Hillsborough County Florida

STAFF REPORT

SUBJECT:	PD 20-0985	**PLANNING AREA:**	Southshore/Riverview
REQUEST:	Rezone to Planned Development	**SECTOR**	South
APPLICANT:	David Wilson, Meritage Homes		
Existing Zoning : M, RSC-6		**Comp Plan Category:** CMU-12	

Application Review Summary and Recommendation

1.0 Summary

1.1 Project Narrative

The applicant is requesting to rezone approximately 9.5 acres from Manufacturing (M) and Residential Single Family Conventional 6 (RSC-6) to Planned Development (PD) to allow a residential development with up to 92 attached townhomes on the north side of Riverview Drive between I-75 to the east and 78th Street to the west. The project consists of 5 parcels with approximately 9.22 acres of uplands with a proposed gross density of 9.71 units per acre. The Comprehensive Plan designation of the subject property is Community Mixed Use -12. The site is surrounded by existing single family homes on the east, north and west sides of the project as well as single family homes located on the south side of Riverview Drive.

Proposed Development Standards

The applicant has proposed the following development standards:

- Minimum (Townhome) Lot Width 18 feet
- Minimum Front Yard (Townhome) Setback 20 feet
- Minimum Rear Yard (Townhome) Setback 15 feet
- Buffer with Type B Screening on the west north and east boundary 10 feet
- Minimum Lot Area 1,440 square feet
- Maximum Building Height 35 feet

Exhibit 2- Ariel View of Subject Site

Connectivity/Access

The proposed project will take access onto Riverview Drive. The project will not connect directly to the residential development that bounds the site on the west, north and eastern sides. If approved, the project entrance will align with Eagle Watch Drive and the developer will construct a westbound southbound turn lane to enhance access to the Eagle Watch Subdivision.

1.2 Compliance Overview with Land Development Code and Technical Manuals

The applicant has not requested any variations to Land Development Code Part 6.05.00 (Parking/Loading), or Part 6.07.00 (Fences/Walls).

The applicant agrees to provide landscaping and buffering exceeding that required from Part 6.06.06 (Buffering and Screening). The required buffering and screening between a single family residential use and multi-family residential use (less than or equal to 12 units per acre) is a 5-foot wide buffer with Type A opaque screen which can be provided in the form of a solid fence, evergreen plants, or a berm in combination with a fence or plants. The applicant also agrees to provide a Type B buffer of 10 feet with a row of evergreen shade trees which are not less than ten feet high at the time of planting, a minimum of two-inch caliper, and are spaced not more than 20 feet apart. A type B screen must be located in a buffer area with a minimum 10 feet in width.

If PD 20-0985 is approved, the County Engineer will approve the Design Exception (dated November 6, 2020 and found approvable January 6, 2021), for the Riverview Drive substandard road improvements As Riverview Drive is a substandard collector roadway, the developer will be required to make certain improvements to Riverview Drive consistent with Design Exception (See Exhibit 5).

1.3 Analysis of Recommended Conditions

The recommended conditions establish that the project will be developed in a manner generally consistent with RMC -12 zoning requirements with the exception of reducing the rear yard setbacks from 20’ feet to 15 feet. The applicant will compensate for the reduce rear yard setback by providing a minimum 10 foot buffer and enhanced Type B screening along the perimeter of the project.

Subject to a request for a design exception approval, the developer has agreed to construct an eastbound to northbound turn lane on Riverview Drive at the project’s entrance. The developer will also construct a westbound to southbound turn land on Riverview Drive at Eagle Watch Drive.

The recommended conditions ensure that regulatory oversight will be exercised over the final design of the buildings and stormwater retention areas and any impacts to the natural environment including the existing canopy of trees on the site and requirements for screening to meet urban scenic roadway requirements along Riverview Drive.

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Utilities
This site is located within the Hillsborough County Urban Service Area, therefore the subject property should be served by Hillsborough County Water and Wastewater Service. This comment does not guarantee water or wastewater service or a point of connection. Developer is responsible for submitting a utility service request at the time of development plan review and will be responsible for any on-site improvements as well as possible off-site improvements.

Transportation

Transportation Review Section staff has no objection to the proposed rezoning. The proposed rezoning would result in a decrease of trips potentially generated by development of the subject parcel. The transportation report and design exception are attached (See Exhibit 5).

School Board

Comments received from the Hillsborough County Public Schools state that capacity is adequate for the area's elementary (Ippolito), and middle school (Giunta) and inadequate for the area's high school (Spoto) based on Concurrency Reservation for the school. However, an addition is being constructed at the high school that is scheduled to be opened in 2021.

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Planning Commission staff has found the proposed planned development is *Consistent* with the Future of Hillsborough Comprehensive Plan.

1.6 Compatibility

Adjacent zoning and uses are as follows:

LOCATION	ZONING	LAND USE
North	PD 87-0171	Single Family Residential (50 foot lot widths)
South	IPD-1 89-0091	Riverview Drive / Single Family Residential (125 foot plus lot widths)
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West	PD 87-0171	Single Family Residential (50 foot lot widths)

Exhibit 3: Matrix of Adjacent Uses

The existing pattern of development in proximity to the proposed development is uniformly single family residential uses. The lot width of the homes in proximity are generally no smaller than 50 feet compared to the proposed 18 foot lot width of the subject project. If approved, the proposed project will introduce a new multi-family residential development use to the immediate area with a pattern of considerably smaller lot widths adjacent to the surrounding single family home development.

However, given that the current M zoning designation of 94 percent of the proposed site, the development of a manufacturing use at the site would provide a greater contrast to the existing surrounding single-family homes. Townhomes in this location, while they provide more of a dense pattern of development than single family homes, are still residential and will create less of a contrasting land use than manufacturing uses in this location.

As indicated in the transportation report, the proposed project will result in a reduction of trips on Riverview Drive. Additionally, if approved, the buildout will enhance traffic movement in the area by virtue of the developer making improvements to this section of Riverview Drive.

Based on the pattern of existing development in proximity to the proposed project, the development of townhomes in this area will not introduce new incompatible uses in the immediate area.

1.7 Recommendation

Therefore, based on the above considerations staff finds the proposed general site development plan supportable.

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The following agencies have reviewed the request and provide comments:

- Water Resource Services
- Development Services, Impact and Mobility Fees
- Environmental Protection Commission, with conditions
- Conservation and Environmental Lands Management
- Hillsborough County School Board
- Development Services, Transportation, with conditions

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Exhibit 1: General Aerial, Zoning Map
Exhibit 2: Aerial View of Subject Site.
Exhibit 3: Matrix of Adjacent Uses
Exhibit 4: Proposed General Development Plan
Exhibit 5: Transportation Report with Design Exception
Exhibit 6: Intermediate Zoning Map
Exhibit 7: Future Land Use Map

2.0 Recommendation

APPROVAL - Approval of the request, subject to the conditions listed below, is based on the revised general site plan submitted December 30, 2020.

1. The project shall be developed with a maximum 92 Townhomes

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2. The Townhomes shall be developed in accordance with RMC-12 development standards with the exception of the following standards:

• Minimum (Townhome) Lot Width	18 feet
• Minimum Front Yard (Townhome) Setback	20 feet
• Minimum Rear Yard (Townhome) Setback	15 feet*
• Minimum Buffer with Type B Screening on the West North and East Project Boundary	10 feet
• Minimum (Townhome) Lot Area	1,440 Sq Ft
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Additional requirement of 2 foot setback for every foot above 20 feet shall not apply

3. Notwithstanding anything herein or shown on the PD site plan to the contrary, bicycle and pedestrian access may be permitted anywhere along the PD boundaries.

4. The project fronts on Riverview Drive which is a designated Urban Scenic Roadway and subject to the requirements outlined in Section 6.06.03.I for such roadways including the planting of street trees and canopy trees.

5. The planting of required trees shall be sensitive to overhead electric utility lines. Trees that exceed a mature, overall height of 20 feet shall not be planted within 30 feet of an existing or proposed overhead electric utility line.

6. The developer shall construct a minimum 5-foot wide sidewalk on its project frontage and internal roadways.

7. If PD 20-0985 is approved, the County Engineer will approve the Design Exception (dated November 6, 2020 and found approvable January 6, 2021), for the Riverview Drive substandard road improvements. As Riverview Drive is a substandard collector roadway, the developer will be required to make certain improvements to Riverview Drive consistent with Design Exception.

8. The developer shall construct the following site improvements:
    - An eastbound to northbound left turn lane on Riverview Drive at the projects entrance;
    - A westbound to southbound left turn land on Riverview Drive at Eagle Watch Drive.

9. 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.

10. 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.

11. Prior to the issuance of any building or land alteration permits or other development, a wetland survey must be submitted to and approved by the EPC. 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).

12. 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.

13. Notwithstanding anything shown on the site plan, the applicant is required to meet Hillsborough County Land Development Code (LDC) Section 6 “Design standards and Improvements Requirements”, interconnectivity requirements and Hillsborough County Transportation Technical Manual (TTM) requirements.

14. 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.

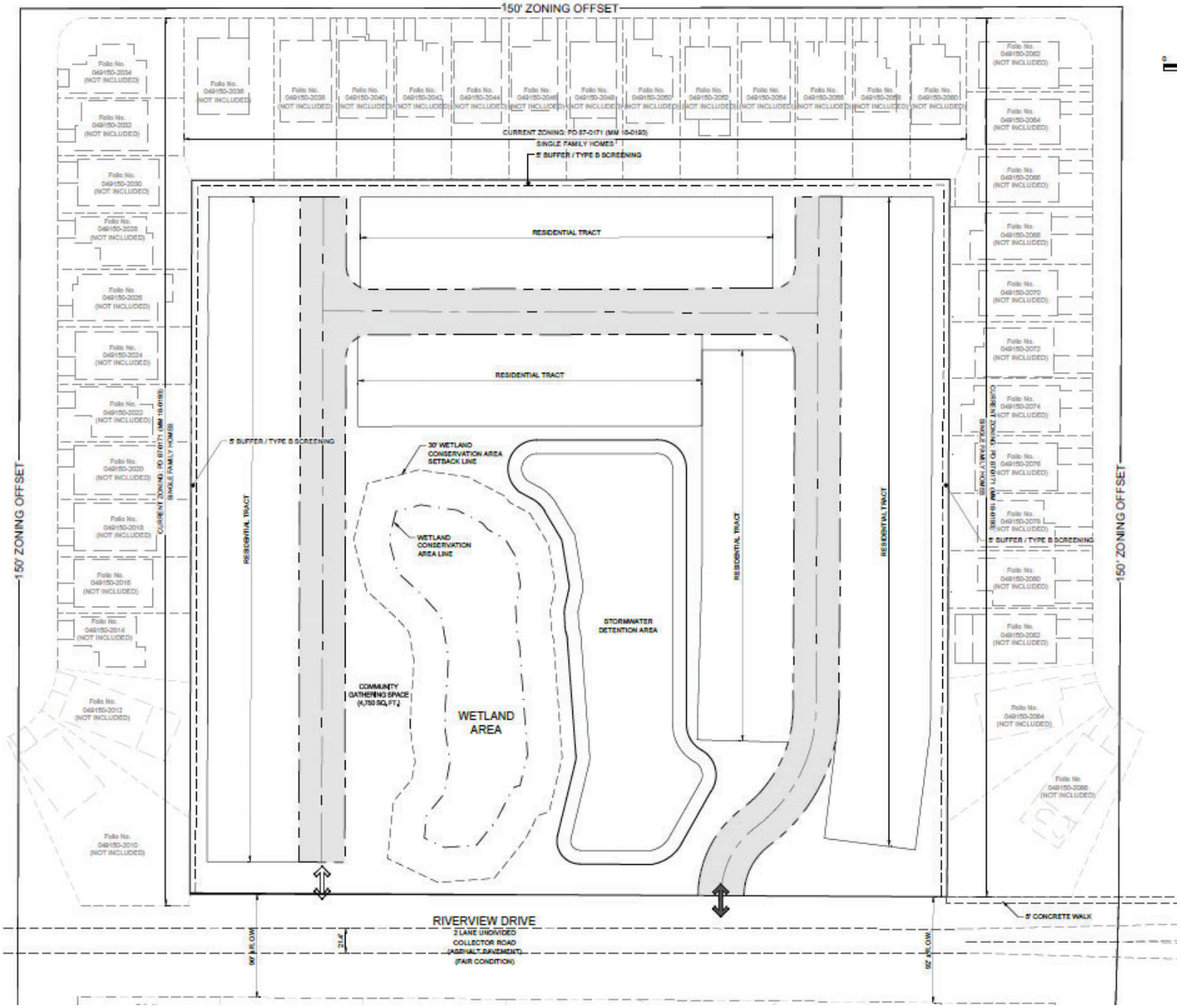
15. The construction and location of any proposed environmental impacts are not approved by this review, but shall be considered by Natural Resources staff through the site and subdivision development plan process pursuant to the Land Development Code (LDC).

16. 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.

17. 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.

Staff's Recommendation: Approvable, Subject to Conditions
Zoning Administrator  J. Brian Grady Sign-off: Tue Feb 2 2021 10:13:43


150' ZONING OFFSET
CURRENT ZONING: PD 87-0171 (MM 18-0193)
SINGLE FAMILY HOMES
5' BUFFER / TYPE B SCREENING
RESIDENTIAL TRACT
RESIDENTIAL TRACT
RESIDENTIAL TRACT
RESIDENTIAL TRACT
30' WETLAND CONSERVATION AREA SETBACK LINE
WETLAND CONSERVATION AREA LINE
STORMWATER DETENTION AREA
COMMUNITY GATHERING SPACE (4,750 SQ. FT.)
WETLAND AREA
150' ZONING OFFSET
5' CONCRETE WALK
RIVERVIEW DRIVE
2 LANE UNDIVIDED COLLECTOR ROAD (ASPHALT PAVEMENT) (FAIR CONDITION)
80' R.O.W.
92' R.O.W.
21.4'

20-0985

RECEIVED
By Rosalina Timoteo at 3:05 pm, Dec 30, 2020

LINCKS & ASSOCIATES, INC.

Engineers
Planners

Revised November 12, 2020
August 5, 2020

Mr. Mike Williams
Hillsborough County Government
601 East Kennedy Blvd., 22nd Floor
Tampa, FL 33602

Re: Riverview Landing
Folio Number 04145.0000
04144.0000
04143.0000
04143.0100
04143.0200
RZ 20-0985
Lincks Project No. 20068

The purpose of this letter is to request a Design Exception to Section 6.02.07 of the Hillsborough County Land Development for Riverview Drive from US 41 to US 301. The developer proposes to develop the subject property for up to 92 Townhomes.

According to the Hillsborough County Functional Classification Map, Riverview Drive is classified as a collector roadway. The subject site is within the Hillsborough County Urban Service Area.

Table 1 provides the trip generation for the project and Table 2 provides the roadway capacity analysis for Riverview Drive adjacent to the site. As shown in Table 2, Riverview Drive currently operates at an acceptable level of service and will continue to operate at an acceptable level of service with the addition of the project traffic. Table 3 provides the Access Recommendation for the project.

The access to serve the project is proposed to be via one full access to Riverview Drive to align with Eagle Watch Drive.

On June 25, 2020 and November 9, 2020, the following individuals met to discuss proposed project and Design Exception for Riverview Drive.

- Mike Williams
- James Raltiff
- Ben Kneisley
- Sheida Tirado

5023 West Laurel Street
Tampa, FL 33607
813 289 0039 Telephone
8133 287 0674 Telefax
www.Lincks.com Website

The request is for a Design Exception to TS-7 of the Hillsborough County Transportation Technical Manual for Riverview Drive from US 41 to US 301, which is currently a two-lane roadway that includes residential homes fronting on the roadway. The pavement is approximately 22'. The following exceptions are requested to accommodate the proposed project.

1) Right of Way – TS-7 has 96 feet of right of way. The right of way varies between 50 and 70 feet along Riverview Drive.

2) Lane Width – TS-7 has 12' travel lanes. The existing roadway has 11' travel lanes.

3) Shoulders – TS-7 has 8' shoulders with 5' paved. The existing roadway has unpaved shoulders along the subject section.

4) Sidewalk – TS-7 has sidewalk on both sides of the roadway. There are currently intermittent sidewalks on the north and south sides of Riverview Drive.

The justification for the Design Exception is as follows:

1. The proposed development has limited frontage of Riverview Drive and the properties east and west of the subject property is fully developed with Single Family Homes.

2. The right of way for Riverview Drive along the property frontage is approximately 90 feet. Therefore, no additional right of way should be required for the subject parcel.

3. Riverview Drive is a collector roadway with a posted speed limit of 35 to 45 MPH. According to Table 210.2.1 of the 2020 Florida Design Manual, 11-foot lanes are acceptable for Suburban (C3)/Urban General (C4) roadways.

4. There are unpaved shoulders along the roadway. Therefore, it does not appear to have any off tracking. Therefore, the existing shoulder should be adequate.

5. The developer proposes to construct sidewalk along the property frontage to connect to the sidewalk to the east. In addition, the developer proposed to extend the sidewalk west approximately 950 feet to connect the existing sidewalk. This is above and beyond the LDC requirement for the project.

6. Based on the Access Management Analysis for the project, left and right turn lanes are not warranted for the project access. However, the developer has committed to provide an eastbound left turn lane for the subject project and a westbound left turn lane for Eagle Watch Drive.

Figure 1 illustrates the limits of the sidewalk and turn lane improvements and Figure 2 provides the typical section for Riverview Drive adjacent to the subject parcel.

Based on the above, it is our opinion, the proposed improvements to Riverview Drive mitigate the impact of the project and meet the intent of the Transportation Technical Manual to the extent feasible.

Please do not hesitate to contact us if you have any questions or require any additional information.

Best Regards,

Steven J Henry
President
Lincks & Associates, Inc.
P.E. #51555

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

_____Disapproved

_____Approved

If there are any further questions or you need clarification, please contact Benjamin Kniesley, P.E. at (813) 307-1758

Sincerely,

Michael J. Williams

Hillsborough County Engineer

Hillsborough County Florida

Immediate Aerial Zoning Map

RZ-PD 20-0985

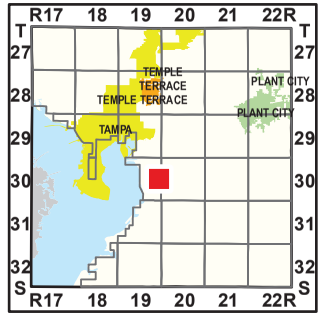
Folio: 49143.0000, 49143.0100, 49143.0200, 49144.0000, 49145.0000

Application Site
Zoning Boundary
Parcels

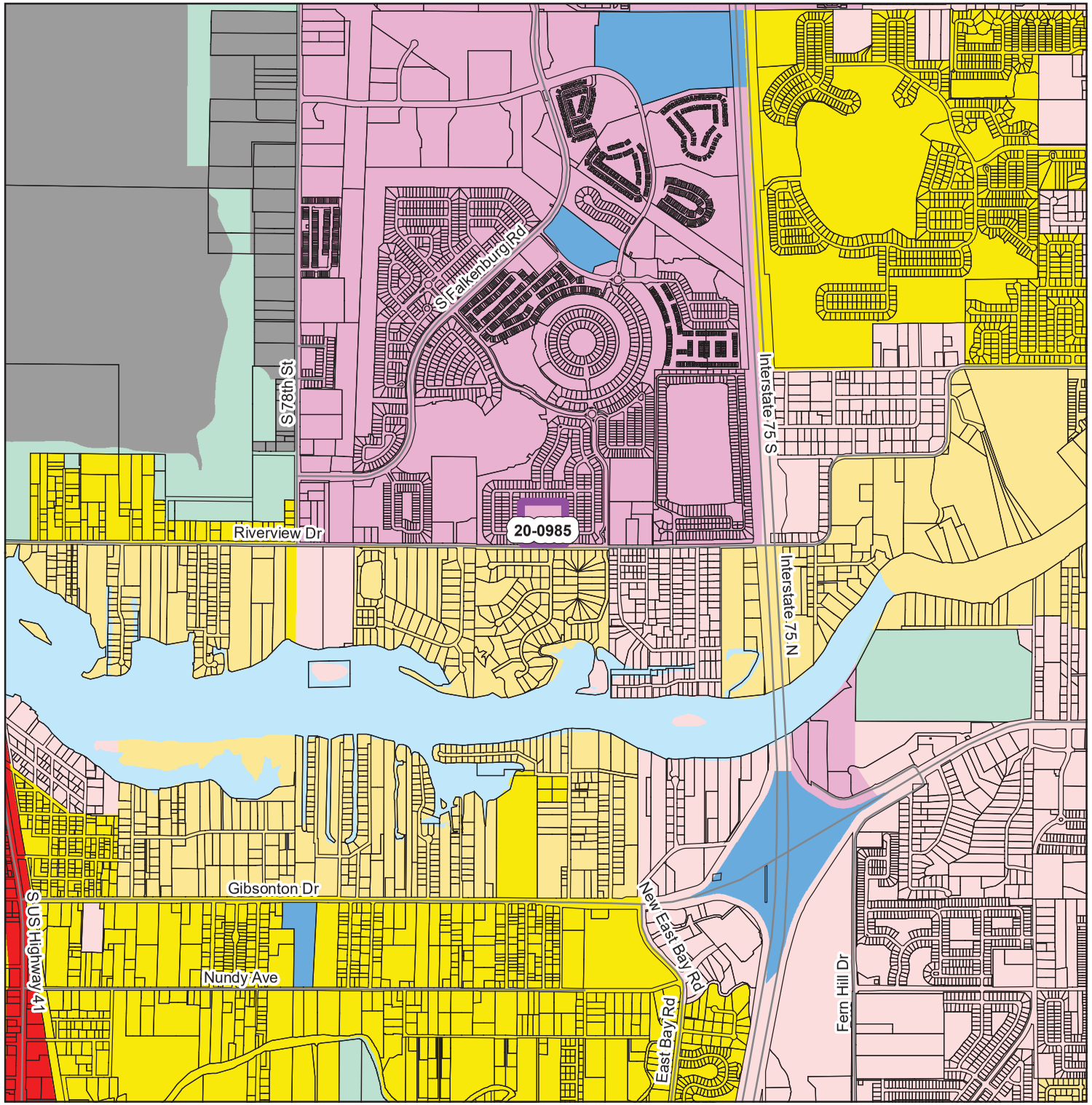
N

0 130 260 Feet

STR: 13-30-19



Date: 09/02/2020 Path: G:\ZONING\GIS\Data\Zoning- Site.aprx



HILLSBOROUGH COUNTY
2019 FUTURE LAND USE
RZ PD 20-0985

Rezonings

- <all other values>

STATUS

- APPROVED
- CONTINUED
- DENIED
- WITHDRAWN
- PENDING

- Tampa Service Area
- Urban Service Area
- Shoreline
- County Boundary
- Jurisdiction Boundary
- Major Roads
- Parcels
- 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
- WATER

N W E S

0 1,100 2,200 3,300 4,400 Feet

Map Printed from Rezoning System: 8/3/2020

Author: Beverly F. Daniels

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

Hillsborough County City-County Planning Commission

COUNTY OF HILLSBOROUGH

LAND USE HEARING OFFICER'S RECOMMENDATION

Application number:	RZ PD 20-0985
Hearing date:	February 15, 2021
Applicant:	David Wilson, Meritage Homes
Request:	Rezone approximately 9.5 acres from Manufacturing (M) and Residential Single Family Conventional-6 (RSC-6) to Planned Development to allow up to 92 attached townhomes
Location:	8714, 8718, and 8808 Riverview Drive, located on the North side of Riverview Drive between I-75 to the east and 78th Street to the west
Parcel size:	The project consists of 5 parcels totaling approximately 9.5 acres
Existing zoning:	M, RSC-6
Future land use designation:	Community Mixed Use-12 (12 du/ga; 0.50 FAR)
Service area:	Urban
Community planning area:	Riverview, Southshore Areawide Systems

A. APPLICATION REVIEW

DEVELOPMENT SERVICES STAFF REPORT

Application Review Summary and Recommendation

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9. 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.

10. 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.

11. Prior to the issuance of any building or land alteration permits or other development, a wetland survey must be submitted to and approved by the EPC. 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).

12. 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.

13. Notwithstanding anything shown on the site plan, the applicant is required to meet Hillsborough County Land Development Code (LDC) Section 6 “Design standards and Improvements Requirements”, interconnectivity requirements and Hillsborough County Transportation Technical Manual (TTM) requirements.

14. 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.

15. The construction and location of any proposed environmental impacts are not approved by this review, but shall be considered by Natural Resources staff through the site and subdivision development plan process pursuant to the Land Development Code (LDC).

16. 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.

17. 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.

Staff's Recommendation: Approvable, Subject to Conditions
Zoning Administrator  J. Brian Grady Sign-off: Tue Feb 2 2021 10:13:43

B. HEARING SUMMARY

This case was heard by the Hillsborough County Land Use Hearing Officer on February 15, 2021. Mr. Brian Grady of the Hillsborough County Development Services Department introduced the petition.

Applicant
Ms. Kami Corbett spoke on behalf of the applicant. She introduced Garth Noble with Meritage Homes, Trent Stevenson of Level Up who is the project civil engineer, Isabelle Albert who is the planner, and Steve Henry who is the transportation engineer.

Ms. Corbett asked Ms. Albert to come forward with her presentation.

Ms. Albert stated the subject property is a 9.5-acre site located in Riverview between I-75 and 78th Street. She stated the subject property is currently zoned Manufacturing with a pocket of RSC-6. She stated the Future Land Use designation is Community Mixed Use-12.

Ms. Albert stated the applicant proposes a townhome development for 92 townhomes. She stated the site is surrounded by single-family residential lots and the applicant proposes to increase the buffering and screening. She stated a 5-foot buffer with Type B screening is required, but the applicant is proposing a 10-foot buffer with a Type B screening and PVC fence.

Ms. Albert stated there is a wetland internal to the project where the applicant is creating a community area. She stated access to the project will be lined up with Eagle Watch Drive. She stated the subject property is on the scenic corridor and the applicant will provide landscaping for that purpose.

Ms. Albert stated the current zoning is Manufacturing. She pointed out the site on her presentation slide, and stated the surrounding area has interesting zoning. She stated there is additional Manufacturing zoning to the east, and some Show Business zoning to the south, and Industrial zoning further to the west.

Ms. Albert stated the subject property is in a Future Land Use of Community Mixed Use, 12 units to the acre. She stated north of Riverview Drive is more intense and there is also Light Industrial. She stated there is Residential-6 and to the south there is mixed use and Residential-4, which is the least intense in the area.

She stated the zoning is not very consistent or compatible with the existing residential area. She stated with the CMU-12 designation the applicant has a minimum density requirement in the Urban Service Area and is complying with that. She stated with the replacement of Manufacturing with residential there is neighborhood protection, and the townhome is compatible with the residential area.

Ms. Albert stated the applicant must also comply with the Riverview Community Plan. She states the first goal is to provide a diverse city of housing types and the second goal is the vision to have a mixed-use district. She stated the mixed-use district is residential, retail, education, but different types of residential as well with the townhomes. Ms. Albert pointed out the townhomes are consistent with the overall residential character of the area more so than Manufacturing, which would be incompatible with the area.

Ms. Albert stated the rezoning request is consistent with the comprehensive plan and meets the minimum density requirement for the Urban Services Area. She stated the project promotes integration with adjacent land uses and is preserving the on-site wetland.

Ms. Albert stated Mr. Henry will discuss access and connectivity.

Mr. Henry stated he performed a traffic analysis for the project. He showed a graphic illustrating the Level of Service of Riverview Drive in the area. He pointed out the green color on the chart represents background traffic and the blue color represents the additional project traffic the project will add to the road.

Mr. Henry stated the Level of Service D capacity is right about 1,200 cars per day. He stated the a.m. peak hour for the project is about 596, and the p.m. peak hour is about 657. Mr. Henry stated that represents about a .55 volume to capacity ratio. He stated this is a good level of service. Mr. Henry stated he looked at the trip generation comparison of the current zoning for the subject property versus what the applicant is proposing. He stated the Manufacturing use would generate significantly more traffic in the a.m. and p.m. peak hours. Mr. Henry stated this represents a significant decrease in the amount of traffic that could be generated based on zoning.

Mr. Henry stated the applicant heard ideas about putting in single-family on the subject property versus townhomes. He showed a comparison of the single-family homes that could be put on the subject property. He stated about 51 single-family homes could fit on the property versus the 92 townhomes. He stated the difference in traffic is negligible and is virtually the same amount of traffic for single-family as for the townhomes the applicant is proposing.

Mr. Henry stated the county considers Riverview Drive to be a substandard road and the applicant requested a design exception that has been deemed approvable. He showed an illustration of the section the applicant would have to meet for Riverview Drive, which is the TS-7, a rural collector roadway. Mr. Henry stated the TS-7 has 12-foot lanes, but Riverview Drive has 11-foot lanes, which meets DOT criteria for that type of roadway. He stated the TS-7 has paved shoulders.

Mr. Henry stated the applicant is proposing mitigation, including sidewalk along the subject property, and extending that sidewalk to join up to the other sidewalk about 950 feet to the west. Mr. Henry stated the project does not warrant a left turn lane for its driveway on Riverview Drive. He stated the project access will align with Eagle Watch, an existing single-family development to the south. He stated the applicant is proposing to

install a left turn lane not only for its development but also for Eagle Watch. He stated that would help mitigate the impact of the project on Riverview Drive.

Mr. Henry concluded his presentation.

Ms. Corbett stated she wanted to close by letting the hearing officer know the applicant did meet with neighbors. She stated the applicant met virtually with them and different members of the applicant's team have spoken with some of the neighbors about their concerns, and the neighbors have expressed some concerns via email in the record.

Ms. Corbett stated most of the neighbors' concerns are about the townhome development in the form of development, and as Ms. Albert stated, the plan density cannot be achieved with single-family homes. She stated the applicant has proposed buffering, screening, and layout that will limit any impact to adjacent single-family homes.

Ms. Corbett stated the applicant has not heard from any immediately adjacent property owners. She stated most of the residents that have objected to the rezoning request are south of Riverview Drive. She stated those would be directly adjacent to single-family homes. She stated the applicant received one call who asked about what was being proposed and heard no further objection.

Ms. Corbett stated neighbors have expressed concern about transportation and access, and as Mr. Henry demonstrated, the proposed rezoning reduced daily trips. Ms. Corbett stated the applicant agreed to make the turn lane improvements after meeting with the neighbors because it knew this was a concern and something the applicant could accommodate.

Ms. Corbett stated the request has been found consistent and compatible by the Planning Commission and consistent by Development Services with a recommendation of approval.

Ms. Corbett ended her presentation.

Development Services Department
Mr. Steve Beachy, Hillsborough County Development Services Department, presented a summary of the findings and analysis as detailed in the staff report previously submitted into the record. Mr. Beachy stated townhomes in this location will create less of a contrasting use than currently zoned M designation in this location. He stated Development Services staff finds the proposed general site plan supportable.

Planning Commission
Melissa Lienhard, Hillsborough County City-County Planning Commission, presented a summary of the findings and analysis as detailed in the Planning Commission report previously submitted into the record. Ms. Lienhard stated Planning Commission staff finds the proposed Planned Development consistent with the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County*, subject to the conditions proposed by the Development Services Department.

Proponents
The hearing officer asked whether there was anyone at the hearing in person or online to speak in support of the application. There were none.

Opponents
The hearing officer asked whether there was anyone at the hearing in person or online to speak in opposition to the application. Three persons wished to speak.

Mr. Robert Rose, Eagle Watch Drive, stated he has known about this development since the fall and has had quite a bit of time to have discussions with the residents in the area about their concerns. He stated he is the president of the Eagle Watch Homeowners' Association. He stated Mike Lawrence, a resident, will speak to some of the slides and Dennis McComak, who is president of Stillwater, which is an adjacent development.

The hearing officer advised the opponents they would have a total of 15 minutes.

Mr. Rose stated that most of the folks he talked to in the previous couple of days have been frustrated by the traffic that is on Riverview Drive. He stated that when he asked them about the 92 townhomes that are going to be built right across the street, he cannot convince them that it is going to reduce the traffic on the road, or that it is even compatible with the neighborhood.

Mr. Rose stated that neighbor comments fall into one of three categories, concerns about compatibility, concerns about increased traffic congestion, and concern about traffic safety. He stated the entrance is going to be right across the street from Eagle Watch. He stated Eagle Watch has 62 homes and 300 to 325 trips per day. He stated the community knows this because they have a gate, and the gate can count it. He stated he knows every single day how many trips.

Mr. Rose stated the fact that there is going to be 90 to almost 50 percent more dwellings across the street just argues that it is going to be more than 300 to 325 trips a day. He stated it is going to worsen the traffic on a road that is already overburdened.

Mr. Rose recognized and appreciated the applicant's willingness to put the turn lanes in. He stated the applicant did meet with the community and listened to some of their concerns. He stated it was very helpful for the applicant to have included that. Mr. Rose stated he would turn the microphone over to Mike Lawrence who would speak a little more detailed about some of the concerns on compatibility.

Mr. Mike Lawrence, Eagle Watch Drive, stated he lives directly across the street from the entry to this "disastrous proposal." He showed his property on the screen and pointed out Oak Creek subdivision, which he stated is about four units per acre. He stated in the area where he lives the properties average two units per acre. He stated it is a community of single-family homes, but it is all custom homes.

Mr. Lawrence stated he is very aware of the growth in the area because he is a residential developer. He stated he has accounted for his share of the growth in the area. He stated he has been before the zoning hearing masters throughout more than 20 years and is well-versed in the Land Development Code. He stated he has some problems with what is being proposed.

Mr. Lawrence stated that with all the homes being single-family custom homes he has a hard time looking at his lot, which is 125-feet wide, and the proposed townhomes are 18-feet wide. Mr. Lawrence stated the closest multifamily project is well over on Falkenburg Road located on a divided arterial roadway, not in the midst of custom homes.

Mr. Lawrence stated for that reason alone the petition should be denied. He stated he is not naïve, and he realizes the community cannot stop this project. He stated he just wished there were a way to change the design. He stated he hoped the hearing officer would agree with the community that this much multi-family directly across the street just does not fit.

Mr. Lawrence referred to the downzoning from Manufacturing and stated there is no Manufacturing anywhere in the area. He stated it is really a moot point to confuse it and say Manufacturing would be worse. He stated it would never be approved.

Ms. Lawrence referred the hearing officer to Policy 1.4 and read, “Compatibility does not mean the same as, rather it refers to the sensitivity of development proposals in maintaining the character of existing development.” He stated “stuffing” a nine-unit-per-acre project into an area of two-unit-per-acre homes does not maintain the character very well.

Mr. Lawrence stated Policy 16.2 speaks of gradual transitions from one use to the other. He stated there is nothing gradual about this. Mr. Lawrence stated Policy 16.8 requires all projects must reflect the character. He stated that policy was not followed. Mr. Lawrence stated Policy 16.10 requires any density increase shall be compatible with existing proposed or planned surrounding development. He stated, “That’s a joke.”

Mr. Lawrence stated “anybody who proposes who says that this is compatible is just bad at math. Nine does not equal two, it doesn’t equal four. That’s how many units per acre are on this project.” Mr. Lawrence stated the units per gross acre the same thing you have heard from everybody else, the same thing that you heard from staff, and it is just inconsistent with everything.

Mr. Lawrence stated the community is asking the applicant to fence the entire project and use buffers the LDC calls out to screen the project from their homes. He stated he applauded the effort and appreciated the applicant for putting in turn lanes. He suggested the project also include an entry and exit gate. He stated the Eagle Watch community has an enter-and-exit gate and the community to the east does. He stated down the way is Key West Landings, which is gated, and east is Arbor Park, which is gated. He stated

custom home developments often have gates. He stated there should be a way to separate this from his community.

Mr. Dennis McComak, Stillwaters Landing Drive, stated he is the president of Stillwaters Landing Homeowners Association and is speaking in opposition to the development. He stated he listened to the staff reports and is going to talk about the traffic and specifically Riverview Drive.

Mr. McComak stated Riverview Drive is a substandard Road and the applicant admitted this. He stated he listened to the traffic report that the proposed development will result in a reduction of trips on Riverview Drive. He stated that is an assumption, a worst-case assumption. He stated the fact is this development will increase significantly the amount of traffic on Riverview Drive.

Mr. McComak stated Riverview Drive is a 4-mile road connecting 301 to 41. He stated it is called a collector road. He stated it has limited turn lanes, no bike lanes, and is badly in need of widening and resurfacing. He stated the only ingress and egress for almost a thousand homes along that four-mile stretch is Riverview Drive. He stated they cannot go south. They cannot go any other way.

Mr. McComak stated the proposed development would add 92 more home sites. He stated the current traffic study is inaccurately understated due to the pandemic. He stated there is probably 50 percent of the traffic now than last year at this time. He stated people are not going to work, school, sporting events, or out to dinner. He stated once the pandemic is over traffic will be much, much more difficult.

Mr. McComak stated immediately to the east of I-75 there are four S-curves on Riverview Drive to the site of frequent accidents. He stated this proposed development would exacerbate an already difficult traffic issue and set precedent for future high-density developments along Riverview Drive. Mr. McComak stated the fact that Riverview Drive does not have turn lanes at either end of 41 and 301 or substandard at best, needs resurfaced and any additional growth and specifically 92 units would greatly exacerbate traffic problems.

The hearing officer asked Mr. McComak whether he was a traffic engineer.

Mr. McComak stated he was not a traffic engineer, but he could count.

Mr. McComak stated one of the earlier speakers mentioned there had been no comments from anyone around, only comments from those of us on the south side. He stated he tried to contact the neighborhood Oak Park across the street through their management company who never forwarded his request or ignored it.

Development Services Department
Mr. Grady stated Development Services Department had no further comments.

Applicant Rebuttal
Ms. Corbett stated she appreciated the hearing officer's question to the witness. She stated all three gentlemen who spoke clearly care passionately about their neighborhood but none of them are professional planners or transportation engineers.

Ms. Corbett stated she will submit into the record a memorandum of law about the ability for the zoning hearing master and Board of County Commissioners to consider lay testimony on matters that require expert opinion, including things like transportation and compatibility. She stated all the expert testimony was heard not just from the applicant's team but from the county staff, who support the proposed request and found it is compatible and consistent with both the comprehensive plan and land development code.

Ms. Corbett asked Mr. Henry to come to the microphone to address the transportation issues.

Mr. Henry showed a graphic illustrating Riverview Drive operates at an acceptable level of service. He pointed out the blue color on the chart represents the traffic the proposed project will add. He stated it is less than 3 percent of the capacity of the road. He stated that is an insignificant amount of traffic and impact to the road.

Mr. Henry stated he has been studying intersections throughout the county before the pandemic and during the pandemic. He stated he adjusts his counts based on when they were done and looks at those counts to be able to determine what the traffic is doing. He stated when the pandemic first started there was a significant decrease but over time it is starting to increase. He stated he has adjusted his counts to reflect that. He stated the chart on his slide reflects not only the pandemic but also peak season traffic.

Mr. Henry concluded his presentation.

Ms. Albert pointed out the subject property is in a mixed-use Future Land Use category. She stated it is a lot more intense to the north and the Res-4 where the opposition is from is the least intensive Future Land Use category there. She stated the applicant is providing a fence around the property and a Type B screening, which is more intense and more dense than Type A.

Ms. Corbett stated as to Arbor Park, the folks within 250 feet north and east and west boundaries, they would have received mail notice and they would have had the opportunity to come here and appear. She stated she did not believe it is a matter of them not being aware of it. They just have not registered any opposition.

Ms. Corbett closed her presentation and asked for a recommendation of approval.

The hearing officer closed the hearing on Rezoning 20-0985.

C. EVIDENCE SUMBITTED

Ms. Corbett submitted into the record at the hearing a copy of the applicant's PowerPoint presentation slides, and a memorandum of law regarding lay witness testimony.

Mr. Henry submitted into the record at the hearing a Trip Generation Comparison chart comparing single family homes and townhomes, a Level of Service chart, a Trip Generation Comparison Chart comparing manufacturing use and townhomes, a Typical Section diagram, and a satellite imagery photograph of the subject property and surrounding area illustrating proposed road and sidewalk improvements.

D. FINDINGS OF FACT

1. The subject property consists of approximately 9.5 acres and is located on the north side of Riverview Drive, between I-75 to the east and 78th Street to the west.

2. The subject property is currently zoned M (Manufacturing) and RSC-6 (Residential Single-Family Conventional-6). The subject property is designated Community Mixed Use-12 on the Future Land Use Map.

3. The applicant is requesting to rezone the property to Planned Development to allow a residential development with up to 92 attached townhomes.

4. The subject property is the Urban Services Area and is within the boundaries of the Riverview and SouthShore Areawide Systems Community Plans.

5. Surrounding land uses consist of single-family homes adjacent to the subject property on the east, north, and west, and single-family homes on the south side of Riverview Drive.

6. Although a townhome development will introduce a denser development pattern than the surrounding single-family homes, townhomes are a residential use and will result in a more compatible land use than manufacturing, which the current zoning allows.

7. The applicant has not requested any variations to LDC Part 6.05.00 (Parking and Loading) or Part 6.07.00 (Fences and Walls). The applicant has agreed to provide landscaping and buffering that exceed the requirements of LDC Part 6.06.06.

8. The applicant has requested a design exception for improvements to Riverview Drive, and the County Engineer has found the exception approvable. The applicant has agreed to install a turn lane for the project access point and for the Eagle Watch community on the south side of Riverview Drive.

9. The proposed Planned Development rezoning will allow development that is compatible with the surrounding zoning and land uses.

10. The proposed Planned Development rezoning will allow development that is consistent with the CMU-12 Future Land Use designation and furthers the objectives, policies, land uses, and densities or intensities in the comprehensive plan and the vision and goals of the Riverview Community Plan.

E. FINDING OF COMPLIANCE OF NON-COMPLIANCE WITH COMPREHENSIVE PLAN

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

F. CONCLUSIONS OF LAW

A development order is consistent with the comprehensive plan if "the land uses, densities or intensities, and other aspects of development permitted by such order…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." § 163.3194(3)(a), Fla. Stat. (2020). Based on the evidence and testimony submitted in the record and at the hearing, including reports and testimony of Development Services Staff and Planning Commission staff, applicant's testimony and evidence, and opponents' testimony and evidence, there is substantial competent evidence demonstrating the requested rezoning is consistent with the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County*, and does comply with the applicable requirements of the Hillsborough County Land Development Code.

G. SUMMARY

The applicant is seeking to rezone approximately 9.5 acres from M and RSC-6 to PD to allow a residential development with up to 92 attached townhomes.

H. RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, this recommendation is for **approval** of the rezoning request.

