, hearing and consideration of evidence to be adduced as a basis for the making thereof.

Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and ***475** properly reviewable by petition for certiorari. [1]

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership,* 619 So.2d 996 (Fla. 2d DCA1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. *Compare Snyder v. Board of County Comm'rs,* 595 So.2d 65, 75-76 (Fla. 5th DCA1991) (land use), *and Machado v. Musgrove,* 519 So.2d 629, 632 (Fla. 3d DCA1987), *review denied,* 529 So.2d 693 (Fla.1988), and *review denied,* 529 So.2d 694

(Fla.1988) (land use), *with* *In re Estate of Greenberg,* 390 So.2d 40, 42-43 (Fla.1980) (general discussion of strict scrutiny review in context of fundamental rights), *appeal dismissed,* 450 U.S. 961, 101 S.Ct. 1475, 67 L.Ed.2d 610 (1981), *Florida High Sch. Activities Ass'n v. Thomas,* 434 So.2d 306 (Fla.1983) (equal protection), *and* *Department of Revenue v. Magazine Publishers of America, Inc.,* 604 So.2d 459 (Fla.1992) (First Amendment).

At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the *future* use of land, which contemplates a gradual and ordered growth. *See* *City of Jacksonville Beach,* 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose,* 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

> [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in *Lee County v. Sunbelt Equities II, Limited Partnership:*

> [A]bsent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.
>
> ....
>
> Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict ***476** scrutiny" of *Machado* to insure this does not happen.

619 So.2d at 1005-06.

This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris,* 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.,* 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the

board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

While they may be useful, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant,* 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

All Citations

627 So.2d 469, 18 Fla. L. Weekly S522

Footnotes

1 One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County,* 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

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627 So.2d 469
Supreme Court of Florida.

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, Florida, Petitioner,

v.

Jack R. SNYDER, et ux., Respondents.

No. 79720.
|
Oct. 7, 1993.
|
Rehearing Denied Dec. 23, 1993.

Synopsis

Property owners brought original action seeking writ of certiorari after county board denied their application for rezoning of property from general use to medium density multiple-family dwelling use. The District Court of Appeal, 595 So.2d 65, granted petition. On review for direct conflict of decisions, the Supreme Court, Grimes, J., held that: (1) rezoning action which entails application of general rule or policy to specific individuals, interests or activities is quasi-judicial in nature, subject to strict scrutiny on certiorari review; (2) landowner who demonstrates that proposed use of property is consistent with comprehensive plan is not presumptively entitled to such use; (3) landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan, and burden thereupon shifts to zoning board to demonstrate that maintaining existing zoning classification accomplishes legitimate public purpose; and (4) although board is not required to make findings of fact in denying application of rezoning, upon review by certiorari in the circuit court it must be shown there was competent substantial evidence presented to board to support its ruling.

Decision of District Court of Appeal quashed.

Shaw, J., dissented.

Attorneys and Law Firms

***470** Robert D. Guthrie, County Atty., and Eden Bentley, Asst. County Atty., Melbourne, for petitioner.

Frank J. Griffith, Jr., Cianfrogna, Telfer, Reda & Faherty, P.A., Titusville, for respondents.

Denis Dean and Jonathan A. Glogau, Asst. Attys. Gen., Tallahassee, amicus curiae, for Atty. Gen., State of FL.

Nancy Stuparich, Asst. Gen. Counsel, and Jane C. Hayman, Deputy Gen. Counsel, Tallahassee, amicus curiae, for FL League of Cities, Inc.

Paul R. Gougelman, III, and Maureen M. Matheson, Reinman, Harrell, Graham, Mitchell & Wattwood, P.A., Melbourne, amicus curiae, for Space Coast League of Cities, Inc., City of Melbourne, and Town of Indialantic.

Richard E. Gentry, FL Home Builders Ass'n, and Robert M. Rhodes and Cathy M. Sellers, Steel, Hector and Davis, Tallahassee, amicus curiae, for FL Home Builders Ass'n.

David La Croix, Pennington, Wilkinson & Dunlap, P.A., and William J. Roberts, Roberts and Eagan, P.A., Tallahassee, amicus curiae, for FL Ass'n of Counties.

David J. Russ and Karen Brodeen, Asst. Gen. Counsels, Tallahassee, amicus curiae, for FL Dept. of Community Affairs.

Richard Grosso, Legal Director, Tallahassee, and C. Allen Watts, Cobb, Cole and Bell, Daytona Beach, amicus curiae, for 1000 Friends of FL.

Neal D. Bowen, County Atty., Kissimmee, amicus curiae, for Osceola County.

M. Stephen Turner and David K. Miller, Broad and Cassel, Tallahassee, amicus curiae, for Monticello Drug Co.

John J. Copelan, Jr., County Atty., and Barbara S. Monahan, Asst. County Atty. for Broward County, Fort Lauderdale, and Emeline Acton, County Atty. for Hillsborough County, Tampa, amici curiae, for Broward County, Hillsborough County and FL Ass'n of County Attys., Inc.

Thomas G. Pelham, Holland & Knight, Tallahassee, amicus curiae, pro se.

Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners,* 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla. 1st DCA1984), *review denied,* 469 So.2d 749 (Fla.1985); and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA1987), *review denied,* ***471** 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

After the application for rezoning was filed, the Brevard County Planning and Zoning staff reviewed the application and completed the county's standard "rezoning review worksheet." The worksheet indicated that the proposed multifamily use of the Snyders' property was consistent with all aspects of the comprehensive plan except for the fact that it was located in the one-hundred-year flood plain in which a maximum of only two units per acre was permitted. For this reason, the staff recommended that the request be denied.

