

STAFF REPORT

| SUBJECT: | MM 21-0033 | PLANNING AREA: | Riverview/Balm |
|--|---|-----------------------------------|----------------|
| REQUEST: | Major Modification to a Planned Development | SECTOR | South |
| APPLICANT: Eisenhower Property Group, L.L.C. | | | |
| Existing Zoning: PD 18-0304 | | Comp Plan Category: RES-2 & RES-4 | |



-- Prepared: 05/27/2021

ZHM HEARING DATE: February 15, 2021

BOCC MEETING DATE: April 13, 2021

CASE REVIEWER: Michelle Heinrich, AICP

Application Review Summary and Recommendation

This application was continued at the April 13, 2021 BOCC Land Meeting to the June 8, 2021 BOCC Land Use Meeting to allow the applicant to provide additional details regarding the land excavation. The applicant has provided information, signed and sealed by an engineer, that states approximately 1 million cubic yards is needed to be removed from the project (see Exhibit 6). This amount will be generated from the creation of the stormwater ponds, as high areas of the site will provide adequate material to fill low areas of the site. Condition 14.1 has been revised to reflect the maximum permitted to be exported.

1.0 Summary

1.1 Project Narrative

The applicant is requesting a major modification to Planned Development (PD) 18-0304, as most recently modified by MM 19-1172. PD 18-0304 is a 358.0 acre, non-contiguous PD with a northern area (Rhodine Borrow Pit) in the Riverview community and a southern area (The Grove) in the Balm community (see Figure 1). This application requests to modify the "The Grove" portion of the PD by allowing the use of a land excavation. No modifications to the "Rhodine Borrow Pit" portion are proposed.

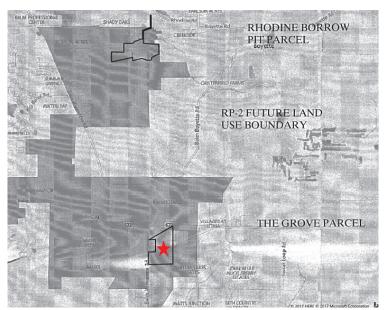


Figure 1: PD 18-0304 Areas

The subject site received approval for a Special Use Permit (SU 19-1026) for a land excavation on August 22, 2020. The permit allows for the removal of a maximum of 2.5 million cubic yards of material (lake creation) from 54 acres of the site over a five year period (see Figure 2). Distance waivers, as part of the Special Use Permit, were approved to the required distance standards of 500 feet from residentially developed/zoned property, 1,000 feet from churches, and 30/50 feet from wetland areas. As specified in SU 19-1026 condition #2, approval of this use within the PD is required prior to the issuance of an Operating Permit.

"The Grove" PD portion is 178 acres in size and approved for 356 single-family detached units and 497 square feet of retail uses. The site's location in the RP-2 Future Land Use (FLU) category permits a maximum of 2 dwelling units per acre when developed in Planned Village pattern in accordance with the Land Development Code and *Future of Hillsborough* Comprehensive Plan.

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"The Rhodine Borrow Pit" PD portion is 180 acres in size approved for 271 single-family detached units and 3,658.5 sf of retail uses (Village Node). The site is located both with the RP-2 and RES-4 Future land use categories. This portion of the PD is not proposed for any modifications.



Figure 2: Excavation Areas per SU 191026 staff report

1.2 Compliance Overview with Land Development Code and Technical Manuals

The application does not require any variations to Land Development Code Parts 6.05.00 (Parking and Loading), 6.06.00 (Landscaping/Buffering) or 6.07.00 (Fences and Walls).

1.3 Evaluation of Existing and Planned Public Facilities

The project area is located in the Rural Service Area. In accordance with the planned villages LDC requirements and Comprehensive Plan policies, water and wastewater to serve the project is to be brought to the site at the developer's expense.

Transportation staff has reviewed the request and has no objections, proposed conditions or modified conditions.

1.4 Natural Resources/Environmental

The Environmental Protection Commission has reviewed the application and finds that wetlands (ditches) are present on the site. No objections are made subject to existing conditions of approval.

The site is not located within a Wellhead Resource Protection Zone, a Surface Water Protection Area, a Significant Wildlife Habitat or the Coastal High Hazard Area. The northwestern area does contain a community potable well and community potable well buffer. The site is not adjacent to any ELAPP lands. None of the roadways along the perimeters of the site are designated as Scenic Corridors.

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1.5 Comprehensive Plan Consistency

The project is located within the RP-2 Future Land Use (FLU) category and within the Balm Community Plan area. Planning Commission staff has found the proposed modification request to be **CONSISTENT** with the *Future of Hillsborough* Comprehensive Plan.

1.6 Compatibility

The subject area ("The Grove") is located within an area developed with agricultural and residential uses and has been approved for a planned village. No increase in density is proposed.

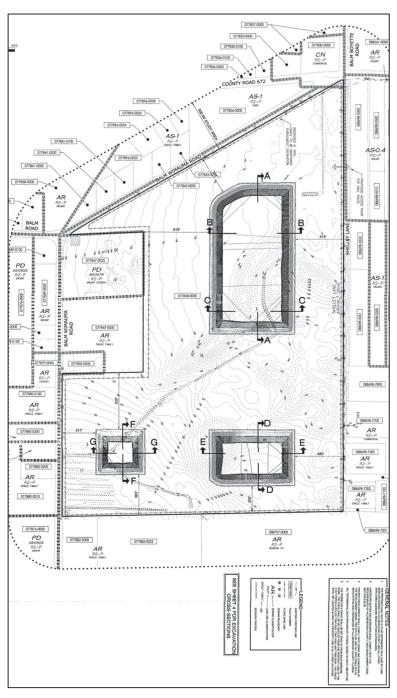


Figure 3: SU 19-1026 Site Plan

Under SU 19-1026, staff found that the subject site is located on a designated Truck Route and is not within a land excavation prohibited or restricted area. Figure 3, provided below, depicts the land excavation details per the SU 19-1026 site plan. The specific excavation pits do not meet required setbacks from all neighboring residentially properties and two churches; however, the future use of these excavation pits as ponds are consistent with the areas depicted for ponds on general site plan for the previously approved PD rezoning. Furthermore, the applicant proposed operational restrictions that exceed those required in the Land Development Code. Staff also noted the following: the excavation driveway will be located on the east side of the site to eliminate impacts associated with the driveway to neighboring residential and church uses; material stockpiles will be located at least 200 feet from Balm-Wimauma adjacent residential and adjacent church uses; the entire site will be screened with a 6 foot high solid wood or PVC fence; and, this fence will be located at least 30 feet from Balm Riverview Road and at least 50 feet from adjacent residential and church use parcels. Therefore, the use was found to be compatible with the surrounding area.

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1.7 Agency Comments

The following agencies have reviewed the application and offer no objections:

- Transportation
- Environmental Protection Commission
- Water Resource Services

1.8 Exhibits

Exhibit 1: Future Land Use Map

Exhibit 2: Aerial/Zoning Map – General Area

Exhibit 3: Aerial/Zoning Map – Immediate Area

Exhibit 4: Existing Certified Site Plan (MM 19-1172)

Exhibit 5: Proposed Site Plan (MM 21-0033)

Exhibit 6: Additional Land Excavation Information Provided by the Applicant

Requirements for Certification:

Site plan to reflect approved site plan of PRS 20-1310 (2/09/21 BOCC LUM)

2.0 Recommendation

Approvable, subject to the following conditions:

Approval - Approval of the request, subject to the conditions listed below, is based on the general site plan submitted December 31, 2020.

The following shall apply to the Rhodine Borrow Pit parcel:

1. The Rhodine Borrow Pit parcel shall be permitted a maximum of 271 single-family lots within a maximum residential development area of 77.17 acres and developed in accordance with the following development standards. The maximum number of units permitted in the Rhodine Borrow Pit parcel is identified as Critical Design Feature. Any change to this number will require a Major Modification to be reviewed in accordance with the procedures established in LDC Part 10.03.00.

Minimum lot size: 4,400 square feet / 5,500 square feet

Minimum lot width: 40 feet / 50 feet

Minimum front yard setback: 20 feet

10 feet for front yards functioning as side yards*

Minimum side yard setback: 5 feet
Minimum rear yard setback: 15 feet

Maximum building height: 35 feet/2-stories

*Garages accessed from front yards functioning as side yards shall be setback a minimum of 20 feet.

1.1 The project's residential development area shall consist of a maximum of 77.17 acres. Correspondingly, the remaining 99.9 acres shall be utilized as open space in accordance with Comprehensive Plan Policy 14.2. A total of 0.23 acres shall be dedicated to the Village Node to provide a maximum FAR of 0.35 for the required on-site retail square footage.

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The Village Node acreage shall not be considered open space or residential development area.

- 1.2 Along the southern PD boundary of the Rhodine Borrow Pit area, adjacent to PD 98-0812 (Triple Creek), single-family residential lots/units shall be permitted to be partially located in both the subject PD and PD 98-0812 as part of a unified plan of development. At the time of platting, these lots shall be assigned to either the subject PD or PD 98-0812 and in no case shall the maximum number of permitted units in either PD be exceeded. These lots shall follow the development standards and any additional supplement requirements of the PD they are assigned to for accounting purposes. Vehicular and pedestrian cross access between the common boundary line shall be permitted.
- 2. For lots at a width of less than 50 feet, the following shall apply:
 - 2.1 Garages shall be setback a minimum of 25 feet. Garages accessed from a front yard functioning as a side yard shall be setback a minimum of 20 feet.
 - 2.2 A 2-car garage and a minimum 18 foot wide driveway shall be provided for each unit.
 - 2.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's front façade. Homes shall not have the same driveway location (left or right side) as the adjacent home. The alternating pattern may be adjusted at corner lots as necessary.
 - A variety of garage door designs shall be provided and there shall be no two identical garage door designs adjacent to each other.
 - 2.5 Each unit's primary entrance door shall face the roadway.
 - 2.6 Street trees may include an alternating pattern of shade and ornamental trees, subject to final design and approval by Natural Resources staff.
- 3. A maximum of 3,658.5 square feet of neighborhood retail uses shall be provided within Commercial Pocket A (Rhodine Borrow Pit Village Node). Neighborhood retail uses shall include grocery stores, food/produce markets, convenience stores, pharmacies and other retail uses permitted in the CN zoning district.
- 4. The Rhodine Borrow Pit Village Node shall meet the following:
 - 4.1 The Village Node may also contain office uses, residential support uses (such as churches, adult care centers and daycare centers) and government uses (such as schools, government offices/services). Square footage for these uses shall not count towards the minimum square footage required for on-site neighborhood retail. The maximum F.A.R. permitted within the entire Village Node is 0.35.
 - 4.2 No minimum building setbacks shall be required.
 - 4.3 Building height shall be limited to a maximum of 35 feet with no additional setback for

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buildings over 20 feet in height required.

4.4 Buffering and screening in accordance with Land Development Code Section 6.06.06 shall be provided along adjacent properties of differing land use classifications.

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- 4.5 Parking lots in the Village Node shall be located at the rear or to the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the roadway.
- 4.6 Signage within the Village Node shall be limited to monument signs.
- 5. Prior to the issuance of building permits for more than 75% of the residential units (lots 203-271), Certificates of Occupancy shall be issued for a minimum of 50 percent of the 3,658.5 s.f. of required on-site neighborhood retail in the Village Node. Prior to the building permits for more than 95% of the residential units (lots 257-271), Certificates of Occupancy shall be issued for the remaining 3,658.5 square feet of neighborhood retail in the Village Node.
- 6. The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space and Village Node areas.
- 7. A 50-foot wide buffer shall be provided where depicted on the general site plan. This buffer is to be platted as a separate tract to be owned and maintained by the Homeowner's Association, or other similar entity. Within the buffer, screening shall be provided and shall be either 1) screening to consist of two or more of the following for an overall height of six feet: a berm (4:1 slope), a continuous row of evergreen shrubs at a minimum height of 24" and/or a solid wooden fence, PVC fence or wall architecturally finished on both sides; or 2) a six foot high wooden fence, PVC fence or wall architecturally finished on both sides and a row of evergreen shade trees at a minimum of 10 feet in height and minimum 2" caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-or-way, use of a six foot high wooden fence shall not be used. Additionally, should the buffer abut a right-of-way, hedges or trees shall not be blocked by a fence/wall from the view of the roadway and properties facing the village.
- 8. The parcel identified by Folio Number 77420.5000 is adjacent to the Triple Creek Preserve. Per LDC Section 4.01.00, compatibility of the development with the preserve will be ensured with a compatibility plan that addresses issues related to the development such as, but not necessarily limited to, access, prescribed fire, and landscaping. The compatibility plan shall be proposed by the developer, reviewed and approved by the Conservation and Environmental Lands Management Department, and shall be required as a condition of granting a Natural Resources Permit.
- 9. As Rhodine Road is a substandard collector roadway, the developer shall improve Rhodine Road between the project driveway and the nearest standard roadway to current County standards unless otherwise approved in accordance with Section 6.04.02.B of the Hillsborough County Land Development Code (LDC). Deviations from Transportation Technical Manual (TTM) standards may be considered in accordance with Section 1.7.2 and other applicable sections of the Hillsborough County TTM.

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10. Utilization of proposed access points along the project's southern boundary shall require modification of the adjacent Planned Development (to permit such cross access).

- 11. The developer shall construct the following site access improvements, unless otherwise approved by Hillsborough County Public Works:
 - a. An eastbound to southbound right turn lane on Rhodine Road into the project; and,
 - b. A westbound to southbound left turn lane on Rhodine Road into the project.

Such improvements may require the developer to dedicate or otherwise acquire additional right-of-way.

- 12. The first 1,800 feet of the internal project roadway (south of Rhodine Road) shall be utilized as a shared access facility. The purpose of this shared access facility is to serve:
 - a. Future development on folio 77409.3000, consistent with the adjacent PD 05-0110; and,
 - b. Existing/future development on folio 77420.6000.

Notwithstanding anything shown on the PD site plan to the contrary, vehicular and pedestrian access may be taken anywhere along the project boundaries with folios 77409.3000 and 77420.6000, subject to the review and approval of Hillsborough County Public Works.

13. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 5 feet of right-of-way along its Rhodine Road frontage, such that a minimum of 55 feet of right-of-way is preserved south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.

The following shall apply to the Grove parcel:

14. The Grove parcel shall be permitted a maximum of 356 single-family lots and developed in accordance with the following development standards. The maximum number of units permitted in the Grove parcel is identified as Critical Design Feature. Any change to this number will require a Major Modification to be reviewed in accordance with the procedures established in LDC Part 10.03.00.

Minimum lot size: 4,400 square feet / 5,500 square feet

Minimum lot width: 40 feet / 50 feet

Minimum front yard setback: 20 feet

10 feet for front yards functioning as side yards*

Minimum side yard setback: 5 feet
Minimum rear yard setback: 15 feet

Maximum building height: 35 feet/2-stories

*Garages accessed from front yards functioning as side yards shall be setback a minimum of 20 feet.

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Land Excavation shall be a permitted use on the Grove Parcel subject to approval of a Special Use Permit per Land Development Code Section 6.11.54. The maximum export permitted shall be 759,000 cubic yards from Pond N, 78,000 cubic yards from Pond SW and 238,000 cubic yards from Pond SE (as depicted in SU 19-1026) for a total of 1,075,000 cubic yards.

- 15. For lots at a width of less than 50 feet, the following shall apply:
 - 15.1 Garages shall be setback a minimum of 25 feet. Garages accessed from a front yard functioning as a side yard shall be setback a minimum of 20 feet.
 - 15.2 A 2-car garage and a minimum 18 foot wide driveway shall be provided for each unit.
 - 15.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's front façade. Homes shall not have the same driveway location (left or right side) as the adjacent home. The alternating pattern may be adjusted at corner lots as necessary.
 - 15.4 A variety of garage door designs shall be provided and there shall be no two identical garage door designs adjacent to each other.
 - 15.5 Each unit's primary entrance door shall face the roadway.
 - 15.6 Street trees may include an alternating pattern of shade and ornamental trees, subject to final design and approval by Natural Resources staff.
- 16. This PD approves a waiver to the provision of 4,806 s.f. of on-site neighborhood retail. A total of 5,038 square feet is provided off-site on folios 77886.0000 (a 3,238 square foot convenience store) and 77857.0000 (a 1,800 square foot post office).
 - 16.1 The 5,038 square feet on folios 77886.0000 and 77857.0000 shall not be used for any future on-site commercial waiver requests for other proposed Planned Villages.
- 17. The Grove Village Node (amenity/specialty retail depicted area) shall meet the following:
 - 17.1 The Village Node may contain a maximum of 5,000 square feet of neighborhood-retail uses, office uses, residential support uses (such as churches, adult care centers and daycare centers) and government uses (such as schools, government offices/services). A maximum of 497 square feet of this 5,000 square feet may be developed with neighborhood-retail uses permitted in the CN zoning district. The maximum F.A.R. permitted within the entire Village Node is 0.35.
 - 17.2 The Village Node may also contain neighborhood amenity uses, such as a pool, amenity area and clubhouse which shall not count towards the maximum F.A.R. permitted in the Village Node.
 - 17.2 No minimum building setbacks shall be required.

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17.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in height required.

- 17.4 Buffering and screening in accordance with Land Development Code Section 6.06.06 shall be provided along adjacent properties of differing land use classifications.
- 17.5 Parking lots in the Village Node shall be located at the rear or to the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the roadway.
- 17.6 Signage within the Village Node shall be limited to monument signs.
- 18. A Village Square/Green (minimum size of 4,806 square feet) shall be provided where depicted on the general site plan. The Village Square/Green shall be bound on all sides by streets and improved with landscaping, walkways, benches, fountains, gazebos and/or similar amenities to encourage and accommodate use by village residents.
- 19. The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space, Village Square/Green and Village Node areas.
- 20. A 50-foot wide buffer shall be provided where depicted on the general site plan. Should the buffer be adjacent to a roadway requiring right-of-way preservation, the buffer shall be measured from the future right-of-way line. This buffer is to be platted as a separate tract to be owned and maintained by the Homeowner's Association, or other similar entity. Within the buffer, screening shall be provided and shall be either: 1) screening to consist of two or more of the following for an overall height of six feet: a berm (4:1 slope), a continuous row of evergreen shrubs at a minimum height of 24" and/or a solid wooden fence, PVC fence or wall architecturally finished on both sides; or 2) a six foot high wooden fence, PVC fence or wall architecturally finished on both sides and a row of evergreen shade trees at a minimum of 10 feet in height and minimum 2" caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-of-way, use of a six foot high wooden fence shall not be used. Additionally, should the buffer abut a right-of-way, hedges or trees shall not be blocked by a fence/wall from the view of the roadway and properties facing the village. Any buffers abutting a right-of-way shall be measured from the roadway's preservation line.
 - 20.a Should any portion of Balm-Wimauma Road be vacated (Option 1 and Option 2 in condition 17.d), the 50-foot wide buffer and screening shall not be required.
- 21. A 250-foot wide buffer shall be provided adjacent to folio 77850.0000, as depicted on the general site plan.
- 22. The developer shall construct the following site access improvements, of which 22.a, 22.b or 22.c shall be constructed only if warranted per Section 6.04.04.D. of the Hillsborough County Land Development Code or unless otherwise approved in accordance the Section 6.04.02.B. administrative variance process:

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- 22.a An eastbound to southbound right turn lane on CR 672 at Shelley Ln.;
- 22.b A westbound to southbound left turn lane on CR 672 at Shelley Ln.;
- 22.c. A southbound to eastbound left turn lane on Balm Wimauma Rd. into the project's southernmost entrance; and,
- 22.d One (1) of the following options (as depicted on the on the PD site plan) relating to site access and roadway reconfigurations proposed by the developer:
- i. Option 1 The developer shall construct an extension of Balm Wimauma Rd. (between its intersection with Balm Rd. and CR 672) as a 2-lane collector roadway. Within 6 months of acceptance of the roadway extension, the developer shall remove up to a +/- 1,300-foot long segment of existing Balm Wimauma Rd. south of CR 672. Specific limits of the segment to be removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the intersection of the roadway extension with CR 672. In no event shall removal of the roadway section occur until such time as a cul-de-sac or other end of roadway treatment acceptable to Hillsborough County Public Works is constructed and open to public traffic; or,
- ii. Option 2 The developer shall realign up to +/- 1,300 feet of Balm Wimauma Rd. (i.e. that portion immediately south of CR 672) such that it connects to Shelley Ln. Concurrent with the opening of the realigned roadway extension, the developer shall close the old/realigned roadway and, within 6 months, complete removal of the old/unutilized roadway. Specific limits of the segment to be realigned/removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the newly created intersection of Balm Wimauma Rd. and Shelley Ln. The applicant shall also be responsible for preserving sufficient right-of-way necessary to accommodate a 2-lane enhanced roadway segment between the new intersection and CR 672; or,
- iii. Option 3 The developer shall construct a roundabout at the intersection of CR 672, Balm Wimauma Rd., Shelley Ln., and Balm Boyette Rd. This option may require the developer to dedicate or otherwise acquire additional right-of-way necessary to accommodate the roundabout. Notwithstanding anything herein to the contrary, utilization of this option shall relieve the developer of its obligation to construct the improvements listed in 1.a. and 1.b., above. Utilization of this option is also contingent upon review and approval of the proposed roundabout by Hillsborough County Public Works.

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As Shelley Ln. is a substandard local roadway the developer will be required to improve Shelley Ln., between its southernmost access connection and CR 672, to current County standards unless otherwise approved in accordance with Section 6.04.02.B. of the Hillsborough County LDC. Deviations from TTM standards may be considered in accordance with Section 1.7.2. and other applicable sections of the Hillsborough County TTM.

- 24. As Balm Wimauma Rd. may be a substandard collector roadway, the developer will be required to coordinate with Hillsborough County Public Works to determine the improvements that may be required prior to or concurrent with plat/site/construction plan approval.
- 25. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 23 feet of right-of-way along its Balm Wimauma Rd. frontages, such that a minimum of 54 feet of right-of-way is preserved east and south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.
- 26. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 14 feet of right-of-way along its CR 672 frontage, such that a minimum of 54 feet of right-of-way is preserved south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.
- 27. Notwithstanding anything shown on the PD site plan to the contrary, the relocation of the southernmost access on Balm Wimauma Rd. such that it is located a minimum of 330 feet from the nearest adjacent access connection, shall be made. However, the access point shall not be located any further than 600 feet from the southern boundary of folio 77850.0000. Alternatively, the developer shall obtain a Section 6.04.02.B. administrative variance from the Section 6.04.07 access spacing requirements.

The following shall apply to both Planned Villages:

- 28. Access shall be provided as shown on the PD site plan unless otherwise provided herein these conditions. Internal roadways may be public or private, and if private, and if private, roadways may be gated (except for those portions functioning as shared access roadways, as required herein these conditions).
- 29. Notwithstanding anything on the PD site plan or herein these conditions to the contrary, bicycle and pedestrian access may be permitted anywhere along the project boundaries.
- 30. 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.
- 31. The construction and location of any proposed wetland impacts are not approved by this

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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.

- 32. 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).
- 33. 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.
- 34. 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 any stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan/plat approval.

Staff's Recommendation: Approvable, subject to conditions

Zoning
Administrator

Administrator Sign-off:

Brian Grady

HILLSBOROUGH COUNTY 2020 FUTURE LAND USE

RZ MM 21-0033

<all other values>

urisdiction Boundary unty Boundary

PEC PLANNED ENVIRONMENTAL COMMUNITY-1/2 (.25 FAR) AGRICULTURAL/MINING-1/20 (.25 FAR)

AGRICULTURAL/RURAL-1/5 (.25 FAR) AGRICULTURAL-1/10 (.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-12 (.35 FAR) RESIDENTIAL-9 (.35 FAR)

RESIDENTIAL-16 (.35 FAR) RESIDENTIAL-20 (.35 FAR)

RESIDENTIAL-35 (1.0 FAR)

NEIGHBORHOOD MIXED USE-4 (3) (.35 FAR)

COMMUNITY MIXED USE-12 (:50 FAR) SUBURBAN MIXED USE-6 (.35 FAR)

URBAN MIXED USE-20 (1.0 FAR)

RESEARCH CORPORATE PARK (1.0 FAR.) REGIONAL MIXED USE-35(2.0 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) NATURAL PRESERVATION

WIMAUMA VILLAGE RESIDENTIAL-2 (.25 FAR) CITRUS PARK VILLAGE

4,600

Map Printed from Rezoning System: 11/13/2020

File: G:\RezoningSystem\MapPr Author: Beverly F. Daniels



General Aerial Zoning Map

BALM RIVERVIEW RD

MM 21-0033

Folio: 77848.0000

BALM BOYETTERD

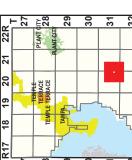
Zoning Boundary Application Site

Parcels

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Immediate Aerial Zoning Map

Zoning Map MM 21-0033

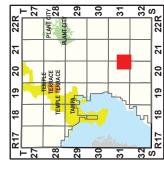
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Application Site Zoning Boundary

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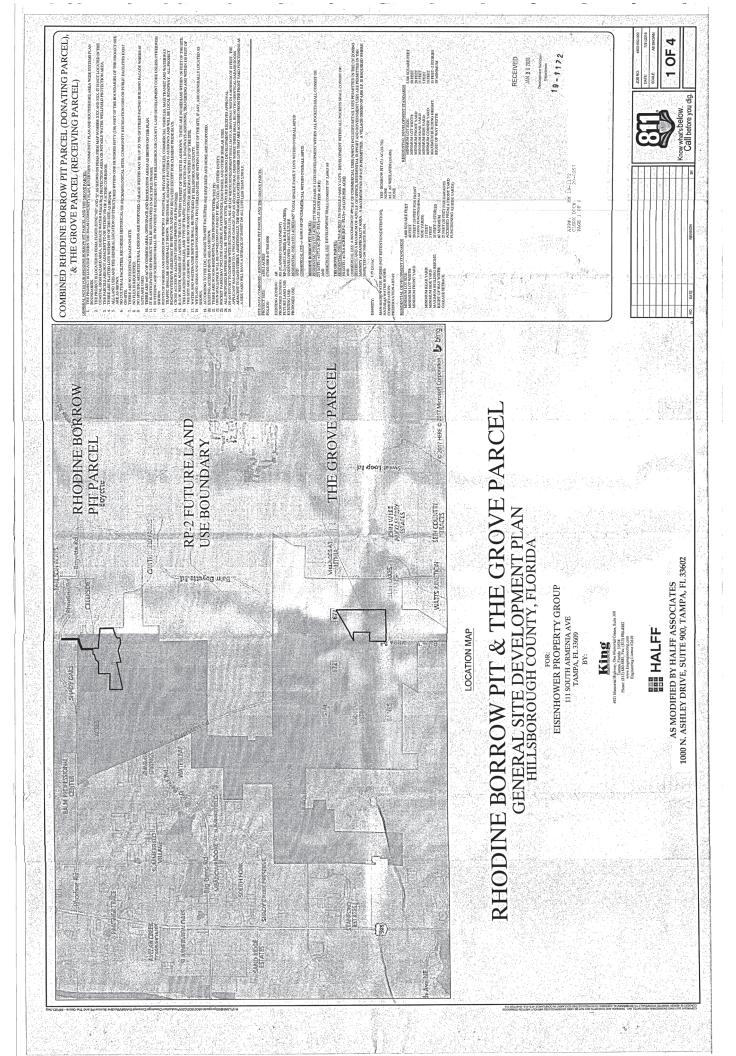
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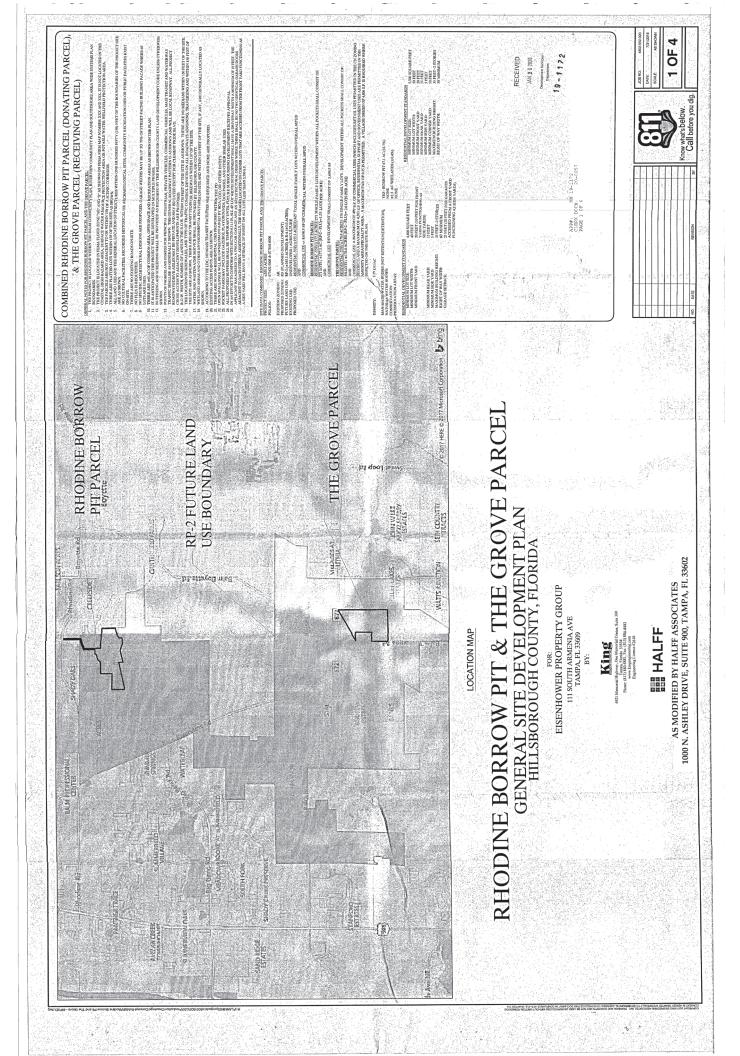
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SENDER'S DIRECT DIAL: (813) 227-8421

SENDER'S E-MAIL: Kami.Corbett@hwhlaw.com

May 14, 2021

Via Email: heinrichm@hcflgov.net Michelle Heinrich, AICP Principal Planner Development Services Department Hillsborough County 601 E. Kennedy Boulevard Tampa, Florida 33602

Re: MM 21-0033

Dear Ms. Heinrich:

Enclosed please find additional information regarding the proposed Land Excavation use.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

HILL WARD HENDERSON

Kami Corbett

KC/bc



May 14, 2021

Steve Luce, AICP Balm Grove LLC 111 S. Armenia Ave, Suite 201 Tampa, FI 33609

RE: BALM GROVE EAST (AKA THE GROVE PARCEL)
EARTHWORK

Dear Mr. Luce,

We have completed an earthwork analysis for the above referenced project as part of our efforts as the project design and permitting engineer. This analysis is based upon the approved zoning plan, the topography of the property, the draft detailed design plans for the project, standard industry engineering conventions, the minimum requirements of the Hillsborough County Stormwater Technical Manual (HCSTM), the Southwest Florida Water Management District and our expertise related to subdivision design, permitting and construction in this region.

The site is expected to have an earthwork balance (the amount of material cut from the high areas would be used to fill the low areas) without the use of material generated from the three primary stormwater management facility (pond) excavations. Therefore, it is expected that the material being removed from these ponds will be required to be exported off the project site.

We are approximating this necessary earthwork export for the project to be approximately 1 million cubic yards. Excavating the ponds to an industry typical 25 to 30 feet below seasonal high water would result in an additional 1 to 1.5 million cubic yards of export.

We are providing the below summary tables which include detailed pond volume calculations for the primary three ponds that are typically provided during the design and permitting of the project. These calculations assume a typical standard minimum depth of 8 feet below the approximate seasonal high water level at each pond location. The Geotechnical Engineering Analysis, prepared by ECS for this project indicates suitable soils could be excavated at depths of 40 to 50 feet below seasonal high water.

Sincerely,

HALFF ASSOCIATES, INC.

Kyle L. Thornton, PE License No:60279

Engineering Team Leader



Steve Luce, AICP Balm Grove LLC 5/14/21 Page 2

| POND NE | | | | | |
|----------------|---|---------|--------|---------------|-------------|
| | EL | AREA | AREA | VOLUME | VOLUME |
| DESC. | (FT) | (SF) | (AC) | (AC-FT) | (CY) |
| Bottom (8ft) | 122 | 830000 | 19.054 | 0 | 0 |
| SHW | 130 | 954000 | 21.901 | 163.820 | 264295.7502 |
| | 131 | 970000 | 22.268 | 185.904 | 299925.3062 |
| | 132 | 986700 | 22.652 | 208.364 | 336160.4166 |
| | 133 | 1003000 | 23.026 | 231.203 | 373006.6367 |
| | 133.5 | 1011000 | 23.209 | 242.762 | 391654.7463 |
| Avg Exist | 143 | 1074000 | 24.656 | 470.121 | 758459.544 |
| Total Volume g | Total Volume generated (unadjusted)= CY 759,000 | | | | 759,000 |

| POND SE | | | | | |
|--|----------------------------|--------|-------|---------|-------------|
| | EL AREA AREA VOLUME VOLUME | | | | |
| DESC. | (FT) | (SF) | (AC) | (AC-FT) | (CY) |
| Bottom (8ft) | 109 | 135000 | 3.099 | 0 | 0 |
| SHW | 117 | 187400 | 4.302 | 29.605 | 47762.86428 |
| | 118 | 194500 | 4.465 | 33.989 | 54835.07189 |
| | 119 | 201740 | 4.631 | 38.537 | 62172.83451 |
| | 120 | 209000 | 4.798 | 43.252 | 69779.11509 |
| | 121 | 227000 | 5.211 | 48.256 | 77853.17248 |
| Avg Exist | 121 | 227000 | 5.211 | 48.256 | 77853.17248 |
| Total Volume generated (unadjusted)= CY 78,000 | | | | | |

| POND E | | | | | | |
|---|----------------------------|--------|-------|---------|-------------|--|
| | EL AREA AREA VOLUME VOLUME | | | | | |
| DESC. | (FT) | (SF) | (AC) | (AC-FT) | (CY) | |
| Bottom (8ft) | 114 | 277000 | 6.359 | 0 | 0 | |
| SHW | 122 | 350000 | 8.035 | 57.576 | 92888.69697 | |
| | 123 | 360000 | 8.264 | 65.725 | 106036.818 | |
| | 124 | 370000 | 8.494 | 74.105 | 119555.3085 | |
| | 125 | 380000 | 8.724 | 82.713 | 133444.1687 | |
| | 126 | 404000 | 9.275 | 91.713 | 147962.6573 | |
| Avg Exist | 132 | 404000 | 9.275 | 147.360 | 237740.2495 | |
| Total Volume generated (unadjusted)= CY 238,000 | | | | 238,000 | | |

| Total Volume generated (unadjusted) [cubic yards] | | |
|---|-----------|--|
| POND NE | 759,000 | |
| POND SE | 78,000 | |
| POND E | 238,000 | |
| TOTAL (+/-) | 1,075,000 | |

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COUNTY OF HILLSBOROUGH LAND USE HEARING OFFICER'S RECOMMENDATION

| Application number: | MM 21-0033 |
|------------------------------|--|
| Hearing date: | February 15, 2021 |
| Applicant: | Eisenhower Property Group, LLC |
| Request: | Major modification to PD 18-0304 |
| Location: | 15110 Balm Wimauma Road, located on the south and east sides of Balm Wimauma Road, west of Shelly Lane, south of County Road 672 |
| Parcel size: | 178 acres |
| Existing zoning: | PD 18-0304 |
| Future land use designation: | Residential Planned-2 (2 du/ga; 0.35 FAR as a Planned Village or 1 du/5 ga) |
| Service area: | Rural |
| Community planning area: | Balm and Southshore Areawide Systems |

A. APPLICATION REVIEW DEVELOPMENT SERVICES STAFF REPORT

ZHM HEARING DATE: February 15, 2021 BOCC MEETING DATE: April 9, 2021

CASE REVIEWER: Michelle Heinrich, AICP

Application Review Summary and Recommendation

1.0 Summary

1.1 Project Narrative

The applicant is requesting a major modification to Planned Development (PD) 18-0304, as most recently modified by MM 19-1172. PD 18-0304 is a 358.0 acre, non-contiguous PD with a northern area (Rhodine Borrow Pit) in the Riverview community and a southern area (The Grove) in the Balm community (see Figure 1). This application requests to modify the "The Grove" portion of the PD by allowing the use of a land excavation. No modifications to the "Rhodine Borrow Pit" portion are proposed.

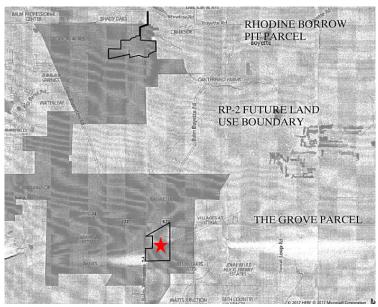


Figure 1: PD 18-0304 Areas

The subject site received approval for a Special Use Permit (SU 19-1026) for a land excavation on August 22, 2020. The permit allows for the removal of a maximum of 2.5 million cubic yards of material (lake creation) from 54 acres of the site over a five year period (see Figure 2). Distance waivers, as part of the Special Use Permit, were approved to the required distance standards of 500 feet from residentially developed/zoned property, 1,000 feet from churches, and 30/50 feet from wetland areas. As specified in SU 19-1026 condition #2, approval of this use within the PD is required prior to the issuance of an Operating Permit.

"The Grove" PD portion is 178 acres in size and approved for 356 single-family detached units and 497 square feet of retail uses. The site's location in the RP-2 Future Land Use (FLU) category permits a maximum of 2 dwelling units per acre when developed in Planned Village pattern in accordance with the Land Development Code and *Future of Hillsborough* Comprehensive Plan.

"The Rhodine Borrow Pit" PD portion is 180 acres in size approved for 271 single-family detached units and 3,658.5 sf of retail uses (Village Node). The site is located both with the RP-2 and RES-4 Future land use categories. This portion of the PD is not proposed for any modifications.

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Figure 2: Excavation Areas per SU 191026 staff report

1.2 Compliance Overview with Land Development Code and Technical Manuals

The application does not require any variations to Land Development Code Parts 6.05.00 (Parking and Loading), 6.06.00 (Landscaping/Buffering) or 6.07.00 (Fences and Walls).

1.3 Evaluation of Existing and Planned Public Facilities

The project area is located in the Rural Service Area. In accordance with the planned villages LDC requirements and Comprehensive Plan policies, water and wastewater to serve the project is to be brought to the site at the developer's expense.

Transportation staff has reviewed the request and has no objections, proposed conditions or modified conditions.

1.4 Natural Resources/Environmental

The Environmental Protection Commission has reviewed the application and finds that wetlands (ditches) are present on the site. No objections are made subject to existing conditions of approval.

The site is not located within a Wellhead Resource Protection Zone, a Surface Water Protection Area, a Significant Wildlife Habitat or the Coastal High Hazard Area. The northwestern area does contain a community potable well and community potable well buffer. The site is not adjacent to any ELAPP lands. None of the roadways along the perimeters of the site are designated as Scenic Corridors.

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1.5 Comprehensive Plan Consistency

The project is located within the RP-2 Future Land Use (FLU) category and within the Balm Community Plan area. Planning Commission staff has found the proposed modification request to be **CONSISTENT** with the *Future of Hillsborough* Comprehensive Plan.

1.6 Compatibility

The subject area ("The Grove") is located within an area developed with agricultural and residential uses and has been approved for a planned village. No increase in density is proposed.

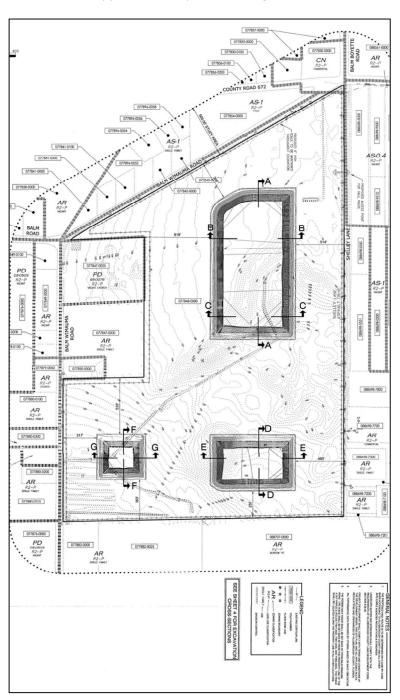


Figure 3: SU 19-1026 Site Plan

Under SU 19-1026, staff found that the subject site is located on a designated Truck Route and is not within a land excavation prohibited or restricted area. Figure 3, provided below, depicts the land excavation details per the SU 19-1026 site plan. The specific excavation pits do not meet required setbacks from all neighboring residentially properties and two churches; however, the future use of these excavation pits as ponds are consistent with the areas depicted for ponds on general site plan for the previously approved PD rezoning. Furthermore, the applicant proposed operational restrictions that exceed those required in the Land Development Code. Staff also noted the following: the excavation driveway will be located on the east side of the site to eliminate impacts associated with the driveway to neighboring residential and church uses; material stockpiles will be located at least 200 feet from Balm-Wimauma adjacent residential and adjacent church uses; the entire site will be screened with a 6 foot high solid wood or PVC fence; and, this fence will be located at least 30 feet from Balm Riverview Road and at least 50 feet from adjacent residential and church use parcels. Therefore, the use was found to be compatible with the surrounding area.

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1.7 Agency Comments

The following agencies have reviewed the application and offer no objections:

- Transportation
- Environmental Protection Commission
- Water Resource Services

1.8 Exhibits

Exhibit 1: Future Land Use Map

Exhibit 2: Aerial/Zoning Map – General Area

Exhibit 3: Aerial/Zoning Map – Immediate Area

Exhibit 4: Existing Certified Site Plan (MM 19-1172)

Exhibit 4: Proposed Site Plan (MM 21-0033)

Requirements for Certification:

1. Site plan to reflect approved site plan of PRS 20-1310 (2/09/21 BOCC LUM)

2.0 Recommendation

Approvable, subject to the following conditions:

Approval - Approval of the request, subject to the conditions listed below, is based on the general site plan submitted December 31, 2020.

The following shall apply to the Rhodine Borrow Pit parcel:

1. The Rhodine Borrow Pit parcel shall be permitted a maximum of 271 single-family lots within a maximum residential development area of 77.17 acres and developed in accordance with the following development standards. The maximum number of units permitted in the Rhodine Borrow Pit parcel is identified as Critical Design Feature. Any change to this number will require a Major Modification to be reviewed in accordance with the procedures established in LDC Part 10.03.00.

Minimum lot size: 4,400 square feet / 5,500 square feet

Minimum lot width: 40 feet / 50 feet

Minimum front yard setback: 20 feet

10 feet for front yards functioning as side yards*

Minimum side yard setback: 5 feet
Minimum rear yard setback: 15 feet

Maximum building height: 35 feet/2-stories

*Garages accessed from front yards functioning as side yards shall be setback a minimum of 20 feet.

1.1 The project's residential development area shall consist of a maximum of 77.17 acres. Correspondingly, the remaining 99.9 acres shall be utilized as open space in accordance with Comprehensive Plan Policy 14.2. A total of 0.23 acres shall be dedicated to the Village Node to provide a maximum FAR of 0.35 for the required on-site retail square footage. The Village Node acreage shall not be considered open space or residential development

ZHM HEARING DATE: February 15, 2021 BOCC MEETING DATE: April 9, 2021

area.

1.2 Along the southern PD boundary of the Rhodine Borrow Pit area, adjacent to PD 98-0812 (Triple Creek), single-family residential lots/units shall be permitted to be partially located in both the subject PD and PD 98-0812 as part of a unified plan of development. At the time of platting, these lots shall be assigned to either the subject PD or PD 98-0812 and in no case shall the maximum number of permitted units in either PD be exceeded. These lots shall follow the development standards and any additional supplement requirements of the PD they are assigned to for accounting purposes. Vehicular and pedestrian cross access between the common boundary line shall be permitted.

CASE REVIEWER: Michelle Heinrich, AICP

- 2. For lots at a width of less than 50 feet, the following shall apply:
 - 2.1 Garages shall be setback a minimum of 25 feet. Garages accessed from a front yard functioning as a side yard shall be setback a minimum of 20 feet.
 - 2.2 A 2-car garage and a minimum 18 foot wide driveway shall be provided for each unit.
 - 2.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's front façade. Homes shall not have the same driveway location (left or right side) as the adjacent home. The alternating pattern may be adjusted at corner lots as necessary.
 - A variety of garage door designs shall be provided and there shall be no two identical garage door designs adjacent to each other.
 - 2.5 Each unit's primary entrance door shall face the roadway.
 - 2.6 Street trees may include an alternating pattern of shade and ornamental trees, subject to final design and approval by Natural Resources staff.
- 3. A maximum of 3,658.5 square feet of neighborhood retail uses shall be provided within Commercial Pocket A (Rhodine Borrow Pit Village Node). Neighborhood retail uses shall include grocery stores, food/produce markets, convenience stores, pharmacies and other retail uses permitted in the CN zoning district.
- 4. The Rhodine Borrow Pit Village Node shall meet the following:
 - 4.1 The Village Node may also contain office uses, residential support uses (such as churches, adult care centers and daycare centers) and government uses (such as schools, government offices/services). Square footage for these uses shall not count towards the minimum square footage required for on-site neighborhood retail. The maximum F.A.R. permitted within the entire Village Node is 0.35.
 - 4.2 No minimum building setbacks shall be required.
 - 4.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in height required.

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4.4 Buffering and screening in accordance with Land Development Code Section 6.06.06 shall be provided along adjacent properties of differing land use classifications.

- 4.5 Parking lots in the Village Node shall be located at the rear or to the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the roadway.
- 4.6 Signage within the Village Node shall be limited to monument signs.
- 5. Prior to the issuance of building permits for more than 75% of the residential units (lots 203-271), Certificates of Occupancy shall be issued for a minimum of 50 percent of the 3,658.5 s.f. of required on-site neighborhood retail in the Village Node. Prior to the building permits for more than 95% of the residential units (lots 257-271), Certificates of Occupancy shall be issued for the remaining 3,658.5 square feet of neighborhood retail in the Village Node.
- 6. The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space and Village Node areas.
- 7. A 50-foot wide buffer shall be provided where depicted on the general site plan. This buffer is to be platted as a separate tract to be owned and maintained by the Homeowner's Association, or other similar entity. Within the buffer, screening shall be provided and shall be either 1) screening to consist of two or more of the following for an overall height of six feet: a berm (4:1 slope), a continuous row of evergreen shrubs at a minimum height of 24" and/or a solid wooden fence, PVC fence or wall architecturally finished on both sides; or 2) a six foot high wooden fence, PVC fence or wall architecturally finished on both sides and a row of evergreen shade trees at a minimum of 10 feet in height and minimum 2" caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-or-way, use of a six foot high wooden fence shall not be used. Additionally, should the buffer abut a right-of-way, hedges or trees shall not be blocked by a fence/wall from the view of the roadway and properties facing the village.
- 8. The parcel identified by Folio Number 77420.5000 is adjacent to the Triple Creek Preserve. Per LDC Section 4.01.00, compatibility of the development with the preserve will be ensured with a compatibility plan that addresses issues related to the development such as, but not necessarily limited to, access, prescribed fire, and landscaping. The compatibility plan shall be proposed by the developer, reviewed and approved by the Conservation and Environmental Lands Management Department, and shall be required as a condition of granting a Natural Resources Permit.
- 9. As Rhodine Road is a substandard collector roadway, the developer shall improve Rhodine Road between the project driveway and the nearest standard roadway to current County standards unless otherwise approved in accordance with Section 6.04.02.B of the Hillsborough County Land Development Code (LDC). Deviations from Transportation Technical Manual (TTM) standards may be considered in accordance with Section 1.7.2 and other applicable sections of the Hillsborough County TTM.

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10. Utilization of proposed access points along the project's southern boundary shall require modification of the adjacent Planned Development (to permit such cross access).

- 11. The developer shall construct the following site access improvements, unless otherwise approved by Hillsborough County Public Works:
 - a. An eastbound to southbound right turn lane on Rhodine Road into the project; and,
 - b. A westbound to southbound left turn lane on Rhodine Road into the project.

Such improvements may require the developer to dedicate or otherwise acquire additional right-of-way.

- 12. The first 1,800 feet of the internal project roadway (south of Rhodine Road) shall be utilized as a shared access facility. The purpose of this shared access facility is to serve:
 - a. Future development on folio 77409.3000, consistent with the adjacent PD 05-0110; and,
 - b. Existing/future development on folio 77420.6000.

Notwithstanding anything shown on the PD site plan to the contrary, vehicular and pedestrian access may be taken anywhere along the project boundaries with folios 77409.3000 and 77420.6000, subject to the review and approval of Hillsborough County Public Works.

13. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 5 feet of right-of-way along its Rhodine Road frontage, such that a minimum of 55 feet of right-of-way is preserved south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.

The following shall apply to the Grove parcel:

14. The Grove parcel shall be permitted a maximum of 356 single-family lots and developed in accordance with the following development standards. The maximum number of units permitted in the Grove parcel is identified as Critical Design Feature. Any change to this number will require a Major Modification to be reviewed in accordance with the procedures established in LDC Part 10.03.00.

Minimum lot size: 4,400 square feet / 5,500 square feet

Minimum lot width: 40 feet / 50 feet

Minimum front yard setback: 20 feet

10 feet for front yards functioning as side yards*

Minimum side yard setback: 5 feet
Minimum rear yard setback: 15 feet

Maximum building height: 35 feet/2-stories

*Garages accessed from front yards functioning as side yards shall be setback a minimum of 20 feet.

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14.1 Land Excavation shall be a permitted use on the Grove Parcel subject to approval of a Special Use Permit per Land Development Code Section 6.11.54

- 15. For lots at a width of less than 50 feet, the following shall apply:
 - 15.1 Garages shall be setback a minimum of 25 feet. Garages accessed from a front yard functioning as a side yard shall be setback a minimum of 20 feet.
 - 15.2 A 2-car garage and a minimum 18 foot wide driveway shall be provided for each unit.
 - 15.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's front façade. Homes shall not have the same driveway location (left or right side) as the adjacent home. The alternating pattern may be adjusted at corner lots as necessary.
 - 15.4 A variety of garage door designs shall be provided and there shall be no two identical garage door designs adjacent to each other.
 - 15.5 Each unit's primary entrance door shall face the roadway.
 - 15.6 Street trees may include an alternating pattern of shade and ornamental trees, subject to final design and approval by Natural Resources staff.
- 16. This PD approves a waiver to the provision of 4,806 s.f. of on-site neighborhood retail. A total of 5,038 square feet is provided off-site on folios 77886.0000 (a 3,238 square foot convenience store) and 77857.0000 (a 1,800 square foot post office).
 - The 5,038 square feet on folios 77886.0000 and 77857.0000 shall not be used for any future on-site commercial waiver requests for other proposed Planned Villages.
- 17. The Grove Village Node (amenity/specialty retail depicted area) shall meet the following:
 - 17.1 The Village Node may contain a maximum of 5,000 square feet of neighborhood-retail uses, office uses, residential support uses (such as churches, adult care centers and daycare centers) and government uses (such as schools, government offices/services). A maximum of 497 square feet of this 5,000 square feet may be developed with neighborhood-retail uses permitted in the CN zoning district. The maximum F.A.R. permitted within the entire Village Node is 0.35.
 - 17.2 The Village Node may also contain neighborhood amenity uses, such as a pool, amenity area and clubhouse which shall not count towards the maximum F.A.R. permitted in the Village Node.
 - 17.2 No minimum building setbacks shall be required.
 - 17.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in height required.

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17.4 Buffering and screening in accordance with Land Development Code Section 6.06.06 shall be provided along adjacent properties of differing land use classifications.

- 17.5 Parking lots in the Village Node shall be located at the rear or to the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the roadway.
- 17.6 Signage within the Village Node shall be limited to monument signs.
- 18. A Village Square/Green (minimum size of 4,806 square feet) shall be provided where depicted on the general site plan. The Village Square/Green shall be bound on all sides by streets and improved with landscaping, walkways, benches, fountains, gazebos and/or similar amenities to encourage and accommodate use by village residents.
- 19. The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space, Village Square/Green and Village Node areas.
- 20. A 50-foot wide buffer shall be provided where depicted on the general site plan. Should the buffer be adjacent to a roadway requiring right-of-way preservation, the buffer shall be measured from the future right-of-way line. This buffer is to be platted as a separate tract to be owned and maintained by the Homeowner's Association, or other similar entity. Within the buffer, screening shall be provided and shall be either: 1) screening to consist of two or more of the following for an overall height of six feet: a berm (4:1 slope), a continuous row of evergreen shrubs at a minimum height of 24" and/or a solid wooden fence, PVC fence or wall architecturally finished on both sides; or 2) a six foot high wooden fence, PVC fence or wall architecturally finished on both sides and a row of evergreen shade trees at a minimum of 10 feet in height and minimum 2" caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-of-way, use of a six foot high wooden fence shall not be used. Additionally, should the buffer abut a right-of-way, hedges or trees shall not be blocked by a fence/wall from the view of the roadway and properties facing the village. Any buffers abutting a right-of-way shall be measured from the roadway's preservation line.
 - 20.a Should any portion of Balm-Wimauma Road be vacated (Option 1 and Option 2 in condition 17.d), the 50-foot wide buffer and screening shall not be required.
- 21. A 250-foot wide buffer shall be provided adjacent to folio 77850.0000, as depicted on the general site plan.
- 22. The developer shall construct the following site access improvements, of which 22.a, 22.b or 22.c shall be constructed only if warranted per Section 6.04.04.D. of the Hillsborough County Land Development Code or unless otherwise approved in accordance the Section 6.04.02.B. administrative variance process:
 - 22.a An eastbound to southbound right turn lane on CR 672 at Shelley Ln.;
 - 22.b A westbound to southbound left turn lane on CR 672 at Shelley Ln.;

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22.c. A southbound to eastbound left turn lane on Balm Wimauma Rd. into the project's southernmost entrance; and,

- One (1) of the following options (as depicted on the on the PD site plan) relating to site access and roadway reconfigurations proposed by the developer:
- i. Option 1 The developer shall construct an extension of Balm Wimauma Rd. (between its intersection with Balm Rd. and CR 672) as a 2-lane collector roadway. Within 6 months of acceptance of the roadway extension, the developer shall remove up to a +/- 1,300-foot long segment of existing Balm Wimauma Rd. south of CR 672. Specific limits of the segment to be removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the intersection of the roadway extension with CR 672. In no event shall removal of the roadway section occur until such time as a cul-de-sac or other end of roadway treatment acceptable to Hillsborough County Public Works is constructed and open to public traffic; or,
- ii. Option 2 The developer shall realign up to +/- 1,300 feet of Balm Wimauma Rd. (i.e. that portion immediately south of CR 672) such that it connects to Shelley Ln. Concurrent with the opening of the realigned roadway extension, the developer shall close the old/realigned roadway and, within 6 months, complete removal of the old/unutilized roadway. Specific limits of the segment to be realigned/removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the newly created intersection of Balm Wimauma Rd. and Shelley Ln. The applicant shall also be responsible for preserving sufficient right-of-way necessary to accommodate a 2-lane enhanced roadway segment between the new intersection and CR 672; or,
- iii. Option 3 The developer shall construct a roundabout at the intersection of CR 672, Balm Wimauma Rd., Shelley Ln., and Balm Boyette Rd. This option may require the developer to dedicate or otherwise acquire additional right-of-way necessary to accommodate the roundabout. Notwithstanding anything herein to the contrary, utilization of this option shall relieve the developer of its obligation to construct the improvements listed in 1.a. and 1.b., above. Utilization of this option is also contingent upon review and approval of the proposed roundabout by Hillsborough County Public Works.
- 23. As Shelley Ln. is a substandard local roadway the developer will be required to improve Shelley Ln., between its southernmost access connection and CR 672, to current County standards unless

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otherwise approved in accordance with Section 6.04.02.B. of the Hillsborough County LDC. Deviations from TTM standards may be considered in accordance with Section 1.7.2. and other applicable sections of the Hillsborough County TTM.

- 24. As Balm Wimauma Rd. may be a substandard collector roadway, the developer will be required to coordinate with Hillsborough County Public Works to determine the improvements that may be required prior to or concurrent with plat/site/construction plan approval.
- 25. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 23 feet of right-of-way along its Balm Wimauma Rd. frontages, such that a minimum of 54 feet of right-of-way is preserved east and south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.
- 26. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 14 feet of right-of-way along its CR 672 frontage, such that a minimum of 54 feet of right-of-way is preserved south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.
- 27. Notwithstanding anything shown on the PD site plan to the contrary, the relocation of the southernmost access on Balm Wimauma Rd. such that it is located a minimum of 330 feet from the nearest adjacent access connection, shall be made. However, the access point shall not be located any further than 600 feet from the southern boundary of folio 77850.0000. Alternatively, the developer shall obtain a Section 6.04.02.B. administrative variance from the Section 6.04.07 access spacing requirements.

The following shall apply to both Planned Villages:

- 28. Access shall be provided as shown on the PD site plan unless otherwise provided herein these conditions. Internal roadways may be public or private, and if private, and if private, roadways may be gated (except for those portions functioning as shared access roadways, as required herein these conditions).
- 29. Notwithstanding anything on the PD site plan or herein these conditions to the contrary, bicycle and pedestrian access may be permitted anywhere along the project boundaries.
- 30. 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.
- 31. 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.

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- 32. 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).
- 33. 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.
- 34. 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 any stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan/plat approval.

Zoning
Administrator
Sign-off:

Approvable, subject to conditions

Desktop
Administrator
Sign-off:

Mon Feb 1 2021 12:49:53

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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. Ms. Corbett stated the applicant is requesting a major modification to an existing PD 18-0304, which is an approved PD site plan.

Ms. Corbett stated there are two parcels. She pointed out on her slide presentation the Rhodine Borrow Pit parcel at the top of the slide and the Grove parcel indicated by a star. Ms. Corbett stated the major modification applies only to the Grove parcel. She stated the applicant is only seeking to add one condition, which is within condition 14.1, stating land excavation shall be a permitted use in the Grove parcel.

Ms. Corbett stated the applicant views this as a technical modification to acknowledge land excavation as an allowed use. She stated the modification is required because of a new staff interpretation of the Land Development Code. She stated this PD illustrates the change in philosophy. Ms. Corbett pointed to her presentation slide and noted the Rhodine Borrow Pit site plan depicts a borrow pit. She stated that highlighted aerials show the permitted uses.

Ms. Corbett pointed to the Grove parcel and noted the proposed lakes outlined in red. She stated the list of permitted uses are largely the same in that the list provides residential uses and commercial uses and at the time there was an active borrow pit on the Rhodine Borrow Pit parcel even though the PD did not recognize a borrow pit as a permitted use. Ms. Corbett stated the applicant is adding borrow pit as a permitted use in this application and the land excavation is for lake creation. She pointed to the presentation slide depicting the PD site plan and noted this is the approved Special Use site plan. She stated the lakes are somewhat smaller, but they are generally in the same location.

Ms. Corbett stated Planning Commission staff found the major modification request consistent and county Development Services staff recommends approval. Ms. Corbett stated the applicant would like the hearing officer to recommend approval.

Ms. Corbett ended her presentation and stated she wished to reserve any remaining time for rebuttal.

Development Services Department

Ms. Michelle Heinrich, Hillsborough County Development Services Department, presented a summary of the findings and analysis as detailed in the staff report previously submitted into the record.

Ms. Heinrich noted the major modification request applies to the Grove parcel, which is within the boundaries of the Balm Community Plan in RP-2 and is subject to the moratorium. She stated this is a permitted request since it does not increase the density or reduce any proposed buffers.

Ms. Heinrich stated in August 2020 the subject site received land excavation approval in Special Use 19-1026. She explained Condition 2 of the Special Use Permit requires approval of the use within the PD before an operating permit is issued.

Ms. Heinrich stated Development Services staff found the modification request compatible with the surrounding area and recommended land excavation be listed as a permitted use in the Grove parcel of the PD. She stated the Planning Commission found the request consistent with the comprehensive plan and no agency objections were received. She concluded that staff finds the request approvable subject to conditions.

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 the major modification request supports the ShouthShore Areawide Systems Plan by adhering to the designated truck routes to operate the land excavation. She stated Planning Commission staff find the proposed major modification consistent with the *Future of Hillsborough Comprehensive Plan of 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. There were four individuals who wished to speak in opposition.

Mr. Buddy Harwell stated he is a board member of Balm Civic Association. He stated he would submit into the record a letter that he submitted during the Special Use process and a letter from a gentleman who lives in the area who is a geotechnical engineer.

Mr. Harwell stated that PD 18-0304 was approved on the condition that there are two noncontiguous properties under one PD. He stated the Board of County Commissioners remanded it. He stated the TDRs were eliminated. He stated that comprehensive plan policy 33.2.A provides that two noncontiguous parcels designated RP-2 that each are at least 160 acres or greater may blend the density or intensity of those noncontiguous parcels across the entire project through one plan PD. He stated that there were no TDR

transfers, so both PDs should be considered null and void and should have to start from "ground one" on this per the policy.

Mr. Harwell stated there are a lot of issues with wells in the area. He stated this will be the fifth borrow pit within a two-mile radius. He stated there would be some other evidence placed in the record. He pointed out definitions of the land excavation and where it does not adhere—adverse impact on the surrounding communities.

Mr. Harwell stated the applicant had a variance for two churches in the area on the Special Use. He projected a photograph and stated that this shows a sign that is out in front of the Good Samaritan Church. He stated they have been operating up and going again for the last six to eight months.

Mr. Harwell stated there were some drums out there and this was caught at one time, but he never heard a response on that. He projected a photograph and the hearing officer asked him what was depicted in the photograph. Mr. Harwell told the hearing officer the photograph depicted lids to 55-gallon drums that "supposedly had some hazardous waste in it."

Mr. Harwell stated another concern is that when the 30- to 60-foot ponds or lakes are dug, water must be pumped out to continue digging. He asked, "where's that water going to go?" Mr. Harwell projected a photograph, which he stated shows "just south of that parcel that is Shelley Lake." He stated the lake is high to the bank and is now within six inches of the bank. He pointed out the subject property and stated the site is probably about 15 feet higher. He stated he is concerned with the water flowing out of the proposed lakes flowing into the area and flooding surrounding areas. Mr. Harwell stated he lives just east of Shelley Lake and that the lake stays wet year-round.

Mr. Harwell brought up dump trucks and stated, "they have one thing on their mind to get paid by how many loads they make a day." He stated 2.5 million cubic yards of dirt equals 150,000 loaded dump trucks and 150,000 empty dump trucks. Mr. Harwell projected a photograph, which he stated was his mother's car after a dump truck hit it just two miles down the road. He stated luckily his mother walked away from the accident. He pointed to the photograph showing the dump truck.

Mr. Harwell stated he wanted the hearing officer to consider that land excavations have a real impact in his area. He said they have pumps in the lakes that pump them so they can keep digging. He stated these pumps run 24/7, 365, for five years. He stated he moved in this area for a rural life and for quiet. He stated he can go out and hear crickets and coyotes. He stated he can go out and see stars at night. He stated that to have another land excavation at this end of Balm Wimauma Road and there is one at the south end of Balm Wimauma Road. He stated there is a provision in the LDC that provides land excavations are not supposed to be within one mile of each other and they are like 1.2 miles apart so that is really close to have another one for the impact in the area and more trucks on substandard roads.

Mr. Harwell concluded his presentation.

Mr. James Frankland stated he and his wife have a small business and residence on Balm Road. He stated it is beautiful downtown Balm. He said he wanted to talk about water and stated they do not have enough water. Mr. Frankland stated that everything being done is to take water away and not to add water. He stated borrow pits cause the aquifer to go down. He stated there is no good to it and it is only good for the guy digging the dirt making the money. He stated it is not good for anybody else.

Mr. Franklin stated that when borrow pits are dug all wells in the area usually suffer. He stated he has a friend who lives almost two miles away from where Shelley Lake Mine was dug, and his water "took a dive" and "has never been good since." He stated a lot of water companies tried making the water better, but it does not work. He stated they gave up having tap water for anything but taking a shower and washing the car. He stated there is no help for him and once gone it is gone.

Mr. Franklin submitted a letter from Joe Gaskin, owner of Aquarius Water Refining, Inc. He stated the company has been in business in south Hillsborough County since 1975. He stated Mr. Gaskin "is not really for any of these borrow pits." He stated every time they dig his well has a problem and a problem with his business. Mr. Franklin stated "it's a big mistake. We're against it."

Mr. Franklin concluded his presentation.

Mr. Al Brunner stated he echoes all the same things that Mr. Franklin and Mr. Harwell said. He stated that in addition to all the dump trucks, about 300,000-plus, that he has not been hit but has been run off the road. He stated he has experienced dump trucks bullying their way into turn lanes and threatening to hit him so much that he added air horns to his cars and 363-degree cameras so he will have legal recourse when a dump truck hits him.

Mr. Brunner stated he echoes the same concerns about existing wells and the risk of them running dry and the risk of additional contamination due to exposure of the aquifer from runoff of the various agricultural businesses and other things in the area.

Mr. Brunner stated the pond on his property has already been affected by a borrow pit from the previous owner so much that it had to have water pumped in from the Hills borrow pits into his pond under threat of lawsuit. He stated the three springs that fed the pond no longer have the water pressure to support them.

Mr. Brunner stated his grave concern is that within two and one-half miles of his house is Mosaic mine to the east, the Shelley Lake and borrow pits to the west and northwest, and Razorback Ranch to the southwest. He stated that to the east is Hills and the mining operation. He stated his water has already been deeply affected. Mr. Brunner stated, "we don't need another one inside that 2.5-mile area to ruin my water further." He stated, "unless somebody's willing to pay for my new well and pay for water to get supply to my pond, I'm vehemently against it."

Mr. Brunner stated that adding dump trucks on inferior roads is already a hazard. He stated the mining trucks already go down and all the existing planned developments in motion so that just to exit his road onto Carlton Lake in the middle of the morning rush hour can take ten minutes just to make the turn onto Carlton Lake safely. Mr. Brunner stated the number of accidents occurring on Balm-Riverview Road and Balm Picnic intersection where this new development is going in have already increased.

Mr. Brunner stated that is all he had, and he concluded his presentation.

Mr. Glen Fiske stated he lives in Balm, Florida. He asked, "first thing they're pushing from these folks here is how many acres is the excavation going to take away from building?"

The hearing officer instructed Mr. Fiske to speak into the microphone and pose his questions and so the applicant could address it on rebuttal.

Mr. Fiske stated he could not say much more about it now. He stated that what he was getting at is if the applicant is going to remove, for example, 50 acres of dirt that it cannot build down, whether it would remove 108 homes or move two per acre for every acre of land to be excavated.

Mr. Fiske stated the Planning Commission found the request consistent with the Balm Community Plan and stated, "we have never been spoken to about anything about this property from day one with the first proposal that's already been approved." He stated the request is not consistent with the Balm Community Plan and probably never will be. He stated the Balm Community Plan is being ignored, and it is time that stops.

Mr. Fiske concluded his presentation.

Mr. Brunner came back to the microphone. The hearing officer advised him the opponents had two minutes and 30 seconds remaining. Mr. Brunner stated he wanted to address the other parcel, Rhodine Road, which was north of the subject property and was supposed to have been the continued piece for the TDRs. He stated, "she commented that there's a borrow pit there already." He stated that borrow pit was there first and the Planned Development was approved afterward. He stated now that the Planned Development is approved, they are asking for a borrow pit. He stated it is "night and day between the differences on these." He stated he just needed to make that remark.

Development Services Department

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

Applicant Rebuttal

The hearing officer announced the applicant had 13 minutes remaining from its principle case, which it had reserved, plus five minutes for rebuttal.

Ms. Corbett stated that there was a reference to the "Hill" pit, and she wanted to clarify for the record that Eisenhower Property Group's principal is Jeffrey Hills. She stated the borrow pit referenced as the "Hill" pit is Annie Hill, who is not related in any way to the applicant in this case.

Ms. Corbett turned back to her slide presentation and stated many of the issues raised by opponents were raised at the Special Use Permit hearing. She stated that under the land excavation regulations, a Special Use Permit is required once 30,000 cubic yards of export is exceeded. She stated the LDC provides that Special Use Permits and the impacts of land excavation are reviewed in by the Land Use Hearing Officer. She stated the Board of County Commissioners is now seeking to modify the LDC to have land excavations come before the board, but that is not the code today. She stated that under the code today land excavation Special Use Permits are reviewed by the LUHO.

Ms. Corbett stated the Special Use Permit was approved August 3, 2020. She stated county staff recommended approval and Land Use Hearing Officer Finch recommended approval after hearing all the similar testimony regarding transportation impacts, surrounding well impacts, light, noise, and overall cumulative impacts.

Ms. Corbett stated the duration of the land excavation Special Use Permit is limited to five years and the excavation may not exceed 60 feet. She stated the hours of operations have been limited. She stated the applicant offered buffering and setbacks and will fence to mitigate the impacts. She stated access is limited. She stated the applicant must mitigate dust activities. She stated wetlands and preservation setbacks are required to be preserved, and the developer must repair any damage to Balm Wimauma Road. She stated all these issues have already been considered by the Land Use Hearing Officer.

Ms. Corbett stated she is submitting into the record the approval for the Shelley Lakes Mine, which the opponents brought up. She stated that approval was for 20 million cubic yards for a duration of 15 years. She stated it was much more intensive. She stated the applicant's request is for lake creation for the subdivision. She stated she would submit into the record the approval decision, approved site plan, certified site plan from PD 18-0304, transcript of the BOCC hearing, which reflects the Balm Civic Association did appear, and the records from SU 19-1026 so the hearing officer could see what issues were raised at that hearing and already addressed.

Ms. Corbett stated she also will submit into the record a legal memorandum on whether the applicant should even have to make the major modification request. She stated the applicant disagreed with that requirement throughout the process but is complying with the requirement so it can proceed with the land excavation.

Ms. Corbett asked the hearing officer to recommend approval. She concluded her presentation.

C. EVIDENCE SUMBITTED

Ms. Kami Corbett submitted into the record at the hearing a copy of the Land Use Application Summary Report for application SU 08-1433, a packet that included the PD site plan for PD 18-0304 (October 10, 2018), transcript of BOCC approval for PD 18-0304, LUHO Decision for Special Use Permit Approval (August 3, 2020), Special Use Permit Staff Report for PD 19-1026 (August 3, 2020), Special Use Permit Site Plan for PD 19-1026 (February 17, 2020), Transcript of LUHO hearing on August 3, 2020, Exhibits from PD 19-1026 (Part 1, Part 2, Part 3), Memorandum of Law re: Statutory Construction, Memorandum of Law re: Lay Witnesses, and a PowerPoint Presentation.

Mr. Buddy Harwell submitted into the record at the hearing a letter from Christopher L. Lewis, M.S., P.E., Mr. Harwell's personal statement in opposition, copies of LDC provisions on land excavation, copies of portions of the staff report from PD 18-0304, and several photographs.

Mr. James Frankland submitted into the record at the hearing a letter from Joseph F. Gaskill, President and Founder of Aquarius Water Refining Inc.

D. FINDINGS OF FACT

- 1. The subject property consists of a 358-acre non-contiguous Planned Development, PD 18-0304, with a northern area (the Rhodine Borrow Pit parcel) in the Riverview community, and a southern area (the Grove parcel) in the Balm community.
- 2. The Grove parcel consists of 178 acres approved for 356 single-family detached units and 497 square feet of retail uses. The Grove parcel is designated RP-2 on the Future Land Use Map. The Rhodine Borrow Pit parcel consists of 180 acres approved for 271 single-family detached units and 3,658.5 square feet of retail uses for a Village Node. The Rhodine Borrow Pit parcel is designated RP-2 and Res-4 on the Future Land Use Map.
- 3. The subject property is in the Rural Services Area and is within the boundaries of the Balm and SouthShore Areawide Community Plan.
- 4. The applicant has requested a major modification of PD 18-0304, as most recently modified by MM 19-1172, to modify the Grove parcel of the PD by allowing land excavation as a permitted use. No modification of the Rhodine Borrow Pit parcel of the PD is requested.
- 5. On August 22, 2020, the Grove parcel received approval for a Special Use Permit, SU 19-1026, for land excavation. The Special Use Permit allows removal of a maximum of 2.5 million cubic yards of material from 54 acres of the site over a five-year period for lake creation. Condition #2 of SU 19-1026 required approval of land excavation as a permitted use within the PD prior to issuance of an operating permit.

- 6. During the SU 19-1026 Special Use Permit process the Land Use Hearing Officer heard and considered issues of water, transportation, and cumulative impacts of borrow pits.
- 7. The requested major modification to allow land excavation for lake creation on the Grove parcel of PD 18-0304 would be compatible with the surrounding area subject to the conditions set out in the Development Services staff report based on the site plan submitted December 31, 2020.
- 8. The requested major modification to allow land excavation for lake creation on the Grove parcel of PD 18-0304, subject to the conditions set out in the Development Services staff report based on the site plan submitted December 31, 2020, is consistent with the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County*.
- 9. The applicant has not requested any variations from LDC parts 6.06.00-Parking and Loading, 6.06.00-Landscaping and Buffering Requirements, or 6.07.00-Fences and Walls.

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

The major modification 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 major modification 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 has requested a major modification of PD 18-0304, as most recently modified by MM 19-1172, to modify the Grove parcel of the PD by allowing land excavation for lake creation as a permitted use. No modification of the Rhodine Borrow

Pit parcel of the PD is requested. On August 22, 2020 the Land Use Hearing Officer approved a land excavation Special Use Permit, SU 19-1026.

H. RECOMMENDATION

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

Pamela Oo Hatley Pamela Jo Hatley, PhD, \$D March 3, 2021

Date

Land Use Hearing Officer



| Unincorporated Hillsborough County Rezoning | | |
|---|---|--|
| Hearing Date: February 15, 2021 Report Prepared: January 8, 2021 | Petition: MM 21-0033 15110 Balm Wimauma Road South and East sides of Balm Wimauma Road, west of Shelly Lane, south of County Road 672 | |
| Summary Data: | | |
| Comprehensive Plan Finding: | CONSISTENT | |
| Adopted Future Land Use: | Residential Planned-2 (2 du/ga; 0.35 FAR as a Planned Village or 1 du/5 ga) | |
| Service Area | Rural | |
| Community Plan: | Balm and Southshore Areawide Systems | |
| Requested Modification: | Modification to Planned Development (PD 18-0304) to add land excavation as an additional use. | |
| Parcel Size (Approx.): | 178± acres (7,753,680 square feet) | |
| Street Functional Classification: | Balm Wimauma Road – Collector Shelly Lane- Local County Road 672-Arterial | |
| Locational Criteria | Not subject to Locational Criteria | |
| Evacuation Area | The subject property is not located within an Evacuation Zone. | |



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

Context

- The 178 ± acre site known as the "Grove Parcel" is located between Balm Wimauma Road and Shelly Land, south of State Road 672. The site is within the limits of the Rural Area, is within the limits of the Southshore Areawide Systems and the Balm community plans.
- The site is designated with a Future Land Use category of Residential Planned -2 (RP-2), with typical uses agriculture, Residential, suburban scale neighborhood, and community commercial, office uses, multi-purpose and clustered mixed use projects. Non-residential uses shall meet locational criteria for specific land use.
- The subject property is surrounded by the RP-2 Future Land Use category. Further east parcels are designated Residential-1 (RES-1) and Agricultural Rural (AR). Parcels to the south are designated as Wimauma Village Residential-2 (WVR-2) and additional Agricultural Rural (AR).
- Within the general vicinity, there are zoning designations of Planned Developments with approvals for other Planned Villages. Agricultural Single Family-1 (AS-1) abuts the northern boundary of the site and is developed as Balm Park and single family residential. Along the eastern boundary is designated Agricultural Single Family Estate (AS-0.4) and is developed with a mixed use auto operation and other heavy industrial uses. The southern boundary is primarily vacant and is designated as Planned Development (PD).
- The subject site received approval for a Special Use Permit (SU 19-1026) for a land excavation in August of 2020.
- The applicant is requesting a Major Modification to Planned Development (PD 18-0304) for the purpose of adding land excavation to the allowable uses.

Compliance with Comprehensive Plan:

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

Future Land Use Element

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.

Objective 4: The Rural Area will provide areas for long term, agricultural uses and large lot, low density rural residential uses which can exist without the threat of urban or suburban encroachment, with the goal that no more than 20% of all population growth within the County will occur in the Rural Area.

Policy 4.2: For the purpose of this Plan, planned villages shall be considered areas identified as Residential Planned-2 or Wimauma Village-2 on the Future Land Use Map within the Rural Area.

MM 21-0033

Rural communities are generally existing areas shown on the Future Land Use map at densities higher than 1 du/5ga and up to 1 du/ga outside the USA. Suburban enclaves are those existing areas shown on the Future Land Use Map as higher than 1 du/ga outside the USA.

Policy 4.3: The Residential Planned-2 or Wimauma Village-2 land use category shall not be expanded outside of the Urban Service Area.

Policy 4.7: Extension of Water and Sewer in Rural Area

Public water and sewer lines shall not be permitted to be extended into rural areas unless this extension occurs to:

- Serve a planned village (RP-2 or WVR-2) or Planned Environmental Community ½ as described in this Plan;
- Serve a project that has established vested rights for the use of these facilities;
- Address a public health hazard documented by the Health Department or other regulatory agency;
- Provide for the extension of centralized water or wastewater facilities to serve a school facility so long as the service lines are designed to accommodate solely the service demands of the school, consistent with the School Interlocal Agreement.

Neighborhood/Community Development

Objective 16: Neighborhood Protection The neighborhood is the 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 16.3: 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 connection

Conservation and Aquifer Recharge Element

Policy 10.9: The County shall continue to require appropriate setbacks between mining activities and adjacent existing and future land uses to ensure public health and safety, as well as economic and aesthetic attributes.

Objective 11: The County shall continue to regulate the location and operation of land excavations to minimize negative impacts on surrounding properties, ensure that land excavations are appropriately reclaimed, and encourage the productive reuse of such areas.

Policy 11.1: The County shall continue to prohibit land excavation activities that adversely impact surface or groundwater levels or wetlands on surrounding property.

MM 21-0033

- **Policy 11.2:** The County shall require reclamation plans to ensure environmentally acceptable and economically viable reuses of excavated lands.
- **Policy 11.5:** The County shall periodically review, and amend, if necessary, the Land Excavation Regulations to ensure adequate standards and requirements are in place to minimize the negative impacts of land excavations, and to ensure that land excavations are appropriately reclaimed.
- **Policy 11.6:** The County shall require setbacks between land excavations and adjacent land uses to protect the public health, safety and welfare.
- **Policy 11.7:** The County shall restrict land excavations in documented listed species habitat.
- **Policy 11.8:** The County shall require demonstration of restoration of essential wildlife habitat prior to permitting land excavations in areas that support listed species.

Livable Communities Element: Southshore Areawide Community Plan

- 3. Livable Roadways In the future, improved roadway corridors should reflect surrounding character, neighborhood and/or historical and environmental features whenever possible and/or feasible through strategies such as;
 - g. All currently designated truck routes and proposed new collectors and arterials shall be available for consideration to continue as or as potential new truck routes with the exception of the following roads:
 - 19th Ave. N.E. from US 41 to US 301
 - 24th St. extended from SR 674 to Big Bend Rd.
 - Big Bend Rd. from US 301 to its eastern terminus

Staff Analysis of Goals, Objectives, and Policies:

The subject site is located on approximately 178 acres, located between Balm Wimauma Road and Shelley Lane, south of SR 672. The site is located within the Rural Area and the limits of the Balm and Southshore Areawide Systems Community plans. The applicant requests to modify an existing Planned Development (PD 18-0304) to allow land excavation as an additional use. The site is currently approved for 356 single family residential units and 497 square feet of retail uses to be developed in a Planned Village as per the requirements of the Residential Planned-2 Future Land use classification.

PD (18-0304) consists of two non-contiguous parcels with a northern portion (Rhodine Borrow Pit) in the Riverview community and a southern portion (The Grove), which is located in the Balm Community. The addition of the land excavation as an additional use is only being proposed on the (The Grove) parcel. No modifications are being proposed to the "Rhodine Borrow Pit" portion of the site.

Adding land excavation as an allowable use will mean that the site will be subject to Special Use Permit (SU 19-1026) for a land excavation which was approved in August of 2020.

With SU 19-1026, the applicant requested a waiver to the setback between the excavated area and residentially zoned properties. Policy 1.4 of the Hillsborough Comprehensive Plan describes compatibility as the characteristics of different uses or activities or design

MM 21-0033 4

which allow them to be located near or adjacent to each other in harmony. A condition restricting operating hours as well as the applicant moving the haul route to have less of an impact on the residential development pattern will mitigate impacts, consistent with this policy direction. This major modification application is also consistent with the policies, goals and objectives within the Conservation and Aquifer Recharge Element of the Unincorporated Hillsborough County Comprehensive Plan ensuring that the land excavation is appropriately reclaimed.

This application supports the vision of the Southshore Areawide Systems Community plan by adhering to the designated truck routes to operate the land excavation.

Overall, the proposed modification would allow for development that is consistent with the Goals, Objectives and Policies of the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County*, and that is compatible with the existing and planned development pattern found in the surrounding area.

Recommendation

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

MM 21-0033 5

HILLSBOROUGH COUNTY 2020 FUTURE LAND USE

RZ MM 21-0033

<all other values>

APPROVED

WITHDRAWN CONTINUED DENIED

Jrban Service Area unty Boundary **urisdiction Boundary**

PEC PLANNED ENVIRONMENTAL COMMUNITY-1/2 (.25 FAR) AGRICULTURAL/MINING-1/20 (.25 FAR) AGRICULTURAL/RURAL-1/5 (.25 FAR) AGRICULTURAL-1/10 (.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-12 (.35 FAR) RESIDENTIAL-9 (.35 FAR)

RESIDENTIAL-16 (.35 FAR) RESIDENTIAL-20 (.35 FAR) RESIDENTIAL-35 (1.0 FAR)

NEIGHBORHOOD MIXED USE-4 (3) (.35 FAR)

COMMUNITY MIXED USE-12 (:50 FAR) SUBURBAN MIXED USE-6 (.35 FAR) URBAN MIXED USE-20 (1.0 FAR)

ENERGY INDUSTRIAL PARK (.50 FAR USES OTHER THAN RETAIL, .25 FAR RETAIL/COMMERCE) RESEARCH CORPORATE PARK (1.0 FAR.)

LIGHT INDUSTRIAL PLANNED (.50 FAR)

LIGHT INDUSTRIAL (.50 FAR)

HEAVY INDUSTRIAL (.50 FAR)

WIMAUMA VILLAGE RESIDENTIAL-2 (.25 FAR) NATURAL PRESERVATION CITRUS PARK VILLAGE

2,300

4,600

Map Printed from Rezoning System: 11/13/2020

Author: Beverly F. Daniels

File: G:\RezoningSystem\MapPrc



CURRENTLY APPROVED



DEVELOPMENT SERVICES

PO Box 1110, Tampa, FL 33601-1110

HILLSBOROUGH COUNTY DEVELOPMENT SERVICES DEPARTMENT

GENERAL SITE PLAN REVIEW/CERTIFICATION

BOARD OF COUNTY COMMISSIONERS

Harry Cohen
Ken Hagan
Pat Kemp
Gwendolyn "Gwen" Myers
Kimberly Overman
Mariella Smith
Stacy R. White
COUNTY ADMINISTRATOR
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COUNTY ATTORNEY
Christine M. Beck

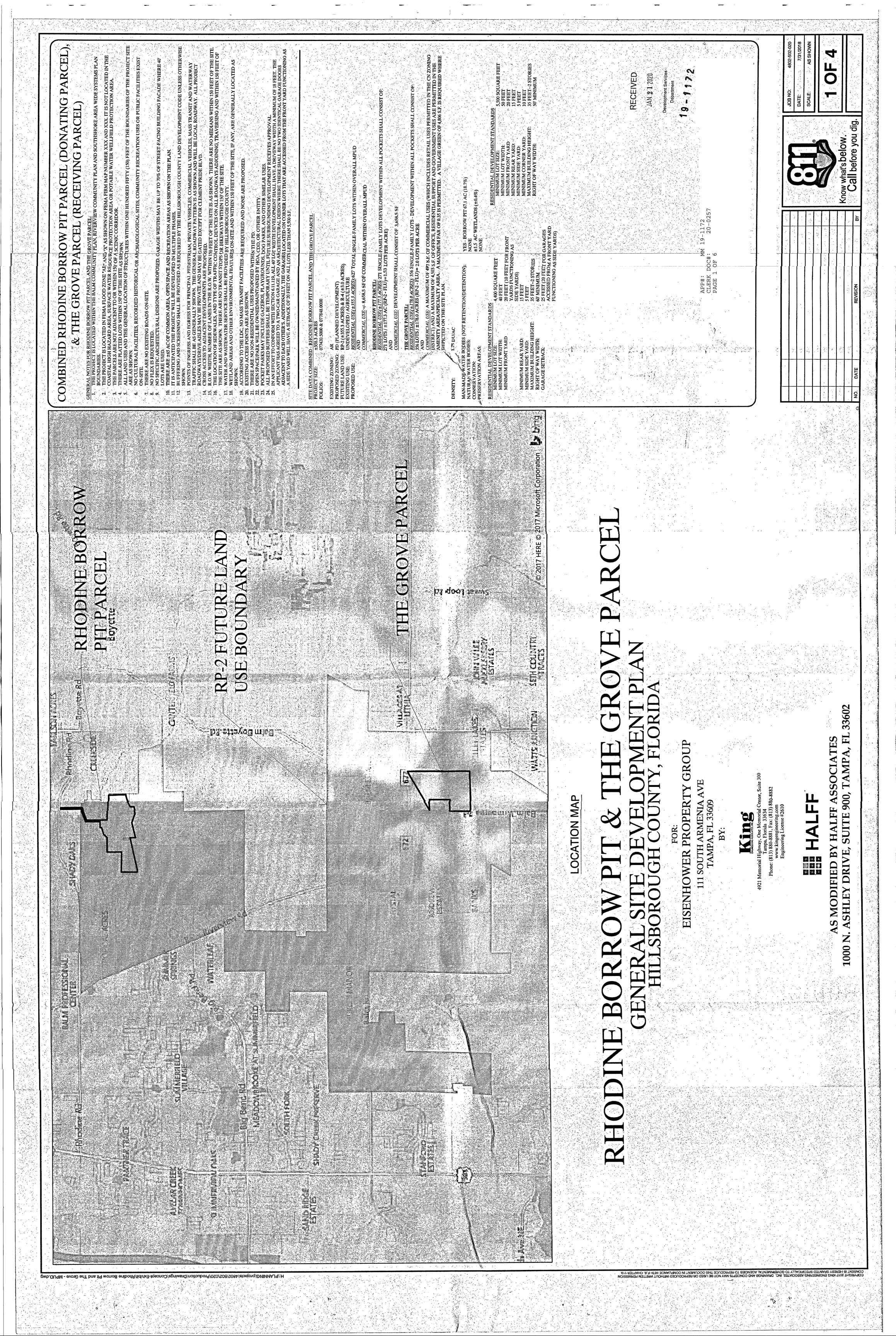
DEPUTY COUNTY ADMINISTRATOR

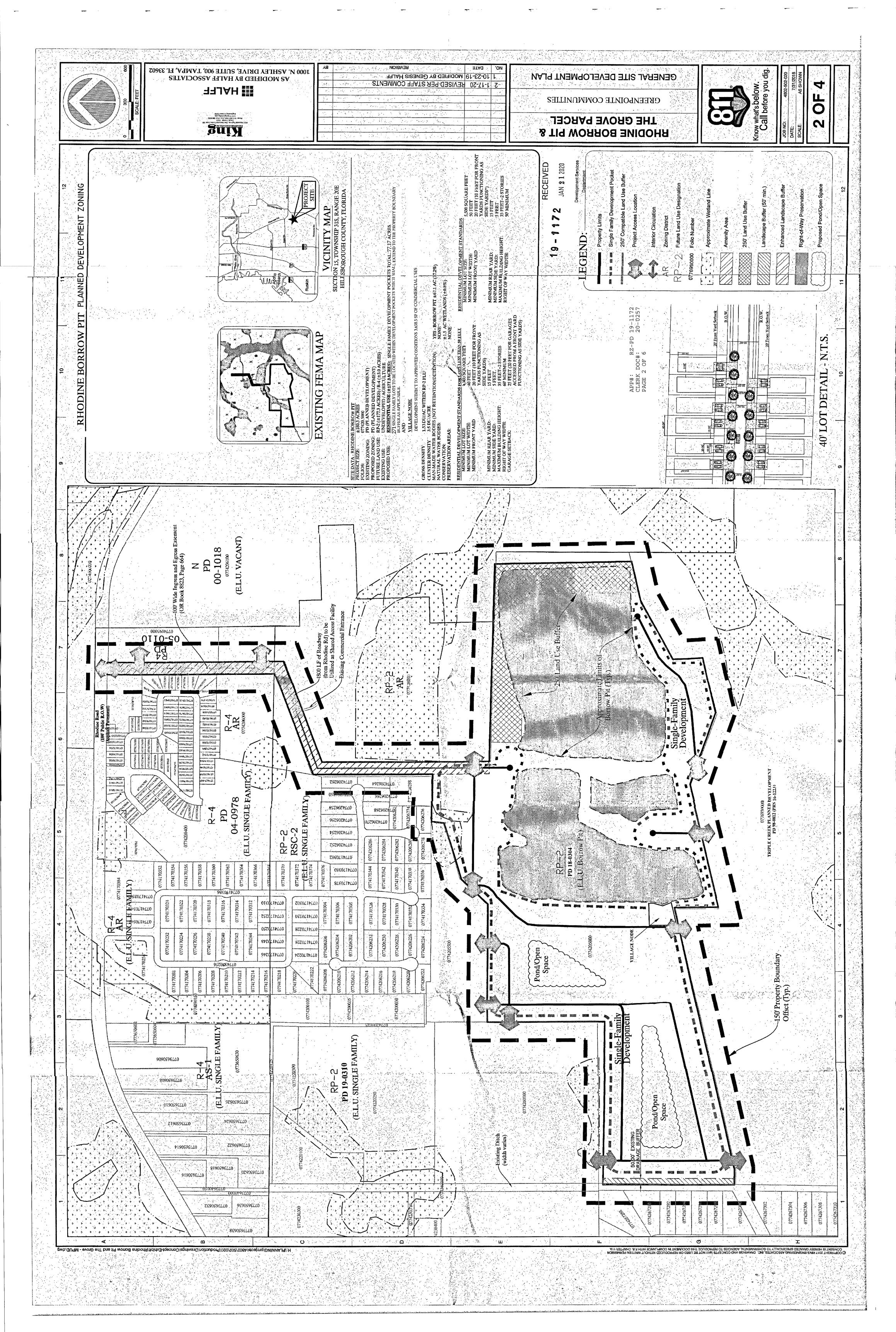
Lucia E. Garsys

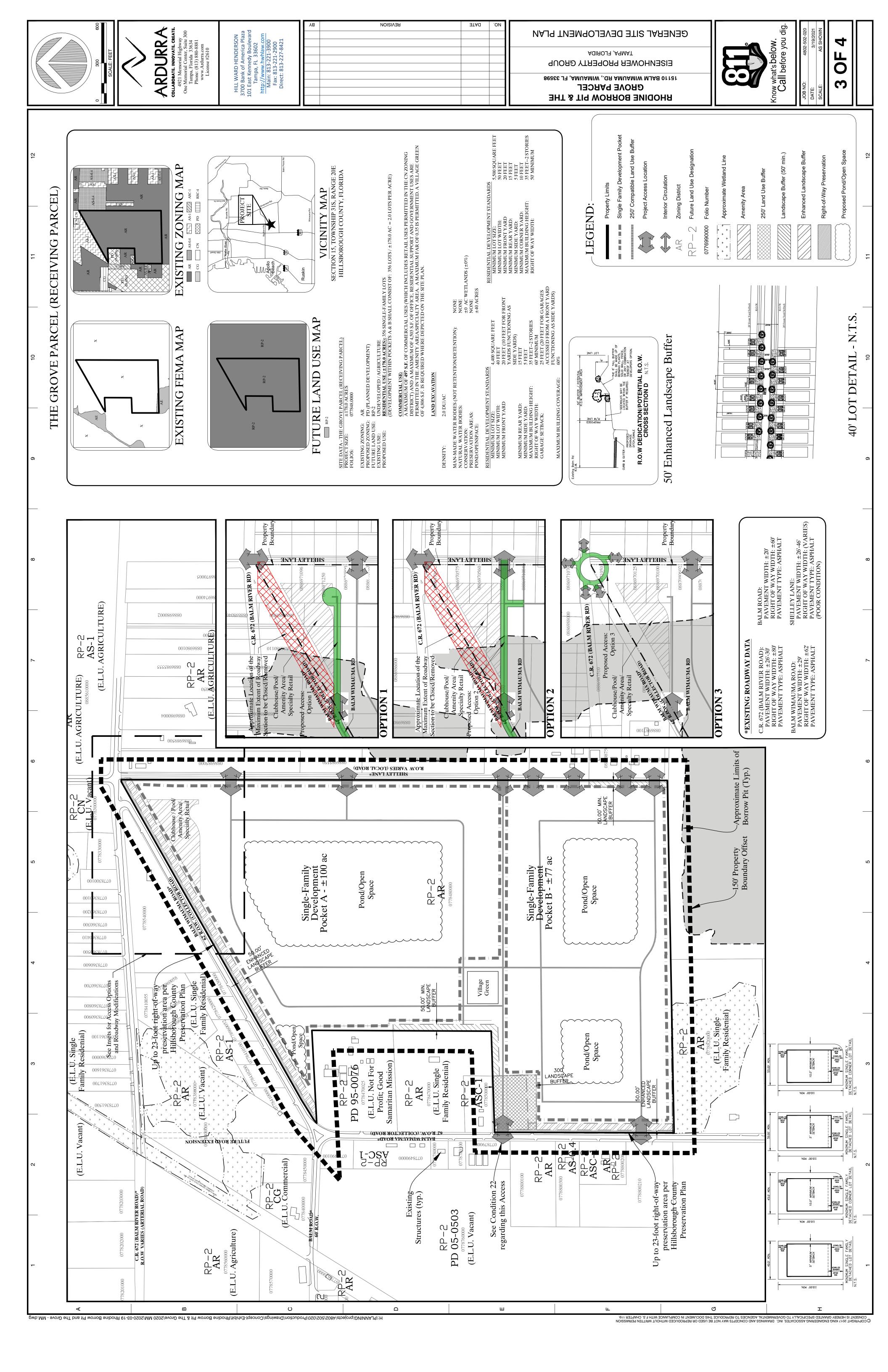
Peggy Caskey

INTERNAL AUDITOR

| Project Name: | | _ |
|--|---|-------------------|
| Zoning File: | Modification: | _ |
| Atlas Page: | Submitted: | _ |
| To Planner for Review: | Date Due: | _ |
| Contact Person: | Phone: | _ |
| Right-Of-Way or Land Require | ed for Dedication: Yes No | |
| () The Development Services Do | epartment HAS NO OBJECTION to this General Site Plan. | |
| () The Development Services De following reasons: | epartment RECOMMENDS DISAPPROVAL of this General S | Site Plan for the |
| Reviewed by: | Date: | _ |
| Date Agent/Owner notified of I | Disapproval: | |







BORROW RHODINE

LEGAL DESCRIPTION: (PER COMMITMENT FOR TITLE INSURANC

Begin at the SW corner of the NW 1/4 of the NW 1/4 of Section 1, Township 31 S the West boundary of said Section 1, 88.37 feet, thence run South 89 deg. 45'22 feet, thence run South 89 deg. 45'22 East 1685.95 feet, thence South 00 deg.3 feet, thence S. 1 deg.23'40" E. 1090.90 feet, thence S. 76 deg. 56'10" W. 325.4 deg. 26'55" E. 238.46 feet, thence S. 77 deg.06'25" W. 468.39 feet, thence N. 7 1019.38 feet, thence N. 1 deg.09'55" W. 350.52 feet, thence S. 77 deg. 46'30" V Section 1, said point being 1913.12 feet North of the SW corner thereof, continual south, Range 20 East to a point being 1650 feet North of the South 130.45 feet, thence N. 0 deg. 02'12" E. 1048.54 feet to the NW comer of East 1/1316.96 feet to the NE comer of SE 1/4 of said Section 2, thence N. 0 deg. 08'22

From the intersection of the West boundary of Section 36, Township 30 Sout Road, run thence S. 89 deg. 48'35" E. along said right-of-way line 2816.42 f 1327.00 feet; thence S. 69 deg. 27'00" W. 885.56 feet; thence S. 0 deg. 34'thence N. 0 deg. 34'35" W. 1334.27 feet; thence N. 69 deg. 27'00" E. 885.7 right-of-way line of Rhodine Road, thence N. 89 deg. 48'35" W. 100.00 feet egress over and across said property.

Ω

Beginning at the SW corner of the NW 1/4 of the NW 1/4 of Section 1, Townshe West line of said NW 1/4 a distance of 88.37 feet; thence S. 89 deg. 45". distance of 35.00 feet; thence S. 89 deg. 45".22" E. a distance of 1,301.70 fe a distance of 115.98 feet; thence continue along said Westerly bank S. 74 dewesterly bank S. 43 deg. 24"17" W. a distance of 294.26 feet; thence N. 89 1/4 of the NW 1/4 of said Section 1; thence continue along said West line of 402.88 feet to the Point of Beginning. All lying and being in Hillsborough Cou

LEGAL DESCRIPTION: (PER COMMITMENT F

4921 Memorial Highway, One Memorial Center, Suite 300 Tampa, Florida 33634 Phone: (813) 880-8881, Fax: (813) 880-8882

Submitted as part of MM 19-1172 by Genesis Halff. No Changes on this page.



GENERAL SITE DEVELOPMENT PLAN

AGIROJA, AGMAT EISENHOWER PROPERTY GROUP

THE GROVE PARCEL

RHODINE BORROW PIT &

©COPYRIGHT 2017 KING ENGINEERING ASSOCIATES, INC. DRAWINGS AND CONCEPTS MAY NOT BE USED OR REPRODUCED WITH F.S. CHAPTER 119.

AGENCY COMMNENTS

AGENCY COMMENT SHEET

| TO: ZC | ONING TECHNICIAN, Development Services | DATE: 1/12/2021 |
|--------|--|-------------------------|
| REVIE | REVIEWER: James Ratliff, AICP, PTP Principal Planner AGENCY/DEPT: Transportation | |
| COMM | MUNITY PLAN/ SECTOR: BYT/ Central | PETITION NO: MM 21-0033 |
| | This agency has no comments. | |
| X | This agency has no objection. | |
| | This agency has no objection, subject to listed or attached | l conditions. |
| | This agency objects, based on the listed or attached groun | nds. |

REPORT HIGHLIGHTS AND CONCLUSIONS

The applicant is seeking a Major Modification (MM) of existing PD 18-0304. The applicant is seeking to add excavation uses to the PD. The excavation was previously reviewed and authorized via Special Use application #19-1026. As such, transportation review section has no objection to this request.

ROADWAY LEVEL OF SERVICE

| Roadway | From | То | LOS Standard | Peak Hour Directional LOS |
|------------------|------------------|-------------|-----------------|---------------------------------|
| Balm Rd. | Balm Wimauma Rd. | Balm Rd. | D | В |
| CR 672 | US 301 | Balm Rd. | D | В |
| Balm Boyette Rd. | CR 672 | Boyette Rd. | С | В |

Source: Hillsborough County 2019 Level of Service Report.