Pamela Jo Hatley — March 3, 2021

Pamela Jo Hatley, PhD, JD — Date
Land Use Hearing Officer

Hillsborough County
City-County
Planning Commission

Unincorporated Hillsborough County Rezoning	
Hearing Date: February 15, 2021 **Report Prepared:** January 8, 2021	**Petition: PD 20-0985** **8714,8718 and 8808 Riverview Drive** *North side of Riverview Drive, west of Still Creek Drive*
Summary Data:	
Comprehensive Plan Finding:	**CONSISTENT**
Adopted Future Land Use:	**Community Mixed Use-12(12 du/ga; 0.50 FAR)**
Service Area	**Urban**
Community Plan:	**Riverview and Southshore Areawide Systems**
Requested Zoning:	Residential Single Family Conventional-6 (RSC-6) and Manufacturing (M) to a Planned Development (PD) to allow for the development of 92 townhomes.
Parcel Size (Approx.):	9.47 +/- acres (412,513 square feet)
Street Functional Classification:	Riverview Drive – **Collector** Still Creek Drive – **Local**
Locational Criteria	N/A
Evacuation Zone	The subject property is in Evacuation Zone A

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

Context

- The approximately 9.47+/- acre site is located on the north side of Riverview Drive, west of Still Creek Drive. A portion of the site currently developed with a warehouse and a single family home. The subject site is located within the Urban Service Area (USA). It falls within the boundary of the Riverview and Southshore Areawide Systems Community Planning Areas.

- The subject site's Future Land Use designation is Community Mixed Use-12 (CMU-12) on the Future Land Use Map. Typical allowable uses within the CMU-12 Future Land Use category include residential, community scale retail commercial, office uses, research corporate park uses, light industrial multi-purpose and clustered residential and/or mixed use projects at appropriate locations. Non-residential land uses must be compatible with residential uses through established techniques of transition or by restricting the location of incompatible uses. CMU-12 abuts the site to the north, east and west. Residential-4 and Suburban Mixed Use-6 are located south of the site.

- The subject site is zoned as Residential Single Family Conventional-6 (RSC-6) and Manufacturing(M). A Planned Development abuts the site to the north, west and east and is developed with single family residential. Parcels to the south are zoned Interstate Planned Development-1 (IPD-1) and are also developed with single family residential.

- The applicant is requesting to rezone the subject site from Residential Single Family Conventional-6 (RSC-6) and Manufacturing (M) to a Planned Development (PD) to allow for the development of 92 townhomes.

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

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;*
- *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.*

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.*

Relationship to Land Development Regulations

Objective 9: *All existing and future land development regulations shall be made consistent with the Comprehensive Plan, and all development approvals shall be consistent with those development regulations as per the timeframe provided for within Chapter 163, Florida Statutes. Whenever feasible and consistent with Comprehensive Plan policies, land development regulations shall be designed to provide flexible, alternative solutions to problems.*

Policy 9.1: *Each land use plan category shall have a set of zoning districts that may be permitted within that land use plan category, and development shall not be approved for zoning that is inconsistent with the plan.*

Policy 9.2: *Developments must meet or exceed the requirements of all land development regulations as established and adopted by Hillsborough County, the state of Florida and the federal government unless such requirements have been previously waived by those governmental bodies.*

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 16.1: *Established and planned neighborhoods and communities shall be protected by restricting incompatible land uses through mechanisms such as:*

a) locational criteria for the placement of non-residential uses as identified in this Plan,
b) limiting commercial development in residential land use categories to neighborhood scale;
c) requiring buffer areas and screening devices between unlike land uses;

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.*

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.*

POLICY 12-1.4: *Compatibility may be achieved through the utilization of site design techniques including but not limited to transitions in uses, buffering, setbacks, open space and graduated height restrictions, to affect elements such as height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture.*

Conservation and Aquifer Recharge Element

Wetlands and Floodplain Resources

Objective 4: *The County shall continue to 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 other surface waters authorized for projects in Hillsborough County, consistent with the Uniform Mitigation Assessment Method. The County shall work with the Environmental Protection Commission, the Southwest Florida Water Management District, the Florida Department of Environmental Protection, and the Tampa Bay Estuary Program to achieve a measurable annual increase in ecological values provided by the functions performed by wetlands and other surface waters. It shall be the County's intent to maintain optimum wetland functions as well as acreage.*

Policy 4.1: *The County shall, through the land use planning and development review processes, and in cooperation with the Environmental Protection Commission, continue to conserve and protect wetlands from detrimental physical and hydrological alteration.*

Policy 4.3: *The County shall, through the land planning and development review processes, and in cooperation with the Environmental Protection Commission, continue to prohibit unmitigated encroachment into wetlands.*

Livable Communities Element: Riverview Community Plan

Goal 2 ***Reflect the vision of Riverview using the Riverview District Concept Map. The Riverview District Concept Map will illustrate the unique qualities and land uses related to distinct geographic areas identified as "districts".*** *(see Figure 10)*

The following specific districts are incorporated into the Riverview District Concept Map. Require future development and redevelopment to comply with the adopted Riverview District Concept Map.

4. Mixed Use District Vision

In the areas where commerce, education, agriculture and residential subdivisions merge, Riverview has handled the transition gracefully. Unincorporated areas maintain their neighborhood identity, while commercial businesses have upgraded their image by adhering to the community plan's building façade and storefront criteria. Small businesses are encouraged to locate and remain in Riverview due to a business-friendly environment. The older neighborhoods enjoy upgraded infrastructure with improved fire hydrant access, new sidewalks, curbs and drainage.

Staff Analysis of Goals, Objectives, and Policies:

The applicant is requesting to rezone the subject site from Residential Single Family Conventional-6 (RSC-6) and Manufacturing(M) to allow for the development of 92 single-family attached townhomes.

The subject property is located in the Urban Service Area, where growth and development should be directed according to the Future Land Use Element (FLUE) of the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County*, meeting the intent of Future Land Use Element Objective 1. The proposal meets the intent of Policies 1.2 and 1.3 of the Future Land Use Element of the Comprehensive Plan (FLUE) and is consistent with the density anticipated under the CMU-12 designation requesting a maximum density of 95 units.

The proposal for townhomes is also compatible with the surrounding area as this is an area developed predominantly with small lot single family residential in the area. Additionally, there is a townhome development at the intersection of Falkenburg Road and Still River Drive, north of the proposed site, meeting the intent of The Community Design Component (CDC), which provides policy direction with regards to new residential development. Goal 12 and its accompanying Objective 12-1 and Policy 12.1-4 requires new developments to be designed to relate to the predominant character of the area. As the area is primarily single family residential, the addition of townhomes would provide a housing type in line with the existing character of the area.

Objective 16 requires new development to protect existing neighborhoods and communities. Policies 16.1, 16.2, 16.3 provide direction to protect and integrate proposed development with the surrounding community. The proposal meets the intent of Objective

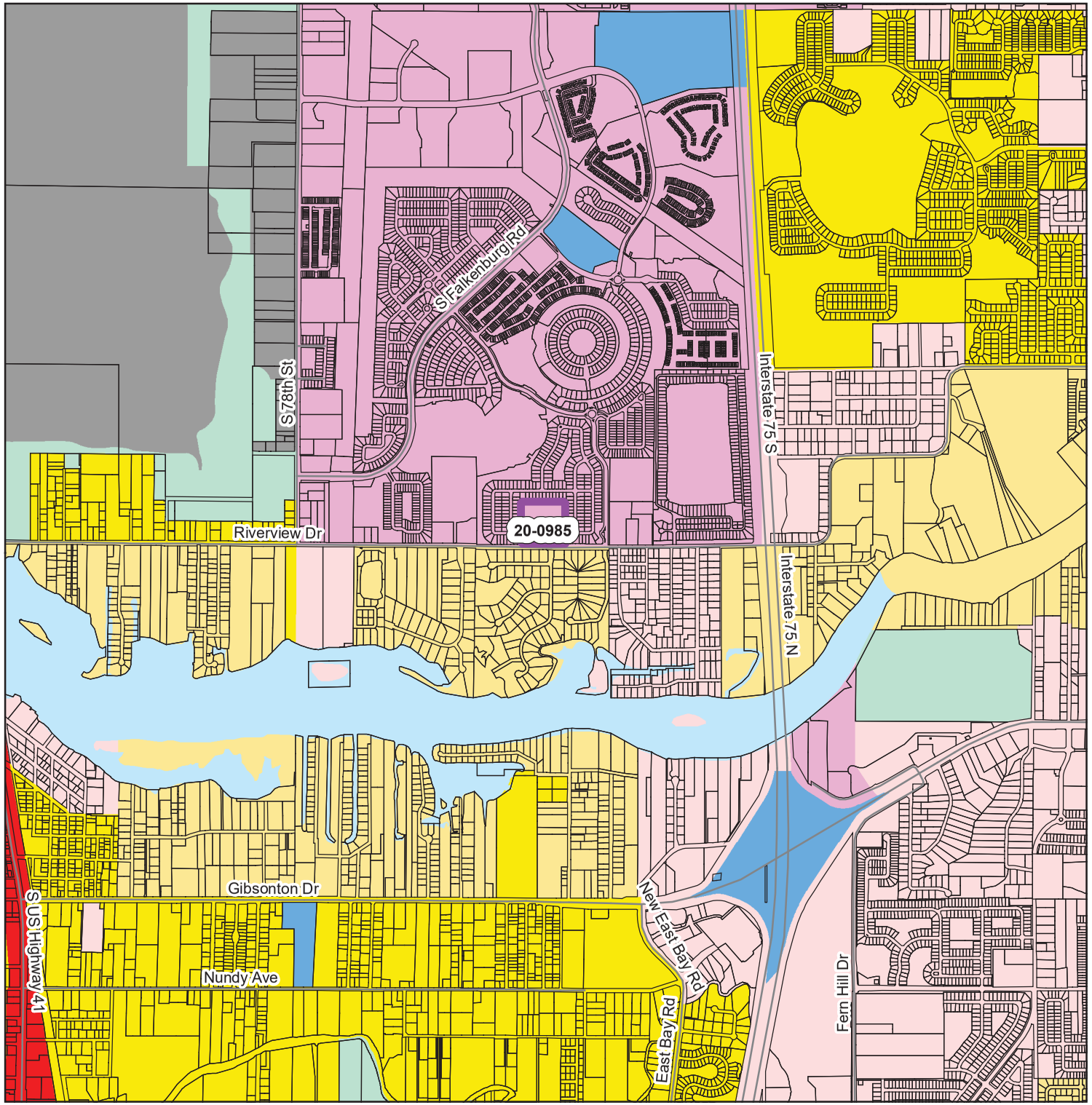
16 and its accompanying policies. The site plan demonstrates buffering and screening meeting LDC requirements. Additionally, the proposed use reflects the overall density and lot sizes of the immediate area, therefore consistent with Policy 16.8 of the Future Land Use Element.

There are wetlands present on the property. The Environmental Protection Commission (EPC) Wetlands Division has reviewed the proposed rezoning. The EPC has determined a resubmittal is not necessary for the site plan's current configuration. If the site plan changes, EPC staff will need to review the zoning again. Planning Commission staff finds this request consistent, given that there is a separate approval process for wetland impacts with the Environmental Protection Commission.

The site is also located within the Mixed Use District, as outlined in Riverview Community Plan. The Mixed Use District includes areas where commerce, education, agriculture, and residential subdivisions merge. The proposed development for townhomes meets the intent of the Mixed Use District (*LCE Goal 2*).

Recommendation

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



HILLSBOROUGH COUNTY
2019 FUTURE LAND USE
RZ PD 20-0985

Rezonings

- <all other values>

STATUS

- APPROVED
- CONTINUED
- DENIED
- WITHDRAWN
- PENDING

- Tampa Service Area
- Urban Service Area
- Shoreline
- County Boundary
- Jurisdiction Boundary
- Major Roads
- Parcels
- 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
- WATER

N W E S

0 1,100 2,200 3,300 4,400 Feet

Map Printed from Rezoning System: 8/3/2020

Author: Beverly F. Daniels

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

Hillsborough County City-County Planning Commission

GENERAL
SITE PLAN
FOR
CERTIFICATION

Hillsborough County Florida

DEVELOPMENT SERVICES
PO Box 1110, Tampa, FL 33601-1110

HILLSBOROUGH COUNTY
DEVELOPMENT SERVICES DEPARTMENT

GENERAL SITE PLAN REVIEW/CERTIFICATION

Project Name: Riverview Landing

Zoning File: RZ-PD 20-0985 **Modification:** None

Atlas Page: NA **Submitted:** 3/17/21

To Planner for Review: 3/18/21 **Date Due:** 3/29/21

Contact Person: Kami Corbett **Phone:** 813-227-8421/kami.corbett@hwhlaw.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: Steve Beachy Date: 3/26/21

Date Agent/Owner notified of Disapproval:

PROPERTY DESCRIPTION

LEGAL DESCRIPTION PROVIDED BY: HILLSBOROUGH COUNTY PROPERTY APPRAISER

DESCRIPTION:

PART OF TRACT 14, IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 30 SOUTH, RANGE 19 EAST, ASS THE ABOVE APPEARS IN FIRST ADITION TO SOUTH TAMPA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 66 OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHEAST CORNER OF THE AFORESAID TRACT 14 AND RUN THENCE N00 DEG 12'23" E ALONG THE EAST BOUNDARY THEREOF A DISTANCE OF 303.00 FEET TO THE POINT OF BEGINNING OF SAID TRACT HEREIN DESCRIBED; THENCE CONTINUING N 00 DEG 12'23" E ALONG SAID EAST BOUNDARY OF TRACT 14 A DISTANCE OF 41.88 FEET; THENCE S 89DEG 50'57" W A DISTANCE OF 330.74 FEET; THENCE S 00 DEG 11 05" W A DISTANCE OF 424.4 FEET; THENCE N 89 DEG 50'27" E ALONG A LINE 303.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH BOUNDARY OF THE SAID TRACT 14 A DISTANCE OF 330.77 FEET TO THE POINT OF BEGINNING

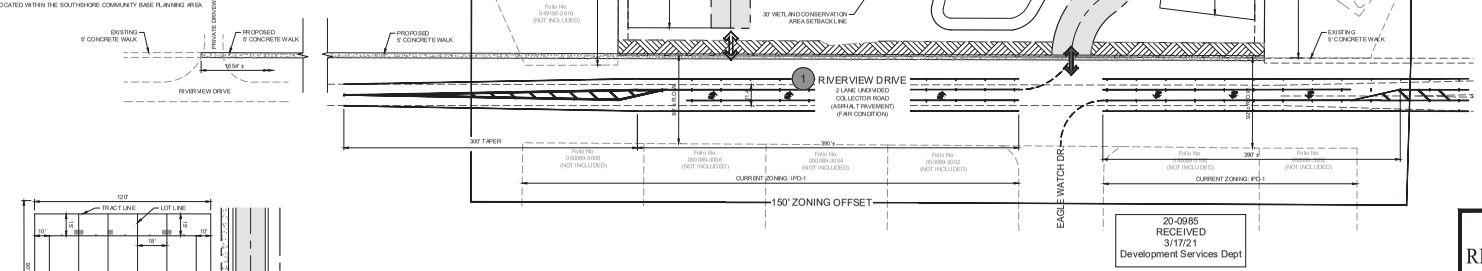
AND

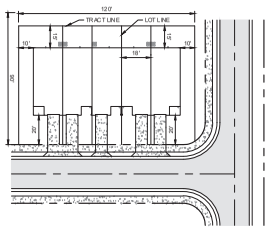
PART OF TRACT 14 IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 30 SOUTH, RANGE 19 EAST, AS THE SAME APPEARS IN FIRST ADITION TO SOUTH TAMPA, ACCORDING TO THE MAP OF PLAT THEROF RECORDED IN PLAT BOOK 8, PAGE 66 OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF THE AFORESAID TRACT 14 AND RUN THENCE N 00 DEG 0'948" E ALONG THE WEST BOUNDARY THEREOF A DISTANCE OF 346.00 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED THENCE CONTINUING N 00 DEG 0'948" E ALONG SAID WEST BOUNDARY A DISTANCE OF 301.79 FEET TO THE NORTHWEST CORNER OF SAID TRACT 14 A DISTANCE OF 661.70 FEET THENCE S 00 DEG 12'23" W A DISTANCE OF 301.79 FEET; THENCE S 89 DEG 50'57" W A DISTANCE OF 330.74 FEET; THENCE N 00 DEG 11'05" E A DISTANCE OF 46.00 FEET; THENCE S 82 DEG 0'27" W A DISTANCE OF 336.12 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS DESCRIBED AS FOLLWOS; FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF APOREMENTIONED TRACT 14 AND RUN THENCE N 00 DEG 0'948" E ALONG THE WEST BOUNDARY THEREOF A DISTANCE OF 15.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF RIVERVIEW DRIVE THENCE N 89 DEG 50'27" E ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 110.00 FEET TO THE POIT OF BEGINNING OF THE TRAT HEREIN DESCRIBED; THENCE N 00 DEG 0'948" E A DISTANCE OF 120.00 FEET; THENCE N 44 DEG 50'12" W A DISTANCE OF 84.85 FEET; THENCE N 00 DEG 0'948" E A DISTANCE OF 157.94 FEET; THENCE N 82 DEG 01'29" E A DISTANCE OF 20.20 FEET; THENCE S 00 DEG 0'948" W A DISTANCE OF 152.11 FEET; THENCE S 44 DEG 50'12" E A DISTANCE OF 84.85 FEET; THENCE S 00DEG 0'948" W A DISTANCE OF 128.0' FEET TO A POINT ON THE APORESAID NORTH RIGHT OF WAY LINE OF RIVERVIEW DRIVE; THENCES 89 DEG 50'27" W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

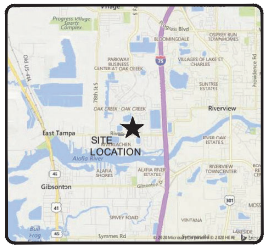
GENERAL NOTES:

1. THE PROJECT IS WITHIN AN URBAN DISTRICT.
2. POTABLE WATER PROVIDED BY HILLSBOROUGH COUNTY.
3. SEWAGE DISPOSAL PROVIDED BY HILLSBOROUGH COUNTY.
4. ON-SITE WATER AND SEWER TO BE MAINTAINED BY HILLSBOROUGH COUNTY.
5. DRAINAGE PLANS AND CALCULATIONS COMPLY WITH REQUIREMENTS AS REFERENCED IN SUBDIVISION REGULATIONS OF THE LAND DEVELOPMENT CODE OF HILLSBOROUGH COUNTY, FLORIDA
6. THE PROJECT CONTAINS NO FLEX AREAS.
7. ALL FOLIO NUMBERS ARE SHOWN ON THE PLANS FOR THE PROJECT AND WITHIN 150 LINEAR FEET OF THE PROJECT BOUNDARY.
8. BUFFERING WILL COMPLY WITH THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE (LCD), LATEST EDITION.
9. OPEN SPACE AND COMMUNITY GATHERING SPACE WILL BE PROVIDED AS REQUIRED BY THE LDC.
10. ZONING AND COMPREHENSIVE PLAN DESIGNATIONS FOR ALL PROPERTY WITHIN 150 LINEAR FEET OF THE PROJET IS SHOWN ON THE PLAN.
11. THE PLATTED PARCEL LINES AND PROPERTY FOLIO NUMBERS FOR ALL PROPERTY WITHIN 150 LINEAR FEET OF THE PROJECT ARE SHOWN ON THE PLAN.
12. THE CURRENT LAND USE FOR ALL PROPERTY WITHIN 150 LINEAR FEET OF THE PROJECT IS SHOWN ON THE PLAN.
13. POINTS OF INGRESS/EGRESS ARE IDENTIFIED ON THE SITE PLAN.
14. PROPOSED PROJECT ENTRY, INTERNAL ROADWAYS AND PONDS ARE SHOWN AS APPROXIMATE AND ARE SUBJECT TO CHANGE DURING PERMITTING.
15. PROJECT SHALL BE DESIGNED IN ACCORDANCE WITH LAND DEVELOPMENT CODE FOR STORMWATER, TRANSPORTATION, WATER AND WASTEWATER REQUIREMENTS.
16. THE PROJECT IS NOT LOCATED WITHIN ANY OVERLAY DISTRICTS.
17. THE PROJECT IS NOT LOCATED WITHIN ANY SPECIAL ZONING DISTRICTS.
18. FIRE FLOW WILL BE PROVIDED AS REQUIRED BY HILLSBOROUGH COUNTY FIRE DEPARTMENT AND WATER AUTHORITY HAVING JURISDICTION.
19. MINIMUM SETBACKS: SEE DETAILS THIS SHEET
20. OUTDOOR LIGHTING INTERNAL TO THE PROJECT WILL BE PROVIDED.
21. DETENTION/RETENTION POND PARCELS AND DRAINAGE EASEMENTS TO BE OWNED AND MAINTAINED BY ANY HOA AND /OR CDD.
22. OPEN SPACE/ DRAINAGE EASEMENTS/TRACTS IN BETWEEN LOTS TO BE DEDICATED TO THE HOA AND/OR CDD.
23. ELECTRICAL POWER DISTRIBUTION AND TELEPHONE SERVICE LINES SHALL BE UNDERGROUND WHEREVER POSSIBLE.
24. TREES TO BE PROTECTED AND/OR REMOVED ARE TO BE DETERMINED DURING CONSTRUCTION PLAN SUBMITTAL. IN ADDITION, THE TOTAL AMOUNT OF REPLACEMENT TREES SHALL BE DETERMINED AT THAT TIME.
25. THE SITE IS LOCATED WITHIN AN URBAN SCENIC CORRIDOR.
26. THE LAYOUT AS DEPICTED MAY BE MODIFIED DUE TO FINAL APPROVAL OF DETAILED ENGINEERING, AND STORMWATER REQUIREMENTS.
27. THERE ARE PLATTED LOTS WITHIN 150 FEET OF THE SITE AS SHOWN.
28. NO CULTURAL FACILITIES, RECORDED HISTORICAL OR ARCHAEOLOGICAL SITES, COMMUNITY RECREATION USES OR PUBLIC FACILITIES EXIST ON-SITE.
29. THERE ARE NO EXISTING ROADS ON SITE.
30. THE PROJECT IS LOCATED WITHIN THE RIVERVIEW COUNTY WIDE PLANNING AREA.
31. THE PROJECT IS LOCATED WITHIN THE SOUTHSHORE COMMUNITY BASE PLANNING AREA.





TYPICAL TOWNHOME DETAIL
N.T.S.



VICINITY MAP
N.T.S.

SCALE IN FEET
0 30 60 120

LEGEND
- RIGHT OF WAY LINE
- EASEMENT LINE
- EDGE OF WATER
- TRACT LINE
- RESIDENTIAL ROAD SECTION
- 15' URBAN SCENIC CORRIDOR BUFFER
- PROPOSED ACCESS POINT(S) (PEDESTRIAN & VEHICULAR)
- EMERGENCY ACCESS ONLY

1 RIVERVIEW DRIVE
- 90'-02'± MAINTAINED RIGHT OF WAY*
- 21.4' PAVEMENT / 2 LANES*
- COLLECTOR/PUBLIC ROAD*
- ASPHALT IN FAIR CONDITION*
- SIDEWALK ON SOUTH SIDE OF ROADWAY*
- NO BIKE PATH / TRANSIT STOPS / TRAFFIC DEVICES*
- URBAN SCENIC ROADWAY

SITE DATA TABLE

PROJECT LOCATION	HILLSBOROUGH COUNTY, FLORIDA
TOTAL PROJECT AREA	9.47 ACRES±
WETLAND AREA	0.25 ACRES±
UPLAND AREA	9.22 ACRES±
GROSS DENSITY	9.71 UNIT/ACRE
COMMUNITY GATHERING SPACE	0.11 ACRES±
PRODUCT TYPE	TOWNHOME
NUMBER OF UNITS	92
MINIMUM LOT DEPTH	80 FEET
MINIMUM LOT AREA	1400 SQ. FEET
MINIMUM LOT WIDTH	18 FEET
MINIMUM SETBACK ALONG RIVERVIEW DR.	20 FEET
MINIMUM SETBACK FROM PD BOUNDARY (WEST, NORTH, AND EAST)	15 FEET
MINIMUM BUILDING SEPARATION	20 FEET
MAXIMUM BUILDING HEIGHT	35 FEET
FOLIO NUMBERS	049143-0000, 049143-0100, 049145-0000 049143-0200, 049144-0000
CURRENT ZONING	M, RSC-6
FUTURE LAND USE	CMU-12
ALLOWABLE DENSITY	12 DU/ACRE
OWNER	MERITAGE HOMES 10117 PRINCESS PALM AVE #550 TAMPA, FL 33610
FLOOD ZONE	"X" FIRM PANEL NO. 12057C0501J DATED: OCTOBER 26, 2018

20-0985
RECEIVED
3/17/21
Development Services Dept

PROJECT TEAM MEMBERS:

DEVELOPER:
MERITAGE HOMES, INC.
10117 PRINCESS PALM AVENUE, SUITE 550
TAMPA, FLORIDA 33610
PHONE: (855) 588-6374

ENGINEER:
LEVELUP CONSULTING, LLC
505 E. JACKSON STREET SUITE 200
TAMPA, FLORIDA 33602
PHONE: (813) 375-0616

SURVEYOR:
HAMILTON ENGINEERING & SURVEYING, INC.
3409 W LEMON ST.
TAMPA, FLORIDA 33609
PHONE: (813) 250-3535

PLANNER:
HALFF ASSOCIATES, INC.
1000 N. ASHLEY DRIVE, SUITE 900
TAMPA, FLORIDA 33602
PHONE: (813) 620-4500

TRANSPORTATION:
LINCKS & ASSOC., INC.
5023 W. LAUREL STREET
TAMPA, FL. 33607
PHONE: (813) 289-0039

ENVIRONMENTAL:
ECT , INC.
1191 SARASOTA CENTER BOULEVARD
SARASOTA, FLORIDA 34240
PHONE: (941) 337-8608

PROJECT NAME:
RIVERVIEW LANDING

DRAWING TITLE:
PD PLAN

PREPARED FOR:
MERITAGE

PROJECT No. 086-01-E01

SHEET 1 of 1

LEVELUP CONSULTING, LLC
505 E. JACKSON STREET
SUITE 200
TAMPA, FLORIDA 33602
OFFICE: 813-375-0616
WWW.LEVELUPFLORIDA.COM

T:\Projects\086-01 Riverview Landing\Drawings\086-01-E01 PD Plan\Current Plans\086010101.dwg
03/09/2021 1:12:08 PM PLOTTED BY: bridget stevens

AGENCY COMMNENTS

AGENCY REVIEW COMMENT SHEET

TO: Zoning Technician, Development Services Department	**DATE:** 01/08/2021
REVIEWER: Sofia Garantiva, AICP, Senior Planner	**AGENCY/DEPT:** Transportation
PLANNING AREA/SECTOR: Riverview (RV)	**PETITION NO:** PD 20-0985

☐ 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.

REPORT HIGHLIGHTS AND CONCLUSIONS

- The proposed rezoning could result in a decrease of 458 daily trips, 139 a.m. peak hour trips, and 64 p.m. peak hour trips from the current zoning.
- Riverview Drive is a substandard collector roadway. If the rezoning is approved, the County Engineer will approve the Design Exception for Riverview Drive.
- The developer shall construct an eastbound to northbound left turn lane on Riverview Drive at the project's entrance and a westbound to southbound left turn lane on Riverview Drive at Eagle Watch Drive.

CONDITIONS

1) If PD 20-0985 is approved, the County Engineer will approve the Design Exception (dated November 6, 2020 and found approvable on January 6, 2021), for the Riverview Drive substandard road improvements. As Riverview Drive is a substandard collector roadway, the developer will be required to make certain improvements to Riverview Drive consistent with the Design Exception.
2) The developer shall construct the following site access improvements:
    - An eastbound to northbound left turn lane on Riverview Drive at the project's entrance; and
    - A westbound to southbound left turn lane on Riverview Drive at Eagle Watch Drive.

PROJECT OVERVIEW & ANALYSIS

The applicant is requesting the rezoning of +/- 9.47 acres from Residential Single Family Conventional-6 (RSC-6), in part, and Manufacturing (M), in part, to a Planned Development (PD) zoning district to allow for 92 townhomes.

As required by the Development Review Procedures Manual (DRPM), the applicant submitted a transportation analysis for the subject property. Staff has prepared a comparison of the trips generated by development under the existing and proposed zoning designations, generally consistent with the applicant's analysis and based upon a generalized worst-case scenario. Information shown was developed using Institute of Transportation Engineer's Trip Generation Manual, 10th Edition.

Existing Use:

Land Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
RSC-6: 3 Single Family DU's (ITE LUC 210)	28	2	3
M: 292,723 SF Maximum of Manufacturing (ITE LUC 140)	1,085	181	196
Total	**1,113**	**183**	**119**

Proposed Use:

Land Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD, 92 Townhome DU's (ITE LUC 220)	**655**	**44**	**55**

Trip Generation Difference:

Land Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
Difference	**(-) 458**	**(-) 139**	**(-) 64**

The proposed rezoning could result in a decrease of 458 daily trips, 139 a.m. peak hour trips, and 64 p.m. peak hour trips from the current zoning.

TRANSPORTATION INFRASTRUCTURE SERVING THE SITE

Riverview Drive is a substandard 2-lane undivided collector roadway with +/- 11-foot travel lanes, +/- 22-feet of pavement lying within a +/- 76-foot wide right-of-way adjacent to the project. There is a +/- 5-foot wide sidewalk along the south side of the roadway. There are no bicycle facilities on Riverview Drive in the vicinity of the proposed project.

Riverview Drive is shown on the Hillsborough County Corridor Preservation future 2-lane enhanced roadway. As such, 76 feet of right-of-way is needed. There appears to be 90 feet existing per the survey on record. As such, additional preservation is not required at this time.

SITE ACCESS AND CONNECTIVITY

The applicant is requesting one full access connection to Riverview Drive that will align with Eagle Watch Drive to the south. The applicant is also proposing an emergency access connection to Riverview Drive. No additional connections are proposed or being required. The proposed project is bordered on the west, north and east property boundaries by PD 81-0171, a mixed used development with single family residences located adjacent to the proposed project.

Per the Access Management Analysis for the project, turn lanes are not warranted. However, after meeting with the residents of the surrounding neighborhoods, the developer is proposing to construct an eastbound left turn lane on Riverview Drive to serve the proposed project and a westbound left turn lane on Riverview Drive to facilitate westbound to southbound left turning movements on to Eagle Watch Drive, serving the community to the south.

DESIGN EXCEPTION

Riverview Drive is a substandard local roadway, the applicant's Engineer of Record (EOR) submitted a Design Exception request for Riverview Drive (dated August 5, 2020 and Revised November 12, 2020) to determine the specific improvements that would be required by the County Engineer. Based on factors presented in the Design Exception request, the County Engineer approved a Roadway Design Exception (on January 6, 2021) authorizing deviations from the TS-7 Typical Section.

The developer will be permitted to utilize 11-foot wide travel lanes (for both through lanes and turn lanes) in lieu of the 12-foot wide travel lanes and utilize existing shoulder configuration in lieu of the 8' shoulder with 5' pavement typically required by the Hillsborough County Transportation Technical Manual's (TTM) TS-7 Typical Section.

In lieu of widening Riverview Drive (from US Hwy 41 to US Hwy 301), the developer will extend the required sidewalk (to be constructed along the project frontage) west beyond the project boundary, 950 feet to connect with the existing sidewalk. Per the Access Management Analysis for the project, turn lanes are not warranted, however the developer will construct an eastbound left turn lane on Riverview Drive to serve the proposed project and a westbound left turn lane on Riverview Drive to facilitate westbound to southbound left turning movements on to Eagle Watch Drive.

ROADWAY LEVEL OF SERVICE (LOS)

FDOT Generalized Level of Service				
Roadway	**From**	**To**	**LOS Standard**	**Peak Hr Directional LOS**
RIVERVIEW DRIVE	US HWY 41	US HWY 301	D	D

Source: 2019 Hillsborough County Level of Service (LOS) Report

20-0985

Engineers
Planners

LINCKS & ASSOCIATES, INC.

Revised November 12, 2020
August 5, 2020

Mr. Mike Williams
Hillsborough County Government
601 East Kennedy Blvd., 22nd Floor
Tampa, FL 33602

Re: Riverview Landing
Folio Number 04145.0000
04144.0000
04143.0000
04143.0100
04143.0200
RZ 20-0985
Lincks Project No. 20068

The purpose of this letter is to request a Design Exception to Section 6.02.07 of the Hillsborough County Land Development for Riverview Drive from US 41 to US 301. The developer proposes to develop the subject property for up to 92 Townhomes.

According to the Hillsborough County Functional Classification Map, Riverview Drive is classified as a collector roadway. The subject site is within the Hillsborough County Urban Service Area.

Table 1 provides the trip generation for the project and Table 2 provides the roadway capacity analysis for Riverview Drive adjacent to the site. As shown in Table 2, Riverview Drive currently operates at an acceptable level of service and will continue to operate at an acceptable level of service with the addition of the project traffic. Table 3 provides the Access Recommendation for the project.

The access to serve the project is proposed to be via one full access to Riverview Drive to align with Eagle Watch Drive.

On June 25, 2020 and November 9, 2020, the following individuals met to discuss proposed project and Design Exception for Riverview Drive.

- Mike Williams
- James Raltiff
- Ben Kneisley
- Sheida Tirado

5023 West Laurel Street
Tampa, FL 33607
813 289 0039 Telephone
8133 287 0674 Telefax
www.Lincks.com Website

The request is for a Design Exception to TS-7 of the Hillsborough County Transportation Technical Manual for Riverview Drive from US 41 to US 301, which is currently a two-lane roadway that includes residential homes fronting on the roadway. The pavement is approximately 22'. The following exceptions are requested to accommodate the proposed project.

1) Right of Way – TS-7 has 96 feet of right of way. The right of way varies between 50 and 70 feet along Riverview Drive.

2) Lane Width – TS-7 has 12' travel lanes. The existing roadway has 11' travel lanes.

3) Shoulders – TS-7 has 8' shoulders with 5' paved. The existing roadway has unpaved shoulders along the subject section.

4) Sidewalk – TS-7 has sidewalk on both sides of the roadway. There are currently intermittent sidewalks on the north and south sides of Riverview Drive.

The justification for the Design Exception is as follows:

1. The proposed development has limited frontage of Riverview Drive and the properties east and west of the subject property is fully developed with Single Family Homes.

2. The right of way for Riverview Drive along the property frontage is approximately 90 feet. Therefore, no additional right of way should be required for the subject parcel.

3. Riverview Drive is a collector roadway with a posted speed limit of 35 to 45 MPH. According to Table 210.2.1 of the 2020 Florida Design Manual, 11-foot lanes are acceptable for Suburban (C3)/Urban General (C4) roadways.

4. There are unpaved shoulders along the roadway. Therefore, it does not appear to have any off tracking. Therefore, the existing shoulder should be adequate.

5. The developer proposes to construct sidewalk along the property frontage to connect to the sidewalk to the east. In addition, the developer proposed to extend the sidewalk west approximately 950 feet to connect the existing sidewalk. This is above and beyond the LDC requirement for the project.

6. Based on the Access Management Analysis for the project, left and right turn lanes are not warranted for the project access. However, the developer has committed to provide an eastbound left turn lane for the subject project and a westbound left turn lane for Eagle Watch Drive.

Figure 1 illustrates the limits of the sidewalk and turn lane improvements and Figure 2 provides the typical section for Riverview Drive adjacent to the subject parcel.

Based on the above, it is our opinion, the proposed improvements to Riverview Drive mitigate the impact of the project and meet the intent of the Transportation Technical Manual to the extent feasible.

Please do not hesitate to contact us if you have any questions or require any additional information.

Best Regards,

Steven J Henry
President
Lincks & Associates, Inc.
P.E. #51555

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

_____Disapproved

_____Approved

If there are any further questions or you need clarification, please contact Benjamin Kniesley, P.E. at (813) 307-1758

Sincerely,

Michael J. Williams

Hillsborough County Engineer

TABLE 1

ESTIMATED PROJECT TRIP ENDS (1)

Land Use	ITE LUC	Size	Daily Trip Ends	AM Peak Hour Trip Ends			PM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total
Townhomes	220	92 DU's	655	10	34	44	35	20	55

(1) Source: ITE Trip Generation Manual, 10th Edition, 2017.

TABLE 2

ARTERIAL ANALYSIS

Roadway	From	To	Period	LOS Standard	Peak Hour Capacity	Background Traffic Peak Hour Volume (2)	Project Traffic (3)	Background + Project Traffic	Available Capacity
Riverview Drive	US 41	Project Access	AM	D	1,197	559	25	584	613
			PM	D	1,197	618	30	648	549
	Project Access	US 301	AM	D	1,197	577	19	596	601
			PM	D	1,197	632	25	657	540

(1) Source: 2012 FDOT Quality/Level of Service Handbook Tables.
(2) See Figure 5 of the Access Management Analysis.
(3) See Figure 2 of the Access Management Analysis.

TABLE 3

ACCESS RECOMMENDATIONS

Intersection	Movement	Volume (1)	Turn Lane Warranted? (2)	Queue Length (3)	Declaration Length (4)	Total Length
Riverview Drive and	WBR	4/16	No	-	-	-
Eagle Watch Drive Project Access	EBL	6/19	No	100'	290'	390'
	WBL	7/14	No	100'	290'	390'
	EBR	2/10	No	-	-	-

(1) See Figure 6 of the Access Management Analysis for the project.
(2) Based on Hillsborough County LDC Section 6.04.04D
(3) Queue Length
EBL - 19/30 X 25 = 16' Use 100' (a)
WBL - 14/30 x 25 = 12' Use 100' (a)
(a) Minimum length per Hillsborough County TTM.
(4) Deceleration Length based on FDOT Standard Plans Index 711-001 and posted speed limit of 45 on Riverview Drive.

