



City of Stuart

A G E N D A
LOCAL PLANNING AGENCY / PLANNING ADVISORY BOARD
TO BE HELD OCTOBER 8, 2020
AT 5:30 PM
COMMISSION CHAMBERS
121 S.W. FLAGLER AVE. STUART, FLORIDA 34994

LOCAL PLANNING AGENCY

Chair - Ryan Strom
Vice Chair - Li Roberts
Board Member - Larry Massing
Board Member - Bill Mathers
Board Member - Christina de la Vega
Board Member - Michael Herbach
Board Member - Campbell Rich
Ex Officio - Garret Grabowski

ADMINISTRATIVE

Development Director, Kev Freeman
Board Secretary, Jordan Pinkston

In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation to attend this meeting should contact the City's ADA coordinator at 288-5306 at least 48 hours in advance of the meeting, excluding Saturday and Sunday.

If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he will need a record of the proceeding, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

CALL TO ORDER

ROLL CALL

THIS MEETING WILL BE A HYBRID IN PERSON/REMOTE MEETING.

In Person: City Hall can accommodate a small number of citizen participants.

Teleconference: Citizens can attend from the comfort of their home via telephone, computer, laptop, tablet or smartphone. Click the below link or call the below phone number to attend.

The City reserves the right to revoke anyone's virtual attendance for cause, just as the sergeant at arms would at an in person meeting.

JOIN MEETING: By Device -

<https://us02web.zoom.us/j/83928834147>

If you wish to speak during public comment, click raise hand at bottom of window. Your microphone will be unmuted when you are called to speak. Your microphone will be deactivated once you have completed your comment.

By Telephone - Meeting ID: 839 2883 4147

Dial In numbers:

+1 312 626 6799 US

+1 646 558 8656 US

+1 253 215 8782 US

+1 301 715 8592 US

If you wish to speak during public comment press *9 to raise your hand. You will be called by your partially displayed phone number so please listen for that number. The host will lower your hand and mute your line after speaking.

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

COMMENTS FROM THE BOARD MEMBERS

ACTION ITEMS

ORDINANCES

1.

REQUEST FOR CONTINUANCE TO NOVEMBER 12th 2020 LOCAL PLANNING AGENCY.

ANNEXATION OF CITY OWNED PROPERTY AT HANEY CREEK. (QUASI-JUDICIAL) (RC)

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING, ALLOCATING A FUTURE LAND USE OF CONSERVATION AND ALLOCATING A ZONING CATEGORY OF PUBLIC FOR FOUR (4) CITY OWNED PROPERTIES ADJACENT TO HANEY CREEK AND NW BAKER ROAD AND WHICH ARE SUBJECT TO A FLORIDA COMMUNITIES TRUST GRANT AWARD AGREEMENT AND BEING MORE FULLY DESCRIBED IN EXHIBITS A1, A2, A3 and A4 ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

2. AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS - RESIDENTIAL INFILL

STORMWATER MANAGEMENT. (QUASI JUDICIAL)(RC)

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTION 6.03.00. OF THE LAND DEVELOPMENT CODE ENTITLED "STORMWATER MANAGEMENT" OF CHAPTER VI ENTITLED "ON-SITE AND OFF-SITE DEVELOPMENT STANDARDS" IN RESPECT OF STANDARDS FOR RESIDENTIAL SINGLE FAMILY AND DUPLEX INFILL DEVELOPMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

3. ORDINANCE NUMBER 2454-2020

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTION 2.04.00, OF THE LAND DEVELOPMENT CODE ENTITLED "AREA, IMPERVIOUS SURFACE, SETBACK, AND HEIGHT REQUIREMENTS" OF CHAPTER II, TABLE 5 ENTITLED "RESIDENTIAL AREA, IMPERVIOUS SURFACE COVERAGE, SETBACKS, AND HEIGHT REQUIREMENTS" AND SECTION 2.04.02 OF THE LAND DEVELOPMENT CODE ENTITLED "SUPPLEMENTAL AREA REQUIREMENTS", IN RESPECT OF STANDARDS FOR LOT SIZE, LOT WIDTH AND BUILDING SETBACKS FOR THE R-2 AND R-3 ZONING DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

4. ORDINANCE NUMBER 2422-2020.

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING ARTICLE V OF THE CODE OF ORDINANCES ENTITLED "COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY" IN RESPECT OF STANDARDS FOR THE PROVISION OF REGULATING THE PLACEMENT AND MAINTENANCE OF NEW AND EXISTING WIRELESS COMMUNICATION TOWERS IN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

STAFF UPDATE

ADJOURNMENT

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
Local Planning Agency**

Meeting Date: 10/8/2020

Prepared by: David Dyess, City Manager

Title of Item:

THIS MEETING WILL BE A HYBRID IN PERSON/REMOTE MEETING.

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If you wish to speak during public comment press *9 to raise your hand. You will be called by your partially displayed phone number so please listen for that number. The host will lower your hand and mute your line after speaking.

Summary Explanation/Background Information on Agenda Request:

Funding Source:

Recommended Action:

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST Local Planning Agency

Meeting Date: 10/8/2020

Prepared by: Kev Freeman

Title of Item:

REQUEST FOR CONTINUANCE TO NOVEMBER 12th 2020 LOCAL PLANNING AGENCY.

ANNEXATION OF CITY OWNED PROPERTY AT HANEY CREEK. (QUASI-JUDICIAL) (RC)

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING, ALLOCATING A FUTURE LAND USE OF CONSERVATION AND ALLOCATING A ZONING CATEGORY OF PUBLIC FOR FOUR (4) CITY OWNED PROPERTIES ADJACENT TO HANEY CREEK AND NW BAKER ROAD AND WHICH ARE SUBJECT TO A FLORIDA COMMUNITIES TRUST GRANT AWARD AGREEMENT AND BEING MORE FULLY DESCRIBED IN EXHIBITS A1, A2, A3 and A4 ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Staff request a continuance to ensure that all site notices are in place 15 days prior to the Local Planning Agency meeting.

Background

The four (4) properties subject of this application are affected by the conditions and restrictions contained within a Florida Communities Trust Grand Award Agreement dated 28th June, 2000. The agreement sets out the conservation of an area of land contiguous to the Haney Creek watershed. The agreement further states that the properties within the project site should be assigned a Future Land Use of Open Space, Conservation or outdoor recreation uses.

At the present time the properties are within the jurisdiction of Martin County and each are assigned a Future Land Use of one of either Mobile Home, Low Density or Medium Density.

Summary

Staff have confirmed with the County Administrator that they have no objection to the annexation of the properties subject of this application. Staff have also confirmed that County is not interested in the annexation of the remaining County owned parcel, which has a Future Land Use of Low Density.

The proposal is therefore to annex the four (4) City owned properties into the City limits and to allocate a future land use category of Conservation and zoning category of Public to each property.

Conservation future land use is defined in the Comprehensive Plan such: The purpose[s] of the conservation category include: to conserve and protect natural resources including wetlands, floodplains, unique native vegetation, and habitat of listed species; to provide flood control; and to provide a general open space amenity. Uses allowed include passive recreation support facilities and other public facilities and utilities which do not conflict with the purpose of this land use category.

A Public zoning category allows uses that are of a public function such as parks.

Funding Source:

N/A

Recommended Action:

Recommend a continuance to a date certain of November 12th 2020.

ATTACHMENTS:

	Description	Upload Date	Type
▢	A1. Ord 2452-2020 Haney Creek City Properties	9/28/2020	Ordinance add to Y drive
▢	A2. Exhibit A1 to Ord 2452-2020	9/28/2020	Exhibit
▢	A3. Exhibit A2 to Ord 2452-2020	9/28/2020	Exhibit
▢	A4. Exhibit A3 to Ordinance 2452-2020	9/28/2020	Exhibit
▢	A5. Exhibit A4 to Ordinance 2452-2020	9/28/2020	Exhibit
▢	C1. Subject Property	9/28/2020	Backup Material
▢	C2. Notification Property Owners 300ft	9/28/2020	Attachment
▢	C3. County Notification	9/28/2020	Attachment
▢	D1. Resolution 181-98	9/25/2020	Backup Material
▢	D2. FCT Grant Agreement	9/25/2020	Backup Material
▢	City Attorney Letter	10/1/2020	Backup Material

Return to:

**City Attorney's Office
City of Stuart
121 SW Flagler Street
Stuart, FL 34994**

ORDINANCE No. 2452-2020

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING, ALLOCATING A FUTURE LAND USE OF CONSERVATION AND ALLOCATING A ZONING CATEGORY OF PUBLIC FOR FOUR CITY OWNED PROPERTIES ADJACENT TO HANEY CREEK AND NW BAKER ROAD AND WHICH ARE SUBJECT TO A FLORIDA COMMUNITIES TRUST GRANT AWARD AGREEMENT AND BEING MORE FULLY DESCRIBED IN EXHIBITS A1, A2, A3 and A4 ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

WHEREAS, The City of Stuart as petitioner, constituting the fee simple title holder to the four (4) parcels consisting of a combined 42.46 acres, more particularly described in **Exhibits "A1, A2, A3 and A4"**, attached hereto and made a part thereof, has voluntarily requested the City of Stuart annex said land into the corporate limits of the City; and

WHEREAS, the City Commission, has considered the Petitioner's voluntary request for annexation, and has also considered the recommendation of the Stuart Local Planning Agency and City staff.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF STUART:

SECTION 1. Findings. The City Commission finds the above statements are true and

correct,

and serve as a basis for consideration of this ordinance; that said lands are contiguous with the corporate limits of the City of Stuart, creates no enclaves, is reasonably compact, and that the City can effectively provide police, fire, and sanitary services to said land, all in compliance with the terms and requirements of Sec. 171.44, Florida Statutes, and the City of Stuart Code.

SECTION 2. Annexation. The parcels of lands more particularly described in **Exhibits "A1, A2, A3 and A4"**, are hereby annexed into and shall be within the corporate limits of the City of Stuart, Florida, and that same shall henceforth be a part of said City as if said lands were originally a part of the City of Stuart.

SECTION 3. Future Land Use. The parcels of lands more particularly described in **Exhibits "A1, A2, A3 and A4"**, are hereby designated a City of Stuart Future Land Use of Conservation.

SECTION 4. Zoning. The parcels of lands more particularly described in **Exhibits "A1, A2, A3 and A4"**, are hereby designated a City of Stuart zoning category of Public.

SECTION 5. Directions to the City Clerk. The City Clerk shall cause the boundaries as set forth in the City's Charter to be amended and codified. The City Clerk shall submit such documentation as required by law to give effect to this ordinance to the Clerk of the Circuit Court, Board of County Commissioners Florida Statute 171.044(6) within 10 days prior to second reading adoption, the Chief Administrative Officer of Martin County, and the Florida Department of State within seven (7) days following adoption, in accordance with Section 171.044, Florida Statutes. Upon complete execution of this Ordinance, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

SECTION 6. Repeal of Conflicting Ordinances. All Ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

SECTION 7. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance. The corporate boundary of the City shall be re-codified to include lands annexed.

SECTION 8. Adoption. This ordinance shall take effect upon adoption

Passed on first reading the ____ day of _____ 2020.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MICHAEL J. MEIER, MAYOR
EULA R. CLARKE, VICE MAYOR
BECKY BRUNER, COMMISSIONER
MERRITT MATHESON, COMMISSIONER
TROY MCDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this ____ day of _____, 2020.

ATTEST:

MARY R. KINDEL
CITY CLERK

MICHAEL J. MEIER
MAYOR

APPROVED AS TO FORM

AND CORRECTNESS:

MICHAEL J. MORTELL

CITY ATTORNEY

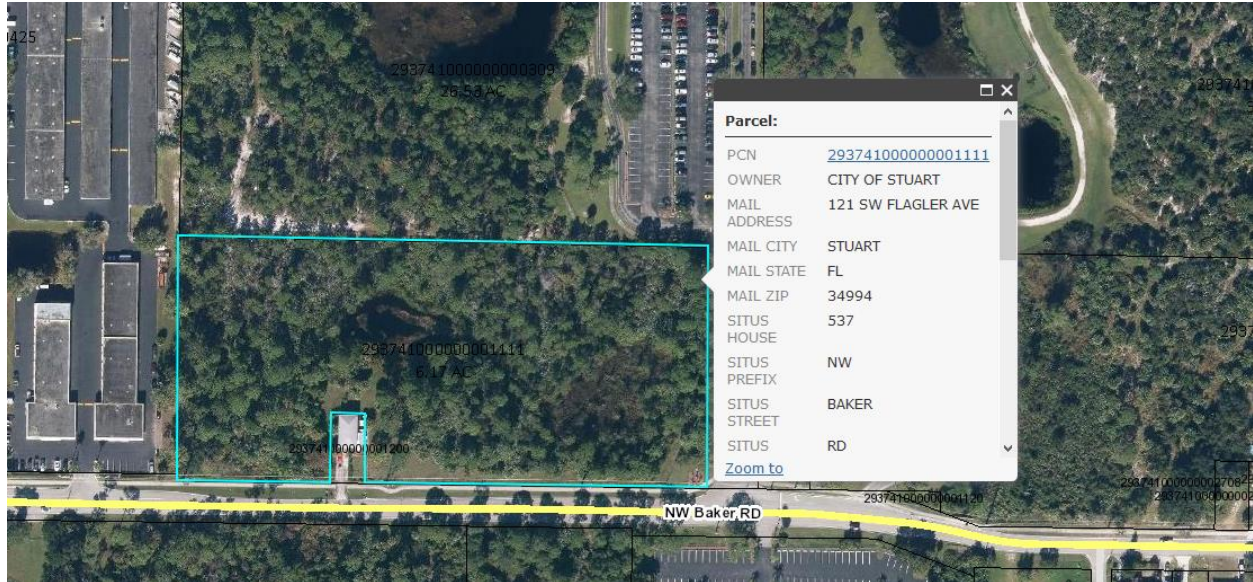
Exhibits

EXHIBIT A1 to Ordinance 2452-2020

PARCEL ID: 29-37-41-000-000-00111-1

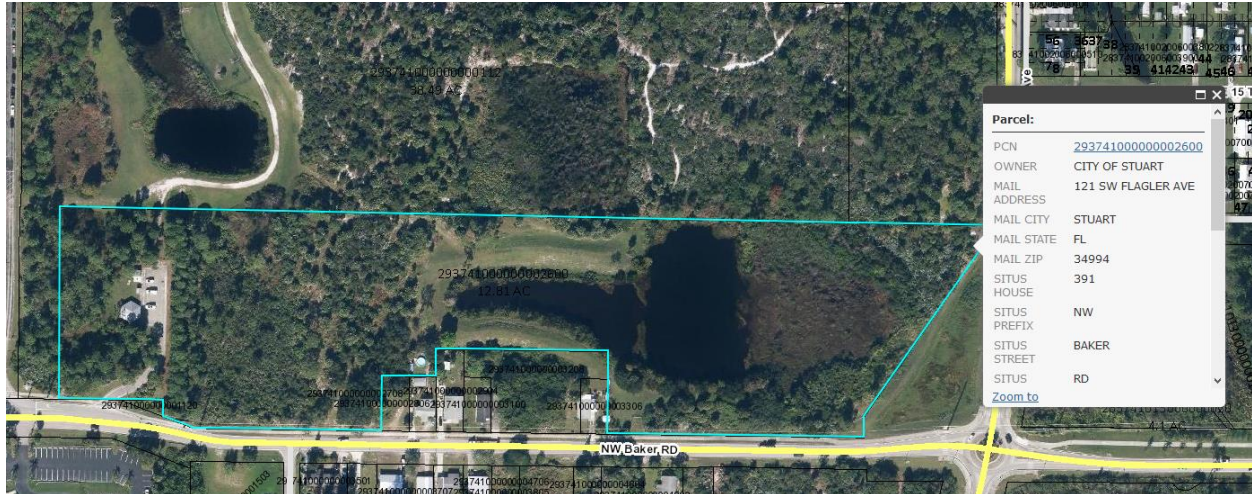
ACRES: 6.12

ADDRESS: 537 NW BAKER RD, STUART

**LEGAL DESCRIPTION**

Commence at the Southeast corner of Section 29, Township 37 South, Range 41 East, Martin County, Florida, thence N 88°49'00" W along the South line of said section, a distance of 272.50', thence N 00°15'00" E along a line parallel to the East line of said section a distance of 874.94' to the South right of way line of Baker Road; thence N 89°04'50" W along said line, a distance of 282.26' to the Point of Beginning; thence N 89°04'50" W a distance of 50'; thence S 00°55'10" W a distance of 100'; thence N 89°04'50" W a distance of 200'; thence N 00°55'00" E a distance of 100'; thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 100' thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 107'; thence S 88°49'00" E a distance of 172.50'; thence S 00°18'41" W a distance of 664.53' to a point on the South line of Section 29; thence S 88°49'00" E along said South section line 335.44'; thence N 00°15'14" E a distance of 668.21'; thence N 88°56'17" W a distance of 57.22'; thence N 00°55'10" E a distance of 205.53' to the South right of way line of Baker Road and the Point of Beginning.

EXHIBIT A2 to Ordinance 2452-2020

PARCEL ID: **29-37-41-000-000-00260-0**ACRES: **13.0**ADDRESS: **391 NW BAKER RD, STUART****LEGAL DESCRIPTION**

Begin 633 feet East of the Northwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, thence run East 678 feet to the West road right-of-way, thence run Southwesterly and South to the North road right-of-way, thence run West along right-of-way 460 feet, thence run North 100 feet, thence run East 35 feet and North 292.87 feet to the Point of Beginning, Section 29, Township 37 South, Range 41 East, Martin County, Florida.

AND

Begin 1,326.1 feet North of the Southeast section corner and 703.15 feet West for the Point of Beginning, thence continue West 300 feet, thence run South 244.59 feet, thence run East 265 feet, thence run South 50 feet, thence run East 35 feet and North 292.89 feet to the Point of Beginning, Section 29, Township 37 South, Range 41 East, Martin County, Florida.

AND

Begin at the Northwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, thence run South 396.48 feet, thence run East along road right-of-way 180.12 feet, thence run North 100 feet, thence run East 100 feet, thence run North 50 feet, thence run East 50 feet, thence run North 244.59 feet and East 333 feet to the Point of Beginning, and the East 171 feet of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, lying North of Baker Road, Section 29, Township 37 South, Range 41 East, Martin County, Florida.

AND

That part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 South, Range 41 East, Martin County, Florida, lying North of the North right-of-way of Baker Road; less triangle along North right-of-way as described in O.R. Book 1076, Page 2499 and less that West 925.89 feet thereof.

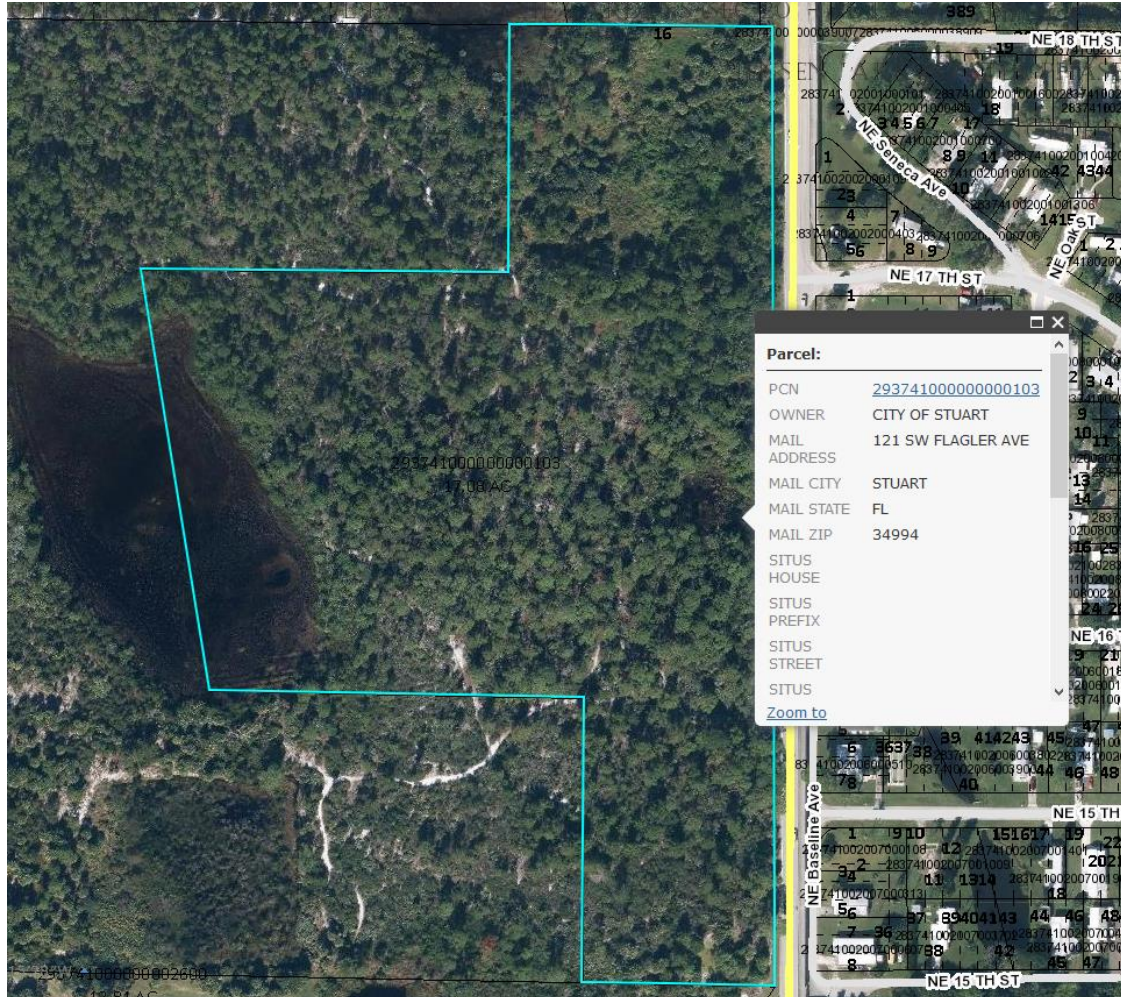
(Containing 13 Acres +/-)

EXHIBIT A3 to Ordinance 2452-2020

PARCEL ID: 29-37-41-000-000-00010-3

ACRES: 16.9

ADDRESS: NW GREEN RIVER PKY, STUART

**LEGAL DESCRIPTION**

Part of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 South, Range 41 East, Martin County, Florida, described as follows:

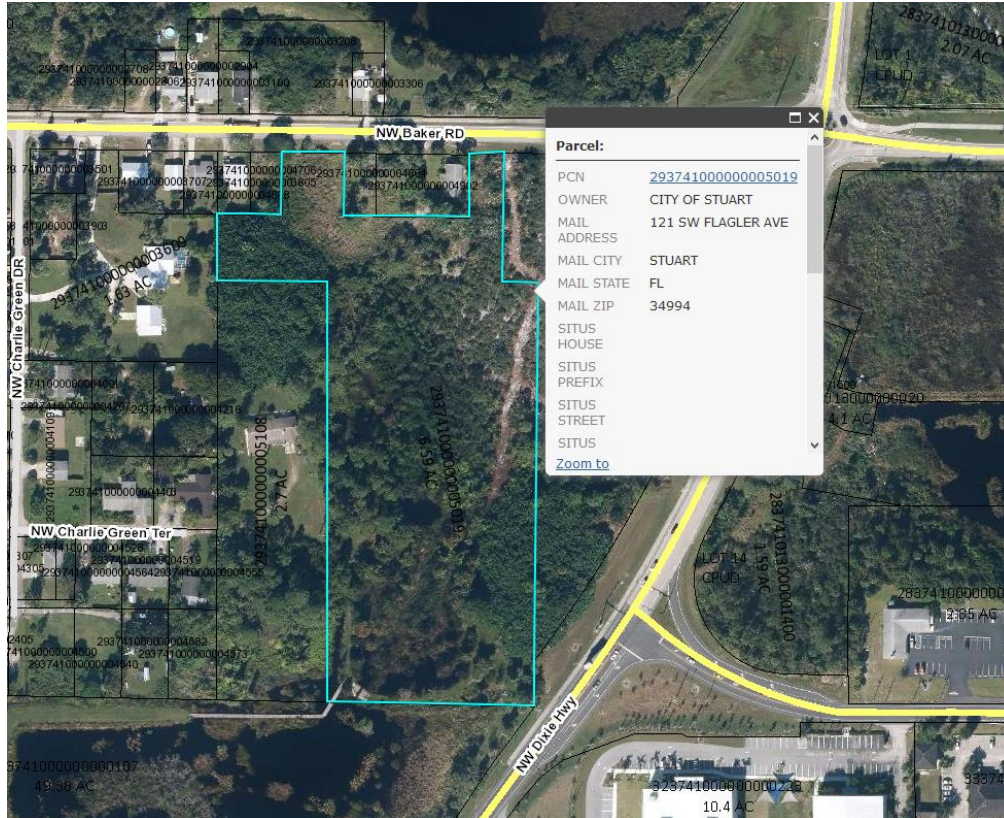
Begin 2,255 feet, more or less, East of the Northwest corner of the Southeast $\frac{1}{4}$; thence run South 350 feet, thence run West 520 feet; thence run South $09^{\circ}43'31''$ East 603.83 feet; thence run East 530 feet; thence run South 400 feet; thence run East to the East line of Section; thence run North to the Northeast corner of the Southeast $\frac{1}{4}$ and West to the Point of Beginning. Less and except the East 30 feet thereof.

EXHIBIT A4 to Ordinance 2452-2020

PARCEL ID: 29-37-41-000-000-00501-9

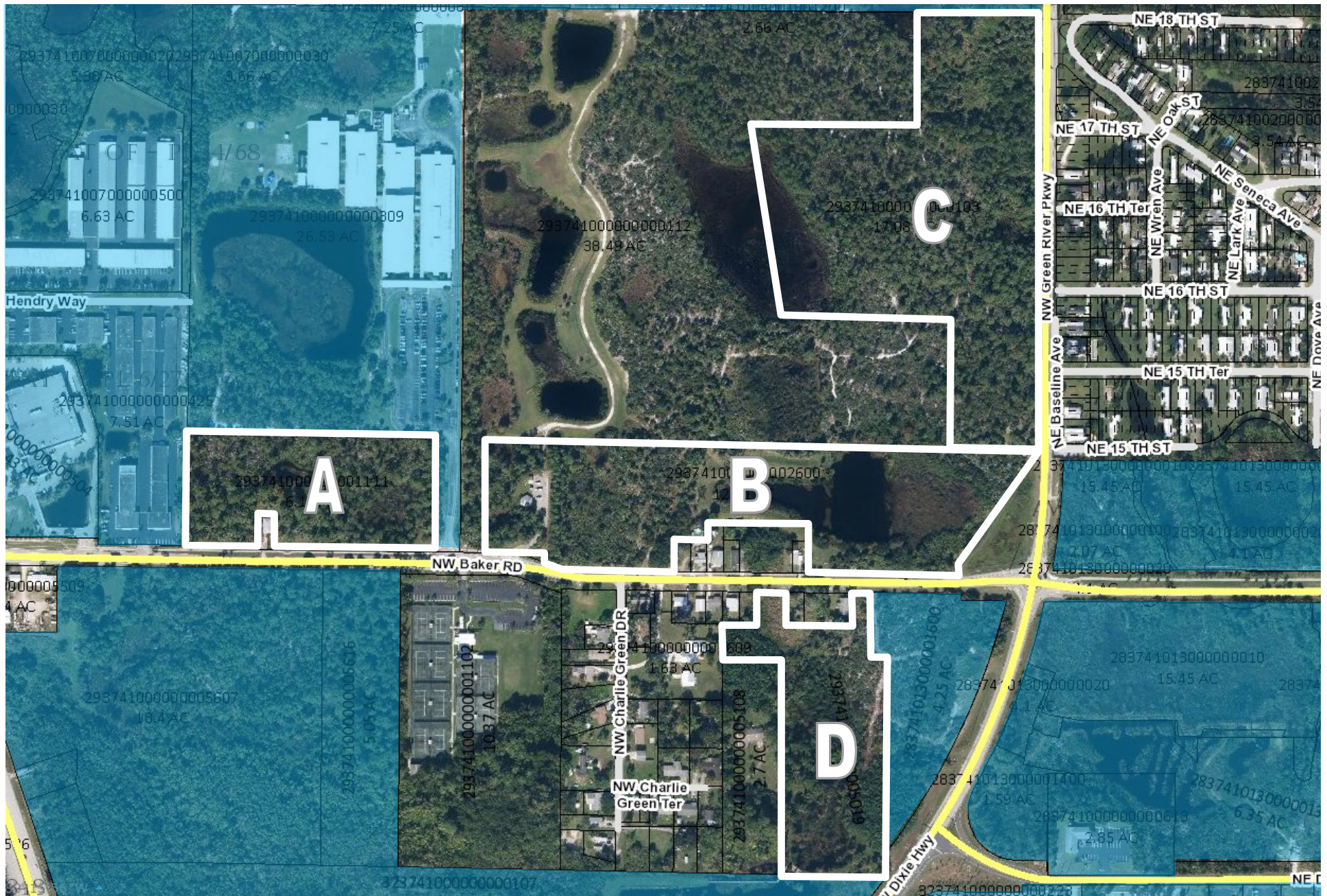
ACRES: 6.44

ADDRESS: UNASSIGNED, SOUTH BAKER ROAD, STUART



LEGAL DESCRIPTION

Commence at the Southeast corner of Section 29, Township 37 South, Range 41 East, Martin County, Florida, thence N 88°49'00" W along the South line of said section, a distance of 272.50', thence N 00°15'00" E along a line parallel to the East line of said section a distance of 874.94' to the South right of way line of Baker Road; thence N 89°04'50" W along said line, a distance of 282.26' to the Point of Beginning; thence N 89°04'50" W a distance of 50'; thence S 00°55'10" W a distance of 100'; thence N 89°04'50" W a distance of 200'; thence N 00°55'00" E a distance of 100'; thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 100' thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 107'; thence S 88°49'00" E a distance of 172.50'; thence S 00°18'41" W a distance of 664.53' to a point on the South line of Section 29; thence S 88°49'00" E along said South section line 335.44'; thence N 00°15'14" E a distance of 668.21'; thence N 88°56'17" W a distance of 57.22'; thence N 00°55'10" E a distance of 205.53' to the South right of way line of Baker Road and the Point of Beginning.