COMMISSION

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Pat Kemp VICE-CHAIR
Ken Hagan
Lesley "Les" Miller, Jr.
Sandra L. Murman
Kimberly Overman
Stacy White



DIRECTORS

Janet L. Dougherty EXECUTIVE DIRECTOR

Hooshang Boostani, P.E. WASTE DIVISION Elaine S. DeLeeuw, ADMIN DIVISION Sam Elrabi, P.E. WATER DIVISION Rick Muratti, Esq. LEGAL DEPT Andy Schipfer, P.E. WETLANDS DIVISION Sterlin Woodard, P.E. AIR DIVISION

AGENCY COMMENT SHEET

| REZONING | | |
|--|--|--|
| HEARING DATE: 1/19/21 | COMMENT DATE: 11/17/20 | |
| PETITION NO.: 21-0033 EPC REVIEWER: Mike Thompson | PROPERTY ADDRESS: 15110 Balm Wimauma Rd | |
| CONTACT INFORMATION: (813) 627-2600 X 1219 | FOLIO #: 77848.0000 STR: 25-31S-20E | |
| EMAIL: thompson@epchc.org | 011 20 010 20 <u>2</u> | |
| REQUESTED ZONING: MM to PD | | |
| FINDINGS | | |
| WETLANDS PRESENT | YES | |
| SITE INSPECTION DATE | 1/19/18 | |
| WETLAND LINE VALIDITY | NA | |
| WETLANDS VERIFICATION (AERIAL PHOTO, SOILS SURVEY, EPC FILES) | Ditches | |
| The EPC Wetlands Division has reviewed the proposed rezoning. In the site plan's current | | |

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

- Approval of this zoning petition by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission of Hillsborough County (EPC) approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impact to wetlands, and does not grant any implied or vested right to environmental approvals.
- The construction and location of any proposed wetland impacts are not approved by this correspondence, but shall be reviewed by EPC staff under separate application pursuant to the EPC Wetlands rule detailed in Chapter 1-11, Rules of the EPC, (Chapter 1-11) to determine whether such impacts are necessary to accomplish reasonable use of the subject property.
- Prior to the issuance of any building or land alteration permits or other development, the approved wetland / other surface water (OSW) line must be incorporated into the site plan. The

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

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

INFORMATIONAL COMMENTS:

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

- The subject property contains wetland/OSW areas, which have not been delineated. Knowledge of the actual extent of the wetland and OSW are necessary in order to verify the avoidance of wetland impacts pursuant to Chapter 1-11. Prior to the issuance of any building or land alteration permits or other development, the wetlands/OSWs 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.
- 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.



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: 01/14/2021

REVIEWER: Ron Barnes, Impact & Mobility Fee Coordinator

APPLICANT: Kami Corbett PETITION NO: 21-0033

LOCATION: 15110 Balm Wimauma Rd

FOLIO NO: 77848.000

Estimated Fees:

(Fee estimate is based on a 2,000 square foot, 3 bedroom, Single Family Detached)

Mobility: \$9,005 * 356 units = \$3,205,780 Parks: \$1,815 * 356 units = \$646,140 School: \$8,227 * 356 units = \$2,928,812 Fire: \$335 * 356 units = \$119,260 Total Single Family Detached = \$6,899,992

Project Summary/Description:

Rural Mobility, South Park/Fire - 356 Single Family Units

WATER RESOURCE SERVICES REZONING REVIEW COMMENT SHEET: WATER & WASTEWATER

| PETIT | FION NO.: MM21-0033 REVIEWED BY: Randy Rochelle DATE: 12/4/2020 |
|-------|--|
| FOLI | O NO.: |
| | This agency would ☐ (support), ☒ (conditionally support) the proposal. WATER |
| | The property lies within theWater 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 inch water main exists _ (adjacent to the site), _ (approximately feet from the site) |
| | 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 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 inch wastewater force main exists \[\] (adjacent to the site), \[\] (approximately feet from the site) |
| | 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 |
| COMN | MENTS: The subject site is located outside of the Hillsborough County Urban Service Area, however the subject property's land use designation could allow for connection to Hillsborough County Water and Wastewtaer Service. No water and/or wastewater service is consider adjacent. 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. |

EXHIBITS SUBMITTED DURING THE ZHM HEARING

HEARING TYPE: ZHM, PHM, VRH, LUHO

HEARING MASTER: Pamela Jo Hatley PAGE: 1 OF 1

DATE: 2/15/2021

| 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 | Applicant's Presentation Packet | No |
| RZ 20-1282 | Jesse Blackstock | Applicant's Presentation Packet | No |
| RZ 20-1282 | Todd Pressman | 2. Opposition Presentation Packet | No |
| RZ 20-0389 | Michael Horner | Applicant's Presentation Packet | No |
| RZ 20-0389 | Michael Yates | 2. Applicant's Presentation Packet | No |
| RZ 20-0394 | Michael Yates | Applicant's Presentation Packet | No |
| MM 20-0898 | Brian Grady | Revised Staff Report | Yes |
| RZ 20-0985 | Kami Corbett | 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 | 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 | Opposition Presentation Packet and Photographs | No |
| MM 21-0033 | Jamie Frankland | 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 | Agency Review Comment Sheet | Yes |
| RZ 21-0108 | Bill Sullivan | 2. Applicant's Presentation packet | No |
| | | | |

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

PAGE OF 9

DATE/TIME: 2/15/21 6:00 2m HEARING MASTER: Panels Jo Hatley

PLEASE PRINT CLEARLY, THIS INFORMATION WILL BE USED FOR MAILING PLEASE PRINT APPLICATION # NAME Typer Hudsen 22 -1266 MAILING ADDRESS 400 N. Ashley Drive CITY Tames STATE [1 ZIP 33602PHONE VS NAME Steve Allism APPLICATION # MAILING ADDRESS 14217 Shadow Mass law # 101 Rz 20-1279 CITY Jampa STATE FC ZIP33113 PHONE 83-244-2106 APPLICATION # NAME JESSE BLACKSTOCK MAILING ADDRESS TO BOX 10099 RZ 20-1282 CITY TAMPA STATE FL ZIP 336 PHONE 727. 2209440 PLEASE PRINT APPLICATION # RZ 20- 282 MAILING ADDRESS 200 04 CITY F. POUS MUSTATE T ZIP 3701 PHONE 804 PLEASE PRINT OM JOHNSTON APPLICATION # RZ 20-1282 MAILING ADDRESS 3/15 CURRY RD CITY LOTZ STATE FL ZIP 33549 PHONE 813-190-5865 NAME ZACHERY BURKE **APPLICATION #** AZ 20 - 1282 MAILING ADDRESS 2633 FIDDLESTICK CIR. CITY LUTZ STATE FL ZIP 3355 PHONE 813-46-563

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

PAGE OF

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

PAGE 2 OF

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Cancia To Hotley

| PLEASE PRINT CLE | ARLY, THIS INFORMATION WILL BE USED FOR MAILING |
|------------------|---|
| APPLICATION # | PLEASE PRINT NAME Lauren Chepand |
| RZ 20- 1282 | MAILING ADDRESS 2503 High Dales LA |
| | CITY LUTZ STATE ZIP 3357 PHONE 813.760. |
| APPLICATION # | NAME Maria Elena DAMICO |
| RZ 20-1282 | MAILING ADDRESS 16105 Danell Rd |
| 72 000 | CITY LUTE STATE FC ZIP 3354 PHONE 83.2304091 |
| APPLICATION # | PLEASE PRINT NAME Alan Vernick |
| RZ 20-082 | MAILING ADDRESS 2110 Curry Road |
| US | CITY LAZ STATE FL ZIP 33549 PHONE |
| APPLICATION # | PLEASE PRINT ROUND |
| RZ 20-1282 | MAILING ADDRESS 2002 Cussy Rund |
| US | CITY LURZ STATE FL ZIP33949 PHONE |
| APPLICATION # | PLEASE PRINT NAME Soh 1 Cay |
| 17 70-1767 | MAILING ADDRESS 16102 Darnell Rd |
| RZ 20-1282 VS | CITY LUTZ STATE FL ZIP 33544 PHONE |
| APPLICATION # | PLEASE PRINT NAME Doug Tibbett |
| Dz 20-1282 | MAILING ADDRESS 2525 Victoria Cirole |
| V5 | CITY_Lotz STATE TI ZIP 33559 PHONE |

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

PAGE $\frac{3}{2}$ OF $\frac{9}{2}$

DATE/TIME: 2115121 6:00 PM HEARING MASTER: Pamela To Hatley

PLEASE PRINT CLEARLY, THIS INFORMATION WILL BE USED FOR MAILING PLEASE PRINT
NAME Lesky Miller **APPLICATION #** RZ 20-1282 MAILING ADDRESS 2530 Victoria Circle CITY Cutz STATE FL ZIP 33559 PHONE PLEASE PRINT **APPLICATION #** NAME Jan Decamp Brown RZ 20- 1282 MAILING ADDRESS 2002 Comy Rd 1/5 CITY Luce STATE FL ZIP 33549 PHONE PLEASE PRINT **APPLICATION #** NAME John Spephers RZ 20 - 1282 MAILING ADDRESS 2513 High Oaks Lone CITY LUTZ STATE FL ZIP 33599 PHONE US PLEASE PRINT APPLICATION # NAME Heidi Taylor on Rehalf of Adres Major 02 20-1082 MAILING ADDRESS P. O. Boy 1934 CITY Dade City STAT: FL ZIP 33526 PHONE VS PLEASE PRINT APPLICATION # NAME Shidey Gast Mann AZ 20-1287 MAILING ADDRESS 2111 Curry Road VS CITY LUTZ STATE FL ZIP 33519 PHONE PLEASE PRINT Mellih Hichen APPLICATION # RZ 21-0047 MAILING ADDRESS 6813 ALTIER Estate CITY Tampa STATE FC ZIP 33610 PHONE 813- 248-521

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 4 OF 4 DATE/TIME: 2/15/21 6:00 PM HEARING MASTER: Panels Jo Hatley PLEASE PRINT CLEARLY, THIS INFORMATION WILL BE USED FOR MAILING PLEASE PRINT **APPLICATION #** NAME RZ 20-0389 MAILING ADDRESS STATE ZIP PHONE 7 PLEASE PRINT APPLICATION # NAME MICHAEL YATES
PALM TRAFFIC MAILING ADDRESS 400 N Tampa St, 15th Floor RZ 20-0389 CITY Tampa STATE FL ZIP 33602 PHONE 813 205 8057 APPLICATION # NAME MAHAY J. MOOL MAILING ADDRESS 18942 Faton Whe Rol. RZ 20-0389 CITY L. MA STATE FU ZIP 3354 PHONE 818 689447 PLEASE PRINT APPLICATION # NAME JAY MCKEEHAN MAILING ADDRESS 4615 E. HARVIVA AVE RZ 20 - 0130 CITY TAMPA STATE FC ZIP 33610 PHONE 626-2332 PLEASE PRINT APPLICATION # NAME MAILING ADDRESS 1450 RZ 20-0394 STATE ZIP PHONE PLEASE PRINT **APPLICATION #** NAME Reed Fishkeh MAILING ADDRESS Slo Vonder burg Drive Ste 208 RZ 20-03aU

CITY Brooks STATE PL ZIP 33 51 PHONE

VG

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

PAGE \underline{S} OF $\underline{9}$

DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Panels To Itatley

| PLEASE PRINT CLE | ARLY, THIS INFORMATION WILL BE USED FOR MAILING |
|---------------------------|---|
| APPLICATION# RZ 20- 0394 | PLEASE PRINT NAME MICHAEL YATES PAUM TRAFFIC MAILING ADDRESS 400 N Tampa ST, 15th Floor |
| R C 20 544 | CITY Tampa STATE FL ZIP 33600PHONE 813 205 8057 |
| APPLICATION # | NAME David Wright |
| #7 MM 20-0808 | MAILING ADDRESS P.O. Boy 1016 |
| VS | CITY Tampa STATE FL ZIP 3360 PHONE |
| APPLICATION # | NAME Cam'i Corbett |
| RZ90-0785 | MAILING ADDRESS 18 / East Remedy Bh Str 3700 |
| , | CITY TAMA STATE = ZIP 3400 PHONES 13-227-842 |
| APPLICATION # | NAME I Subelle albert |
| RZ 20- 0885 | MAILING ADDRESS (COO D), aghley DV, CITY Your STATE D ZIP 33629 PHONE 813 6204500 |
| | 1 |
| APPLICATION # | PLEASE PRINT NAME THE TONK |
| Q Z 20-0985 | MAILING ADDRESS 5023 W. LAVREL ST |
| K - 02 | CITY TPA STATE FL ZIP PHONE 0039 |
| APPLICATION # | PLEASE PRINT Robert Roce |
| RZ 20-0285 | MAILING ADDRESS 8926 Eagle Watch De |
| 1,5 00 008) | CITY PIWIM STATE FL ZIP 33178 PHONE 813 - 302-1572 |

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

PAGE 6 OF 9 DATE/TIME: 2/15/21 6:00 PM HEARING MASTER: Pameia To Hafley

| PLEASE PRINT CLE | ARLY, THIS INFORMATION WILL BE USED FOR MAILING |
|------------------|--|
| APPLICATION # | NAME MICHAEL LAW DENK |
| RZ 20-0485 | MAILING ADDRESS 8806 Eagle Watch DV |
| | CITY PHONE 813-625- |
| APPLICATION # | NAME DONPIS Mª COMAK |
| RZ 20-0985 | MAILING ADDRESS 8819 Stillwaters Landing Da |
| / 2 a 16) | CITY RIVERVIEW STATE FL ZIP 33578 PHONE 8 13-728 3240 |
| APPLICATION # | NAME William Molla |
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| APPLICATION # | NAME DAVID W, FORD |
| RZ 20-1149 | MAILING ADDRESS 1000 N. Ashley Nr. Snite 925 |
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| APPLICATION # | NAME William Molly |
| Q7, 20-1248 | MAILING ADDRESS 35 S. BLJ |
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| APPLICATION # | NAME I Sabelle albert |
| MM 20- 1258 | MAILING ADDRESS 1000 N. Ashly Dr C CITY Compose STATE P ZIP33602PHONE 620 4500 |
| APPLICATION # | NAME Cam i Corbett |
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| APPLICATION # | NAME Isabelle albert |
| RZ 20-265 | MAILING ADDRESS (WO W. ashley pr - CITY Tumpu STATE & ZIP33402PHONE S136204700 |
| APPLICATION# RZ 26-1265 | PLEASE PRINT NAME MAILING ADDRESS STATE ZIP PHONE 0039 |
| APPLICATION # | NAME Buddy Harmell |
| RZ 20-1265 | 1 - 2 327 |
| APPLICATION # | NAME ALFRAD BOUNNER |
| RZ 20-1265 | MAILING ADDRESS 40 BOX 1661 CITY RIVERVIEW STATE TL ZIP 33666582 |

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PAGE & OF 9

DATE/TIME: 2 /15/21 6:00 20 HEARING MASTER: Panela J. Hapley

PLEASE PRINT CLEARLY, THIS INFORMATION WILL BE USED FOR MAILING PLEASE PRINT APPLICATION # NAME_ 6len Fiske MAILING ADDRESS P.O. Box 24/ RZ 20- 1265 CITY Balm STATE FL ZIP33503 PHONE 813-468-7021 NAME TRENT Stephenson APPLICATION # MAILING ADDRESS 505 E Jackson St Ste # Zug RZ 20- 1265 CITY TAMP STATE FL ZIP 33602PHONE 913.375.06/1 NAME Kawi Corbett APPLICATION # MAILING ADDRESS 101 & Kenerly BWd, Str 3700 Mu 21-0033 CITY TANNOL STATE PL ZIP 336 PLPHONE 8 13 825-842 NAME Buddy Harrel APPLICATION # MAILING ADDRESS 20 Box 297 MM 21-0033 CITY 6.5504 PM STATE / ZIP33534 PHONE 6/3-671-4158 PLEASE PRINT APPLICATION # NAME SAMIS FRANKLAND MAILING ADDRESS PO BOX 25 MM 21-0033 CITY BALM STATE FL ZIP DOSOJPHONE SA USY 9856 PLEASE PRINT APPLICATION # NAME_ AL BRUNNER MAILING ADDRESS PO BOX 166) MM 21-0033 CITY RIVENERVIEW STATE PL ZIP 33568PHONE 443306 6582

SIGN-IN SHEET: RFR, CHM, PHM, LUHO PAGE 9 OF 9 DATE/TIME: 2/15/21 6:00 pm HEARING MASTER: Pamela Jo Hafley PLEASE PRINT CLEARLY, THIS INFORMATION WILL BE USED FOR MAILING NAME 6kn Fiske APPLICATION # MAILING ADDRESS P. O. BOX 241 MM 21-0033 CITY Balm STATE FL ZIP33503 PHONE 813-468-7021 PLEASE PRINT SOM (APPLICATION # MAILING ADDRESS 13825 I COHOND Ste 605 RZ 20108 CITY Languater STATE FE ZIP 33/6 PHONE 524-1818 NAME WOLLAM SULLIVAN APPLICATION # MAILING ADDRESS 1350 ORANGE SIC Ste 20/ 22 21-0108 CITY Winter PARSTATE FL ZIP 3278PHONE 407-465 PLEASE PRINT APPLICATION # NAME MAILING ADDRESS CITY_____ STATE___ ZIP__ PHONE PLEASE PRINT APPLICATION # NAME

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APPLICATION #

PLEASE PRINT

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.

Mr. Frankland:

It was nice to speak with you the other day about our community. Like you, I have long been a resident of Balm (13709 CR 672, Balm Florida). My parents moved here in the mid-seventies and Balm has been our home ever since. My wife and I purchased my parents' home where I grew up nearly 14 years ago now. We purchased the land prior to the completion of the Shelly Lakes mine being fully excavated. This time frame is important as will be detailed in the text to follow. It is also relevant to disclose that I am a registered Professional Engineer that primarily practices in the geotechnical field. Geotechnical engineers specialize in the study of soils with a focus on material strength and associated settlements.

First, as we spoke you expressed concern about the water table draw down effecting your shallow well. This is a legitimate concern because for borrow pits to be financially feasible the amount of soil to be removed will likely require the water table to be lowered so equipment can be staged for deeper excavation. Most local borrow pits look to excavate 20 to 30 feet below the existing ground surface. This is well below our local water table depth. Pumps are often used to expedite the process. Even without the use of pumps for relatively shallow excavations voids are created that will fill with water causing a natural flow toward the excavation lowering the water table as the flow moves toward the excavation. Growing up in Florida this is an easy concept to understand from our youth playing at beach digging holes and watching them fill with water. As you dig the hole you can see the water flow in from all directions until the hole is full of water; noting that the water surface is lowered initially. For large excavations, the distance and magnitude of head loss (lowering of water table) is generally estimated on soils properties gathered through local agencies because the cost of testing is quite expensive. Thus, predicting head loss in magnitude and the distance at which the water table will return to its natural elevation is not an exact science. Furthermore, water table elevations change around ponds are not just temporary; heated water will evaporite and induce a continuous recharge cycle (water flow filling the pond until equilibrium is achieved). In summary, it is possible that your shallow well can be affected by the water table draw down during the excavation process and maybe even long term.

Another concern is that when the water table is drawn down there is a potential for settlement of the soil due to an increase in effective stresses. Effective stress is an engineering term that describes the force that the soil is subject too. In lay terms it is the force the soil is feeling. Mathematically, it is calculated as the total stress minus the pore water pressure. It is not important to fully understand the concept, however the important term here is the pore water pressure. What the equation states is essentially if you remove the water the stress to soil feels will increase. This stress increase may cause settlement at the ground surface. Even minor settlement may cause cosmetic damage to block and other structures. Most commonly cracks in block joints or stucco are observed. Additionally, drywall joints inside homes may also crack. My home has already experienced drywall cracks, stair step cracking of the block and stucco cracks. This cosmetic damage is largely observable on my two-story addition that was properly

engineered, permitted, and inspected per current code. The water level in the lake behind my house (Shelly Mine borrow pit) has continuously dropped over the years. A floating dock I installed shortly after the lake was finished is now 4 to 5 feet higher than the water level.

As was described above there are several possible short-term and long-term issues associated with pond construction. Those responsible for the proposed pond excavation need to be held accountable and should be liable for damage and impacts to our community.

Regards,

Christopher L Lewis Digitally signed by: Christopher L Lewis C = US O = Unaffiliated OU = A01410D00000171367CD0310001A67C Date: 2021.01.12 17.45.43 -05'00'

Christopher L. Lewis, M.S., P.E.

Buddy Harwell

13802 Sweat Loop Rd

Wimauma Fl 33598

To whom it my concern

This is my NOTICE/STATEMENT REGARDING MY Right

- The effects of the constant noise from the water pumps running 24/7 365 days for 3yrs, nor did the applicant offer any mitigation on this issue.
- Did not the account for an existing borrow pit already in operation 1.2 miles down the same road that borders this site, this would put more dangerous trucks on an already heavily and substandard road. Policy 1.8 can not be within 1 mile of existing pits.
- Where the excess water will be going, is it going to flood the property surrounding this site?
- The effects this will have on the surrounding wells in the area, as this would be the 4th pit within a 3 mile area. For the last 12 months according to the local well company that has been in business for 40yrs, they have seen a lot of water issues.
- 1. Given the amount of material proposed for excavation and the proposed five-year time frame, it is estimated that an average of 1,992 cubic yards of material will be excavated per day. The 1,992 cubic yards equates to 220 trucks per day (110 inbound and 110 outbound). Employee trips are estimated to be ten (10) trips per day (5 inbound and 5 outbound). The proposed project would generate approximately 87 trip ends during the AM peak hour with 46 inbound and 41 outbound. The average number of trucks during a typical hour of the day is estimated to be 30 trip ends (15 inbound and 15 outbound). The site is not proposed to operate during the PM peak hour timeframe, so no PM peak impacts are anticipated.

The math alone defies the argument that trucks will not be lined up out on CR 672, Balm Wimauma Road and Balm Boyette road Waiting to be loaded. There would be no means to achieve the desired quantity otherwise.

2. Under the temporary permit Eisenhower has now there are an equal amount of filled trucks entering the Grove property to dumb their contents. Dumping is not excavating why is this allowed?

The property dynamics do not qualify it for excavation. Hence 4 variations have been requested.

- 3. The offer to install a 6ft fence 30ft from the road way. A PD for the property already exists requiring a fence 50ft from the roadway. This alone requires Condition 2 to be applied. As it presently stands the 50 ft is a variance granted from the 250ft standard requirement. The request for 30 ft violates every intent of required 250ft setbacks. It is also in direct conflict with the original PD variance granted.
- 4. The proposed land excavation shall be 500 feet from any residentially developed or residentially zoned property line. This county requirement is not met.
- 5. The proposed land excavation shall be 30 feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site. Greater

separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area. This county requirement is not met.

- 6. The proposed land excavation shall be 1,000 feet from any school, hospital, or church property line. This county requirement is not met.
- i. Also, this statement by the applicant is false; The applicant also notes that the church located on the east side of Balm-Wimauma Road adjacent to the proposed excavation has been vacant for several years and is currently not for sale. The Pastor and his wife live on the property. The church is active to include classes. The property not being for sale is irrelevant since the property is being used.
- 7. Mr. Luce detailed how the request to excavate 2.5 million cubic yards complies with the standards of the Land Development Code regarding land excavation. This is a false statement. Were it a true statement there would not be a need for 4 variances.

This request blatantly violates the code as is written. What is the purpose of the code if no other reason is needed for an applicant to request and be granted variances then they cannot use a parcel as they wish to.

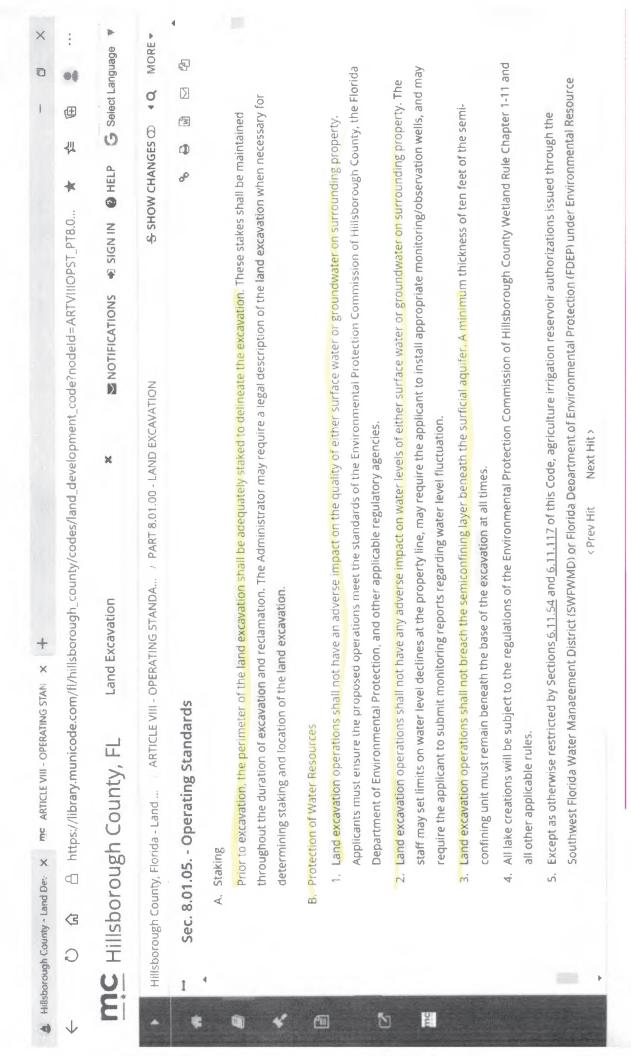
With the amount of variances requested to make this property comply with Hillsborough County Land Use Code in addition to the fact that a PD already exists this property should be reevaluated under Condition 2 in the code.

The Balm Community Association vehemently opposes this request.

11/6mc

Thank you

Buddy Harwell



Revised Applicant Narrative – Special Use Application 19-1026

RECEIVED

MAR 0 3 2020

The Applicant has revised its request to:

Development Services
Department

- Reduce the total volume to 2.5 million cubic yards
- Reduce the size of the excavation pond
- Reduce the duration of the excavation activity
- Limit the days of operation to Monday through Friday
- Limit the hours of operation to between 7:00 am and 4:00 pm
- Move the southwestern pond to a location at least 500' from the closest residentially zoned property
- Provide a fence setback of 50' along the boundaries of adjacent properties, with a 30' setback from Balm Wimauma Road, and provide fencing along the property line on all other sides of the property
- Relocate the haul route to the east side of the property

The Applicant is requesting the following waivers:

Distance Separation from a Church Property Line

A waiver to allow a distance separation of 618' from a church property line [Pond ABC]

A waiver to allow a distance separation of a minimum of 317' from a church property line [Pond FG]

Distance Separation from a Residential Property Line

A waiver to allow a distance separation of a minimum of 368' from a residential property line [Pond ABC]

A waiver to allow a distance separation of a minimum of 265' from a residential property line [Pond DE]

A waiver to allow a distance separation of a minimum of 383' from a residential property line [Pond FG]

ARTICLE VIII - OPERATING STANDARDS

PART 8.00.00 - GENERALLY

This article contains operating standards for certain uses. These uses must be approved for the site on which they will take place by the appropriate procedures elsewhere in this Code. Once the use is approved for the site, the following procedures and standards must be complied with before commencement of the use.

PART 8.01.00 - LAND EXCAVATION

Sec. 8.01.01. - General Provisions

A.Short Title

This Part shall be known and may be cited as the "Hillsborough County Land Excavation Regulations."

B.Purpose

The purpose of this division is to protect the public health, safety, and welfare through the establishment of reasonable standards for the review and regulation of the location and operation of land excavation activities as materials to meet the demands of construction within Hillsborough County. It is intended that this division be used in conjunction with the provisions of Section 6.11.54 of this Code pertaining to Land Excavation Special Use Permit and Section 6.11.117 pertaining to Agricultural Reservoir Conditional Use Permit. This division shall fairly and equitably allow the operation of land excavation while at the same time protecting the following needs and interests of the County.

1.Reuse of Property Excavated, 2.Reclamation of Excavated Area, 3. Surrounding Land Use, 4. Transportation Concerns, 5. Environmentally Sensitive Areas and heavily treed sites, 6. Water Quality, 7. Water Quantity, 8. Drainage, 9. Public Safety, 10. Fugitive Dust Attenuation, 11. Noise Levels, 12. Property Values, and 13. Compliance with the Future of Hillsborough Comprehensive Plan.

It is further intended that where these regulations make special provisions for land excavations for the purpose of agricultural irrigation that are authorized by the Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP), the provisions shall cease to be in effect in the event that SWFWMD or FDEP no longer issues such authorizations and the excavations shall comply with all standard requirements of this Section.

C.Administrative Guidelines

The Administrator may adopt Administrative Guidelines in the form of rules of procedure and regulations for the administration and enforcement of this Part.

The Applicant is proposing to create excavation ponds in conjunction with the development of a residential subdivision. This means that the location of the excavation ponds must be in the same general location as they are depicted in the certified site plan of the PD zoning approval for the property. Strict imposition of the distance separation requirement would unreasonably force a redesign of the entire subdivision solely for the temporary use of the property for the creation of excavation ponds.

The Applicant is proposing to mitigate the requested reduction in distance separation by limiting the days and hours of operation and the total duration of the land excavation activity. The Applicant is also proposing visual screening to minimize any potential visual impact.

It should be noted that the church building located within 618' from Pond ABC is vacant and unused. The church building has not been in use for several years and is currently for sale. Thus, there are currently no church operations, nor are any church operations anticipated during the duration of the excavation.

It should also be noted that the residential properties directly to the south of Ponds DE & FG are owned and controlled by entities related to the Applicant, which have no objection to the distance separation waiver.

Prohibition of other Excavation, Land Alteration

Section 6.11.54(B)(8) of the Hillsborough County Land Development Code prohibits the issuance of any other land alteration permit until the land excavation activities have ceased. The Applicant is seeking a waiver from this prohibition to allow land alteration permits to be issued in conjunction with the development of the residential subdivision.

Creation of excavation ponds in conjunction with the construction of a subdivision does not require a special use permit as long as the total volume of excavated materials does not exceed 30,000 cubic yards. In such situations, the excavation pond creation and subdivision site work are able to occur simultaneously. If there are more than 30,000 cubic yards excavated, then a Special Use Permit is required. Until the ponds are completely excavated, the 30,000 cubic yard limit will not be reached; therefore it would be unreasonable to require the excavation ponds be completely excavated before any other site work for the subdivision

APPLICATION: PD 18-0304 (REMAND) Riverview & Balm/South

ZHM HEARING DATE: August 20, 2018 BOCC MEETING DATE: October 9, 2018

CASE REVIEWER: Michelle Heinrich, AICP

Application Review Summary and Recommendation

1.0 Summary

1.1 Project Narrative

This application was remanded to the Zoning Hearing Master by the Board of County Commissioners at their July 24, 2018 BOCC Land Use Meeting. The purpose of the remand was to provide additional density calculations and conduct a re-analysis of the proposed perimeter buffers.

Density Analysis:

Planned Village Densities & Environmentally Sensitive Land Credits:

The subject non-contiguous properties are located within the RP-2 and RES-4 Future Land Use (FLU) categories. The Comprehensive Plan permits property within the RP-2 FLU category a maximum gross density of 2 units per acre if the developed in accordance with the Planned Village Comprehensive Plan Policies and Land Development Code regulations. The Planned Village development pattern seeks to create a "self-sustainable development" with proximity to on-site shopping, efficient use of infrastructure and preservation of open space and environmental. To meet this goals, "clustering" is required that will create a net density of 3.5 units per acre. However, the overall gross density is limited to 2 units per acre.

When seeking to develop properties utilizing a planned village concept, the Comprehensive Plan also allows transferring densities between two non-contiguous parcels when both are in the RP-2 category and at least each 160 acres in size or greater.

Comprehensive Plan Policy 33.2(a):

"Two (2) non-contiguous parcels designated RP-2 that each are at least 160 acres or greater, may blend the density or intensity of those non-contiguous parcels across the entire project through one Planned Development (PD) zoning, transferring up to 50% of the density/intensity from one parcel to the other. Through the PD, both parcels shall function as separate planned villages with neighborhood and community commercial needs met."

The northern property (Rhodine) is 180.3 acres and southern property (Grove) is 178 acres. The majority if the Rhodine parcel is within the RP-2 FLU category and all of the Grove parcel is within the RP-2 FLU category. Utilizing Comprehensive Plan Policy 33.2(a), the non-contiguous parcels are viewed as one project allowing the transfer of density (up to 50%) from one parcel to the other as they are each over 160 acres in size and located in the RP-2 FLU category.

Calculating the correct density requires application of Comprehensive Plan Policy 13.3 when wetlands are present in the project. This Policy is applicable to all developments, not just those developing in under the Planned Village standards.

Comprehensive Plan Policy 13.3:

"Density and FAR calculations for properties that include wetlands will comply with the following calculations and requirements for determining density/intensity credits:

- Wetlands are considered to be the following:
 - Conservation and preservation areas as defined in the Conservation and Aquifer Recharge Element

- 12. 24.—As Balm Wimauma Rd. may be a substandard collector roadway, the eveloper Developer will be required to coordinate with Hillsborough County Public Works to determine the improvements that may be required prior to or concurrent with plat/site construction plan approval.
- 25. In accordance with the Hillsborough County Corridor Preservation P1, the developer shall preserve up to 23 feet of right-of-way along its Balm Wimauma R-Road frontages, such that a minimum of 54 feet of right-of-way is preserved east and south of hethe existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.
- 26. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 14 feet of right-of-way along its CR 672 frontage, such that a minimum of 54 feet of right-of-way is preserved south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be pe itted permitted within the preserved right-of-way. The right-of-way preservation area shall be sh wnshown on all future site plans, and building setbacks shall be calculated from the future right-ight -of-way line.
- 27. Notwithstanding anything shown on the PD site plan to the contrary, the relocation of the southernmost access on Balm Wimauma Rd. such that it is located a mi imumminimum of 330 feet from the nearest adjacent access connection, shall be made. However, the access point shall not be located any further than 600 feet from the southern boundary of folio 77850.0000. Alternatively, the developer shall obtain a Section 6.04.02.B. administrative administrative variance from the Section 6.04.07 access spacing requirements.

The following shall apply to both Planned Villages:

- 28. Access shall be provided as shown on the PD site plan unless otherwise provided herein these conditions. Internal roadways may be public or private, and if private, and if private, roadways may be gated (except for those portions functioning as shared access roadways, as required herein these conditions).
- 17. 29. Notwithstanding anything on the PD site plan or herein these conditions to the contrary, bicycle and pedestrian access may be permitted anywhere along the project boundaries.
- 18. 30. 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.
- 19. 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.
- 20. 32. 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 etland wetland Line", and the wetland must be labeled as "Wetland Conservation Area" pursuant to the Hillsborough County Land Development Code (LDC).
- 21. 33. 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.
- 22. 34. 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 any stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan/plat approval.

- 7. The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space, Village Square/Green and Village Node areas.
- 8. A 50-foot wide buffer shall be provided where depicted on the general site plan. Should the buffer be adjacent to a roadway requiring right-of-way preservation, the buffer shall be measured from the future right-of-way line. This buffer is to be platted as a separate tract to be owned and maintained by the Homeowner's Association, or other similar entity. Within the buffer, screening shall be provided and shall be either: 1) screening to consist of two or more of the following for an overall height of six feet: a berm (4:1 slope), a continuous row of evergreen shrubs at a minimum height of 24" and/or a solid wooden fence, PVC fence or wall architecturally finished on both sides; or 2) a six foot high wooden fence, PVC fence or wall architecturally finished on both sides and a row of evergreen shade trees at a minimum of 10 feet in height and minimum 2" caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-or-way, use of a six-foot high wooden fence shall not be used. Additionally, should the buffer abut a right-of-way, hedges or trees shall not be blocked by a fence/wall from the view of the roadway and properties facing the village. Any buffers abutting a right-of-way shall be measured from the roadway's preservation line.
 - 8.1. Should any portion of Balm-Wimauma Road be vacated (Option 1 and Option 2 in condition 9.4, the 50-foot wide buffer and screening shall not be required.
- 9. A 250-foot wide buffer shall be provided adjacent to folio 77850.0000, as depicted on the general site plan.
- 10. The developer shall construct the following site access improvements, of which 9.1, 9.2 or 9.3 shall be constructed only if warranted per Section 6.04.04.D. of the Hillsborough County Land Development Code or unless otherwise approved in accordance the Section 6.04.02.B. administrative variance process:
 - 10.1. An eastbound to southbound right turn lane on CR 672 at Shelley Ln.;
 - 10.2. A westbound to southbound left turn lane on CR 672 at Shelley Ln.;
 - 10.3. A southbound to eastbound left turn lane on Balm Wimauma Rd. into the project's southernmost entrance; and,
 - 10.4. One (1) of the following options (as depicted on the on the PD site plan) relating to site access and roadway reconfigurations proposed by the developer:
 - 10.4.1. Option 1 The developer shall construct an extension of Balm Wimauma Rd. (between its intersection with Balm Rd. and CR 672) as a 2-lane collector roadway. Within 6 months of acceptance of the roadway extension, the developer shall remove up to a +/- 1,300-foot long segment of existing Balm Wimauma Rd. south of CR 672. Specific limits of the segment to be removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the intersection of the roadway extension with CR 672. In no event shall removal of the

roadway section occur until such time as a cul-de-sac or other end of roadway treatment acceptable to Hillsborough County Public Works is constructed and open to public traffic; or,

- 10.4.2. Option 2. Wimauma Rd. (i.e. that portion immediately south of CR 672) such that it connects to Shelley Ln. Concurrent with the opening of the realigned roadway extension, the developer shall close the old/realigned roadway and, within 6 months, complete removal of the old/unutilized roadway. Specific limits of the segment to be realigned/removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the newly created intersection of Balm Wimauma Rd. and Shelley Ln. The applicant shall also be responsible for preserving sufficient right-of-way necessary to accommodate a 2-lane enhanced roadway segment between the new intersection and CR 672; or,
- 10.4.3. Option 3. The developer shall construct a roundabout at the intersection of CR 672, Balm Wimauma Rd., Shelley Ln., and Balm Boyette Rd. This option may require the developer to dedicate or otherwise acquire additional right-of-way necessary to accommodate the roundabout. Notwithstanding anything herein to the contrary, utilization of this option shall relieve the developer of its obligation to construct the improvements listed in 1.a. and 1.b., above. Utilization of this option is also contingent upon review and approval of the proposed roundabout by Hillsborough County Public Works.
- 11. As Shelley Ln. is a substandard local roadway the developer will be required to improve Shelley Ln., between its southernmost access connection and CR 672, to current County standards unless otherwise approved in accordance with Section 6.04.02.B. of the Hillsborough County LDC. Deviations from TTM standards may be considered in accordance with Section 1.7.2. and other applicable sections of the Hillsborough County TTM.



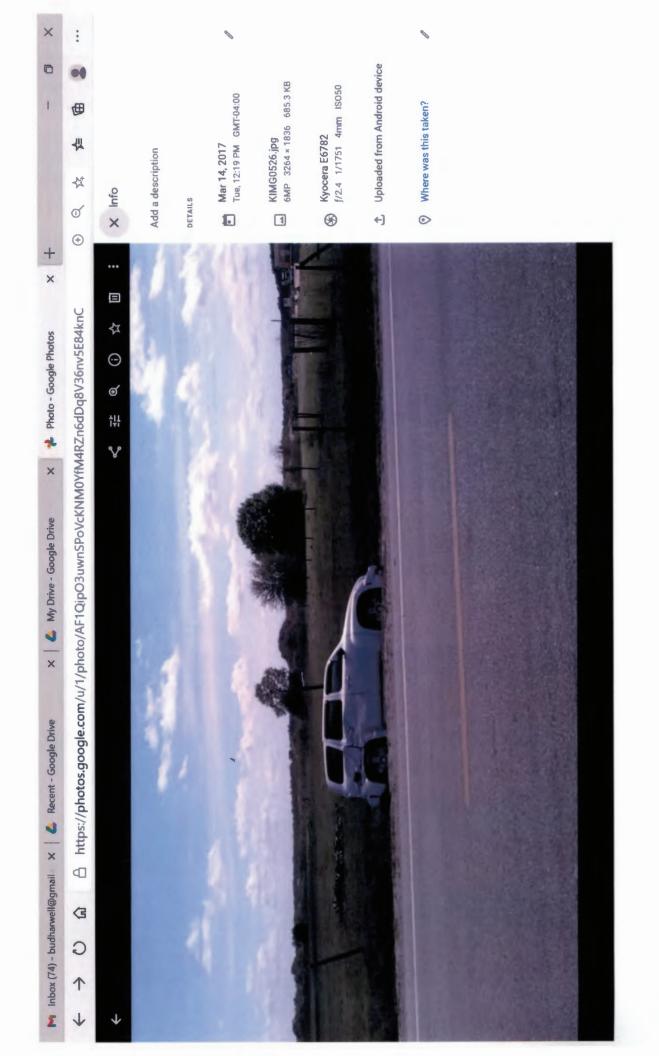


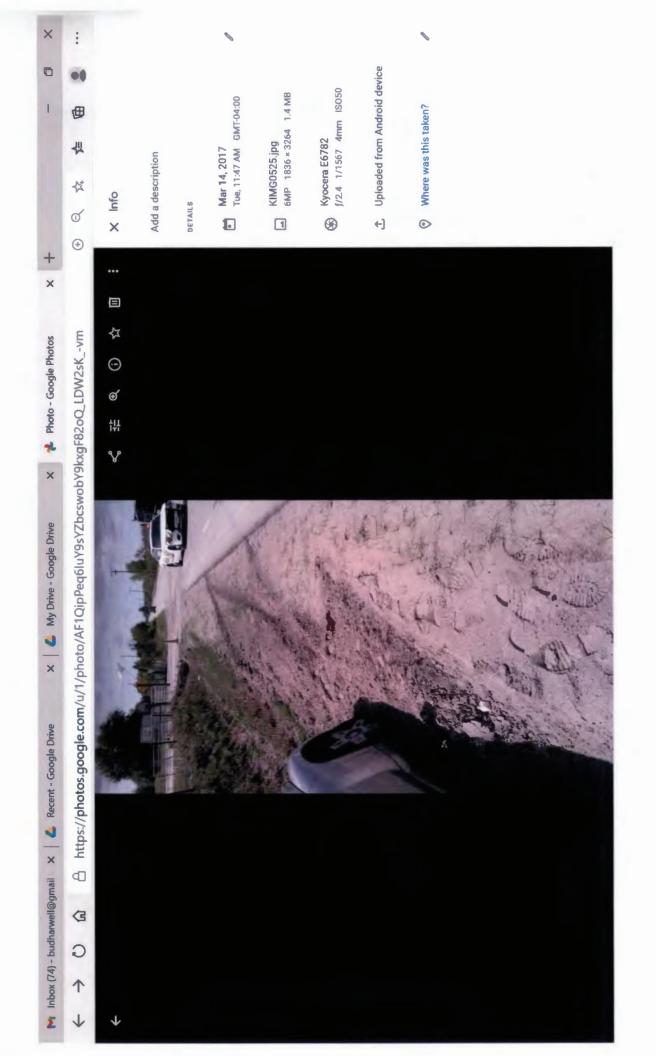


Looking North from Sweat Loop Rd at Shelly Lake, Notice the water level is about 6 inches below the land grade.



Looking north over Shelly Lake at the Grove property in the background.





AQUARIUS WATER REFINING, INC.

Commercial Residential 5914 SR 674 Wimauma, FL. 33598 PHONE (813) 634-3134 EMAIL aquaref@live.com www.aquariuswaterrefining.com

1/13/2021

Application No. AMM 21-0033

Name: Tone 5 Frankland

Entered at Public Hearing: ZHM

Exhibit # 2 Date: 2115121

RE: Concerning the existing and proposed borrow pits in the Balm Wimauma FL. Area

Aquarius Water Refining has been installing water treatment equipment for the residents in the Balm Wimauma area since 1975. Over the years we have seen the effects on wells when subjected to excessive land development.

It is our opinion that that adding additional and or expanding the current borrow pits in the area could cause serious damage and or contamination to the existing resident's wells.

Excessive digging has the potential to cause wells in the area to go dry because of the shifting water tables especially for our residents with shallow wells.

The other concern with this shift of the land is the possibility of contamination of well water from heavy metals and fertilizers as well as bacterial contamination from pasture land in the area.

Private Wells can be contaminated by both naturally occurring sources and by human activities. We have no control over natural occurrences but it is our civic duty to point out the potential cause and effect to our ground water by human activities.

Joseph F. (jaskill

Joseph F. Gaskill President and founder

Aquarius Water Refining, Inc.



Application No. 21-00 33

Name: komi corkett

ZHM Entered at Public Hearing: Date: 2/15/21

Land Use Application Summary Report

Application Number: SU 08-1433 BA

Exhibit # _____ Adjacent Zon

Existing Zoning:

AR

North: AR Undeveloped

Requested Zoning:

Land Excavation Special Use

South:

AR Agricultural, Rural Residential

Comp Plan:

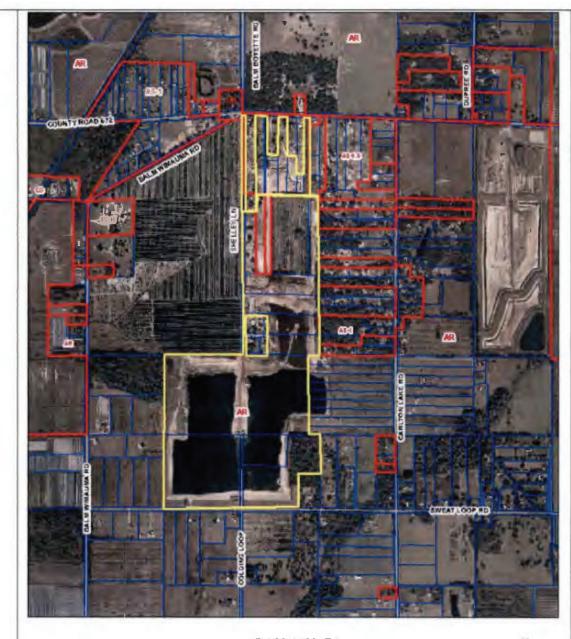
AR-1/5, RP-2

AS-0.4, AR, AS-1 Salvage Yard, Agricultural, Rural East: Residential

Service Area:

Rural

AR Agricultural West:



31-21-30

SU 08-1433 BA



Project Area



Zoning Boundary

Planning & Growth Management Department

NTS

APPLICATION: SU 08-1433 BA

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

Request Details:

The request is for a Land Development Code (LDC) Section 6.11.54 Land Excavation (LE) Special Use Permit for the following:

- To consolidate all of the Shelley Lakes LE permits under one Special Use Permit and one Operating Permit,
- To expand the existing land area by ten acres for a total of 246 acres, and
- To excavate a total of 20,000,000 million cubic yards of material, approximately 5,100,000 million cubic yards of material have been excavated to date.

Staff Findings:

- The combined land area for the total project is 246 acres; the total excavation area will be approximately 182 acres. An estimated total of 20,000,000 cubic yards of material is to be excavated, within five cells, to a maximum depth of 40 feet.
- According to the Land Excavation and Phosphate Mining Review agency staff report, the Shelley Lakes Land
 Excavation will consolidate the applicant's four existing permits (Special Use Permits and Land Excavation
 Permits), with the additional 10 acres, into one permit. The existing permits to be combined into this new permit
 are as follows:
 - 1. SU00-0307BW Expiration date, May 21, 2006 (00-2-LE)
 - 2. SU04-0301BW Expiration date, May 30, 2009 (04-3 LE)
 - 3. SU05-0653BW Expiration date, Feb. 20, 2016 (05-4-LE)
 - 4. SU07-0454BA Expiration date, Oct. 12, 2012 (07-5-LE)
- According to Land Development Code (LDC) Section 6.11.54, the proposed creation and expansion of the existing lake is a permitted use within all zoning districts. According to the application, the site is not located in a Wellhead Resource Protection area, is not in an area with a DRASTIC index greater than 179 per the Conservation and Aquifer Recharge Element of the Comprehensive Plan, is not located within a quarter mile of a Class I or Class II Landfill, is not in an area prone to sinkhole development, and significant wildlife habitat has not been identified on the site. The Environmental Protection Commission (EPC) identified wetlands on the site; conditions have been added to address EPC staff wetland and excavation concerns. Natural Resources staff identified a number of mature trees on the site a condition has been added to minimize removal trees.
- The proposed setbacks meet the LCD requirements. The setbacks from residential uses are 100 feet, setbacks from Sweat Loop Road are 150 feet, setbacks from the salvage yard, agricultural uses and Shelley Lane are 25 feet. No variances or waivers to LDC regulations have been requested or reviewed as part of this request.
- Site access and haul route will be from State Road (SR) 672, a designated Truck Route; trucks will then proceed to the west to U.S. Highway 301 or east to SR 39. Hours of operation have been added to mitigate for adverse impacts from the hauling and excavation activity.
- Staff finds the request to combine the existing land excavation permits, with the minor expansion, as conditioned, comparable and compatible with the nature of the existing or developing uses in the surrounding area.

| Zoning |
|--------------------------------|
| Zoning Administrator Sign-off: |

APPLICATION: SU 08-1433 BA

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

NEIGHBORHOOD MEETING

| Per LDC Section 5.03.06.B.2 the applicant is required to conduct a neighborhood meeting if requested by noticed residents According to the applicant, noticed residents did not request a neighborhood meeting. The applicant conducted a neighborhood meeting. A summary of the meeting and the sign-in sheet are attached pursuant to the requirements of Sec. 5.03.06.B.2. VARIANCE(S) TO NON-DISTRICT REGULATIONS No variances to non-district regulations have been requested. The applicant has requested a variance to Staff finds the applicant's justifications (attached) for the variance(s), as provided in accordance with LDC Section 5.03.03, are sufficient / insufficient to warrant approval of the requested variance(s). | | | | | | | | | |
|--|-----------------|----------------------|-------------------------------|-----------------|-------------------------|--|--|--|--|
| | REVIE | | GENCY COMMENTS | | 100 - | | | | |
| AGENCY | NO OBJECTION | CONDITIONS REQUESTED | AGENCY | NO OBJECTION | CONDITIONS REQUESTED | | | | |
| Community Improvement | | | Reclaimed Water | | | | | | |
| Environmental Protection Commission | | \boxtimes | Storm Water | \boxtimes | | | | | |
| Florida DOT | | | Water Utilities | \boxtimes | | | | | |
| Fire Rescue | | | Wastewater | \boxtimes | | | | | |
| HART Line | | | City of Plant City | | | | | | |
| Natural Resources | \boxtimes | \boxtimes | City of Tampa | | | | | | |
| Parks, Recreation, and Conservation | | | City of Temple Terrace | | | | | | |
| Public Works - Engineering | | | Tampa Bay Water | | | | | | |
| Public Works - Roadway | | | LE/Phosphate Mining Review | | | | | | |
| Public Works - Traffic | | | Real Estate | | | | | | |
| School Board | \boxtimes | | | | | | | | |
| Sheriff | | | | | | | | | |
| Transportation | | | | | | | | | |

APPLICATION: SU 08-1433 BA

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

Changes to Conditions

RECOMMENDED ZONING CONDITIONS

RECOMMENDED SPECIAL USE CONDITIONS ARE BASE ON THE GENERAL SITE PLAN RECEIVED **SEPTEMBER 25, 2008**

- 1. The land excavation shall be limited to the removal of a maximum of 20,000,000 million cubic yards of material, subject to approval of a Land Excavation Operating Permit in accordance with Part 8.01.00 of the Hillsborough County Land Development Code (LDC). Approval of the Special Use Permit shall not guarantee approval of a Land Excavation Operating Permit. The excavation shall not exceed 40 feet in depth. This Special Use Permit shall supersede all other Shelley Lakes Mine Special Use Permits
- 2. This Special Use Permit shall expire seven years from the date of the Special Use Permit approval or five years from the date of the Operating Permit approval, whichever occurs first.
- 3. All Land Excavation design standards shall comply with Sections 6.11.54 and 8.01.00 of the LDC.
- 4. The entire site shall be adequately fenced with all access points having gates that shall be locked when no activity is occurring on site.
- 5. Method of water control and management shall be subject to approval during review of a Land Excavation Operating Permit application.
- The Land Excavation Operating Permit will limit the hours of operation of a land excavation to between 7:00 a.m. to 6. 6:00 p.m. Monday through Friday Saturday, excluding Hillsborough County recognized holidays.
- 7. No material of any type other than excavated material and material associated with the land excavation shall be stored or placed on site.
- 8. Minimum of 30 percent of the banks along the entire perimeter shall have a landscaped littoral shelf (Lake Management Plan) to be reviewed and approved by EPC pursuant to LDC Section.8.01.06.
- 9. All off-site hauling of fill material and the return trip of the haulers shall be in compliance with the Metropolitan Planning Organization's Hillsborough County Truck Plan, in effect, as of January 1, 1995 with subsequent updates. The off-site haul route shall be Shelley Lane to County Road 672 (an approved Hillsborough County Truck Route) and east or west along approved truck routes.
- 10. The applicant shall locate the proposed excavation to minimize the removal of trees having a DBH of five inches or greater.
- 11. Approval of this petition by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impacts to wetlands, and does not grant any implied or vested right to environmental approvals.
- 12. No excavation shall extend below permitted design depths/elevations unless additional testing supports otherwise; and no lower semi-confining unit clayey soil material and/or no limestone materials shall be excavated, regardless if these materials are encountered within the permitted excavation depths/elevations. If any lower semi-confining unit clayey soil materials or limestone materials are encountered above the permitted depths/elevations, then excavation operations shall cease in the general area. EPC Wetlands Management Division staff must be contacted prior to any excavation of clays.
- 13. The construction, location, size and depth of any proposed land excavation shall be reviewed by EPC pursuant to Chapter 1-11, Wetlands, Rules of the EPC, and must be designed and located to avoid or minimize wetland impacts.
- The post condition construction design must ensure that the volumetric hydrologic contribution from the existing on-14. site surface water basins to any wetland area is not reduced by greater than 10 percent and if possible 5 percent, to these wetland areas.

APPLICATION: SU 08-1433 BA

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

15. The existing pre-development wetland hydroperiods (seasonal high water and normal pool) must be maintained in the post-development condition.

- 16. All lake creations will be subject to the regulations of the Environmental Protection Commission of Hillsborough County Wetland Rule Chapter 1-11 and all other applicable rules.
- 17. A 0.80 acre wetland mitigation area/conservation easement exists on the northern section of proposed Cell 4. Surface water basins and mitigation area setbacks shall be reviewed by EPC pursuant to Chapter 1-11, Wetlands, Rules of the EPC, during the land excavation review.
- 18. If the notes and/or graphic on the site plan are in conflict with specific 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 approval.
- 19. 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.
- 20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.

Application No. 21-0033
Name: ____leam: Corbot
Entered at Public Hearing: 24M
Exhibit # _____ Date: 2/1512



Documents Submitted for the Record of:

MM 21-0033

Applicant: Eisenhower Property Group, L.L.C.

Applicant's Representative: Kami Corbett, Esq.

Folio: 74848.0000

Hearing Date: February 15, 2021

Index to Documents Submitted to the Record

MM 21-0033

| No. | Document |
|-----|---|
| 1. | PD Site Plan for PD 18-0304 (October 10, 2018) |
| 2. | Transcript of BOCC Approval for PD 18-0304 |
| 3. | LUHO Decision for Special Use Permit Approval (August 3, 2020) |
| 4. | Special Use Permit Staff Report for PD 19-1026 (August 3, 2020) |
| 5. | Special Use Permit Site Plan for PD 19-1026 (February 17, 2020) |
| 6. | Transcript of LUHO hearing on August 3, 2020 |
| 7. | Exhibits from PD 19-1026 |
| | a. Part 1 |
| | b. Part 2 |
| | c. Part 3 |
| 8. | Memorandum of Law re: Statutory Construction |
| 9. | Memorandum of Law re: Lay Witnesses |
| 10. | PowerPoint Presentation |

AR so PD PETITION PILE HUNGER 82-PO 18-0304 BY & SA BOCC MERTON DATE October 9, 2018 This is to comely that this lists Dovelopment Plan lats how previously by the Board of County Communicates and the following across taken APPROVED WITH CONDITIONS AS NOTED: and attracted to contribut six plan. CHAIRMAN, BOARD OF COUNTY COMMISSIONERS ATTEST DISPUTY CLEAK
PAT FRANK
CLERK OF THE CIBCUIT COURT BOARD OF COUNTY COMMISSIONERS HELISBORIOUGH COUNTY FLORIDA DOCINICATI NO.

include grocery mores, food/produce merkets, convenience stores, pharmacies and othe setall uses permitted in the CN zoning district.

- The Rhading Borrow Pit Village Node shall meet the following
 - 4.1 The Village Node may also contain office uses, residential support uses (such as clumpies, debt) care contains and departer content) and performent incess (such as achiecis, preventment officessive-rices). Siquem broating for thisse uses leafl not count towards the statisticus against Dosago required for on-size anglidorhood result. The assumment P. A. prescribed which the center Village Node is 0.37.
 - 4.2 No minimum building setbacks shall be required
 - 4.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in beight required.
 - 4.4 Buffering and acreening in accordance with Land Development Code Section 6.06.05 shall be provided along adjacent properties of differing land use abunifications.
 - Purking lots in the Village Node shall be located at the rear or so the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the readway.
- The developer shall provide a pedestrien system of sidewells and/or stabilized pathways (a minimum of 5 has in width) throughout the project with direct connections between the ranidemial, open space and Village Ninde areas
- A 50-flow which buffer shall be provided where depicted on the general size plan. This buffer is to be planned as a separese trust to be covered and maintained by the Blommonest's Association, or other strained resident entitle entity. Which as harder, severaine, shall be provided and references to the strained of the first and buffer, severaine, shall be provided or of six first a sheem (4) sizeps), a continuous torus of overgreen sheels as a colorisoner height of 20° medre a said second reside, or 21 a set foot high wooder finest. PVC fines or well residentiately finished on the size of 21 a set foot high wooder finest, PVC fines or well architecturally finished on both defan and a root of revergemen shall be treat as a sintermore of 10 flow in hight and

Page 2 of 9

In securities with the Hillsburrough County Cortifar Preservation Plan. The developmental preserve up to 5 feet of right-of-may along in Blockins Road floreings, each that a minimum of 55 feet of right-of-may along in Blockins Road floreings, each that a minimum of 50 feet of right-of-may in personnel could find the scaling injection. Only those invertee mass allowed by the Hillsburrough County LDC shall be permitted within the preserved right-of-may The right-of-may preservation sents that it deview on all flouries site plans, and building softwards shall be calculated from the flouring right-of-may pleas.

The following shell apply to the Grove purcel.

The Grove parcel shall be permitted a maximum of 356 ningle-family loss and developed in accordance with the following development standards. The maximum number of units permitted in the Core permitted in Section 1991, permitted a Critical Pening France Asymptomy of the master will require a Major Montification to be reviewed in accordance with the procedure sentification in LoC 97 no.

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40 feet 50 feet
10 feet for from yeard sections.
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15 feet 75 fee

- 15 For lots at a width of less than 50 feet, the following shall apply:
 - 15.1 Garages shall be susback a cointmust of 25 flust. Garages accessed from a from yard functioning as a side yeed shall be setback a minimum of 20 flust.
 - 15.2 A 2-ear garage and a minimum 18 foot wide driveway shall be provided for such
 - 15.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's from façade. Human shall not have the same driveway tomics (selt or right side) as the afficient home. The alternating pattern may be adjusted as corner lost as recovery.
 - 15.4 A variety of gaussie door designs shall be provided and there shall be no two identical gausse door dusigns adjacent to such other

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0004 F MEETING DATE October 9, 2018 October 9, 2018

The following shall apply to the Rhodine Borrow Pit perual:

The Blandine Boover Pit perest shall be germitted a maximum of 283 diagle-family ion which the boundaries of Probat A and developed in accordance with the following control of the perest of the perest of the following the perest of the perest is described as critical Design Feature. Any chains to this number will require a Major Modification to be reviewed in accordance with the procedures established in LDC Part 10 of 30

Minimum los ains 4,000 aguare fees / 5,000 aguare fees
Addisense law olds
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- 2 For lots at a width of less then 50 feet, the following shell apply
 - 2.1 Garages shall be maharit a minimum of 25 feet. Garages accessed from a from yard functioning as a side yard shall be setbook a minimum of 20 feet.

 - 2.3 All drivenceys shall be provided in an abscrating pattern on the left or right ride of the unit's from faquid. Homes shall not have the same drivencey location (left or right side) as the adjacent home. The abstracting pattern may be adjusted at corner lots as measurer.
 - 2.4 A variety of gazage door designs shall be provided and there shall be no two identical gazage door designs of accust to each other.
 - 2.5 Each unit's primery entrance door shell face the roadway
 - 2.6 Street trees may include an afternating pattern of shade and organization trees, subject to final design and approval by Natural Resources staff.
- A nucleman of 3,820.5 square fast of neighborhood retail uses shall be provided within Consequent a Pocket A (Rhodine Borrow Pt Vidage Node). Neighborhood retail uses shall

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0304 RV & BA
MEETING DATE Occider 9, 2018
DATE TYPED: Occider 9, 2018

minimum 2" cultipar at the binne of planting planted on 20 foot consers. Should the buffer about a right-co-way, use of a six foot high wooden lines shall not be used. Adulticoulty, should the buffer that a right-of-two, hodges or tens shall not be blooked by a fitnow/wall from the view of the roadway and properties facing the virilage.

- The partie feeding by Folio Number 774(3) 5000 is officent to the Triple Credit Preserve
 For LDC Section 40 100, compatibility of the development with six preserve will be
 meaned with a compatibility plan that adhresses issues related to the development such as,
 but not necessarily literals for, acoust, prescribed fire, and fandecaping. The compatibility
 plan shall be proposed by the development, reviewed and approved by the Credit plan
 factor from the companion of the companio
- As Rhodae Road in a submanderd collocur roadway, the developer shall impro-4 Rhodes. Road between the project delivency and the saures sanderd roadway to current Coury Reliaborated County Land Developerant Code (IDC). Developed the transportation Technical Manual (TTM) standards may be considered in socretares with Section 1.2 and other options of the contract of the contract
- 10 Utilization of proposed access points along the project's southern boundary shall require modification of the adjacent Planned Development (to purelit such cross access).
- 11 The developer shall construct the following site access insprovements, unless other approved by Hilleborough County Public Works.

Such lengurements may require the developer to dedicate or otherwise acquire stdfin right-of-way.

- The first 1,800 feet of the internal project roadway (south of Rhodine Road) shall be utilized as a shared access facility. The purpose of this shared access facility is to serve
 - Prince development on folio 77409-3000, consistent with the adjector PD 05-0110;

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0004 RV & BA
MEETING DATE Occober 9, 2018
DATE TYPED: Occober 9, 2018

15.6 Struct trees may include an abornating pattern of shade and ornamental tre subject to final design and approval by Natural Rescurcos staff.

- This PD approves a waiver to the provision of 4,806 s.f. of on-site neighborhood retail total of 5,038 square fast to provided off-site on folion 77886 0000 (a 3,238 square foot convenience some) and 77857 0000 (a 1,800 square foot post office)
- The Grove Village Node (amonity/specialty total) depicted area) shall meet the following
 - 17. The Vollage Node was contain a manisme of 5,000 aguer from 6 night-shoot-ornal must offer man underland support sens (on the Sturches, saled must need of segure content) and government uses (such as shoots, government offersiers (such as a shoots, government offersiers). A manisment of 60°7 queries for 61° is 5000 square first of the shoots of the shoots of the shoots of 60° is 60° in 60° in
 - 17.2 The Village Note may also contain neighborhood amenly uses, such as a pool, amenly area and dushbouse which shall not count towards the maximum F.A.R. permitted in the Village Note.
 - 17.2 No minimum building settecks shall be required.
 - 17.3 Building beight shall be limited to a maximum of 35 feet with no additional senteck for buildings over 20 feet in height required
 - 17.4 Buffering and screening is accordance with Land Development Code Section 6.06.05 shall be provided along adjacent properties of differing land use

 - 17.6 Signage within the Village Node shall be limited to monument signs.
- A Village Square/Green (minimum size of 4,806 square fast) shall be provided where depicted on the general size plan. The Village Square/Green shall be board on all sides by streets and improved with landscaping, walk-ways, benches, Souteain, guarbon and/or sirelar amenishes to mocrange and accommodate use by village residence.

PRIAL CONDITIONS DATE TYPED. Oxfober 9, 2018

The developer shall provide a profitable option of sidewalks and/or stabilized pathwa/© (a minimum of 5 that he width) descapation this project with allows connections between the profitable option space. Village Supervi

- restrictions, open speak. Vising hyperteriors and vising from the general size plan. Should the buffler build be previoudle where deposing on the general size plan. Should the buffler build be shallown to a roately-proparing right-of-very preservation, the buffer shall be measured from the father englov-d-v-ey fine. This buffler is not buffler shall be sense of the consent and maintained by the Vermonover's Association, or other similar subject to be covered and maintained by the Vermonover's Association, or other similar subject to be consent of the following for an avoidabling of the Vermonover's Association, or other similar subject of or not or more of the following for an avoidabling to be the first, or 1 sets that light secondaries, PVC from or wall architecturally from buffler of 2x subfer a solid recondaries, PVC from or wall architecturally from the buffle shall be solid secondaries. PVC from or wall exclude earlies the buffle shall be solid secondaries of the solid second
 - 20.a Should any portion of Balno-Winauma Road to vacated (Option 1 and Option 2 in condition 17.d), the 50-floot wide buffer and sersanting shall not be construed
- 21 A 250-flost wide buffer shall be provided adjacent to falls 77830.0000, as depleted on the general site plan.
- The developer shall construct the following sits access insprovements, of which 22 s. 22 b or 22 c shall be communated only if watersand per Eachson 6 4 6 4 D of the Hillshorough County Land Development Code or unless atherwise approved in accordance the Seelen 6 04 02.8 attends/apartive variance process.
 - 22.a An eastbound to acuthbound right turn lose on CR 672 at Shelley Ln ,
 - 23.b A westbound to southbound left turn lane on CR 672 at Shalley L.s.,
 - 22.c A southbound to eastheam lieft non lane on Belin Winneams Rd. into the project's southernmost unicanos, and.

[Option]] — The developer shall construct an example of Balm Wangame Rd. (between its intersection with Balw Rd, and CR 672) as a 2-lane collector readway

PENAL CONDITIONS MEETING DATE: October 9, 2018
OF APPROVAL DATE 1 YPED. October 9, 2018

- AS Balm Wima-sims Rd. stoy be a substandard collector roadway. the developer will 10 required to accordinate with Hillshowsupik County Papille. Works to deservation the Improvements that stoy be required prior to or consument with plass/kin/konstruction plans.
- for accordance with the Millidocrosph Country Cordidar Preservation. Plan. the developer deal preserve up to 2.5 feet of right-of-very drosp in Balos Winnames Rd. Persuages, such feet a statistican of 54 feet of right-of-very drosp in Balos Winnames Rd. Persuages gript-of-very countries. Costy those insuden uses allowed by the Millidocrosph County LDC deal to persuasiate videal that preserved region el-very The citylen Covery preservations call be substant on all futures size plans, and building substant shall be criticalested from the Sauer rights of-very line citylen college.
- In accordance with the Hillshormugh County Cordict Preservation Plan, the developer shall preserve up to 18 that of sight-of-very sinong its CR 672 florance, such that a resistance of 58 fast of sight-of-very is preserved upon the threating sight-of-very contention. Only those insents uses allowed by the Hillshorrough Councy LDC shall be paresisted within the preserved sight-of-very. The right-of-very preservation uses said by shoon on all filters into plane, and building sotherize shall be calendated from the floure right-of-very laux.
- Natividiostanding anything phones on the PD size plate to the context, the relocation of the anothermonic assess on Bulbs Winnesse R.E. and the bit is incessed a self-rise of 23 M plate for the exercise algorithms on 23 M plate, which has easily reviewer; the assess point shall form the reserver; the context point shall have been appeared to the context of the plate of the plate

The following shall apply to both Planned Villages

- Access shall be provided as shown on the PD site plan swises otherwise provided barelet stace conditions. Instead read-why may be public or private, and if private, and if private, readways may be gased (except for those portions fluorisming as shared access trathways, as applical leavin tisses conditions)
- Notwithstanding snything on the PD sits plan or benin these conditions to the contexty, bicycle and podestrian access may be pereinted anywhere slong the project boundaries
- Approved of fish zoming published by Hillaborough County does not constitute a generated that the Divinomental Protestina Communica of Hillaborough County (EPC) approvedity/missing necessary for the development appropried will be insured, does not itself serve to justify any impact to willands, and does not generat any implied or vented right to overknamental approvals.
- The construction and location of any proposed westered inspects are not approved by this correspondence, but shall be reviewed by EPC staff under separate application pursuant to

Page 3 of 9

PETITION NUMBER RZ-PD 18-0004 RV & BA
DATE TYPED: Oxford 9, 2018

Within 6 months of acceptance of the readway extension, the developer shall remove up to a 1/2 1,300-500 tongs augment of accessing flatter witnesses the scene representation of the scene of the scene

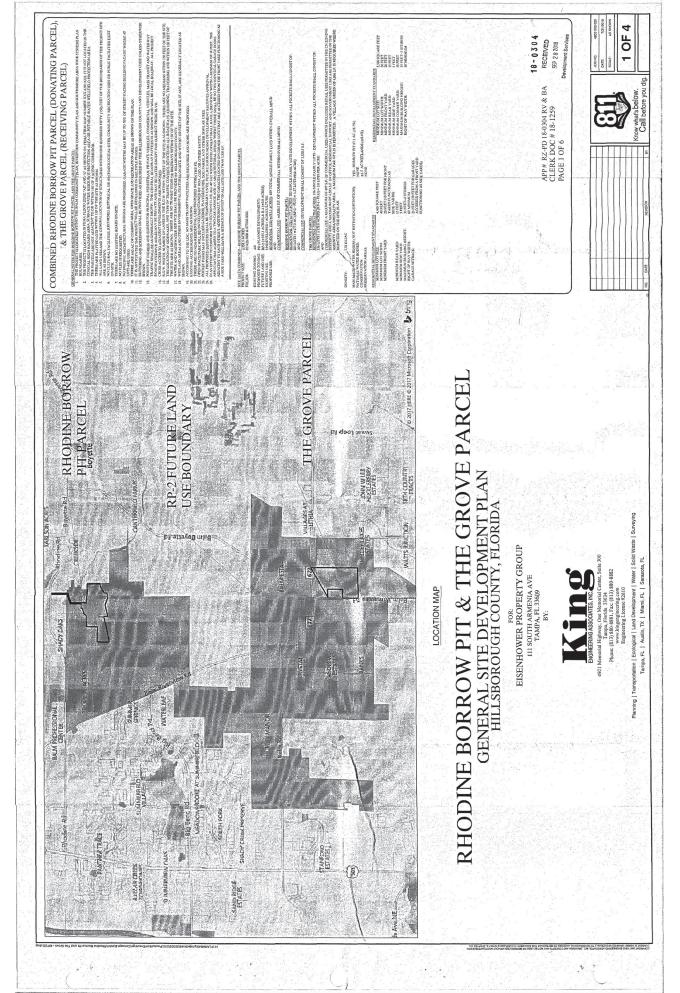
- constructed and open to public striffs, or.

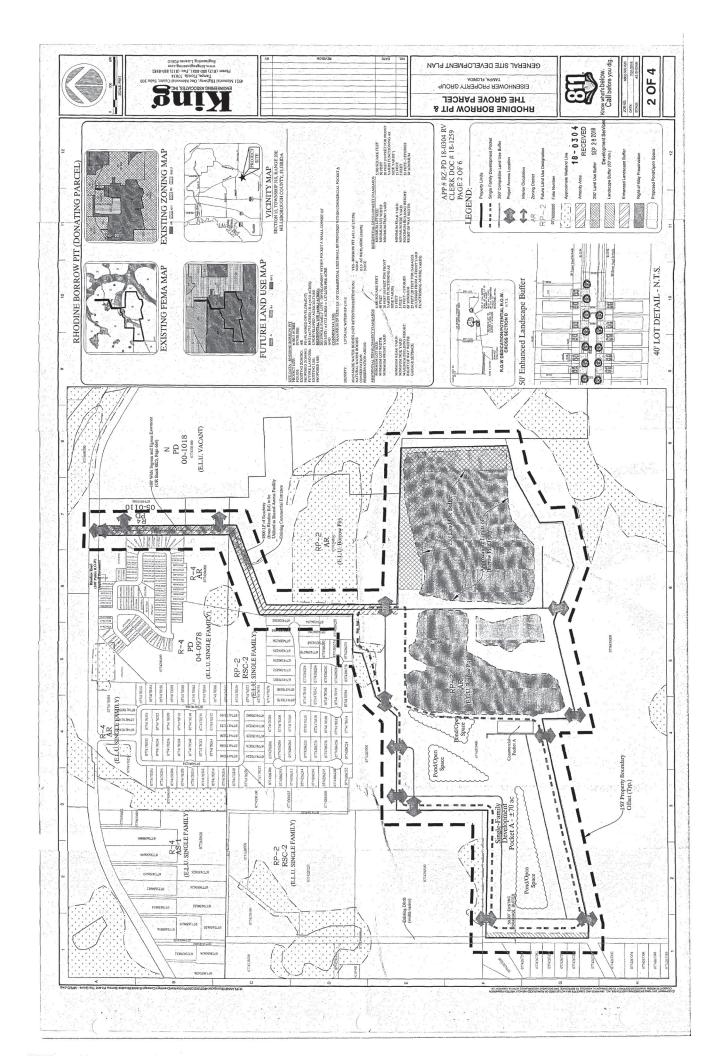
 10. Option 2. This developer shall restling up to ~*. 1,200 film of Balon Winnamer
 Rd. 6.4 this protrois immediately small of CT& 973 such that it creames to Shallon
 Rd. 6.4 this protrois immediately small of CT& 973 such that it creames to Shallon
 Rd. 6.4 this protrois immediately small of CT& 973 such that it creames to Shallon
 shall close the definaligned mode say and width in months, complete memoral of the
 old-immediated modes. Reactic little of the sequents to be supple conformed of the
 old-immediated modes. Reactic little of the sequents to be subject to the solid cost, design of
 facility, dottes all required promise for numeration, and explain any additional
 eligino-drivary necessary for the representation of the signal improvement.
 Uniteration of this option is also touringent upon review and approval of the
 facility, dottes all responses to the second of the
- ii. Option 1.— The developer shall countries a reanableout at the internaction of fig. 672, Blain W. Immune Mal. Blaffley Lu., and Blain Boyana Rd. This option may require use of the countries anglar indirection algorithms of the countries anglar indirection algorithms of the countries anglar indirection algorithms of the countries anglar indirection and the countries and construction and the countries and the countries and the countries and the construction and the countries and the proposed translations and the proposed translations.
- As Shelley Ln. is a substandard local reaching the developer will be required to inspress Shelley Ln. between his southermone scores consention and CR 670, to current County standards selected columns columns control as consultance with Section 6.0 Vol. 8. of the Hittlewoogh County UCD Christicos from YTM standards may be considered in accordance with Section 6.10 CD Christicos Store YTM standards were be considered as coordinates with Section 1.7.2 and during applicable sections of the Hittlewoody County

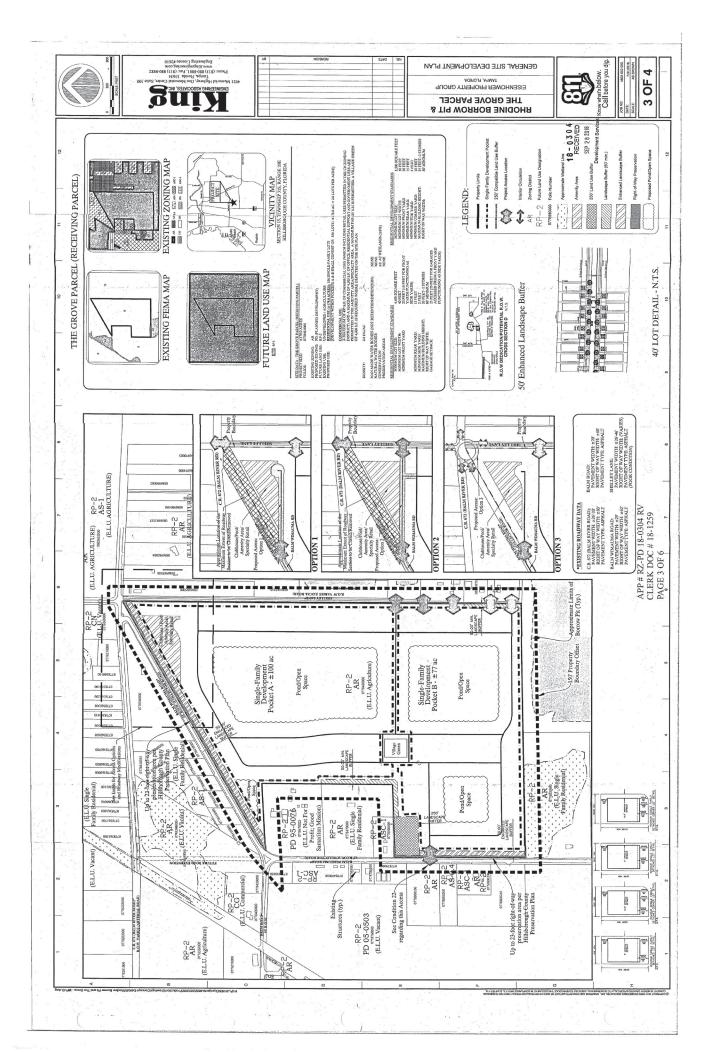
FINAL CONDITIONS MEETING DATE: October 9, 2018
OF APPROVA; DATE TYPED: October 3, 2017

- etlands rule detailed in Cha 111, Rules of the EPC, (Change 1-11) to
- Prior to the insumon of any building or land alteration paraists or other development, the approved waster of other surface seem (COSVV) has same be long-passed into the sile place. The vertained COSVI his most appear can ill may plant, labeled on "EEV Windows List" and the valued is "EV Windows List" and the valued on "EEV Windows List" and the valued seem to identify a "Windows Cosmo-vaction Area" pursuant to the Williferrough County Land Development Crist (CLIS).
- 33 Final design of buildings, story-more revenue or mean, and lagress/agreenes are subject to change prodling formal agency/unsfactional desurrainations of vertical and other surface were boundaries and approved by the appropriate regulatory agencies
 - 14 If the noise and/or graphic on the site plan are in conflict with specific arrang confined to the plan are in conflict with specific arrang confined to the plan are in confident engaleties apply, unless predicting confined coloraines affection to device and the LDC in any seaso conditions that the interpreted as the regulations in effect as the of profit instancy site plancy large agreement.

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BONGERING ASSOCIATES, INC.

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THAT PART OF THE N12 OF THE NE JAY UTING SOUTH OF THE BALM-WIRAMAN RAVED BODD; THE S1,Z OF THE NE JA, LESS THE WEST STATE RADIE OF LALE RENZO FINE THE NIZO FTHE STATE, ALL IN SECTION 23, TOWNSHIP 31 SOUTH, BANGE 20 BAST, LESS RIGHT OW WAY STATE RADIE OF JALL REINE OF HILLSGROWEN COMMT, FADILIA.

THE GROVE PARCEL LEGAL DESCRIPTION: DESCRIPTION: (AS PROVIDED BY CLIENT AND DESCRIBED IN OFFICIAL RECORDS BOOK 16192, PAGE 1492)

LEGAL DESCRIPTION: (PER COMMITMENT FOR TITLE INSURANCE)

A PARCEL OF LAND LYIMG IN SECTION 25 TOWNSHIP 21 SOUTH, RANGE 20 EAST, HILLSBOROUGH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

DESCRIPTION: (WRITTEN AS REQUESTED BY CLIENT)

GENERAL SITE DEVELOPMENT PLAN

EISENHOWER PROPERTY GROUP

я тне вояном ріт & ТНЕ GROVE РАЯСЕL

4 OF 4

RECEIVED SFP 28 2018

18-0304

Development Services APP# RZ-PD 18-0304 RV CLERK DOC# 18-1259 PAGE 4 OF 6

>> THANK YOU, COMMISSIONERS.

THIS BRINGS US TO ITEM G1 ON THE AGENDA.

THIS IS REZONING PD18-0304.

THIS APPLICATION WAS REMANDED FROM A PREVIOUS BOARD MEETING BACK
TO ZONING HEARING MASTER AND IS BEFORE YOU AGAIN.

THE APPLICATION HAS GONE THROUGH SOME CHANGES DEALING SPECIFICALLY WITH THE UNIT COUNT AND ALSO SOME ADJUSTMENTS IN THE BUFFER AREA.

PRIMARILY WHEN THIS IS BEFORE YOU LAST TIME THERE WAS SOME

QUESTIONS ABOUT NUMBERS AND ABOUT WETLAND DENSITY TRANSFERS AND

HOW UNITS WILL BE TRANSFERRING.

THERE ARE TWO PARCELS.

THE ONE TO THE NORTH IS GENERALLY KNOWN AS THE RHODINE PARCELS AND IT'S LOCATED SOUTH OF RHODINE ROAD.

AND THE PARCEL TO THE SOUTH IS GENERALLY KNOWN AS THE GROVE.

ACREAGE FOR THE NORTHERN PARCEL IS 177.

THE ACREAGE FOR THE SOUTHERN PARCEL IS 178.

THE NUMBERS IN TOTAL BEFORE YOU AT THE LAST HEARING WAS 710.

THE NUMBERS IN TOTAL NOW HAVE BEEN ADJUSTED DOWN TO 639.

AND THE NUMBERS FOR THE PROJECTS BY ACREAGE WOULD BE 283 FOR THE RHODINE PARCEL, WHICH IS TO THE NORTH, AND 356 TO THE GROVE PARCEL WHICH IS TO THE SOUTH.

ESSENTIALLY WHAT'S BEFORE YOU IS A RESIDENTIAL PROJECT WHICH IS PROPOSING TO USE THE RP2 DEVELOPMENT STANDARDS.

AGAIN, THERE HAVE BEEN SOME ADJUSTMENTS IN THE BUFFER AREA

ACKNOWLEDGING ADJACENT LAND USES AND CALIBRATING THAT BUFFERING

FOR THE ADJACENT LAND USE FOR COMPATIBILITY PURPOSES TO THE

EXTENT THAT IT'S PRACTICAL.

STAFF HAS RECOMMENDED APPROVAL OF IN REVIEW OF THIS APPLICATION, AND WE'RE HERE IF YOU HAVE ANY QUESTIONS.

ORAL ARGUMENT'S BEEN FILED.

>> SANDRA MURMAN: THANK YOU VERY MUCH FOR THE PRESENTATION.

IS THE APPLICANT HERE?

GOOD MORNING.

AND YOU'LL HAVE 10 MINUTES.

>> THANK YOU, COMMISSIONERS.

VIN MARCHETTI REPRESENTING EISENHOWER PROPERTIES, A GROUP.

JEFF HILLS IS HERE TODAY AS WELL AS STEVE LEWIS.

POINTS REMANDED FOR THE CASE, ONE BEING THE BUFFERING THAT WE JUST DISCUSSED BY JOE, ALSO THE CALCULATION OF DENSITY.

I THINK COMMISSIONER WHITE HAD ASKED FOR THAT CLARIFICATION.

WE ALSO HAVE HERE FOR ANY QUESTIONS A TRAFFIC ENGINEER STEVE HENRY AS WELL AS OUR CIVIL ENGINEER CLARK -- FROM KING ENGINEERING.

STAFF DID EXPLAIN THE NATURE OF THE REQUEST.

I GUESS I'M ON HOLD.

>> MR. MARCHETTI, HAVE YOU BEEN SWORN IN?

>> YES.

- >> THANK YOU.
- >> SANDRA MURMAN: I SAW HIM.
- >> THE STAFF DID EXPLAIN THE NATURE OF THE REZONING REQUEST.

 AGAIN ONE PARCEL BEING 177 ACRES.

THE RIVERVIEW THE OTHER BEING 178 ACRES IN BALM.

BOTH PROPERTIES ARE IN THE RP2 LAND USE CATEGORY WITH THE EXCEPTION OF THREE ACRES WHICH IS LOCATED IN THE RHODINE SITE. THE ZHM FIRST ISSUED A 17-PAGE RECOMMENDATION OF APPROVAL ON JUNE 7th BASED UPON ALL EVIDENCE PRESENTED INTO THE RECORD INCLUDING FROM THE PLANNING COMMISSION STAFF WHO FOUND THE REZONINGS BOTH PARCELS TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN.

AND ALSO FROM DEVELOPMENT SERVICES WHO FOUND AGAIN THE

APPLICATION SUBJECT TO CONDITIONS WHICH THE APPLICANT HAS AGREED

TO IN FULL TO BE CONSISTENT AND COMPATIBLE AND APPROVABLE.

JOE JUST MENTIONED THE TRANSFER OF UNITS THAT WE HAD DISCUSSED

BETWEEN THE TWO PARCELS RHODINE TO BALM HAS NOW BEEN TAKEN OFF

THE TABLE.

MY CLIENT DECIDED AFTER HEARING TESTIMONY FROM THE LAST HEARING BEFORE BOCC FROM THE BALM CIVIC ASSOCIATION GROUP THAT HE WOULD TAKE THAT OFF THE TABLE.

IT IS NO LONGER TRANSFER BETWEEN THE TWO PROPERTIES.

LET ME HAVE DAVID SMITH JUST GO THROUGH QUICKLY THE BUFFERING SCENARIO.

I THINK WE'RE SORT OF DOWN TO THAT.

ON THE DENSITY CALCULATIONS, JOE MENTIONED THE NUMBERS, THEY'RE ACCURATE.

THEY'RE ESSENTIALLY BASED UPON EACH PARCEL INDIVIDUALLY IN ONE APPLICATION HERE TODAY.

DAVID?

>> SANDRA MURMAN: COMMISSIONER HAGAN, DO YOU WANT TO RESERVE
YOUR COMMENTS UNTIL AFTER?

>> DAVID SMITH, 401 EAST JACKSON STREET, PLANNER FOR STEARNS WEAVER MILLER.

I HAVE BEEN SWORN.

WHAT I'VE PUT UP BEFORE YOU IS BASICALLY GRAPHICS INDICATING THE BUFFER.

THIS WAS HANDED OUT AND DISCUSSED AT THE REMAND.

A QUESTION THAT COME UP RELATIVE TO THE 250-FOOT BUFFER REQUIREMENT AROUND THE BOUNDARIES OF THE PROPERTY, AND TO AN EXPLANATION AND A REREVIEW OF THOSE BUFFERS.

AS INDICATED, MR. MARCHETTI, THE ZONING HEARING MASTER STAFF AND PLANNING COMMISSION HAVE ALL REAFFIRMED THAT THESE ARE CONSISTENT AND COMPATIBLE WITH THE COMPREHENSIVE PLAN, THE LAND DEVELOPMENT CODE, AND SUPPORTED BY STAFF AND THE ZHM.

BUT JUST TO QUICKLY GO OVER IT, IN THE RHODINE PARCEL WE ARE SURROUNDED BY TRIPLE CREEK IT'S RP2 PROPERTY SIMILAR DENSITIES,

ACROSS A 50-FOOT WIDE EASEMENT FROM TROPICAL ACRES.

TO OUR NORTH THERE IS A TV TOWER FACILITY.

THEN THERE ARE RESIDENTIAL DEVELOPMENTS THAT ONLY ABUT THE ACCESS ROAD, AND THEN WE'RE ABUTTED BY ELAPP.

THE ADJUSTMENTS TO THE PLAN FOR RHODINE IS WE PROVIDED 250-FOOT BUFFER, A BUFFERING THE ELAPP LANDS TO OUR EAST.

OTHER BUFFERS REMAIN THE SAME BECAUSE NO BUFFER IS REQUIRED BETWEEN PROJECTS WITH SIMILAR DENSITY.

PROPERTIES ARE NOT ADJACENT IF THEY'RE ACROSS 50-FOOT WIDE OR MORE EASEMENT OR RIGHT-OF-WAY.

TROPICAL ACRES BUT WE HAVE PROCEEDED A 50-FOOT ADDITIONAL BUFFER PROVIDING 105-FOOT FROM THIS PORTION OF TROPICAL ACRES.

NO BUFFER IS REQUIRED THROUGH HERE BECAUSE THAT IS ONLY AN ACCESS ROAD ACCESSING THE PROPERTY.

ON THE SOUTHERN PROPERTY KNOWN AS THE GROVE, WE HAVE SIMILAR SITUATIONS.

WE'RE SURROUNDED ON TWO SIDES BY RP2 DEVELOPMENT THAT ALREADY
PROVIDES BUFFER OR IS NOT GOING TO HAVE ANY DEVELOPMENT AT ALL.
SO THEREFORE, WE'RE PROVIDING NO ADDITIONAL BUFFER OTHER THAN
WHAT IS SHOWN ON THE PLAN.

WE HAVE PROVIDED FOR THESE NONCONFORMING LOTS THAT ARE ACROSS SPENCER LANE, AND ALSO ACROSS A VERY NARROW SINGULAR PROPERTY THAT'S ABOUT 50-FOOT WIDE.

WE PROVIDED A 50-FOOT BUFFER THERE.

ALONG THE HIGHWAY FRONTAGES, THE RIGHT-OF-WAY EXCEEDS 50-FOOT IN

WIDTH.

THEREFORE, UNDER THE POLICIES, THOSE PROPERTIES ARE NOT ADJACENT.

BASED UPON THAT FACT THOUGH WE HAVE PROVIDED A 50-FOOT WIDE AUGMENTED BUFFER ALONG THESE HIGHWAY FRONTAGES IN ORDER TO PROVIDE ADDITIONAL SCREENING FOR THE RESIDENTIAL PROPERTIES.

ALSO NOTE THAT THIS IS A TRUCK ROUTE.

ALSO THERE WAS A COMMENT AND A REQUEST MADE BY MR. SCOGGINS FOR 250-FOOT WIDE BUFFER BE PROVIDED AGAINST HIS PROPERTY.

THAT HAS BEEN INCORPORATED IN THE PLAN.

THE ONLY OTHER TWO PROPERTIES THAT ABUT US IS THIS RESIDENTIAL TRACT DEVELOPED WITH ONE HOME.

WE PROVIDED AN AUGMENTED 50-FOOT WIDE BUFFER THERE.

WE'VE HAD NO COMMENTS THROUGH TWO PUBLIC HEARINGS FROM THESE RESIDENTS.

NO OBJECTIONS RELATIVE TO THE BUFFER BEING PROPOSED.

AND THIS PROPERTY FOR THE GOOD SAMARITAN.

GOOD SAMARITAN IS A NONRESIDENTIAL USE HOWEVER WE DO HAVE A LETTER FROM THEM THAT'S BEEN PLACED IN THE FILE, AND THEY HAVE NO OBJECTION TO THE PROPOSED BUFFERING.

BASED UPON THE DEFINITIONS IN THE CODE RELATIVE TO ADJACENT PROPERTIES AND THE ABILITY TO HAVE ALTERNATIVE BUFFERING, WE REQUEST THAT YOU APPROVE THIS AS PLANNED.

THANK YOU.

I'LL ANSWER ANY QUESTIONS.

>> JUST TO CONCLUDE, VIN MARCHETTI AGAIN FOR THE RECORD QUICKLY.

BASED UPON OUR CLIENT'S REMOVAL OF THE TRANSFER OPTION, WHICH

DID AGAIN ZONE WILL, IN THE ADJUSTMENT OF THE BUFFER, THE ZHM,

MR. SCAROLA THEN ISSUED A 30-PAGE RECOMMENDATION OF APPROVAL

WITH A DETAILED ANALYSIS ON EACH POINT THAT THE BOCC REQUESTED

THAT HE CONSIDER.

THE PLANNING COMMISSION AGAIN REVIEWED THE APPLICATION, FOUND IT
CONSISTENT WITH THE COMPREHENSIVE PLAN, DEVELOPMENT SERVICES
AGAIN FOUND THE APPLICATION APPROVABLE WITH CONDITIONS WHICH THE
APPLICANT AGREES TO IN FULL.

THE STAFF REPORTS BEFORE YOU INCLUDING THE ZHM RECOMMENDATION

ARE VERY THOROUGH ADDRESSING EACH AND EVERY QUESTION ADDRESSED,

INCLUDING OR QUESTIONED, INCLUDING THOSE QUESTIONS ASKED OF THE

BALM CIVIC ASSOCIATION MEMBERS WHO ARE HERE TODAY TO SPEAK AS

WELL, AS WELL AS MR. SCOGGINS.

I WOULD ASK THAT YOU CONSIDER THE COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD AND SUPPORT THE APPLICATION.

THANK YOU.

>> SANDRA MURMAN: OKAY.

DOES THAT CONCLUDE YOUR PRESENTATION?

>> YES.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

AND THEN WE WILL GO TO THE ORAL ARGUMENT.

IT WILL BE LIMITED TO PARTIES OF RECORD.

AND HAS EVERYONE SPOKEN FROM YOUR SIDE, MR. MARCHETTI ON THE SUPPORT?

OKAY.

SO WE HAVE MICHAEL FAVREAU, BILL O'BRIEN, AND JERRY SCOGGINS AS PARTIES OF RECORD IF THEY WILL COME FORWARD AND SPEAK.

AND YOU ARE IN OPPOSITION AND BETWEEN THE THREE OF YOU, YOU WILL HAVE 10 MINUTES TOTAL.

YOU GOING TO COME FORWARD?

NO?

OKAY.

ARE ALL THREE OF YOU GOING TO SPEAK?

>> YES, MA'AM, AT THIS TIME, WE PLAN TO.

>> SANDRA MURMAN: OKAY.

10 MINUTES TOTAL.

>> MY NAME IS WILLIAM F. O'BRIEN MY PHYSICAL ADDRESS IS 15002 CARLTON LAKE ROAD, WIMAUMA, FLORIDA.

MAKE IT CLEAR, I LIVE IN BALM, FLORIDA.

I'VE LIVED IN THE BALM AREA ALL OF MY LIFE.

I REPRESENT MYSELF AND THE CITIZENS OF BALM WHERE I HAVE SERVED OVER THE LAST 40 YEARS AS PRESIDENT OF THE CIVIC ASSOCIATION, VICE PRESIDENT OF THE CIVIC ASSOCIATION, MAYOR, AND OTHER AREAS OF RESPONSIBILITY WITHIN MY COMMUNITY.

THANK YOU FOR THE OPPORTUNITY TO SPEAK ON BEHALF OF MY

COMMUNITY.

AT THIS POINT, I WANT TO FOCUS ON THE INCONSISTENCY OF THIS ZONING PETITION WITH THE BALM COMMUNITY PLAN.

I WAS ONE OF THE BALM CITIZENS ON THE COMMITTEE TO HELP DRAFT THE COMMUNITY PLAN.

WE BEGAN THE DEVELOPMENT IN EARLY JANUARY 2012.

WE COMPLETED SUBMITTAL AND IT WAS APPROVED BY THE BOARD OF COUNTY COMMISSIONERS IN JANUARY OF 2013.

AS A TEXT AMENDMENT TO THE LIVABLE COMMUNITIES ELEMENT OF THE COMPREHENSIVE PLAN, THE COMMUNITY WORKED IN COLLABORATION WITH THE COUNTY PARTICIPATING IN OVER 21 WORKSHOPS TO DEVELOP AND GAIN APPROVAL OF THE PLAN THAT WOULD HELP TO MOLD THE FUTURE OF OUR TOWN.

THE ADOPTED PLAN CONSISTED OF OUR VISION, GOALS, AND STRATEGIES

AND SEEKS TO MANAGE GROWTH WHILE PRESERVING RURAL AND AGRARIAN

CHARACTERISTICS AND THE QUALITY OF LIFE ESTABLISHED BY

LONG-STANDING RESIDENTS.

IN THEIR PRESENTATION OF THE PLAN, THE STAFF COMMENTED THAT THE COMMUNITY AUTHORED THE VISION FOR HOW THEIR COMMUNITY WILL LOOK IN THE FUTURE.

ADOPTING THE PLAN PROVIDES BALM WITH THE TOOL TO IMPLEMENT THEIR VISION.

THE VISION GIVES THE COMMUNITY DIRECTIONS AND MOTIVATION TO STRIVE TO MAINTAIN THE UNIQUE RURAL LIFESTYLES ESTABLISHED BY

ITS INVENTORY OF AGRICULTURAL LANDS AND ENVIRONMENTAL RESOURCES
AND ACCOMMODATE FUTURE LOW DENSITY RESIDENTIAL DEVELOPMENT.

IMPROVED QUALITY OF LIFE WILL BE ACHIEVED THROUGH IMPLEMENTING
THE STRATEGIES.

THAT'S A DIRECT QUOTE FROM YOUR STAFF.

IN ADDITION THE STAFF COMMENTS INCLUDED THIS COMMUNITY PLAN
DEMONSTRATES HILLSBOROUGH COUNTY'S COMMITMENT TO USE THE
COMMUNITY PLAN, VISION, GOALS, STRATEGIES, AND ACTION PLAN WHEN
EVALUATING AND DECIDING ON MATTERS PERTAINING TO THE COMMUNITY
PLAN AREA.

THIS REZONING HAS NUMEROUS INCONSISTENCIES WITH OUR PLAN, GOALS,
AND COMMITMENTS MADE TO HILLSBOROUGH COUNTY TO SUPPORT THESE
GOALS.

GOAL NUMBER ONE, THE COMMUNITY SEEKS TO MAINTAIN AND RESERVE AND RURAL AND AGRARIAN CHARACTERISTICS, ATMOSPHERE, AND QUALITY OF LIFE ESTABLISHED BY LONG-STANDING COMMUNITY RESIDENTS, WHICH INCLUDES LEISURELY ACTIVITIES, STRONG NEIGHBORHOOD TIES, FAITH-BASED ORGANIZATIONS, AND RURAL LOW DENSITY LAND USE DESIGNATIONS.

IN RETURN, THE COUNTY COMMITTED THEY WILL CONTINUE TO MAINTAIN THE RURAL FUTURE LAND USE MAP DESIGNATIONS THAT ARE COMPATIBLE WITH THE EXISTING RURAL CHARACTER AND LEVEL OF DEVELOPMENT INVOLVED.

SPECIFICALLY MAINTAINING THE COMPREHENSIVE PLAN DEFINITION OF

RURAL DENSITIES IN THE RURAL AREA AS ONE UNIT PER FIVE ACRE OR LESS.

THE COUNTY WILL NOT DESIGNATE ANY FURTHER RESIDENTIAL RP2 LAND

USE CATEGORIES UNLESS DUE TO SPLIT USES ON ONE PARCEL CONSISTENT

WITH THE FUTURE LAND USE ELEMENT POLICIES.

COMMISSIONERS, 100 OR HUNDREDS OF HOUSES ON 40 TO 50-FOOT LOTS IS NOT CONSISTENT WITH OUR PLAN.

GOAL NUMBER 2, BALM ENCOURAGES HILLSBOROUGH COUNTY TO MAKE

NECESSARY IMPROVEMENTS TO AND PROVIDE CONTINUED MAINTENANCE OF

NEW AND EXISTING INFRASTRUCTURE IN ORDER TO KEEP BALM

ATTRACTIVE, FUNCTIONAL, AND SAFE FOR VISITORS AND LOCAL

RESIDENTS.

THE COUNTY WILL, THESE ARE ADDITIONAL COMMITMENTS, EMPHASIZE THE USE OF LIVABLE ROADWAYS, GUIDELINES, AND COMPREHENSIVE PLAN COMMUNITY DESIGN COMPONENT POLICIES FOR DESIGN OF ALL MODES OF TRAVEL WITHIN BALM WHEN FEASIBLE.

SO WHERE ARE THESE POLICIES APPLIED IN THIS APPLICATION?

GOAL NUMBER 4, BALM STAKEHOLDERS SUPPORT THE PRESERVATION OF

EXISTING OPEN SPACES AND ACQUISITION OF NEW OPEN SPACES WHEN

OPEN TO THE PUBLIC.

COMMITMENT FROM THE COUNTY.