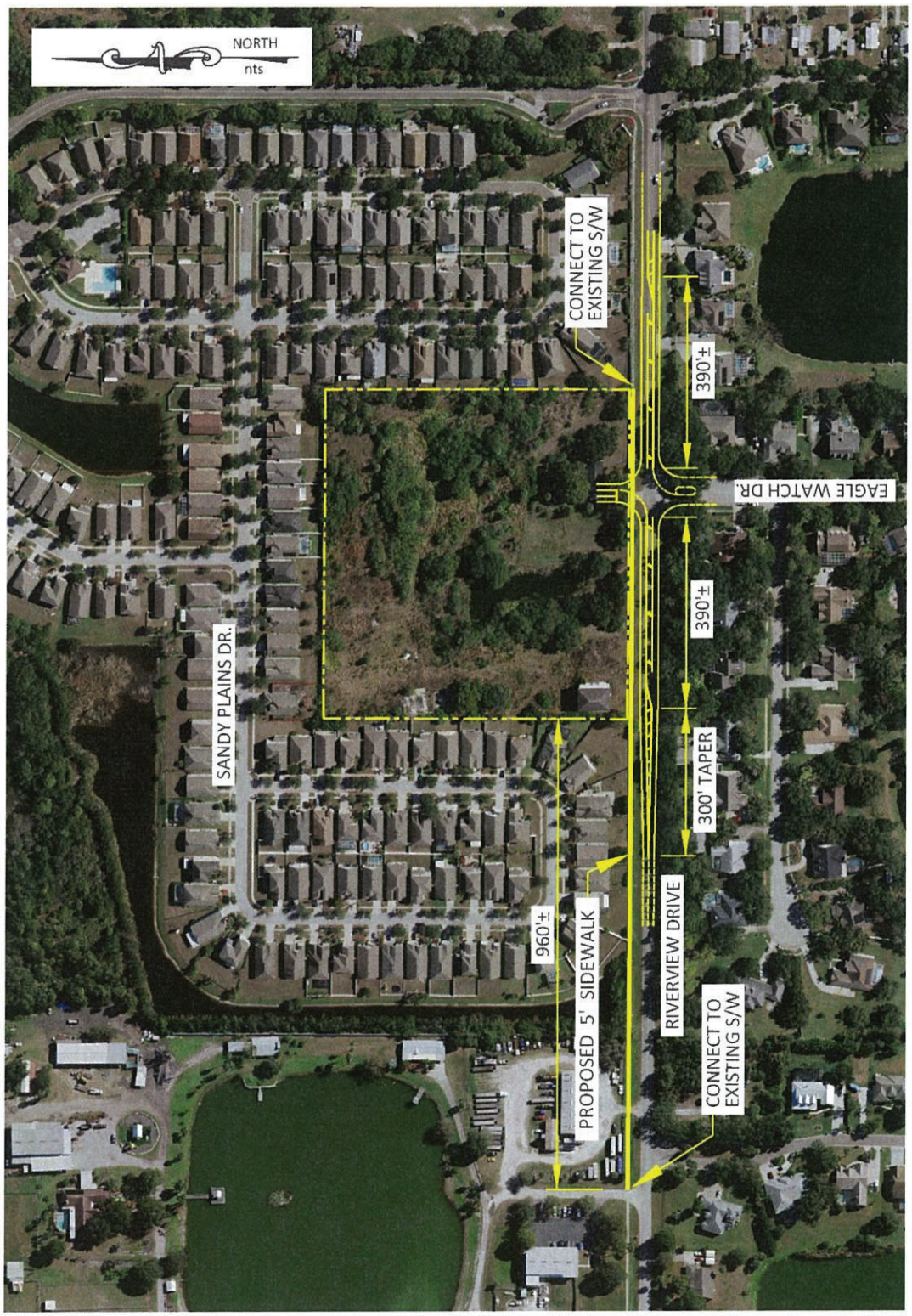
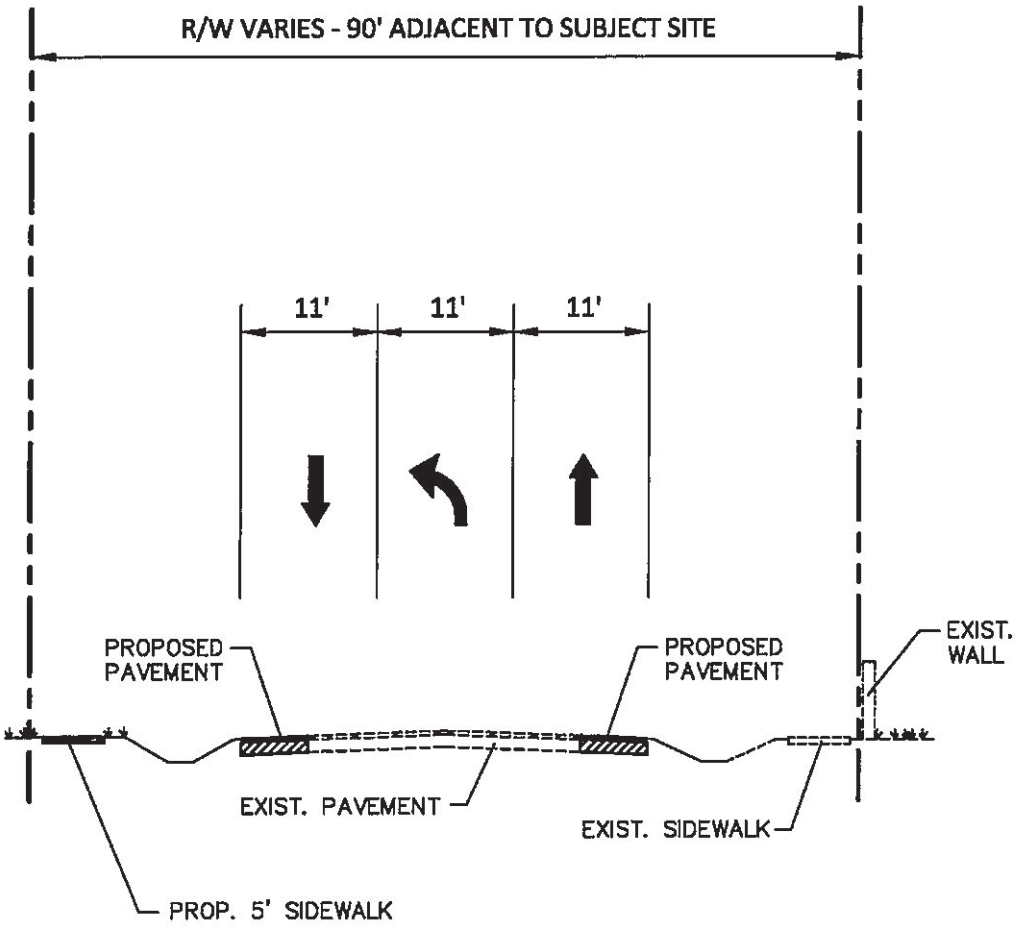


FIGURE 1
IMPROVEMENT PLAN

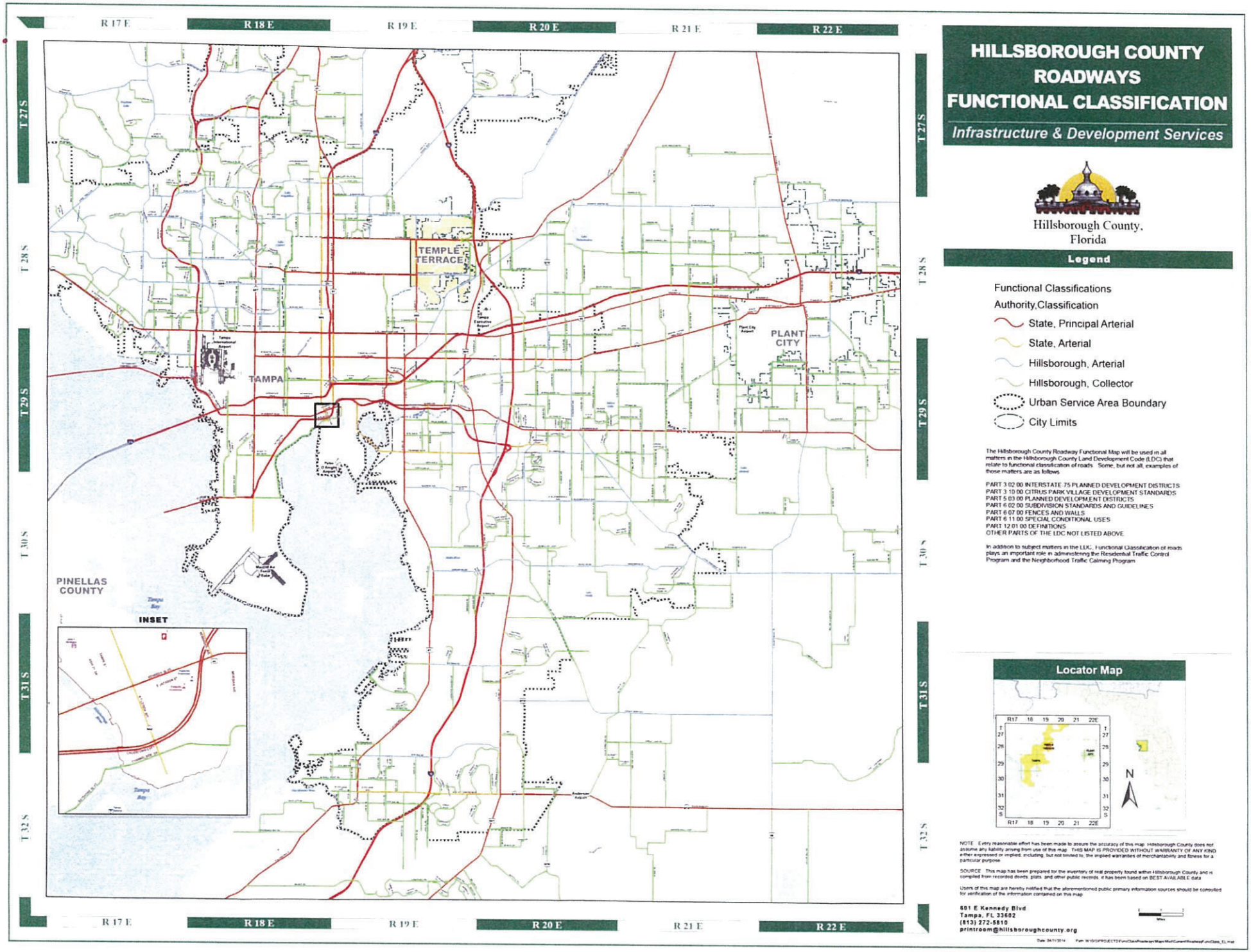


TYPICAL SECTION

FIGURE 2
TYPICAL SECTION

APPENDIX

HILLSBOROUGH COUNTY
ROADWAYS FUNCTIONAL CLASSIFICATION



HILLSBOROUGH COUNTY ROADWAYS FUNCTIONAL CLASSIFICATION

Infrastructure & Development Services

Hillsborough County, Florida

Legend

Functional Classifications

Authority,Classification

- State, Principal Arterial
- State, Arterial
- Hillsborough, Arterial
- Hillsborough, Collector
- Urban Service Area Boundary
- City Limits

The Hillsborough County Roadway Functional Map will be used in all matters in the Hillsborough County Land Development Code (LDC) that relate to functional classification of roads. Some, but not all, examples of those matters are as follows:

PART 3.02.00 INTERSTATE 75 PLANNED DEVELOPMENT DISTRICTS
PART 3.10.00 CITRUS PARK VILLAGE DEVELOPMENT STANDARDS
PART 5.03.00 PLANNED DEVELOPMENT DISTRICTS
PART 6.02.00 SUBDIVISION STANDARDS AND GUIDELINES
PART 6.07.00 FENCES AND WALLS
PART 6.11.00 SPECIAL CONDITIONAL USES
PART 12.01.00 DEFINITIONS
OTHER PARTS OF THE LDC NOT LISTED ABOVE

In addition to subject matters in the LDC, Functional Classification of roads plays an important role in administering the Residential Traffic Control Program and the Neighborhood Traffic Calming Program.

Locator Map

NOTE: Every reasonable effort has been made to assure the accuracy of this map. Hillsborough County does not assume any liability arising from use of this map. THIS MAP IS PROVIDED WITHOUT WARRANTY OF ANY KIND either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

SOURCE: This map has been prepared for the inventory of real property found within Hillsborough County and is compiled from recorded deeds, plats, and other public records. It has been based on BEST AVAILABLE data.

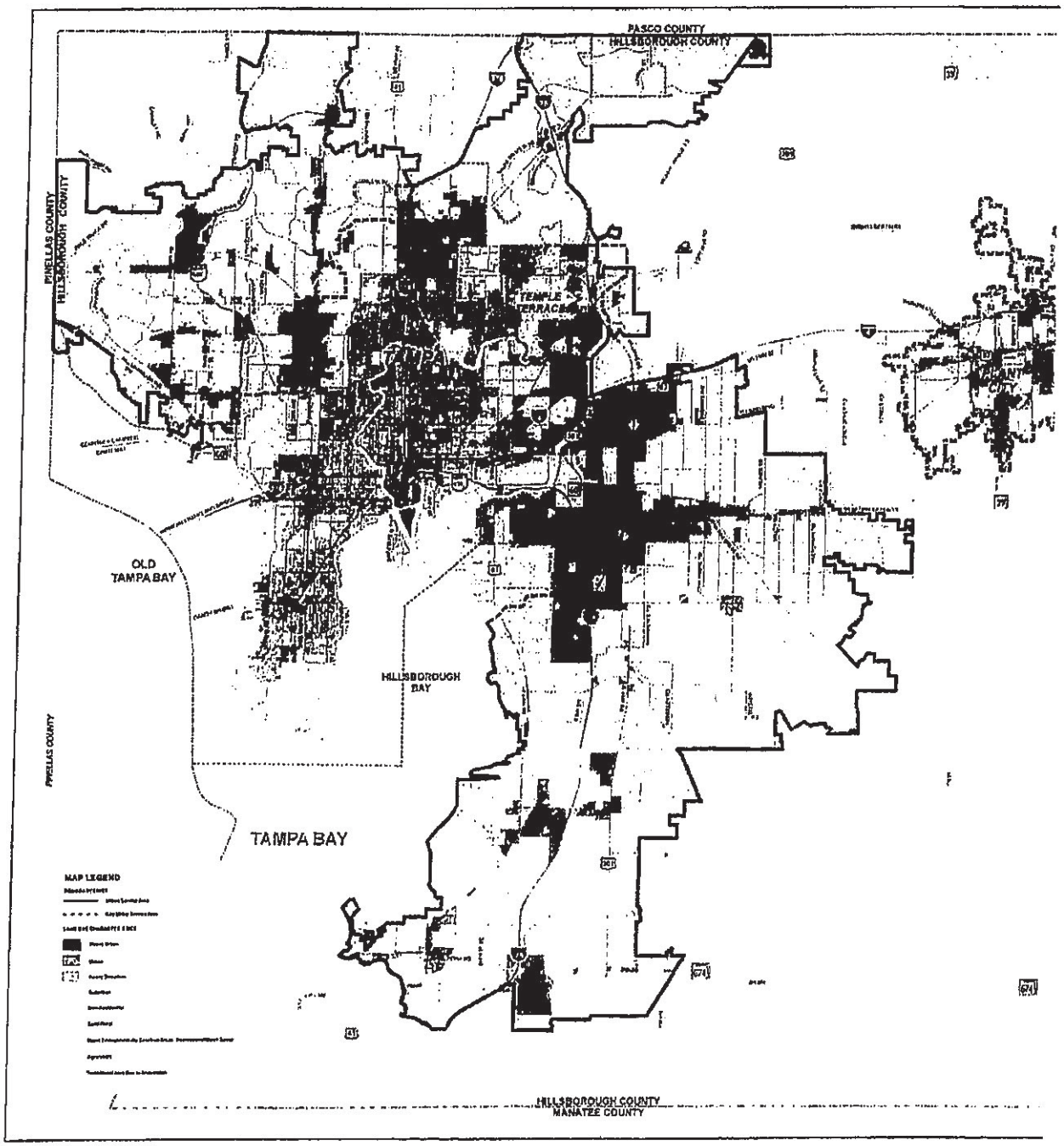
Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map.

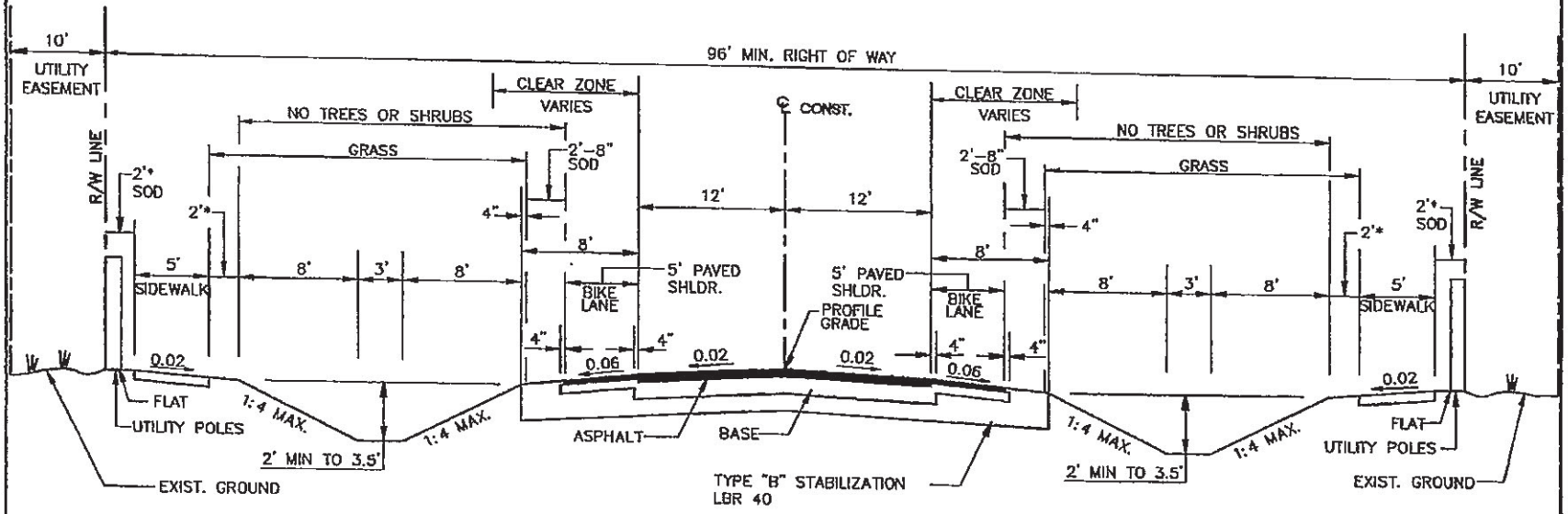
601 E Kennedy Blvd
Tampa, FL 33602
(813) 272-5810
printroom@hillsboroughcounty.org

Miles

Date: 04/11/2014 Path: W:\GIS\PROJECTS\FunctClass\Roadway\Maps\Mxd\Current\RoadwayFunctClass_EL.mxd

HILLSBOROUGH COUNTY
URBAN SERVICE AREA


PASCO COUNTY
HILLSBOROUGH COUNTY
PINELLAS COUNTY
HILLSBOROUGH COUNTY
TEMPLE TERRACE
OLD TAMPA BAY
HILLSBOROUGH BAY
PINELLAS COUNTY
TAMPA BAY
MAP LEGEND
HILLSBOROUGH COUNTY
MANATEE COUNTY



TYPICAL SECTION

N.T.S.

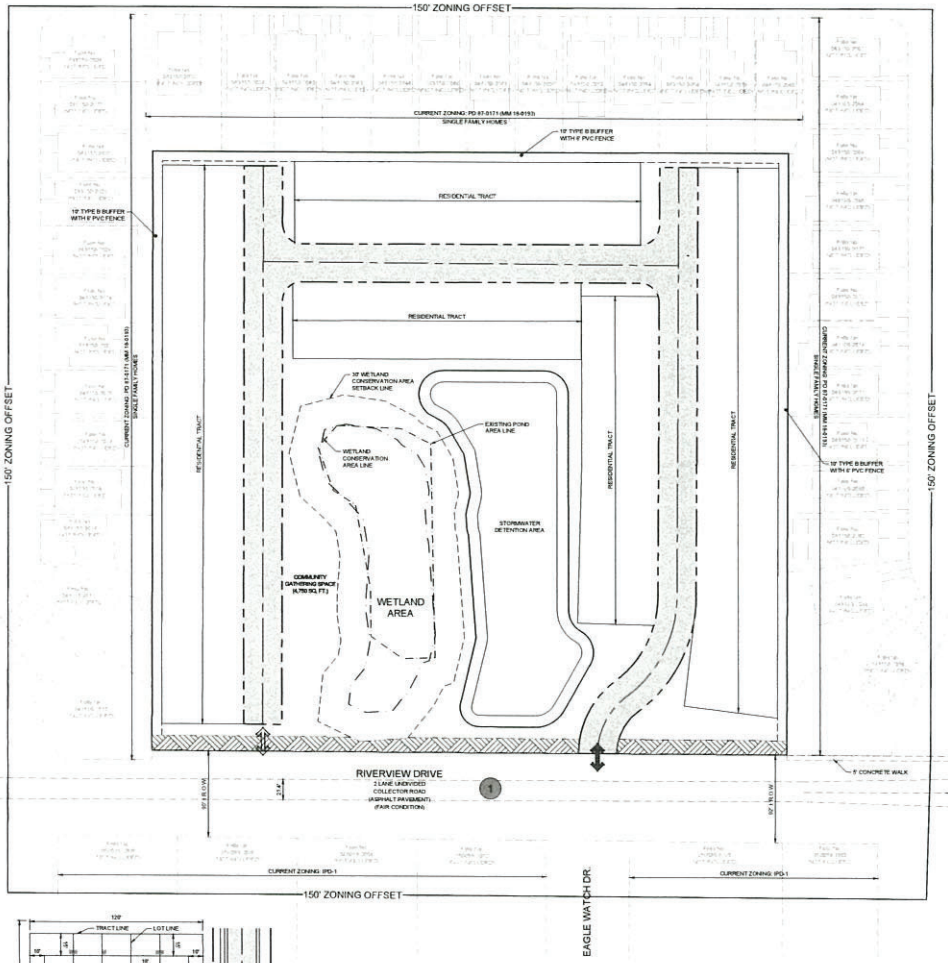
FOR LESS THAN 10,000 AADT

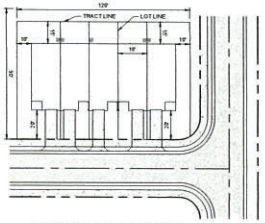
1. ALL DIMENSIONS SHOWN ARE MINIMUM.
2. SEE APPROPRIATE SECTIONS OF TECHNICAL MANUAL FOR DESIGN PARAMETERS.
*3. PROVIDE 2' MINIMUM CLEARANCE FROM FENCES, WALLS, HEDGES, ABOVEGROUND UTILITIES OR IMPROVEMENTS, DROP OFFS, OR FROM THE TOPS OF BANKS WITH SLOPES STEEPER THAN 1 TO 4, THAT INTERFERE WITH THE SAFE, FUNCTIONAL USE OF THE SIDEWALK. INTERMITTENT ABOVEGROUND UTILITIES, OR MATURE TREES, 2' OR LESS IN DIAMETER MAY BE PLACED IN THIS 2' STRIP AS FAR FROM THE SIDEWALK AS POSSIBLE, IF NOT IN THE CLEAR ZONE.

MAX. ALLOWABLE DESIGN SPEED – 50 MPH

REVISION DATE : 04/09	TRANSPORTATION TECHNICAL MANUAL	Hillsborough County Florida	LOCAL RURAL ROADS (2 LANE UNDIVIDED) TYPICAL SECTION	DRAWING NO. TS-7 SHEET NO. 1 OF 1

PD PLAN





TYPICAL TOWNHOME DETAIL
N.T.S.

LEGEND
- RIGHT OF WAY LINE
- EASEMENT LINE
- EDGE OF WATER
- TRACT LINE
- RESIDENTIAL ROAD SECTION
- 15' URBAN SCENIC CORRIDOR BUFFER
- PROPOSED ACCESS POINT(S) (PEDESTRIAN & VEHICULAR)
- EMERGENCY ACCESS ONLY

1 RIVERVIEW DRIVE
- 90'-92'± MAINTAINED RIGHT OF WAY*
- 21.4' PAVEMENT / 2 LANES*
- COLLECTOR/PUBLIC ROAD*
- ASPHALT IN FAIR CONDITION*
- SIDEWALK ON SOUTH SIDE OF ROADWAY*
- NO BIKE PATH / TRANSIT STOPS / TRAFFIC DEVICES*
- URBAN SCENIC ROADWAY

SCALE IN FEET

PROJECT TEAM MEMBERS:

DEVELOPER:
MERITAGE HOMES, INC.
10117 PRINCESS PALM AVENUE, SUITE 550
TAMPA, FLORIDA 33610
PHONE: (855) 588-6374

ENGINEER:
LEVELUP CONSULTING, LLC
505 E. JACKSON STREET SUITE 200
TAMPA, FLORIDA 33602
PHONE: (813) 375-0616

SURVEYOR:
HAMILTON ENGINEERING & SURVEYING, INC.
3409 W LEMON ST.
TAMPA, FLORIDA 33609
PHONE: (813) 250-3535

PLANNER:
HALFF ASSOCIATES, INC.
1000 N. ASHLEY DRIVE, SUITE 900
TAMPA, FLORIDA 33602
PHONE: (813) 620-4500

TRANSPORTATION:
LINCKS & ASSOC., INC.
5023 W. LAUREL STREET
TAMPA, FL. 33607
PHONE: (813) 289-0039

ENVIRONMENTAL:
ECT , INC.
1191 SARASOTA CENTER BOULEVARD
SARASOTA, FLORIDA 34240
PHONE: (941) 337-8608

VICINITY MAP
N.T.S.

GENERAL NOTES:
1. THE PROJECT IS WITHIN AN URBAN DISTRICT
2. POTABLE WATER PROVIDED BY HILLSBOROUGH COUNTY
3. SEWAGE DISPOSAL PROVIDED BY HILLSBOROUGH COUNTY
4. ON-SITE WATER AND SEWER TO BE MAINTAINED BY HILLSBOROUGH COUNTY
5. DRAINAGE PLANS AND CALCULATIONS COMPLY WITH REQUIREMENTS AS REFERENCED IN SUBDIVISION REGULATIONS OF THE LAND DEVELOPMENT CODE OF HILLSBOROUGH COUNTY, FLORIDA.
6. THE PROJECT CONTAINS NO FLEX AREAS
7. ALL FOLIO NUMBERS ARE SHOWN ON THE PLANS FOR THE PROJECT AND WITHIN 150 LINEAR FEET OF THE PROJECT BOUNDARY.
8. BUFFERING WILL COMPLY WITH THE HILLSBOROUGH COUNTY LAND DEVELOPMENT CODE (LDC), LATEST EDITION.
9. OPEN SPACE AND COMMUNITY GATHERING SPACE WILL BE PROVIDED AS REQUIRED BY THE LDC.
10. ZONING AND COMPREHENSIVE PLAN DESIGNATIONS FOR ALL PROPERTY WITHIN 150 LINEAR FEET OF THE PROJET IS SHOWN ON THE PLAN.
11. THE PLATTED PARCEL LINES AND PROPERTY FOLIO NUMBERS FOR ALL PROPERTY WITHIN 150 LINEAR FEET OF THE PROJECT ARE SHOWN ON THE PLAN.
12. THE CURRENT LAND USE FOR ALL PROPERTY WITHIN 150 LINEAR FEET OF THE PROJECT IS SHOWN ON THE PLAN.
13. POINTS OF INGRESS/EGRESS ARE IDENTIFIED ON THE SITE PLAN.
14. PROPOSED PROJECT ENTRY, INTERNAL ROADWAYS AND PONDS ARE SHOWN AS APPROXIMATE AND ARE SUBJECT TO CHANGE DURING PERMITTING.
15. PROJECT SHALL BE DESIGNED IN ACCORDANCE WITH LAND DEVELOPMENT CODE FOR STORMWATER, TRANSPORTATION, WATER AND WASTEWATER REQUIREMENTS.
16. THE PROJECT IS NOT LOCATED WITHIN ANY OVERLAY DISTRICTS.
17. THE PROJECT IS NOT LOCATED WITHIN ANY SPECIAL ZONING DISTRICTS.
18. FIRE FLOW WILL BE PROVIDED AS REQUIRED BY HILLSBOROUGH COUNTY FIRE DEPARTMENT AND WATER AUTHORITY HAVING JURISDICTION.
19. MINIMUM SETBACKS: SEE DETAILS THIS SHEET
20. OUTDOOR LIGHTING INTERNAL TO THE PROJECT WILL BE PROVIDED.
21. DETENTION/RETENTION POND PARCELS AND DRAINAGE EASEMENTS TO BE OWNED AND MAINTAINED BY AN HOA AND/OR CDD.
22. OPEN SPACE/ DRAINAGE EASEMENTS/TRACTS BETWEEN LOTS TO BE DEDICATED TO THE HOA AND/OR CDD.
23. ELECTRICAL POWER DISTRIBUTION AND TELEPHONE SERVICE LINES SHALL BE UNDERGROUND WHEREVER POSSIBLE.
24. TREES TO BE PROTECTED AND/OR REMOVED ARE TO BE DETERMINED DURING CONSTRUCTION PLAN SUBMITTAL. IN ADDITION, THE TOTAL AMOUNT OF REPLACEMENT TREES SHALL BE DETERMINED AT THAT TIME.
25. THE SITE IS LOCATED WITHIN AN URBAN SCENIC CORRIDOR.
26. THE LAYOUT AS DEPICTED MAY BE MODIFIED DUE TO FINAL APPROVAL OF DETAILED ENGINEERING AND STORMWATER REQUIREMENTS.
27. THERE ARE PLATTED LOTS WITHIN 150 FEET OF THE SITE AS SHOWN.
28. NO CULTURAL FACILITIES, RECORDED HISTORICAL OR ARCHAEOLOGICAL SITES, COMMUNITY RECREATION USES OR PUBLIC FACILITIES EXIST ON-SITE.
29. THERE ARE NO EXISTING ROADS ON SITE.
30. THE PROJECT IS LOCATED WITHIN THE RIVERVIEW COUNTY WIDE PLANNING AREA.
31. THE PROJECT IS LOCATED WITHIN THE SOUTHSHORE COMMUNITY BASE PLANNING AREA.

PROPERTY DESCRIPTION

LEGAL DESCRIPTION PROVIDED BY: HILLSBOROUGH COUNTY PROPERTY APPRAISER

DESCRIPTION:

PART OF TRACT 14 IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 30 SOUTH, RANGE 19 EAST, ASS THE ABOVE APPEARS IN FIRST ADITION TO SOUTH TAMPA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 66 OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHEAST CORNER OF THE AFORESAID TRACT 14 AND RUN THENCE N00 DEG 12'22" E ALONG THE EAST BOUNDARY THEREOF A DISTANCE OF 309.00 FEET TO THE POINT OF BEGINNING OF SAID TRACT HEREIN DESCRIBED; THENCE CONTINUING N 00 DEG 12'22" E ALONG SAID EAST BOUNDARY OF TRACT 14 A DISTANCE OF 41.88 FEET; THENCE S 89DEG 56'35" W A DISTANCE OF 330.74 FEET; THENCE S 00 DEG 11 05" W A DISTANCE OF 42.44 FEET; THENCE N 89 DEG 50'22" E ALONG A LINE 309.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH BOUNDARY OF THE SAID TRACT 14 A DISTANCE OF 330.72 FEET TO THE POINT OF BEGINNING.

AND

PART OF TRACT 14 IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 30 SOUTH, RANGE 19 EAST, AS THE SAME APPEARS IN FIRST ADITION TO SOUTH TAMPA, ACCORDING TO THE MAP OF PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 66 OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF THE AFORESAID TRACT 14 AND RUN THENCE N 00 DEG 09'48" E ALONG THE WEST BOUNDARY THEREOF A DISTANCE OF 365.00 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE CONTINUING N 00 DEG 09'48" E ALONG SAID WEST BOUNDARY A DISTANCE OF 301.79 FEET TO THE NORTHWEST CORNER OF SAID TRACT 14 A DISTANCE OF 661.70 FEET THENCE S 00 DEG 12'21" W A DISTANCE OF 301.79 FEET; THENCE S 89 DEG 56'35" W A DISTANCE OF 330.74 FEET; THENCE N 00 DEG 1705" E A DISTANCE OF 46.00 FEET; THENCE S 82 DEG 01'27" W A DISTANCE OF 33.12 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS DESCRIBED AS FOLLWOS; FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF AFOREMENTIONED TRACT 14 AND RUN THENCE N 00 DEG 09'48" E ALONG THE WEST BOUNDARY THEREOF A DISTANCE OF 15.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF RIVERVIEW DRIVE; THENCE N 89 DEG 50'22" E ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 100.00 FEET TO THE POIT OF BEGINNING OF THE TRAT HEREIN DESCRIBED; THENCE N 00 DEG 09'48" E A DISTANCE OF 120.00 FEET; THENCE N 44 DEG 50'12" W A DISTANCE OF 84.85 FEET; THENCE N 00 DEG 09'48" E A DISTANCE OF 157.54 FEET; THENCE N 82 DEG 01'27" E A DISTANCE OF 20.20 FEET; THENCE S 00 DEG 09'48" W A DISTANCE OF 152.11 FEET; THENCE S 44 DEG 50'12" E A DISTANCE OF 84.85 FEET; THENCE S 00DEG 09'48" W A DISTANCE OF 128.17 FEET TO A POINT ON THE AFORESAID NORTH RIGHT OF WAY LINE OF RIVERVIEW DRIVE; THENCE S 90 DEG 50'22" W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SITE DATA TABLE

Project Location	Hillsborough County, Florida
Upland Area	8.98 Acres±
Wetlands	0.49 Acres±
Existing Natural Waterbodies	0.25 Acres±
Stormwater Retention Area	0.71 Acres±
Total Project Area	9.47 Acres±
Gross Density	9.71 Unit/Acre
Community Gathering Space	0.11 Acres±
Product Type	Townhome
Number of Units	92
Minimum Lot Depth	80 Feet
Minimum Lot Area	1400 Sq. Feet
Minimum Lot Width	18 Feet
Minimum Setback Along Riverview Dr.	20 Feet
Minimum Setback From PD Boundary (West, North, and East)	15 Feet
Minimum Building Separation	20 Feet
Maximum Building Height	35 Feet
Folio Numbers	049143-0000, 049143-0100, 049145-0000 049143-0200, 049144-0000
Current Zoning	M, RSC-6
Future Land Use	CMU-12
Allowable Density	12 DU/Acre
Owner	Meritage Homes 10117 Princess Palm Ave #550 Tampa, FL 33610
Flood Zone	"X" Firm Panel No. 12057C0501J Dated: October 26, 2018

PROJECT NAME:
RIVERVIEW LANDING

DRAWING TITLE:
PD PLAN

PREPARED FOR:
MERITAGE

PROJECT No. 086-01-E01

SHEET 1 of 1

LEVELUP CONSULTING, LLC
LVLUP
505 E. Jackson Street
Suite 200
Tampa, Florida 33602
Office: 813-375-0616
www.levelupflorida.com

2012 FDOT QUALITY / LEVEL OF SERVICE HANDBOOK

TABLE 4

Generalized **Peak Hour Two-Way** Volumes for Florida's Urbanized Areas[1]

12/18/12

INTERRUPTED FLOW FACILITIES

STATE SIGNALIZED ARTERIALS

Class I (40 mph or higher posted speed limit)

Lanes	Median	B	C	D	E
2	Undivided	*	1,510	1,600	**
4	Divided	*	3,420	3,580	**
6	Divided	*	5,250	5,390	**
8	Divided	*	7,090	7,210	**

Class II (35 mph or slower posted speed limit)

Lanes	Median	B	C	D	E
2	Undivided	*	660	1,330	1,410
4	Divided	*	1,310	2,920	3,040
6	Divided	*	2,090	4,500	4,590
8	Divided	*	2,880	6,060	6,130

Non-State Signalized Roadway Adjustments

(Alter corresponding state volumes by the indicated percent.)

Non-State Signalized Roadways - 10%

Median & Turn Lane Adjustments

Lanes	Median	Exclusive Left Lanes	Exclusive Right Lanes	Adjustment Factors
2	Divided	Yes	No	+5%
2	Undivided	No	No	-20%
Multi	Undivided	Yes	No	-5%
Multi	Undivided	No	No	-25%
–	–	–	Yes	+ 5%

One-Way Facility Adjustment

Multiply the corresponding two-directional volumes in this table by 0.6

BICYCLE MODE[2]

(Multiply motorized vehicle volumes shown below by number of directional roadway lanes to determine two-way maximum service volumes.)

Paved Shoulder/Bicycle Lane Coverage	B	C	D	E
0-49%	*	260	680	1,770
50-84%	190	600	1,770	>1,770
85-100%	830	1,770	>1,770	**

PEDESTRIAN MODE[2]

(Multiply motorized vehicle volumes shown below by number of directional roadway lanes to determine two-way maximum service volumes.)

Sidewalk Coverage	B	C	D	E
0-49%	*	*	250	850
50-84%	*	150	780	1,420
85-100%	340	960	1,560	>1,770

BUS MODE (Scheduled Fixed Route)[3]

(Buses in peak hour in peak direction)

Sidewalk Coverage	B	C	D	E
0-84%	> 5	≥ 4	≥ 3	≥ 2
85-100%	> 4	≥ 3	≥ 2	≥ 1

UNINTERRUPTED FLOW FACILITIES

FREEWAYS

Lanes	B	C	D	E
4	4,120	5,540	6,700	7,190
6	6,130	8,370	10,060	11,100
8	8,230	11,100	13,390	15,010
10	10,330	14,040	16,840	18,930
12	14,450	18,880	22,030	22,860

Freeway Adjustments

Auxiliary Lanes Present in Both Directions	Ramp Metering
+ 1,800	+ 5%

UNINTERRUPTED FLOW HIGHWAYS

Lanes	Median	B	C	D	E
2	Undivided	770	1,530	2,170	2,990
4	Divided	3,300	4,660	5,900	6,530
6	Divided	4,950	6,990	8,840	9,790

Uninterrupted Flow Highway Adjustments

Lanes	Median	Exclusive left lanes	Adjustment factors
2	Divided	Yes	+5%
Multi	Undivided	Yes	-5%
Multi	Undivided	No	-25%

[1] Values shown are presented as peak hour two-way volumes for levels of service and are for the automobile/truck modes unless specifically stated. This table does not constitute a standard and should be used only for general planning applications. The computer models from which this table is derived should be used for more specific planning applications. The table and deriving computer models should not be used for corridor or intersection design, where more refined techniques exist. Calculations are based on planning applications of the Highway Capacity Manual and the Transit Capacity and Quality of Service Manual.

[2] Level of service for the bicycle and pedestrian modes in this table is based on number of motorized vehicles, not number of bicyclists or pedestrians using the facility.

[3] Buses per hour shown are only for the peak hour in the single direction of the higher traffic flow.

* Cannot be achieved using table input value defaults.

** Not applicable for that level of service letter grade. For the automobile mode, volumes greater than level of service D become F because intersection capacities have been reached. For the bicycle mode, the level of service letter grade (including F) is not achievable because there is no maximum vehicle volume threshold using table input value defaults.

Source:
Florida Department of Transportation
Systems Planning Office
www.dot.state.fl.us/planning/systems/sm/los/default.shtm

2020 FLORIDA DESIGN MANUAL

LINCKS & ASSOCIATES, INC.

New features installed on RRR projects are to meet new construction criteria. However, RRR criteria may be used for establishing the minimum requirements for adding auxiliary lanes, keyhole lanes, or other minor intersection improvements with the understanding that when existing R/W is adequate, new construction criteria will be used to the maximum extent feasible.

210.1.2 Railroad-Highway Grade Crossing

If a railroad-highway grade crossing is within or near the limits of the project, and there are Federal Funds associated with the project, see ***FDM 220.2.4*** for requirements.

210.1.3 Aviation and Spaceports

If an airport or spaceport is within 10 nautical miles of the project, refer to ***FDM 110.5.1*** for requirements.

210.2 Lanes

Design criteria for lane widths and pavement slopes are given by lane type, design speed and context classification. Minimum travel, auxiliary, and two-way left-turn lane widths are provided in ***Table 210.2.1.*** Refer to ***FDM 211*** for ramp lane widths.

Two-way left turn lane widths (flush median) may be used on 3-lane and 5-lane typical sections with design speeds ≤ 40 mph. On new construction projects, flush medians are to include sections of raised or restrictive median to enhance vehicular, bicycle, and pedestrian safety, improve traffic efficiency, and attain the standards of the Access Management Classification of that highway system. Sections of raised or restrictive medians are recommended on RRR projects.

Table 210.2.1 – Minimum Travel and Auxiliary Lane Widths

Context Classification		Travel (feet) Design Speed (mph)			Auxiliary (feet) Design Speed (mph)			Two-Way Left Turn (feet) Design Speed (mph)	
		25-35	40-45	≥ 50	25-35	40-45	≥ 50	25-35	40
C1	Natural	11	11	12	11	11	12	N/A	
C2	Rural	11	11	12	11	11	12		
C2T	Rural Town	11	11	12	11	11	12	12	12
C3	Suburban	10	11	12	10	11	12	11	12
C4	Urban General	10	11	12	10	11	12	11	12
C5	Urban Center	10	11	12	10	11	12	11	12
C6	Urban Core	10	11	12	10	11	12	11	12

Notes:

Travel Lanes:

(1) Minimum 11-foot travel lanes on designated freight corridors, SIS facilities, or when truck volume exceeds 10% on very low speed roadways (design speed ≤ 35 mph) (regardless of context).

(2) Minimum 12-foot travel lanes on all undivided 2-lane, 2-way roadways (for all context classifications and design speeds). However, 11-foot lanes may be used on 2-lane, 2-way curbed roadways that have adjacent buffered bicycle lanes.

(3) 10-foot travel lanes are typically provided on very low speed roadways (design speed ≤ 35 mph), but should consider wider lanes when transit is present or truck volume exceeds 10%.

(4) Travel lanes should not exceed 14 feet in width.

Auxiliary Lanes:

(1) Auxiliary lanes are typically the same width as the adjacent travel lane.

(2) Table values for right turn lanes may be reduced by 1 foot when a bicycle keyhole is present.

(3) Median turn lanes should not exceed 15 feet in width.

(4) For high speed curbed roadways, 11-foot minimum lane widths for dual left turn lanes are allowed.

(5) For RRR Projects, 9-foot right turn lanes on very low speed roadways (design speed ≤ 35 mph) are allowed.

Two-way Left Turn Lanes:

(1) Two-way left turn lanes are typically one foot wider than the adjacent travel lanes.

(2) For RRR Projects, the values in the table may be reduced by 1-foot.

Table 200.4.1 Context Classifications

Context Classification		Description of Adjacent Land Use
C1	Natural	Lands preserved in a natural or wilderness condition, including lands unsuitable for settlement due to natural conditions.
C2	Rural	Sparsely settled lands; may include agricultural land, grassland, woodland, and wetlands.
C2T	Rural Town	Small concentrations of developed areas immediately surrounded by rural and natural areas; includes many historic towns.
C3R	Suburban Residential	Mostly residential uses within large blocks and a disconnected/sparse roadway network.
C3C	Suburban Commercial	Mostly non-residential uses with large building footprints and large parking lots. Buildings are within large blocks and a disconnected/sparse roadway network.
C4	Urban General	Mix of uses set within small blocks with a well-connected roadway network. May extend long distances. The roadway network usually connects to residential neighborhoods immediately along the corridor or behind the uses fronting the roadway.
C5	Urban Center	Mix of uses set within small blocks with a well-connected roadway network. Typically concentrated around a few blocks and identified as part of the community, town, or city of a civic or economic center.
C6	Urban Core	Areas with the highest densities and with building heights typically greater than four floors within FDOT classified Large Urbanized Areas (population >1,000,000). Many are regional centers and destinations. Buildings have mixed uses, are built up to the roadway, and are within a well-connected roadway network.

STREET VIEW PICTURES


Riverview Dr
Google Earth


Riverview Dr
Google Earth


Riverview Dr
Google Earth

AGENCY COMMENT SHEET

REZONING	
HEARING DATE: 10/09/2020 **PETITION NO.:** 20-0985 **EPC REVIEWER:** Chantelle Lee **CONTACT INFORMATION:** (813) 627-2600 X 1358 **EMAIL:** leec@epchc.org	**COMMENT DATE:** 08/14/2020 **PROPERTY ADDRESS:** 8714, 8718, 8808 Riverview Dr, Riverview, FL 33578 **FOLIO #:** 049143.0000, 049143.0100, 049143.0200, 049144.0000, 049145.0000 **STR:** 13-30S-19E
REQUESTED ZONING: RSC-6 and M to PD	

FINDINGS	
WETLANDS PRESENT	YES
SITE INSPECTION DATE	N/A
WETLAND LINE VALIDITY	Expired 12/05/2018
WETLANDS VERIFICATION (AERIAL PHOTO, SOILS SURVEY, EPC FILES)	Pond in folio# 049143.0000

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.

- Wetland delineation surveys were submitted and approved by EPC; however, they expired in 2018. Prior to the issuance of any building or land alteration permits or other development, the wetlands/other surface waters (OSW) must be field delineated in their entirety by EPC staff or Southwest Florida Water Management District staff (SWFWMD) and the wetland line surveyed**.** Once delineated, surveys must be submitted for review and formal approval by EPC staff. The approved wetland / OSW line must be incorporated into the development of a 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).

- 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.

cl/mst

Hillsborough County
PUBLIC SCHOOLS
Preparing Students for Life

Adequate Facilities Analysis: Rezoning

Date: October 12, 2020 **Jurisdiction**: Hillsborough County **Case Number**: 20-0985 **HCPS #:** RZ-295 **Address/Folio**: 8808 Riverview Drive, Riverview, FL (049143.0000, 049143.0100, 049143.0200, 049144.0000, 049145.0000)	**Acreage:** 9.48 acres **Current Land Use**: Single-family residential, Vacant Industrial, and Vacant Residential **Proposed Land Use**: Planned Development/Townhomes **Maximum Residential Units**: 92 Units

School Data	Ippolito Elementary	Giunta Middle	Spoto High
FISH Capacity	872	1558	1977
2018-19 Enrollment	515	798	1676
Current Utilization	*59%*	*51%*	*85%*
Concurrency Reservations	96	228	524
Students Generated	11	5	7
Proposed Utilization	*71%*	*66%*	*112%*

Source: *2019-20 40th Day Enrollment Count with Updated Concurrency Reservations*.

Notes: Adequate capacity exists at this time at Ippolito Elementary and Giunta Middle at this time. Capacity does not currently exist at Spoto High School. However, an addition is being constructed at the high school that is scheduled to open in 2021.

This is a review for school capacity only and is NOT a determination of school concurrency. A school concurrency review will be issued prior to preliminary plat or site plan approval.