At the planning and zoning board meeting, the county planning and zoning director indicated that when the property was developed the land elevation would be raised to the point where the one-hundred-year-flood plain restriction would no longer be applicable. Thus, the director stated that the staff no longer opposed the application. The planning and zoning board voted to approve the Snyders' rezoning request.

When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The Snyders filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and denied it by a two-to-one decision. The Snyders then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners,* 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

> (4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.
>
> (5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned ***472** lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable

> comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County,* 589 So.2d 1337 (Fla. 3d DCA1991), *review denied,* 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

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Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale,* 354 So.2d 57 (Fla.1978); *County of Pasco v. J. Dico, Inc.,* 343 So.2d 83 (Fla. 2d DCA1977). In *Schauer v. City of Miami Beach,* this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So.2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs,* 461 So.2d at 163; *Tinnerman,* 517 So.2d at 700.

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Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and ***475** properly reviewable by petition for certiorari. [1]

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership,* 619 So.2d 996 (Fla. 2d DCA1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. *Compare Snyder v. Board of County Comm'rs,* 595 So.2d 65, 75-76 (Fla. 5th DCA1991) (land use), *and Machado v. Musgrove,* 519 So.2d 629, 632 (Fla. 3d DCA1987), *review denied,* 529 So.2d 693 (Fla.1988), and *review denied,* 529 So.2d 694

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At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the *future* use of land, which contemplates a gradual and ordered growth. *See* *City of Jacksonville Beach,* 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose,* 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

> [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in *Lee County v. Sunbelt Equities II, Limited Partnership:*

> [A]bsent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.
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> Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict ***476** scrutiny" of *Machado* to insure this does not happen.

619 So.2d at 1005-06.

This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris,* 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.,* 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the

board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

While they may be useful, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant,* 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

All Citations

627 So.2d 469, 18 Fla. L. Weekly S522

Footnotes

1 One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County,* 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

627 So.2d 469
Supreme Court of Florida.

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, Florida, Petitioner,
v.
Jack R. SNYDER, et ux., Respondents.

No. 79720.
|
Oct. 7, 1993.
|
Rehearing Denied Dec. 23, 1993.

Synopsis
Property owners brought original action seeking writ of certiorari after county board denied their application for rezoning of property from general use to medium density multiple-family dwelling use. The District Court of Appeal, 595 So.2d 65, granted petition. On review for direct conflict of decisions, the Supreme Court, Grimes, J., held that: (1) rezoning action which entails application of general rule or policy to specific individuals, interests or activities is quasi-judicial in nature, subject to strict scrutiny on certiorari review; (2) landowner who demonstrates that proposed use of property is consistent with comprehensive plan is not presumptively entitled to such use; (3) landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan, and burden thereupon shifts to zoning board to demonstrate that maintaining existing zoning classification accomplishes legitimate public purpose; and (4) although board is not required to make findings of fact in denying application of rezoning, upon review by certiorari in the circuit court it must be shown there was competent substantial evidence presented to board to support its ruling.

Decision of District Court of Appeal quashed.

Shaw, J., dissented.

Attorneys and Law Firms

***470** Robert D. Guthrie, County Atty., and Eden Bentley, Asst. County Atty., Melbourne, for petitioner.

Frank J. Griffith, Jr., Cianfrogna, Telfer, Reda & Faherty, P.A., Titusville, for respondents.

Denis Dean and Jonathan A. Glogau, Asst. Attys. Gen., Tallahassee, amicus curiae, for Atty. Gen., State of FL.

Nancy Stuparich, Asst. Gen. Counsel, and Jane C. Hayman, Deputy Gen. Counsel, Tallahassee, amicus curiae, for FL League of Cities, Inc.

Paul R. Gougelman, III, and Maureen M. Matheson, Reinman, Harrell, Graham, Mitchell & Wattwood, P.A., Melbourne, amicus curiae, for Space Coast League of Cities, Inc., City of Melbourne, and Town of Indialantic.

Richard E. Gentry, FL Home Builders Ass'n, and Robert M. Rhodes and Cathy M. Sellers, Steel, Hector and Davis, Tallahassee, amicus curiae, for FL Home Builders Ass'n.

David La Croix, Pennington, Wilkinson & Dunlap, P.A., and William J. Roberts, Roberts and Eagan, P.A., Tallahassee, amicus curiae, for FL Ass'n of Counties.

David J. Russ and Karen Brodeen, Asst. Gen. Counsels, Tallahassee, amicus curiae, for FL Dept. of Community Affairs.

Richard Grosso, Legal Director, Tallahassee, and C. Allen Watts, Cobb, Cole and Bell, Daytona Beach, amicus curiae, for 1000 Friends of FL.

Neal D. Bowen, County Atty., Kissimmee, amicus curiae, for Osceola County.

M. Stephen Turner and David K. Miller, Broad and Cassel, Tallahassee, amicus curiae, for Monticello Drug Co.

John J. Copelan, Jr., County Atty., and Barbara S. Monahan, Asst. County Atty. for Broward County, Fort Lauderdale, and Emeline Acton, County Atty. for Hillsborough County, Tampa, amici curiae, for Broward County, Hillsborough County and FL Ass'n of County Attys., Inc.

Thomas G. Pelham, Holland & Knight, Tallahassee, amicus curiae, pro se.

Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners,* 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla. 1st DCA1984), *review denied,* 469 So.2d 749 (Fla.1985); and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA1987), *review denied,* ***471** 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

After the application for rezoning was filed, the Brevard County Planning and Zoning staff reviewed the application and completed the county's standard "rezoning review worksheet." The worksheet indicated that the proposed multifamily use of the Snyders' property was consistent with all aspects of the comprehensive plan except for the fact that it was located in the one-hundred-year flood plain in which a maximum of only two units per acre was permitted. For this reason, the staff recommended that the request be denied.