A: PID#: 29-37-41-000-000-00111-1

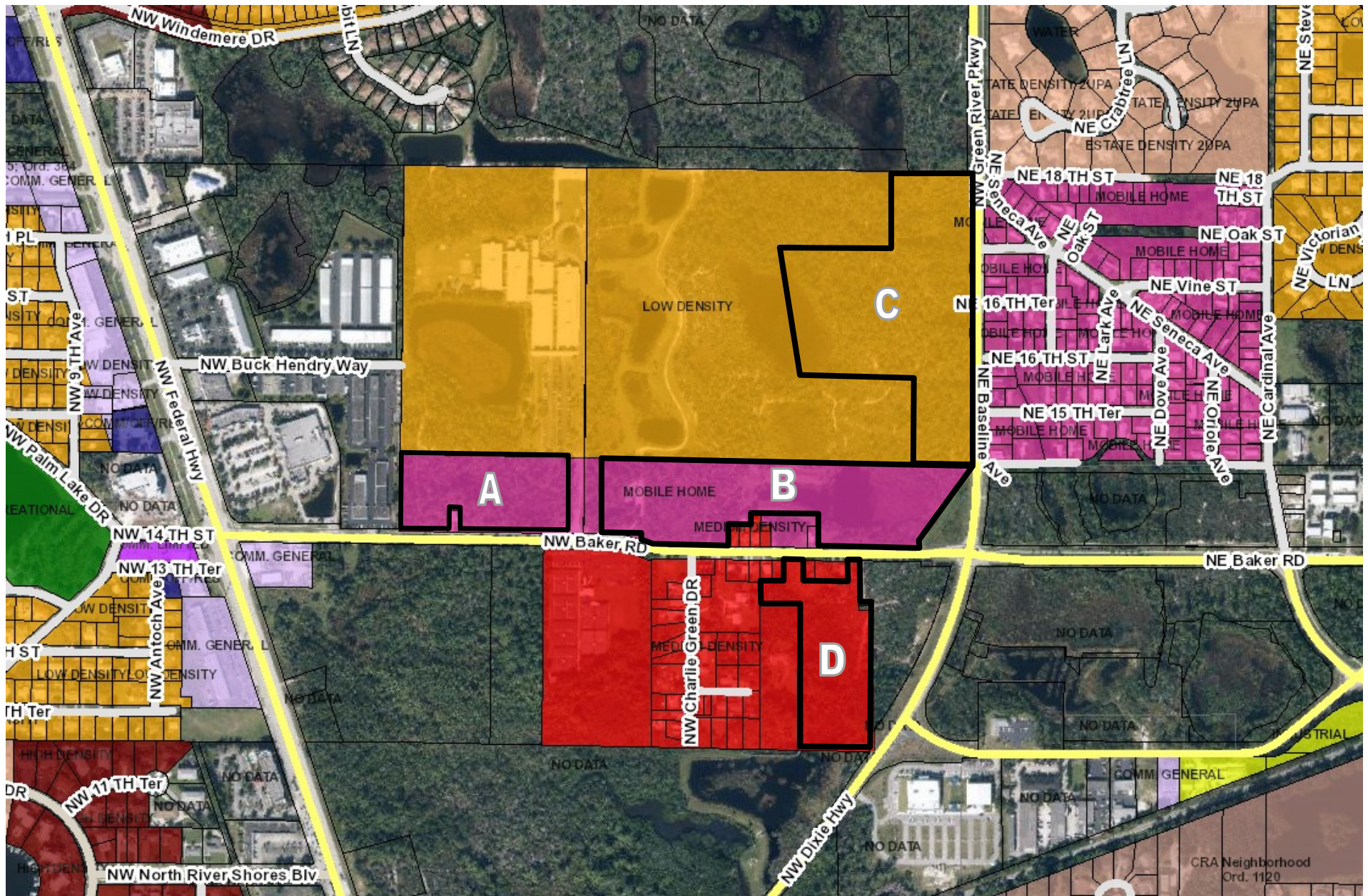
B: PID#: 29-37-41-000-000-00260-0

PROPERTIES SUBJECT OF PROPOSED

C: PID#: 29-37-41-000-000-00010-3

D: PID#: 29-37-41-000-000-00501-9

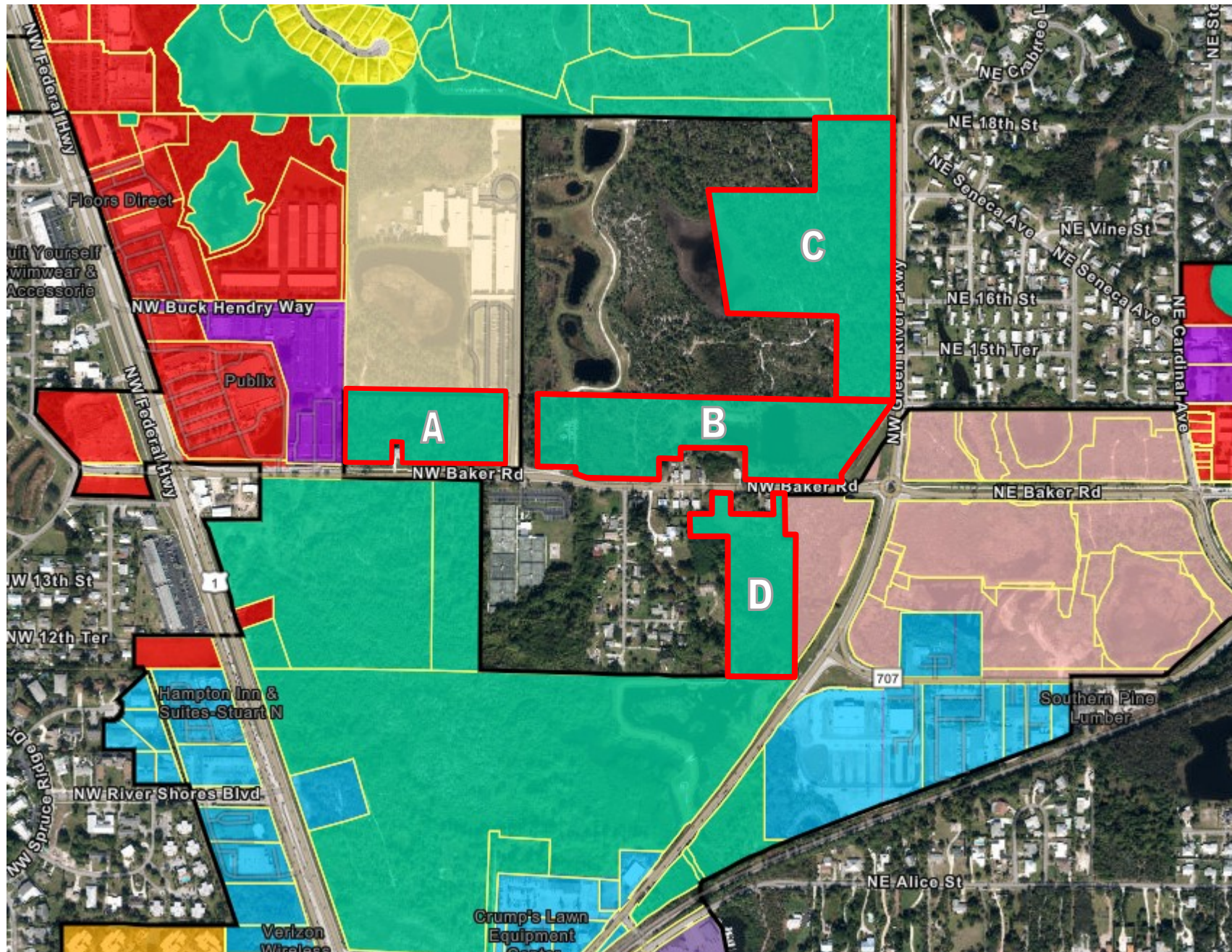
ANNEXATION



PROPERTIES SUBJECT OF PROPOSED
ANNEXATION

FUTURE LAND USE
EXISTING COUNTY

A: MOBILE HOME B: MOBILE HOME
C: LOW DENSITY D: MEDIUM DENSITY

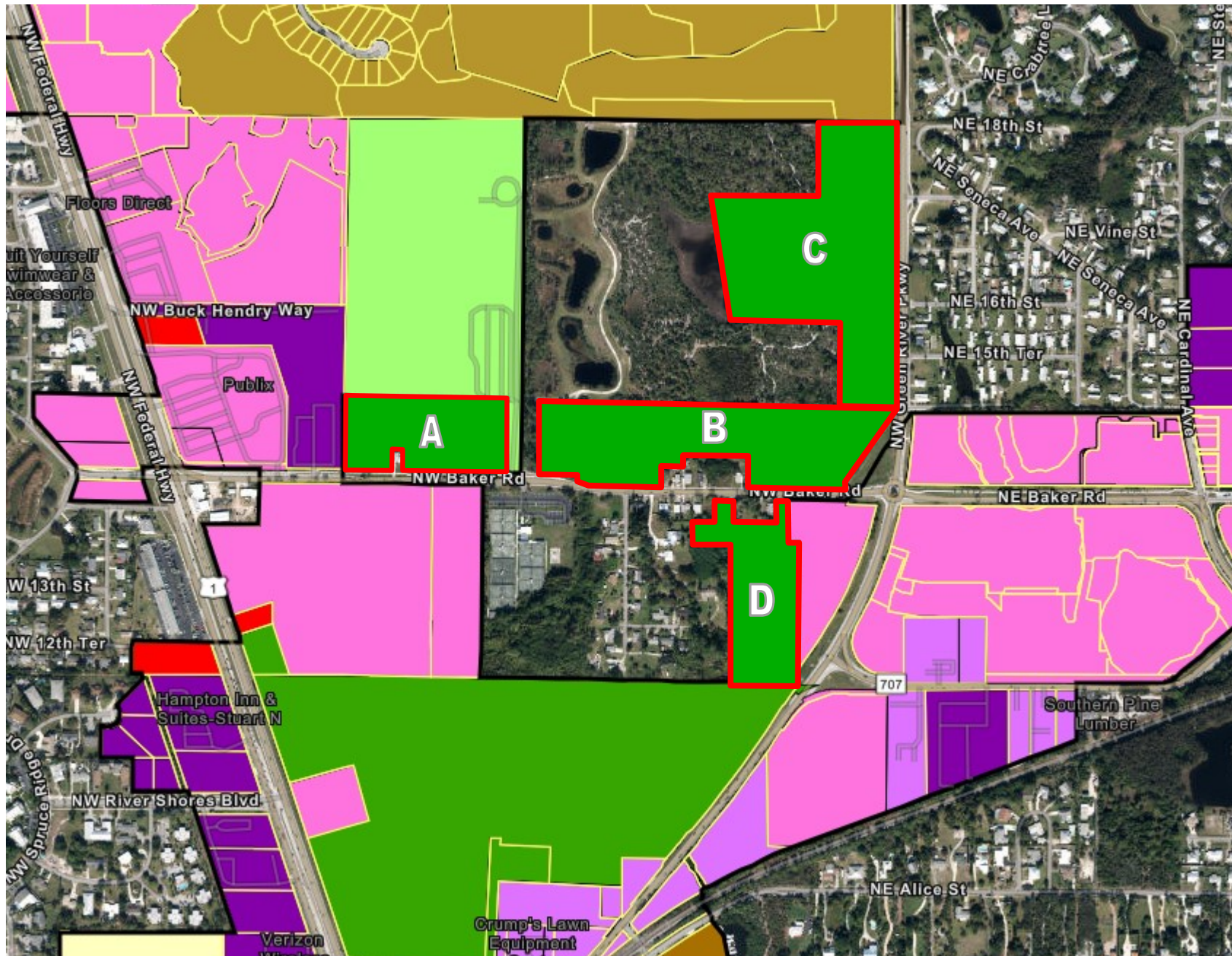


PROPERTIES SUBJECT OF PROPOSED

FUTURE LAND USE

ANNEXATION

PROPOSED CITY: **CONSERVATION**



PROPERTIES SUBJECT OF PROPOSED
ANNEXATION

ZONING
PROPOSED CITY ZONING: **PUBLIC**

Owner	Mail Street Addr	Mail City	Mail State	Mail Zip
16330B55 TRUST	1015 10TH ST	LAKE PARK	FL	33403
ABSHIRE CAROL F	18 MOHAVE RD	CRAWFORDVILLE	FL	32327
AVONLEA COMMERCIAL CORNERS LLC	100 SW ALBANY AVE #200	STUART	FL	34994
AVONLEA PROPERTY OWNERS ASSOCIATION	PO BOX 1610	JENSEN BEACH	FL	34958
BAGNASCO JEFF	38 NE 16TH TERR	STUART	FL	34994
BAKER RD LLC	20734 NW 29TH AVE	BOCA RATON	FL	33434
BASHAWAY MARIA LEONORBASHAWAY PAUL DAVID	61 NE 15TH TERR	STUART	FL	34994
BEACH, NETTIE ANN	PO BOX 141	STUART	FL	34995
BETEL PROPERTIES	2702 SE JANET ST	STUART	FL	34997
BROWN JENNIFER LSATUR DAVID	1822 NE CRABTREE TR	JENSEN BEACH	FL	34957
BUTTONWOOD TENNIS CLUB LLC	400 NW BAKER RD	STUART	FL	34994
CHURCH OF JESUS CHRIST	1628 APACHE AVE	STUART	FL	34994
COGOSSI MATTHEW	1368 NW CHARLIE GREEN DR	STUART	FL	34994
COOPER THOMAS JCOOPER VIRGINIA K	1585 N BASELINE AVE	STUART	FL	34994
DURYEA CHARLES H	1535 NW 9TH AVE	STUART	FL	34994
DYSON MILA L/E	42 NE 15TH TERR	STUART	FL	34994
ESTRADA, VICTORIALeon, COSMEN	55 NE 16TH ST	STUART	FL	34994
FARMER, BOBBY RAY JR	956 NW EGRET CT	STUART	FL	34994
IORE MICHAELIORE MARTIN	1043 FAIRVIEW AVE	LAKE FOREST	IL	60045
FISHER, GLENN W	49 NE 15TH ST	STUART	FL	34994
FORTIN VIRGINIA L	1740 NE SENECA AVE	STUART	FL	34994
FRANK A WACHA JR TRUSTEE	PO BOX 1610	JENSEN BEACH	FL	34958
FREDERICK H RUTZKE FARMS INC	325 SE ST LUCIE BLVD	STUART	FL	34996
FYR SFR BORROWER LLC	3505 KOGER BLVD #400	DULUTH	GA	30096
GARCIA MIGUEL AGARCIA JANET	14645 SW SANDY OAKS LOOP	INDIANTOWN	FL	34956
GARLAND MARJORIE	190 SW KANNER HWY	STUART	FL	34997
GATHRIGHT THOMASGATHRIGHT LINDSEY	1832 NE CRABTREE LN	JENSEN BEACH	FL	34957
GONZALEZ GAUDENCIO	1104 NW 16TH PL	STUART	FL	34994
GREEN MARGARET	1358 NW CHARLIE GREEN DR	STUART	FL	34994
HALL, KENNETH D	93 NE OAK ST	STUART	FL	34994
HENDRY PROPERTIES INC	656 NW BUCK HENDRY WAY	STUART	FL	34994
HOLLINGER JODY	276 NW CHARLIE GREEN TERR	STUART	FL	34994
HOWARD-DAVIS, BOBBIE MOORE, SHELLEY L	225 NW CHARLIE GREEN TER	STUART	FL	34994
HUGHES, WILLIAM NHUGHES, MARTHA A (T/C)	738 HUGHES RD	FRANKLIN	KY	42134
JK & MAG HOMES & ASSOCIATES INC	5354 NW ALAM CIR	PORT ST LUCIE	FL	34986
JOSUE DIANA DIXON	2601 ARNOLD CT	FORT PIERCE	FL	34946
KINDIG CHRISTOPHER WKINDIG MELISSA C	646 NE RIVER TERR	JENSEN BEACH	FL	34957
LEONARD ANNIE ESTATE	1900 S KANNER HWY #5-201	STUART	FL	34994
LEONARD OTIS SRLEONARD OTIS JR	292 NW BAKER RD #A	STUART	FL	34994
MAIZE, JOYCE	236 NW CHARLIE GREEN TER	STUART	FL	34994
MARTIN COUNTY	2401 SE MONTEREY RD	STUART	FL	34996
MCLENDON MONTE PARKER	272 NW BAKER RD	STUART	FL	34994
MIHAYLOV VASILTODOROVA GALINA S	3864 SE FAIRWAY WEST	STUART	FL	34997
MYERS WANDA SILSBY	1535 N BASELINE AVE	STUART	FL	34994
NEADOW CHRISTINA	1148 S ORTONVILLE RD	ORTONVILLE	MI	48462
NORTHWOOD MOBILE HOME PARK LLC	21346 ST ANDREWS BLVD #420	BOCA RATON	FL	33433
NORTHWOOD TWIN LAKES, INC	152 NE 15TH TERR	STUART	FL	34994
PARRISH NEALIE C	222 NW BAKER RD	STUART	FL	34994
PINEAPPLE PLANTATION PROPERTY OWNERS	1111 SE FEDERAL HWY SUITE 100	STUART	FL	34994
PUBLIX SUPER MARKETS INC	PO BOX 32018	LAKELAND	FL	33802
RABENOLD, MARLYN L	6700 WYMAN LN	CINCINNATI	OH	45243
RICKARD RODNEY L/E	82 NE 15TH TERR	STUART	FL	34994
RPMO PROPERTIES II LLC	2854 NE ROSETREE DR	JENSEN BEACH	FL	34957
SANCHEZ FERNANDO RUBIO	4476 SE BECKET AVE	STUART	FL	34997
SCHOOL BOARD OF MARTIN COUNTY	500 E OCEAN BLVD	STUART	FL	34994
SOLID GROUND OF MARTIN COUNTY LLC	2076 NW DIAMOND CREEK WAY	JENSEN BEACH	FL	34957
STRAIN BRIAN	4357 HICKORY HOLLOW RD	GASTONIA	NC	28056
TELM, SANDRA LYNN	37 NE 16TH TER	STUART	FL	34994
THAYER JOAN ELAINE	1 NE 15TH TERR	STUART	FL	34994
TILLMAN, JERRY D III	62 NE 18TH ST	STUART	FL	34994
TLC LLC	1592 NE SOUTH ST	JENSEN BEACH	FL	34957
TREASURE COAST COMMUNITY CHURCH INC	PO BOX 1511	JENSEN BEACH	FL	34958
TYSON CLEVELAND	231 NW BAKER RD	STUART	FL	34994
VILORIA MARIO WVILORIA CARMEN	1720 NE SENECA AVE	STUART	FL	34994
WELLIVER, ALAN RWELLIVER, BRENDA L	27 NE 16TH TERR	STUART	FL	34994
WILLIAMS JAMES ESTATE	1100 NW 128TH ST	MIAMI	FL	33168
WILSON SHACARA D	3654 BURLINGTON AVE N	ST PETERSBURG	FL	33713



Development Department
121 SW Flagler Ave. Stuart FL 34994
Phone: 772.600.5375

VIA MAIL AND EMAIL

September 17th, 2020
Taryn Kryzda
County Administrator
Martin County Administrative Center
2401 SE Monterey Road
Stuart, FL 34996

RE: City of Stuart property annexations.

Dear Taryn,

In accordance with the City of Stuart Comprehensive Plan Intergovernmental Coordination Element Policy A8.13, please find enclosed a proposal for the City to annex four properties located in the area adjacent to NW Baker Road and NW Green River Parkway, Stuart. The properties are all in ownership of the City of Stuart and subject to a Florida Communities Trust grant award agreement. Details of each property are also attached.

As part of the application the City proposes to assign a Future Land Use of Conservation and a Zoning of Public to each parcel.

The proposal is scheduled for the October 8th, 2020 Local Planning Agency meeting and hearings at the October 26th, 2020 and November 9th, 2020 City Commission meetings. If possible, please review and submit comments by Friday, October 2nd, 2020.

If you have any questions or would like to schedule a meeting to discuss the proposal, please feel free to contact me at 772 288 5328.

Sincerely,

Kev Freeman
Development Director

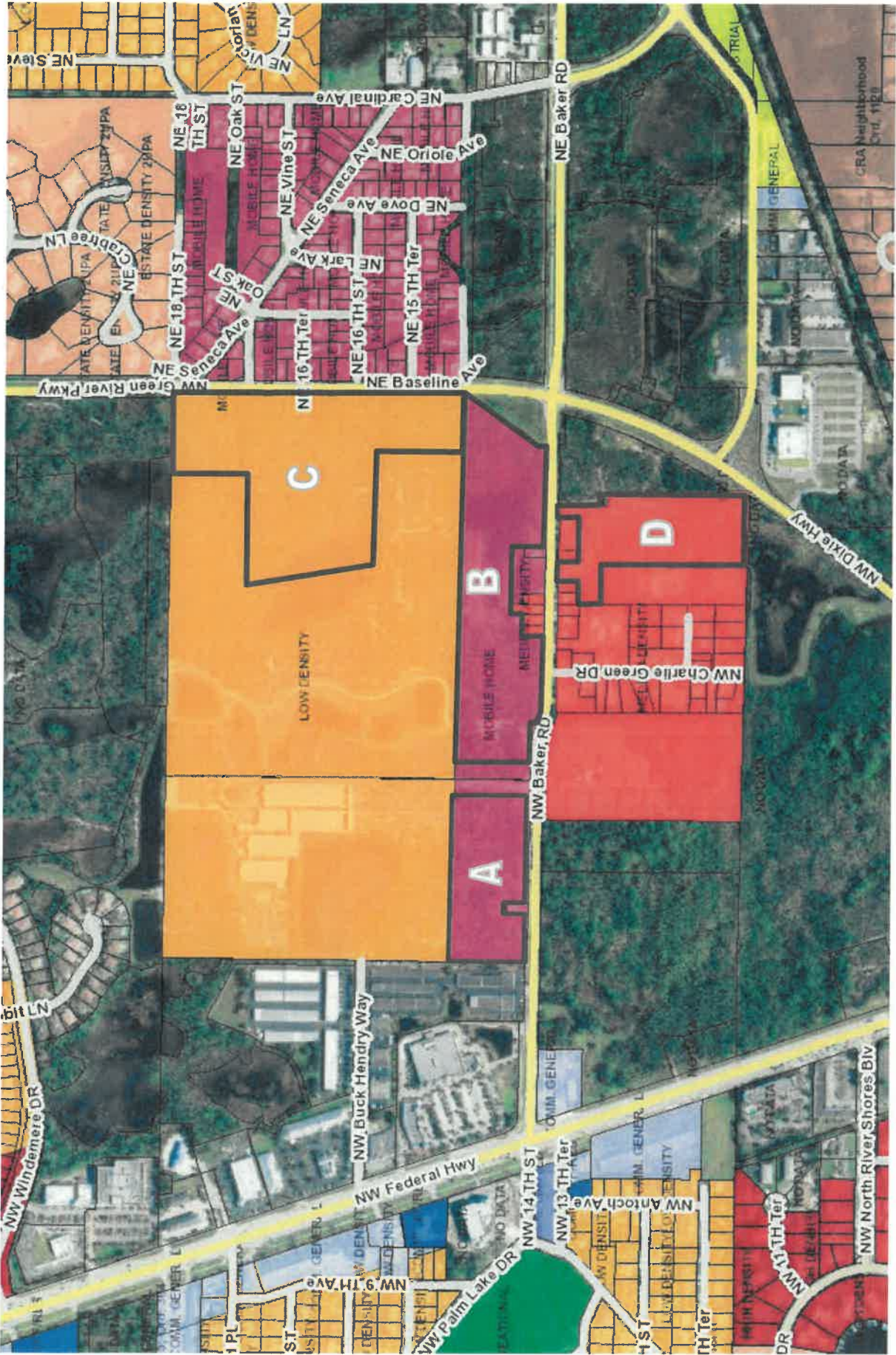
CC: Paul Shilling, Growth Management Director
Sarah Woods, County Attorney

B: PID#: 29-37-41-000-000-00260-0

PROPERTIES SUBJECT OF PROPOSED

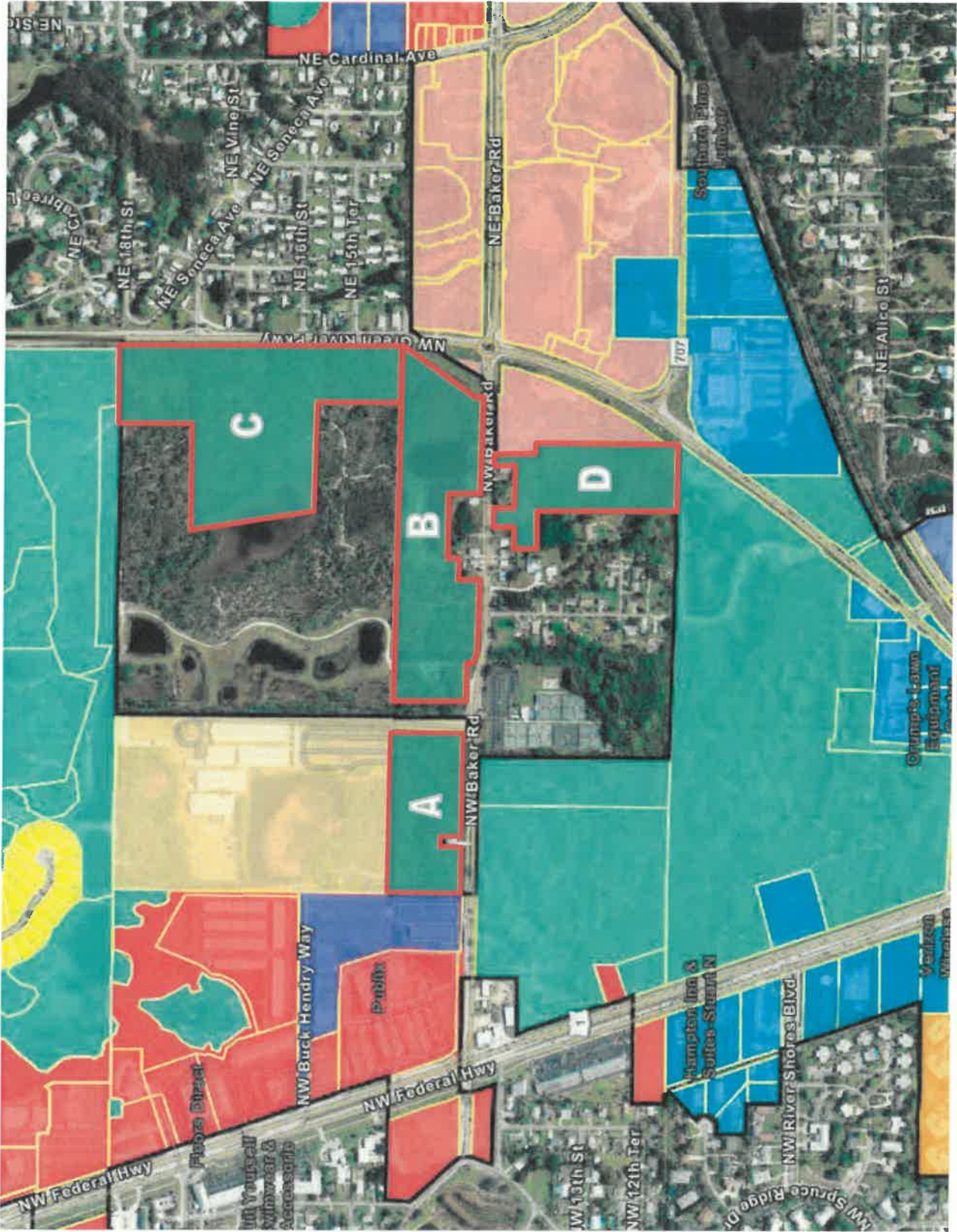
D: PID#: 29-37-41-000-000-00501-9

ANNEXATION



PROPERTIES SUBJECT OF PROPOSED ANNEXATION

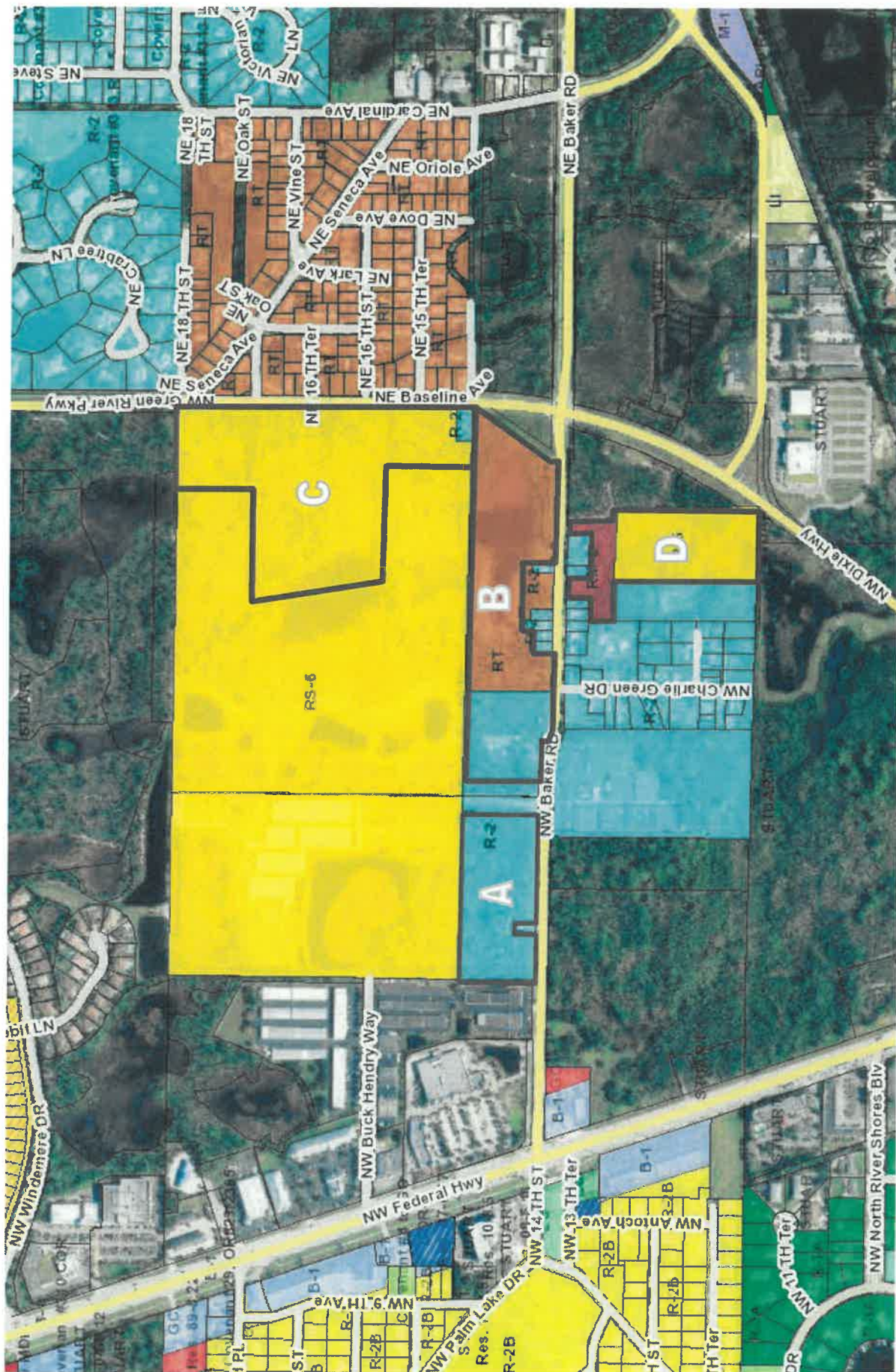
	FUTURE LAND USE	A: MOBILE HOME	B: MOBILE HOME
	EXISTING COUNTY	C: LOW DENSITY	D: MEDIUM DENSITY



PROPERTIES SUBJECT OF PROPOSED ANNEXATION

FUTURE LAND USE

PROPOSED CITY: CONSERVATION



PROPERTIES SUBJECT OF PROPOSED

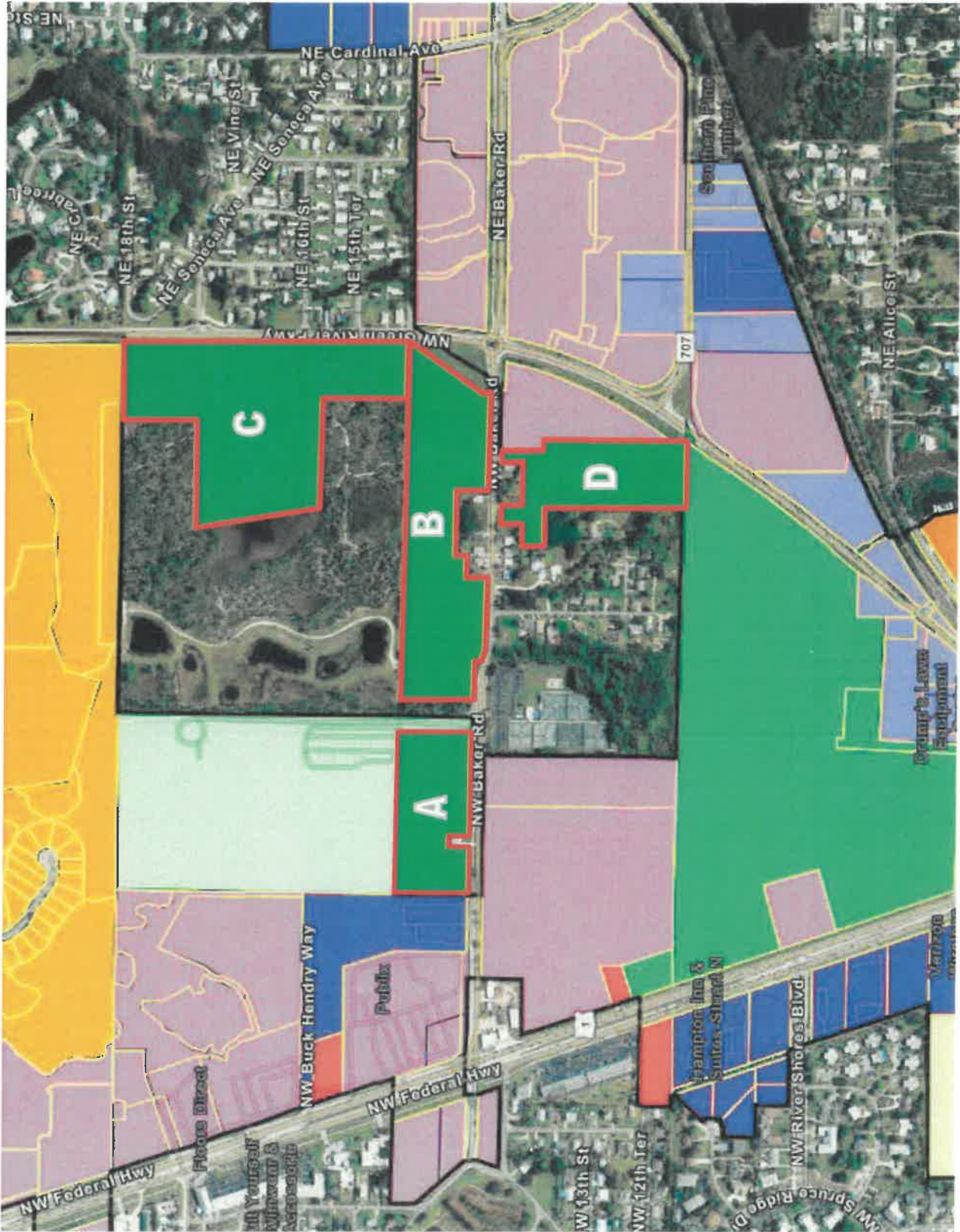
ANNEXATION

ZONING

EXISTING COUNTY

A: R-2 B: R-2, RT

C: RS-6, R-2 D: RM-8, R-5



PROPERTIES SUBJECT OF PROPOSED ANNEXATION

ZONING

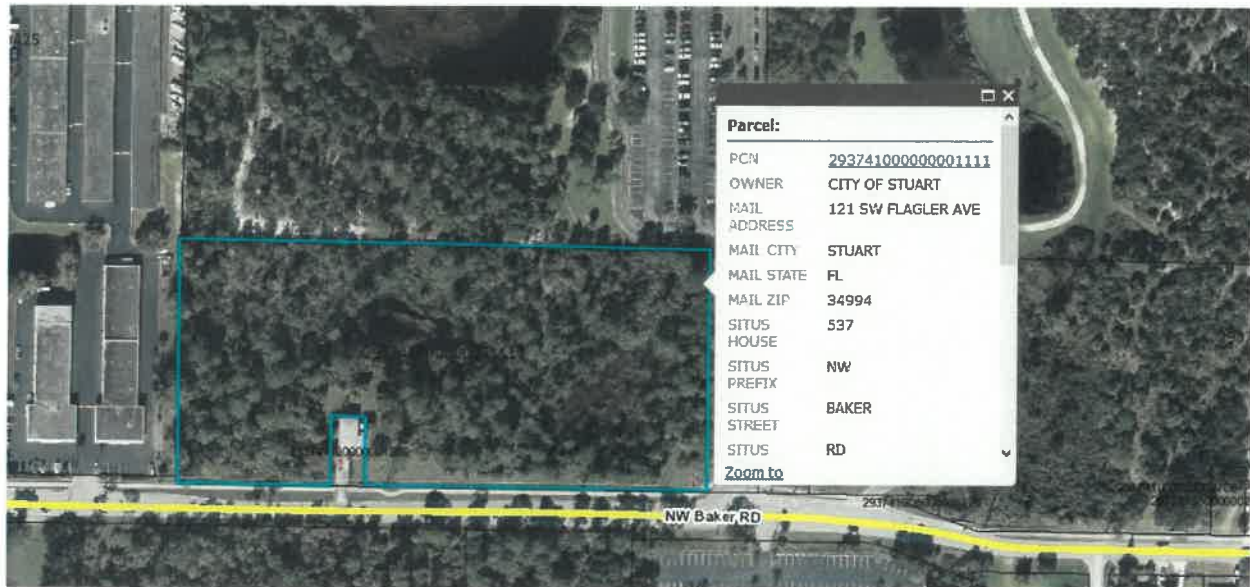
PROPOSED CITY ZONING: PUBLIC



PARCEL ID: 29-37-41-000-000-00111-1

ACRES: 6.12

ADDRESS: 537 NW BAKER RD, STUART



LEGAL DESCRIPTION

Commence at the Southeast corner of Section 29, Township 37 South, Range 41 East, Martin County, Florida, thence N 88°49'00" W along the South line of said section, a distance of 272.50', thence N 00°15'00" E along a line parallel to the East line of said section a distance of 874.94' to the South right of way line of Baker Road; thence N 89°04'50" W along said line, a distance of 282.26' to the Point of Beginning; thence N 89°04'50" W a distance of 50'; thence S 00°55'10" W a distance of 100'; thence N 89°04'50" W a distance of 200'; thence N 00°55'00" E a distance of 100'; thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 100' thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 107'; thence S 88°49'00" E a distance of 172.50'; thence S 00°18'41" W a distance of 664.53' to a point on the South line of Section 29; thence S 88°49'00" E along said South section line 335.44'; thence N 00°15'14" E a distance of 668.21'; thence N 88°56'17" W a distance of 57.22'; thence N 00°55'10" E a distance of 205.53' to the South right of way line of Baker Road and the Point of Beginning.