Matthew Pleasant
Department Manager, Planning and Siting
Email: matthew.pleasant@hcps.net
Phone: 813-272-4000

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:**	10/02/2020
REVIEWER:	Ron Barnes, Impact & Mobility Fee Coordinator		
APPLICANT:	David Wilson/Meritage Homes	**PETITION NO:**	20-0985
LOCATION:	8808 Riverview Dr		
FOLIO NO:	49145, 49143, 49143.0100, 49143.0200, 49144.0000		

Estimated Fees:

(Fee estimate is based on a 1,500 square foot, 3 bedroom, Townhouse Unit 1-2 Stories)
Mobility: $2,874.00 * 92 units = $264,408.00
Parks: $382.37 * 92 units = $ 35,178.04
School: $7,027.00 * 92 units = $646,484.00
Fire: $249.00 * 92 units =$ 22,908.00
Total Townhouse = $968,978.04

Project Summary/Description:

Urban Mobility, Central Parks/Fire 92 Townhouse Units

AGENCY REVIEW COMMENT SHEET

TO: ZONING TECHNICIAN, Planning Growth Management **DATE:** 3 Aug 2020

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

APPLICANT: Isabelle Albert **PETITION NO:** PD 20-0985

LOCATION: 8808 Riverview Dr., Riverview, FL 33578

FOLIO NO: 49145.0000, 49143.0000, 49143.0100, 49143.0200, 49144.0000 **SEC:** 13 **TWN:** 30 **RNG:** 19

☒ 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.: PD20-0985 **REVIEWED BY:** **Randy Rochelle** **DATE:** 7/28/2020

FOLIO NO.: 49145.0000, 49143.0000, 49143.0100 & 49144.0000

☒ This agency would ☐ (support), ☒ (conditionally support) the proposal.

WATER

☒ The property lies within the Hillsborough County Water Service Area. The applicant should contact the provider to determine the availability of water service.

☐ No Hillsborough County water line of adequate capacity is presently available.

☒ A 12 inch water main exists ☐ (adjacent to the site), ☒ (approximately 65 feet from the site) and is located south of the subject property within the south Right-of-Way of Riverview Drive .

☐ Water distribution improvements may be needed prior to connection to the County's water system.

☐ No CIP water line is planned that may provide service to the proposed development.

☐ The nearest CIP water main (_____ inches), will be located ☐ (adjacent to the site), ☐ (feet from the site at _____). Expected completion date is _____.

WASTEWATER

☒ The property lies within the Hillsborough County Wastewater Service Area. The applicant should contact the provider to determine the availability of wastewater service.

☐ No Hillsborough County wastewater line of adequate capacity is presently available.

☐ A 4 inch wastewater force main exists ☐ (adjacent to the site), ☒ (approximately 1380 feet from the site) and is located west of the subject property within the north Right-of-Way of Riverview Drive .

☐ Wastewater distribution improvements may be needed prior to connection to the County's wastewater system.

☐ No CIP wastewater line is planned that may provide service to the proposed development.

☐ The nearest CIP wastewater main (_____ inches), will be located ☐ (adjacent to the site), ☐ (feet from the site at _____). Expected completion date is _____.

COMMENTS: This site is located within the Hillsborough County Urban Service Area, therefore the subject property should be served by Hillsborough County Water and Wastewater Service. This comment sheet does not guarantee water or wastewater service or a point of connection. Developer is responsible for submitting a utility service request at the time of development plan review and will be responsible for any on-site improvements as well as possible off-site improvements.

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: PAMELA JO HATLEY
Land Use Hearing Master

DATE: Monday, February 15, 2021

TIME: Commencing at 6:00 p.m.
Concluding at 11:35 p.m.

PLACE: Appeared via Cisco Webex Videoconference

Reported By:

Christina M. Walsh, RPR
Executive Reporting Service
Ulmerton Business Center
13555 Automobile Blvd., Suite 100
Clearwater, FL 33762
(800) 337-7740

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

ZONING HEARING MASTER HEARINGS
February 15, 2021
ZONING HEARING MASTER: PAMELA JO HATLEY

D4:

Application Number:	RZ-PD 20-0985
Applicant:	David Wilson, Meritage Homes
Location:	40' North of Intersection: Eagle Watch Dr., Riverview Dr.
Folio Number:	049143.0000, 049143.0100, 049143.0200, 049144.0000 & 049145.0000
Acreage:	9.78 acres, more or less
Comprehensive Plan:	CMU-12
Service Area:	Urban
Existing Zoning:	M & RSC-6
Request:	Rezone to Planned Development

MR. GRADY: The next application is agenda item D-4, Rezoning-PD 20-0985. The applicant is David Wilson with Meritage Homes.

The request is to rezone from M, Manufacturing, and RSC-6 to Planned Development. Stephen Beachy will provide staff recommendation after presentation by the applicant.

HEARING MASTER HATLEY: All right. Applicant.

MS. CORBETT: Good evening. Kami Corbett with the law firm of Hill, Ward & Henderson here representing Meritage Homes. I'm here with Garth Noble from Meritage Homes, Trent Stevenson from Level Up who is the project civil engineer, Isabelle Albert who's our planner, and Steve Henry who's our transportation engineer.

And at this time I'd like Isabelle to come up and make her presentation.

HEARING MASTER HATLEY: Thank you.

MS. ALBERT: Good evening. Isabelle Albert with Halff, 1000 North Ashley Drive, Suite 900. I was not sworn in.

HEARING MASTER HATLEY: All right. Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth?

(Witnesses affirmed to the oath.)

MS. ALBERT: I do. Thank you.

HEARING MASTER HATLEY: Thank you. Thank you-all. I forgot to ask for everyone, but I appreciate that.

MS. ALBERT: Okay. So this is -- okay. So what we have here before you tonight is a 9 1/2-acre site that's located in Riverview. It's located between I-75 and 78th Street.

It is currently zoned Manufacturing with a pocket of RSC-6, Residential Single-Family. But the future land is Community Mixed Use-12.

The proposal is for a townhome development for 92 townhomes, and we have -- we're surrounded by single-family residential lots, and so, therefore, we've decided to increase the buffering and screening, and it's required to have a 5-foot buffer with a Type B screening.

We're proposing a 10-foot buffer with a Type B screening as well as the PVC fence. Internal to the project, we have wetland and, therefore, we are creating a community area internal to the project. The access will be along with Eagle Walks Drive, and we are on the scenic corridor, provide some landscaping for that.

As I said, the zoning -- current zoning is Manufacturing. The site is in the middle. So around there it's got some interesting zonings. You'll see there's additional Manufacturing to the east. To the south, we have some zoning with Show Business and to the west -- further to the west you'll see it's industrial.

Off-site, as you can see with the Future Land Use, we are in a Community Mixed Use, 12 units to the acre. So north of Riverview Drive is more intense. We also have Light Industrial. We have Residential-6. To the south, we have some mixed use and some Residential-4, which is the least intense in the area.

So this is the zoning and it's not very consistent. It's not very compatible with the existing area, the residential area. With the CMU-12, we do have a minimum density requirement in the Urban Service Area, which we're providing that.

And we also -- with the replacement of Manufacturing residential, we, you know, think of the neighborhood protection and the townhome is compatible with the residential area.

We also have to meet with the Riverview Community Plan. Their first goal is to provide a

diverse city of housing types, and their second goal is this vision that they have in the area where we're located is like a mixed-use district. And this mixed-use district is residential retail education but different types of residential as well with the townhomes -- townhomes.

Let's say you saw from the aerial we're surrounded by single-family homes. The townhomes are, you know, consistent with the overall residential character of the area instead of the Manufacturing, which would be incompatible with the area.

We are consistent with the Comprehensive Plan. We meet the minimum density requirement being in the Urban Service Area. We promote integration with adjacent Land Use and we are preserving the wetlands on-site.

Next will be Steve Henry, and he will go over access and connectivity. Thank you.

HEARING MASTER HATLEY: Thank you.

MR. HENRY: Good evening. Steve Henry, Lincks & Associates, 5023 West Laurel, Tampa, 33607, and I have been sworn.

We did a traffic analysis for the project. This graphic up here illustrates the level of

service of Riverview Drive in the area. The green represents the background traffic. The blue represents the additional project traffic that will add to the road.

So as you can see, the Level of Service D capacity is right about 1200 cars per day. The a.m. peak hour with us is about 596, and then in the p.m. peak hour it is about 657.

So that represents about a .55 volume to capacity ratio. So, obviously, a good level of service. We then also looked at the trip generation comparison of the current zoning for the property versus what we're proposing.

So the green represents the existing zoning -- M zoning, and the blue represents what we're proposing.

And as you can see in the a.m. peak hour, the manufacturing would generate significantly more traffic than what we're proposing and also in the p.m. peak hour, 184 versus the 55.

So a significant decrease in the amount of traffic that could be generated based on existing zoning. Also, what we've done is we looked at -- we've heard some ideas about putting single-family there, and the townhomes would generate more

traffic.

This actually provides a comparison of the single-family homes that could be put on the property. About 51 single-family homes could fit on the property versus the 92 townhomes. As you can see, the difference in traffic is negligible. It's virtually the same amount of traffic versus single-family versus the townhomes that we're proposing.

Now, we -- Riverview Drive is considered to be a substandard road by Hillsborough County standards, but we have received a design exception that has been deemed approvable. This illustrates the section that we would have to meet for Riverview Drive, which is the TS-7, a rural collector roadway.

So one of the things we've got is the TS-7 has 12-foot lanes. There's actually 11-foot lanes out on Riverview Drive, but that actually meets the DOT criteria for that type of roadway.

And then in addition to that, the TS-7 has paved shoulders. What we are proposing to try to mitigate, that is we're providing the sidewalk along our property. But in addition to that, we're extending that sidewalk to join up to the other

sidewalk to the west about 950 feet.

And then in addition to that, the -- based on our traffic analysis, we do not warrant a left turn lane for our project driveway on Riverview Drive. We are aligning with Eagle Watch to the south, which is an existing single-family development.

What we're proposing to do is actually put in left turn lane not only for our development but also for Eagle Watch. So that would help mitigate the impact of the project on Riverview Drive.

So that concludes my presentation unless you've got any questions.

HEARING MASTER HATLEY: I do not. Thank you.

MR. HENRY: Thank you.

Mr. Henry, would you please sign in with the clerk. Thank you.

MS. CORBETT: And I just wanted to close by letting you know we did meet with the neighbors. We've spoken with -- virtually we met with them and we've -- also different members of our team have spoken to the -- some of the neighbors about their concerns again, and they've expressed some concerns via e-mail in the record as well.

Most of those concerns are about the

townhome development in the form of development, and as Isabelle stated, the plan density cannot be achieved with single-family homes and we have proposed buffering screening and layout that will limit any impact to adjacent single-family homes.

And I just wanted to know unless someone's here this evening, we have not heard from anyone in the immediately adjacent property owners. Most of the residents that have objected to us have been south of Riverview Drive on the other side of Riverview Drive.

So those that would be directly adjacent to single-family homes, we received one call who asked about what we are proposing, and we have not heard further objection.

And as you just heard from Mr. Henry, they've expressed concern about transportation and access and we reduced daily trips, and we agreed to make the turn lane improvements after our meeting because we knew that that was a concern to them, and it was something that we could accommodate.

And so with that, I'd like to close by saying that we've been found consistent and compatible by the Planning Commission and consistent by Development Services with a

recommendation of approval, and we'd ask that you do the same. Thank you.

HEARING MASTER HATLEY: Okay. Thank you.

Development Services.

MR. BEACHY: Good evening. Steve Beachy, Development Services.

The applicant is requesting to rezone approximately 9.5 acres from Manufacturing and RSC-6 to Planned Development to allow a residential development with up to 92 attached homes -- townhomes on the north side of Riverview Drive.

The Comprehensive Plan designation of the subject property is CMU-12. The site is surrounded by existing single-family homes on the east north and west side of the project as well as single-family homes located on the south side of Riverview Drive.

As noted in the applicant's presentation and our Transportation Staff has -- has reviewed this and indicated the proposed rezoning would resolve in a decrease of trips potentially generated by the development of the subject parcel if it were developed as a Manufacturing use.

The existing pattern of development in proximity to the proposed development --

development is uniformly single-family residential uses. If approved, the proposed project will introduce a new multifamily residential development use in the immediate area.

However, townhomes in this location will create less of a contrasting use than currently zoned M designation in this location.

Therefore, staff finds the proposed general site plan supportable. This concludes my remarks. I'm available for any questions.

HEARING MASTER HATLEY: Thank you.

Planning Commission.

MS. LIENHARD: Thank you. Melissa Lienhard, Planning Commission staff.

The subject property is located in the Community Mixed Use-12 Future Land Use category. It is in the Urban Service Area, and the subject property is located within the limits of the Riverview Community Plan and the Southshore Areawide Systems Plan.

The applicant is requesting to rezone the subject site from Residential Single-Family Conventional-6 and Manufacturing to allow for the development of 92 single-family attached townhomes.

The proposal meets the intent of Policies 1.2

and 1.3 of the Future Land Use Element regarding minimum densities and is consistent with the density anticipated under the CMU-12 Future Land Use designation.

The proposal for townhomes is also compatible with the surrounding area as this is an area developed predominantly with small lots single-family residential.

Additionally, there is a townhome development at the intersection of Falkenburg Road and Still River Drive north of the proposed site.

This meets the intent of the Community Design Component language -- language regarding new residential development. This policy direction requires new developments be designed to the -- relate to the predominant character of the area.

As the area is primarily single-family residential, the addition of townhomes would provide a housing type that is in line with the existing character of the area.

Objective 16 requires new development to protect existing neighborhoods and communities. Policies 16.1, 16.2, and 16.3 of the Future Land Use Element provide direction to protect and integrate proposed development with the surrounding

community.

This proposal meets the intent of the subjective and its accompanying policies. The site plan demonstrates buffering and screening meeting Land Development Code requirements.

Additionally, the proposed use reflects the overall density and lot sizes of the immediate area. Therefore, it's consistent with Policy 16.8 of the Future Land Use Element.

The site is also located within the mixed-use district as outlined in the Riverview Community Plan. The mixed-use district includes areas for commerce, education, agriculture, and residential subdivisions merge. The proposed development for townhomes meets the intent of the mixed-use district.

Lastly, the site is under the acreage threshold that requires a mix of uses and a CMU-12 Future Land Use category.

Based upon the considerations, Planning Commission staff finds the proposed Planned Development consistent with the Future of Hillsborough Comprehensive Plan for unincorporated Hillsborough County subject to the conditions proposed by the Development Services Department.

Thank you.

HEARING MASTER HATLEY: Thank you.

Is there anyone here tonight or online who wishes to speak in support of this proposal? Okay.

Is there anyone here or online tonight who wishes to speak in opposition to this proposal?

Please come forward. State your name and address for the record and please speak into the microphone.

MR. ROSE: Robert Rose, 8926 Eagle Watch Drive in Riverview, Florida 33578.

HEARING MASTER HATLEY: Go ahead. Thank you.

MR. ROSE: Perfect. Thank you. We've known about this development since the fall, September and October. So we've had quite a bit of time to have a lot of discussions with the residents in the area about their concerns.

I would tell you that generally when I've talked to different folks -- by the way, I'm the president of the homeowners association for Eagle Watch.

I'm going to have Mike Lawrence, who's a resident, speak to some of the slides and Dennis McComak, who's the president of Stillwater which is

an adjacent development.

HEARING MASTER HATLEY: You'll have a total of 15 minutes together.

MR. ROSE: Right. We've practiced. We're below that, I think.

HEARING MASTER HATLEY: Thank you.

MR. ROSE: And I would tell you that most of the folks I've talked to within the previous couple of days, even sometimes couple of hours, have been frustrated by the traffic that's been on Riverview Drive.

So whenever I pose the question to, gee, what do you think about the 92 townhomes that are going to be built right across the street, I can't convince them that it's going to reduce the traffic on the road or, frankly, that it's even compatible with the neighborhood.

All the comments fall into one of three categories. If we could go to the next slide. And regardless of what they said, it really -- concerns about compatibility, concerns about increased traffic congestion, and there was a specific concern about traffic safety.

We are, you know, their entrance is going to be right across the street from Eagle Watch. Eagle

Watch has about three -- has 62 homes in it and 300 to 325 trips per day. We know that because we have a gate and the gate can count it. So I know every single day how many trips.

So the fact that there's going to be 90 to almost 50 percent more dwellings across the street just argues that it's going to be more than 300 to 325 trips a day. It's going to worsen the traffic on a road that's already overburdened.

Now, I want -- I want to take a moment just recognize and appreciate their willingness to put the turn lanes in. They -- they did meet with us. They listened to some of our concerns. And I think that -- that was very helpful for them to have -- to have included that.

So I'm going to turn this over now to -- to Mike Lawrence who would just speak a little more detailed about some of the concerns on the compatibility.

HEARING MASTER HATLEY: Thank you, please. See the clerk and sign in. Thank you. Yes, sir. Come forward.

MR. LAWRENCE: I am Mike Lawrence. I live at 8806 Eagle Watch Drive in Riverview directly across the street from the entry to this disastrous

proposal.

You can see our property here, the Oak Creek subdivision and the other -- it's about four units per acre. However, across the street in the area where I live, we average two per acre. It is a community of single-family homes as they said, but it's all custom homes.

I'm very aware of the growth in the area because I'm a residential developer, and I've accounted for my share of these -- the growth in the area.

I've been before this Zoning Hearing Masters throughout the years -- more than 20 years actually. So I'm pretty well versed in the Land Development Code, and I have some problems with what's being proposed.

With all of these homes being single-family custom homes, I just -- I just have a hard time looking at my lot is 125 feet wide and the proposed townhomes are 18 feet wide.

The closest multifamily project is well over on Falkenburg Road located understandably on a divided arterial roadway, not in the midst of custom homes.

For that reason alone, you should deny the

petition. I am not naive. I realize that we can't stop this project. I just wish that there was a way to change the design. I hope that you would agree with us that this much multifamily directly across the street just doesn't fit.

I speak of down-zoning from Manufacturing, but there is no Manufacturing anywhere in the area. So it's really a moot point to confuse it and say that Manufacturing would be worse. It would never be approved.

I refer you to the Hillsborough County Land Development Code. Policy 1.4 states, Compatibility does not mean the same as, rather it refers to the sensitivity of development proposals in maintaining the character of existing development.

Stuffing a nine-unit-per-acre project into an area of two-unit-per-acre homes is -- I don't think that maintains the character very well.

Policy 16.2 speaks of gradual transitions from one use to the other. Gradual, there's nothing gradual about this.

16.8 says, All projects must reflect the character. This policy wasn't followed.

16.10 says, Any density increase shall be compatible with existing proposed or planned

surrounding development. That's a joke.

So I think that just, you know, anybody who proposes who says that this is compatible is just bad at math. Nine doesn't equal two, it doesn't equal four. That's how many units per acre are on this project.

These units per gross acre, the same thing that you've heard from everybody else, same thing that you heard from staff. And it's -- it's just inconsistent with everything.

However, the developer, we're asking them that they fence the entire project. We ask that the developer use the buffers that the Land Development Code calls out to screen as best we can the -- this project from our homes.

They put turn lanes in, and I really applaud that effort and I appreciate it, but I suggest that they also include an entry and exit gate. Our community Eagle Watch has an enter-and-exit gate and the community to the east does.

Down the way, there's Key West Landings. It's gated. East is Arbor Park. It's gated. So when you talk about custom homes you often get gates. There should be a way to separate this from us, and I appreciate your consideration.

MR. MCCOMAK: My name is Dennis McComak. I live at 8819 Stillwaters Landing Drive, Riverview, Florida.

I am the president of Stillwaters Landing Homeowners Association and speaking in opposition to this development. I listened to the staff reports. I'm going to talk a little bit about the traffic and specifically Riverview Drive.

Riverview Drive is listed -- they've admitted it's a substandard road and that is a kind statement. I also listened to the traffic report and as composed to a potentially -- this development is potentially generated a manufacturing would reduce -- result in a reduction of trips on Riverview Drive.

As Mike said, that's an assumption -- a worse case assumption. The fact is this development will increase significantly the amount of traffic on Riverview Drive.

It's -- Riverview Drive is a 4-mile road connecting 301 to 41. It's called a collector road. It has limited turn lanes, no bike lanes, and is badly need of widening and resurfacing. The only ingress and egress for almost a thousand homes along that four-mile stretch is Riverview Drive.

They can't go south. They can't go any other way.

This development would add 92 more home sites. The current traffic study -- any studies they've done now are inaccurate understated due to the pandemic. We have probably 50 percent of traffic now than we had last year at this time.

People aren't going to work. They aren't going to school. They aren't going to sporting events. They're not going out to dinner. Once the pandemic is over, traffic will be much, much more difficult.

We talked earlier about safety. Immediately to the east of I-75, there are four S curves on Riverview Drive to the sight of frequent accidents. This proposed development would exacerbate an already difficult traffic issue and set precedent for future high density developments along Riverview Drive.

Oops. Wrong way. Well, in summary, the fact that the Riverview Drive does not have turn lanes at either end of 41 and 301 or substandard at best, needs resurfaced any additional growth and specifically 92 units would greatly exacerbate our traffic problems.

HEARING MASTER HATLEY: Mr. McComak, I have

a question for you, please.

MR. MCCOMAK: Sure.

HEARING MASTER HATLEY: Professionally, are you a traffic engineer or --

MR. MCCOMAK: I am not a traffic engineer. No. But I can count.

HEARING MASTER HATLEY: Okay. Thank you.

MR. MCCOMAK: And one comment before I leave, earlier one of the -- one of the speakers mentioned there had been no comments from anyone around, only comments from those of us on the south side.

I tried to contact the neighborhood Oak Park across the street and -- through their management company who never forwarded my request or they ignored it. So, yes, I've been trying to contact. Thank you.

HEARING MASTER HATLEY: Thank you, sir. Please see the clerk to sign in.

Anyone else wish to speak in? Okay. Staff, anything further?

MR. GRADY: No further comments.

HEARING MASTER HATLEY: All right.

Applicant, five minutes for rebuttal and summation.

MS. CORBETT: Yes. Thank you.

I appreciate your question there of the witness. The -- all three gentlemen who spoke, you know, clearly care passionately about their neighborhood, but unfortunately, none of them are professional planners or transportation engineers.

And I have a memorandum of law that I'll be submitting into the record about the ability for the Zoning Hearing Master and the Board of County Commissioners to consider lay testimony on matters that require expert opinion, including things like transportation and compatibility.

All of the expert testimony you heard not just from the applicant's team but from the County Staff supports the proposed request is compatible and consistent with both the Comprehensive Plan and the Land Development Code.

And with that, I'll hand that memorandum and ask Steve Henry to come up and address some transportation issues.

HEARING MASTER HATLEY: Thank you.

MR. HENRY: Steve Henry, Lincks & Associates again.

I just wanted to, one, address the issue on the amount of traffic and that it would have a

significant impact on Riverview Drive. As this graphic illustrates, one Riverview Drive operates acceptable level of service. The blue represents the amount of traffic we're going to add to that. It's less than 3 percent of the capacity of the road. That is insignificant amount of traffic and impact to the road.

In addition, they talked about the pandemic and the impact on pandemic to traffic. What we've been doing is we've actually been studying intersections throughout the county before the pandemic and during the pandemic.

And so we actually adjust our counts based on when they were done and looking at those counts to be able to determine what the traffic is doing. In fact, when the pandemic first came out, it was a significant decrease.

But over time it is starting to increase. We've actually adjusted our counts to reflect that. So this actually reflects not only the pandemic but also peak season traffic. So that concludes my presentation unless any questions.

HEARING MASTER HATLEY: Thank you.

MS. ALBERT: Thank you. Isabelle Albert for the record.

I do want to, you know, remind everyone of the Future Land Use that we have. We are in a mixed-use category. This is the north. You can see it's a lot more intense. And the Residential-4 where the applicants -- the opposition came from there, from the least intensive Future Land Use category there.

And also I wanted to stress out that we are providing a fence around the property and a Type B screening which is more intensive and more dense than the Type A. And so I just wanted to clarify that. Thank you.

HEARING MASTER HATLEY: Thank you.

MS. CORBETT: Kami Corbett, again, for the record.

And just on the -- as to the Arbor Park, the folks within 250 feet north -- on the north and east and west boundaries, they would have received mail notice, and they would have had the opportunity to come here and appear.

So I don't think it's a matter of them not being aware of it. They just haven't registered any opposition. And with that, I'd like to close and just ask for -- respectfully ask for your approval.

HEARING MASTER HATLEY: Thank you.

All right. We'll close the hearing on Rezoning 20-0985.

staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

The next item is item D-1, Rezoning-PD 20-0382. This item is also being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

The next item then is item D-2, Rezoning-PD 20-0394. This application is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

Then item D-3, Rezoning-PD 20-0985. This application is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

Item D-4, Rezoning-PD 20-1149. This application is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

And item D-5, Rezoning-PD 20-1248. This item is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

And then item D-6, Major Mod Application 20-1258. This is being continued by staff to the February 15 Zoning Hearing Master Hearing beginning

staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

The next item is item D-1, Rezoning-PD 20-0382. This item is also being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

The next item then is item D-2, Rezoning-PD 20-0394. This application is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

Then item D-3, Rezoning-PD 20-0985. This application is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

Item D-4, Rezoning-PD 20-1149. This application is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

And item D-5, Rezoning-PD 20-1248. This item is being continued by staff to the February 15th Zoning Hearing Master Hearing beginning at 6:00 p.m.

And then item D-6, Major Mod Application 20-1258. This is being continued by staff to the February 15 Zoning Hearing Master Hearing beginning

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, December 14, 2020

TIME: Commencing at 6:00 p.m.
Concluding at 8:36 p.m.

PLACE: Appeared via Webex videoconference

Reported By:

Christina M. Walsh, RPR
Executive Reporting Service
Ulmerton Business Center
13555 Automobile Blvd., Suite 100
Clearwater, FL 33762
(800) 337-7740

Item A-11, Major Mod Application 20-0898. This application is out of order to be heard and is being continued to the January 19th, 2021, Zoning Hearing Master Hearing.

Item A-12, Rezoning-PD 20-0985. This applicaation is out of order to be heard and is being continued to the January 19th, 2021, Zoning Hearing Master Hearing.

Item A-13, Major Mod Application 20-1068. This application is out of order to be heard and is being continued to the January 19th, 2021, Zoning Hearing Master Hearing.

Item A-14, Major Mod Application 20-1138. This application is out of order to be heard and is being continued to the January 19th, 2021, Zoning Hearing Master Hearing.

Item A-15, Rezoning-PD 20-1142. This application is out of order to be heard and is being continued to the January 19, 2021, Zoning Hearing Master Hearing.

Item A-16, Rezoning-PD 20-1198. This application is out of order to be heard and is being continued to the January 19, 2021, Zoning Hearing Master Hearing.

Item A-17, Rezoning-PD 20-1252. This

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

ZONE HEARING MASTER HEARINGS

ZONING HEARING MASTER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: JAMES SCAROLA and SUSAN FINCH
Land Use Hearing Masters

DATE: Monday, November 16, 2020

TIME: Commencing at 6:00 p.m.
Concluding at 11:38 p.m.

PLACE: Appeared via Webex Videoconference

Reported By:

Christina M. Walsh, RPR
Executive Reporting Service
Ulmerton Business Center
13555 Automobile Blvd., Suite 100
Clearwater, FL 33762
(800) 337-7740

Item A-12, RZ-PD 20-0394. This application is out of order to be heard and is being continued to the December 14, 2020, Zoning Hearing Master Hearing.

Item A-13, Major Mod Application 20-0801. This application is being continued by staff to the December 14, 2020, Zoning Hearing Master Hearing.

Item A-14, Major Mod Application 20-0898. This application is being continued by the applicant to the December 14, 2020, Zoning Hearing Master Hearing.

Item A-15, Rezoning PD 20-0985. This application is being continued by the applicant to the December 14, 2020, Zoning Hearing Master Hearing.

Item A-16, Major Mod Application 20-1068. This application is being continued by the applicant to the December 14, 2020, Zoning Hearing Master Hearing.

Item A-17, RZ-PD 20-1071. This application is being continued by the applicant to the January 19, 2021, Zoning Hearing Master Hearing.

Item A-18, RZ-PD 20-1142. This application is out of order to be heard and is being continued to the December 14, 2020, Zoning Hearing Master

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

ZONING HEARING MASTER (ZHM) HEARING

ZONING HEARING MASTER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: SUSAN FINCH
Zoning Hearing Master

DATE: Monday, October 19, 2020

TIME: Commencing at 6:00 p.m.
Concluding at 8:57 p.m.

PLACE: Cisco Webex Video Conference

Reported By:
Diane T. Emery, CMRS, FPR
Executive Reporting Service
Ulmerton Business Center, Suite 100
Clearwater, FL 33762

is being continued by staff to the November 16, 2020, Zoning Hearing Master hearing.

Item A.14., major mod 20-0898. This application is out of order to be heard and is being continued to the November 16, 2020, Zoning Hearing Master hearing.

Item A.15, rezoning PD 20-0985. This application is out of order to be heard and is being continued to the November 16, 2020, Zoning Hearing Master hearing.

Item A.16., major mod 20-1068. This application is out of order to be heard and is being continued to the November 16, 2020, Zoning Hearing Master hearing.

Item A.17., major mod 20-1070. This application is out of order to be heard and is being continued to the November 16, 2020, Zoning Hearing Master hearing.

Item A.18., RZ-PD 20-1071. This application is out of order to be heard and is being continued to the November 16, 2020, Zoning Hearing Master hearing.

Item A.19., rezoning standard 20-1078. This application is out of order to be heard and is being continued to the November 16, 2020, Zoning

EXHIBITS SUBMITTED

DURING THE ZHM HEARING

HEARING TYPE: ZHM, PHM, VRH, LUHO **DATE: 2/15/2021**

HEARING MASTER: Pamela Jo Hatley **PAGE: 1 OF 1**

APPLICATION #	SUBMITTED BY	EXHIBITS SUBMITTED	HRG. MASTER YES OR NO
MM 20-1068	Brian Grady	1. Staff Report	Yes
RZ 20-1377	Brian Grady	1. Staff Report	Yes
RZ 20-1279	Steve Allison	1. Applicant's Presentation Packet	No
RZ 20-1282	Jesse Blackstock	1. Applicant's Presentation Packet	No
RZ 20-1282	Todd Pressman	2. Opposition Presentation Packet	No
RZ 20-0389	Michael Horner	1. Applicant's Presentation Packet	No
RZ 20-0389	Michael Yates	2. Applicant's Presentation Packet	No
RZ 20-0394	Michael Yates	1. Applicant's Presentation Packet	No
MM 20-0898	Brian Grady	1. Revised Staff Report	Yes
RZ 20-0985	Kami Corbett	1. Applicant's Presentation Packet and Memorandum of Law	No
RZ 20-0985	Steve Henry	2. Applicant's Presentation Packet	No
RZ 20-1149	William Molloy	1. Draft Conditions	No
RZ 20-1265	Steve Henry	1. Applicant's Presentation Packet	No
RZ 20-1265	Buddy Harwell	2. Opposition Presentation Packet and Photographs	No
RZ 20-1265	Kami Corbett	3. Applicant's Presentation Packet and Memorandum of Law	No
MM 21-0033	Buddy Harwell	1. Opposition Presentation Packet and Photographs	No
MM 21-0033	Jamie Frankland	2. Letter from Joseph Gaskill	No
MM 21-0033	Kami Corbett	3. Land Use Application Summary	No
MM 21-0033	Kami Corbett	4. Record for PD 18-0304, Applicant's Presentation Packet and Memorandum of law	Yes
RZ 21-0108	Brian Grady	1. Agency Review Comment Sheet	Yes
RZ 21-0108	Bill Sullivan	2. Applicant's Presentation packet	No

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 1 OF 9

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT
RZ 20-1266 US	NAME Tyler Hudson MAILING ADDRESS 400 N. Ashley Drive CITY Tampa STATE FL ZIP 33602 PHONE
APPLICATION #	PLEASE PRINT
RZ 20-1279	NAME Steve Allison MAILING ADDRESS 14217 Shadow Moss Lane #101 CITY Tampa STATE FL ZIP 33613 PHONE 813-244-2106
APPLICATION #	PLEASE PRINT
RZ 20-1282	NAME JESSE BLACKSTOCK MAILING ADDRESS PO BOX 10099 CITY TAMPA STATE FL ZIP 33679 PHONE 727.220.9440
APPLICATION #	PLEASE PRINT
RZ 20-1282	NAME Todd Pressman MAILING ADDRESS 200 2nd Ave. South #451 CITY St. Petersburg STATE FL ZIP 33701 PHONE 727-804-1760
APPLICATION #	PLEASE PRINT
RZ 20-1282	NAME TOM JOHNSTON MAILING ADDRESS 7115 CURRY RD CITY LUTZ STATE FL ZIP 33549 PHONE 813-690-5663
APPLICATION #	PLEASE PRINT
RZ 20-1282	NAME ZACHERY BURKE MAILING ADDRESS 2633 FIDDLESTICK CIR. CITY LUTZ STATE FL ZIP 33559 PHONE 813-46-5163

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 2 OF 9

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Pamela Jo Hotley

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

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY / STATE / ZIP / PHONE
RZ 20-1282	NAME Lauren Shepard MAILING ADDRESS 2503 High Oaks Ln CITY Lutz STATE FL ZIP 33559 PHONE 813.760.7604
RZ 20-1282	NAME Maria Elena D'Amico MAILING ADDRESS 16105 Darnell Rd CITY Lutz STATE FL ZIP 33549 PHONE 813.230.4091
RZ 20-1282 VS	NAME Alan Vernick MAILING ADDRESS 2110 Curry Road CITY Lutz STATE FL ZIP 33549 PHONE
RZ 20-1282 VS	NAME Carl Brown MAILING ADDRESS 2002 Curry Road CITY Lutz STATE FL ZIP 33549 PHONE
RZ 20-1282 VS	NAME John Lax MAILING ADDRESS 16102 Darnell Rd CITY Lutz STATE FL ZIP 33549 PHONE
RZ 20-1282 VS	NAME Doug Tibbett MAILING ADDRESS 2525 Victoria Circle CITY Lutz STATE FL ZIP 33559 PHONE

SIGN-IN SHEET: RFR, (ZHM), PHM, LUHO PAGE 3 OF 9

DATE/TIME: 2/15/21 6:00 PM HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT
RZ 20-1282 VS	NAME Lesley Miller MAILING ADDRESS 2530 Victorra Circle CITY Lutz STATE FL ZIP 33559 PHONE
RZ 20-1282 VS	NAME Jan Decamp Brown MAILING ADDRESS 2002 Curry Rd CITY Lutz STATE FL ZIP 33549 PHONE
RZ 20-1282 VS	NAME John Stephens MAILING ADDRESS 2513 High Oaks Lane CITY Lutz STATE FL ZIP 33559 PHONE
RZ 20-1282 VS	NAME Heidi Taylor on Behalf of Audrey Major MAILING ADDRESS P.O. Box 1934 CITY Dade City STAT FL ZIP 33526 PHONE
RZ 20-1282 VS	NAME Shirley Gastmann MAILING ADDRESS 2111 Curry Road CITY Lutz STATE FL ZIP 33549 PHONE
RZ 21-0047	NAME Mellih Hichem MAILING ADDRESS 6813 Altier Estates Ct CITY Tampa STATE FL ZIP 33610 PHONE 813-298-52

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 4 OF 9

DATE/TIME: 2/15/21 6:00PM HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT
RZ 20-0389	NAME M. D. HORNER MAILING ADDRESS 4502 N. Dale Mabry CITY T STATE FL ZIP 33618 PHONE 962-3385
RZ 20-0389	NAME MICHAEL YATES PALM TRAFFIC MAILING ADDRESS 400 N Tampa St, 15th FLOOR CITY Tampa STATE FL ZIP 33602 PHONE 8132058057
RZ 20-0389	NAME Matthew S. Moore MAILING ADDRESS 6942 Fulton Ridge Rd. CITY Lithia STATE FL ZIP 33547 PHONE 813 689 4471
RZ 20-0130	NAME JAY MCKEEHAN MAILING ADDRESS 4615 E HANNA AVE CITY TAMPA STATE FL ZIP 33610 PHONE 626-2332
RZ 20-0394	NAME MICHAEL A. HORNER MAILING ADDRESS 4502 N. Dale Mabry Hwy CITY T STATE FL ZIP 33618 PHONE 962-3385
RZ 20-0394 VS	NAME Reed Fischbach MAILING ADDRESS 510 Vonderburg Drive Ste 208 CITY Brandon STATE FL ZIP 33511 PHONE

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 5 OF 9

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT
RZ 20-0394	NAME MICHAEL YATES PALM TRAFFIC MAILING ADDRESS 400 N Tampa St, 15th FLOOR CITY Tampa STATE FL ZIP 33602 PHONE 813 205 8057
APPLICATION #	PLEASE PRINT
~~RZ~~ MM 20-0848 US	NAME David Wright MAILING ADDRESS P.O. Box 1016 CITY Tampa STATE FL ZIP 33601 PHONE
APPLICATION #	PLEASE PRINT
RZ 20-0785	NAME Kami Corbett MAILING ADDRESS 101 East Kennedy Blvd Ste 3700 CITY TAMPA STATE FL ZIP 33602 PHONE 813-227-8421
APPLICATION #	PLEASE PRINT
RZ 20-0985	NAME Isabelle Albert MAILING ADDRESS 1000 N. Ashley Dr. CITY Tampa STATE FL ZIP 33629 PHONE 813 620 4500
APPLICATION #	PLEASE PRINT
RZ 20-0985	NAME STEVE HENRY MAILING ADDRESS 5023 W. LAUREL ST CITY TPA STATE FL ZIP 33607 PHONE 813-289 0039
APPLICATION #	PLEASE PRINT
RZ 20-0985	NAME Robert Rose MAILING ADDRESS 8926 Eagle Watch Dr CITY Riverview STATE FL ZIP 33578 PHONE 813-362-1572

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 6 OF 9

DATE/TIME: 2/15/21 6:00 PM HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT
RZ 20-0985	NAME MICHAEL LAWRENCE MAILING ADDRESS 8806 Eagle Watch Dr CITY Ruskin STATE FL ZIP 33570 PHONE 813-625-2899
APPLICATION #	PLEASE PRINT
RZ 20-0985	NAME Dennis McComak MAILING ADDRESS 8819 Stillwaters Landing Dr CITY Riverview STATE FL ZIP 33578 PHONE 813-727-3240
APPLICATION #	PLEASE PRINT
RZ 20-1149	NAME William Molloy MAILING ADDRESS 305 S Blvd CITY Tampa STATE FL ZIP 33606 PHONE
APPLICATION #	PLEASE PRINT
RZ -20-1149	NAME STEVE HENRY MAILING ADDRESS 5023 W. LAUREL ST CITY TPA STATE FL ZIP 33607 PHONE 813-289-0039
APPLICATION #	PLEASE PRINT
RZ 20-1149	NAME DAVID W. FORD MAILING ADDRESS 1000 N. Ashley Dr. Suite 925 CITY TAMPA STATE FL ZIP 33611 PHONE 813 245-1788
APPLICATION #	PLEASE PRINT
RZ 20-1248	NAME William Molloy MAILING ADDRESS 305 S. Blvd CITY Tampa STATE FL ZIP 33606 PHONE

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 7 OF 9

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY STATE ZIP PHONE
MM 20-1258	NAME Isabelle Albert MAILING ADDRESS 1000 N. Ashley Dr - CITY Tampa STATE FL ZIP 33602 PHONE 813 620 4500
RZ 20-1265	NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd, Ste 3700 CITY TAMPA STATE FL ZIP 33602 PHONE 813-225-842
RZ 20-1265	NAME Isabelle Albert MAILING ADDRESS 1000 N. Ashley Dr - CITY Tampa STATE FL ZIP 33602 PHONE 8136204500
RZ 20-1265	NAME STEVE HENRY MAILING ADDRESS 5023 W. LAUREL ST CITY TPA STATE FL ZIP 33607 PHONE 813-289 0039
RZ 20-1265	NAME Buddy Harwell MAILING ADDRESS P.O Box 297 CITY Gibsonton STATE Fl ZIP 33534 PHONE 813-677-4558
RZ 20-1265	NAME ALFRED BRUNNER MAILING ADDRESS PO BOX 1661 CITY RIVERVIEW STATE FL ZIP 33568 PHONE 4433660582

SIGN-IN SHEET: RFR, (ZHM), PHM, LUHO PAGE 8 OF 9

DATE/TIME: 2/15/21 6:00pm HEARING MASTER: Pamela Jo Hapley

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

APPLICATION #	PLEASE PRINT
RZ 20-1265	NAME Glen Fiske MAILING ADDRESS P.O. Box 241 CITY Balm STATE FL ZIP 33503 PHONE 813-468-7021
RZ 20-1265	NAME TRENT Stephenson MAILING ADDRESS 505 E Jackson St Ste #200 CITY Tampa STATE FL ZIP 33602 PHONE 813.375.0612
MM 21-0033	NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd, Ste 3700 CITY TAMPA STATE FL ZIP 33602 PHONE 813-825-842
MM 21-0033	NAME Buddy Harrell MAILING ADDRESS P.O Box 297 CITY Gibsonton STATE FL ZIP 33534 PHONE 813-671-4556
MM 21-0033	NAME JAMES FRANKLAND MAILING ADDRESS PO BOX 25 CITY BALM STATE FL ZIP 33503 PHONE 813 634 9556
MM 21-0033	NAME AL BRUNNER MAILING ADDRESS PO BOX 1601 CITY RIVIERA VIEW STATE FL ZIP 33568 PHONE 4433066582

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 9 OF 9

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Pamela Jo Hatley

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

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY STATE ZIP PHONE
MM 21-0033	NAME Glen Fiske MAILING ADDRESS P.O. Box 241 CITY Balm STATE FL ZIP 33503 PHONE 813-468-7021
RZ 21-0108	NAME Sean Corsen MAILING ADDRESS 1325 Icot Blvd Ste 605 CITY Clearwater STATE FL ZIP 33760 PHONE 727 524-1818
RZ 21-0108	NAME William Sullivan MAILING ADDRESS 1350 Orange Ave Ste 201 CITY Winter Park STATE FL ZIP 32789 PHONE 407-645-3133
	NAME MAILING ADDRESS CITY STATE ZIP PHONE
	NAME MAILING ADDRESS CITY STATE ZIP PHONE
	NAME MAILING ADDRESS CITY STATE ZIP PHONE

FEBRUARY 15, 2021 – ZONING HEARING MASTER

The Zoning Hearing Master (ZHM), Hillsborough County, Florida, met in Regular Meeting, scheduled for Monday, February 15, 2021, at 6:00 p.m., held virtually.

▶ Pamela Jo Hatley, ZHM, called the meeting to order and led in the pledge of allegiance to the flag.

▶ Brian Grady, Development Services, reviewed the changes/withdrawals/continuances.

D.9 RZ 20-1266

▶ Brian Grady, Development Services, calls RZ 20-1266.

▶ Tyler Hudson, applicant, requested a continuance.

▶ Pamela Jo Hatley, ZHM, calls proponents/opponents/Development Services/Applicant/granted the continuance.

▶ Brian Grady, Development Services, continues changes/withdrawals/continuances.

▶ Pamela Jo Hatley, ZHM, overview of ZHM process.

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

▶ Pamela Jo Hatley, ZHM, oath.