THE COUNTY WILL CONTINUE TO MINIMIZE LIGHT POLLUTION AND PERVASIVE ARTIFICIAL LIGHT THROUGH THE DARK SKY STANDARDS. COMMISSIONERS.

HUNDREDS OF HOUSES BUILT UP TO THREE STORIES HIGH WITH REDUCED PERIMETER LOT LINES WILL NOT SUPPORT THIS GOAL.

AND FINALLY, GOAL NUMBER 6, THE COMMUNITY SEEKS TO CREATE OF
PEDESTRIAN FRIENDLY VILLAGES THAT INCLUDES A DIVERSE MIX OF USES
MEETING THEIR DAILY NEEDS.

THE COUNTY COMMITMENT.

IMPLEMENT EXISTING FUTURE LAND USE ELEMENT POLICIES CALLING FOR COUNTY-WIDE RURAL DESIGN GUIDELINES TO FOSTER THE RURAL ENVIRONMENT.

REINFORCE ITS CHARACTER AND DISTINGUISH IT FROM THE MORE URBAN DEVELOPMENT.

SO WHERE ARE THE RURAL DESIGN GUIDELINES APPLIED IN THIS REZONING REQUEST?

COMMISSIONERS, WE WORKED HARD AND LONG ON THE DEVELOPMENT OF OUR COMMUNITY PLAN TO HELP ESTABLISH A PATH FOR MANAGED DEVELOPMENT IN OUR TOWN.

YOU MADE COMMITMENTS TO SUPPORT OUR PLAN.

THE REZONING REQUEST 18-0304 IS NOT CONSISTENT WITH OUR PLAN,

AND IF APPROVED WILL BE INCOMPATIBLE WITH THE EXISTING LAND

USES.

THANK YOU.

>> SANDRA MURMAN: THANK YOU VERY MUCH, AND THERE IS ABOUT FOUR
MINUTES 18 SECONDS LEFT FOR THE OTHER TWO SPEAKERS.

AND DO YOU WANT TO SPEAK FROM THE ELMO, SIR?

THERE IS A MICROPHONE OVER THERE.

AND HAVE YOU BEEN SWORN IN?

>> HELLO, YES.

>> SANDRA MURMAN: OKAY, THANK YOU.

AND COULD YOU IDENTIFY YOURSELF.

>> MY NAME IS JERRY SCOGGINS, 15024 BALM WIMAUMA ROAD.

AS YOU ALL KNOW AT THE LAST MEETING, CAN I GET THIS ON THE SCREEN HERE?

>> SANDRA MURMAN: WE'LL GET SOMEBODY TO HELP YOU.

>> MR. SCOGGINS, BEFORE YOU BEGIN, CAN YOU ADVISE ME IF THAT WAS PLACED INTO THE RECORD AT THE ZONING HEARING MASTER HEARING?

>> EXCUSE ME?

>> DID YOU PRESENT THAT MATERIAL AT THE ZONING HEARING MASTER HEARING?

>> YES, YES, I DID.

YES, I DID PRESENT THE SAME MATERIAL.

OKAY.

HOW COME IT'S NOT ON THE SCREEN.

OKAY.

ALL RIGHT.

I WANTED TO BRINGS UP A COUPLE THINGS HERE.

ACCORDING TO THE DEVELOPMENT OF SERVICES PLAN, YOU'RE SUPPOSED TO HAVE A 250-FOOT BUFFER AROUND 70% OF ANY SUBDIVISION IN A RURAL AREA.

I AGREE WITH THEM THAT THEY GAVE ME A 250-FOOT BUFFER.

BUT THE PROBLEM WITH THE BUFFER IS IF I LOOK OUT MY BACKYARD

WHEN THE SUN'S COMING UP IN THE EAST, YOU KNOW WHAT I'M GOING TO

SEE?

I'M GOING TO SEE LOT LINES OF 40-FOOT BY 50-FOOT RIGHT BEHIND PLY HOUSE WHERE THE SUN'S SUPPOSED TO COME UP IN MY BACKYARD.

THAT BEING SAID, I'M REQUESTING THAT THE 250-FOOT BUFFER BE AROUND THE WHOLE SUBDIVISION.

WHAT IS WRONG WITH THAT?

BECAUSE THIS IS A NATURAL AREA.

IT'S BEEN LIKE THAT FOREVER.

AND THEN WE WANT TO COME IN HERE AND PUT ZERO LOT LINES OF 50-FOOT LOT LINES AROUND OUR PROPERTIES.

THAT'S ONE THING.

ANOTHER THING IS THE ROAD THAT GOES NORTH OF MY PROPERTY THAT TIES INTO 170619.

NOW, THAT'S THE OTHER ZONING THAT IS COMPATIBLE TO THIS SUBDIVISION THAT THEY WANT TO DO.

WELL, ACCORDING TO THE PLANS, THEY WANT TO BRING A ROAD STRAIGHT DOWN THROUGH BETWEEN MY PROPERTY ON BOTH SIDES OF THE ROAD.

THERE'S GOING TO BE 300 HOMES ON THE WEST SIDE OF MY PROPERTY.

THERE'S GOING TO BE 350 HOMES ON THE EAST SIDE OF MY PROPERTY.

THAT RIGHT-OF-WAY IS ONLY 63 FEET WIDE.

OKAY?

SO IN ORDER TO ACCOMMODATE THE TURN LANE JUST TO GO INTO THEIR SUBDIVISION, THEY NEED TO EXPAND THAT RIGHT-OF-WAY TO 96 FEET.

THAT THE BEING SAID, I FEEL THAT THE RIGHT-OF-WAY IN BETWEEN

THOSE PROPERTIES NEEDS TO BE PURCHASED BECAUSE THE DEVELOPER IS

GOING TO GIVE YOU A SETBACK AND DONATE THE RIGHT-OF-WAY TO YOU

GUYS FOR THE EXPANSION OF THE ROAD.

BUT THERE IS NOTHING SAID ABOUT THE PROPERTIES IN BETWEEN US.

AND THAT'S WHERE I REST MY CASE RIGHT THERE.

AND THAT'S ALL I GOT TO SAY.

>> SANDRA MURMAN: OKAY.

THANK YOU VERY MUCH.

AND THE, YOU HAVE ONE SPEAKER LEFT FOR TWO MINUTES.

>> THANKS.

>> SANDRA MURMAN: IF YOU WOULD PLEASE IDENTIFY YOURSELF.

>> MICHAEL FAVREAU, 14423 COUNTY ROAD 672.

I'M ONE MILE EAST OF THIS PROPERTY REQUEST, AND YES I HAVE BEEN SWORN IN.

YES, I HAVE BEEN SWORN.

I'M HERE TO REPRESENT OUR ASSOCIATION AS A BUSINESS OWNER DOWN
THERE AS WELL AS THE PRESIDENT OF THEIR COMMUNITY.

OBVIOUSLY THIS GETS TO REDUCE, SO LET'S GET TO THE POINT.

WE'RE NOT OPPOSED TO DEVELOPMENT IN OUR AREA, AS LONG AS IT REMAINS CONSISTENT WITH OUR PLAN AND WHERE WE LIVE.

WE STRONGLY OBJECT TO THE MANNER IN WHICH IT IS TRYING TO BE DONE NOW.

MAKE NO MISTAKE.

THIS PD HAS NOTHING TO DO WITH NONE OF US THAT LIVE THERE, ABSOLUTELY NOTHING.

YOU WANT RESIDENTIAL WHERE YOU CAN WALK TO THAT THEY DON'T YOU KNOW THEY HAVE TRAILS.

ALL OF THAT IS INSIDE OF THAT COMMUNITY WHICH HAS NOTHING TO DO WITH WHERE WE LIVE.

AS FAR AS COMPATIBILITY, I REALLY DO NOT KNOW HOW THIS IS EVEN CONSIDERED TO BE COMPATIBLE TO BALM.

THERE ARE NO BERMS, THERE ARE NO TREES, THERE ARE NO CLUSTER DEVELOPMENTS ANYWHERE IN BALM.

IF WE'RE JUST USING HILLSBOROUGH COUNTY AS A RULE ON 16 AUGUST COMMISSIONER HAGAN HAD FOUND THAT SOMETHING IN THONOTOSASSA WAS INCOMPATIBLE.

IS THAT NOT IN HILLSBOROUGH COUNTY?

SO IF WE'RE JUST USING A GENERAL RP2 AND WHAT OUR COMPREHENSIVE PLAN IS, WHICH BY THE WAY IS JUST A GUIDE, NOWHERE IN THERE IT SAYS YOU MUST PUT TWO HOMES ON AN ACRE.

NOWHERE.

SO SINCE THAT'S NOT IN THERE, WHY ARE WE GETTING RID OF THE BUFFERS?

WE'RE GETTING RID OF THE BUFFERS FOR THE SIMPLE REASON TO PUT

MORE HOUSES THERE.

THAT'S JUST GREED.

YOU SWORE ME IN TO TALK, BUT WE USE GREED AS AN EXCUSE TO PUT EXTRA HOUSES.

THEY SAY WE'RE GOING TO MAKE IT PRETTY.

WHERE I LIVE, I LOOK OUT ACROSS THE SKY.

YOU WANT TO PUT A SIX-FOOT FENCE AND A 35-FOOT HOUSE THAT'S 29 FEET ABOVE THAT, THAT'S MY NEW VIEW.

THAT IS AGAIN NOT CONSISTENT.

WE WOULD REQUEST GUIDELINES FOR WHAT CONSIDERED TO BE CONSISTENT AND NOT.

THERE IS PLENTY OF FILM OF THESE MEETINGS.

WE CAN GO OVER AND MAKE SURE THAT IT'S BEEN CONSISTENT ACROSS THE BOARD.

BECAUSE THERE IS NOTHING IN BALM THAT IS IN THIS PD.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

AND THE APPLICANT HAS FIVE MINUTES FOR REBUTTAL.

>> COMMISSIONERS, DAVID SMITH AGAIN.

JUST TO POINT OUT, COMPREHENSIVE PLAN POLICY HAS BEEN REVIEWED BY THE PLANNING COMMISSION, REVIEWED BY YOUR STAFF, AND WERE FOUND TO BE CONSISTENT.

COUPLE OF THINGS I WOULD LIKE TO POINT OUT.

THE BALM COMMUNITY PLAN ALSO INDICATES A COUPLE LITTLE IMPORTANT FACTS.

ONE, IT INDICATES SPECIFICALLY THAT YOU DON'T WANT TO

DEVELOP -- DENSITIES OTHER THAN WHERE THE FUTURE LAND USE PLAN

PROVIDES FOR THEM.

RP2 PROVIDES FOR THESE DENSITIES.

WE'RE CONSISTENT WITH THE RP2.

THIS IS SPECIFICALLY IN THE COMMUNITY PLAN UNDER GOAL 1.

WHEN YOU COME OVER FURTHER IN THE PLAN, IT TALKS ABOUT VILLAGE

NODES.

IT SAYS VILLAGE LOCATIONS ARE THOSE AREAS THAT MEET LOCATIONAL CRITERIA.

PREFERRED LOCATIONS ARE AT THE INTERSECTION OF BALM ROAD, BALM WIMAUMA NEAR THE EXISTING POST OFFICE AND ARE AT THE INTERSECTION OF BALM BOYETTE, COUNTY ROAD 672 AND SHELLEY LANE. I WOULD LIKE TO POINT OUT THAT THIS PROPERTY IS EXACTLY AT THAT LOCATION.

672, SHELLEY LANE AND THESE ARE PLACES IN THE BALM COMMUNITY
PLAN THEY HAVE IDENTIFIED FOR THESE VILLAGE DEVELOPMENTS.
WE'RE CONSISTENT WITH THE COMPREHENSIVE PLAN POLICIES RELATIVE
TO THAT.

WE PROVIDE BUFFERS AS PROVIDED FOR GIVEN THE ADJACENCY OF
ADJACENT USES AND WE RESPECTFULLY REQUEST THAT YOU FIND THIS
CONSISTENT AND APPROVABLE.

>> JUST WRAP UP.

VIN MARCHETTI ON REBUTTAL HERE.

I GUESS A COUPLE OF ITEMS.

FIRST, MR. BRIAN'S VERY PASSIONATE AS IS MR. FAVREAU BOTH OF THE BALM COMMUNITY WHICH WE DON'T MIND.

WE WORK WITH THEM ACTUALLY PRETTY EXTENSIVELY.

HOWEVER, THEY'RE CITING TO PROVISIONS IN THEIR BALM COMMUNITY PLAN.

DAVID JUST POINTED OUT A COUPLE OF THEM THAT ARE NOT CONSISTENT WITH WHAT'S BEFORE YOU TODAY.

MR. O'BRIEN ALSO WENT WELL BEYOND THE TWO ITEMS FOR REBUTTAL, WHICH WAS DENSITY CALCULATIONS ON THE TWO PARCELS.

I THINK INDIVIDUALS OR COMMISSIONER WHITE TALKED ABOUT, AND THEN THE BUFFERS.

BUT I LET HIM DO THAT BECAUSE OUT OF COURTESY TO HIM I WANTED TO

MAKE SURE THE BOARD HAD A PURVIEW OF ALL HIS INFORMATION.

HAVING SAID THAT, RP2 HAS BEEN IN PLACE IN THE GRAPHIC PLEASE

PUT THE GRAPHIC BACK UP.

THE RP2 HAS BEEN IN PLACE SINCE THE EARLY 90s.

OKAY?

SO YOU HAVE TO UNDERSTAND WHEN THE PLANNING COMMISSION OR THE DEVELOPMENT SERVICES STAFF STARTED THEIR COMMUNITY PLAN DISCUSSIONS WITH BALM, IT WAS UNDER THE CONTEXT OF RP2 BEING IN PLACE, NOT THAT IT'S NOT THERE, AND SO THEIR COMMUNITY PLAN DEFINITELY RECOGNIZES THE FACT THAT IT IS IN PLACE, RP2 IS A TRANSITION AREA, AND OBJECTIVE 33 WITHIN PLANNED VILLAGES IN

YOUR COMPREHENSIVE PLAN STATES SPECIFICALLY 33.2, THE
RESIDENTIAL PLANNED CATEGORY RP2 LAND USE CATEGORY IS INTENDED
TO IMPLEMENT A TWO-TIERED APPROACH IN THE APPLICATION OF
DENSITIES AND INTENSITIES.

THE PURPOSE OF RP2 LAND USE CATEGORY IS TO PROMOTE

SELF-SUSTAINABLE DEVELOPMENT, THE ABILITY TO OBTAIN MAXIMUM

DENSITIES AND/OR DENSITIES PERMITTED IN RP2 LAND USE CATEGORIES.

160 ACRES OR GREATER, WHICH IS THE CASE HERE, SHALL BE DEPENDENT

UPON THE EXTENT DO WHICH DEVELOPMENTS ARE INTENDED TO ACHIEVE ON

SITE CLUSTERING.

THAT'S WHAT RP2 PROVIDES FOR IN YOUR COMPREHENSIVE PLAN.

THE ZONING HEARING MASTER IN HIS CONCLUSION ON PAGE 29 SAID

PROPOSED PROJECT MEETS THE INTENT OF RP2 PLANNED VILLAGE

POLICIES OF THE COMPREHENSIVE PLAN TO CREATE A PEDESTRIAN

ORIENTED COMMUNITY TO COMPLEMENT THE LOW DENSITY DEVELOPMENT

PATTERN PERMITTED AROUND THE RP2 FUTURE LAND USE CATEGORIES, NOT

DEVELOPED IN A PLANNED VILLAGE MANNER.

OVERALL THE REQUEST WILL RESULT IN DEVELOPMENT THAT IS

COMPATIBLE WITH THE SURROUNDING DEVELOPMENT PATTERN.

MR. SCOGGINS TALKED ABOUT I'M NOT SURE WHAT HE TALKED

ABOUT -- HE TALKED ABOUT BUFFERS.

THE LAST MEETING BEFORE, HE ASKED FOR 250 FEET.
WE GAVE HIM 250 FEET.

NOW HE'S TALKING ABOUT SOMEONE ELSE'S PROPERTY.

SOME OTHER PROPERTIES ACROSS THE WAY.

AGAIN, HE WENT WELL BEYOND WHAT THE INTENT FOR THIS REMAND WAS, BUT I LET HIM SPEAK AS WELL.

MR. FAVREAU IS ALIGNED WITH MR. O'BRIEN.

I RESPECT THEIR OPINIONS.

THIS IS RP2 LAND.

THIS PROPERTY WILL BE DEVELOPED AS A TRANSITION PARCELS IF YOU WILL TO THE OTHERWISE RURAL AREA.

SO THAT'S OUR CASE.

THERE'S A LOT OF EVIDENCE ON THE RECORD SUPPORTING OUR REQUEST.

I WOULD ASK THAT YOU SUPPORT IT.

THANK YOU.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

WE'LL NOW MOVE TO REPORTS ON THE PLANNING COMMISSION.

>> THANK YOU, MADAM CHAIRMAN.

TONY GARCIA, PLANNING COMMISSION STAFF.

THIS CASE WAS REMANDED BACK TO THE ZONING HEARING MASTER BY THE COUNTY COMMISSIONERS.

NO TRANSFER OF DEVELOPMENT RIGHTS, EACH PARCEL HAS BEEN REVIEWED INDIVIDUALLY FOR DENSITY AND THE RHODINE PARCEL'S MAXIMUM UNIT COUNT IS AS STATED 283 UNITS.

THE GROVE PARCEL DWELLING UNIT TOTAL IS 356 UNITS.

STAFF CONCURS WITH THE AMOUNT OF RETAIL DESIGNATED FOR EACH PARCEL IN THE DEVELOPMENT SERVICES REPORT.

THE AMENITY CENTER SLATED FOR THE GROVE PARCEL CAN ACCOMMODATE RETAIL DEVELOPMENT.

STAFF ALSO CONCURS WITH THE REQUEST FOR NEIGHBORHOOD SPECIALTY
RETAIL AS SHOWN ON THE SITE PLAN AS BALM WIMAUMA IN BALM BOYETTE
ROADS.

THE APPLICANT HAS ALSO REQUESTED A WAIVER TO THE 250-FOOT BUFFER REQUIREMENT IN CERTAIN LOCATIONS.

STAFF CONCURS WITH THE BUFFER WAIVER AND PROPOSED BUFFER

CONDITIONS PROVIDED BY THE DEVELOPMENT SERVICES DEPARTMENT.

THIS INCLUDES A BERM AND SCREENING WITH LANDSCAPE MATERIALS.

STAFF CONCURS WITH LOCATIONS OF THE VILLAGE NODES FOR BOTH

PARCELS.

BASED ON THE ABOVE CONSIDERATIONS, PLANNING COMMISSION STAFF FINDS THE PROPOSED REQUEST CONSISTENT WITH THE COMPREHENSIVE PLAN.

THANKS.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

ZONING HEARING MASTER, I HAVE A REPORT FROM YOU.

>> THE ZONING HEARING MASTER CONSIDERED THE REQUEST TO REZONE

THREE 58.3 NONCONTIGUOUS ACRES FROM AGRICULTURAL RURAL TO

PLANNED DEVELOPMENT WITHIN THE SOUTH COUNTY PLANNING SECTOR IN

THE RIVERVIEW AND BALM PLANNING AREAS.

AS A RESULT OF THE REMAND, THE APPLICATION HAS CHANGED.

THE APPLICANT NO LONGER PROPOSES TO TRANSFER DENSITIES BETWEEN

THE TWO PARCELS CONSISTENT WITH COMPREHENSIVE PLAN POLICY 33.2A.

THE PARCEL YIELDS ARE NOW BASED ON THE INDIVIDUAL PARCEL DENSITY

CALCULATIONS.

THE ZONING HEARING MASTER REVIEWED THE APPLICATION AND FOUND THAT THE UNIT COUNT REQUESTED ON THE GROVE PARCEL HAS BEEN REDUCED BY 54 UNITS FROM THE ORIGINAL REQUEST.

THE ZONING HEARING MASTER CONCLUDED THAT WITH REGARD TO THE
BUFFER REQUIREMENTS, THERE HAVE BEEN TWO CHANGES TO THE ORIGINAL
BUFFER PROPOSALS PER THE REMAND.

FIRST ON THE GROVE PARCEL A250-FOOT BUFFER HAS BEEN ADDED ADJACENT TO FOLIO 7785.0000 SCOGGINS PROPERTY.

SECOND, ON THE RHODINE PARCEL, A 250-FOOT BUFFER HAS BEEN ADDED TO THE EAST BOUNDARY ADJACENT TO THE COUNTY PRESERVATION AREA.

THE ZONING HEARING MASTER CONSIDERED THE BUFFER WAIVER AND FOUND THAT THE APPLICANT HAS APPROPRIATELY REQUESTED A WAIVER TO THE BUFFER REQUIREMENTS.

-- NETWORK OF BUFFERS AND SCREENING DESIGNED APPROPRIATELY

BASED ON THE SMALL GROUPINGS OF REMAINING USES THAT ARE NOT PART

OF THE SURROUNDING PLAN VILLAGE.

ACCORDINGLY, THE ZONING HEARING MASTER FOUND THE APPLICANT HAS

APPROPRIATELY JUSTIFIED THE REQUESTED WAIVERS OF BUFFER.

THE ZONING HEARING MASTER CONSIDERED THE ENTIRETY OF THE

PROPOSED PROJECT, FINDING THAT IT MET THE INTENT OF THE

RESIDENTIAL PLANNED 2 PLAN VILLAGE POLICIES OF THE COMPREHENSIVE

PLAN TO CREATE A PEDESTRIAN ORIENTED COMMUNITY TO COMPLEMENT THE LOW DENSITY DEVELOPMENT PATTERN PERMITTED AROUND THE RP2 FUTURE LAND USE CATEGORIES.

OVERALL, THE REQUEST WOULD RESULT IN DEVELOPMENT THAT IS COMPATIBLE WITH THE SURROUNDING DEVELOPMENT PATTERN.

THE ZONING HEARING MASTER THEREFORE RECOMMENDED APPROVAL.

>> SANDRA MURMAN: OKAY.

THANK YOU VERY MUCH.

WE'LL NOW MOVE TO BOARD DISCUSSION AND ACTION.

COMMISSIONER HAGAN, YOU'RE RECOGNIZED.

>> THANK YOU, MADAM CHAIR.

BOARD MEMBERS, ON JULY 24th, I MADE A MOTION TO APPROVE BASED ON ZHM AND DEVELOPMENT SERVICES HAVING RECOMMENDED APPROVAL, AND BASED ON PLANNING COMMISSION FINDING IT CONSISTENT WITH THE COMPREHENSIVE PLAN.

THE BOARD ULTIMATELY REMANDED THE ITEM TO ADDRESS BUFFERING AND DENSITY ISSUES.

THE APPLICANT DID JUST THAT.

AS A RESULT, THE APPLICANT HAS ELIMINATED THE DENSITY TRANSFER, WHICH HAS RESULTED IN A REDUCTION OF 54 UNITS.

THEY ALSO HAVE TWO ADDITIONAL 250-FOOT BUFFERS HAVE BEEN ADDED.

ONE QUESTION I HAVE, THE FIRST SPEAKER WAS REFERENCING THE FACT

THAT HE BELIEVED THAT THIS WAS INCONSISTENT WITH THE COMMUNITY

PLANS.

ADAM, I'M ASSUMING THAT STAFF AND THE PLANNING COMMISSION DOES NOT CONCUR WITH THAT OPINION.

>> YES, WE DO NOT CONCUR.

IN OUR REVIEW, WE FOUND THIS TO BE CONSISTENT WITH THE BALM

COMMUNITY PLAN, PARTICULARLY THE RECOGNITION IN THERE OF THE RP2

CATEGORIES THAT DID EXIST, AND THESE WERE EXISTING LAND USE

CATEGORIES AT THAT TIME.

>> KEN HAGAN: OKAY, BASED ON THE RECOMMENDATIONS OF APPROVAL AND THE ADDITIONAL CHANGES, I'M GOING TO MOVE APPROVAL.

>> SANDRA MURMAN: OKAY.

WE HAVE A MOTION TO APPROVE ITEM G1 FROM COMMISSIONER HAGAN, SECONDED BY COMMISSIONER HIGGINBOTHAM.

COMMISSIONER KEMP, YOU'RE RECOGNIZED.

>> PAT KEMP: THANK YOU.

I DO HAVE VERY MANY CONCERNS ABOUT THE THINGS THAT THE RESIDENTS OF THE BALM AREA BROUGHT FORWARD TODAY.

SOMETIMES YOU CAN ASK FOR THINGS THAT ARE SO EXTREME AND SO
WAIVERS THAT ARE SO HUGE AND OTHER LAND DEVELOPMENT ISSUES THAT
ARE SO BIG THAT WHEN YOU GO TO REMAND AND YOU GET SOME OF THEM
CHANGED, YOU STILL HAVE QUITE A PACKAGE OF WAIVERS THAT HAVE
BEEN PUT FORWARD AND THINGS THAT DON'T WORK.

I WOULD REALLY LIKE TO SEE THIS GO BACK TO REMAND AGAIN.

I THINK THAT THERE WERE SEVERAL ISSUES, AND I SEE SEVERAL WAIVERS WITHIN THIS THAT I THINK ARE, I THINK THAT REALLY SHOULD

BE WORKED OUT MORE.

I AGREE WITH THE BALM COMMUNITY.

TO ME DOES NOT SEEM CONSISTENT WITH THE REST OF THE AREA.

I BELIEVE THERE ARE TESTIMONY SO SEEMS LIKE WHAT WE'VE TURNED

THIS INTO IS JUST ANOTHER TYPICAL KIND OF SPRAWL DEVELOPMENT AND

I THINK WE COULD DO BETTER THAN THAT AND I WOULD LIKE TO SEE US

DO BETTER THAN THAT.

SOME OF THE WAIVERS I'M CONCERNED ABOUT ARE NUMBER 11 HERE.

APPROVE THE WAIVER OF ON SITE NEIGHBORHOOD RETAIL AND LOOKING AT
THE OFFSITE AS A SUBSTITUTE INSTEAD.

I THINK THAT THAT'S A PROBLEM, THE NUMBER 11.

I THINK THE BUFFERING SOUNDS LIKE IT'S STILL AN ISSUE THAT MAYBE NEEDS SOME MORE ATTENTION.

I'M CONCERNED TOO AS WE DO SO OFTEN HEAR UNFORTUNATELY IS THROW DOWN MORE AND MORE DEVELOPMENT ON SUBSTANDARD ROADS.

AND WE KEEP DOING THAT.

AND I'M HOPING THAT AT OUR FUTURE LAND USE HEARINGS, THAT YOU KNOW WE CAN RECONSIDER HOW WE ARE DEVELOPING MOVING FORWARD IN THE COUNTY.

BUT RIGHT NOW BEFORE US WE HAVE 19.

AS BALM WIMAUMA ROAD MAYBE A SUBSTANDARD COLLECTOR ROADWAY, THE DEVELOPER WILL BE REQUIRED TO COORDINATE WITH HILLSBOROUGH COUNTY PUBLIC WORKS TO DETERMINE THE IMPROVEMENTS THAT WILL BE REQUIRED.

THERE'S NO REASON WHY THIS BOARD CAN'T FIGURE OUT WHAT THOSE IMPROVEMENTS NEED TO BE AHEAD OF TIME.

AND WE SHOULD I THINK STOP MOVING FORWARD WITH ISSUES LIKE THIS

THAT REALLY DON'T WORK TO THE BETTERMENT OF THE COMMUNITY AND

DON'T MAKE THE AREA BETTER AND DON'T MAKE, AND DON'T DO THE KIND

OF DEVELOPMENT THAT WE NEED FOR THE FUTURE.

I WAS GLAD TO HEAR ABOUT THE COMMUNITY PLAN KINDS OF THINGS,
THINGS LIKE ARTIFICIAL LIGHT IN THE DARK SKY STANDARDS.

THAT'S KIND OF AMAZING THAT THE PLAN IS THAT PRECISE, AND I JUST THINK THAT THIS COULD BE SOMETHING THAT COULD MAYBE GO FOR SOME FURTHER DISCUSSION WITH THIS NEIGHBORHOOD.

I DO BELIEVE THAT THEY'RE NOT HERE JUST TO OPPOSE DEVELOPMENT
BUT REALLY LOOK FOR COMPATIBLE DEVELOPMENT THAT WORKS IN THE
AREA THAT WILL MAKE THE COMMUNITIES BETTER, AND I THINK THAT
THAT CAN BE ACHIEVED.

I THINK THAT THAT IS SOMETHING THAT CAN BE MOVED FORWARD.

BUT I HOPE WE, I'D LIKE TO SEE THIS GET TO REMAND.

[APPLAUSE]

>> SANDRA MURMAN: OKAY.

COMMISSIONER WHITE, YOU'RE RECOGNIZED.

>> STACY WHITE: YOU KNOW, I THOUGHT YOU WERE GOING TO MAKE A MOTION TO REMAND IT, AND THEN I WAS PREPARED TO SECOND THAT FOR THE SAKE OF DISCUSSION.

YOU KNOW, I DO, I DO HAVE TO SAY, YOU KNOW, I'LL REMIND THE

AUDIENCE AND PARTICULARLY THE CITIZENS FROM BALM THAT ARE HERE
THAT I GREW UP DOWN IN WIMAUMA, FLORIDA, AND I KNOW THE CITIZENS
OF BALM VERY WELL.

I KNOW THE AREA WELL.

I HAVE FRIENDS AND ACQUAINTANCES IN BALM THAT I HAVER ARE KNOWN FOR A VERY, VERY LONG TIME.

MY ENTIRE LIFE SOME OF THEM.

A LOT OF PEOPLE MAY NOT KNOW, PARTICULARLY SOME AT THIS DAIS
THAT YOU KNOW I CONSIDERED RUNNING FOR THE COUNTY COMMISSION
BACK IN THE 90s, AND YOU KNOW, I WOULD'VE LOVED TO HAVE BEEN ON
THIS BOARD 20, 25 YEARS AGO.

I THINK I COULD'VE MADE A BIG DIFFERENCE IN SHAPING SOME POLICY, YOU KNOW, BUT SEEING AS HOW I DIDN'T BECOME A COMMISSIONER UNTIL 2014, YOU KNOW, I WAS DEALT A DECK OF CARDS THAT YOU KNOW, THAT'S YOU KNOW, IT'S THERE, IT'S IN THE COMPREHENSIVE PLAN, IT'S IN THE LAND DEVELOPMENT CODE: FOR THE RECORD, IF I WOULD'VE BEEN A COMMISSIONER IN THE 90s, I WOULD NOT HAVE SUPPORTED THE RP2 LAND USE CATEGORY.

I WOULD'VE LIKED TO HAVE SEEN BALM HAVE ITS LARGE LOT RURAL CHARACTER PROTECTED.

BUT R2P, YOU KNOW, IS EMBEDDED IN THE COMPREHENSIVE PLAN AT THIS POINT.

I WILL REMIND THE CITIZENS THAT AT MY URGING, THIS WAS REMANDED TO LOOK AT SOME OF THE BUFFERING, AND PARTICULARLY THE DENSITY

CALCULATION.

AND WHAT WE HAVE BEFORE US IS A REDUCTION IN DENSITY FROM 710 UNITS TOTAL BETWEEN THE TWO PARCELS TO 639 UNITS.

THAT'S A DECREASE OF 71 UNITS AND IF I'M DOING MY QUICK MATH

CORRECTLY, OFF THE TOP OF MY HEAD, THAT'S A 10% DECREASE I KNOW

SOME OF THE BUFFERING ISSUES WERE TAKEN OUT.

SO I AM NOT OPPOSED TO ANOTHER REMAND TO TAKE A LOOK AT SOME OF THE ISSUES HERE.

BUT I TELL YOU GIVEN THAT I'VE BEEN DEALT THIS HAND, THAT RP2 IS EMBEDDED IN THE COMPREHENSIVE PLAN, YOU KNOW, I DON'T KNOW THAT WE'RE GOING TO BE ON SOUND LEGAL FOOTING ULTIMATELY FOR ANY KIND OF A DENIAL.

BUT I'M CERTAINLY NOT OPPOSED TO SOME ADDITIONAL LOOKS,

COMMISSIONER KEMP, DEPENDING ON WHAT IT IS THAT YOU WOULD

PROPOSE THAT WE TAKE A FURTHER LOOK AT.

>> PAT KEMP: I'LL MAKE A SUBSTITUTE.

>> SANDRA MURMAN: YOU HAVEN'T BEEN CALLED ON YET.

OKAY, COMMISSIONER KEMP, YOU'RE RECOGNIZED.

>> PAT KEMP: I WOULD LIKE TO MAKE A SUBSTITUTE MOTION TO REMAND ON THE ISSUES OF THE ROADWAY.

ON THE ISSUES OF THE BUFFER.

ON THE ISSUES OF THE COMMERCIAL, THE WAIVER ON COMMERCIAL CONDITIONS.

AND ALSO I WOULD LIKE TO NOTE WITH REGARD TO ONES OF THE

SPEAKERS WHO BROUGHT UP THE ISSUE OF RIGHT-OF-WAY THAT WOULD BE NEEDED AS PART OF IT TO EVER MAKE THE ROADWAY STANDARD.

[INAUDIBLE]

TO BRING IT UP TO WHAT WE NEED THERE.

IF WE DO NEED RIGHT-OF-WAY IF THAT HAS TO BE PART OF IT AND SHOULD BE A CONDITION I THINK BEFORE MOVING FORWARD.

>> SANDRA MURMAN: OKAY.

WE DO HAVE A SUBSTITUTE MOTION TO REMAND BY COMMISSIONER KEMP WHICH IS SECONDED BY COMMISSIONER WHITE.

SO THERE IS A SUBSTITUTE MOTION AND NEXT IN THE QUEUE IS COMMISSIONER HAGAN.

YOU'RE RECOGNIZED.

AND THIS IS, DO YOU WANT TO TALK ON THE REMAND? OKAY.

THANK YOU.

>> KEN HAGAN: WELL, I'M GOING TO OPPOSE THE REMAND.

WE REMANDED THIS ONCE, WE ASKED THEM TO ADDRESS BUFFERING AND DENSITY ISSUES.

THE APPLICANT DID JUST THAT.

I'VE BEEN ON THIS BOARD A LONG TIME.

I DON'T EVER RECALL A REMAND COMING BACK AND THEN THIS BOARD REMANDING IT AGAIN.

I DON'T THINK THAT'S EVER HAPPENED.

OKAY?

SO I MEAN, IT'S BAD PRECEDENT.

I DON'T -- HOW MANY BITES AT THE APPLE ARE WE SUPPOSED TO GIVE HERE.

OUR APPLICANT HEARD OUR CONCERNS, THEY ADDRESSED THEM AND THAT'S NOT GOOD ENOUGH.

EVEN AS COMMISSIONER WHITE SAID, THERE IS ULTIMATELY THERE IS NO LEGAL BASIS TO DENY THIS ULTIMATELY.

SO I WILL STRONGLY OPPOSE THE SUBSTITUTE MOTION.

>> SANDRA MURMAN: OKAY.

COMMISSIONER WHITE, YOU ARE RECOGNIZED.

>> STACY WHITE: PARTIALLY TO COMMISSIONER HAGAN'S POINT, YOU KNOW, I AGREE THAT WE CANNOT CONTINUE TO JUST INDEFINITELY KICK THE CAN DOWN THE ROAD.

COMMISSIONER KEMP, I'LL SUPPORT YOU ON THIS REQUEST FOR A REMAND, BUT AGAIN, PARTIALLY TO COMMISSIONER HAGAN'S POINT, YOU KNOW, WHEN THIS COMES BACK, IF A REMAND PASSES, YOU KNOW, WE'VE GOT TO HAVE CLOSURE HERE AND WE'VE GOT TO BRING THIS IN FOR A LANDING, SO IF THIS PASSES TODAY FOR A SECOND REMAND, YOU KNOW, I'M PREPARED TO TAKE A VOTE WHEN IT COMES BACK AND JUST HAVE THIS ADDRESSED ONCE AND FOR ALL.

I DON'T KNOW IF WE NEED TO OFFICIALLY INCORPORATE THIS INTO THE MOTION BUT ONE CITIZEN HAD EXPRESSED SOME CONCERNS ABOUT THE POTENTIAL HEIGHT OF STRUCTURES.

I'M NOT SURE WHAT THE DEVELOPER WOULD INTEND TO BUILD, BUT I'D

BE WILLING TO ASK IF THE DEVELOPER WOULD BE WILLING TO TALK ABOUT ISSUES OF HEIGHT.

I KNOW YOU KNOW THAT, I WOULD IMAGINE, COULD POSSIBLY BE OFFERED AS A RESTRICTION OR CONCESSION OF SOME KIND, YOU KNOW, IF YOU KNOW THEY'RE NOT PLANNING TO BUILD TO A MAXIMUM HEIGHT THAT WOULD BE ALLOWED ANYWAY.

>> SANDRA MURMAN: SO THAT WOULD BE IN THE REMAND REQUEST IF IT PASSES?

>> STACY WHITE: I WOULDN'T -- AT A MINIMUM I WOULD JUST LIKE TO

SEE THE DEVELOPER JUST TALK WITH THE COMMUNITY ABOUT THAT AND

SEE IF SOME CONCESSIONS CAN BE MADE.

>> SANDRA MURMAN: OKAY.

COMMISSIONER MILLER, YOU'RE RECOGNIZED.

>> LES MILLER, JR.: THANK YOU, MADAM CHAIR.

MY MEMORY IS SLIPPING ME NOW BUT I THINK WE HAD A DISCUSSION LAST TIME FROM THE APPLICANT.

WE HAD A DISCUSSION WITH YOU MEETING WITH THE CITIZENS OUT THERE
AFTER IT WAS REMANDED THE LAST TIME?

>> VIN MARCHETTI FOR THE RECORD, YES, WE'VE HAD CONSTANT
DIALOGUE WITH MR. SCOGGINS, WITH MR. O'BRIEN, MR. FAVREAU ALONG
THE WAY, AND I'LL TELL YOU THAT THE ITEMS THAT YOU'RE DISCUSSING
HERE FOR POTENTIAL REMAND ARE ALL ADDRESSED EITHER IN THE CODES
OR IN THE CONDITIONS.

>> LES MILLER, JR.: SO SINCE THE LAST REMAND YOU HAD DISCUSSIONS

WITH THE CITIZENS OUT THERE TO TRY TO WORK THIS OUT, AND OBVIOUSLY IT DIDN'T WORK OUT.

>> WE'VE WORKED OUT WHAT MR. SCOGGINS ASKED FOR, AND WE'VE WORKED OUT THE BEST WE CAN, MR. O'BRIEN, MR. FAVREAU.

THEY DON'T WANT DEVELOPMENT.

ALTHOUGH THEY SAY THEY DO, THEY DON'T WANT DEVELOPMENT IN BALM.

IT'S RP2.

THAT'S THE FUNDAMENTAL ISSUE THEY HAVE.

>> SANDRA MURMAN: NO, SIR, YOU CANNOT SPEAK.

PLEASE, SIR, SIR, WE CANNOT HAVE ANY OUTBURSTS.

SIR.

IT'S YOUR LAST WARNING.

THANK YOU.

OKAY.

COMMISSIONER KEMP, YOU'RE RECOGNIZED.

>> PAT KEMP: I AGREE THAT RP2 IS FUNDAMENTALLY EXTREMELY FLAWED LAND USE CATEGORY, AND THE PENDING TEXT AMENDMENT IT WOULD ONLY MAKE IT MORE TERRIBLE AND MORE SPRAWL.

BUT THAT'S OUTSIDE OF THIS CONVERSATION.

I AGREE WITH THAT TOO.

BUT THAT DOESN'T MEAN THAT WE CAN'T MOVE FORWARD ON THIS AND
START TO LOOK AT THE ISSUES IN THIS PARTICULAR AND WE CAN'T PUT
IT OFF FOREVER BUT I DO THINK THERE SHOULD BE SOME MORE COMING
TO TERMS WITH WHAT IS PLANNED OUT HERE.

I THINK WE DID MOVE FORWARD A LITTLE BIT WITH THIS WITH THE REDUCTION IN UNITS AND OTHER THINGS, BUT I DO THINK THERE IS THESE OUTSTANDING ISSUES STILL OF AS I MENTIONED THE BUFFERING, THE NEIGHBORHOOD COMMERCIAL, AND THE TRAFFIC ISSUE AND THE ROADWAY ISSUE I THINK IS VERY SIGNIFICANT.

AND SHOULDN'T BE, WE SHOULDN'T BE MOVING FORWARD WAIVING THOSE
THINGS -- [INAUDIBLE]

OR LEAVING THEM TO THE FUTURE.

I THINK THAT WE NEED TO MEET THESE CONDITIONS AND LOOK AT THIS AHEAD OF TIME.

SO I -- TOTALLY SUPPORT A REMAND TO LOOK AT THESE ISSUES.

>> SANDRA MURMAN: THANK YOU.

COMMISSIONER HAGAN, YOU'RE RECOGNIZED.

>> KEN HAGAN: I JUST HAVE A QUESTION FOR MR. GORMLY.

ADAM, DO YOU EVER RECALL A SITUATION WHERE COUNTY COMMISSION HAS REMANDED AN ITEM, IT'S COME BACK TO US, AND THEN WE'VE REMANDED IT A SECOND TIME.

- >> I CAN'T RECALL THAT THAT HAS OCCURRED PREVIOUSLY IN MY TIME HERE.
- >> KEN HAGAN: OKAY, THANK YOU.
- >> SANDRA MURMAN: COMMISSIONER WHITE, YOU'RE RECOGNIZED.
- >> STACY WHITE: VERY BRIEFLY, MADAM CHAIR.
- I AM GOING TO SUPPORT THE MOTION FOR A SECOND REMAND TO LOOK AT SOME OF THESE ISSUES, BUT I DON'T WANT TO SET ANY FALSE

EXPECTATIONS FOR THE CITIZENS HERE.

I DON'T BELIEVE ULTIMATELY THAT WE'RE ON SOUND LEGAL FOOTING TO

JUST DENY THIS AND TELL THE APPLICANT THAT THEY HAVE TO DO

FIVE-ACRE TRACTS ON THIS SITE.

OKAY, BUT I AM WILLING FOR THIS SECOND TO LET THIS SECOND REMAND

GO THROUGH SO THAT THERE CAN BE SOME ADDED DISCUSSION BETWEEN

THE APPLICANT AND THE CITIZENS TO TALK A LITTLE BIT ABOUT THE

BUFFERING AND EVERYTHING.

BUT AGAIN, I WOULD DEALT THIS HAND, OKAY.

AS YOU'VE HEARD THESE POLICIES HAVE BEEN IN EFFECT SINCE THE 90s.

THIS IS A COMPLEX LEGAL PROCESS.

WE HAVE TO BE ON SOUND LEGAL FOOTING TO DENY A REZONING.

I JUST -- I DON'T BELIEVE WE'RE THERE, SO AGAIN, I DON'T WANT TO SET ANY FALSE EXPECTATIONS.

I REALLY DON'T LEGALLY BELIEVE WE'RE GOING TO BE ABLE TO TELL
THE DEVELOPER THAT HE'S GOT TO DO FIVE-ACRE TRACTS HERE, BUT
I'LL SUPPORT THE MOTION FOR A REMAND FOR SOME FURTHER
DISCUSSION.

>> SANDRA MURMAN: OKAY.

THANK YOU.

NO MORE BOARD DISCUSSION ON THE REMAND.

THERE IS A SUBSTITUTE MOTION TO REMAND BY COMMISSIONER KEMP, SECONDED BY COMMISSIONER WHITE.

IS THERE ANY FURTHER DISCUSSION?

>> COMMISSIONERS, JUST TO NOTE, THIS WOULD BE NOVEMBER 14th AT 6:00 P.M.

>> SANDRA MURMAN: NOVEMBER 14th AT 6:00 P.M.

MS. LUNDGREN.

>> NOVEMBER 19th AT 6:00 P.M.

>> 14th IS YOUR LAND USE MEETING.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

OKAY.

IS THERE ANY FURTHER DISCUSSION?

SEEING NONE, PLEASE RECORD YOUR VOTE ON THE MOTION TO REMAND.

>> MOTION FAILED 3-4.

COMMISSIONERS CRIST, HAGAN, HIGGINBOTHAM, AND MURMAN VOTED NO.

>> SANDRA MURMAN: OKAY.

WE ARE NOW BACK ON THE MOTION BY COMMISSIONER HAGAN, SECONDED BY COMMISSIONER HIGGINBOTHAM TO APPROVE ITEM G1.

IS THERE ANY FURTHER DISCUSSION?

SEEING NONE, PLEASE -- OH, YES, COMMISSIONER WHITE, YOU'RE RECOGNIZED.

>> STACY WHITE: BRIEFLY.

I'M GOING TO HAVE TO VOTE YES ON THE ITEM AT THIS POINT BECAUSE OF THE LEGAL ISSUES THAT I BROUGHT UP.

AS YOU CAN SEE, I'VE SUPPORTED THE MOTION FOR A REMAND.

I VOTED IN FAVOR OF THE REMAND.

IT WAS AT MY URGING THAT THIS WENT BACK THE FIRST TIME.

THE DENSITY'S BEEN REDUCED BY 10% IF MY MATH IS CORRECT.

THERE ALSO HAVE BEEN SOME CONCESSIONS ON THE BUFFERING.

BUT AGAIN, UNFORTUNATELY, YOU KNOW, I'VE BEEN DEALT THIS HAND WITH RESPECT TO WHAT'S IN THE COMPREHENSIVE PLAN.

YOU KNOW, LEGALLY, YOU KNOW, I FEEL LIKE EVERYTHING HERE IS IN ORDER AND LEGALLY SOUND.

>> SANDRA MURMAN: OKAY.

THANK YOU.

I SEE NO FURTHER DISCUSSION.

WITH THAT, PLEASE RECORD YOUR VOTE ON ITEM G1.

>> MOTION CARRIED 5-2, COMMISSIONERS KEMP AND MILLER VOTED NO.

>> SANDRA MURMAN: OKAY.

THANK YOU VERY MUCH.

COUNTY OF HILLSBOROUGH DECISION OF THE LAND USE HEARING OFFICER

APPLICATION NUMBER: SU-LE 19-1026

DATE OF HEARING: August 3, 2020

APPLICANT: Balm Grove, LLC

PETITION REQUEST: The request is for a Special Use

for a Land Excavation Permit

LOCATION: 15110 Balm Wimauma Rd.

SIZE OF PROPERTY: 177.62 acres m.o.l.

EXISTING ZONING DISTRICT: PD 18-0304

FUTURE LAND USE CATEGORY: RP-2

SERVICE AREA: Rural

STAFF PROVIDED BACKGROUND

1.0 Request

The applicant seeks approval of a "lake creation" land excavation Special Use permit to allow the removal of 2.5 million cubic yards of material from a 177-acre site located at on the southwest corner of Balm-Wimauma Road and County Road 672 (Balm Road).

The property is zoned PD 18-0304, as most recently modified by Major Modification 19-1172. As proposed by the applicant, the excavated material will be removed from approximately 54 acres of the site over a five-year period. The proposed depth of the excavation is 40 feet, although final permitted depth will be determined during Operating Permit review and may be less. The applicant is proposing to access the excavation from Shelley Lane, a private road on the east side of the subject site that is under common corporate umbrella ownership as the subject property. Trucks will leave and approach Shelley Lane on County Road 672 in accordance with the Truck Route plan.

PD 18-1304 permits development of a maximum of 356 single-family lots on the subject property, which is identified as the "The Grove Parcel" in the PD. The PD site plans shows three "ponds/open spaces" at the location of the proposed excavation pits and states there are no proposed man-made water bodies except for retention/detention ponds. The LDC defines "land excavation" as the removal of a total quantity of more than 10,000 cubic yards of material from a site, or more than a total of 30,000 cubic yards of material for projects with approved subdivision construction plans. Preliminary development plans have been submitted for the subdivision and are currently under review by staff.

The permitted uses allowed by PD 18-0304 do not include the proposed land excavation. Therefore, approval of a modification to the PD by the Board of County Commissioners will be required prior to Operating Permit approval for the proposed land excavation, per the recommended conditions of approval for the requested Special Use in this report.

1.1 Restricted/Prohibited Areas

The site is not located within a prohibited or restricted area pursuant to LDC Section 6.11.54.A.5.

1.2 Access Requirements

The proposed excavation site is adjacent to Balm-Wimauma Road and County Road 672, both of which are designated Truck Routes and collector roads, and therefore complies with the access requirements found in LDC Section

6.11.54.A.3, pursuant to the definition of "access, direct/collectors and arterials" in the LDC.

1.3 Operational Restrictions

Per LDC Section 6.11.54.A.4.b, land excavation operations are limited to the hours from 7:00 a.m. to 6:00 p.m. Monday through Saturday, excluding holidays recognized by Hillsborough County, with no operations permitted at any time on Sunday. However, the applicant has proposed to further restrict operations as follows: 7:00 a.m. to 4:00 p.m. Monday through Friday, excluding County recognized holidays, with no operations permitted at any time on Saturday and Sunday.

1.4 Fencing

Per LDC Section 6.11.54.B.7, active land excavations must be secured with a fence and gate to prevent unauthorized access. The applicant proposes to enclose the entire excavation site with a six-foot-high solid wood or PVC fence. The fence will be set back a minimum of 30 feet from the Balm-Wimauma Road right-of-way and 50 feet from the adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. The applicant's narrative includes a variance request for the proposed fence height on the premise that a six-foothigh fence is not permitted on residentially zoned property. This is not correct. A six-foot fence height is allowed in residential districts, although in required front yards along streets a maximum height of only four feet is permitted. The subject fence, as originally proposed by the applicant, was to be placed on the property line along Balm-Wimauma Road and therefore would have required a variance to allow a height of six feet. However, the applicant subsequently proposed a 30foot setback from Balm-Wimauma Road for the fence, thereby obviating the need for a height variance. Shelley Lane is a private road that does not meet the definition of "street" in the LDC and therefore no setback is required along the east property line for a six-foot-high fence.

1.5 Required Separations

The proposed land excavation does not meet all required separation distances pursuant to LDC Section 6.11.54.A.2. Per Section 6.11.54.A.2. of the LDC, the following distance separation requirements apply to the proposed "lake creation" land excavation:

- 1. The proposed land excavation shall be 25 feet from any right-of-way line of a publicly owned road or street. Per the site plan submitted by the applicant, the request **does** comply with this requirement.
- 2. The proposed land excavation shall be 25 feet from the boundary line of any publicly owned drainage or utility easement.

- Per the site plan submitted by the applicant, the request does comply with this requirement.
- 3. The proposed land excavation shall be 25 feet from any non-residential property line, including agricultural use.
- Per the site plan submitted by the applicant, the request does comply with this requirement.
- 4. The proposed land excavation shall be 500 feet from any residentially developed or residentially zoned property line.
- Per the site plan submitted by the applicant, the request **does not** comply with this requirement. There are residentially developed properties approximately 383 feet to the west and 400 feet to the south of Pond FG; approximately 450 feet to the northwest of Pond ABC; and approximately 480 feet to the east of Pond DE.
- 5. The proposed land excavation shall be 1,000 feet from any school, hospital, or church property line.
- Per the site plan submitted by the applicant, the request **does not** comply with this requirement. There are church properties approximately 618 feet to the west of Pond ABC and approximately 600 feet to the northwest of Pond FG. There are no schools or hospitals within 1,000 feet.
- 6. The proposed land excavation shall be 30 feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site. Greater separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area.
- Per the site plan submitted by the applicant, the request does not comply with this requirement. There are agricultural ditches within the proposed excavation areas that are identified by EPC staff as wetlands. EPC staff does not object to the proposed excavation, subject to the recommended conditions of approval found in this report.

The applicant requests a wavier to these separation requirements on the grounds that the excavation ponds are in conjunction with the development of residential subdivision and must be located in the same general location as depicted on the certified site plan for the PD zoning of the property. Strict imposition of the distance separation requirements would unreasonably force a redesign of the entire subdivision solely for the temporary use of the property for the creation of the excavation ponds. Additionally, the applicant is proposing to mitigate the reduction in the required separations by limiting the days and hours of operation and the total duration of the land excavation to be more restrictive than what is permitted by the LDC. The applicant is also proposing visual screening to

minimize potential visual impacts and has located the project driveway on Shelley Lane rather than Balm- Wimauma Road.

The applicant also notes that the church located on the east side of Balm-Wimauma Road adjacent to the proposed excavation has been vacant for several years and is currently not for sale. Additionally, the residential properties directly to the south of the excavation site are owned and controlled by entities under common ownership with the applicant.

In view of the justification provided by the applicant, and the fact that most of the residentially developed properties and one of the churches within the required separation distances are located across Shelley Lane or Balm-Wimauma Road, a designated Truck Route, from the excavation site, staff does not object to the requested separation waivers subject to the recommended conditions of approval in this report, which include a requirement that material stockpiles be located a minimum of 200 feet from the Balm-Wimauma Road right-of-way, the adjacent church parcel and residential parcels on the east side of Balm-Wimauma Road, and the residential parcels on the east side of Shelley Lane. Staff finds this requirement will promote general compatibility with the area and provide additional impact mitigation for the neighboring residential and church properties, including the adjacent church that, while currently vacant, could be occupied by a new congregation at any time during the five-year excavation term.

1.6 Prohibition of Other Excavation, Land Alteration

Per LDC Section 6.11.54.B.8, upon approval of a Land Excavation Special Use permit, no other permits for excavation of land alteration activities may be approved for the site until release of the financial security for the Operating Permit.

The applicant requests a waiver of this provision to allow land alteration permits to be issued in conjunction with development of the residential subdivision permitted by the property's PD zoning. The applicant notes that creation of water bodies in conjunction with the construction of a subdivision does not require a Land Excavation Special Permit provided that no more than 30,000 cubic yards of material are taken off-site and contends that it us unreasonable to require the proposed excavations to be completed before any other site work for the subdivision can occur.

Land Excavation staff does not object to the requested waiver subject to Condition 5 of the recommended conditions of approval in this report which is necessary to support monitoring and enforcement actions by staff that would otherwise be undermined by having separately permitted but concurrent operations on the site.

1.7 Transportation

Transportation staff has reviewed the proposed excavation and does not object, subject to the recommended conditions of approval found in this report. The proposed excavation is to take place over a five-year time period. The site is located adjacent to Shelley Lane which intersects with Balm Road (County Road 672), a designated Truck Route. The applicant is not limiting the distribution of the material to a specific location. The applicant shall be required to conduct the hauling operation from the Shelley Lane intersection to delivery destinations in a manner consistent with Hillsborough County Truck Route Plan.

Given the amount of material proposed for excavation and the proposed five-year time frame, it is estimated that an average of 1,992 cubic yards of material will be excavated per day. The 1,992 cubic yards equates to 220 trucks per day (110 inbound and 110 outbound). Employee trips are estimated to be ten (10) trips per day (5 inbound and 5 outbound). The proposed project would generate approximately 87 trip ends during the AM peak hour with 46 inbound and 41 outbound. The average number of trucks during a typical hour of the day is estimated to be 30 trip ends (15 inbound and 15 outbound). The site is not proposed to operate during the PM peak hour timeframe, so no PM peak impacts are anticipated.

Shelley Lane is a two-lane private road. Shelley Lane. The pavement width on Shelley Lane is +/- 24 feet. The pavement appears to be in poor condition. The road does not have a posted speed limit. There appears to be adequate roadway capacity to accommodate the additional trips generated by the proposed project. No capacity increasing improvements are currently scheduled for this road.

Balm Road is a two-lane undivided collector road. The pavement width on Balm Road is +/- 24 feet with a stabilized shoulder. The pavement appears to be in good condition. The right-of-way along Bam Road adjacent to the site appears to be approximately 76 feet. Balm Road is posted at 45 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Road in the vicinity of the site is currently operating at LOS "B".

Balm-Wimauma Road is a two-lane undivided collector road. Balm-Wimauma Road is a designated Truck Route. The pavement width on Balm Wimauma Road is +/- 22 feet with stabilized shoulders. The pavement appears to be in good condition. The right of way along Balm Boyette Road in the vicinity of the site appears to be approximately 67 feet. Balm Road is posted at 50 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Wimauma Road in the vicinity of the site is currently operating at LOS "A"

Sole access to the proposed excavation will be from Shelley Lane. Based on the project's trip generation, no site access turn lanes are required. A 15-year accident report was submitted along with the traffic study for the proposed

project. The report includes accidents within a distance of +/- 250 feet east of Balm-Wimauma Road and +/- 250 feet west of Shelly Lane. During the 15-year period there have been 59 accidents reported in the area between Balm-Wimauma Road and Patsy Marie Lane. The majority of the accidents appear to be at the intersection of Balm-Wimauma Road and Balm Road. These accidents appear to be front to rear end and angle accidents. These numbers represent 3.93 accidents annually in the vicinity of the project. There was one fatality in the area. The highest number of crashes (30) appear to be between 2005 through 2008 with 2008 being the highest with 11 crashes. The last five years has seen a significant reduction in crashes. There is nothing in the crash report to indicate that there are recent safety concerns in the vicinity of the project.

1.8 Cumulative Impacts

There are two completed land excavations located within one mile of the proposed land excavations. One of the excavations, Shelley Lakes Mines (SU 08-1433), is located adjacent to the east side of the proposed land excavation. It was closed in 2017 after a total of 19,645,966 cubic yards of material was excavated over a 19-year period, approximately. The other land excavation, Hills Dirt Pit (SU 04-1054), is located about three-quarters of a mile the east on County Road 672. It was closed in 2018 after a total of 4,997,796 cubic yards of material was excavated over a 13-year period, approximately.

No other land excavations, completed or active, are located within one mile of the proposed land excavations.

1.9 Agency Comments

Conservation and Environmental Lands Management staff reported no comments to the proposed excavation.

Natural Resources staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

EPC staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

Hillsborough County School District staff reported no objections to the proposed excavation. Public Works staff reported no comments to the proposed excavation.

Balm Park and Community Center is located on the north side of Balm-Wimauma Road, across from the subject site. Hillsborough County Parks and Recreation staff reported no objections to the proposed excavation.

1.10 Conclusion

The proposed land excavation is located on a designated Truck Route as required by the LDC, and the site is not within a prohibited or restricted area. The excavation pits do not meet required separations from all neighboring residentially developed properties and two churches, however, the location of the pits, which will form ponds, are consistent with the location of the ponds shown on the approved PD site plan for the property. Additionally, the applicant has proposed operational day/hour limits that are more restrictive than those allowed by the LDC; the excavation driveway will be located on the east side of the site to eliminate driveway-associated impacts on neighboring residential uses and churches on Balm-Wimauma Road; material stockpiles will be at least 200 feet from Balm-Wimauma Road and adjacent residential parcels and church; and the entire site will be enclosed by a six-foot-high solid wood or PVC fence which will be set back 30 feet from Balm-Wimauma Road and 50 feet from adjacent residential and church parcels between the road and the excavation site.

For these reasons, staff finds the proposed land excavation is compatible with the surrounding area and approvable, subject to the recommended conditions in this report.

1.10 Exhibits

Exhibit 1: Aerial Map

Exhibit 2: Future Land Use Map Exhibit 3: Proposed Site Plan

Staff's Recommendation: Approvable, Subject to Conditions

Special Use conditions which were presented at the August 3, 2020 Land Use Hearing Officer hearing were reviewed and are incorporated by reference as a part of the Land Use Hearing Officer decision.

SUMMARY OF HEARING

This Cause came on for hearing before the Hillsborough County Zoning Hearing Master on August 3, 2020. Mr. Tom Hiznay of the Hillsborough County Development Services Department introduced the Petition.

Ms. Kami Corbett, 101 East Kennedy Blvd. Suite 3700, testified on behalf of the applicant Balm Grove, LLC. Ms. Corbett stated that the request is fairly straightforward for the proposed subdivision. She added that the applicant agrees with all conditions of approval with the exception of condition 2 which requires the applicant to modify the Planned Development to specifically permit land excavation.

Mr. Steve Luce testified on behalf of the applicant Balm Grove, LLC which is a

wholly owned subsidiary of the Eisenhower Property Group. Mr. Luce detailed how the request to excavate 2.5 million cubic yards complies with the standards of the Land Development Code regarding land excavation. He explained that the duration of the excavation is five years which is shorter than the typical ten year timeframe. There is a land excavation site east and south of the subject property but it is closed therefore there are no active excavation sites in the area. The proposed 2.5 million cubic yards will create the storm water ponds on-site. The ponds match the Planned Development site plan. Mr. Luce showed graphics to describe the location of the property and the location of the three ponds. The proposed depth of each pond is approximately 30 to 60 feet. The driveway is located approximately 800 feet south of the northeast corner of the property. The required fencing will be installed and the fill dirt will be located in accordance with the proposed conditions. Mr. Luce then detailed the proposed excavation's compliance with the Land Development Code regarding proximity to wells, distance to natural resources and habitats, wetlands and the wellhead resource protection area. He also showed a graphic to explain that the property is not located in an area where there are existing sinkholes. Mr. Luce identified the closest adjacent single-family lots as well as adjacent parcels and stated that the proposed hours of operation will be Monday through Saturday from 7am to 4pm which is earlier than the Code permitted 5pm. He stated that there is a church located approximately 617 feet to the west but it is closed and for sale.

Hearing Officer Finch asked Mr. Luce to describe the proposed haul route. Mr. Luce replied that the access point is approximately 800 feet south of the northeast corner of the property. County Road 672 is a haul route and will follow the County's truck route plan.

Hearing Officer Finch asked Mr. Luce to confirm that the excavation is only for the stormwater ponds and that the fill will not be retained on the subject property. Mr. Luce replied yes and added that the fill will be on-site pending timing of the trucks coming to the property to get the soil. He added that a zoning condition is proposed to identify the permitted location of the stacks of dirt awaiting removal from the property.

Mr. Luce concluded his comments by addressing the zoning condition which requires an amendment to the Planned Development zoning conditions to permit land excavation as a use. He testified that he worked for Hillsborough County for eleven years and was a Hearing Master for seven years and in his research found no time that a Planned Development condition was required to be amended to recognize land excavation as a use. He added that the excavation is only for the ponds, not the entire property. He also acknowledged that the ponds are deeper than otherwise needed for single-family development which requires slightly more export.

Ms. Corbett completed the applicant's presentation by stating that the zoning condition requiring the amendment of the Planned Development to add land

excavation as a use is inconsistent with the Land Development Code. She showed portions of the Land Development regarding Special Uses. Specifically, she pointed to Section 5.2.1 and 6.11 regarding land excavation and stated that land excavations are permitted in all zoning districts. She contrasted the use to Wireless Communication Towers which are deemed a specific use in PD districts.

Mr. Tom Hiznay of the Development Services staff testified regarding the County staff report. Mr. Hiznay stated that there are separational requirements from residential uses and churches. Staff supports the requested waivers. The applicant agreed to the proposed hours of operation which is less than stated in the Land Development Code. He added that the applicant also agreed to surround the property with a six-foot high pvc or wood fence which could be, by Code, chain link. The fence will be setback 50 feet therefore a six-foot high fence is permitted. The applicant requested a waiver regarding the prohibition of land alteration activity while land excavation is occurring on-site. Staff supports the waiver such that site development work for the subdivision can proceed. Reviewing agencies supported the request and the operational limits are more restrictive than permitted by the Code and EPC. Mr. Hiznay concluded his presentation by stating that staff finds the request approvable subject to the proposed conditions.

Hearing Officer Finch asked Mr. Hiznay to address the issue brought up by the applicant regarding the proposed zoning condition requiring an amendment to the PD conditions to add the use of land excavation. Mr. Hiznay replied that there were discussions with the applicant months ago and that there were avenues for the applicant to address the issue but that they did not.

Hearing Officer Finch asked Mr. Hiznay what his professional opinion was regarding Mr. Luce's testimony that the County has never required a Plannecl Development to amend a zoning condition to add the use of land excavation. Mr. Hiznay replied that he was not familiar with Mr. Luce's research and could not address it.

Hearing Officer Finch asked Mr. Hiznay if in his tenure at the County, did he know of an instance that the County required the amendment to add the use of land excavation. Mr. Hiznay replied that he could not say yes but that he has not been involved in all Planned Developments requesting land excavation.

Hearing Master Finch asked for audience members in support. There were none.

Hearing Master Finch asked for audience members in opposition.

Mr. Buddy Harwell of the Balm Civic Association testified virtually and stated that he would like the request to be denied. He added that there are variances

requested for distance from residential and churches. There is a sign stating that a school will be coming in. The excavation will generate dust and noise and the pumps will operate 24/7 all year. Mr. Harwell testified that in February he witnessed at least six trucks coming out of Balm Grove loaded full of dirt and dumping it at South Fork. He cited Sections 8.0104.F, G and H regarding the paving of Shelly Lake Lane. The excavation will affect the wells in the area. He also testified that there is another excavation site located at Razorback Ranch south of Balm Wimauma Road which is 1.2 miles away. Mr. Harwell stated that his mother was hit by a dump truck three years about which worries him about the inattention of the drivers. He stated that he is concerned about the drainage ditch on-site and its regulation by EPC. He concluded his remarks by stating that he is concerned about the overflow into Shelly Lakes and its effect on adjacent properties.

Mr. James Frankland, 15064 Balm Road, Balm Florida testified virtually in opposition. Mr. Frankland stated that he has been dealing with dump trucks in the area since the early 1980's. They line up at 5am and the noise and sand damages the roadways. He added that the drivers should be County Road 672 but they use Balm Wimauma Road instead. The dirt will be blown to adjacent properties and will damage homes, furniture, cars and adjacent parks.

County staff did not have additional comments.

Ms. Corbett testified during the rebuttal period that she did not hear anything from the two gentlemen in opposition that constituted substantial competent evidence. She stated that Mr. Henry of the applicant's team could testify regarding transportation issues. Ms. Corbett asked Mr. Hiznay to clarify his response as to whether he had previously imposed a condition to add land excavation as a use.

Mr. Hiznay replied that he had not personally imposed a condition but that he has not been involved in every land excavation and Planned Development project.

Ms. Corbett testified that the only other process to achieve a resolution of the zoning condition issue was to request a zoning interpretation and appeal it to the LUHO. The same LUHO that was hearing the Special Use case would also determine if the staff's interpretation was correct. She added that sufficient evidence was submitted into the record regarding the issue. She explained that the County previously stated that the condition was imposed because the term land excavation was not in the approved PD. Ms. Corbett stated that "lake creation" was clearly contemplated on the approved site plan and that the three lakes could be reasonably assumed to result in more than 30,000 cubic yards of fill. She added that she has never been involved in a case where the applicant was asked how much volume the lakes would generate and asked if the land use of land excavation needed to be added. She believes that the issue is political as the gentlemen that testified in opposition are very active in the Balm Civic

Association and that the issue is just an end-around to try to get at the PD which was controversial at the time, back in front of the Board of County Commissioners to have them weigh in on whether the Special Use is allowable in the PD.

Hearing Officer Finch asked Mr. Clark of the County Attorney's Office about Ms. Corbett's testimony that the other venue to have the issue decided would be a zoning interpretation which, if denied by staff, would be appealed to the Land Use Hearing Officer. Hearing Officer Finch asked Mr. Clark if it is appropriate from a procedural or legal standpoint that the Hearing Officer opine of whether the use should be added to the zoning conditions through the Special Use process.

Mr. Clark of the County Attorney's Office replied virtually that the process of appeal is a different standard of review. It is an appellate process. He stated that the Hearing Officer should review the Special Use.

Hearing Officer Finch replied to Mr. Clark that she was having difficulty hearing his answer which was provided virtually.

Mr. Clark stated that he did not recall the issue being brought up previously or in other land excavation requests. He reviewed proposed zoning condition 2 and stated that he would ask staff why the condition was proposed.

Mr. Hiznay of the Development Services Department replied that the condition was proposed because land excavation was not a listed use.

Mr. Clark of the County Attorney's Office stated that he had reviewed the proposed zoning condition and stated that he was going to defer the issue back to staff and therefore not take a position contrary.

Hearing Officer Finch asked Mr. Clark if it was appropriate for the Land Use Hearing Officer to opine on whether zoning condition 2 is appropriate as it relates to the matter of process. Mr. Clark replied that he did not have a concern with that.

Ms. Corbett completed her rebuttal testimony by stating that regarding the truck traffic from the property, there is an open Natural Resource permit active on the property which is required to be closed prior to the land excavation. She asked Mr. Amaden to provide a brief statement.

Mr. Todd Amaden, 8515 Palm River Road testified regarding engineering issues and stated that the location of the ponds coincides with the PD site plan. He added that in his 25-years of experience in permitting land excavation sites, he had never seen a zoning condition like the one proposed by County staff.

The hearing was then concluded.

EVIDENCE SUBMITTED

Ms. Corbett submitted documents into the record which included aerial maps pertaining to groundwater contamination and sinkholes, a portion of the Land Development Code regarding permitted uses, Special Use standards, Hearing Officer authority, the approved PD zoning conditions and site plan for PD RZ 19-0310, and research of other zonings at the hearing.

Mr. Luce submitted a copy of a letter dated January 23, 2020 from Mr. Tom Amaden to Hillsborough County regarding responses to staff comments.

PREFACE

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

Findings of Fact

- The property is zoned Planned Development (PD) 18-0304 and designated Residential Planned-2 (RP-2) by the Comprehensive Plan.
- 2. The Special Use request is for a Land Excavation Special Use permit to excavate 2.5 million cubic yards of material from a 177 acre site.
- 3. The Planning Commission found the Special Use request consistent with the Comprehensive Plan.
- 4. The applicant has agreed to hours of operation which are less than permitted by the Land Development Code. The hours of operation are proposed to be 7am to 4pm Monday through Friday. The Land Development Code permits the consideration of Monday through Saturday operation, 7am to 6pm.
- The applicant has agreed to a limitation of five years from the date of the Operating Permit approval.
- The applicant has agreed to install a six-foot high fence (either PVC or wood) to enclose the excavation site.
- 7. The applicant has requested waivers as a part of the request.
- * The first waiver is to the Land Development Code required 500-foot separation from residentially developed or residentially zoned property line.

The site plan shows that there is residentially zoned property within 383 feet to the west and 400 feet to the south of Pond FG, 450 feet to the north of Pond ABC and 480 feet to the east of Pond DE.

- * The second waiver is to the Land Development Code required 1,000 foot separation from any school, hospital or church property line. The site plan shows that there is a church 618 feet to the west of Pond ABC and 600 feet to the northwest of Pond FG.
- * The third waiver is to the Land Development Code required 30-foot separation from wetland/wetland conservation area line and 50-foot wetland/waterbody preservation area line. There are agricultural ditches within the proposed excavation areas that have been identified by EPC staff as wetlands.
- * The fourth waiver pertains to the Land Development Code prohibition of any land excavation until the issuance of the financial security for the Operating Permit. This is requested as the applicant would like to obtain land alteration permits associated with the residential development while excavating for the three ponds.

The waivers are justified for the following reasons:

- a. The excavation of the 2.5 million cubic yards of material is to create stormwater ponds associated with the proposed 356 lot single-family residential community and the three ponds are approximately located in the same area as approved on the certified General Site Plan.
- b. The majority of the residential properties are located to the south of the subject property are owned by the applicant.
- c. The remaining residential properties are located across Balm-Wimauma Road which is a designated truck route.
- d. According to testimony by the applicant's representative and the County staff report, the church has been vacant and not in operation for many years. An additional church is located across from the subject property.
- EPC staff does not object to the proposed excavation subject to the Special Use conditions.
- f. The request to obtain land alteration permits during the excavation period is justified by the proposed Special Use condition that permits are subject to the same restricted hours of operation and that the access shall be the same as the land excavation site.
- 8. The applicant objects to proposed Zoning Condition #2 regarding a requirement to modify the approved list of uses to add "land excavation" prior to the issuance of an operating permit. This modification would require approval by the Board of County Commissioners. The applicant's objection is based upon testimony and research conducted by their expert land use planner that no other Planned Development zoning has previously been required to amend their permitted uses to include "land"

excavation." Further, the applicant's representative testified that "land excavation" is permitted in all zoning districts.

County staff testified at the Land Use Hearing Officer hearing that Zoning Condition #2 was discussed many months ago with the applicant and if the applicant disagreed with the condition, they should have addressed it at a point earlier than the Land Use Hearing. The applicant's representative submitted a copy of a letter to the Development Services Department dated 9-19-19 in which the disagreement of the issue was explained and concludes with the applicant's representative declining to file a Major Modification application to add the "land excavation" use and a request to consider the issue under the Special Use process. Additionally, the applicant's land use planner submitted a copy of a letter dated 1-23-20 from the project engineer to the County planner assigned to the case responding to staff comments. These responses included the disagreement of the proposed requirement to modify the Planned Development zoning.

Of particular note and discussion with the Assistant County Attorney was the testimony from the applicant's representative that the only other process to achieve a resolution of Zoning Condition #2 was to request a Zoning Interpretation and appeal the presumed staff denial to the Land Use Hearing Officer which is the same entity as the Special Use application.

Audio issues prevented the Land Use Hearing Officer from precisely understanding the Assistant County Attorney as he testified remotely regarding the issue. These audio issues prevented the Land Use Hearing Officer from receiving confirmation of the question regarding the appropriateness of the review of the process issue pertaining the Zoning Condition #2 as a part of the Special Use application.

The Special Use application was filed with the intent to create three ponds associated with the development of 356 single-family dwelling units. Section 6.11.01 states that Special Uses have "...additional design standards to ensure compatibility with adjacent uses and the surrounding neighborhood." This is the focus of the Land Use Hearing Officer's review of a Special Use application.

The applicant's representative is correct that the dispute over Zoning Condition #2 could be through the Zoning Interpretation process. This is the appropriate process for a determination if staff interpreted the Land Development Code appropriately in requiring a modification to the approved Planned Development list of permitted uses. It should be noted that the applicant's representative submitted a significant amount of

- evidence regarding staff's interpretation and this evidence could be used in an appeal of the staff's decision, if appropriate.
- 9. The County's Transportation staff has no objection to the request and the associated traffic.
- 10. The proposed haul route is on Shelley Lane which is a private road and then along County Road 672, which is a County designated truck route.
- 11. The Special Use conditions proposed by the Development Services
 Department result in an excavation project that protects the surrounding
 area by means of a limited duration of time (five years), limited hours of
 operation, and the fencing of the property with a six-foot high fence.

Final Conclusions of Law

Based on the Findings of Fact and Conclusions of Law cited above, there is sufficient competent substantial evidence to demonstrate that the Special Use request for a land excavation permit with the requested waivers is in accordance with the applicable Land Development Code requirements.

DECISION

Based on the foregoing, the applicant has satisfied the criteria for issuance of a Special Use permit for a land excavation permit with waivers of the required distance standards from residentially developed or zoned property, churches, wetland areas and the prohibition of any land excavation until the issuance of the financial security for the Operating Permit. The Special Use is hereby APPROVED subject to the conditions proposed by the Development Services Department.

August 22, 2020

Susan M. Finch, AICP

Land Use Hearing Officer

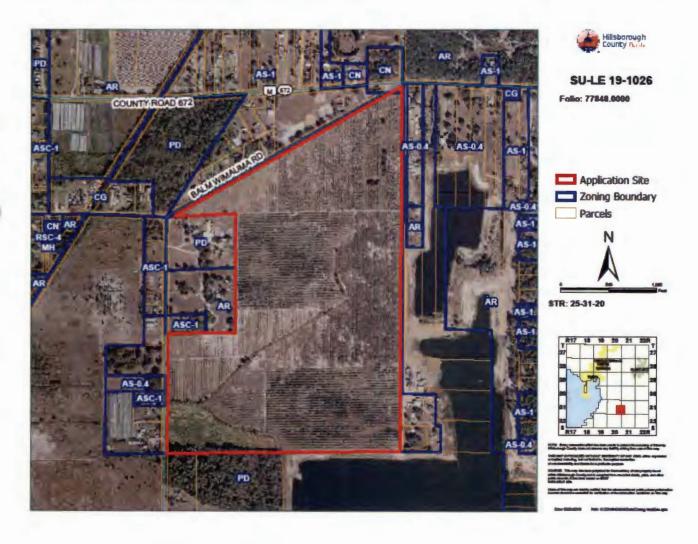
Sum M. Fine

Date



Land Use Application Summary Report

| Application Number: | SU LE 19-1026 | Adjacent Zoning and Land Uses: | |
|------------------------|--|--------------------------------|--|
| Request: | Special Use Permit for a Land Excavation | North: | AS-1/CN; Single-Family/Park/Commercial |
| | | East: | AR, AS-0.4; Single-Family; Vacant |
| Comp Plan: | RP-2 | South: | PD 17-0619; Agriculture/Borrow Pit |
| Service Area: | Rural | West: | AR/ASC-1/AS-0.4/PD 17-0619/PD 95-0076; Agriculture/single-family dwellings/church |



1.0 Request

The applicant seeks approval of a "lake creation" land excavation Special Use permit to allow the removal of 2.5 million cubic yards of material from a 177-acre site located at on the southwest corner of Balm-Wimauma Road and County Road 672 (Balm Road).

The property is zoned PD 18-0304, as most recently modified by Major Modification 19-1172. As proposed by the applicant, the excavated material will be removed from approximately 54 acres of the site over a five-year period. The proposed depth of the excavation is 40 feet, although final permitted depth will be determined during Operating Permit review and may be less. The applicant is proposing to access the excavation from Shelley Lane, a private road on the east side of the subject site that is under common corporate umbrella ownership as the subject property. Trucks will leave and approach Shelley Lane on County Road 672 in accordance with the Truck Route plan.

PD 18-1304 permits development of a maximum of 356 single-family lots on the subject property, which is identified as the "The Grove Parcel" in the PD. The PD site plans shows three "ponds/open spaces" at the location of the proposed excavation pits and states there are no proposed man-made water bodies except for retention/detention ponds. The LDC defines "land excavation" as the removal of a total quantity of more than 10,000 cubic yards of material from a site, or more than a total of 30,000 cubic yards of material for projects with approved subdivision construction plans. Preliminary development plans have been submitted for the subdivision and are currently under review by staff.

The permitted uses allowed by PD 18-0304 do not include the proposed land excavation. Therefore, approval of a modification to the PD by the Board of County Commissioners will be required prior to Operating Permit approval for the proposed land excavation, per the recommended conditions of approval for the requested Special Use in this report.

1.1 Restricted/Prohibited Areas

The site is not located within a prohibited or restricted area pursuant to LDC Section 6.11.54.A.5.

1.2 Access Requirements

The proposed excavation site is adjacent to Balm-Wimauma Road and County Road 672, both of which are designated Truck Routes and collector roads, and therefore complies with the access requirements found in LDC Section 6.11.54.A.3, pursuant to the definition of "access, direct/collectors and arterials" in the LDC.

1.3 Operational Restrictions

Per LDC Section 6.11.54.A.4.b, land excavation operations are limited to the hours from 7:00 a.m. to 6:00 p.m. Monday through Saturday, excluding holidays recognized by Hillsborough County, with no operations permitted at any time on Sunday. However, the applicant has proposed to further restrict operations as follows: 7:00 a.m. to 4:00 p.m. Monday through Friday, excluding County recognized holidays, with no operations permitted at any time on Saturday and Sunday.

1.4 Fencing

Per LDC Section 6.11.54.B.7, active land excavations must be secured with a fence and gate to prevent unauthorized access. The applicant proposes to enclose the entire excavation site with a six-foot-high solid wood or PVC fence. The fence will be set back a minimum of 30 feet from the Balm-Wimauma Road right-of-way and 50 feet from the adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. The applicant's narrative includes a variance request for the proposed fence height on the premise that a six-foot-high fence is not permitted on residentially zoned property. This is not correct. A six-foot fence height is allowed in residential districts, although in required front yards along streets a maximum height of only four feet is permitted. The subject fence, as originally proposed by the applicant, was to be placed on the property line along Balm-Wimauma Road and therefore would have required a variance to allow a height of six feet. However, the applicant subsequently proposed a 30-foot setback from Balm-Wimauma Road for the fence, thereby obviating the need for a height variance. Shelley Lane is a private road that does not meet the definition of "street" in the LDC and therefore no setback is required along the east property line for a six-foot-high fence.



1.5 Required Separations

The proposed land excavation does not meet all required separation distances pursuant to LDC Section 6.11.54.A.2. Per Section 6.11.54.A.2. of the LDC, the following distance separation requirements apply to the proposed "lake creation" land excavation:

- 1. The proposed land excavation shall be 25 feet from any right-of-way line of a publicly owned road or street.
 - Per the site plan submitted by the applicant, the request does comply with this requirement.
- 2. The proposed land excavation shall be 25 feet from the boundary line of any publicly owned drainage or utility easement.
 - Per the site plan submitted by the applicant, the request does comply with this requirement.
- 3. The proposed land excavation shall be 25 feet from any non-residential property line, including agricultural use.
 - Per the site plan submitted by the applicant, the request **does** comply with this requirement.
- 4. The proposed land excavation shall be 500 feet from any residentially developed or residentially zoned property line.
 - Per the site plan submitted by the applicant, the request does not comply with this requirement. There are residentially developed properties approximately 383 feet to the west and 400 feet to the south of Pond FG; approximately 450 feet to the northwest of Pond ABC; and approximately 480 feet to the east of Pond DE.
- 5. The proposed land excavation shall be 1,000 feet from any school, hospital, or church property line.

APPLICATION: SU LE 19-1026 LUHO HEARING DATE: August 3, 2020

- Per the site plan submitted by the applicant, the request does not comply with this requirement. There are
 church properties approximately 618 feet to the west of Pond ABC and approximately 600 feet to the
 northwest of Pond FG. There are no schools or hospitals within 1,000 feet.
- 6. The proposed land excavation shall be 30 feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site. Greater separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area.
 - Per the site plan submitted by the applicant, the request does not comply with this requirement. There are
 agricultural ditches within the proposed excavation areas that are identified by EPC staff as wetlands. EPC
 staff does not object to the proposed excavation, subject to the recommended conditions of approval found
 in this report.

The applicant requests a wavier to these separation requirements on the grounds that the excavation ponds are in conjunction with the development of residential subdivision and must be located in the same general location as depicted on the certified site plan for the PD zoning of the property. Strict imposition of the distance separation requirements would unreasonably force a redesign of the entire subdivision solely for the temporary use of the property for the creation of the excavation ponds. Additionally, the applicant is proposing to mitigate the reduction in the required separations by limiting the days and hours of operation and the total duration of the land excavation to be more restrictive than what is permitted by the LDC. The applicant is also proposing visual screening to minimize potential visual impacts and has located the project driveway on Shelley Lane rather than Balm-Wimauma Road.

The applicant also notes that the church located on the east side of Balm-Wimauma Road adjacent to the proposed excavation has been vacant for several years and is currently not for sale. Additionally, the residential properties directly to the south of the excavation site are owned and controlled by entities under common ownership with the applicant.

In view of the justification provided by the applicant, and the fact that most of the residentially developed properties and one of the churches within the required separation distances are located across Shelley Lane or Balm-Wimauma Road, a designated Truck Route, from the excavation site, staff does not object to the requested separation waivers subject to the recommended conditions of approval in this report, which include a requirement that material stockpiles be located a minimum of 200 feet from the Balm-Wimauma Road right-of-way, the adjacent church parcel and residential parcels on the east side of Balm-Wimauma Road, and the residential parcels on the east side of Shelley Lane. Staff finds this requirement will promote general compatibility with the area and provide additional impact mitigation for the neighboring residential and church properties, including the adjacent church that, while currently vacant, could be occupied by a new congregation at any time during the five-year excavation term.

1.6 Prohibition of Other Excavation, Land Alteration

Per LDC Section 6.11.54.B.8, upon approval of a Land Excavation Special Use permit, no other permits for excavation of land alteration activities may be approved for the site until release of the financial security for the Operating Permit.

The applicant requests a waiver of this provision to allow land alteration permits to be issued in conjunction with development of the residential subdivision permitted by the property's PD zoning. The applicant notes that creation of water bodies in conjunction with the construction of a subdivision does not require a Land Excavation Special Permit provided that no more than 30,000 cubic yards of material are taken off-site and contends that it us unreasonable to require the proposed excavations to be completed before any other site work for the subdivision can occur.

Land Excavation staff does not object to the requested waiver subject to Condition 5 of the recommended conditions of approval in this report which is necessary to support monitoring and enforcement actions by staff that would otherwise be undermined by having separately permitted but concurrent operations on the site.

1.7 Transportation

Transportation staff has reviewed the proposed excavation and does not object, subject to the recommended conditions of approval found in this report. The proposed excavation is to take place over a five-year time period. The site is located adjacent to Shelley Lane which intersects with Balm Road (County Road 672), a designated Truck Route. The applicant is not limiting the distribution of the material to a specific location. The applicant shall be required to conduct the hauling operation from the Shelley Lane intersection to delivery destinations in a manner consistent with Hillsborough County Truck Route Plan.

Given the amount of material proposed for excavation and the proposed five-year time frame, it is estimated that an average of 1,992 cubic yards of material will be excavated per day. The 1,992 cubic yards equates to 220 trucks per day (110 inbound and 110 outbound). Employee trips are estimated to be ten (10) trips per day (5 inbound and 5 outbound). The proposed project would generate approximately 87 trip ends during the AM peak hour with 46 inbound and 41 outbound. The average number of trucks during a typical hour of the day is estimated to be 30 trip ends (15 inbound and 15 outbound). The site is not proposed to operate during the PM peak hour timeframe, so no PM peak impacts are anticipated.

Shelley Lane is a two-lane private road. Shelley Lane. The pavement width on Shelley Lane is +/- 24 feet. The pavement appears to be in poor condition. The road does not have a posted speed limit. There appears to be adequate roadway capacity to accommodate the additional trips generated by the proposed project. No capacity increasing improvements are currently scheduled for this road.

Balm Road is a two-lane undivided collector road. The pavement width on Balm Road is +/- 24 feet with a stabilized shoulder. The pavement appears to be in good condition. The right-of-way along Bam Road adjacent to the site appears to be approximately 76 feet. Balm Road is posted at 45 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Road in the vicinity of the site is currently operating at LOS "B".

Balm-Wimauma Road is a two-lane undivided collector road. Balm-Wimauma Road is a designated Truck Route. The pavement width on Balm Wimauma Road is +/- 22 feet with stabilized shoulders. The pavement appears to be in good condition. The right of way along Balm Boyette Road in the vicinity of the site appears to be approximately 67 feet. Balm Road is posted at 50 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Wimauma Road in the vicinity of the site is currently operating at LOS "A"

Sole access to the proposed excavation will be from Shelley Lane. Based on the project's trip generation, no site access turn lanes are required. A 15-year accident report was submitted along with the traffic study for the proposed project. The report includes accidents within a distance of +/- 250 feet east of Balm-Wimauma Road and +/- 250 feet west of Shelly Lane. During the 15-year period there have been 59 accidents reported in the area between Balm-Wimauma Road and Patsy Marie Lane. The majority of the accidents appear to be at the intersection of Balm-Wimauma Road and Balm Road. These accidents appear to be front to rear end and angle accidents. These numbers represent 3.93 accidents annually in the vicinity of the project. There was one fatality in the area. The highest number of crashes (30) appear to be between 2005 through 2008 with 2008 being the highest with 11 crashes. The last five years has seen a significant reduction in crashes. There is nothing in the crash report to indicate that there are recent safety concerns in the vicinity of the project.

1.8 Cumulative Impacts

There are two completed land excavations located within one mile of the proposed land excavations. One of the excavations, Shelley Lakes Mines (SU 08-1433), is located adjacent to the east side of the proposed land excavation. It was closed in 2017 after a total of 19,645,966 cubic yards of material was excavated over a 19-year period, approximately. The other land excavation, Hills Dirt Pit (SU 04-1054), is located about three-quarters of a mile the east on County Road 672. It was closed in 2018 after a total of 4,997,796 cubic yards of material was excavated over a 13-year period, approximately.

No other land excavations, completed or active, are located within one mile of the proposed land excavations.

1.9 Agency Comments

Conservation and Environmental Lands Management staff reported no comments to the proposed excavation.

Natural Resources staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

EPC staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

Hillsborough County School District staff reported no objections to the proposed excavation.

Public Works staff reported no comments to the proposed excavation.

Balm Park and Community Center is located on the north side of Balm-Wimauma Road, across from the subject site. Hillsborough County Parks and Recreation staff reported no objections to the proposed excavation.

1.10 Conclusion

The proposed land excavation is located on a designated Truck Route as required by the LDC, and the site is not within a prohibited or restricted area. The excavation pits do not meet required separations from all neighboring residentially developed properties and two churches, however, the location of the pits, which will form ponds, are consistent with the location of the ponds shown on the approved PD site plan for the property. Additionally, the applicant has proposed operational day/hour limits that are more restrictive than those allowed by the LDC; the excavation driveway will be located on the east side of the site to eliminate driveway-associated impacts on neighboring residential uses and churches on Balm-Wimuama Road; material stockpiles will be at least 200 feet from Balm-Wimauma Road and adjacent residential parcels and church; and the entire site will be enclosed by a six-foot-high solid wood or PVC fence which will be set back 30 feet from Balm-Wimauma Road and 50 feet from adjacent residential and church parcels between the road and the excavation site.

For these reasons, staff finds the proposed land excavation is compatible with the surrounding area and approvable, subject to the recommended conditions in this report.

1.10 Exhibits

Exhibit 1: Aerial Map

Exhibit 2: Future Land Use Map Exhibit 3: Proposed Site Plan

Staff's Recommendation: Approvable, Subject to Conditions

Zoning Administrator

Sign-off: Tue Jul 21

Page

6

2.0 Recommendation:

Approvable, subject to the following conditions. This approval is based on the site plan received February 27, 2020:

- The land excavation shall be limited to the removal of a maximum of 2.5 million cubic yards of material, subject to approval of a Land Excavation Operating Permit in accordance with all provisions of the Land Excavation Regulations as stated in Part 8.01.00 of the Land Development Code. Approval of this Special Use Permit does not guarantee approval of an Operating Permit.
- 2. Prior to Operating Permit approval, the applicant shall obtain approval from the Board of County Commissioners of a modification to PD 18-0304 pursuant to Section 5.03.07 of the Land Development Code to amend the permitted uses to include a land excavation. Approval of this Special Use Permit does not guarantee approval of the PD modification. Effectiveness of this Special Use Permit is contingent upon approval of the PD modification and no activities associated with the land excavation shall be permitted prior to approval of the PD modification.
- 3. This Special Use Permit shall expire five years from the date of Operating Permit approval. If an Operating Permit has not been issued for any portion of the land excavation within two years of the date of approval for the PD modification required in Condition 2, this Special Use Permit shall expire.
- 4. Prior to Operating Permit approval, the excavation work permitted by NRO Permit 46798 shall be completed and the permit closed out per the terms of the NRO permit.
- 5. Upon approval of this Special Use Permit, no other permits for the removal of material from the site in any quantity shall be approved until the release of financial security for the Land Excavation Operating Permit. Permits for on-site land alteration activities only necessary for development of the residential subdivision permitted by PD 18-0304 may be approved prior to the release of said financial security, subject to the following conditions:
 - a) All such activities, regardless of nature, shall be limited to the permitted days/hours of operation stated in Condition 7 of this Special Use Permit.
 - b) Site ingress/access for all such activities, regardless of nature, shall be limited to Shelley Lane in conformance with Condition 11 of this Special Use permit.
- 6. The land excavation depth shall not exceed 60 feet, notwithstanding the cross-section depths or other depths shown on the site plan. Final permitted depth will be determined during Operating Permit review and may be less than 60 feet.
- 7. The permitted hours of operation shall be limited to the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays recognized by Hillsborough County. Operations shall be prohibited on Saturday, Sunday and County recognized holidays. These operating hours shall apply to the queuing of trucks on Shelley Lane.
- 8. Minimum setbacks for the excavation areas, with the exception of perimeter ditches and dewatering ditches, shall be as shown on the site plan received February 27, 2020.
- 9. Material stockpiles shall be located a minimum of 200 feet from the Balm-Wimauma Road right-of-way and adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. Additionally, material stockpiles shall be located a minimum of 200 feet from parcel folios 88698.7500 and 88698.7500 on the east side of Shelley Lane.

10. The excavation site shall be enclosed with a six-foot-high solid wood or PVC fence. The fence shall be set back a minimum of 30 feet from the Balm-Wimauma Road right-of-way and 50 feet from the adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. Site access gates shall be secured

and locked when no activity is occurring at the excavation areas.

- 11. The excavation shall be limited to one access driveway on Shelley Lane. The driveway shall be located approximately 800 feet south of County Road 672. Haul trucks shall not que on County Road 672. Haul trucks may que on Shelley Lane but shall not obstruct the passage of other vehicles using the road.
- 12. Haul trucks shall head north on Shelley Lane to County Road 672, then east and west to delivery destinations in accordance with the Truck Route Plan. Haul trucks shall access the site in reverse manner.
- 13. The permittee shall be required to repair any damage to Balm Road and Balm-Wimauma Road caused by the excavation, as determined by Hillsborough County Public Works.
- 14. The excavation shall be operated in a manner to minimize fugitive dust emissions. Truck beds shall be covered and tailgates securely latched. Paving and/or regular sweeping or watering of the onsite haul routes shall be required to minimize dust.
- 15. Approval of this Special Use by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission of Hillsborough County (EPC) approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impact to wetlands, and does not grant any implied or vested right to environmental approvals.
- 16. The construction and location of any proposed wetland impacts shall be reviewed by EPC staff under separate application pursuant to the EPC Wetlands rule detailed in Chapter 1-11, Rules of the EPC, (Chapter 1-11) to determine whether such impacts are necessary to accomplish reasonable use of the subject property.
- 17. Prior to the issuance of any building or land alteration permits or other development, the approved wetland/ other surface water (OSW) line must be incorporated into the site plan. The wetland/ OSW line must appear on all site plans, labeled as "EPC Wetland Line", and the wetland must be labeled as "Wetland Conservation Area" pursuant to the Hillsborough County Land Development Code (LDC).
- 18. Final design of the excavation areas, buildings, stormwater retention areas, and ingress/egress is subject to change pending formal agency jurisdictional determinations of wetland and other surface water boundaries and approval by the appropriate regulatory agencies.
- 19. An evaluation of the property supports the presumption that listed animal species may occur or have restricted activity zones throughout the property. Pursuant to the Land Development Code (LDC), a wildlife survey of any endangered, threatened or species of special concern in accordance with the Florida Fish and Wildlife Conservation Commission Wildlife Methodology Guidelines shall be required. This survey information must be provided upon submittal of the preliminary plans through the Land Development Code's Land Excavation process.
- 20. Wetlands or other surface waters are considered Environmentally Sensitive Areas and are subject to Conservation Area and Preservation Area setbacks. A minimum setback must be maintained around these areas which shall be designated on all future plan submittals and where land alterations are restricted.
- 21. 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.

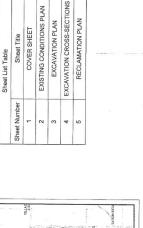
- 22. The construction and location of any proposed environmental impacts are not approved by this correspondence and shall be reviewed by Natural Resources staff through the land excavation and subdivision development plan process pursuant to the Land Development Code.
- 23. The method of water control and management shall be subject to approval during review of the Land Excavation Operating Permit application.
- 24. No material of any type other than excavated material and material associated with the land excavation shall be stored or placed on site.
- 25. The excavation shall conform to these conditions of approval and the site plan submitted February 27, 2020, all requirements of the Land Development Code unless waived herein, and all other applicable rules, regulations and ordinances of Hillsborough County. If the notes and/or graphics on the site plan conflict with specific conditions of approval and/or Land Development Code regulations, the more restrictive regulation or greater requirement shall prevail unless otherwise stated in the conditions.