PARCEL ID: 29-37-41-000-000-00260-0

ACRES: 13.0

ADDRESS: 391 NW BAKER RD, STUART

**LEGAL DESCRIPTION**

Begin 633 feet East of the Northwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, thence run East 678 feet to the West road right-of-way, thence run Southwesterly and South to the North road right-of-way, thence run West along right-of-way 460 feet, thence run North 100 feet, thence run East 35 feet and North 292.87 feet to the Point of Beginning, Section 29, Township 37 South, Range 41 East, Martin County, Florida.

AND

Begin 1,326.1 feet North of the Southeast section corner and 703.15 feet West for the Point of Beginning, thence continue West 300 feet, thence run South 244.59 feet, thence run East 265 feet, thence run South 50 feet, thence run East 35 feet and North 292.89 feet to the Point of Beginning, Section 29, Township 37 South, Range 41 East, Martin County, Florida.

AND

Begin at the Northwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, thence run South 396.48 feet, thence run East along road right-of-way 180.12 feet, thence run North 100 feet, thence run East 100 feet, thence run North 50 feet, thence run East 50 feet, thence run North 244.59 feet and East 333 feet to the Point of Beginning, and the East 171 feet of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, lying North of Baker Road, Section 29, Township 37 South, Range 41 East, Martin County, Florida.

AND

That part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 South, Range 41 East, Martin County, Florida, lying North of the North right-of-way of Baker Road; less triangle along North right-of-way as described in O.R. Book 1076, Page 2499 and less that West 925.89 feet thereof.

(Containing 13 Acres +/-)



PARCEL ID: 29-37-41-000-000-00010-3

ACRES: 16.9

ADDRESS: NW GREEN RIVER PKY, STUART

**LEGAL DESCRIPTION**

Part of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 South, Range 41 East, Martin County, Florida, described as follows:

Begin 2,255 feet, more or less, East of the Northwest corner of the Southeast $\frac{1}{4}$; thence run South 350 feet, thence run West 520 feet; thence run South $09^{\circ}43'31''$ East 603.83 feet; thence run East 530 feet; thence run South 400 feet; thence run East to the East line of Section; thence run North to the Northeast corner of the Southeast $\frac{1}{4}$ and West to the Point of Beginning. Less and except the East 30 feet thereof.



PARCEL ID: 29-37-41-000-000-00501-9

ACRES: 6.44

ADDRESS: UNASSIGNED, SOUTH BAKER ROAD, STUART

**LEGAL DESCRIPTION**

Commence at the Southeast corner of Section 29, Township 37 South, Range 41 East, Martin County, Florida, thence N 88°49'00" W along the South line of said section, a distance of 272.50', thence N 00°15'00" E along a line parallel to the East line of said section a distance of 874.94' to the South right of way line of Baker Road; thence N 89°04'50" W along said line, a distance of 282.26' to the Point of Beginning; thence N 89°04'50" W a distance of 50'; thence S 00°55'10" W a distance of 100'; thence N 89°04'50" W a distance of 200'; thence N 00°55'00" E a distance of 100'; thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 100' thence N 89°04'50" W a distance of 100'; thence S 00°55'10" W a distance of 107'; thence S 88°49'00" E a distance of 172.50'; thence S 00°18'41" W a distance of 664.53' to a point on the South line of Section 29; thence S 88°49'00" E along said South section line 335.44'; thence N 00°15'14" E a distance of 668.21'; thence N 88°56'17" W a distance of 57.22'; thence N 00°55'10" E a distance of 205.53' to the South right of way line of Baker Road and the Point of Beginning.



BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 181-98

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE A "CONCEPTUAL APPROVAL AGREEMENT" BETWEEN THE CITY AND THE FLORIDA COMMUNITIES TRUST OF THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS RELATING TO THE "HANEY CREEK WATERSHED PRESERVATION AND GREENWAYS PROJECT" GRANT; FURTHER DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE A "CONFIDENTIALITY AGREEMENT" RELATING TO THIS PROJECT GRANT; APPROVING AN ACQUISITION PLAN FOR THE PROJECT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The Mayor and City Clerk are hereby authorized and directed to execute on behalf on the City a "Conceptual Approval Agreement" between the City and the Florida Communities Trust of the Florida Department of Community Affairs relating to the "Haney Creek Watershed Preservation and Greenways Project." A copy of the agreement is attached as "Attachment A."

SECTION 2: The Mayor and City Clerk are hereby authorized and directed to execute on behalf on the City a "Confidentiality Agreement" relative to this Project. A copy of the agreement is an attachment to the agreement.

SECTION 3: An "Acquisition Plan" is hereby approved for this Project. A copy of the plan is attached as "Attachment B."

SECTION 4: This resolution shall take effect upon adoption.

ADOPTED this 23rd day of November, 1998.

ATTEST:


DIANNE M. O'DONNELL
CITY CLERK


JEFFREY A. KRAUSKOPF
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:


CARL V.M. COFFIN
CITY ATTORNEY

ORIGINAL

FCT Contract #99-CT-8D-98-8A-H1-045

FLORIDA COMMUNITIES TRUST

P8A AWARD #98-045-P8A

HANEY CREEK WATERSHED PRESERVATION AND GREENWAYS

CONCEPTUAL APPROVAL AGREEMENT

THIS AGREEMENT is entered into on JANUARY 5, 1999, the date the last party executes this Agreement, by and between the FLORIDA COMMUNITIES TRUST (FCT), a nonregulatory agency within the State of Florida Department of Community Affairs, and CITY OF STUART (FCT Recipient), a local government of the State of Florida. The intent of this Agreement is to impose terms and conditions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds (Project Site), that are necessary to ensure compliance with applicable Florida Law and federal income tax law and to otherwise implement provisions of Sections 259.101, 375.045, and Chapter 380, Part III, Florida Statutes (F.S.).

* * * * *

WHEREAS, Chapter 380, Part III, F.S., the Florida Communities Trust Act, creates a nonregulatory agency within the Department of Community Affairs (Department) that will assist local governments in bringing local comprehensive plans into compliance and implementing the goals, objectives, and policies of the conservation, recreation and open space, and coastal management elements of local comprehensive plans, or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 259.101(3)(c) of the Florida Preservation 2000 Act provides for the distribution of ten percent (10%) less certain reductions of the net Preservation 2000 Revenue Bond proceeds to the Department of Community Affairs to provide land acquisition grants and loans to local governments through the FCT;

WHEREAS, the Governor and Cabinet have annually authorized the sale and issuance of State of Florida Department of Environmental Protection Preservation 2000 Revenue Bonds (Bonds); and Bonds have been annually sold, thereby producing revenues for distribution according to Section 259.101(3)(c), F.S.;

WHEREAS, the Bonds are issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of Bondholders for federal income tax purposes;

WHEREAS, Rule Chapter 9K-4, Florida Administrative Code (F.A.C.), describes the

procedures for evaluation and selection of lands proposed for acquisition using funds allocated to the FCT through the Department of Community Affairs from the Preservation 2000 Trust Fund;

WHEREAS, the FCT Governing Body met on August 27-28, 1998, to score, rank and select projects that were to receive Conceptual Approval for funding;

WHEREAS, the FCT Recipient's project, described in an application submitted for evaluation, was selected for funding and in accordance with Rule Chapter 9K-4, F.A.C., and more particularly described within this Agreement;

WHEREAS, Rule 9K-4.010(2)(f), F.A.C., authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding; and

WHEREAS, the purpose of this Agreement is to set forth the conditions of Conceptual Approval that must be satisfied by FCT Recipient prior to the disbursement of any FCT Preservation 2000 funds awarded, as well as the restrictions that are imposed on the Project Site subsequent to its acquisition with the FCT Preservation 2000 Series Bond Proceeds.

NOW THEREFORE, FCT and FCT Recipient mutually agree as follows:

I. GENERAL CONDITIONS

1. At least two original copies of this Agreement shall be executed by FCT Recipient and returned to the FCT office at 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100 as soon as possible and before **December 15, 1998**. Upon receipt of the signed Agreements by FCT, FCT will execute the Agreements, retain one original copy and return all other copies that have been executed to FCT Recipient. If the FCT Recipient requires more than one original document, the FCT Recipient should photocopy the number of additional copies needed, and then execute each as an original document.

2. The name *Conceptual Approval Agreement* is used to indicate that the project has been approved as a concept that was described in FCT Application #98-045-P8A. Since the entire Project Site has not yet been negotiated for acquisition, some elements of the project are not yet known, such as the purchase price, other project costs, and the terms upon which an owner will voluntarily convey the property. The Conceptual Approval Agreement is in every respect a grant contract between the parties. The Agreement describes activities that will be conducted both prior and subsequent to acquisition of the Project Site, described in the application that was submitted and selected for funding by the FCT.

3. Conceptual Approval for funding shall be until **July 27, 1999**. In the event the project has not been completed in full by **July 27, 1999**, the Conceptual Approval Agreement must be extended in order that the grant will remain in effect. In advance of the **July 27, 1999**, date and in sufficient time before a meeting of the FCT governing board that would allow

approval of an extension to this Agreement before its expiration, the FCT Recipient must request a written extension to the Conceptual Approval Agreement for project continuation in compliance with Rule 9K-4.010(2)(j), F.A.C. If the FCT Recipient does not request an extension, or if an extension is not granted to the FCT Recipient by the FCT Governing Body, the Preservation 2000 award granted to the FCT Recipient by the Governing Body shall terminate and all obligations hereunder shall cease.

Based upon the Florida Legislature's ongoing oversight of the rate of expenditure of funds, and the impact on future funding if expenditures do not timely occur, the FCT requires that the project be completed as soon as possible after project selection.

4. Extensions to this Agreement, described in Paragraph 3 above, shall not exceed 24 months from the date the Agreement was approved by the FCT, except as described in this paragraph. In compliance with Section 380.510(f), F.S., if the project is not concluded by October 27, 2000, the project shall only be extended if the FCT Governing Body determines that a request for additional time to complete the project is warranted based upon FCT Recipient's demonstration that significant progress is being made toward closing the project or that extenuating circumstances warrant an extension of time.

5. This Agreement may be terminated before its expiration at the written request of the FCT Recipient. Such a request shall fully describe the circumstances that compel the FCT Recipient to terminate the project. A request for termination should be mailed to the offices of the FCT at the address given in paragraph 1 above. The request for termination will be placed on the agenda of the next regularly scheduled meeting of the FCT Governing Body for concurrence by the FCT. The termination shall be acknowledged by the FCT in a letter to the FCT Recipient.

Circumstances may arise that, in the analysis of the FCT, warrant termination of the project before its completion. In such an event, the FCT will advise the FCT Recipient of its analysis and will confer with the FCT Recipient on continuation of the project. If the FCT Recipient concurs, a request for termination will be considered at the next regularly scheduled meeting of the FCT Governing Body.

6. FCT Recipient agrees to make diligent efforts to submit the documentation to FCT that is required in this Agreement as soon as is reasonably possible so that the Project Site may be acquired in an expeditious manner. Deadlines stated in this Agreement, as well as deadlines associated with any FCT activity relating to the project, are strictly enforced. Failure to adhere to deadlines, whether stated in this Agreement or associated with meetings of the FCT Governing Body, may result in delays in the project, may result in allocation of time or resources to other recipients that responded timely, and may result in this Agreement being voidable. It is the responsibility of the FCT Recipient to know all project deadlines, to devise a method of monitoring the project, and to adhere to all deadlines.

7. The FCT Preservation 2000 award granted to the FCT Recipient will in no event

exceed the lesser of Ninety-Five Percent (95.00%) of the final Total Project Costs, as defined in Rule 9K-4.002(30), F.A.C., or Four Million Four Hundred Twenty-Four Thousand Six Hundred Twenty-Five Dollars And No Cents (\$4,424,625.00), unless the FCT Governing Body approves a different amount, which shall be reflected in an addendum to this Agreement.

8. The grant amount stated in paragraph 7 above is based on the FCT Recipient's estimate of Total Project Costs in application #98-045-P8A, as well as limits on awards in the Notice of Application Period announcing the application cycle. When disbursing funds for the project, the FCT will recognize the actual Total Project Costs, defined in Rule 9K-4.002(30), F.A.C., for acquisition of the Project Site. The Total Project Costs will be reflected on a grant reconciliation statement prepared pursuant to paragraph 10 below. The FCT will participate in the land cost at either the actual purchase price, or the Maximum Approved Purchase Price based on appraisal reports that comply with requirements set forth in Rule 9K-6.007, F.A.C., whichever is less, and multiplied by the percent stated in paragraph 7 above.

9. The FCT Governing Body has given Conceptual Approval for funding to acquire the entire Project Site identified in the FCT Recipient's application #98-045-P8A. The FCT Governing Body reserves the right to withdraw the FCT award if the acreage that comprises the Project Site is reduced so that the objectives of the acquisition cannot be achieved. Request for modification of the boundary of the Project Site identified in the FCT Recipient's application #98-045-P8A may be considered by the FCT Governing Body following the procedures for submission and review of boundary modification requests set forth in Rule 9K-4.0105, F.A.C.

If the Project Site is comprised of multiple parcels, an Acquisition Plan was required in the application. The FCT Governing Body reserves the right to withdraw the FCT award if the priority parcel(s), identified in the Acquisition Plan prepared pursuant to Rule 9K-4.004(5)(g), F.A.C., included in application #98-045-P8A, incorporated by reference herein and attached as Exhibit "A," cannot be acquired. Approval of the Conceptual Approval Agreement shall constitute approval of the Acquisition Plan by FCT.

10. The FCT funds shall be delivered either in the form of eligible Project Costs prepaid by FCT to vendors or in the form of a State of Florida warrant at the closing of the Project Site, payable to the Seller or the Seller's designated agent authorized by law to receive such payment, provided the Comptroller determines that such disbursement is consistent with good business practices and can be completed in a manner minimizing costs and risks to the State of Florida. If the Project Site is comprised of multiple parcels, FCT shall deliver at the closing of each parcel only the share of the FCT award that corresponds to the parcel being closed. FCT will prepare a grant reconciliation statement prior to the closing of the Project Site parcel that will evidence the amount of local match, if any is required, provided by the FCT Recipient and the portion of the FCT award that corresponds to the parcel being closed. Cash expended by the FCT for eligible Project Costs incurred by the FCT will be recognized as part of the FCT grant award amount on the grant reconciliation statement.

11. The FCT Recipient's local match, if any is required, shall be delivered either in the form of eligible Project Costs prepaid to vendors by the FCT Recipient; cash; eligible documented donation by Seller of land value; or FCT Recipient's warrant at the closing of the Project Site. If the Project Site is comprised of multiple parcels, the FCT Recipient shall deliver at the closing of each parcel the share of the local match, if any is required, that corresponds to the parcel being closed. The cash expended by the FCT Recipient for eligible Project Costs incurred by the FCT Recipient conducting acquisition activities will be recognized as part of the local match, if any is required, on the reconciliation statement prepared pursuant to paragraph 10 above. In the event FCT Recipient's application #98-045-P8A represents that land value is the source of local match, if any is required, the value attributed to the land local match, if any is required, shall be determined after an appraisal report that complies with the procedures and requirements set forth in Rule 9K-6.007, F.A.C. Such appraisal report shall be subject to review and approval by FCT prior to FCT funds being delivered for the project.

12. The FCT Governing Body adopted the Preservation 2000 Program Approved List of Complete Applications for Series P8A Funding Cycle on May 18, 1998, at which time the Project Site became part of a list of lands that were approved for consideration for land acquisition. If action initiated by the FCT Recipient that is the local government having jurisdiction over the Project Site, subsequent to May 18, 1998, results in a governmentally-derived higher value due to an enhanced highest and best use, the FCT acquisition activities will be terminated unless the seller agrees that the appraisal will be done at the highest and best use of the Project Site on or before May 18, 1998.

13. FCT Recipient hereby notifies the FCT that the following local government employee or official is the authorized key contact, or project manager, on behalf of the FCT Recipient for purposes of coordinating project activities for the duration of the project:

Name: David Collier
 Title: City Manager
 Address: 121 S.W. Flagler Ave. Stuart, FL. 34994
 Phone: (561) 288-5312 Fax: (561) 288-5316

The FCT Recipient must notify the FCT as to any change in the authorization of the key contact on behalf of the FCT Recipient named above. This notification must be made in writing to the Executive Director and signed by the appropriate local government employee, official or authorized representative named in paragraph II.6.d. below.

14. This Agreement may be amended at any time prior to FCT giving Project Plan approval to the FCT Recipient. Any amendment must be set forth in a written instrument and agreed to by both the FCT Recipient and FCT. Such amendments shall become a part of this Agreement.

II. REQUIREMENTS THAT MUST BE MET PRIOR TO INITIATION OF PROJECT SITE NEGOTIATION

1. The FCT Recipient hereby notifies the FCT that City of Stuart
[note: elect either FCT, FCT Recipient or FCT Recipient Agent] will be the party responsible for all negotiation and acquisition activities.

2. The FCT Recipient hereby notifies the FCT that the FCT Recipient(s)' Federal Employer Identification Number(s) is 59-6000 433.

3. No later than **December 15, 1998**, the FCT Recipient must deliver to FCT a written statement from the Project Site property owner(s) evidencing that the owner(s) is willing to entertain an offer from the FCT Recipient and FCT.

4. No later than **December 15, 1998**, the FCT Recipient shall execute a Confidentiality Agreement pursuant to Rule 9K-6.010(5), F.A.C. A sample of a Confidentiality Agreement is attached as Exhibit "B"; an Agreement specific to this project will be prepared by FCT for execution by the FCT Recipient. This Confidentiality Agreement is not a part of this Agreement and may be amended without amending this Agreement, if needed.

5. By execution of this Agreement, the FCT Recipient affirms that:

- a. the FCT Recipient is ready, willing and able to provide the local match, if any, is required;
- b. the FCT Recipient reaffirms the representations made in FCT Application #98-045-P8A;
- c. the FCT Recipient shall, on the anniversary date of the approval of the Project Plan by the FCT Governing Body, prepare and submit to FCT an annual report as required by Rule 9K-4.013, F.A.C.;
- d. the FCT Recipient authorizes the local government employee, official or authorized representative named in this paragraph to execute all documents in connection with this project on behalf of the FCT Recipient, including but not limited to the Conceptual Approval Agreement or any addenda thereto, purchase agreement for the property, grant reconciliation statement, closing documents, statements submitted as a part of the Project Plan, and Grant Award Agreement pursuant to Rule 9K-6.014(6), F.A.C.:

Name: David Collier

Title: City Manager

Address: 121 S.W. Flagler Ave. Stuart, Fl. 34994

Phone: (561) 288-5312

Fax: (561) 288-5316

The FCT Recipient must notify the FCT as to any change in the authorization of the local government employee, official or representative named in this paragraph to execute all documents on behalf of the FCT Recipient. This notification must be made in writing to the Executive Director and signed by the appropriate local government employee, official or authorized representative.

III. PROJECT PLAN APPROVAL

1. Prior to closing of the real estate transaction and final disbursement of award funds by FCT, the FCT Recipient must prepare a Project Plan that complies with Rule 9K-4.011, F.A.C. This Project Plan is a compilation of the following items listed below, which must be reviewed and approved by FCT in a meeting of the FCT Governing Body. In the event that the FCT Recipient is a partnership, the FCT Recipient must also provide FCT with the interlocal agreement that sets forth the relationship among the partners and the fiscal and management responsibilities and obligations incurred by each partner for the Project Site as a part of its Project Plan.

The Project Plan shall include, and shall not be considered by FCT unless it includes all of the following documents, to be reviewed and approved by FCT to ensure that the interest of the State of Florida will be protected:

a. A purchase agreement for acquisition of the Project Site, in a form approved by the FCT staff prior to being executed by the Seller, such agreement fully executed by both the Seller and the FCT Recipient, that is based on an appraisal or appraisals prepared consistent with the requirements of Rule Chapter 9K-6, F.A.C., and otherwise consistent with the provisions of that rule chapter and in a form and with terms that are acceptable to FCT. (See Paragraph 1 of Section IV below.)

b. A management plan that complies with the following: written according to Exhibit "C" (*FCT Technical Assistance Bulletin #2--Writing a Management Plan*), which is attached hereto and incorporated herein by reference; acceptable to FCT; addresses the criteria and conditions set forth in Section IV, V, VI, VII and VIII hereinbelow; and, at a minimum, sets forth how the site will be managed to further the purpose of the project, contains a description of all planned improvements to the Project Site, identifies the costs of management and site improvement and funding sources, and identifies the management entity and its funding source.

If the FCT Recipient is not the proposed managing entity, the Project Plan must also include a signed agreement between the FCT Recipient and the managing entity stating the managing

entity's willingness to manage the site, the manner in which the site will be managed to further the purpose(s) of the project, and identification of the source of funding for management.

c. A statement of the Total Project Cost, including all non-recurring costs of project development.

d. A statement of the amount of the award being requested from the FCT.

e. A statement from each local government in whose jurisdiction the Project Site is located that the Project Plan is consistent with the local comprehensive plan.

f. Evidence that the conditions imposed as part of the Conceptual Approval Agreement have been satisfied.

g. An affidavit from the FCT Recipient evidencing that after conducting a diligent search, the FCT Recipient, to the best of its knowledge, represents that there are no existing or pending violations of any local, state, regional and federal laws and regulations on the Project Site.

2. The FCT strongly encourages the FCT Recipient to request a courtesy review of its entire Project Plan, but especially its management plan, well in advance of the meeting of the FCT Governing Body where the Project Plan will be considered for approval and funds will be authorized for disbursement. As a part of its duties to the FCT Governing Body, FCT Staff will make a recommendation of approval of complete and accurate Project Plans or disapproval of incomplete or insufficient Project Plans. FCT Recipient is strongly urged to coordinate with the FCT staff in order that the FCT review of the management plan coincides with both the anticipated FCT Governing Body approval and the closing date of the real estate transaction(s) associated with the project.

3. Pursuant to 9K-4.011(2)(f), F.A.C., FCT shall withhold Project Plan approval if the local comprehensive plan(s) of the FCT Recipient or the FCT Recipient's partner is, for any reason, found not in compliance by the Department after conceptual approval has been granted by FCT, unless the FCT Recipient has executed a Compliance Agreement (formerly called a stipulated settlement agreement) with the Department to resolve all of the issues raised by the Department in a statement of intent to find a plan not in compliance issued pursuant to Section 163.3184(8), F.S.

4. Pursuant to Rule 9K-4.011(3), F.A.C., the FCT shall publish a Notice of Approval for Preservation 2000 Funds in the *Florida Administrative Weekly* that shall list each Project Plan that has received approval for funding and the amount of funding approved. Any person with a substantial interest that is or may be determined by the decision of the FCT to reject or approve the Project Plan may request an administrative proceeding pursuant to Section 120.57, F.S. within 21 days from publication of the Notice of Approval for Preservation 2000 Funds. Real

estate closings associated with the project may close only after expiration of the 21-day notice period, so long as no requests for an administrative proceeding have been filed.

IV. PROJECT SITE ACQUISITION REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375, AND CHAPTER 380, PART III, F.S.

FCT RECIPIENT AGREES AS FOLLOWS:

1. FCT shall approve the terms under which the interest in land is acquired, pursuant to Section 380.510(3), F.S. Such approval is deemed given when the FCT governing body approves and executes the purchase agreement for acquisition of the Project Site, further described in Section III.1.a. above, to which FCT is a party.

2. Title to the Project Site shall be titled in the FCT Recipient, unless the FCT Recipient specifically requests that title shall permanently vest in the Board of Trustees of the Internal Improvement Trust Fund (Trustees). Such request shall be subject to the approval of FCT and the Trustees. The FCT Recipient hereby elects that title to the Project Site shall be vested in City of Stuart [Note—insert either the name of FCT Recipient or Board of Trustees of Internal Improvement Trust Fund]. If the FCT Recipient elects that title shall vest in the Trustees, then all acquisition activities shall be administered by the Division of State Lands as specified in Section 253.025, F.S., and Rule 18-1, F.A.C.

3. The transfer of title to the FCT Recipient for the Project Site shall not occur until the requirements for the acquisition of lands, as specified in Section 380.507(11), F.S., and Rule Chapter 9K-6, F.A.C., have been fully complied with by the FCT Recipient and FCT.

4. Any deed whereby the FCT Recipient acquires title to the Project Site shall contain or be subject to such covenants and restrictions as are, at a minimum, sufficient to ensure that the use of the Project Site at all times complies with Section 375.045 and 375.051, F.S.; Section 9, Article XII of the State Constitution; the applicable bond indenture under which the Bonds were issued; and any provision of the Internal Revenue Code or the regulations promulgated thereunder that pertain to tax exempt bonds and shall contain clauses providing for the conveyance of title to the Project Site in the Board of Trustees of the Internal Improvement Trust Fund upon failure to use the Project Site conveyed thereby for such purposes. Such covenants and restrictions as are described in this paragraph shall be in the form of a Grant Award Agreement, prepared by FCT, executed by the parties to the Conceptual Approval Agreement and recorded at the time of closing of the Project Site. The recordable Grant Award Agreement shall restate the conditions that were placed on the Project Site at the time of project selection and initial grant approval. All statements contained in the recordable Grant Award Agreement are contained in this Conceptual Approval Agreement, with the exception of statements that do not survive the real estate closing of the Project Site.

5. The Grant Award Agreement containing such covenants and restrictions as

referenced in paragraph 4 above and describing the real property subject to the Agreement shall be executed by the FCT and FCT Recipient at the time of the conveyance of the Project Site and shall be recorded in the county in which the Project Site is located.

6. If any essential term or condition of the Grant Award Agreement is violated, and the FCT Recipient does not correct the violation within 30 days of written notice of violation, title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund. The deed transferring title to the Project Site to the FCT Recipient shall set forth the executory interest of the Board of Trustees of the Internal Improvement Trust Fund.

7. The interest acquired by the FCT Recipient in the Project Site shall not serve as security for any debt of the FCT Recipient.

8. If the existence of the FCT Recipient terminates for any reason, title to all interest in real property it has acquired with the FCT award shall be conveyed or revert to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

9. The Project Site shall be managed only for the conservation, protection and enhancement of natural resources and for public outdoor recreation that is compatible with the conservation, protection and enhancement of the Project Site, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site must be specifically designated in the management plan approved by the FCT as a part of the Project Plan.

V. OBLIGATIONS OF THE FCT RECIPIENT AS A CONDITION OF PROJECT FUNDING

1. Following the acquisition of the Project Site, the FCT Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the FCT Recipient's comprehensive plan is required, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the FCT Recipient subsequent to the Project Site's acquisition.

2. FCT Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the applicable adopted and approved comprehensive plan. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

3. The FCT Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the management plan approved by the FCT as a part of the Project Plan.

4. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the FCT Recipient at the Project Site.

5. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably withheld by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the FCT Recipient's management plan addressing the items mentioned herein shall be considered written approval from FCT.

VI. OBLIGATIONS OF THE FCT RECIPIENT RELATING TO THE USE OF BOND PROCEEDS

1. FCT is authorized by Sections 375.045(4) and 380.510(7)(a) and (b), F.S., to impose conditions for funding on FCT Recipient in order to ensure that the project complies with the requirements for the use of Preservation 2000 Bond proceeds including without limitation the provisions of the Internal Revenue Code and the regulations promulgated thereunder as the same pertain to tax exempt bonds.

2. If the Project Site is to remain subject, after its acquisition by the FCT Recipient and/or the Trustees, to any of the below listed transactions, events, and circumstances, the FCT Recipient shall provide at least 60 days advance written notice of any such transactions, events, and circumstances to FCT, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest. FCT Recipient agrees and acknowledges that the following transactions, events, and circumstances may be disallowed on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law. The FCT Recipient further agrees and acknowledges that the following transactions, events, and circumstances may be allowed up to a certain extent based on guidelines or tests outlined in the Federal Private Activity regulations of the Internal Revenue Service:

- a. any sale or lease of any interest in the Project Site to any person or organization;
- b. the operation of any concession on the Project Site by any person or organization;

c. any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with any person or organization;

d. any use of the Project Site by any person other than in such person's capacity as a member of the general public;

e. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of bonds from which the disbursement is to be made;

f. a management contract of the Project Site with any person or organization;
or

g. such other activity or interest as may be specified from time to time in writing by FCT to the FCT Recipient.

The foregoing are collectively referred to as the "Disallowable Activities."

VII. DISALLOWABLE ACTIVITIES/REMEDIES

In the event that FCT determines at any time or from time to time that the FCT Recipient is engaging or allowing others to engage in Disallowable Activities on the Project Site, the FCT Recipient agrees to immediately cease or cause the cessation of the Disallowable Activity upon receipt of written notice from the FCT. To the extent allowed by law, FCT Recipient hereby indemnifies and agrees to hold FCT harmless from all claims, causes of action or damages of any nature whatsoever arising from or with respect to Disallowable Activities on the Project Site. Nothing herein shall be deemed a waiver of the FCT Recipient's sovereign immunity. In addition to all other rights and remedies at law or in equity, FCT shall have the right to temporary and permanent injunctions against FCT Recipient for any Disallowable Activity on the Project Site.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE FCT RECIPIENT AND OTHER GOVERNMENTAL BODIES, NOT FOR PROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE FCT RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

VIII. CONDITIONS PARTICULAR TO THE PROJECT SITE THAT MUST BE ADDRESSED IN THE MANAGEMENT PLAN

The management plan for the Project Site is mentioned throughout this Agreement, and is particularly described in Paragraph 1.b. of Section III above. In addition to the various conditions already described in this Agreement, which apply to all sites acquired with FCT funds, the management plan shall address the following conditions that are particular to the Project Site and result from either representations made in the application that received scoring points or observations made by the FCT staff during the site visit described in Rule 9K-4.010(2)(f), F.A.C.:

1. Outdoor recreational facilities including nature trails, boardwalks, an observation deck and interpretive displays shall be provided. The facilities shall be developed in a manner that allows the general public reasonable access for observation and appreciation of the natural resources on the Project Site without causing harm to those resources.
2. A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the Project Site is open to the public and was purchased with funds from the Florida Communities Trust Preservation 2000 Program and the Recipient. Such recognition shall also be included in all printed literature and advertising associated with the Project Site.
3. Regularly scheduled and ongoing educational programs that promote the protection of natural resources shall be provided at the Project Site. The programs shall include guided walks and programs for school groups.
4. A survey of vegetative communities and plant species shall be conducted on the Project Site. The FCT Recipient shall detail how the survey shall be used during development of the site to ensure the protection, restoration, and preservation of the natural resources on the Project Site.
5. The slash pine, sand pine scrub, hardwood swamp and wetland communities that occur on the Project Site shall be preserved and appropriately managed to ensure the long-term viability of these vegetative communities.
6. The Project Site shall be managed in a manner that protects and enhances habitat for listed wildlife species that utilize or could potentially utilize the Project Site, including the gopher tortoise, scrub jay and wading birds. The FCT Recipient shall coordinate with the Game and Freshwater Fish Commission on the management of the Project Site for the protection of listed species and listed species habitat. The FCT Recipient shall also conduct periodic surveys of listed species using the Project Site and develop informational signs relating to the protection of listed animal species and their habitat.

7. Management of the Project Site shall be coordinated with the Department of Environmental Protection's Aquatic Preserve Management Plan and the Indian River Lagoon SWIM Plan.
8. Adjacent development activities shall be monitored through the development review and approval process to ensure that such activities do not negatively effect the resources on the Project Site. Vegetated buffers shall be used as necessary to ensure that resources and planned outdoor recreation activities on the project site are sufficiently protected from the adverse impacts of adjacent land uses.
9. Approximately 7 acres of disturbed upland and wetland vegetation on the Project Site shall be restored in terms of biological composition and ecological function by removing exotics and planting native vegetative species.
10. An ongoing monitoring and control program for invasive exotic vegetation shall be implemented at the Project Site. The Exotic Pest Plant Council's List of Florida's Most Invasive Species shall be used to identify invasive exotic vegetation on the Project Site.
11. A stormwater management program shall be developed and implemented on the Project Site to improve the quality of water entering Haney Creek and the St. Lucie River. The FCT Recipient shall coordinate with the South Florida Water Management District on the development of a stormwater management program for the Project Site.
12. A vegetation analysis of the Project Site shall be performed to determine which areas of the Project Site need a prescribed burning regime implemented to maintain natural fire-dependent vegetative communities. The development of a prescribed burn plan shall be coordinate with Division of Forestry and Game and Fresh Water Fish Commission.
13. Management of the Project Site shall be coordinated with the land managers of other conservation and preservation lands in the project area.
14. Pedestrian and bicycle access to the Project Site shall be promoted as an alternative to automobile transportation by providing pedestrian walkways and/or bicycle parking stands.
15. The Project Site shall be incorporated into the City's overall management program for the protection and enhancement of natural and recreational resources within the greenway corridor that extends from the St. Lucie River to the Savannahs State Preserve.
16. The requirements imposed by other grant program funds that may be sought by the FCT Recipient for activities associated with the Project Site shall not conflict with the terms and conditions of the FCT award.

This Agreement including Exhibits "A", "B" and "C" embodies the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

CITY OF STUART

FLORIDA COMMUNITIES TRUST

By: [Signature]
Print Name: Jeffrey A. Krauskopf
Its: Mayor

By: [Signature]
James F. Murley, Chair
Date: 11/5/99

Date: 11/24/98
ATTEST: [Signature]
Print Name: Dianne O'Donnell
City Clerk

Approved as to Form and Legality:
By: [Signature]
Print Name: CARL V.M. COFFIN

Approved as to Form and Legality:
By: [Signature]
Ann J. Wild, Trust Counsel

STATE OF FLORIDA
COUNTY OF MARTIN

I, the undersigned, duly appointed City Clerk of the City of Stuart, Florida, HEREBY CERTIFY that this is a true and correct copy of the original.

Signature: [Signature]
CITY CLERK
DATE: 3/17/99

ORIGINAL

Contract No: 99-CT-8D-98-8A-H1-045

FCT Project No: 98-045-P8A

FCT Project Name: HANEY CREEK WATERSHED PRESERVATION AND GREENWAYS

CONFIDENTIALITY AGREEMENT

This is a Confidentiality Agreement ("Agreement") pursuant to Rule 9K-6.010(5), Florida Administrative Code (F.A.C.).

Parties to the Confidentiality Agreement: CITY OF STUART ("FCT Recipient"), a municipality within the State of Florida, and the Florida Communities Trust ("FCT"), a nonregulatory agency within the Department of Community Affairs.