At the planning and zoning board meeting, the county planning and zoning director indicated that when the property was developed the land elevation would be raised to the point where the one-hundred-year-flood plain restriction would no longer be applicable. Thus, the director stated that the staff no longer opposed the application. The planning and zoning board voted to approve the Snyders' rezoning request.

When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The Snyders filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and denied it by a two-to-one decision. The Snyders then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners,* 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

> (4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.
>
> (5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned ***472** lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable

> comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County,* 589 So.2d 1337 (Fla. 3d DCA1991), *review denied,* 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

The Snyders respond that the decision below should be upheld in all of its major premises. They argue that the rationale for the early decisions that rezonings are legislative in nature has been changed by the enactment of the Growth Management Act. Thus, in order to ensure that local governments follow the principles enunciated in their comprehensive plans, it is necessary for the courts to exercise stricter scrutiny than would be provided under the fairly debatable rule. The Snyders contend that their rezoning application was consistent with the comprehensive plan. Because there are no findings of fact or reasons given for the denial by the board of county commissioners, there is no basis upon which the denial could be upheld. Various amici curiae have also submitted briefs in support of their several positions.

Historically, local governments have exercised the zoning power pursuant to a broad delegation of state legislative power subject only to constitutional limitations. Both federal and state courts adopted a highly deferential standard of judicial review early in the history of local zoning. In *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), the United States Supreme Court held that "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." 272 U.S. at 388, 47 S.Ct. at 118. This Court expressly adopted the fairly debatable principle in *City of Miami Beach v. Ocean & Inland Co.,* 147 Fla. 480, 3 So.2d 364 (1941).

Inhibited only by the loose judicial scrutiny afforded by the fairly debatable rule, local zoning systems developed in a markedly inconsistent manner. Many land use experts and practitioners have been critical of the local zoning system. Richard Babcock deplored the effect of "neighborhoodism" and ***473** rank political influence on the local decision-making process. Richard F. Babcock, *The Zoning Game* (1966). Mandelker and Tarlock recently stated that "zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits." Daniel R. Mandelker and A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law,* 24 Urb.Law. 1, 2 (1992).

Professor Charles Harr, a leading proponent of zoning reform, was an early advocate of requiring that local land use regulation be consistent with a legally binding comprehensive plan which would serve long range goals, counteract local pressures for preferential treatment, and provide courts with a meaningful standard of review. Charles M. Harr, "*In Accordance With A Comprehensive Plan,*" 68 Harv.L.Rev. 1154 (1955). In 1975, the American Law Institute adopted the Model Land Development Code, which provided for

procedural and planning reforms at the local level and increased state participation in land use decision-making for developments of regional impact and areas of critical state concern.

Reacting to the increasing calls for reform, numerous states have adopted legislation to change the local land use decision-making process. As one of the leaders of this national reform, Florida adopted the Local Government Comprehensive Planning Act of 1975. Ch. 75-257, Laws of Fla. This law was substantially strengthened in 1985 by the Growth Management Act. Ch. 85-55, Laws of Fla.

Pursuant to the Growth Management Act, each county and municipality is required to prepare a comprehensive plan for approval by the Department of Community Affairs. The adopted local plan must include "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development" of the local government's jurisdictional area. Section 163.3177(1), Fla.Stat. (1991). At the minimum, the local plan must include elements covering future land use; capital improvements generally; sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer protection specifically; conservation; recreation and open space; housing; traffic circulation; intergovernmental coordination; coastal management (for local government in the coastal zone); and mass transit (for local jurisdictions with 50,000 or more people). *Id.*, § 163.3177(6).

Of special relevance to local rezoning actions, the future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the "proposed future general distribution, location, and extent of the uses of land" for various purposes. *Id.*, § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. *Id.*, § 163.3177(6)(a).

The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. *Id.* § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. *Id.*, § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

> (a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3164, Florida Statutes (1991), reads in pertinent part:

> (6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.
>
> ***474** (7) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs*, 578 So.2d 415 (Fla. 2d DCA1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic*, 419 So.2d 1041 (Fla.1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by

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Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and ***475** properly reviewable by petition for certiorari. [1]

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At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the *future* use of land, which contemplates a gradual and ordered growth. *See* *City of Jacksonville Beach,* 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose,* 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

> [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in *Lee County v. Sunbelt Equities II, Limited Partnership:*

> [A]bsent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.
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> Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict ***476** scrutiny" of *Machado* to insure this does not happen.

619 So.2d at 1005-06.

This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris,* 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.,* 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the

board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

While they may be useful, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant,* 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

All Citations

627 So.2d 469, 18 Fla. L. Weekly S522

Footnotes

1 One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County,* 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

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Respondents cited the case of *Martin Cty. v. Yusem* for the proposition that Petitioners were required to bring this case as an original action in circuit court, and not as a petition for certiorari. 690 So. 2d 1288, 1295 (Fla. 1997). However, very significantly, *Yusem* did not pertain to a small-scale amendment, but rather to a comprehensive land use amendment pertaining to a fifty-four-acre property that

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***2** The City of Miami Planning Department Staff Analysis ("Staff Report") stated that "[t]he application is subject to small-scale amendment procedures as established in Section 163.3187, Florida Statutes, involving less than 10 acres of Subject Properties." (SA:25). The Report also noted that the proposed Property was consistent with the goals, objectives and policies of the MCNP. Here we find that all the requirements of Section 163.3187, Fla. Stat. have been met for small-scale development, and the Petition for Writ of Certiorari is properly before this Court.