C.1 RZ 20-1279

▶ Brian Grady, Development Services, calls RZ 20-1279

▶ Steve Allison, applicant rep, presents testimony.

▶ Pamela Jo Hatley, ZHM, questions to applicant.

▶ Steve Beachy, Development Services, staff report.

▶ Melissa Lienhard, Planning Commission, staff report.

▶ Pamela Jo Hatley, ZHM, calls for proponents/opponents/Development Services/applicant rep.

- Steve Allison, applicant rep, rebuttal.
- Pamela Jo Hatley, ZHM, closes RZ 20-1279.

C.2 RZ 20-1282

- Brian Grady, Development Services, calls RZ 20-1282.
- Jesse Blackstock, applicant rep, presents testimony.
- Tania Chapela, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents.
- The following spoke in opposition: Todd Pressman, Tom Johnston, Zachery Burke, Lauren Shepard, Maria Elena D'Amico, Alan Vernick, Carl Brown, John Lax, Doug Tibbett, Jan DeCamp-Brown, John Stephens, Heidi Taylor, Lesley Miller, and Shirley Gastmann.
- Pamela Jo Hatley, ZHM, calls Development Services/applicant.
- Jesse Blackstock, applicant rep, rebuttal and question to Development Services.
- Brian Grady, Development Services, responds to applicant rep.
- Pamela Jo Hatley, ZHM, questions to applicant rep.
- Jesse Blackstock, applicant rep, responds to ZHM.
- Pamela Jo Hatley, ZHM, closes RZ 20-1282.

C.3 RZ 21-0047

- Brian Grady, Development Services, calls RZ 21-0047.
- Hichem Melitti, applicant, presents testimony.
- Isis Brown, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents/Development Services/applicant/closes RZ 21-0047.

D.1 RZ 20-0389

- Brian Grady, Development Services, calls RZ 20-0389.
- The following applicant representatives gave testimony: Michael Horner, Michael Yates, and Matthew Moore.
- Israel Monsanto, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- ZHM calls for proponents/opponents/Development Services/applicant rep.
- Michael Horner, applicant rep, rebuttal.
- Pamela Jo Hatley, ZHM, closes RZ 20-0389.

C.4 RZ 21-0129

- Brian Grady, Development Services, announced the item would be continued to the March 15, 2021, ZHM hearing.

C.5 RZ 21-0130

- Brian Grady, Development Services, calls RZ 21-0130.
- James McKeehan, applicant rep, presents testimony.
- Chris Grandlienard, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 21-0130.

D.2 RZ 20-0394

- Brian Grady, Development Services, calls RZ 20-0394.
- The following applicant representatives gave testimony: Michael Horner, Reed Fischbach, and Michael Yates.
- Michelle Heinrich, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls for proponents/opponents/Development Services.

- James Ratliff, Development Services, Transportation, gave testimony.
- Pamela Jo Hatley, ZHM, questions to Development Services, Transportation.
- James Ratliff, Development Services, Transportation, answers ZHM questions.
- Michael Horner and Michael Yates, applicant reps, rebuttal.
- Pamela Jo Hatley, ZHM, closes RZ 20-0394.

D.3 MM 20-0898

- Brian Grady, Development Services, calls MM 20-0898.
- David Wright, applicant rep, presents testimony.
- Israel Monsanto, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls for proponents/opponents/Development Services/ applicant/closes MM 20-0898.

D.4 RZ 20-0985

- Brian Grady, Development Services, calls RZ 20-0985.
- The following applicant representatives presents testimony: Kami Corbett, Isabelle Albert, and Steve Henry.
- Steve Beachy, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents.
- The following spoke in opposition: Robert Rose, Michael Lawrence, and Dennis McComak
- Pamela Jo Hatley, ZHM, calls Development Services/applicant rep.
- The following applicant representatives gave rebuttal: Kami Corbett, Steve Henry, and Isabelle Albert.
- Pamela Jo Hatley, ZHM, closes RZ 20-0985.

D.5 RZ 20-1149

- Brian Grady, Development Services, calls RZ 20-1149.
- The following applicant representatives presents testimony: William Molloy, Steve Henry, and David Wiford.
- Michelle Heinrich, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents/Development Services/ applicant rep/closes RZ 20-1149.

D.6 RZ 20-1248

- Brian Grady, Development Services, calls RZ 20-1248.
- William Molloy, applicant rep, presents testimony.
- Michelle Heinrich, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 20-1248.

D.7 MM 20-1258

- Brian Grady, Development Services, calls MM 20-1258.
- Isabelle Albert, applicant rep, presents testimony.
- Colleen Marshall, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls for proponents/opponents/Development Services/applicant.
- Isabelle Albert, applicant rep, rebuttal.
- Pamela Jo Hatley, ZHM, closes MM 20-1258.

D.8 RZ 20-1265

- Brian Grady, Development Services, calls RZ 20-1265.

- The following applicant representatives presents testimony: Kami Corbett, Isabelle Albert, and Steve Henry.
- Michelle Heinrich, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents.
- The following spoke in opposition: Buddy Harwell, Alfred Brunner, and Glen Fiske.
- Pamela Jo Hatley, ZHM, calls Development Services/applicant.
- The following applicant reps gave rebuttal: Kami Corbett, Steve Henry, Trent Stephenson, and Isabelle Albert.
- Pamela Jo Hatley, ZHM, closes RZ 20-1265.

D.10 MM 21-0033

- Brian Grady, Development Services, calls MM 21-0033.
- Kami Corbett, applicant rep, presents testimony.
- Michelle Heinrich, Development Services, staff report.
- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls for proponents/opponents.
- The following spoke in opposition: Buddy Harwell, Jamie Frankland, Alfred Brunner, and Glen Fiske.
- Pamela Jo Hatley, ZHM, calls Development Services/applicant rep.
- Kami Corbett, applicant rep, gave rebuttal.
- Pamela Jo Hatley, ZHM, closes MM 21-0033.

D.11 RZ 21-0108

- Brian Grady, Development Services, calls RZ 21-0108.
- Sean Cashen and William Sullivan, applicant reps, presents testimony.
- Steve Beachy, Development Services, staff report.

- Melissa Lienhard, Planning Commission, staff report.
- Pamela Jo Hatley, ZHM, calls proponents/opponents/Development Services/ applicant rep/closes MM RZ 21-0108.
- Pamela Jo Hatley, ZHM, adjourns meeting.

Application No. RZ 20-0985
Name: Kami Corbett
Entered at Public Hearing: ZHM
Exhibit # 1 Date: 2/15/21

HILL WARD HENDERSON
ATTORNEYS AT LAW

Documents Submitted for the Record of:

PD 20-0985

Applicant: Meritage Homes

Applicant's Representative: Kami Corbett, Esq.

Folios: 49145.0000, 49143.0000, 49143.0100, 49143.0200, 49144.0000

Hearing Date: February 15, 2021

3700 BANK OF AMERICA PLAZA, 101 E KENNEDY BLVD, TAMPA, FL 33602-5195
TEL: 813-221-3900 FAX: 813-221-2900 WWW.HWHLAW.COM

Index to Documents Submitted to the Record

PD 20-0985

No.	Document
1.	PowerPoint Presentation
2.	Memorandum of Law re: Lay Witnesses

RZ-PD 20-0985

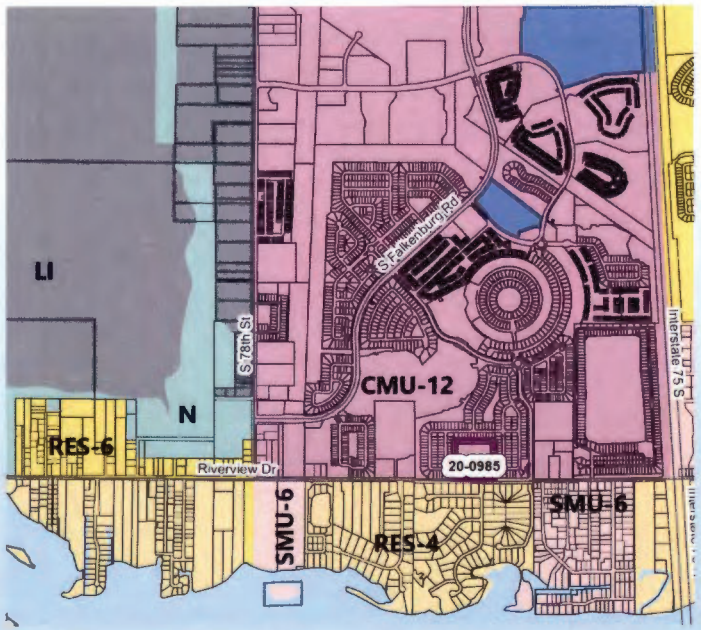
February 15, 2021

Applicant: Meritage Homes

Representative: Kami Corbett, Esq.

Site Information

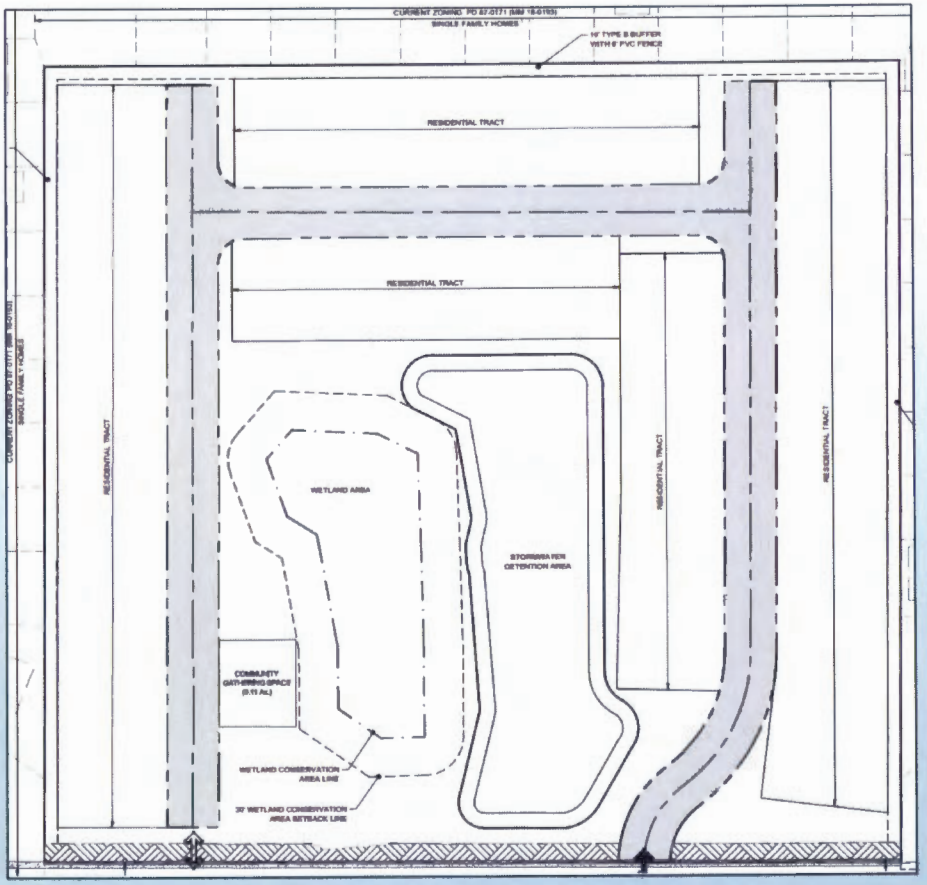
- 9.5+/- acres in Riverview
- Located between I-75 and 78th St.
- <u>Current Zoning:</u>
  - Manufacturing (M)
  - Residential Single Family Conventional (RSC-6)
- <u>Future Land Use:</u>
  - Community Mixed Use (CMU-12)



Rezoning Request

- 92 Attached Townhome Units
- 10’ rear Landscaping Buffer
- Enhanced landscape perimeter screening

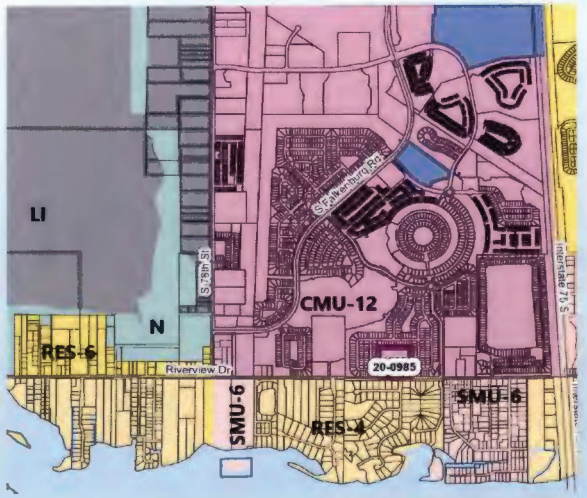
- **Proposed Development Standards:**
  - 18’ min. Townhome Lot Width
  - 20’ min. Front Yards
  - 15’ min. Rear Yards
  - 1,440 s.f. min. Townhome Lot Size
  - 35’ Max. Building Height



Site Layout

- Significant wetland conservation and pond area in center of project
  - .11 acre community-gathering space near wetlands
- Access point aligned with Eagle Watch Drive
- 10' perimeter buffers with landscaping and PVC fencing
  - Enhanced scenic roadway landscaping along Riverview Drive

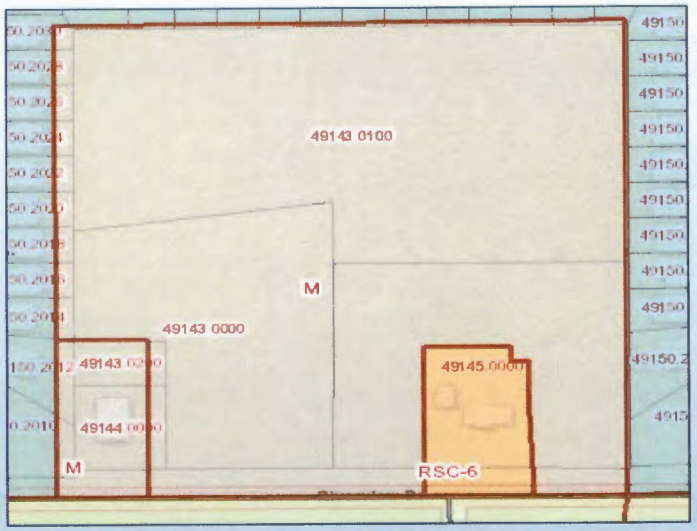
Surrounding Area



Current Zoning

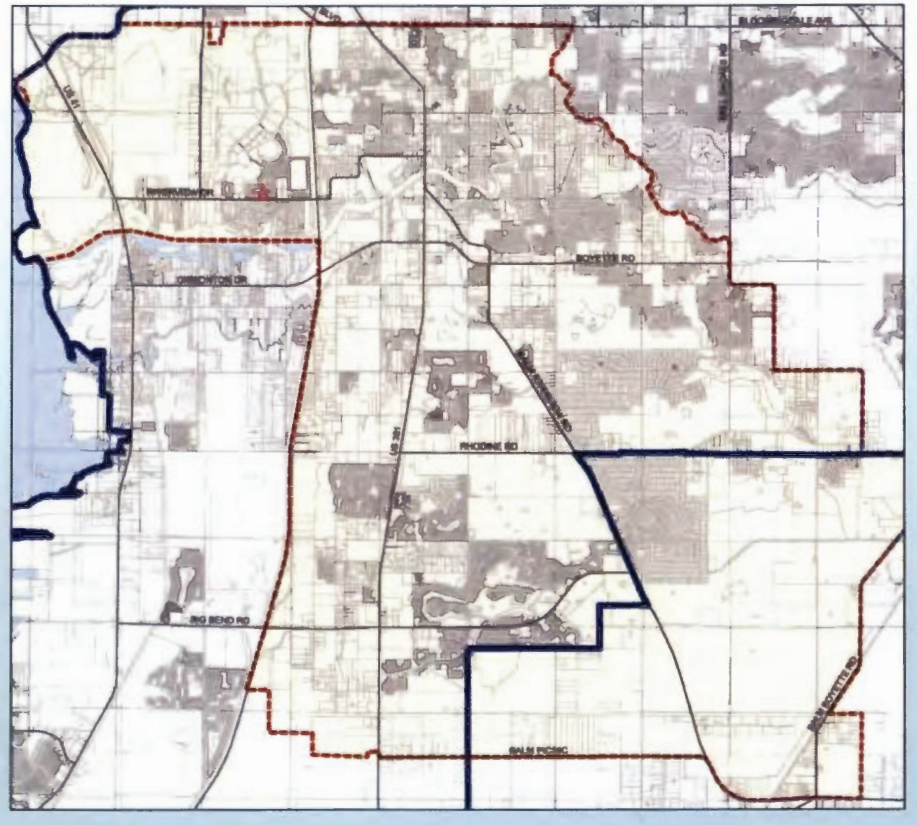
Incompatible with Surrounding Area

- Approximately 94% Manufacturing (M)
  - Intense Manufacturing Uses
  - Small portion zoned RSC-6
- Comprehensive Plan Consistency
  - Policy 1.2: Minimum density requirement – minimum 85 units required
  - Objective 16: Neighborhood protection – removes manufacturing potential
  - Policy 1.4: Compatibility – surrounding area is residential



Riverview Community Plan:

- Goal 1: Promote Diversity in Housing type and style to counter generic subdivision look
- Goal 2: Reflect the Vision of Riverview using the Riverview District Concept Map
  - Site is located within the Mixed Use District of the Map, which guides development
  - Envisions a mix of commerce, education, agriculture, and residential subdivisions



Compatibility

- Surrounding area includes **existing single family homes**
  - North, East, and West: PD 87-01711 / Single Family / 50 foot lots
  - South across Riverview Drive: IPD-189-001 / Single Family / 125+ foot lots
- Townhomes are **consistent with overall residential character** of area
  - Contributes to diverse housing styles and choices
- Current Manufacturing (M) **zoning on site is incompatible** with area

Consistency with Comprehensive Plan

- Planning Commission finds project **consistent**
- Satisfies minimum density requirements within the Urban Service Area
  - **Higher-density growth** is encouraged
- Promotes integration with adjacent land uses
  - Residential use **instead of** existing **manufacturing** zoning
- **Preserves the wetlands** on site

Access and Connectivity

- Proposed sole access point on Riverview Drive
- Project will result in a reduction of trips on Riverview Drive

- Improvements to Riverview Drive will enhance traffic conditions
  - Westbound to southbound turn lane at Eagle Watch Drive
  - Eastbound to northbound turn lane at project entrance

- Design Exception for certain TS-7 standards; justified by the proposed sidewalk additions, turn lane additions, speed limit, and site frontage on Riverview Drive

Meetings with Neighbors

- Expressed Concerns about Townhome Development
  - Planned Density Cannot be Achieved with Single Family Homes
  - Proposed Buffering , Screening and Layout will limit any Impact to Adjacent Single Family Homes
- Expressed Concern about Transportation and Access
  - Proposed Development Reduces Daily Trips
  - Developer Agreed to Make Improvements to Turn Lanes to Improve Access Conditions

Thank you.

HILL WARD HENDERSON
ATTORNEYS AT LAW

SENDER'S DIRECT DIAL:
(813) 227-8421

SENDER'S E-MAIL:
kami.corbett@hwhlaw.com

February 15, 2021

To: **Hillsborough County Zoning Hearing Master**

From: **Kami Corbett, Esq. and Jaime Maier, Esq.**

Re: **Memorandum of Law on Citizen Testimony in Quasi-Judicial Hearings**
RZ PD 20-0985

I. Due Process in Quasi-Judicial Hearings

A quasi-judicial hearing is one in which a local government body must rely upon competent, substantial evidence in making its decision to approve or deny a land use application. Quasi-judicial hearings must meet basic due process requirements, which include public notice of the hearing and an opportunity to be heard. Those who must have an opportunity to be heard include the applicant, parties to the case (those who will be affected by the outcome of the case differently than the public at large), and "participants", which include members of the public.

While parties must be given the ability to "present evidence, cross-examine witnesses, and be informed of all the facts upon which the [local government] acts[,]"[1] participants only have the right to attend the hearing and to be heard.[2] In other words, as long as the public has proper notice of the hearing, and is allowed to attend and speak, due process for participants has been served.

II. Competent, Substantial Evidence

As stated above, all quasi-judicial decisions must be based on competent, substantial evidence. Such evidence is defined as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred . . .. . . [T]he 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."[3]

To satisfy this standard, evidence relied upon must be factual – mere generalized opinion or opposition to an application does not constitute specific, fact-based testimony that constitutes

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[1] Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).
[2] *See generally* Chapter 286.0114(2)-(4), Florida Statutes.
[3] Pollard v. Palm Beach County, 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990).

the competent, substantial evidence upon which a local government body must rely.[4] Similarly, courts have held that "[b]are allegations," and mere "[s]urmise, conjecture or speculation" do not constitute competent, substantial evidence.[5]

Moreover, quantity of testimony is not a stand-in for quality of testimony – a large number of opponents do not turn non-factual or opinion based testimony into competent, substantial evidence. "The objections of a large number of residents of [an] affected neighborhood are not a sound basis for the denial of a permit."[6]

III. Layperson Testimony

Under a similar line of reasoning as the principles cited above, courts have determined that layperson testimony does not constitute competent, substantial evidence on matters that require expertise. "[L]ayman's opinions unsubstantiated by any competent facts"[7] are therefore not a sound basis for a decision.

Although frequently commented on by residents of neighborhoods affecting by land use applications, traffic conditions are one such matter that require expertise, and therefore cannot be competently testified to by laymen residents. "Lay witnesses may offer their views in land use cases about matters not requiring expert testimony . . . [but] [l]ay witnesses' speculation about potential 'traffic problems, light and noise pollution,' and general unfavorable impacts of a proposed land use are not [ ] considered competent, substantial evidence . . . There must be evidence other than the lay witnesses' opinions to support such claims."[8]

IV. Parties vs. Participants

As stated in the initial paragraph of this memorandum, parties to a quasi-judicial hearing are afforded extra due process rights over mere participants. To be given party-status, a participant would have to satisfy the "special injury" test. The person who seeks party status challenging a zoning petition must show special damages peculiar to the party which differ in kind than the damages suffered by the affected neighborhood as a whole.[9] "The fact that a person is among those entitled to receive notice under the zoning ordinance is . . . not controlling on the question of who has standing"[10] to challenge or appeal a zoning application.

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[4] Hialeah Gardens v. Miami-Dade Charter Found., Inc., 857 So. 2d 202, 204 (Fla. 3d DCA 2003).
[5] Fla. Rate Conf. v. Fla. R.R. & Pub. Utils. Comm'n, 108 So. 2d 601, 607-08 (Fla. 1959).
[6] City of Apopka v. Orange County, 299 So. 2d 657, 659 (Fla. 4th DCA 1974).
[7] *Id.* at 660.
[8] Katherine's Bay, LLC v. Fagan, 52 So. 3d 19, 30 (Fla. 1st DCA 2010).
[9] *See generally*, Renard v. Dade County, 261 So. 2d 832 (Fla. 1972).
[10] *Id.* at 835.

589 So.2d 1337
District Court of Appeal of Florida,
Third District.

Milton S. JENNINGS, Appellant,
v.
DADE COUNTY and Larry Schatzman, Appellees.

Nos. 88–1324, 88–1325.
|
Aug. 6, 1991.*
|
On Rehearing Granted Dec. 17, 1991.

Synopsis

Landowner petitioned for writ of certiorari to challenge trial court order which dismissed landowner's count alleging due process violation as result of ex parte communication between adjacent landowner's lobbyist and county commissioners before vote approving use variance for adjacent landowner, which gave to landowner leave to amend complaint only against county, and which denied motion to dismiss count alleging nuisance as result of permitted use. The District Court of Appeal, Nesbitt, J., held on rehearing that: (1) landowner's timely petition activated common-law certiorari jurisdiction; (2) lobbyist's ex parte communication could violate due process despite landowner's actual and constructive knowledge of ex parte communication; and (3) landowner's prima facie case of ex parte contacts would give rise to presumption of prejudice and shift burden to adjacent landowner and county to rebut the presumption.

Quashed and remanded.

Ferguson, J., filed concurring opinion upon grant of rehearing.

Procedural Posture(s): Motion to Dismiss.

Attorneys and Law Firms

***1339** John G. Fletcher, South Miami, for appellant.

Robert D. Korner and Roland C. Robinson, Miami, Robert A. Ginsburg, County Atty., and Eileen Ball Mehta and Craig H. Coller, Asst. County Attys., for appellees.

Joel V. Lumer, Miami, for The Sierra Club as Amicus Curiae.

Before BARKDULL,* NESBITT and FERGUSON, JJ.

ON REHEARING GRANTED

NESBITT, Judge.

The issue we confront is the effect of an ex parte communication upon a decision emanating from a quasi-judicial proceeding of the Dade County Commission. We hold that upon proof that a quasi-judicial officer received an ex parte contact, a presumption arises, pursuant to section 90.304, Florida Statutes (1989), that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the commission unless the defendant proves that the communication was not, in fact, prejudicial. For the reasons that follow, we quash the order under review with directions.

Respondent Schatzman applied for a variance to permit him to operate a quick oil change business on his property adjacent to that of petitioner Jennings. The Zoning Appeals Board granted Schatzman's request. The county commission upheld the board's decision. Six days prior to the commission's action, a lobbyist Schatzman employed to assist him in connection with the proceedings registered his identity as required by section 2–11.1(s) of the Dade County Ordinances. Jennings did not attempt to determine the content of any communication between the lobbyist and the commission or otherwise challenge the propriety of any communication prior to or at the hearing.

Following the commission order, Jennings filed an action for declaratory and injunctive relief in circuit court wherein he alleged that Schatzman's lobbyist communicated with some or all of the county commissioners prior to the vote, thus denying Jennings due process both under the United States and Florida constitutions as well as section (A)(8) of the Citizens' Bill of Rights, Dade County Charter. Jennings requested ***1340** the court to conduct a hearing to establish the truth of the allegations of the complaint and upon a favorable determination then to issue an injunction prohibiting use of the property as allowed by the county. Based upon the identical allegations, Jennings also claimed in the second count of his complaint that Schatzman's use of the permitted variance constituted a nuisance which he requested the court to enjoin. The trial court dismissed Count I of the complaint, against both Dade County and Schatzman. The court gave Jennings leave only against Dade County to amend the complaint and to transfer the matter to the appellate division of the circuit court. The trial court denied

Schatzman's motion to dismiss Count II and required him to file an answer. Jennings then timely filed this application for common law certiorari.

We have jurisdiction based on the following analysis. The trial court's order dismissed Jennings' equitable claim of non-record ex parte communications while it simultaneously reserved jurisdiction for Jennings to amend his complaint so as to seek common law certiorari review pursuant to *Dade County v. Marca, S.A.*, 326 So.2d 183 (Fla.1976). Under *Marca,* Jennings would be entitled solely to a review of the record as it now exists. However, since the content of ex parte contacts is not part of the existing record, such review would prohibit the ascertainment of the contacts' impact on the commission's determination. This order has the effect then of so radically altering the relief available to Jennings that it is the functional equivalent of requiring him to litigate in a different forum. Thus, Jennings' timely petition activates our common law certiorari jurisdiction because the order sought to be reviewed a) constitutes a departure from the essential requirements of law, and b) requires him to litigate a putative claim in a proceeding that cannot afford him the relief requested and for that reason does not afford him an adequate remedy. *See Tantillo v. Miliman,* 87 So.2d 413 (Fla.1956); *Norris v. Southern Bell Tel. & Tel. Co.*, 324 So.2d 108 (Fla. 3d DCA 1960). The same reasoning does not apply against Schatzman. Nonetheless, because we have jurisdiction, there is no impediment to our exercising it over Schatzman as a party.

At the outset of our review of the trial court's dismissal, we note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to full judicial hearing is entitled. *See Goss v. Lopez,* 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); *Hadley v. Department of Admin.*, 411 So.2d 184 (Fla.1982). Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. *See Astore v. Florida Real Estate Comm'n,* 374 So.2d 40 (Fla. 3d DCA 1979); *Woodham v. Williams,* 207 So.2d 320 (Fla. 1st DCA 1968). Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. *See Hadley,* 411 So.2d at 184; *City of Miami v. Jervis,* 139 So.2d 513 (Fla. 3d DCA 1962). Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied. *See Morgan v. United States,* 298 U.S. 468, 480–81, 56 S.Ct. 906, 911–12, 80 L.Ed. 1288 (1936); *Western Gillette, Inc. v. Arizona Corp. Comm'n,* 121 Ariz. 541, 592 P.2d 375 (Ct.App.1979). A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648, 652 (Fla. 3d DCA 1982). [1]

The reported decisions considering the due process effect of an ex parte communication upon a quasi-judicial decision are conflicting. Some courts hold that an ex parte communication does not deny due process where the substance of the communication was capable of discovery by the complaining party in time to rebut it on the record. *See, e.g.,* ***1341** *Richardson v. Perales,* 402 U.S. 389, 410, 91 S.Ct. 1420, 1431–32, 28 L.Ed.2d 842 (1971); *United Air Lines, Inc. v. C.A.B.,* 309 F.2d 238 (D.C.Cir.1962); *Jarrott v. Scrivener,* 225 F.Supp. 827, 834 (D.D.C.1964). Other courts focus upon the nature of the ex parte communication and whether it was material to the point that it prejudiced the complaining party and thus resulted in a denial of procedural due process. *E.g., Waste Management v. Pollution Control Bd.,* 175 Ill.App.3d 1023, 125 Ill.Dec. 524, 530 N.E.2d 682 (Ct.App.1988), *appeal denied,* 125 Ill.2d 575, 130 Ill.Dec. 490, 537 N.E.2d 819 (1989); *Professional Air Traffic Controllers Org. (PATCO) v. Federal Labor Relations Auth.,* 685 F.2d 547, 564–65 (D.C.Cir.1982); *Erdman v. Ingraham,* 28 A.D.2d 5, 280 N.Y.S.2d 865, 870 (Ct.App.1967).

The county adopts the first position and argues that Jennings was not denied due process because he either knew or should have known of an ex parte communication due to the mandatory registration required of lobbyists. The county further contends that Jennings failed to avail himself of section 33–316 of the Dade County Code to subpoena the lobbyist to testify at the hearing so as to detect and refute the content of any ex parte communication. We disagree with the county's position.

Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings. Quasi-judicial officers should avoid all such contacts where they are identifiable. However, we recognize the reality that commissioners are elected officials in which capacity they may unavoidably be the recipients of unsolicited ex parte communications regarding quasi-judicial matters they are to decide. The occurrence of such a communication in a quasi-judicial proceeding does not mandate automatic reversal. Nevertheless, we hold that the allegation of prejudice resulting from ex parte contacts with the decision makers

in a quasi-judicial proceeding states a cause of action. *E.g., Waste Management; PATCO.* Upon the aggrieved party's proof that an ex parte contact occurred, its effect is presumed to be prejudicial unless the defendant proves the contrary by competent evidence. § 90.304. *See generally Caldwell v. Division of Retirement,* 372 So.2d 438 (Fla.1979) (for discussion of rebuttable presumption affecting the burden of proof). Because knowledge and evidence of the contact's impact are peculiarly in the hands of the defendant quasi-judicial officer(s), we find such a burden appropriate. *See Technicable Video Sys. v. Americable,* 479 So.2d 810 (Fla. 3d DCA 1985); *Allstate Finance Corp. v. Zimmerman,* 330 F.2d 740 (5th Cir.1964).

In determining the prejudicial effect of an ex parte communication, the trial court should consider the following criteria which we adopt from *PATCO,* 685 F.2d at 564–65:

> [w]hether, as a result of improper ex parte communications, the agency's decisionmaking process was irrevocably tainted so as to make the ultimate judgment of the agency unfair, either as to an innocent party or to the public interest that the agency was obliged to protect. In making this determination, a number of considerations may be relevant: the gravity of the ex parte communications; whether the contacts may have influenced the agency's ultimate decision; whether the party making the improper contacts benefited from the agency's ultimate decision; whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceedings would serve a useful purpose. Since the principal concerns of the court are the integrity of the process and the fairness of the result, mechanical rules have little place in a judicial decision whether to vacate a voidable agency proceeding. Instead, any such decision must of necessity be an exercise of equitable discretion.

Accord E & E Hauling, Inc. v. Pollution Control Bd., 116 Ill.App.3d 586, 71 Ill.Dec. 587, 603, 451 N.E.2d 555, 571 (Ct.App.1983), *aff'd,* 107 Ill.2d 33, 89 Ill.Dec. 821, 481 N.E.2d 664 (1985).

Accordingly, we hold that the allegation of a prejudicial ex parte communication ***1342** in a quasi-judicial proceeding before the Dade County Commission will enable a party to maintain an original equitable cause of action to establish its claim. Once established, the offending party will be required to prove an absence of prejudice. [2]

In the present case, Jennings' complaint does not allege that any communication which did occur caused him prejudice. Consequently, we direct that upon remand Jennings shall be afforded an opportunity to amend his complaint. Upon such an amendment, Jennings shall be provided an evidentiary hearing to present his prima facie case that ex parte contacts occurred. Upon such proof, prejudice shall be presumed. The burden will then shift to the respondents to rebut the presumption that prejudice occurred to the claimant. Should the respondents produce enough evidence to dispel the presumption, then it will become the duty of the trial judge to determine the claim in light of all the evidence in the case. [3, 4]

For the foregoing reasons, the application for common law certiorari is granted. The orders of the circuit court are quashed [5] and remanded with directions.

BARKDULL, J., concurs.

FERGUSON, Judge (concurring).

I concur in the result and write separately to address two arguments of the appellees: (1) This court in *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648 (Fla. 3d DCA 1982), rejected attempts to categorize county commission hearings on district boundary changes as "legislative," while treating hearings on applications for special exceptions or variances as "quasi-judicial"; and (2) the petitioner does not state a cause of action by alleging simply that a lobbyist discussed the case in a private meeting with members of the County Commission prior to the hearing. It is clear from

Judge Nesbitt's opinion for the court that neither argument is accepted.

Legislative and Quasi–Judicial Functions Distinct

In support of its argument, that "[t]his Court has previously rejected attempts to categorize county commission hearings on district boundary changes as 'legislative', while treating hearings on applications for special exceptions or variances as 'quasi-judicial'," Dade County cites *Coral Reef Nurseries, Inc. v. Babcock Company,* 410 So.2d 648 (Fla. 3d DCA 1982). The argument is made for the purpose of bringing this case within what the respondents describe as a legislative-function exception to the rule against ex parte communications. Indeed, there is language in the *Coral Reef* opinion, particularly the dicta that "it is the character of the administrative hearing leading to the action of the administrative body that determines the label" as legislative or quasi-judicial, *Coral Reef* at 652, which, when read out of context, lends support to Dade County's contentions. As an abstract proposition, the statement is inaccurate.

Whereas the character of an administrative hearing will determine whether the proceeding is quasi-judicial or executive, *De Groot v. Sheffield,* 95 So.2d 912, 915 (Fla.1957), it is the nature of the act performed that determines its character as legislative or otherwise. *Suburban Medical Center v. Olathe Community Hosp.,* 226 Kan. 320, 328, 597 P.2d 654, 661 (1979). *See also* ***1343** *Walgreen Co. v. Polk County,* 524 So.2d 1119, 1120 (Fla. 2d DCA 1988) ("The quasi-judicial nature of a proceeding is not altered by mere procedural flaws.").

> A judicial inquiry investigates, declares and enforces liabilities as they stand on present facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.
>
> *Suburban Medical Center,* 597 P.2d at 661 (quoting *Prentis v. Atlantic Coast Line Co.,* 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908)).[1]

It is settled that the enactment and amending of zoning ordinances is a legislative function—by case law, *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *Machado v. Musgrove,* 519 So.2d 629 (Fla. 3d DCA 1987) (en banc), *rev. denied,* 529 So.2d 694 (Fla.1988), by statute, sections 163.3161 and 166.041, Florida Statutes (1989), and by ordinance, Dade County Code § 35–303. *See also* Anderson, *Law of Zoning,* § 1.13 (2d Ed.1976) (zoning is a legislative act representing a legislative judgment as to how land within the city should be utilized and where the lines of demarcation between the several zones should be drawn); 101 C.J.S. *Zoning and Land Planning* § 1 (1958) (same). It is also fairly settled in this state that the granting of variances,[2] and special exceptions or permits, are quasi-judicial actions.[3] *Walgreen Co. v. Polk County,* 524 So.2d 1119, 1120 (Fla. 2d DCA 1988); *City of New Smyrna Beach v. Barton,* 414 So.2d 542 (Fla. 5th DCA) (Cowart, J., concurring specially), *rev. denied,* 424 So.2d 760 (Fla.1982); *City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974); *Sun Ray Homes, Inc. v. County of Dade,* 166 So.2d 827 (Fla. 3d DCA 1964).

A variance contemplates a nonconforming use in order to alleviate an undue burden on the individual property owner caused by the existing zoning. Rezoning contemplates a change in existing zoning rules and regulations within a district, subdivision or other comparatively large area in a given governmental unit. *Troup v. Bird,* 53 So.2d 717 (Fla.1951); *Mayflower Property, Inc. v. City of Fort Lauderdale,* 137 So.2d 849 (Fla. 2d DCA 1962); 101A C.J.S. *Zoning and Land Planning* § 231 (1979).

Coral Reef Case Clarified

Coral Reef involved a legislative action. The issue before the court was whether ***1344** there was a showing of substantial and material changes in a 1979 application for a rezoning so that a 1978 denial of an application for the same changes, on the same parcel, by the same applicant, would not be precluded by res judicata principles. It was not necessary to hold the 1978 hearing quasi-judicial in character in order to find that the 1978 resolution had preclusive effect on the 1979 zoning hearing. There is a requirement for procedural fairness in all land use hearings, whether

on an application for a boundary change or a variance. Adherence to that constitutional standard, however, does not alter the distinct legal differences between quasi-judicial and legislative proceedings in land use cases.

We clarify *Coral Reef,* in accordance with its facts, as holding only that legislation denying an application for rezoning has a preclusive effect on a subsequent application for the same rezoning, unless the applicant can show substantial and material changes in circumstances. *Treister v. City of Miami,* 575 So.2d 218 (Fla. 3d DCA 1991), relying on *Coral Reef.* An interpretation of *Coral Reef* as holding that there is no longer a distinction between legislative actions and quasi-judicial actions of a county commission in land use cases goes far beyond the actual holding of the case, and is clearly erroneous. *See* note 1 *supra.*

Reliance by the respondents on *Izaak Walton League of America v. Monroe County,* 448 So.2d 1170 (Fla. 3d DCA 1984), is similarly misplaced. In that case we held that county commissioners, when acting in their legislative capacities, have the right to publicly state their views on pending legislative matters. *Izaak Walton League* does not address the issue of ex parte communications or prehearing pronouncements in quasi-judicial proceedings.

Lobbying

Jennings argues here that the behind-the-scenes lobbying [4] of the commissioners by Schatzman, for the purpose of influencing the outcome of an appeal from a quasi-judicial proceeding, violated the Citizens' Bill of Rights [5] of the Dade County Charter, as well as the due process provisions of the United States and Florida Constitutions. We agree, obviously, that the lobbying actions were unlawful. Dade County and Schatzman respond that Jennings is entitled to no relief because he has not alleged and demonstrated a resulting prejudice. In the opinion on rehearing this court now clearly rejects that argument.

Prejudice is to be presumed, without further proof, from the mere fact that any county commissioner granted a private audience to a lobbyist, whose purpose was to solicit the commissioner to vote a certain way in an administrative proceeding for reasons not necessarily addressed solely to the merits of the petition, and that the commissioner did vote accordingly. Starting with the legal definition of lobbying, ***1345** *see* note 4 *supra,* and applying common knowledge as to how the practice works, there is a compelling reason for placing the burden of proving no prejudice on the party responsible for the ex parte communication.

Although an ex parte communication with a quasi-judicial tribunal makes its final action voidable, rather than void *per se,* the presumption which is drawn from the fact of the improper conduct, is applied to promote a strong social policy and is sufficient evidence to convince the fact-finder that the innocent party has been prejudiced; the rebuttable presumption imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact. [6] § 90.304, Fla.Stat. (1991); *Department of Agriculture & Consumer Servs. v. Bonanno,* 568 So.2d 24, 31–32 (Fla.1990); Black's Law Dictionary 1349 (4th ed. 1968).

Ex parte lobbying of an administrative body acting quasi-judicially denies the parties a fair, open, and impartial hearing. *Suburban Medical Center v. Olathe Community Hosp.,* 226 Kan. 320, 597 P.2d 654 (1979). Adherence to procedures which insure fairness "is essential not only to the legal validity of the administrative regulation, but also to the maintenance of public confidence in the value and soundness of this important governmental process." *Id.* 597 P.2d at 662 (citing 2 Am.Jur.2d *Administrative Law* § 351). The constitutional compulsions which led to the establishment of rules regarding the disqualification of judges apply with equal force to every tribunal exercising judicial or quasi-judicial functions. 1 Am.Jur.2d *Administrative Law* § 64, at 860 (1962); *City of Tallahassee v. Florida Pub. Serv. Comm'n,* 441 So.2d 620 (Fla.1983) (standard used in disqualifying agency head is same standard used in disqualifying judge). *See also Rogers v. Friedman,* 438 F.Supp. 428 (E.D.Tex.1977) (rule as to disqualification of judges is same for administrative agencies as it is for courts) (citing K. Davis, *Administrative Law* § 12.04, at 250 (1972)). *Ritter v. Board of Comm'rs of Adams County,* 96 Wash.2d 503, 637 P.2d 940 (1981) (same).

All Citations

589 So.2d 1337, 16 Fla. L. Weekly D2059, 17 Fla. L. Weekly D26

Footnotes

* Judge Barkdull participated in decision only.

* Judge Barkdull participated in decision only.

1 It was conceded at oral argument that the hearing before the commission in this case was quasi-judicial.

2 In such a proceeding, the principles and maxims of equity are applicable. *See* 22 Fla.Jur.2d *Equity* §§ 44, et seq. (1980).

3 In rebutting the presumption of prejudice, respondent may rely on any favorable evidence presented during the claimant's case-in-chief, including that adduced during respondent's cross-examination of claimant's witnesses.

4 Under the *PATCO* test adopted, one of the primary concerns is whether the ex parte communication had sufficient impact upon the decision and, therefore, whether the vacation of the agency's decision and remand for a new proceeding would be likely to change the result.

5 Nothing in this decision shall affect our holding in *Izaak Walton League of America v. Monroe County,* 448 So.2d 1170 (Fla. 3d DCA 1984) (county commission acting in a legislative capacity).