Parcels Covered by this Agreement: This Agreement covers all parcels identified as part of the Project Site in FCT application 98-045-P8A That was selected for funding and is governed by a Conceptual Approval Agreement for FCT Project Number 98-045-P8A ("Project Site").

Confidentiality:

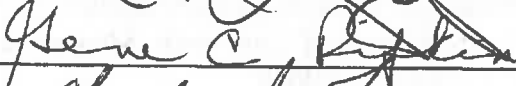
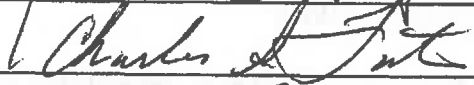
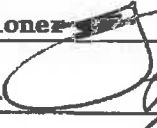
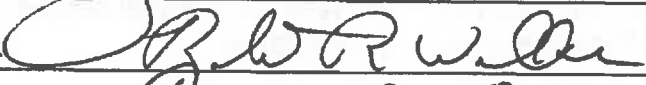
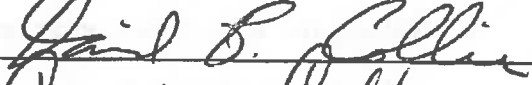
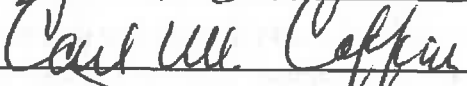
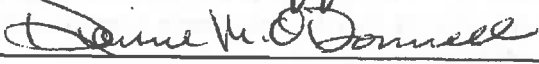
a) Pursuant to Rule 9K-6.002(17), F.A.C., the term "Confidential" refers to information that shall not be available for public disclosure or inspection and is exempt from the provisions of Section 119.07(1), Florida Statutes (F.S.).

b) The FCT Recipient and its agents shall maintain the confidentiality of all appraisals, offers, and counteroffers as required by Section 125.355(1)(a), F.S., for counties, or Section 166.045(1)(a), F.S., for municipalities, and Rule Chapter 9K-6, F.A.C. The FCT Recipient may disclose such confidential information only to the individuals listed herein below.

c) Requests to add persons to the disclosure list must be made in writing and the FCT Recipient must receive the written consent of the FCT Executive Director and execute an Addendum to the Agreement. All confidentiality requirements outlined above shall apply to individuals added to the list.

d) The undersigned board members and staff of the FCT Recipient ("FCT Recipient") and its agents, if any, agree to maintain the confidentiality of appraisal information, offers and counter-offers concerning FCT Project Number 98-045-P8A as required by Section 125.355 (1)(a), F.S., for counties, or Section 166.045 (1)(A), F.S., for municipalities, and Rule Chapter 9K-6, F.A.C., and by this Confidentiality Agreement between the FCT Recipient and FCT.

e) The undersigned certify that they have no legal or beneficial interest in the Project Site.

Date	FCT Recipient Board Member, Staff or Agent name	Signature
	<u>Karl J. Krueger, Jr., Mayor</u>	
	<u>Gene C. Rifkin, Vice Mayor</u>	
	<u>Charles S. Foster, Commissioner</u>	
	<u>Jeffrey A. Krauskopf, Commissioner</u>	
	<u>Robert W. Walker, Commissioner</u>	
	<u>David Collier, City Manager</u>	
	<u>Carl V.M. Coffin, City Attorney</u>	
	<u>Dianne M. O'Donnell, City Clerk</u>	
	<u>Wm. F. Underwood, Administrative Services Director</u>	

CITY OF STUART

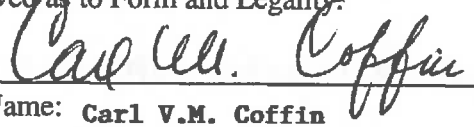
By: 
 Print Name: Karl J. Krueger

Its: Mayor

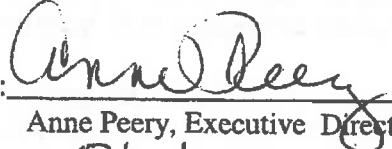
Date: 5/8/99

ATTEST: 
 Dianne M. O'Donnell, City Clerk

Approved as to Form and Legality:

By: 
 Print Name: Carl V.M. Coffin
 City Attorney

FLORIDA COMMUNITIES TRUST

By: 
 Anne Peery, Executive Director

Date: 3/11/99

Approved as to Form and Legality:

By: 
 Ann J. Wild, Trust Counsel

Contract No: 99-CT-8D-98-8A-H1-045

FCT Project No: 98-045-P8A

FCT Project Name: Haney Creek Watershed Preservation and Greenways

ADDENDUM 1 TO CONCEPTUAL APPROVAL AGREEMENT

This ADDENDUM 1 to Conceptual Approval Agreement is entered into by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and CITY OF STUART ("FCT Recipient"), this 19 day of July 1999.

WHEREAS, the parties hereto entered into a Conceptual Approval Agreement setting forth the conditions of conceptual approval that must be satisfied by FCT Recipient prior to the disbursement of the FCT Preservation 2000 award and the restrictions that are imposed on the Project Site subsequent to its acquisition;

WHEREAS, the term of the Conceptual Approval Agreement expires July 27, 1999 ;

WHEREAS, the FCT Recipient in accordance with GENERAL CONDITIONS paragraph 3 of the Conceptual Approval Agreement and in compliance with Rule 9K-4.010(2)(j), F.A.C., has timely submitted to FCT a written request for extension of the July 27, 1999 expiration date;

WHEREAS, GENERAL CONDITIONS paragraph 14 of the Conceptual Approval Agreement states that the agreement may be amended at any time prior to FCT giving final project plan approval to the FCT Recipient. Any agreement must be set forth in a written instrument and agreed to by both the FCT Recipient and FCT;

WHEREAS, the parties hereto desire to extend the term of the Conceptual Approval Agreement as provided by Rule 9K-4.010(2)(j), F.A.C.;

NOW THEREFORE, the FCT and FCT RECIPIENT mutually agree as follows:

1. Notwithstanding the language of Section I. GENERAL CONDITIONS, paragraph 3. and paragraph 4., the parties hereby agree to revive it nunc pro tunc as though it had not lapsed in accordance with paragraph 3.

2. In every respect, this amendment is to be construed and applied as though the parties had both signed it before July 27, 1999

3. The Conceptual Approval Agreement by and between FCT and FCT Recipient is hereby extended until January 27, 2000

The date of execution of this addendum shall be the date that the last party signs this addendum.

IN WITNESS WHEREOF, the parties hereto have duly executed this ADDENDUM 1 TO CONCEPTUAL APPROVAL AGREEMENT.

CITY OF STUART

By: [Signature]

Print Name: Karl J. Krueger, Jr.
Mayor

Attest: [Signature]
Dianne M. O'Donnell
City Clerk

Date: 7/2/99

FLORIDA COMMUNITIES TRUST

By: [Signature]

Steven M. Seibert, Chair

Date: 7/19/99

Approved as to Form and Legality:

By: [Signature]

Print Name: CALL V.N. COFFIN

Approved as to Form and Legality:

By: [Signature]

Ann J. Wild, Trust Counsel

City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

Dianne M. O'Donnell
City Clerk

PHONE (561) 288-5306
FAX (561) 288-5305

July 2, 1999

Florida Communities Trust
Anne Peery, Executive Director
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

ATTENTION: Anne Perry, Executive Director

REFERENCE: Haney Creek Watershed Preservation & Greenways Grant
Addendum I - PROJECT #98-045-P8A / City of Stuart

MESSAGE: Enclosed are two original addendums executed by city officials.
Please complete with required signatures and return one fully
executed original to the Office of the City Clerk at the address
indicated above.

If you have any questions please do not hesitate to call.

Sincerely,



Dianne M. O'Donnell
City Clerk

Enc.

rec'd 7/27



Florida Communities Trust

June 14, 1999

David Collier
City Manager
City Development Department
121 SW Flagler Avenue
Stuart, FL 34994-2192

RE: City of Stuart
Haney Creek Watershed Preservation and Greenways
Project Number: 98-045-P8A

Mr. Collier:

Enclosed find Addendum I to the Conceptual Approval Agreement for the referenced project. The Addendum reflects an extension of time granted by the governing board of the Florida Communities Trust at its June 11, 1999, meeting. Your agreement has been extended according to the terms set forth in the addendum. Any questions about the addendum can be directed to Ann Wild, Trust Attorney at (850) 488-0410. Please execute the addendum and return it to the Trust **as soon as possible**.

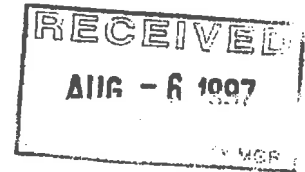
Please expedite your FCT project so that we can conclude it as soon as possible. This expediting includes promptly returning documents, phone calls or any other step needed to achieve success in your project. I encourage you to rely on the Trust staff for any assistance you need to bring the project to a successful conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Anne Peery". The signature is written in dark ink and is positioned above the printed name and title.

Anne Peery
Executive Director

Enclosure: Conceptual Approval Agreement Addendum I



Florida Communities Trust

August 4, 1999

Mr. David Collier
City Manager
121 S.W. Flagler Ave.
Stuart, Florida 34994

**RE: FCT Project Number: 98-045-P8A
City of Stuart
Haney Creek Watershed Preservation and Greenways**

Dear Mr. Collier:

Enclosed please find a fully executed original of the Addendum I to Confidentiality Agreement for the above- referenced Florida Communities Trust Project.

If you have any questions, please contact me at (850) 922-2207 (SunCom 292-2207).

Sincerely,

A handwritten signature in dark ink, appearing to read "Lee H. Slaton", with a horizontal line extending to the right.

Lee H. Slaton
Operations & Management Consultant I

LHS/bw

Enclosures



Contract No: 99-CT-8D-98-8A-H1-045

FCT Project No: 98-045-P8A

FCT Project Name: HANEY CREEK WATERSHED PRESERVATION AND GREENWAYS

ADDENDUM TO CONFIDENTIALITY AGREEMENT

This is an Addendum to the Confidentiality Agreement ("Agreement") pursuant to Rule 9K-6.010(5), Florida Administrative Code (F.A.C.), and is entered into by the parties to add the undersigned persons to the list contained in the Agreement between the parties.

Parties to the Confidentiality Agreement: CITY OF STUART ("FCT Recipient"), a municipality State of Florida, and the Florida Communities Trust ("FCT"), a nonregulatory agency within the Department of Community Affairs.

Parcels Covered by this Agreement: This Agreement covers all parcels identified as part of the Project Site in FCT application 98-045-P8A That was selected for funding and is governed by a Conceptual Approval Agreement for FCT Project Number 98-045-P8A ("Project Site").

Confidentiality:

a) Pursuant to Rule 9K-6.002(17), F.A.C., the term "Confidential" refers to information that shall not be available for public disclosure or inspection and is exempt from the provisions of Section 119.07(1), Florida Statutes (F.S.).

b) The FCT Recipient and its agents shall maintain the confidentiality of all appraisals, offers, and counteroffers as required by Section 125.355(1)(a), F.S., for counties, or Section 166.045(1)(a), F.S., for municipalities, and Rule Chapter 9K-6, F.A.C. The FCT Recipient may disclose such confidential information only to the individuals listed herein below.

c) The undersigned board members and staff of the FCT Recipient ("FCT Recipient") and its agents, if any, agree to maintain the confidentiality of appraisal information, offers and counter-offers concerning FCT Project Number 98-045-P8A as required by Section 125.355 (1)(a), F.S., for counties, or Section 166.045 (1)(A), F.S., for municipalities, and Rule Chapter 9K-6, F.A.C., and by this Confidentiality Agreement between the FCT Recipient and FCT.

d) The undersigned certify that they have no legal or beneficial interest in the Project Site.

Date FCT Recipient Board Member, Staff or Agent name Signature

7-22-99 Kim DeLaney, City Planner, City of Stuart

Kim DeLaney

7-23-99 Matthew Sexton, Florida Representative, The Conservation Fund

Matthew Sexton

CITY OF STUART

FLORIDA COMMUNITIES TRUST

By: *David Collier*
Print Name: DAVID COLLIER

By: *Anne Peery*
Anne Peery, Executive Director

Its: CITY MANAGER

Date: 8/3/99

Date: JULY 19, 1999

Approved as to Form and Legality:

By: *Carl V.M. Coffin*
Print Name: CARL V.M. COFFIN

Approved as to Form and Legality:

By: *Ann J. Wild*
Ann J. Wild, Trust Counsel

ORIGINAL

Contract No: 99-CT-8D-98-8A-A1-045

FCT Project No: 98-045-P8A

FCT Project Name: Haney Creek Watershed Preservation and Greenways

ADDENDUM 2 TO CONCEPTUAL APPROVAL AGREEMENT

This ADDENDUM 2 to the Conceptual Approval Agreement is entered into by and between the FLORIDA COMMUNITIES TRUST (FCT), a nonregulatory agency within the State of Florida Department of Community Affairs, and CITY OF STUART(Recipient), this 7th day of MARCH, 2000.

WHEREAS, the parties hereto entered into a Conceptual Approval Agreement setting forth the conditions of conceptual approval that must be satisfied by Recipient prior to the disbursement of the FCT Preservation 2000 award and the restrictions that are imposed on the project site subsequent to its acquisition;

WHEREAS, the term of the Conceptual Approval Agreement expires January 27, 2000;

WHEREAS, the Recipient in accordance with GENERAL CONDITIONS paragraph 3 of the Conceptual Approval Agreement and in compliance with Rule 9K-4.010(2)(j), F.A.C., has timely submitted to FCT a written request for extension of the January 27, 2000 expiration date;

WHEREAS, GENERAL CONDITIONS paragraph 14 of the Conceptual Approval Agreement states that the agreement may be amended at any time prior to FCT giving final project plan approval to the Recipient. Any agreement must be set forth in a written instrument and agreed to by both the Recipient and FCT;

WHEREAS, the parties hereto desire to extend the term of the Conceptual Approval Agreement as provided by Rule 9K-4.010(2)(j), F.A.C.:

NOW THEREFORE, the FCT and RECIPIENT mutually agree as follows:

1. Notwithstanding the language of Section I. GENERAL CONDITIONS, paragraph 3. and paragraph 4., the parties hereby agree to revive it nunc pro tunc as though it had not lapsed in accordance with paragraph 3.
2. In every respect, this amendment is to be construed and applied as though the parties had both signed it before January 27, 2000.
3. The Conceptual Approval Agreement by and between FCT and Recipient is hereby extended until July 27, 2000.

ADD 2/98-045-P8A

01/26/2000

The date of execution of this addendum shall be the date that the last party signs this addendum.

IN WITNESS WHEREOF, the parties hereto have duly executed this ADDENDUM 2 TO CONCEPTUAL APPROVAL AGREEMENT.

CITY OF STUART

FLORIDA COMMUNITIES TRUST

By: [Signature]
Print Name: Karl J. Krueger Jr.

By: [Signature]
for Steven M. Seibert, Chair

Its: Mayor

Date: 3/3/00

Date: [Signature]
ATTEST City Clerk

Dianne M. O'Donnell, City Clerk
Approved as to Form and Legality:

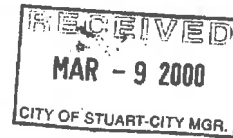
Approved as to Form and Legality:

By: [Signature]
Print Name: CARL V.M. COFFIN

By: [Signature]
Ann J. Wild, Trust Counsel



Florida Communities Trust



March 6, 2000

Mr. David Collier
City Manager
121 S.W. Flagler Ave.
Stuart, Florida 34994

**RE: FCT Project Number: 98-045-P8A
City of Stuart
Haney Creek Watershed Preservation and Greenways**

Dear Mr. Collier:

Enclosed please find a fully executed original of the Addendum II to Conceptual Approval Agreement for the above- referenced Florida Communities Trust Project.

If you have any questions, please contact me at (850) 922-2207 (SunCom 292-2207).

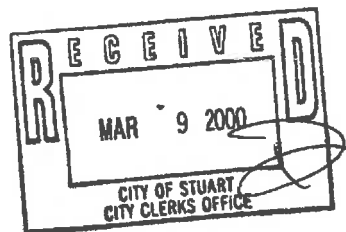
Sincerely,

A handwritten signature in dark ink, appearing to read "Lee H. Slaton".

Lee H. Slaton
Operations & Management Consultant I

LHS/bw

Enclosures



DEPARTMENT OF COMMUNITY AFFAIRS • 2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-2100
850/922-2207 • SUNCOM 292-2207 • FAX 850/921-1747


FLORIDA COMMUNITIES TRUST BICYCLES

City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

Dianne M. O'Donnell
City Clerk

PHONE (861) 288-5306
FAX (561) 288-5305

February 21, 2000

Ralph Cantral, Acting Executive Director
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Dear Ralph Cantral, Acting Executive Director:

SUBJECT: FCT PROJECT # 98-045-P8A

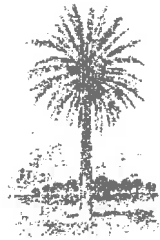
Honey Creek
Enclosed are two original Conceptual Approval Agreements for your execution. Please sign and date both and mail one fully executed original back in the self-stamped addressed envelope provided.

Respectfully,

Cherie White
Office Assistant II

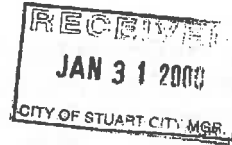
Enclosures (2)

cw



Florida Communities Trust

January 27, 2000



Mr. David Collier
City Manager
City Development Department
121 SW Flagler Avenue
Stuart, FL 34994-2192

RE: FCT Project Number 98-045-P8A
Haney Creek Watershed Preservation and Greenways
City of Stuart

Dear Mr. Collier:

Enclosed are two originals of Addendum 2 to the Conceptual Approval Agreement for the project. The Addendum includes an extension of time as approved by the governing board of the Florida Communities Trust at its January 26, 2000, meeting. Any questions about the addendum can be directed to Ann Wild, Trust Attorney at (850) 488-0410. Please execute the addendum and return it to the Trust as soon as possible.

Please expedite your FCT project so that we can conclude it as soon as possible. This expediting includes promptly returning documents, phone calls or any other step needed to achieve success in your project. I encourage you to rely on the Trust staff for any assistance you need to bring the project to a successful conclusion.

Sincerely,

Ralph Cantrall
Acting Executive Director

RC:lhs

Enclosure: Conceptual Approval Agreement Addendum 2

Contract No: 99-CT-8D-98-8A-A1-045

FCT Project No: 98-045-P8A

FCT Project Name: Haney Creek Watershed Preservation and Greenways

ADDENDUM 3 TO CONCEPTUAL APPROVAL AGREEMENT

This ADDENDUM 3 to the Conceptual Approval Agreement is entered into by and between the FLORIDA COMMUNITIES TRUST (FCT), a nonregulatory agency within the State of Florida Department of Community Affairs, and CITY OF STUART (Recipient), this 7th day of SEPTEMBER, 2000.

WHEREAS, the parties hereto entered into a Conceptual Approval Agreement setting forth the conditions of conceptual approval that must be satisfied by Recipient prior to the disbursement of the FCT Preservation 2000 award and the restrictions that are imposed on the project site subsequent to its acquisition;

WHEREAS, the term of the Conceptual Approval Agreement expires July 27, 2000;

WHEREAS, the Recipient in accordance with GENERAL CONDITIONS paragraph 3 of the Conceptual Approval Agreement and in compliance with Rule 9K-4.010(2)(j), F.A.C., has timely submitted to FCT a written request for extension of the July 27, 2000 expiration date;

WHEREAS, the parties hereto desire to extend the term of the Conceptual Approval Agreement as provided by Rule 9K-4.010(2)(j), F.A.C.; and

WHEREAS, Section 215.97, Florida Statutes, the Florida Single Audit Act, provides uniform state audit requirements for state financial assistance provided by state agencies over the audit threshold as defined in that Section;

WHEREAS, the parties hereto desire to make these requirements a part of the Conceptual Approval Agreement as provided by Rule 9K-4.010(2)(j), F.A.C.;

WHEREAS, the Recipient has requested the expansion of the boundary of the Project Site to add two adjacent parcels and this request was approved on August 3, 2000, by the Acting Executive Director pursuant to the authority delegated to him by the governing board ;

WHEREAS, the parties hereto desire to make these two parcels a part of the Conceptual Approval Agreement; and

WHEREAS, the Recipient has requested a modification to the Acquisition Plan included in the application, and incorporated by reference and attached as Exhibit "B" to the Conceptual Approval Agreement, to include these two parcels;

WHEREAS, the parties hereto desire to amend the Conceptual Approval Agreement to modify the Acquisition Plan;

WHEREAS, GENERAL CONDITIONS paragraph 14 of the Conceptual Approval Agreement states that the agreement may be amended at any time prior to FCT giving final project plan approval to the Recipient. Any agreement must be set forth in a written instrument and agreed to by both the Recipient and FCT;

NOW THEREFORE, the FCT and RECIPIENT mutually agree as follows:

1. Notwithstanding the language of Section I. GENERAL CONDITIONS, paragraph 3. and paragraph 4., the parties hereby agree to revive it nunc pro tunc as though it had not lapsed in accordance with paragraph 3.
2. In every respect, this amendment is to be construed and applied as though the parties had both signed it before July 27, 2000.
3. The Conceptual Approval Agreement by and between FCT and Recipient is hereby extended until January 27, 2001.
4. The Conceptual Approval Agreement by and between FCT and Recipient is hereby amended to add Section IX as follows:

IX. AUDIT REQUIREMENTS

1. The Recipient agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.
2. These records shall be available at all reasonable times for inspection, review, or audit by state personnel and other personnel duly authorized by FCT. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.
3. The Recipient shall also provide FCT with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.
4. In the event that the Recipient expends a total amount of State financial assistance from all state sources equal to or in excess of \$300,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600, Rules of the Auditor General.

Section 1.7. above below indicates State financial assistance through FCT by this Agreement. In determining the State financial assistance expended in its fiscal year, the Recipient shall consider all sources of State financial assistance, including State funds received from FCT, except that State financial assistance received by a nonstate entity for Federal program matching requirements shall be excluded from consideration. The funding for this Agreement was received by FCT as a grant appropriation.

- a. The annual financial audit report shall include all management letters and the Recipient's response to all findings, including corrective actions to be taken.
- b. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.
- c. The complete financial audit report, including all items specified in (12)(d) 1 and 2 above, shall be sent directly to:

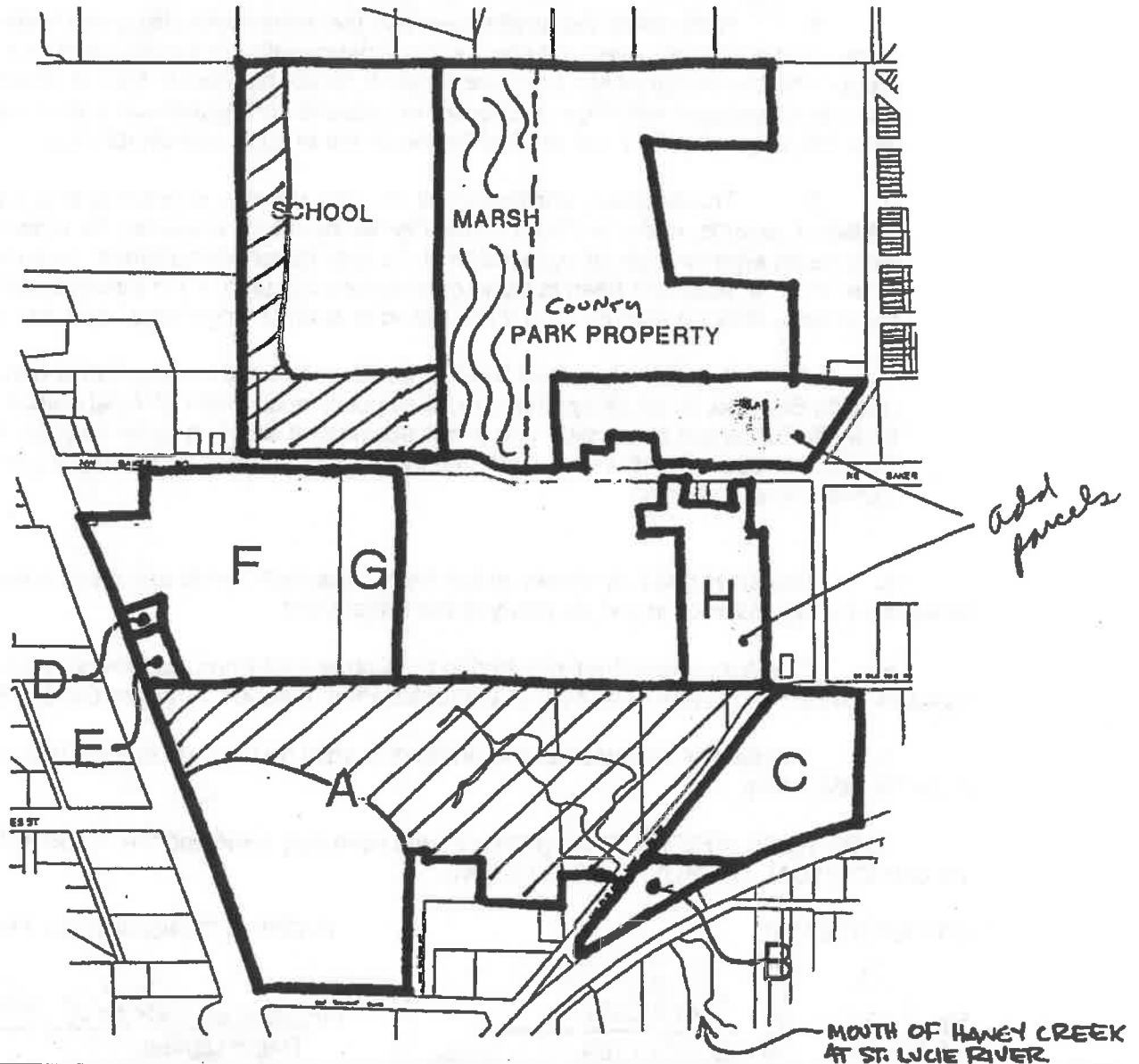
Department of Community Affairs
Office of Audit Services
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

and

State of Florida Auditor General
Attn: Ted J Sauerbeck
Room 574, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32302-1450

- d. In connection with the audit requirements addressed above, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapter 10.600, Rules of the Auditor General.
- e. If the Recipient expends less than \$300,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the Recipient expends less than \$300,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from recipient funds obtained from other than State entities).

HANEY CREEK WATERSHED PRESERVATION & GREENWAYS PROJECT **MAP OF PURCHASE AREA & SUBJECT PROPERTIES**



LEGEND	
A	Kremser property (mostly upland; may be developed)
 A	Kremser property (location of Arant's Swamp and slough; cannot be developed or mitigated. City to acquire through PUD negotiations)
B	Bussell property (option contract pending)
C	Boll property (counter-offer pending from owner)
D	Sommer property
E	Conway property
F	Bridgeton property (option contract approved; closing TBA)
G	Bridgeton property (option contract approved; closing TBA)
H	Dragseth property (to be added via boundary modification)
I	Tilton property (to be added via boundary modification)
SCHOOL	Felix Williams Elementary School (area of school improvements)
 SCHOOL	Felix Williams Elementary School (area of preserve to be dedicated to City)
 MARSH	Flow-through freshwater marsh (included within County-owned park property; permits to be approved by SFWMD in July 2000)
PARK PROPERTY	County-owned surplus park property (to be preserved with limited passive recreational improvements)

EXHIBIT "A"

5. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to FCT of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after FCT has notified the Recipient of such non-compliance.

6. The Recipient shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of three years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the three-year period, the records shall be retained until the litigation or audit findings have been resolved.

7. The Recipient shall have all audits completed in accordance with 215.97, Florida Statutes, by an independent certified public accountant (IPA) who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Florida Statutes. The IPA shall state that the audit complied with the applicable provisions noted above.

5. Parcels H and I as shown on Exhibit "A" attached hereto and made a part hereof are hereby included in the boundary of the Project Site.

6. The Acquisition Plan attached to the Conceptual Approval Agreement is hereby replaced, revised and superseded by the Acquisition Plan attached hereto as Exhibit "B".

7. The date of execution of this addendum shall be the date that the last party signs this addendum

IN WITNESS WHEREOF, the parties hereto have duly executed this ADDENDUM 3 TO CONCEPTUAL APPROVAL AGREEMENT.

CITY OF STUART

FLORIDA COMMUNITIES TRUST

By: David Collier
Print Name: DAVID COLLIER

By: Ann Wild for
Ralph Central,
Acting Executive Director

Attest: Dianne M. O'Donnell
City Clerk

Its: City Manager

Date: 9-7-00

Date: August 28, 2000

Approved as to Form and Legality:

By: Carl M. Collier
Print Name: CARL V. M. COLLIER

Approved as to Form and Legality:

By: Ann J. Wild
Ann J. Wild, Trust Counsel

Acquisition Plan

Project Name: Haney Creek Watershed Preservation and Greenways Project

Applicant: City of Stuart

Rule 9K-4.004(5)(g), Florida Administrative Code, reads in part as follows:

If the project site consists of more than one parcel or owner, an Acquisition Plan, as defined in Rule 9K-4.002(2), is required.

Rule 9K-4.002(2), Florida Administrative Code, reads as follows:

Acquisition Plan applies to Project Sites with multiple parcels or multiple owners and means a written description of the priority parcels and the general order in which the parcels will be acquired to assure that, in the event that all parcels cannot be acquired, the purposes of the project can be achieved.

Florida Communities Trust (FCT) staff will review the acquisition plan to assure that the purposes of the project can be achieved in the event all parcels cannot be acquired.

Provide tax identification number for all parcels within the project boundary

See attached summary ownership data sheet (Exhibit D).

Provide the name, address and phone number, if available, for all the owners of parcels within the project boundary.

See attached summary ownership data sheet (Exhibit D).

Identify the priority parcels needed to achieve the purposes of the project.

The key parcels required are reference parcels F, G and B (please see Exhibit D). Ownership of these parcels will enable the flow-through marsh construction on parcels F and G (23.5 acres) and control of the tributary flood plain via parcel B. These parcels abut and surround wetlands in the largest parcel, parcel A which is a key feature in the Haney Creek project.

Purchase of parcel A is highly desirable due to its size and diversity of habitats and is a key link of the overall greenways/flowways project if the surrounding parcels are in public ownership. If not purchased in this program, the combination of the City's upland preserve requirements and state and federal wetlands protection will likely protect a large portion of this parcel under conservation easements with any development proposal. However, the protection of parcel A in public ownership will allow both the connection to the greenway/flowway from the drainage basin to the north as well as provide protection of key environmental areas and habitats present on the

site.

Parcel C is next most desirable, being comprised of sand pine uplands and seepage slope wetlands tributary to parcel B.

Parcels H and I will allow a greenway/flowway connecting into the eastern portion of the Swamp, which will improve stormwater quality and preservation of a native corridor for wildlife. In addition, Parcel I contains an old borrow pit which will allow for the preservation of a deepwater habitat, thereby expanding the habitat functions of the entire project.

Finally, parcels D and E are included to preclude development adjacent to the main freshwater swamp along Federal Highway. These are also desirable but not essential to overall success.

Identify the general order in which the parcels should be acquired, parcels can be grouped in categories.

FIRST PRIORITY

Parcel A
Parcel B
Parcel C
Parcel F
Parcel G
Parcel H
Parcel I

SECOND PRIORITY

Parcel E
Parcel D

INSTR # 1452314
 OR BK 01502 PG 0951
 RECORDED 08/29/2000 11:39 AM
 MARSHA EWING
 MARTIN COUNTY Florida
 DEPUTY CLERK S Johnson

This document prepared by:
 Ann J. Wild
 Florida Communities Trust
 Department of Community Affairs
 2555 Shumard Oak Blvd.
 Tallahassee, FL 32399

After Recording Return To:

Robert D. Schwartz, Esq.
 Law offices of Robert D. Schwartz, P.A.
 555 South Federal Hwy.--Suite 430
 Boca Raton, FL 33432

FLORIDA COMMUNITIES TRUST
 P8A AWARD# 98-045-P8A
 FCT Contract# 98-CT-P8A-98-P8A-J1-045

GRANT AWARD AGREEMENT

THIS AGREEMENT is entered into this 26th day of JUNE, 2000, by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and the CITY OF STUART, a political subdivision of the State of Florida ("FCT Recipient"), in order to impose terms, conditions, and restrictions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds and as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), as shall be necessary to ensure compliance with applicable Florida Law and federal income tax law and to otherwise implement provisions of Chapters 253, 259, and 380, Florida Statutes.

WHEREAS, Part III Chapter 380, Florida Statutes, the Florida Communities Trust Act, creates a nonregulatory agency within the Department of Community Affairs, which will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans and in otherwise conserving natural resources and resolving land use conflicts by providing financial assistance to local governments to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 1 of the Florida Preservation 2000 Act provides for the distribution of ten percent (10%) of the net Preservation 2000 Revenue Bond proceeds to the Department of Community Affairs to provide land acquisition grants and loans to local governments through the FCT;

WHEREAS, the Governor and Cabinet authorized the sale and issuance of State of Florida Department of Natural Resources Preservation 2000 Revenue Bonds ("Bonds");

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 5-15-00

WHEREAS, the Bonds were issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of Bondholders for federal income tax purposes;

WHEREAS, Rule 9K-4.010(2)(f), F.A.C., authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding in accordance with Rule Chapter 9K-4, F.A.C.;

WHEREAS, the FCT has approved the terms under which the Project Site is acquired and the deed whereby the FCT Recipient acquires title to the Project Site shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund upon the failure of the FCT Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, such covenants and restrictions shall be imposed by an agreement which shall describe with particularity the real property which is subject to the agreement and shall be recorded in the county in which the real property is located; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to its acquisition with the FCT Preservation 2000 Bond award.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and FCT Recipient do hereby contract and agree as follows:

I. GENERAL CONDITIONS.

1. Upon execution and delivery by the parties hereto, the FCT Recipient shall cause this Agreement to be recorded and filed in the official public records of Martin County, Florida, as referenced in the warranty deed vesting fee simple title to the Project Site in the FCT Recipient, and in such manner and in such other places as FCT may reasonably request, and shall pay all fees and charges incurred in connection therewith.

2. The FCT Recipient and FCT agree that the State of Florida Department of Environmental Protection will forward this Agreement to Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax exempt status of the Preservation

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2000 Bonds is not jeopardized, FCT and FCT Recipient shall amend the Agreement accordingly.

3. This Agreement may be amended at any time. Any amendment must be set forth in a written instrument and agreed to by both the FCT Recipient and FCT.