THE GROVE AT BALM

SECTION 25, TOWNSHIP 31 SOUTH, RANGE 20 EAST A COMMERCIAL PROJECT LOCATED IN OF HILLSBOROUGH COUNTY, FLORIDA







COVER SHEET

HILLSBOROUGH COUNTY, FLORIDA

SPECIAL USE PLAN MAR TA BVORD BHT

LOU 13.5

> SITE DATA
> TOTAL SITE AREA: 177 8 ACRESS:
> FOLIO NUMBER: 077846-0000
> PRODOSED EXCAVATION AREA: 51.34 ZONING. PD 18-0304 FUTURE LAND USE: R2-P

Vicinity Map

Group
111 S. Amenia Ave
Suite 201
Tampa, Florida
Phone (813) 225-4102

Eisenhower Property

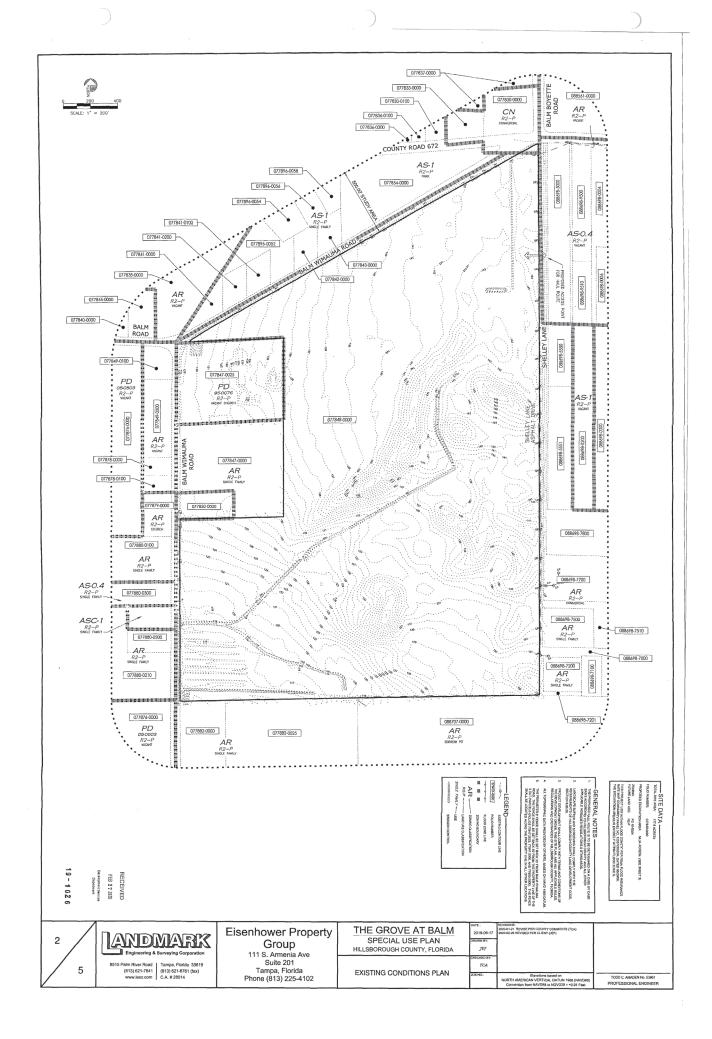
Tampa, Florida 33619 (813) 621-6761 (fax) C.A. # 28014

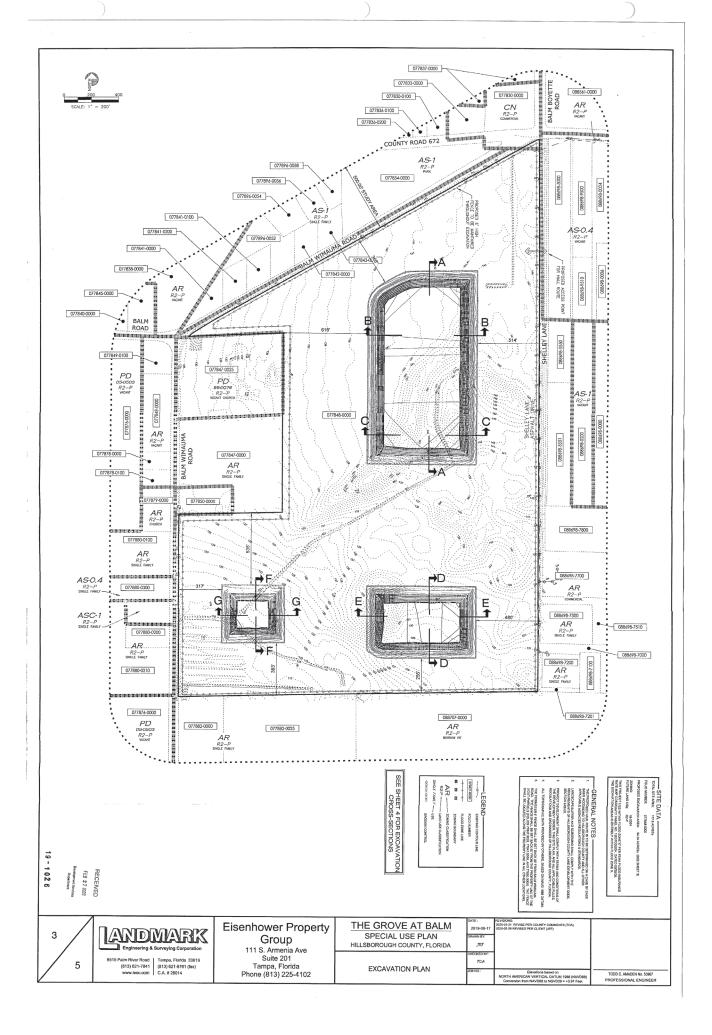
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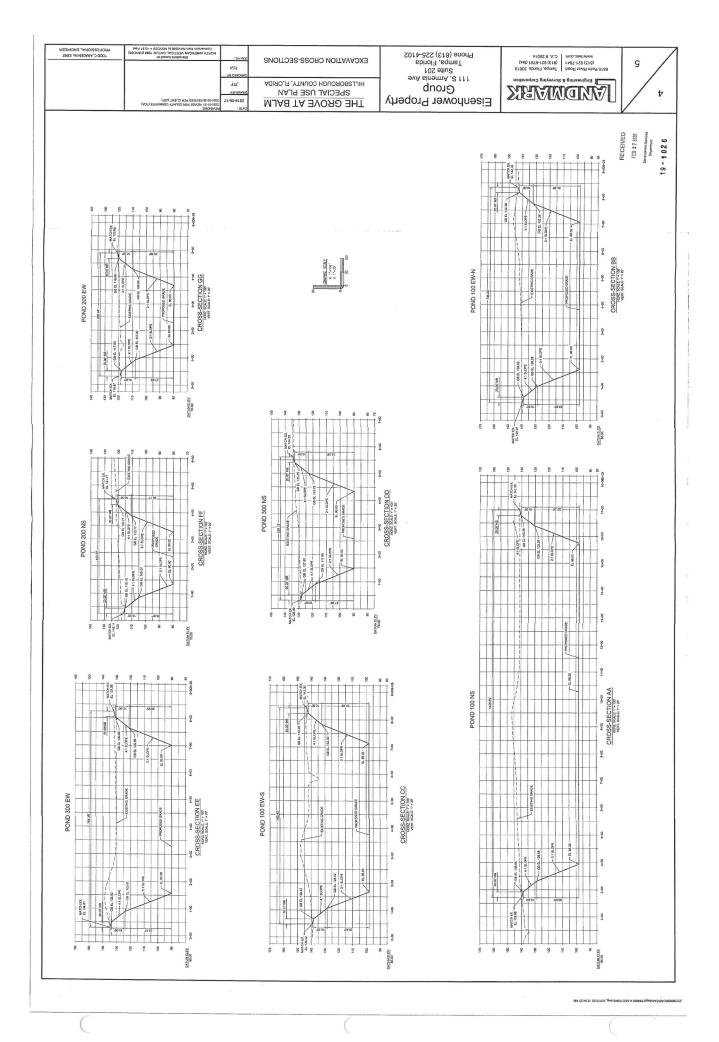
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Group
111 S. Armenia Ave
Suite 201
Tampa, Florida
Phone (813) 225-4102

RECLAMATION PLAN

CKED BY TCA

Additional / Revised Information Sheet

Hillsborough County Development Services Department



| A | pplication Number: SU 19-1026 | Applicant's Name: El | Applicant's Name: Elsenhower Property Group | | |
|--------------------------------------|---|---|--|--|--|
| Reviewing Planner's Name: Tom Hiznay | | | | | |
| A | pplication Type: [Select One:] | Current Hearing Date | e: | | |
| P | lease check (✓) all appropriate changes / | additions: | | | |
| | Revised Plans or Request information | n: # of Plans Submitted: 4 | Large Small | | |
| | Acreage (Added / Removed) |) # of Acres: | ☐ Changes to Requested Uses | | |
| | Revised Building or Lot Layout | | Revised Square Footage (FAR) Info | | |
| | Access Point(s) - (Added / D | Deleted / Moved) | Dctail added | | |
| | Changes to Requested Number of Ur | nits (- Increase, - Decrease | e, - Reallocation) | | |
| | Other: | | | | |
| | Other Additions: | | | | |
| | Revised/Corrected Legal Description | Traffic Analys | sis | | |
| | Party of Record Letter(s) or Petition | | ees – Receipt # | | |
| | Letter Requesting a Continuance / Remand / Withdrawal | | | | |
| | Other: | | | | |
| | Other. | | | | |
| | | FOR OFFICE USE ONLY | | | |
| | ☐ Notification E-Mail Sent ☐ Scann | ned into OPTIX Planner Revi | ewed | | |
| | ☐ Transmittal Completed | In-Take Compl | eted by: | | |
| | ransmit to: (check () all that apply) | | _ | | |
| 12 | | HARTLine | ☐ Sheriff's Department ☐ SWFWMD | | |
| | | ☐ Parks & Recreation ☐ Community Planning | Water – Reclaimed | | |
| | | Natural Resources | Water Utilities | | |
| | | PGM Project Review | ☐ Water – Wastewater | | |
| | Fire Department | School Board | | | |
| | ☐ City of Plant City | FDOT | Polk County | | |
| | City of Tampa – Sewer | Hazard Mitigation | Public Works - Traffic | | |
| | | H.C. Aviation Authority | Public Works Roadway | | |
| | | H.C Health Department | Real Estate | | |
| | Federal Aviation Admin | MacDill Air Base | Tampa Bay Water | | |
| | FDA [FL Dept of Envir. Prot. [| Pasco County Pinellas County | ☐ University Dev Corp ☐ USF Area Civic Assoc | | |
| | Other: | | _ On The Citie Asset | | |

THE GROVE AT BALM

SECTION 25, TOWNSHIP 31 SOUTH, RANGE 20 EAST A COMMERCIAL PROJECT LOCATED IN OF HILLSBOROUGH COUNTY, FLORIDA





COVER SHEET

ніггавовопен сопиту, ғговірь

SPECIAL USE PLAN

THE GROVE AT BALM

EXCAVATION CROSS-SECTIONS EXISTING CONDITIONS PLAN

RECLAMATION PLAN **EXCAVATION PLAN** COVER SHEET

TCA 13.F 13.F

Sheet List Table



Vicinity Map

111 S. Armenia Ave Suite 201 Tampa, Florida Phone (813) 225-4102

Group

Eisenhower Property

SITE DATA
TOTAL SITE AREA: 1776 ACRESS
FOLIO NUMBER: 077864-0000
PROPOSED EXCAVATION AREA: 93.34 CONING. PD 18-0304 UTURE LAND USE: R2-P

GENERAL NOTES

AR -

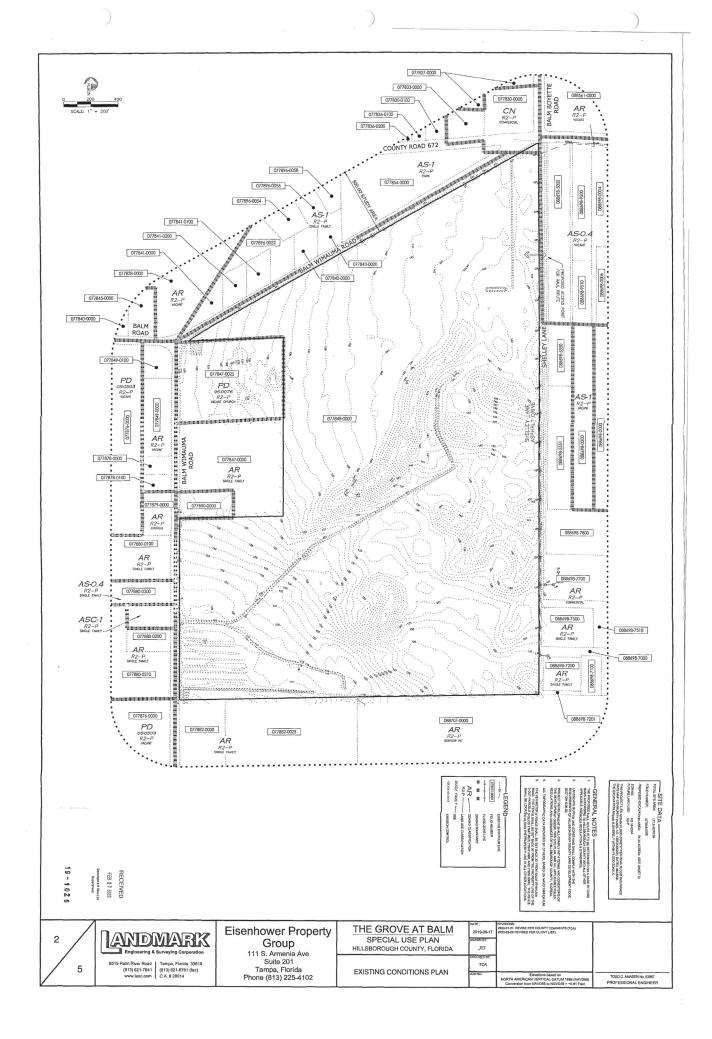
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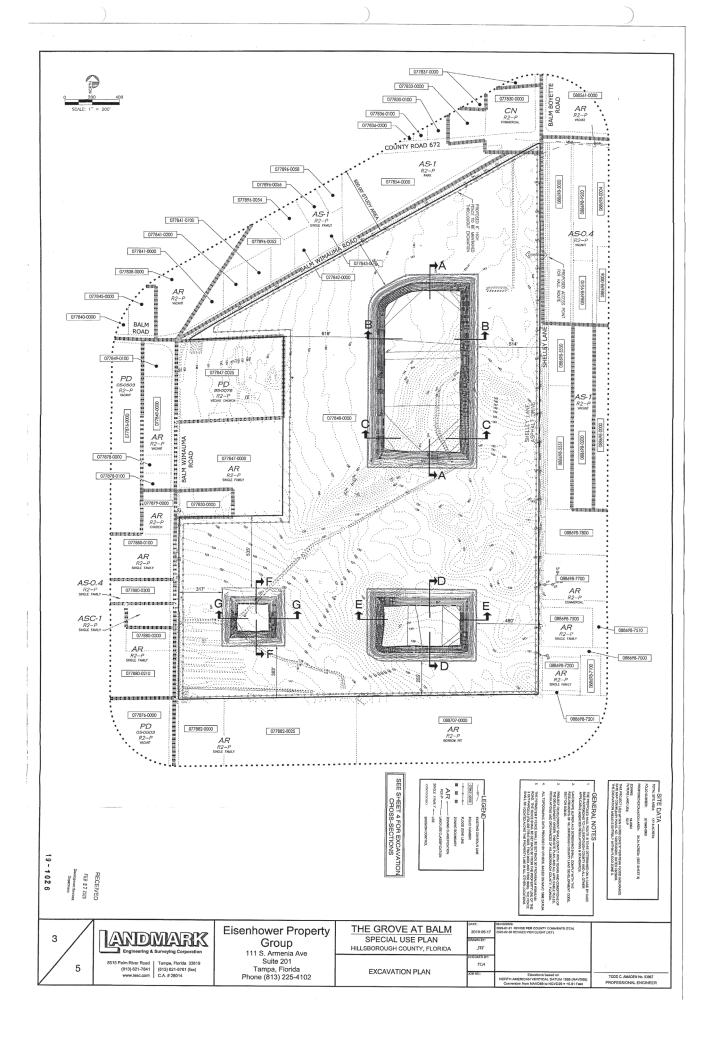
8515 Palm River Road (813) 621-7841 www.lesc.com

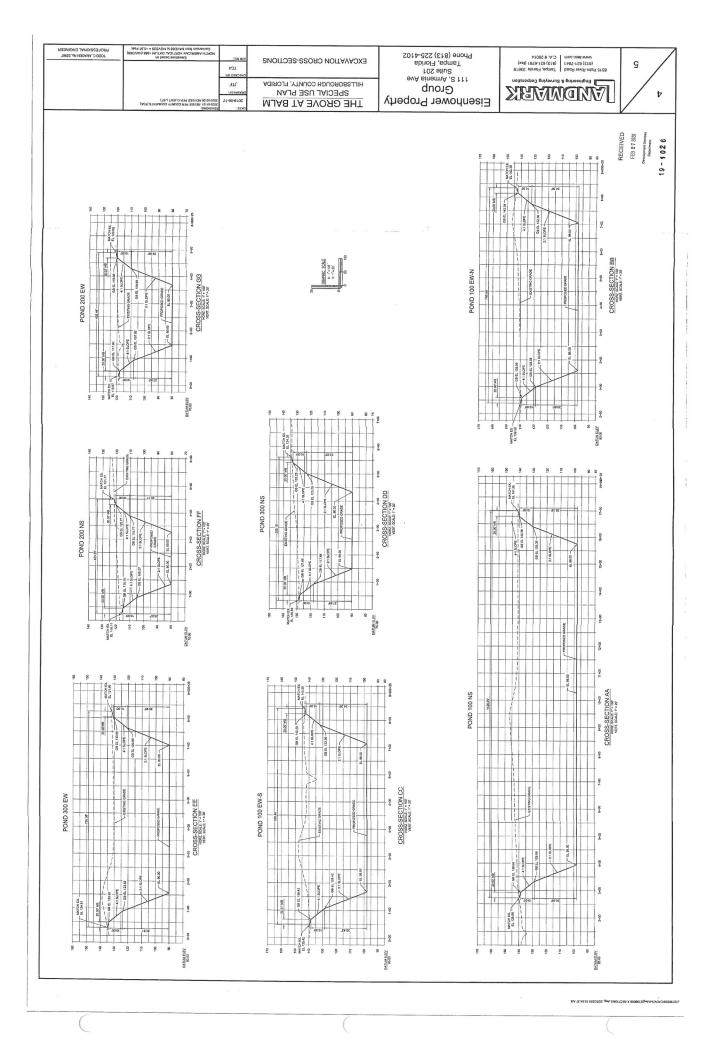
Development Sevices Department 19 - 1026 FEB 2 7 2029

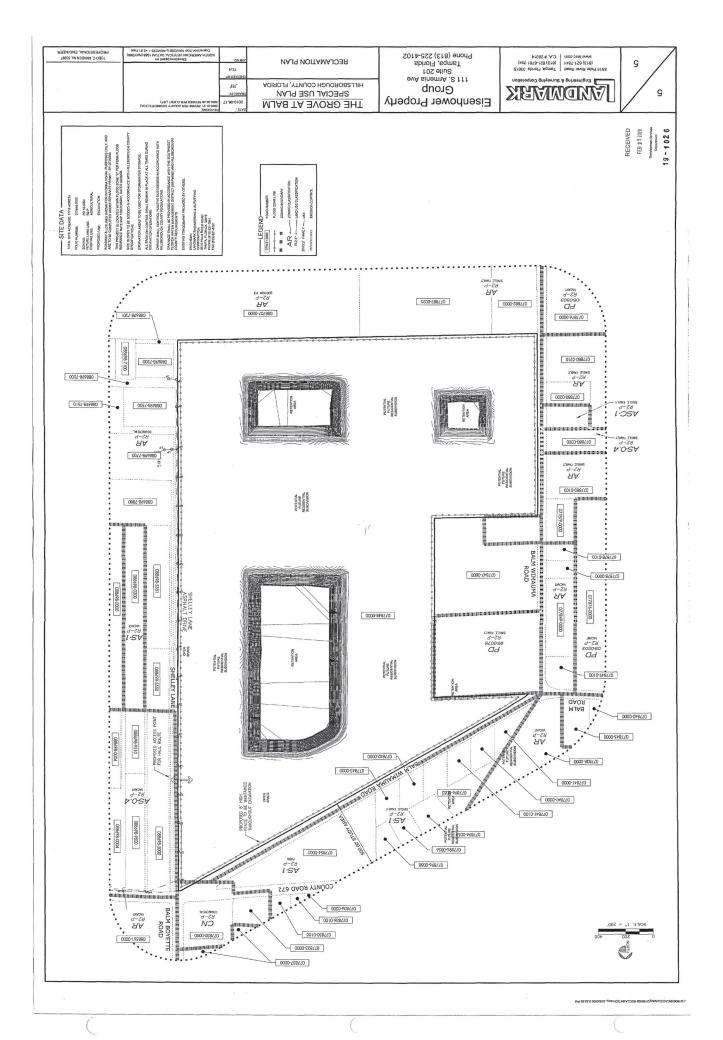
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HILLSBOROUGH COUNTY, FLORIDA BOARD OF COUNTY COMMISSIONERS

In Re:

LAND USE HEARING OFFICER HEARINGS

LAND USE HEARING OFFICER HEARING TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE:

SUSAN FINCH

Land Use Hearing Officer

DATE:

August 3, 2020

TIME:

Commencing at 9:00 a.m.

Concluding at 12:28 p.m.

PLACE:

Via Cisco Webex Video

Conference

REPORTED BY: Jerry Lefler, RPR CRR CM

Executive Reporting Service 13555 Automobile Boulevard, Suite 100 Clearwater, Florida 33762 (727) 822-5458

| | | | Page 30 |
|----|-----|---------------------|---------------------------------|
| 1 | , | | COUNTY, FLORIDA |
| 2 | | BOARD OF COUNT | Y COMMISSIONERS |
| 3 | | | |
| 4 | | ZONING HEARING | MASTER HEARINGS |
| 5 | | AUGUST | 3, 2020 |
| 6 | | ZONING HEARING MAS | STER: SUSAN FINCH |
| 7 | | | |
| 8 | H.1 | Application Number: | SU-AB 19-1026 |
| 9 | | Applicant: | Balm Grove, LLC |
| 10 | | Location: | 15110 Balm Wimauma Rd. |
| 11 | | Folio Number: | 077848.0000 |
| 12 | | Acreage: | 177.62 acres, more or less |
| 13 | | Comprehensive Plan: | RP-2 |
| 14 | | Service Area: | Rural |
| 15 | | Existing Zoning: | PD (18-0304) |
| 16 | | Request: | Special use for land excavation |
| 17 | | | excavation |
| 18 | | | |
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| 20 | | | |
| 21 | | | |
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| 25 | | | |
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Page 31 MR. HIZNAY: We're now moving into the 1 Special Use portion of the agenda. first case is Item H.1. This is application 3 19-1026. The Applicant is Balm Grove, LLC. The request is for a Special Use for a land excavation. Staff report was prepared by Annie Barnes. However, I'll be presenting the 9 report for her after the Applicant's presentation. 10 11 HEARING MASTER FINCH: Is the Applicant 12 here? Good morning. 13 MS. CORBETT: Good morning. Kami Corbett, 101 East Kennedy Boulevard, Suite 14 15 3700, here for the Applicant, Balm Grove, 16 LLC. 17 This is a fairly straightforward 18 request for a (inaudible) subdivision. 19 There's not anything particularly unusual 20 about it. The only thing that's really new 21 about it is Condition 2 of the staff report. We've reviewed all of the other 22 23 recommendations for approval and the 24 conditions associated with the approval, and

we agree with all of them with the exception

1 of Condition 2, which requires us to modify the PD, specifically allowing land 3 excavation. I'm going to get into that in a lot 4 more detail later on, but first we're going to have Steve Luce come up and make a 6 presentation for the application. HEARING MASTER FINCH: Thank you. 9 morning. 10 MR. LUCE: Good morning, Ms. Hearing Master and staff. My name is Steve Luce --11 12 HEARING MASTER FINCH: We just need 13 Ms. Corbett to sign in. 14 MR. LUCE: -- on behalf of the Applicant 15 Balm Grove, LLC, a wholly-owned subsidiary 16 of Eisenhower Property Group. I'd like to walk you through some 17 18 of the criteria that are in the Land 19 Development Code and how we comply with each 20 one of these criteria, as well as give a 21 little overview of the request, which is for 22 2.5 million cubic yards of export off the 23 property as part of the Special Use land 24 excavation. 25 The duration is five years.

just so you know, the time period is shorter 1 than normally you would see on your typical 3 excavation requests, which are 10 years. And oftentimes you'll see extensions for 4 those. Excavations will come in for more time five years at a time. You can get land 6 excavations that last for 20 years. Just so happens coincidentally to the OR sort of east and south is a former 9 land excavation site, Shelly Lakes mine, 10 which was excavated roughly 19 million to 20 11 million cubic yards of fill over roughly 12 15-, 20-year time period. That pit has been 13 14 closed and is no longer active. There's a criteria in the Code that 15 talks about not having other land 16 excavations within a certain distance that 17 18 are active. And we're not within an active 19 distance of any other land excavation site. 20 So, again, 2.5 million cubic yards. 21 It's really only meant to address our storm 22 water ponds on our site, because our existing property is zoned PD. And the 23 ponds match the PD site plan locations, and 24 25 so we're excavating the ponds. If not for

the ponds, we wouldn't be asking for the 1 Land Excavation Permit. So, essentially it's an export 3 site, because it's a fairly high site, to dig the ponds. And so normally you would see the in-fill dirt for a lot of sites around the county. In this case, we have export. Because of the geographic and geological condition, we have export on the 9 10 property. So, quickly I'll run through some 11 12 of my slides for graphics. Make sure I get the Elmo going correctly. 13 This is sort of a locational map. 14 Zoomed in a little bit. If you're familiar 15 with this general area, it's about five 16 miles east of U.S. 301, about three and 17 a half miles north of County Road 674. The 18 Balm Road site is the parcel identified as 19 20 Parcel 1. 21 The areas in yellow are all properties that Eisenhower Property Group 22 owns. So essentially -- Strike that. Our 23 ponds are internally located within Parcel 24 25 1.

So from a general sense, our 1 2 surrounding property owner is us. There are some exceptions, and I'll get into those in 3 a minute, and how we are recognizing the 4 distance to residential and church sites and how we're mitigating those distances through fencing, driveway location, and our route off-site. 8 9 Here's a graphic showing the Balm Road Special Use -- If I can get it centered 10 a little bit better. You get the idea where 11 it's located now. Here's the location of 12 13 the ponds. Three ponds on site. If we do the math on each pond, to a depth of roughly 14 15 30 to 60 feet in depth. It comes to 2.5 16 million cubic yards of fill will be exported 17 off the property. 18 HEARING MASTER FINCH: Mr. Luce, you 19 noted that those are in the same, almost the 20 same location as noted on the PD site plan. MR. LUCE: Correct. And let me throw 21 22 that on the Elmo as well. Here is the PD site plan for Balm 23 24 Road. You can see generally the ponds are 25 in the same location as the Special Use Land

Excavation Permit Application. In fact, the 1 ponds conceptually are larger on the PD than 3 they are on the preliminary plat that's actually already submitted. So they match. The point of the graphic, right? I also want to point out that on the Special Use Plan -- It's hard to see, because I can't do this Elmo correctly. But 8 at the north end of the property, sort of 9 the northeast corner, is where the driveway 10 into the land excavation would be located. 11 About 800 feet south of the northeast 12 13 corner. HEARING MASTER FINCH: Can you point to 14 15 that? Right in there. Okay. MR. LUCE: Up here. All right. Sorry. 16 17 Where my finger is. You see the driveway? HEARING MASTER FINCH: I see the arrow, 18 yes. 19 MR. LUCE: Thank you very much. 20 21 a fence required by the Code that surrounds 22 the entire site. It is 30 feet off the right-of-way of the adjacent streets that 23 24 are on the west and sort of the northwest 25 side of the property.

Around the carve-out, these central 1 sort of out parcels, if you will, we have a 50-foot setback for the fence in those 3 locations. 4 And there's a requirement about where we can put our fill dirt while we're in operation moving dirt around from time to time. We find that condition acceptable. 8 9 It's not a problem for us. I'll briefly run through this 10 11 criteria. The Land Development Code has a number of standards about locational land 12 13 excavation sites. They can't be within a thousand feet or within areas of proposed 14 15 wells or existing wells. And we are not. You see the small 16 17 "X," the location of Balm Road, Balm Wimauma Road. That's our location. You can see 18 where the red dots are. Where the wells 19 20 are, we are not located in an area where there are wells. 21 This graphic shows where natural 22 resources are located. Environmental 23 attributes. We're not located in an area 24

where such features are located.

| l | | |
|---|----|--|
| | 1 | This graphic showing strategic |
| | 2 | habitat, conservation areas. We're not |
| | 3 | located in an area of such natural habitats. |
| | 4 | This graphic shows we're not in an |
| | 5 | area of wellhead resource protection areas. |
| | 6 | Another graphic showing wetlands |
| | 7 | and wetland systems. We're not located in |
| | 8 | an area where such wetlands or wetland |
| | 9 | systems are located. |
| | 10 | I will note that on the specific |
| | 11 | property there are agricultural drainage |
| | 12 | ways, which EPC will claim. There are other |
| | 13 | surface waters which are claimed as |
| | 14 | wetlands, but there are other surface |
| | 15 | waters, which EPC has no objections to us |
| | 16 | mitigating. |
| | 17 | This is a Drastic Map which gets at |
| | 18 | the areas susceptible to ground water |
| | 19 | contamination and areas that may be |
| | 20 | susceptible to sinkholes. |
| | 21 | The areas in reddish color are the |
| | 22 | least area in Hillsborough County that would |
| | 23 | be susceptible to sinkholes. So that's not |
| | 24 | an issue either. |
| - | 25 | Here is a graphic of where there |
| | | |

are known sinkholes throughout the county,

and we're not located in an area where there

are existing sinkholes.

I started by showing you how

Eisenhower Property Group is the primary adjacent property owner, but there are a few residences that are located within 500 feet. They are approximately 372 feet away of that northern-most pond to two single-family lots that are on the sort of north side, northwest side, of Balm Wimauma Road.

Our mitigation for that distance is the fence, the roadway itself, our hours of operation, which have been limited.

Usually the Code allows for Monday through Saturday from 7 a.m. to 5 p.m.

We're limiting our hours from 7 a.m. to

4 p.m. Monday through Friday.

To the east side, as you saw in the earlier -- the first graphic I put up, we are the primary property owner to the east, and there are no residences along our east side until you get down to the southeast corner. But that distance to that location is approximately 484 feet. We just barely

1 touch the edge of those residential lots. Again, we'll have a fence along that property boundary. Again, our haul 3 route is from the northeast corner of the site going north up to Balm Road, so it will not impact those folks at all. To the south, the distance to off-site residentially-zoned property is 8 approximately -- You can read that -- 253 9 10 feet. That land to the south is undevelopable, consisting of wetlands and an 11 12 existing pond that's sort of a remnant of the prior Shelly Lakes mining operation. 13 So no residences will ever be located in 14 that location. 15 And to the west, that pond that's 16 in the southwest corner is approximately 381 17 feet away from two off-site residential 18 19 properties. And again mitigation in those 20 locations is because of our fence, the roadway itself, hours of operation, and the 21 22 location of our haul route, our access in 23 and out, and the haul route is to the north. 24 Then finally, the distance to 25 churches is a thousand feet. There are two

churches in proximity of our land excavation
activity. One church in sort of the
southwestern location is about 387 feet to
the west.

Again, the mitigation, as already
presented, is the fence, the road itself,
the location of our entrance/exit, hours of

land excavation activity.

And finally, there's a church in sort of the northern western location, one of those out-parcels, just about 617 feet to our west. Again, the same mitigation, less the road issue.

operation, and frankly the duration of our

But that church is no longer in use. It's been for sale on and off for a number of years. We actually had it under contract at one point, and looking to purchase it again in the future. But again we'll have a fence around it.

There's a condition about stacking of our dirt during operations, all intended to mitigate the distance from that church.

I'll present these graphics to the
Clerk, get a copy for you. I also have a

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1 written submittal that sort of puts in writing my presentation today, which I'll 3 present to the Clerk and you, a copy for the record. 4 With that, I respectfully wish you would support our application. And I'm 6 available if you have and questions. HEARING MASTER FINCH: If you could just 9 go over the haul route, what the proposed 10 haul route is for the excavation. MR. LUCE: The access point is roughly 11 12 as described, about 800 feet south of the northeast corner. 672 is a haul route. 13 14 once it gets to that point, it will have to follow the Hillsborough County truck route 15 16 plan. 17 HEARING MASTER FINCH: So it comes right 18 out of that northern point. 19 MR. LUCE: Right. 20 HEARING MASTER FINCH: And that hits 672. 21 22 MR. LUCE: Right. 23 HEARING MASTER FINCH: All right. 24 Again, you testified that this is -- there's 25 no fill being stored, being retained on

1 site. These are only excavations for the ponds. Is that correct? 3 MR. LUCE: Yeah. But during operations, it's like a timing issue about trucks coming 4 and getting soil. There are certain stacks of dirt that will be from time to time 6 located the property. There's a zoning condition that addresses where those stacks 9 can be located. 10 HEARING MASTER FINCH: All right. Thank you. Those are my only questions. 11 12 MR. LUCE: Okay. Just to follow up, one last comment about the condition about the 13 14 Major Mod requirement, or amendment to the 15 existing zoning, is that I worked for Hillsborough County for 11 years, 16 17 Development Services. As you know, I was a 18 Hearing Master for seven years. We also did research on all known 19 20 land excavations in Hillsborough County. 21 Since records have been kept, we found no 22 evidence at any point in time during my time 23 working for Development Services or as a 24 Hearing Master, or our search of existing 25 land excavation permits, where the Zoning

| 1 | Department attached a condition that |
|----|---|
| 2 | required the underlying PD to be amended to |
| 3 | recognize the land excavation as a use. |
| 4 | I would add to that, that not only |
| 5 | are we not doing a sort of comprehensive |
| 6 | 173-acre excavation of the entire site, |
| 7 | we're only doing excavation of the ponds to |
| 8 | implement residential development. And |
| 9 | because it's an export site, we have to get |
| 10 | a Special Use Land Excavation Permit. |
| 11 | I would acknowledge that the depth |
| 12 | of these ponds may be deeper than we |
| 13 | otherwise would need for a single-family |
| 14 | subdivision. That's the only real |
| 15 | difference between the Planned Development |
| 16 | and the depth of these ponds being slightly |
| 17 | deeper, requires a little bit more export. |
| 18 | I just want that on the record. |
| 19 | There's no evidence in the history of |
| 20 | Hillsborough County that requires an |
| 21 | Applicant to go back to amend the zoning. I |
| 22 | respectfully request that you delete that |
| 23 | condition. |
| 24 | So with that, that concludes my |
| 25 | testimony. |

Page 45 1 HEARING MASTER FINCH: All right. Thank 2 you so much. 3 MR. LUCE: Thank you. HEARING MASTER FINCH: Ms. Corbett, did 4 you have something you wanted to add, to 5 conclude? 6 MS. CORBETT: I do, actually. I would 8 like to ask if I could get some time, due to some of the technical difficulties we had. 9 I'd like to add maybe two minutes to the 10 11 clock. 12 HEARING MASTER FINCH: I have no way to 13 see the time that we have left. Is it 14 possible -- Does that have the time on the 15 front? Can you turn it around so I can see 16 it? Hang on. 17 Speaking of technical issues. 18 see. Can you conclude in two minutes? 19 MS. CORBETT: I will try. 20 HEARING MASTER FINCH: Perfect. 21 you. 22 MS. CORBETT: I just want to call your 23 attention that this condition is actually 24 inconsistent with the Land Development Code, 25 the condition to modify the PD.

1 I'll just quickly call to your attention, and we'll put in the records, 2 specific sections of the Land Development 3 Code that I'm referencing. First, we start with 5.2.1. I get Sideways. It talks about Special it now. Use Permits. And "Special Uses are uses that are generally not appropriate to a zoning district without more stringent 9 10 compliance with development standards." And then you move to Section 6.0 --11 12 If you can adjust that for me -- 6.11, which talks about "Special Uses contained in this 13 14 part shall be considered in accordance with the requirements of 10.02.00," which is the 15 16 LUHO process. Then you move to Section 1154 that 17 refers to land excavation, and there's 18 19 specific location criteria. It says "Where 20 are land excavations permitted? They are 21 permitted in all zoning districts. 22 dry land excavations where there are limitations, land excavations may be 23 considered in all design districts." As 24 25 Mr. Luce just testified, that's the way

Page 47 1 Hillsborough County has historically treated 2 that. By contrast, if you look at the 3 Wireless Communication Tower Special Use section, you'll see that there is a specific 6 requirement that the way the Development Code was modified in 2005 to require a 8 wireless communication tower to be placed in 9 a PD-9 district as a specifically approved use if it's going to be approved through the 10 11 Special Use process. 12 So you can see here that a Land Development Code amendment is required to 13 14 impose such a requirement. And therefore we 15 don't believe that staff has the legal 16 authority to impose such a condition. 17 With that, I'll wrap up my time and 18 save anything else for rebuttal. 19 We're going to put the list of 20 cases that Mr. Luce was referring to, I have 2.1 a spreadsheet of all those cases. 22 HEARING MASTER FINCH: And you're 23 submitting all of that into the record? 24 MS. CORBETT: I am.

Perfect.

HEARING MASTER FINCH:

| 1 | you so much. |
|----|--|
| 2 | We'll go back to Development |
| 3 | Services for a presentation of the staff |
| 4 | report. |
| 5 | MR. HIZNAY: The Applicant has done a |
| 6 | good job of going over a lot of the details. |
| 7 | I'm just going to focus on specificity |
| 8 | compatibility issues and things like that, |
| 9 | that we addressed in the report. |
| 10 | As noted, they do require some |
| 11 | separational requirements from residential |
| 12 | uses in the area, as well as churches. |
| 13 | Those were detailed in the Applicant's |
| 14 | presentation as well as our report. |
| 15 | We'd support the waiver, subject to |
| 16 | the conditions that you find in the report. |
| 17 | Specifically, one of the most one of the |
| 18 | primary things is that the Applicant agreed |
| 19 | to restrict their hours of operation to less |
| 20 | than what is allowed by the Code. |
| 21 | The Code allows hours of operation |
| 22 | 7 a.m. to 6 p.m. Monday through Saturday, |
| 23 | excluding holidays recognized by the county. |
| 24 | The Applicant has agreed and |
| 25 | proposed to restrict the hours from 7 a.m. |

- to 4 p.m. Monday through Friday, excluding county holidays, and with no operations permitted at any time on Saturday and Sunday.
 - Additionally, during the course of the review on this, the Applicant decreased the volume of material that was going to be proposed to be excavated from the site.

The Applicant has also agreed to surround the site with a solid six-foot high wood or PVC fence. The Code requires the site to be fenced, but that could be for security purposes, so that could have been a chain link fence.

The fence is going to be set back from the roadways and from the adjacent properties that are on the same side as Balm Wimauma Road as the subject site.

I would like to point out that in the Applicant's narrative and in the notice it includes a variance to the site, because at the time that the notice was sent, they proposed to put that fence directly on the property line along the roadway, at which point a fence height variance would have

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1 been required. But since they are setting it back from the road right-of-way, then the height 3 of -- a six-foot height is permitted, so no variances to the fence height requirements. I'd also like to point out that they had asked for a waiver. The Code 7 prohibits that once a Special Use Permit is 9 approved for land excavation, that no other 10 permit for other land excavation or land 11 alteration activity can be approved until 12 the operating permit is closed for the land 13 excavation. 14 They asked for a waiver of this so 15 that they can proceed with site development 16 work that's connected to the subdivision 17 that is going to go in here. 18 We didn't object to it, provided 19 that there is a condition in place that says all work on the site, whether it's land 20 21 excavation or for land alteration connected 22 with the site grading and things like that, 23 that they're all subject to the same hours 24 of operation. 25

This was necessary so that -- it

1 would be impossible for our staff to differentiate between activity on the site 3 occurring on a Saturday that was connected with the land excavation or connected with land alteration work. And so they've agreed to that condition, so we don't object to the waiver. In general, this proposed -- also, 9 as far as agency comment, Conservation and 10 Environmental Land Management staff, Natural Resources staff, EPC staff, School District 11 12 staff, Public Works staff, and County Parks and Recreation staff did not object to this 13 14 land excavation. 15 Some of them have some recommended 16 conditions of approval. I would 17 particularly point out that there is a park, Balm Park and Community Center, that's 18 located on the north side of Balm Wimauma 19 20 road across from the subject site, and the 21 Parks and Recreation staff reported no 22 objections to this excavation. 23 The proposed land excavation is

located on a designated truck route, as

required by the LDC, and the site is not

24

1 within a prohibited or restricted area. The excavation pits do not meet 3 required separation from all neighboring residentially-developed properties and two 4 churches; however, the location of the pits which will form ponds are consistent with 6 the location of the ponds shown on the approved PD site plan for the property. 9 Additionally, the Applicant has 10 proposed operational limits that are more 11 restrictive than those allowed by EPC. 12 The excavation driveway will be located the east side of the site to 13 eliminate driveway impact and potential 14 15 uses of churches on Balm Wimauma Road. Material stockpiles will be at 16 least 200 feet from Balm Wimauma Road and 17 18 adjacent residential parcels and the church. 19 The entire site will be enclosed by 20 a six-foot high solid wood or PVC fence 21 which will be set back 30 feet from Balm 22 Wimauma Road and 50 feet from adjacent 23 residence or church parcels between the road and excavation site. 24 25 For these reasons, staff finds the

Page 53

| | 3. |
|----|--|
| 1 | proposed land excavation is compatible with |
| 2 | the surrounding area and approvable, subject |
| 3 | to the recommended conditions. |
| 4 | HEARING MASTER FINCH: Thank you, |
| 5 | Mr. Hiznay. Could you please address the |
| 6 | issue that the Applicant brought up about |
| 7 | their disagreement that the county's |
| 8 | requiring them to amend the PD zoning |
| 9 | conditions to add the use of land |
| 10 | excavation? |
| 11 | MR. HIZNAY: Yes, ma'am. There have |
| 12 | been discussions on this and that |
| 13 | determination was made with the applicants |
| 14 | months and months ago. |
| 15 | If they had disagreed with that |
| 16 | determination, which they did, but there are |
| 17 | avenues for them that they could have chosen |
| 18 | to pursue to address that question. They |
| 19 | did not. |
| 20 | So we're now within the hearing, |
| 21 | and staff has not agreed to |
| 22 | HEARING MASTER FINCH: What is your |
| 23 | professional opinion regarding Mr. Luce's |
| 24 | testimony that the county has never required |
| 25 | a Planned Development to amend a condition |

| 1 | to add a use of land excavation, in his |
|----|---|
| 2 | research? |
| 3 | MR. HIZNAY: Yes, ma'am. I'm not |
| 4 | familiar with his research, so I cannot |
| 5 | address it. |
| 6 | HEARING MASTER FINCH: In your practice |
| 7 | at the county, have you ever had that |
| 8 | instance where the county has required them |
| 9 | to add that land use? |
| 10 | MR. HIZNAY: In my personal experience, |
| 11 | I can't say "yes." But I certainly have not |
| 12 | been involved in review of all planned |
| 13 | developments requesting a land excavation. |
| 14 | HEARING MASTER FINCH: All right. Thank |
| 15 | you so much. |
| 16 | Is there anyone that would like to |
| 17 | speak in favor of this application? Anyone |
| 18 | in support? |
| 19 | Do we have anyone here in the room |
| 20 | in-person that would like to oppose the |
| 21 | application? Anyone in opposition to this |
| 22 | application in the room? |
| 23 | All right. Seeing no one. |
| 24 | I have two people signed up |
| 25 | virtually that would like to speak. We'll |

| | Tage |
|----|--|
| 1 | start with Mr. James Frankland. |
| 2 | MR. Frankland: I'm here. But I would |
| 3 | like to have Buddy Harwell go first, if he |
| 4 | could. Can you hear me? |
| 5 | UNIDENTIFIED MALE VOICE: We can hear |
| 6 | you. |
| 7 | MR. Frankland: Okay. I'd like to have |
| 8 | Buddy Harwell go first and I'll be second. |
| 9 | Is that all right? |
| 10 | UNIDENTIFIED MALE VOICE: Yes. |
| 11 | MR. Frankland: Hello. Fantastic. |
| 12 | Hello. Testing. |
| 13 | UNIDENTIFIED MALE VOICE: We can hear |
| 14 | you. |
| 15 | MR. HARWELL: This is Buddy Harwell, |
| 16 | Balm, Florida. A member of the Balm Civic |
| 17 | Association, and board member. |
| 18 | We ask that you deny this |
| 19 | application on several reasons. With all |
| 20 | the variances that they're asking for, with |
| 21 | the churches and the residents around there, |
| 22 | they stated that one church was closed and |
| 23 | don't see the future of them opening. |
| 24 | But there is a sign out. There's |
| 25 | been a sign out for two months, with the VBS |
| | |

| 1 | School coming in. |
|----|--|
| 2 | You've got to remember that this |
| 3 | generates a lot of dust, noise in the area. |
| 4 | They did reduce the hours of operation, yet |
| 5 | the pumps that pump the water out of the |
| 6 | ponds so they can keep digging run 24/7/365. |
| 7 | Three or four pumps running in the |
| 8 | middle of the night, when it's supposed to |
| 9 | be nice, peaceful and quiet in Balm, that's |
| 10 | all can you hear echoing for miles. Okay. |
| 11 | The other thing I wanted to bring |
| 12 | out, back in February, and as recently as |
| 13 | Friday, I witnessed at least six trucks |
| 14 | coming out of Balm Grove loaded full of dirt |
| 15 | going five miles down the road, dumping that |
| 16 | dirt at South Fork, a location in South |
| 17 | Fork, filling that truck back up, hauling |
| 18 | the dirt back up to Balm Grove. |
| 19 | Just kind of curious, why are we |
| 20 | doing this? Isn't that a waste of money? |
| 21 | What are we exchanging dirt for? Just kind |
| 22 | of curious. |
| 23 | County standards 8.0104F, G and H, |
| 24 | got to pave Shelly Lake Lane and keep 672 |
| 25 | Balm Wimauma clean. |

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| 1 | You also can have an impact on our |
|----|---|
| 2 | wells around here. He stated no wells |
| 3 | within a thousand feet. I disagree with |
| 4 | that, because every piece of property out |
| 5 | here is on a well. |
| 6 | That was actually a farm grove, and |
| 7 | it should have at least one well. I was |
| 8 | told two wells on the property itself. So |
| 9 | has that been taken care of? |
| 10 | We do not need another pit |
| 11 | operating at the same time. They stated |
| 12 | that there was no other dirt pit operating |
| 13 | in the area, which is not true. There's |
| 14 | Razorback Ranch south of Balm Wimauma Road. |
| 15 | The record says within a mile. It's 1.2 |
| 16 | miles away. |
| 17 | And this is personal, because my |
| 18 | mother was hit by a dump truck in her car |
| 19 | about three years ago. She is okay, but |
| 20 | there's too many dump trucks. They're not |
| 21 | paying attention. All they're worried about |
| 22 | is getting the dirt delivered to the next |
| 23 | job. |
| 24 | And stating that the hours are from |
| 25 | 7:00 to 4:00, what are they going to do |

| 1 | about the dump trucks that come and start |
|----|--|
| 2 | idling out there at 5:30, six o'clock in the |
| 3 | morning before the pit opens? |
| 4 | There again, approval of the |
| 5 | variance of a fence. Required separation, |
| 6 | LDC Section 6.11.54. A.2, for the two |
| 7 | churches and the residential property. |
| 8 | And what about the drainage ditch |
| 9 | that's on site that goes from one pond to |
| 10 | the other? I know he did mention that EPC |
| 11 | was going to regulate it. I just wanted to |
| 12 | make sure that you did know about it on the |
| 13 | record. |
| 14 | And you've got to realize I live |
| 15 | next to Shelly Lake that was done. Once |
| 16 | they start digging these things, what |
| 17 | happens when they hit our aquifer, when our |
| 18 | wells start going dry? |
| 19 | Then we have the problem of when |
| 20 | they're done that they hit the aquifer, all |
| 21 | the water vanes down there that fills up the |
| 22 | pond. |
| 23 | Shelly Lake mine Shelly Lake |
| 24 | sits next to them, drains out millions of |
| 25 | gallons of water daily because of all the |

Page 59 aquifers that they hit down there and it 1 floods the surrounding property. This property is higher than Shelly 3 Lakes, so is it going to overflow into Shelly Lakes and make the surrounding property worse, or along the Balm Wimauma Road in the Balm Park? That's all I have to say. 9 you. 10 UNIDENTIFIED MALE VOICE: Would you please give us your name and address for the 11 12 record? UNIDENTIFIED MALE VOICE: Sir, would you 13 14 please give us your name and address for the 15 record? The man who just spoke. MR. HARWELL: We're getting killed by 16 17 these dump trucks. It's been a mess. MR. CLARK: Mr. Frankland, we're going 18 19 to need the name of the person who just 20 spoke. And the address. I believe it was 21 Buddy Harwell. MR. HARWELL: I'm here. Hello. 22 23 MR. CLARK: Mr. Frankland, can you give us your name and your testimony? 24 25 MR. HARWELL: I'll do it again.

| 1 | MR. FRANKLAND: My name is James |
|----|--|
| 2 | Frankland. Address is 15064 Balm Road, |
| 3 | Balm, Florida. |
| 4 | We have been putting up with these |
| 5 | dump trucks since early '80s. Shelly Lake |
| 6 | mine. They used to start lining up at five |
| 7 | o'clock in the morning. Dozens of trucks. |
| 8 | Noise, sand, killing the road out here. |
| 9 | 672 is a road they should use, but |
| 10 | they want to use Balm Wimauma Road. Now |
| 11 | Balm Wimauma Road is killed because of the |
| 12 | big dump trucks. It's going to get worse. |
| 13 | If you do okay this dirt pit out |
| 14 | there, they will only be able to use 672, |
| 15 | not Balm Wimauma Road. Those big piles |
| 16 | they're going to make there, when the wind |
| 17 | blows, that's going to be over everybody's |
| 18 | car. That's going to be all over their |
| 19 | house, their outside furniture, their |
| 20 | barbecue pits, whatever they have, that's |
| 21 | going to go. And that's going to go over |
| 22 | the park also. That's going to go in every |
| 23 | direction. |
| 24 | It's going to be a bigger mess than |
| 25 | you can think. But it's only going to |

| | Page 61 |
|----|--|
| 1 | affect the residents of the Balm area. It's |
| 2 | not going to affect anybody that live around |
| 3 | here. So only the people around here should |
| 4 | have a vote on this. |
| 5 | That's about all I've got to say. |
| 6 | Thank you. |
| 7 | HEARING MASTER FINCH: We will now go to |
| 8 | County staff. Do you have anything you |
| 9 | would like to add? |
| 10 | MR. HIZNAY: No, ma'am. |
| 11 | HEARING MASTER FINCH: The Applicant has |
| 12 | then five minutes for rebuttal. |
| 13 | MR. HARWELL: Thank you. I did not hear |
| 14 | anything from either of the gentlemen that |
| 15 | constitutes substantial competent evidence |
| 16 | for you to consider with respect to the |
| 17 | items they were testifying about. |
| 18 | Our experts are here this morning. |
| 19 | Mr. Henry to deal with transportation |
| 20 | issues, should you have any questions, |
| 21 | additional questions, about the haul route. |
| 22 | There is an analysis in the |
| 23 | application that will guide you on what the |
| 24 | Applicant's done to mitigate those issues. |
| 25 | And testimony regarding other |

| 1 | former mines is not relevant for your |
|----|---|
| 2 | consideration this morning. And I think |
| 3 | you're aware of that. |
| 4 | I did want to touch back on the |
| 5 | Condition 2, because that's really where we |
| 6 | have the most disagreement. |
| 7 | County agencies have all reviewed |
| 8 | this and found that this is approvable, |
| 9 | subject to the conditions, and really the |
| 10 | only disagreement is that Condition 2. |
| 11 | I didn't If I could ask for a |
| 12 | clarification. I didn't get Mr. Hiznay's |
| 13 | testimony on whether or not he had I |
| 14 | didn't understand his answer to your |
| 15 | question. Was he saying "yes," he had |
| 16 | imposed a condition on a previous PD, or |
| 17 | "no," he has not? |
| 18 | HEARING MASTER FINCH: You can ask him |
| 19 | for a clarification. |
| 20 | MR. HIZNAY: No. My response was in my |
| 21 | own personal experience, there wasn't a |
| 22 | condition like that. However, I have not |
| 23 | been involved in every land excavation and |
| 24 | Planned Development or elsewhere. So |
| 25 | circumstances could certainly be different. |

MR. HARWELL: I understand. That's what 1 I thought that you said, but I didn't want to misunderstand. 3 HEARING MASTER FINCH: Fair enough to 4 5 clarify for the record. MR. HARWELL: I think the only other process that we would have had to achieve a resolution on this would have been to ask 8 9 for a zoning interpretation and appeal that to the LUHO. 10 So we're here in front of the body 11 that would be making that decision and 12 13 making that judgment call between whether County staff interpretation of the Land 14 Development Code is correct or whether our 15 16 interpretation of the Land Development Code is correct. 17

I think we submitted sufficient evidence in the record to you today to indicate that our interpretation is in fact correct.

The only explanation that we've gotten in an entire year as to why this condition would be imposed is because of the strict and literal interpretation that the

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Page 64

words "land excavation" do not appear in the approved PD.

But "lake creation" was clearly contemplated on the approved PD. There are three very large and prominent lakes that are located on the site plan, and it's reasonable to assume that it's possible that the amount of fill would exceed 30,000 cubic yards.

I don't think I have ever been involved in a case where the Applicant is proposing subdivision lakes and been asked, "How much volume will you generate from this? And do we need we need to add land excavation as a permitted use on the PD?"

It just simply doesn't happen.

That's not the way it has been done.

Unfortunately, I think this is purely a political issue.

The gentlemen that spoke are very active in the Balm Civic Association, and I think this is just an end-around to try to get this PD, which was controversial at the time, back in front of the Board of County Commissioners to have them opine whether or

| 1 | not this Special Use Permit is allowable in |
|----|--|
| 2 | this PD zoning. I don't think that's |
| 3 | appropriate. |
| 4 | HEARING MASTER FINCH: Before you |
| 5 | conclude, Mr. Clark of the County Attorney's |
| 6 | office, if I could ask you a question. |
| 7 | MR. CLARK: Yes, Madame Hearing Officer. |
| 8 | HEARING MASTER FINCH: Ms. Corbett |
| 9 | raised the issue of the other venue to have |
| 10 | this issue decided would be a zoning |
| 11 | interpretation, which if the county held its |
| 12 | position would be appealed to the Land Use |
| 13 | Hearing Officer. |
| 14 | Is it appropriate from a procedural |
| 15 | or legal standpoint that the Hearing Officer |
| 16 | can opine on this issue of whether it's a |
| 17 | use that should be added to zoning |
| 18 | conditions through this Special Use process? |
| 19 | MR. CLARK: Well, the Hearing Officer |
| 20 | process for the appeal of an administrative |
| 21 | determination, I mean, it's a different |
| 22 | standard of review. It's an appellate |
| 23 | process. |
| 24 | Whereas, in this instance the |
| 25 | Hearing Officer is making the original |

| 1 | the initial determination and this is |
|----|--|
| 2 | potentially appealable to the Appeals Board. |
| 3 | So if this should have gone a |
| 4 | different route, it really should have |
| 5 | already done so prior to this point. |
| 6 | This is actually the first I'm |
| 7 | hearing this issue, so I say at this point I |
| 8 | think you're just reviewing what's in front |
| 9 | of you right now. |
| 10 | HEARING MASTER FINCH: I'm sorry. I'm |
| 11 | having trouble understanding him. The |
| 12 | speaker is pointed at me. I'm getting a |
| 13 | little reverberation, so it's difficult to |
| 14 | hear his enunciation, from my standpoint. I |
| 15 | don't know if you can understand what he's |
| 16 | saying. |
| 17 | MR. CLARK: Can you hear me now? |
| 18 | HEARING MASTER FINCH: Mr. Clark, can |
| 19 | you just simply say whether it's appropriate |
| 20 | or not to decide that issue through this |
| 21 | Special Use process? |
| 22 | MR. CLARK: If it's appropriate for you |
| 23 | to (inaudible). |
| 24 | MR. CLARK: I'm sorry. Can you clarify |
| 25 | what that question is, Madame Hearing |
| | |

| 1 | Officer? |
|----|--|
| 2 | UNIDENTIFIED MALE VOICE: Sir, can you |
| 3 | say that again? |
| 4 | MR. CLARK: I'm trying to clarify, what |
| 5 | is the question again? Because it sounds |
| 6 | like the question is, is it appropriate, |
| 7 | Madame Hearing Officer, for you to |
| 8 | HEARING MASTER FINCH: Do the Planned |
| 9 | Development zoning conditions need to be |
| 10 | amended for land excavation through this |
| 11 | Special Use process? Just "Yes" or "No." |
| 12 | MR. CLARK: Is it appropriate for you |
| 13 | to (inaudible). from staff as to the |
| 14 | nature of that condition. |
| 15 | Likewise, I don't recall a |
| 16 | condition like that being in a Special Use |
| 17 | application previously either. So I would |
| 18 | be curious to know some background. That |
| 19 | hasn't come up for discussion up to this |
| 20 | point. |
| 21 | HEARING MASTER FINCH: Mr. Hiznay, |
| 22 | please correct me if you'd like to add to |
| 23 | this. His answer was that he did not recall |
| 24 | that being a requirement to add to a |
| 25 | condition, but that he had not been involved |

| | 1490 00 |
|----|--|
| 1 | in every Special Use land excavation case. |
| 2 | MR. CLARK: And I don't recall one of |
| 3 | those coming up either. I guess I was just |
| 4 | trying to inquire as to, this is a condition |
| 5 | that's being proposed by staff. Am I |
| 6 | correct? |
| 7 | HEARING MASTER FINCH: (Inaudible) into |
| 8 | the zoning conditions prior to the issuance |
| 9 | of the operating permit. |
| 10 | MR. CLARK: So the question is |
| 11 | essentially that this that an approval by |
| 12 | the Hearing Officer wouldn't become |
| 13 | effective until after a modification to the |
| 14 | PD through the rezoning process? |
| 15 | Can anyone hear me? |
| 16 | HEARING MASTER FINCH: Maybe I missed |
| 17 | it. Did you reply to my question? |
| 18 | MR. CLARK: I'm sorry. I keep |
| 19 | getting (inaudible). What I'm asking is, |
| 20 | it sounds to me like there is a condition |
| 21 | for the Special Use that in order for it to |
| 22 | be effective, it would have to go back to |
| 23 | the Board for a rezoning, through a PD |
| 24 | modification. Is that the effect of the |
| 25 | condition? |
| | |

| 1 | HEARING MASTER FINCH: It's Condition |
|----|--|
| 2 | Number 2 of the Special Use that's proposed |
| 3 | by the staff. |
| 4 | MR. CLARK: Okay. Give me one moment, |
| 5 | please. You're going to have to bear with |
| 6 | me for just a moment. |
| 7 | UNIDENTIFIED MALE VOICE: Can you repeat |
| 8 | that? |
| 9 | MR. CLARK: I'm reviewing the condition. |
| 10 | Please give me a moment. The question that |
| 11 | I was asking is trying to get some |
| 12 | background from staff. |
| 13 | If this is a staff proposed |
| 14 | condition, and we've never put a condition |
| 15 | like this in before, the question I'm asking |
| 16 | is, why is this being put in by staff? |
| 17 | I'm going to look at the condition, |
| 18 | and I'll rule on that, but the question that |
| 19 | I'm asking is, what is the nature of the |
| 20 | condition? What is the reason for the |
| 21 | condition? |
| 22 | MR. HIZNAY: The condition was put in |
| 23 | place because land excavation was |
| 24 | (inaudible) under the condition. |
| 25 | MS. CORBETT: I think the question that |

you asked was whether it's appropriate for 1 2 you to consider the condition. HEARING MASTER FINCH: I did. Whether 3 it's appropriate during this process. 4 MR. CLARK: You're going to have to bear 5 with me. 6 HEARING MASTER FINCH: Do we have 7 Mr. Clark back? MR. CLARK: I'm here. Can you hear me? 9 HEARING MASTER FINCH: I can hear you. 10 MR. CLARK: Okay. I've taken a look at 11 the condition. I appreciate what the 12 13 concern is, but I'm going to defer to the position of staff on this, just based on the 14 15 fact that they put this in there for a 16 reason. I appreciate Mr. Hiznay saying he's 17 not familiar with this having been done 18 19 before, but I'm not sure if this exact circumstance has come up; therefore, I'm not 20 21 going to take a position contrary to 22 staff's. HEARING MASTER FINCH: Is it appropriate 23 24 through this Special Use review for the Land Use Hearing Officer to opine on whether that 25

| 1 | Zoning Condition Number 2 is appropriate or |
|----|--|
| 2 | not? |
| 3 | MR. CLARK: Can you opine as part of |
| 4 | your determination, just like you're |
| 5 | asking, is the Hearing Officer able to opine |
| 6 | on the appropriateness of the condition? |
| 7 | HEARING MASTER FINCH: Yes. Number 2. |
| 8 | Because it relates to the matter of process. |
| 9 | MR. CLARK: Okay. No, I don't have any |
| 10 | concern with the Hearing Officer opining on |
| 11 | something like that. |
| 12 | HEARING MASTER FINCH: Ms. Corbett, did |
| 13 | you have any last words before you close? |
| 14 | MS. CORBETT: I just wanted to point out |
| 15 | two things brought up in the rebuttal. They |
| 16 | talk about some trucks going back and forth. |
| 17 | There is an open Natural Resource Permit |
| 18 | that's active on the site, but you'll see in |
| 19 | the conditions that's required to be closed |
| 20 | out before this land excavation takes place. |
| 21 | HEARING MASTER FINCH: Thank you so |
| 22 | much. |
| 23 | MS. CORBETT: If I could just briefly, I |
| 24 | would like to have Mr. Todd Amadin come up |
| 25 | and provide a brief statement as well |

| 1 | HEARING MASTER FINCH: If we can just |
|----|--|
| 2 | take one minute for that, that would be |
| 3 | terrific. Good morning. |
| 4 | MR. AMADIN: Good morning. Todd Amadin, |
| 5 | 8515 Palm River Road. Brief testimony just |
| 6 | to confirm everything engineering-wise in |
| 7 | Mr. Luce's report, where the location of the |
| 8 | ponds and how it coincides with the PD plan |
| 9 | and the preliminary plat and proposed |
| 10 | construction plans. All those things line |
| 11 | up. |
| 12 | And just in my 25 years of |
| 13 | experience in permitting land excavation |
| 14 | permits and site development permits, I've |
| 15 | never seen a condition like this being |
| 16 | remanded back to rezoning. Thank you. |
| 17 | HEARING MASTER FINCH: Thank you for |
| 18 | your testimony. |
| 19 | All right. With that, we will |
| 20 | close Special Use land Excavation 19-1026 |
| 21 | and go to the next case. |
| 22 | |
| 23 | |
| 24 | |
| 25 | |



8515 Palm River Road, Tampa, FL 33619-4315 | 813-621-7841 | Fax 813-621-6761 | mail@lesc.com | www.lesc.com

January 23, 2020

Ms. Annie Barnes Hillsborough County Development Services 601 East Kennedy Boulevard Tampa, Florida 33602

Re:

THE GROVE AT BALM

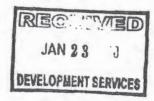
19-1026

SU LE 19-0095 Folio: 77848.0000

Jn:

2190039

Application No. 54 19-1076 Entered at Public Hearing: Exhibit # 2 Date:



Dear Ms. Barnes:

We are in receipt of comments for the above reference project. Enclosed for review is one (1) copy of the revised plan per your comments. In response we offer the following:

As you have been advised, the subject SU LE 19-1026 cannot move forward to a public hearing because the proposed use, a land excavation, is not a permissible use within the zoning district (PD 18-0304). Consequently, a major modification to PD 18-0304 is required to allow for a land excavation before this case can move forward. Notwithstanding, I wish to take this opportunity to send you the below comments regarding SU LE 19-1026:

There is no requirement in the LDC that requires existing approved PDs to be amended to specifically allow for a land excavation land use. Such a position is contrary to the Special Use requirements established in the LDC for obtaining approval of a land excavation land use and contrary to 30 plus years of how the LDC is interpreted; that a land excavation land use, per Sec. 6.11.54.A.1 is allowed in all zoning districts, subject to compliance with the Special Use requirements as established in Sec 6.11.54.

Below are responses to the specific application review comments:

- Per DRPM Section 5.2.1.5, the Excavation plan needs to be at a scale of 1" = 20', 1" = 50', 1" = 100' or 1" = 200'. Please revise plan to show at one of these scales. Plans have been revised to 1" = 200' scale
- The zoning in the site data table in the site plan needs to reflect the current zoning. Zoning in the site data table has been revised accordingly

 Revised narrative received 10/21/19 does address distance separation requirements. Per Sec. 6.11.54.2.d. of the LDC, land excavation must be five hundred feet from any residentially developed or residentially zoned property line. Per Sec. 6.11.54.2.e. of the LDC, land excavation must be one thousand feet from any school, hospital or church property line. It appears the requested land excavation does not to meet these requirements.

There are no schools or hospitals within 1,000 feet of the proposed land excavation.

Except for the property to the south of the subject S.U./Land Excavation site which is zoned PD and is undeveloped (and which the applicant is the owner) the balance of the surrounding properties is zoned Agricultural (with one additional exception noted below). Some of these large lot Agriculturally zoned parcels are residentially developed.

Enclosed is a graphic (Exhibit A) showing 500-foot concentric circles around the proposed land excavation ponds (ponds 100, 200 and 300). These proposed ponds (which align with the proposed subdivision pond locations) are substantially located internal to the Balm Grove S.U. site. The separation requirement to residentially developed property is met to the west and south. There is one residentially developed parcel to the north (folio # 077843.0000) across Balm Wimauma Road which is located approximately 400 feet from Pond 100. The subject S.U. site will have a six-foot opaque fence along the south side of Balm Wimauma Road screening the off-site residentially developed parcel from the temporary land excavation activities. In addition, the truck route will be along CR 672 via Shelley Lane (owned by the applicant) avoiding Balm Wimauma Road and eliminating any truck related activity in the vicinity of these residentially developed lots. The screening proposed, the 400 ft. separation, the intervening roadway and location of the project entrance/truck route all provide for mitigation of the required distance separation and provide adequate justification for a waiver of the separation requirement to residentially developed lots in this location.

There is one residentially developed lot located on the east side of Balm Wimauma Road just north of proposed excavation Pond 200. This parcei (folio # 077850.0000) is under contract and will soon be owned by the applicant. There is one additional lot adjacent to folio # 077850.0000 that is developed residential but is over 10 acres in size and the home on this lot is in excess of 500 feet from the proposed land excavation activity. Otherwise, there are three residentially developed parcels located on the west side of Balm Wimauma Road at a distance of approximately 400 feet from Pond 200. As noted above, a six-foot opaque fence will be provided along Balm Wimauma Road screening the proposed temporary land excavation activity from these homes. Also, as described above, truck activity will be directed away from these residentially developed lots and towards the northeast as the proposed



site entrance will be at the northeast corner and the truck route will be on CR 672 via Shelley Lane. The screening proposed, the 400 ft. separation, the intervening roadway and location of the project entrance/truck route all provide for mitigation of the required distance separation and provide adequate justification for a waiver of the separation requirement in this location.

There is a church site located approximately 618 feet to the west of Pond 100. The property is zoned PD and is approved for a church and church related attached housing. The PD zoning was approved in 1995. The attached housing was never developed. The church is inactive. The property is for sale. The inactive nature of the church, the proposed intervening property line screening and the routing of truck traffic away from the inactive church property all provide for mitigation and justify a waiver of the required separation requirement.

There is a church site located approximately 383 feet from the northwest corner of Pond 200. This church site is located on the west side of Balm Wimauma Road. Pond 200 is the smallest of the three proposed excavation ponds on the property. Otherwise, Ponds 100 and 300 are located in excess of 1,000 feet from the subject church site. The duration of land excavation activities at Pond 200 can be limited. The applicant will commit to a limited duration for land excavation activity at this pond site location. Given these described circumstances, the time limitation commitment provided above, given the proposed intervening screening, roadway and location of the project entrance and haul route away from the church site these mitigating factors provide adequate mitigation and justification for a waiver of the separation requirement at this location for this church.

- It is difficult to distinguish the boundary lines of the land excavation on the site plan. It appears parcel 77850,0000 and 77847,0025 are included in the project boundaries. If these parcels are to also be included, they need to be included in the application.

 The boundary has been revised; the site plans cover one folio (77848)
- Fencing is not shown on site plan. The proposed land excavation will meet all fencing requirements found in LDC Section 6.11.54.A.7.

 The required fencing is shown on the revised site plans
- Land Excavation must have direct access to a road on the current Truck Route, Both
 Balm Wimanma Road and CR 672 are truck routes. Site data denotes that the direct hand
 route will be addressed on a case by case basis, but direct access should be shown.
 Land Excavation truck traffic will be directed to the CR 672 via Shelley Lane.
 Please see the updated site plan showing the project entrance.



19-1026

In addition to the specific review comments and responses provided above, the following additional information is provided:

- CR 672 is a truck route and the proposed Balm Grove land excavation haul route will be
 directed to our proposed entrance near the northeast corner of the site vis Shelley Lane
 (applicant owned private roadway) to CR 672.
- The site is not located within a Wellhead Resource Protection Area.
- The site is not located in a Hillsborough County Surface Water Resource Protection Area.
- The site is not located within an area susceptible to groundwater contamination. The site is located within the "least susceptible" area.
- The site is not located within 1,000 ft. of a Class I or II Landfill.
- The site is not located within a Sinkhole prone area.
- There is one private well on site, which will be capped/abandoned. There is one off-site well that is located approximately 400 feet from the northeast corner of the site and is not within 500 feet of the proposed land excavation activity. Given the distance separation between this off-site well and the proposed land excavation activity the proposed land excavation will have no adverse impact on this off-site well.
- There are no active Land Excavations within 1 mile of the subject site.

If you have any questions regarding this submittal, please feel free to contact me at 813-621-7841.

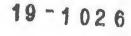
Sincerely,

LANDMARK ENGINEERING & SURVEYING CORPORATION

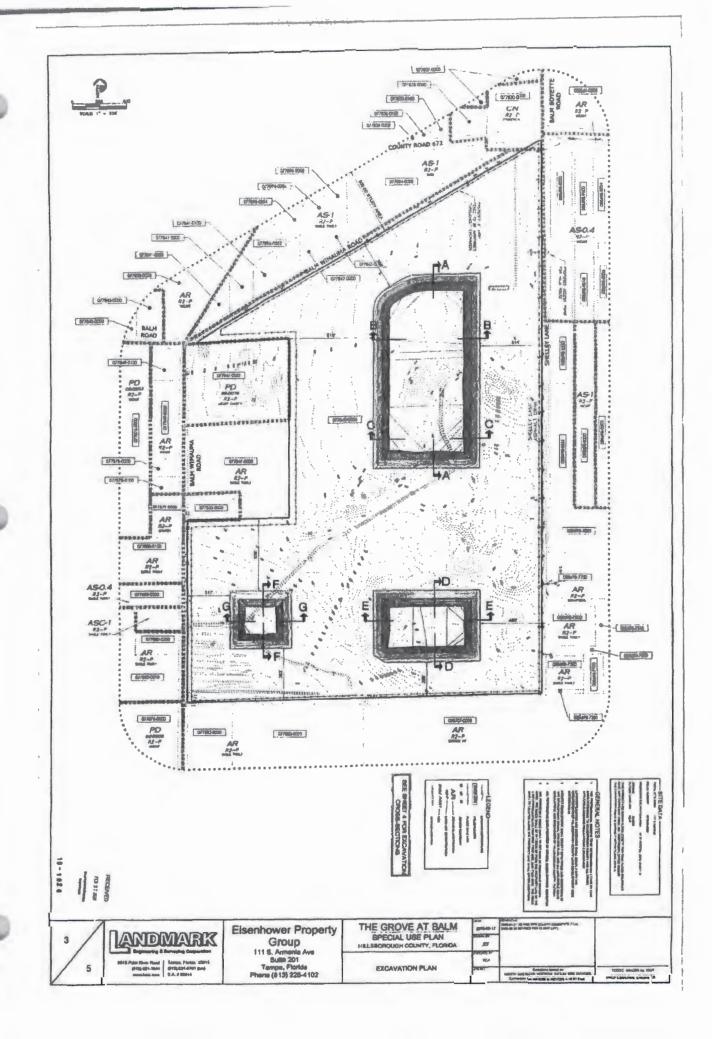
Todd. C. Amaden, P.E.

President

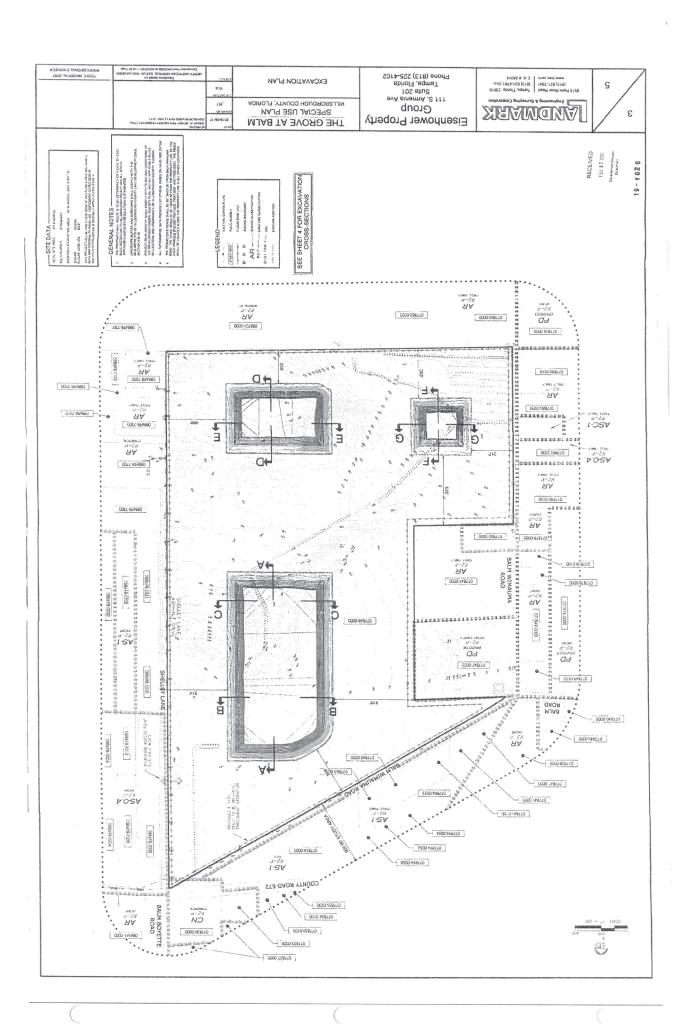
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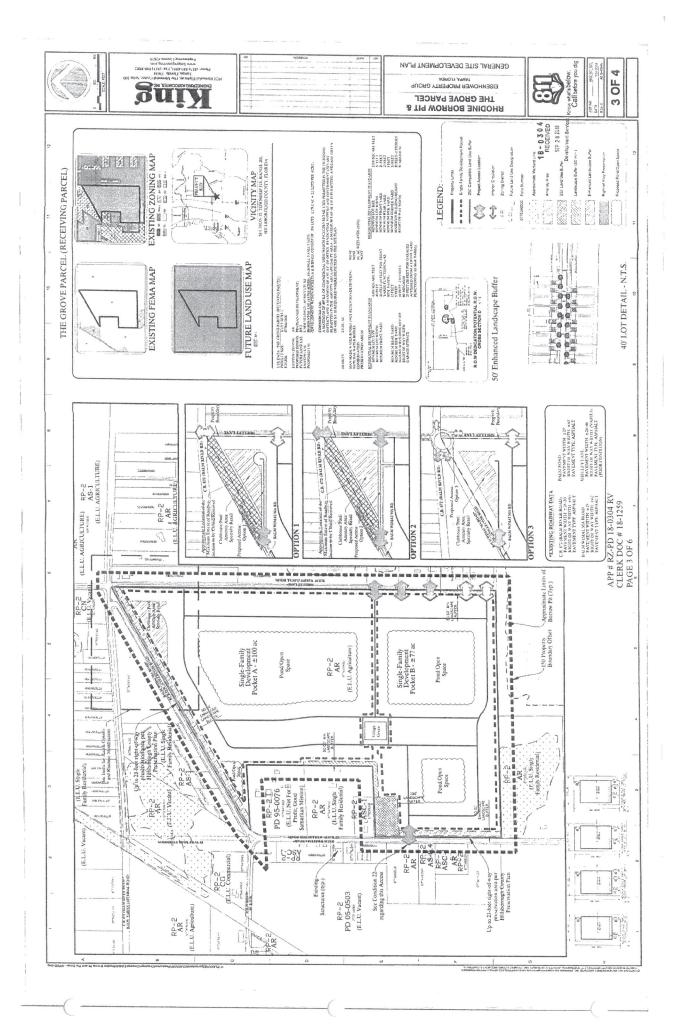


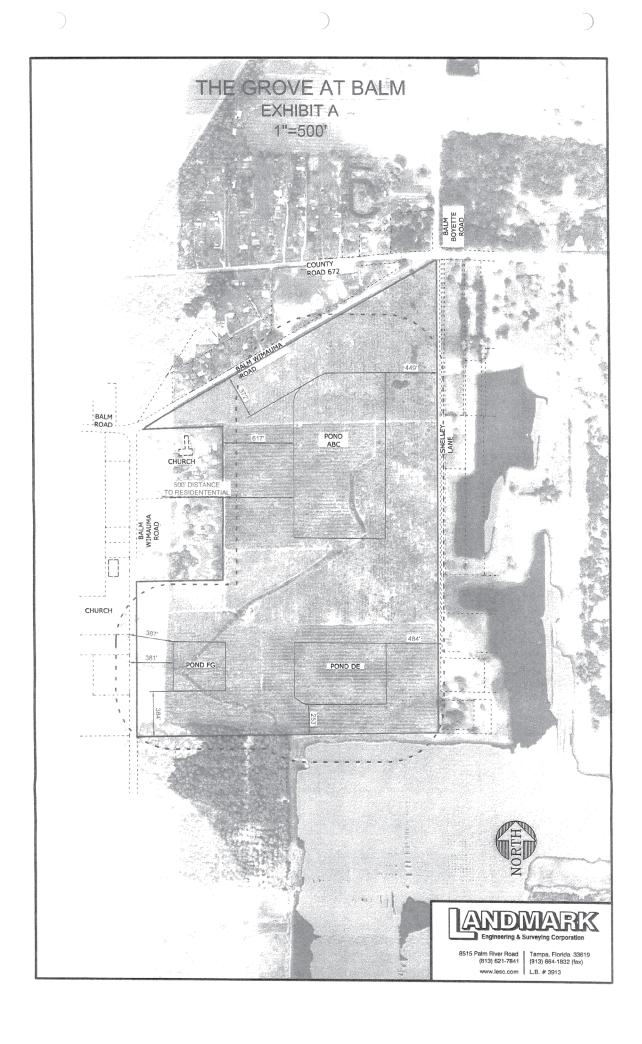


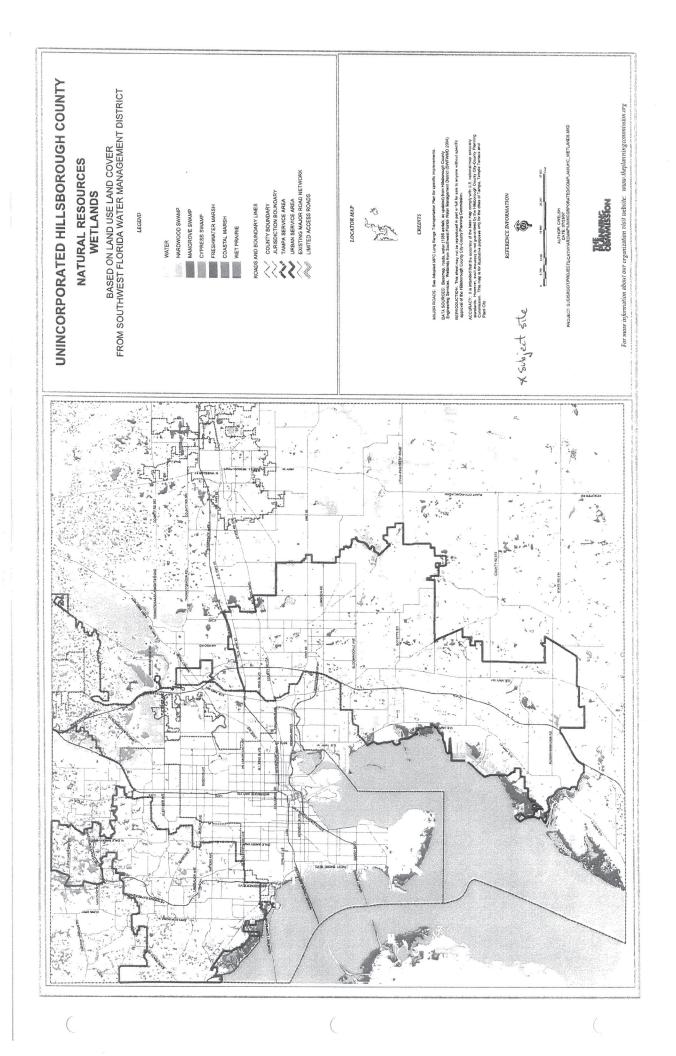


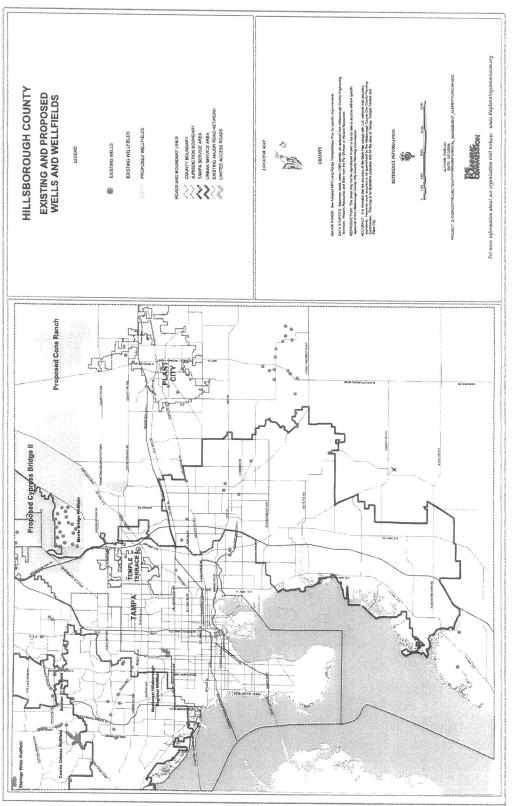
BALM EPG OWNED PARCELS 6/2020 KEY ACRES FOLIO OWNER ACRES KEY FOLIO OWNER 77848.0000 177.6 11 88698.5551 EISENHOWER PROPERTY GROUP LLC 3.7 BALM GROVE LLC 77882.0000 BALM GROVE LLC 12 88698.7800 EISENHOWER PROPERTY GROUP LLC 15.1 13 88698.7700 EISENHOWER PROPERTY GROUP LLC 20.4 14 88698.7510 EISENHOWER PROPERTY GROUP LLC 8.9 7.0 77882.0025 BALM GROVE LLC 77838.0000 EISENHOWER PROPERTY GROUP LLC 77876.0000 EISENHOWER PROPERTY GROUP LLC 155.7 15 88698.7000 EISENHOWER PROPERTY GROUP LLC 77914.0000 EISENHOWER PROPERTY GROUP LLC 9.2 16 88707.0000 EISENHOWER PROPERTY GROUP LLC 88698.9500 EISENHOWER PROPERTY GROUP LLC 2.8 17 88718.0100 EISENHOWER PROPERTY GROUP LLC 75.1 8 88698.9510 EISENHOWER PROPERTY GROUP LLC 1.5 18 88718.0050 EISENHOWER PROPERTY GROUP LLC 9 88698.0200 EISENHOWER PROPERTY GROUP LLC 4.9 19 77970.0000 EISENHOWER PROPERTY GROUP LLC 23.0 10 88698.0000 EISENHOWER PROPERTY GROUP LLC COUNTY ROAD 672 11 12 1 13 14 15 5 3 16 17 19 18 SWEAT LOOP RD N Legend NEGOTIATING_PARCELS EPG_OWNED_6_2020 PARCELS_6_2020 Source: Esn. DigitalGlobe, GeeEve. Farthstar-Geographics, CNES/Airbus DS, USDA AeroGRID, IGN, and the C S User Community 0 1,000 2,000 4,000 6,000 Feet



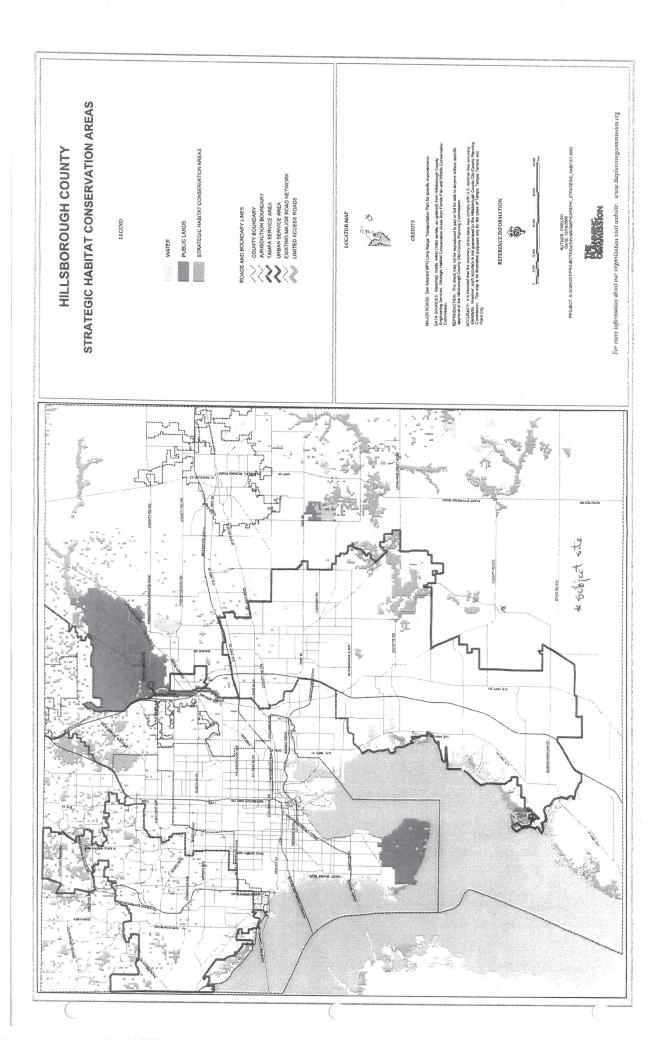


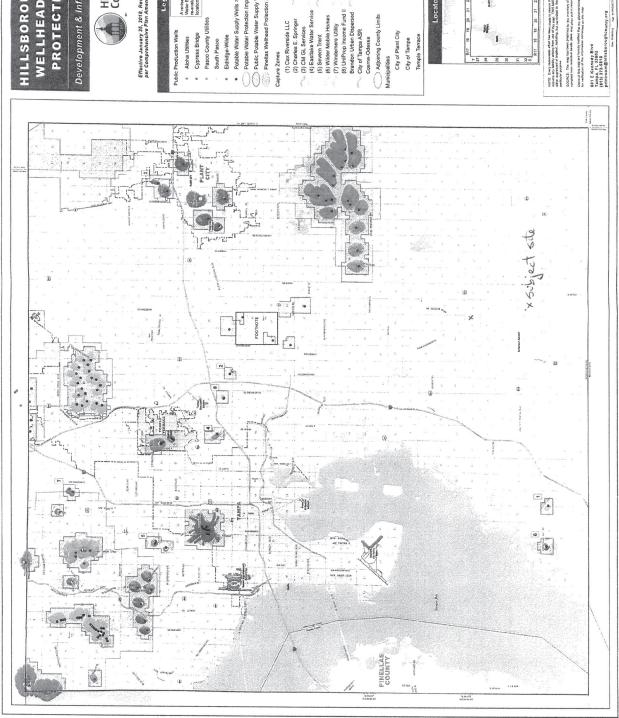






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HILLSBOROUGH COUNTY WELLHEAD RESOURCE PROTECTION AREAS

Development & Infrastructure Services



Hillsborough County Florida

Effective January 26, 2018, Revision Adopted December 14, 2017 per Comprehensive Plan Amendment CPA 17-09A.

Potable Water Supply Wells >= 100,000 gpd

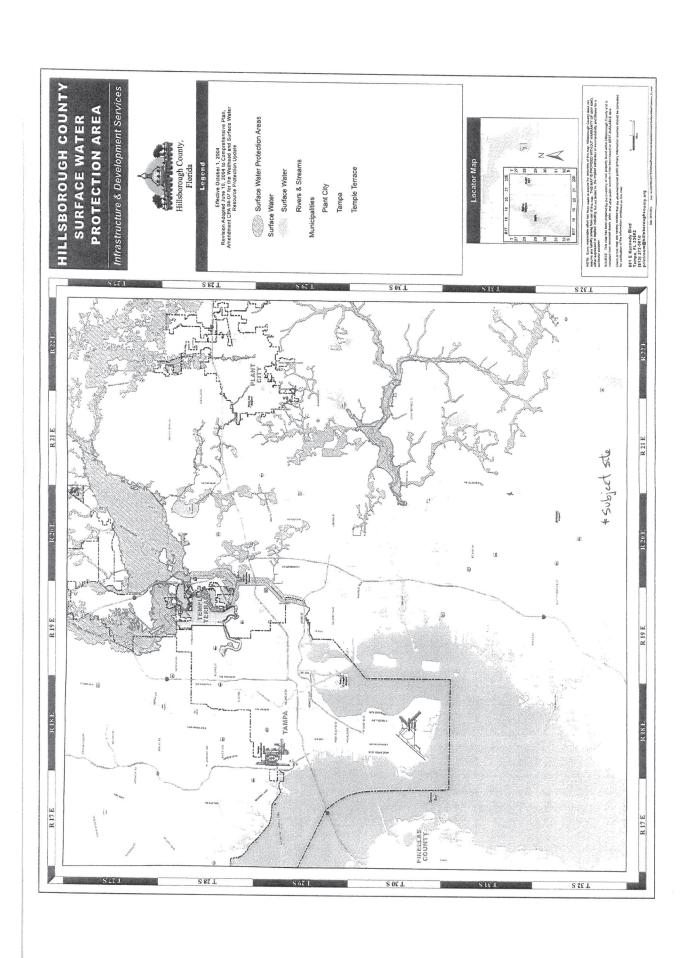
Potable Water Protection Impact Zone - Zone 1

Public Potable Water Supply Well Protection Zo.

Cypress Bridge
Eldridge-Wilde
Morris Bridge
Northwest Hillsbo
Part City
Section 21
South Central Hill
South Passoo
Temple Terrace

Adjoining County Limits





UNINCORPORATED HILLSBOROUGH COUNTY

AREAS SUSCEPTIBLE TO GROUNDWATER CONTAMINATION



DRASTIC AQUIFER INDEX RANGE

ROADS AND BOUNDARY LINES 80 - 99 120 - 139 140 - 159 160 - 179 180 - 199 200 - 226

COUNTY BOUNDARY

LINESDICTION BOUNDARY

THAP, SERVICE AREA

WERN SERVICE AND NETWORK

ENSTRE MADER ROAD NETWORK

LIMITED ACCESS ROADS

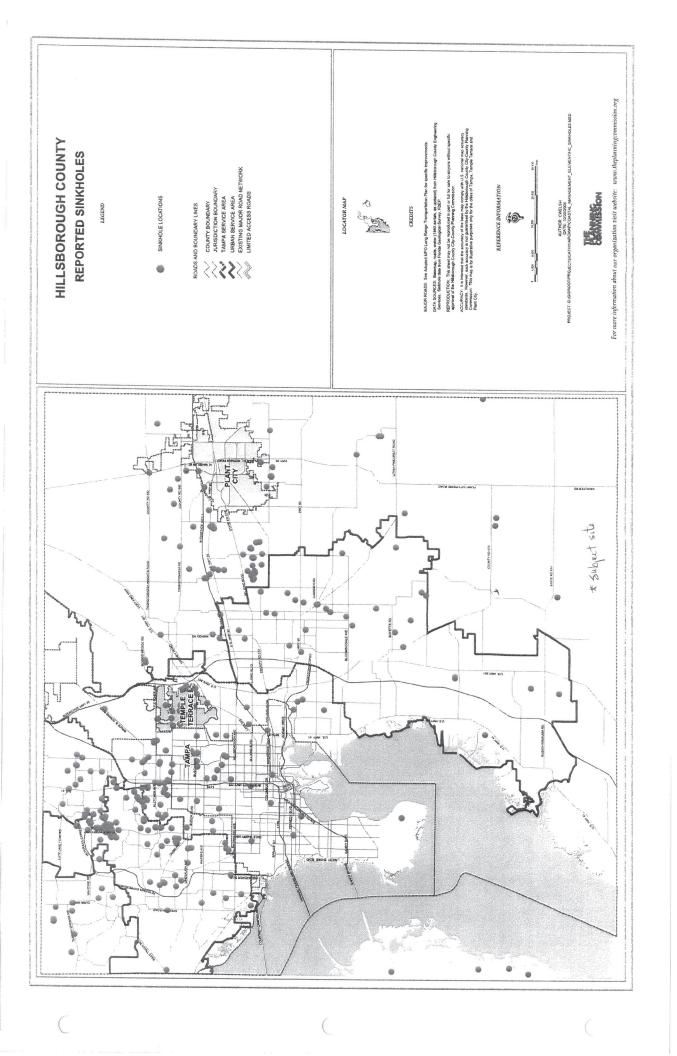
CREDITS

ACCUBACY: It is funned that the accuracy of the base map comply with U.S. national standards. However, such accuracy is not guaranteed by the Habborogal County City. Commission. This map is for flustrative purposes only for the oties of Tampa. Temple 'Plant City.