1 Relying on *Coral Reef,* the majority opinion refers to "quasi-judicial zoning proceedings," a confounding phrase which has its genesis in *Rinker Materials Corp. v. Dade County,* 528 So.2d 904, 906, n. 2 (Fla. 3d DCA 1987). There Dade County argued to this court that the according of "procedural due process" converts a legislative proceeding into a quasi-judicial proceeding, citing *Coral Reef.* That proposition runs afoul of an entire body of administrative law. If an act is in essence legislative in character, the fact of a notice and a hearing does not transform it into a judicial act. If it would be a legislative act without notice and a hearing, it is still a legislative act with notice and a hearing. *See Prentis v. Atlantic Coast Line Co.,* 211 U.S. 210, 29 S.Ct. 67, 53 L.Ed. 150 (1908); *Reagan v. Farmers' Loan & Trust Co.,* 154 U.S. 362, 14 S.Ct. 1047, 38 L.Ed. 1014 (1894).

2 A variance is a modification of the zoning ordinance which may be granted when such variance will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. 7 FlaJur2d, *Building, Zoning, and Land Controls,* § 140 (1978).

The normal function of a variance is to permit a change in "building restrictions or height and density limitations" but not a change in "use classifications". *George v. Miami Shores Village,* 154 So.2d 729 (Fla. 3d DCA 1963).

3 An administrative body acts quasi-judicially when it adjudicates private rights of a particular person after a hearing which comports with due process requirements, and makes findings of facts and conclusions of law on the disputed issues. Reviewing courts scrutinize quasi-judicial acts by non-deferential judicial standards. *See City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974).

On review of legislative acts, the court makes a deferential inquiry, *i.e.,* is the exercise of discretionary authority "fairly debatable." *Southwest Ranches Homeowners Ass'n v. Broward County,* 502 So.2d 931 (Fla. 4th DCA), *rev. denied,* 511 So.2d 999 (Fla.1987). Further, there is no requirement that a governmental body, acting in its legislative capacity, support its actions with findings of fact and conclusions of law.

4 " 'Lobbying' is defined as any personal solicitation of a member of a legislative body during a session thereof, by private interview, or letter or message, or other means and appliances *not [necessarily] addressed solely to the judgment,* to favor or oppose, or to vote for or against, any bill, resolution, report, or claim pending, or to be introduced ..., by any person ... who is employed for a consideration by a person or corporation interested in the passage or defeat of such bill, resolution, or report, or claim, for the purpose of procuring the passage or defeat thereof." Black's Law Dictionary 1086 (rev. 4th ed. 1968). (Emphasis supplied). The work of lobbying is performed by lobbyists.

A lobbyist is one who makes it a business to "see" members of a legislative body and procure, by persuasion, importunity, or the use of inducements, the passing of bills, public as well as private, which involve gain to the promoters. *Id.*

5 Section a(8), Citizens' Bill of Rights, Dade County Charter, provides in pertinent part:

> At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record.

6 *PATCO v. Federal Labor Relations Authority,* 685 F.2d 547 (D.C.Cir.1982), relied on by Judge Nesbitt, supports this view. There the court was construing section 557(d)(1) of the Administrative Procedure Act, governing ex parte communications. The Act provides, in subsection (C), that a member of the body involved in the decisional process who receives any prohibited communication shall place the contents of the communication on public record. Subsection (D) states that where the communication was knowingly made by a party in violation of this subsection, the party may be required "to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation." 5 U.S.C.A. § 557(d)(1)(C), (D).

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560 So.2d 1358
District Court of Appeal of Florida,
Fourth District.

Patricia POLLARD, Petitioner,
v.
PALM BEACH COUNTY, a political subdivision of the State of Florida, Respondent.

No. 88-1827.
|
May 9, 1990.

Synopsis

Owner of residential property applied for special exception to use property as adult congregate living facility for elderly. The Circuit Court for Palm Beach County, William C. Williams, III, J., denied owner's petition for writ of certiorari to review denial of application, and owner petitioned for review. The District Court of Appeal held that opinions of neighbors that proposed use would cause traffic problems, would cause light and noise pollution, and would generally have unfavorable impact on area provided no competent substantial evidence to support denial of petition.

Certiorari granted, order quashed, and matter remanded with instructions.

Stone, J., dissented with opinion.

Attorneys and Law Firms

***1359** Bruce G. Kaleita, West Palm Beach, for petitioner.

Richard W. Carlson, Jr. and Thomas P. Callan, Asst. County Attys., West Palm Beach, for respondent.

Opinion

PER CURIAM.

This is a petition to review denial of an application for a special exception. The real property in question is located in an area zoned residential. The use for which a special exception was requested is an adult congregate living facility for the elderly, a use permitted by special exception in a residential area.

Certain procedural shortcomings having been remedied, we now treat only the merits, being satisfied that this court has jurisdiction.

After making appropriate application, petitioner obtained approval of the County Zoning Department and, subsequently, the approval of the County Planning Commission. Approval was based upon documentary evidence and expert opinion.

In public hearings before the County Commission, various neighbors expressed their opinion that the proposed use would cause traffic problems, light and noise pollution and generally would impact unfavorably on the area. The County Commission denied the application and the circuit court denied certiorari to review that denial. We grant the writ and quash the order under review.

We explained the respective burdens of an applicant for a special exception and the zoning authority in *Rural New Town, Inc. v. Palm Beach County,* 315 So.2d 478, 480 (Fla. 4th DCA 1975), as follows:

> In rezoning, the burden is upon the *applicant* to clearly establish such right (as hereinabove indicated). In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the *zoning authority* to demonstrate by competent substantial evidence that the special exception *is adverse to the public interest.* Yokley on Zoning, vol. 2, p. 124. A special exception is a permitted use to which the applicant is entitled *unless* the zoning authority determines according to the standards of the zoning ordinance that such use would adversely affect the public interest.

(Emphasis in original; some citations omitted.)

The supreme court, in *De Groot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957), explained in the following language what is

meant by the term "competent substantial evidence" in the context of certiorari review:

> 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. *Becker v. Merrill,* 155 Fla. 379, 20 So.2d 912; *Laney v. Board of Public Instruction,* 153 Fla. 728, 15 So.2d 748. 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. *Jenkins v. Curry,* 154 Fla. 617, 18 So.2d 521. We are of the view, however, that the evidence relied upon to ***1360** 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."

(Some citations omitted.)

In *City of Apopka v. Orange County,* 299 So.2d 657, 660 (Fla. 4th DCA 1974), the "evidence" in opposition to petitioner's application for special exception consisted, as in the present case, of the opinions of neighbors, and in that case we explained:

> The evidence in opposition to the request for exception was in the main laymen's opinions unsubstantiated by any competent facts. Witnesses were not sworn and cross examination was specifically prohibited. Although the Orange County Zoning Act requires the Board of County Commissioners to make a finding that the granting of the special exception shall not adversely affect the public interest, the Board made no finding of facts bearing on the question of the effect the proposed airport would have on the public interest; it simply stated as a conclusion that the exception would adversely affect the public interest. Accordingly we find it impossible to conclude that on an issue as important as the one before the board, there was substantial competent evidence to conclude that the public interest would be adversely affected by granting the appellants the special exception they had applied for.

Earlier in that opinion we also noted:

> As pointed out by Professor Anderson in Volume 3 of his work, American Law Of Zoning, § 15.27, pp. 155-56:
>
> "It does not follow, ... that either the legislative or the quasi-judicial functions of zoning should be controlled or unduly influenced by opinions and desires expressed by interested persons at public hearings. Commenting upon the role of the public hearing in the processing of permit applications, the Supreme Court of Rhode Island said:
>
> 'Public notice of the hearing of an application for exception ... is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of ... public health.... The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.'
>
> The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts

> adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect."

299 So.2d at 659.

Our review of the record leads us to conclude that there is literally no competent substantial evidence to support the conclusion reached below. The circuit court overlooked the law which says that a special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards of the zoning ordinance that the use would adversely affect the public interest. *Rural New Town,* 315 So.2d at 480. It also overlooked the law which says that opinions of residents are not factual evidence and not a sound basis for denial of a zoning change application. *See City of Apopka,* 299 So.2d at 660.

For these reasons we grant certiorari, quash the order and remand with instructions that the special exception be granted.

HERSEY, C.J., and ANSTEAD, J., concur.

STONE, J., dissents with opinion.

***1361** STONE, Judge, dissenting.

I would deny certiorari. In my judgment, the record supports the decision of the circuit court upholding the action of the county. I also do not conclude that the trial court overlooked the law.

All Citations

560 So.2d 1358, 15 Fla. L. Weekly D1272

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857 So.2d 202
District Court of Appeal of Florida,
Third District.

CITY OF HIALEAH GARDENS, Petitioner,
v.
MIAMI–DADE CHARTER FOUNDATION, INC., and Luis Machado, Respondents.

No. 3D03–1056.
|
July 23, 2003.
|
Rehearing and Rehearing En Banc Denied Oct. 17, 2003.

Synopsis

City petitioned for certiorari review of decision of the Circuit Court, Miami-Dade County, Appellate Division, Sidney B. Shapiro, Celeste H. Muir, and David C. Miller, JJ., quashing city's denial of application for special exception use resolution permitting construction and operation of charter elementary school. The District Court of Appeal, Wells, J., held that competent substantial evidence supported city's finding that proposed special exception use resolution did not meet city's criteria.

Petition granted.

Attorneys and Law Firms

***202** Citrin & Walker and J. Frost Walker, III, Coral Gables, for petitioner.

Tannebaum, Plans & Weiss and Daniel A. Weiss, for respondents.

Before FLETCHER, and WELLS, and NESBITT, Senior Judge.

Opinion

WELLS, Judge.

The City of Hialeah Gardens petitions for certiorari review of a decision of the circuit court, appellate division, quashing ***203** the City's denial of an application for a special exception use resolution. We grant the petition and quash the circuit court's decision.

Luis Machado and the Miami–Dade Charter Foundation, Inc. (collectively "Machado") sought a permit from the City of Hialeah Gardens for a "special exception use" resolution permitting the construction and operation of a charter elementary school on approximately 2.1 acres of property fronting Northwest 103rd Street, a main highway artery and extension of West 49th Street in neighboring Hialeah. Under the City's code, the use of this property for a school, due to its location in a BU zone, is authorized upon adoption of a resolution granting a special exception use, which must be found by the City Council to comply with the following requirements:

> (1) The use is a permitted special use as set forth in the special exception uses for that district.
>
> (2) The use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.
>
> (3) The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
>
> (4) The use will be compatible with adjoining developments and the proposed character of the district where it is to be located.
>
> (5) Adequate landscaping and screening is provided as required in this chapter, or as otherwise required.
>
> (6) Adequate off-street parking and loading is provided. Ingress and egress is designed so as to cause minimum interference with traffic on abutting streets and the use has adequate frontage on a public or approved private street.
>
> (7) The use conforms with all applicable regulations governing the district where located, except as may otherwise be determined for planned unit developments.

§ 78–132, City of Hialeah Gardens Code.

In the course of the three public hearings held on the matter, Machado presented two site plans and introduced both lay and expert testimony in support of the request. The City's professional staff explained why they could not support the placement of an elementary school on what was characterized as one of the busiest, most congested roadways in Miami–Dade County. Ultimately, the City rejected Machado's application.

The City's decision was overturned by the circuit court, appellate division, primarily for two reasons: first, because the City's testimony addressing "the traffic risks associated with placing a school on a well traveled thoroughfare" was "not based on specific expert competent evidence," and second, because the testimony of staff members, while "cast[ing] doubt" on the evidence presented by Machado, did not overcome Machado's evidence.

Our scope of review of the circuit court's decision is limited to determining whether the circuit court applied the correct law or legal standard, that is, whether it departed from the essential requirements of the law. *See Haines City Cmty. Dev. v. Heggs,* 658 So.2d 523, 530 (Fla.1995); *City of Deerfield Beach v. Vaillant,* 419 So.2d 624, 626 (Fla.1982); *Metropolitan Dade County v. Blumenthal,* 675 So.2d 598, 608–09 (Fla. 3d DCA 1995). We agree with the City that the circuit court applied the wrong law or incorrect legal standard, first, by rejecting the City's decision as not being "based on specific expert competent evidence," and second, by re-weighing the evidence, and in the process, ignoring the evidence supporting the City's decision. *See* ***204** *Vaillant,* 419 So.2d at 626; *see also Dusseau v. Metro. Dade County Bd. of County Comm'rs,* 794 So.2d 1270, 1275 (Fla.2001); *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1093 (Fla.2000). We therefore exercise our certiorari jurisdiction because the circuit court violated clearly established principles of law resulting in a substantial miscarriage of justice. *See Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 682–83 (Fla.2000).

A.

Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meets code criteria, the decision-making body may deny the request only where "the party opposing the application (i.e., either the agency itself or a third party) ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria." *Fla. Power & Light Co.,* 761 So.2d at 1092; *see Irvine v. Duval County Planning Comm'n,* 495 So.2d 167 (Fla.1986); *Jesus Fellowship, Inc. v. Miami–Dade County,* 752 So.2d 708 (Fla. 3d DCA 2000). In this context, competent evidence is evidence sufficiently relevant and material to the ultimate determination "that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957). Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred. *Id.; Blumenthal,* 675 So.2d at 608; *see also Pollard v. Palm Beach County,* 560 So.2d 1358, 1359–60 (Fla. 4th DCA 1990) ("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.' ").

Under this standard, generalized statements in opposition to a land use proposal, even those from an expert, should be disregarded. *See Div. of Admin. v. Samter,* 393 So.2d 1142, 1145 (Fla. 3d DCA 1981) ("[n]o weight may be accorded an expert opinion which is totally conclusory in nature and is unsupported by any discernible, factually-based chain of underlying reasoning"). However, contrary to the circuit court's decision, relevant fact-based statements, whether expert or not, are to be considered. *See Blumenthal,* 675 So.2d at 607 ("[u]nder the correct legal standard, citizen testimony in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based"); *see also Metro. Dade County v. Sportacres Dev. Group,* 698 So.2d 281, 282 (Fla. 3d DCA 1997)(holding that materials in the record in conjunction with neighbors' testimony could constitute competent substantial evidence). Here, the Chief of Police, the Director of Public Works, and the Chief Zoning Official, gave specific fact-based reasons for their recommendations that the application be rejected. [1] Their observations were relevant, ***205** material, and fact-based and not merely, "generalized statement[s] of opposition." *Blumenthal,* 675 So.2d at 607; *see Jesus Fellowship,* 752 So.2d at 709; *Miami–Dade County v. Walberg,* 739 So.2d 115, 117 (Fla. 3d DCA 1999)(citing *Blumenthal,* 675 So.2d at 607). In sum, these witnesses were "no group of 'Apopka Witnesses,' i.e., local residents who simply wished the facility to be established elsewhere" but were experts providing fact-based, relevant and material evidence. *Blumenthal,* 675 So.2d at 608, *quoting City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974); *see also Allapattah Cmty. Ass'n v. Miami,* 379 So.2d 387, 393 (Fla. 3d DCA 1980)(citing to "expert opinion" of planning department).

Inherent in the circuit court's conclusion that the City's denial had to be based on "specific expert competent testimony," is the incorrect assumption that the expert testimony of those opposing Machado's application had to be distilled from the experts' *own* studies or reports. This is incorrect. The fact that these professionals did not submit, as the circuit court noted, their own "countervailing" charts, statistical studies or other materials did not diminish the sufficiency of their testimony.

The "facts" upon which such testimony rests may derive from relevant portions of the record or from other relevant factual information detailed in the application itself. *See Sportacres Dev. Group,* 698 So.2d at 282 (holding that "the County Commission had access to a record which contained maps, reports and other information which, in conjunction with the testimony of the neighbors, if believed by the Commission, constituted competent substantial evidence").

Here, the testifying staff members utilized their professional experiences and personal observations, as well as Machado's application, site plan, and traffic study, as the basis for their testimony. These record materials, along with the staff presentations, combined to provide evidence "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot,* 95 So.2d at 916. Ignoring this standard constituted a departure from the essential requirements of the law.

B.

A circuit court may not re-weigh the evidence. In reviewing local administrative action, circuit courts are constrained to determine only whether the agency's determination is *supported* by competent substantial evidence. A circuit court may not re-weigh the evidence to substitute its judgment for that of the agency by determining whether the evidence *shows* that the application was deficient:

> At the circuit court level, a solitary judge quashed the Commission decision, ruling as follows: "The [homeowners] failed to show by competent substantial evidence that such use [was inconsistent with the Dania Code]" (emphasis added). This ruling was improper. Under *Vaillant,* the circuit court was constrained to determine simply whether the Commission's decision was supported by competent substantial evidence. The circuit court instead decided anew whether the homeowners had shown by competent ***206** substantial evidence that the proposed use was deficient. In other words, a single judge conducted his own de novo review of the application and, based on the cold record, substituted his judgment for that of the Commission as to the relative weight of the conflicting testimony. The circuit court thus usurped the fact-finding authority of the agency.

City of Dania, 761 So.2d at 1093; *see Vaillant,* 419 So.2d at 626.

Re-weighing of the evidence is precisely what the circuit court did when it held:

> At best, the testimony by Hialeah Gardens' staff members cast doubt upon the conclusions and evidence submitted by Machado....
>
> * * * *
>
> The opponents of the special exception use did not show, by competent substantial evidence, that the proposed use was adverse to the public interest.

Consideration of the fact-based testimony of the Director of Public Works and the Chief of Police, as well as other record materials, including the pretzel-like diagram of the proposed site and the memo of the Chief Zoning Officer, was, as the Florida Supreme Court has confirmed, where the circuit court's analysis should have ended:

> We reiterate that the "competent substantial evidence" standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters. The issue before the court is not whether the agency's decision is the "best" decision or the "right" decision or even a "wise" decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience—and is inherently unsuited—to sit as a roving "super agency" with plenary oversight in such matters.
>
> The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-a-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the "pros and cons" of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

Dusseau, 794 So.2d at 1275–76 (citation omitted).

In this case, the circuit court substituted its judgment as to the weight of the evidence for that of the City Council, which is contrary to the law and synonymous with failing to observe the essential requirements of the law. *See Blumenthal,* 675 So.2d at 609; *see also City of Dania,* 761 So.2d at 1093; *Heggs,* 658 So.2d at 530.

Accordingly, we grant the Petition for Certiorari, quash the decision of the circuit court, and return this case to the circuit court for final determination consistent with this opinion. *See City of Dania,* 761 So.2d at 1093–94; *see also Allstate Ins. Co. v. Kaklamanos,* 843 So.2d 885, 889 (Fla.2003)("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 ***207** in a miscarriage of justice"); *Blumenthal* 675 So.2d at 608; *Maturo v. City of Coral Gables,* 619 So.2d 455, 457 (Fla. 3d DCA 1993); *Orange County v. Lust,* 602 So.2d 568, 572 (Fla. 5th DCA 1992); *Herrera v. City of Miami,* 600 So.2d 561, 563 (Fla. 3d DCA 1992); *City of Ft. Lauderdale v. Multidyne Med. Waste Mgmt. Inc.,* 567 So.2d 955, 958 (Fla. 4th DCA 1990); *City of Deland v. Benline Process Color Co.,* 493 So.2d 26, 28 (Fla. 5th DCA 1986); *Bd. of County Comm'rs of Pinellas County v. City of Clearwater,* 440 So.2d 497, 499 (Fla. 2d DCA 1983); *Town of Mangonia Park v. Palm Beach Oil, Inc.,* 436 So.2d 1138, 1139 (Fla. 4th DCA 1983).

All Citations

857 So.2d 202, 28 Fla. L. Weekly D1686

Footnotes

1 Based on personal observation and experience and from a review of Machado's site plans, the Director of Public Works testified that Machado's plan, which called for traffic entering the school property from Northwest 103rd Street to cross over the traffic attempting to exit following drop-off, back onto Northwest 103rd Street, would cause "stacking" of traffic in the westbound lane of Northwest 103rd street.
The Chief of Police testified, based on his 27 years as a policeman and observations of behavior during drop-off and pick-up at other Hialeah Gardens schools, that placing a school at this site was dangerous.
The Chief Zoning Officer's memo concluded that she, as well as the Public Works Director and Chief of Police all agreed:

> [t]he additional vehicles related to six hundred (600) students and forty-two (42) staff members during peak hours would cause extreme traffic congestion. Individuals making a left or right turn into the school would back up traffic in both directions on NW 103rd Street. In addition, the exiting of the school onto 103rd Street would cause chaos.

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108 So.2d 601
Supreme Court of Florida.

FLORIDA RATE CONFERENCE, a non-profit corporation, The Traffic and Rate Bureau of St. Petersburg, Florida, The Tampa Chamber of Commerce, The Broward County Traffic Association, The Greater Miami Traffic Association, and The Jacksonville Traffic Bureau, Petitioners,

v.

FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION. The Florida Intrastate RateBureau, Respondents.

Jan. 9, 1959.

Rehearing Denied Feb. 23, 1959.

Synopsis

Proceeding on certiorari to review an order of the Railroad Commission granting a rate increase to common carrier motor freight lines. The Supreme Court, Hobson, J., held that where Railroad Commission after determining total amount of additional revenue that it would take in its judgment to give motor carriers involved a reasonable return on their investment, stated that the study of an alleged representative carrier did not follow the stipulated procedure and was therefore unreliable, but the commission was required to make some use of it because it had no other source from which to draw in making the necessary apportionment of the revenues and expenses, the commission's order was invalid on the ground that it showed on its face that it was not supported by competent substantial evidence.

Petition for certiorari granted and order quashed.

Roberts, J., dissented.

Attorneys and Law Firms

***602** Ben F. Overton, Em. Davis, of Baynard, Baynard & McLeod, St. Petersburg, for petitioners.

Lewis W. Petteway, General. Counsel for Florida Railroad and Public Utilities Commission, Tallahassee, A. Pickens Coles, John M. Allison, Tampa, for Florida Intrastate Rate Bureau, for respondents.

Opinion

HOBSON, Justice.

This case was brought before us on a writ of certiorari requesting that we review an order of the respondent Florida Railroad and Public Utilities Commission granting a rate increase of 8.72% to the applicant Florida Intrastate Rate Bureau on behalf of all common carrier motor freight lines participating in Motor Freight Tariff FR&PUC MF No. 7.

The Intrastate Rate Bureau, representing eleven common carrier motor freight lines, originally applied to the Commission on behalf of these common carriers for a rate increase of 10% in all Class and Commodity Rates and Charges. The petitioners appeared at the hearing on the Rate Bureau's application as protestants for and on behalf of the shipping public in their respective metropolitan areas. Information as to petitioners' position in this case is best gleaned from the following excerpts of Order 3910 of the Commission, granting the 8.72% increase:

'Some time prior to the initial hearing in these Dockets, a prehearing conference was held in the offices of the Commission at Tallahassee, Florida between the motor freight carriers participating herein and the Commission's Staff for the purpose of simplifying the ***603** issue as much as possible, determining the nature and scope of the exhibits to be offered at the hearing by various parties, and developing a separation procedure to be used by the carriers in ascertaining the inter-intrastate relationship of their operations. A separation procedure was agreed upon, reduced to writing and was subsequently received in evidence herein as Exhibit No. 92. The basis factors for the separation procedure were to be the actual revenues, truck and tractor miles and tons of revenue freight carried. At the conference representatives of Central Truck Lines stated that they could make a separation between interstate and intrastate operations on the basis of actual revenues, truck and tractor miles and tons of revenue freight carried. Because of this representation, and because Central appeared to be the most representative carrier participating herein with both interstate and intrastate operations, Central Truck Lines was selected to make the separation study which would be accepted as representing the inter-intrastate relationship of the carriers as a group.

'During the hearings it developed that the basic factors used in making the separation study were not actual as required by Exhibit No. 92, aforesaid. On the contrary a very simple but completely unreliable method was employed

to determine interstate revenues, truck and tractor miles and tons of revenue freight carried. Schedules which originated or terminated at points outside the State of Florida were considered as exclusively interstate. These interstate schedules all originate or terminate at the carrier's basic terminals in Florida. The factors developed from this simple method did not comprehend shipments interchanged at Jacksonville with R. C. Motor Lines and other carriers. Neither did such factors take into consideration the miles and tonnage involved in transporting purely interstate shipments between such Florida terminals and Florida points of origin or destination. Miles of tonnage of this character were considered as intrastate in nature. All schedules moving between points within the state were considered as exclusively intrastate even though they might be transporting interstate shipments.

'Applicant's witnesses readily admitted the foregoing discrepancies but attempted to minimize their effect by expressing the unsupported opinion that intrastate operations were favored by the method used because intrastate received credit for revenues that would have been credited to interstate operations under a complete and accurate analysis. This conclusion of the witnesses is a matter of opinion, is not predicated upon any reliable facts presented at the hearing, and is not shared by the Commission.

'Transportation companies seldom, if ever, make a satisfactory showing before the Commission for increases in their intrastate rates and charges. They appear always to be convinced that their revenue problems result from intrastate rate deficiencies but the proof of that situation inevitably leaves much to be desired. Carriers must find some reliable approach to the problem of demonstrating the results revenue wise of the intrastate portion of their operations. Once a sound and reliable approach is found it must be observed and followed completely in every detail.

'We are sounding the warning now to the common carrier motor freight lines that future cases of this kind must be supported by more reliable separation techniques. We believe the procedure outlined in Exhibit No. 92 aforesaid would have produced more satisfactory results had the separation procedure outlined therein been followed ***604** as intended. It is the purpose of this Commission to require the common carrier motor freight lines participating in this case to begin a continuing and permanent separation study with monthly reports to the Commission so that we may be fully and accurately advised concerning the revenue results of intrastate operations. The procedures to be observed in this continuing study will be announced in sufficient time for the study to be commenced in July of this year.

'In the meantime, system-wide exhibits of the various carriers, and their annual and quarterly reports filed with the Commission, strongly indicate that some of the carriers are in need of rate relief. The operating ratio is the most frequently used measure of a motor carrier's revenue needs and financial condition. * * *' [1]

The Commission determined that the applicants as a group were in need of total additional revenue (intrastate and interstate) in the amount of $1,540,994. The Commission, in its order, then said:

'Apportioning these additional revenue requirements between interstate and intrastate services poses the most difficult part of the problem. The separation study already mentioned herein was intended to simplify this problem. While we feel that the study did not follow the stipulated procedure, and is therefore unreliable, we must make some use of it because we have no other source from which to draw in making the necessary apportionment of revenues and expenses.' (Emphasis supplied.)

The Commission, in its order, then made the necessary computation to enable it to enter the following finding:

'Based upon the record herein, including the quarterly and annual reports filed with the Commission by the participating carriers, the Commission finds as follows:

'(1) The common carrier motor freight lines participating in Motor Freight Tariff FR&PUC MF No. 7 are in need of additional intrastate revenues in the total sum of $971,549 on the basis of 1956 operations adjusted for revenue and expense increases occurring during that year and comprehending 1957 wage increases actually committed and agreed to by contract.

'(2) The additional revenues needed by the carriers can be produced by increasing minimum charges twenty-five cents (25¢) per shipment, and by increasing Class and Commodity Rates and Charges by 8.72%

'(3) The rates and charges when increased as aforesaid will be fair, just, reasonable, and compensatory.

'(4) Overseas Transportation Company should be require to discontinue assessing the arbitrary described above for a test

period of one year. At the end of the test period the effect of the discontinuance of the arbitrary on the carrier's operating ratio will be determined as the basis for further action concerning the reinstatement or elimination of said arbitrary.

'(5) The increased rates and charges herein authorized should become effective upon proper tariff publication by applicant.'

***605** One of petitioners' contentions is that it was improper for the Commission to grant this rate increase to eleven carriers on the basis of evidence submitted by one carrier (Central Truck Lines, Inc.), particularly when this carrier is not representative of the other carriers involved.

This contention of the petitioners has been carefully considered and found to be without merit. The Legislature has authorized the Commission to determine facts in making and enforcing administrative rates, rules and regulations. Such determinations when duly made are, by statute, clothed with a presumption that they are prima facie reasonable and just. F.S.A. s 350.12(2)(m). On review this presumption of validity can only be overcome when either the invalidity of the Commission's decision appears plainly on the face of the order, rule, regulation or schedule, or where such weakness is made to appear by clear and satisfactory evidence.

Our examination of the record upon which the Commission based its order discloses that the Commission had before it evidence which included the annual and quarterly financial reports of all eleven carriers, as well as their current operating ratios. The Commission's determination that a rate increase was needed was based on competent substantial evidence supplied by the various carriers involved, including Central Truck Lines.

The record also shows that the selection of Central Truck Lines as the most representative carrier involved with both intra and interstate operations was not arbitrary or unreasonable. Even if we accept petitioners' assertions that Central Truck Line's operating expenses in certain areas are higher percentage-wise than those of the other carriers involved, we do not believe the petitioners have, by clear and satisfactory evidence, shown that Central Truck Lines was not sufficiently representative to provide the material it was selected to present. The petitioners have failed to overcome this statutory presumption in favor of the validity of the Commission's decision and, therefore, cannot prevail as to this point.

The major issue in this petition concerns the validity of the separation study prepared by Central Truck Lines, Inc. As indicated by the Commission's order, Central was selected to prepare a separation study designed to separate its revenues and expenses incident to intrastate operations from those connected with its interstate operations.

The petitioners assume the position that when a common carrier operates in both intrastate and interestate commerce, its revenue and expenses must be separated between intra and interstate by competent evidence before an intrastate rate increase can be granted by the Railroad and Public Utilities Commission. In support of this contention they cite that portion of the case of State ex rel. Railroad Com'rs v. Louisville and Nashville R. Co., 1912, 62 Fla. 315, 57 So. 175, 190, wherein this court said:

> 'Where the same property, labor, and management are used at the same time by a common carrier in interstate and intrastate commerce the value of the property and labor and management used should be properly apportioned in determining the reasonableness of the compensation for service rendered by the carrier in the intrastate business taken separately and as an entirety, or in connection with the interstate business concurrently done.'

See also State ex rel. Railroad Com'rs v. Seaboard Air Line R. Co., 1904, 48 Fla. 129, 37 So. 314, 320.

The reason behind this rule was explained in the following section of American Jurisprudence, where it is said:
'A state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, nor can the carrier impose unreasonably high rates on ***606** domestic business in order to meet losses on interstate business; the reasonableness of the rates to be fixed by the state must be decided with reference exclusively to what is just and reasonable in respect of domestic business.' 9 Am.Jur., p. 520, s 130.

We believe the Commission's statement on this subject in the disputed order is of compelling significance. The Commission, after determining the total amount of additional revenue that it would take in its judgment to give all the carriers involved a reasonable return on their investment, said: 'While we feel that the study did not follow the stipulated procedure, and is therefore unreliable, we must make some use of it because we have no other source from which to draw in making the necessary apportionment of revenues and expenses.' (Emphasis supplied.)

This court recognizes that the Railroad Commission has the difficult and highly technical duty of regulating motor highway common carriers. Over the years it has gained a great deal of experience and knowledge in this field. In the instant case we are content that its characterization of the separation study as being 'necessary' to its establishment of a reasonable rate, was a sound exercise of its decisional powers.

We have now reached the very fulcrum of this case. For we are asked to pass upon the validity of a Commission order which, by its own terms, has used an 'unreliable' separation study to support a 'necessary' apportionment of revenues and expenses because it 'had no other source from which to draw this information'. [2]

The scope and procedure of the review of administrative orders has been often set forth. From the cases it is clear that on certiorari this court will not undertake to re-weigh or re-evaluate the evidence presented to the administrative body whose order is under examination. This court is charged with the duty of examining the record to determine whether the agency's order is in accord with the essential requirements of law and whether the agency had before it competent substantial evidence to support its findings and conclusions. De Groot v. Sheffield, Fla.1957, 95 So.2d 912, 916.

With reference to actions by the Railroad & Public Utilities Commission, the Legislature has clothed the orders with a presumption of validity. Section 350.12(2)(m), F.S.A., reads in part as follows:

> 'Every rule, regulation, schedule or order heretofore or hereafter made by the commissioners shall be deemed and held to be within their jurisdiction and their powers, and to be reasonable and just and such as ought to have been made in the premises and to have been properly made and arrived at in due form of procedure and such as can and ought to be executed, unless the contrary plainly appears on the face thereof of or be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so appears. All presumptions shall be in favor of every action of the commissioners and all doubts as to ***607** their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the railroad commissioners shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control public carriers in the public interest.'

It is clear that the above statutory injunction imposes a duty upon petitioners to either satisfactorily and clearly show the errors upon which they rely, or to show that such error plainly appears on the face of the order.

If there is competent substantial evidence to sustain the findings and conclusions of the Commission, and no rule of law was violated in the proceedings, and the whole record does not disclose an abuse of authority or arbitrary action, the findings and conclusions of the Commission will not be set aside on certiorari, even though the reviewing court might have reached different conclusions on the evidence. Florida Motor Lines v. State Railroad Commission, 1931, 101 Fla. 1018, 132 So. 851, 862. It is equally clear that the reverse of this holds true, for we have held that where a rate, rule or regulation is made without statutory authority or without giving the carrier affected by it, reasonable opportunity to be heard, or without obtaining or considering any substantial evidence, where investigation, inquiry and evidence are necessary as a basis for the action taken, the proceeding is not had in due course of law and this court will not enforce it. State ex rel. Railroad Com'rs v. Florida East Coast R. Co., 1912, 64 Fla. 112, 59 So. 385, 393.

In the instant case we are blessed with the unique opportunity to inspect the precise evidence which led the Commission to it findings and conclusions, for the Commission has in its order discussed in detail the logical processes and data used

in arriving at its findings. The Commission's error, if any, thus plainly shows upon the face of its order. By its own statements the Commission has found the disputed separation study 'necessary' to its conclusions. Further, the Commission has measured the separation study against its experience in this field and determined the study was 'unreliable'. And last, but not least, the Commission has stated it must make some use of this 'unreliable' study 'because (it had) no other source from which to draw' in making the apportionment between intra and interstate expenses and revenue. The question is clearly whether or not the Railroad Commission may ground an essential portion of its order solely on evidence it characterizes as unreliable. We think not. Although we are fully aware of the statutory presumption in favor of such orders and know our obligation to resolve all doubt in favor of the validity of the Commission's actions, it is our opinion that Order 3910 clearly shows upon its face that it is not supported by competent substantial evidence.

Although the terms 'substantial evidence' or 'competent substantial evidence' have been variously defined, past judicial interpretation indicates that an order which bases an essential finding or conclusion solely on unreliable evidence should be held insufficient.

In the case of N. L. R. B. v. A. S. Abell Co., 4 Cir., 1938, 97 F.2d 951, 958, a federal court said that the substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences. And in Milford Copper Co. of Utah v. Industrial Commission, 1922, 61 Utah 37, 210 P. 993, 994, the court said that evidence to be substantial must possess something of substantial and relevant consequence and must not consist of vague, uncertain, or irrelevant matter not carrying the quality of proof or having fitness to induce conviction. Surmise, conjecture or speculation have been held not to be substantial evidence. White v. Valley Land Company, 1958, 64 N.M. 9, 322 P.2d 707, 709.

And in this state in the recent case of De Groot v. Sheffield, supra, Mr. Justice Thornal ***608** capably defined the term and its usage when he wrote

> 'We have used the term 'competent substantial evidence' advisedly. 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. Becker v. Merrill, 155 Fla. 379, 20 So.2d 912; Laney v. Board of Public Instruction, 153 Fla. 728, 15 So.2d 748. 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. Jenkins v. Curry, 154 Fla. 617, 18 So.2d 521. 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.' Schwartz, American Administrative Law, p. 88; The Substantial Evidence Rule by Malcolm Parsons, Fla.Law Review, Vol. IV, No. 4, p. 481; United States Casualty Company v. Maryland Casualty Company, Fla.1951, 55 So.2d 741; Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126.'

The evidence relied upon to sustain the ultimate finding in this case has been characterized by the Railroad and Public Utilities Commission as 'unreliable'. Webster's New International Dictionary (2nd Edition) defines unreliable to mean not reliable; undependable; untrustworthy.

Our administrative evidentiary standard is competent substantial evidence. It is clear that the use of unreliable evidence as the sole foundation of an essential portion of the Commission's findings fails to meet this standard. This order is not grounded upon competent substantial evidence legally sufficient to support the Commission's findings and conclusions. This fatal deficiency is etched boldly upon the face of the order herein challenged.

For this reason the petition for writ of certiorari is granted and Order 3910 of the Florida Railroad and Public Utilities Commission is quashed.

TERRELL, C. J., and THOMAS and O'CONNELL, JJ., concur.

ROBERTS, J., dissents.

All Citations

108 So.2d 601

Footnotes

1 The operating ratio is the proportion which operating expense bears to operating income. Stated another way, the operating ratio represents the number of cents required to be expended as operating expenses in producing one revenue dollar. An operating ratio in excess of 100 would indicate that operating expenses exceeded operating revenues. Just how low the operating ratio should be is one of the problems of motor carrier rate making. (Taken from Railroad & Public Utilities Commission's Order No. 3910, June 5, 1957.

2 The record discloses that a five day actual traffic study of all 11 carriers was conducted. This exhibit was designed to show how the present revenue was split between intra and interstate commerce and what effect on future revenue the proposed increases would have. This exhibit does not contain a separation of interstate and intrastate costs and expenses. The results of such short period studies was stated to be unreliable by a member of the Commission staff. We mention this study here merely to show that were it not for the Commission's own statements, in the order, informing us of the evidence upon which it based its findings and conclusions, we would be presented with the more difficult problem of determining whether or not the other evidence of record was sufficient to support the Commission's findings and conclusions.

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52 So.3d 19
District Court of Appeal of Florida,
First District.

KATHERINE'S BAY, LLC, Intervenor, Appellant,
v.
Ronald J. FAGAN and Citrus County, Appellees.

No. 1D10–939.
|
Dec. 14, 2010.

Synopsis

Background: Developer sought review of Department of Administration decision approving ALJ's ruling that rezoning of its property from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) was invalid because it rendered the county's comprehensive plan internally inconsistent. Neighboring landowner intervened.

Holdings: The District Court of Appeal, Lewis, J., held that:

assertion that recommendation of the county staff was not given sufficient weight was unreviewable;

ALJ's finding that property had severe environmental limitations was thoroughly supported by the county staff's report;

ALJ's finding of severe environmental limitations was insufficient to justify overriding county's determination that amendment to plan was proper;

ALJ erred by relying on neighboring landowner's testimony concerning impact of rezoning; and

reliance by ALJ on definitions provided in Administrative Code was proper.

Reversed and remanded.

Attorneys and Law Firms

***21** Clark A. Stillwell, Inverness, for Appellant.

Shaw P. Stiller, General Counsel, Department of Community Affairs, Tallahassee, and Denise A. Lyn, Inverness, for Appellees.

Opinion

LEWIS, J.

Katherine's Bay, LLC, Appellant, seeks review of a final order issued by the Administration Commission ("the Commission"), which adopted an administrative law judge's ("ALJ") holding that a small-scale development amendment ("the Amendment") to Citrus County's Comprehensive Plan ("the Plan") was invalid because it rendered the Plan internally inconsistent. The ALJ and the Commission recognized two grounds for finding the Amendment inconsistent with the Plan: first, that it violated a policy in the Plan's Future Land Use Element ("FLUE") requiring compatibility of land uses; and second, that it violated a policy in the Plan's FLUE requiring the County to guide future development to areas with minimal environmental limitations. Appellant challenges both grounds. As to the first ground, Appellant argues that there was a lack of competent, substantial evidence to support the ALJ's finding that the Amendment approved a future land use designation that was incompatible with the surrounding uses. We agree. As to the second ground, Appellant argues both that there was a lack of competent, substantial evidence to support the ALJ's factual findings and that the ALJ's ultimate conclusion resulted from an erroneous construction of the Plan. While we do find competent, substantial evidence of the findings the ALJ made in relation to the second ground, we hold that the findings did not support the conclusion that the Amendment rendered the Plan internally inconsistent. Because the ALJ's conclusion that the Amendment rendered the Plan internally inconsistent is not supported by either of the FLUE policies at issue, we reverse and remand to the Commission for reinstatement of the ordinance.

***22 I. Facts and Procedural History**

On May 26, 2009, the Citrus County Board of County Commissioners adopted an ordinance that amended the Plan's Generalized Future Land Use Map ("GFLUM"), which is a part of the FLUE. The Amendment changed the future land use designation of a 9.9–acre parcel of land owned by Appellant, based on Appellant's application for such a change.

The subject property is located in a geographic region defined by Citrus County as the "Coastal Area." According to the Plan, "[t]he Coastal Area parallels the Gulf of Mexico, and the boundary may be described as following the west side of US–19 north from the Hernando County line to the Withlacoochee River." The Plan notes that "[t]his boundary is the basis for an environmentally sensitive overlay zone to be used for land use regulatory purposes."

Before the Amendment, the subject property was designated Low Intensity Coastal and Lakes ("CL"), which the Plan defines in pertinent part as follows:

> **Low Intensity Coastal and Lakes (CL)**
>
> This land use category designates those areas having environmental characteristics that are sensitive to development and therefore should be protected. Residential development in this district is limited to a maximum of one dwelling unit per 20 acres....
>
> ....
>
> In addition to single family residential development, the following land uses may be allowed provided the permitted use is compatible with the surrounding area, and standards for development are met as specified in the Citrus County Land Development Code (LDC)[:]
>
> • Multifamily residences (in existing platted areas only or in lieu of clustering single family units at a density of one unit per lot of record and requiring the recombination of said lots. For example, a duplex requires two lots to be recombined into a single parcel, a quadruplex four lots, etc.)
>
> • Recreational uses
>
> • Agricultural and Silviculture uses
>
> • Public/Semi–Public, Institutional facilities
>
> • Home occupations
>
> • New railroad right-of-way, storage facilities, or related structures
>
> • Communication towers
>
> • Utilities
>
> • Commercial fishing and marina related uses
>
> • Commercial uses that are water related, water dependent, or necessary for the support of the immediate population[.]

The Amendment changed the subject property's future land use category from CL to Recreational Vehicle Park/ Campground ("RVP"), which the Plan defines in pertinent part as follows:

> **Recreational Vehicle Park/Campground (RVP)**
>
> This category is intended to recognize existing Recreational Vehicle (RV) Parks and Campgrounds, as well as to provide for the location and development of new parks for recreational vehicles. Such parks are intended specifically to allow temporary living accommodation for recreation, camping, or travel use.
>
> ....
>
> New RV parks shall be required to preserve thirty percent (30%) of the gross site area as permanent open space, consistent with Policy 17.15.11 of this Plan.
>
> ***23** In addition to RV/campsite development, the following land uses as detailed in the Land Development Code, shall be allowed provided the permitted use is compatible with the surrounding area, and standards for development are met as specified in the County Land Development Code:
>
> • Recreational Uses
>
> • Agricultural and Silvicultural Uses
>
> • Public/Semi–Public, Institutional Facilities
>
> • Convenience retail and personal services to serve park visitors and guests up to one percent of the gross site area, not to exceed 5,000 square feet, located within the development and not accessible from any external road[.]