4. This Agreement and the covenants and restrictions contained herein shall run with the Property herein described and shall bind, and the benefits shall inure to, respectively, the FCT and the FCT Recipient and their respective successors and assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

6. Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

FCT:

Florida Communities Trust
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
ATTN: Executive Director

FCT Recipient:

City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994
ATTN: Kim Delaney, City Planner

7. If any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

II. PROJECT SITE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375, AND CHAPTER 380, PART III, FLORIDA STATUTES.

1. If any essential term or condition of this grant agreement is violated by the FCT Recipient or by some third party with the knowledge of the FCT Recipient and the FCT Recipient does not correct the violation within 30 days of notice of the violation, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal

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Improvement Trust Fund. The FCT shall treat such property in accordance with Section 380.508(4)(e), Florida Statutes.

2. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.

3. The interest, if any, acquired by the FCT Recipient in the Project Site will not serve as security for any debt of the FCT Recipient unless FCT approves the transaction.

4. If the existence of the FCT Recipient terminates for any reason, title to all interest in real property it has acquired with the FCT award shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

5. In the event that the Project Site is damaged or destroyed or title to the Project Site, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the FCT Recipient shall deposit with the FCT any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. The FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the FCT Recipient fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project Site after notice from the FCT, the FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT will have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

III. PROJECT SITE OBLIGATIONS IMPOSED BY FCT ON THE FCT RECIPIENT.

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Project Site, along with other related uses necessary for the accomplishment of this purpose. The proposed

OR BK 01502 PG 0955

uses for the Project Site are specifically designated in the Project Plan as approved by FCT.

2. The FCT Recipient shall prepare and submit to FCT an annual report as required by Rule 9K-4.013, F.A.C.

3. The FCT Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the FCT Recipient's comprehensive plan is required to comply with this paragraph, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the FCT Recipient.

4. FCT Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

5. The FCT Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the FCT approved project plan.

6. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the FCT Recipient at the Project Site.

7. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and/or major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably withheld by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the FCT Recipient's management plan addressing the items mentioned herein shall be considered written approval from FCT.

8. If archaeological and historic sites are located on the Project Site, the FCT Recipient shall comply with Chapter 267, Florida Statutes. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site will be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

9. The FCT Recipient shall ensure that the Project Site is identified as being publicly owned and operated as a passive, natural resource-based public outdoor recreational site in all signs, literature and advertising regarding the Project Site. The FCT Recipient shall erect a sign(s) identifying the Project Site as being open to the public and as having been purchased with funds from FCT and FCT Recipient.

IV. OBLIGATIONS INCURRED BY FCT RECIPIENT AS A RESULT OF BOND PROCEEDS BEING UTILIZED TO PURCHASE THE PROJECT SITE.

1. If the Project Site is to remain subject, after its acquisition by the State and the FCT Recipient, to any of the below listed activities or interests, the FCT Recipient shall provide at least 60 days written notice of any such activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest:

a. any lease of any interest in the Project Site to a non-governmental person or organization;

b. the operation of any concession on the Project Site to a non-governmental person or organization;

c. any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with a non-governmental person or organization;

d. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;

e. a management contract of the Project Site with a non-governmental person or organization; and

f. such other activity or interest as may be specified from time to time in writing by FCT to the FCT Recipient.

2. FCT Recipient agrees and acknowledges that the following transaction, events, and circumstances may not be permitted on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law:

a. a sale of the Project Site or a lease of the Project Site to a non-governmental person or organization;

b. the operation of a concession on the Project Site by a non-governmental person or organization;

c. a sale of things attached to the Project Site to be severed from the Project Site to a non-governmental person or organization;

d. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of bonds from which the disbursement is to be made;

e. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;

f. a management contract of the Project Site with a non-governmental person or organization; and

g. such other activity or interest as may be specified from time to time in writing by FCT to the FCT Recipient.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE FCT RECIPIENT AND OTHER GOVERNMENTAL BODIES, NOT FOR PROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE FCT RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

V. CONDITIONS THAT ARE PARTICULAR TO THE PROJECT SITE AS A RESULT OF THE FCT APPROVED MANAGEMENT PLAN.

1. Outdoor recreational facilities including nature trails, boardwalks, an observation deck and interpretive displays shall be provided. The facilities shall be developed in a manner that allows the general public reasonable access for observation and appreciation of the natural resources on the Project Site without causing harm to those resources.

2. A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the Project Site is open to the public and was purchased with funds from the Florida Communities Trust Preservation 2000 Program and the Recipient. Such recognition shall also be included in all printed literature and advertising associated with the Project Site.

3. Regularly scheduled and ongoing educational programs that promote the protection of natural resources shall be provided at the Project Site. The programs shall include guided walks and programs for school groups.

4. A survey of vegetative communities and plant species shall be conducted on the Project Site. The FCT Recipient shall detail how

the survey shall be used during development of the site to ensure the protection, restoration, and preservation of the natural resources on the Project Site.

5. The slash pine, sand pine scrub, hardwood swamp and wetland communities that occur on the Project Site shall be preserved and appropriately managed to ensure the long-term viability of these vegetative communities.

6. The Project Site shall be managed in a manner that protects and enhances habitat for listed wildlife species that utilize or could potentially utilize the Project Site, including the gopher tortoise, scrub jay and wading birds. The FCT Recipient shall coordinate with the Game and Freshwater Fish Commission on the management of the Project Site for the protection of listed species and listed species habitat. The FCT Recipient shall also conduct periodic surveys of listed species using the Project Site and develop informational signs relating to the protection of listed animal species and their habitat.

7. Management of the Project Site shall be coordinated with the Department of Environmental Protection's Aquatic Preserve Management Plan and the Indian River Lagoon SWIM Plan.

8. Adjacent development activities shall be monitored through the development review and approval process to ensure that such activities do not negatively effect the resources on the Project Site. Vegetated buffers shall be used as necessary to ensure that resources and planned outdoor recreation activities on the project site are sufficiently protected from the adverse impacts of adjacent land uses.

9. Approximately 7 acres of disturbed upland and wetland vegetation on the Project Site shall be restored in terms of biological composition and ecological function by removing exotics and planting native vegetative species.

10. An ongoing monitoring and control program for invasive exotic vegetation shall be implemented at the Project Site. The Exotic Pest Plant Council's List of Florida's Most Invasive Species shall be used to identify invasive exotic vegetation on the Project Site.

11. A stormwater management program shall be developed and implemented on the Project Site to improve the quality of water entering Haney Creek and the St. Lucie River. The FCT Recipient shall coordinate with the South Florida Water Management District on the development of a stormwater management program for the Project Site.

OR BK 01502 PG 0959

12. A vegetation analysis of the Project Site shall be performed to determine which areas of the Project Site need a prescribed burning regime implemented to maintain natural fire-dependent vegetative communities. The development of a prescribed burn plan shall be coordinate with Division of Forestry and Game and Fresh Water Fish Commission.

13. Management of the Project Site shall be coordinated with the land managers of other conservation and preservation lands in the project area.

14. Pedestrian and bicycle access to the Project Site shall be promoted as an alternative to automobile transportation by providing pedestrian walkways and/or bicycle parking stands.

15. The Project Site shall be incorporated into the City's overall management program for the protection and enhancement of natural and recreational resources within the greenway corridor that extends from the St. Lucie River to the Savannahs State Preserve.

16. The requirements imposed by other grant program funds that may be sought by the FCT Recipient for activities associated with the Project Site shall not conflict with the terms and conditions of the FCT award.

THIS GRANT AWARD AGREEMENT embodies the entire Agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Witness:

CITY OF STUART

Mary F. Whisenant
Witness Name:
N. Pat Person
Witness Name:

BY: [Signature]
Its: Mayor, Karl J. [Signature]

Date: 4/12/00

Attest: [Signature]
City Clerk, Dianne O'Donnell

Accepted as to Legal Form and Sufficiency:

Carl V.M. Coffin
Date: 4/15/00

Carl V.M. Coffin, City Attorney

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2000, by _____, as _____ He\She is personally known to me.

Notary Public
Print Name: _____
Commission No. _____
My Commission Expires: _____

FLORIDA COMMUNITIES TRUST

L. Christine McCay

Witness Name: L. Christine McCay

Teresa Divers

Witness Name: Teresa Divers

Ralph Cantral

Ralph Cantral,
Acting Executive Director

Date: 6/28/00

Accepted as to Legal Form and
Sufficiency:

Ann J. Wild

Ann J. Wild, Trust Counsel

Date: 6/22/00

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 28 day of June, 2000, by Ralph Cantral, as Acting Executive Director of the Florida Communities Trust. He is personally known to me.



DARRAH L. BAGLEY
COMMISSION # CC 716067
EXPIRES FEB 12, 2002
BONDED THRU
ATLANTIC BONDING CO., INC

Darrah L. Bagley

Notary Public
Print Name: Darrah L. Bagley
Commission No. CC 716067
My Commission Expires: 02-12-2002

GAA\98-045-P8A
5-15-00

10

EXHIBIT "A"

A TRACT OF LAND LYING IN SECTION 29, TOWNSHIP 37 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 29, COMMENCE NORTH 89 DEGREES, 38 MINUTES, 22 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 249.64 FEET; THENCE NORTH 18 DEGREES, 41 MINUTES, 32 SECONDS WEST, A DISTANCE OF 257.58 FEET; THENCE NORTH 00 DEGREES, 32 MINUTES, 08 SECONDS EAST, A DISTANCE OF 105.91 FEET; THENCE SOUTH 71 DEGREES, 18 MINUTES, 28 SECONDS WEST, A DISTANCE OF 201.63 FEET TO THE EASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1 (STATE ROAD NO. 5) AS SHOWN ON THE PLAT OF "PALM LAKE PARK" AS RECORDED IN PLAT BOOK 3, PAGE 41, OF THE PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA; THENCE NORTH 18 DEGREES, 41 MINUTES, 32 SECONDS WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 451.16 FEET; THENCE SOUTH 89 DEGREES, 38 MINUTES, 22 SECONDS EAST, PARALLEL WITH AND 710 FEET NORTH OF, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 273.05 FEET; THENCE NORTH 00 DEGREES, 30 MINUTES, 17 SECONDS EAST, PARALLEL TO AND 400 FEET WEST OF, AS MEASURED AT RIGHT ANGLES TO, THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 205.45 FEET TO THE SOUTH RIGHT OF WAY LINE OF BAKER ROAD, A 60 FOOT RIGHT OF WAY AS NOW LAID OUT AND IN USE; THENCE SOUTH 89 DEGREES, 11 MINUTES, 13 SECONDS EAST, ALONG THE SOUTH RIGHT OF WAY LINE OF BAKER ROAD, A DISTANCE OF 25.00 FEET; THENCE SOUTH 00 DEGREES, 30 MINUTES, 17 SECONDS WEST, A DISTANCE OF 100.00 FEET; THENCE SOUTH 89 DEGREES, 32 MINUTES, 08 SECONDS WEST, A DISTANCE OF 100.00 FEET; THENCE SOUTH 00 DEGREES, 32 MINUTES, 08 SECONDS WEST, A DISTANCE OF 241.03 FEET; THENCE SOUTH 00 DEGREES, 32 MINUTES, 08 SECONDS WEST, A DISTANCE OF 915.77 FEET TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29; THENCE NORTH 88 DEGREES, 33 MINUTES, 13 SECONDS WEST, ALONG SAID SOUTH LINE A DISTANCE OF 424.58 FEET TO THE POINT OF BEGINNING.

A tract of Land lying in Section 29, Township 37 South, Range 41 East, Martin County, Florida, being more particularly described as follows: The East 240.97 feet (as measured at right angles to) The East line of the following described parcel: Beginning at the South One-Quarter corner of said Section 29, commence North 89°38'22" West, along the South line of the Southwest quarter of said Section 29, a distance of 249.64 feet; Thence North 18°41'32" West, a distance of 257.58 feet; Thence North 00°32'08" East, a distance of 105.91 feet; Thence South 71°18'28" West, a distance of 201.63 feet to the Easterly right of way line of U.S. Highway No 1 (State Road No 5) As shown on the Plat of "Palm Lake Park" as recorded in Plat Book 3, Page 41 of the Public Records of Martin County, Florida; Thence North 18°41'32" West along said Easterly Right of Way line a distance of 451.16 feet; Thence South 89°38'22" East parallel with and 710 feet North of, as measured at right angles to, the South line of the Southwest quarter of said Section 29, a distance of 273.05 feet; Thence North 00°30'17" East parallel to and 400 feet West of, as measured at right angles to, the East line of the Southwest quarter of said section 29, a distance of 205.45 feet to the South right of way line of Baker Road, a 60 foot right of way as now laid out and in use;

Thence South 89°11'13" East along the South Right of Way line of Baker Road, A distance of 25.00 feet; thence South 00°30'17" West, a distance of 100.00 feet; Thence South 89°11'13" East, a distance of 200.00 feet; Thence North 00°30'17" East a distance of 100.00 feet to the South Right of Way line of said Baker Road; Thence South 89°11'13" East along said South Right of Way line a distance of 175.00 feet to the East line of the Southwest quarter of said Section 29; Thence continue South 89°11'13" East along said South Right of Way line a distance of 250.00 feet; Thence South 00°30'17" West parallel to and 250.00 feet East of, as measured at right angles to, the West line of the Southwest quarter of said Section 29 A distance of 100.00 feet; Thence South 89°11'13" East, a distance of 175.00 feet; Thence North 00°30'17" East a distance of 100.00 feet to the South Right of Way line of said Baker Road; Thence South 89°11'13" East, along said South Right of Way line a distance of 241.03 feet; Thence South 00°32'00" West, a distance of 915.77 feet to the South line of the Southwest quarter of said Section 29; Thence North 88°33'13" West along aforesaid South line a distance of 665.57 feet to the Point of Beginning.

GAA\98-045-P8A
5-15-00

CITY OF STUART
OFFICE OF THE CITY ATTORNEY



MEMORANDUM

TO: KEV FREEMAN, DEVELOPMENT DIRECTOR

SUBJECT: ANNEXATION OF FOUR PARCELS ON BAKER ROAD ADJACENT
TO HANEY CREEK WATERSHED

CC: DAVID DYESS, CITY MANAGER

DATE: October 1, 2020

I have reviewed the agenda item prepared by the Development Director pertaining to the City's annexation of 42.46 acres of conservation land located on or near Baker Road and Green River Parkway S.E. Federal Highway bearing parcel control nos.: 29-37-41-000-000-00111-1 (6.12 acres); 9-37-41-000-000-00260-0 (13.0 acres); 29-37-41-000-000-00010-3 (16.9 acres); and 29-37-41-000-000-00501-9 (6.44 acres) as depicted in the location maps attached as Exhibit A1-A4 to the Ordinance.

The City is the owner of the property at issue. As a result, the City is seeking a voluntary annexation to place City owned conservation land into the City boundaries. Voluntary annexations are governed by the standards of Section 171.044 Florida Statutes. The basic requirement is stated as follows:

“(1) The owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.”

Because these parcels are being submitted as one annexation the review will be based upon all parcels being annexed contemporaneously.

The state statute contains four (4) general requirements. First, a petition for voluntary annexation

must be unanimously signed by all property owners in the area to be annexed. Second, the property proposed to be annexed must be contiguous and reasonably compact. Third, the proposed annexation cannot produce an enclave. Finally, county charters which provide for an exclusive method of municipal annexation override the Florida Statute. Martin County is not a Charter county and therefore, the fourth criteria does not apply to an annexation in the City of Stuart, Florida.

1. **Signed by all property owners in the geographic area being annexed.** Because the City is the sole owner of all properties, the first requirement has been met.
2. **Contiguous to the Municipality:** Pursuant to Section 171.044(1), F.S., “the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.” Property is deemed to be “Contiguous” under Section 171.031 (11), F.S., where a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous (sharing a common boundary) with a part of the boundary of the municipality. “Contiguous” has also been defined as “touching or adjoining in a reasonably substantial ... sense.” See City of Sanford v. Seminole County, 538 So. 2d 113 (Fla. 5th DCA 1989); May v. Lee County, 483 So. 2d 481 (Fla. 2d DCA 1986). The Sanford Court found that Section 171.031(11) F.S. only requires “that a substantial part of a boundary” touch municipal property as opposed to the entire perimeter of the property.

Section 171.031(11) provides that:

Separation of the territory sought to be annexed from the annexing municipality by a publicly owned right-of-way for a highway, road, railroad, canal or utility or a body of water, watercourse or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such division does not, as a practical matter, present the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent inhabitants from fully associating and trading with each other socially and economically.

In the current application, a review of the location map indicates that a substantial part of the boundary is coterminous with the City of Stuart. The entire frontage of the property of all four properties abuts and is bordered by the City of Stuart. Therefore, the property meets condition two and deemed is contiguous to the City of Stuart.

3. **Reasonably Compact**

“Compactness is defined under subsection (12) of 171.031, F.S., to mean a concentration of a piece of property in a single area. The requirement for compactness precludes any action which would create enclaves, pockets, or ginger areas in serpentine patterns. The purpose of the compact and contiguous requirement is to assure creation of geographically unified and compact municipalities, City of Sunrise v. Broward County, 473 So. 2d 1387 (Fla. 4th DCA 1985).

A review of the map and the application determines that this property is reasonably compact and meets Florida Statute 171.031(12). Given the configuration of the City, as well as the property requesting annexation, the annexation will not *create* pockets of unincorporated areas or serpentine finger areas.

No Enclaves

Subsection 5 of 171.044, F.S. Provides that “[l] and shall not be annexed through voluntary annexation when such annexation *results in the creation of enclaves*”. The term “enclave” is defined under Section 171.031(13), F.S., as “any unincorporated improved or developed area that is bounded on all sides by a single municipality or any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.”

A review of the map, appears to indicate that property that remains dedicated to the Haney Creek Water Shed will be in an enclave. In addition, there is property on the South Side of Baker Road which will also become an enclave.

Conclusion

Based upon the foregoing facts and analysis it is my opinion that the voluntary annexation of this parcel into the municipal boundaries of the City of Stuart complies with three of the four conditions set forth in Florida Statute §171.044. If the County challenges this annexation application, it is unlikely that the City will meet the burden of proof to comply with the state statute.

This opinion is prepared solely at the request of and for the use of, the City of Stuart, and no other person or entity may rely on it for any purpose without the express written permission of the City of Stuart.

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST Local Planning Agency

Meeting Date: 10/8/2020

Prepared by: Kev Freeman

Title of Item:

AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS - RESIDENTIAL INFILL STORMWATER MANAGEMENT. (QUASI JUDICIAL)(RC)

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTION 6.03.00. OF THE LAND DEVELOPMENT CODE ENTITLED "STORMWATER MANAGEMENT" OF CHAPTER VI ENTITLED "ON-SITE AND OFF-SITE DEVELOPMENT STANDARDS" IN RESPECT OF STANDARDS FOR RESIDENTIAL SINGLE FAMILY AND DUPLEX INFILL DEVELOPMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The City is experiencing a greater number of single-family and duplex infill projects within existing residential neighborhoods. The majority of neighborhoods were built to what are now outdated stormwater management requirements. The condition is compounded by the existing regulations regarding stormwater management for new single-family and duplex infill lot development.

The issues that occur relate to the fact that new single-family and duplex construction is required to meet existing flood plain elevation standards. The consequence of this requirement is that new homes are built at an elevation which can be significantly higher than neighboring homes and can cause localized stormwater ponding and potential flooding.

As a result, staff are often involved after the construction process has commenced in attempting to correct stormwater flooding issues and negotiating remedial solutions between property owners that are identified after the fact and as far as the code allows.

The purpose of this Land Development amendment is twofold:

1. To provide single-family and duplex residential infill lot builders and staff with standards that will achieve on-site stormwater management.
2. To provide reassurance to neighboring property owners that new infill single-family and duplex construction will be designed to accommodate adequate stormwater management.

The proposed code amendments include the requirement to provide:

- A. Topographic survey (spot elevations) extending a minimum of 25' beyond lot property line and which identifies existing improvements within this area, and
- B. Engineers stormwater lot grading plan.

The following are proposed construction requirements:

- a. Lot fill shall be limited to the minimum necessary for construction of the building.
- b. Construction of a stem-wall or extended footers or other approved method of foundation construction.
- c. Installation of roof gutters that discharge into rain-gardens and/or french drains.
- d. If the residential infill lot has a waterfront then a buffered shoreline or other approved method for preventing excessive stormwater run-off into the water-body shall be required.

This Land Development Code amendment supports the following comprehensive plan objectives and policies:

Objective B1 of the City's Comprehensive Plan Future Land Use Element to discourage urban sprawl by facilitating urban redevelopment and infill development of properties and planning for urban infill and redevelopment of lands located within Stuart in order to achieve a compact urban form.

Policy 7.1 of the City's Comprehensive Plan Infrastructure Element to encourage residential infill development and redevelopment which will maximize the use of existing facilities and discourage urban sprawl.

Policy 2.5 of the City's Comprehensive Plan Conservation Element to ensure that stormwater management shall be designed to maximize the quality of water being recharged as well as that being discharged off-site and to require new residential infill development to address off-site watershed issues related to water quality impacts due to on-site stormwater management designs.

Funding Source:

N/A

Recommended Action:

Move to approve Ordinance 2453-2020 and forward to City Commission for first hearing.

ATTACHMENTS:

Description	Upload Date	Type
▣ A1. Ord 2453-2020	9/3/2020	Ordinance add to Y drive
▣ A2. Appendix A to Ordinance	9/2/2020	Ordinance add to Y drive
▣ B1. Staff Presentation	9/3/2020	Presentation



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2453-2020

**AN ORDINANCE OF THE CITY OF STUART, FLORIDA,
AMENDING SECTION 6.03.00. OF THE LAND DEVELOPMENT
CODE ENTITLED "STORMWATER MANAGEMENT" OF
CHAPTER VI ENTITLED "ON-SITE AND OFF-SITE
DEVELOPMENT STANDARDS" IN RESPECT OF STANDARDS
FOR RESIDENTIAL SINGLE FAMILY AND DUPLEX INFILL
DEVELOPMENT; PROVIDING FOR REPEAL OF CONFLICTING
ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING
FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE
DATE, AND FOR OTHER PURPOSES.**

* * * * *

WHEREAS, the purpose of this Land Development Code amendment is to support Objective B1 of the City's Comprehensive Plan Future Land Use Element to discourage urban sprawl by facilitating urban redevelopment and infill development of properties and planning for urban infill and redevelopment of lands located within Stuart in order to achieve a compact urban form.

WHEREAS, the purpose of this Land Development Code amendment is to support Policy 7.1 of the City's Comprehensive Plan Infrastructure Element to encourage residential infill development and redevelopment which will maximize the use of existing facilities and discourage urban sprawl.

WHEREAS, the purpose of this Land Development Code amendment is to support Policy 2.5 of the City's Comprehensive Plan Conservation Element to ensure that stormwater management shall be designed to

maximize the quality of water being recharged as well as that being discharged off-site and to require new residential infill development to address off-site watershed issues related to water quality impacts due to on-site stormwater management designs.

WHEREAS, the purpose of this Land Development Code amendment is to establish minimum standards for stormwater management for single-family and duplex residential infill developments; and

WHEREAS, the Land Planning Agency reviewed the proposed amendments to the Land Development Code at a public hearing on _____; and

WHEREAS, the City Commission duly scheduled, advertised, and held a public hearing on _____, to consider this ordinance and provide for full public participation in the Land Development Code amendment process.

* * * * *

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, that:

SECTION 1: The Stuart Land Development Code is hereby amended as attached in appendix A to this ordinance.

SECTION 2: All ordinances or parts of ordinances herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: The provision of Sections 1 of this ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption

Passed on first reading the _____ day of _____ 2020.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MICHAEL J. MEIER, MAYOR
 EULA R. CLARKE, VICE MAYOR
 BECKY BRUNER, COMMISSIONER
 MERRITT MATHESON, COMMISSIONER
 TROY MCDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2020.

ATTEST:

 MARY R. KINDEL
 CITY CLERK

 MICHAEL J. MEIER
 MAYOR

APPROVED AS TO FORM
 AND CORRECTNESS:

 MICHAEL J. MORTELL
 CITY ATTORNEY

Chapter VI - ON-SITE AND OFF-SITE DEVELOPMENT STANDARDS

6.00.00. - GENERAL PROVISIONS

Sec. 6.00.01. - Purpose.

The purpose of this chapter is to provide development design and improvement standards applicable to all development activity within the city.

Sec. 6.00.02. - Responsibility for improvements.

All improvements required by this chapter shall be designed, installed, and paid for by the developer.

Sec. 6.00.03. - Principles of development design.

The provisions of this chapter are intended to ensure functional and attractive development.

Development design shall first take into account the protection of natural resources as prescribed in chapter V of this Code. All development shall be designed to avoid unnecessary impervious surface cover; to provide adequate access to lots and sites; and to avoid adverse effects of shadow, glare, noise, odor, traffic, drainage, and utilities on surrounding properties.

6.03.00. - STORMWATER MANAGEMENT

Sec. 6.03.01. - Generally.

- A. *Intent.* It is the policy of the City of Stuart to promote efficient use and management of stormwater. To the maximum extent possible, stormwater will be percolated into the shallow aquifer by use of retention/detention areas, underground storage, green space, pervious pavement, and exfiltration systems. It is also the policy of the City of Stuart to protect existing facilities from adverse impacts of new construction.
- B. *Applicability.*
 - 1. The provisions of this chapter shall apply to development within the City of Stuart municipal boundaries, excluding the urban district, as follows:
 - (a) All new development shall be required to comply with the site design requirements of the South Florida Water Management District. New development shall be required to comply with all requirements for water quality as set forth in this chapter. Exfiltration systems shall be used for water quality purposes only. Proper management of stormwater runoff shall be accommodated through retention and detention, green space, allowable discharge and up to 40 percent underground storage.
 - (b) Renovation development, vacant development and infill development shall be required to comply with all requirements for water quality as set forth in this chapter. Exfiltration

systems shall be used for water quality purposes only. Not more than 40 percent of stormwater runoff may be stored in underground storage structures. The remaining 60 percent of the required stormwater runoff shall be accommodated through retention and detention, green space, and allowable discharge.

2. In the Urban Code District and East Stuart District, all development, including new development, substantial renovation and infill development, shall be required to comply with all requirements for water quality as set forth in this chapter. Exfiltration systems shall be used for water quality purposes only. Proper management of stormwater runoff may be accommodated through any combination of underground storage structures, retention and detention, green space, and allowable discharge.

A certificate of occupancy shall not be issued if any portion of a stormwater system is not in compliance with the approved site plan.

C. *Site planning.*

1. Developments must, in their site planning, account for and compensate for historic drainage patterns in the area of the development so as not to cause flooding to adjacent and surrounding properties. ~~Single-family homes and duplexes on lots of record, though not required to have engineered site plans, must demonstrate by submission of a civil plan depicting that stormwater runoff will not flow onto adjoining properties.~~
2. Alterations, additions and modifications of existing facilities, as to the extent of the alteration, addition or modification are subject to this chapter.

- D. *Drainage.* An adequate drainage system, including necessary ditches, canals, swales, percolation areas, berms, dikes, weirs, detention ponds, storm sewers, drain inlets, manholes, headwalls, endwalls, culverts, bridges and other appurtenances shall be required in all subdivisions and developments for the positive drainage of storm and groundwater. The drainage system shall provide for surface waters affecting the subdivision or development.

- E. *Stormwater treatment.* Stormwater treatment facilities shall be required in the subdivision or development to control stormwater runoff quality by providing for on-site retention/detention or other appropriate treatment technique for stormwater.

- F. *Maintenance.* The capacity of a stormwater management system shall be properly maintained. Methods of required maintenance may include vacuuming exfiltration systems, vacuuming and pressure-cleaning pervious parking areas, replacement of berms, the installation of silt screens or similar devices, and the installation of sod. If any portion of a stormwater system ceases to function as designed, the property owner or occupant may be required to remove, repair or replace that portion of a stormwater system.

G. *Infill development.*

1. All single family and duplex residential infill lot development shall submit the following at time of building permit submittal:

- i. A topographic survey (spot elevations) extending a minimum of 25' beyond lot property line and which identifies existing improvements within this area. Surveys are to be signed and sealed by a registered surveyor in the State of Florida.
- ii. A Signed and sealed Engineers stormwater lot grading plan that may be reviewed by external engineer.

2. Residential infill development shall comply with the following:

- i. Lot fill shall be limited to the minimum necessary for construction of the building.
- ii. Construction of a stem-wall or extended footers or other approved method of foundation construction.
- iii. Installation of roof gutters that discharge into:
 - a. Raingardens and/or,
 - b. French Drains.
- iv. If the residential infill lot has a waterfront then a buffered shoreline or other approved method for preventing excessive stormwater run-off into the waterbody shall be required.

~~The city development director may require a stem wall or other approved method of foundation construction for infill development to maintain consistent regional elevations at grade, and to prevent excessive stormwater runoff~~

Local Planning Agency October 8th, 2020

Land Development Code Amendment
Ordinance 2453-2020

Single-family and Duplex Infill Stormwater Management



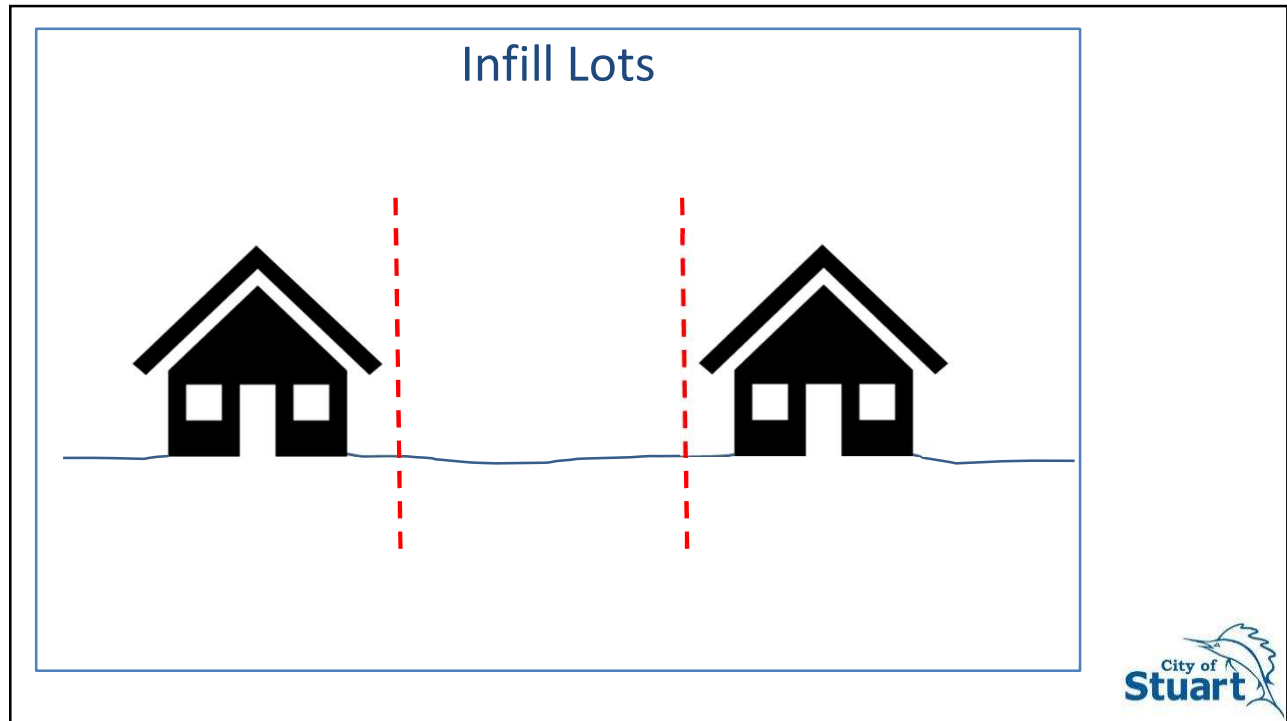
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Ordinance 2448-2020

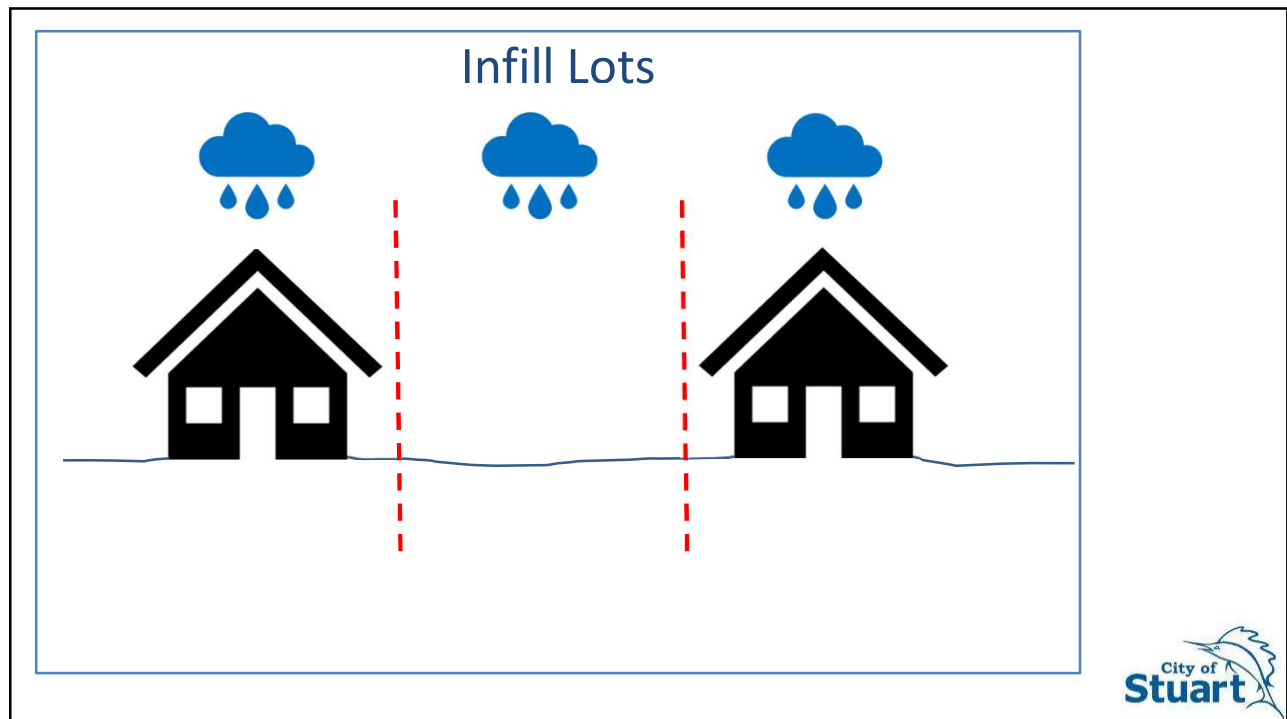
AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTION 6.03.00. OF THE LAND DEVELOPMENT CODE ENTITLED "STORMWATER MANAGEMENT" OF CHAPTER VI ENTITLED "ON-SITE AND OFF-SITE DEVELOPMENT STANDARDS" IN RESPECT OF STANDARDS FOR RESIDENTIAL SINGLE FAMILY AND DUPLEX INFILL DEVELOPMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.