AUTHOR: CWELSH DATE: 11/15/2006 HY/ARCMAP/CDASTAL.A

BANNISSION



Application No. 54191026

Name: LANGOPBIT

Entered at Public Hearing: LANGO

Exhibit # 2 Date: 8/3/20

ZONING DISTRICTS

§ 2.02.02

| subject to requirements or l'art 6.11.00. Bissan a l'ite | | Blen | r - Pre | Distriction of the control of the co | - | | | | | | | | | | - | | | | | | | | | | | | | | | | | | |
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| Animal Preduction Unit, Type 1 and 3 | O | Ų | 0 | U | ي | O | O | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Landscaping Contractor's Number | C | O | 0 | ٥ | C | | <u>a</u> | | | | | | | | | - | | | | | | | | <u>n</u> | _ | | | | | | | | |
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| Pug Mills (in Agrecultural Zaning Districts, part of an appreved land encavation site) | O | U | υ | | | | υ | | | | | | | | | - | | | | | | | | | | | | | | | | | |
| Stubles (Private) | C | 0 | 0 | O | o | 0 | Ç | | | | | | - | - | - | - | - | - | | _ | | | | | z | | | | | | | C | 0 |
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| Accemory Dwellings | 0 | C | 0 | O | O | C | | C | O | O | 0 | - | | 0 | C | C | 0 | O | | | | | | | | C | | O | | | | | |
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| Accessory Strectures | C | C | C | C | o | 0 | C | C | 0 | C | C | C | C | C | 0 | CC | 0 | 0 | 0 | O | | O | o | O | o | 0 | O | o | 0 | C | C | 0 | 0 |
| Affordable Housing Develop- | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Dermitories | C | C | O | 0 | 0 | C | | O | 0 | O | 0 | 0 | | Ç | C | Q | O | O | 0 | 0 | | 0 | O | | _ | 0 | O | | | | | | |
| Dwelling, Modular | a. | 0 | ß. | Pa | a, | 0 | | 8. | a. | 0 | 0 | a. | 4 | 4 | 0 | 0 | 0 | 4 | <u>a</u> | 4 | 0. | | | | | 0. | | ۵, | | | | | |
| Develling, Multi-family | | | | | | | | | | | | | | | | a. | 4 | D. | 4 | a. | ۵ | | | | | ۵. | | ۵. | | | | | |
| Dwelling, Single-family conventional | 0. | 0 | 0, | Δ. | ۵. | 0. | | Da . | 2 | ۵. | a. | ۵. | 0. | p. | ۵. | <u>a</u> | R. | <u>a</u> | a. | ۵ | Q ₄ | - | | | | ۵. | | ۵. | | | | | |
| Dwelling, Single-femily manufactured/mebile home | 724 | ۵ | Δ. | Δ, | a. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Dwelling, Two-family (duplex) | | | | | | | | | | | | | | 0 | 0. | ۵ | 0 | B- | 4 | Д | 4 | | | | | Ba . | | ۵ | | | | | |
| Femily Day Care Home | Pr. | ß, | A | p. | 0 | p. | 0. | 0. | ß. | ۵. | 0 | 0. | a. | ۵, | p. | a. | B _n | 4 | 4 | D ₁ | ß4 | Da. | Δ. | D ₀ | | Da . | ۵. | ۵ | | | | | |
| Pretornitios/Sereritaes | - | | | | | | | | | | | | | - | | | a. | d. | 4 | 0. | _ | _ | | | | ۵ | | 4 | | 8 | | | |
| Garage, Yard, Etc. Sales | * | 4 | ٧ | A | A | ٧ | ٧ | 4 | ٧ | ٧ | ٧ | ٧ | ٧ | ٧ | 4 | ٧ | V | / V | V | ٧ | 4 | | | | | < | | < | | | | | |
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| Home Based Business, Residential | 0 | 0 | υ | 0 | 0 | O | C11 | O O | O | O | S | o | υ | O | Q | C | U | 0 | 0 | 0 | 0 | | | | | 0 | | 0 | | | | | |
| Home Swimming Instructions | 0 | C | C | C | 0 | C | O | O | 0 | C | 0 | O | C | C | C | O | C | 0 | 0 | C | C | | | | | С | | O | | | | | |
| Florgital Great Mouse | | d. | 4 | - | - | | | | | | | | | | - | | | - | - | - | - | _ | Д | 0 | | | βu | | | | | | |
| Housing for Older Persons | C | 0 | C | C | C | C | | C | O | C | 0 | C | C | C | C | C | C | 0 | C | C | H | H | | | | 0 | | O | | | | | |
| Life Care Treatment | 605 | 83 | 60 | 60 | 100 | 60) | | 82 | 80 | 10 | 120 | 80 | 8 | 80 | 89 | 88 | 10 | 9 | 83 | 5) | _ | _ | _ | | _ | 00 | 80 | 00 | | | | | |
| Mental Health Care Pacility | c | C | C | C | C | C | | | | | | | | - | | | | - | _ | - | _ | - | | | _ | 0 | O | | | | | | |
| Mobile Home Park | | | | | | | | | | | | | REQUIRES | | PLANNED | | DEVELOPMENT | OPME | | DISTRICT | | APPROVAL | | | | | | | | | | | |
| Model Dwelling Units and Pre- construction Sales Offices | | | | | | | | o | o | Ç | o | 0 | 0 | Q | Ç | C | 0 | 0 | 0 | 0 | | | | | | 0 | | 0 | | | | | |
| Nursing, Convalence and Extended Care Fedilities | 0 | 0 | 3 | o | 0 | C | | | | | | | | | | | | | 0 | 0 | | - | | | | 0 | O | 0 | | | | | |
| Parks Security Mobile Heme | C | C | C | C | C | C | C | C | C | C | C | 0 | C | C | c | C | C | C | C | CCC | 0 | C | C | C | C | 0 | C | C | | | | | |
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| Professional Residential Pacifi- | | | | | | | | | | | | | | | | | | | | | - | | | | | - | | | | | | | |
| Rorovery Home A | co. | 80 | eQ. | 002 | 02 | 83 | - | u2 | co | 52 | 8 | 00 | 60 | 80 | 82 | 00 | 80 | 00 | 80 | 80 | 00 | 80 | | | _ | 80 | 8 | 0 | | | | | |
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| to etabolatels of Article VI. Erytownsh purmans to Section on sensitionments of State & 11 no. River b Problitical | Dien k | Preb | | 10.0 | sion 10.07.00. A e Accessory use, permitrical parvasant to Article VI. N e Pitamethally parmitical parvasant to Bestians G. 11.00. LTN w Consistent and I berrief for a parmitrical parvasant to Article VI. N e Pitamethally parmitical parvasant to Article VII. N e Pitamethally VIII. N e Accessory VIII. N e A | V = V | Deseor | J 1000, | Description | | A STATE OF THE PARTY OF THE PAR | to Art | Icle VI | B E | Mone Cir | NA PER | | | 2 | | 6.11.6 | 2 | 3 = 2 | | T Deep | 2 | new, pe | all little | d with | | The second | a Land | |
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| Recreational Vehicle Park | | | | | | | | | | | | | REGI | TREE | REQUIRES PLANNED DEVELOPMENT DISTRICT APPROVAL | T GEN | EVEL | DENCE | MT DE | TREE | APP | TOVAL | | | | | | | | | | | |
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| Appliance Stores, Small | | | | | | | | | | | | | | | | | - | - | - | - | _ | 0 | A | <u>a</u> | < | | | | | | | | |
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| Automotive Supply Store | | | | | | | | | | | | | | | | | | | - | | - | <u>a</u> | ٩ | A. | < | | | | | | | | |
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| to visualizable of Article VI. Reviewed pursuant to Section 10.02.00. As Attenuanty use, permitted gravement to Article VI. N = Putentially parentiated gravement to Section 8.11.60. CPR s Conditional Unaffic Raview, parentially prior sending review subject to requirements of Pare 6.11.60. Email = Problemized. Section 8.11.60. CPR s Conditional Unaffe Raview, parential without prior sending review subject to requirements of Pare 6.11.60. CPR s Section 8.11.60. CPR s Conditional Unaffe Raview, parential prior sending review subject to requirements of Pare 6.11.60. CPR s Section 8.11.60. CPR s Conditional Unaffe Raview, parential prior sending review subject to requirements of Parential Section 8.11.60. CPR s Conditional Unaffe Raview, parential transfer sending review subject to requirements of Parential Section 8.11.60. CPR s Conditional Unaffe Raview, parential transfer sending review subject to requirements of Parential Section 8.11.60. CPR s Conditional Unaffe Raview, parential Section 8.11.60. CPR s Conditional Unaffe Raview, parential Section 8.11.60. CPR s Conditional Unaffe Raview Section 8.11.60. CPR s Condition 8.11.60. CPR | Dame to | | | | | | | | | | | | | | | | | | Droom. | Salvano 0. | | | | al I la | - 10 | - | permy | tank with | bout p | rior 30 | į | 1 |
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| to standards of Article VI. Revewed pursuant to Section 10.02.00. A - Assessmeny use, permitted pursuant to Article VI. N - Petentially permitted pursuant to Section 4.11.05. CNE - Candidamal Landbo Staview, permitted without prior peaking tweeze | 4 6.11.4 | provent | nat to | Prohibi | 10.02 | .00. A | - Asse | , | Man, pos | anitted. | pursa | of line | Article | M 'N | - Poten | ntielly | 1 | red ber | - | to Bect | on 6.3 | 1,46. C | NE - C | Talle! | U femal | No B | erion, | | The same | ither | parlet 1 | and and | Toring |
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| Sales, Rental and Service of New or Used Commercial Vehicles, Buses and Trucks | R si | | | | | | | | - | | | | | | - | | | | | | | | | | Δ, | 0. | | | | | | | <u>-</u> | Ω, | Δ. |
| Saleo, Rental and Service of New or Used Demostic Velucies, Farm and Gereton Equipment, Private Pleasure Crafts and Hothy Velbi- cies | 1823 | | | | | | | | | | | | | | | | | | | | | | | D ₄ | 4 | Z | | | | | | | | | |
| Seles, Rental and Service of Rec- restional Vehicles | è | | | | | - | - | - | - | | _ | | | | | | - | - | - | | | _ | | Δ, | 0. | Z | | | | | | | | | |
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| Sexually Oriented Businesses | | | | | | | - | - | - | | - | | - | | - | | - | | | - | - | - | 2 | Pe De | P 10 | P. | | | | | | | 2 | Po | Щ |
| Shopping Centurs | | | | | | | - | - | | _ | | | - | - | - | - | H | - | | - | - | - | 4 | On . | Ø, | Ц | | | | | | | | | |
| Sign Palating | | | | | | _ | _ | - | - | - | | _ | _ | | | | _ | _ | - | - | - | _ | | - | O. | 04 | _ | | | | | e, | Δ, | Δ, | _ |
| Small Meter Repetr | - | | | | | | _ | | - | - | | | - | _ | | | | | | | - | - | | Δ. | Q. | De . | | | | | C | υ | 0 | | 000 |
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| Sporting Goods Store | _ | | | | | | | - | | | | | | _ | - | | | _ | | _ | _ | - | A. | E. | ۵ | < | _ | | | | | | | | - |
| Storage Yards for Equipment, Ma- chinery and Supplies for Build- ing and Trades Contractors | 9 2 | | | | | | | | | | | | | | | | | | | | | | | | Ω, | <u>p</u> | | | | | | Δ. | <u>a</u> | 2 | |
| Sepermarks | | | | | | | | | | | | _ | | | | | | _ | _ | - | - | | ۵ | p. | Ь | | | | | _ | | | | | - |
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| Utility Buildings and Caustina | | | | | - | _ | - | - | | - | - | - | - | - | - | _ | - | - | _ | - | - | - | - | H | D. | ۵ | | | | | | | ۵ | 0. | - |
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| the standard of smile by manager and the standard of the stand | A comment | American de la familia de la f | S. St. | 400 | non ma | | | | | A | | 50.00 | | E. | | | | | | | | - | - | - | 318- | - | - | | THE PERSON AND THE PERSON AND DESCRIPTIONS OF PARTY AND PARTY. | | - | | - | |
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| To standards of Article V. I Perform partness to Section 10,722.00. A = Accessory one, permitted partness to Article V.I. N = Periodized partness to Section 4.11.65. CNR = Conditional Unifice Review, permitted without prior sound review subject to requirements of Part 6.11.00. Shank = Prehibited. | d pur | Probi | bicarl. | JO. | 02.00 | 4 - V | 00000 | 1 | | | OLIO | | | | | | | I | Contra | 9 | 1 | 11.65 | | | | Com/I | le Revi | er, pa | Traicted | witho | 1 | ALL I | June 1 | |
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| Land Excavation (Lake Creation, Lake Clearing and Stockpile Re- moval) | et) | OC C | 90 | 9/3 | 80 | 00 | 40 | CEQ. | 40 | 60 | 80 | 40 | e2 | 80 | 60 | 60 | 80 | 602 | 60 | 60 | 60) | 60 | 80 | 60 | 00 | 66 | 60 | 80 | ec | ec: | 80 | es, | 40 | GD GD |
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| Large-Scale Printing Plants | | | | | | | | | | | | | | | | | | | | | | | | | ۵ | 0 | | | | | - | 0 | g_ | 0. |
| Lumberyards | | | | | | | | | | | | | | | | | | | | | | | | | | ۵ | | | | | | | | |
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| Minor Industry | | | | | | | | | | | | | | | | | | | | | | | | | Ç | C | | | | | | C | c | O |
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| Power Plants | | | | | | | | | | | | | | | | | | | | | | | | | | ۵ | | | | | | | | |
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| Production | | | | | | | | | | | | | | | | | | | | | | | | | | D ₄ | | | | | | | - | |
| Railroad Switching and Chassift- cations Yard | | | | | | | | | | | | | | | | | | | | | | | | | | p ₄ | | | | | | | | |
| Stanghterhouse and Animal Pro- | | | | | | | | | | | | | | | | | | | | | | | | | | o | | | | | | | | |
| Trucking and Truck Terminal | | | - | - | | | | | | | | | | | | | | | | | | | | | Δ, | ۵ | | | | | | 0 | e. | p. |
| Warehousing, With or Without Distribution Center | | | | | | | | | | | | | | | | | | | | | | | | | 4 | 0. | | | | | | p. | а. | ۵ |
| Wholesale Distribution (Trade) | | | | | | | | | | | | | | | | | | | | | | | | 4 | 4 | ۵ | | | | | | Q, | d. | 0 |
| Vehicle Auction—Wholeade | | - | H | H | H | | | | | | | | | | | | | | | | | | | | 0 | O | | | | | | H | H | |
| Office and Professional Services | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | - | | |
| Animal Hospita/Weterlaney Clinic, General and Small, With or Without Accessory Crematori- ums | U | o | Ü | U | o | O | | | | | | | | | | | | | | | o | | 0 | o | O | | | | | | | | O | 0 |
| Barber, Beauty Shop | | | | | | | | | | | | | | | | | | | | | 4 | 4 | ß, | ۵ | ۵. | | 4 | 4 | | | | | | |
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| Diagnostic Costers, which Pre- vide Radiology, Medical Screen- ing and Testing Services | | - | - | | - | 5 | 1 | | , | | | | 2 | | | | | 2 | | | D ₄ | 4 | 0. | 2 | a. | p. | G. | 4 | | | | | | |
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| Preentanding Emergency Roam | | | | | | | | | | | L | | | | | | | | | | O | | o | ۵ | ۵ | 4 | ۵ | d | | | | | D | C |
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| Medical and Dontal Laboratory | | | | | | | | | | | | | | | | | | | | | | | | ۵ | a. | | d | O. | | | | | ۵. | 0. |
| Medical Offices or Clinics with Schoduled or Energency Services by Physicians | | | | | | | | | | | | | | | | | | | | | 0. | | ۵. | Δ. | 0 | 0. | ۵ | <u>a</u> | | | | | ۵. | ρ. |
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| Professional Services | | | | | | | | | | L | L | | | | | | | | | | ß. | fis. | Д | ۵ | ۵ | ß. | D _e | p. | | | | В | 4 | D ₄ |
| Rehabilitation Center | | | | | | | | | | | | | | | | | | | | | | | | 0 | 0 | | D ₄ | - | | | | | | |
| Outdoor, Passive and Berre- | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cemeteries (either Runso or Pet) With or Without Mannaleums or Account Crossonelums | O | O | υ | υ | υ | O | U | O | O | | | | | | | | | | | | | | | U | U | | | | | | | | | |
| Game Preserve | Ы | Q. | p. | ۵ | 4 | a. | i. | | | | | | | | | | | | | | | | | <u>a</u> | Q. | | | | | | | | | |
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| Camivals/Circuscs | | | | | | | | | | | | | | | | | | | | | | | | 60) | C | C | | | | | | | | |
| Drive-In Theatons | | | | | | | | | | | | | | | | | | | | | | | | O | c | ٥ | | | | | | | | |
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| Public Parks & Romesties Pacil- ities | p. | P4 | c | 0. | <u>c</u> | D ₄ | p ₄ | ρ. | _ | Pr. | p ₄ | ρ., | Pr. | ß. | Pa . | p. | Д | ۵. | p. | 0 | ۵ | 0 | - | p. | ۵. | <u>C</u> | - | ρ. | <u>o</u> | <u>c</u> | <u>c</u> | <u>a</u> | p. | ρ., |
| Private Stateboard Ramps | D | O | C | O | D | 0 | | 0 | O | O | O | O | O | D | C | C | O | 0 | 0 | 0 | | | | | | | | | | | | | П | |

| · D - Permitted, C - Comditions | neal Con | A, perry | | 10 | at to e | A = A | rule of | Article | N. V. | 1 | C bear | t to Arr | Dela V | N- N | ted purvenant to standards of Articlo VI (no public hearing required values especified in applicable section) and the presentance of Bestion 10,01.00. a "Special Use, partners produce bearing required values and experience price and a produce produce of the Section 0.11.00. A s. Accessary case, permitted viltones prior social review subject. | I in a | The Line | parent. | 3 | Section | 6.11.6 | S. C. | - Con | dition, | U. U. | Spenie No Rev | es, p | Table of | d with | I I | P souin | red as | 900 |
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| Recreational Uses, Gaseral In- door/Outdoor | | | | | | | | | | | | | | | | | - | - | - | - | _ | D ₄ | D. | 0. | ρ. | | | | | | | - | |
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| Recressional Uses, Private Com- munity | 2 | p. | 6. | <u>c</u> | 4 | g, | 2 | 0. | E. | ۵. | 0. | 2 | 0. | g. | p. | <u>a</u> | 2 | 0 | 2 | 0 | P. | 0. | p. | 0. | Ω. | 0. | Q. | 0. | ۵. | 0. | 0. | 0. | ۵. |
| Recreational Use, Passive | d | p. | Ba . | p. | a. | - | ß, | 4 | - | 2. | B. | L. | a. | p. | G. | - | e. | Δ, | 2 | D. | Q. | 2 | 2 | 2 | 2 | ۵ | 2 | 0 | 0 | C. | ۵ | 0, | 0. |
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| Ambalance Services | P. | ۵ | p. | 4 | a. | ۵. | ۵ | р., | ٩ | 2 | ß, | 4 | Q. | g. | ß. | a | 2 | Ba . | g, | <u>a</u> | d | A. | p. | d, | <u>a</u> | ß. | Д | Ь | | d. | Ь | d | d |
| Communication Pacifities, Wire- loss ⁶ | 2 | ్టి | 63 | ా | at) | 00 | 2 | co | un | 92 | 100 | 00 | 60 | 100 | 95 | 62 | 80 | 93 | 00 | ౌర | င်ဒ | సి | ч | ъ | C _g | 60 | GD | 120 | | | | | |
| Connesunication Pacifities, Wire- less on Schools ⁶ | Ø | 60 | 100 | 00 | co. | (d) | 60 | Ø | Ø | co | 00 | v) | GD | 80 | 10 | 40 | 89 | 60 | 60 | 00 | 65 | 60) | 00) | 60 | 60 | aà | 90 | 9 | | | | | |
| Components of Winterwater Sys- tems | O | U | O | o | O | o | O | 0 | O | O | v | O | U | υ | U | o | 0 | 0 | O | 0 | U | Q | Q | v | Ü | O | Q | O | | 0 | O | 0 | U |
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| Correctional Pacifities, Commu- nity and Major | | | | | | | | | | | | | RUNGH | RESCHERES | PLANNED | CED D | WELC | PACE | T DE | DEVELOPMENT DISTRICT APPROVAL | APPI | TVACE | | | | | | | | | | | |
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Endnotes:

¹Separate Alcohol Beverage Special Use Permit required.

²Permitted only in HI (Heavy Industrial) Comprehensive Plan Category.

³Reviewed and permitted in accordance with the design standards of Article VI at site development/building permit review, unless separation requirement is not met. In such cases, a noticed public hearing is required.

⁴Permitted subject to review according to Public Facility Siting Policy.

⁵Permitted subject to review procedures of Interlocal Agreement with School Board.

⁶In Planned Development (PD) districts approved after October 1, 2005, wireless communication facilities are permitted only if expressly allowed by the conditions of approval, except as otherwise permitted by Sections 6.11.29.A., B.

⁷A special use permit is required if the project does not conform to the requirements of Section 6.11.39 or if the project is located in the suburban or urban land use categories.

⁸Special Use permit reviewed in accordance with the procedures of Section 10.02.00 may be required under certain circumstances as described in Section 6.11.11.

⁹Permitted subject to Section 2.02.06 (Additional Location Restrictions for Sexually Oriented Businesses) and Ordinance 06-25.

¹⁰Permitted without Special Use review subject to the requirements of Section 6.11.117 provided the support tower for the WECS does not exceed 10 feet in height as measured from point of installation at grade or, when applicable, point of installation on rooftop.

¹¹Subject to the residence determined legally nonconforming.

¹²Restricted to entertainment/sporting facilities as defined by this Code. All other regional recreational uses prohibited.

 13 Permitted subject to compliance with Section 6.11.03. and Section 6.11.127. (Ord. No. 97-18, § 2, 12-18-97; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 02-22, § 2, 11-13-02; Ord. No. 03-9, § 2, 6-5-03; Ord. No. 03-36, § 2, 11-12-03; Ord. No. 04-27, § 2, 6-10-04; Ord. No. 04-30, § 2, 6-10-04; Ord. No. 04-46, § 2, 11-4-04; Ord. No. 05-10, § 2, 6-16-05, eff. 10-1-05; Ord. No. 05-22, § 2, 11-17-05; Ord. No. 06-24, § 2, 6-24-06; Ord. No. 06-34, § 2(Exh. A), 11-2-06; Ord. No. 07-18, § 2, 7-19-07, eff. 10-1-07; Ord. No. 07-20, § 2, 8-7-07, eff. 10-1-07; Ord. No. 07-25, § 2, 11-1-07, eff. 2-1-08; Ord. No. 08-15, § 2, 6-12-08, eff. 10-1-08; Ord. No. 08-29, § 2, eff. 2-1-09; Ord. No. 09-52, 6-11-09, eff. 6-18-09; Ord. No. 09-53, Items C, K, L, M, N, 6-11-09, eff. 10-1-09; Ord. No. 09-62, Items E, L—N, Q, 10-26-09, eff. 2-1-2010; Ord. No. 10-9, § 2, Item C(10-0172), Item F(10-0175), Item J(10-0177), 5-27-10, eff. 10-1-10; Ord. No. 10-26, § 2, Exh. A(10-0754), (10-0755), eff. 2-11-11; Ord. No. 11-19, § 2(Item V-A)(11-0236), 11-3-11, eff. 2-1-12; Ord. No. 12-9, § 2(Exh. A), 5-24-12, eff. 10-1-12; Ord. No. 12-25, § 2(Exh. A), (14-0062), 2-27-14; Ord. No. 17-7, § 2(Exh. A), 3-7-17, eff. 3-13-17; Ord. No. 17-28, § 2(Exh. A), 10-19-17, eff. 10-26-17)

Sec. 5.2.1 - SPECIAL USE PERMIT

A. General Description

Special uses are certain uses that would not be generally appropriate to a zoning district without compliance to more stringent development standards or conditions. The list of special uses within this section include those special uses described in Section 6.11.00 of the LDC.

B. Cross Reference to Land Development Code

Section 2.02.02 Table of Allowable Uses in Zoning Districts

Section 2.03.00, Special Use Permit

C. Special Use Submittal Requirements

Unless otherwise required in supplemental submittal requirements for certain types of special uses, the following submittal requirements shall apply to all Special Use Permit applications.

- 1. Fee Payment referenced in Section 2.0 of the Development Review Procedures Manual.
- Application referenced in Section 3.0 of the Development Review Procedures Manual.
- Public Notice provide public notice in accordance with requirements of Section 10.02.02.D of the LDC and procedures of Section 12.00 of the Development Review Procedures Manual.
- Code Compliance / Project Description Statement unless otherwise required by the Administrator, a statement including the following shall be provided:
 - description of how the proposal will comply with specific standards in the LDC. If the project
 does not comply with specific standards of the LDC, then a detailed statement shall be
 submitted addressing proposed "Variations from Regulations" in accordance with criteria
 referenced in Section 11.04.02.D, of the LDC shall be provided.
 - · detailed description of proposal.
 - · describe any issues related to existing zoning violations (attach copy of citation).
- 5. Conceptual Site Plan— Seven (7) full size (24-inch × 36-inch) folded copies and one 8½-inch × 11-inch reduced copy shall be provided with the application, and with resubmittals for revision, if necessary. The site plan shall be drawn to a sufficient and commonly used scale to show all of the information required to review the site plan. Additionally, one digital copy of the site plan in PDF format on compact disk (CD), USB flash drive or similar medium must be submitted.
 - a. Specific Information to the extent possible, the site plan shall include information (graphic and/or data) to demonstrate compliance with applicable sections of the LDC: Special Use Section 10.02.00 and/or Conditional Use Section 6.11.00 standards of the LDC.
 - General Information Unless otherwise determined by the Administrator, site plans should include the following information:

Title Block with the following:

- title of the project,
- · names of the project planner(s) and developer(s),
- · date,
- · north arrow,
- · address of site, and
- · scale.

Location of the (existing and proposed) site features as follows:

- · project boundaries,
- roads, drives, access easements of subject and adjacent sites (indicate name and functional classification of road),
- existing and approximate location of proposed points of ingress and egress,
- · existing and approximate location of proposed structures,
- · fences,
- · approximate location of water courses,
- approximate location of environmentally sensitive areas (wetlands, habitat areas, conservation or preservation areas),
- · easements.
- · existing or proposed slabs, etc.,
- · approximate location of off-street parking and off-street loading areas,
- · proposed screening and buffer areas,
- · existing trees,
- indicate land uses adjacent to project boundaries and across roads from project boundaries,
- · approximate size and location of stormwater pond areas, and
- if mixed use is proposed, delineate area dedicated to proposed and existing uses on subject property folio.

Site Data as follows:

- · proposed utilities,
- · structure height,
- · Comprehensive Plan category,
- · zoning,
- · existing uses,
- · percentage of ground coverage by structures,
- · percentage of open space,
- approximate percentage of site which is environmentally sensitive (wetlands, habitat, conservation or preservation),
- numbers of off-street parking and off-street loading spaces (indicate handicap parking),
- · total project density (dwelling units per acre) and/or intensity (floor area ratio).
- General Location Map included on site plan or attached separately, showing general location of the site relative to the county as a whole.
- 7. Current Aerial Photographs one (1) copy which include subject site, site shall be outlined.
- Legal Description typed on separate page.
- Deed copy of recorded deed.

(Res. No. R05-289, § 1(Item #10), 12-13-05, eff. 1-1-06; Res. No. R08-181, Items A, J, 12-9-08, eff. 1-1-09; Res. No. R13-072, § 1(Exh. A), 5-7-13)

Sec. 6.11.01. - Generally

- A. Conditional uses contained in this Part have been determined to require additional design standards to ensure compatibility with adjacent uses and the surrounding neighborhood. The standards described for each use below shall supplement and be in addition to the standards and criteria otherwise required within this Code. Unless otherwise required herein, compliance with these supplemental standards shall be determined during development review and shall not require any additional procedural steps or review processes.
- B. Special uses contained in this Part shall be considered and approved, approved with conditions, or denied in accordance with the requirements of 10.02.00 for the issuance of development orders. Changes to previously approved Special Uses contained in this part shall be considered and approved, approved with conditions or denied in accordance with the requirements of 10.02.00. The special uses contained in this Part may only be permitted upon demonstration of compliance with all of the requirements of this Part and the requirements of Section 5.0 or, when applicable, Section 4.0 of the Development Review Procedures Manual.
- C. To determine if a use contained in this Part is a conditional or special use, refer to Table 2.02.02. Notwithstanding the provisions of Section 6.11.01.A. above, certain uses identified as conditional uses in Table 2.02.02 require, due to location circumstances, review in accordance with Section 6.11.01.B. above. The regulations provided in this Part identify those conditional uses and the circumstances resulting in the requirement for review in accordance with 6.11.01.B.

(Ord. No. 01-26, § 2, 9-12-01; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 09-62, Item J, 10-26-09, eff. 2-1-2010)

Sec. 6.11.54. - Land Excavation

The purpose of these regulations is to protect the public health, safety and welfare and community character from the adverse impacts generated by land excavations, such as but not limited to noise, dust, vibrations, water table drawdown and truck traffic, through the establishment of regulations for the location and operation of land excavations. It is intended these regulations be utilized in concert with the land excavation operating standards found in Part 8.01.00 of this Code. However, approval of a Special Use Land Excavation Permit shall not guarantee that an Operating Permit will be approved.

It is further intended that where these regulations make special provisions for land excavations for the purpose of agricultural irrigation that are authorized by the Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP), those provisions shall cease to be in effect in the event that SWFWMD or FDEP no longer issues such authorizations and the excavations shall comply with all standard requirements of this Section and Section 6.11.117.

A. Locational Criteria

- 1. Where Allowed for Consideration
 - Lake creations, lake cleaning and stockpile removal may be considered in all zoning districts.
 - b. "Dry" land excavations may be considered only in the following districts:
 - (1) AM, A, AR, A-I, BPO, CN, CG, CI, M, SPI-UC-2, SPI-AP-1, SPI-AP-2, SPI-AP-3, SPI-AP-4, SPI-AP-5 and SPI-AP-V.
 - Agricultural reservoirs permitted in accordance with Section 6.11.117 of this Code may be considered in all agricultural zoning districts.

2. Required Separations

All excavated areas, with the exception of perimeter ditches and recharge ditches, shall meet the following separation requirements. All separations shall be measured in a straight line along the shortest distance from the edge of the excavated areas to the applicable right-of-way lines, boundary lines, property lines and conservation/preservation area lines, irrespective of any intervening properties and natural or man-made features.

- a. Twenty-five feet from any right-of-way line of a publicly owned road or street, except for "dry" land excavations which shall be 150 feet from any publicly-owned local road or street and 200 feet from any right-of-way line of a publicly-owned arterial or collector.
- Twenty-five feet from the boundary line of any publicly owned drainage or utility easement.
- c. Twenty-five feet from any non-residential property line, including agricultural use.
- d. Five hundred feet from any residentially developed or residentially zoned property line.
- e. One thousand feet from any school, hospital or church property line.
- f. Thirty feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site (see definition of Environmentally Sensitive Area). Greater separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area.

3. Access

- a. Land excavations shall be located on sites which:
 - (1) Have direct access to the receiving site of the excavated materials; or,
 - (2) Have direct access to a road shown on the current Truck Route Plan; or,
 - (3) Have direct access to a collector or arterial roadway, as shown on the current Roadway Functional Classification Map in the Hillsborough County Comprehensive Plan, within one mile of a road shown on the current Truck Route Plan as measured from the project driveway; or,
 - (4) Have direct access to a collector or arterial roadway, as shown on the current Roadway Functional Classification Map in the Hillsborough County Comprehensive Plan, meeting Current Hillsborough County or FDOT Roadway Technical Manual standards for that portion of the haul route from the project driveway to the first road shown on the current Truck Route Plan; or,
 - (5) Are within an approved subdivision or site development project under construction; or
 - (6) Are adjacent to a public project such as a new road corridor or storm water utility improvement; or,
 - (7) Are zoned A or AM.

Additionally, site specific analysis must be performed to determine if a proposed land excavation meets all other locational, environmental and compatibility requirements.

4. Mitigation of Impacts

- Conditions pertaining to techniques to mitigate the impacts of offsite hauling on approved haul routes may include, but are not limited to, the following:
 - Restrictions on the route(s) utilized for off-site hauling and the days and/or hours hauling is permitted.

- (2) A method approved by Hillsborough County to document and/or monitor existing physical conditions of the approved haul route, including but not limited to, video recording or pavement structure testing which conform with County specifications. Alternatively, the applicant may post a form of financial security as determined by Hillsborough County.
- (3) Contribution by the applicant to Hillsborough County for up to the full cost of road improvements on the haul route where improvements are needed prior to hauling to accommodate the activity, as determined by the County.
- (4) Contribution by the applicant to Hillsborough County for up to the full cost of road repairs on portions of the haul route damaged during excavation operations, as determined by the County.
- b. Land excavation operations shall be limited to the hours from 7:00 a.m. to 6:00 p.m. Monday through Saturday, excluding holidays recognized by Hillsborough County. No operations shall be permitted on Sunday. Further restrictions may be imposed on the hours and/or days of operation of any land excavation when necessary to protect the public health, safety and welfare, promote community compatibility or lessen cumulative impacts. Requests to allow operations on days and/or times other than those described above shall be approved only if the applicant can demonstrate the proposed operations schedule is necessary to relieve a unique hardship or practical difficulty, is not for mere convenience or to gain a competitive advantage, and will not adversely affect any adjoining property or the health, safety and welfare of the general public.

5. Where Prohibited

Land Excavations shall be prohibited within the following locations:

- Within 200 feet of abandoned dumpsites or landfills as identified on the Environmental Protection Commission list of closed landfills in Hillsborough County.
- Within 1,000 feet of a wellhead of a public supply production well of 100,000 gallons per day or greater.
- Within environmentally sensitive areas as defined in Article IV, except as permitted in 4.01.03.D.1.
- Within a Wellhead Resource Protection Area, Zone 2, as shown on the Hillsborough County Wellhead Resource Protection Area Map.
- e. Within a Surface Water Resource Protection Area as shown on the Hillsborough County Surface Water Resource Protection Area Map. Notwithstanding, land excavations for the purpose of agriculture irrigation that receive authorization, including permits and exemptions, through the Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP) under Environmental Resource Permit or Water Use Permit rules, may be considered subject to the review provisions of this Section or Section 6.11.117. In such cases, however, deliberations by the County Administrator and/or Land Use Hearing Officer shall not include potential impacts on surface water resources.

6. Where Restricted

Land Excavations shall be restricted within the following locations:

a. Areas susceptible to groundwater contamination with a drastic index of greater than 179 as shown in the Conservation and Aquifer Recharge Element, Future of Hillsborough Comprehensive Plan or within a quarter of a mile from a Class I or Class II landfill. When a land excavation is proposed in such an area, a detailed site specific hydrogeologic study shall be submitted by the applicant showing any potential impact of the excavation on groundwater resources. A proposal for the study shall be submitted to the County for approval prior to conducting the actual study. When the excavation is for an agriculture irrigation reservoir, the applicant shall submit an authorization issued through the Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP) under Environmental Resource Permit or Water Use Permit rules, including permits and exemptions, to fulfill this requirement.

 Areas prone to sinkhole development as shown in the Conservation and Aquifer Recharge Element, Future of Hillsborough Comprehensive Plan.

When a land excavation is proposed in such an area a study evaluating the site specific sinkhole potential and groundwater contamination assessment of the proposed land excavation shall be submitted by the applicant. A proposal for the study shall be submitted to the County for approval prior to conducting the actual study. When the excavation is for an agriculture irrigation reservoir, the applicant shall submit an authorization issued through the Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP) under Environmental Resource Permit or Water Use Permit rules, including permits and exemptions, to fulfill this requirement.

c. Within a Wellhead Resource Protection Area, Zone 1, as shown on the Hillsborough County Wellhead Resource Protection Area Map, excluding areas near public supply production wells as prohibited by Section 6.11.54.5.b above.

When a land excavation is proposed in such a restricted area, a detailed site specific hydrogeologic study shall be submitted by the applicant showing any potential impact of the excavation on groundwater resources. A proposal for the study shall be submitted to the County for approval prior to conducting the actual study.

B. Special Use Permit

1. When Required

Land Excavation Special Use and Operating Permits shall be required for all land excavation activities except for the following:

- Land excavation activities regulated by the Hillsborough County Phosphate Mining Regulations.
- b. Land excavation activities pursuant to an Order of the Board of County Commissioners which Order shall state the reasons why the Land Excavation Regulations will not apply or pursuant to an Order of the Environmental Protection Commission of Hillsborough County.
- c. Land excavation activities pursuant to a Board Order which may be requested by a governmental agency, an applicant under the Order of another governmental agency, or under the Order of a court having jurisdiction in Hillsborough County. The information required for a Special Use Permit and an Operating Permit shall be submitted and the required public notice requirements shall be met unless one or both are waived by the County Administrator when the applicant shows that such waiver will not adversely impact the public health, safety and welfare. A public hearing shall be held to request a Board Order and to request the Board's permission to proceed with such action. The Board may impose conditions upon the activity in order to effectuate the intent of this division.
- Land excavation activities within utility rights-of-way, public rights-of-way or easements necessary to supply electric, gas, water, sanitary or storm sewer,

telephone, or cable television service, provided these activities do not adversely impact an environmentally sensitive area. Land excavation activities exempted under this section shall be regulated under the Natural Resources Regulations. This exemption does not include excavation for the construction of detention basins and/or retention basins which otherwise meet the definition of land excavation.

e. Land excavation activities permitted as a Conditional Use in accordance with Section 6.11.117, Agricultural Reservoirs, of this Code. However, such excavations shall require an Operating Permit.

2. Procedure

An application for a Land Excavation Special Use Permit shall be reviewed pursuant to the Procedures for Issuance of a Development Order at 10.02.00.

3. Factors to be Considered

In addition to all standards found in this section, the following factors shall be considered in the review of a Land Excavation Special Use Permit application:

- a. The compatibility of the proposed land excavation with existing and planned land uses as stipulated in the Future of Hillsborough Comprehensive Plan. In making a determination of compatibility, the following shall be considered:
 - (1) The nature of existing and planned land uses.
 - (2) The size of the proposed land excavation.
 - (3) The effect of increased truck traffic generation on existing and planned land uses.
 - (4) The proximity to residences, schools, hospitals, or churches.
 - (5) The proximity to recreational uses such as parks and playgrounds.
- b. Impact on the roads and bridges located along the proposed haul route.
- Adequacy and compatibility of the reclamation plan relative to environmental resources as well as existing and planned uses.
- d. Cumulative impact of all permitted land excavations within one mile of the proposed land excavation, whether such permits are active, inactive, expired or released. The consideration of cumulative impact shall include, but is not limited to, the total duration of the excavations, total number of truck trips associated with the excavations, concentration of truck trips on roadways and adverse affect on community character.
- e. Whether the haul routes for the removal of land excavation material pass schools, hospitals or houses of worship and whether the increased truck traffic incidental to the land excavation activity will adversely effect the conduct of the institution's activities. In evaluating the effect of the truck traffic, the following shall be considered: the capacity and existing service level of the road(s) designated as the haul route within 500 feet of the boundaries of the institution's property, the hours of operation of the land excavation and of the institution; the estimated volume of truck traffic; and the location of access to the school, hospital or house of worship.

4. Imposition of Reasonable Conditions

Reasonable conditions upon the land excavation operation designed to mitigate the impact of the excavation upon those items listed in Subsection B.3 above may be imposed.

5. Duration of Permit

The land excavation Special Use Permit shall be issued for a period based upon the estimated length of excavation but shall not exceed 10 years from the time of Operating Permit approval.

6. Buffening and Screening Determinations

a. A condition may be imposed on the Permit whereby a buffer area and/or screening shall be provided in those situations where the proposed land excavation is to be located on property contiguous to a boundary of property developed with or zoned for residential uses, or proposed for rezoning for residential use. For purposes of this subsection, "contiguous" shall include parcels that are separated from the excavation site by a road, street, or right-of-way.

If required, the buffer area and/or screening shall be provided in the area lying between the edge of the land excavation facing the described property and the boundary line of the described property. As a prerequisite to imposing such an additional condition, a finding must be made that buffer area and/or screening is required to ensure the compatibility of the land excavation operation with a contiguous property. No activities associated with the land excavation operation shall be allowed in the buffer area unless specifically approved in the Special Use Permit.

- b. The following factors shall be considered in determining the need for a buffer area and/or screening:
 - Buffering and screening requirements for the existing, permitted or proposed residential development of the contiguous property.
 - (2) Density of the existing, permitted or proposed residential uses of the contiguous property.
 - (3) Size of the proposed land excavation and land excavation site in total.
 - (4) Location of the proposed land excavation on the property relative to the existing, permitted or proposed residential development of the contiguous property.
 - (5) Natural and man-made areas such as trees, lakes, ponds, streams, wells, drainageways, wetland areas, roads and other rights-of-way located between the proposed excavation and the existing, permitted or proposed residential development of the contiguous property.

7. Fencing

- a. Unless otherwise authorized by the Land Use Hearing Officer, all land excavations shall be secured with a fence and gate to prevent unauthorized access to the land excavation. All points of access shall be secured when no activity is occurring in the land excavation. In determining whether a fence is required for a land excavation and the type of fence to be required, the Land Use Hearing Officer shall consider the following factors.
 - (1) The location, size, depth and side slope of the land excavation.
 - (2) The nature of the surrounding uses and the Future of Hillsborough Comprehensive Plan for the area.
 - (3) The depth of water, if any, in the land excavation during the period of excavation activity.
 - (4) Natural or man-made features existing on the site.
- The fence and gate shall be maintained throughout the duration of land excavation activities and may be removed after reclamation is completed.
- 8. Other Excavation, Land Alteration Prohibited

Upon approval of the Special Use Permit, no other permits for excavation or land alteration activities shall be approved for the site until the release of financial security for the Operating Permit.

9. Expiration of Special Use Permit

If an Operating Permit has not been issued for any portion of a land excavation within two years of Special Use Permit approval, the Special Use Permit shall expire.

C. Waivers

1. Generally

The requirements of this Part may be waived where literal or strict enforcement of the terms or provisions of this Part would (1) impose upon the applicant an unreasonable, unnecessary or exceptional burden due to irregular shaped parcel of property, unusual topography, or other pertinent conditions, or (2) where the applicant can show that literal or strict enforcement would impose upon the applicant an unusual or practical difficulty and granting the request will not serve as a mere convenience to the applicant, or (3) where the applicant provides affidavits of no objection from adjacent property owners peculiarly affected by a proposed waiver, such as reduced separation between an excavation and neighboring residential properties. However, in no case shall waivers be granted which seriously or adversely affects any adjoining property or the health, safety and welfare of the general public.

2. Decision by Land Use Hearing Officer

The Land Use Hearing Officer, in its review of the Special Use Permit shall make a decision on any waiver request which pertains to the locational criteria or any other requirement of this Section.

3. Factors to be Considered

The following factors shall be considered, as applicable to the particular waiver request:

- a. The location of the land excavation
- b. The size of the land excavation
- c. The depth of the land excavation
- d. The cubic yards of material to be excavated and removed
- e. The side slope requested, if applicable
- f. The nature of the land excavation material to be removed
- g. The nature of existing or developing uses in the surrounding area
- The projected depth of water, if any, in the land excavation at the time of completion of the land excavation activity
- i. Proximity of the land excavation to environmentally sensitive areas
- The existing location, configuration, setbacks and slopes of a previously permitted land excavation.

(Ord. No. 02-13, § 2, 8-1-02; Ord. No. 08-29, § 2, eff. 2-1-09; Ord. No. 11-19, § 2(Item V-B)(11-0604), 11-3-11, eff. 2-1-12)

Sec. 6.11.29. - Communication Facilities, Wireless

- A. Wireless Communication Antennas. To encourage collocation and to minimize the number of Wireless Communication Support Structure(s) (WCSS), Wireless Communication Antenna(s) (WCA) shall be evaluated as an accessory use on or attached to any structure, including existing WCSSs, without additional zoning review.
- B. Wireless facilities that are concealed within a legally permitted structure and are not visible or discernable as a wireless communication facility shall be exempt from the requirements of this Section.
- C. Except as provided above, wireless communication facilities shall be permitted in Planned Development (PD) districts approved after October 1, 2005 only if expressly allowed as a specifically identified use by the conditions of approval. In such cases, the location of the facility, height of the antenna support structure and design and/or camouflage requirements shall be addressed by the PD site plan and conditions.
- D. Wireless Communication Support Structures (WCSS) General Criteria.
 - 1. The WCSS may be located on a zoning lot containing other principal uses. The facility may be located within an area smaller than the minimum lot size of the applicable zoning district provided the zoning lot on which it is located complies with the applicable minimum lot size or, in non-residential and non-agricultural districts, is a legal nonconforming lot. Required yards and setbacks shall be measured from the boundary of the zoning lot. The area within which the WCSS is located (WCSS Area) shall be the area subject to all other the requirements of this section, unless otherwise provided herein.
 - WCSS facilities shall at a minimum, meet the same required yards as those for principal structures in the various districts as set forth in 6.01.01. However, if a greater separation is achieved through a setback, where the zoning lot on which the WCCS is:
 - a. Adjacent to residentially developed property or residentially zoned property that is developable for residential use, the minimum setback from the property line abutting said residential property shall be 100 percent of structure height.

Notwithstanding these requirements, where the applicant can demonstrate, to the satisfaction of the reviewing entity, that one or more of the following mitigating factors justifies a reduction in the setback, a lesser setback may be approved but in no case shall the setback be less than the required yards for principal structures in the applicable zoning district.

- The locating of the WCSS area in compliance with the setbacks would result in the removal
 of significant trees which could be saved by reducing the setback;
- The WCSS is substantially obscured from view on affected adjacent properties by intervening buildings, trees, landscaping, or other such screen;
- An intervening use or activity, such as a wetland, retention area, etc., exists on the adjacent property;
- d. Compliance with the additional setback would prevent the collocation of additional WCA on the WCSS; or,
- e. Other such mitigating factor.
- 3. WCSS Design Requirements and Permitting Procedures

The following design criteria and permitting procedures shall apply to all WCSS as defined by this Code.

a. Design Criteria

All new WCSS, with the exception of those proposed to be located in the AM, AI, CI and M zoning districts, and PD and IPD districts which generally permit the AM, AI, CI or M use

categories, shall be camouflaged as defined by this Code. WCSS located in the AM, AI, CI and M zoning districts, or PD and IPD districts which generally permit the AM, AI, CI or M use categories, may be of a monopole, lattice or camouflage design.

Examples of camouflaged towers are contained in the Wireless Communication Support Structure Technical Manual. Except as provided in 3.b.2 below, the applicant shall select the proposed structure type and shall demonstrate how the selection is of a nature or structure type that would be expected or anticipated to occur or be constructed in the general area of the proposed tower location.

b. Review Process

1. Completeness Review

All applications for WCSS are deemed submitted or resubmitted on the date the application is received by the Administrator. If the application is not completed in compliance with the submittal requirements of this Code, the Administrator shall so notify the applicant in writing, indicating, with specificity, any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, would make the application properly completed. If the Administrator fails to notify the applicant in writing that the application is not completed in compliance with the submittal requirements of this Code within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed complete, properly submitted and review shall move forward.

- Once an application is corrected either by submission of the additional information, or it is considered complete by the lack of comments from local government agencies that it is incomplete within the 20 business day time frame, then the review moves forward and a decision must be rendered within the normal timeframes of review, as outlined in Sec. 10.02.02.C of this Code.
- Failure to grant or deny a properly completed application within the timeframes designated for review renders the application automatically approved and the applicant may proceed with placement of the new tower without interference or penalty.
 - 2. New WCSS shall be reviewed as a Special Use pursuant to Section 10.02.00:
- Any WCSS proposed to be located on property owned by any municipality, county, school or state entity;
- All WCSS proposed to be located in RSC, RDC, RMC and residential PD and IPD zoning districts; and,
- All WCSS proposed to be located in CPV, BMS, UAC and TND districts permitting residential uses, excluding parcels developed with office or commercial uses; and,
- WCSS 100 to 200 feet in height proposed to be located in the ASC-1 and AS-1 districts; and,
- WCSS 100 to 200 feet in height proposed to be located within 250 feet of the ASC-1, AS-1, RSC, RMC, RDC and residential PD and IPD zoning districts; and,

- WCSS 100 to 200 feet in height proposed to be located within 250 feet of CPV, BMS, UAC and TND districts permitting residential uses, excluding parcels developed with office or commercial uses.
 - 3. All other proposed WCSS shall be reviewed pursuant to Section 10.01.00.
 - 4. The table below identifies the zoning districts in which specific camouflage structure types are presumed compatible. If an alternative design to those identified below is desired, the request shall be reviewed pursuant to Section 10.02.00 as a Special Use.

| Camouflage Structure Type | Location |
|--|--|
| Flagpoles | BPO, OR, R-BPO, CN & CG districts. PD and IPD districts which generally permit the BPO, OR, CN or CG use categories*. CPV, BMS, UAC and TND districts developed with, or restricted to, non-residential uses. Also A, AR, AS-0.4, AS-1 and ASC-1 zoned properties developed with sports/recreation facilities. |
| Bell towers, clock towers | A, AR, AS-0.4, AS-1, ASC-1, BPO, OR, R- BPO, CN & CG districts. PD and IPD districts which generally permit the A, AR, AS-0.4, AS-1, ASC-1, BPO, OR, CN and CG use categories*. CPV, BMS, UAC and TND districts developed with, or restricted to, nonresidential uses. |
| Parking lot lights with internal antennas and close mounts, provided the WCSS does not exceed the height of existing light structures by more than 20 feet | BPO, OR, CN & CG districts. PD and IPD districts which generally permit the BPO, OR, CN and CG use categories*. CPV, BMS, UAC and TND districts developed with nonresidential uses. |
| Tree-type camouflaged | A, AR AS-0.4, AS-1, ASC-1, BPO, OR, CN & CG districts. PD and IPD districts which generally permit the A, AR, AS-0.4, AS-1, ASC-1, BPO, OR, CN and CG use categories*. CPV, BMS, UAC and TND districts developed with, or restricted to, non-residential uses. |

- Only those PD and IPD districts approved before October 1, 2005
 - Failure to grant or deny a properly completed application for a WCSS within 90 business days renders an application automatically approved and the applicant may proceed with the next level of review without interference or penalty.
- E. A new WCSS shall not be approved unless it can be documented by the applicant, to the satisfaction of the Administrator, that the proposed WCA cannot be placed on an existing or approved WCSS, on

a public structure, or on some other appropriate structure. Factors that must be considered in this determination will include one or more of the following:

- New WCA(s) would exceed the structural capacity of existing and approved WCSS/ other
 appropriate structures, considering existing and planned use of those WCSS/ structures, and
 existing and approved towers/structures cannot be reinforced to accommodate new WCA(s) at
 a reasonable cost.
- New WCA(s) would cause Radio Frequency (RF) interference which cannot be prevented at a reasonable cost.
- Existing or approved WCSS's do not have sufficient space on which new WCA's can be placed
 or are not located so as to allow new WCA's to function effectively and reasonably in parity with
 other similar equipment in place or approved.
- 4. There are no existing structures of sufficient height in the area on which to locate a WCA.
- Other reasons that make it impracticable to place the equipment planned by the applicant on existing and approved towers or other appropriate structures or the leased property.

Reasonable cost shall be defined as the point up to which the cost, including any leasing agreement, of collocation exceeds what would be the cost for the applicant to construct a new WCSS. Construction costs shall not only include costs associated with the actual construction of a new WCSS (including building permits), but also those costs that would be incurred by the applicant in order to secure either a permit, if required for the construction of a new WCSS.

Documentation shall be submitted to the Administrator at the time of the permit application and shall contain, at a minimum, a signed statement from appropriate accredited engineer, which may include, but is not limited to a radio frequency engineer and/or a structural engineer, outlining the reasons as to why the proposed WCA cannot be located on an existing or approved structure. Appropriate support material for verification shall be included. Hillsborough County shall obtain the services of an outside expert to review the submitted support material for compliance with paragraphs 1-5 above and other reviews as necessary to verify compliance with this Code. The costs for this review shall be borne by the application.

- F. The applicant for a new WCSS shall submit a letter of intent committing the WCSS owner and its successors to allow shared use of the WCSS as per the criteria established above or to allow a replacement tower to be erected within the WCSS Area provided that the replacement is physically and contractually feasible and that the cost of modifying or replacing the WCSS to accommodate the collocated WCA is borne by the collocating company. Said letter of intent shall be filed in the Office of the County Clerk and the Administrator prior to any building permit being issued. Reasonable charges (costs) shall be as outlined in E. above.
- G. In order to provide the opportunity for other telecommunication users to collocate on the WCSS, the applicant shall notice other potential users of the new WCSS offering an opportunity for collocation. If during the permit review period, another potential user requests collocation in writing to the Administrator, the request shall be accommodated, unless it can be documented as outlined in E. above, that collocation is not possible.
- H. The Administrator shall approve requests for collocation of a WCA on an existing and/or permitted facility without additional zoning action if the height of the WCSS will not increase. If the height of the WCSS will increase as a result of collocation, the Administrator shall increase the currently permitted height of the facility as necessary, up to a maximum of 25 feet, and waive any additional setback that would be required per subsection D.2. above. This authority shall apply to all facilities, including those approved by the Land Use Hearing Officer. In no case, however, shall the Administrator approve a final height of more than 200 feet.
- An existing WCSS may be replaced for purposes of accommodating collocation of other WCAs or otherwise, without additional zoning action, provided that:
 - 1. The replacement WCSS does not exceed 200 feet.

- 2. The replacement WCSS is located within the same zoning lot as the existing WCSS and meets or exceeds the existing setbacks. Additionally, if the height of the replacement WCSS exceeds the height of the existing WCSS by more than 25 feet, the new facility shall comply with the setback requirements from residentially developed property and residentially zoned property that is developable for residential use, per subsection D.2 above, to the greatest extent possible.
- The existing WCSS is removed within 90 days of the completion of the replacement WCSS and the relocation of the WCA(s).
- 4. If the location of the replacement WCSS is such that the existing WCSS must be removed before the replacement WCSS is constructed, a temporary portable antennae support facilities may be used, but must be removed within 30 days of the completion of the replacement WCSS and the relocation of the WCA(s).
- J. All applications for a new or replacement WCSS. or requesting an increase in the height of an existing WCSS to accommodate collocation of antennas (WCA) or other purposes shall include documentation showing the Hillsborough County Aviation Authority has reviewed the proposal as required by Airport Zoning Regulations (HCAA Resolution 2010-54, April 1, 2010, as revised) to determine if there is any potential impact on public airports in Hillsborough County. No WCSS shall be located in a manner or built to a height which constitutes a hazard to aviation or creates hazards to persons or property by reason of unusual exposure to aviation hazards.
- K. Any WCSS which is abandoned shall be removed or demolished either by the owner of the tower, or by the property owner, but not at Hillsborough County's expense. For the purposes of this section, abandoned shall mean that no commercial operation of any WCA or other commercial antenna on the WCSS has occurred for a one-year period.

(Ord. No. 98-43, § 2, 7-17-98; Ord. No. 01-30, § 2, 11-15-01; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 02-22, § 2, 11-13-02; Ord. No. 03-9, § 2, 6-5-03; Ord. No. 05-10, § 2, 6-16-05, eff. 10-1-05; Ord. No. 05-22, § 2, 11-17-05; Ord. No. 06-18, § 2, 8-1-06; Ord. No. 08-29, § 2, eff. 2-1-09; Ord. No. 09-52, 6-11-09, eff. 6-18-09; Ord. No. 12-29, § 2(Exh. A), 12-11-12, eff. 2-1-13)

PART 10.02.00 - PROCEDURE FOR ISSUANCE OF DEVELOPMENT ORDERS

Sec. 10.02.01. - Applicability

The procedures in this Part and Section 5.0 of the Development Review Procedures Manual shall be followed whenever this Code provides as such for review of specific types of proposed development.

(Ord. No. 01-26, § 2, 9-12-01)

Sec. 10.02.02. - Pre-Hearing Procedures

- A. Preapplication Conference and Application
 - Conference with the Administrator may be requested in those cases where an applicant is in doubt as to the applicability or requirements of these procedures.
 - All applications shall be typed or neatly printed on forms provided by the Administrator. The required number of copies of the application shall be filed with the Administrator who shall mark thereon the date of filing and shall retain the original.
- B. Setting the Matter Before the Land Use Hearing Officer
 - The Administrator shall set the matter for hearing before a Land Use Hearing Officer after the completed application has been filed in accordance with the published Land Use Hearing Officer Hearing Schedule.
 - 2. Continuance(s) of the public hearing shall be permitted in accordance with the procedures and requirements set forth in Section 10.03.02, Subsections C, D, E and F. However, in no case shall the public hearing be continued to a hearing date that is more than six months after the originally scheduled hearing date. If a public hearing is not held on the application within the required time frame, the application shall be withdrawn from processing by the Zoning Administrator. The hearing time frame shall not apply to any application that has been reopened or remanded for further hearing.
- C. Notice of Hearing Before the Land Use Hearing Officer shall be completed in the same manner set forth in Section 10.03.02, Subsections C, D, E and F.
- D. Notice Content
 - 1. Posted and published notices shall contain the following information:
 - a. Application number and date of filing.
 - b. Name, address and telephone number of applicant or applicant's agent.
 - Nature of the proposed development activity, or application request.
 - d. Location of the property.
 - Date, time, and place of Land Use Hearing Officer hearing.
 - f. Statements substantially as follows:
 - (1) Copies of the application and department reports are kept by the Administrator and are open to public inspection in the offices of the Clerk of the Board and the Administrator.
 - (2) All interested persons wishing to submit testimony or other evidence in this matter must submit same to the Land Use Hearing Officer at the hearing. If review of the Land Use Hearing Officer's decision by the Appeals Board is requested, such review will be restricted to the record as created at the hearing before the Land Use Hearing Officer.

- (3) Citizen input may be submitted to the County prior to the formulation of the staff report to the Land Use Hearing Officer. The deadline for submitting such information is 14 calendar days prior to the hearing date.
- g. Instructions for obtaining further information regarding the application and nature of the hearing before the Land Use Hearing Officer.

E. County Department Reports

When an application has been set for hearing before the Land Use Hearing Officer, the Administrator shall coordinate and assemble the reviews of other departments and governmental agencies having an interest in the application and shall prepare a report summarizing the factors involved and the departmental findings, and if applicable, recommendations, and conditions. This report shall be available at the offices of the Administrator to all persons six calendar days prior to the hearing. The report and all submittals shall be filed with the Clerk of the Board six calendar days prior to the hearing.

F. Motions for Disqualification

Unless good cause is shown, all motions for disqualification of Land Use Hearing Officer assigned to hear the case shall be filed no later than ten working days after the moving party has been notified of the assignment of the particular hearing officer. The motion shall be accompanied by an affidavit stating particular grounds, which shall be limited to those for which a judge may be disqualified. The affidavit must state facts sufficient to show that the movant has a well-founded fear that the movant will not receive a fair and impartial hearing. Unless denied as untimely, the motion shall be ruled on by the Land Use Hearing Officer before whom the case is pending. If the motion and affidavit are found legally sufficient, the Land Use Hearing Officer shall disqualify himself or herself, after which the matter will be given to the next available Hearing Officer on the list.

(Ord. No. 98-43, § 2, 7-17-98; Ord. No. 99-26, § 2, 11-18-99; Ord. No. 00-38, § 2, 11-2-00; Ord. No. 05-10, § 2, 6-16-05, eff. 10-1-05; Ord. No. 06-18, § 2, 8-1-06; Ord. No. 09-53, Item Q, 6-11-09, eff. 10-1-09)

Sec. 10.02.03. - Hearing Before the Land Use Hearing Officer

A. Participants

The participants before the Land Use Hearing Officer shall be the applicant, County staff, County agencies, proponents, and opponents, inclusive of the public and witnesses with relevant testimony. The proponent shall be defined as a participant in favor of the application, exclusive of the applicant; whereas, the opponent shall be defined as a participant against the application. Both definitions are inclusive of the public and any other parties of record.

B. Order of Presentation

The order of and total time allotments for Non-Variance applications shall be as follows:

- 1. Applicant and witnesses; proposal: 15 minutes
- 2. Administrator; summary of the application, County staff and department findings: five minutes
- 3. Proponents; argument for the application: 15 minutes
- 4. Opponents; argument against the application: 15 minutes
- 5. Staff; amended recommendations, if any: five minutes
- 6. Applicant; rebuttal and summation: five minutes

The order of and total time allotments for Variance applications shall be as follows:

1. Administrator; summary of the application, County staff and department findings: five minutes

- 2. Applicant and witnesses; proposal: 15 minutes
- 3. Proponents; argument for the application: 15 minutes
- 4. Opponents; argument against the application: 15 minutes
- 5. Staff; amended recommendations, if any: five minutes
- 6. Applicant; rebuttal and summation: five minutes

For good cause shown, the Land Use Hearing Officer may grant additional time.

C. Nature of Hearings

To the maximum extent practicable, the hearings shall be informal. Questioning shall be confined as closely as possible to the scope of direct testimony. The Land Use Hearing Officer may call and question witnesses as he deems necessary and appropriate. The Land Use Hearing Officer shall decide all questions of procedure.

D. Evidence

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Any part of the evidence may be received in written form, and all testimony shall be under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient, in itself, to support a finding by the Land Use Hearing Officer unless it would be admissible over objections in a civil action.

E. Matters To Be Considered by the Land Use Hearing Officer in Making Decision

The Land Use Hearing Officer shall consider, in addition to all evidence presented at the hearing, the following as are relevant in making his decision on an application, which are not listed in any particular order:

- The history of the subject parcel.
- 2. Applicable regulations and development standards promulgated.
- 3. Applicable goals, objectives, and policies contained in the Comprehensive Plan.
- 4. Reports and recommendations filed by reviewing agencies.
- 5. Physical characteristics of the subject parcel and surrounding lands.
- 6. Impact on the surrounding transportation network.
- 7. Availability and capacity of public services.
- 8. Nature of and impacts on surrounding land use.
- 9. Environmental impact of the proposed development activity.
- F. Findings and Decision of the Land Use Hearing Officer
 - The decision of the Land Use Hearing Officer shall be in writing and include:
 - a. Summary of proposed development activity and the evidence presented.
 - b. Findings of fact.
 - c. Conclusions of law, including compliance or noncompliance of the proposed development activity with applicable provisions of the Comprehensive Plan and this Land Development Code.
 - A decision to either approve or deny the application with reasons therefore specified, including any recommended conditions.

Persons wishing to receive a copy of the decision by mail may supply the Clerk of the Board with their name, address, and a stamped, self-addressed envelope for that purpose.

- G. Record of Hearing Before the Land Use Hearing Officer
 - An audio recording of all hearings before the Land Use Hearing Officer shall be recorded by the Clerk of the Board and also recorded by an official court reporter.
 - 2. The record of the hearing before the Land Use Hearing Officer shall consist of:
 - The application and accompanying documents.
 - b. Staff reports and recommendations.
 - c. All exhibits and documentary evidence.
 - d. The decision of the Land Use Hearing Officer.
 - e. The audio recording of testimony at the hearing.
 - f. Verbatim transcript of the proceedings.
- H. Decision of the Land Use Hearing Officer

A copy of the decision of the Land Use Hearing Officer is required to be filed with the Clerk of the Board within 15 working days after the conclusion of the public hearing before said officer.

- Reconsideration of Matter by the Land Use Hearing Officer
 - On motion and upon such terms as are just, the [Land Use] Hearing Officer may grant a rehearing on an application for the following reasons:
 - a. Mistake, inadvertence or excusable neglect;
 - Newly discovered evidence which by due diligence could not have been discovered in time for the original hearing; or
 - c. Fraud, misrepresentation or other misconduct of an adverse party.
 - The motion shall be made prior to the deadline for filing an appeal to Appeal Board. The filing of such a motion tolls the time for filing an appeal. The time for filing an appeal shall begin anew in full upon the [Land Use] Hearing Officer's denial of such a motion.
- J. Changes to Approved Special Use Permits

Requests to modify the existing conditions and/or site plan associated with an approved special use shall follow the same review process as a new application. Approval of the modification shall serve to amend the original permit.

(Ord. No. 97-18, § 2, 12-18-97; Ord. No. 98-43, § 2, 7-17-98; Ord. No. 06-18, § 2, 8-1-06; Ord. No. 07-25, § 2, 11-1-07, eff. 2-1-08; Ord. No. 08-15, § 2, 6-12-08, eff. 10-1-08; Ord. No. 09-62, Item J, 10-26-09, eff. 2-1-2010)

| 11 | LLSBOROUGH COUNTY, FLORIDA |
|---|---|
| ZONING REQUEST: | AR to PD |
| PETITION FILE NUMBER: | RZ-PD 18-0304 RV & BA |
| ZHM REARING DATE | August 20, 2018 |
| BOCC MEETING DATE | October 9, 2018 |
| This is to certify that this Site D Board of County Commissioner | velopment Plan has been reviewed by the and the following action taken |
| _X_APPROVED WITH CON- certified site plan. | DITIONS AS NOTED: and attached to |
| 19/25/2018 DATE | CHAIRMAN BOARD OF COUNTY COMMISSIONERS |
| 10/25/2018 DATE | ATTEST DEPUTY CLERK PAT FRANK CLERK OF THE CIRCUIT COURT |
| BOARD OF COUNTY COMMISSION HILLSBOROUGH COUNTY FLORE DOCUMENT NO. | |

PETITION NUMBER: RZ-PD 18-0304 RV & BA
MEETING DATE: October 9, 2018
DATE TYPED: October 9, 2018

include grocery stores, food/produce markets, convenience stores, pharmacies and other retail uses permitted in the CN zoning district.

- The Rhodine Borrow Pit Village Node shall meet the following.
 - 4.1 The Village Node may also contain office uses, residential support uses tsuch as churches, adult care centers and daycare centers) and government uses (such as schools, government offices/survivee). Square foreign for these uses shall not count towards the minimum square foreign expansed for owsite neighborhood retail. The meximum F.A.R. permitted which the enter Village Node is 0.35.
 - 4.2 No minimum building setbacks shall be required
 - 4.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in height required
 - 4.4 Buffering and screening in accordance with Land Development Code Section 6.06.06 shall be provided along adjacent properties of differing land use classifications.
 - 4.5 Parking lots in the Village Node shall be located at the rear or to the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the roadway.
- Prior to the issuance of harlising penuits fur more than 75% of the residential units flors 21-2381, Certificates of Occupancy shall be issued for a minimum of 50 pecces of the 3280-5 x.1 of registerior do-rist englisherhood retail in the Village Note. Prior to the issuance of halding penuits for more than 95% of the residential units flors 26x-281, Certificates of Occupancy shall be issued for the remaining 3.820 5 square feet of neighborhood retail in the Village Node.
- A 59-fixe whilefulfier shall be provided where degicced on the general site plan. This buffer is to be jastled as a separate inert to be content and maintained by the Homesoner's Ascociation, or dark similar entity. Within the buffer, secretain shall be provided and exceeding the state of the similar entity. Within the buffer, secretain shall be provided and of six feet a herm (4.1 sleep), a continuous row of evergeres shashs as a maintaine height of 24° and/or a solid wooden fence, PW. Green or wall architecturally funished on both sides and a row of evergeres shall the rost at a maintaine of 10 feet in both side and a row of evergeres shall the rost at a maintaine of 10 feet in benefit and of the side o

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER: RZ-PD 18-0304 RV & BA
MEETING DATE: October 9, 2018
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In accordance with the Hilldorough County Corridor Preservation Plan, the developer shall preserve up to 5 feet of right-of-way along its Bhodine Road furstage, such that a minimum of 35 feet of right-of-way reserved seath of the evising right-of-way centerline. Only those interion uses allowed by the Hillborough County IDC shall be premitted within the preserved right of-way. The right-of-way preservation area shall be shown on all future size plans, and building setbacks shall be calculated from the finure right of-way time.

The following shall apply to the Grove parcel:

The Greve parcel shall be permitted a maximum of 356 single-family lots and developed in accordance with the following development standards. The maximum number of units permitted in the Greve parcel is detunified as Critical Design Feature. Any change to this number will require a Magier Medification to the reviewed in accordance with the procedure setablished in LICP part 100 to 30.

- 15. For lots at a width of less than 50 feet, the following shall apply
 - 15.1 Garages shall be setback a minimum of 25 feet. Garages accessed from a front yard functioning as a side yard shall be setback a minimum of 20 feet.
 - 15.2 A 2-car garage and a minimum 18 foot wide driveway shall be provided for each
 - 15.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's front facade. Homes shall not have the same driveway location (left or right side) as the adjacent home. The alternating pattern may be adjusted at comer lots as necessary.
 - 15.4 A variety of garage door designs shall be provided and there shall be no two identical garage door designs adjacent to each other
 - 15.5 Each unit's primary entrance door shall face the roadway.

FINAL CONDITIONS OF APPROVAL.

PETITION NUMBER RZ-PD 18-0304 RV & BA
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Approval of the request, subject to the conditions listed, is based on the revised general site plan submitted July 31, 2018

The Rhodine Borrow Pri parcel shall be permitted a meximum of 283 single family lot within the boundaries of Pocket A and developed in accordance with the following development saidness. The maximum number of units gentilitied in the Rhodine Borrow development saidness. The maximum number of units gentilitied in the Rhodine Borrow and the Rhodine Borrow and the Rhodine Borrow and the Rhodine Borrow and Rhodin

Minimum hot size 4,600 square feet / 5,500 square feet Minimum hot sidth 40 feet / 50 feet Minimum from yard sethods 20 feet / 10 feet for frest yards functioning as side yards*

Minimum retry with sethods 15 feet Seet 2 suries 15 feet Seet 2 suries 25 feet from front yards functioning as side yards shall be sethack a minimum of 20 feet.

- 2. For lets at a width of less than 50 feet, the following shall apply
 - 2.1 Garages shall be setback a minimum of 25 feet. Garages accessed from a front yard functioning as a side yard shall be setback a minimum of 20 feet.
 - 2.2 A 2-car garage and a minimum 18 foot wide driveway shall be provided for each
 - 2.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's front façade. Homes shall not have the same driveway location (left or right side) as the adjacent home. The alternating pattern may be adjusted at corner tots as necessary.
 - 2.4 A variety of garage door designs shall be provided and there shall be no two identical garage door designs adjacent to each other
 - 2.5 Each unit's primary entrance door shall face the roadway.
 - 2.6 Street trees may include an alternating pattern of shade and ornamental trees, subject to final design and approval by Natural Resources staff.
- A maximum of 3,820.5 square feet of neighborhood retail uses shall be provided w Commercial Pocket A (Rhodine Borrow Pit Village Node). Neighborhood retail uses:

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0304 RV & BA
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minimum 2: caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-or-way, use of a six foot high wooden fence shall not be used. Additionally should the buffer abut a right-of-way, he

- The parcel identified by Folio Number 77420 5000 is adjacent to the Triple Creek Preserve Per LDC Section 4 01.00, compatibility of the development with the preserve will be nourned with a compatibility plan that address issues related to the development such as, but not necessarily limited to, access, prescribed fire, and landscaping. The compatibility plan shall be proposed by the developer, reviewed and approved by the Conservation and Environmental Lands Management Department, and shall be required as a condition of granting Natural Recursors: Permit Proposed Conservation and granting Natural Recursors: Permit Proposed Prop
- AcRhedine Road is a substandard collector madway, the developer shall improve Rhodine Road between the project drivenay and the neurest standard roadway to current County anadards unders otherwise approved in accordance with Section 6.0102. B of the Hillshowayh County Land Development Code (IDC). Desiations from Transportation Technical Manual (TM) standards may be considered in accordance with Section 172 and other applicable sections of the Hillshowayh County TTM.
- Utilization of proposed access points along the project's southern boundary shall require modification of the adjacent Planned Development (to permit such cross access)
- The developer shall construct the following site access improvements, unless otherwise approved by Hillsborough County Public Works.
 - a An eastbound to southbound right turn lane on Rhodine Road into the project; and,
 - b. A westbound to southbound left turn lane on Rhodine Road into the project

Such improvements may require the developer to dedicate or otherwise acquire additional right-of-way

- The first 1,800 feet of the internal project roadway (south of Rhodine Road) shall be utilized as a shared access facility. The purpose of this shared access facility is to serve
 - Future development on folio 77409 3000, consistent with the adjacent PD 05-0110, and,
 - b. Existing/future development on folio 77420 6000.

Notwithstanding anything shown on the PD site plan to the contrary, vehicular and prefestina access may be taken anywhere along the project houndaries with Felios 77409-0000 and 77420-6000, subject to the review and approval of Hillsberough County Public Works

PETITION NUMBER. RZ-PD 18-0304 RV & BA
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- 15.6 Street trees may include an alternating pattern of shade and ornamental trees, subject to final design and approval by Natural Resources staff.
- This PD approves a waiver to the provision of 4,806 s.f. of on-site neighborhood retail. A total of 5,038 square feet is provided off-site on folios 77886 0000 (a 3,238 square foot convenience store) and 77857 0000 (a 1,800 square feet post office).
 - 16.1 The 5,038 square feet on folios 77886.0000 and 77857.0000 shall not be used for any future ori-site commercial waiver requests for other proposed Planned Villages.
- 17 The Grove Village Node (amenity/specialty retail depicted area) shall meet the following
 - 17.1. The Village Node may contain a maximum of 5.000 square feet of neighborhood-restitutes, office uses; rendertual supportuses fused as churches, shall care centers and discontenents uses (used as schools; because of fice states of the schools; because of fices/scorves). A maximum of 402 quarte feet of this 5.000 square feet may be developed with neighborhood evalual uses permitted in the CN avoing district. The maximum of A R, pennitred within the entire Village Node is 13.5.
 - 17.2 The Village Node may also contain neighborhood amenity uses, such as a pool, amenity area and clubbouse which shall not count towards the maximum F A R permitted in the Village Node
 - 17.2 No minimum building setbacks shall be required
 - 17.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in height required
 - 17.4 Buffering and screening in accordance with Land Development Code Section 6.06.06 shall be provided along adjacent properties of differing land use
 - 17.5 Parking lots in the Village Node shall be located at the rear or to the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the roadway.
 - 17.6 Signage within the Village Node shall be limited to monument signs
- A Village Square/Green (minimum size of 4.800 square feet) shall be provided where depicted on the general site plan. The Village Square/Green shall be hound on all sides by streets and improved with landsetspine, walksways, benches, Teutatins, gazebos and/or similar amenities to encourage and accommodate use by village residents.

OF APPROVAL

PETITION NUMBER: RZ-PD 18-0304 RV & BA
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October 9, 2018

- The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space, Village Square/Green and Village Node areas.
- residential, open space, Village Square/Green and Village Node areas.

 A 50-few side high few shall be provided where depicted on the opened using plan.

 A 50-few side high few shall be provided where depicted on the opened using the buffer shall be most of the shall be sh
 - 29.a Should any portion of Balm-Wimauma Road be vacated (Option 1 and Option 2 in condition 17 d), the 50-foot wide buffer and screening shall not be required.
- A 250-foot wide buffer shall be provided adjacent to folio 77850 0000, as depicted on the general site plan.
- The developer shall construct the following site access improvements, of which $22.a, 22\,b$ or $22\,c$ shall be constructed only if warranted per Section $6.04.04\,D$. Of the Hillsborough County Land Development Code or unless otherwise approved in accordance the Section $6.94.02\,B$ administrative variance process.
 - 22 a An eastbound to southbound right turn lane on CR 672 at Shelley Ln :
 - 22.b A westbound to southbound left turn lane on CR 672 at Shelley Ln.;
 - 22.e. A southbound to eastbound left turn lane on Balm Wimauma Rd. into the project's southernmost entrance, and,
 - 22 d One (1) of the following options (as depicted on the on the PD site plan) relating to site access and roadway reconfigurations proposed by the developer:

i. Option 1 - The developer shall construct an extension of Balm Wimauma Rd (herween its intersection with Balm Rd and CR 672) as a 2-lane collector readway

- As Balm Wimauma Rd may be a substandard collector roadway, the developer will be required to coordinate with Hillsborough County Public Works to determine the improvements that may be required prior to or concurrent with plath/site/construction plan approval
- In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 21 feet of right-of-way along its Balm Wimanam Rd frontages, such that a minimum of 3 feet of right-of-way incremed real and south of the existing right-of-way centerline Only those interin uses allowed by the Hillsborough County JDC shall be permitted within the preserved right-drowny The right-frowy preservation area shall be shown on all former site plans, and building setbacks shall be calculated from the future right-of-way preservation and the plans of the plan
- ha secondarce with the Elliborough County Corricle Preservation Plan, the develop-shall preserve up to 1 Ferror Plan, but may impair to 1 CF 17 Transage, such that a manimum of 54 fert of right-of-way is preserved would not the existing right-of-way in preserved would not the existing right-of-way and an extension of 54 fert of right-of-way. The right-of-way preservation are shall be permitted within the preserved right-of-way. The right-of-way preservation are shall be shown on all future step than, and building sethoods shall be calculated from the future right-of-way line.
- Note distinating and sing above on the TP sing plan to the course, the relocation of the senderments does not bell we Winnama Ke and that it is located a minimum of 130 feet from the nearest adjacent access connection, shall be an obtained to the contract of the from the nearest adjacent access connection, shall be made and the contract of the shall be determined by the shall be Alternatively, the developer shall obtain a Section 6.40.2 B. administrative variance from the Section 6.0.1 9 access spacing requirements 27.

The following shall apply to both Planned Villages

- Access shall be provided as shown on the PD site plan unless otherwise provided herein these conditions. Internal roadways may be public or private, and if private, and if private, are stated except for those portions functioning as shared access roadways, as required herein these conditions)
- Notwithstanding anything on the PD site plan or herein these conditions to the contrary, bicycle and pedestrian access may be permitted anywhere along the project boundaries.
- Approval of this zoning petition by Hillshorough County does not constitute a guarantee that the Environmental Protection Commission of Hillshorough County (FFC) approval/permits necessary for the development as proposed will be issued toos not itself serve to justify any impact in welfands, 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

PETITION NUMBER
MEETING DATE:
DATE TYPED:

RZ-PD 18-0304 RV & BA
October 9, 2018
October 9, 2018

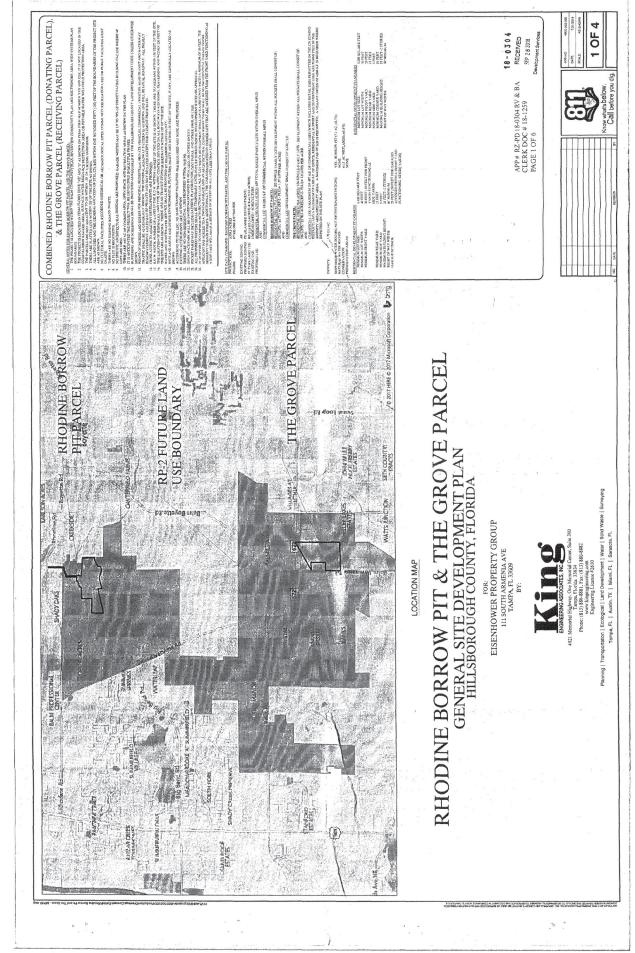
DATE TYPED. October 9, 2018.
Whin 6 months of acceptance of the troubs systemic, the developer shall remove up to a ½.1,300-foot long segment of exiting Balm Winnama Rd south of TK 6.72 Specific limits of the segment to be removed able to determined an approved by Hillsborough County Public Works. Utilization of this option is contingent upon the electiper's shilly to at its ole cont. deeps the facility, obtain all required permits for construction, and acquire any additional right-of-way receives a fast occurringent upon review and approved of the proposed vention and related improvements. Utilization of this option is also contingent upon review and approved of the proposed reduction and related improvements. Utilization of this option is also contingent upon review and approved of the proposed reduction and the fasted improvements. Utilization of this obtained is a second solution of the continuation of the reducing section occur until such time a a cul-de-one or other end of rendowly retarrester acceptable or Hillsborough County Public Works is constituted and open to public traffic, or,

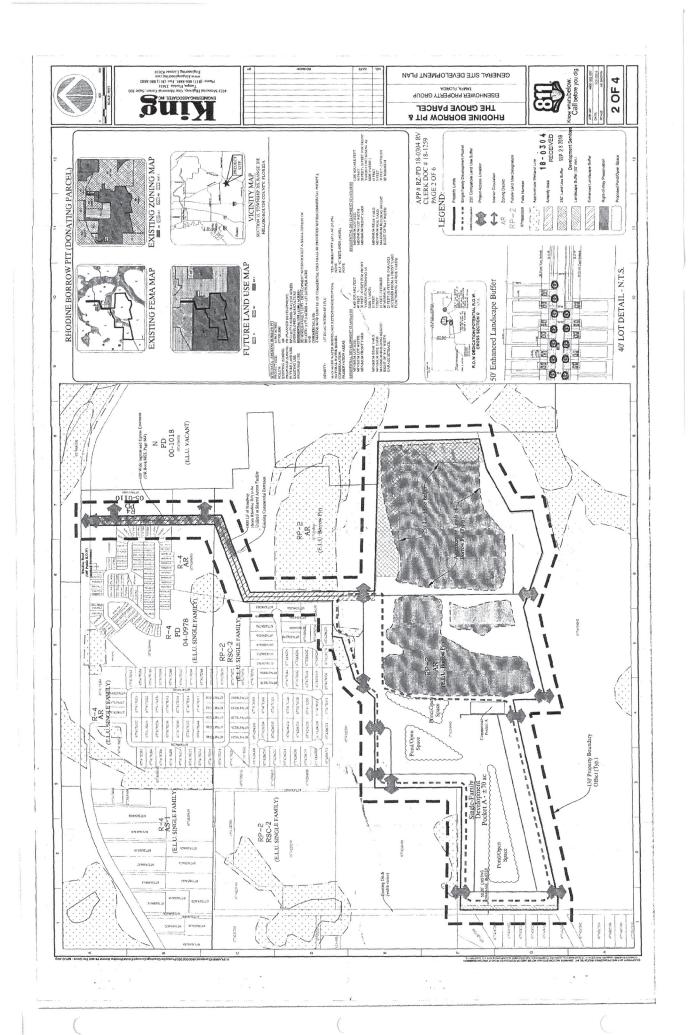
- constructed and open to public traffic, or,

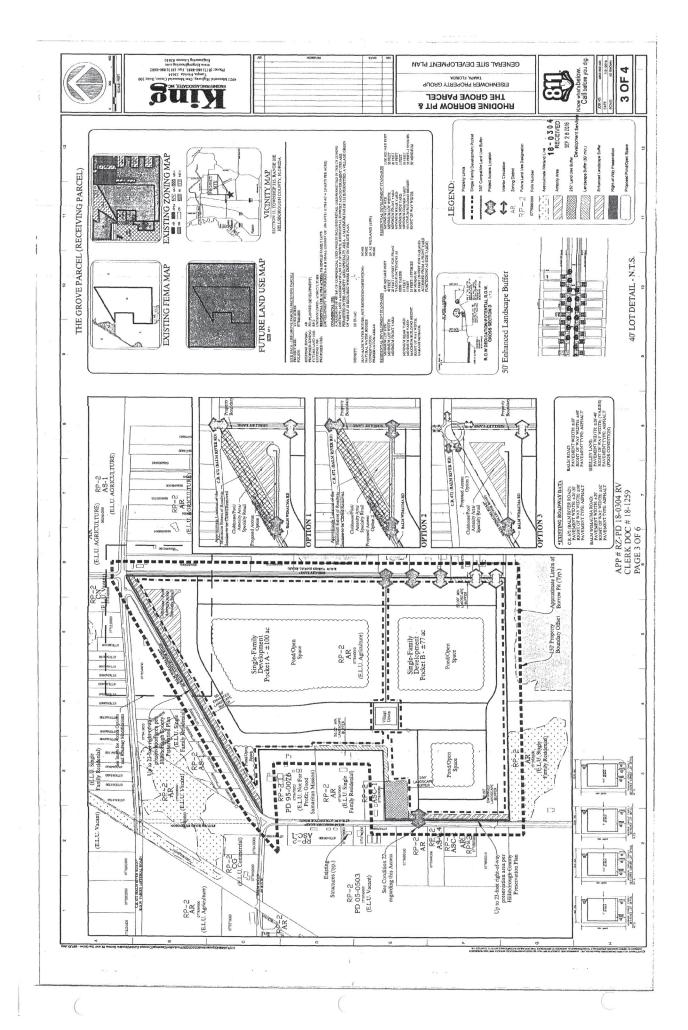
 if . 3ging 2. The developer half registing up to *1.1,100 feet of Balm Winnsuma
 Rd 6t e. that pertian immediately results of CR 6273 such that it connects to Stelley
 Rd 6t e. that pertian immediately results of CR 6273 such that it connects to Stelley
 La Concurrent with the opening of the resiligated randows cuterion, the feet every
 shall close the clifversligated read-way and, within 6 months, complice removal of the
 coldiumstilizer andways. Specific limits of the segment to be realizagedremoved that
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 facility, obtain all required permits for construction, and acquire any additional
 replaced-way necessary for the proposed extension and related improvements.
 Utilization of this eption is also contingent upon review and approved of the
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 that may be required by the Cevany at the new vector-funding any time flow
 supported by the Cevany of the control of the proposition of the vector of the responsible for preserving
 sufficient right-fe-way necessary to a commondate a 2-dane enhanced randows
 segment between the new intersection and CR 672; or,
- iii Oggien 3 The developer shall construct a roundshort at the intersection of CR 672, Bulm Winasuma Rd., Shelley In., and Rulm Ineyette Rd. This caption may require the developer to defecte or otherwise acquire additional rigidal-drasp require the developer to develop the construction of the construction of this color of contrary, utilization of this option shall relieve the developer of its editigation to construct the improvements listed in Ia. and I. b. above Utilization of this caption is also contingent upon review and approval of the proposed roundshout by Hillsberough County Public Werks.
- As Shelley I.n is a substandard local roadway the developer will be required to improve Shelley I.n. between its southernmost access connection and CR 672, to current County standards unless otherwise approved in accordance with Section 6.04 02. B. of the Billsborough County LDC. Deviations from TTM standards may be considered in accordance with Section 1.72, and other applicable sections of the Hillsborough County TTM.

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October 9, 2018

- Prior to the issuance of any building or land alteration permits or other development, the approved wethen? other surface water (ICSW) line must be incorporated into the size plan approved without of the surface water (ICSW) line must appear on all size fasts, beloted as "PCE Velland Line", and the wetland must be labeled as "Wetland conservation Area" pursuant to the Hillsborough County Land Development Code (IOC)
- 33 Final design of buildings, stomwater 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.
- If the notes and/or graphic on the site plan are in conflict with specific zoning conditions and/or the Land Development Crafe (LDC) regulations, the more restrictive regulation obtaining apply, unless specifically conditioned otherwise. Reference to development standards of the LDC in any stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan plant approximation.







| DESCRIPTION: | NEMT EXP TITLE THE IBANCE |
|--------------|----------------------------|
| LEGAL | MSHBANCEL |
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GENERAL SITE DEVELOPMENT PLAN EISENHOWER PROPERTY GROUP

В НОВІИЕ ВОЯВОМ РІТ & ТНЕ GROVE PARCEL

4 OF 4

RECEIVED 18-0304

APP# RZ-PD 18-0304 RV CLERK DOC# 18-1259 PAGE 4 OF 6

THE GROVE PARCEL LEGAL DESCRIPTION: LEGAL DESCRIPTION: (PER COMMITMENT FOR TITLE INSURANCE)

DESCRIPTION: (AS PROVIDED BY CLIENT AND DESCRIBED IN OFFICIAL RECORDS BOOK 16192, PAGE 1492)

NEERING ASSOCIATES, INC.
Ontal Highway, One Memorial Contor, Suits
I ampa, Florida 33634

THAT PART OF THE NE, JO THE NE, JULYING SOUTH OF THE BULHWINDADA ANNED NOO, THE SLIZ OF THE NE, JULYESS THE MEST TREASED, AND THE NIZ OF THESE LUALLIN SECTION, 25, TOWNSHIP II, SOUTH, ANNEE 20, EAST, LESS, RIGHT OF WAY FOR STATE ROUD 672. ALL EBING IM HILLESOROUGH COUNTY, ROADED.

A PARCE, OF LAND LYING IN SECTION 25 TOWISHIP 31 SOUTH, RANCE 20 EAST, HILLSBORDUGH COUNTY, FLORIDA I PARTICULARLY DESCRIBED AS FULLOWS: **DESCRIPTION:** (WRITTEN AS REQUESTED BY CLIENT)



SENDER'S DIRECT DIAL: 813-227-8421

SENDER'S E-MAIL: Kami.Corbett@hwhlaw.com

September 30, 2019

VIA HAND DELIVERY

Adam J. Gormly, Esq.
Director, Development Services Department
Hillsborough County
601 E. Kennedy Boulevard, 20th Floor
Tampa, Florida 33602

Re:

SU-19-1026; Applicant: Balm Grove, LLC

Rebuttal to Staff Determination on Necessity to File a

Major Modification to Existing PD Rezoning

Dear Mr. Gormly:

As a follow up to our meeting on September 12, 2019, I have reviewed the relevant Hillsborough County Land Development Code provisions (the "Code") and disagree with staff's position that the Applicant must first file a Major Modification to the existing PD Zoning 18-0304 rezoning before SU 19-1026 can be processed.

Land Excavation is identified in the Code as a use that is approvable by Special Use Permit. There are three separate types of land excavation in the Code, which are all subject to locational criteria. The locational criteria for land excavations that result in lake creations, lake cleaning and stockpile removal (as proposed in SU-19-1026) are expressly permitted to be <u>considered in all zoning districts</u>. By contrast, dry land excavation and agricultural reservoirs can only be considered in certain zoning districts.²

If the drafters of the Code had intended to limit the zoning districts where land excavation for lake creation could be considered, they could have easily made that clarification. Likewise, if it was intended that a Land Excavation Special Use Permit could only be approved in a PD District if Land Excavation was an approved use in the PD District, the locational criteria could have included that requirement, but it does not. The Code clearly states that Land Excavation for lake creation may be considered in all zoning districts without limitation.

¹ Section 6.11.54(A)(1)(a) Hillsborough County Land Development Code

² Sections 6.11.54(A)(1)(b)&(c) Hillsborough County Land Development Code

Adam J. Gormly, Esq.
Director, Development Services Department
Hillsborough County
September 30, 2019
Page 2

The Code also makes a clear distinction between the zoning process and the special use approval process. These are different processes, and serve different purposes. The zoning district sets forth the allowable uses within the district, and the special uses are uses that are not generally appropriate to a zoning district without compliance to a more stringent development standard or condition.³ The special use process is specifically intended to impose more stringent standards than would otherwise be required by the zoning district.

The County has historically treated the zoning approval process and the special use process as separate processes. This is true as recently as during the review process for RZ PD-19-0310 (Balm Grove/Rhodine Pit Rezoning). The Rhodine Pit property that was the subject of rezoning was historically used as a land excavation site; yet there was no acknowledgement of that use, no discussion at any point in the rezoning review process as to the status of the borrow pit operation or continuation of the use and no conditions were imposed as part of the PD relating to the existence of that use.

We know of no instance where a previously approved special use was included in the list of subsequently approved PD District uses or where the potential for future special uses were required to be included in the list of approved PD uses before a special use could be approved within the PD District.

Therefore, on behalf the Applicant we respectfully decline to file a Major Modification to the PD and request that the County review application SU-19-1026 in accordance with the requirements of Section 10.02.00, as is required by Section 6.11.01 (B) of the Code.

Sincerely,

HILL WARD HENDERSON

Kami Corbett

KC/bc

13133197v1

¹ Hillsborough County Land Development Code 5.2.1 (A)

| FID Zoning NZONE | NZONE_DESC | RZ ZC | RS | OVERLAY | OVERLAY CATEGORY | Restr FID_LandEx ActivClos | SUPermit | OperPermit |
|------------------|--|---------|----|---------|---------------------|----------------------------|-----------|------------|
| 9806 AR | Agricultural - Rural | | | | Agricultural | 42 CLOSED | | |
| 6573 PD | Planned Development | 04-0235 | | | Planned Development | 7 ACTIVE | 05-0708 | 05-5-LE |
| 9806 AR | Agricultural - Rural | | | | Agricultural | 43 CLOSED | | 2-80-3 |
| 10166 AR | Agricultural - Rural | | | | Agricultural | 110 CLOSED | | 6-82-2 |
| 9806 AR | Agricultural - Rural | | | | Agricultural | 40 CLOSED | | |
| 9387 RSC-2 | Residential - Single-Family Conventional | 85-0353 | | MH | Residential | 44 CLOSED | | |
| 9806 AR | Agricultural - Rural | | | | Agricultural | 37 CLOSED | SU01-2-LE | 01-2-LE |
| 6611 PD | Planned Development | 01-0638 | | | Planned Development | 26 CLOSED | SU95-0338 | 96-3-LE |
| 6611 PD | Planned Development | 01-0638 | | | Planned Development | 41 CLOSED | | |
| 9806 AR | Agricultural - Rural | | | | Agricultural | 171 CLOSED | | |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 190 ACTIVE | 11-0082 | 12-3-LE |
| 6611 PD | Planned Development | 01-0638 | | | Planned Development | 151 CLOSED | | |
| 9282 PD | Planned Development | 04-0460 | | | Planned Development | 116 CLOSED | | |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 0 ACTIVE | 05-0142 | 05-2-LE |
| 6611 PD | Planned Development | 01-0638 | | | Planned Development | 80 CLOSED | | |
| 5583 AS-1 | Agricultural - Single-Family | | | | Agricultural | 89 CLOSED | | |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 176 ACTIVE | 04-1711 | 05-3-LE |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 143 ACTIVE | 06-0156 | 07-2-LE |
| GM 0996 | Planned Development | 73-0186 | | | Planned Development | 45 CLOSED | | 6-80-1 |
| 8647 PD | Planned Development | 10-0147 | | | Planned Development | 141 CLOSED | | |
| 4903 AR | Agricultural - Rural | | | | Agricultural | 189 ACTIVE | 12-0283 | 12-1-LE |
| 8864 PD | Planned Development | 05-1926 | | | Planned Development | 174 CLOSED | | |
| 8966 PD | Planned Development | 03-1332 | | | Planned Development | 48 CLOSED | | |
| 8943 AR | Agricultural - Rural | | | | Agricultural | 47 CLOSED | | |
| 9144 PD | Planned Development | 02-1386 | | | Planned Development | 165 CLOSED | | |
| 8950 RSC-2 | Residential - Single-Family Conventional | 94-0288 | | MH | Residential | SO CLOSED | | |
| 8939 PD | Planned Development | 84-0030 | | | Planned Development | 49 CLOSED | | |
| Q4 0996 | Planned Development | 73-0186 | | | Planned Development | 8 CLOSED | | |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 1 CLOSED | | |
| Q4 0996 | Planned Development | 73-0186 | | | Planned Development | 9 CLOSED | | 1-11-79 |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 188 CLOSED | | |
| 9744 PD | Planned Development | 77-0123 | | | Planned Development | 167 CLOSED | | |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 2 ACTIVE | 08-1433 | 09-4-LE |
| | | | | | | | | |

| FID_Zoning NZONE | NZONE_DESC | RZ ZC | X. | OVERLAI | OVERLAY CATEGORY | Restr FID_Langex Activelos | ACLIVCIUS | SOLETIME | משפושבו |
|------------------|--|----------|----|---------|---------------------------|----------------------------|------------|----------------------|-----------|
| 2987 PD | Planned Development | 98-1513 | | | Planned Development | 6 | 96 CLOSED | | 9-81-7 |
| 9957 AR | Agricultural - Rural | | | | Agricultural | | 3 ACTIVE | 04-1054 | 05-1-LE |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 2 | 29 CLOSED | | |
| 9744 PD | Planned Development | 77-0123 | | | Planned Development | 13 | .39 CLOSED | | |
| 8538 AS-0.4 | Agricultural - Single-Family Estate | | | | Agricultural | 18 | 184 CLOSED | SU07-0454-BA 07-5-LE | A 07-5-LE |
| 9957 AR | Agricultural - Rural | | | | Agricultural | 16 | 166 CLOSED | | |
| 1240 AR | Agricultural - Rural | | | | Agricultural | 3 | 31 CLOSED | | |
| 8579 PD | Planned Development | 14-0815 | | | Planned Development | 9 | 63 CLOSED | | 83-8-BP |
| 8606 PD | Planned Development | 87-0209 | | | Planned Development | 2 | 53 CLOSED | | |
| 7851 AR | Agricultural - Rural | | | | Agricultural | 9 | 64 CLOSED | | |
| 9744 PD | Pianned Development | 77-0123 | | | Planned Development | | S CLOSED | | |
| 8765 PD | Planned Development | 81-0339A | | | Planned Development | | 6 CLOSED | | |
| 8757 M | Manufacturing | 74-0005 | | | Commercial/Office/Industr | | 142 CLOSED | SU1270LE GB | 07-1-LE |
| 7851 AR | Agricultural - Rural | | | | Agricultural | 9 | 65 CLOSED | | |
| 6948 AI | Agricultural - Industrial | | | | Agricultural | 60 | 84 CLOSED | | |
| 8742 PD | Planned Development | 83-0214 | | | Planned Development | | 4 CLOSED | | |
| 8702 PD | Planned Development | 99-0338 | | | Planned Development | 9 | 60 CLOSED | | |
| 7851 AR | Agricultural - Rural | | | | Agricultural | 9 | 68 CLOSED | | |
| 8711 AR | Agricultural - Rural | | | | Agricultural | 2 | 25 ACTIVE | 95-0171 | 95-5-LE |
| 8721 PD | Planned Development | 85-0317 | | | Planned Development | 8 | 39 ACTIVE | 00-0502 | 00-3-LE |
| 8703 AR | Agricultural - Rural | | | | Agricultural | en . | 38 CLOSED | | |
| 8704 PD | Planned Development | 04-1593 | | | Planned Development | 15 | 159 CLOSED | | |
| 9706 PD | Planned Development | 06-0243 | | | Planned Development | 13 | 138 CLOSED | | |
| 9544 RSC-9 | Residential - Single-Family Conventional | 14-0082 | | | Residential | (R) 3 | 34 CLOSED | | |
| 617 AR | Agricultural - Rural | | | | Agricultural | 13 | 136 CLOSED | | 6-81-4 |
| 9351 AR | Agricultural - Rural | | | | Agricultural | 7 | 72 CLOSED | | |
| 617 AR | Agricultural - Rural | | | | Agricultural | 14 | 148 CLOSED | | |
| 8439 PD | Planned Development | 96-0295 | | | Planned Development | 2 | 57 CLOSED | | |
| 7987 PD | Planned Development | 00-0532 | | | Planned Development | 7 | 71 CLOSED | | |
| 6454 AR | Agricultural - Rural | | | | Agricultural | 18 | 183 CLOSED | 5009-0718 | 09-2-LE |
| 8373 RSC-6 | Residential - Single-Family Conventional | 84-0054 | | ΨH | Residential | 7 | 78 CLOSED | | |
| 3306 PD | Planned Development | 84-0037 | | | Planned Development | 13 | 134 CLOSED | | 2-81-5 |
| 3315 PD | Planned Development | 03-1469 | | | Planned Development | 1 | 11 CLOSED | | 12-11-79 |

| FID_Zoning NZONE | NZONE_DESC | RZ | ZC RS | OVERLAY CATEGORY | Restr FID_Landex Activatios | SUPERMIL | OperPermit |
|------------------|---|----------|---------|---------------------------|-----------------------------|--------------|------------|
| 5406 PD | Planned Development | 8600-68 | | Planned Development | 170 CLOSED | | |
| 5238 PD | Planned Development | 88-0066 | | Planned Development | 69 CLOSED | | 6-81-1 |
| 10205 AR | Agricultural - Rural | | | Agricultural | 125 CLOSED | | |
| 1240 AR | Agricultural - Rural | | | Agricultural | 164 CLOSED | | |
| 6546 PD | Planned Development | 94-0134 | | Planned Development | 186 CLOSED | | |
| 7810 RSC-2 | Residential - Single-Family Conventional | 80-0091B | | Residential | 54 CLOSED | | 1-80-5 |
| 7902 PD | Planned Development | 87-0171 | | Planned Development | 55 CLOSED | | |
| 7681 PD | Planned Development | 84-0255 | | Planned Development | 77 CLOSED | | |
| 7322 PD | Planned Development | 84-0117 | | Planned Development | 106 CLOSED | | |
| 5340 PD | Planned Development | 98-0825 | | Planned Development | 22 CLOSED | | 83-1-BP |
| 7481 ASC-1 | Agricultural - Single-Family Conventional | | | Agricultural | 82 CLOSED | | |
| 7470 ASC-1 | Agricultural - Single-Family Conventional | | | Agricultural | 20 CLOSED | | 8-81-3 |
| 9435 PD | Planned Development | 05-1253 | | Planned Development | 10 CLOSED | | |
| 7010 PD | Planned Development | 04-1068 | | Planned Development | 180 CLOSED | | |
| 6416 PD | Planned Development | ZC | 92-0383 | Pianned Development | 97 CLOSED | | |
| 6417 AM | Agricultural - Mining | | | Agricultural | 12 CLOSED | | |
| 5728 AS-1 | Agricultural - Single-Family | | | Agricultural | 111 CLOSED | | |
| 5728 AS-1 | Agricultural - Single-Family | | | Agricultural | 152 CLOSED | | |
| 6703 PD | Planned Development | 98-0826 | | Planned Development | 153 CLOSED | | |
| 6605 PD | Planned Development | 82-0223 | | Planned Development | 100 CLOSED | | 8-82-3 |
| 6704 PD | Planned Development | 98-1462 | | Planned Development | 91 CLOSED | | |
| OA 9966 | Planned Development | 89-0051 | | Planned Development | 163 CLOSED | | |
| 6629 CI | Commercial - Intensive | 95-0275 | | Commercial/Office/Industr | r 70 CLOSED | | 1-80-6 |
| 10191 AR | Agricultural - Rural | | | Agricultural | 58 CLOSED | | 6-80-2 |
| 9794 PD | Planned Development | 15-0439 | | Planned Development | S9 CLOSED | | 7-80-2 |
| 5970 AM | Agricultural - Mining | | | Agricultural | 144 CLOSED | SU06-0792 ER | 3 07-3-LE |
| 6004 M | Manufacturing | 83-0367 | | Commercial/Office/Industr | r 140 CLOSED | | |
| 6836 AS-1 | Agricultural - Single-Family | | | Agricultural | 162 CLOSED | | |
| 5731 PD | Planned Development | 05-0809 | | Planned Development | 88 CLOSED | | |
| 4384 IPD-1 | Interstate Planned Development | 2600-06 | | Planned Development | 104 CLOSED | | |
| 5865 PD | Planned Development | 05-1916 | | Planned Development | 32 CLOSED | | |
| 9729 AR | Agricultural - Rural | | | Agricultural | 92 CLOSED | | 7-81-3 |
| 7581 AR | Agricultural - Rural | | | Agricultural | 83 CLOSED | | 8-80-3 |

| FID ZONING NZUNE | NZONE_DESC | 77 7X | 2 | OVEKLA | OVERLAY CATEGORY | Kestr FID_Langex Activolos | SUPERMIL | Operhermin |
|------------------|---|---------|---|--------|---------------------------|----------------------------|----------|------------|
| M 1096 | Manufacturing | | | | Commercial/Office/Industr | 24 ACTIVE | 96-0215 | 96-5-LE |
| 9601 M | Manufacturing | | | | Commercial/Office/Industr | 187 CLOSED | | |
| 2114 CG | Commercial - General | | | | Commercial/Office/Industr | 74 CLOSED | | |
| 9711 AR | Agricultural - Rural | | | | Agricultural | 93 CLOSED | | |
| 1646 CG | Commercial - General | | | | Commercial/Office/Industr | 19 CLOSED | | |
| 1206 PD | Planned Development | 99-1066 | | | Planned Development | 169 CLOSED | | |
| 10141 ASC-1 | Agricultural - Single-Family Conventional | 13-0886 | | | Agricultural | 30 ACTIVE | 96-0271 | 97-9-LE |
| 8490 PD | Planned Development | 12-0512 | | | Pianned Development | 181 ACTIVE | 09-0191 | 09-3-LE |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 13 CLOSED | | |
| 2585 ASC-1 | Agricultural - Single-Family Conventional | | | | Agricultural | 18 CLOSED | | |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 36 CLOSED | | |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 14 CLOSED | | |
| 941 M | Manufacturing | 85-0165 | | | Commercial/Office/Industr | 86 CLOSED | | 84-7-BP |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 182 ACTIVE | 12-0654 | 12-2-LE |
| 1235 AS-1 | Agricultural - Single-Family | 01-0378 | | | Agricultural | 158 CLOSED | | |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 62 CLOSED | | 88-4-LE |
| 941 M | Manufacturing | 85-0165 | | | Commercial/Office/Industr | 16 CLOSED | | 6-82-1 |
| 10146 PD | Planned Development | 13-0949 | | | Planned Development | 150 CLOSED | | 89-1-LE |
| 3080 PD | Planned Development | 99-0396 | | | Planned Development | 109 CLOSED | | 5-82-4 |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 15 CLOSED | | |
| 2797 AS-1 | Agricultural - Single-Family | | | | Agricultural | 157 CLOSED | | |
| 2762 ASC-1 | Agricultural - Single-Family Conventional | | | | Agricultural | 168 CLOSED | | |
| 941 M | Manufacturing | 85-0165 | | | Commercial/Office/Industr | 149 CLOSED | | |
| 2756 ASC-1 | Agricultural - Single-Family Conventional | 96-0361 | | | Agricultural | 156 CLOSED | | |
| 9947 AR | Agricultural - Rural | | | | Agricultural | 147 CLOSED | | 12-82-2 |
| 9835 AR | Agricultural - Rural | | | | Agricultural | 75 CLOSED | | 87-9-LE |
| 9353 PD | Planned Development | 13-0945 | | | Planned Development | 191 ACTIVE | 12-0776 | 13-1-LE |
| 8744 AS-1 | Agricultural - Single-Family | | | , | Agricultural | 146 CLOSED | | |
| 576 AS-1 | Agricultural - Single-Family | | | | Agricultural | 137 CLOSED | | |
| 2600 PD | Planned Development | 04-1830 | | | Planned Development | 145 CLOSED | | |
| 2583 RSC-4 | Residential - Single-Family Conventional | | | | Residential | 73 CLOSED | | |
| 9427 AR | Agricultural - Rural | | | | Agricultural | 155 CLOSED | | |
| 7589 AS-1 | Agricultural - Single-Family | | | | Agricultural | AE CLOSED | | |