After the Amendment changing the subject property's future land use category from CL to RVP was adopted, Appellee, the owner of neighboring property, challenged the Amendment under the procedure set forth in section 163.3187(3)(a), Florida Statutes (2008). Appellee argued that the Amendment was not "in compliance" with the Local Government Comprehensive Planning and Land Development Regulation Act ("the Act") because it rendered the Plan internally

inconsistent. Appellee identified two policies in the FLUE, among others, that he claimed were inconsistent with the Amendment. Those policies are 17.2.7 and 17.2.8, and they provide as follows:

> Policy 17.2.7 The County shall guide future development to the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations and the availability of necessary services.
>
> Policy 17.2.8 The County shall utilize land use techniques and development standards to achieve a functional and compatible land use framework which reduces incompatible land uses.

Appellant intervened in the proceedings, and the matter proceeded to a section 120.57 hearing.

The parties stipulated that the subject property is located across the road from Appellee's property, which is on the Homosassa River, and that the subject property is bordered in all directions by property designated as either CL or Coastal and Lakes Residential ("CLR"). They also stipulated that there exists on Appellant's property a parcel designated Coastal/Lakes–Commercial ("CLC") [1] and that this property is being used as an RV park because this use of the property is vested. Further, they stipulated that Appellee's property was in the Coastal High Hazard Area ("CHHA").

At the hearing, Appellee supported his argument that the Amendment rendered the subject property incompatible with the surrounding uses primarily by presenting his own testimony and that of his neighbor. Appellee described the beauty and peacefulness of the area and opined that the introduction of another RV park into the area would lead to increased traffic, litter, noise, and light pollution. He testified that the vested RV park currently existing on Appellant's property is an "eyesore" that "looks like a bunch of junk stored on the front lawn." Appellee also testified that, in 1993, there was a major flood in the area around his home, which was so severe that he had to tie boats to his mailbox to keep them from floating down ***24** the road. He was concerned that the RV park Appellant planned to develop on the subject property would require him to manage even more debris in the event of a natural disaster. Appellee also expressed concern that the RV park would decrease his property value. A neighbor expressed the same concerns about the potential for increased traffic and decreased property values in the area.

The evidence concerning the subject property's environmental limitations came in the form of the County Staff's report and the testimony of Dr. Timothy Pitts and Sue Farnsworth, both of whom were employed by the County as planners. The report was prepared by Dr. Pitts, who was the County's Senior Planner of Community Development at the time. According to the County Staff's report, the subject property was studied by officials in the fire prevention, engineering, utilities, and environmental divisions. The fire prevention and engineering representatives recommended approval of the application with conditions, and the utilities representative recommended approval. The environmental planner did not recommend approval or denial but noted that the subject property was within a "Karst Sensitive Area." [2] Additionally, the report indicated that a "traffic analysis" had revealed that "adequate capacity exists on Halls River Road for anticipated traffic at the maximum development potential of the site." The report also noted that the subject property was within the CHHA and that it contained "significant wetland areas." According to the report, if the application was granted, Appellant would still need to "design a Master Plan of Development that minimizes wetland alterations."

One of the policies of the Plan that the report indicated may be cause for concern was Policy 3.18.11, which provides as follows:

> The County shall protect springs by prohibiting increases in allowed land use intensity at the Generalized Future Land Use level within a Karst Sensitive Area without a hydrogeological analysis that addresses impacts to groundwater resources. The analysis shall be performed by a professional geologist or professional engineer licensed in Florida. Karst Sensitive Area shall be defined as an area in which limestone lies within five (5) feet of depth from natural grade.

In relation to this policy, the report stated that Appellant had "provided a letter from a professional engineer that adequately meets the intent of this policy" and that Appellant intended "to develop the site using methods that will meet the

intent of the Comprehensive Plan." The report also contained the following observations:

> This site has some severe environmental restrictions—extensive wetlands, proximity to an Outstanding Florida Waterbody, Karst sensitive landscape—and it will be difficult to design a site that meets the standards of the Comprehensive Plan and the Land Development Code. The following policy would potentially restrict development if this application were to be approved:
>
> **Policy 3.16.3** Development shall not be allowed at the maximum densities and intensities of the underlying land use district if those densities would be harmful to natural resources.
>
> So, the applicant should be cautioned that given the environmental sensitivity of the property, development may be limited on this site to less than the allowable maximum intensity. If this ***25** application is approved, an appropriately designed master plan of development will be required which meets all standards of the Comprehensive Plan and the Land Development Code and is approved by the Board of County Commissioners.

Ultimately, despite the environmental limitations, the County Staff concluded that the site was "appropriate for some type of RV Park development subject to an appropriately designed master plan." In making this recommendation, the County Staff emphasized that, "based on the environmental limitations of the area, the applicant is cautioned that the site may not be able to be designed at the maximum intensity for this land use district."

Dr. Pitts testified consistently with the County Staff's report. He noted that neither the Plan nor the Land Development Code ("LDC") prohibits RV parks in either karst sensitive areas or the CHHA. He explained, however, that the County has regulations limiting the density or intensity of RV parks in such areas and indicated that the professional studies he had received on the subject property represented that the site could be developed to meet those standards. Dr. Pitts testified that, in his opinion, "just about anything west of [U.S. Highway 19] is ... karst sensitive." Dr. Pitts acknowledged that the subject property had 1.64 acres of wetlands and that there were wetlands in the surrounding areas. He explained that the Plan requires "setbacks" to mitigate wetland impacts and that the LDC required one-hundred percent protection of the wetlands. Additionally, he explained that the regulations required fifty percent open space in the Coastal Area. Based on these regulations, Dr. Pitts testified that it was highly unlikely that Appellant would be permitted to develop the space at the maximum build-out potential theoretically allowed under the new designation, which would be five units per acre. He emphasized that, no matter what the number of approved units proved to be, complete protection of the wetlands would be required. Finally, Dr. Pitts testified that there were several vested uses in the surrounding area, including a 300–to 400–unit RV park, that did not conform to the land use designations identified for those properties in the Plan.

Farnsworth, an environmental planner for the County, testified that the wetlands were located around the perimeter of the property and that they extended into the part of the property beyond the perimeter. She explained, however, that permitting standards for an RV park prohibited the filling of wetlands and that the subject property could be developed as an RV park without the need to fill in the wetlands.

After the hearing, the ALJ issued a Recommended Order concluding that the Amendment was inconsistent with FLUE Policy 17.2.7's requirement that future development be directed to "the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations." In support of this conclusion, the ALJ noted the County Staff's finding that the land had "severe environmental limitations." In particular, the ALJ noted that the area in which the subject property was located had extensive wetlands, a karst sensitive landscape, and a CHHA designation. The ALJ acknowledged that the Plan did not expressly prohibit RV parks in CHHA areas and that there were regulations in the Plan and the LDC that would limit the intensity of development on this land even under the RVP designation. The ALJ concluded, however, that "[n]otwithstanding the other provisions within the Plan and LDRs that place limitations on RV park development ***26** in an effort to satisfy environmental constraints, ... the subject property is clearly not 'the most appropriate area, as depicted on the GFLUM' for new development, nor is it an area with 'minimal environmental limitations.' "

The ALJ also concluded that the Amendment was inconsistent with FLUE Policy 17.2.8's requirement that development be accomplished in a "functional and compatible land use framework which reduces incompatible land uses." Because "compatible" is not defined in the Plan, the ALJ relied on the definition of "compatibility" in Florida

Administrative Code Rule 9J–5.003(23). That definition is as follows:

> "Compatibility" means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

In support of the conclusion that the new designation approved a land use incompatible with the surrounding uses, the ALJ noted Appellee's testimony concerning the characteristics of the area. He also noted Appellee's concerns about noise, lighting, litter, traffic, and property value. The ALJ further noted that there were only six nonconforming land uses and that each was permitted to exist due to vested rights. The ALJ then stated, "It is fair to infer that the insertion of an RV park in the middle of a large tract of vacant CL land would logically lead to further requests for reclassifying CL land to expand the new RV park or to allow other non-residential uses." The ALJ further found the following:

> The commercial RV park, with a yet-to-be determined number of spaces for temporary RVs, tenants, and associated commercial development, will be in close proximity to a predominately [sic] residential neighborhood. A reasonable inference from the evidence is that these commercial uses will have a direct or indirect negative impact on the nearby residential properties and should not coexist in close proximity to one another.

Based on these findings and the determination that the Amendment was inconsistent with FLUE Policy 17.2.7, the ALJ recommended that the Commission conclude that the Amendment was not in compliance with the Act.

The Commission adopted the ALJ's findings and conclusions, except that it modified the finding that the Amendment would "logically lead to further requests for reclassifying CL land to expand the new RV park or to allow other non-residential uses." The Commission concluded that this finding was mere conjecture, unsupported by competent, substantial evidence. It modified the finding to read, "Unlike the presence of ... pre-existing, non-conforming uses, permitting the addition of an RV park in the middle of a large tract of vacant CL land now would set a precedent that an RV park, a Commercial Land Use, is compatible with the Low Intensity Coastal and Lakes Land Use designation in this vicinity." Based on the adoption of the ALJ's findings and conclusions, as modified, the Commission held that the Amendment had no legal effect.

II. Analysis

A. Standard of Review

The amendment at issue in this case was adopted under the authority of section 163.3187(1)(c), Florida Statutes (2008). Section 163.3187(3)(a) provides for review of amendments adopted under section 163.3187(1)(c) under the following terms:

> The state land planning agency shall not review or issue a notice of intent for small scale development amendments which satisfy the requirements of paragraph ***27** (1)(c). Any affected person may file a petition with the Division of Administrative Hearings pursuant to *ss. 120.569* and *120.57* to request a hearing to challenge the compliance of a small scale development amendment with this act within 30 days following the local government's adoption of the amendment, shall serve a copy of the petition on the local government, and shall furnish a copy to the state land planning agency. An administrative law judge shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an administrative law judge. The parties to a hearing

> held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the local government's determination that the small scale development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act. In any proceeding initiated pursuant to this subsection, the state land planning agency may intervene.

§ 163.3187(3)(a).

Because Appellant is challenging the Administration Commission's final agency action in this appeal, *see id.*, this Court's standard of review is governed by section 120.68(7), Florida Statutes (2010). That section provides in pertinent part as follows:

> The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:
>
> ....
>
> (b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to *ss. 120.569* and *120.57;* however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact; [or]
>
> ....
>
> (d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action....

§ 120.68(7).

In this Court, Appellant challenges the sufficiency of the evidence supporting the findings of inconsistency with both policies.[3] In addition, Appellant challenges the ALJ's interpretation of the policy requiring that future development be directed toward areas of the County with minimal environmental limitations. The separate arguments concerning each policy will be addressed in turn.

B. FLUE Policy 17.2.7

With regard to FLUE Policy 17.2.7, Appellant raises two arguments: first, that ***28** the ALJ erred in relying on the County Staff's finding of "severe environmental limitations" because the County Staff recommended approval of the application; and second, that the ALJ erred in failing to apply the FLUE policies that are more specific to RV parks in the Coastal Area in lieu of FLUE Policy 17.2.7, which is a general planning policy applicable to all land use decisions countywide. We agree with the second point.

i. The County Staff's Report

Appellant insists that the ALJ was required to give the County Staff's recommendation great weight. Even assuming that the County Staff's report was entitled to great weight in this case, there is no basis in the record for believing that the ALJ did not give it due consideration. To the contrary, the ALJ recited it heavily and relied on the concrete findings within it that showed the environmental limitations of the subject property, even though the ALJ disagreed with the ultimate conclusion. If an ALJ were not entitled to disagree, then the ALJ's review would serve no purpose. To the extent Appellant argues that the recommendation of the County Staff was not given sufficient weight, this assertion is unreviewable because "[i]t is not the role of the appellate court to reweigh evidence anew." *Young v. Dep't of Educ., Div. of Vocational Rehab.*, 943 So.2d 901, 902 (Fla. 1st DCA 2006). The ALJ's finding that the subject property had severe environmental limitations was thoroughly supported by the County Staff's report. Whether those limitations required a finding that the Amendment was inconsistent with FLUE Policy 17.2.7 is, however, a separate matter.

ii. Interpretation of the Plan

Appellant's argument that the ALJ erred in relying on a general policy in the Plan where more specific policies existed is an issue of law to be reviewed de novo. *See Nassau County v. Willis*, 41 So.3d 270, 278 (Fla. 1st DCA 2010). In reviewing this issue de novo, however, we bear in mind that the ALJ

was required under section 163.3187(3)(a) to presume that the County's determination that the Amendment complied with the Act (and, thus, was consistent with the Plan) was correct.

Rules of statutory construction are applicable to the interpretation of comprehensive plans. *See Great Outdoors Trading, Inc. v. City of High Springs,* 550 So.2d 483, 485 (Fla. 1st DCA 1989) (noting that the rules of statutory construction apply to municipal ordinances and city charters); *Willis,* 41 So.3d at 279 (noting that a comprehensive plan is like a "constitution for all future development within the governmental boundary") (citation omitted). Appellant argues that this case implicates the rules of construction that specific provisions control over general ones and that one provision should not be read in such a way that it renders another provision meaningless. Both rules are well-established. *See Murray v. Mariner Health,* 994 So.2d 1051, 1061 (Fla.2008). Another rule of construction relevant to this issue is that all provisions on related subjects be read in pari materia and harmonized so that each is given effect. *Cone v. State, Dep't of Health,* 886 So.2d 1007, 1010 (Fla. 1st DCA 2004).

Here, the ALJ concluded that the Amendment conflicted with FLUE Policy 17.2.7, which provides, "The County shall guide future development to the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations and the availability of necessary services." (CP 10–155). Appellant contends that FLUE Policies 17.6.5 and 17.6.12, which are more specific to RV parks in the Coastal Area, indicate ***29** that the Amendment was consistent with the Plan. Those policies provide as follows:

> Policy 17.6.5 Specialized commercial needs, such as water-dependent and water-related uses, temporary accommodations for tourists and campers, as well as neighborhood commercial uses and services serving residential communities within the general Coastal, Lakes, and Rivers Areas shall be provided for within the Future Land Use Plan and standards for development provided within the County LDC.
>
> Policy 17.6.12 Recreational vehicle (RV) parks and campgrounds shall be designed according to a detailed master plan, shall preserve a minimum of 30 percent of the property in open space, shall provide a minimum of an additional 10 percent of the property as recreation areas, and generally shall conform to the commercial development standards in the Land Development Code.... In order to minimize the adverse impact of development on the resources and natural features of the Coastal, Lakes, and Rivers Region, the LDC shall be amended to include additional review criteria for all new RVP projects located in this region. Such criteria may include:
>
> • Restrictions on density
>
> • Enhanced open space requirements
>
> • Wetland protection
>
> • Upland preservation
>
> • Clustering
>
> • Connection to regional central water and sewer service

Appellant is correct in noting that the development of new RV parks in Coastal Areas was specifically anticipated by FLUE Policy 17.6.12. This observation does not, however, mandate approval of an RVP designation for the particular parcel at issue. Thus, it was appropriate for the ALJ to resort to other portions of the Plan to determine whether approval of the RVP designation for the subject property was proper. The policy that most directly relates to this inquiry is FLUE Policy 17.2.7, which articulates the County's general preference for guiding future development to the "most appropriate areas," which are areas "with minimal environmental limitations."

Two additional provisions of the Plan provide more context for the policies at issue. First, the Plan describes the "Coastal Area" as follows:

> The Coastal Area parallels the Gulf of Mexico, and the boundary may be described as following the west side of US–19 north from the Hernando County line to the Withlacoochee River. This boundary is the basis for an environmentally sensitive overlay zone to be used for land use regulatory purposes....

Second, under the heading "Development in Wetland and Coastal Areas," the Plan notes the following:

> Future development in the Coastal, Lake, and River Areas will require careful management in order to reduce potential problems and impacts on the environment. Development within these areas will be limited to low, [sic] intensity uses. In addition, all development will be required to meet standards for development and obtain necessary permits from appropriate regulatory agencies.

These two provisions show that, under the Plan, the entire Coastal Area is considered environmentally sensitive, and yet "[f]uture development" of this environmentally sensitive area is expected. Thus, when all the pertinent provisions of the Plan are considered in pari materia, the mere fact ***30** that an area has environmental limitations is not a basis to prohibit development as long as the development is carried out in accordance with the limitations provided by the Plan and the LDC. Therefore, the ALJ's finding of "severe environmental limitations" was insufficient to justify overriding the County's determination that the Amendment was proper, particularly in light of the presumption required by section 163.3187(3)(a). The ALJ properly found the existence of wetlands and karst sensitivity in the area, but there was no competent, substantial evidence that these limitations were so severe as to require a prohibition on the development of an RV park under the restrictions that would be imposed by the LDC. In sum, when FLUE Policy 17.2.7 and the evidence related to that policy are viewed in the context of all relevant provisions of the Plan, the conclusion that the Amendment is inconsistent with that policy is unsupported.

C. FLUE Policy 17.2.8

With regard to FLUE Policy 17.2.8, Appellant argues that the ALJ erred in relying on the testimony of Appellee and his neighbor as a basis for finding incompatibility of the subject property's new future land use designation with the surrounding uses. In particular, he argues that this testimony was "unacceptable lay testimony" and that no competent, substantial evidence showed a lack of compatibility, as that term is defined by Florida Administrative Code Rule 9J–5.003(23). We agree.

Initially, we note that the reliance on the definitions provided in Florida Administrative Code Rule 9J–5.003 was proper because the Plan does not define the term "compatible," and because section 163.3184(1)(b) defines "in compliance" in pertinent part as "consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J–5, Florida Administrative Code." Therefore, to show that the Amendment provided for an incompatible land use, Appellee was required to prove that, because of the new future land use category assigned to Appellant's property, the land uses or conditions in the area could not "coexist ... in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." *See* Fla. R. Admin. Code 9J–5.003(23).

Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. *Metro. Dade County v. Blumenthal,* 675 So.2d 598, 601 (Fla. 3d DCA 1995). For example, lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise. *Blumenthal,* 675 So.2d at 601. Lay witnesses' speculation about potential "traffic problems, light and noise pollution," and general unfavorable impacts of a proposed land use are not, however, considered competent, substantial evidence. *Pollard v. Palm Beach County,* 560 So.2d 1358, 1359–60 (Fla. 4th DCA 1990). Similarly, lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. *See City of Apopka v. Orange County,* 299 So.2d 657, 659–60 (Fla. 4th DCA 1974) (citation omitted). There must be evidence other than the lay witnesses' opinions to support such claims. *See BML Invs. v. City of Casselberry,* 476 So.2d 713, 715 (Fla. 5th DCA 1985); *City of Apopka,* 299 So.2d at 660.

Based on these standards, it was error for the ALJ to rely on Appellee's testimony concerning potential light pollution, increased traffic, and negative impacts on ***31** the value of the homes in the area. There were no facts to support his concerns, and in fact, the County Staff's report indicates that the traffic issue was studied by an expert and determined that increased traffic would not unduly burden the area.

Although it was proper for the ALJ to consider Appellee's observations that, with the exception of the vested non-conforming uses, the area is predominantly residential

and that it is peaceful, Appellee presented no competent, substantial evidence to support his claim that the new RV park would unduly interfere with those characteristics of the area. The mere fact that Appellee's property has a different future land use designation than Appellant's re-classified property is insufficient. *See Hillsborough County v. Westshore Realty, Inc.*, 444 So.2d 25, 27 (Fla. 2d DCA 1983) (holding that the mere fact that property is in close proximity to another property with a less restrictive classification does not require reclassification). Additionally, while it may have been noteworthy that Appellant presently fails to maintain its vested one-acre RV park in an attractive manner, the concern that the yet-to-be-developed RV park would be maintained in the same way is speculative and does not establish long-term negative impacts stemming from the reclassification of the subject property.

In sum, based on the applicable definition of "compatibility," Appellant's argument that there was insufficient evidence to support a finding that the RV park was incompatible is well-taken. It appears that, in finding the proposed use incompatible with the surrounding uses, the ALJ gave undue emphasis to Appellee's preference not to have an RV park as a neighbor. However, this preference in itself is insufficient to override Appellant's desire to build an RV park on its land. *See Conetta v. City of Sarasota*, 400 So.2d 1051, 1053 (Fla. 2d DCA 1981) (suggesting that a land-use decision should not be "based primarily on the sentiments of other residents"). As a result, we hold that the ALJ erred in concluding that the Amendment was inconsistent with FLUE Policy 17.2.8.

III. Conclusion

For the reasons explained above, both of the ALJ's ultimate conclusions as to inconsistency of the Amendment with the remaining portions of the Plan were erroneous. As a result, we reverse and remand to the Commission for reinstatement of the ordinance approving the Amendment.

REVERSED and REMANDED.

WEBSTER and MARSTILLER, JJ., Concur.

All Citations

52 So.3d 19, 35 Fla. L. Weekly D2759

Footnotes

1 As provided in the Plan, the CLC category allows commercial uses that are "water related, water dependent, or necessary for the support of the immediate population," i.e. "neighborhood commercial uses, personal services, or professional services." This category is intended "for a single business entity on a single parcel of property."

2 According to Dr. Pitts, karst is a "limestone underground sort of rock structure that is very porous" and through which "pollutants can very easily travel."

3 In challenging the sufficiency of the evidence, Appellant argues that the ALJ did not view the evidence with an eye toward the proper standard. He contends the ALJ should have considered whether the County's determination that the Amendment was proper was "fairly debatable," based on the standard recognized in *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So.2d 204 (Fla.2001). The argument that the ALJ applied the wrong standard is not properly before us because Appellant stood silent when Appellee argued to the ALJ that the "fairly debatable" standard did not apply and when the ALJ invited Appellant to provide contrary authority. *See Dep't of Bus. & Prof'l. Regulation, Constr. Indus. Licensing Bd. v. Harden*, 10 So.3d 647, 649 (Fla. 1st DCA 2009) (recognizing the preservation rule in administrative proceedings).

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299 So.2d 657
District Court of Appeal of Florida, Fourth District.

The CITY OF APOPKA, Florida, et al., Appellants,
v.
ORANGE COUNTY, a political subdivision of the State of Florida, and Clarcona Improvement Association, Appellees.

No. 73-273.
|
Feb. 22, 1974.
|
On Rehearing April 11, 1974.

Synopsis

Application submitted by three communities for special exception to allow construction of airport on extraterritorial land owned by them was denied by the zoning board of adjustment and the board of county commissioners affirmed. Municipalities' petition for certiorari was denied by the Circuit Court, Orange County, Parker Lee McDonald, J., and municipalities appealed. The District Court of Appeal, Downey, J., held that it was not the function of the board of county commissioners to hold a plebiscite on the application for special exception and that board's duty was to make finding as to how construction and operation of proposed airport would affect public interest and base its granting or denial of the special exception on those findings; and that evidence which consisted mainly of laymen's opinions which were unsubstantiated by competent facts and which were submitted at hearing where witnesses were not sworn and where cross-examination was specifically prohibited did not support conclusion that public interest would be adversely affected by the granting of the special exception.

Reversed and remanded with directions.

Attorneys and Law Firms

***657** William G. Mitchell, of Giles, Hedrick & Robinson, Orlando, for appellants.

***658** Steven R. Bechtel, of Mateer & Harbert, Orlando, for appellee Orange county.

Carter A. Bradford, of Bradford, Oswald, Tharp & Fletcher, Orlando, for appellee Clarcona Improvement Assn.

Opinion

DOWNEY, Judge.

This is an appeal by the cities of Apopka, Ocoee, and Winter Garden and the Tri-City Airport Authority from a final judgment of the circuit court denying their petition for certiorari which sought review of an order denying appellants' application for a special exception. This is a companion appeal to those consolidated appeals numbered 72-1204 and 72-1209, 299 So.2d 652.

The appellant cities formed the appellant Tri-City Airport Authority pursuant to Chapter 332, F.S.1971, F.S.A., commonly known as The Airport Law of 1945, for the purpose of building an airport to serve the three cities and the surrounding area. Appropriate engineering studies were made and various sites for the proposed airport were considered. Finally, the Authority determined that a parcel of property located in Orange County outside any municipality and zoned A-1 was the most suitable site for the proposed airport. The Authority thereafter obtained options to buy that property. Orange County's zoning legislation permits construction and operation of 'airplane landing fields and helicopter ports with accessory facilities for private or public use' in an A-1 district as a special exception. Thus, the three cities and the Authority filed an application for a special exception with the Orange County Zoning Board of Adjustment to build their proposed airport. Without entering any finding of fact, the Zoning Board of Adjustment denied the application on the ground that granting it 'would be adverse to the general public interest.' On appeal to the Board of County Commissioners a de novo hearing was held with the following result:

> 'A motion was made by Commissioner Pickett, seconded by Commissioner Poe, and carried, that the decision of the Board of Zoning Adjustment on December 2, 1971 denying application No. 2 for a Special Exception in an A-1 District for the construction of a proposed Tri-City Airport be affirmed and upheld on the grounds that the granting of the proposed Special Exception would adversely affect the general public and would be detrimental to the public health, safety, comfort, order, convenience, prosperity and general welfare and, therefore, not

in accordance with the Comprehensive Zoning Plan of Orange County.'

Appellants then filed a petition for a writ of certiorari in the circuit court in accordance with the provisions of the Orange County Zoning Act, Chapter 63-1716, Laws of Florida, as amended, to obtain review of the foregoing decision of the Board of County Commissioners. While the petition for certiorari was pending appellants filed another action in the Circuit Court of Orange County. The new action sought a declaration that implementation of Chapter 332, F.S.1971, F.S.A., by the appellants constituted a governmental function thereby exempting appellants from the operation of Orange County zoning regulations.

In order to determine whether there was substantial competent evidence to support the decision below we must of necessity resort to the evidence introduced at the hearing before the Board of County Commissioners. The appellants adduced evidence from (a) the Tri-City Airport Authority consulting engineer, (b) a representative of the Federal Aviation Agency, (c) and a representative of the Florida Department of Transportation, Mass Transit Division. Their testimony showed that there was a definite public need for the airport; that serious in depth studies had been made to determine the most appropropriate location for the airport; that the location in question was the best available considering such factors as (1) convenience to users, (2) land and area requirements, (3) general *659 topography, (4) 'compatability with existing land use, plans and land users', (5) land costs, (6) air space and objections, (7) availability of utilities, (8) noise problems, (9) bird habitats and other ecological problems. The mayors of the three municipalities and the members of the Airport Authority also demonstrated that the selection of the site in question resulted from long study and competent advice on the subject. Approval had been received from every interested government agency including the Federal Aviation Administration, the Florida Department of Transportation, and the Florida Department of Air and Water Pollution Control.

The evidence upon which the Board of County Commissioners relied to deny appellants' application came from one abutting owner, Richard Byrd; several other owners within a two to five mile radius of the proposed airport site; a petition signed by some two hundred members of the Clarcona Improvement Association; and approximately thirty-five people in attendance at the hearing who objected but did not testify. Byrd's testimony was mainly directed to his opinion of what the airport would do to construction costs in the area and his opinion of what would happen to zoning in the area as a result of the proposed use. It also developed that Byrd is interested in buying the property proposed to be used as the airport. Several other property owners speculated about what would happen to the area's zoning, complained about the anticipated noise, and generally wanted to keep the status quo in the area. One witness who admitted he was a layman with no special training or experience advised the Board about his opinion of the damage to the Florida aquifer which would result from the proposed airport.

Although notice to and hearing of the proponents and opponents of an application for a special exception or other zoning change are essential and all interested parties should be given a full and fair opportunity to express their views, it was not the function of the Board of County Commissioners to hold a plebiscite on the application for the special exception. Rockville Fuel and Feed Co. v. Board of Appeals, 257 Md. 183, 262 A.2d 499, 504 (1970). As pointed out by Professor Anderson in Volume 3 of his work, American Law of Zoning, s 15.27, pp. 155-156:

'It does not follow, . . . that either the legislative or the quasi-judicial functions of zoning should be controlled or even unduly influenced by opinions and desires expressed by interested persons at public hearings. Commenting upon the role of the public hearing in the processing of permit applications, the Supreme Court of Rhode Island said:

'Public notice of the hearing of an application for exception . . . is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of . . . public health . . .. The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.'

The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. While the facts disclosed by objecting neighbors should be considered, the courts have said that:

> 'A mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception ***660** applied for is consistent with the public convenience or welfare or whether it will tend to devaluate the neighboring property."

(Footnotes omitted.)

Instead the Board's purpose was to make findings as to how construction and operation of the proposed airport would affect the public and base its granting or denial of the special exception on those findings. Cf. Laney v. Holbrook, 150 Fla. 622, 8 So.2d 465, 146 A.L.R. 202 (1942); Veasey v. Board of Public Instruction, Fla.App.1971, 247 So.2d 80.

The evidence in opposition to the request for exception was in the main laymen's opinions unsubstantiated by any competent facts. Witnesses were not sworn and cross examination was specifically prohibited. Although the Orange County Zoning Act requires the Board of County Commissioners to make a finding that the granting of the special exception shall not adversely affect the public interest, the Board made no finding of facts bearing on the question of the effect the proposed airport would have on the public interest; it simply stated as a conclusion that the exception would adversely affect the public interest. Accordingly, we find it impossible to conclude that on an issue as important as the one before the board, there was substantial competent evidence to conclude that the public interest would be adversely affected by granting the appellants the special exception they had applied for.

The judgment appealed from is therefore reversed and remanded to the circuit court with directions to grant the writ of certiorari and to remand the cause to the board of county commissioners for another de novo hearing on the application for special exception.

If the decision of the board is deemed to be arbitrary or unreasonable the aggrieved party will then have the option of a judicial review by certiorari pursuant to Florida Appellate Rules or a trial de novo in the circuit court pursuant to the Rules of Civil Procedure. Section 163.250 F.S.1971, F.S.A.

Reversed and remanded with directions.

WALDEN and MAGER, JJ., concur.

ON PETITIONS FOR REHEARING.

PER CURIAM.

On petitions for rehearing the parties have advised this court that Orange County has not taken formal suitable action declaring its election to proceed under the provisions of Part II of the act entitled County and Municipal Planning For Future Development (163.160-163.315, F.S.1971, F.S.A.). Accordingly, the petitions for rehearing filed by the parties are granted and we recede from all references in our opinion of February 22, 1974, to the availability of Section 163.250, F.S.1971, F.S.A., in this case.

We maintain the view however, that the judgment appealed from should be reversed with directions to grant the writ of certiorari and to remand the cause to the board of county commissioners for another de novo hearing on the application for a special exception, at which time said board will have the opportunity to apply the balance-of-interests test to the evidence adduced before it. Thereafter, any aggrieved party may have that decision reviewed by the circuit court on petition for certiorari pursuant to the provisions of Chapter 63-1716, Special Acts of Florida, as amended.

WALDEN, MAGER and DOWNEY, JJ., concur.

All Citations

299 So.2d 657

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261 So.2d 832
Supreme Court of Florida.

Grace RENARD, Petitioner,
v.
DADE COUNTY, a political subdivision of the State of Florida, et al., Respondents.

No. 41388.
|
April 19, 1972.

Synopsis

Rezoning proceeding. The zoning officials rezoned tract from industrial to multiple family residence and abutting property owners sought certiorari. The Circuit Court for Dade County, Grady L. Crawford, J., entered ruling, and abutting property owner appealed. The District Court of Appeal, 249 So.2d 500, affirmed, and writ of certiorari issued. The Supreme Court, Boyd, J., held that owners of property abutting property sought to be rezoned from industrial to multiple family residence, with increased setback restrictions different in kind from community generally, had standing to bring suit attacking rezoning ordinance as not fairly debatable.

Affirmed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

***833** Eugene P. Spellman, of Law Offices of Eugene P. Spellman, Miami, for petitioner.

Stuart Simon, County Atty., and St. Julien P. Rosemond, Asst. County Atty., and Paul Siegel, of Sinclair, Louis, Sand & Siegel, Miami, for respondents.

Opinion

BOYD, Justice.

This cause is before us on petition for writ of certiorari to review the decision of the District Court of Appeal, Third District, reported at 249 So.2d 500. Jurisdiction is based on the certification of the District Court under ***834** Article V, s 4(2) of the Florida Constitution, F.S.A., that the decision sought to be reviewed passes upon a question of great public interest, to-wit:

> 'The standing necessary for a plaintiff to (1) enforce a valid zoning ordinance; (2) attack a validly enacted zoning ordinance as not being fairly debatable and therefore an arbitrary and unreasonable exercise of legislative power; and (3) attack a void ordinance, i.e., one enacted without proper notice required under the enabling statute or authority creating the zoning power.'

Petitioner Renard and respondents Richter, owned certain adjoining properties in the unincorporated area of Dade County zoned IU—2, industrial. The Richters applied for a rezoning of their parcel. The Board of County Commissioners ultimately permitted a rezoning from IU—2 to multiple family residence with certain exceptions relative to a nine-hole golf course and a variance for private, in lieu of public, roads. This was in accordance with the recommendations of the planning board as approved by the zoning appeals board of the county.

Petitioner was an objector in the zoning proceedings held before the Dade County Zoning Appeals Board and an objector before the Board of County Commissioners. Following adverse rulings by the appeals board and County Commission, petitioner sought certiorari before the Circuit Court pursuant to applicable county ordinances. [1]

The Circuit Court ruled that petitioner, not having alleged a special interest, had no standing to prosecute the matter in the Circuit Court and, even if she had standing, the record adequately demonstrated that the issue was fairly debatable and petitioner would not have been entitled to the relief sought.

On appeal, the District Court held that petitioner had sufficient standing to institute suit in the trial court but, that the rezoning in question was fairly debatable and therefore within the legislative discretion of the Board of County Commissioners. The District Court affirmed the judgment of the trial court but certified its decision as one passing on a question of great public interest.

The decision of the District Court on the question certified is as follows: [2]

'First, as indicated above, the appellant as an abutting property owner to the property rezoned would, in fact, suffer a special damage by virtue of the increased setback restriction different in kind from the community generally; and this would meet the test of special damage. But, even without meeting this test, we hold that these cases would not be applicable to a property owner within the area wherein actual notice was required to be sent to him prior to any rezoning hearing. Anything to the contrary said in S. A. Lynch Investment Corporation v. City of Miami, supra, is hereby specifically receded from. We further note that there is a distinction in the cases relied on by the County when there is a proceeding in which a plaintiff seeks to enforce an existing zoning ordinance, such as a violation of a setback requirement, special damage is necessary, and no special damage is necessary when a plaintiff seeks to ***835** have an act of a zoning authority declared void or is within the immediate area to be affected. Hartnett v. Austin, Fla.1956, 93 So.2d 86; Josephson v. Autrey, Fla.1957, 96 So.2d 784. In other words, we hold special damage must be shown when a taxpayer or property owner seeks to enjoin the violation of an existing ordinance (i.e. Boucher v. Novotny, Fla.1958, 102 So.2d 132; Conrad v. Jackson, Fla.1958, 107 So.2d 369), But need not be shown if the taxpayer or property owner is within the affected range of the property which requires actual notice before the rezoning made may be considered by the legislative body (Hartnett v. Austin, supra; Elwyn v. City of Miami, Fla.App.1959, 113 So.2d 849; Friedland v. City of Hollywood, Fla.App.1961, 130 So.2d 306; Vol. 3, American Law of Zoning, Anderson, s 21.05, p. 558), Or when he seeks to review an alleged void act. Hartnett v. Austin, supra; Josephson v. Autrey, supra; Rhodes v. City of Homestead, Fla.App.1971, 248 So.2d 674 (opinion filed May 25, 1971). Therefore, we find that in the instant case the appellant had the standing to institute the suit in the trial court.' (Emphasis supplied.)

In the years following this Court's decision in Boucher v. Novotny, [3] a split has developed between the various District Courts on the issue of standing to sue on zoning matters. The Boucher case was a suit to enjoin the violation of the setback requirements of a municipal zoning ordinance. The Bouchers sought to obtain mandatory injunctive relief to compel the Novotnys to remove allegedly illegal encroachments constructed on their motel. The City had approved the building plans for the Novotny's motel which included the complained of encroachment. The properties of the parties located in the City of Clearwater, were separated by a sixty-foot wide street. The Bouchers attempted to allege special damages by reason of proximity and by reason of being within the zoning area subject to the same setback requirements as the Novotny's property. This Court held, however, that the Bouchers did not have sufficient standing to sue and stated the following rule: [4]

'We, therefore, align ourselves with the authorities which hold that one seeking redress, either preventive or corrective, against an Alleged violation of a municipal zoning ordinance must allege and prove special damages peculiar to himself differing in kind as distinguished from damages differing in degree suffered by the community as a whole.' (Emphasis supplied.)

The 'special damage' rule of the Boucher case is an outgrowth of the law of public nuisance. [5] Zoning violations have historically been treated as public nuisances not subject to suit by an individual unless that individual has suffered damages different in kind and degree from the rest of the community. The Boucher rule was not intended to be applied to zoning matters other than suits by individuals for zoning violations. [6]

The general rule regarding standing to contest the action of a zoning authority was ***836** stated by this Court in Josephson v. Autrey: [7]

'We have on numerous occasions held that persons adversely affected by zoning ordinances or the action of zoning agencies have a status as parties sufficient to entitle them to proceed in court to seek relief.'

To like effect is this Court's decision in Hartnett v. Austin. [8]

In Wags Transportation System v. City of Miami Beach, [9] this Court held that homeowners in a zoning district would be permitted to intervene in an appeal from a decree breaking zoning restrictions and commercializing the area where their homes were located.

The District Court of Appeal, Third District, in Elwyn v. City of Miami, [10] held that abutting homeowners were entitled to maintain a suit challenging an ordinance granting a variance for a gasoline service station. On petition for rehearing, the Boucher case was raised by the zoning authority and distinguished by the District Court as follows:

'That case (Boucher) was not applicable here because of material difference in the factual situations presented in the two cases.

'The instant case was not one dealing with the violation of a zoning ordinance, but one which challenged the validity of an amendatory zoning ordinance, which, by granting a variance amounting to spot zoning, permitted appellees to put their property to a liberal business use (gasoline service station), prohibited in the more restricted R—3 classification for which the area involved was zoned. The right of an adjacent or nearby home owner directly affected by an alleged improper intrusion of such liberal business to challenge the validity thereof, is recognized.'

A similar case is that of Friedland v. Hollywood, [11] wherein the District Court of *837 Appeal, Second District, held void an ordinance which would have allowed the variance for the construction of a service station in the vicinity of property owned by the plaintiffs.

Some of the foregoing cases attacking the validity of zoning ordinances came to the Circuit Court as petitions for writ of certiorari to review actions of the zoning board of adjustment under Florida Statutes Chapter 176, F.S.A.; others originated in the Circuit Court. On the question of standing to sue there is no basis for distinguishing between cases reaching the courts after appeal to a zoning board, in areas where such boards exist, and those cases originating in the court system. [12] Florida Statutes s 176.11, F.S.A., provides for appeals to the zoning board of adjustment by 'any person aggrieved.' Florida Statutes s 176.16, F.S.A., provides that 'any person aggrieved' by the decision of the zoning board of adjustment may petition the Circuit Court for writ of certiorari.

An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The interest may be one shared in common with a number of other members of the community as where an entire neighborhood is affected, but not every resident and property owner of a municipality can, as a general rule, claim such an interest. An individual having standing must have a definite interest exceeding the general interest in community good share in common with all citizens. So-called 'spite suits' will not be tolerated in this area of the law any more than in any other.

In determining the sufficiency of the parties' interest to give standing, factors such as the proximity of his property to the property to be zoned or rezoned, the character of the neighborhood, including the existence of common restrictive covenants and set-back requirements, and the type of change proposed are considerations. The fact that a person is among those entitled to receive notice under the zoning ordinance is a factor to be considered on the question of standing to challenge the proposed zoning action. However, since the notice requirements of the many zoning laws throughout the State vary greatly, notice requirements are not controlling on the question of who has standing. Persons having sufficient interest to challenge a zoning ordinance may, or may not, be entitled to receive notice of the proposed action under the zoning ordinances of the community.

It is to be remembered that even though a person has sufficient standing to challenge the action of the zoning authority, he must still carry the burden of proving that the challenged action of the zoning authority was not fairly debatable. [13]

The question certified to this Court, set out supra, has three parts. Part (1) deals with standing to enforce a valid zoning ordinance. The Boucher rule requiring special damages still covers this type of suit. However, in the twenty years since the Boucher decision, changed conditions, including increased population growth and *838 density, require a more lenient application of that rule. The facts of the Boucher case, if presented today, would probably be sufficient to show special damage.

Part (2) of the question certified to this Court deals with standing to attack a validly enacted zoning ordinance as being an unreasonable exercise of legislative power. As indicated above, persons having a legally recognizable interest, which is adversely affected by the proposed zoning action, have standing to sue.

Part (3) of the question certified deals with standing to attack a zoning ordinance which is void because not properly enacted, as where required notice was not given. Any affected resident, citizen or property owner of the governmental unit in question has standing to challenge such an ordinance. [14]

The District Court found that petitioner Renard had sufficient standing to attack the rezoning here in question, but, on review of the record, determined that the rezoning was 'fairly debatable' and so was a valid exercise of power by the zoning authority. We agree.

Accordingly, and for the foregoing reasons, the decision of the District Court of Appeal is affirmed.

It is so ordered.

ROBERTS, C.J., and ERVIN, CARLTON and McCAIN, JJ., concur.

All Citations

261 So.2d 832

Footnotes

1 Metropolitan Code of Dade County, s 33—316: 'No Person aggrieved by any zoning resolution, order, requirement, decision or determination of an administration official or by any decision of the zoning appeals board may apply to the Court for relief unless he has first exhausted the remedies provided for herein and taken all available steps provided in this article . . . it is intended and suggested that such decision may be reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or board; and such time shall commence to run from the date of the decision sought to be reviewed.' (Emphasis supplied.)

2 Renard v. Dade County, 249 So.2d 500, 502 (Fla.App.3rd 1971).

3 102 So.2d 132 (Fla.1958).

4 Id. at 135.

5 Boucher v. Novotny, 102 So.2d 132, 135 (Fla.1958); North Dade Bar Assoc. v. Dade-Commonwealth Title Ins., 143 So.2d 201, 205 (Fla.App.3rd 1962): "* * * A public nuisance is an offense against the State, and as such is subject to abatement or indictment on the motion of the proper governmental agency. * * *
"* * * An individual cannot maintain an action for a public nuisance as such. But when an individual suffers special damage from a public nuisance, he may maintain an action.'
'This rule has been applied in Florida to suits to enjoin a zoning violation. Boucher v. Novotny, Fla.1958, 102 So.2d 132.'

6 Boucher has been subject to criticism even as applied to zoning violations: 12 Univ.Fla.L.Rev., Third Parties in Zoning, 16, 23, 40 (1959).

7 96 So.2d 784, 787 (Fla.1957).