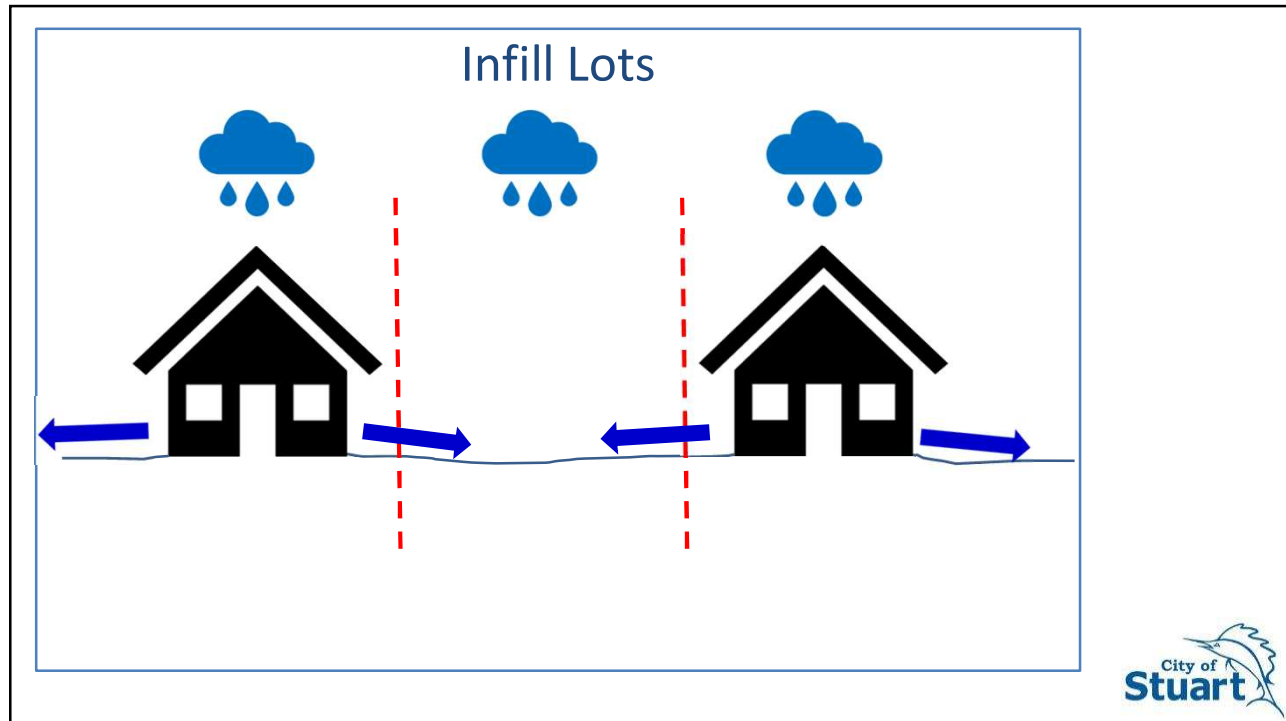
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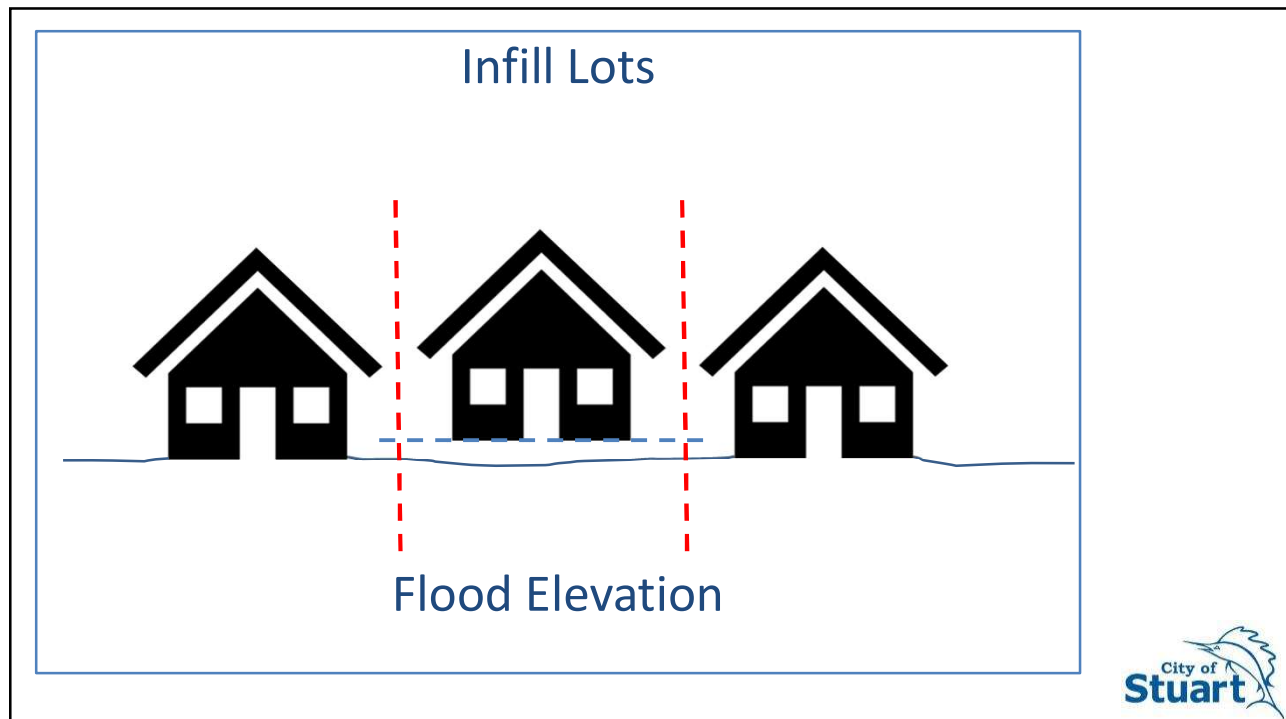
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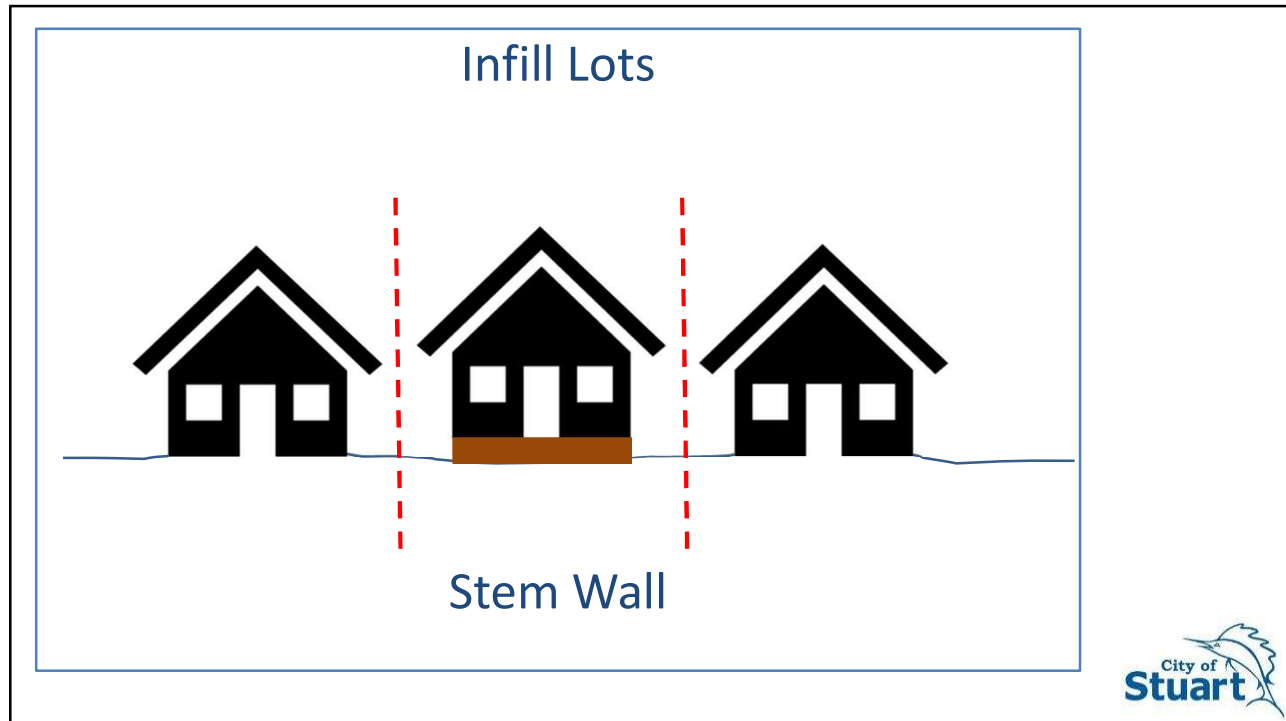
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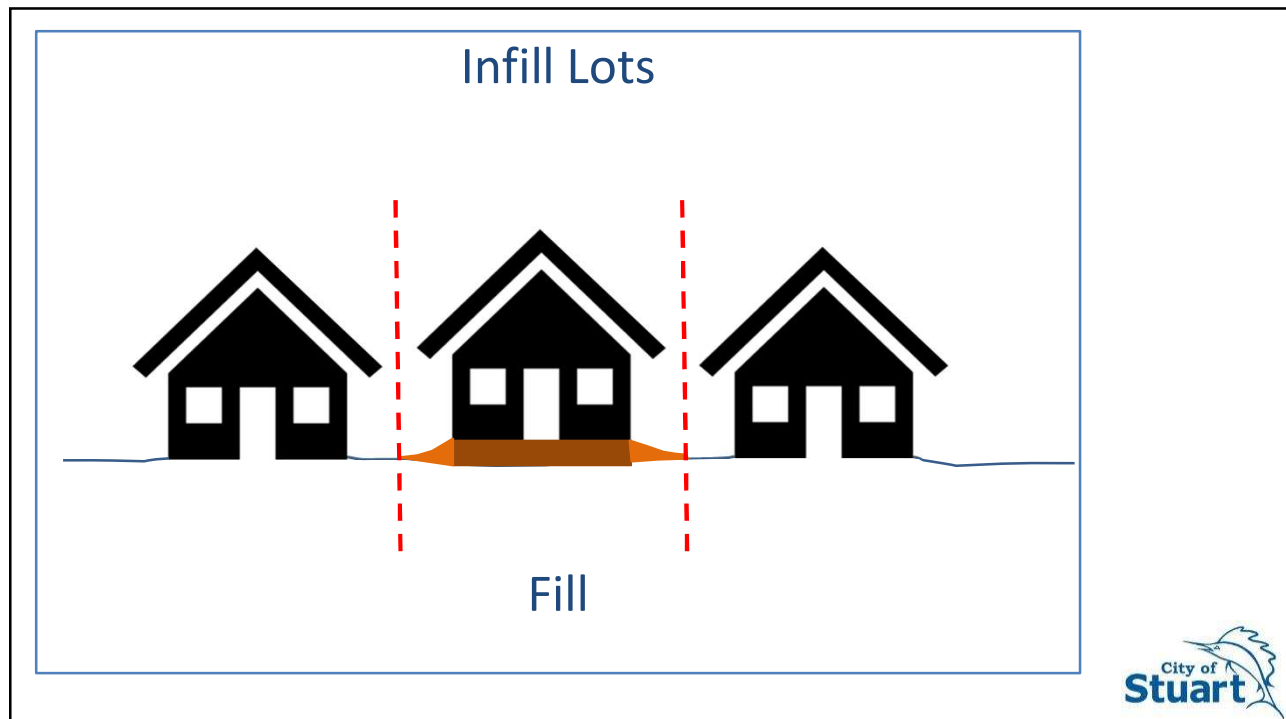
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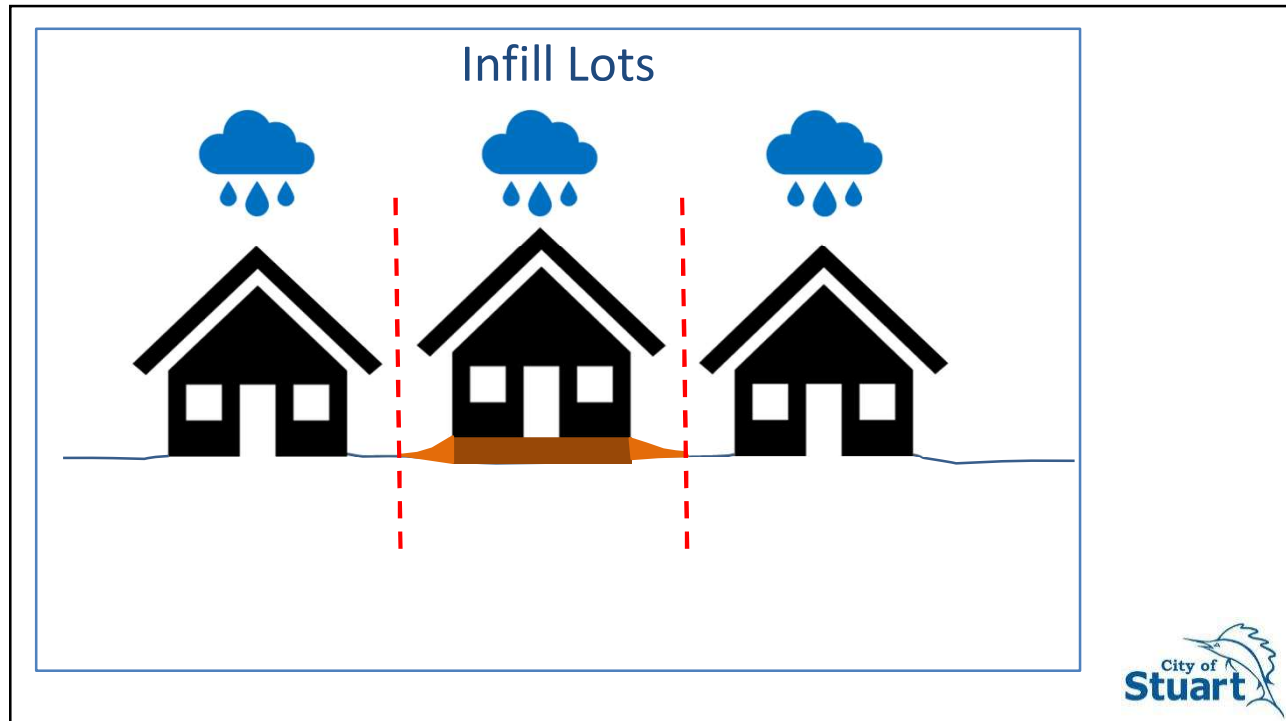
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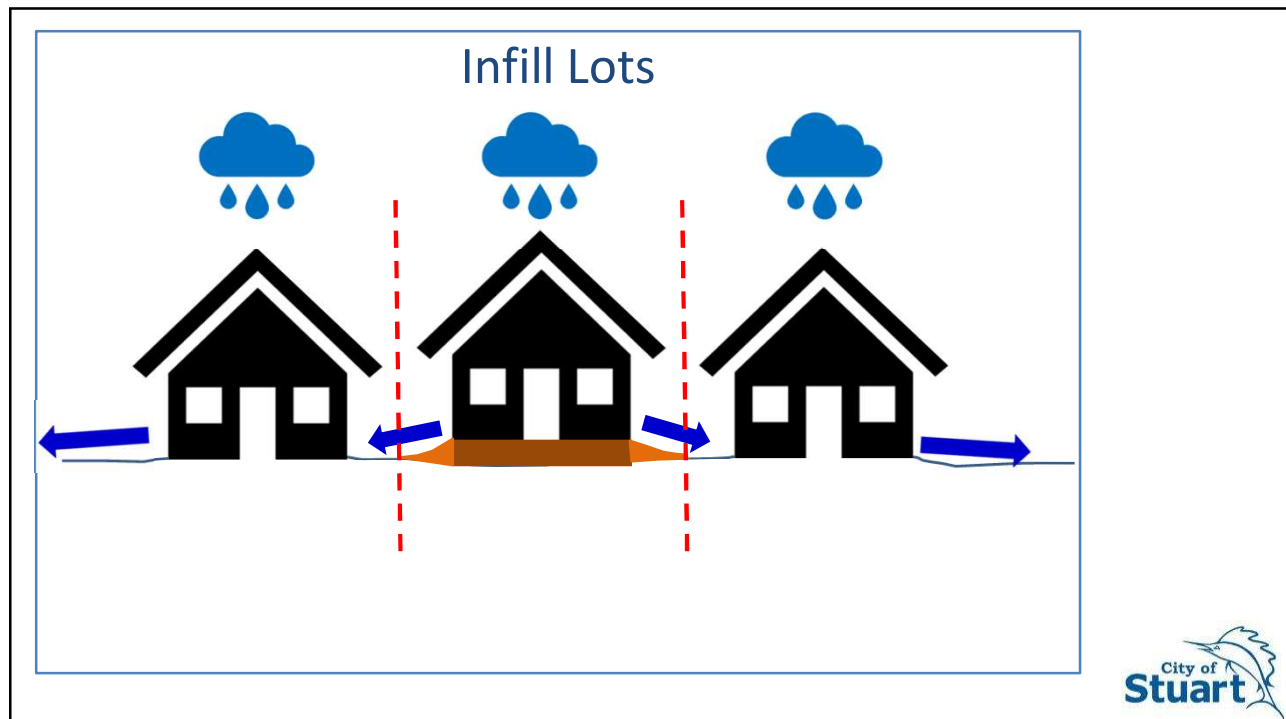
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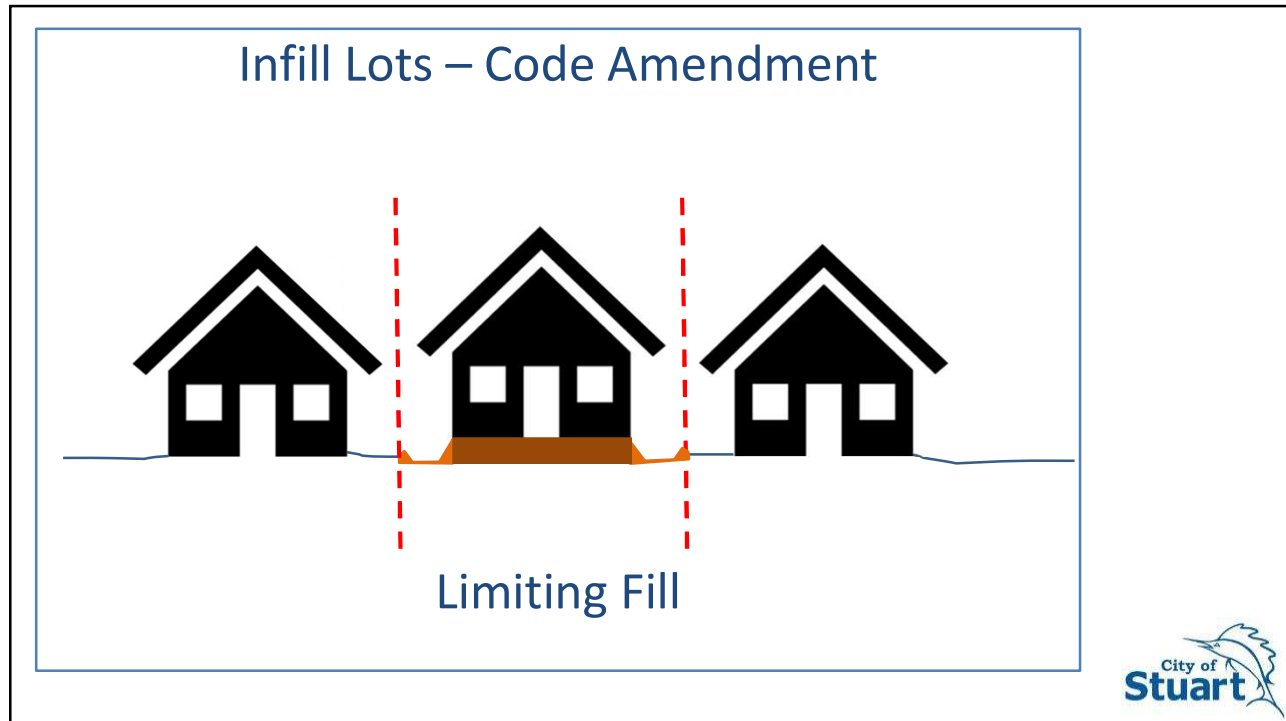
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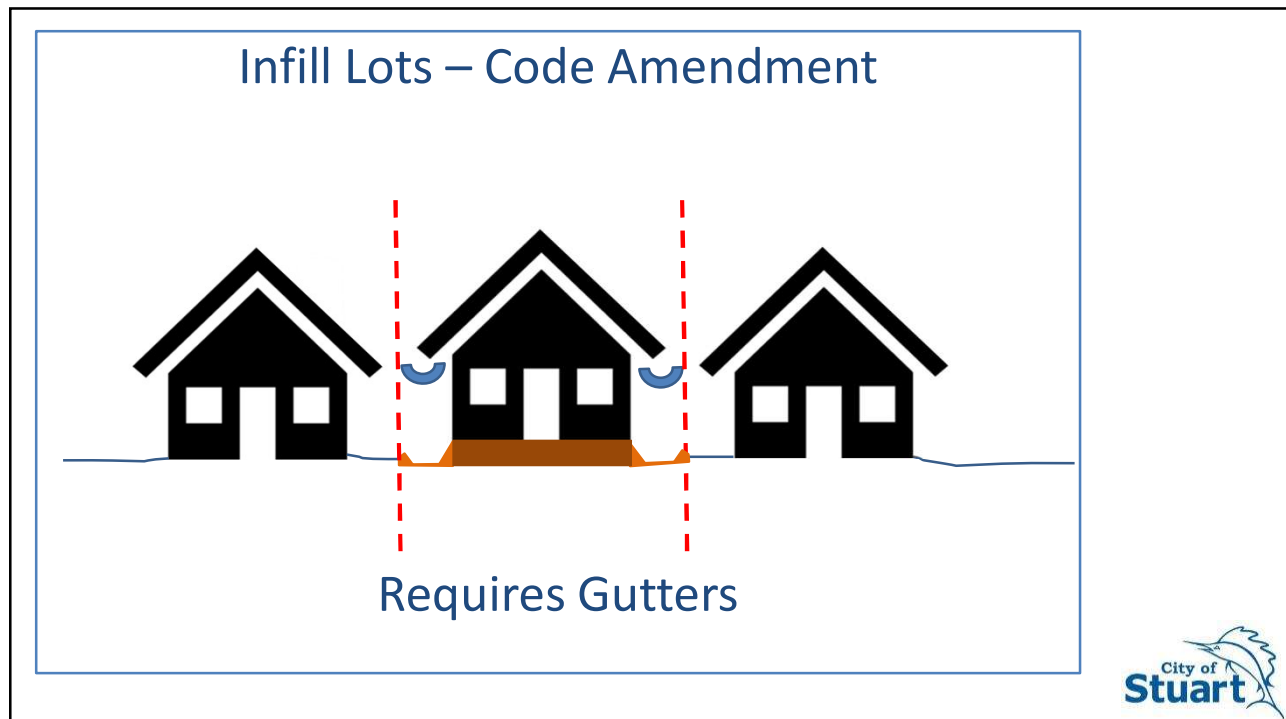
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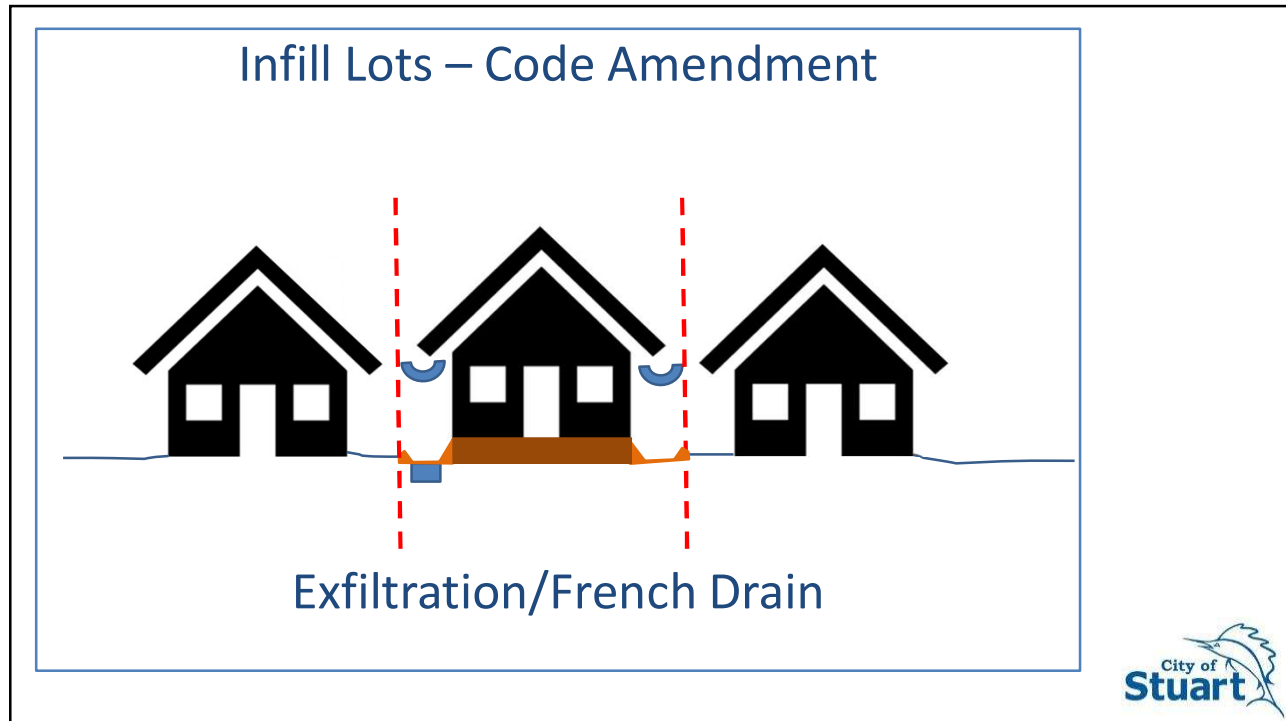
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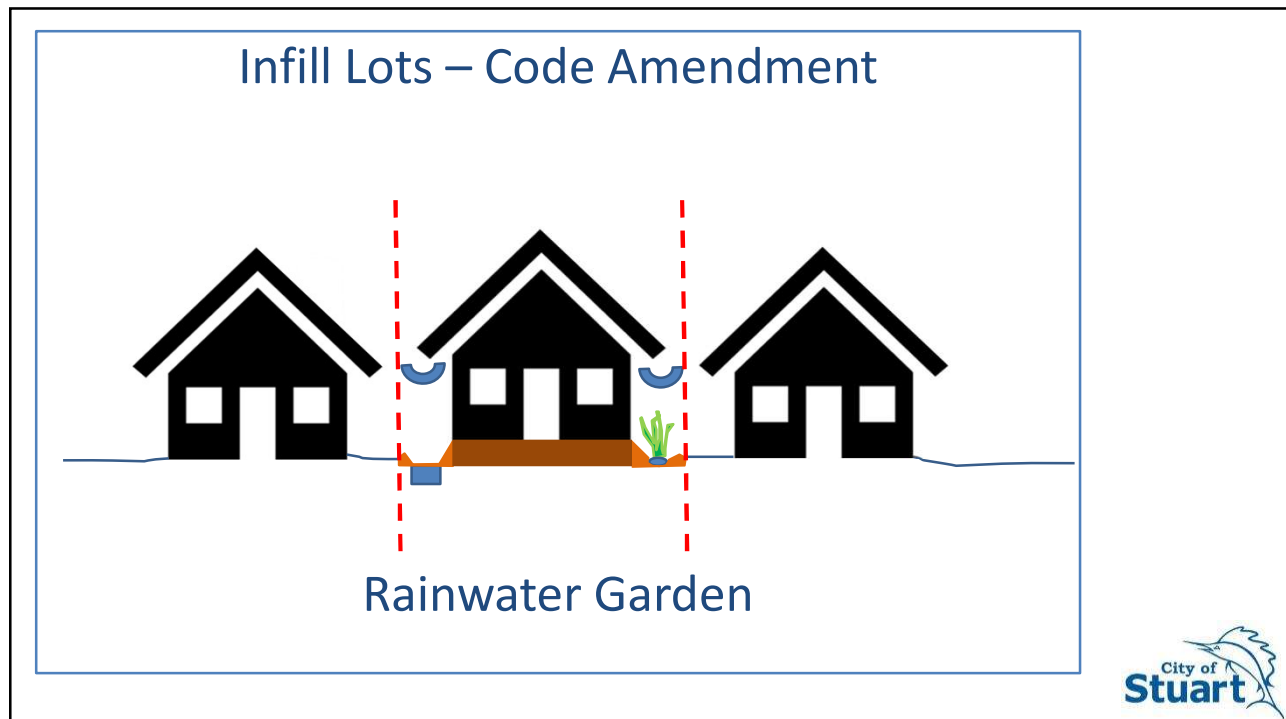
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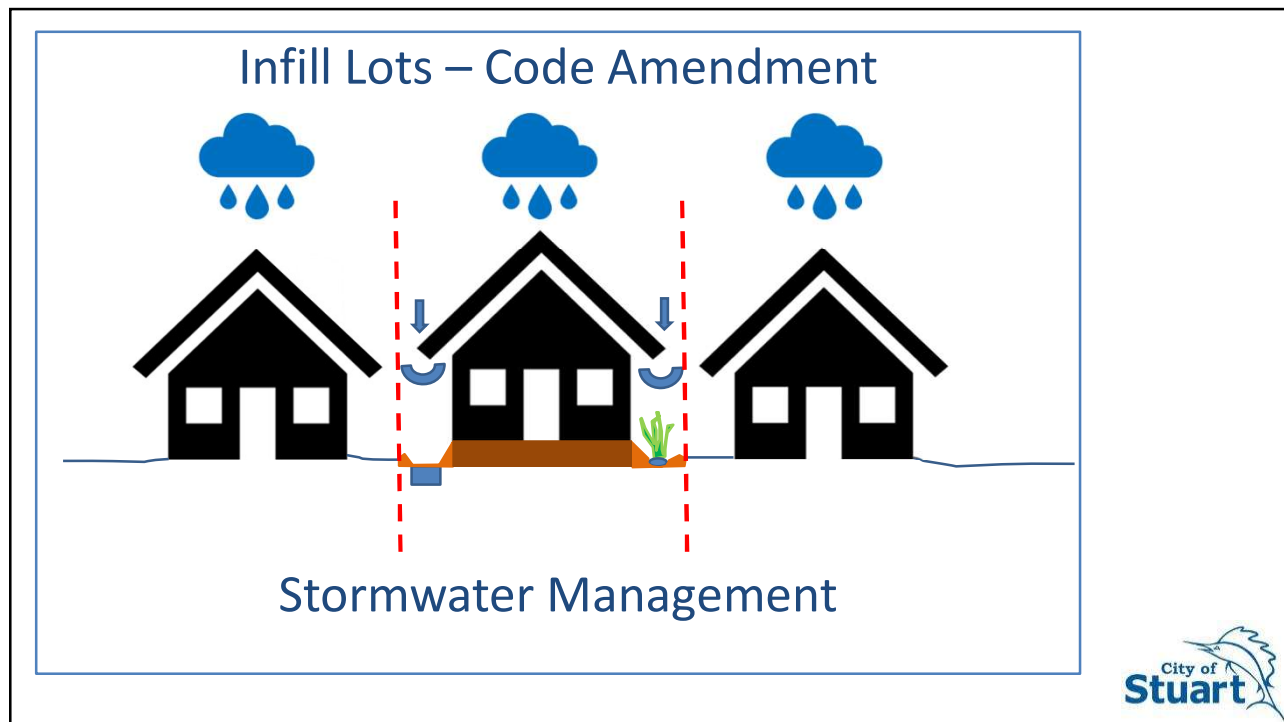
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13



14



15

Standards

- A topographic survey (spot elevations) extending a minimum of 25' beyond lot property line and which identifies existing improvements within this area.
- An engineers' stormwater lot grading plan.
 - Lot fill shall be limited to the minimum necessary for construction of the building.
 - Construction of a stem-wall or extended footers or other approved method of foundation construction.
 - Installation of roof gutters that discharge into Raingardens and/or French Drains.
 - If the residential infill lot has a waterfront then a buffered shoreline or other approved method for preventing excessive stormwater run-off into the waterbody shall be required.

City of
Stuart

16

Discussion & Recommendation

Staff recommend approval.



CITY OF STUART, FLORIDA AGENDA ITEM REQUEST Local Planning Agency

Meeting Date: 10/8/2020

Prepared by: Stephen Mayer

Title of Item:

ORDINANCE NUMBER 2454-2020

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTION 2.04.00, OF THE LAND DEVELOPMENT CODE ENTITLED "AREA, IMPERVIOUS SURFACE, SETBACK, AND HEIGHT REQUIREMENTS" OF CHAPTER II, TABLE 5 ENTITLED "RESIDENTIAL AREA, IMPERVIOUS SURFACE COVERAGE, SETBACKS, AND HEIGHT REQUIREMENTS" AND SECTION 2.04.02 OF THE LAND DEVELOPMENT CODE ENTITLED "SUPPLEMENTAL AREA REQUIREMENTS", IN RESPECT OF STANDARDS FOR LOT SIZE, LOT WIDTH AND BUILDING SETBACKS FOR THE R-2 AND R-3 ZONING DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Staff is proposing changes to the Land Development Code within the R-2 and R-3 zoning district regulations (as it pertains to minimum lot area, lot width and side setbacks) for the following reasons:

1. Provide consistency between the lot width and sizes in the Land Development Code and the densities in the Comprehensive Plan;
2. Remove the disincentives of building single family lots within the R-2 and R-3 zoning districts; and
3. Correct minor technical errors in the R-2 and R-3 minimum side setbacks regarding duplex and town homes, specifically the zero lot line side of those housing types.