Standard of Review

Review of a quasi-judicial zoning decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgments are supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (*citing City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)). Petitioners argue that essential requirements of the law were not observed, and there was a lack of competent substantial evidence to support the Commission's decision. [2]

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In *Haines,* the Supreme Court, in considering whether the essential requirements of the law were observed, held that "applying] the correct law" is synonymous with "observing the essential requirements of law." 658 So. 2d at 527. Overlooking sources of established law or applying an incorrect analysis of the law results in a departure from the essential requirements of law. *See City of Tampa v. City Nat'l Bank of Fla.*, 974 So. 2d 408, 411 (Fla. 2d DCA 2007).

Petitioners contend that the Commission departed from the essential requirements of law because the Respondents' Application for the proposed Property is inconsistent with the legal requirements of Miami 21 and the MCNP. This argument is unavailing. The Staff Report recommended approval of the Application, finding that it was "consistent" with the various MCNP objectives and goals. Moreover, the Planning, Zoning, and Appeals Board recommended approval of the change in both the zoning classification and the FLUM.

Petitioners also contend that the Application fails to meet certain requirements such as "neighborhood traffic calming plans," The covenant signed by the Respondents contains a section for traffic improvements. We find no departure from the essential requirements of the law.

Competent Substantial Evidence

We now turn to the issue of competent substantial evidence. Competent substantial evidence has been defined as "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Smith v. Dep't of Health & Rehab. Servs.*, 555 So. 2d 1254, 1255 (Fla. 3d DCA 1989) (citation omitted). "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (citation omitted).

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Staff report recommendations constitute competent substantial evidence. *See* *Village of Palmetto Bay v. Palmer Trinity Private Sch, Inc.*, 128 So. 3d 19, 26-27 (Fla. 3d DCA 2012). Here, we find that the City staff conducted a complete review of the Respondents' Application, and recommended approval. We find that there is ample competent substantial evidence in the record to support the Commission's decision.

We conclude that the Commission followed the essential requirements of law and that there was competent substantial evidence to support the Commission's decision. The Petition for Writ of Certiorari is therefore **DENIED,**

TRAWICK, SANTOVENIA and WALSH, JJ, concur.

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Footnotes

1 The rezoning of the Property was from a "T3-R" Sub-Urban Transect Zone-Restricted with a Neighborhood Conservation District ("NCD-2") overlay to a "T4-L" General Urban Transect Zone-Limited with an NCD-2 overlay. The change in the zoning classification was made pursuant to the zoning requirements of Article 7, Section 7.1.2.8 of Miami 21.

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Review of a quasi-judicial zoning decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgments are supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (*citing City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)). Petitioners argue that essential requirements of the law were not observed, and there was a lack of competent substantial evidence to support the Commission's decision. [2]

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Section 163.3187, Fla. Stat. (2021) states:

> (1) A small-scale development amendment may be adopted under the following conditions:
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> (a) The proposed amendment involves a use of 50 acres or fewer and:
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> (b) The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity ...
>
> (c) The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s, 380.0552 or by the Administrative Commission pursuant to s. 380.05(1).

Respondents cited the case of *Martin Cty. v. Yusem* for the proposition that Petitioners were required to bring this case as an original action in circuit court, and not as a petition for certiorari. 690 So. 2d 1288, 1295 (Fla. 1997). However, very significantly, *Yusem* did not pertain to a small-scale amendment, but rather to a comprehensive land use amendment pertaining to a fifty-four-acre property that

was part of a nine-hundred-acre tract of land. The Supreme Court clarified in a later case, *Coastal Dev. of N. Fla., Inc., v. City of Jacksonville Beach,* that in *Yusem* they "expressly declined to pass upon small-scale development amendments, as that issue was not before us." 788 So. 2d 204, 208 (Fla. 2001) (citation omitted). Accordingly, *Coastal* held that "[a] challenge to a local government's decision on a small-scale development amendment **may be** commenced as an original action in the circuit court." *Id.* at 209. (emphasis added) Therefore, aggrieved persons are not required to file an original action and may challenge a local government's decision on a small-scale development amendment by certiorari.

***2** The City of Miami Planning Department Staff Analysis ("Staff Report") stated that "[t]he application is subject to small-scale amendment procedures as established in Section 163.3187, Florida Statutes, involving less than 10 acres of Subject Properties." (SA:25). The Report also noted that the proposed Property was consistent with the goals, objectives and policies of the MCNP. Here we find that all the requirements of Section 163.3187, Fla. Stat. have been met for small-scale development, and the Petition for Writ of Certiorari is properly before this Court.

Standard of Review

Review of a quasi-judicial zoning decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgments are supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (*citing City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)). Petitioners argue that essential requirements of the law were not observed, and there was a lack of competent substantial evidence to support the Commission's decision. [2]

Essential Requirements of Law

In *Haines,* the Supreme Court, in considering whether the essential requirements of the law were observed, held that "applying] the correct law" is synonymous with "observing the essential requirements of law." 658 So. 2d at 527. Overlooking sources of established law or applying an incorrect analysis of the law results in a departure from the essential requirements of law. *See City of Tampa v. City Nat'l Bank of Fla.*, 974 So. 2d 408, 411 (Fla. 2d DCA 2007).

Petitioners contend that the Commission departed from the essential requirements of law because the Respondents' Application for the proposed Property is inconsistent with the legal requirements of Miami 21 and the MCNP. This argument is unavailing. The Staff Report recommended approval of the Application, finding that it was "consistent" with the various MCNP objectives and goals. Moreover, the Planning, Zoning, and Appeals Board recommended approval of the change in both the zoning classification and the FLUM.

Petitioners also contend that the Application fails to meet certain requirements such as "neighborhood traffic calming plans," The covenant signed by the Respondents contains a section for traffic improvements. We find no departure from the essential requirements of the law.