| FID_Zoning NZONE | NZONE_DESC | RZ ZC | RS | OVERLAY CATEGORY | Restr FID_LandEx ActivClos | SUPermit | OperPermit |
|------------------|---|---------|---------|---------------------|----------------------------|-----------|------------|
| 1391 PD | Planned Development | 766-090 | | Planned Development | 81 CLOSED | | |
| 10197 PD | Planned Development | 14-1103 | | Planned Development | OB CLOSED | | 8-82-4 |
| 10197 PD | Planned Development | 14-1103 | | Planned Development | 17 CLOSED | | 4-82-2 |
| 9835 AR | Agricultural - Rural | | | Agricultural | 178 CLOSED | | 87-7-LE |
| 9414 PD | Planned Development | 13-0415 | | Planned Development | 79 CLOSED | • | |
| 9427 AR | Agricultural - Rural | | | Agricultural | 52 CLOSED | | |
| 1369 RMC-16 | 5 Residential - Multi-Family Conventional | | | Residential | 127 CLOSED | | |
| 10152 AS-1 | Agricultural - Single-Family | | | Agricultural | 175 CLOSED | | |
| 9427 AR | Agricultural - Rural | | | Agricultural | 179 CLOSED | | 11-81-2 |
| 1349 PD | Planned Development | 90-0043 | | Planned Development | 128 CLOSED | | |
| 9685 AS-1 | Agricultural - Single-Family | | | Agricultural | 126 CLOSED | | |
| 2002 PD | Planned Development | 93-0242 | | Planned Development | 101 CLOSED | | |
| 9427 AR | Agricultural - Rural | | | Agricultural | 67 CLOSED | | |
| 492 PD | Planned Development | 98-0019 | | Planned Development | 177 CLOSED | | 2-81-4 |
| 1954 PD | Planned Development | 96-0376 | | Planned Development | 154 CLOSED | | |
| 9799 AR | Agricultural - Rural | | | Agricultural | 122 CLOSED | | |
| 1740 PD | Planned Development | 01-0347 | | Planned Development | 23 CLOSED | | |
| 10252 AS-1 | Agricultural - Single-Family | | | Agricultural | 118 CLOSED | | |
| 9483 AS-0.4 | Agricultural - Single-Family Estate | RS | 95-0092 | 92 Agricultural | 103 CLOSED | | |
| 397 AS-1 | Agricultural - Single-Family | RS | 95-0092 | 92 Agricultural | 135 CLOSED | | 6-81-2 |
| 1574 PD | Planned Development | 80-0091 | | Pfanned Development | 161 CLOSED | | |
| 9799 AR | Agricultural - Rural | | | Agricultural | 87 CLOSED | | |
| 1580 CPV-F-1 | . Citrus Park Village | 04-0315 | | Community Based | 124 CLOSED | | |
| 4963 PD | Planned Development | 84-0077 | | Planned Development | 113 CLOSED | | 7-82-3 |
| 1294 AR | Agricultural - Rural | | | Agricultural | 102 CLOSED | | 4-80-1 |
| 9799 AR | Agricultural - Rural | | | Agricultural | 121 CLOSED | | |
| 802 RSC-6 | Residential - Single-Family Conventional | | | Residential | 117 CLOSED | | |
| 10139 RMC-12 | Residential - Multi-Family Conventional | 13-0879 | | Residential | 51 CLOSED | | 2-81-1 |
| 702 PD | Planned Development | 85-0281 | | Planned Development | 120 CLOSED | | |
| 394 AS-0.4 | Agricultural - Single-Family Estate | RS | 95-0092 | 92 Agricultural | 27 CLOSED | SU02-0786 | 2-5-LE |
| 1056 PD | Planned Development | 73-0197 | | Planned Development | 112 CLOSED | | |
| 9799 AR | Agricultural - Rural | | | Agricultural | 119 CLOSED | | 7-82-1 |
| 879 ASC-1 | Agricultural - Single-Family Conventional | | | Agricultural | 115 CLOSED | | |

| OperPermit | | | | 7-82-2 | 84-15-BP | | | | | | | | 5-81-3 | | 4-81-2 | 08-1-LE | |
|----------------------------|---------------------|---------------------|----------------------|---|---------------------|----------------------|----------------------|---------------------|---------------------|----------------------|----------------------|---------------------|----------------------|----------------------|---|----------------------|---------------------|
| SUPermit | | | | | | | | | | | | | | | | 06-0975 | |
| Restr FID LandEx ActivClos | 172 CLOSED | 133 CLOSED | 132 CLOSED | 61 CLOSED | 123 CLOSED | 129 CLOSED | 114 CLOSED | 85 CLOSED | 130 CLOSED | 76 CLOSED | 66 CLOSED | 105 CLOSED | 131 CLOSED | 173 CLOSED | S6 CLOSED | 185 ACTIVE | 35 CLOSED |
| OVERLAY CATEGORY | Planned Development | Planned Development | Agricultural | Agricultural | Planned Development | Agricultural | Agricultural | Planned Development | Planned Development | Agricultural | Agricultural | Planned Development | Agricultural | Agricultural | Agricultural | Agricultural | Planned Development |
| RS | | | | | | | | | | | | | | | | | |
| ZC | 482 | 562 | | | 600 | | | 750 | 200 | | | 114 | | | | | 143 |
| RZ | 99-0482 | 82-0299 | | naí | 92-0009 | | | 01-1057 | 90-0007 | | | 93-0414 | | | lat | | 86-0143 |
| NZONE_DESC | Planned Development | Planned Development | Agricultural - Rural | Agricultural - Single-Family Conventional | Planned Development | Agricultural - Rural | Agricultural - Rural | Pianned Development | Planned Development | Agricultural - Rural | Agricultural - Rural | Planned Development | Agricultural - Rural | Agricultural - Rural | Agricultural - Single-Family Conventional | Agricultural - Rural | Planned Development |
| FID_Zoning NZONE | 376 PD | 1305 PD | 9799 AR | 9818 ASC-1 | 267 PD | 9799 AR | 1036 AR | 196 PD | 199 PD | 9799 AR | 9799 AR | 103 PD | 9799 AR | 9799 AR | 9867 ASC-1 | 3 AR | 5 PD |

| OWNER | FolioNum | IssueDate | ExpirDate MapNum | LocDesc |
|---|------------|------------|------------------|--|
| HILLSBOROUGH RANCH CORP | 58103.0150 | | 9 | |
| CL REALTY LLC | 32837.0000 | 10/2/2006 | 8/30/2011 180 | USHwy 41, East side just north of Valroy Rd |
| SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT | 58079.0000 | 3/5/1980 | 3/5/1981 15 | 1 1/2 mile N of Hillsborough-Manatee County Line |
| DAWN M DRUM AND ROBERT B LAVERS SR | 79636.0025 | 8/5/1982 | 8/5/1983 62 | S of Bonita Dr, W of Crenshaw Dr |
| SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT | 32717.0000 | | 122 | |
| DEAN LEE DRIGGERS | 55182.0000 | | 84 | |
| OCEAN BREEZE PROPERTIES LLC | 32720.0000 | | 8/12/2008 167 | |
| LOST RIVER PRESERVE LLC | 32694.0000 | 4/4/1997 | 4/4/2012 145 | E and S of Gulf City Rd, N of Coachroach Bay Rd |
| LOST RIVER PRESERVE PROPERTY OWNERS' ASSOC | 32696.1066 | | 99 | |
| OCEAN BREEZE PROPERTIES LLC | 32676.0150 | | 172 | |
| JPL Land Holdings LLC | 79456.0000 | 18991230 | 18991230 192 | CR 579 1.5 miles S of SR 674 West Side of CR 579 |
| LOST RIVER PRESERVE LLC | 32683.0000 | | 131 | |
| K HOVNANIAN WINDWARD HOMES LLC | 57480.3000 | | 93 | |
| KIEWIT INFRASTRUCTURE SOUTH COMPANY | 79451.0000 | 3/28/2006 | 3/28/2016 177 | Leonard Lee Rd, 1/2 mile South of SR674 |
| LOST RIVER PRESERVE PROPERTY OWNERS' ASSO INC | 32686.0000 | | 111 | |
| MARY C MCMILLAN TRUSTEE ET AL | 55042,0000 | | 20 | |
| TAMPA GROVES LLC | 79443.0000 | 6/30/2006 | 6/30/2021 178 | Balm Wimauma Rd, East of Lake Carlton Rd |
| DAN S AND JOAN! J TILLETT | 77989.0000 | 12/10/2007 | 12/10/2017 183 | S of Colding Loop Rd, 1/2mile W of Cariton Lake Rd |
| MILLER FLORIDA HOMES INC | 54248.0200 | 7/9/1980 | 7/9/1981 21 | N of Route 674, E of I-75 |
| MITCHELL DEVELOPMENT VENTURE LLC | 78001.0000 | | 123 | |
| HILLSBOROUGH COUNTY | 31569.0000 | 7/23/2012 | 7/23/2014 191 | N side of Shell Point Rd, 1 mile west of US Hwy 41 |
| HILLSBOROUGH COUNTY | 31564.0000 | | 47 | |
| WESTFIELD HOMES OF FLORIDA | 55707.0000 | | 108 | |
| DEPT OF TRANSPORTATION | 55737,0000 | | 79 | |
| MIRA LAGO WEST CDD | 31581.0736 | | 73 | |
| MARTHA M SWANSON | 55738.0000 | | 87 | |
| EAST BAY PARTNERS LTD | 54196.0000 | | 56 | |
| M/I HOMES OF TAMPA LLC. | 54245.5100 | | 181 | |
| SHELLEY LAKES MINE INC | 77970.0000 | | 176 | |
| W-G DEVELOPMENT CORP | 54245.0000 | 11/7/1979 | 11/7/1980 1 | E of TECO Rd, 2 miles N of Route 674 |
| EW MILLER | 88707.0000 | | 166 | |
| HILLSBOROUGH COUNTY | 54193.0000 | | 165 | |
| REGINALD JOYNER | 88707.0000 | 6/7/2010 | 6/7/2015 190 | S of Balm Rd, W of Carlton Rd |
| | | | | |
| | | | 7 | |
| | | | | |

| TERRABROOK APOLLO BEACH LP | 51638.0100 | 10/29/1980 | 10 | |
|---|------------|------------|--------------------------------------|--|
| STOCKTON FARMS LLC | 88695.0000 | 7/5/2006 | 7/5/2021 179 | CR672 , 1/2 mile east of Lake Carlton Rd |
| WILLIAM BRADY WALLACE | 88698.6000 | | 154 | |
| SHELLEY LAKES MINE INC | 88698.0050 | 10/18/2007 | 88698.0050 10/18/2007 10/18/2012 184 | S/S of CR 672: 700' E of Shelley Ln |
| SUN COUNTRY MATERIALS LLC | 77789.1000 | | 119 | |
| AG-MART PRODUCE INC | 77820.0200 | | 156 | |
| NNP-SOUTHBEND LLC | 54157.0000 | 8/17/1983 | 8/17/1983 10/24/1988 71 | S of Big Bend Rd, W of I-75 |
| | 54163.0500 | | 77 | |
| E G SIMMONS FARMS INC | 51514.0000 | | 00 | |
| HILLSBOROUGH COUNTY | 52052.0000 | | 173 | |
| | 77686.0020 | | 175 | |
| TAMPA ELECTRIC CO | 51470.0000 | 9/13/2007 | 9/13/2007 10/12/2008 182 | N of Big Bend Rd; E of US 41 on Wyandotte |
| TIITF/LOCATED IN HILLSBOROUGH CO | 51501.0000 | | 7 | |
| WILLIAM R WILLIAMS IR TRUSTEE ET AL | 51486.0000 | | 81 | |
| SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT | 51450.0000 | | 174 | |
| SOUTH POINTE OF TAMPA HOA | 77479.2910 | | 63 | |
| TITE/LOCATED IN HILLSBOROUGH COUNTY | 51426.0000 | | 25 | |
| | 77420.5000 | 1/30/1996 | 1/30/2016 125 | S of Rhodine Rd, E of Balm Riverview Rd |
| SOUTHERN DEVELOPMENT GROUP INC | 77457.0100 | 2/15/2002 | 2/15/2008 169 | E side of East Bay Rd, 1 mile north of Big Bend Rd |
| HILLSBOROUGH COUNTY | 77441.0000 | | 170 | |
| TRANSCEND DEVELOPMENT CORP | 77433.1000 | | 126 | |
| MAXINE H HILL TRUSTEE | 77290.0000 | | 115 | |
| | 77291.0200 | | 161 | |
| HARRY III AND VONDA ANN CUNNINGHAM | 77219.0100 | 7/15/1981 | 7/15/1982 40 | E of East Bay Rd, S of Symmes Rd |
| | 77299.0100 | | 117 | |
| DEPT OF TRANSPORTATION | 77245.1000 | | 78 | |
| | 77192.4658 | | 19 | |
| JAMIE READING AND DAVID D MCLAUCHLIN IR | 77169.1734 | | 118 | |
| SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT | 50682.0000 | 1/29/2010 | 1/29/2012 188 | Symmes Rd east of Ekker Rd west of Buliforg Creek |
| BRUSSELS BOY HOMEOWNERS ASSOCIATION INC | 77169.1162 | | 13 | |
| WILDER CORP OF DELAWARE | 77058.5000 | 3/18/1981 | 3/6/1985 32 | E of US Hwy 301, N of Symmes Rd |
| VO LICENTARADA ILC | 77154 0000 | 11/10/1982 | 11/10/1087 11/10/1083 4 | W of US Hwy 301, 1/2 mile N of Symmes Rd |

| OWNER | FolioNum | IssueDate | ExpirDate MapNum | LocDesc |
|--|------------|------------|-------------------------------------|--|
| HENDERSON BROTHERS/LAND LLC | 88353.4644 | | | |
| RING POWER CORP | 77173.0150 | 6/25/1981 | 6/25/1982 38 | S of Gibsonton Dr, W of Fern Hills |
| KALVEN DALE KALSHOVEN AND JUNE DIXIE KALSHOVEN | 76686.0000 | | 102 | |
| LAVERNE AARON BRADLEY TRUSTEE | 93627.0000 | | 128A | |
| PETER J AND STEPHANIE L DUFFY | 76720.2076 | | 140 | |
| TRYGVE G AND JOANNA ANDERSON | 50229.2546 | 2/25/1982 | 2/25/1983 10 | S of Riverview Dr, 1/4 mile E of 78th St |
| PARKWAY CENTER CDD | 49150.2228 | | 5 | |
| LAKE FANTASIA HOMEOWNERS INC | 76151.0568 | | 2 | |
| MAGGIE M SAVICH TRUST | 76041.0000 | | 109 | |
| LAKE ST CHARLES CDD | 73988.5000 | 2/23/1983 | 3/20/1985 75 | N of Riverview Rd, E of I-75 |
| AILEEN AMIERO TRUSTEE ET AL | 87518.0000 | | 138 | |
| MELISSA S RIVERS | 74703.0100 | 11/24/1982 | 11/24/1982 11/24/1983 46 | S of Bloomingdale Ave, W of Bell Shoals Rd |
| ROSENBLATT FAMILY LIMITED PARTNERSHIP | 47934.0000 | | 89 | |
| CIRCLE C PROPERTY INC | 73857.0000 | | 80 | |
| JAMES E JONES JR | 93136.0000 | | 30 | |
| JIMMIE V APRILE AND JENNIE APRILE FAM LTD PTNSP | 93186.0200 | | 72 | |
| WHITE CONSTRUCTION INC | 73783.0100 | | 83 | |
| CRESCENT OWNERS ASSOCIATION INC | 72223.0000 | | 152 | |
| LAKE BRANDON ASSOCIATION INC | 72233.0000 | | 94 | |
| DAVID C CRUM TRUSTEE | 93102.0100 | 9/20/1982 | 9/23/1983 69 | S of State Road 60, W of Route 39 |
| LEGACY PARK OWNER'S ASSOCIATION INC | 72214.0500 | | 88 | |
| DANIEL D AND AMBER R TROMBLEY | 47888.3698 | | 153 | |
| CIRCLE JR (I) LC | 46421,0000 | 2/13/1980 | 2/13/1981 11 | 400 ft W of Maydell Dr, N of 22nd St |
| ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ST MARY 44655.0100 | 44655.0100 | 7/15/1981 | 7/23/1981 22 | E of 86th St, N of 22nd St Causeway |
| JOSE SUAREZ JR TRUSTEE | 44651.0000 | 8/20/1980 | 8/20/1981 23 | N of 22nd St, E of 86th St |
| HOPEWELL ENTERPRISES LLC | 93095.0000 | 2/7/2008 | 6/29/2008 185 | S/S SR 60; W/S Cassels Rd |
| TAMPA ELECTRIC CO | 44464.0000 | | 120 | |
| LAURA S DICKERSON | 85740.1016 | | 164 | |
| DOROTHY JANE CASE LIFE ESTATE | 67909,0000 | | 41 | |
| BROADWAY CENTRE ASSOCIATION INC | 65683.5716 | | 51 | |
| REVEALING TRUTH MINISTRIES CHRISTIAN CENTER INC | 41791.0000 | | 157 | |
| WHITE CONSTRUCTION COMPANY INC | 65053.0000 | 12/16/1981 | 65053.0000 12/16/1981 12/28/1982 43 | N of MLK Blvd, W of Williams Rd |
| HILLSBOROUGH COUNTY | 65070.0000 | 9/10/1980 | 9/17/1982 24 | S of Tanner Rd, W of Williams Rd |

| OWINER | FolioNum | IssueDate | ExpirDate MapNum | LocDesc |
|---|------------|------------|---------------------------|---|
| SOVRAN GROUP INC | 39897.6532 | 11/22/1996 | 11/22/1996 11/22/2006 142 | N of Hillsborough Ave, W of Harney Rd |
| GEORGE L SOUTHWORTH | 39903.5100 | | 141 | |
| STEPHENS AND JOHN INC | 63292.5100 | | 35 | |
| DIOCESE OF ST PETERSBURG | 62688.0000 | | 49 | |
| CHADWELL HOMES CORPORATION | 63679.0000 | | 45 | |
| KILCOYNE GATOR PROPERTIES LLC | 63471.0104 | | 163 | |
| LAWRENCE AND SUSAN M MILLER | 82776.0100 | 10/6/1998 | 10/6/2008 155 | W of Moores Lake Rd, 1500 feet south of US Hwy 92 |
| MCCORMICK-TAMPA PROPERTIES LLC | 61976.0020 | 5/17/2010 | 5/17/2015 189 | S of US 92, W of Carlton Rd |
| DAVID J JOSEPH CO | 62060.0100 | | 28 | |
| C DENNIS CARLTON SR | 82521.0000 | | 29 | |
| CONE & GRAHAM INC | 62048.0000 | | 168 | |
| HILLSBOROUGH COUNTY | 62169.0000 | | 17 | |
| AZZARELLI DEVELOPMENT CORP | 27352.0000 | 5/10/1984 | 6/13/1988 91 | S of Waters Ave, W of Anderson Rd |
| LORTON INDUSTRIES INC | 62049.0000 | 2/5/2013 | 8/31/2018 187 | N/W Corner of Pruett Rd & Kingsway |
| MICHAEL R BECKMAN | 62217.0000 | | 160 | |
| AZZARELLI DEVELOPMENT CORP | 62145.0000 | 8/30/1988 | 7/21/1991 124 | E of Route 579, N of Pruitt Rd |
| FGHP PHASE III LIMITED PARTNERSHIP | 23831.2500 | 7/26/1982 | 7/26/1983 61 | N of Waters Ave, W of Anderson Rd |
| ALLIANCE PP2 FX3 LIMITED PARTNERSHIP ET AL | 24260.0000 | 6/15/1989 | 12/15/1989 127 | E of Himes Ave, S of Busch Blvd |
| TOULON COMMUNITY DEVELOPERS INC | 61558.0000 | 6/17/1982 | 6/15/1984 60 | S of Joe Ebert Rd, W of Williams Rd |
| WILLIAM HUGH STANTON | 61742.0000 | | 37 | |
| LAMARK W STILLINGS | 61694.0000 | | 147 | |
| STAR 105 DEVELOPMENT INC | 90178.0000 | | 144 | |
| CF WEST LAKE CORPORATE CENTER ASSOCIATION INC | 23877.0714 | | 110 | |
| BAILEY FAMILY FOUNDATION INC | 81794.0000 | | 150 | |
| WHITE CONSTRUCTION CO INC | 61303.0000 | 1/19/1983 | 1/19/1983 10/25/1985 74 | W of Williams Rd, S of Harney Rd |
| AMERICAN BORROW PIT INC | 61740.0000 | 1/22/1988 | 1/14/1991 36 | E of Route 579, N of I-4 |
| Graceland Sparkman | 60845.0000 | 18991230 | 18991230 193 | CR 579 N of Joe Ebert Rd W corner |
| NANCY D AND RONALD FLOYD | 23767.0100 | | 27 | |
| JANUS TOQUE AND HAYDROJELANE GARUPA | 81509.0000 | | 106 | |
| PULTE HOME CORPORATION | 3728.0000 | | 134 | |
| RONALD HO AND ASSOCIATES INC | 23830.6530 | | 33 | |
| FUTCH PROPERTIES INC | 89759.5002 | | 143 | |
| MIDWAY INVESTMENT CO | 89796.0100 | | 112 | |
| | | | | |

| OWNER | FolioNum | IssueDate | ExpirDate MapNum | Im LocDesc |
|--|------------|------------|------------------|---|
| WESTCHASE FAST CDD | 4025,0000 | | | |
| CWK FAMILY PARTNERSHIP LTD | 61229,0000 | 9/23/1982 | 07 5861/56/6 | F of Morris Bridge Rd & I-75 W of Tampa Bypass C. |
| C W KEARNEY | 61227.0000 | 5/27/1982 | 5/27/1983 57 | E of Morris Bridge Rd, N of McRae Ave |
| LAHNE JOHNSON | 60620.0100 | 9/2/1981 | 1/14/1991 44 | N of Thonotosassa Rd, W of McIntosh Rd |
| THOMAS HOLDINGS LLC | 4017.0800 | | 92 | |
| JOHN A JR AND SUSAN CORDELL | 89754.5000 | | 129 | |
| TREE TOPS II LLC | 3540.0134 | | 28 | |
| ERNESTO GONZALEZ AND ALEXIS GONZALEZ SR | 3589.0000 | | 114 | |
| ERNESTO PEREZ | 89752.0000 | 12/28/1981 | 12/7/1984 50 | S of Midway Rd, 1/4 mile E of Charlie Taylor Rd |
| ASTON GARDENS AT TAMPA BAY LLC | 3521.4000 | | 130 | |
| HILLSBOROUGH COUNTY | 3543.0000 | | 06 | |
| DELTA ASPHALT PAVING CO | 59849.0010 | | 98 | |
| CARL LJR AND MARILYN S CARPENTER | 89350.0000 | | 82 | |
| WEST HAMPTON HOA | 3520.3036 | 3/18/1981 | 3/6/1985 31 | N of Racetrack Rd, E of County Line |
| FAWN LAKE HOMEOWNERS ASSOCIATION INC | 3507.8778 | | 76 | |
| HILLSBOROUGH COUNTY | 3512.0000 | | 66 | |
| WILLIAM L BISHOP | 3517.0500 | | 133 | |
| DEPT OF TRANSPORTATION | 3017.0100 | | 136 | |
| E WAYNE AND JUANITA WIGGINS | 80706.0100 | | 103 | |
| TRINA REYES | 80743.0000 | 7/8/1981 | 7/8/1982 39 | E of Gallagher Rd, N of Knights-Griffin Rd |
| HOMEOWNERS ASSOCIATION AT WESTWOOD LAKES INC | 3520.1348 | | 159 | |
| LAUREL A ENDRESS TRUSTEE | 2721.0000 | | 95 | |
| ASHTON TAMPA RESIDENTIAL LLC | 2873.0000 | | 100 | |
| AMBASSADOR X L P | 16427.5000 | 8/27/1982 | 8/27/1983 66 | E of Zambito Rd, N of Erhlich Rd |
| LAMAR E VARN | 80567.0000 | 4/27/1983 | 4/27/1984 18 | W of Varn Rd, N of Knights-Griffin Rd |
| HILLSBOROUGH COUNTY | 2736.0000 | | 139 | |
| ANTHONY C BAKER | 2955.7144 | | 12 | |
| YASIR SULLAIMAN AND ABEER M YOUSEF ET AL | 34650.0000 | 3/18/1981 | 3/18/1982 29 | E of Livingston, N of Sinclair Hills |
| LEWIS AND SHIRLEY A WILLIAMS | 2725.2522 | | 101 | |
| WETHERINGTON TRACTOR SERVICE INC | 80358.0000 | 7/7/1997 | 7/7/2002 146 | E of McIntosh Rd, N of Ike Smith Rd |
| PATRICIA ASSOCIATES LIMITED PARTNERSHIP | 15895.1030 | | 137 | |
| CITY OF ST PETERSBURG | 2553.0000 | 8/20/1982 | 8/20/1983 64 | S of Racetrack Rd, W of Gunn Hwy |
| DIMITRI AND SONYA ARTZIBUSHEV C/O | 2313.0000 | | 132 | |

| OWNER | FolioNum | IssueDate | ExpirDate MapNum | LocDesc |
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| ORANGE BLOSSOM CREEK A'SSOCIATION INC | 16123.8320 | | 6 | |
| NHC-FL8 LP C/O PROPERTY 1'AX CONSULTANTS | 1684.0000 | | 92 | |
| FAYE R HOWARD | 1681.0200 | | 128 | |
| JOAN VAN BEBBER | 15326.0000 | | 8/20/1982 8/17/1984 65 | S of DeBueil Rd, E of US Hwy 41 |
| ALTO PHARMACEUTICALS INC | 2100.0000 | 11/8/1985 | 11/8/1985 96 | S of Van Dyke Rd, E of Gunn Hwy |
| HILLSBOROUGH COUNTY | 1679,0500 | | 85 | |
| DEPT OF TRANSPORTATION | 14529.0050 | | 135 | |
| REFLECTIONS OF HILLSBOROUGH ASSOCIATION INC | 14536.0880 | | 89 | |
| GARY AND ANNETTE MURPHY | 1633.0275 | | 105 | |
| JOHN ALLEN AND ROSE MARY HENDRIX | 1630.5000 | | 104 | |
| WN1 HAND RUBY B MARTIN | 384.0000 | | 89 | |
| SWAN COVE HOA | 518.5330 | | 107 | |
| C H AND LINDA MARTIN | 383.0000 | | 34 | W of Tyler Rd, N of Tarpon Springs Rd |
| PINELLAS COUNTY | 378.0010 | | 86 | |
| JOHN A HOWARD | 33016.0000 | 5/15/1981 | 5/1/1985 16 | S of Newberger Rd & 3/4 mile E of US Hwy 41 |
| STEPHEN J DIBBS | 12940.0000 | 12/19/2008 | 12940.0000 12/19/2008 12/19/2018 186 | W of Suncoast Pkwy, S of Pasco Cnty line |
| SCHOOL BOARD OF HILLSBORCHUGH COUNTY | 12929.0004 | | 162 | |
| | | | | |



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[,]" participants only have the right to attend the hearing and to be heard. 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."

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

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."

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" 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."

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. "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" to challenge or appeal a zoning application.

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,

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.

Ouashed 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 parte communications. 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 quasijudicial 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. § 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 quasijudicially 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.
- In such a proceeding, the principles and maxims of equity are applicable. See 22 Fla.Jur.2d Equity §§ 44, et seq. (1980).
- 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.
- 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).
- 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).
- 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).
- 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.
- "'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

- 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.
- 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,

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. 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 factbased, 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

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 dropoff 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,

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. 126.1

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.

ROBERTS, J., dissents.

All Citations

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

108 So.2d 601

Footnotes

- 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.
- 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.

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 hydrogeological analysis 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

3

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 onehundred 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 yetto-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 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 wellestablished. 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 longterm 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

- 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."
- According to Dr. Pitts, karst is a "limestone underground sort of rock structure that is very porous" and through 2 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,

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 appropriate 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

- 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.
- 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.'
- 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 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).

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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 re: MM 21-0033

"Land Excavation" Not Required as Listed PD Use

I. Summary

County Staff and the Land Use Hearing Officer conditioned the effectiveness of Special Use permit for Land Excavation (SU LE 19-1026) on a Major Modification to a Planned Development approval, which would add Land Excavation as a specific use in the PD (PD 18-0304). This is not required of other Special Uses, with the exception of uses that have a specific Code requirement to do so. Balm Grove, LLC, the applicant in this case, is being singled out by the County, and is burdened with an additional requirement to achieving a special use permit than that which is required by Code. This treatment violates basic principles of statutory interpretation and equal protection.

The applicant is not, under County Code, required to gain PD modification approval in order to conduct the Land Excavation activities to which it is now otherwise entitled under the SULE permit.

II. Planned Development Site Plan and Uses

The concept of a Planned Development district in the Code allows for "broad, general concept plans . . . with limited flexibility to accommodate land use changes in response to evolving market conditions." The permitted uses in a PD zoning district are stated on the site plan, and, in the case of the broad concept plan type of PD site plan, the locations of uses are generally stated on the plans in "bubble" form, with general areas but fewer concrete details.

In the existing, approved PD, there are two parcels – the Rhodine Parcel and the Grove Parcel. The approved SULE permit applies to the Grove Parcel. The Rhodine Parcel has up to this point been used for borrow pit activities, which is a form of land excavation.

The "Proposed Use[s]" listed on the approved PD site plan are as follows:

- Rhodine Parcel: Residential Use (271 single family lots), and Commercial Use (3,658.5 s.f.)
- *Grove Parcel*: Residential Use (356 single family lots), and Commercial Use (maximum of 497 s.f. of CN uses and a maximum of 4,503 s.f. of office, residential support, and government uses, and a village green of 4,806 s.f.).

Neither parcel includes land excavation as a proposed use, however, the Rhodine Parcel has operated as a borrow pit. In addition, the Grove Parcel depicts ponds/lakes on the approved site plan. No natural water bodies are listed as existing on-site, therefore it is clear that such lakes will be created.

Clearly, the Rhodine Parcel was able to operate as a borrow pit *without* such activities being a listed use in the PD site plan proposed uses. Therefore, for even this reason alone, it is erroneous and a clear misapplication of Code to require the Grove Parcel to be modified in order to sustain land excavation uses otherwise permitted under a SULE permit.

III. Locational Criteria for Land Excavation, Lake Creation

Section 6.11.54 of the Code outlines the criteria and requirements for the approval of a Special Use permit for Land Excavation activities. Land Excavation activities are broken up into several different types, including lake creations, "dry" excavations, and agricultural reservoirs. These different types are permitted in different locations based on zoning. Both "dry" and agricultural reservoir excavation activities are limited to specific districts. Lake creation is specifically allowed "in all zoning districts."

Planned Development districts are zoning districts, whose permitted uses, dimensional requirements, and other criteria are established by the site plan, rather than a matrix that uniformly applies like other zoning districts. As a zoning district, a PD district is irrefutably one such "zoning district" in which land excavation activities resulting in lake creation may be considered.

As described below, where the County desired to specify Special Use types that are limited, not allowed, or otherwise affected by PD zoning, the County did so in the Code. Land excavation resulting in lake creation was *not* one such use. As is clear from an analysis of the Code, if a Special Use must specifically be called out as a listed use in a PD site plan, the Code so states.

IV. Other Special Uses in Relation to Planned Development Districts

a. Communication Facilities, Wireless

Wireless communications facilities are a Special Use which the County has addressed in the Code as requiring inclusion as a listed use in a PD district. Specifically, "wireless communication facilities shall be permitted in [PD] districts approved after October 1, 2005 only if expressly allowed as a specifically identified use by the conditions of approval."²

¹ LDC, Section 6.11.54.A.1.a. "Lake creations, lake cleaning and stockpile removal may be considered in all zoning districts." C.f. Section 6.11.54.A.1.b. "Dry' land excavations may be considered only in the following districts..." ² LDC, Section 6.11.29.C. (emphasis added).

b. Land Application Disposal

Similar to the Land Excavation Special Use Code section, the Land Application Disposal section includes Locational Criteria, which prescribe where and in what districts such disposal activities are allowed. Unlike the Land Excavation section, however, the Land Application Disposal Locational Criteria specifically address Planned Development districts as needing to include the disposal activities in their permitted uses. Specifically, "Land Application Disposal shall be permitted in AM, A, AR, AS-0.4, AS-1, ASC-1, AI and M zoning districts and *Planned Developments expressly permitting biosolids application*."

c. Affordable Housing Development

The Special Use rules for Affordable Housing include a provision for bonus density if part of a site plan controlled (PD) zoning district. In order to achieve such bonus density, "[the] site plan controlled projects shall establish specific lot sizes, setbacks and dwelling unit types and shall be exempt from meeting the standard district setback requirements." This is another example of the County specifically calling out the treatment of a Special Use as requiring specificity on a PD site plan.

d. Apartment, Commercial

The Code addresses where Commercial Apartments may be located, allowing them in "the BPO, CN, CG, SPI-UC-1 and SPI-UC-2 zoning districts, as well as in PD (Planned Development) zoning districts which generally permit such district uses." Although slightly less rigid in terms of not requiring dimensional specifications and unit-counts be listed in the PD plans, Commercial Apartment uses are therefore still specifically required by the Code to be listed under the uses of a PD site plan.

e. Hotel/Motel

Although a sparse Code section altogether, the conditions for allowing Hotel/Motel uses include limitations based on location. The Code specifically calls out the "PD-RP" district (a subset of PD district) as one such zoning district in which the dimensions of a Hotel/Motel use is limited.⁶

V. Statutory Interpretation

Based on a review of the Code, specifically of Special Use provisions, it is clear that when the County wants to limit or otherwise address a Special Use in relation to its location in a PD district, it is fully capable of doing so. Notably absent from the Land Excavation section, which falls just after the Land Application Disposal section, is any limitation or other mention of a PD district. Therefore, it is clear that the County does *not* require any special treatment for lake creation activities, which are allowed in "all zoning districts", with respect to a PD district. Unlike Commercial Apartments, Land Application Disposal uses, and Wireless Communication Facilities, which must be included in the permitted uses of Planned Developments, Land Excavations resulting in lake creation need not be called out on the approved site plan.

³ LDC, Section 6.11.53.B.3.a. (emphasis added).

⁴ LDC, Section 6.11.07.C.1.

⁵ LDC, Section 6.11.16. (emphasis added).

⁶ LDC, Section 6.11.50.C. "In the PD-RP district, hotel/motel buildings' square footage shall not exceed 25 percent of the total gross building square footage."

To read the Code otherwise – i.e., to read *in* a requirement that Land Excavation lake creation uses must be included in the PD site plan uses and/or must otherwise be limited or addressed by the PD – is contrary to basic and long-standing principles of statutory interpretation established by the Supreme Court of the United States, and followed by courts, lawyers, and lawmakers alike.

The statutory interpretation canon known as the "Presumption of Meaningful Variation" means that "[where the lawmaker] includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that [the lawmaker] acts intentionally and purposely in the disparate inclusion or exclusion." Therefore, where there are multiple instances of the County Code specifically addressing the interplay of a Special Use and a PD district, in the instances where the County did *not* include such language, this must be presumed to be intentional. Otherwise, the specific mention of inclusion in the PD uses, such as in the Wireless Communication Tower section, would be superfluous and without meaning, which is a result abhorrent and contrary to statutory interpretation principles.⁸

In a similar vein, the statutory interpretation canon known as the "Whole-Text Canon" requires a court to "ascertain [a] statute's plain meaning by looking to the particular language at issue and the language and design of the statute as a whole." For the same reasons as described above, the Land Excavation section cannot be viewed in a vacuum as the County Staff is doing with respect to conditioning the SULE permit on a PD modification. To do so would allow the County Staff to infer requirements into the Code in any section they may wish to look at in isolation. Clearly, however, when viewing the Special Use section of the Code as a whole, it is the obvious intent of the County lawmakers to specifically require Special Uses be listed in a PD district in certain instances, but not others. Land Excavation is not one such use that must be listed. Lake creation activities resulting from Land Excavation are permitted in any zoning district, which includes a PD district, and that is all.

VI. Equal Protection Claim

Applying an erroneous requirement for PD modification to include Land Excavation, on top of an approved Special Use permit for same, is treating the applicant differently than other applicants. In fact, it is effectively treating the applicant differently than other applicants *under the same PD*, because the Rhodine Parcel has operated as a Borrow Pit without mention of the associated excavation activities as a specified permitted use in the PD.

There is a wealth of case law in the State of Florida which holds that such disparate treatment of one applicant/land owner with respect to other, similarly-situated landowners is unconstitutional and a denial of due process. ¹⁰ The Land Excavation lake creation use sought by the applicant is similarly situated to the Borrow Pit use on the Rhodine Parcel, because that Borrow Pit has resulted in the creation of a lake. Therefore, it is the same type of use

⁷ Russello v. United States, 464 U.S. 16, 23 (1983). See also <u>Hamdan v. Rumsfeld</u>, 548 U.S. 557, 578 (2006). "[An] inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute."

⁸ This also implicates the interpretation canon known as the "Rule Against Surplusage". See, e.g. <u>Young v. United Parcel Service, Inc.</u>, 135 S. Ct. 1338, 1352 (2015) "[The Court has] long held that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause is rendered superfluous, void, or insignificant." (internal quotations omitted).

⁹ K Mart Corp. V. Cartier, Inc., 486 U.S. 281, 282 (1988).

¹⁰ See generally Open Homes Fellowship, Inc. v. Orange County, 325 F. Supp. 2d 1349 (M.D. Fla. 2004); City Nat. Bank of Florida v. City of Tampa, 67 So. 3d 293 (Fla. 2d DCA 2011).

contemplated. The Rhodine Parcel was clearly not required to amend the PD to include lake creation resulting from excavation as a permitted use under the PD, because the current PD site plan does not list such a permitted use.

The basis of an equal protection claim is different treatment for similarly-situated uses. ¹¹ In this case, the uses are not part of a protected class – therefore the County needs a rational basis for such disparate treatment. ¹² The County Staff has neither proffered a basis, nor is there a conceivable basis, to allow lake creation on one parcel in the PD without requiring a modification to the permitted uses, but to require it for lake creation on the other parcel. Nor is there any basis for the County Staff to assert that, for some Special Uses in the Code, a requirement to amend a PD must be *inferred*, whereas for other Special Uses in the Code, such a requirement is expressly stated.

The County does not treat other Special Uses whose Code sections do not contain a requirement to list in the PD uses the same way as it is doing so now. For example, the Special use Code section which details the requirements for Alcoholic Beverage Use does not require such uses to be included in the list of PD uses, however, such uses are routinely permitted on PD-zoned properties without an amendment to the PD. Clearly the County Staff does not infer the requirement to include these uses on the list permitted PD uses, because there is no such requirement in Code. The County Staff has asserted that it is "assumed" that alcoholic beverages might be served in commercial uses, however, it could just as easily be "assumed" that any site plan which includes man-made water bodies on the drawings will include land excavation activities of some kind.

The County simply cannot proffer any rational basis for treating the applicant differently by requiring a modification to the PD where it does not require the same for other Special Uses that do not have such a Code requirement, or for other Special Uses of the *same kind*. While the Special Use Land Excavation Code section itself is not unconstitutional, as-applied in this fashion, it is unconstitutional. For the County to maintain this course of action is to deny the applicant equal protection under the law.

VII. Summary and Conclusion

¹³ LDC, Section 6.11.11.

The applicant must *not* be required to amend the PD to add Land Excavation as a permitted use, in order to make the SULE permit effective. The Code does not require this result. Basic principles of statutory interpretation (Meaningful Variation, Rule Against Surplusage, and Whole-Text Canon) point to a clear intent of the County lawmakers to *not* require land excavation as a listed use in a PD plan. A parcel in the same PD as the applicant's parcel at issue was not required to amend the PD to add land excavation as a permitted use. Other Special Uses in the Code are not required to do so, either, where such a provision does not exist. To require the applicant to amend the PD in this way is to deny the applicant equal treatment under the law, and is therefore unconstitutional.

¹¹ Bannum, Inc. v. City of Louisville, Ky., 958 F. 2d 1354, 1359 (6th Cir. 1992), citing Mackenzie v. City of Rockledge, 920 F. 2d 1554, 1559 (11th Cir. 1991). "It is the similarity of the use, and the zoning regulations requirement of a . . . permit for some uses but not for others, that is the subject of constitutional scrutiny. Different treatment is the initial element of an equal protection violation."

¹² Open Homes Fellowship, Inc. v. Orange County, 325 F. Supp. 2d at 1357. "Even under rational basis review . . . the [government] may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." (internal quotations omitted).

Finally, if the applicant is forced to go through with this modification application, besides having an equal protection claim, the applicant is fully entitled to *approval* of the modification to add the permitted use. The 5th DCA in Florida found in favor of an applicant for a major modification to a planned development, where the applicant presented a prima facie case in support of its application, its application "complied with the procedural requirements . . . and no one [argued] that the modification sought would conflict in any way with the Comprehensive Zoning Plan." The County is required to approve the modification unless it can overcome the prima facie case with competent, substantial evidence to the contrary. However, the applicant has clearly met is burden of showing consistency with Code requirements by receiving approval of the SULE permit. In light of the granted SULE permit, it is hard to imagine how the County could deny the use in the PD modification context, since the SULE permit contains sufficient conditions and constraints to ensure compatibility and harmony of the Land Excavation activities with the Code, the Comprehensive Plan, and the surrounding area.

In sum, the applicant is entitled to the Land Excavation activities on the Grove Parcel as a Special Use, without the burden or concern of a PD modification. The applicant respectfully requests that the Zoning Hearing Master either direct the County Staff and the LUHO to reverse and omit the condition that the PD be modified in order for the SULE permit to become effective OR that the Zoning Hearing master approve the PD modification request so that the condition is met.

¹⁴ ABG Real Estate Development Co. of Florida, Inc. v. St. Johns County, 608 So. 2d 59, 62 (Fla. 5th DCA 1992).

MM 21-0033

Balm Grove Land Excavation Site Applicant: Eisenhower Property Group, LLC Representative: Kami Corbett, Esq.

Existing Approval

- Site is part of PD 18-0304 approved PD site plan
- This MM only affects the Grove Parcel
- 356 single-family homes permitted on subject, "The Grove Parcel"

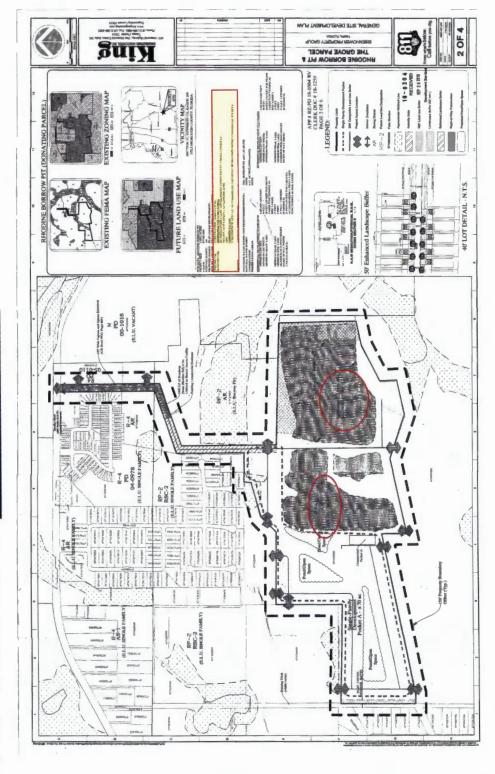




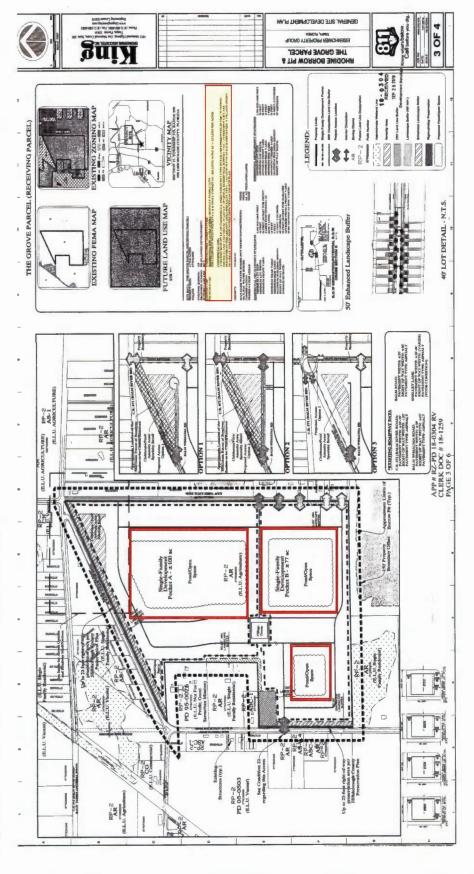
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- Add One Condition:
- **Condition: 14.1** Land Excavation shall be a permitted use on the Grove Parcel subject to approval of a Special Use Permit per Land Development Code Section 6.11.54
- Ministerial/Technical Modification to Acknowledge Land Excavation Use
- Required because of New Staff Interpretation of Land Development Code

The "Rhodine Borrow Pit Site Plan"



The Grove Parcel



Comparison of Uses Permitted by the PD

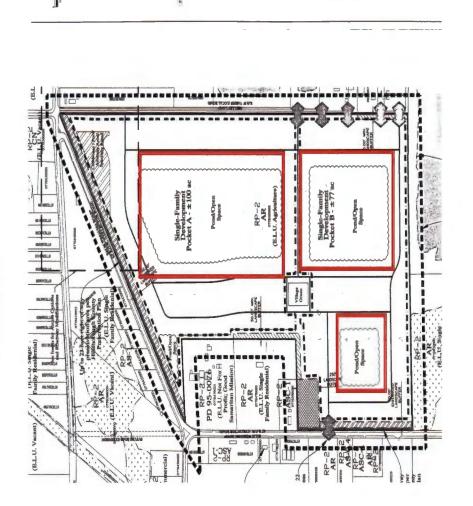
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| SITE DATA - RHODINE BORROW PIT PROJECT SIZE: ±180.3 ACRES FOLIOS: 077420.5000 EXISTING ZONING: AR PROPOSED ZONING: PRO (PLANNED DEVELOPMENT) FITH DET AND INSE. | EXISTING USE: UNDEVELOPED / AGRICULTURE PROPOSED USE: RESIDENTIAL USE (±1843 ACRES); 283 SINGLE-FAMILY LOTS - DEVIE 283 LOTS / ±177,3 ACRES = 1.57 LOT AND COMMERCIAL USE; A MAXIMUM OF 3,820,5 S.F. OF CON |

| SITE DAT | CA - THE GRO | SITE DATA THE GROVE PARCEL (RECEIVING PARCEL) | |
|--------------------------|---|---|--|
| PROJECT SIZE: FOLIOS: | SIZE | ±178.0 ACRES 077848.0000 | |
| PROPOSI FITTIRE | EXISTING ZONING: PROPOSED ZONING: FITTIRE LAND USE: | EXISTING ZONING: AR PROPOSED ZONING: PD (PLANNED DEVELOPMENT) FITTINE LAND LISE: RP-2 | |
| PROPOSED USE | XISTING USE: ROPOSED USE: | UNDEVELOPED/AGRICULTURE RESIDENTIAL USE (±178.0 ACRES); 356 SINGLE-FAMILY LOTS (DEVELOPMENT WITHIN POCKETS A & B SHALL CONSIST OF: 356 LOTS / ± 78.0 AC = 2.0 LOTS PER ACRE) | |
| | | COMMERCIAL USE. A MAXIMUM OF 497 S.F. OF COMMERCIAL USES (WHICH INCLUDES RETAIL USES PERMITTED IN THE CN ZONING DISTRICT) AND A MAXIMUM OF 4,503 S.F. OF OFFICE, RESIDENTIAL SUPPORT AND GOVERNMENT USES ARE PERMITTED IN THE AMENITY AREA/SPECIALTY AREA. A MAXIMUM FAR OF 0,35 IS PERMITTED. A VILLAGE GREEN OF 4,806 S.F. IS REQUIRED WHERE DEPICTED ON THE SITE PLAN. | |
| DENSITY | | 20 DUIAC | |

Land Excavation for Lake Creation

PD Site Plan

Special Use Site Plan



¥ij

Consistency with Comprehensive Plan

Planning Commission finds request CONSISTENT

Comprehensive Plan Consistency

The project is located within the RP-2 Future Land Use (FLU) category and within the Balm Community Plan area. Planning Commission staff has found the proposed modification request to be CONSISTENT with the Future of Hillsborough Comprehensive Plan.

County Staff recommends APPROVAL

2.0 Recommendation

Approvable, subject to the following conditions:

Approval - Approval of the request, subject to the conditions listed below, is based on the general site plan submitted December 31, 2020.

Land Excavation Regulations

removal from any site . . . of any material in a total quantity of more than 10,000 Sec. 12.01.00 (Definitions). Land Excavation: "The excavation and subsequent cubic yards, or in a total quantity of more than 30,000 cubic yards for projects with approved Site Development or Subdivision Construction Plans.

Sec. 6.11.01. B. Special uses contained in this Part shall be considered and approved, approved with conditions, or denied in accordance with the requirements of 10.02.00 Section 10.02.03 – Contains Procedures of Land Use Hearing Officer Hearings

Special Use Permit Approved 08/03/2020

- County Staff Recommended Approval with Conditions
- Land Use Hearing Officer Finch Recommended Approval
- Conditions of Special Use Permit Address Transportation Impacts, Impacts to Surrounding Wells, Light, Noise and Overall Cumulative Impacts

Special Use Permit Conditions

- Permit expires 5 years after date of Operating Permit
- Depth may not exceed 60 feet
- Hours of operation: 7:00 am to 4:00 pm, Monday through Friday
- No operations on weekends or holidays
- Buffering, setbacks, and PVC or wood fence to mitigate impacts to surrounding/adjacent folios

- Access limited to Shelley Lane driveway
- No queuing of haul trucks on County Road 672
- Activities must <u>mitigate dust</u> emissions
- Wetlands/preservation area setbacks required
- Developer to repair any resulting damage to Balm Road/Balm-Wimauma road

Unprecedented Modification

- No Legal or Regulatory Authority requires modification of the PD to add Land Excavation as a Permitted Use in the PD
- Rules of Statutory Construction Do Not Support Staff's Interpretation
- Expert Testimony Supports the Applicant's Position
- No Legal or Regulatory Authority to requires Applicant to seek a Zoning Interpretation to Resolve this Dispute

Balm Civic Association Opposition



Several members of Balm Civic Association oppose the proposed dirt pits, the topic of a public hearing Sept.15. Left to right are Jamie Frankland, Buddy Harwell, Jennifer Stone, Glen Fiske and Barbara Fiske, seated, in front of the site, a former orange grove near the intersection of SR 672 and the Balm/Wimauma Road.

Mr. Frankland:

It was nice to speak with you the other day about our community. Like you, I have long been a resident of Balm (13709 CR 672, Balm Florida). My parents moved here in the mid-seventies and Balm has been our home ever since. My wife and I purchased my parents' home where I grew up nearly 14 years ago now. We purchased the land prior to the completion of the Shelly Lakes mine being fully excavated. This time frame is important as will be detailed in the text to follow. It is also relevant to disclose that I am a registered Professional Engineer that primarily practices in the geotechnical field. Geotechnical engineers specialize in the study of soils with a focus on material strength and associated settlements.

First, as we spoke you expressed concern about the water table draw down effecting your shallow well. This is a legitimate concern because for borrow pits to be financially feasible the amount of soil to be removed will likely require the water table to be lowered so equipment can be staged for deeper excavation. Most local borrow pits look to excavate 20 to 30 feet below the existing ground surface. This is well below our local water table depth. Pumps are often used to expedite the process. Even without the use of pumps for relatively shallow excavations voids are created that will fill with water causing a natural flow toward the excavation lowering the water table as the flow moves toward the excavation. Growing up in Florida this is an easy concept to understand from our youth playing at beach digging holes and watching them fill with water. As you dig the hole you can see the water flow in from all directions until the hole is full of water; noting that the water surface is lowered initially. For large excavations, the distance and magnitude of head loss (lowering of water table) is generally estimated on soils properties gathered through local agencies because the cost of testing is quite expensive. Thus, predicting head loss in magnitude and the distance at which the water table will return to its natural elevation is not an exact science. Furthermore, water table elevations change around ponds are not just temporary; heated water will evaporite and induce a continuous recharge cycle (water flow filling the pond until equilibrium is achieved). In summary, it is possible that your shallow well can be affected by the water table draw down during the excavation process and maybe even long term.

Another concern is that when the water table is drawn down there is a potential for settlement of the soil due to an increase in effective stresses. Effective stress is an engineering term that describes the force that the soil is subject too. In lay terms it is the force the soil is feeling. Mathematically, it is calculated as the total stress minus the pore water pressure. It is not important to fully understand the concept, however the important term here is the pore water pressure. What the equation states is essentially if you remove the water the stress to soil feels will increase. This stress increase may cause settlement at the ground surface. Even minor settlement may cause cosmetic damage to block and other structures. Most commonly cracks in block joints or stucco are observed. Additionally, drywall joints inside homes may also crack. My home has already experienced drywall cracks, stair step cracking of the block and stucco cracks. This cosmetic damage is largely observable on my two-story addition that was properly

engineered, permitted, and inspected per current code. The water level in the lake behind my house (Shelly Mine borrow pit) has continuously dropped over the years. A floating dock I installed shortly after the lake was finished is now 4 to 5 feet higher than the water level.

As was described above there are several possible short-term and long-term issues associated with pond construction. Those responsible for the proposed pond excavation need to be held accountable and should be liable for damage and impacts to our community.

Regards,

Christopher L Lewis Digitally signed by: Christopher L Lewis C = US O = Unaffiliated OU = A01410D00000171367CD0310001A67C Date: 2021.01.12 17.45.43 -05'00'

Christopher L. Lewis, M.S., P.E.

Buddy Harwell

13802 Sweat Loop Rd

Wimauma Fl 33598

To whom it my concern

This is my NOTICE/STATEMENT REGARDING MY Right

- The effects of the constant noise from the water pumps running 24/7 365 days for 3yrs, nor did the applicant offer any mitigation on this issue.
- Did not the account for an existing borrow pit already in operation 1.2 miles down the same road that borders this site, this would put more dangerous trucks on an already heavily and substandard road. Policy 1.8 can not be within 1 mile of existing pits.
- Where the excess water will be going, is it going to flood the property surrounding this site?
- The effects this will have on the surrounding wells in the area, as this would be the 4th pit within a 3 mile area. For the last 12 months according to the local well company that has been in business for 40yrs, they have seen a lot of water issues.
- 1. Given the amount of material proposed for excavation and the proposed five-year time frame, it is estimated that an average of 1,992 cubic yards of material will be excavated per day. The 1,992 cubic yards equates to 220 trucks per day (110 inbound and 110 outbound). Employee trips are estimated to be ten (10) trips per day (5 inbound and 5 outbound). The proposed project would generate approximately 87 trip ends during the AM peak hour with 46 inbound and 41 outbound. The average number of trucks during a typical hour of the day is estimated to be 30 trip ends (15 inbound and 15 outbound). The site is not proposed to operate during the PM peak hour timeframe, so no PM peak impacts are anticipated.

The math alone defies the argument that trucks will not be lined up out on CR 672, Balm Wimauma Road and Balm Boyette road Waiting to be loaded. There would be no means to achieve the desired quantity otherwise.

2. Under the temporary permit Eisenhower has now there are an equal amount of filled trucks entering the Grove property to dumb their contents. Dumping is not excavating why is this allowed?

The property dynamics do not qualify it for excavation. Hence 4 variations have been requested.

- 3. The offer to install a 6ft fence 30ft from the road way. A PD for the property already exists requiring a fence 50ft from the roadway. This alone requires Condition 2 to be applied. As it presently stands the 50 ft is a variance granted from the 250ft standard requirement. The request for 30 ft violates every intent of required 250ft setbacks. It is also in direct conflict with the original PD variance granted.
- 4. The proposed land excavation shall be 500 feet from any residentially developed or residentially zoned property line. This county requirement is not met.
- 5. The proposed land excavation shall be 30 feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site. Greater

separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area. This county requirement is not met.

- 6. The proposed land excavation shall be 1,000 feet from any school, hospital, or church property line. This county requirement is not met.
- i. Also, this statement by the applicant is false; The applicant also notes that the church located on the east side of Balm-Wimauma Road adjacent to the proposed excavation has been vacant for several years and is currently not for sale. The Pastor and his wife live on the property. The church is active to include classes. The property not being for sale is irrelevant since the property is being used.
- 7. Mr. Luce detailed how the request to excavate 2.5 million cubic yards complies with the standards of the Land Development Code regarding land excavation. This is a false statement. Were it a true statement there would not be a need for 4 variances.

This request blatantly violates the code as is written. What is the purpose of the code if no other reason is needed for an applicant to request and be granted variances then they cannot use a parcel as they wish to.

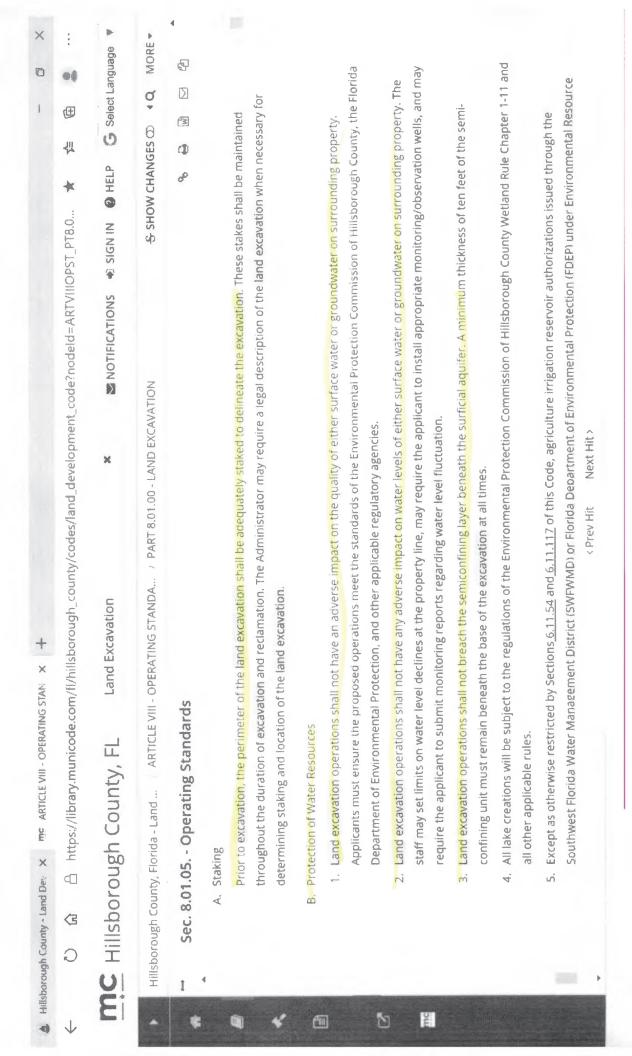
With the amount of variances requested to make this property comply with Hillsborough County Land Use Code in addition to the fact that a PD already exists this property should be reevaluated under Condition 2 in the code.

The Balm Community Association vehemently opposes this request.

11/6mc

Thank you

Buddy Harwell



Revised Applicant Narrative – Special Use Application 19-1026

RECEIVED

MAR 0 3 2020

The Applicant has revised its request to:

Development Services
Department

- Reduce the total volume to 2.5 million cubic yards
- Reduce the size of the excavation pond
- Reduce the duration of the excavation activity
- Limit the days of operation to Monday through Friday
- Limit the hours of operation to between 7:00 am and 4:00 pm
- Move the southwestern pond to a location at least 500' from the closest residentially zoned property
- Provide a fence setback of 50' along the boundaries of adjacent properties, with a 30' setback from Balm Wimauma Road, and provide fencing along the property line on all other sides of the property
- Relocate the haul route to the east side of the property

The Applicant is requesting the following waivers:

Distance Separation from a Church Property Line

A waiver to allow a distance separation of 618' from a church property line [Pond ABC]

A waiver to allow a distance separation of a minimum of 317' from a church property line [Pond FG]

Distance Separation from a Residential Property Line

A waiver to allow a distance separation of a minimum of 368' from a residential property line [Pond ABC]

A waiver to allow a distance separation of a minimum of 265' from a residential property line [Pond DE]

A waiver to allow a distance separation of a minimum of 383' from a residential property line [Pond FG]

ARTICLE VIII - OPERATING STANDARDS

PART 8.00.00 - GENERALLY

This article contains operating standards for certain uses. These uses must be approved for the site on which they will take place by the appropriate procedures elsewhere in this Code. Once the use is approved for the site, the following procedures and standards must be complied with before commencement of the use.

PART 8.01.00 - LAND EXCAVATION

Sec. 8.01.01. - General Provisions

A.Short Title

This Part shall be known and may be cited as the "Hillsborough County Land Excavation Regulations."

B.Purpose

The purpose of this division is to protect the public health, safety, and welfare through the establishment of reasonable standards for the review and regulation of the location and operation of land excavation activities as materials to meet the demands of construction within Hillsborough County. It is intended that this division be used in conjunction with the provisions of Section 6.11.54 of this Code pertaining to Land Excavation Special Use Permit and Section 6.11.117 pertaining to Agricultural Reservoir Conditional Use Permit. This division shall fairly and equitably allow the operation of land excavation while at the same time protecting the following needs and interests of the County.

1.Reuse of Property Excavated, 2.Reclamation of Excavated Area, 3. Surrounding Land Use, 4. Transportation Concerns, 5. Environmentally Sensitive Areas and heavily treed sites, 6. Water Quality, 7. Water Quantity, 8. Drainage, 9. Public Safety, 10. Fugitive Dust Attenuation, 11. Noise Levels, 12. Property Values, and 13. Compliance with the Future of Hillsborough Comprehensive Plan.

It is further intended that where these regulations make special provisions for land excavations for the purpose of agricultural irrigation that are authorized by the Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP), the provisions shall cease to be in effect in the event that SWFWMD or FDEP no longer issues such authorizations and the excavations shall comply with all standard requirements of this Section.

C.Administrative Guidelines

The Administrator may adopt Administrative Guidelines in the form of rules of procedure and regulations for the administration and enforcement of this Part.

The Applicant is proposing to create excavation ponds in conjunction with the development of a residential subdivision. This means that the location of the excavation ponds must be in the same general location as they are depicted in the certified site plan of the PD zoning approval for the property. Strict imposition of the distance separation requirement would unreasonably force a redesign of the entire subdivision solely for the temporary use of the property for the creation of excavation ponds.

The Applicant is proposing to mitigate the requested reduction in distance separation by limiting the days and hours of operation and the total duration of the land excavation activity. The Applicant is also proposing visual screening to minimize any potential visual impact.

It should be noted that the church building located within 618' from Pond ABC is vacant and unused. The church building has not been in use for several years and is currently for sale. Thus, there are currently no church operations, nor are any church operations anticipated during the duration of the excavation.

It should also be noted that the residential properties directly to the south of Ponds DE & FG are owned and controlled by entities related to the Applicant, which have no objection to the distance separation waiver.

Prohibition of other Excavation, Land Alteration

Section 6.11.54(B)(8) of the Hillsborough County Land Development Code prohibits the issuance of any other land alteration permit until the land excavation activities have ceased. The Applicant is seeking a waiver from this prohibition to allow land alteration permits to be issued in conjunction with the development of the residential subdivision.

Creation of excavation ponds in conjunction with the construction of a subdivision does not require a special use permit as long as the total volume of excavated materials does not exceed 30,000 cubic yards. In such situations, the excavation pond creation and subdivision site work are able to occur simultaneously. If there are more than 30,000 cubic yards excavated, then a Special Use Permit is required. Until the ponds are completely excavated, the 30,000 cubic yard limit will not be reached; therefore it would be unreasonable to require the excavation ponds be completely excavated before any other site work for the subdivision

APPLICATION: PD 18-0304 (REMAND) Riverview & Balm/South

ZHM HEARING DATE: August 20, 2018 BOCC MEETING DATE: October 9, 2018

CASE REVIEWER: Michelle Heinrich, AICP

Application Review Summary and Recommendation

1.0 Summary

1.1 Project Narrative

This application was remanded to the Zoning Hearing Master by the Board of County Commissioners at their July 24, 2018 BOCC Land Use Meeting. The purpose of the remand was to provide additional density calculations and conduct a re-analysis of the proposed perimeter buffers.

Density Analysis:

Planned Village Densities & Environmentally Sensitive Land Credits:

The subject non-contiguous properties are located within the RP-2 and RES-4 Future Land Use (FLU) categories. The Comprehensive Plan permits property within the RP-2 FLU category a maximum gross density of 2 units per acre if the developed in accordance with the Planned Village Comprehensive Plan Policies and Land Development Code regulations. The Planned Village development pattern seeks to create a "self-sustainable development" with proximity to on-site shopping, efficient use of infrastructure and preservation of open space and environmental. To meet this goals, "clustering" is required that will create a net density of 3.5 units per acre. However, the overall gross density is limited to 2 units per acre.

When seeking to develop properties utilizing a planned village concept, the Comprehensive Plan also allows transferring densities between two non-contiguous parcels when both are in the RP-2 category and at least each 160 acres in size or greater.

Comprehensive Plan Policy 33.2(a):

"Two (2) non-contiguous parcels designated RP-2 that each are at least 160 acres or greater, may blend the density or intensity of those non-contiguous parcels across the entire project through one Planned Development (PD) zoning, transferring up to 50% of the density/intensity from one parcel to the other. Through the PD, both parcels shall function as separate planned villages with neighborhood and community commercial needs met."

The northern property (Rhodine) is 180.3 acres and southern property (Grove) is 178 acres. The majority if the Rhodine parcel is within the RP-2 FLU category and all of the Grove parcel is within the RP-2 FLU category. Utilizing Comprehensive Plan Policy 33.2(a), the non-contiguous parcels are viewed as one project allowing the transfer of density (up to 50%) from one parcel to the other as they are each over 160 acres in size and located in the RP-2 FLU category.

Calculating the correct density requires application of Comprehensive Plan Policy 13.3 when wetlands are present in the project. This Policy is applicable to all developments, not just those developing in under the Planned Village standards.

Comprehensive Plan Policy 13.3:

"Density and FAR calculations for properties that include wetlands will comply with the following calculations and requirements for determining density/intensity credits:

- Wetlands are considered to be the following:
 - Conservation and preservation areas as defined in the Conservation and Aquifer Recharge Element

- 12. 24.—As Balm Wimauma Rd. may be a substandard collector roadway, the eveloper Developer will be required to coordinate with Hillsborough County Public Works to determine the improvements that may be required prior to or concurrent with plat/site construction plan approval.
- 25. In accordance with the Hillsborough County Corridor Preservation P1, the developer shall preserve up to 23 feet of right-of-way along its Balm Wimauma R-Road frontages, such that a minimum of 54 feet of right-of-way is preserved east and south of hethe existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be permitted within the preserved right-of-way. The right-of-way preservation area shall be shown on all future site plans, and building setbacks shall be calculated from the future right-of-way line.
- 26. In accordance with the Hillsborough County Corridor Preservation Plan, the developer shall preserve up to 14 feet of right-of-way along its CR 672 frontage, such that a minimum of 54 feet of right-of-way is preserved south of the existing right-of-way centerline. Only those interim uses allowed by the Hillsborough County LDC shall be pe itted permitted within the preserved right-of-way. The right-of-way preservation area shall be sh wnshown on all future site plans, and building setbacks shall be calculated from the future right-ight -of-way line.
- 27. Notwithstanding anything shown on the PD site plan to the contrary, the relocation of the southernmost access on Balm Wimauma Rd. such that it is located a mi imumminimum of 330 feet from the nearest adjacent access connection, shall be made. However, the access point shall not be located any further than 600 feet from the southern boundary of folio 77850.0000. Alternatively, the developer shall obtain a Section 6.04.02.B. administrative administrative variance from the Section 6.04.07 access spacing requirements.

The following shall apply to both Planned Villages:

- 28. Access shall be provided as shown on the PD site plan unless otherwise provided herein these conditions. Internal roadways may be public or private, and if private, and if private, roadways may be gated (except for those portions functioning as shared access roadways, as required herein these conditions).
- 17. 29. Notwithstanding anything on the PD site plan or herein these conditions to the contrary, bicycle and pedestrian access may be permitted anywhere along the project boundaries.
- 18. 30. 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.
- 19. 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.
- 20. 32. 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 etland wetland Line", and the wetland must be labeled as "Wetland Conservation Area" pursuant to the Hillsborough County Land Development Code (LDC).
- 21. 33. 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.
- 22. 34. 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 any stated conditions shall be interpreted as the regulations in effect at the time of preliminary site plan/plat approval.

- 7. The developer shall provide a pedestrian system of sidewalks and/or stabilized pathways (a minimum of 5 feet in width) throughout the project with direct connections between the residential, open space, Village Square/Green and Village Node areas.
- 8. A 50-foot wide buffer shall be provided where depicted on the general site plan. Should the buffer be adjacent to a roadway requiring right-of-way preservation, the buffer shall be measured from the future right-of-way line. This buffer is to be platted as a separate tract to be owned and maintained by the Homeowner's Association, or other similar entity. Within the buffer, screening shall be provided and shall be either: 1) screening to consist of two or more of the following for an overall height of six feet: a berm (4:1 slope), a continuous row of evergreen shrubs at a minimum height of 24" and/or a solid wooden fence, PVC fence or wall architecturally finished on both sides; or 2) a six foot high wooden fence, PVC fence or wall architecturally finished on both sides and a row of evergreen shade trees at a minimum of 10 feet in height and minimum 2" caliper at the time of planting planted on 20 foot centers. Should the buffer abut a right-or-way, use of a six-foot high wooden fence shall not be used. Additionally, should the buffer abut a right-of-way, hedges or trees shall not be blocked by a fence/wall from the view of the roadway and properties facing the village. Any buffers abutting a right-of-way shall be measured from the roadway's preservation line.
 - 8.1. Should any portion of Balm-Wimauma Road be vacated (Option 1 and Option 2 in condition 9.4, the 50-foot wide buffer and screening shall not be required.
- 9. A 250-foot wide buffer shall be provided adjacent to folio 77850.0000, as depicted on the general site plan.
- 10. The developer shall construct the following site access improvements, of which 9.1, 9.2 or 9.3 shall be constructed only if warranted per Section 6.04.04.D. of the Hillsborough County Land Development Code or unless otherwise approved in accordance the Section 6.04.02.B. administrative variance process:
 - 10.1. An eastbound to southbound right turn lane on CR 672 at Shelley Ln.;
 - 10.2. A westbound to southbound left turn lane on CR 672 at Shelley Ln.;
 - 10.3. A southbound to eastbound left turn lane on Balm Wimauma Rd. into the project's southernmost entrance; and,
 - 10.4. One (1) of the following options (as depicted on the on the PD site plan) relating to site access and roadway reconfigurations proposed by the developer:
 - 10.4.1. Option 1 The developer shall construct an extension of Balm Wimauma Rd. (between its intersection with Balm Rd. and CR 672) as a 2-lane collector roadway. Within 6 months of acceptance of the roadway extension, the developer shall remove up to a +/- 1,300-foot long segment of existing Balm Wimauma Rd. south of CR 672. Specific limits of the segment to be removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the intersection of the roadway extension with CR 672. In no event shall removal of the

roadway section occur until such time as a cul-de-sac or other end of roadway treatment acceptable to Hillsborough County Public Works is constructed and open to public traffic; or,

- 10.4.2. Option 2. Wimauma Rd. (i.e. that portion immediately south of CR 672) such that it connects to Shelley Ln. Concurrent with the opening of the realigned roadway extension, the developer shall close the old/realigned roadway and, within 6 months, complete removal of the old/unutilized roadway. Specific limits of the segment to be realigned/removed shall be determined and approved by Hillsborough County Public Works. Utilization of this option is contingent upon the developer's ability to, at its sole cost, design the facility, obtain all required permits for construction, and acquire any additional right-of-way necessary for the proposed extension and related improvements. Utilization of this option is also contingent upon review and approval of the proposed roadway by Hillsborough County Public Works, including any turn lanes that may be required by the County at the newly created intersection of Balm Wimauma Rd. and Shelley Ln. The applicant shall also be responsible for preserving sufficient right-of-way necessary to accommodate a 2-lane enhanced roadway segment between the new intersection and CR 672; or,
- 10.4.3. Option 3. The developer shall construct a roundabout at the intersection of CR 672, Balm Wimauma Rd., Shelley Ln., and Balm Boyette Rd. This option may require the developer to dedicate or otherwise acquire additional right-of-way necessary to accommodate the roundabout. Notwithstanding anything herein to the contrary, utilization of this option shall relieve the developer of its obligation to construct the improvements listed in 1.a. and 1.b., above. Utilization of this option is also contingent upon review and approval of the proposed roundabout by Hillsborough County Public Works.
- 11. As Shelley Ln. is a substandard local roadway the developer will be required to improve Shelley Ln., between its southernmost access connection and CR 672, to current County standards unless otherwise approved in accordance with Section 6.04.02.B. of the Hillsborough County LDC. Deviations from TTM standards may be considered in accordance with Section 1.7.2. and other applicable sections of the Hillsborough County TTM.



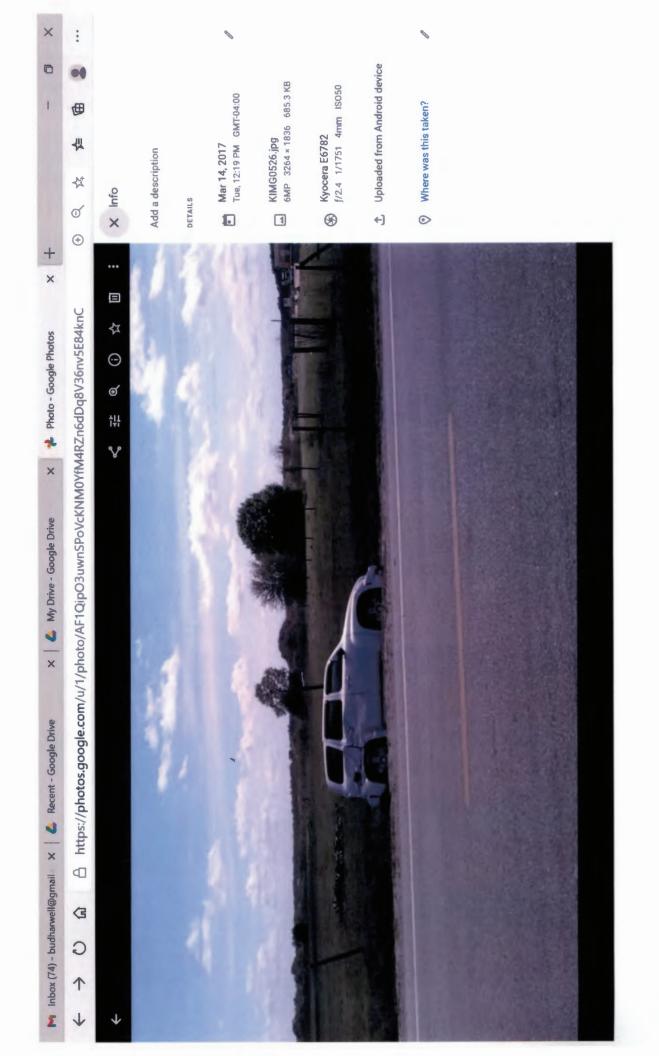


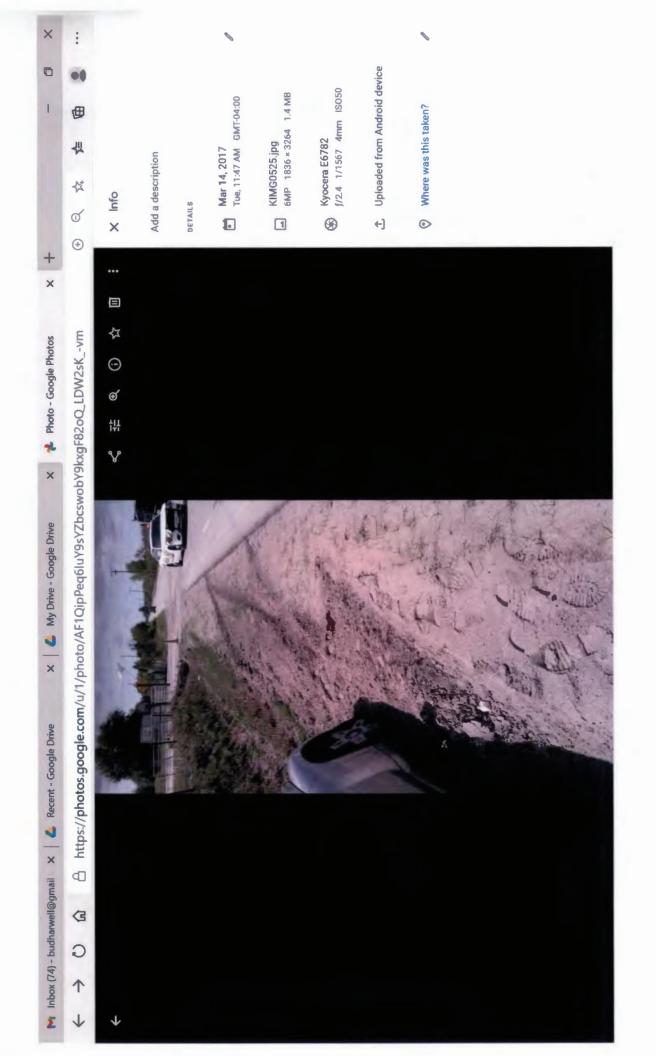


Looking North from Sweat Loop Rd at Shelly Lake, Notice the water level is about 6 inches below the land grade.



Looking north over Shelly Lake at the Grove property in the background.





AQUARIUS WATER REFINING, INC.

Commercial Residential 5914 SR 674 Wimauma, FL. 33598 PHONE (813) 634-3134 EMAIL aquaref@live.com www.aquariuswaterrefining.com

1/13/2021

Application No. AMM 21-0033

Name: Tone 5 Frankland

Entered at Public Hearing: ZHM

Exhibit # 2 Date: 2115121

RE: Concerning the existing and proposed borrow pits in the Balm Wimauma FL. Area

Aquarius Water Refining has been installing water treatment equipment for the residents in the Balm Wimauma area since 1975. Over the years we have seen the effects on wells when subjected to excessive land development.

It is our opinion that that adding additional and or expanding the current borrow pits in the area could cause serious damage and or contamination to the existing resident's wells.

Excessive digging has the potential to cause wells in the area to go dry because of the shifting water tables especially for our residents with shallow wells.

The other concern with this shift of the land is the possibility of contamination of well water from heavy metals and fertilizers as well as bacterial contamination from pasture land in the area.

Private Wells can be contaminated by both naturally occurring sources and by human activities. We have no control over natural occurrences but it is our civic duty to point out the potential cause and effect to our ground water by human activities.

Joseph F. (jaskill

Joseph F. Gaskill President and founder

Aquarius Water Refining, Inc.



Application No. 21-00 33

Name: komi corkett

ZHM Entered at Public Hearing: Date: 2/15/21

Land Use Application Summary Report

Application Number: SU 08-1433 BA

Exhibit # _____ Adjacent Zon

Existing Zoning:

AR

North: AR Undeveloped

Requested Zoning:

Land Excavation Special Use

South:

AR Agricultural, Rural Residential

Comp Plan:

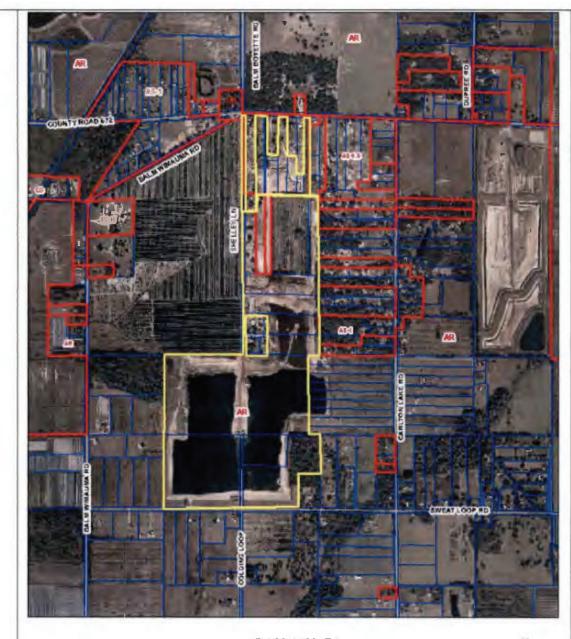
AR-1/5, RP-2

AS-0.4, AR, AS-1 Salvage Yard, Agricultural, Rural East: Residential

Service Area:

Rural

AR Agricultural West:



31-21-30

SU 08-1433 BA



Project Area



Zoning Boundary

Planning & Growth Management Department

NTS

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

Request Details:

The request is for a Land Development Code (LDC) Section 6.11.54 Land Excavation (LE) Special Use Permit for the following:

- To consolidate all of the Shelley Lakes LE permits under one Special Use Permit and one Operating Permit,
- To expand the existing land area by ten acres for a total of 246 acres, and
- To excavate a total of 20,000,000 million cubic yards of material, approximately 5,100,000 million cubic yards of material have been excavated to date.

Staff Findings:

- The combined land area for the total project is 246 acres; the total excavation area will be approximately 182 acres. An estimated total of 20,000,000 cubic yards of material is to be excavated, within five cells, to a maximum depth of 40 feet.
- According to the Land Excavation and Phosphate Mining Review agency staff report, the Shelley Lakes Land
 Excavation will consolidate the applicant's four existing permits (Special Use Permits and Land Excavation
 Permits), with the additional 10 acres, into one permit. The existing permits to be combined into this new permit
 are as follows:
 - 1. SU00-0307BW Expiration date, May 21, 2006 (00-2-LE)
 - 2. SU04-0301BW Expiration date, May 30, 2009 (04-3 LE)
 - 3. SU05-0653BW Expiration date, Feb. 20, 2016 (05-4-LE)
 - 4. SU07-0454BA Expiration date, Oct. 12, 2012 (07-5-LE)
- According to Land Development Code (LDC) Section 6.11.54, the proposed creation and expansion of the existing lake is a permitted use within all zoning districts. According to the application, the site is not located in a Wellhead Resource Protection area, is not in an area with a DRASTIC index greater than 179 per the Conservation and Aquifer Recharge Element of the Comprehensive Plan, is not located within a quarter mile of a Class I or Class II Landfill, is not in an area prone to sinkhole development, and significant wildlife habitat has not been identified on the site. The Environmental Protection Commission (EPC) identified wetlands on the site; conditions have been added to address EPC staff wetland and excavation concerns. Natural Resources staff identified a number of mature trees on the site a condition has been added to minimize removal trees.
- The proposed setbacks meet the LCD requirements. The setbacks from residential uses are 100 feet, setbacks from Sweat Loop Road are 150 feet, setbacks from the salvage yard, agricultural uses and Shelley Lane are 25 feet. No variances or waivers to LDC regulations have been requested or reviewed as part of this request.
- Site access and haul route will be from State Road (SR) 672, a designated Truck Route; trucks will then proceed to the west to U.S. Highway 301 or east to SR 39. Hours of operation have been added to mitigate for adverse impacts from the hauling and excavation activity.
- Staff finds the request to combine the existing land excavation permits, with the minor expansion, as conditioned, comparable and compatible with the nature of the existing or developing uses in the surrounding area.

| Zoning |
|--------------------------------|
| Zoning Administrator Sign-off: |

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

NEIGHBORHOOD MEETING

| Per LDC Section 5.03.06.B.2 the applicant is required to conduct a neighborhood meeting if requested by noticed residents According to the applicant, noticed residents did not request a neighborhood meeting. The applicant conducted a neighborhood meeting. A summary of the meeting and the sign-in sheet are attached pursuant to the requirements of Sec. 5.03.06.B.2. VARIANCE(S) TO NON-DISTRICT REGULATIONS No variances to non-district regulations have been requested. The applicant has requested a variance to Staff finds the applicant's justifications (attached) for the variance(s), as provided in accordance with LDC Section 5.03.03, are sufficient / insufficient to warrant approval of the requested variance(s). | | | | | | | | | |
|--|-----------------|----------------------|-------------------------------|-----------------|-------------------------|--|--|--|--|
| REVIEWING AGENCY COMMENTS | | | | | | | | | |
| AGENCY | NO OBJECTION | CONDITIONS REQUESTED | AGENCY | NO OBJECTION | CONDITIONS REQUESTED | | | | |
| Community Improvement | | | Reclaimed Water | | | | | | |
| Environmental Protection Commission | | \boxtimes | Storm Water | \boxtimes | | | | | |
| Florida DOT | | | Water Utilities | \boxtimes | | | | | |
| Fire Rescue | | | Wastewater | \boxtimes | | | | | |
| HART Line | | | City of Plant City | | | | | | |
| Natural Resources | \boxtimes | \boxtimes | City of Tampa | | | | | | |
| Parks, Recreation, and Conservation | | | City of Temple Terrace | | | | | | |
| Public Works - Engineering | | | Tampa Bay Water | | | | | | |
| Public Works - Roadway | | | LE/Phosphate Mining Review | | | | | | |
| Public Works - Traffic | | | Real Estate | | | | | | |
| School Board | \boxtimes | | | | | | | | |
| Sheriff | | | | | | | | | |
| Transportation | | | | | | | | | |

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

Changes to Conditions

RECOMMENDED ZONING CONDITIONS

RECOMMENDED SPECIAL USE CONDITIONS ARE BASE ON THE GENERAL SITE PLAN RECEIVED **SEPTEMBER 25, 2008**

- 1. The land excavation shall be limited to the removal of a maximum of 20,000,000 million cubic yards of material, subject to approval of a Land Excavation Operating Permit in accordance with Part 8.01.00 of the Hillsborough County Land Development Code (LDC). Approval of the Special Use Permit shall not guarantee approval of a Land Excavation Operating Permit. The excavation shall not exceed 40 feet in depth. This Special Use Permit shall supersede all other Shelley Lakes Mine Special Use Permits
- 2. This Special Use Permit shall expire seven years from the date of the Special Use Permit approval or five years from the date of the Operating Permit approval, whichever occurs first.
- 3. All Land Excavation design standards shall comply with Sections 6.11.54 and 8.01.00 of the LDC.
- 4. The entire site shall be adequately fenced with all access points having gates that shall be locked when no activity is occurring on site.
- 5. Method of water control and management shall be subject to approval during review of a Land Excavation Operating Permit application.
- The Land Excavation Operating Permit will limit the hours of operation of a land excavation to between 7:00 a.m. to 6. 6:00 p.m. Monday through Friday Saturday, excluding Hillsborough County recognized holidays.
- 7. No material of any type other than excavated material and material associated with the land excavation shall be stored or placed on site.
- 8. Minimum of 30 percent of the banks along the entire perimeter shall have a landscaped littoral shelf (Lake Management Plan) to be reviewed and approved by EPC pursuant to LDC Section.8.01.06.
- 9. All off-site hauling of fill material and the return trip of the haulers shall be in compliance with the Metropolitan Planning Organization's Hillsborough County Truck Plan, in effect, as of January 1, 1995 with subsequent updates. The off-site haul route shall be Shelley Lane to County Road 672 (an approved Hillsborough County Truck Route) and east or west along approved truck routes.
- 10. The applicant shall locate the proposed excavation to minimize the removal of trees having a DBH of five inches or greater.
- 11. Approval of this petition by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impacts to wetlands, and does not grant any implied or vested right to environmental approvals.
- 12. No excavation shall extend below permitted design depths/elevations unless additional testing supports otherwise; and no lower semi-confining unit clayey soil material and/or no limestone materials shall be excavated, regardless if these materials are encountered within the permitted excavation depths/elevations. If any lower semi-confining unit clayey soil materials or limestone materials are encountered above the permitted depths/elevations, then excavation operations shall cease in the general area. EPC Wetlands Management Division staff must be contacted prior to any excavation of clays.
- 13. The construction, location, size and depth of any proposed land excavation shall be reviewed by EPC pursuant to Chapter 1-11, Wetlands, Rules of the EPC, and must be designed and located to avoid or minimize wetland impacts.
- The post condition construction design must ensure that the volumetric hydrologic contribution from the existing on-14. site surface water basins to any wetland area is not reduced by greater than 10 percent and if possible 5 percent, to these wetland areas.

ZHM HEARING DATE: November 17, 2008

BOCC MEETING DATE: N/A

CASE REVIEWER: Susan Mariner

15. The existing pre-development wetland hydroperiods (seasonal high water and normal pool) must be maintained in the post-development condition.

- 16. All lake creations will be subject to the regulations of the Environmental Protection Commission of Hillsborough County Wetland Rule Chapter 1-11 and all other applicable rules.
- 17. A 0.80 acre wetland mitigation area/conservation easement exists on the northern section of proposed Cell 4. Surface water basins and mitigation area setbacks shall be reviewed by EPC pursuant to Chapter 1-11, Wetlands, Rules of the EPC, during the land excavation review.
- 18. If the notes and/or graphic on the site plan are in conflict with specific 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 approval.
- 19. 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.
- 20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.

Application No. 2/-033
Name: ____leam: Corbot
Entered at Public Hearing: 2HM
Exhibit #____ Date: ___2/1512



Documents Submitted for the Record of:

MM 21-0033

Applicant: Eisenhower Property Group, L.L.C.

Applicant's Representative: Kami Corbett, Esq.

Folio: 74848.0000

Hearing Date: February 15, 2021

Index to Documents Submitted to the Record

MM 21-0033

| No. | Document |
|-----|---|
| 1. | PD Site Plan for PD 18-0304 (October 10, 2018) |
| 2. | Transcript of BOCC Approval for PD 18-0304 |
| 3. | LUHO Decision for Special Use Permit Approval (August 3, 2020) |
| 4. | Special Use Permit Staff Report for PD 19-1026 (August 3, 2020) |
| 5. | Special Use Permit Site Plan for PD 19-1026 (February 17, 2020) |
| 6. | Transcript of LUHO hearing on August 3, 2020 |
| 7. | Exhibits from PD 19-1026 |
| | a. Part 1 |
| | b. Part 2 |
| | c. Part 3 |
| 8. | Memorandum of Law re: Statutory Construction |
| 9. | Memorandum of Law re: Lay Witnesses |
| 10. | PowerPoint Presentation |

AR so PD PETITION PILE HUNGER 82-PO 18-0304 BY & SA BOCC MERTON DATE October 9, 2018 This is to comely that this lists Dovelopment Plan lats how previously by the Board of County Communicates and the following across taken APPROVED WITH CONDITIONS AS NOTED: and attached to contribut dis plan. CHAIRMAN, BOARD OF COUNTY COMMISSIONERS ATTEST DISPUTY CLEAK
PAT FRANK
CLERK OF THE CIBCUIT COURT BOARD OF COUNTY COMMISSIONERS HELISBORIOUGH COUNTY FLORIDA DOCINICATI NO.

include grocery mores, food/produce merkets, convenience stores, pharmacies and othe setall uses permitted in the CN zoning district.

- The Rhading Borrow Pit Village Node shall meet the following
 - 4.1 The Village Node may also contain office uses, residential support uses (such as clumpies, adult care centers) and departer centers) and personnent time (such as adults), preventment officestwivers). Siquem bringes for thiss uses label not count towerful fire statisticus against Dosigo required for co-sias majdachnod result. The assumment P. A. premitted which the center Village Node is 0.3 T.
 - 4.2 No minimum building setbacks shall be required
 - 4.3 Building height shall be limited to a maximum of 35 feet with no additional setback for buildings over 20 feet in beight required.
 - 4.4 Buffering and acroming in accordance with Land Development Code Section 6.06.05 shall be provided along adjacent properties of differing land use abunifications.
 - Purking lots in the Village Node shall be located at the rear or so the side of buildings, or to the interior of a block. Not more than two rows of angled parking shall be located between a building and the readway.
- Polar to the insurance of building permits for more than 17% of the residential units tiers 112-281, Confedence of Concepture, that the insural for a minimum of 50 permit of the 3200.5 s.f. of required co-the completenced resids in the Village Note. Polar to the insurance of building prevents for more time 99% of the residential units (con-266-283). Confedence of building prevents for more time 99% of the residential units (con-266-283). Confedence of Concepture, that the insurant for the remaining 3,820.5 square four of mightorhood result in the Village Note.
- The developer shall provide a pedestrien system of sidewells and/or stabilized pathways (a minimum of 5 has in width) throughout the project with direct connections between the ranidemial, open space and Village Ninde areas
- A 50-flow which buffer shall be provided where depicted on the general size plan. This buffer is to be planned as a separese trust to be covered and maintained by the Blommonest's Association, or other strained resident entitle entity. Which as harder, severaine, shall be provided and references to the strained of the first and buffer, severaine, shall be provided or of six feet a sheem (4.1 sizeps), a continuous tors of overgreen shrells as a continuous height of 22 medies a sold second fressor. PVC fines or well describeratively finished on the size, or 23 a sax foot high wooden fines. PVC fines or well architecturally finished on both defan and a root of overgreen shall be true at a six-intervent of 10 flows in bugful and both defan and a root of overgreen shall be true at a 2 six-intervent of 10 flows in bugful and

Page 2 of 9

In securities with the Hillsburrough County Cortifar Preservation Flas. the developmental preserve up to 5 feet of right-of-may along in Blockins Road frontings, each that a minimum of 55 feet of right-of-may along in Blockins Road frontings, each that a minimum of 50 feet of right-of-may in personnel could feet training injustment could feet training injustment to the feet of the relation injustment could be preserved right-order. The right-of-may preservation senter that the server of right-ordersy The right-of-may preservation senter the feature right-of-may print of the preserved right-of-may free.

The following shell apply to the Grove purcel.

The Grove parcel shall be permitted a maximum of 356 ningle-family loss and developed in accordance with the following development standards. The maximum number of units permitted in the Grove percel is included as Critical Persipt Fasture As pre-family of the master will require a Major Montification to be reviewed in accordance with the procedure sentification in LoC 970.

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- 15 For lots at a width of less than 50 feet, the following shall apply:
 - 15.1 Garages shall be susback a cointmust of 25 flust. Garages accessed from a from yard functioning as a side yeed shall be setback a minimum of 20 flust.
 - 15.2 A 2-ear garage and a minimum 18 foot wide driveway shall be provided for such
 - 15.3 All driveways shall be provided in an alternating pattern on the left or right side of the unit's from façade. Human shall not have the same driveway tomics (selt or right side) as the afficient home. The alternating pattern may be adjusted as corner lost as recovery.
 - 15.4 A variety of gaussie door designs shall be provided and there shall be no two identical gausse door dusigns adjacent to such other

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0004 F MEETING DATE October 9, 2018 October 9, 2018

The following shall apply to the Rhodine Borrow Pit perual:

The Blandine Boover Pit perest shall be germitted a maximum of 283 diagle-family ion which the boundaries of Probat A and developed in accordance with the following control of the perest is desired as Critical Diagnal Persists. Any chains to this manter well require a Major Modification to be reviewed in accordance with the procedures established in LDC Part 10 of 30

Minimum los ains 4,000 aguare fees / 5,000 aguare fees
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- 2 For lots at a width of less then 50 feet, the following shell apply
 - 2.1 Garages shall be maharit a minimum of 25 feet. Garages accessed from a from yard functioning as a side yard shall be setbook a minimum of 20 feet.

 - 2.3 All drivenceys shall be provided in an abscrating pattern on the left or right ride of the unit's from faquid. Homes shall not have the same drivencey location (left or right side) as the adjacent home. The abstracting pattern may be adjusted at corner lots as measurer.
 - 2.4 A variety of gazage door designs shall be provided and there shall be no two identical gazage door designs of accust to each other.
 - 2.5 Each unit's primery entrance door shell face the roadway
 - 2.6 Street trees may include an afternating pattern of shade and organization trees, subject to final design and approval by Natural Resources staff.
- A nucleman of 3,820.5 square fast of neighborhood retail uses shall be provided within Consequent a Pocket A (Rhodine Borrow Pt Vidage Node). Neighborhood retail uses shall

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0304 RV & BA
MEETING DATE Occider 9, 2018
DATE TYPED: Occider 9, 2018

minimum 2" cultipar at the binne of planting planted on 20 foot consers. Should the buffer about a right-co-way, use of a six foot high wooden lines shall not be used. Adulticoulty, should the buffer that a right-of-two, hodges or tens shall not be blooked by a fitnow/wall from the view of the roadway and properties facing the virilage.

- The partie feeding by Folio Number 774(3) 5000 is officent to the Triple Credit Preserve
 For LDC Section 40 100, computability of the development with six preserve will be
 measured with a compatibility plan that adhresses issues related to the development such as,
 but not necessarily literals for, acousts, prescribed fire, and fandecaping. The compatibility
 plan shall be proposed by the development, reviewed and approved by the Credit plan
 factor of the compatibility plan shall be proposed by the development.

 Environmental Leafs Management Department, and shall be required as a condition of
 granting a Natural Reactures Parents
- As Rhodae Road in a submanderd collocur roadway, the developer shall impro-4 Rhodes. Road between the project delivency and the saures sanderd roadway to current Coury Reliaborated County Land Developerant Code (IDC). Developed the transportation Reliaborated County Land Developerant Code (IDC). Developed the transportation Technical Manual (TTM) standards may be considered in socordance with Section 1.2 and other replicates extended the Reliaboration County TTM.
- 10 Utilization of proposed access points along the project's southern boundary shall require modification of the adjacent Planned Development (to purelt such cross access).
- 11 The developer shall construct the following site access insprovements, unless other approved by Hilleborough County Public Works.

Such improvements may require the developer to dedicate or otherwise acquire additional-way.

- The first 1,800 feet of the internal project roadway (south of Rhodine Road) shall be utilized as a shared access facility. The purpose of this shared access facility is to serve
 - Prince development on folio 77409-3000, consistent with the adjector PD 05-0110;

FINAL CONDITIONS OF APPROVAL

PETITION NUMBER RZ-PD 18-0004 RV & BA
MEETING DATE Occober 9, 2018
DATE TYPED: Occober 9, 2018

- 15.6 Struct trees may include an abornating pattern of shade and ornamental tre subject to final design and approval by Natural Rescurcos staff.
- This PD approves a waiver to the provision of 4,806 s.f. of on-site neighborhood retail total of 5,038 square fast to provided off-site on folion 77886 0000 (a 3,238 square foot convenience some) and 77857 0000 (a 1,800 square foot post office)
- The Grove Village Node (amonity/specialty total) depicted area) shall meet the following
 - 17. The Vollage Node was contain a manisme of 5,000 aguer from 6 night-shoot-ornal must offer man underland support sens (on the Sturches, saled must need of segure content) and government uses (such as shoots, government offersiers (such as a shoots, government offersiers). A manisment of 60°7 queries for 61° is 5000 square first of the shoots of the shoots of the shoots of 60° is 60° in 60° in
 - 17.2 The Village Note may also contain neighborhood amenly uses, such as a pool, amenly area and dushbouse which shall not count towards the maximum F.A.R. permissed in the Village Note.
 - 17.2 No minimum building settecks shall be required.
 - 17.3 Building beight shall be limited to a maximum of 35 feet with no additional senteck for buildings over 20 feet in height required
 - 17.4 Buffering and screening is accordance with Land Development Code Section 6.06.05 shall be provided along adjacent properties of differing land use

 - 17.6 Signage within the Village Node shall be limited to monument signs.
- A Village Square/Green (minimum size of 4,806 square fast) shall be provided where depicted on the general size plan. The Village Square/Green shall be board on all sides by streets and improved with landscaping, walk-ways, benches, Souteain, guarbon and/or sirelar amenists to mocrange and accommodate use by village residence.

PRIAL CONDITIONS DATE TYPED. Oxfober 9, 2018

The developer shall provide a profitable option of sidewalks and/or stabilized pathwa/© (a minimum of 5 that he width) descapation this project with allowed connections between the profitable open space. Virging SuperviCircum and Village Week and the connection between the residential, open space. Virging Supervicirum and Village Needs areas

- restrictions, open speak. Vising hyperteriors and vising from the general size plan. Should the built be adjacent to a control of vising regular colors and the built be adjacent to a control or product of vising regular colors. A Should be built be adjacent to a receivery requiring registerior-type plant and an appear to be consent dress the states registerior-type limit be consent and resistant and by the Memotorwise's Association, or other similar uniform to be consent and maintained by the Memotorwise's Association, or other similar uniform to be consent and the similar similar similar colors of the consent and the similar similar colors of the colors of the following for an avoidal height of a 2 m gold or a solid reconstance, PVC there or well architecturally included on both sides and a row of energy memory, and the colors of the colors of
 - 20.a Should any portion of Balno-Winauma Road to vacated (Option 1 and Option 2 in condition 17.d), the 50-floot wide buffer and sersanting shall not be construed
- 21 A 250-flost wide buffer shall be provided adjacent to falls 77830.0000, as depleted on the general site plan.
- The developer shall construct the following sits access insprovements, of which 22 s. 22 b or 22 c shall be communated only if watersand per Eachson 6.4-0.4 D of the Hillshorough County Land Development Code or unless otherwise approved in accordance the Seelen 6.04-02.8 infinitelespides overlance process.
 - 22.a An eastbound to acuthbound right turn lose on CR 672 at Shelley Ln ,
 - 23.b A westbound to southbound left turn lane on CR 672 at Shalley L.s.,
 - 22.c A southbound to eastheam lieft non lane on Belin Winneams Rd. into the project's southernmost unicanos, and.