1. Staff notes an inconsistency between the R-2 and R-3 zoning district regulations and the City's Comprehensive Plan. The existing R-2 and R-3 zoning district regulations require 60' wide lots and 6,000 square foot area for single family lots. This is larger than the maximum density allowed by code (10 dwelling units per acre) by 10' in width and nearly 1,700 square feet in area. This is not only contrary to our Comprehensive Plan density, but it is also contrary to the historic platting of many of our R-2 and R-3 zoned property. Staff proposes to lower the maximum area for R-2 to 5,000 square feet, or equal to the 8.7 dwelling units per acre allowed by the Comprehensive Plan in Residential Low. In the same regard, staff proposes to lower the R-3 maximum area to 4,356, or equal to the 10 dwelling units per acre allowed in Multi-Family Residential. In order to accomplish this goal, staff has also proposed reducing the minimum width to 50'. There is historic precedent for 50' lots, as many of R-2 and R-3 lots that have been platted, included 50' lots or even smaller. Staff has attached the historic plats of some of the major areas where a mix of single family and duplex houses currently exist.

2. The prevailing direction in affordable housing solutions is to encourage all forms of housing development within the City, including smaller single family homes. At current, the City Land Development Code (LDC), R-2 and R-3 zoning district regulations, encourage the development of multi-family property and discourages the property being utilized for single family lots.

Areas that are predominately duplexes are not affected by the Text Amendment, as the size and lot area for duplexes is not being changed. However, there are areas in which the City has known potential for small, cottage style single family lot development. It is the opinion of staff that the City code should promote the development of this property as single family equally versus multi-family. Because the existing regulations allow for the maximum

density to be achieved for duplexes in the R-2 and townhomes in the R-3 districts respectively, the code provides a disincentive to develop single family lots instead.

Staff also recommends the side setback for single family lots be reduced from 8 feet to 5, in order to accommodate the narrower lot width. 5 feet is customary for 50' lots that are found in the urban district.

3. Staff is correcting minor interpretation errors in regards to duplexes and other zero lot line dwellings such as townhomes. By their nature, the side setback that shares the duplex common wall or the townhome dividing line, would have to have a setback of 0. The Land Development Code allows for these housing types, but does not indicate that the side setback can go to 0 in these circumstances.

The areas that are affected by the Zoning Text Amendment are highlighted by the attached maps. They are all properties within the R-2 and R-3 zoning districts. If a property is currently developed as a duplex, multi-family or nonresidential, the changes will not create a non-conformity. The changes staff is proposing will bring some properties that exist as 50' wide single family into conformity.

Funding Source:

N/A

Recommended Action:

Motion to recommend approval of Ordinance 2454-2020 and forward to the City Commission for first reading on October 26, 2020.

ATTACHMENTS:

Description	Upload Date	Type
❑ A1. Ordinance 2454-2020	9/30/2020	DRAFT ORDINANCE
❑ B1. R2 Zoning Map Areas	9/30/2020	Attachment
❑ B2. R3 Zoning Map Areas	9/30/2020	Attachment
❑ D1. Bessey Addition plat	9/28/2020	Backup Material
❑ D2. Broadway Plat	9/28/2020	Backup Material
❑ D3. Eldorado Heights Amended Plat	9/28/2020	Backup Material
❑ D4. Highlands Plat	9/28/2020	Backup Material
❑ D5. Kreuger Park Plat	9/28/2020	Backup Material
❑ D6. Lawler Heights Plat	9/28/2020	Backup Material



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2454-2020

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTION 2.04.00, OF THE LAND DEVELOPMENT CODE ENTITLED "AREA, IMPERVIOUS SURFACE, SETBACK, AND HEIGHT REQUIREMENTS" OF CHAPTER II, TABLE 5 ENTITLED "RESIDENTIAL AREA, IMPERVIOUS SURFACE COVERAGE, SETBACKS, AND HEIGHT REQUIREMENTS" AND SECTION 2.04.02 OF THE LAND DEVELOPMENT CODE ENTITLED "SUPPLEMENTAL AREA REQUIREMENTS", IN RESPECT OF STANDARDS FOR LOT SIZE, LOT WIDTH AND BUILDING SETBACKS FOR THE R-2 AND R-3 ZONING DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES..

* * * * *

WHEREAS, the purpose of this Land Development Code amendment is to support the objectives of the City's Comprehensive Plan; and

WHEREAS, the purpose of this Land Development Code amendment is to establish minimum criteria for provision of single-family lot sizes, lot widths, and building setbacks in the Residential Single Family/Duplex (R-2) and the Residential Multi-Family (R-3) zoning districts; and

WHEREAS, the Land Planning Agency reviewed the proposed amendments to the Land Development Code at a public hearing on October 8, 2020; and

WHEREAS, the City Commission duly scheduled, advertised, and held a public hearing on October 26, 2020, to consider this ordinance and provide for full public participation in the Land Development Code amendment process.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, that:

SECTION 1: The Stuart Land Development Code is hereby amended as follows:

Chapter 2 – Zoning Districts Uses Allowed, Density, Intensity

2.04.00 Area, Impervious Surface, Setback and Height Requirements

2.04.01 Generally

Table 5 – Residential Area, Impervious Surface Coverage, Setback and Height Requirements

Standard	R-1A	R-1	R-2 (Single-family)	R-2 (Two-Family)	R-3 (Single-family)	R-3 (Two-family)	R-3 (Multi-family)	R-3 (Professional Bldg.)	R-3 (Residential units with business)
Minimum zoning lot size:									
Minimum lot area (sq. feet)	10,000	7,500	6,000 5,000	7,500	6,000 4,356	7,500	10,000	10,000	10,000
Minimum lot width (feet)	100'	75'	60' 50'	75' *	60' 50'	75' *	100'	100'	100'
Maximum Impervious Surface Coverage	50%	50%	50%	50%	50%	50%	40%	40%	40%
Building Setback (Minimum Yards):									
Minimum front	25'	25'	25'	30'	25'	30'	25'	25'	25'
Minimum side	10'	7.5'	7.5'	10' **	8' 5'	10' **	15' **	15'	25'
Minimum rear	15'	15'	15'	20'	20'	20'	20'	20'	20'
Maximum Building Height	35'	35'	35'	35'	35'	35'	35'	45'	45'
Maximum Number of Stories	3	3	3	3	3	3	3	4	4

Note: The above table does not apply to the CRA except for footnotes 1 and 2 noted below. Refer to chapter III, Special Zoning Codes for the development standards for the CRA.

* Total width for both duplex units

** A zero-foot setback allowed for common wall of duplex dwelling units and fee-simple townhome devesing walls

Sec. 2.04.02. - Supplemental area requirements**A. Minimum width and area of lots.**

1. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced so that the lot width or depth, front, side or rear yard, minimum lot area or other requirements of this Code are not maintained. This section shall not apply when a portion of a lot is subsequently acquired for public purposes.
2. No residential lot shall be less than ~~60~~ 50 feet in width. In the case of irregularly shaped lots, the average lot width shall be measured and determined in accordance with the definition of average lot width set forth in chapter XII.
3. No platted lot shall contain less than ~~6,000~~ 4,356 square feet.

B. Adjoining lots of record.

1. If two or more adjoining lots with continuous frontage are in a single ownership at any time and such lots individually are less than the lot width requirements for the zone in which they are located, such groups of lots shall be considered as a single lot or several lots of minimum permitted size and the resulting lot or lots shall be subject to the dimensional requirements of this chapter.

SECTION 2: All ordinances or parts of ordinances herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: The provision of Sections 1 of this ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption

Passed on first reading the ____ day of _____, 2020.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MICHAEL J. MEIER, MAYOR
EULA R. CLARKE, VICE MAYOR
BECKY BRUNER, COMMISSIONER
MERRITT MATHESON, COMMISSIONER
TROY MACDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2020.

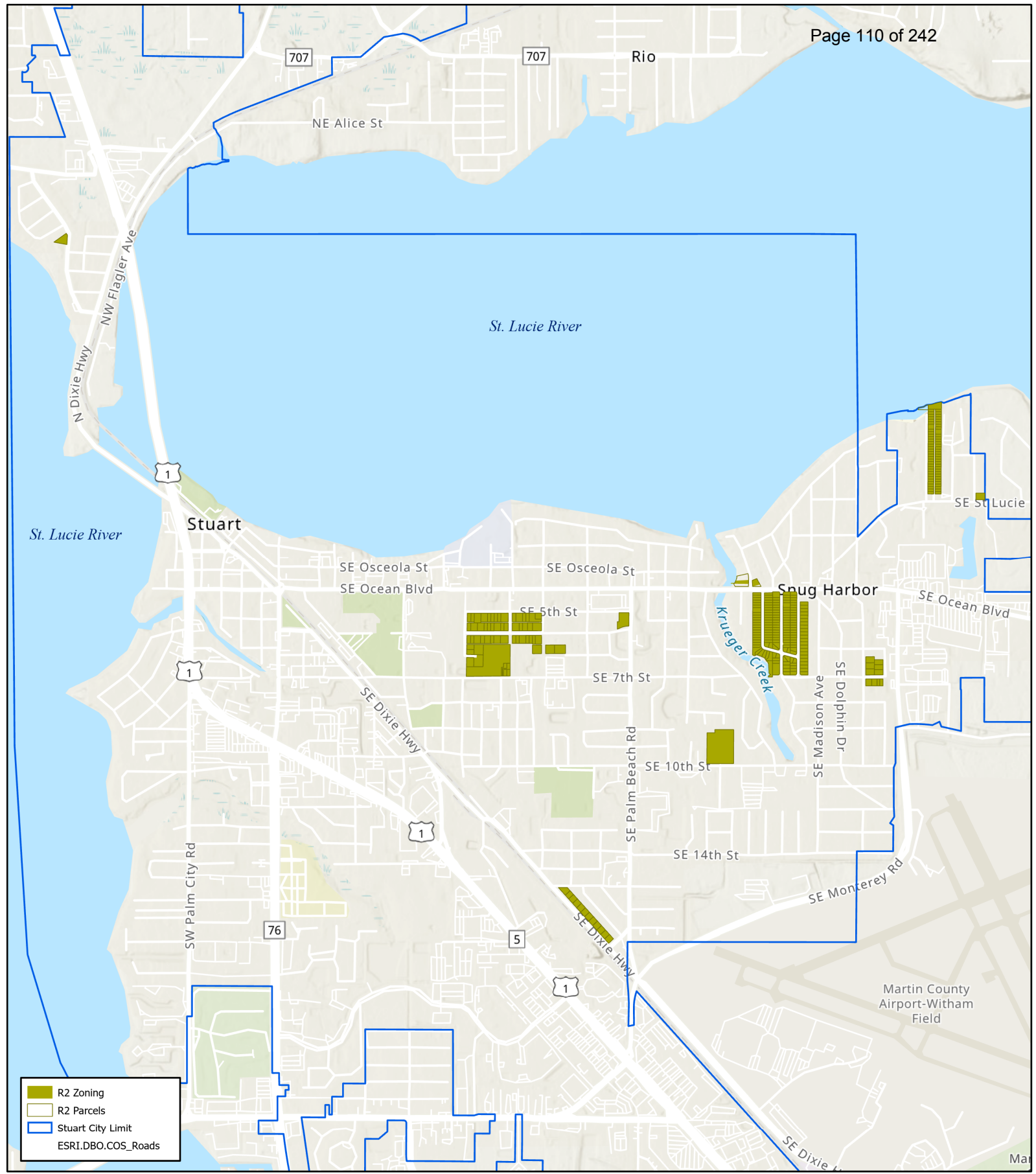
ATTEST:

MARY R. KINDEL
CITY CLERK

MICHAEL J. MEIER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL
CITY ATTORNEY



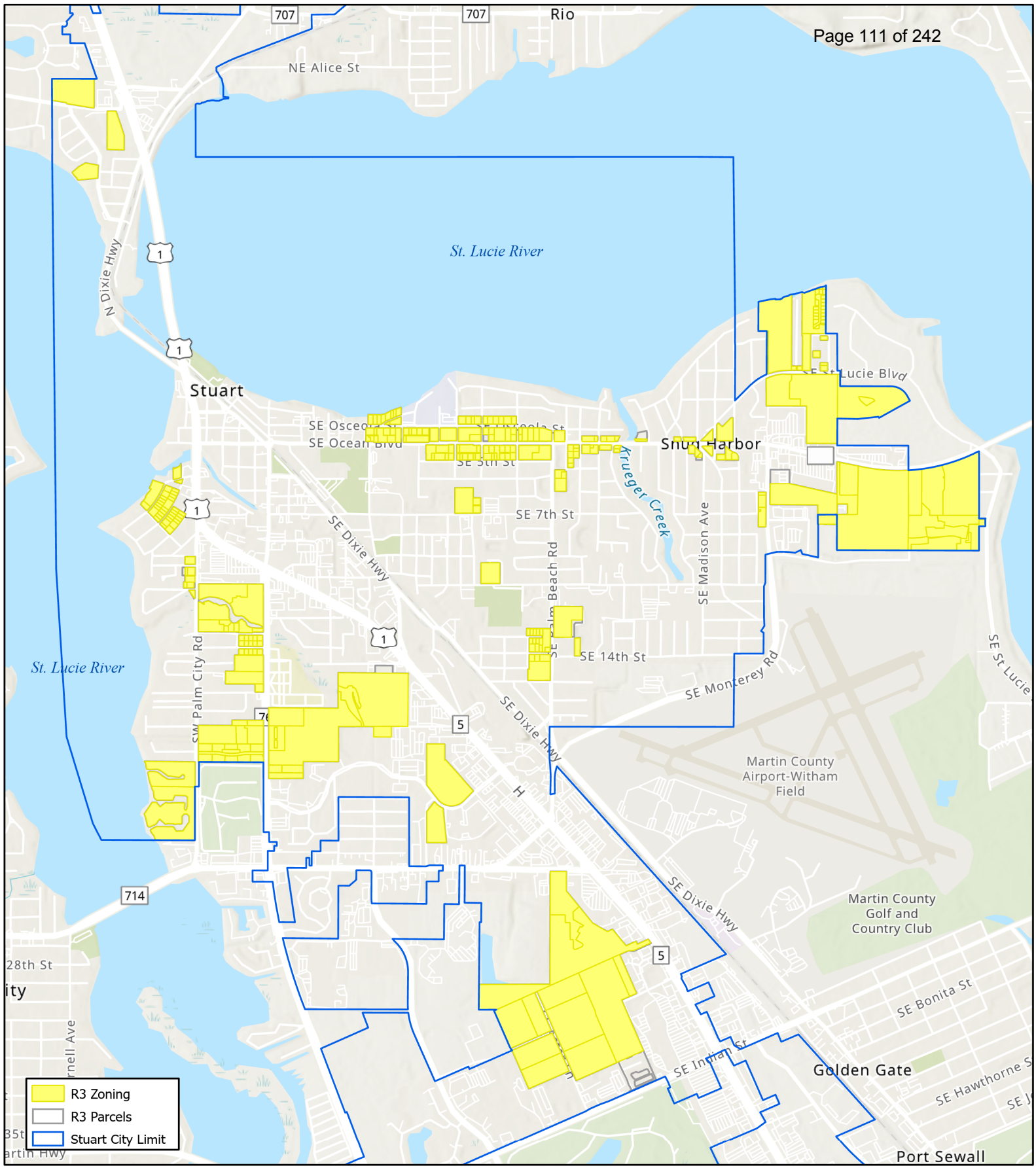
City of Stuart R-2 Zoning

309 Parcels

Approximately 51.95 Acres

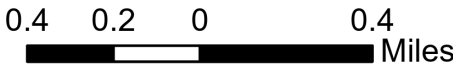
0.3 0.15 0 0.3 Miles





City of Stuart R-3 Zoning

3,908 Parcels
Approximately 62,098 Acres



STATE OF FLORIDA }
COUNTY OF PALM BEACH } ss
THIS INSTRUMENT WAS FILED FOR
RECORD THIS 22ND DAY OF March
1912 AND DULY RECORDED ON THE
27TH DAY OF March 1912 IN BOOK 2
OF PLATS ON PAGE 16, RECORD
VERIFIED.

Richard P. Saunders Jr.
CLERK CIRCUIT CLERK
BY Paul C. Adams
DEPUTY CLERK

THIS IS A TRUE COPY OF THE ORIGINAL
PLAT OF RECORD OF "H.W. BESSEY ADDITION"
PLAT BOOK 2, PAGE 16, PALM BEACH COUNTY,
FLORIDA, NOW MARTIN COUNTY.

Paul A. Adams
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATE No. 443

H.W. BESSEY ADDITION TO THE TOWN OF STUART, FLORIDA.

State of Florida }
County of Palm Beach } ss

Known all men by these presents that the undersigned
H.W. BESSEY, owner in fee simple of the tract of land shown
hereon being a Part of Government Lot Six (6) in Section 5,
Township 38 South, Range 41, East from Tallahassee Meridian
has caused the attached Plat to be made and land subdivided
as shown hereon and do hereby dedicate the streets shown
hereon to the perpetual use of the Public.

Signed and sealed
in the presence of
Paul W. Miller
Harry H. Adams

H.W. Bessey (real)

State of Florida }
County of Palm Beach } ss

I an officer authorized to take acknowledgments of
deeds, hereby certify that H.W. BESSEY personally known to
me to be the individual described in and who executed the
foregoing instrument and that said individual this day
acknowledged before me that he executed said instrument.

Witness my hand and official seal this 23RD day of
March, A.D. 1912, at West Palm Beach, Florida.
Paul C. Adams
Notary Public
My Commission expires April 20th 1913

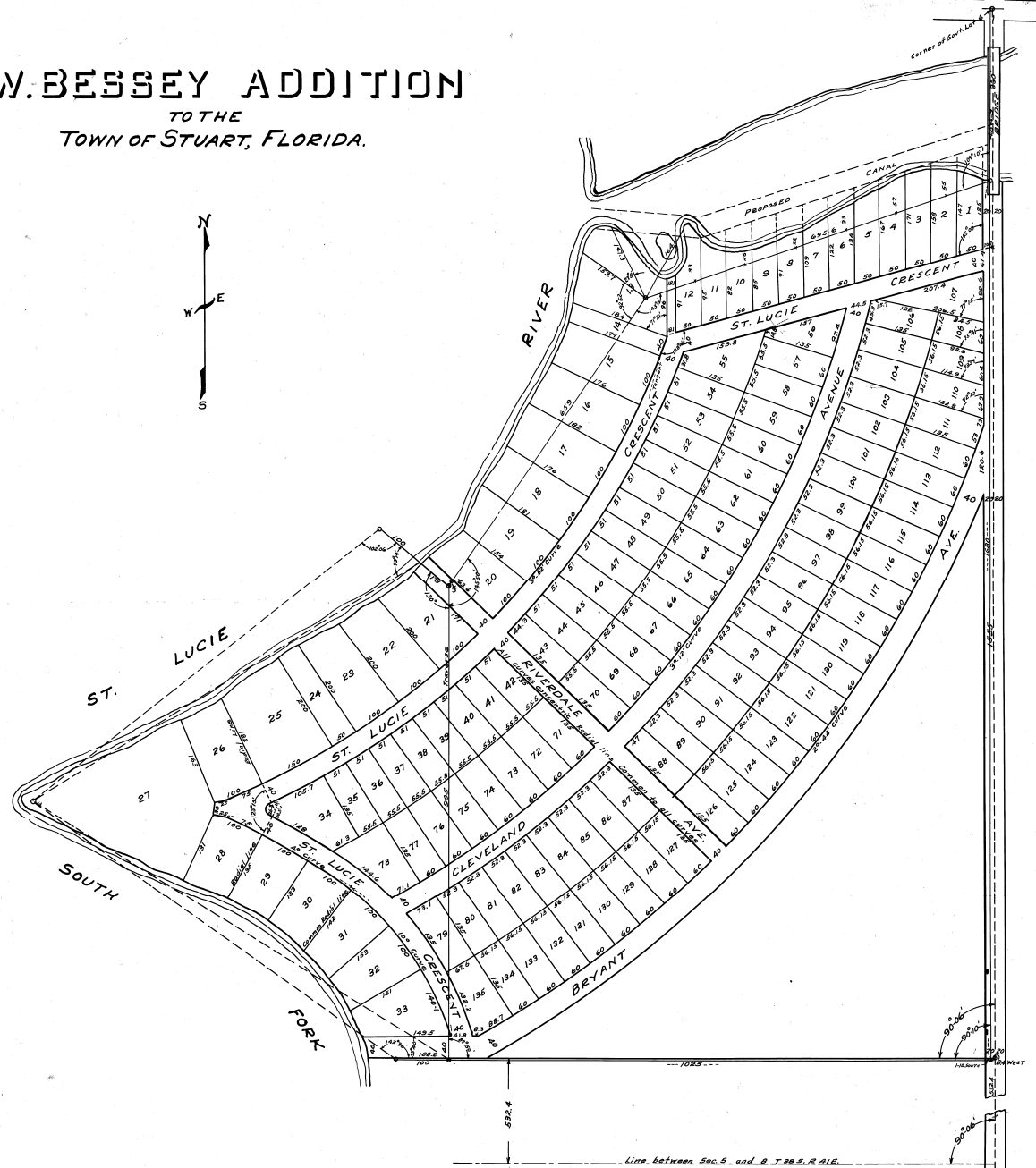
State of Florida }
County of Palm Beach } ss

I hereby certify that the measurements of lots and
streets as shown on the plat conform to actual measurements
taken on this tract by me and that they are true and accurate
to the best of my knowledge and belief.

Paul C. Adams - surveyor

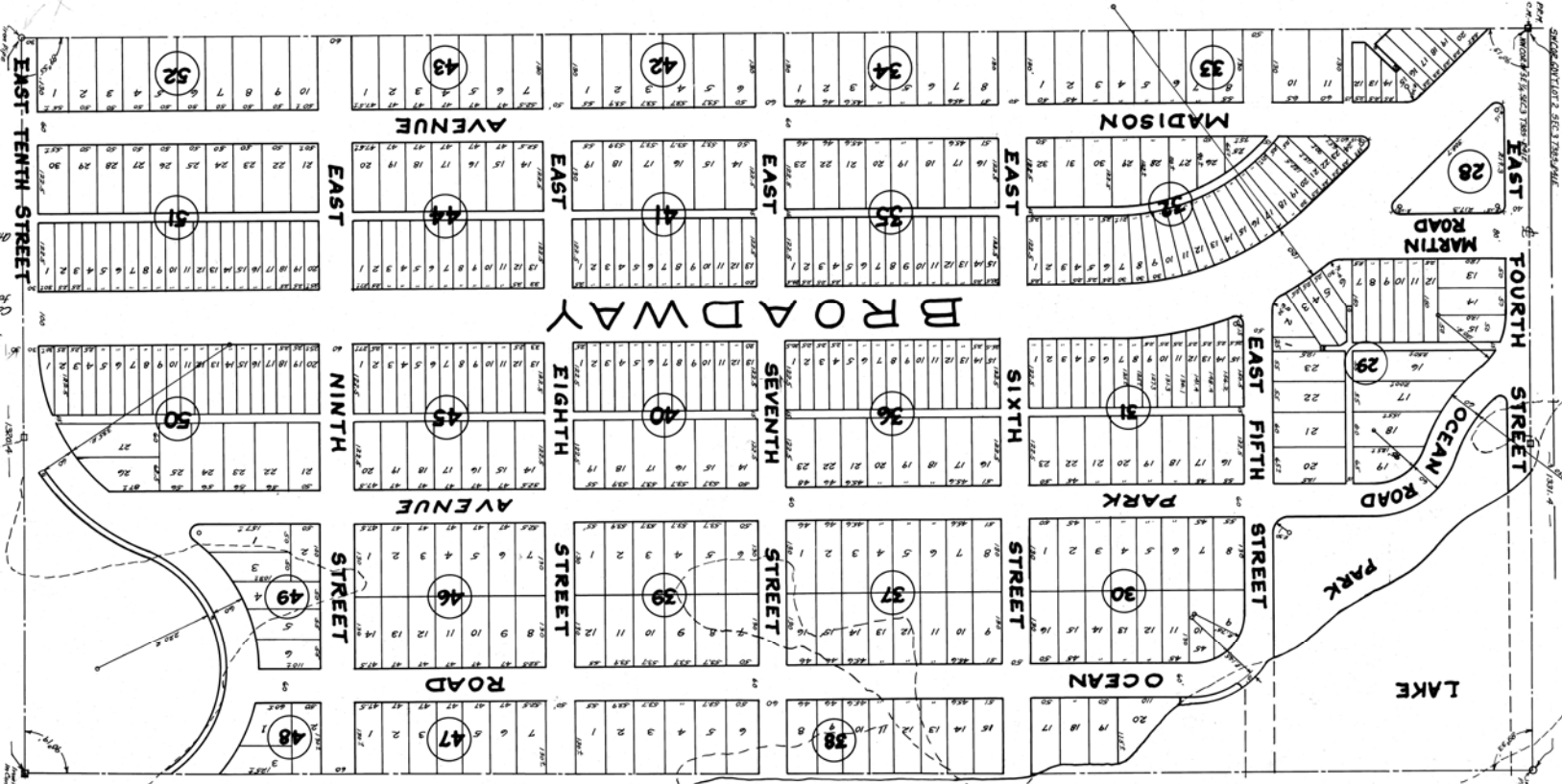
Subscribed and sworn to before me this 28th day of March A.D. 1912
at West Palm Beach, Florida.

Paul I. Metcalf Notary Public
My Commission expires June 12-1913.



BROADWAY SECTION ST LUCIE ESTATES SUBDIVISION

SCALE 1" = 100'



THIS IS A TRUE COPY OF THE ORIGINAL PLAT AS RECORDED
OF BROADWAY SECTION OF ST. LUCIE ESTATES, FIRST BLOCK,
PAGE 49, MARTIN COUNTY, FLORIDA.
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATE NO. 443
THIS PLAT WAS FILED FOR
RECORD IN THE PUBLIC RECORDS OF
MARTIN COUNTY, FLORIDA, ON
JANUARY 1, 1952, AND WAS
RECORDED IN BOOK 1 OF PLATS
ON PAGE 49, RECORD 1.
DEPUTY CLERK

St. Lucie Estates, Inc.
Commissioner of St. Lucie
for their approval.
The St. Lucie Planning Board
City of St. Lucie
Secretary
Chairman

ST LUCIE ESTATES, INC.
PRESIDENT
VICE PRESIDENT
SECRETARY
TREASURER
ATTORNEY AT LAW
CITY ENGINEER

NOTARY PUBLIC STATE OF FLORIDA
My commission expires June 7, 1952
Approved by
City Engineer

THE BROADWAY SECTION
BY
PRESIDENT
VICE PRESIDENT
SECRETARY
TREASURER
ATTORNEY AT LAW
CITY ENGINEER

ST LUCIE ESTATES, INC.
PRESIDENT
VICE PRESIDENT
SECRETARY
TREASURER
ATTORNEY AT LAW
CITY ENGINEER

This is a true Copy of the Original Plat of Record of "ELDORADO HEIGHTS" Plat Book 1, Page 42, Martin County Florida.

Paul A. Stollard
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATE NO. 442

State of Florida } ss
County of Martin }
This instrument was filed for Record at 3:30 P.M. this 12 day of Mar. 1926 and duly recorded on the 12 day of Mar. 1926 in Book 1 of Plats on Page 42, Record Verified.

W. H. Mearns
CLERK CIRCUIT COURT
DEPUTY CLERK

AMENDED PLAT OF ELDORADO HEIGHTS

STUART
MARTIN COUNTY
FLORIDA

Scale 1 in. = 100 ft.

State of Florida }
County of Martin }

Know all men by These Presents, that we, Lucy C. Kickiter, single and Emmett Rodgers, joined by his wife, Ruby Rodgers, the owners in fee simple of the tract of land shown on this plat situated in Martin County, Florida, and described as follows: Commencing at a point 825 feet South of the Northeast corner of Section 9, Township 38 South, Range 91 East; thence West 1320 feet to a stake, thence South 611.37 feet to a stake thence East 1320 feet, thence North 611.37 feet to point of beginning. Have caused said land to be surveyed and plotted and do hereby dedicate to the perpetual use of the public, the streets and alleys shown hereon, reserving unto themselves the reversion and reversions thereof when the same shall be abandoned by the public or discontinued by law, the plot being known as Amended Plat of Eldorado Heights.

In witness whereof, we have hereunto set our hands and seals this 2nd day of March, A.D. 1926.
Lucy C. Kickiter
Emmett Rodgers
Ruby Rodgers

Signed, sealed and delivered in presence of

A. T. Vagstad

Notary Public

My commission expires June 5, 1927

State of Florida }
County of Martin }

I hereby certify that on this day personally appeared before me an officer duly authorized to administer oaths and take acknowledgments Lucy C. Kickiter, single, Emmett Rodgers and Ruby Rodgers his wife, to me well known to be the individuals described in, and who executed the foregoing dedication and they acknowledged before me that they executed the same for the purposes therein expressed. I further certify that the said Ruby Rodgers, known to me to be the wife of the said Emmett Rodgers, on a separate and private examination by me taken separately and apart from her said husband, acknowledged that she executed the aforesaid instrument freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at Stuart, Martin County, Florida, this 2nd day of March, A.D. 1926.

Richard F. Ensey
Notary Public

State of Florida }
County of Martin }

I hereby certify that on this day personally appeared before me Richard F. Ensey, who, being duly sworn, deposes and says he is a Civil Engineer, registered and practicing under the laws of the State of Florida, and further certifies that the attached plat is a correct representation of the land plotted, and that permanent reference monuments have been placed as indicated thereon. Subscribed and sworn to before me this 2nd day of March, A.D. 1926.

Richard F. Ensey
Civil Engineer

Approved by the Planning Board of Stuart, Florida, March 3rd, A.D. 1926, and referred to the City Commission for further action.

W. H. Mearns
Chairman

Attest: W. H. Mearns
Secretary

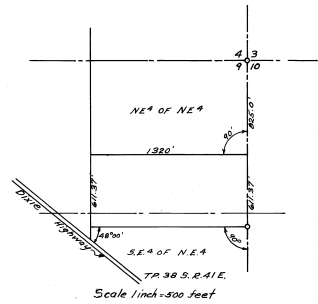
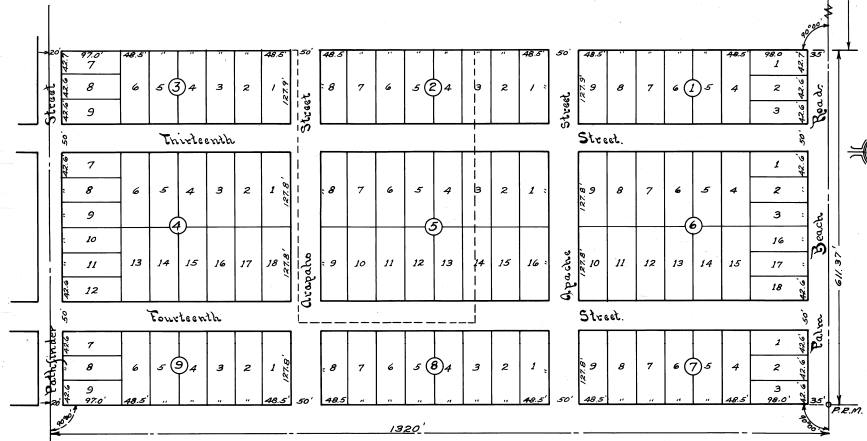
Recommended to the City Commission for their approval: R. F. Ensey
City Engineer

Approved: March 3rd A.D. 1926
The City Commission Stuart, Florida.
by J. E. Taylor
Mayor Commissioner

Attest: Florida K. Spivey
City Clerk

March 2nd A.D. 1926

Approved: W. M. H. Pratt
County Surveyor



Richard F. Ensey,
Consulting Engineer
Stuart, Florida

This is a true copy of the original Plat of
Record of "RAISED HIGHWAYS" Plat Book 1,
Page 18, Worth County, Florida.

Wm. A. Skifford
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATE NO. 743

State of Florida } ss
County of Marion }
This instrument was filed for record
at 2pm this 23rd day of April 1986 and
day recorded on the 23 day of April,
1986, in Book 1 of Page 18.
Record verified
J.P. Moore

[illegible]

My Commission Expires: May 23, 1987

W. H. Jones
Notary Public

~ ACCEPTANCE ~

STATE OF FLORIDA } 35
COUNTY OF MARTIN }

Approved by Wm. H. Roat
1926 County Surveyor

APPROVED BY THE PLANNING BOARD CITY OF STUART, FLA. THIS DAY
1926

CITY OF STUART, July 21, 1926

City Commission for their approval

Don E. Cadogan

Approved by the City Commission
 10/27/07

Attest: *[Signature]*

city clerk

[illegible]

STATE OF FLORIDA } 5.5
COUNTY OF PALM BEACH }

known attorney, these feelings, the Florida growers, in-
vited and assisted under the laws of Florida are the owners in fee simple

STATE OF FLORIDA }
COUNTY OF PALM BEACH }
HERBERT

me personally appeared Carroll Dunstcombe and J. R. Aigler, respectively President and

[illegible]

Secretary of the *Greenes, Inc.*, a corporation under the laws of the State of Florida, to be the persons described in and who executed the foregoing declaration, and severally acknowledged the execution thereof to be their true act and deed as such officers as the undersigned therefor. The undersigned, therefore, the official seal of said corporation, and the said declaration is the act and deed of said corporation for the uses and purposes therein mentioned, and that they affixed thereon the official seal of said corporation, and the said declaration is the act and deed of said corporation.

WITNES my hand and official seal of Sheriff in the County of Martin, and State of Florida, this day and year last aforesaid.