Competent Substantial Evidence

We now turn to the issue of competent substantial evidence. Competent substantial evidence has been defined as "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Smith v. Dep't of Health & Rehab. Servs.*, 555 So. 2d 1254, 1255 (Fla. 3d DCA 1989) (citation omitted). "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (citation omitted).

Petitioners argue that the Commission's approval was not based on competent substantial evidence. Specifically, Petitioners contend that the Property will transform the neighborhood in a way that is neither consistent with the comprehensive plan nor compatible with the existing neighborhood. We do not agree. The Staff Report notes that "[t]he proposed rezoning is a response to various changing conditions within the area and citywide." (SA:280). The Staff Report specifically notes that the proposed rezoning is consistent with the expansion and changed conditions in the vicinity of the proposed development, including the Cocowalk retail complex update, additional transportation options, and new office and lodging projects.

***3** The record reflects that the Commission received evidence in the form of letters of support from numerous homeowners who lived near the Property. The Commission

also received letters of support from neighboring groups such as the Village West Homeowners and Tenants Association and the Coconut Grove Village Council.

Staff report recommendations constitute competent substantial evidence. *See* *Village of Palmetto Bay v. Palmer Trinity Private Sch, Inc.*, 128 So. 3d 19, 26-27 (Fla. 3d DCA 2012). Here, we find that the City staff conducted a complete review of the Respondents' Application, and recommended approval. We find that there is ample competent substantial evidence in the record to support the Commission's decision.

We conclude that the Commission followed the essential requirements of law and that there was competent substantial evidence to support the Commission's decision. The Petition for Writ of Certiorari is therefore **DENIED,**

TRAWICK, SANTOVENIA and WALSH, JJ, concur.

All Citations

Not Reported in So. Rptr., 2022 WL 2467598

Footnotes

1 The rezoning of the Property was from a "T3-R" Sub-Urban Transect Zone-Restricted with a Neighborhood Conservation District ("NCD-2") overlay to a "T4-L" General Urban Transect Zone-Limited with an NCD-2 overlay. The change in the zoning classification was made pursuant to the zoning requirements of Article 7, Section 7.1.2.8 of Miami 21.

2 While not raised by Petitioners, we find that procedural due process was accorded here.

2022 WL 2467598
Only the Westlaw citation is currently available.
NOT FINAL UNTIL DISPOSITION OF TIMELY-FILED MOTION FOR REHEARING OR CLARIFICATION
Florida Circuit Court, Appellate Division,
ELEVENTH JUDICIAL CIRCUIT,
MIAMI-DADE COUNTY.

PRESERVE THE WEST GROVE, INC., Shirley Gibson, Jena Saul, Anthony Vinciguerra, and Courtney Berrien, Petitioners,
v.
CITY OF MIAMI, Respondent,
and
Stirrup Properties, Inc. 3327 Grove, LLC, 3267 Charles, LLC, Respondents.

CASE NO. 2021-56-AP-01
|
Opinion filed: July 6, 2022

On Petition for Writ of Certiorari from the City of Miami Commission approval of Ordinances 13999 and 14000.

Attorneys and Law Firms

David J. Winker, David J. Winker, PA for Petitioners.

Victoria Mendez, City Attorney, John A. Greco, Deputy City Attorney, and Kerri L. McNulty, Senior Appellate Counsel for Respondent City of Miami.

Elliot H. Scherker, Brigid F. Cech Samole, and Bethany J.M. Pandher, Greenberg Traurig, P.A., for Respondents Stirrup Properties, Inc., 3227 Grove, LLC and 3267 Charles, LLC.

OPINION

PER CURIAM

***1** This matter comes before this Court on a Petition for Writ of Certiorari filed by Preserve the West Grove, Inc., Shirley Gibson, Jena Saul, Anthoney Vinciguerra, and Courtney Berrien, (collectively "Petitioners"). Petitioners request that this Court quash Ordinances 13999 and 14000, approved by the City Commission of the City of Miami ("Commission"). Ordinance 13999 allowed the amendment of the Future Land Use Map ("FLUM") designation of the Miami Comprehensive Neighborhood Plan ("MCNP") for the proposed development to be changed from "Single Family Residential" to "Low Density Restricted Commercial," pursuant to the small-scale amendment procedures of Section 163.3187, Florida Statutes. Ordinance 14000 allowed the change in zoning classification [1] of the proposed development ("Property") located at 3270 Williams Avenue and 3227, 3247, 3257 and a portion of 3277 Charles Avenue in the City of Miami.

As a threshold issue, Respondents contend that Petitioners' challenge to Ordinance 13999 through which the Commission amended the FLUM is not subject to certiorari review, because Ordinance 13999 was enacted pursuant to the small-scale amendment procedures of Section 163.3187, Florida Statutes.

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Petitioners also contend that the Application fails to meet certain requirements such as "neighborhood traffic calming plans," The covenant signed by the Respondents contains a section for traffic improvements. We find no departure from the essential requirements of the law.

Competent Substantial Evidence

We now turn to the issue of competent substantial evidence. Competent substantial evidence has been defined as "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Smith v. Dep't of Health & Rehab. Servs.*, 555 So. 2d 1254, 1255 (Fla. 3d DCA 1989) (citation omitted). "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (citation omitted).

Petitioners argue that the Commission's approval was not based on competent substantial evidence. Specifically, Petitioners contend that the Property will transform the neighborhood in a way that is neither consistent with the comprehensive plan nor compatible with the existing neighborhood. We do not agree. The Staff Report notes that "[t]he proposed rezoning is a response to various changing conditions within the area and citywide." (SA:280). The Staff Report specifically notes that the proposed rezoning is consistent with the expansion and changed conditions in the vicinity of the proposed development, including the Cocowalk retail complex update, additional transportation options, and new office and lodging projects.