8 93 So.2d 86, 90 (Fla.1956): 'We encounter no difficulty in concluding that the appellees were entitled to bring the suit. They occupied their homes immediately across the street from the proposed parking area. They relied on the existing zoning conditions when they bought their homes. They had a right to a continuation of those conditions in the absence of a showing that the change requisite to an amendment had taken place. They allege that the contemplated change would damage them and that it was contrary to the general welfare and totally unjustified by existing conditions. This gave them a status as parties entitled to come into court to seek relief. True their rights were subject to the power of the city to amend the ordinance on the basis of a proper showing. Nonetheless, they have a right to insist that the showing be made.'
See also, 35 Fla.Jur., Zoning Laws, s 30: 'Persons adversely affected by zoning ordinances or the action of zoning agencies have a status as parties sufficient to entitle them to proceed in court to seek relief.'

9 88 So.2d 751, 752 (Fla.1956): 'The petition for leave to intervene alleges that petitioners are within the same zoning district as the property described in the complaints in the consolidated causes, that the decree destroys the value of their property because petitioners have homes on said property which they use for residential purposes, therefore the decree of the lower court breaking these zoning restrictions and commercializing the district renders their property less suitable for residential purposes. Petitioners' property was purchased on

the strength of the zoning ordinance and in reliance upon the fact that all property within the zoning district would be maintained as residential property. * * *

'We think the petition to intervene showed such an interest in the res that the ends of justice require that it be granted. * * * Nothing is more sacred to one than his home and the petitioners should have been permitted to come in and bring their rights in this to the attention of the court.'

10 113 So.2d 849 (Fla.App.3rd); cert. denied 116 So.2d 773, (Fla.1959).

11 130 So.2d 306 (Fla.App.2d 1961).

12 2 Rathkopf, Zoning and Planning, 36—1 (1971): 'Generally, any person who can show that the existence or enforcement of a zoning restriction adversely affects, or will adversely affect, a property interest vested in him or that the grant of a permit to another or rezoning of another's land will similarly affect him, has the requisite justiciable interest in the controversy, and is a proper party plaintiff. In this aspect, the right of a litigant to sue for declaratory judgment or for an injunction is based upon the same criteria as are determinative of the status of a petitioner as a 'party aggrieved' to bring certiorari to review the determination of a board of appeals or adjustment. The difference, if any, relates only to the forum and form of the remedy.' (Emphasis supplied.)

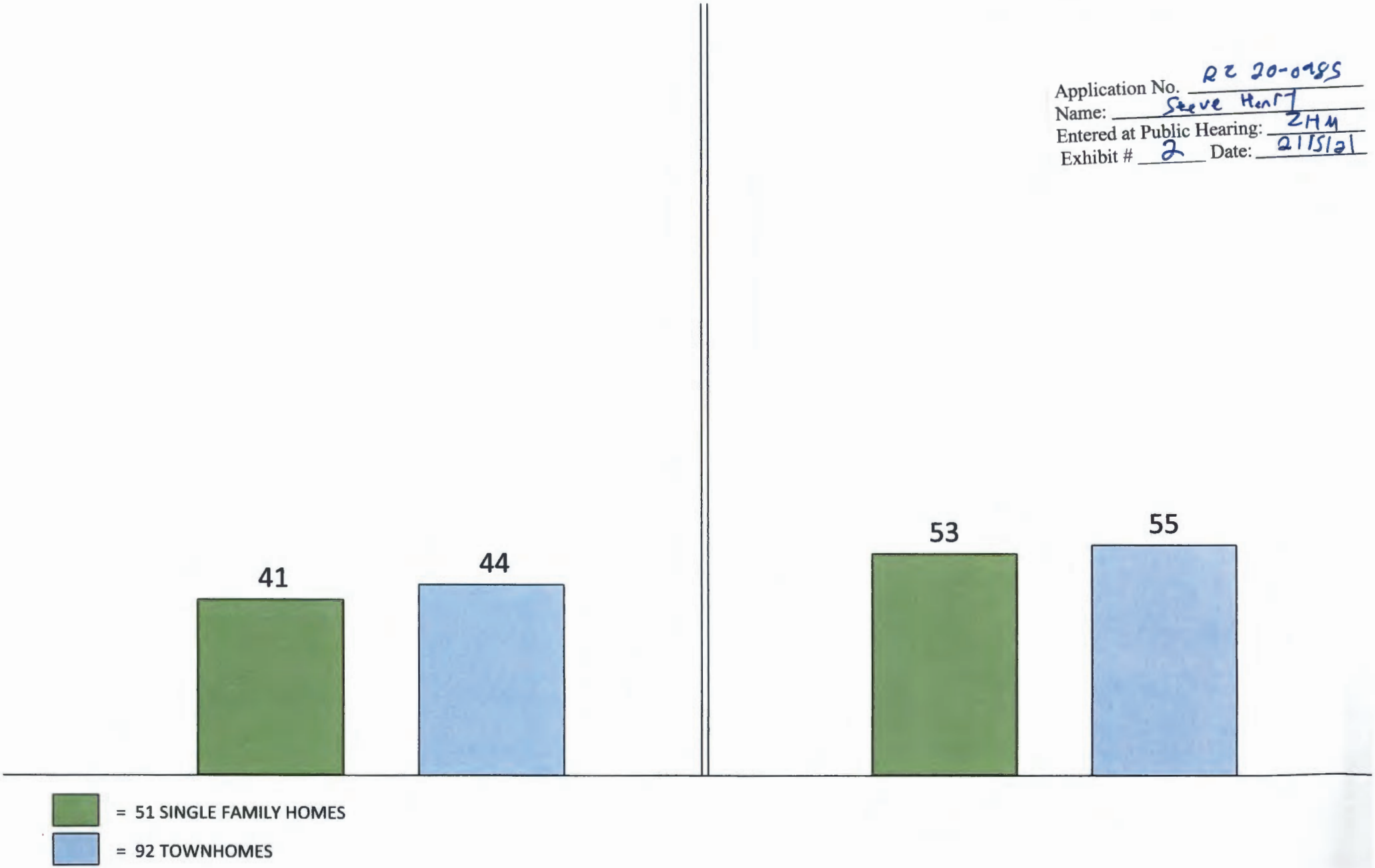
13 City of Miami v. Hollis, 77 So.2d 834 (Fla.1959); City of Jacksonville v. Imler, 235 So.2d 526 (Fla.App.1st 1970).

14 See e.g., Rhodes v. City of Homestead, 248 So.2d 674 (Fla.App.3rd 1971); Knowles v. Town of Kenneth City, 247 So.2d 748 (Fla.App.2d 1971).

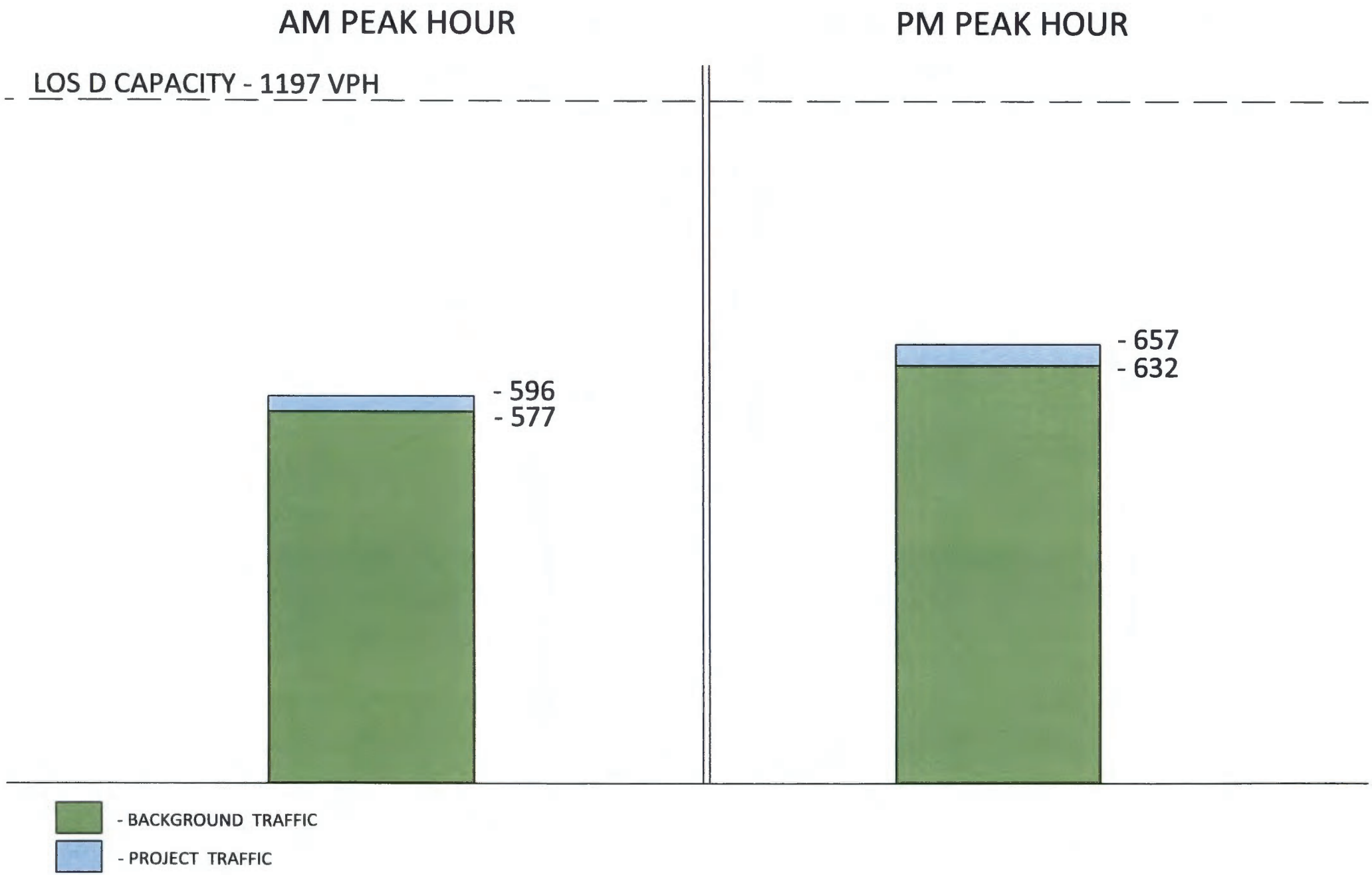
End of Document

TRIP GENERATION COMPARISON

Application No. RZ 20-0985
Name: Steve Henry
Entered at Public Hearing: ZHM
Exhibit # 2 Date: 2/15/21



LEVEL OF SERVICE
RIVERVIEW DRIVE



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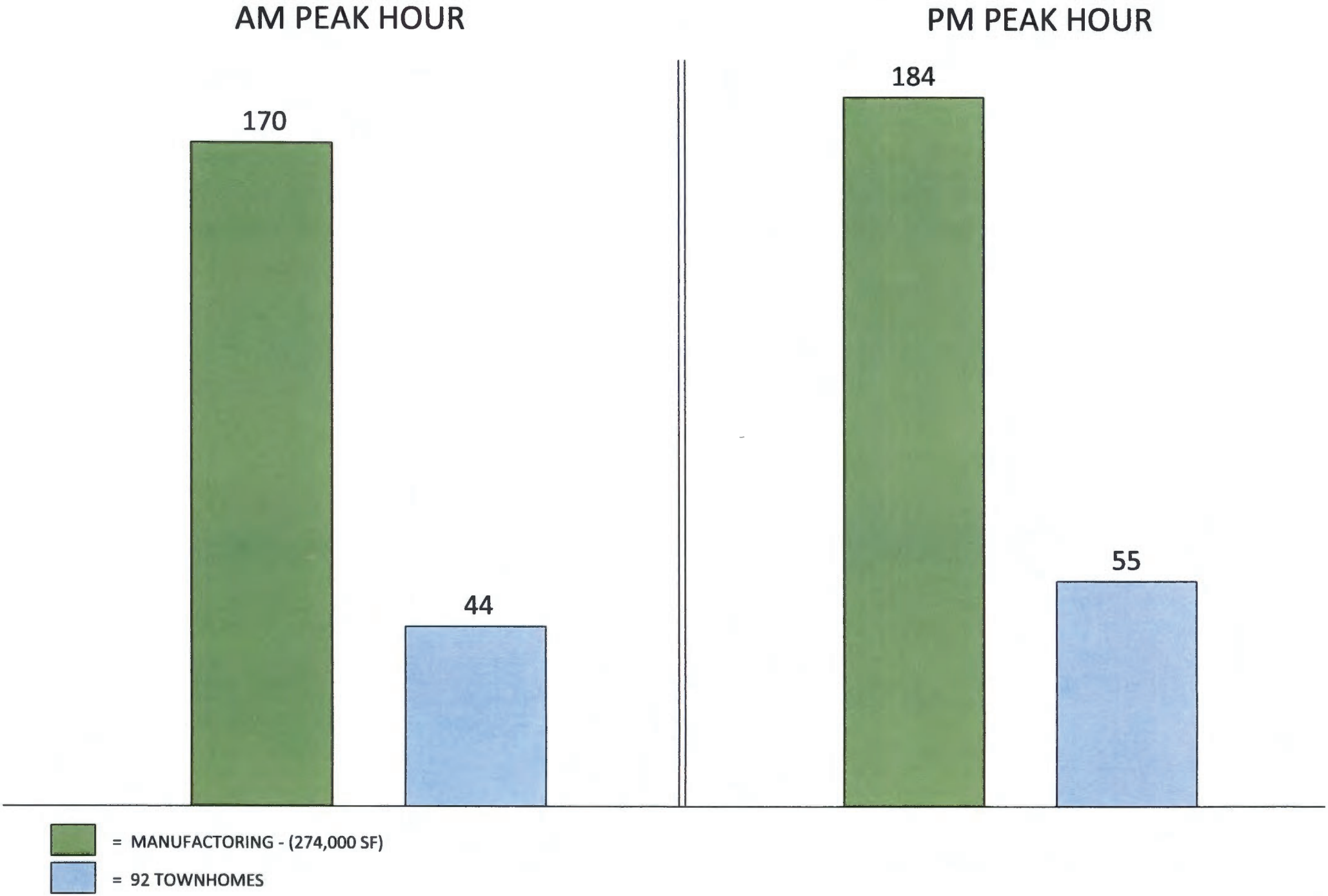
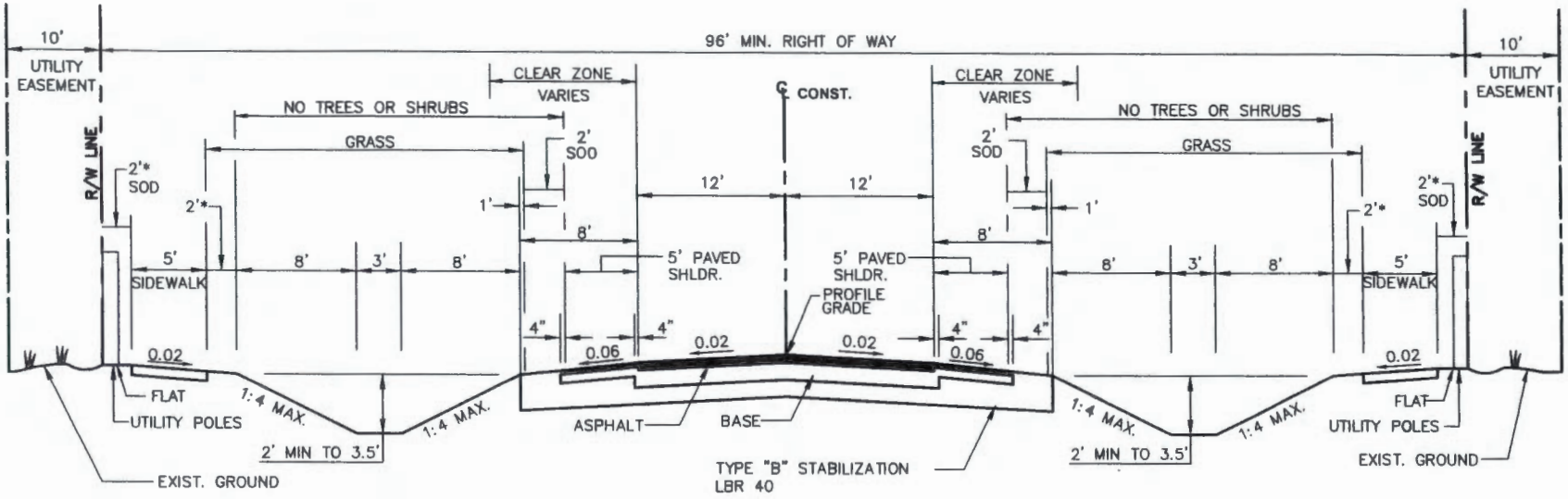




TYPICAL SECTION

N.T.S.

FOR LESS THAN 10,000 AADT

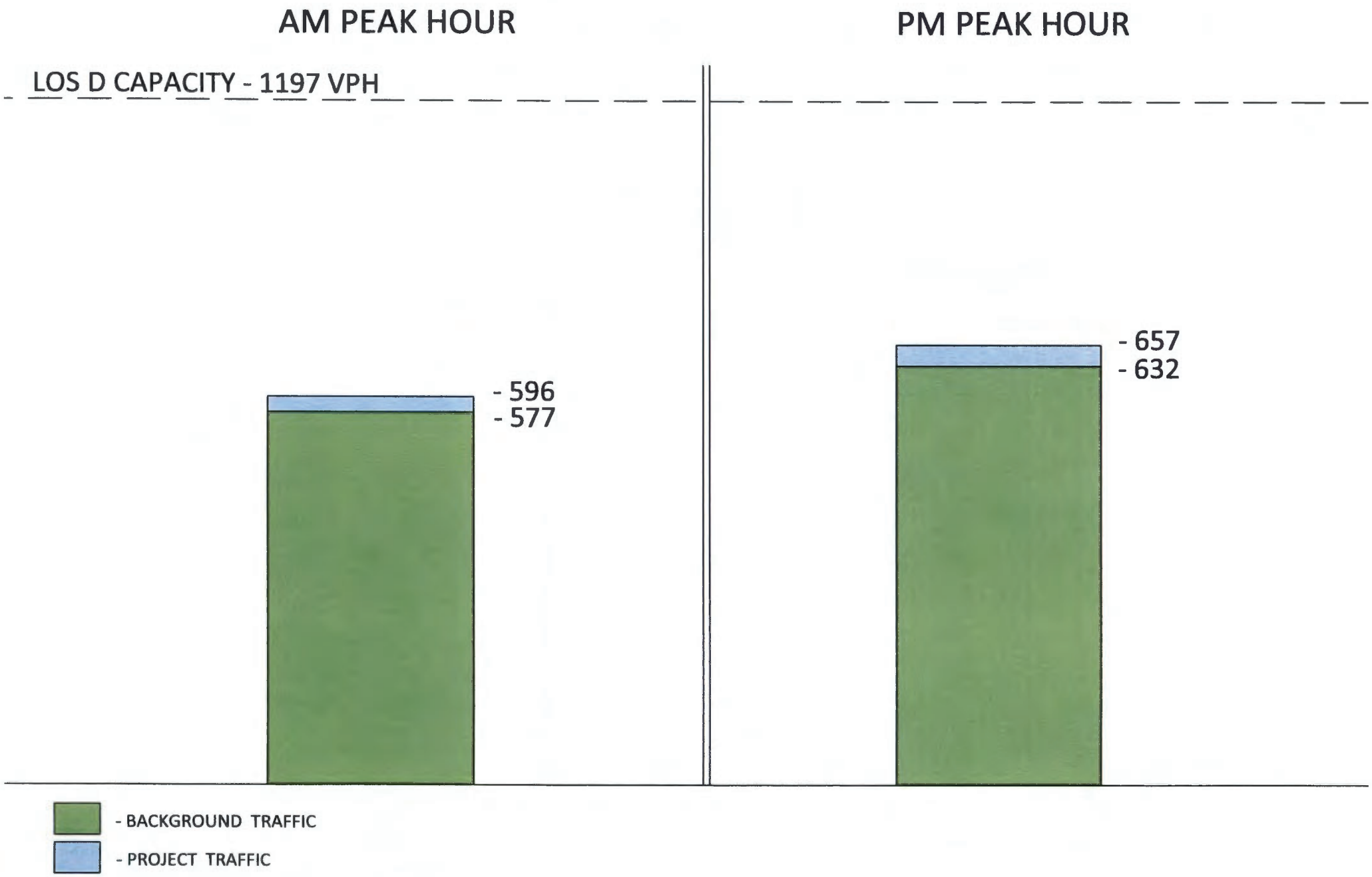
MAX. ALLOWABLE DESIGN SPEED – 50 MPH

1. ALL DIMENSIONS SHOWN ARE MINIMUM.
2. SEE APPROPRIATE SECTIONS OF TECHNICAL MANUAL FOR DESIGN PARAMETERS.
* 3. PROVIDE 2' MINIMUM CLEARANCE FROM FENCES, WALLS, HEDGES, ABOVEGROUND UTILITIES OR IMPROVEMENTS, DROP OFFS, OR FROM THE TOPS OF BANKS WITH SLOPES STEEPER THAN 1 TO 4, THAT INTERFERE WITH THE SAFE, FUNCTIONAL USE OF THE SIDEWALK. INTERMITTENT ABOVEGROUND UTILITIES, OR MATURE TREES, 2' OR LESS IN DIAMETER MAY BE PLACED IN THIS 2' STRIP AS FAR FROM THE SIDEWALK AS POSSIBLE, IF NOT IN THE CLEAR ZONE.
4. SOD SHALL BE PLACED IN TWO ROWS STAGGERED. (BOTH TEMPORARY AND PERMANENT)
5. PAVED SHOULDER TO BE STRIPED AS A DESIGNATED BIKE LANE, AS APPROPRIATE.

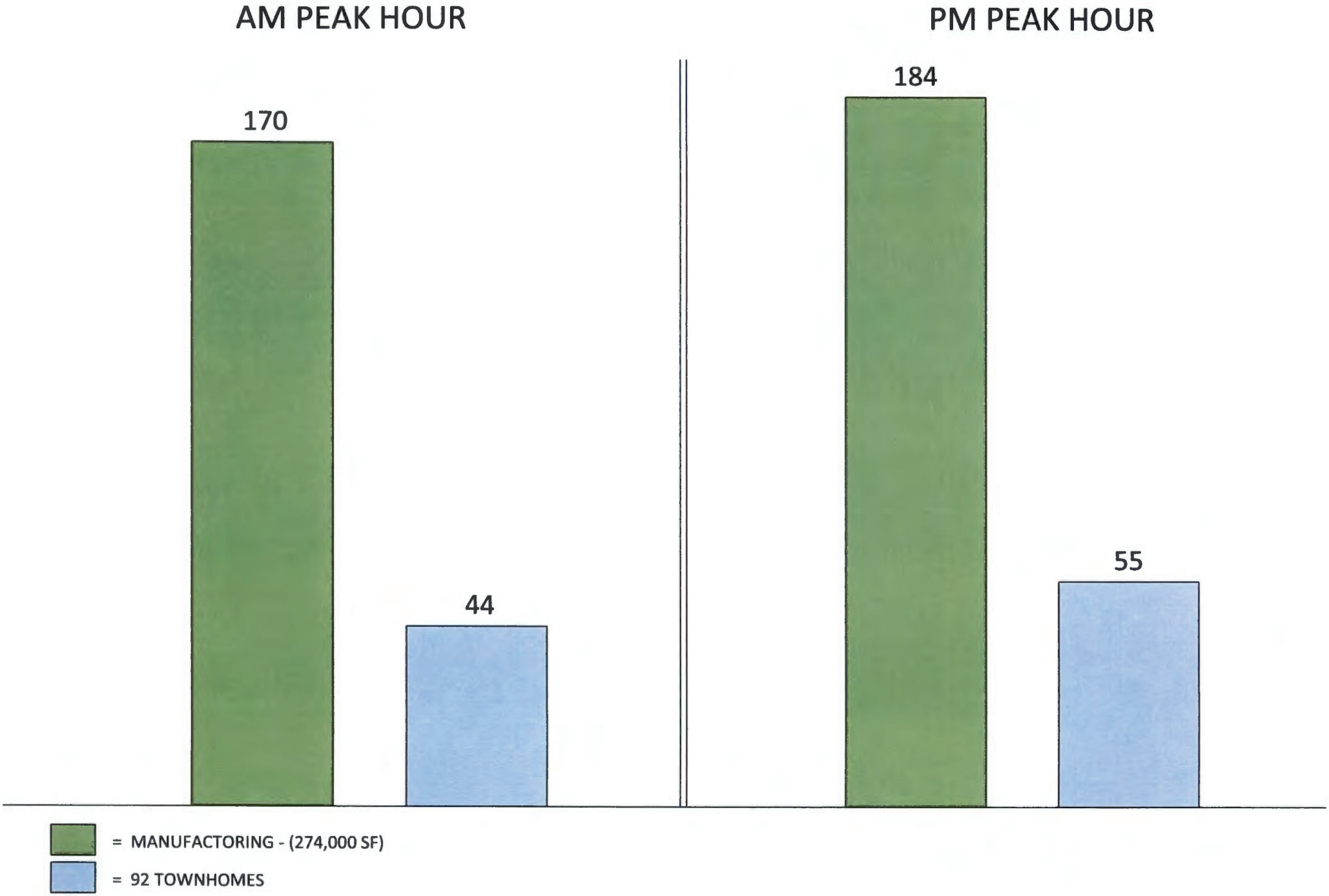
REVISION DATE: 10/17	TRANSPORTATION TECHNICAL MANUAL	Hillsborough County Florida	LOCAL & COLLECTOR RURAL ROADS (2 LANE UNDIVIDED) TYPICAL SECTION	DRAWING NO. TS-7
				SHEET NO. 1 OF 1

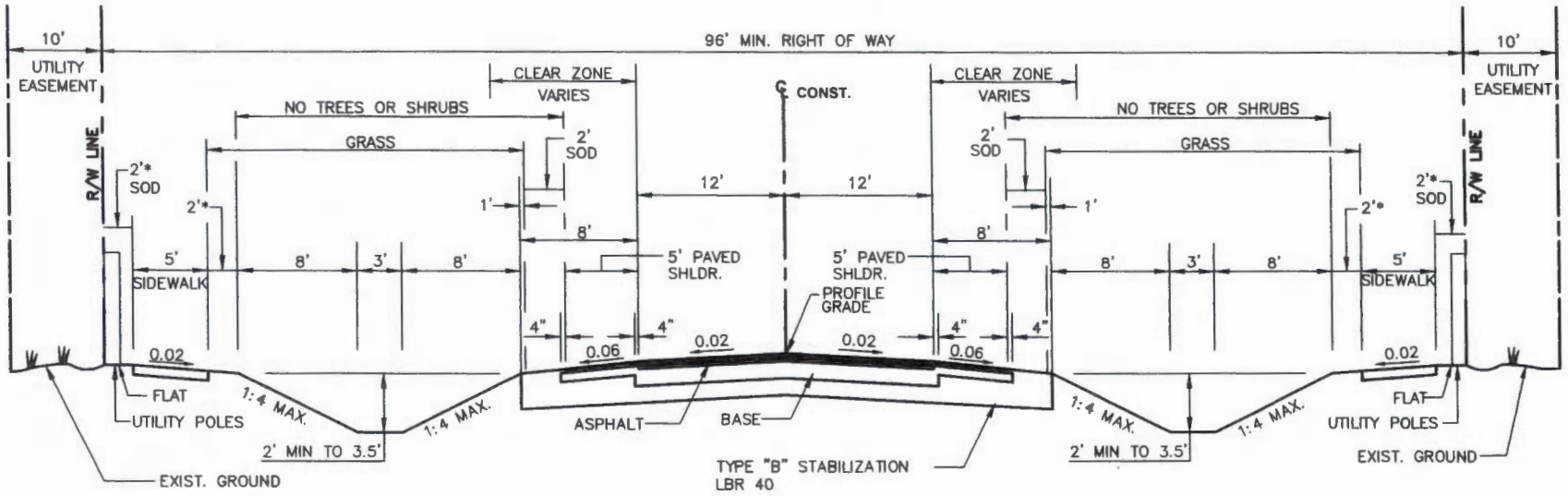
FIGURE 1
IMPROVEMENT PLAN

LEVEL OF SERVICE
RIVERVIEW DRIVE



TRIP GENERATION COMPARISON





TYPICAL SECTION

N.T.S.

FOR LESS THAN 10,000 AADT

MAX. ALLOWABLE DESIGN SPEED – 50 MPH

1. ALL DIMENSIONS SHOWN ARE MINIMUM.
2. SEE APPROPRIATE SECTIONS OF TECHNICAL MANUAL FOR DESIGN PARAMETERS.
* 3. PROVIDE 2' MINIMUM CLEARANCE FROM FENCES, WALLS, HEDGES, ABOVEGROUND UTILITIES OR IMPROVEMENTS, DROP OFFS, OR FROM THE TOPS OF BANKS WITH SLOPES STEEPER THAN 1 TO 4, THAT INTERFERE WITH THE SAFE, FUNCTIONAL USE OF THE SIDEWALK. INTERMITTENT ABOVEGROUND UTILITIES, OR MATURE TREES, 2' OR LESS IN DIAMETER MAY BE PLACED IN THIS 2' STRIP AS FAR FROM THE SIDEWALK AS POSSIBLE, IF NOT IN THE CLEAR ZONE.
4. SOD SHALL BE PLACED IN TWO ROWS STAGGERED. (BOTH TEMPORARY AND PERMANENT)
5. PAVED SHOULDER TO BE STRIPED AS A DESIGNATED BIKE LANE, AS APPROPRIATE.

REVISION DATE: 10/17	TRANSPORTATION TECHNICAL MANUAL	Hillsborough County Florida	LOCAL & COLLECTOR RURAL ROADS (2 LANE UNDIVIDED) TYPICAL SECTION	DRAWING NO. TS-7
				SHEET NO. 1 OF 1

FIGURE 1
IMPROVEMENT PLAN

PARTY OF RECORD

Camacho, Juan

From: formstack@hillsboroughcounty.org
Sent: Saturday, October 3, 2020 11:17 AM
To: Commissioner District 4
Subject: (WEB mail) - Please stop development of townhomes

The following Commissioner(s) received a direct copy of this email:

1 | Commissioner Sandy Murman (District 1)
2 | Commissioner Ken Hagan (District 2)
3 | Commissioner Les Miller (District 3)
4 | Commissioner Stacy White (District 4)
5 | Commissioner Mariella Smith (District 5)
6 | Commissioner Pat Kemp (District 6)
7 | Commissioner Kimberly Overman (District 7)

Date and Time Submitted: Oct 3, 2020 11:16 AM

Name: Mona Posinoff

Address: 8813 Cross Landing Lane
Riverview , FL 33578

Phone Number: (813) 465-2002

Email Address: mposinoff@earthlink.net

Subject: Please stop development of townhomes

Message: I am a homeowner in the Eagle Watch subdivision opposite the proposed property development of 92 townhomes- 40' N of Eagle Watch Drive on Riverview Dr. which is directly across from our entrance.

Living here for 18 years, I have witnessed the surrounding development of subdivisions creating congestion and vehicle accidents due to the massive increase of traffic on the one lane each way roads in this area.
The majority of people driving on Riverview Road on both morning and afternoon commutes use this road to bypass others.
I have counted more than ONE HUNDRED vehicles waiting at the Riverview traffic light to turn onto 41!
What used to be a two-five minute drive in the opposite direction heading towards 301 on Riverview Dr. can now take up to 20 minutes to get through the traffic light at that light.

Please, I ask that you vote to halt this development of mass congestion in an area not created for high density living or traffic.
The roads cannot support the amount of traffic the requested development is asking.

Instead, if they must develop the property can they instead build single houses on larger plots which would limit

the amount of vehicle traffic being added to an already over populated road?

Your support is greatly appreciated.

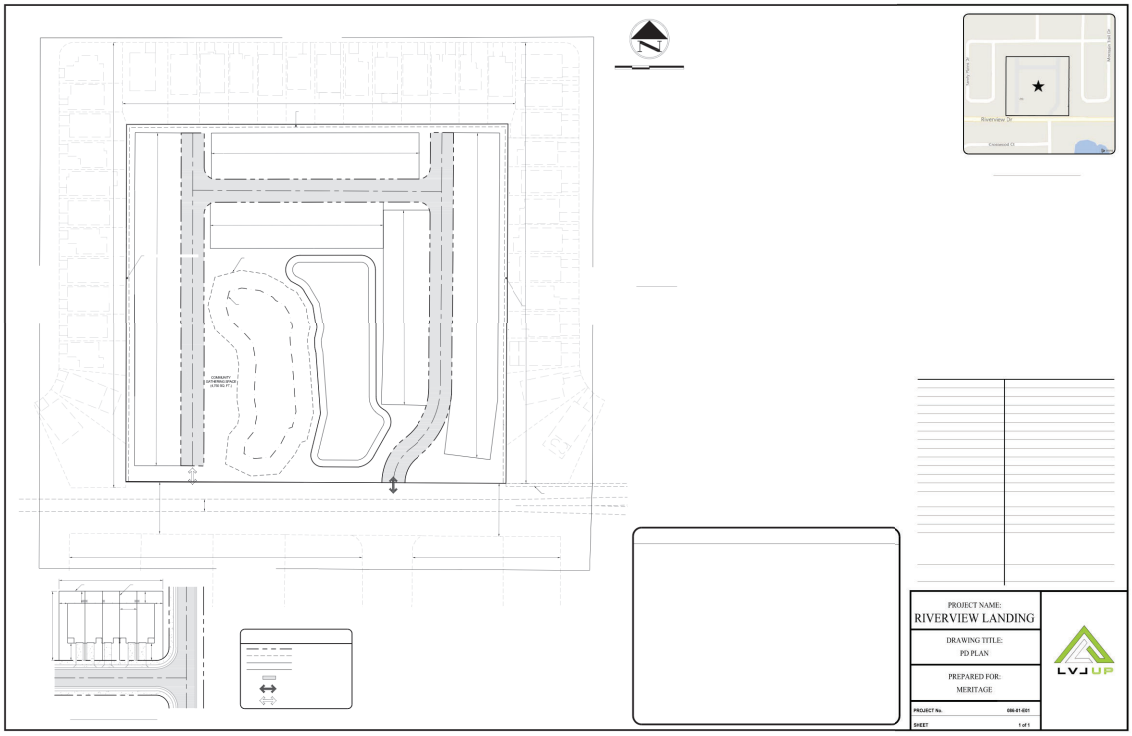
Mona Posinoff
Concerned resident

673248769

Mozilla/5.0 (iPad; CPU OS 12_1_4 like Mac OS X) AppleWebKit/605.1.15 (KHTML, like Gecko) Version/12.0 Mobile/15E148 Safari/604.1

From: Mona Pisinoff
To: Timotej, Rosalina
Subject: Re: (WEB mail) - Please stop development of townhomes
Date: Wednesday, October 28, 2020 8:37:17 AM
Attachments: image001.png
image002.png

[External]



Don't know the application #, but this is what they are asking.

20-0985

Check out my Podcast:
Stories from A-Z with Mona P

From: "Timoteo, Rosalina" <TimoteoR@HillsboroughCounty.ORG>
Date: Wednesday, October 7, 2020 at 8:42 AM
To: "mposinoff@earthlink.net" <mposinoff@earthlink.net>
Subject: RE: (WEB mail) - Please stop development of townhomes

Mona:

What is the application number?

Thank you,

Rosa Timoteo
Senior Planning & Zoning Technician
Development Services Dept.

P: (813) 307-1752
E: timoteor@hillsboroughcounty.org
W: HCFLGov.net

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

Facebook | Twitter | YouTube | LinkedIn | HCFL Stay Safe

Date and Time Submitted: Oct 3, 2020 11:16 AM

Name: Mona Posinoff

Address: 8813 Cross Landing Lane
Riverview , FL 33578

Phone Number: (813) 465-2002

Email Address: mposinoff@earthlink.net

Subject: Please stop development of townhomes

Message: I am a homeowner in the Eagle Watch subdivision opposite the proposed property development of 92 townhomes- 40' N of Eagle Watch Drive on Riverview Dr. which is directly across from our entrance.

Living here for 18 years, I have witnessed the surrounding development of subdivisions creating congestion and vehicle accidents due to the massive increase of traffic on the one lane each way roads in this area.
The majority of people driving on Riverview Road on both morning and afternoon commutes use this road to bypass others.
I have counted more than ONE HUNDRED vehicles waiting at the Riverview traffic light to turn onto 41!
What used to be a two-five minute drive in the opposite direction heading towards 301 on Riverview Dr. can now take up to 20 minutes to get through the traffic light at that light.

Please, I ask that you vote to halt this development of mass congestion in an area not created for high density living or traffic.
The roads cannot support the amount of traffic the requested development is asking.

Instead, if they must develop the property can they instead build single houses on larger plots which would limit the amount of vehicle traffic being added to an already over populated road?

Your support is greatly appreciated.

Mona Posinoff
Concerned resident

673248769

Mozilla/5.0 (iPad; CPU OS 12_1_4 like Mac OS X) AppleWebKit/605.1.15 (KHTML, like Gecko) Version/12.0 Mobile/15E148 Safari/604.1

STILLWATERS LANDING HOMEOWNERS ASSOCIATION, INC.
8819 Stillwaters Landing Drive
Riverview, FL 33578

1 November 2020

Subject: Resolution to Deny Rezoning Request 20-0985 Townhome Development

- The Stillwaters Landing community consists of 21 privately owned properties located 200 yards east of the proposed development site on the south side of Riverview Drive.

- Meritage Homes is seeking rezoning of the 9.47-acre parcel(s) located directly across the intersection of Eagle Watch Drive and Riverview Drive; for the purpose of building a high-density 92- unit townhome community.

- Riverview Drive is the only ingress/egress for thousands of residents with properties immediately south of the road. Additionally, it is the sole ingress/egress for hundreds of residents to the immediate north. As proposed, this Development will also use Riverview Drive as the only ingress/egress point.

- Riverview Drive is an aged, substandard four-mile road connecting Hwy 41 on the west to Hwy 301 on the east. As such, it is a critical east-west traffic artery, not only for residents but also for a growing number of commuters. It sorely needs resurfacing, widening to accommodate additional turn lanes (especially a right turn lane onto Hwy 301), and a traffic light at the intersection of Riverview Drive and 78th Street.

- The high-density Development of 92 townhomes on Riverview Drive will add a significant traffic burden to a substandard road resulting in added congestion and safety concerns. Additionally, approval of this Rezoning Request will set precedent for future such requests for additional high-density developments, further exacerbating the problem.

- It is the Stillwaters Homeowners Association Board of Directors responsibility to represent our community's interests in decisions that may impact safety and quality of life. The Board therefore resolves, on behalf of all Stillwaters' residents, to take this official position **against** the approval of rezoning application 20-0985 for the Townhome Development.

-However, Stillwater's HOA would support a rezoning request for single-family homes. This support is conditional based on the developer providing turn lanes into the development and any additional items needed to reduce congestion and enhance trafficability. This action would be more compatible with existing developments and result in far less additional traffic than a high-density Townhome Development.

Respectfully,

Stillwaters Landing HOA Board

Resolution to Deny Rezoning Request 20-0985 Townhome Development
Approved by the Board of Directors—Eagle Watch Homeowners Association

Whereas Meritage Homes is seeking rezoning of the 9.47 acre parcel(s) located directly across the intersection of Eagle Watch Drive and Riverview Dr, for the purpose of building a 92 unit townhome community application 20-0985;

Whereas it is the Eagle Watch Homeowners Association Board of Directors responsibility to represent the community's interests in decisions which may impact property values and quality of life within the community and:

Whereas it is the Boards responsibility to take actions intended to protect the interests of the membership;

Whereas the Eagle Watch community is on 59 acres, with 63 privately owned parcels with 62 single family homes

Whereas the development of 92 townhomes directly across from the Eagle Watch community will add a traffic burden to a substandard county road, Riverview Drive, resulting in added congestion and potential risk to public safety;

Whereas, the high density townhome development would use Riverview Drive as its sole point of ingress and egress;

Whereas the Board and the Eagle Watch community recognize residential rezoning of the subject parcels for *single family* residences would result in lower and more manageable traffic to Riverview Dr. diminishing the negative impact on congestion and public safety

Now therefore let it be resolved that the Board on behalf of all it's resident members takes this official action to support the denial of rezoning application 20-0985.

From:	Grady, Brian
To:	Timoteo, Rosalina
Cc:	Beachy, Stephen
Subject:	FW: (WEB mail) - Growth vs road capacity
Date:	Monday, February 8, 2021 9:35:55 AM
Attachments:	image001.png image002.png

For the file for 20-0985. Thanks.

J. Brian Grady
Executive Planner
Development Services Department

P: (813) 276-8343
E: GradyB@HCFLGov.net
W: HCFLGov.net

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

From: Cohen, Harry <CohenH@hillsboroughcounty.org>
Sent: Monday, February 8, 2021 9:33 AM
To: Grady, Brian <GradyB@HillsboroughCounty.ORG>
Cc: Manresa, Lidia <ManresaL@hillsboroughcounty.org>
Subject: FW: (WEB mail) - Growth vs road capacity

Brian,
This must be a project in process since I'm unaware of the 2/15 meeting he references. Please add this to the file and confirm that this should not be shared with the Commissioner at this time. Thanks so much.

Della Cury
Legislative Aide to Harry Cohen
County Commissioner, District 1
P: (813) 272-5470
E: Curyd@HillsboroughCounty.org
County Center, 601 E Kennedy Blvd, 2nd floor
Tampa, FL 33602

From: formstack@hillsboroughcounty.org <formstack@hillsboroughcounty.org>

Sent: Friday, February 5, 2021 2:51 PM
To: Commissioner District 1 <ContactDistrict1@hillsboroughcounty.org>
Subject: (WEB mail) - Growth vs road capacity

The following Commissioner(s) received a direct copy of this email:

1 | Commissioner Harry Cohen (District 1)

Date and Time Submitted: Feb 5, 2021 2:51 PM

Name: robert rose

Address: 8926 eagle watch dr
riverview, FL 33578

Phone Number: (813) 362-1572

Email Address: bobjrose@gmail.com

Subject: Growth vs road capacity

Message: Commissioner Cohen--

Our community (Eagle Watch Homeowners on Riverview Drive-33578) is increasingly worried about the continued growth of residential dwellings along Riverview Drive. We (our community plus several others) are at the moment actively engaged at the hearing master level on a zoning variance request (0985), which could add 92 dwellings directly across the street. This project, as well as the potential for others along Riverview Drive can ONLY use Riverview Dr for ingress/egress, which is a 'substandard' connector road between RT301 and RT41.
We would like the opportunity to express both our immediate and longer term concerns with you.(the issue is scheduled to be discussed at the 2.15 hearing).

Thank you

Bob Rose
Eagle Watch Homeowners Association

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