[Option]] — The developer shall construct an examation of Balts Wanasana Rd. (between its intersection with Balts Rd, and CR 672) as a 2-lane collector readway

PENAL CONDITIONS MEETING DATE: October 9, 2018
OF APPROVAL DATE 1 YPED. October 9, 2018

- AS Balm Wima-sims Rd. stoy be a substandard collector roadway. the developer will 10 required to accordinate with Hillshowsupik County Papille. Works to deservation the Improvements that stoy be required prior to or consument with plass/kin/konstruction plans.
- for accordance with the Millidocrosph Country Cordidar Preservation. Plan. the developer deal preserve up to 2.5 feet of right-of-very drosp in Balos Winnames Rd. Persuages, such feet a statistican of 54 feet of right-of-very drosp in Balos Winnames Rd. Persuages gript-of-very countries. Costy those insuden uses allowed by the Millidocrosph County LDC deal to persuasiate videal that preserved region el-very The citylen Covery preservations call be substant on all futures size plans, and building substant shall be criticalested from the Sauer rights of-very line citylen college.
- In accordance with the Hillshormugh County Cordict Preservation Plan, the developer shall preserve up to 18 that of sight-of-very sizing its CR 672 florance, such that a resistance of 58 fast of sight-of-very is preserved upon the threating sight-of-very contention. Only those insents uses allowed by the Hillshorrough Councy LDC shall be paresisted within the preserved sight-of-very. The right-of-very preservation uses said by shoots on all filance size plane, and building sotherize shall be calculated from the finure right-of-very lass.
- Natividiostanding anything phones on the PD size plate to the context, the relocation of the anothermonic assess on Bulbs Winnesse R.E. and the bit is incessed a self-rise of 23 M plate for the exercise algorithms on 23 M plate, which has easily reviewer; the assess point should be made to the context of the self-rise and plate the plate of the context of the self-rise and the self-rise

The following shall apply to both Planned Villages

- Access shall be provided as shown on the PD site plan swises otherwise provided barelet stace conditions. Instead read-why may be public or private, and if private, and if private, readways may be gased (except for those portions fluorisming as shared access trathways, as applical leavin tisses conditions)
- Notwithstanding snything on the PD sits plan or benin these conditions to the contexty, bicycle and podestrian access may be pereinted anywhere slong the project boundaries
- Approved of fish zoming published by Hillaborough County does not constitute a generated that the Divinomental Protestina Communica of Hillaborough County (EPC) approvedity/missing necessary for the development appropried will be insured, does not itself serve to justify any impact to willands, and does not generat any implied or vented right to overknamental approvals.
- The construction and location of any proposed westered inspects are not approved by this correspondence, but shall be reviewed by EPC staff under separate application pursuant to

Page 3 of 9

PETITION NUMBER RZ-PD 18-0004 RV & BA
DATE TYPED: Oxford 9, 2018

Within 6 months of acceptance of the readway extension, the developer shall remove up to a 1/2 1,300-500 tongs augment of accessing flatter witnesses the scene representation of the scene of the scene

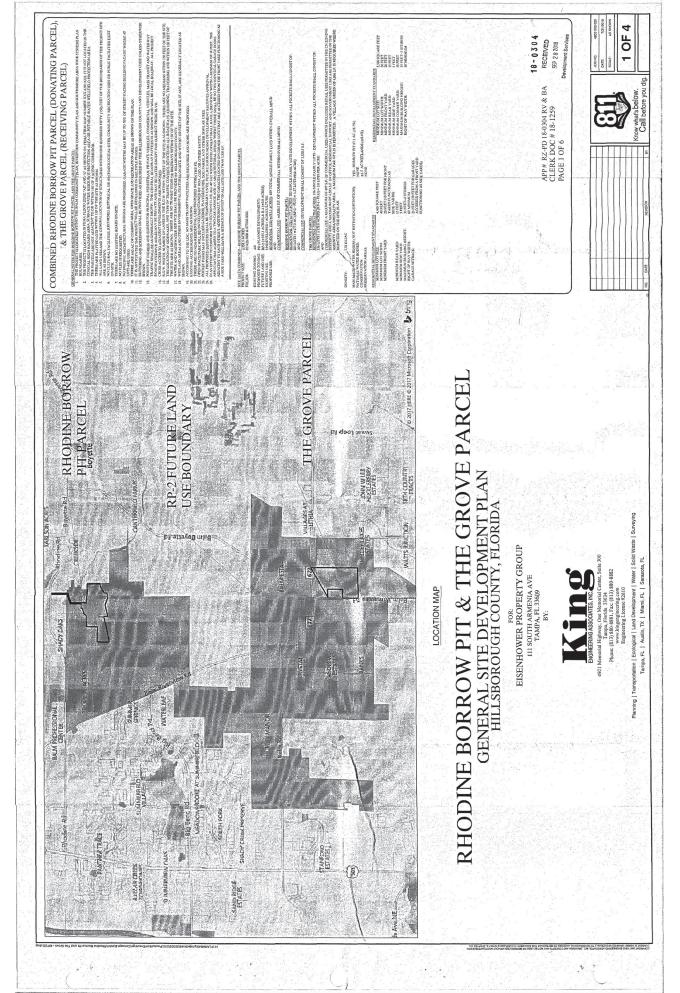
- constructed and open to public striffs, or.

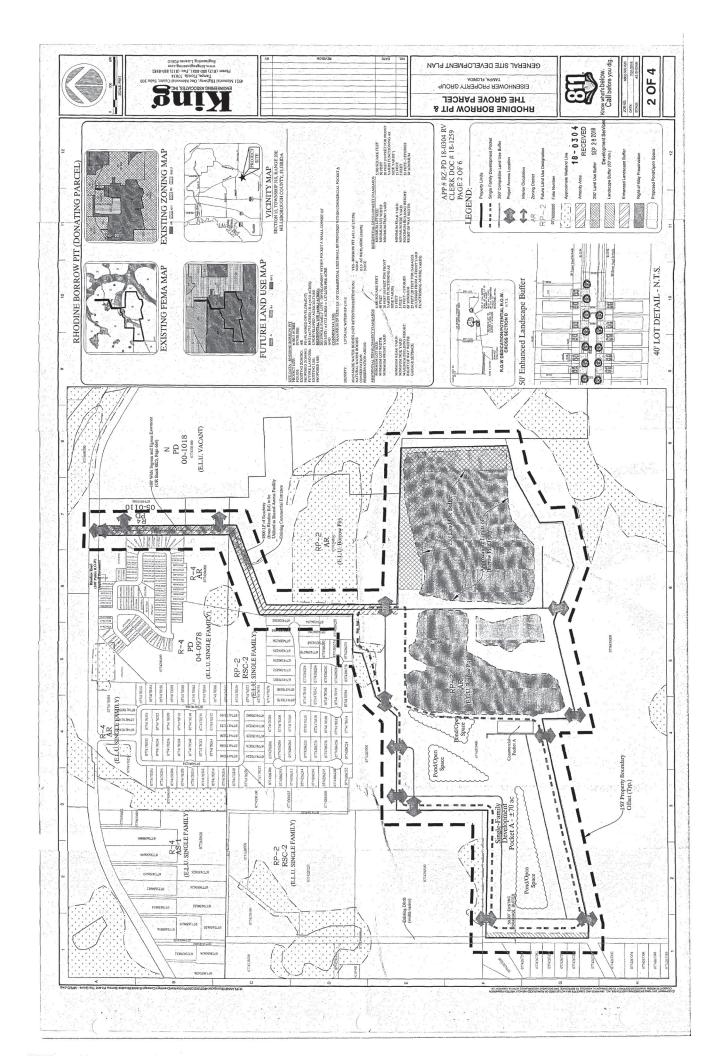
 10. Option 2. The developer shall resting up to ~*. 1,200 fits of Balon Winnamer
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- As Shelley Ln. is a substandard local reaching the developer will be required to inspress Shelley Ln. between his southermone scores consention and CR 670, to current County standards selected columns columns control as consultance with Section 6.0 Vol. 8. of the Hittlewoogh County UCD Christicos from YTM standards may be considered in coordinate with Section 6.10 UCD Christicos from YTM standards were be considered as coordinate with Section 1.72 and of the applicable section of the Hittlewoody County

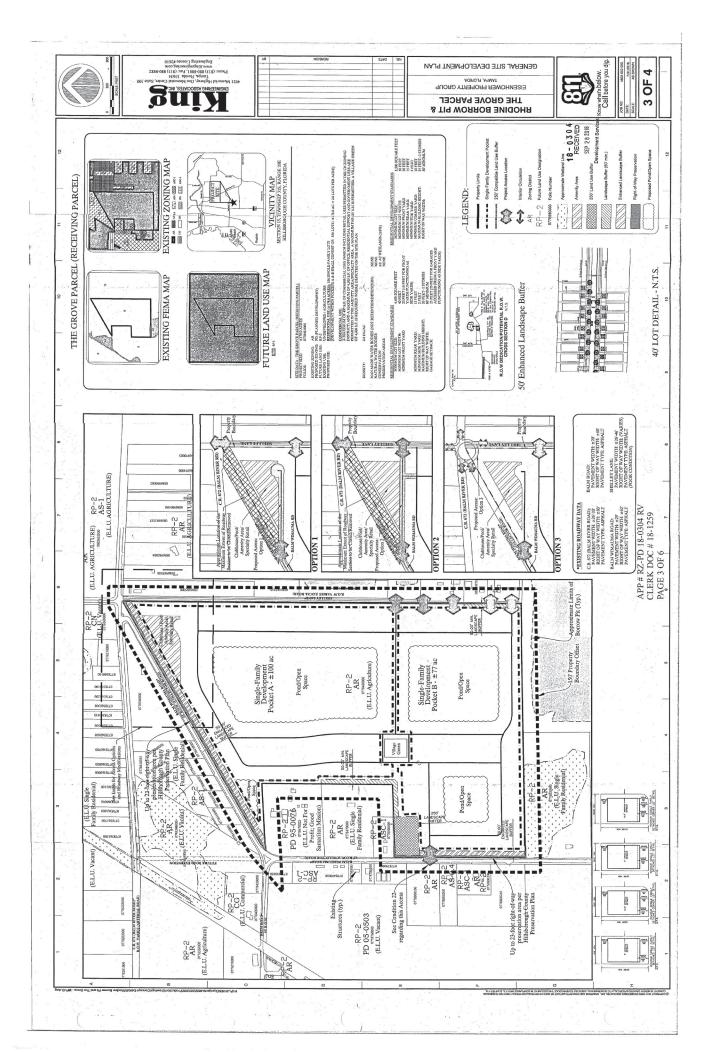
FINAL CONDITIONS MEETING DATE: October 9, 2018
OF APPROVA; DATE TYPED: October 3, 2017

- etlands rule detailed in Cha 111, Rules of the EPC, (Change 1-11) to
- Prior to the insumon of any building or land alteration paraists or other development, the approved waster of other surface seem (COSVV) has search to loopment faits the size proposed faits that size of the search paraisses that the search paraisses that the search paraisses that the search paraisses that the search paraisses to state of the search paraisses to the Millithorough County Land Development Crist (CLIS).
- 33 Final design of buildings, story-more revenue or mean, and lagress/agreenes are subject to change prodling formal agency/unsfactional desurraisandors of vertical and other surface were boundaries and approved by the appropriate regulatory agencies
 - 14 If the noise and/or graphic on the site plan are in conflict with specific arrang confined to the plan are in conflict with specific arrang confined to the plan are in confident engaleties apply, unless predicting confined coloraines affection to device a full reference to device; and the LDC in any seaso conditions that the interpreted as the regulations in effect as the of profit instancy size plancy largeroral.

Page 9 of 9







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THE GROVE PARCEL LEGAL DESCRIPTION: DESCRIPTION: (AS PROVIDED BY CLIENT AND DESCRIBED IN OFFICIAL RECORDS BOOK 16192, PAGE 1492)

LEGAL DESCRIPTION: (PER COMMITMENT FOR TITLE INSURANCE)

A PARCEL OF LAND LYIMG IN SECTION 25 TOWNSHIP 21 SOUTH, RANGE 20 EAST, HILLSBOROUGH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

DESCRIPTION: (WRITTEN AS REQUESTED BY CLIENT)

GENERAL SITE DEVELOPMENT PLAN

EISENHOWER PROPERTY GROUP

я тне вовяом ріт & ТНЕ GROVE РАЯСЕL

4 OF 4

RECEIVED SFP 28 2018

18-0304

Development Services APP# RZ-PD 18-0304 RV CLERK DOC# 18-1259 PAGE 4 OF 6

>> THANK YOU, COMMISSIONERS.

THIS BRINGS US TO ITEM G1 ON THE AGENDA.

THIS IS REZONING PD18-0304.

THIS APPLICATION WAS REMANDED FROM A PREVIOUS BOARD MEETING BACK
TO ZONING HEARING MASTER AND IS BEFORE YOU AGAIN.

THE APPLICATION HAS GONE THROUGH SOME CHANGES DEALING
SPECIFICALLY WITH THE UNIT COUNT AND ALSO SOME ADJUSTMENTS IN
THE BUFFER AREA.

PRIMARILY WHEN THIS IS BEFORE YOU LAST TIME THERE WAS SOME

QUESTIONS ABOUT NUMBERS AND ABOUT WETLAND DENSITY TRANSFERS AND

HOW UNITS WILL BE TRANSFERRING.

THERE ARE TWO PARCELS.

THE ONE TO THE NORTH IS GENERALLY KNOWN AS THE RHODINE PARCELS AND IT'S LOCATED SOUTH OF RHODINE ROAD.

AND THE PARCEL TO THE SOUTH IS GENERALLY KNOWN AS THE GROVE.

ACREAGE FOR THE NORTHERN PARCEL IS 177.

THE ACREAGE FOR THE SOUTHERN PARCEL IS 178.

THE NUMBERS IN TOTAL BEFORE YOU AT THE LAST HEARING WAS 710.

THE NUMBERS IN TOTAL NOW HAVE BEEN ADJUSTED DOWN TO 639.

AND THE NUMBERS FOR THE PROJECTS BY ACREAGE WOULD BE 283 FOR THE RHODINE PARCEL, WHICH IS TO THE NORTH, AND 356 TO THE GROVE PARCEL WHICH IS TO THE SOUTH.

ESSENTIALLY WHAT'S BEFORE YOU IS A RESIDENTIAL PROJECT WHICH IS PROPOSING TO USE THE RP2 DEVELOPMENT STANDARDS.

AGAIN, THERE HAVE BEEN SOME ADJUSTMENTS IN THE BUFFER AREA

ACKNOWLEDGING ADJACENT LAND USES AND CALIBRATING THAT BUFFERING

FOR THE ADJACENT LAND USE FOR COMPATIBILITY PURPOSES TO THE

EXTENT THAT IT'S PRACTICAL.

STAFF HAS RECOMMENDED APPROVAL OF IN REVIEW OF THIS APPLICATION, AND WE'RE HERE IF YOU HAVE ANY QUESTIONS.

ORAL ARGUMENT'S BEEN FILED.

>> SANDRA MURMAN: THANK YOU VERY MUCH FOR THE PRESENTATION.

IS THE APPLICANT HERE?

GOOD MORNING.

AND YOU'LL HAVE 10 MINUTES.

>> THANK YOU, COMMISSIONERS.

VIN MARCHETTI REPRESENTING EISENHOWER PROPERTIES, A GROUP.

JEFF HILLS IS HERE TODAY AS WELL AS STEVE LEWIS.

POINTS REMANDED FOR THE CASE, ONE BEING THE BUFFERING THAT WE JUST DISCUSSED BY JOE, ALSO THE CALCULATION OF DENSITY.

I THINK COMMISSIONER WHITE HAD ASKED FOR THAT CLARIFICATION.

WE ALSO HAVE HERE FOR ANY QUESTIONS A TRAFFIC ENGINEER STEVE HENRY AS WELL AS OUR CIVIL ENGINEER CLARK -- FROM KING ENGINEERING.

STAFF DID EXPLAIN THE NATURE OF THE REQUEST.

I GUESS I'M ON HOLD.

>> MR. MARCHETTI, HAVE YOU BEEN SWORN IN?

>> YES.

- >> THANK YOU.
- >> SANDRA MURMAN: I SAW HIM.
- >> THE STAFF DID EXPLAIN THE NATURE OF THE REZONING REQUEST.

 AGAIN ONE PARCEL BEING 177 ACRES.

THE RIVERVIEW THE OTHER BEING 178 ACRES IN BALM.

BOTH PROPERTIES ARE IN THE RP2 LAND USE CATEGORY WITH THE EXCEPTION OF THREE ACRES WHICH IS LOCATED IN THE RHODINE SITE. THE ZHM FIRST ISSUED A 17-PAGE RECOMMENDATION OF APPROVAL ON JUNE 7th BASED UPON ALL EVIDENCE PRESENTED INTO THE RECORD INCLUDING FROM THE PLANNING COMMISSION STAFF WHO FOUND THE REZONINGS BOTH PARCELS TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN.

AND ALSO FROM DEVELOPMENT SERVICES WHO FOUND AGAIN THE

APPLICATION SUBJECT TO CONDITIONS WHICH THE APPLICANT HAS AGREED

TO IN FULL TO BE CONSISTENT AND COMPATIBLE AND APPROVABLE.

JOE JUST MENTIONED THE TRANSFER OF UNITS THAT WE HAD DISCUSSED

BETWEEN THE TWO PARCELS RHODINE TO BALM HAS NOW BEEN TAKEN OFF

THE TABLE.

MY CLIENT DECIDED AFTER HEARING TESTIMONY FROM THE LAST HEARING BEFORE BOCC FROM THE BALM CIVIC ASSOCIATION GROUP THAT HE WOULD TAKE THAT OFF THE TABLE.

IT IS NO LONGER TRANSFER BETWEEN THE TWO PROPERTIES.

LET ME HAVE DAVID SMITH JUST GO THROUGH QUICKLY THE BUFFERING SCENARIO.

I THINK WE'RE SORT OF DOWN TO THAT.

ON THE DENSITY CALCULATIONS, JOE MENTIONED THE NUMBERS, THEY'RE ACCURATE.

THEY'RE ESSENTIALLY BASED UPON EACH PARCEL INDIVIDUALLY IN ONE APPLICATION HERE TODAY.

DAVID?

>> SANDRA MURMAN: COMMISSIONER HAGAN, DO YOU WANT TO RESERVE
YOUR COMMENTS UNTIL AFTER?

>> DAVID SMITH, 401 EAST JACKSON STREET, PLANNER FOR STEARNS WEAVER MILLER.

I HAVE BEEN SWORN.

WHAT I'VE PUT UP BEFORE YOU IS BASICALLY GRAPHICS INDICATING THE BUFFER.

THIS WAS HANDED OUT AND DISCUSSED AT THE REMAND.

A QUESTION THAT COME UP RELATIVE TO THE 250-FOOT BUFFER REQUIREMENT AROUND THE BOUNDARIES OF THE PROPERTY, AND TO AN EXPLANATION AND A REREVIEW OF THOSE BUFFERS.

AS INDICATED, MR. MARCHETTI, THE ZONING HEARING MASTER STAFF AND PLANNING COMMISSION HAVE ALL REAFFIRMED THAT THESE ARE CONSISTENT AND COMPATIBLE WITH THE COMPREHENSIVE PLAN, THE LAND DEVELOPMENT CODE, AND SUPPORTED BY STAFF AND THE ZHM.

BUT JUST TO QUICKLY GO OVER IT, IN THE RHODINE PARCEL WE ARE SURROUNDED BY TRIPLE CREEK IT'S RP2 PROPERTY SIMILAR DENSITIES,

ACROSS A 50-FOOT WIDE EASEMENT FROM TROPICAL ACRES.

TO OUR NORTH THERE IS A TV TOWER FACILITY.

THEN THERE ARE RESIDENTIAL DEVELOPMENTS THAT ONLY ABUT THE ACCESS ROAD, AND THEN WE'RE ABUTTED BY ELAPP.

THE ADJUSTMENTS TO THE PLAN FOR RHODINE IS WE PROVIDED 250-FOOT BUFFER, A BUFFERING THE ELAPP LANDS TO OUR EAST.

OTHER BUFFERS REMAIN THE SAME BECAUSE NO BUFFER IS REQUIRED BETWEEN PROJECTS WITH SIMILAR DENSITY.

PROPERTIES ARE NOT ADJACENT IF THEY'RE ACROSS 50-FOOT WIDE OR MORE EASEMENT OR RIGHT-OF-WAY.

TROPICAL ACRES BUT WE HAVE PROCEEDED A 50-FOOT ADDITIONAL BUFFER PROVIDING 105-FOOT FROM THIS PORTION OF TROPICAL ACRES.

NO BUFFER IS REQUIRED THROUGH HERE BECAUSE THAT IS ONLY AN ACCESS ROAD ACCESSING THE PROPERTY.

ON THE SOUTHERN PROPERTY KNOWN AS THE GROVE, WE HAVE SIMILAR SITUATIONS.

WE'RE SURROUNDED ON TWO SIDES BY RP2 DEVELOPMENT THAT ALREADY
PROVIDES BUFFER OR IS NOT GOING TO HAVE ANY DEVELOPMENT AT ALL.
SO THEREFORE, WE'RE PROVIDING NO ADDITIONAL BUFFER OTHER THAN
WHAT IS SHOWN ON THE PLAN.

WE HAVE PROVIDED FOR THESE NONCONFORMING LOTS THAT ARE ACROSS SPENCER LANE, AND ALSO ACROSS A VERY NARROW SINGULAR PROPERTY THAT'S ABOUT 50-FOOT WIDE.

WE PROVIDED A 50-FOOT BUFFER THERE.

ALONG THE HIGHWAY FRONTAGES, THE RIGHT-OF-WAY EXCEEDS 50-FOOT IN

WIDTH.

THEREFORE, UNDER THE POLICIES, THOSE PROPERTIES ARE NOT ADJACENT.

BASED UPON THAT FACT THOUGH WE HAVE PROVIDED A 50-FOOT WIDE AUGMENTED BUFFER ALONG THESE HIGHWAY FRONTAGES IN ORDER TO PROVIDE ADDITIONAL SCREENING FOR THE RESIDENTIAL PROPERTIES.

ALSO NOTE THAT THIS IS A TRUCK ROUTE.

ALSO THERE WAS A COMMENT AND A REQUEST MADE BY MR. SCOGGINS FOR 250-FOOT WIDE BUFFER BE PROVIDED AGAINST HIS PROPERTY.

THAT HAS BEEN INCORPORATED IN THE PLAN.

THE ONLY OTHER TWO PROPERTIES THAT ABUT US IS THIS RESIDENTIAL TRACT DEVELOPED WITH ONE HOME.

WE PROVIDED AN AUGMENTED 50-FOOT WIDE BUFFER THERE.

WE'VE HAD NO COMMENTS THROUGH TWO PUBLIC HEARINGS FROM THESE RESIDENTS.

NO OBJECTIONS RELATIVE TO THE BUFFER BEING PROPOSED.

AND THIS PROPERTY FOR THE GOOD SAMARITAN.

GOOD SAMARITAN IS A NONRESIDENTIAL USE HOWEVER WE DO HAVE A LETTER FROM THEM THAT'S BEEN PLACED IN THE FILE, AND THEY HAVE NO OBJECTION TO THE PROPOSED BUFFERING.

BASED UPON THE DEFINITIONS IN THE CODE RELATIVE TO ADJACENT PROPERTIES AND THE ABILITY TO HAVE ALTERNATIVE BUFFERING, WE REQUEST THAT YOU APPROVE THIS AS PLANNED.

THANK YOU.

I'LL ANSWER ANY QUESTIONS.

>> JUST TO CONCLUDE, VIN MARCHETTI AGAIN FOR THE RECORD QUICKLY.

BASED UPON OUR CLIENT'S REMOVAL OF THE TRANSFER OPTION, WHICH

DID AGAIN ZONE WILL, IN THE ADJUSTMENT OF THE BUFFER, THE ZHM,

MR. SCAROLA THEN ISSUED A 30-PAGE RECOMMENDATION OF APPROVAL

WITH A DETAILED ANALYSIS ON EACH POINT THAT THE BOCC REQUESTED

THAT HE CONSIDER.

THE PLANNING COMMISSION AGAIN REVIEWED THE APPLICATION, FOUND IT
CONSISTENT WITH THE COMPREHENSIVE PLAN, DEVELOPMENT SERVICES
AGAIN FOUND THE APPLICATION APPROVABLE WITH CONDITIONS WHICH THE
APPLICANT AGREES TO IN FULL.

THE STAFF REPORTS BEFORE YOU INCLUDING THE ZHM RECOMMENDATION

ARE VERY THOROUGH ADDRESSING EACH AND EVERY QUESTION ADDRESSED,

INCLUDING OR QUESTIONED, INCLUDING THOSE QUESTIONS ASKED OF THE

BALM CIVIC ASSOCIATION MEMBERS WHO ARE HERE TODAY TO SPEAK AS

WELL, AS WELL AS MR. SCOGGINS.

I WOULD ASK THAT YOU CONSIDER THE COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD AND SUPPORT THE APPLICATION.

THANK YOU.

>> SANDRA MURMAN: OKAY.

DOES THAT CONCLUDE YOUR PRESENTATION?

>> YES.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

AND THEN WE WILL GO TO THE ORAL ARGUMENT.

IT WILL BE LIMITED TO PARTIES OF RECORD.

AND HAS EVERYONE SPOKEN FROM YOUR SIDE, MR. MARCHETTI ON THE SUPPORT?

OKAY.

SO WE HAVE MICHAEL FAVREAU, BILL O'BRIEN, AND JERRY SCOGGINS AS PARTIES OF RECORD IF THEY WILL COME FORWARD AND SPEAK.

AND YOU ARE IN OPPOSITION AND BETWEEN THE THREE OF YOU, YOU WILL HAVE 10 MINUTES TOTAL.

YOU GOING TO COME FORWARD?

NO?

OKAY.

ARE ALL THREE OF YOU GOING TO SPEAK?

>> YES, MA'AM, AT THIS TIME, WE PLAN TO.

>> SANDRA MURMAN: OKAY.

10 MINUTES TOTAL.

>> MY NAME IS WILLIAM F. O'BRIEN MY PHYSICAL ADDRESS IS 15002 CARLTON LAKE ROAD, WIMAUMA, FLORIDA.

MAKE IT CLEAR, I LIVE IN BALM, FLORIDA.

I'VE LIVED IN THE BALM AREA ALL OF MY LIFE.

I REPRESENT MYSELF AND THE CITIZENS OF BALM WHERE I HAVE SERVED OVER THE LAST 40 YEARS AS PRESIDENT OF THE CIVIC ASSOCIATION, VICE PRESIDENT OF THE CIVIC ASSOCIATION, MAYOR, AND OTHER AREAS OF RESPONSIBILITY WITHIN MY COMMUNITY.

THANK YOU FOR THE OPPORTUNITY TO SPEAK ON BEHALF OF MY

COMMUNITY.

AT THIS POINT, I WANT TO FOCUS ON THE INCONSISTENCY OF THIS ZONING PETITION WITH THE BALM COMMUNITY PLAN.

I WAS ONE OF THE BALM CITIZENS ON THE COMMITTEE TO HELP DRAFT THE COMMUNITY PLAN.

WE BEGAN THE DEVELOPMENT IN EARLY JANUARY 2012.

WE COMPLETED SUBMITTAL AND IT WAS APPROVED BY THE BOARD OF COUNTY COMMISSIONERS IN JANUARY OF 2013.

AS A TEXT AMENDMENT TO THE LIVABLE COMMUNITIES ELEMENT OF THE COMPREHENSIVE PLAN, THE COMMUNITY WORKED IN COLLABORATION WITH THE COUNTY PARTICIPATING IN OVER 21 WORKSHOPS TO DEVELOP AND GAIN APPROVAL OF THE PLAN THAT WOULD HELP TO MOLD THE FUTURE OF OUR TOWN.

THE ADOPTED PLAN CONSISTED OF OUR VISION, GOALS, AND STRATEGIES

AND SEEKS TO MANAGE GROWTH WHILE PRESERVING RURAL AND AGRARIAN

CHARACTERISTICS AND THE QUALITY OF LIFE ESTABLISHED BY

LONG-STANDING RESIDENTS.

IN THEIR PRESENTATION OF THE PLAN, THE STAFF COMMENTED THAT THE COMMUNITY AUTHORED THE VISION FOR HOW THEIR COMMUNITY WILL LOOK IN THE FUTURE.

ADOPTING THE PLAN PROVIDES BALM WITH THE TOOL TO IMPLEMENT THEIR VISION.

THE VISION GIVES THE COMMUNITY DIRECTIONS AND MOTIVATION TO STRIVE TO MAINTAIN THE UNIQUE RURAL LIFESTYLES ESTABLISHED BY

ITS INVENTORY OF AGRICULTURAL LANDS AND ENVIRONMENTAL RESOURCES
AND ACCOMMODATE FUTURE LOW DENSITY RESIDENTIAL DEVELOPMENT.

IMPROVED QUALITY OF LIFE WILL BE ACHIEVED THROUGH IMPLEMENTING
THE STRATEGIES.

THAT'S A DIRECT QUOTE FROM YOUR STAFF.

IN ADDITION THE STAFF COMMENTS INCLUDED THIS COMMUNITY PLAN
DEMONSTRATES HILLSBOROUGH COUNTY'S COMMITMENT TO USE THE
COMMUNITY PLAN, VISION, GOALS, STRATEGIES, AND ACTION PLAN WHEN
EVALUATING AND DECIDING ON MATTERS PERTAINING TO THE COMMUNITY
PLAN AREA.

THIS REZONING HAS NUMEROUS INCONSISTENCIES WITH OUR PLAN, GOALS,
AND COMMITMENTS MADE TO HILLSBOROUGH COUNTY TO SUPPORT THESE
GOALS.

GOAL NUMBER ONE, THE COMMUNITY SEEKS TO MAINTAIN AND RESERVE AND RURAL AND AGRARIAN CHARACTERISTICS, ATMOSPHERE, AND QUALITY OF LIFE ESTABLISHED BY LONG-STANDING COMMUNITY RESIDENTS, WHICH INCLUDES LEISURELY ACTIVITIES, STRONG NEIGHBORHOOD TIES, FAITH-BASED ORGANIZATIONS, AND RURAL LOW DENSITY LAND USE DESIGNATIONS.

IN RETURN, THE COUNTY COMMITTED THEY WILL CONTINUE TO MAINTAIN THE RURAL FUTURE LAND USE MAP DESIGNATIONS THAT ARE COMPATIBLE WITH THE EXISTING RURAL CHARACTER AND LEVEL OF DEVELOPMENT INVOLVED.

SPECIFICALLY MAINTAINING THE COMPREHENSIVE PLAN DEFINITION OF

RURAL DENSITIES IN THE RURAL AREA AS ONE UNIT PER FIVE ACRE OR LESS.

THE COUNTY WILL NOT DESIGNATE ANY FURTHER RESIDENTIAL RP2 LAND

USE CATEGORIES UNLESS DUE TO SPLIT USES ON ONE PARCEL CONSISTENT

WITH THE FUTURE LAND USE ELEMENT POLICIES.

COMMISSIONERS, 100 OR HUNDREDS OF HOUSES ON 40 TO 50-FOOT LOTS IS NOT CONSISTENT WITH OUR PLAN.

GOAL NUMBER 2, BALM ENCOURAGES HILLSBOROUGH COUNTY TO MAKE

NECESSARY IMPROVEMENTS TO AND PROVIDE CONTINUED MAINTENANCE OF

NEW AND EXISTING INFRASTRUCTURE IN ORDER TO KEEP BALM

ATTRACTIVE, FUNCTIONAL, AND SAFE FOR VISITORS AND LOCAL

RESIDENTS.

THE COUNTY WILL, THESE ARE ADDITIONAL COMMITMENTS, EMPHASIZE THE USE OF LIVABLE ROADWAYS, GUIDELINES, AND COMPREHENSIVE PLAN COMMUNITY DESIGN COMPONENT POLICIES FOR DESIGN OF ALL MODES OF TRAVEL WITHIN BALM WHEN FEASIBLE.

SO WHERE ARE THESE POLICIES APPLIED IN THIS APPLICATION?

GOAL NUMBER 4, BALM STAKEHOLDERS SUPPORT THE PRESERVATION OF

EXISTING OPEN SPACES AND ACQUISITION OF NEW OPEN SPACES WHEN

OPEN TO THE PUBLIC.

COMMITMENT FROM THE COUNTY.

THE COUNTY WILL CONTINUE TO MINIMIZE LIGHT POLLUTION AND PERVASIVE ARTIFICIAL LIGHT THROUGH THE DARK SKY STANDARDS. COMMISSIONERS.

HUNDREDS OF HOUSES BUILT UP TO THREE STORIES HIGH WITH REDUCED PERIMETER LOT LINES WILL NOT SUPPORT THIS GOAL.

AND FINALLY, GOAL NUMBER 6, THE COMMUNITY SEEKS TO CREATE OF
PEDESTRIAN FRIENDLY VILLAGES THAT INCLUDES A DIVERSE MIX OF USES
MEETING THEIR DAILY NEEDS.

THE COUNTY COMMITMENT.

IMPLEMENT EXISTING FUTURE LAND USE ELEMENT POLICIES CALLING FOR COUNTY-WIDE RURAL DESIGN GUIDELINES TO FOSTER THE RURAL ENVIRONMENT.

REINFORCE ITS CHARACTER AND DISTINGUISH IT FROM THE MORE URBAN DEVELOPMENT.

SO WHERE ARE THE RURAL DESIGN GUIDELINES APPLIED IN THIS REZONING REQUEST?

COMMISSIONERS, WE WORKED HARD AND LONG ON THE DEVELOPMENT OF OUR COMMUNITY PLAN TO HELP ESTABLISH A PATH FOR MANAGED DEVELOPMENT IN OUR TOWN.

YOU MADE COMMITMENTS TO SUPPORT OUR PLAN.

THE REZONING REQUEST 18-0304 IS NOT CONSISTENT WITH OUR PLAN,

AND IF APPROVED WILL BE INCOMPATIBLE WITH THE EXISTING LAND

USES.

THANK YOU.

>> SANDRA MURMAN: THANK YOU VERY MUCH, AND THERE IS ABOUT FOUR
MINUTES 18 SECONDS LEFT FOR THE OTHER TWO SPEAKERS.

AND DO YOU WANT TO SPEAK FROM THE ELMO, SIR?

THERE IS A MICROPHONE OVER THERE.

AND HAVE YOU BEEN SWORN IN?

>> HELLO, YES.

>> SANDRA MURMAN: OKAY, THANK YOU.

AND COULD YOU IDENTIFY YOURSELF.

>> MY NAME IS JERRY SCOGGINS, 15024 BALM WIMAUMA ROAD.

AS YOU ALL KNOW AT THE LAST MEETING, CAN I GET THIS ON THE SCREEN HERE?

>> SANDRA MURMAN: WE'LL GET SOMEBODY TO HELP YOU.

>> MR. SCOGGINS, BEFORE YOU BEGIN, CAN YOU ADVISE ME IF THAT WAS PLACED INTO THE RECORD AT THE ZONING HEARING MASTER HEARING?

>> EXCUSE ME?

>> DID YOU PRESENT THAT MATERIAL AT THE ZONING HEARING MASTER HEARING?

>> YES, YES, I DID.

YES, I DID PRESENT THE SAME MATERIAL.

OKAY.

HOW COME IT'S NOT ON THE SCREEN.

OKAY.

ALL RIGHT.

I WANTED TO BRINGS UP A COUPLE THINGS HERE.

ACCORDING TO THE DEVELOPMENT OF SERVICES PLAN, YOU'RE SUPPOSED TO HAVE A 250-FOOT BUFFER AROUND 70% OF ANY SUBDIVISION IN A RURAL AREA.

I AGREE WITH THEM THAT THEY GAVE ME A 250-FOOT BUFFER.

BUT THE PROBLEM WITH THE BUFFER IS IF I LOOK OUT MY BACKYARD

WHEN THE SUN'S COMING UP IN THE EAST, YOU KNOW WHAT I'M GOING TO

SEE?

I'M GOING TO SEE LOT LINES OF 40-FOOT BY 50-FOOT RIGHT BEHIND PLY HOUSE WHERE THE SUN'S SUPPOSED TO COME UP IN MY BACKYARD.

THAT BEING SAID, I'M REQUESTING THAT THE 250-FOOT BUFFER BE AROUND THE WHOLE SUBDIVISION.

WHAT IS WRONG WITH THAT?

BECAUSE THIS IS A NATURAL AREA.

IT'S BEEN LIKE THAT FOREVER.

AND THEN WE WANT TO COME IN HERE AND PUT ZERO LOT LINES OF 50-FOOT LOT LINES AROUND OUR PROPERTIES.

THAT'S ONE THING.

ANOTHER THING IS THE ROAD THAT GOES NORTH OF MY PROPERTY THAT TIES INTO 170619.

NOW, THAT'S THE OTHER ZONING THAT IS COMPATIBLE TO THIS SUBDIVISION THAT THEY WANT TO DO.

WELL, ACCORDING TO THE PLANS, THEY WANT TO BRING A ROAD STRAIGHT DOWN THROUGH BETWEEN MY PROPERTY ON BOTH SIDES OF THE ROAD.

THERE'S GOING TO BE 300 HOMES ON THE WEST SIDE OF MY PROPERTY.

THERE'S GOING TO BE 350 HOMES ON THE EAST SIDE OF MY PROPERTY.

THAT RIGHT-OF-WAY IS ONLY 63 FEET WIDE.

OKAY?

SO IN ORDER TO ACCOMMODATE THE TURN LANE JUST TO GO INTO THEIR SUBDIVISION, THEY NEED TO EXPAND THAT RIGHT-OF-WAY TO 96 FEET.

THAT THE BEING SAID, I FEEL THAT THE RIGHT-OF-WAY IN BETWEEN

THOSE PROPERTIES NEEDS TO BE PURCHASED BECAUSE THE DEVELOPER IS

GOING TO GIVE YOU A SETBACK AND DONATE THE RIGHT-OF-WAY TO YOU

GUYS FOR THE EXPANSION OF THE ROAD.

BUT THERE IS NOTHING SAID ABOUT THE PROPERTIES IN BETWEEN US.

AND THAT'S WHERE I REST MY CASE RIGHT THERE.

AND THAT'S ALL I GOT TO SAY.

>> SANDRA MURMAN: OKAY.

THANK YOU VERY MUCH.

AND THE, YOU HAVE ONE SPEAKER LEFT FOR TWO MINUTES.

>> THANKS.

>> SANDRA MURMAN: IF YOU WOULD PLEASE IDENTIFY YOURSELF.

>> MICHAEL FAVREAU, 14423 COUNTY ROAD 672.

I'M ONE MILE EAST OF THIS PROPERTY REQUEST, AND YES I HAVE BEEN SWORN IN.

YES, I HAVE BEEN SWORN.

I'M HERE TO REPRESENT OUR ASSOCIATION AS A BUSINESS OWNER DOWN
THERE AS WELL AS THE PRESIDENT OF THEIR COMMUNITY.

OBVIOUSLY THIS GETS TO REDUCE, SO LET'S GET TO THE POINT.

WE'RE NOT OPPOSED TO DEVELOPMENT IN OUR AREA, AS LONG AS IT REMAINS CONSISTENT WITH OUR PLAN AND WHERE WE LIVE.

WE STRONGLY OBJECT TO THE MANNER IN WHICH IT IS TRYING TO BE DONE NOW.

MAKE NO MISTAKE.

THIS PD HAS NOTHING TO DO WITH NONE OF US THAT LIVE THERE, ABSOLUTELY NOTHING.

YOU WANT RESIDENTIAL WHERE YOU CAN WALK TO THAT THEY DON'T YOU KNOW THEY HAVE TRAILS.

ALL OF THAT IS INSIDE OF THAT COMMUNITY WHICH HAS NOTHING TO DO WITH WHERE WE LIVE.

AS FAR AS COMPATIBILITY, I REALLY DO NOT KNOW HOW THIS IS EVEN CONSIDERED TO BE COMPATIBLE TO BALM.

THERE ARE NO BERMS, THERE ARE NO TREES, THERE ARE NO CLUSTER DEVELOPMENTS ANYWHERE IN BALM.

IF WE'RE JUST USING HILLSBOROUGH COUNTY AS A RULE ON 16 AUGUST COMMISSIONER HAGAN HAD FOUND THAT SOMETHING IN THONOTOSASSA WAS INCOMPATIBLE.

IS THAT NOT IN HILLSBOROUGH COUNTY?

SO IF WE'RE JUST USING A GENERAL RP2 AND WHAT OUR COMPREHENSIVE PLAN IS, WHICH BY THE WAY IS JUST A GUIDE, NOWHERE IN THERE IT SAYS YOU MUST PUT TWO HOMES ON AN ACRE.

NOWHERE.

SO SINCE THAT'S NOT IN THERE, WHY ARE WE GETTING RID OF THE BUFFERS?

WE'RE GETTING RID OF THE BUFFERS FOR THE SIMPLE REASON TO PUT

MORE HOUSES THERE.

THAT'S JUST GREED.

YOU SWORE ME IN TO TALK, BUT WE USE GREED AS AN EXCUSE TO PUT EXTRA HOUSES.

THEY SAY WE'RE GOING TO MAKE IT PRETTY.

WHERE I LIVE, I LOOK OUT ACROSS THE SKY.

YOU WANT TO PUT A SIX-FOOT FENCE AND A 35-FOOT HOUSE THAT'S 29 FEET ABOVE THAT, THAT'S MY NEW VIEW.

THAT IS AGAIN NOT CONSISTENT.

WE WOULD REQUEST GUIDELINES FOR WHAT CONSIDERED TO BE CONSISTENT AND NOT.

THERE IS PLENTY OF FILM OF THESE MEETINGS.

WE CAN GO OVER AND MAKE SURE THAT IT'S BEEN CONSISTENT ACROSS THE BOARD.

BECAUSE THERE IS NOTHING IN BALM THAT IS IN THIS PD.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

AND THE APPLICANT HAS FIVE MINUTES FOR REBUTTAL.

>> COMMISSIONERS, DAVID SMITH AGAIN.

JUST TO POINT OUT, COMPREHENSIVE PLAN POLICY HAS BEEN REVIEWED BY THE PLANNING COMMISSION, REVIEWED BY YOUR STAFF, AND WERE FOUND TO BE CONSISTENT.

COUPLE OF THINGS I WOULD LIKE TO POINT OUT.

THE BALM COMMUNITY PLAN ALSO INDICATES A COUPLE LITTLE IMPORTANT FACTS.

ONE, IT INDICATES SPECIFICALLY THAT YOU DON'T WANT TO

DEVELOP -- DENSITIES OTHER THAN WHERE THE FUTURE LAND USE PLAN

PROVIDES FOR THEM.

RP2 PROVIDES FOR THESE DENSITIES.

WE'RE CONSISTENT WITH THE RP2.

THIS IS SPECIFICALLY IN THE COMMUNITY PLAN UNDER GOAL 1.

WHEN YOU COME OVER FURTHER IN THE PLAN, IT TALKS ABOUT VILLAGE

NODES.

IT SAYS VILLAGE LOCATIONS ARE THOSE AREAS THAT MEET LOCATIONAL CRITERIA.

PREFERRED LOCATIONS ARE AT THE INTERSECTION OF BALM ROAD, BALM WIMAUMA NEAR THE EXISTING POST OFFICE AND ARE AT THE INTERSECTION OF BALM BOYETTE, COUNTY ROAD 672 AND SHELLEY LANE. I WOULD LIKE TO POINT OUT THAT THIS PROPERTY IS EXACTLY AT THAT LOCATION.

672, SHELLEY LANE AND THESE ARE PLACES IN THE BALM COMMUNITY
PLAN THEY HAVE IDENTIFIED FOR THESE VILLAGE DEVELOPMENTS.
WE'RE CONSISTENT WITH THE COMPREHENSIVE PLAN POLICIES RELATIVE
TO THAT.

WE PROVIDE BUFFERS AS PROVIDED FOR GIVEN THE ADJACENCY OF
ADJACENT USES AND WE RESPECTFULLY REQUEST THAT YOU FIND THIS
CONSISTENT AND APPROVABLE.

>> JUST WRAP UP.

VIN MARCHETTI ON REBUTTAL HERE.

I GUESS A COUPLE OF ITEMS.

FIRST, MR. BRIAN'S VERY PASSIONATE AS IS MR. FAVREAU BOTH OF THE BALM COMMUNITY WHICH WE DON'T MIND.

WE WORK WITH THEM ACTUALLY PRETTY EXTENSIVELY.

HOWEVER, THEY'RE CITING TO PROVISIONS IN THEIR BALM COMMUNITY PLAN.

DAVID JUST POINTED OUT A COUPLE OF THEM THAT ARE NOT CONSISTENT WITH WHAT'S BEFORE YOU TODAY.

MR. O'BRIEN ALSO WENT WELL BEYOND THE TWO ITEMS FOR REBUTTAL, WHICH WAS DENSITY CALCULATIONS ON THE TWO PARCELS.

I THINK INDIVIDUALS OR COMMISSIONER WHITE TALKED ABOUT, AND THEN THE BUFFERS.

BUT I LET HIM DO THAT BECAUSE OUT OF COURTESY TO HIM I WANTED TO

MAKE SURE THE BOARD HAD A PURVIEW OF ALL HIS INFORMATION.

HAVING SAID THAT, RP2 HAS BEEN IN PLACE IN THE GRAPHIC PLEASE

PUT THE GRAPHIC BACK UP.

THE RP2 HAS BEEN IN PLACE SINCE THE EARLY 90s.

OKAY?

SO YOU HAVE TO UNDERSTAND WHEN THE PLANNING COMMISSION OR THE DEVELOPMENT SERVICES STAFF STARTED THEIR COMMUNITY PLAN DISCUSSIONS WITH BALM, IT WAS UNDER THE CONTEXT OF RP2 BEING IN PLACE, NOT THAT IT'S NOT THERE, AND SO THEIR COMMUNITY PLAN DEFINITELY RECOGNIZES THE FACT THAT IT IS IN PLACE, RP2 IS A TRANSITION AREA, AND OBJECTIVE 33 WITHIN PLANNED VILLAGES IN

YOUR COMPREHENSIVE PLAN STATES SPECIFICALLY 33.2, THE
RESIDENTIAL PLANNED CATEGORY RP2 LAND USE CATEGORY IS INTENDED
TO IMPLEMENT A TWO-TIERED APPROACH IN THE APPLICATION OF
DENSITIES AND INTENSITIES.

THE PURPOSE OF RP2 LAND USE CATEGORY IS TO PROMOTE

SELF-SUSTAINABLE DEVELOPMENT, THE ABILITY TO OBTAIN MAXIMUM

DENSITIES AND/OR DENSITIES PERMITTED IN RP2 LAND USE CATEGORIES.

160 ACRES OR GREATER, WHICH IS THE CASE HERE, SHALL BE DEPENDENT

UPON THE EXTENT DO WHICH DEVELOPMENTS ARE INTENDED TO ACHIEVE ON

SITE CLUSTERING.

THAT'S WHAT RP2 PROVIDES FOR IN YOUR COMPREHENSIVE PLAN.

THE ZONING HEARING MASTER IN HIS CONCLUSION ON PAGE 29 SAID

PROPOSED PROJECT MEETS THE INTENT OF RP2 PLANNED VILLAGE

POLICIES OF THE COMPREHENSIVE PLAN TO CREATE A PEDESTRIAN

ORIENTED COMMUNITY TO COMPLEMENT THE LOW DENSITY DEVELOPMENT

PATTERN PERMITTED AROUND THE RP2 FUTURE LAND USE CATEGORIES, NOT

DEVELOPED IN A PLANNED VILLAGE MANNER.

OVERALL THE REQUEST WILL RESULT IN DEVELOPMENT THAT IS

COMPATIBLE WITH THE SURROUNDING DEVELOPMENT PATTERN.

MR. SCOGGINS TALKED ABOUT I'M NOT SURE WHAT HE TALKED

ABOUT -- HE TALKED ABOUT BUFFERS.

THE LAST MEETING BEFORE, HE ASKED FOR 250 FEET.
WE GAVE HIM 250 FEET.

NOW HE'S TALKING ABOUT SOMEONE ELSE'S PROPERTY.

SOME OTHER PROPERTIES ACROSS THE WAY.

AGAIN, HE WENT WELL BEYOND WHAT THE INTENT FOR THIS REMAND WAS, BUT I LET HIM SPEAK AS WELL.

MR. FAVREAU IS ALIGNED WITH MR. O'BRIEN.

I RESPECT THEIR OPINIONS.

THIS IS RP2 LAND.

THIS PROPERTY WILL BE DEVELOPED AS A TRANSITION PARCELS IF YOU WILL TO THE OTHERWISE RURAL AREA.

SO THAT'S OUR CASE.

THERE'S A LOT OF EVIDENCE ON THE RECORD SUPPORTING OUR REQUEST.

I WOULD ASK THAT YOU SUPPORT IT.

THANK YOU.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

WE'LL NOW MOVE TO REPORTS ON THE PLANNING COMMISSION.

>> THANK YOU, MADAM CHAIRMAN.

TONY GARCIA, PLANNING COMMISSION STAFF.

THIS CASE WAS REMANDED BACK TO THE ZONING HEARING MASTER BY THE COUNTY COMMISSIONERS.

NO TRANSFER OF DEVELOPMENT RIGHTS, EACH PARCEL HAS BEEN REVIEWED INDIVIDUALLY FOR DENSITY AND THE RHODINE PARCEL'S MAXIMUM UNIT COUNT IS AS STATED 283 UNITS.

THE GROVE PARCEL DWELLING UNIT TOTAL IS 356 UNITS.

STAFF CONCURS WITH THE AMOUNT OF RETAIL DESIGNATED FOR EACH PARCEL IN THE DEVELOPMENT SERVICES REPORT.

THE AMENITY CENTER SLATED FOR THE GROVE PARCEL CAN ACCOMMODATE RETAIL DEVELOPMENT.

STAFF ALSO CONCURS WITH THE REQUEST FOR NEIGHBORHOOD SPECIALTY
RETAIL AS SHOWN ON THE SITE PLAN AS BALM WIMAUMA IN BALM BOYETTE
ROADS.

THE APPLICANT HAS ALSO REQUESTED A WAIVER TO THE 250-FOOT BUFFER REQUIREMENT IN CERTAIN LOCATIONS.

STAFF CONCURS WITH THE BUFFER WAIVER AND PROPOSED BUFFER

CONDITIONS PROVIDED BY THE DEVELOPMENT SERVICES DEPARTMENT.

THIS INCLUDES A BERM AND SCREENING WITH LANDSCAPE MATERIALS.

STAFF CONCURS WITH LOCATIONS OF THE VILLAGE NODES FOR BOTH

PARCELS.

BASED ON THE ABOVE CONSIDERATIONS, PLANNING COMMISSION STAFF FINDS THE PROPOSED REQUEST CONSISTENT WITH THE COMPREHENSIVE PLAN.

THANKS.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

ZONING HEARING MASTER, I HAVE A REPORT FROM YOU.

>> THE ZONING HEARING MASTER CONSIDERED THE REQUEST TO REZONE

THREE 58.3 NONCONTIGUOUS ACRES FROM AGRICULTURAL RURAL TO

PLANNED DEVELOPMENT WITHIN THE SOUTH COUNTY PLANNING SECTOR IN

THE RIVERVIEW AND BALM PLANNING AREAS.

AS A RESULT OF THE REMAND, THE APPLICATION HAS CHANGED.

THE APPLICANT NO LONGER PROPOSES TO TRANSFER DENSITIES BETWEEN

THE TWO PARCELS CONSISTENT WITH COMPREHENSIVE PLAN POLICY 33.2A.

THE PARCEL YIELDS ARE NOW BASED ON THE INDIVIDUAL PARCEL DENSITY

CALCULATIONS.

THE ZONING HEARING MASTER REVIEWED THE APPLICATION AND FOUND THAT THE UNIT COUNT REQUESTED ON THE GROVE PARCEL HAS BEEN REDUCED BY 54 UNITS FROM THE ORIGINAL REQUEST.

THE ZONING HEARING MASTER CONCLUDED THAT WITH REGARD TO THE
BUFFER REQUIREMENTS, THERE HAVE BEEN TWO CHANGES TO THE ORIGINAL
BUFFER PROPOSALS PER THE REMAND.

FIRST ON THE GROVE PARCEL A250-FOOT BUFFER HAS BEEN ADDED ADJACENT TO FOLIO 7785.0000 SCOGGINS PROPERTY.

SECOND, ON THE RHODINE PARCEL, A 250-FOOT BUFFER HAS BEEN ADDED TO THE EAST BOUNDARY ADJACENT TO THE COUNTY PRESERVATION AREA.

THE ZONING HEARING MASTER CONSIDERED THE BUFFER WAIVER AND FOUND THAT THE APPLICANT HAS APPROPRIATELY REQUESTED A WAIVER TO THE BUFFER REQUIREMENTS.

-- NETWORK OF BUFFERS AND SCREENING DESIGNED APPROPRIATELY

BASED ON THE SMALL GROUPINGS OF REMAINING USES THAT ARE NOT PART

OF THE SURROUNDING PLAN VILLAGE.

ACCORDINGLY, THE ZONING HEARING MASTER FOUND THE APPLICANT HAS

APPROPRIATELY JUSTIFIED THE REQUESTED WAIVERS OF BUFFER.

THE ZONING HEARING MASTER CONSIDERED THE ENTIRETY OF THE

PROPOSED PROJECT, FINDING THAT IT MET THE INTENT OF THE

RESIDENTIAL PLANNED 2 PLAN VILLAGE POLICIES OF THE COMPREHENSIVE

PLAN TO CREATE A PEDESTRIAN ORIENTED COMMUNITY TO COMPLEMENT THE LOW DENSITY DEVELOPMENT PATTERN PERMITTED AROUND THE RP2 FUTURE LAND USE CATEGORIES.

OVERALL, THE REQUEST WOULD RESULT IN DEVELOPMENT THAT IS COMPATIBLE WITH THE SURROUNDING DEVELOPMENT PATTERN.

THE ZONING HEARING MASTER THEREFORE RECOMMENDED APPROVAL.

>> SANDRA MURMAN: OKAY.

THANK YOU VERY MUCH.

WE'LL NOW MOVE TO BOARD DISCUSSION AND ACTION.

COMMISSIONER HAGAN, YOU'RE RECOGNIZED.

>> THANK YOU, MADAM CHAIR.

BOARD MEMBERS, ON JULY 24th, I MADE A MOTION TO APPROVE BASED ON ZHM AND DEVELOPMENT SERVICES HAVING RECOMMENDED APPROVAL, AND BASED ON PLANNING COMMISSION FINDING IT CONSISTENT WITH THE COMPREHENSIVE PLAN.

THE BOARD ULTIMATELY REMANDED THE ITEM TO ADDRESS BUFFERING AND DENSITY ISSUES.

THE APPLICANT DID JUST THAT.

AS A RESULT, THE APPLICANT HAS ELIMINATED THE DENSITY TRANSFER, WHICH HAS RESULTED IN A REDUCTION OF 54 UNITS.

THEY ALSO HAVE TWO ADDITIONAL 250-FOOT BUFFERS HAVE BEEN ADDED.

ONE QUESTION I HAVE, THE FIRST SPEAKER WAS REFERENCING THE FACT

THAT HE BELIEVED THAT THIS WAS INCONSISTENT WITH THE COMMUNITY

PLANS.

ADAM, I'M ASSUMING THAT STAFF AND THE PLANNING COMMISSION DOES NOT CONCUR WITH THAT OPINION.

>> YES, WE DO NOT CONCUR.

IN OUR REVIEW, WE FOUND THIS TO BE CONSISTENT WITH THE BALM

COMMUNITY PLAN, PARTICULARLY THE RECOGNITION IN THERE OF THE RP2

CATEGORIES THAT DID EXIST, AND THESE WERE EXISTING LAND USE

CATEGORIES AT THAT TIME.

>> KEN HAGAN: OKAY, BASED ON THE RECOMMENDATIONS OF APPROVAL AND THE ADDITIONAL CHANGES, I'M GOING TO MOVE APPROVAL.

>> SANDRA MURMAN: OKAY.

WE HAVE A MOTION TO APPROVE ITEM G1 FROM COMMISSIONER HAGAN, SECONDED BY COMMISSIONER HIGGINBOTHAM.

COMMISSIONER KEMP, YOU'RE RECOGNIZED.

>> PAT KEMP: THANK YOU.

I DO HAVE VERY MANY CONCERNS ABOUT THE THINGS THAT THE RESIDENTS OF THE BALM AREA BROUGHT FORWARD TODAY.

SOMETIMES YOU CAN ASK FOR THINGS THAT ARE SO EXTREME AND SO
WAIVERS THAT ARE SO HUGE AND OTHER LAND DEVELOPMENT ISSUES THAT
ARE SO BIG THAT WHEN YOU GO TO REMAND AND YOU GET SOME OF THEM
CHANGED, YOU STILL HAVE QUITE A PACKAGE OF WAIVERS THAT HAVE
BEEN PUT FORWARD AND THINGS THAT DON'T WORK.

I WOULD REALLY LIKE TO SEE THIS GO BACK TO REMAND AGAIN.

I THINK THAT THERE WERE SEVERAL ISSUES, AND I SEE SEVERAL WAIVERS WITHIN THIS THAT I THINK ARE, I THINK THAT REALLY SHOULD

BE WORKED OUT MORE.

I AGREE WITH THE BALM COMMUNITY.

TO ME DOES NOT SEEM CONSISTENT WITH THE REST OF THE AREA.

I BELIEVE THERE ARE TESTIMONY SO SEEMS LIKE WHAT WE'VE TURNED

THIS INTO IS JUST ANOTHER TYPICAL KIND OF SPRAWL DEVELOPMENT AND

I THINK WE COULD DO BETTER THAN THAT AND I WOULD LIKE TO SEE US

DO BETTER THAN THAT.

SOME OF THE WAIVERS I'M CONCERNED ABOUT ARE NUMBER 11 HERE.

APPROVE THE WAIVER OF ON SITE NEIGHBORHOOD RETAIL AND LOOKING AT

THE OFFSITE AS A SUBSTITUTE INSTEAD.

I THINK THAT THAT'S A PROBLEM, THE NUMBER 11.

I THINK THE BUFFERING SOUNDS LIKE IT'S STILL AN ISSUE THAT MAYBE NEEDS SOME MORE ATTENTION.

I'M CONCERNED TOO AS WE DO SO OFTEN HEAR UNFORTUNATELY IS THROW DOWN MORE AND MORE DEVELOPMENT ON SUBSTANDARD ROADS.

AND WE KEEP DOING THAT.

AND I'M HOPING THAT AT OUR FUTURE LAND USE HEARINGS, THAT YOU KNOW WE CAN RECONSIDER HOW WE ARE DEVELOPING MOVING FORWARD IN THE COUNTY.

BUT RIGHT NOW BEFORE US WE HAVE 19.

AS BALM WIMAUMA ROAD MAYBE A SUBSTANDARD COLLECTOR ROADWAY, THE DEVELOPER WILL BE REQUIRED TO COORDINATE WITH HILLSBOROUGH COUNTY PUBLIC WORKS TO DETERMINE THE IMPROVEMENTS THAT WILL BE REQUIRED.

THERE'S NO REASON WHY THIS BOARD CAN'T FIGURE OUT WHAT THOSE IMPROVEMENTS NEED TO BE AHEAD OF TIME.

AND WE SHOULD I THINK STOP MOVING FORWARD WITH ISSUES LIKE THIS

THAT REALLY DON'T WORK TO THE BETTERMENT OF THE COMMUNITY AND

DON'T MAKE THE AREA BETTER AND DON'T MAKE, AND DON'T DO THE KIND

OF DEVELOPMENT THAT WE NEED FOR THE FUTURE.

I WAS GLAD TO HEAR ABOUT THE COMMUNITY PLAN KINDS OF THINGS,
THINGS LIKE ARTIFICIAL LIGHT IN THE DARK SKY STANDARDS.

THAT'S KIND OF AMAZING THAT THE PLAN IS THAT PRECISE, AND I JUST THINK THAT THIS COULD BE SOMETHING THAT COULD MAYBE GO FOR SOME FURTHER DISCUSSION WITH THIS NEIGHBORHOOD.

I DO BELIEVE THAT THEY'RE NOT HERE JUST TO OPPOSE DEVELOPMENT
BUT REALLY LOOK FOR COMPATIBLE DEVELOPMENT THAT WORKS IN THE
AREA THAT WILL MAKE THE COMMUNITIES BETTER, AND I THINK THAT
THAT CAN BE ACHIEVED.

I THINK THAT THAT IS SOMETHING THAT CAN BE MOVED FORWARD.

BUT I HOPE WE, I'D LIKE TO SEE THIS GET TO REMAND.

[APPLAUSE]

>> SANDRA MURMAN: OKAY.

COMMISSIONER WHITE, YOU'RE RECOGNIZED.

>> STACY WHITE: YOU KNOW, I THOUGHT YOU WERE GOING TO MAKE A MOTION TO REMAND IT, AND THEN I WAS PREPARED TO SECOND THAT FOR THE SAKE OF DISCUSSION.

YOU KNOW, I DO, I DO HAVE TO SAY, YOU KNOW, I'LL REMIND THE

AUDIENCE AND PARTICULARLY THE CITIZENS FROM BALM THAT ARE HERE
THAT I GREW UP DOWN IN WIMAUMA, FLORIDA, AND I KNOW THE CITIZENS
OF BALM VERY WELL.

I KNOW THE AREA WELL.

I HAVE FRIENDS AND ACQUAINTANCES IN BALM THAT I HAVER ARE KNOWN FOR A VERY, VERY LONG TIME.

MY ENTIRE LIFE SOME OF THEM.

A LOT OF PEOPLE MAY NOT KNOW, PARTICULARLY SOME AT THIS DAIS
THAT YOU KNOW I CONSIDERED RUNNING FOR THE COUNTY COMMISSION
BACK IN THE 90s, AND YOU KNOW, I WOULD'VE LOVED TO HAVE BEEN ON
THIS BOARD 20, 25 YEARS AGO.

I THINK I COULD'VE MADE A BIG DIFFERENCE IN SHAPING SOME POLICY, YOU KNOW, BUT SEEING AS HOW I DIDN'T BECOME A COMMISSIONER UNTIL 2014, YOU KNOW, I WAS DEALT A DECK OF CARDS THAT YOU KNOW, THAT'S YOU KNOW, IT'S THERE, IT'S IN THE COMPREHENSIVE PLAN, IT'S IN THE LAND DEVELOPMENT CODE: FOR THE RECORD, IF I WOULD'VE BEEN A COMMISSIONER IN THE 90s, I WOULD NOT HAVE SUPPORTED THE RP2 LAND USE CATEGORY.

I WOULD'VE LIKED TO HAVE SEEN BALM HAVE ITS LARGE LOT RURAL CHARACTER PROTECTED.

BUT R2P, YOU KNOW, IS EMBEDDED IN THE COMPREHENSIVE PLAN AT THIS POINT.

I WILL REMIND THE CITIZENS THAT AT MY URGING, THIS WAS REMANDED TO LOOK AT SOME OF THE BUFFERING, AND PARTICULARLY THE DENSITY

CALCULATION.

AND WHAT WE HAVE BEFORE US IS A REDUCTION IN DENSITY FROM 710 UNITS TOTAL BETWEEN THE TWO PARCELS TO 639 UNITS.

THAT'S A DECREASE OF 71 UNITS AND IF I'M DOING MY QUICK MATH

CORRECTLY, OFF THE TOP OF MY HEAD, THAT'S A 10% DECREASE I KNOW

SOME OF THE BUFFERING ISSUES WERE TAKEN OUT.

SO I AM NOT OPPOSED TO ANOTHER REMAND TO TAKE A LOOK AT SOME OF THE ISSUES HERE.

BUT I TELL YOU GIVEN THAT I'VE BEEN DEALT THIS HAND, THAT RP2 IS EMBEDDED IN THE COMPREHENSIVE PLAN, YOU KNOW, I DON'T KNOW THAT WE'RE GOING TO BE ON SOUND LEGAL FOOTING ULTIMATELY FOR ANY KIND OF A DENIAL.

BUT I'M CERTAINLY NOT OPPOSED TO SOME ADDITIONAL LOOKS,

COMMISSIONER KEMP, DEPENDING ON WHAT IT IS THAT YOU WOULD

PROPOSE THAT WE TAKE A FURTHER LOOK AT.

>> PAT KEMP: I'LL MAKE A SUBSTITUTE.

>> SANDRA MURMAN: YOU HAVEN'T BEEN CALLED ON YET.

OKAY, COMMISSIONER KEMP, YOU'RE RECOGNIZED.

>> PAT KEMP: I WOULD LIKE TO MAKE A SUBSTITUTE MOTION TO REMAND ON THE ISSUES OF THE ROADWAY.

ON THE ISSUES OF THE BUFFER.

ON THE ISSUES OF THE COMMERCIAL, THE WAIVER ON COMMERCIAL CONDITIONS.

AND ALSO I WOULD LIKE TO NOTE WITH REGARD TO ONES OF THE

SPEAKERS WHO BROUGHT UP THE ISSUE OF RIGHT-OF-WAY THAT WOULD BE NEEDED AS PART OF IT TO EVER MAKE THE ROADWAY STANDARD.

[INAUDIBLE]

TO BRING IT UP TO WHAT WE NEED THERE.

IF WE DO NEED RIGHT-OF-WAY IF THAT HAS TO BE PART OF IT AND SHOULD BE A CONDITION I THINK BEFORE MOVING FORWARD.

>> SANDRA MURMAN: OKAY.

WE DO HAVE A SUBSTITUTE MOTION TO REMAND BY COMMISSIONER KEMP WHICH IS SECONDED BY COMMISSIONER WHITE.

SO THERE IS A SUBSTITUTE MOTION AND NEXT IN THE QUEUE IS COMMISSIONER HAGAN.

YOU'RE RECOGNIZED.

AND THIS IS, DO YOU WANT TO TALK ON THE REMAND? OKAY.

THANK YOU.

>> KEN HAGAN: WELL, I'M GOING TO OPPOSE THE REMAND.

WE REMANDED THIS ONCE, WE ASKED THEM TO ADDRESS BUFFERING AND DENSITY ISSUES.

THE APPLICANT DID JUST THAT.

I'VE BEEN ON THIS BOARD A LONG TIME.

I DON'T EVER RECALL A REMAND COMING BACK AND THEN THIS BOARD REMANDING IT AGAIN.

I DON'T THINK THAT'S EVER HAPPENED.

OKAY?

SO I MEAN, IT'S BAD PRECEDENT.

I DON'T -- HOW MANY BITES AT THE APPLE ARE WE SUPPOSED TO GIVE HERE.

OUR APPLICANT HEARD OUR CONCERNS, THEY ADDRESSED THEM AND THAT'S NOT GOOD ENOUGH.

EVEN AS COMMISSIONER WHITE SAID, THERE IS ULTIMATELY THERE IS NO LEGAL BASIS TO DENY THIS ULTIMATELY.

SO I WILL STRONGLY OPPOSE THE SUBSTITUTE MOTION.

>> SANDRA MURMAN: OKAY.

COMMISSIONER WHITE, YOU ARE RECOGNIZED.

>> STACY WHITE: PARTIALLY TO COMMISSIONER HAGAN'S POINT, YOU KNOW, I AGREE THAT WE CANNOT CONTINUE TO JUST INDEFINITELY KICK THE CAN DOWN THE ROAD.

COMMISSIONER KEMP, I'LL SUPPORT YOU ON THIS REQUEST FOR A REMAND, BUT AGAIN, PARTIALLY TO COMMISSIONER HAGAN'S POINT, YOU KNOW, WHEN THIS COMES BACK, IF A REMAND PASSES, YOU KNOW, WE'VE GOT TO HAVE CLOSURE HERE AND WE'VE GOT TO BRING THIS IN FOR A LANDING, SO IF THIS PASSES TODAY FOR A SECOND REMAND, YOU KNOW, I'M PREPARED TO TAKE A VOTE WHEN IT COMES BACK AND JUST HAVE THIS ADDRESSED ONCE AND FOR ALL.

I DON'T KNOW IF WE NEED TO OFFICIALLY INCORPORATE THIS INTO THE MOTION BUT ONE CITIZEN HAD EXPRESSED SOME CONCERNS ABOUT THE POTENTIAL HEIGHT OF STRUCTURES.

I'M NOT SURE WHAT THE DEVELOPER WOULD INTEND TO BUILD, BUT I'D

BE WILLING TO ASK IF THE DEVELOPER WOULD BE WILLING TO TALK ABOUT ISSUES OF HEIGHT.

I KNOW YOU KNOW THAT, I WOULD IMAGINE, COULD POSSIBLY BE OFFERED AS A RESTRICTION OR CONCESSION OF SOME KIND, YOU KNOW, IF YOU KNOW THEY'RE NOT PLANNING TO BUILD TO A MAXIMUM HEIGHT THAT WOULD BE ALLOWED ANYWAY.

>> SANDRA MURMAN: SO THAT WOULD BE IN THE REMAND REQUEST IF IT PASSES?

>> STACY WHITE: I WOULDN'T -- AT A MINIMUM I WOULD JUST LIKE TO

SEE THE DEVELOPER JUST TALK WITH THE COMMUNITY ABOUT THAT AND

SEE IF SOME CONCESSIONS CAN BE MADE.

>> SANDRA MURMAN: OKAY.

COMMISSIONER MILLER, YOU'RE RECOGNIZED.

>> LES MILLER, JR.: THANK YOU, MADAM CHAIR.

MY MEMORY IS SLIPPING ME NOW BUT I THINK WE HAD A DISCUSSION LAST TIME FROM THE APPLICANT.

WE HAD A DISCUSSION WITH YOU MEETING WITH THE CITIZENS OUT THERE
AFTER IT WAS REMANDED THE LAST TIME?

>> VIN MARCHETTI FOR THE RECORD, YES, WE'VE HAD CONSTANT
DIALOGUE WITH MR. SCOGGINS, WITH MR. O'BRIEN, MR. FAVREAU ALONG
THE WAY, AND I'LL TELL YOU THAT THE ITEMS THAT YOU'RE DISCUSSING
HERE FOR POTENTIAL REMAND ARE ALL ADDRESSED EITHER IN THE CODES
OR IN THE CONDITIONS.

>> LES MILLER, JR.: SO SINCE THE LAST REMAND YOU HAD DISCUSSIONS

WITH THE CITIZENS OUT THERE TO TRY TO WORK THIS OUT, AND OBVIOUSLY IT DIDN'T WORK OUT.

>> WE'VE WORKED OUT WHAT MR. SCOGGINS ASKED FOR, AND WE'VE WORKED OUT THE BEST WE CAN, MR. O'BRIEN, MR. FAVREAU.

THEY DON'T WANT DEVELOPMENT.

ALTHOUGH THEY SAY THEY DO, THEY DON'T WANT DEVELOPMENT IN BALM.

IT'S RP2.

THAT'S THE FUNDAMENTAL ISSUE THEY HAVE.

>> SANDRA MURMAN: NO, SIR, YOU CANNOT SPEAK.

PLEASE, SIR, SIR, WE CANNOT HAVE ANY OUTBURSTS.

SIR.

IT'S YOUR LAST WARNING.

THANK YOU.

OKAY.

COMMISSIONER KEMP, YOU'RE RECOGNIZED.

>> PAT KEMP: I AGREE THAT RP2 IS FUNDAMENTALLY EXTREMELY FLAWED LAND USE CATEGORY, AND THE PENDING TEXT AMENDMENT IT WOULD ONLY MAKE IT MORE TERRIBLE AND MORE SPRAWL.

BUT THAT'S OUTSIDE OF THIS CONVERSATION.

I AGREE WITH THAT TOO.

BUT THAT DOESN'T MEAN THAT WE CAN'T MOVE FORWARD ON THIS AND
START TO LOOK AT THE ISSUES IN THIS PARTICULAR AND WE CAN'T PUT
IT OFF FOREVER BUT I DO THINK THERE SHOULD BE SOME MORE COMING
TO TERMS WITH WHAT IS PLANNED OUT HERE.

I THINK WE DID MOVE FORWARD A LITTLE BIT WITH THIS WITH THE REDUCTION IN UNITS AND OTHER THINGS, BUT I DO THINK THERE IS THESE OUTSTANDING ISSUES STILL OF AS I MENTIONED THE BUFFERING, THE NEIGHBORHOOD COMMERCIAL, AND THE TRAFFIC ISSUE AND THE ROADWAY ISSUE I THINK IS VERY SIGNIFICANT.

AND SHOULDN'T BE, WE SHOULDN'T BE MOVING FORWARD WAIVING THOSE
THINGS -- [INAUDIBLE]

OR LEAVING THEM TO THE FUTURE.

I THINK THAT WE NEED TO MEET THESE CONDITIONS AND LOOK AT THIS AHEAD OF TIME.

SO I -- TOTALLY SUPPORT A REMAND TO LOOK AT THESE ISSUES.

>> SANDRA MURMAN: THANK YOU.

COMMISSIONER HAGAN, YOU'RE RECOGNIZED.

>> KEN HAGAN: I JUST HAVE A QUESTION FOR MR. GORMLY.

ADAM, DO YOU EVER RECALL A SITUATION WHERE COUNTY COMMISSION HAS REMANDED AN ITEM, IT'S COME BACK TO US, AND THEN WE'VE REMANDED IT A SECOND TIME.

- >> I CAN'T RECALL THAT THAT HAS OCCURRED PREVIOUSLY IN MY TIME HERE.
- >> KEN HAGAN: OKAY, THANK YOU.
- >> SANDRA MURMAN: COMMISSIONER WHITE, YOU'RE RECOGNIZED.
- >> STACY WHITE: VERY BRIEFLY, MADAM CHAIR.
- I AM GOING TO SUPPORT THE MOTION FOR A SECOND REMAND TO LOOK AT SOME OF THESE ISSUES, BUT I DON'T WANT TO SET ANY FALSE

EXPECTATIONS FOR THE CITIZENS HERE.

I DON'T BELIEVE ULTIMATELY THAT WE'RE ON SOUND LEGAL FOOTING TO

JUST DENY THIS AND TELL THE APPLICANT THAT THEY HAVE TO DO

FIVE-ACRE TRACTS ON THIS SITE.

OKAY, BUT I AM WILLING FOR THIS SECOND TO LET THIS SECOND REMAND

GO THROUGH SO THAT THERE CAN BE SOME ADDED DISCUSSION BETWEEN

THE APPLICANT AND THE CITIZENS TO TALK A LITTLE BIT ABOUT THE

BUFFERING AND EVERYTHING.

BUT AGAIN, I WOULD DEALT THIS HAND, OKAY.

AS YOU'VE HEARD THESE POLICIES HAVE BEEN IN EFFECT SINCE THE 90s.

THIS IS A COMPLEX LEGAL PROCESS.

WE HAVE TO BE ON SOUND LEGAL FOOTING TO DENY A REZONING.

I JUST -- I DON'T BELIEVE WE'RE THERE, SO AGAIN, I DON'T WANT TO SET ANY FALSE EXPECTATIONS.

I REALLY DON'T LEGALLY BELIEVE WE'RE GOING TO BE ABLE TO TELL
THE DEVELOPER THAT HE'S GOT TO DO FIVE-ACRE TRACTS HERE, BUT
I'LL SUPPORT THE MOTION FOR A REMAND FOR SOME FURTHER
DISCUSSION.

>> SANDRA MURMAN: OKAY.

THANK YOU.

NO MORE BOARD DISCUSSION ON THE REMAND.

THERE IS A SUBSTITUTE MOTION TO REMAND BY COMMISSIONER KEMP, SECONDED BY COMMISSIONER WHITE.

IS THERE ANY FURTHER DISCUSSION?

>> COMMISSIONERS, JUST TO NOTE, THIS WOULD BE NOVEMBER 14th AT 6:00 P.M.

>> SANDRA MURMAN: NOVEMBER 14th AT 6:00 P.M.

MS. LUNDGREN.

>> NOVEMBER 19th AT 6:00 P.M.

>> 14th IS YOUR LAND USE MEETING.

>> SANDRA MURMAN: THANK YOU VERY MUCH.

OKAY.

IS THERE ANY FURTHER DISCUSSION?

SEEING NONE, PLEASE RECORD YOUR VOTE ON THE MOTION TO REMAND.

>> MOTION FAILED 3-4.

COMMISSIONERS CRIST, HAGAN, HIGGINBOTHAM, AND MURMAN VOTED NO.

>> SANDRA MURMAN: OKAY.

WE ARE NOW BACK ON THE MOTION BY COMMISSIONER HAGAN, SECONDED BY COMMISSIONER HIGGINBOTHAM TO APPROVE ITEM G1.

IS THERE ANY FURTHER DISCUSSION?

SEEING NONE, PLEASE -- OH, YES, COMMISSIONER WHITE, YOU'RE RECOGNIZED.

>> STACY WHITE: BRIEFLY.

I'M GOING TO HAVE TO VOTE YES ON THE ITEM AT THIS POINT BECAUSE OF THE LEGAL ISSUES THAT I BROUGHT UP.

AS YOU CAN SEE, I'VE SUPPORTED THE MOTION FOR A REMAND.

I VOTED IN FAVOR OF THE REMAND.

IT WAS AT MY URGING THAT THIS WENT BACK THE FIRST TIME.

THE DENSITY'S BEEN REDUCED BY 10% IF MY MATH IS CORRECT.

THERE ALSO HAVE BEEN SOME CONCESSIONS ON THE BUFFERING.

BUT AGAIN, UNFORTUNATELY, YOU KNOW, I'VE BEEN DEALT THIS HAND WITH RESPECT TO WHAT'S IN THE COMPREHENSIVE PLAN.

YOU KNOW, LEGALLY, YOU KNOW, I FEEL LIKE EVERYTHING HERE IS IN ORDER AND LEGALLY SOUND.

>> SANDRA MURMAN: OKAY.

THANK YOU.

I SEE NO FURTHER DISCUSSION.

WITH THAT, PLEASE RECORD YOUR VOTE ON ITEM G1.

>> MOTION CARRIED 5-2, COMMISSIONERS KEMP AND MILLER VOTED NO.

>> SANDRA MURMAN: OKAY.

THANK YOU VERY MUCH.

COUNTY OF HILLSBOROUGH DECISION OF THE LAND USE HEARING OFFICER

APPLICATION NUMBER: SU-LE 19-1026

DATE OF HEARING: August 3, 2020

APPLICANT: Balm Grove, LLC

PETITION REQUEST: The request is for a Special Use

for a Land Excavation Permit

LOCATION: 15110 Balm Wimauma Rd.

SIZE OF PROPERTY: 177.62 acres m.o.l.

EXISTING ZONING DISTRICT: PD 18-0304

FUTURE LAND USE CATEGORY: RP-2

SERVICE AREA: Rural

STAFF PROVIDED BACKGROUND

1.0 Request

The applicant seeks approval of a "lake creation" land excavation Special Use permit to allow the removal of 2.5 million cubic yards of material from a 177-acre site located at on the southwest corner of Balm-Wimauma Road and County Road 672 (Balm Road).

The property is zoned PD 18-0304, as most recently modified by Major Modification 19-1172. As proposed by the applicant, the excavated material will be removed from approximately 54 acres of the site over a five-year period. The proposed depth of the excavation is 40 feet, although final permitted depth will be determined during Operating Permit review and may be less. The applicant is proposing to access the excavation from Shelley Lane, a private road on the east side of the subject site that is under common corporate umbrella ownership as the subject property. Trucks will leave and approach Shelley Lane on County Road 672 in accordance with the Truck Route plan.

PD 18-1304 permits development of a maximum of 356 single-family lots on the subject property, which is identified as the "The Grove Parcel" in the PD. The PD site plans shows three "ponds/open spaces" at the location of the proposed excavation pits and states there are no proposed man-made water bodies except for retention/detention ponds. The LDC defines "land excavation" as the removal of a total quantity of more than 10,000 cubic yards of material from a site, or more than a total of 30,000 cubic yards of material for projects with approved subdivision construction plans. Preliminary development plans have been submitted for the subdivision and are currently under review by staff.

The permitted uses allowed by PD 18-0304 do not include the proposed land excavation. Therefore, approval of a modification to the PD by the Board of County Commissioners will be required prior to Operating Permit approval for the proposed land excavation, per the recommended conditions of approval for the requested Special Use in this report.

1.1 Restricted/Prohibited Areas

The site is not located within a prohibited or restricted area pursuant to LDC Section 6.11.54.A.5.

1.2 Access Requirements

The proposed excavation site is adjacent to Balm-Wimauma Road and County Road 672, both of which are designated Truck Routes and collector roads, and therefore complies with the access requirements found in LDC Section

6.11.54.A.3, pursuant to the definition of "access, direct/collectors and arterials" in the LDC.

1.3 Operational Restrictions

Per LDC Section 6.11.54.A.4.b, land excavation operations are limited to the hours from 7:00 a.m. to 6:00 p.m. Monday through Saturday, excluding holidays recognized by Hillsborough County, with no operations permitted at any time on Sunday. However, the applicant has proposed to further restrict operations as follows: 7:00 a.m. to 4:00 p.m. Monday through Friday, excluding County recognized holidays, with no operations permitted at any time on Saturday and Sunday.

1.4 Fencing

Per LDC Section 6.11.54.B.7, active land excavations must be secured with a fence and gate to prevent unauthorized access. The applicant proposes to enclose the entire excavation site with a six-foot-high solid wood or PVC fence. The fence will be set back a minimum of 30 feet from the Balm-Wimauma Road right-of-way and 50 feet from the adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. The applicant's narrative includes a variance request for the proposed fence height on the premise that a six-foothigh fence is not permitted on residentially zoned property. This is not correct. A six-foot fence height is allowed in residential districts, although in required front yards along streets a maximum height of only four feet is permitted. The subject fence, as originally proposed by the applicant, was to be placed on the property line along Balm-Wimauma Road and therefore would have required a variance to allow a height of six feet. However, the applicant subsequently proposed a 30foot setback from Balm-Wimauma Road for the fence, thereby obviating the need for a height variance. Shelley Lane is a private road that does not meet the definition of "street" in the LDC and therefore no setback is required along the east property line for a six-foot-high fence.

1.5 Required Separations

The proposed land excavation does not meet all required separation distances pursuant to LDC Section 6.11.54.A.2. Per Section 6.11.54.A.2. of the LDC, the following distance separation requirements apply to the proposed "lake creation" land excavation:

- 1. The proposed land excavation shall be 25 feet from any right-of-way line of a publicly owned road or street. Per the site plan submitted by the applicant, the request **does** comply with this requirement.
- 2. The proposed land excavation shall be 25 feet from the boundary line of any publicly owned drainage or utility easement.

- Per the site plan submitted by the applicant, the request does comply with this requirement.
- 3. The proposed land excavation shall be 25 feet from any non-residential property line, including agricultural use.
- Per the site plan submitted by the applicant, the request does comply with this requirement.
- 4. The proposed land excavation shall be 500 feet from any residentially developed or residentially zoned property line.
- Per the site plan submitted by the applicant, the request **does not** comply with this requirement. There are residentially developed properties approximately 383 feet to the west and 400 feet to the south of Pond FG; approximately 450 feet to the northwest of Pond ABC; and approximately 480 feet to the east of Pond DE.
- 5. The proposed land excavation shall be 1,000 feet from any school, hospital, or church property line.
- Per the site plan submitted by the applicant, the request **does not** comply with this requirement. There are church properties approximately 618 feet to the west of Pond ABC and approximately 600 feet to the northwest of Pond FG. There are no schools or hospitals within 1,000 feet.
- 6. The proposed land excavation shall be 30 feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site. Greater separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area.
- Per the site plan submitted by the applicant, the request does not comply with this requirement. There are agricultural ditches within the proposed excavation areas that are identified by EPC staff as wetlands. EPC staff does not object to the proposed excavation, subject to the recommended conditions of approval found in this report.

The applicant requests a wavier to these separation requirements on the grounds that the excavation ponds are in conjunction with the development of residential subdivision and must be located in the same general location as depicted on the certified site plan for the PD zoning of the property. Strict imposition of the distance separation requirements would unreasonably force a redesign of the entire subdivision solely for the temporary use of the property for the creation of the excavation ponds. Additionally, the applicant is proposing to mitigate the reduction in the required separations by limiting the days and hours of operation and the total duration of the land excavation to be more restrictive than what is permitted by the LDC. The applicant is also proposing visual screening to

minimize potential visual impacts and has located the project driveway on Shelley Lane rather than Balm- Wimauma Road.

The applicant also notes that the church located on the east side of Balm-Wimauma Road adjacent to the proposed excavation has been vacant for several years and is currently not for sale. Additionally, the residential properties directly to the south of the excavation site are owned and controlled by entities under common ownership with the applicant.

In view of the justification provided by the applicant, and the fact that most of the residentially developed properties and one of the churches within the required separation distances are located across Shelley Lane or Balm-Wimauma Road, a designated Truck Route, from the excavation site, staff does not object to the requested separation waivers subject to the recommended conditions of approval in this report, which include a requirement that material stockpiles be located a minimum of 200 feet from the Balm-Wimauma Road right-of-way, the adjacent church parcel and residential parcels on the east side of Balm-Wimauma Road, and the residential parcels on the east side of Shelley Lane. Staff finds this requirement will promote general compatibility with the area and provide additional impact mitigation for the neighboring residential and church properties, including the adjacent church that, while currently vacant, could be occupied by a new congregation at any time during the five-year excavation term.

1.6 Prohibition of Other Excavation, Land Alteration

Per LDC Section 6.11.54.B.8, upon approval of a Land Excavation Special Use permit, no other permits for excavation of land alteration activities may be approved for the site until release of the financial security for the Operating Permit.

The applicant requests a waiver of this provision to allow land alteration permits to be issued in conjunction with development of the residential subdivision permitted by the property's PD zoning. The applicant notes that creation of water bodies in conjunction with the construction of a subdivision does not require a Land Excavation Special Permit provided that no more than 30,000 cubic yards of material are taken off-site and contends that it us unreasonable to require the proposed excavations to be completed before any other site work for the subdivision can occur.

Land Excavation staff does not object to the requested waiver subject to Condition 5 of the recommended conditions of approval in this report which is necessary to support monitoring and enforcement actions by staff that would otherwise be undermined by having separately permitted but concurrent operations on the site.

1.7 Transportation

Transportation staff has reviewed the proposed excavation and does not object, subject to the recommended conditions of approval found in this report. The proposed excavation is to take place over a five-year time period. The site is located adjacent to Shelley Lane which intersects with Balm Road (County Road 672), a designated Truck Route. The applicant is not limiting the distribution of the material to a specific location. The applicant shall be required to conduct the hauling operation from the Shelley Lane intersection to delivery destinations in a manner consistent with Hillsborough County Truck Route Plan.

Given the amount of material proposed for excavation and the proposed five-year time frame, it is estimated that an average of 1,992 cubic yards of material will be excavated per day. The 1,992 cubic yards equates to 220 trucks per day (110 inbound and 110 outbound). Employee trips are estimated to be ten (10) trips per day (5 inbound and 5 outbound). The proposed project would generate approximately 87 trip ends during the AM peak hour with 46 inbound and 41 outbound. The average number of trucks during a typical hour of the day is estimated to be 30 trip ends (15 inbound and 15 outbound). The site is not proposed to operate during the PM peak hour timeframe, so no PM peak impacts are anticipated.

Shelley Lane is a two-lane private road. Shelley Lane. The pavement width on Shelley Lane is +/- 24 feet. The pavement appears to be in poor condition. The road does not have a posted speed limit. There appears to be adequate roadway capacity to accommodate the additional trips generated by the proposed project. No capacity increasing improvements are currently scheduled for this road.

Balm Road is a two-lane undivided collector road. The pavement width on Balm Road is +/- 24 feet with a stabilized shoulder. The pavement appears to be in good condition. The right-of-way along Bam Road adjacent to the site appears to be approximately 76 feet. Balm Road is posted at 45 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Road in the vicinity of the site is currently operating at LOS "B".

Balm-Wimauma Road is a two-lane undivided collector road. Balm-Wimauma Road is a designated Truck Route. The pavement width on Balm Wimauma Road is +/- 22 feet with stabilized shoulders. The pavement appears to be in good condition. The right of way along Balm Boyette Road in the vicinity of the site appears to be approximately 67 feet. Balm Road is posted at 50 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Wimauma Road in the vicinity of the site is currently operating at LOS "A"

Sole access to the proposed excavation will be from Shelley Lane. Based on the project's trip generation, no site access turn lanes are required. A 15-year accident report was submitted along with the traffic study for the proposed

project. The report includes accidents within a distance of +/- 250 feet east of Balm-Wimauma Road and +/- 250 feet west of Shelly Lane. During the 15-year period there have been 59 accidents reported in the area between Balm-Wimauma Road and Patsy Marie Lane. The majority of the accidents appear to be at the intersection of Balm-Wimauma Road and Balm Road. These accidents appear to be front to rear end and angle accidents. These numbers represent 3.93 accidents annually in the vicinity of the project. There was one fatality in the area. The highest number of crashes (30) appear to be between 2005 through 2008 with 2008 being the highest with 11 crashes. The last five years has seen a significant reduction in crashes. There is nothing in the crash report to indicate that there are recent safety concerns in the vicinity of the project.

1.8 Cumulative Impacts

There are two completed land excavations located within one mile of the proposed land excavations. One of the excavations, Shelley Lakes Mines (SU 08-1433), is located adjacent to the east side of the proposed land excavation. It was closed in 2017 after a total of 19,645,966 cubic yards of material was excavated over a 19-year period, approximately. The other land excavation, Hills Dirt Pit (SU 04-1054), is located about three-quarters of a mile the east on County Road 672. It was closed in 2018 after a total of 4,997,796 cubic yards of material was excavated over a 13-year period, approximately.

No other land excavations, completed or active, are located within one mile of the proposed land excavations.

1.9 Agency Comments

Conservation and Environmental Lands Management staff reported no comments to the proposed excavation.

Natural Resources staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

EPC staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

Hillsborough County School District staff reported no objections to the proposed excavation. Public Works staff reported no comments to the proposed excavation.

Balm Park and Community Center is located on the north side of Balm-Wimauma Road, across from the subject site. Hillsborough County Parks and Recreation staff reported no objections to the proposed excavation.

1.10 Conclusion

The proposed land excavation is located on a designated Truck Route as required by the LDC, and the site is not within a prohibited or restricted area. The excavation pits do not meet required separations from all neighboring residentially developed properties and two churches, however, the location of the pits, which will form ponds, are consistent with the location of the ponds shown on the approved PD site plan for the property. Additionally, the applicant has proposed operational day/hour limits that are more restrictive than those allowed by the LDC; the excavation driveway will be located on the east side of the site to eliminate driveway-associated impacts on neighboring residential uses and churches on Balm-Wimauma Road; material stockpiles will be at least 200 feet from Balm-Wimauma Road and adjacent residential parcels and church; and the entire site will be enclosed by a six-foot-high solid wood or PVC fence which will be set back 30 feet from Balm-Wimauma Road and 50 feet from adjacent residential and church parcels between the road and the excavation site.

For these reasons, staff finds the proposed land excavation is compatible with the surrounding area and approvable, subject to the recommended conditions in this report.

1.10 Exhibits

Exhibit 1: Aerial Map

Exhibit 2: Future Land Use Map Exhibit 3: Proposed Site Plan

Staff's Recommendation: Approvable, Subject to Conditions

Special Use conditions which were presented at the August 3, 2020 Land Use Hearing Officer hearing were reviewed and are incorporated by reference as a part of the Land Use Hearing Officer decision.

SUMMARY OF HEARING

This Cause came on for hearing before the Hillsborough County Zoning Hearing Master on August 3, 2020. Mr. Tom Hiznay of the Hillsborough County Development Services Department introduced the Petition.

Ms. Kami Corbett, 101 East Kennedy Blvd. Suite 3700, testified on behalf of the applicant Balm Grove, LLC. Ms. Corbett stated that the request is fairly straightforward for the proposed subdivision. She added that the applicant agrees with all conditions of approval with the exception of condition 2 which requires the applicant to modify the Planned Development to specifically permit land excavation.

Mr. Steve Luce testified on behalf of the applicant Balm Grove, LLC which is a

wholly owned subsidiary of the Eisenhower Property Group. Mr. Luce detailed how the request to excavate 2.5 million cubic yards complies with the standards of the Land Development Code regarding land excavation. He explained that the duration of the excavation is five years which is shorter than the typical ten year timeframe. There is a land excavation site east and south of the subject property but it is closed therefore there are no active excavation sites in the area. The proposed 2.5 million cubic yards will create the storm water ponds on-site. The ponds match the Planned Development site plan. Mr. Luce showed graphics to describe the location of the property and the location of the three ponds. The proposed depth of each pond is approximately 30 to 60 feet. The driveway is located approximately 800 feet south of the northeast corner of the property. The required fencing will be installed and the fill dirt will be located in accordance with the proposed conditions. Mr. Luce then detailed the proposed excavation's compliance with the Land Development Code regarding proximity to wells, distance to natural resources and habitats, wetlands and the wellhead resource protection area. He also showed a graphic to explain that the property is not located in an area where there are existing sinkholes. Mr. Luce identified the closest adjacent single-family lots as well as adjacent parcels and stated that the proposed hours of operation will be Monday through Saturday from 7am to 4pm which is earlier than the Code permitted 5pm. He stated that there is a church located approximately 617 feet to the west but it is closed and for sale.

Hearing Officer Finch asked Mr. Luce to describe the proposed haul route. Mr. Luce replied that the access point is approximately 800 feet south of the northeast corner of the property. County Road 672 is a haul route and will follow the County's truck route plan.

Hearing Officer Finch asked Mr. Luce to confirm that the excavation is only for the stormwater ponds and that the fill will not be retained on the subject property. Mr. Luce replied yes and added that the fill will be on-site pending timing of the trucks coming to the property to get the soil. He added that a zoning condition is proposed to identify the permitted location of the stacks of dirt awaiting removal from the property.

Mr. Luce concluded his comments by addressing the zoning condition which requires an amendment to the Planned Development zoning conditions to permit land excavation as a use. He testified that he worked for Hillsborough County for eleven years and was a Hearing Master for seven years and in his research found no time that a Planned Development condition was required to be amended to recognize land excavation as a use. He added that the excavation is only for the ponds, not the entire property. He also acknowledged that the ponds are deeper than otherwise needed for single-family development which requires slightly more export.

Ms. Corbett completed the applicant's presentation by stating that the zoning condition requiring the amendment of the Planned Development to add land

excavation as a use is inconsistent with the Land Development Code. She showed portions of the Land Development regarding Special Uses. Specifically, she pointed to Section 5.2.1 and 6.11 regarding land excavation and stated that land excavations are permitted in all zoning districts. She contrasted the use to Wireless Communication Towers which are deemed a specific use in PD districts.

Mr. Tom Hiznay of the Development Services staff testified regarding the County staff report. Mr. Hiznay stated that there are separational requirements from residential uses and churches. Staff supports the requested waivers. The applicant agreed to the proposed hours of operation which is less than stated in the Land Development Code. He added that the applicant also agreed to surround the property with a six-foot high pvc or wood fence which could be, by Code, chain link. The fence will be setback 50 feet therefore a six-foot high fence is permitted. The applicant requested a waiver regarding the prohibition of land alteration activity while land excavation is occurring on-site. Staff supports the waiver such that site development work for the subdivision can proceed. Reviewing agencies supported the request and the operational limits are more restrictive than permitted by the Code and EPC. Mr. Hiznay concluded his presentation by stating that staff finds the request approvable subject to the proposed conditions.

Hearing Officer Finch asked Mr. Hiznay to address the issue brought up by the applicant regarding the proposed zoning condition requiring an amendment to the PD conditions to add the use of land excavation. Mr. Hiznay replied that there were discussions with the applicant months ago and that there were avenues for the applicant to address the issue but that they did not.

Hearing Officer Finch asked Mr. Hiznay what his professional opinion was regarding Mr. Luce's testimony that the County has never required a Plannecl Development to amend a zoning condition to add the use of land excavation. Mr. Hiznay replied that he was not familiar with Mr. Luce's research and could not address it.

Hearing Officer Finch asked Mr. Hiznay if in his tenure at the County, did he know of an instance that the County required the amendment to add the use of land excavation. Mr. Hiznay replied that he could not say yes but that he has not been involved in all Planned Developments requesting land excavation.

Hearing Master Finch asked for audience members in support. There were none.

Hearing Master Finch asked for audience members in opposition.

Mr. Buddy Harwell of the Balm Civic Association testified virtually and stated that he would like the request to be denied. He added that there are variances

requested for distance from residential and churches. There is a sign stating that a school will be coming in. The excavation will generate dust and noise and the pumps will operate 24/7 all year. Mr. Harwell testified that in February he witnessed at least six trucks coming out of Balm Grove loaded full of dirt and dumping it at South Fork. He cited Sections 8.0104.F, G and H regarding the paving of Shelly Lake Lane. The excavation will affect the wells in the area. He also testified that there is another excavation site located at Razorback Ranch south of Balm Wimauma Road which is 1.2 miles away. Mr. Harwell stated that his mother was hit by a dump truck three years about which worries him about the inattention of the drivers. He stated that he is concerned about the drainage ditch on-site and its regulation by EPC. He concluded his remarks by stating that he is concerned about the overflow into Shelly Lakes and its effect on adjacent properties.

Mr. James Frankland, 15064 Balm Road, Balm Florida testified virtually in opposition. Mr. Frankland stated that he has been dealing with dump trucks in the area since the early 1980's. They line up at 5am and the noise and sand damages the roadways. He added that the drivers should be County Road 672 but they use Balm Wimauma Road instead. The dirt will be blown to adjacent properties and will damage homes, furniture, cars and adjacent parks.

County staff did not have additional comments.

Ms. Corbett testified during the rebuttal period that she did not hear anything from the two gentlemen in opposition that constituted substantial competent evidence. She stated that Mr. Henry of the applicant's team could testify regarding transportation issues. Ms. Corbett asked Mr. Hiznay to clarify his response as to whether he had previously imposed a condition to add land excavation as a use.

Mr. Hiznay replied that he had not personally imposed a condition but that he has not been involved in every land excavation and Planned Development project.

Ms. Corbett testified that the only other process to achieve a resolution of the zoning condition issue was to request a zoning interpretation and appeal it to the LUHO. The same LUHO that was hearing the Special Use case would also determine if the staff's interpretation was correct. She added that sufficient evidence was submitted into the record regarding the issue. She explained that the County previously stated that the condition was imposed because the term land excavation was not in the approved PD. Ms. Corbett stated that "lake creation" was clearly contemplated on the approved site plan and that the three lakes could be reasonably assumed to result in more than 30,000 cubic yards of fill. She added that she has never been involved in a case where the applicant was asked how much volume the lakes would generate and asked if the land use of land excavation needed to be added. She believes that the issue is political as the gentlemen that testified in opposition are very active in the Balm Civic

Association and that the issue is just an end-around to try to get at the PD which was controversial at the time, back in front of the Board of County Commissioners to have them weigh in on whether the Special Use is allowable in the PD.

Hearing Officer Finch asked Mr. Clark of the County Attorney's Office about Ms. Corbett's testimony that the other venue to have the issue decided would be a zoning interpretation which, if denied by staff, would be appealed to the Land Use Hearing Officer. Hearing Officer Finch asked Mr. Clark if it is appropriate from a procedural or legal standpoint that the Hearing Officer opine of whether the use should be added to the zoning conditions through the Special Use process.

Mr. Clark of the County Attorney's Office replied virtually that the process of appeal is a different standard of review. It is an appellate process. He stated that the Hearing Officer should review the Special Use.

Hearing Officer Finch replied to Mr. Clark that she was having difficulty hearing his answer which was provided virtually.

Mr. Clark stated that he did not recall the issue being brought up previously or in other land excavation requests. He reviewed proposed zoning condition 2 and stated that he would ask staff why the condition was proposed.

Mr. Hiznay of the Development Services Department replied that the condition was proposed because land excavation was not a listed use.

Mr. Clark of the County Attorney's Office stated that he had reviewed the proposed zoning condition and stated that he was going to defer the issue back to staff and therefore not take a position contrary.

Hearing Officer Finch asked Mr. Clark if it was appropriate for the Land Use Hearing Officer to opine on whether zoning condition 2 is appropriate as it relates to the matter of process. Mr. Clark replied that he did not have a concern with that.