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also received letters of support from neighboring groups such as the Village West Homeowners and Tenants Association and the Coconut Grove Village Council.

Staff report recommendations constitute competent substantial evidence. *See* *Village of Palmetto Bay v. Palmer Trinity Private Sch, Inc.*, 128 So. 3d 19, 26-27 (Fla. 3d DCA 2012). Here, we find that the City staff conducted a complete review of the Respondents' Application, and recommended approval. We find that there is ample competent substantial evidence in the record to support the Commission's decision.

We conclude that the Commission followed the essential requirements of law and that there was competent substantial evidence to support the Commission's decision. The Petition for Writ of Certiorari is therefore **DENIED,**

TRAWICK, SANTOVENIA and WALSH, JJ, concur.

All Citations

Not Reported in So. Rptr., 2022 WL 2467598

Footnotes

1 The rezoning of the Property was from a "T3-R" Sub-Urban Transect Zone-Restricted with a Neighborhood Conservation District ("NCD-2") overlay to a "T4-L" General Urban Transect Zone-Limited with an NCD-2 overlay. The change in the zoning classification was made pursuant to the zoning requirements of Article 7, Section 7.1.2.8 of Miami 21.

2 While not raised by Petitioners, we find that procedural due process was accorded here.

Application No. RZ 22-0949
Name: Christopher Jordan
Entered at Public Hearing: ZHM
Exhibit # 2 Date: 11/14/22

Hillsborough County Planning Commission

Hillsborough County Zoning Commission

Hillsborough County Hearing Master

Hillsborough County Board of Commissioners

Regs- 10003 Myrtle Rd. Valrico

Zoning Application- 22-0949

November 1st, 2022

To whom it may concern,

I am writing this letter to address the issues and concerns of the 30+ homeowners surrounding the proposed subject property above. We as a group are very hopeful that the hearing master as well as the Hillsborough County planning and zoning staffs will understand our concerns and not approve a PD variance for an excessive number of 14 homes to be erected that absolutely do not conform with the current surrounding area. Below are just a few of the very important things we feel that county should consider before approving or denying this application.

1- Just less than 2 years ago when this horrific never-ending widening of Bell Shoals Rd. was starting, we the residents were advised that our block was being cut off from being able to turn out of Myrtle Rd. onto S/B Bell Shoals and also no longer being able to turn left into our street from S/B Bell Shoals. When we attempted to ask the county for assistance, Commissioner White did in fact hold several meetings with us but after extensive review, planners from Hillsborough County openly admitted that they did not conduct a vehicle count / traffic count of the homes and horse farm businesses on our block and rather gave the turn lanes to a smaller count of homes just north of us. Even though this was a dire mistake on the county, they pushed us aside yet again and made a concession to give us a minor bump out about ¼ mile south on Bell Shoals for us and our children to "unsafely" make U-turns on the busy Bell Shoals in the future. This was a disgrace but again, not a major concern for the officials at Hillsborough County.
2- Considering the above with poor egress and ingress to our street and also the fact that our road is too narrow to afford traffic both ways, wouldn't this be a huge safety issue for Emergency vehicles not being able to come into the street easily if fire, police or ambulance were ever needed?
3- This is one of the few remaining "country style" setting blocks left in this part of Valrico. Many of us, sold our homes in neighborhoods similar to this proposal to avoid these such over crowded areas and now, just to take in more tax revenue, this may be allowed? That being said, we would now undergo a couple more years of excessive noise construction and more street work and traffic as a result of this approval?

4- I did see on the plans that there may be a need to also widen our road and paint a double yellow line down the middle. If that were to happen, our county setting would now resort to becoming living on an "avenue" style city block.
5- Current zoning does not allow for such small parcels and large developments on this property. This will not conform with surrounding homes and lots.
6- This lot has tons of animal wild life and passing tracts through it for numerous wildlife that we the residents see on the property quite regularly. So should all these animals become displaced or their paths be removed and thus possibly forcing all the wildlife out onto the major roadways? Who would be liable if this project was approved and the misplaced wildlife veer into Bell shoals and cause injury or death to persons in vehicles that may strike them? Also, the adjoining properties could be in danger of the roaming wildlife now moving to their properties or yards. There is also tons of natural vegetation and old trees on the property which would also have to be killed off and cut down as a result of this possible approval.
7- The building of such a large development and smaller lots would not only majorly increase our traffic flow, it would absolutely have a negative effect on our current real estate home values. This development could entirely change our entire current neighborhood. I understand that this may not be a concern for county officials that do not live here or drive by here but this is devastating to the residents here and why we have all signed a petition to oppose this.
8- Hillsborough County has steadily increased our real estate taxes in past several years and yet now may approve such a disastrous change that could reduce our values entirely and I'm sure would not lower our taxes either to offset.

I would also like to add that when speaking with the builder's attorneys I did advise her that we as a neighborhood would not have objected to a 7 home 1 acre lot per development. If their application was modified to what that max of 7 we would happily remove our petition and oppositions.

Just to give you more background on our residents of Myrtle Rd. and Crape Myrtle. The previous developer that intended on buying 1003 Myrtle approached our entire block with the hope to completely take out Myrtle Rd and build a large apartment complex. Several people including myself were offered up to 30% over the already inflated high values of our homes to sell to them. I was actually offered more than double what I paid for my property only 6 years ago. We all said "NO" this is our peaceful safe haven of forever homes and we had no interest in taking the money and running.

Hillsborough county has had quite a growth spurt in last few years. Its unfortunate that they always seem to take in millions in fees and allow developments everywhere and then worry about the infrastructure / traffic after the fact almost each and every time. Our commutes to go 5 miles to work in Brandon was 10-15 mins only a few years ago and now takes 30 mins just to go 2-3 miles on Bell Shoals alone due to extremely poor planning on the part of Hillsborough County.

I know most staff in the county are overloaded with hundreds of pages of documents each time a PD such is this is applied for, but I feel it would be extremely useful for people to actually come out of their offices in busy Tampa and see what beautiful natures, wildlife and surrounding neighborhoods they will allow to be destroyed if things like this are rubber stamped or allowed solely because of more taxable income for the county.

We intend on having 20+ members of our area to be at the meeting on Nov. 14th to speak in opposition and again in January if need be. We though hope expressing our concerns ahead of time could save some time for us and you and maybe could avoid a lengthy meeting on those evenings.

Again, we understand the county wanting growth for new residents to move here, but I don't think the county is looking at the numbers of long-term residents that are now moving out of the county for all the reasons listed above. We the residents, strongly urge to county to reconsider and not allow our community to be changed so drastically.

Very respectfully,

Christopher Jordan Fl. Lisc. R/E Broker

Myrtle Road Resident

30+ local Residents

(813) 523-1301

Petition to Oppose Hillsborough County Rezoning to PD

Application # 22-0949

1003 Myrtle Rd. Valrico, Fl. 33596

Petition summary and background	We, the surrounding residents / homeowners oppose permission to be granted for rezoning to PD for above application and address. We hereby appoint Christopher Jordan or anyone appointed by him to appear and speak on our behalf

Printed Name	Signature	Address	Email	Phone Number
SEAN Blackwell	Sean T. Blackwell	1132 Myrtle Rd	SEANblackwell038.gmail	(813) 856-89
Angie Blackwell	Angie Blackwell	1153 Myrtle Rd	blackwella916gmail	(813) 863-4720
RICHARD BAYNE	Richard Bayne	1102 MYRTLE RD	BRNARD157@GMAIL.COM	454-5022
Adam Estabrook		1140 Myrtle RD	Adam@Estabrook.io	813-577-2297
Winston Keen	Winston Keen	1009 Myrtle Rd	N/A	813-900-7376
Michael Ippolito	Michael Ippolito	1137 Myrtle Rd	ippolim@yahoo.com	813-310-9828
Joan Alagood	Joan Alagood	4802 Crape Myrtle	jmalagood@	813-245-2414
John Blanchard	John Blanchard	4815 crape myrtle	Tiffany2426@yahoo.com	407-414-[illegible]
Jackie Hudson	Jackie Hudson	1020 Emerald Creek Dr	chudsun11@verizon.net	(813) 220-520[illegible]

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Printed Name	Signature	Address	Email	Phone Number
Tonda Roberson	Tonda Roberson	4820 Crape Myrtle Ln	Wellrounded2@yahoo.com	404-326-5792
Christina Roberson	Christina Roberson	4820 Crape Myrtle Ln Valrico FL	nursedornan@gmail.com	813-786-9645
Chris Jordan		1133 Myrtle Rd	CJORDAN@kings-Realty.com	(813) 523 1301
DAVID SHERN		1141 MYRTLE RD	DLSTARR@AOL.COM	813-377 8623
Mary E. Evans	Mary E Evans	1141 Myrtle Rd	Marytampa@aol.com	813-548-7155
Lynnette Bayne	Lynnette Bayne	1102 myrtle Rd	lbayne1127@gmail.com	813-523-7447

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Printed Name	Signature	Address	Email	Phone Number
MANGESH PATEL		1026 Emerald Creek Drive Valrico	lata.mangesh.patel@gmail	813 689 7827
Reba Garth		1014 Emerald Creek Dr Valrico FL 33596	rgarth@usfield	
Paul Garth		"	Paul-Garth@verizon.net	863 221-1570

Petition to Oppose Hillsborough County Rezoning to PD

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1003 Myrtle Rd. Valrico, Fl. 33596

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Printed Name	Signature	Address	Email
Erika Kovacs-Nagy		4814 Crape Myrtle Ln	Nyuszi77@aol
Attila Nagy	Attila Nagy	4814 Crape Myrtle Ln	Lambertaffp@ya
Lynette Bayne	Lynette Bayne	1102 Myrtle Rd	lbayne1127@gm

PARTY OF RECORD

Rome, Ashley

From: Hearings
Sent: Monday, October 17, 2022 8:31 AM
To: Timoteo, Rosalina; Rome, Ashley; Lampkin, Timothy
Subject: FW: Application # 22-0949 1003 Myrtle Rd Valrico, 33596
Attachments: IMG_6351.jpg

From: Chris Jordan <cjordan@kings-realty.com>
Sent: Sunday, October 16, 2022 1:38 PM
To: Hearings <Hearings@HillsboroughCounty.ORG>
Subject: Application # 22-0949 1003 Myrtle Rd Valrico, 33596

To whom it may concern,

I am a neighbor to this property and have multiple concerns about this rezoning application and so do many surrounding residents who will be present for the hearing tomorrow (10/17/22).

One of our concerns is that several of us have not received any notices about these hearings (which I believe there were several that were postponed to future dates) We all tried to rely on the required signs posted in front of the property to give us the date information and any changes. As you can see in attached picture taken yesterday 10/15/22, the sign has been laying face down for no one to be able to view. It has been that way for at least 10 days now and no one has any knowledge as to the status of this application.
Is the sign required to be erected for public view and noticing of the surrounding neighbors? If the homeowners (who are residing on property currently) are not able to stand such sign up, should they have contacted the county about this? This has now confused many neighbors and will affect some peoples ability to schedule whether or not to be at the correct meeting. I hope based on this we can get a new date for everyone to be noticed properly and attend.