Ms. Corbett completed her rebuttal testimony by stating that regarding the truck traffic from the property, there is an open Natural Resource permit active on the property which is required to be closed prior to the land excavation. She asked Mr. Amaden to provide a brief statement.

Mr. Todd Amaden, 8515 Palm River Road testified regarding engineering issues and stated that the location of the ponds coincides with the PD site plan. He added that in his 25-years of experience in permitting land excavation sites, he had never seen a zoning condition like the one proposed by County staff.

The hearing was then concluded.

EVIDENCE SUBMITTED

Ms. Corbett submitted documents into the record which included aerial maps pertaining to groundwater contamination and sinkholes, a portion of the Land Development Code regarding permitted uses, Special Use standards, Hearing Officer authority, the approved PD zoning conditions and site plan for PD RZ 19-0310, and research of other zonings at the hearing.

Mr. Luce submitted a copy of a letter dated January 23, 2020 from Mr. Tom Amaden to Hillsborough County regarding responses to staff comments.

PREFACE

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

Findings of Fact

- The property is zoned Planned Development (PD) 18-0304 and designated Residential Planned-2 (RP-2) by the Comprehensive Plan.
- 2. The Special Use request is for a Land Excavation Special Use permit to excavate 2.5 million cubic yards of material from a 177 acre site.
- 3. The Planning Commission found the Special Use request consistent with the Comprehensive Plan.
- 4. The applicant has agreed to hours of operation which are less than permitted by the Land Development Code. The hours of operation are proposed to be 7am to 4pm Monday through Friday. The Land Development Code permits the consideration of Monday through Saturday operation, 7am to 6pm.
- The applicant has agreed to a limitation of five years from the date of the Operating Permit approval.
- The applicant has agreed to install a six-foot high fence (either PVC or wood) to enclose the excavation site.
- 7. The applicant has requested waivers as a part of the request.
- * The first waiver is to the Land Development Code required 500-foot separation from residentially developed or residentially zoned property line.

The site plan shows that there is residentially zoned property within 383 feet to the west and 400 feet to the south of Pond FG, 450 feet to the north of Pond ABC and 480 feet to the east of Pond DE.

- * The second waiver is to the Land Development Code required 1,000 foot separation from any school, hospital or church property line. The site plan shows that there is a church 618 feet to the west of Pond ABC and 600 feet to the northwest of Pond FG.
- * The third waiver is to the Land Development Code required 30-foot separation from wetland/wetland conservation area line and 50-foot wetland/waterbody preservation area line. There are agricultural ditches within the proposed excavation areas that have been identified by EPC staff as wetlands.
- * The fourth waiver pertains to the Land Development Code prohibition of any land excavation until the issuance of the financial security for the Operating Permit. This is requested as the applicant would like to obtain land alteration permits associated with the residential development while excavating for the three ponds.

The waivers are justified for the following reasons:

- a. The excavation of the 2.5 million cubic yards of material is to create stormwater ponds associated with the proposed 356 lot single-family residential community and the three ponds are approximately located in the same area as approved on the certified General Site Plan.
- b. The majority of the residential properties are located to the south of the subject property are owned by the applicant.
- c. The remaining residential properties are located across Balm-Wimauma Road which is a designated truck route.
- d. According to testimony by the applicant's representative and the County staff report, the church has been vacant and not in operation for many years. An additional church is located across from the subject property.
- EPC staff does not object to the proposed excavation subject to the Special Use conditions.
- f. The request to obtain land alteration permits during the excavation period is justified by the proposed Special Use condition that permits are subject to the same restricted hours of operation and that the access shall be the same as the land excavation site.
- 8. The applicant objects to proposed Zoning Condition #2 regarding a requirement to modify the approved list of uses to add "land excavation" prior to the issuance of an operating permit. This modification would require approval by the Board of County Commissioners. The applicant's objection is based upon testimony and research conducted by their expert land use planner that no other Planned Development zoning has previously been required to amend their permitted uses to include "land"

excavation." Further, the applicant's representative testified that "land excavation" is permitted in all zoning districts.

County staff testified at the Land Use Hearing Officer hearing that Zoning Condition #2 was discussed many months ago with the applicant and if the applicant disagreed with the condition, they should have addressed it at a point earlier than the Land Use Hearing. The applicant's representative submitted a copy of a letter to the Development Services Department dated 9-19-19 in which the disagreement of the issue was explained and concludes with the applicant's representative declining to file a Major Modification application to add the "land excavation" use and a request to consider the issue under the Special Use process. Additionally, the applicant's land use planner submitted a copy of a letter dated 1-23-20 from the project engineer to the County planner assigned to the case responding to staff comments. These responses included the disagreement of the proposed requirement to modify the Planned Development zoning.

Of particular note and discussion with the Assistant County Attorney was the testimony from the applicant's representative that the only other process to achieve a resolution of Zoning Condition #2 was to request a Zoning Interpretation and appeal the presumed staff denial to the Land Use Hearing Officer which is the same entity as the Special Use application.

Audio issues prevented the Land Use Hearing Officer from precisely understanding the Assistant County Attorney as he testified remotely regarding the issue. These audio issues prevented the Land Use Hearing Officer from receiving confirmation of the question regarding the appropriateness of the review of the process issue pertaining the Zoning Condition #2 as a part of the Special Use application.

The Special Use application was filed with the intent to create three ponds associated with the development of 356 single-family dwelling units. Section 6.11.01 states that Special Uses have "...additional design standards to ensure compatibility with adjacent uses and the surrounding neighborhood." This is the focus of the Land Use Hearing Officer's review of a Special Use application.

The applicant's representative is correct that the dispute over Zoning Condition #2 could be through the Zoning Interpretation process. This is the appropriate process for a determination if staff interpreted the Land Development Code appropriately in requiring a modification to the approved Planned Development list of permitted uses. It should be noted that the applicant's representative submitted a significant amount of

- evidence regarding staff's interpretation and this evidence could be used in an appeal of the staff's decision, if appropriate.
- 9. The County's Transportation staff has no objection to the request and the associated traffic.
- 10. The proposed haul route is on Shelley Lane which is a private road and then along County Road 672, which is a County designated truck route.
- 11. The Special Use conditions proposed by the Development Services
 Department result in an excavation project that protects the surrounding
 area by means of a limited duration of time (five years), limited hours of
 operation, and the fencing of the property with a six-foot high fence.

Final Conclusions of Law

Based on the Findings of Fact and Conclusions of Law cited above, there is sufficient competent substantial evidence to demonstrate that the Special Use request for a land excavation permit with the requested waivers is in accordance with the applicable Land Development Code requirements.

DECISION

Based on the foregoing, the applicant has satisfied the criteria for issuance of a Special Use permit for a land excavation permit with waivers of the required distance standards from residentially developed or zoned property, churches, wetland areas and the prohibition of any land excavation until the issuance of the financial security for the Operating Permit. The Special Use is hereby APPROVED subject to the conditions proposed by the Development Services Department.

August 22, 2020

Susan M. Finch, AICP

Land Use Hearing Officer

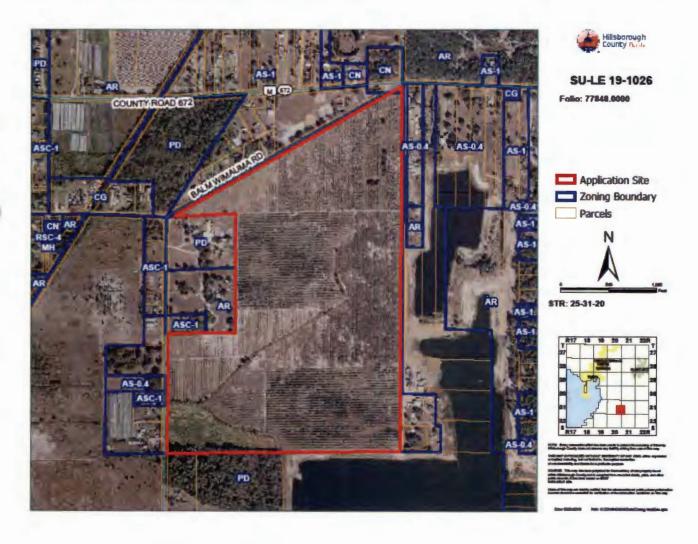
Sum M. Fine

Date



Land Use Application Summary Report

| Application Number: | SU LE 19-1026 | Adjacent Zoning and Land Uses: | |
|------------------------|---|--------------------------------|--|
| Request: | Special Use Permit for a Land Excavation | North: | AS-1/CN; Single-Family/Park/Commercial |
| | | East: | AR, AS-0.4; Single-Family; Vacant |
| Comp Plan: | RP-2 | South: | PD 17-0619; Agriculture/Borrow Pit |
| Service Area: | Rural | West: | AR/ASC-1/AS-0.4/PD 17-0619/PD 95-0076; Agriculture/single-family dwellings/church |



1.0 Request

The applicant seeks approval of a "lake creation" land excavation Special Use permit to allow the removal of 2.5 million cubic yards of material from a 177-acre site located at on the southwest corner of Balm-Wimauma Road and County Road 672 (Balm Road).

The property is zoned PD 18-0304, as most recently modified by Major Modification 19-1172. As proposed by the applicant, the excavated material will be removed from approximately 54 acres of the site over a five-year period. The proposed depth of the excavation is 40 feet, although final permitted depth will be determined during Operating Permit review and may be less. The applicant is proposing to access the excavation from Shelley Lane, a private road on the east side of the subject site that is under common corporate umbrella ownership as the subject property. Trucks will leave and approach Shelley Lane on County Road 672 in accordance with the Truck Route plan.

PD 18-1304 permits development of a maximum of 356 single-family lots on the subject property, which is identified as the "The Grove Parcel" in the PD. The PD site plans shows three "ponds/open spaces" at the location of the proposed excavation pits and states there are no proposed man-made water bodies except for retention/detention ponds. The LDC defines "land excavation" as the removal of a total quantity of more than 10,000 cubic yards of material from a site, or more than a total of 30,000 cubic yards of material for projects with approved subdivision construction plans. Preliminary development plans have been submitted for the subdivision and are currently under review by staff.

The permitted uses allowed by PD 18-0304 do not include the proposed land excavation. Therefore, approval of a modification to the PD by the Board of County Commissioners will be required prior to Operating Permit approval for the proposed land excavation, per the recommended conditions of approval for the requested Special Use in this report.

1.1 Restricted/Prohibited Areas

The site is not located within a prohibited or restricted area pursuant to LDC Section 6.11.54.A.5.

1.2 Access Requirements

The proposed excavation site is adjacent to Balm-Wimauma Road and County Road 672, both of which are designated Truck Routes and collector roads, and therefore complies with the access requirements found in LDC Section 6.11.54.A.3, pursuant to the definition of "access, direct/collectors and arterials" in the LDC.

1.3 Operational Restrictions

Per LDC Section 6.11.54.A.4.b, land excavation operations are limited to the hours from 7:00 a.m. to 6:00 p.m. Monday through Saturday, excluding holidays recognized by Hillsborough County, with no operations permitted at any time on Sunday. However, the applicant has proposed to further restrict operations as follows: 7:00 a.m. to 4:00 p.m. Monday through Friday, excluding County recognized holidays, with no operations permitted at any time on Saturday and Sunday.

1.4 Fencing

Per LDC Section 6.11.54.B.7, active land excavations must be secured with a fence and gate to prevent unauthorized access. The applicant proposes to enclose the entire excavation site with a six-foot-high solid wood or PVC fence. The fence will be set back a minimum of 30 feet from the Balm-Wimauma Road right-of-way and 50 feet from the adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. The applicant's narrative includes a variance request for the proposed fence height on the premise that a six-foot-high fence is not permitted on residentially zoned property. This is not correct. A six-foot fence height is allowed in residential districts, although in required front yards along streets a maximum height of only four feet is permitted. The subject fence, as originally proposed by the applicant, was to be placed on the property line along Balm-Wimauma Road and therefore would have required a variance to allow a height of six feet. However, the applicant subsequently proposed a 30-foot setback from Balm-Wimauma Road for the fence, thereby obviating the need for a height variance. Shelley Lane is a private road that does not meet the definition of "street" in the LDC and therefore no setback is required along the east property line for a six-foot-high fence.



1.5 Required Separations

The proposed land excavation does not meet all required separation distances pursuant to LDC Section 6.11.54.A.2. Per Section 6.11.54.A.2. of the LDC, the following distance separation requirements apply to the proposed "lake creation" land excavation:

- 1. The proposed land excavation shall be 25 feet from any right-of-way line of a publicly owned road or street.
 - Per the site plan submitted by the applicant, the request does comply with this requirement.
- 2. The proposed land excavation shall be 25 feet from the boundary line of any publicly owned drainage or utility easement.
 - Per the site plan submitted by the applicant, the request does comply with this requirement.
- 3. The proposed land excavation shall be 25 feet from any non-residential property line, including agricultural use.
 - Per the site plan submitted by the applicant, the request **does** comply with this requirement.
- 4. The proposed land excavation shall be 500 feet from any residentially developed or residentially zoned property line.
 - Per the site plan submitted by the applicant, the request does not comply with this requirement. There are residentially developed properties approximately 383 feet to the west and 400 feet to the south of Pond FG; approximately 450 feet to the northwest of Pond ABC; and approximately 480 feet to the east of Pond DE.
- 5. The proposed land excavation shall be 1,000 feet from any school, hospital, or church property line.

APPLICATION: SU LE 19-1026 LUHO HEARING DATE: August 3, 2020

- Per the site plan submitted by the applicant, the request does not comply with this requirement. There are
 church properties approximately 618 feet to the west of Pond ABC and approximately 600 feet to the
 northwest of Pond FG. There are no schools or hospitals within 1,000 feet.
- 6. The proposed land excavation shall be 30 feet from any wetland/waterbody Conservation Area line and 50 feet from any wetland/waterbody Preservation Area line, whether off site or on site. Greater separations may be required by the Environmental Protection Commission of Hillsborough County depending on the environmental sensitivity of the area.
 - Per the site plan submitted by the applicant, the request does not comply with this requirement. There are
 agricultural ditches within the proposed excavation areas that are identified by EPC staff as wetlands. EPC
 staff does not object to the proposed excavation, subject to the recommended conditions of approval found
 in this report.

The applicant requests a wavier to these separation requirements on the grounds that the excavation ponds are in conjunction with the development of residential subdivision and must be located in the same general location as depicted on the certified site plan for the PD zoning of the property. Strict imposition of the distance separation requirements would unreasonably force a redesign of the entire subdivision solely for the temporary use of the property for the creation of the excavation ponds. Additionally, the applicant is proposing to mitigate the reduction in the required separations by limiting the days and hours of operation and the total duration of the land excavation to be more restrictive than what is permitted by the LDC. The applicant is also proposing visual screening to minimize potential visual impacts and has located the project driveway on Shelley Lane rather than Balm-Wimauma Road.

The applicant also notes that the church located on the east side of Balm-Wimauma Road adjacent to the proposed excavation has been vacant for several years and is currently not for sale. Additionally, the residential properties directly to the south of the excavation site are owned and controlled by entities under common ownership with the applicant.

In view of the justification provided by the applicant, and the fact that most of the residentially developed properties and one of the churches within the required separation distances are located across Shelley Lane or Balm-Wimauma Road, a designated Truck Route, from the excavation site, staff does not object to the requested separation waivers subject to the recommended conditions of approval in this report, which include a requirement that material stockpiles be located a minimum of 200 feet from the Balm-Wimauma Road right-of-way, the adjacent church parcel and residential parcels on the east side of Balm-Wimauma Road, and the residential parcels on the east side of Shelley Lane. Staff finds this requirement will promote general compatibility with the area and provide additional impact mitigation for the neighboring residential and church properties, including the adjacent church that, while currently vacant, could be occupied by a new congregation at any time during the five-year excavation term.

1.6 Prohibition of Other Excavation, Land Alteration

Per LDC Section 6.11.54.B.8, upon approval of a Land Excavation Special Use permit, no other permits for excavation of land alteration activities may be approved for the site until release of the financial security for the Operating Permit.

The applicant requests a waiver of this provision to allow land alteration permits to be issued in conjunction with development of the residential subdivision permitted by the property's PD zoning. The applicant notes that creation of water bodies in conjunction with the construction of a subdivision does not require a Land Excavation Special Permit provided that no more than 30,000 cubic yards of material are taken off-site and contends that it us unreasonable to require the proposed excavations to be completed before any other site work for the subdivision can occur.

Land Excavation staff does not object to the requested waiver subject to Condition 5 of the recommended conditions of approval in this report which is necessary to support monitoring and enforcement actions by staff that would otherwise be undermined by having separately permitted but concurrent operations on the site.

1.7 Transportation

Transportation staff has reviewed the proposed excavation and does not object, subject to the recommended conditions of approval found in this report. The proposed excavation is to take place over a five-year time period. The site is located adjacent to Shelley Lane which intersects with Balm Road (County Road 672), a designated Truck Route. The applicant is not limiting the distribution of the material to a specific location. The applicant shall be required to conduct the hauling operation from the Shelley Lane intersection to delivery destinations in a manner consistent with Hillsborough County Truck Route Plan.

Given the amount of material proposed for excavation and the proposed five-year time frame, it is estimated that an average of 1,992 cubic yards of material will be excavated per day. The 1,992 cubic yards equates to 220 trucks per day (110 inbound and 110 outbound). Employee trips are estimated to be ten (10) trips per day (5 inbound and 5 outbound). The proposed project would generate approximately 87 trip ends during the AM peak hour with 46 inbound and 41 outbound. The average number of trucks during a typical hour of the day is estimated to be 30 trip ends (15 inbound and 15 outbound). The site is not proposed to operate during the PM peak hour timeframe, so no PM peak impacts are anticipated.

Shelley Lane is a two-lane private road. Shelley Lane. The pavement width on Shelley Lane is +/- 24 feet. The pavement appears to be in poor condition. The road does not have a posted speed limit. There appears to be adequate roadway capacity to accommodate the additional trips generated by the proposed project. No capacity increasing improvements are currently scheduled for this road.

Balm Road is a two-lane undivided collector road. The pavement width on Balm Road is +/- 24 feet with a stabilized shoulder. The pavement appears to be in good condition. The right-of-way along Bam Road adjacent to the site appears to be approximately 76 feet. Balm Road is posted at 45 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Road in the vicinity of the site is currently operating at LOS "B".

Balm-Wimauma Road is a two-lane undivided collector road. Balm-Wimauma Road is a designated Truck Route. The pavement width on Balm Wimauma Road is +/- 22 feet with stabilized shoulders. The pavement appears to be in good condition. The right of way along Balm Boyette Road in the vicinity of the site appears to be approximately 67 feet. Balm Road is posted at 50 mph speed limit. No capacity increasing improvements are currently scheduled for this road. Balm Wimauma Road in the vicinity of the site is currently operating at LOS "A"

Sole access to the proposed excavation will be from Shelley Lane. Based on the project's trip generation, no site access turn lanes are required. A 15-year accident report was submitted along with the traffic study for the proposed project. The report includes accidents within a distance of +/- 250 feet east of Balm-Wimauma Road and +/- 250 feet west of Shelly Lane. During the 15-year period there have been 59 accidents reported in the area between Balm-Wimauma Road and Patsy Marie Lane. The majority of the accidents appear to be at the intersection of Balm-Wimauma Road and Balm Road. These accidents appear to be front to rear end and angle accidents. These numbers represent 3.93 accidents annually in the vicinity of the project. There was one fatality in the area. The highest number of crashes (30) appear to be between 2005 through 2008 with 2008 being the highest with 11 crashes. The last five years has seen a significant reduction in crashes. There is nothing in the crash report to indicate that there are recent safety concerns in the vicinity of the project.

1.8 Cumulative Impacts

There are two completed land excavations located within one mile of the proposed land excavations. One of the excavations, Shelley Lakes Mines (SU 08-1433), is located adjacent to the east side of the proposed land excavation. It was closed in 2017 after a total of 19,645,966 cubic yards of material was excavated over a 19-year period, approximately. The other land excavation, Hills Dirt Pit (SU 04-1054), is located about three-quarters of a mile the east on County Road 672. It was closed in 2018 after a total of 4,997,796 cubic yards of material was excavated over a 13-year period, approximately.

No other land excavations, completed or active, are located within one mile of the proposed land excavations.

1.9 Agency Comments

Conservation and Environmental Lands Management staff reported no comments to the proposed excavation.

Natural Resources staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

EPC staff reported no objection to the proposed excavation, subject to the recommended conditions of approval found in this report.

Hillsborough County School District staff reported no objections to the proposed excavation.

Public Works staff reported no comments to the proposed excavation.

Balm Park and Community Center is located on the north side of Balm-Wimauma Road, across from the subject site. Hillsborough County Parks and Recreation staff reported no objections to the proposed excavation.

1.10 Conclusion

The proposed land excavation is located on a designated Truck Route as required by the LDC, and the site is not within a prohibited or restricted area. The excavation pits do not meet required separations from all neighboring residentially developed properties and two churches, however, the location of the pits, which will form ponds, are consistent with the location of the ponds shown on the approved PD site plan for the property. Additionally, the applicant has proposed operational day/hour limits that are more restrictive than those allowed by the LDC; the excavation driveway will be located on the east side of the site to eliminate driveway-associated impacts on neighboring residential uses and churches on Balm-Wimuama Road; material stockpiles will be at least 200 feet from Balm-Wimauma Road and adjacent residential parcels and church; and the entire site will be enclosed by a six-foot-high solid wood or PVC fence which will be set back 30 feet from Balm-Wimauma Road and 50 feet from adjacent residential and church parcels between the road and the excavation site.

For these reasons, staff finds the proposed land excavation is compatible with the surrounding area and approvable, subject to the recommended conditions in this report.

1.10 Exhibits

Exhibit 1: Aerial Map

Exhibit 2: Future Land Use Map Exhibit 3: Proposed Site Plan

Staff's Recommendation: Approvable, Subject to Conditions

Zoning Administrator

Sign-off: Tue Jul 21

Page

6

2.0 Recommendation:

Approvable, subject to the following conditions. This approval is based on the site plan received February 27, 2020:

- The land excavation shall be limited to the removal of a maximum of 2.5 million cubic yards of material, subject to approval of a Land Excavation Operating Permit in accordance with all provisions of the Land Excavation Regulations as stated in Part 8.01.00 of the Land Development Code. Approval of this Special Use Permit does not guarantee approval of an Operating Permit.
- 2. Prior to Operating Permit approval, the applicant shall obtain approval from the Board of County Commissioners of a modification to PD 18-0304 pursuant to Section 5.03.07 of the Land Development Code to amend the permitted uses to include a land excavation. Approval of this Special Use Permit does not guarantee approval of the PD modification. Effectiveness of this Special Use Permit is contingent upon approval of the PD modification and no activities associated with the land excavation shall be permitted prior to approval of the PD modification.
- 3. This Special Use Permit shall expire five years from the date of Operating Permit approval. If an Operating Permit has not been issued for any portion of the land excavation within two years of the date of approval for the PD modification required in Condition 2, this Special Use Permit shall expire.
- 4. Prior to Operating Permit approval, the excavation work permitted by NRO Permit 46798 shall be completed and the permit closed out per the terms of the NRO permit.
- 5. Upon approval of this Special Use Permit, no other permits for the removal of material from the site in any quantity shall be approved until the release of financial security for the Land Excavation Operating Permit. Permits for on-site land alteration activities only necessary for development of the residential subdivision permitted by PD 18-0304 may be approved prior to the release of said financial security, subject to the following conditions:
 - a) All such activities, regardless of nature, shall be limited to the permitted days/hours of operation stated in Condition 7 of this Special Use Permit.
 - b) Site ingress/access for all such activities, regardless of nature, shall be limited to Shelley Lane in conformance with Condition 11 of this Special Use permit.
- The land excavation depth shall not exceed 60 feet, notwithstanding the cross-section depths or other depths shown on the site plan. Final permitted depth will be determined during Operating Permit review and may be less than 60 feet.
- 7. The permitted hours of operation shall be limited to the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays recognized by Hillsborough County. Operations shall be prohibited on Saturday, Sunday and County recognized holidays. These operating hours shall apply to the queuing of trucks on Shelley Lane.
- 8. Minimum setbacks for the excavation areas, with the exception of perimeter ditches and dewatering ditches, shall be as shown on the site plan received February 27, 2020.
- 9. Material stockpiles shall be located a minimum of 200 feet from the Balm-Wimauma Road right-of-way and adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. Additionally, material stockpiles shall be located a minimum of 200 feet from parcel folios 88698.7500 and 88698.7500 on the east side of Shelley Lane.

10. The excavation site shall be enclosed with a six-foot-high solid wood or PVC fence. The fence shall be set back a minimum of 30 feet from the Balm-Wimauma Road right-of-way and 50 feet from the adjacent parcels under folio numbers 77850.0000, 77847.0000 and 77847.0025. Site access gates shall be secured

and locked when no activity is occurring at the excavation areas.

- 11. The excavation shall be limited to one access driveway on Shelley Lane. The driveway shall be located approximately 800 feet south of County Road 672. Haul trucks shall not que on County Road 672. Haul trucks may que on Shelley Lane but shall not obstruct the passage of other vehicles using the road.
- 12. Haul trucks shall head north on Shelley Lane to County Road 672, then east and west to delivery destinations in accordance with the Truck Route Plan. Haul trucks shall access the site in reverse manner.
- 13. The permittee shall be required to repair any damage to Balm Road and Balm-Wimauma Road caused by the excavation, as determined by Hillsborough County Public Works.
- 14. The excavation shall be operated in a manner to minimize fugitive dust emissions. Truck beds shall be covered and tailgates securely latched. Paving and/or regular sweeping or watering of the onsite haul routes shall be required to minimize dust.
- 15. Approval of this Special Use by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission of Hillsborough County (EPC) approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impact to wetlands, and does not grant any implied or vested right to environmental approvals.
- 16. The construction and location of any proposed wetland impacts shall be reviewed by EPC staff under separate application pursuant to the EPC Wetlands rule detailed in Chapter 1-11, Rules of the EPC, (Chapter 1-11) to determine whether such impacts are necessary to accomplish reasonable use of the subject property.
- 17. Prior to the issuance of any building or land alteration permits or other development, the approved wetland/ other surface water (OSW) line must be incorporated into the site plan. The wetland/ OSW line must appear on all site plans, labeled as "EPC Wetland Line", and the wetland must be labeled as "Wetland Conservation Area" pursuant to the Hillsborough County Land Development Code (LDC).
- 18. Final design of the excavation areas, buildings, stormwater retention areas, and ingress/egress is subject to change pending formal agency jurisdictional determinations of wetland and other surface water boundaries and approval by the appropriate regulatory agencies.
- 19. An evaluation of the property supports the presumption that listed animal species may occur or have restricted activity zones throughout the property. Pursuant to the Land Development Code (LDC), a wildlife survey of any endangered, threatened or species of special concern in accordance with the Florida Fish and Wildlife Conservation Commission Wildlife Methodology Guidelines shall be required. This survey information must be provided upon submittal of the preliminary plans through the Land Development Code's Land Excavation process.
- 20. Wetlands or other surface waters are considered Environmentally Sensitive Areas and are subject to Conservation Area and Preservation Area setbacks. A minimum setback must be maintained around these areas which shall be designated on all future plan submittals and where land alterations are restricted.
- 21. 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.

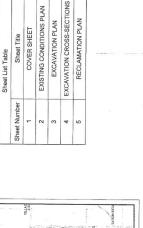
- 22. The construction and location of any proposed environmental impacts are not approved by this correspondence and shall be reviewed by Natural Resources staff through the land excavation and subdivision development plan process pursuant to the Land Development Code.
- 23. The method of water control and management shall be subject to approval during review of the Land Excavation Operating Permit application.
- 24. No material of any type other than excavated material and material associated with the land excavation shall be stored or placed on site.
- 25. The excavation shall conform to these conditions of approval and the site plan submitted February 27, 2020, all requirements of the Land Development Code unless waived herein, and all other applicable rules, regulations and ordinances of Hillsborough County. If the notes and/or graphics on the site plan conflict with specific conditions of approval and/or Land Development Code regulations, the more restrictive regulation or greater requirement shall prevail unless otherwise stated in the conditions.

THE GROVE AT BALM

SECTION 25, TOWNSHIP 31 SOUTH, RANGE 20 EAST A COMMERCIAL PROJECT LOCATED IN OF HILLSBOROUGH COUNTY, FLORIDA







COVER SHEET

HILLSBOROUGH COUNTY, FLORIDA

SPECIAL USE PLAN MAR TA BVORD BHT

LOU 13.5

> SITE DATA
> TOTAL SITE AREA: 177 8 ACRESS:
> FOLIO NUMBER: 077846-0000
> PRODOSED EXCAVATION AREA: 51.34 ZONING. PD 18-0304 FUTURE LAND USE: R2-P

Vicinity Map

Group
111 S. Amenia Ave
Suite 201
Tampa, Florida
Phone (813) 225-4102

Eisenhower Property

Tampa, Florida 33619 (813) 621-6761 (fax) C.A. # 28014

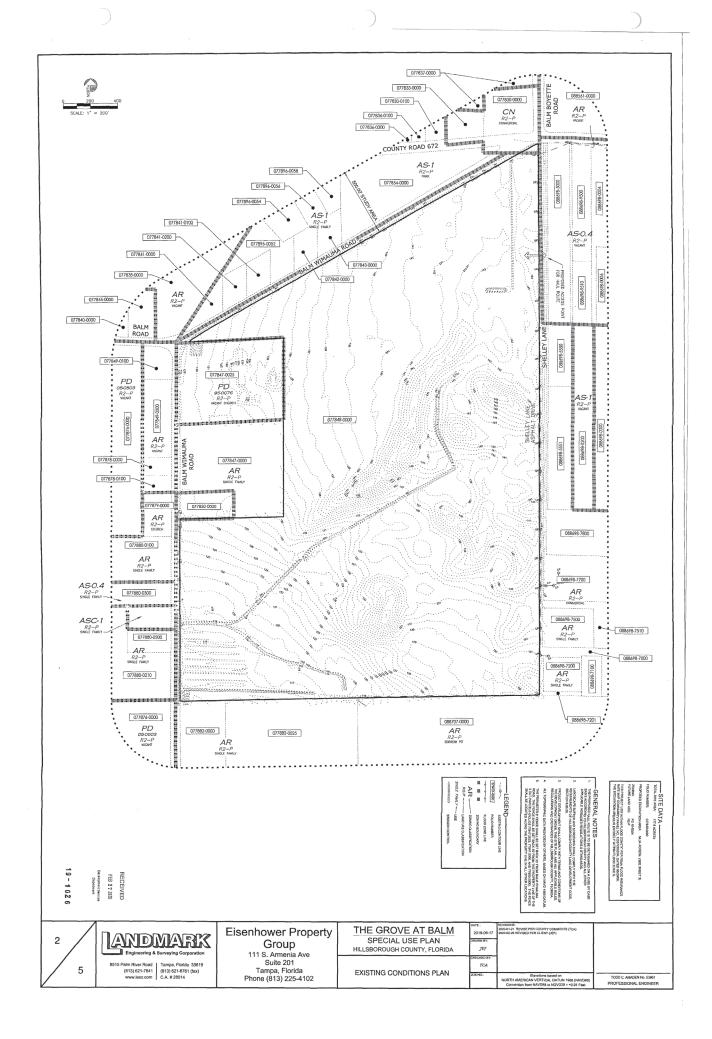
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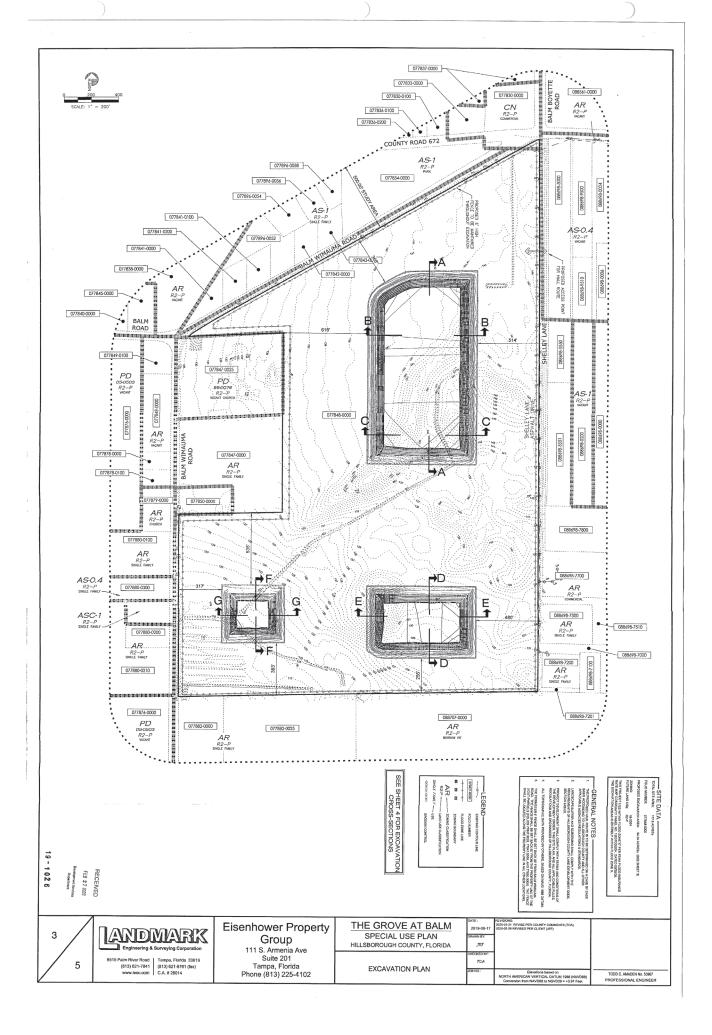
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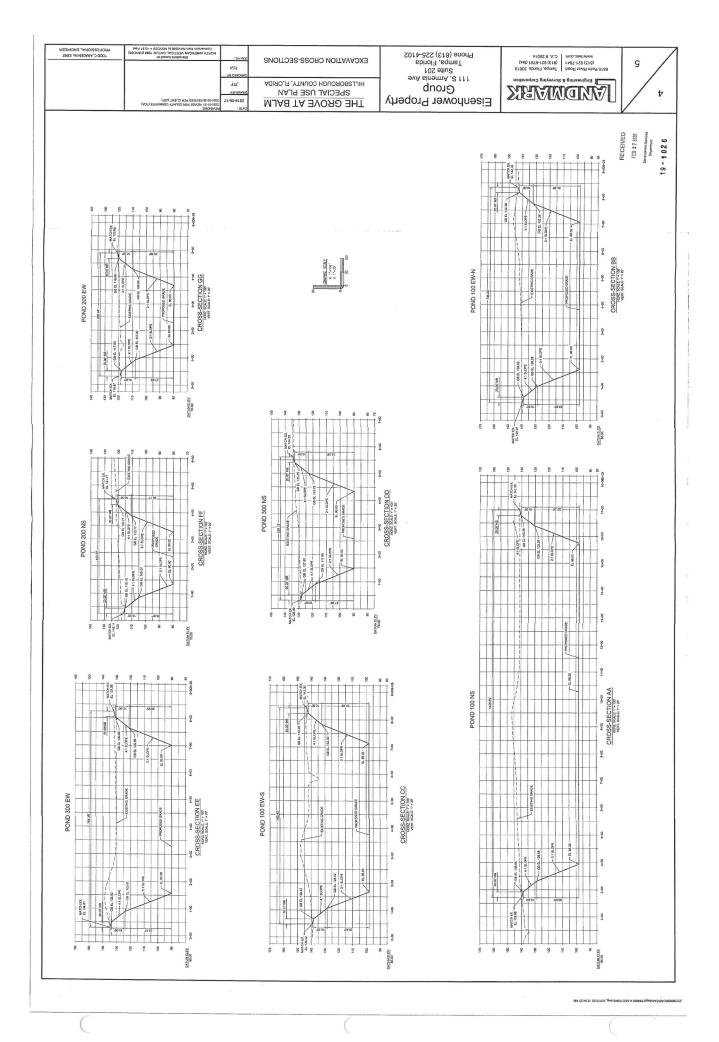
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Group
111 S. Armenia Ave
Suite 201
Tampa, Florida
Phone (813) 225-4102

RECLAMATION PLAN

CKED BY TCA

Additional / Revised Information Sheet

Hillsborough County Development Services Department



| Application Number: SU 19-1026 | | Applicant's Name: El | Applicant's Name: Eisenhower Property Group | | | |
|--|---|---|--|--|--|--|
| 1 | teviewing Planner's Name: Tom Hiznay | | | | | |
| A | pplication Type: [Select One:] | Current Hearing Date | e: | | | |
| Please check (✓) all appropriate changes / additions: | | | | | | |
| | Revised Plans or Request information: # of Plans Submitted: 4 Large Small | | | | | |
| | Acreage (Added / Removed) |) # of Acres: | ☐ Changes to Requested Uses | | | |
| | Revised Building or Lot Layout | | Revised Square Footage (FAR) Info | | | |
| | Access Point(s) - (Added / D | Deleted / Moved) | Dctail added | | | |
| Changes to Requested Number of Units (- Increase, - Decrease, - Reallocation) | | | | | | |
| | Other: | | | | | |
| Other Additions: | | | | | | |
| | Revised/Corrected Legal Description | sis | | | | |
| | Party of Record Letter(s) or Petition Additional Fees - Receipt # | | | | | |
| | Letter Requesting a Continuance / Remand / Withdrawal | | | | | |
| | Other: | | | | | |
| | | | | | | |
| FOR OFFICE USE ONLY | | | | | | |
| | ☐ Notification E-Mail Sent ☐ Scanned into OPTIX ☐ Planner Reviewed | | | | | |
| | ☐ Transmittal Completed | In-Take Completed by: | | | | |
| | ransmit to: (check () all that apply) | | _ | | | |
| 12 | | HARTLine | ☐ Sheriff's Department ☐ SWFWMD | | | |
| | | ☐ Parks & Recreation ☐ Community Planning | Water – Reclaimed | | | |
| | | Natural Resources | Water Utilities | | | |
| | ☐ EPC ☐ PGM Project Review | | ☐ Water – Wastewater | | | |
| | Fire Department | School Board | | | | |
| | ☐ City of Plant City | FDOT | Polk County | | | |
| | City of Tampa – Sewer Hazard Mitigation | | Public Works - Traffic | | | |
| | | H.C. Aviation Authority | Public Works Roadway | | | |
| | | H.C Health Department | Real Estate | | | |
| | Federal Aviation Admin | MacDill Air Base | Tampa Bay Water | | | |
| | FDA [FL Dept of Envir. Prot. [| Pasco County Pinellas County | ☐ University Dev Corp ☐ USF Area Civic Assoc | | | |
| | Other: | | _ On The Citie Asset | | | |

THE GROVE AT BALM

SECTION 25, TOWNSHIP 31 SOUTH, RANGE 20 EAST A COMMERCIAL PROJECT LOCATED IN OF HILLSBOROUGH COUNTY, FLORIDA





COVER SHEET

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SPECIAL USE PLAN

THE GROVE AT BALM

EXCAVATION CROSS-SECTIONS EXISTING CONDITIONS PLAN

RECLAMATION PLAN **EXCAVATION PLAN** COVER SHEET

TCA 13.F 13.F

Sheet List Table



Vicinity Map

111 S. Armenia Ave Suite 201 Tampa, Florida Phone (813) 225-4102

Group

Eisenhower Property

SITE DATA
TOTAL SITE AREA: 1776 ACRESS
FOLIO NUMBER: 077864-0000
PROPOSED EXCAVATION AREA: 93.34 CONING. PD 18-0304 UTURE LAND USE: R2-P

GENERAL NOTES

AR -

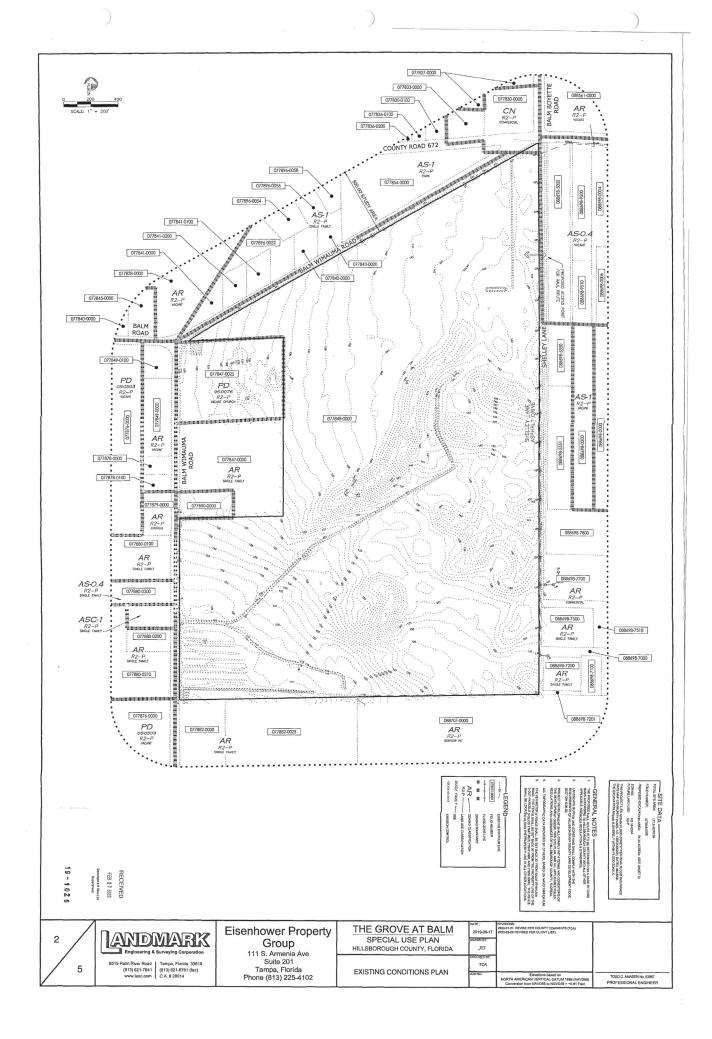
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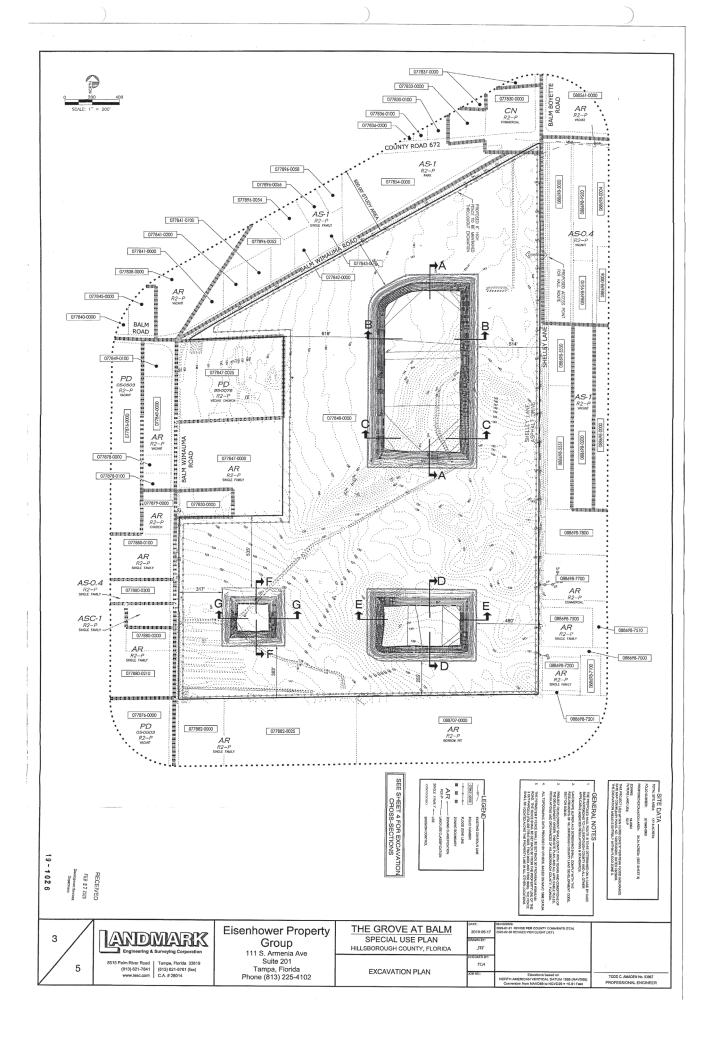
8515 Palm River Road (813) 621-7841 www.lesc.com

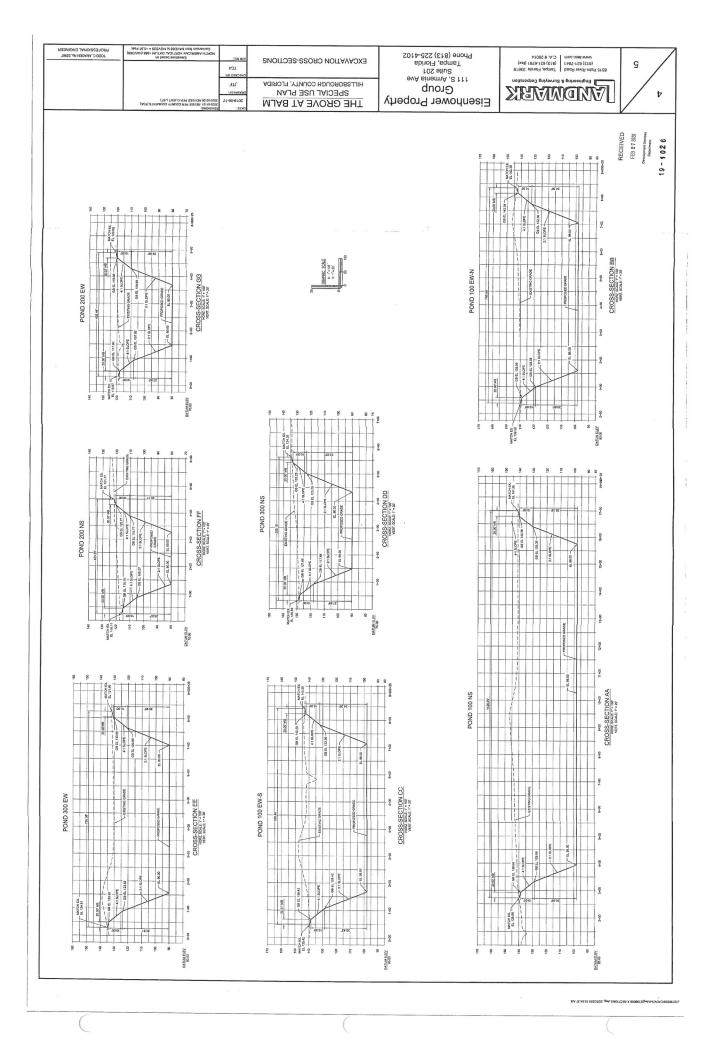
Development Sevices Department 19 - 1026 FEB 2 7 2029

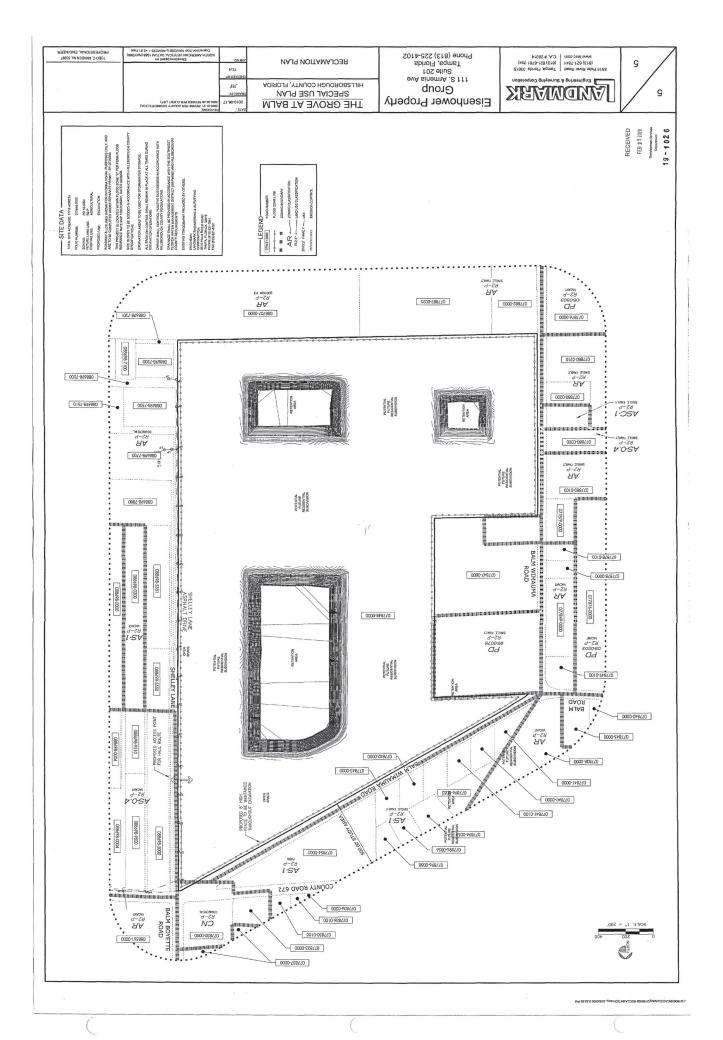
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HILLSBOROUGH COUNTY, FLORIDA BOARD OF COUNTY COMMISSIONERS

In Re:

LAND USE HEARING OFFICER HEARINGS

LAND USE HEARING OFFICER HEARING TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE:

SUSAN FINCH

Land Use Hearing Officer

DATE:

August 3, 2020

TIME:

Commencing at 9:00 a.m.

Concluding at 12:28 p.m.

PLACE:

Via Cisco Webex Video

Conference

REPORTED BY: Jerry Lefler, RPR CRR CM

Executive Reporting Service 13555 Automobile Boulevard, Suite 100 Clearwater, Florida 33762 (727) 822-5458

| | | | Page 30 |
|----|-----|---------------------|---------------------------------|
| 1 | , | | COUNTY, FLORIDA |
| 2 | | BOARD OF COUNT | Y COMMISSIONERS |
| 3 | | | |
| 4 | | ZONING HEARING | MASTER HEARINGS |
| 5 | | AUGUST | 3, 2020 |
| 6 | | ZONING HEARING MAS | STER: SUSAN FINCH |
| 7 | | | |
| 8 | H.1 | Application Number: | SU-AB 19-1026 |
| 9 | | Applicant: | Balm Grove, LLC |
| 10 | | Location: | 15110 Balm Wimauma Rd. |
| 11 | | Folio Number: | 077848.0000 |
| 12 | | Acreage: | 177.62 acres, more or less |
| 13 | | Comprehensive Plan: | RP-2 |
| 14 | | Service Area: | Rural |
| 15 | | Existing Zoning: | PD (18-0304) |
| 16 | | Request: | Special use for land excavation |
| 17 | | | excavation |
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Page 31 MR. HIZNAY: We're now moving into the 1 Special Use portion of the agenda. first case is Item H.1. This is application 3 19-1026. The Applicant is Balm Grove, LLC. The request is for a Special Use for a land excavation. Staff report was prepared by Annie Barnes. However, I'll be presenting the 9 report for her after the Applicant's presentation. 10 11 HEARING MASTER FINCH: Is the Applicant 12 here? Good morning. 13 MS. CORBETT: Good morning. Kami Corbett, 101 East Kennedy Boulevard, Suite 14 15 3700, here for the Applicant, Balm Grove, 16 LLC. 17 This is a fairly straightforward 18 request for a (inaudible) subdivision. 19 There's not anything particularly unusual 20 about it. The only thing that's really new 21 about it is Condition 2 of the staff report. We've reviewed all of the other 22 23 recommendations for approval and the 24 conditions associated with the approval, and

we agree with all of them with the exception

| 1 | of Condition 2, which requires us to modify |
|----|--|
| 2 | the PD, specifically allowing land |
| 3 | excavation. |
| 4 | I'm going to get into that in a lot |
| 5 | more detail later on, but first we're going |
| 6 | to have Steve Luce come up and make a |
| 7 | presentation for the application. |
| 8 | HEARING MASTER FINCH: Thank you. Good |
| 9 | morning. |
| 10 | MR. LUCE: Good morning, Ms. Hearing |
| 11 | Master and staff. My name is Steve Luce |
| 12 | HEARING MASTER FINCH: We just need |
| 13 | Ms. Corbett to sign in. |
| 14 | MR. LUCE: on behalf of the Applicant |
| 15 | Balm Grove, LLC, a wholly-owned subsidiary |
| 16 | of Eisenhower Property Group. |
| 17 | I'd like to walk you through some |
| 18 | of the criteria that are in the Land |
| 19 | Development Code and how we comply with each |
| 20 | one of these criteria, as well as give a |
| 21 | little overview of the request, which is for |
| 22 | 2.5 million cubic yards of export off the |
| 23 | property as part of the Special Use land |
| 24 | excavation. |
| 25 | The duration is five years. And |

just so you know, the time period is shorter 1 than normally you would see on your typical 3 excavation requests, which are 10 years. And oftentimes you'll see extensions for 4 those. Excavations will come in for more time five years at a time. You can get land 6 excavations that last for 20 years. Just so happens coincidentally to the OR sort of east and south is a former 9 land excavation site, Shelly Lakes mine, 10 which was excavated roughly 19 million to 20 11 million cubic yards of fill over roughly 12 15-, 20-year time period. That pit has been 13 14 closed and is no longer active. There's a criteria in the Code that 15 talks about not having other land 16 excavations within a certain distance that 17 18 are active. And we're not within an active 19 distance of any other land excavation site. 20 So, again, 2.5 million cubic yards. 21 It's really only meant to address our storm 22 water ponds on our site, because our existing property is zoned PD. And the 23 ponds match the PD site plan locations, and 24 25 so we're excavating the ponds. If not for

the ponds, we wouldn't be asking for the 1 Land Excavation Permit. So, essentially it's an export 3 site, because it's a fairly high site, to dig the ponds. And so normally you would see the in-fill dirt for a lot of sites around the county. In this case, we have export. Because of the geographic and geological condition, we have export on the 9 10 property. So, quickly I'll run through some 11 12 of my slides for graphics. Make sure I get the Elmo going correctly. 13 This is sort of a locational map. 14 Zoomed in a little bit. If you're familiar 15 with this general area, it's about five 16 miles east of U.S. 301, about three and 17 a half miles north of County Road 674. The 18 Balm Road site is the parcel identified as 19 20 Parcel 1. 21 The areas in yellow are all properties that Eisenhower Property Group 22 owns. So essentially -- Strike that. Our 23 ponds are internally located within Parcel 24 25 1.

So from a general sense, our 1 2 surrounding property owner is us. There are some exceptions, and I'll get into those in 3 a minute, and how we are recognizing the 4 distance to residential and church sites and how we're mitigating those distances through fencing, driveway location, and our route off-site. 8 9 Here's a graphic showing the Balm Road Special Use -- If I can get it centered 10 a little bit better. You get the idea where 11 it's located now. Here's the location of 12 13 the ponds. Three ponds on site. If we do the math on each pond, to a depth of roughly 14 15 30 to 60 feet in depth. It comes to 2.5 16 million cubic yards of fill will be exported 17 off the property. 18 HEARING MASTER FINCH: Mr. Luce, you 19 noted that those are in the same, almost the 20 same location as noted on the PD site plan. MR. LUCE: Correct. And let me throw 21 22 that on the Elmo as well. Here is the PD site plan for Balm 23 24 Road. You can see generally the ponds are 25 in the same location as the Special Use Land

Excavation Permit Application. In fact, the 1 ponds conceptually are larger on the PD than 3 they are on the preliminary plat that's actually already submitted. So they match. The point of the graphic, right? I also want to point out that on the Special Use Plan -- It's hard to see, because I can't do this Elmo correctly. But 8 at the north end of the property, sort of 9 the northeast corner, is where the driveway 10 into the land excavation would be located. 11 About 800 feet south of the northeast 12 13 corner. HEARING MASTER FINCH: Can you point to 14 15 that? Right in there. Okay. MR. LUCE: Up here. All right. Sorry. 16 17 Where my finger is. You see the driveway? HEARING MASTER FINCH: I see the arrow, 18 yes. 19 MR. LUCE: Thank you very much. 20 21 a fence required by the Code that surrounds 22 the entire site. It is 30 feet off the right-of-way of the adjacent streets that 23 24 are on the west and sort of the northwest 25 side of the property.

Around the carve-out, these central 1 sort of out parcels, if you will, we have a 50-foot setback for the fence in those 3 locations. 4 And there's a requirement about where we can put our fill dirt while we're in operation moving dirt around from time to time. We find that condition acceptable. 8 9 It's not a problem for us. I'll briefly run through this 10 11 criteria. The Land Development Code has a number of standards about locational land 12 13 excavation sites. They can't be within a thousand feet or within areas of proposed 14 15 wells or existing wells. And we are not. You see the small 16 17 "X," the location of Balm Road, Balm Wimauma Road. That's our location. You can see 18 where the red dots are. Where the wells 19 20 are, we are not located in an area where there are wells. 21 This graphic shows where natural 22 resources are located. Environmental 23 attributes. We're not located in an area 24

where such features are located.

| l | | |
|---|----|--|
| | 1 | This graphic showing strategic |
| | 2 | habitat, conservation areas. We're not |
| | 3 | located in an area of such natural habitats. |
| | 4 | This graphic shows we're not in an |
| | 5 | area of wellhead resource protection areas. |
| | 6 | Another graphic showing wetlands |
| | 7 | and wetland systems. We're not located in |
| | 8 | an area where such wetlands or wetland |
| | 9 | systems are located. |
| | 10 | I will note that on the specific |
| | 11 | property there are agricultural drainage |
| | 12 | ways, which EPC will claim. There are other |
| | 13 | surface waters which are claimed as |
| | 14 | wetlands, but there are other surface |
| | 15 | waters, which EPC has no objections to us |
| | 16 | mitigating. |
| | 17 | This is a Drastic Map which gets at |
| | 18 | the areas susceptible to ground water |
| | 19 | contamination and areas that may be |
| | 20 | susceptible to sinkholes. |
| | 21 | The areas in reddish color are the |
| | 22 | least area in Hillsborough County that would |
| | 23 | be susceptible to sinkholes. So that's not |
| | 24 | an issue either. |
| - | 25 | Here is a graphic of where there |
| | | |

are known sinkholes throughout the county,

and we're not located in an area where there

are existing sinkholes.

I started by showing you how

Eisenhower Property Group is the primary adjacent property owner, but there are a few residences that are located within 500 feet. They are approximately 372 feet away of that northern-most pond to two single-family lots that are on the sort of north side, northwest side, of Balm Wimauma Road.

Our mitigation for that distance is the fence, the roadway itself, our hours of operation, which have been limited.

Usually the Code allows for Monday through Saturday from 7 a.m. to 5 p.m.

We're limiting our hours from 7 a.m. to

4 p.m. Monday through Friday.

To the east side, as you saw in the earlier -- the first graphic I put up, we are the primary property owner to the east, and there are no residences along our east side until you get down to the southeast corner. But that distance to that location is approximately 484 feet. We just barely

1 touch the edge of those residential lots. Again, we'll have a fence along that property boundary. Again, our haul 3 route is from the northeast corner of the site going north up to Balm Road, so it will not impact those folks at all. To the south, the distance to off-site residentially-zoned property is 8 approximately -- You can read that -- 253 9 10 feet. That land to the south is undevelopable, consisting of wetlands and an 11 12 existing pond that's sort of a remnant of the prior Shelly Lakes mining operation. 13 So no residences will ever be located in 14 that location. 15 And to the west, that pond that's 16 in the southwest corner is approximately 381 17 feet away from two off-site residential 18 19 properties. And again mitigation in those 20 locations is because of our fence, the roadway itself, hours of operation, and the 21 22 location of our haul route, our access in 23 and out, and the haul route is to the north. 24 Then finally, the distance to 25 churches is a thousand feet. There are two

churches in proximity of our land excavation
activity. One church in sort of the
southwestern location is about 387 feet to
the west.

Again, the mitigation, as already
presented, is the fence, the road itself,
the location of our entrance/exit, hours of

land excavation activity.

And finally, there's a church in sort of the northern western location, one of those out-parcels, just about 617 feet to our west. Again, the same mitigation, less the road issue.

operation, and frankly the duration of our

But that church is no longer in use. It's been for sale on and off for a number of years. We actually had it under contract at one point, and looking to purchase it again in the future. But again we'll have a fence around it.

There's a condition about stacking of our dirt during operations, all intended to mitigate the distance from that church.

I'll present these graphics to the
Clerk, get a copy for you. I also have a

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| 1 | written submittal that sort of puts in |
| 2 | writing my presentation today, which I'll |
| 3 | present to the Clerk and you, a copy for the |
| 4 | record. |
| 5 | With that, I respectfully wish you |
| 6 | would support our application. And I'm |
| 7 | available if you have and questions. |
| 8 | HEARING MASTER FINCH: If you could just |
| 9 | go over the haul route, what the proposed |
| 10 | haul route is for the excavation. |
| 11 | MR. LUCE: The access point is roughly |
| 12 | as described, about 800 feet south of the |
| 13 | northeast corner. 672 is a haul route. So |
| 14 | once it gets to that point, it will have to |
| 15 | follow the Hillsborough County truck route |
| 16 | plan. |
| 17 | HEARING MASTER FINCH: So it comes right |
| 18 | out of that northern point. |
| 19 | MR. LUCE: Right. |
| 20 | HEARING MASTER FINCH: And that hits |
| 21 | 672. |
| 22 | MR. LUCE: Right. |
| 23 | HEARING MASTER FINCH: All right. |
| 24 | Again, you testified that this is there's |
| 25 | no fill being stored, being retained on |

1 site. These are only excavations for the ponds. Is that correct? 3 MR. LUCE: Yeah. But during operations, it's like a timing issue about trucks coming 4 and getting soil. There are certain stacks of dirt that will be from time to time 6 located the property. There's a zoning condition that addresses where those stacks 9 can be located. 10 HEARING MASTER FINCH: All right. Thank you. Those are my only questions. 11 12 MR. LUCE: Okay. Just to follow up, one last comment about the condition about the 13 14 Major Mod requirement, or amendment to the 15 existing zoning, is that I worked for Hillsborough County for 11 years, 16 17 Development Services. As you know, I was a 18 Hearing Master for seven years. We also did research on all known 19 20 land excavations in Hillsborough County. 21 Since records have been kept, we found no 22 evidence at any point in time during my time 23 working for Development Services or as a 24 Hearing Master, or our search of existing 25 land excavation permits, where the Zoning

| 1 | Department attached a condition that |
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| 2 | required the underlying PD to be amended to |
| 3 | recognize the land excavation as a use. |
| 4 | I would add to that, that not only |
| 5 | are we not doing a sort of comprehensive |
| 6 | 173-acre excavation of the entire site, |
| 7 | we're only doing excavation of the ponds to |
| 8 | implement residential development. And |
| 9 | because it's an export site, we have to get |
| 10 | a Special Use Land Excavation Permit. |
| 11 | I would acknowledge that the depth |
| 12 | of these ponds may be deeper than we |
| 13 | otherwise would need for a single-family |
| 14 | subdivision. That's the only real |
| 15 | difference between the Planned Development |
| 16 | and the depth of these ponds being slightly |
| 17 | deeper, requires a little bit more export. |
| 18 | I just want that on the record. |
| 19 | There's no evidence in the history of |
| 20 | Hillsborough County that requires an |
| 21 | Applicant to go back to amend the zoning. I |
| 22 | respectfully request that you delete that |
| 23 | condition. |
| 24 | So with that, that concludes my |
| 25 | testimony. |

Page 45 1 HEARING MASTER FINCH: All right. Thank 2 you so much. 3 MR. LUCE: Thank you. HEARING MASTER FINCH: Ms. Corbett, did 4 you have something you wanted to add, to 5 conclude? 6 MS. CORBETT: I do, actually. I would 8 like to ask if I could get some time, due to some of the technical difficulties we had. 9 I'd like to add maybe two minutes to the 10 11 clock. 12 HEARING MASTER FINCH: I have no way to 13 see the time that we have left. Is it 14 possible -- Does that have the time on the 15 front? Can you turn it around so I can see 16 it? Hang on. 17 Speaking of technical issues. 18 see. Can you conclude in two minutes? 19 MS. CORBETT: I will try. 20 HEARING MASTER FINCH: Perfect. 21 you. 22 MS. CORBETT: I just want to call your 23 attention that this condition is actually 24 inconsistent with the Land Development Code, 25 the condition to modify the PD.

1 I'll just quickly call to your attention, and we'll put in the records, 2 specific sections of the Land Development 3 Code that I'm referencing. First, we start with 5.2.1. I get Sideways. It talks about Special it now. Use Permits. And "Special Uses are uses that are generally not appropriate to a zoning district without more stringent 9 10 compliance with development standards." And then you move to Section 6.0 --11 12 If you can adjust that for me -- 6.11, which talks about "Special Uses contained in this 13 14 part shall be considered in accordance with the requirements of 10.02.00," which is the 15 16 LUHO process. Then you move to Section 1154 that 17 refers to land excavation, and there's 18 19 specific location criteria. It says "Where 20 are land excavations permitted? They are 21 permitted in all zoning districts. 22 dry land excavations where there are limitations, land excavations may be 23 considered in all design districts." As 24 25 Mr. Luce just testified, that's the way

Page 47 1 Hillsborough County has historically treated 2 that. By contrast, if you look at the 3 Wireless Communication Tower Special Use section, you'll see that there is a specific 6 requirement that the way the Development Code was modified in 2005 to require a 8 wireless communication tower to be placed in 9 a PD-9 district as a specifically approved use if it's going to be approved through the 10 11 Special Use process. 12 So you can see here that a Land Development Code amendment is required to 13 14 impose such a requirement. And therefore we 15 don't believe that staff has the legal 16 authority to impose such a condition. 17 With that, I'll wrap up my time and 18 save anything else for rebuttal. 19 We're going to put the list of 20 cases that Mr. Luce was referring to, I have 2.1 a spreadsheet of all those cases. 22 HEARING MASTER FINCH: And you're 23 submitting all of that into the record? 24 MS. CORBETT: I am.

Perfect.

HEARING MASTER FINCH:

| 1 | you so much. |
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| 2 | We'll go back to Development |
| 3 | Services for a presentation of the staff |
| 4 | report. |
| 5 | MR. HIZNAY: The Applicant has done a |
| 6 | good job of going over a lot of the details. |
| 7 | I'm just going to focus on specificity |
| 8 | compatibility issues and things like that, |
| 9 | that we addressed in the report. |
| 10 | As noted, they do require some |
| 11 | separational requirements from residential |
| 12 | uses in the area, as well as churches. |
| 13 | Those were detailed in the Applicant's |
| 14 | presentation as well as our report. |
| 15 | We'd support the waiver, subject to |
| 16 | the conditions that you find in the report. |
| 17 | Specifically, one of the most one of the |
| 18 | primary things is that the Applicant agreed |
| 19 | to restrict their hours of operation to less |
| 20 | than what is allowed by the Code. |
| 21 | The Code allows hours of operation |
| 22 | 7 a.m. to 6 p.m. Monday through Saturday, |
| 23 | excluding holidays recognized by the county. |
| 24 | The Applicant has agreed and |
| 25 | proposed to restrict the hours from 7 a.m. |

to 4 p.m. Monday through Friday, excluding county holidays, and with no operations permitted at any time on Saturday and Sunday.

Additionally, during the course of the review on this, the Applicant decreased the volume of material that was going to be proposed to be excavated from the site.

The Applicant has also agreed to surround the site with a solid six-foot high wood or PVC fence. The Code requires the site to be fenced, but that could be for security purposes, so that could have been a chain link fence.

The fence is going to be set back from the roadways and from the adjacent properties that are on the same side as Balm Wimauma Road as the subject site.

I would like to point out that in the Applicant's narrative and in the notice it includes a variance to the site, because at the time that the notice was sent, they proposed to put that fence directly on the property line along the roadway, at which point a fence height variance would have

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1 been required. But since they are setting it back from the road right-of-way, then the height 3 of -- a six-foot height is permitted, so no variances to the fence height requirements. I'd also like to point out that they had asked for a waiver. The Code 7 prohibits that once a Special Use Permit is 9 approved for land excavation, that no other 10 permit for other land excavation or land 11 alteration activity can be approved until 12 the operating permit is closed for the land 13 excavation. 14 They asked for a waiver of this so 15 that they can proceed with site development 16 work that's connected to the subdivision 17 that is going to go in here. 18 We didn't object to it, provided 19 that there is a condition in place that says all work on the site, whether it's land 20 21 excavation or for land alteration connected 22 with the site grading and things like that, 23 that they're all subject to the same hours 24 of operation. 25

This was necessary so that -- it

1 would be impossible for our staff to differentiate between activity on the site 3 occurring on a Saturday that was connected with the land excavation or connected with land alteration work. And so they've agreed to that condition, so we don't object to the waiver. In general, this proposed -- also, 9 as far as agency comment, Conservation and 10 Environmental Land Management staff, Natural Resources staff, EPC staff, School District 11 12 staff, Public Works staff, and County Parks and Recreation staff did not object to this 13 14 land excavation. 15 Some of them have some recommended 16 conditions of approval. I would 17 particularly point out that there is a park, Balm Park and Community Center, that's 18 located on the north side of Balm Wimauma 19 20 road across from the subject site, and the 21 Parks and Recreation staff reported no 22 objections to this excavation. 23 The proposed land excavation is

located on a designated truck route, as

required by the LDC, and the site is not

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1 within a prohibited or restricted area. The excavation pits do not meet 3 required separation from all neighboring residentially-developed properties and two 4 churches; however, the location of the pits which will form ponds are consistent with 6 the location of the ponds shown on the approved PD site plan for the property. 9 Additionally, the Applicant has 10 proposed operational limits that are more 11 restrictive than those allowed by EPC. 12 The excavation driveway will be located the east side of the site to 13 eliminate driveway impact and potential 14 15 uses of churches on Balm Wimauma Road. Material stockpiles will be at 16 least 200 feet from Balm Wimauma Road and 17 18 adjacent residential parcels and the church. 19 The entire site will be enclosed by 20 a six-foot high solid wood or PVC fence 21 which will be set back 30 feet from Balm 22 Wimauma Road and 50 feet from adjacent 23 residence or church parcels between the road and excavation site. 24 25 For these reasons, staff finds the

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| 1 | proposed land excavation is compatible with |
| 2 | the surrounding area and approvable, subject |
| 3 | to the recommended conditions. |
| 4 | HEARING MASTER FINCH: Thank you, |
| 5 | Mr. Hiznay. Could you please address the |
| 6 | issue that the Applicant brought up about |
| 7 | their disagreement that the county's |
| 8 | requiring them to amend the PD zoning |
| 9 | conditions to add the use of land |
| 10 | excavation? |
| 11 | MR. HIZNAY: Yes, ma'am. There have |
| 12 | been discussions on this and that |
| 13 | determination was made with the applicants |
| 14 | months and months ago. |
| 15 | If they had disagreed with that |
| 16 | determination, which they did, but there are |
| 17 | avenues for them that they could have chosen |
| 18 | to pursue to address that question. They |
| 19 | did not. |
| 20 | So we're now within the hearing, |
| 21 | and staff has not agreed to |
| 22 | HEARING MASTER FINCH: What is your |
| 23 | professional opinion regarding Mr. Luce's |
| 24 | testimony that the county has never required |
| 25 | a Planned Development to amend a condition |

| 1 | to add a use of land excavation, in his |
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| 2 | research? |
| 3 | MR. HIZNAY: Yes, ma'am. I'm not |
| 4 | familiar with his research, so I cannot |
| 5 | address it. |
| 6 | HEARING MASTER FINCH: In your practice |
| 7 | at the county, have you ever had that |
| 8 | instance where the county has required them |
| 9 | to add that land use? |
| 10 | MR. HIZNAY: In my personal experience, |
| 11 | I can't say "yes." But I certainly have not |
| 12 | been involved in review of all planned |
| 13 | developments requesting a land excavation. |
| 14 | HEARING MASTER FINCH: All right. Thank |
| 15 | you so much. |
| 16 | Is there anyone that would like to |
| 17 | speak in favor of this application? Anyone |
| 18 | in support? |
| 19 | Do we have anyone here in the room |
| 20 | in-person that would like to oppose the |
| 21 | application? Anyone in opposition to this |
| 22 | application in the room? |
| 23 | All right. Seeing no one. |
| 24 | I have two people signed up |
| 25 | virtually that would like to speak. We'll |

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| 1 | start with Mr. James Frankland. |
| 2 | MR. Frankland: I'm here. But I would |
| 3 | like to have Buddy Harwell go first, if he |
| 4 | could. Can you hear me? |
| 5 | UNIDENTIFIED MALE VOICE: We can hear |
| 6 | you. |
| 7 | MR. Frankland: Okay. I'd like to have |
| 8 | Buddy Harwell go first and I'll be second. |
| 9 | Is that all right? |
| 10 | UNIDENTIFIED MALE VOICE: Yes. |
| 11 | MR. Frankland: Hello. Fantastic. |
| 12 | Hello. Testing. |
| 13 | UNIDENTIFIED MALE VOICE: We can hear |
| 14 | you. |
| 15 | MR. HARWELL: This is Buddy Harwell, |
| 16 | Balm, Florida. A member of the Balm Civic |
| 17 | Association, and board member. |
| 18 | We ask that you deny this |
| 19 | application on several reasons. With all |
| 20 | the variances that they're asking for, with |
| 21 | the churches and the residents around there, |
| 22 | they stated that one church was closed and |
| 23 | don't see the future of them opening. |
| 24 | But there is a sign out. There's |
| 25 | been a sign out for two months, with the VBS |
| | |

| 1 | School coming in. |
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| 2 | You've got to remember that this |
| 3 | generates a lot of dust, noise in the area. |
| 4 | They did reduce the hours of operation, yet |
| 5 | the pumps that pump the water out of the |
| 6 | ponds so they can keep digging run 24/7/365. |
| 7 | Three or four pumps running in the |
| 8 | middle of the night, when it's supposed to |
| 9 | be nice, peaceful and quiet in Balm, that's |
| 10 | all can you hear echoing for miles. Okay. |
| 11 | The other thing I wanted to bring |
| 12 | out, back in February, and as recently as |
| 13 | Friday, I witnessed at least six trucks |
| 14 | coming out of Balm Grove loaded full of dirt |
| 15 | going five miles down the road, dumping that |
| 16 | dirt at South Fork, a location in South |
| 17 | Fork, filling that truck back up, hauling |
| 18 | the dirt back up to Balm Grove. |
| 19 | Just kind of curious, why are we |
| 20 | doing this? Isn't that a waste of money? |
| 21 | What are we exchanging dirt for? Just kind |
| 22 | of curious. |
| 23 | County standards 8.0104F, G and H, |
| 24 | got to pave Shelly Lake Lane and keep 672 |
| 25 | Balm Wimauma clean. |

| 1 | You also can have an impact on our |
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| 2 | wells around here. He stated no wells |
| 3 | within a thousand feet. I disagree with |
| 4 | that, because every piece of property out |
| 5 | here is on a well. |
| 6 | That was actually a farm grove, and |
| 7 | it should have at least one well. I was |
| 8 | told two wells on the property itself. So |
| 9 | has that been taken care of? |
| 10 | We do not need another pit |
| 11 | operating at the same time. They stated |
| 12 | that there was no other dirt pit operating |
| 13 | in the area, which is not true. There's |
| 14 | Razorback Ranch south of Balm Wimauma Road. |
| 15 | The record says within a mile. It's 1.2 |
| 16 | miles away. |
| 17 | And this is personal, because my |
| 18 | mother was hit by a dump truck in her car |
| 19 | about three years ago. She is okay, but |
| 20 | there's too many dump trucks. They're not |
| 21 | paying attention. All they're worried about |
| 22 | is getting the dirt delivered to the next |
| 23 | job. |
| 24 | And stating that the hours are from |
| 25 | 7:00 to 4:00, what are they going to do |

| 1 | about the dump trucks that come and start |
|----|--|
| 2 | idling out there at 5:30, six o'clock in the |
| 3 | morning before the pit opens? |
| 4 | There again, approval of the |
| 5 | variance of a fence. Required separation, |
| 6 | LDC Section 6.11.54. A.2, for the two |
| 7 | churches and the residential property. |
| 8 | And what about the drainage ditch |
| 9 | that's on site that goes from one pond to |
| 10 | the other? I know he did mention that EPC |
| 11 | was going to regulate it. I just wanted to |
| 12 | make sure that you did know about it on the |
| 13 | record. |
| 14 | And you've got to realize I live |
| 15 | next to Shelly Lake that was done. Once |
| 16 | they start digging these things, what |
| 17 | happens when they hit our aquifer, when our |
| 18 | wells start going dry? |
| 19 | Then we have the problem of when |
| 20 | they're done that they hit the aquifer, all |
| 21 | the water vanes down there that fills up the |
| 22 | pond. |
| 23 | Shelly Lake mine Shelly Lake |
| 24 | sits next to them, drains out millions of |
| 25 | gallons of water daily because of all the |

Page 59 aquifers that they hit down there and it 1 floods the surrounding property. This property is higher than Shelly 3 Lakes, so is it going to overflow into Shelly Lakes and make the surrounding property worse, or along the Balm Wimauma Road in the Balm Park? That's all I have to say. 9 you. 10 UNIDENTIFIED MALE VOICE: Would you please give us your name and address for the 11 12 record? UNIDENTIFIED MALE VOICE: Sir, would you 13 14 please give us your name and address for the 15 record? The man who just spoke. MR. HARWELL: We're getting killed by 16 17 these dump trucks. It's been a mess. MR. CLARK: Mr. Frankland, we're going 18 19 to need the name of the person who just 20 spoke. And the address. I believe it was 21 Buddy Harwell. MR. HARWELL: I'm here. Hello. 22 23 MR. CLARK: Mr. Frankland, can you give us your name and your testimony? 24 25 MR. HARWELL: I'll do it again.

| 1 | MR. FRANKLAND: My name is James |
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| 2 | Frankland. Address is 15064 Balm Road, |
| 3 | Balm, Florida. |
| 4 | We have been putting up with these |
| 5 | dump trucks since early '80s. Shelly Lake |
| 6 | mine. They used to start lining up at five |
| 7 | o'clock in the morning. Dozens of trucks. |
| 8 | Noise, sand, killing the road out here. |
| 9 | 672 is a road they should use, but |
| 10 | they want to use Balm Wimauma Road. Now |
| 11 | Balm Wimauma Road is killed because of the |
| 12 | big dump trucks. It's going to get worse. |
| 13 | If you do okay this dirt pit out |
| 14 | there, they will only be able to use 672, |
| 15 | not Balm Wimauma Road. Those big piles |
| 16 | they're going to make there, when the wind |
| 17 | blows, that's going to be over everybody's |
| 18 | car. That's going to be all over their |
| 19 | house, their outside furniture, their |
| 20 | barbecue pits, whatever they have, that's |
| 21 | going to go. And that's going to go over |
| 22 | the park also. That's going to go in every |
| 23 | direction. |
| 24 | It's going to be a bigger mess than |
| 25 | you can think. But it's only going to |

| | Page 61 |
|----|--|
| 1 | affect the residents of the Balm area. It's |
| 2 | not going to affect anybody that live around |
| 3 | here. So only the people around here should |
| 4 | have a vote on this. |
| 5 | That's about all I've got to say. |
| 6 | Thank you. |
| 7 | HEARING MASTER FINCH: We will now go to |
| 8 | County staff. Do you have anything you |
| 9 | would like to add? |
| 10 | MR. HIZNAY: No, ma'am. |
| 11 | HEARING MASTER FINCH: The Applicant has |
| 12 | then five minutes for rebuttal. |
| 13 | MR. HARWELL: Thank you. I did not hear |
| 14 | anything from either of the gentlemen that |
| 15 | constitutes substantial competent evidence |
| 16 | for you to consider with respect to the |
| 17 | items they were testifying about. |
| 18 | Our experts are here this morning. |
| 19 | Mr. Henry to deal with transportation |
| 20 | issues, should you have any questions, |
| 21 | additional questions, about the haul route. |
| 22 | There is an analysis in the |
| 23 | application that will guide you on what the |
| 24 | Applicant's done to mitigate those issues. |
| 25 | And testimony regarding other |

VERBATIM TRANSCRIPT

HILLSBOROUGH COUNTY, FLORIDA BOARD OF COUNTY COMMISSIONERS

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| IN RE: |) |
| ZONE HEARING MASTER HEARINGS |))) |
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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

Executive Reporting Service

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| 1 | HILLSBOROUGH COUNTY, FLORIDA BOARD OF COUNTY COMMISSIONERS |
| 2 | ZONING HEARING MASTER HEARINGS |
| 3 | February 15, 2021 |
| 4 | ZONING HEARING MASTER: PAMELA JO HATLEY |
| 5 | |
| 6 | D10: Application Number: MM 21-0033 |
| 7 | Applicant: Eisenhower Property Group, LLC Location: 15110 Balm Wimauma Rd. |
| 8 | Folio Number: 077848.0000 Acreage: 358 acres, more or less |
| 9 | Comprehensive Plan: RP-2 & R-4 Service Area: USA & Rural |
| 10 | Existing Zoning: PD (18-0304) Request: Major Modification to a Planned Development |
| 11 | 20.0201.0 |
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Page 225 MR. GRADY: The next item, then, is agenda 1 2 item D-10, Major Mod Application 21-0033. The applicant is Eisenhower Property Group, LLC. The request is for a Major Modification to 4 5 existing Planned Development. Michelle Heinrich will provide staff recommendation after 6 presentation by the applicant. 8 HEARING MASTER HATLEY: All right. Will the applicant come forward, please? Are they online? 9 10 Okay. Thank you. MS. CORBETT: Madam Hearing Master, Kami 11 12 Corbett for the record; Hill, Ward, Henderson. If 13 you could just give me a moment to get the thumb 14 drive out. 15 HEARING MASTER HATLEY: Okay. 16 MS. CORBETT: Maybe if you wanted to take a

MS. CORBETT: Maybe if you wanted to take a five-minute recess. I don't need that much time, but it's kind of getting around to your break time.

19 HEARING MASTER HATLEY: Do we need a comfort

20 break?

MS. CORBETT: Okay. Again, Kami Corbett;

Hill, Ward, Henderson here for the applicant.

23 This is a Major Modification to an existing
24 PD. It is part of PD 18-0304, which is an approved

PD site plan. There are two parcels. You can see

17

1 the Rhodine Borrow Pit parcel labeled at the top,

2 and then The Grove parcel with the star on it.

This modification only applies to The Grove parcel.

And all we're doing here is adding one condition. And it's within 14.1, and it says that land excavation shall be a permitted use in the growth parcel.

We view this as mince material and technical modification to acknowledge land excavation use.

It's required because of a new staff interpretation of the Land Development Code. And no better illustration of the change in philosophy on this then this exact PD.

This is the Rhodine Borrow Pit site plan, and as you can see in red, there's a borrow pit shown there. And in highlighted aerials, you see the permitted uses, which I'll show you on a slide in a minute.

This is The Grove parcel. The proposed lakes on the PD are outlined in red. Again, we have a box of permitted uses. And when you see them, they're largely the same. They provide residential uses and commercial uses even though at the time on the Rhodine Borrow Pit parcel, as it says by its name, it had an active borrow pit and the PD did

Page 227 not recognize the land excavation as a permitted 1 use. Then -- so we are actually adding that to a permitted use right now. This is the land 4 5 excavation for the lake creation. This is the PD 6 site plan, and this is the approved Special Use site plan. You can see the lakes are somewhat 8 smaller, but they're generally the same location. 9 Planning Commission has found -- found this request consistent and County Staff recommends 10 11 approval. And we would like you to do the same. 12 I'd like to reserve any time for rebuttal. 13 HEARING MASTER HATLEY: Thank you. All right. Development Services. 14 15 MS. HEINRICH: Good evening again. Michelle 16 Heinrich, Development Services. 17 As you heard, the applicant is requesting a 18 Major Modification to PD 18-0304, and that PD is in 19 its entirety 358 acres in size as was shown by the applicant's representative. It is a noncontiguous 20 21 PD with a northern area referred to as the Rhodine 22 Borrow Pit in the Riverview community and a 23 southern area referred to as The Grove in the Balm 24 community. 25 This application request to only modify The

Grove portion of the PD for the specific request to allow a land excavation. And it should be noted that the Balm Community Plan in RP-2 is subject to the moratorium. However, this is a permitted request as it does not increase the density or

reduce any proposed buffers.

The subject site received approval for a Special Use permit, which is Special Use 19-1026, for a lane excavation in August of last year. The permit allows for the removal of a maximum of 2.5 million cubic yards of material which was for the purpose of lake creation from 54 acres of the site over a five-year period.

Distance waivers as part of Special Use

Permit were approved to the required distance

standards from residentially developed and zoned

property churches and wetland areas.

As specified in Condition 2 of the Special Use Permit, approval of the use within this PD is required prior to the issuance of an operating permit.

It should be noted in the staff report for Special Use 19-1026, staff found that the subject site is located on a designated truck route and is not within a land excavation prohibited or

1 restricted area.

Staff at that time did do a review of compatibility, and what they found is the future use of those excavation areas as ponds was consistent with the areas depicted as ponds on the general site plan for the approved PD zoning.

Furthermore, the applicant provided operational restrictions that exceeded those required in the Land Development Code. Staff noted that the excavation driveway will be located on the east side of the site to eliminate impacts.

The neighboring residential and church uses and material stock piles will be located 200 feet from Balm Wimauma Road, and the entire site would be screened by 6-foot-high solid fence of wood or PVC.

Based upon those considerations, they did during the Special Use permit review find it to be compatible with the surrounding area. So for this application, we are proposing that this be listed as a permitted use in this portion of the PD.

It has been found to be consistent by the Planning Commission and no agency objections were received. Therefore, staff recommends approval subject to conditions of approval. Thank you.

Page 230 1 HEARING MASTER HATLEY: Thank you, Planning Commission. MS. LIENHARD: Thank you. Melissa Lienhard, Planning Commission staff. 4 5 The subject site is located in the 6 Residential Planned-2 Future Land Use category. It is in the Rural Area, and the subject property is located within the limits of the Balm Community Plan and the Southshore Areawide Systems Plan. PD 18-0304 consists of two noncontiguous 10 parcels with a northern portion nicknamed the 11 12 Rhodine Borrow Pit in the Riverview community and 13 the southern portion of The Grove, which is located 14 in the Balm community. 15 The addition of land excavation as an 16 additional use is only being proposed on The Grove 17 parcel. No modifications are being proposed to the 18 Rhodine Borrow Pit portion of the site. 19 Adding land excavation as an allowable use 20 will mean that the site will be subject to Special 21 Use permit 19-1026 for a land excavation, which was 22 approved in August of 2020. 23 This application supports the vision of the 24 Southshore Areawide Systems Plan by adhering to the 25 designated truck routes to operate the land

1 excavation.

Based upon those considerations, Planning

Commission staff finds the proposed Planned

Development -- I'm sorry, Major Modification

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 present or online who wishes to speak in support of this proposal -- in support of this proposal?

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

Please come forward. State your name and address in the record.

MR. HARWELL: Buddy Harwell, Balm, Florida.

Board member, Balm Civic Association.

First of all, I want to ask -- I got a letter I want to enter into the record that submitted during the Special Use. I've also got a letter from a gentleman that lives in the area that's geotechnic engineer. So it should be considered competent and substantial evidence. And he -- he details information that the borrow pits have on

wells, houses, and other issues. I'll do all of that at the end.

Also, I want to bring up the first
Rezoning 18-0304. It was approved on condition
that you have two noncontiguous pieces of property
under one PD. The Board of County Commissioners
remanded it.

The TDRs were eliminated, and so by reading your Comprehensive Plan 33.2 A, two noncontiguous parcels designated RP-2 that each are at least 160 acres or greater may blend the density or intensity of those noncontiguous parcels across the entire project through one plan PD.

There was no TDR transfers. Therefore, they should be considered both PDs null and void, and they should have to start from ground one on this per your policy. And I'll submit that also.

We have a lot of issues with wells in the area. This will be the fifth borrow pit within a two-mile radius. We're going to have some other evidence we're going to enter into the record.

I want to point out definitions of the land excavation where it don't adhere -- adverse impact on the surrounding communities and stuff. I want to get that into the record.

Page 233 Also, they had a variance because they -- for 1 2 two churches in the area on the previous Special Use. This is a sign that's out in front of the Good Samaritan church. They've been operating up 4 5 and going again for the last six to eight months. This is also considered -- there was some 6 drums out there environmental. It was caught at 8 one time. We never did hear any response on that, but this is on the property along Shelley Lane. 9 HEARING MASTER HATLEY: What is that, sir? 10 MR. HARWELL: These are lids to 55-gallon 11 12 drums. 13 HEARING MASTER HATLEY: Oh, drums. Okay. MR. HARWELL: That supposedly had some 14 15 hazardous waste in it. 16 One of the other concerns is when they did 17 these 30- to 60-foot ponds, lakes, they got to pump 18 the water out to continue to dig. Where's that 19 water going to go? This is just south of that 20 parcel that is Shelley Lake. 21 You can see how high it is to the bank. 22 Right now it is within 6 inches of the bank 23 surrounding. And as you can see in the 24 background --25 HEARING MASTER HATLEY: Place the picture

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- 1 down a little bit, please.
- 2 MR. HARWELL: Right here is the closer view.
- 3 HEARING MASTER HATLEY: Okay.
- 4 MR. HARWELL: This is the proposed site.

5 That site's probably about 15 feet higher. We just 6 got more concern with the water flowing out of that proposed lakes flowing into here and then flooding 8 out the surrounding areas. And I do live just east

of Shelley Lake and it stays wet year round. Now, let's get to the dump trucks. They have 10

11 one thing on their mind to get paid by how many loads they make a day; 2.5 million cubic yards of 12 13 dirt equals to 150,000 loaded dump trucks and 14 150,000 empty dump trucks. This is my mother's car

16 the road. Luckily she walked away.

> This is showing the dump truck here in the -just like -- I want you to really consider this. The landfill -- I mean, the land excavations have a

that was hit by a dump truck just two miles down

20 real impact in our area. They have pumps in the

21 lakes that pump them so they can keep digging.

22 These pumps run 24/7, 365 for five years.

23 We moved out in this area for a rural life 24 for quiet. We can go out there and hear the

25 crickets and the coyotes. We can go out there and

9

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Page 235 see the stars at night and to have another 1 2 landfill -- I mean, land excavation at this end of Balm Wimauma Road, it is one at the south end of Balm Wimauma Road. 4 5 And there is a provision in the -- one of 6 the land codes that says they're not supposed to be within one mile of each other or they're like 8 1.2 miles apart. So that's a real close -- as far as, you know, to have another one for the impact in 9 10 the area, more trucks on substandard roads. Thank 11 you. 12 HEARING MASTER HATLEY: Thank you, sir. 13 Next speaker, please. 14 MR. FRANKLAND: My name's James Frankland. 15 My wife and I have a small business and a residence 16 on 15064 Balm Road. It's beautiful downtown Balm. 17 Basically, what I want to talk about is 18 water. We don't have enough water. Everything 19 we're doing is to take water away. Not to add 20 water. Borrow pits aquifer goes down, you know, 21 there's no good to it. It's only good for the guy 22 digging the dirt making the money. It's not good 23 for anybody else. 24 Something else. When these borrow pits are 25 dug, all the wells in the area usually suffer.

have a friend that lives almost two miles away from where Shelley Lake Mines was dug. His water took a dive, and it's never been good since.

A lot of water companies tried to making better water just doesn't work. They give up having tap water for anything but taking a shower and washing the car. There's no help for him.

Once it's gone, it's gone.

I have a letter right here that I'm going to put in. It's from McCorey's Water Refining (phonetic). It's from Joe Gaskin as the owner. They've been in business in south county since 1975. He is not really for any of these borrow pits. Every time they dig his well have a problem. He has a problem with his business. It's a big mistake. We're against it. Thank you.

HEARING MASTER HATLEY: Thank you, sir.

MR. BRUNNER: Good evening. This is Al Brunner again, 15006 Carlton Lake Road.

I echo all the same things that Jamie and Buddy have said. In addition to all the dump trucks, about 300,000-plus, while I haven't been hit, I've been ran off the road. I've had them bully their way into turn lanes and threatening to hit me.

So much so I've added air horns to my cars and 363-degree cameras on my cars so when they do hit me the next time, I have legal recourse. And they'll apply to all who put this dangerous situation into motion.

I echo those same concerns about existing wells. The risk of them running dry. The risk of additional contamination due to the exposure of the aquifer from runoff of the various agricultural businesses and other things in the area.

My pond on my property has already been affected by a borrow pit by the -- from the previous owner. So much so that it had to have water pumped in from the Hills borrow pits into my pond under threat of lawsuit.

The three spring-fed -- the three springs
that fed that pond no longer have the water
pressure to support it. My grave concern is within
two and a half miles of my house, I've got Mosaic
mining to my east. There's two -- the Shelley Lake
and the water borrow pits to the west and
northwest. And to the southwest, we've got the
Razorback Ranch. To my east, I have Hills and I
also have the mining operation.

Our water has already been deeply affected.

Page 238 We don't need another one inside that 2.5-mile area 1 to ruin my water further. Unless somebody's willing to pay for my new well and pay for water to 4 get supply to my pond, I'm vehemently against it. 5 Again, reiterate added dump trucks on our 6 inferior roads is already a hazard. We already have the mining trucks going down. We already have 8 all of the existing Planned Developments in motion just to get off my road onto Carlton lake in the 9 middle of the morning rush hour can take ten 10 minutes, and that's just to make the turn onto 11 12 Carlton Lake safely. 13 The number of accidents occurring either on 14 Balm-Riverview Road and Balm -- the Balm Picnic 15 intersection right there where this new 16 development's going in have already increased. 17 That's all I have. Thank you very much for 18 your time. 19 HEARING MASTER HATLEY: Thank you. 20 Is there another speaker? You have just under four minutes. 21 22 MR. FISKE: Glen Fiske again, 14635 Sweat 23 Loop. I live in Balm, Florida. 24 First thing they're pushing from these folks 25 here is how many acres is the excavation going to

take away from building?

HEARING MASTER HATLEY: Mr. Fiske, I need you to speak into the microphone and pose your question, and they'll address it on rebuttal.

MR. FISKE: I can't say much more about it now. What I'm getting at is if they're going to remove for, say, 50 acres of dirt that they can't build down, are they going to remove 108 homes?

Are they going to move two per acre for every acre of land that they're going to be excavating?

The Planning Commission lady said it was consistent with the Balm Community Plan. Let me state this, we have never been spoken to about anything about this property from day one with the first proposal that's already been approved. They said they were consistent with the Balm Community Plan. They are not. They've never been. They probably never will be. But a Balm Community Plan is being ignored, and it's time that that stops. Thank you.

HEARING MASTER HATLEY: Thank you, sir, please see the clerk also.

You have two minutes and 30 seconds.

MR. BRUNNER: I just want to go on about the

Page 240 other parcel, Rhodine Road that was north of this 1 that was supposed to have been the continued piece for the TDRs and stuff. She commented that there's a borrow pit already there. That borrow pit was 4 5 there first, then they had the Planned Development approved afterwards. 6 7 Now, the Planned Development is approved and 8 they're asking for a borrow pit. It's night and 9 day between the differences on these. I just needed to make that remark. 10 HEARING MASTER HATLEY: Thank you. 11 Thank 12 you, sir. 13 All right. County Staff, any further 14 comments? 15 MR. GRADY: Nothing further. 16 HEARING MASTER HATLEY: All right. 17 Applicant. 18 MS. CORBETT: Kami Corbett with Hill, Ward, 19 Henderson again for the applicant. 20 I just want to clarify. There was a 21 reference to the Hill pit and I --22 HEARING MASTER HATLEY: The clerk, it was 23 13 minutes left a while ago and then she's got 24 five. Okay. Thank you. Yes. Sorry. 25 MS. CORBETT: No problem. There's a

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reference to a Hill pit, and I just want to make
this clarification for the record. Eisenhower

Property Group, the principal is Jeffrey Hills, the
Hill borrow pit he's referring to is an Annie Hill.

It's not related in any way to this applicant. I

just want to make that clear on the record that

that's not the case.

Just go back to the PowerPoint. Many of the issues that have been raised this evening were raised at the Special Use Permit hearing that was held, and as you can see from the land excavation regulations, the moment that you exceed 30,000 cubic yards of export you're required to get a Special Use Permit.

And Special Use permits in the impacts of the land excavation are reviewed right now pursuant to Land Development Code by the Land Use Hearing Officer.

Now, the Board of County Commissioners is seeking to modify that and have these excavations come before the Board of County Commissioners, but that's not the Code today. The Code today is that these are reviewed by the LUHO.

The Special Use Permit was approved on August 3rd of 2020. County Staff recommended

approval, and Land Use Hearing Officer Finch
recommended approval after hearing all of the
similar testimony regarding transportation impacts,
impacts to surrounding wells, light noise, and
overall cumulative impacts.

As staff pointed out, the duration of this permit is limited to five years. May not exceed 60 feet. The hours of operations have been limited. We've offered buffering and setbacks and will fence to mitigate the impacts.

Access is limited. We must mitigate our dust activities, the wetlands, and preservation setbacks are required to be preserved and the developer must repair any damage to Balm Wimauma Road.

And so all of those issues have already been considered by the Land Use Hearing Officer. And I'd like to make also into the record for you the last approval for the Shelley Lakes Mine approval that's been brought up several times this evening.

That was for 20 million cubic yards and that was for a duration of 15 years. So it was a much more intensive. This is for lake creation for the subdivision.

And for your reference and putting into the

| | Page 243 |
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| 1 | record, I'm going to put into the record the |
| 2 | decision the approval the approved site plan, |
| 3 | the certified site plan from 18-0304, the |
| 4 | transcript from the BOCC hearing, which you'll see |
| 5 | that the Balm Civic Association did appear, and |
| 6 | then also all the records from 19-1026 so you can |
| 7 | see for yourself what issues were raised at that |
| 8 | hearing and what has already been addressed. |
| 9 | And with that and then also I'm putting |
| 10 | into the record a legal memorandum on the issue of |
| 11 | whether or not we should even really have to make |
| 12 | this request. |
| 13 | We have disagreed with that requirement the |
| 14 | whole way through, but we are complying with that |
| 15 | at this time to proceed with this land excavation. |
| 16 | And with that, we respectfully request your |
| 17 | approval. |
| 18 | HEARING MASTER HATLEY: Okay. Thank you. |
| 19 | All right. That will close the hearing then |
| 20 | on Major Modification 21-0033. |
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HILLSBOROUGH COUNTY, FLORIDA BOARD OF COUNTY COMMISSIONERS

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| ZONE HEARING MASTER HEARINGS |))) |
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ZONING HEARING MASTER HEARING TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE:

DWIGHT WELLS

Land Use Hearing Master

DATE:

Tuesday, January 19, 2021

TIME:

Commencing at 6:00 p.m.

Concluding at 6:08 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

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Page 7 1 at 6:00 p.m. The next item is item D-7, Rezoning-PD 20-1265. This is being continued by staff to the February 15th Zoning Hearing Master Hearing 5 beginning at 6:00 p.m. 6 Then item D-8, Major Mod Application 21-0033. This, again, Major Mod Application 7 21-0033 -- this is being continued by staff to the 9 February 15th Zoning Hearing Master Hearing 10 beginning at 6:00 p.m. 11 So those were the items that were on the 12 agenda as to be heard tonight, and as noted, 13 they're all being continued by staff to 14 February 15th. 15 I will now go through the withdrawals and 16 continuances that are found on the published withdrawals and continuances that are found on 17 beginning on page 4 of the agenda to read into the 18 19 record. 20 The first item, item A-1, Major Mod 21 Application 19-0521. This application is out of 22 order to be heard and is being continued to the 23 February 15th, 2021, Zoning Hearing Master Hearing 24 at 6:00 p.m. 25 The next item, item A-2, Major Mod

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PARTY OF RECORD

NONE