Please advise us on this matter as soon as possible please.

Thank you very much for any information you can give.

Respectfully,
Christopher Jordan
1133 Myrtle Rd. Valrico
(813) 523-1301

Received October 17, 2022
Development Services

Rome, Ashley

From: Hearings
Sent: Monday, October 17, 2022 9:55 AM
To: Timoteo, Rosalina; Lampkin, Timothy; Attanayake, Sandya
Cc: Rome, Ashley; Medrano, Maricela; Grady, Brian; Heinrich, Michelle
Subject: FW: Application # 22-0949 1003 Myrtle Rd Valrico, 33596
Attachments: PGM Store Tutorial.pdf; Participation in the ZHM Meeting.pdf

Importance: High

Please see email below.

Thanks,

Marylou Norris
Administrative Specialist
Community Development Section
Development Services Department

P: (813) 276-8398
E: NorrisM@HCFLGov.net
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Facebook | Twitter | YouTube | LinkedIn | HCFL Stay Safe

From: Chris jordan <cjordan@kings-realty.com>
Sent: Monday, October 17, 2022 8:57 AM
To: Hearings <Hearings@HillsboroughCounty.ORG>
Subject: Re: Application # 22-0949 1003 Myrtle Rd Valrico, 33596

I appreciate your quick response and I will try to be available tonight for the meeting in person.
Could you advise if the sign being erected was required to be up prior to this hearing?
The main reason for not having the 2 days notice for us to submit materials is because no one was aware if this one was still in fact happening, due to no sign for us to see.

Thanks
Chris Jordan

On Oct 17, 2022, at 8:34 AM, Hearings <Hearings@hillsboroughcounty.org> wrote:

Thank you for your e-mail regarding application RZ-PD 22-0949 to be heard at the 10/17/22 Zoning Hearing Master Hearing. Unfortunately, your email was received after the cutoff date (2 days before the hearing date by 5:00 p.m.) to be placed into the application's record.

If you wish to submit materials into the record, they must be submitted in person or by proxy at Robert W. Saunders, Sr. Public Library, 1505 N. Nebraska Ave., beginning at 6:00pm. Materials cannot be submitted at the hearing through virtual participation.

If you wish to attend the hearing either in person or by virtual participation, please register **one week before the hearing** at the following link **http://hcflgov.net/SpeakUp**. You can register up to 30 minutes prior to the start of the hearing.

PGM Store Instructions:
For your convenience, application records may be viewed directly on our website. We have attached the instructions to access the PGM Store. To review all application records on our website please turn off your Pop-Up Blocker before you log in. Click on the following link **https://www.hillsboroughcounty.org/pgm** to enter the PGM Store. Click on **ENTER PGM STORE**. The username and password are **public**. Double click on **Document Repository**. To access the information, please enter the tracking number in the box that reads **APP/Permit/Tracking #, or by address or folio #,** then click Query. A blue bar will pop up with the Application number, Folio ID, Permit type & Current Status. Double click on the bar to access the documents. Scroll down the page and you will find all the documents you are looking for. **The Tracking, in this case, would be 22-0949.**

If you have any questions or need further information regarding this application, please contact Tim Lampkin at LampkinT@HCFLGov.net, who is the planner for this application. If you have any questions regarding process participation, please let me know.

Best regards,
Marylou Norris
Administrative Specialist
Community Development Section
Development Services Department

P: (813) 276-8398
E: NorrisM@HCFLGov.net
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

From: Chris Jordan <cjordan@kings-realty.com>
Sent: Sunday, October 16, 2022 1:38 PM
To: Hearings <Hearings@HillsboroughCounty.ORG>
Subject: Application # 22-0949 1003 Myrtle Rd Valrico, 33596

To whom it may concern,

I am a neighbor to this property and have multiple concerns about this rezoning application and so do many surrounding residents who will be present for the hearing tomorrow (10/17/22).

One of our concerns is that several of us have not received any notices about these hearings (which I believe there were several that were postponed to future dates) We all tried to rely on the required signs posted in front of the property to give us the date information and any changes. As you can see in attached picture taken yesterday 10/15/22, the sign has been laying face down for no one to be able to view. It has been that way for at least 10 days now and no one has any knowledge as to the status of this application.
Is the sign required to be erected for public view and noticing of the surrounding neighbors? If the homeowners (who are residing on property currently) are not able to stand such sign up, should they have contacted the county about this? This has now confused many neighbors and will affect some peoples ability to schedule whether or not to be at the correct meeting. I hope based on this we can get a new date for everyone to be noticed properly and attend.

Please advise us on this matter as soon as possible please.

Thank you very much for any information you can give.

Respectfully,

Christopher Jordan
1133 Myrtle Rd. Valrico
(813) 523-1301

Rome, Ashley

From: Hearings
Sent: Monday, October 17, 2022 8:47 AM
To: Timoteo, Rosalina; Rome, Ashley; Lampkin, Timothy
Subject: FW: #22-0949 1003 Myrtle Rd, Valrico

-----Original Message-----
From: Erika Nagy <nyuszi77@icloud.com>
Sent: Sunday, October 16, 2022 8:35 PM
To: Hearings <Hearings@HillsboroughCounty.ORG>
Subject: #22-0949 1003 Myrtle Rd, Valrico

I am writing to voice my concern about the amount of homes being built in our area. The traffic is already terrible and to add more homes where there is not adequate traffic flow is irresponsible. Not only in our neighborhood but nearby areas. I am so disappointed in our commissioners approving developments of homes. We need a break. It's already stressful living here and your terrible decisions and planning makes things worse. Listen to your constituents!

Sincerely,
Erika Kovacs- Nagy

Sent from my iPhone