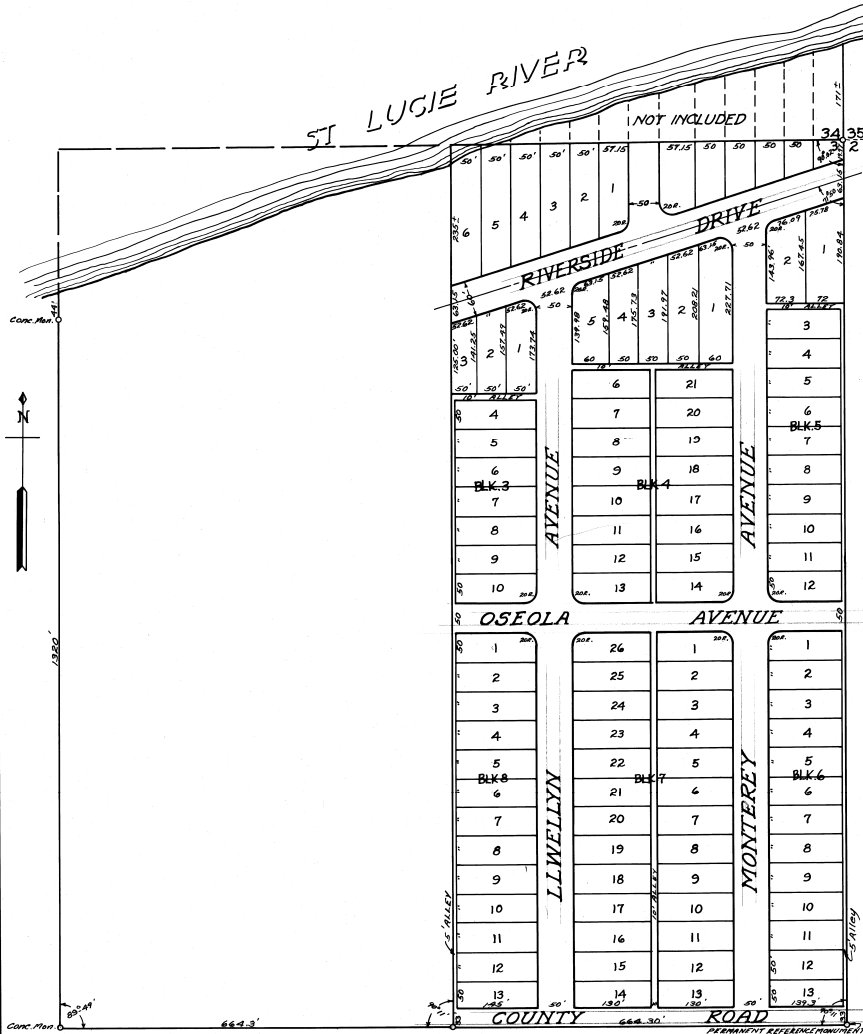
Belong to
C. D. Pittman

FLORIDA GEOMETECS, Inc.
Michael Mearns
President

My Commission Expires June 7th 1924

Notary Public

KRUEGER PARK STUART, FLORIDA MARTIN COUNTY



EXAMINED AND CHECKED AND RECOMMENDED FOR APPROVAL

STUART, FLA. Dec. 30 1925 R. F. Emery
CITY ENGINEER

APPROVED AS RECOMMENDED

CHAIRMAN J. E. Taylor
STUART CITY COMMISSION

ATTEST

Florida S. Davis
CITY CLERK

APPROVED Wm. H. Root

STUART, FLA. January 6th 1926 COUNTY SURVEYOR MARTIN CO.

RECOMMENDED TO CITY COMMISSION FOR APPROVAL

STUART, FLA. Jan 4th 1926 CITY PLAN BOARD

W. H. Spenshaw
CHAIRMAN

G. H. Carby
SECRETARY

LOCATION

Being the subdivision of the E 1/2 of the N 1/2 of Government Lot #1, Section 3,
Township 38 South, Range 41 East.

KNOW ALL MEN BY
THESE PRESENTS:-

DEDICATION

That Albert P. Krueger and Karl Krueger, both single the fee simple owners of the
above described land have caused said land to be surveyed and platted as
shown herein, according to the Engineers Certificate attached and does hereby
dedicate to the perpetual use of the Public the Roads and Streets shown herein
reserving unto themselves the reversions of same whenever discontinued by law.
In Witness Whereof the said Albert P. Krueger and Karl Krueger have
signed these presents and affixed their seal this 13th day of June, A.D. 1925.

Witness:-

K. E. Michaels

J. P. Ward

Albert P. Krueger s.s.

Karl Krueger s.s.

STATE OF FLORIDA
COUNTY OF MARTIN

ACKNOWLEDGEMENT

Before me a Notary Public for the State of Florida personally appeared
Albert P. Krueger and Karl Krueger, the within named and known to be the persons
who signed the foregoing dedication.
In witness whereof I have set my hand and affixed my official seal
this 13th day of June, A.D. 1925.

A. J. Williams
Notary Public
My Commission Expires April 3rd 1929

ENGINEERS CERTIFICATE

We certify that the location, measurements and angles of the bound-
ary lines of the Plat shown herein are taken from actual data found on the
ground by survey under our direction that the subdivisions into lots of the Plat
shown, and as located by the above mentioned survey was made under our
direction and that the description shown herein is true and accurate to the best
of our knowledge and belief.

C. A. Barnett
Florida State Certificate #1A

Subscribed and Sworn to before me this 13th day of June, A.D. 1925

A. J. Williams
Notary Public
My Commission Expires April 3rd 1929

STATE OF FLORIDA } ss
COUNTY OF MARTIN }
This instrument was filed for Record
at 2 P.M. this 6th day of Jan. 1926
and duly recorded on the 6th day of
January 1926 in Book 1 of Plats on
Page 25, Record Verified.

W. H. Spenshaw
CLERK, CIRCUIT COURT
BY: DEPUTY CLERK

This is a true copy of the Original Plat of
Record of 'KRUEGER PARK' Plat Book 1,
Page 25, Martin County, Florida.

Wm. H. Root
Registered Land Surveyor
Florida Certificate No. 665

LAWLER HEIGHTS

STUART, MARTIN COUNTY, FLORIDA

A SUBDIVISION OF ALL OF THAT PART OF SECTION 9, TWP. 38S., R. 41E., LYING SOUTH OF THE RECORDED PLAT OF DIXIE VIEW SUBDIVISION AND EASTERLY OF THE FLORIDA EAST COAST EASTERLY RIGHT OF WAY LINE.

SCALE 1"=60'

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF MARTIN

I HEREBY CERTIFY: THAT ON THIS DAY PERSONALLY APPEARED BEFORE ME AN OFFICER DULY AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGEMENTS, JOSEPH D. ROBINSON, TO ME WELL KNOWN TO BE PRESIDENT OF L. F. R. BUILDERS, INC., A FLORIDA CORPORATION AND HE DID ACKNOWLEDGE BEFORE ME THAT HE EXECUTED THE FOREGOING DEDICATION ON BEHALF OF SAID CORPORATION AND WITH AUTHORITY OF ITS BOARD OF DIRECTORS.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17 DAY OF FEBRUARY, A.D. 1959.

Joseph D. Robinson
NOTARY PUBLIC OF FLORIDA

MY COMMISSION EXPIRES

APPROVED

CITY COMMISSION OF STUART

BY *J. C. Berry* ON 10 DAY OF Feb. 19 59

APPROVED

BOARD OF COUNTY COMMISSIONERS
OF MARTIN COUNTY, FLORIDA

BY *W. H. Howell*
CHAIRMAN

DEDICATION

STATE OF FLORIDA
COUNTY OF MARTIN

I KNOW ALL MEN BY THESE PRESENTS: THAT THE L. F. R. BUILDERS, INC. ORGANIZED AND EXISTING UNDER THE LAWS OF STATE OF FLORIDA, BEING THE OWNERS OF THE PROPERTY SHOWN ON THE ATTACHED PLAT AND TITLE, HAS CAUSED THE ATTACHED PLAT TO BE MADE AND SAID LAND TO BE SUBDIVIDED AS SHOWN HEREON, AND DOES HEREBY DEDICATE TO THE PERPETUAL USE OF THE PUBLIC THE ROADS AND DRAINAGE UTILITY EASEMENTS AS SHOWN, RESERVING HOWEVER UNTO ITSELF, ITS SUCCESSORS, LEGAL REPRESENTATIVES, AND RESIGNS THE REVERSION OR RIGHT OF REVERSION OF SAID EASEMENTS AND EASEMENTS SHOULD THE SAME BE ABANDONED BY THE PUBLIC OR DISCONTINUED BY LAW. IN WITNESS WHEREOF IT HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS PRESIDENT AND ITS CORPORATE SEAL TO BE AFFIXED. THIS 17 DAY OF FEBRUARY, A.D. 1959.

L. F. R. BUILDERS, INC.
BY *J. D. Robinson*
ITS PRESIDENT

CERTIFICATE

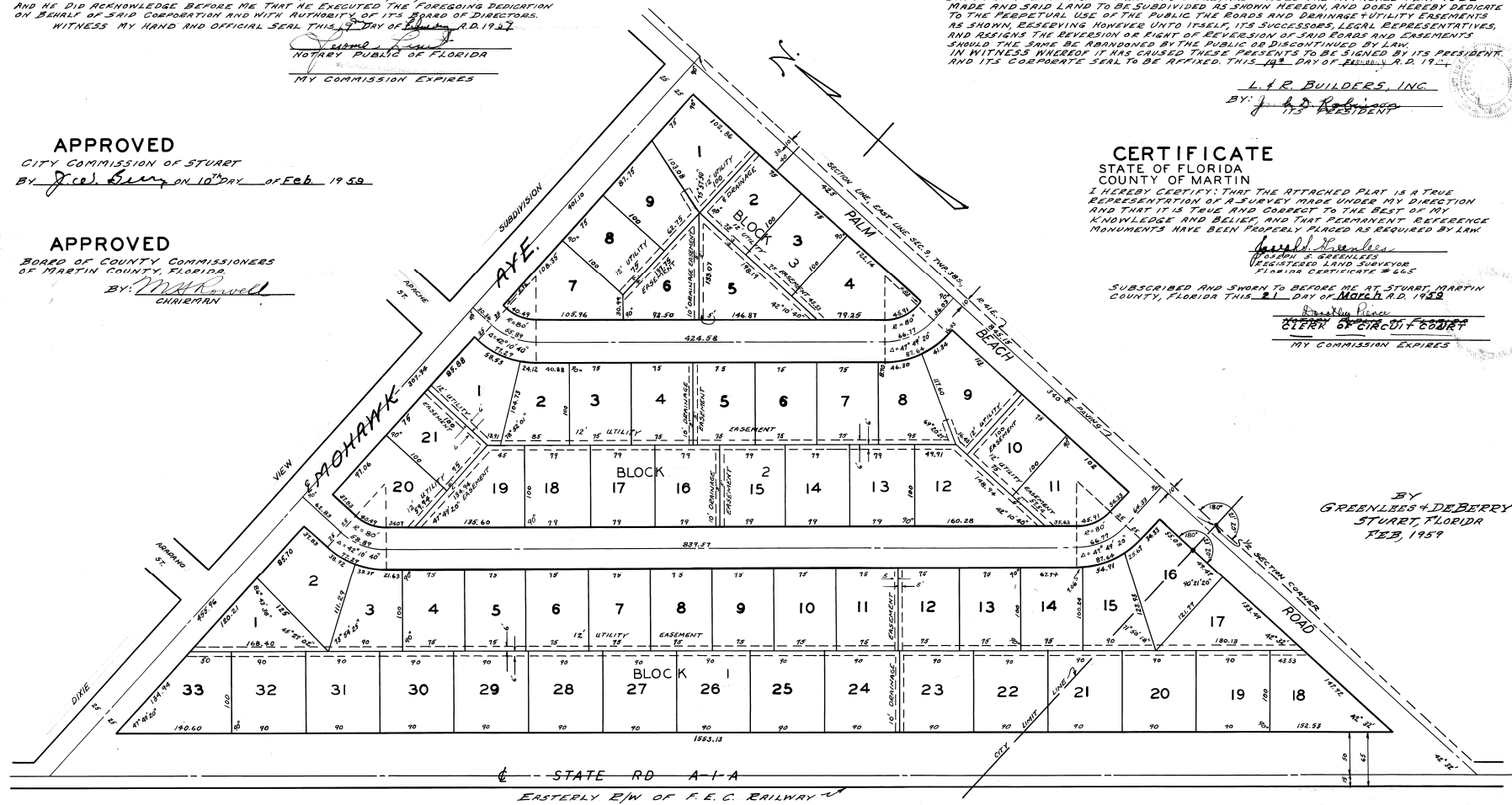
STATE OF FLORIDA
COUNTY OF MARTIN

I HEREBY CERTIFY: THAT THE ATTACHED PLAT IS A TRUE REPRESENTATION OF A SURVEY MADE UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT PERMANENT REFERENCE MONUMENTS HAVE BEEN PROPERLY PLACED AS REQUIRED BY LAW.

Joseph S. Greenlee
JOSEPH S. GREENLEE
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATE # 665

SUBSCRIBED AND SWORN TO BEFORE ME AT STUART, MARTIN COUNTY, FLORIDA THIS 21 DAY OF MARCH, A.D. 1959

Joseph S. Greenlee
CLERK OF CIRCUIT COURT
MY COMMISSION EXPIRES



CITY OF STUART, FLORIDA AGENDA ITEM REQUEST Local Planning Agency

Meeting Date: 10/8/2020

Prepared by: Stephen Mayer

Title of Item:

ORDINANCE NUMBER 2422-2020.

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING ARTICLE V OF THE CODE OF ORDINANCES ENTITLED "COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY" IN RESPECT OF STANDARDS FOR THE PROVISION OF REGULATING THE PLACEMENT AND MAINTENANCE OF NEW AND EXISTING WIRELESS COMMUNICATION TOWERS IN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Background

In 2017, the Florida Legislature adopted the Advanced Wireless Infrastructure Deployment Act which placed certain limits on local government authority to regulate small or micro-wireless communications facilities within public rights-of-way, and required local governments to expedite the review of permit applications for such facilities. Since this time the City has permitted shared wireless communications facilities within the public rights-of-way under the City's current Code of Ordinances. In 2019, the Florida Legislature established additional limitations on local governments to regulate these facilities and City staff was asked to evaluate the existing Code of Ordinances and provide any necessary changes.

What the City May Not Regulate

According to Section 337.401(7) of Florida Statutes, local governments may not:

1. Charge applicants to register or renew small wireless facilities in the right-of-way.
2. Prohibit, regulate, or charge for the collocation of facilities in the right-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public right-of-way.
3. Require the placement of small wireless facilities on any specific utility pole or category of poles, or require multiple antenna systems on a single utility pole.
4. Directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the City, including reserving fiber, conduit, or pole space for the City.
5. Require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for placement of small wireless facilities in the locations identified by the application.
6. Limit the placement of small wireless facilities by minimum separation distances.
7. Require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocating of a small wireless facility on a new utility pole except as provided for below.
8. Require compliance with the City's regulations regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the Florida Department of Transportation unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit.
9. Require a meeting before filing an application.

10. Require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way.
11. Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits allowed by Florida Statutes.
12. Prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of Section 337.401(7)(d), Florida Statutes.
13. Require that any component of a small wireless facility be placed underground except in areas where all utilities in the right-of-way are required to be placed underground.
14. Institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

What the City May Regulate

According to Section 337.401(7)(r) of Florida Statutes, local governments may only require that:

1. A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;
2. Reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure; or
3. A small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in Section 337.401(7), Florida Statutes; and
4. A new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

Section 337.401(7)(d) of Florida Statutes, further states that local governments shall limit the height of small wireless facilities to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by the local government, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than utility poles for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

Ordinance 2422-2020, contains draft language for the LPA's consideration and discussion, which are draft revisions to the City's Code of Ordinances. The City utilized a wireless communication tower code from Bonita Springs, Florida, which is very similar to our own and has been in response to the 2017 Advanced Wireless Infrastructure Deployment Act.

Funding Source:

N/A

Recommended Action:

Motion to recommend approval of Ordinance 2422-2020

ATTACHMENTS:

Description	Upload Date	Type
❑ A1. Ordinance 2422-2020	10/1/2020	DRAFT ORDINANCE
❑ D1. 2019 Modifications to the Advanced Wireless Infrastructure Deployment Act	10/1/2020	Attachment
❑ D2. Bonita Springs Ordinance Example	10/1/2020	Attachment



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2422-2020

**AN ORDINANCE OF THE CITY OF STUART, FLORIDA,
AMENDING ARTICLE V OF THE CODE OF ORDINANCES
ENTITLED "COMMUNICATIONS FACILITIES IN THE PUBLIC
RIGHT-OF-WAY" IN RESPECT OF STANDARDS FOR THE
PROVISION OF REGULATING THE PLACEMENT AND
MAINTENANCE OF NEW AND EXISTING WIRELESS
COMMUNICATION TOWERS IN THE PUBLIC RIGHT-OF-WAY;
PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE,
AND FOR OTHER PURPOSES..**

* * * * *

WHEREAS, the purpose of this Code of Ordinance amendment is to support the objectives of the City's Comprehensive Plan; and

WHEREAS, the City Commission of the City of Stuart has determined that the amendments set forth in this Ordinance promote the public health, safety, and general welfare of the residents of the City of Stuart by regulating the siting of communication facilities within the public rights-of-way; and

WHEREAS, this Ordinance seeks to address new communication facilities technologies, while also protecting, preserving, and maintaining the aesthetic character of the areas where such rights-of-way exist within the City; and

WHEREAS, Section 337.401, Florida Statutes, addresses the authority of the local government to regulate the placement and maintenance of communication facilities in the public rights-of-way, and requires that rules and regulations imposed by a local government related to communications services providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, Section 337.401(7), Florida Statutes, addresses, inter alia, the authority of local governments to adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, and objective design standards requiring a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and prescribing reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, Section 337.401(7)(d)(12), Florida Statutes, provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties, provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, it is the City's intent to exercise its authority over communications services providers, communications facility providers, and pass-through providers' placement and maintenance of communications facilities in its rights-of-way; and

WHEREAS, it is the City's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority; and

WHEREAS, the City's rights-of-way are essential for the travel of persons and the transport of goods throughout the City and are a unique and physically-limited resource requiring proper management by the City in order to maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety, and general welfare; and

WHEREAS, it is the City's intent to implement the Advanced Wireless Infrastructure Deployment Act as provided in Section 337.401(7), Florida Statutes; and

WHEREAS, in 2017 the Florida Legislature adopted the Advanced Wireless Infrastructure Deployment Act (the "Act"), codified at Florida Statutes § 337.401(7), which as of July 1st, 2017, places certain limitations on local government authority to regulate small or micro wireless communications facilities within the public right-of-way and requires local governments to expedite review of permit applications for such facilities; and

WHEREAS, the Act authorizes local governments to adopt objective design standards that may require wireless facilities in the right-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment; and

WHEREAS, in 2019 the Florida Legislature enacted amendments to the Act via Chapter Law 2019-131, Laws of Florida, creating additional restrictions on the right of local governments to regulate small or micro wireless communications facilities within the public right-of-way; and

WHEREAS, passage of the Act, along with the FCC Order and other legal and technological changes in the wireless industry since the City last addressed this topic, necessitates that the City amend its current cell

tower and right-of-way regulations to ensure they comply with the law and properly address new technologies seeking to occupy its right-of-way; and

WHEREAS, the City finds that the regulatory revisions adopted hereby will advance the public health, safety, and welfare, and help protect the unique aesthetic qualities of the City, while complying with state and federal laws, rules and regulations governing communications facilities.

WHEREAS, it is the further intent of the City to exercise its authority to adopt reasonable and nondiscriminatory rules and regulations to the fullest extent allowed by Federal and State law; and

WHEREAS, the Land Planning Agency reviewed the proposed amendments to the Code of Ordinances at a public hearing on October 6, 2020; and

WHEREAS, the City Commission duly scheduled, advertised, and held a public hearing on October 26, 2020, to consider this ordinance and provide for full public participation in the Code of Ordinance amendment process.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, that:

SECTION 1: The Stuart Code of Ordinances is hereby amended as follows:

Article V – Communications Facilities in the Public Right-of-Way

Section 36-128 – Intent and purpose

It is the intent of this article to promote the public health, safety and general welfare by providing for the placement or maintenance of communications facilities in the public rights-of-way within the city by adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401, with the home-rule authority of the city, and in accordance with the provisions of the Federal *Telecommunications Act* of 1996, [*the Advanced Wireless Infrastructure Deployment Act of 2017, as amended*](#) and other state and federal law. By establishing reasonable rules and regulations necessary to manage the

placement or maintenance of communications facilities in the public right-of-way by all communications services providers, the City declares the intent to:

- A) permit and manage reasonable access to the limited physical capacity of the available public rights-of-way of the City for telecommunications purposes in a nondiscriminatory, competitively neutral, and non-exclusive way to the extent required under applicable law;
- B) enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development;
- C) provide for the deployment of small and micro wireless facilities and associated support structures in a manner which preserves the City's aesthetic and minimizes visual blight; and
- D) provide minimum disruption of the public use of the right-of-way ~~can be achieved~~.

In regulating its public right-of-way, the city shall be governed by and shall comply with all applicable state and federal law.

Section 36-129 – Definitions

Section 36-130 - Registration for placing or maintaining communications facilities in public rights-of-way

Section 36-131 – Notice of transfer, sale or assignment of assets in public rights-of-way

Section 36-132 – Placement or maintenance of a communications facility in public rights-of-way

As a condition of allowing the Placement or Maintenance of a Communications System or any Communications Facility in the Public Rights-of-Way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations, and general conditions. Unless otherwise provided in this section, these rules, regulations, and general conditions shall apply to all Communications Services Providers, including those that are Pass-through Providers, irrespective of whether they place and maintain only conduit, dark fiber, or Pass-through Facilities.

(a) Rules on Utilization of the Public Rights-of-Way.

(a) Compliance with Law. A registrant shall at all times comply with and abide by all applicable provisions of state and federal law and city ordinances, codes and regulations in placing or maintaining a communications facility in the public right-of-way.

(b) Due Care. A registrant shall not commence to place or maintain a communications facility in the public right-of-way until all applicable permits, if any, have been issued by the city or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a preexisting service. A registrant shall provide prompt notice to the city of the

placement or maintenance of a communications facility in the public right-of-way in the event of an emergency and shall obtain a permit if a permit would have originally been required to perform the work undertaken in the public right-of-way. The city may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in the public right-of-way. Permits shall apply only to the areas of the public right-of-way specifically identified in the permit.

(c) Application for a Permit. Prior to the issuance of a permit to allow the placement or maintenance of a Communications System or Facility in the Public Rights-of-Way. As part of any permit application to place a new or replace an existing communications facility in the public right-of-way, the registrant shall provide the following:

(1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of facilities that will be located in the public right-of-way;

(2) A description of the manner in which the facility will be installed using anticipated construction methods or techniques;

(3) A maintenance of traffic and if necessary temporary sidewalk closure plan for any disruption of the public right-of-way;

(4) Information Plans, drawings, photographs, and schematics to include cross section layout prepared by a qualified engineer or technician showing where the Communications Facility is proposed to be located in the Public Right-of-Way and showing any known Communications Facilities or utility facilities in such Public Right-of-Way, which demonstrate on the ability of the public right-of-way to accommodate the proposed facility, if available;

(5) If appropriate given the facility proposed, a restoration plan and an estimate of the cost of restoration to the public right-of-way. A restoration plan and a good faith estimate of the cost of restoration of the Public Rights-of-Way to accommodate Placement and Maintenance of the Communications Facility shall be provided. Such good faith estimate shall be accepted by the City unless the City determines such estimated costs are not representative of the actual costs of the restoration of the Public Rights-of-Way;

(6) The timetable for construction of the project or each phase thereof, and the areas of the city that will be affected. A timetable for Placement or Maintenance of the proposed Communications Facility, or each phase of the proposed Placement or Maintenance such Communications Facility, shall be provided, together with a description of the intended areas of service; and

(7) Registrant agrees to indemnification. A statement shall be included within the Application that, by execution of the Application and by applying for the permit, the Registrant agrees to be bound to the City with respect to the indemnification provisions set forth in Section 38-15 as though such indemnification provisions are set forth verbatim in the Application.

(8) Information regarding height limitations. For a Wireless Support Structure, the Applicant shall provide information regarding the heights of other Utility Poles located in the same Public

Rights-of-Way, measured from grade in place within five hundred (500) feet of the proposed location of the Wireless Support Structure. If there is no Utility Pole within five hundred (500) feet of the proposed location of the Wireless Support Structure, the Applicant shall certify the same. Upon such certification by the Applicant, approval of the proposed location shall be in the discretion of the Development Department. The maximum height of wireless support structures shall be fifty (50) feet measured from grade; and

~~(7)~~ (9) Such additional information as the city finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.

(d) Waiver of Standards for At-grade Communications Facilities, Below-grade Communications Facilities, Wireline Facilities, Utility Poles, and Wireless Support Structures.

(1) The waiver provisions listed in this subsection apply in those circumstances where a Communications Services Provider or Pass-through Provider's use of the Public Rights-of-Way is impaired by strict application of the requirements of this Chapter.

(2) A request for a waiver shall be filed contemporaneously with the Application. The request for a waiver shall contain each section or subsection of this Chapter for which a waiver is being sought. A request for a waiver shall include the following information:

(a) A detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of this Chapter is required, including a detailed explanation addressing the relevant criteria to be considered by the City Commission as provided in subsection (d) below;

(b) Distances of the proposed Communications Facility from the edge of pavement, sidewalks, and/or multi-purpose trails;

(c) Design of the proposed Communications Facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts on the surrounding neighborhood; and

(d) Any other information the City Manager may reasonably require processing the request for a waiver.

(3) The City Manager shall review the request for a waiver and shall prepare a recommendation for the City Commission on the request for the waiver.

(4) The City Commission shall grant or deny a request for a waiver within forty-five (45) days after the date of the request unless the Applicant consents to a later date. The City Commission shall consider the following criteria when determining whether to grant or deny a waiver:

(a) Any special conditions and circumstances affecting the proposed site which prevent compliance with the section or subsection for which a waiver is being sought;

(b) The compatibility of the proposed Communications Facility for which the waiver is sought with adjacent properties and the surrounding neighborhood;

(c) Whether there are excessive expenses associated with compliance with the section or subsection for which a waiver is being sought; and

(d) Whether the proposed waiver preserves to the City flexibility in its management of its Public Rights-of-Way.

(5) In granting any waiver, the City Commission may impose conditions to the extent the City Commission concludes such conditions are necessary to minimize any adverse effects of the proposed Communications Facility on the surrounding neighborhood, or to protect the health, safety, and welfare of the public.

~~(d)~~ (e) Power to Restrict Area. To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public right-of-way.

~~(e)~~ (f) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public right-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology such as directional bore method for the installation of facilities in the public right-of-way as well as joint trenching or the collocation of facilities in existing conduit is strongly encouraged and should be employed wherever feasible. The city may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in a public right-of-way consistent with this article and other applicable law.

~~(f)~~ (g) Responsibility for Contractors. Every Communications Services Provider that is Registered with the City shall be liable for the actions of contractor(s) hired by them to perform the Placement or Maintenance of Facilities in the Public Rights-of-Way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations, and general conditions set forth in this Chapter. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(h) Regulations on the Placement or Maintenance of Communications Facilities.

(1) Provision and Form of Record Drawings and As-built Plans. Within forty-five (45) days after completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way, the Communications Services Provider shall provide the City with Record Drawings showing the final location of such Facility in the Public Rights-of-Way, including exact GPS coordinates. Upon request by the Development Department Director, the Communications Services Provider shall also provide the City with As-built Plans within forty-five (45) days after completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way. The Record Drawings and As-built Plans shall be provided to the City at no cost.

(2) Production and Filing of As-builts Plans. Every Communications Services Provider that is Registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of As-built Plans of all Facilities Placed and Maintained in the Public Rights-of-Way. The location and identification of Facilities and the production of As-built Plans shall be at the sole expense of the Communications Services Provider. Within forty-five (45) days of any request by the Development Department Director, the Communications Services Provider must provide to the City, at no cost, copies of complete sets of As-built Plans for the indicated Public Rights-of-Way. The failure of the Communications Services Provider to produce, keep on file, or provide to the City As-built Plans as required under this Chapter is sufficient grounds for the City to deny the issuance of a permit in the future.

(3) Removal of Facilities Placed Without Permit. Any Communications Facilities placed in the Public Rights-of-Way by the Communications Services Provider without first having obtained the required permit shall be removed by the Communications Services Provider within thirty (30) days of written notice from the City to remove the same and, in default of compliance with such notice, such Facilities may be removed by order of the Development Department Director and the cost of removal shall be borne and paid by the Communications Services Provider upon demand.

(4) Underground. The Placement or Maintenance of all Communications Facilities shall be underground unless otherwise approved in writing by the Development Department Director. Communications Facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the Development Department Director. All Communications Facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for and shall have two (2) feet of horizontal clearance from other underground utilities and their appurtenances. Where approved by the Development Department Director, Communications Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the Development Department Director.

(5) Above-Ground Approval. The Placement or Maintenance of Communications Facilities above-ground, including new poles and aerial wires, is subject to written approval by the Development Department Director. Attachment to any pole or other above-ground structure must be pursuant to a separate valid and effective pole attachment agreement or similar instrument. Location on any pole or other above-ground structure shall not be considered a vested interest of the Communications Services Provider, and such poles or structures, if owned by the Communications Services Provider, shall be removed or modified by the Communications Services Provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The lowest placement of any Communications Facility on any pole or other above-ground structure in the Public Rights-of-Way shall not be less than eighteen (18) feet from the ground. The Communications Services Provider shall, at such time as the electric utility facilities or other Communications Facilities are placed underground or are required by the City to be placed underground, concurrently place its Communications Facilities underground without cost to the City.

(a) New Utility Poles, where permitted, shall be placed between the property line and the curb line of all streets and shall not be within the roadway recovery area. The lowest wire on any of such poles, placed in any Public Rights-of-Way open to vehicular, bicycle, and/or pedestrian traffic shall not be less than eighteen (18) feet from the ground and, whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended.

(b) New Utility Poles, where permitted, shall be made of the similar design, material, and color as other Utility Poles within the same Public Rights-of-Way; however, black enamel/paint-clad metal or concrete poles, are preferred.

(c) New Utility Poles, where permitted, shall be located at least twenty (20) feet from the edge of the drip line of existing shade, conifer, or large ornamental species trees located in the Public Rights-of-Way or on private property.

(d) Replacement Utility Poles shall be of similar design, material, and color of the existing Utility Pole being replaced; however, black enamel/paint-clad metal or concrete poles, are preferred. The replacement Utility Pole shall be located in approximately the same location as the existing pole. The replacement Utility Pole shall continue to serve its primary function. If the City has a planned future project to replace Utility Poles in the subject Public Rights-of-Way, the replacement Utility Poles proposed in the Application shall conform to the City's updated design, material, and color.

(i) General Stealth Design requirements for Communications Facilities within Public Rights-of-Way.

(1) Antennae(s) shall be slim design and shall not exceed the diameter of the pole at the point of attachment to which it/they are attached;

(2) Electric meters and disconnect switches may be mounted on the exterior of the pole and shall be concealed with use of Shrouds that are similar to the pole color and texture;

(3) To the maximum extent possible, exposed wires, cables, conduits, and other electronic or mechanical attachments shall be placed internal to the pole or concealed with use of a Shroud or Wrap that is similar to the color and texture of the pole;

(4) Other components, such as back-haul or cooling equipment, where housed above-ground, shall be placed within a cabinet, box, or other container that is concealed with a Wrap or Shroud that is similar to the pole color or includes other imagery in context with the location of equipment (i.e., imagery of vegetation, architectural/geometrical patterns, or equivalent);

(5) Aerial electrical power and fiber connections for new Communications Facilities are not permitted where the majority of utilities have been under-grounded;

(6) The use of wooden poles for Placement or Maintenance of new Communications Facilities is prohibited;

(7) Placement in relation to adjacent uses of property and building facades. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e., front façade and front property line, side street façade and side street property line), or such spaces do not exist in those locations on existing properties, new Communications Facilities and new Utility Poles shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building, as defined in this Code; and

(8) Location context. A proposed Communications Facility shall utilize the following location context requirements:

(a) Installation at outermost boundary of Public Rights-of-Way. At-grade Communications Facilities, Utility Poles, and Wireless Support Structures shall be placed at the farthest distance practicable from the edge of pavement unless the proposed type of Facility has a designated corridor within the Public Rights-of-Way.

(b) Equidistant requirement. Utility Poles and Wireless Support Structures shall be placed equidistant between existing Utility Poles or Wireless Support Structures, if any, within the Public Rights-of-Way; provided that, this requirement shall not limit the placement of Small Wireless Facilities by imposing minimum separation distances.

(c) Common property line. For Placement within residential blocks, Utility Poles shall be placed at the common property line of the parcels that abut the Public Rights-of-Way.

(d) Prohibition against Placement that significantly impairs view from principal structures within residential blocks. At-grade Communications Facilities, Utility Poles, and Wireless Support Structures shall be located such that views from principal structures within residential blocks are not significantly impaired.

(e) Prohibition against Placement within a location subject to homeowners' association restrictions. Wireless Support Structures shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association.

(f) Prohibition against Placement in location where Facilities are placed underground. At-grade Communications Facilities, Wireline Facilities, and Utility Poles in the Public Rights-of-Way shall comply with nondiscriminatory undergrounding requirements of the City that prohibit aboveground structures in the Public Rights-of-Way.

(9) Grounding rods and pull boxes. The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with FDOT Standard specification 635, and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.

(10) Other associated ground-mounted facilities and equipment. Ground-mounted equipment for Small Wireless Facilities shall be located within a ten (10) foot radius of the Utility Pole supporting such Facility and, if possible, in areas with existing foliage or other aesthetic features to obscure the view of the ground-mounted equipment. The ground-mounted equipment shall use Wrap that is similar to the pole color. If the City has a planned future project to replace Facilities or equipment in the subject Public Rights-of-Way, the replacement Facilities or equipment proposed in the Application shall conform to the City's updated design, material, and color.

(11) Signs. No signs shall be permitted on or attached to Communications Facilities or Utility Poles in Public Rights-of-Way, unless otherwise required by Federal or State law. Any Existing Structure or Facility that lawfully supports signs on the effective date of this Ordinance may continue to support such signs, as otherwise permitted by City code or State or Federal law, as may be amended.

(12) Separation from driveways and hydrants. Communications Facilities and Utility Poles shall be located at least ten (10) feet from a driveway apron and at least thirty (30) feet from a fire hydrant.

(13) Additional Placement and Maintenance Standards. The Placement or Maintenance of Communications Facilities in the Public Rights-of-Way shall be performed in accordance with the standards and requirements of the following, as is applicable and as each is in force at the time of the respective Placement or Maintenance of a Communications System or Facility:

(a) the Florida Department of Transportation Utilities Accommodation Guide;

(b) the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways;

(c) the Trench Safety Act (Chapter 553, Florida Statutes);

(d) the Underground Facility Damage Prevention and Safety Act (Chapter 556, Florida Statutes);

(e) the National Electrical Code or the ANSI National Electrical Safety Code; and

(f) the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States.

(14) Sunshine State One-Call. Every Communications Services Provider shall utilize and, if permissible, maintain membership in the utility notification one-call system administered by Sunshine State One-Call of Florida, Inc.

(15) Sufficiency of space. An Application for a permit for Placement of Communications Facilities is also subject to the City's consideration of the following standards and minimum requirements regarding present and future use of the Public Rights-of-Way:

(a) Sufficiency of space to accommodate present and pending Applications for use of the Public Rights-of-Way. The sufficiency of space to accommodate all of the present and pending Applications to place

Wireless Support Structures, Utility Poles, and other at-grade and below-grade structures within the subject area of the Public Rights-of-way;

(b) Sufficiency of space to accommodate the need for projected public improvements. The sufficiency of space to accommodate City plans for public improvements or projects adopted as part of the City's schedule of capital improvements or other approved capital improvements lists as part of the Comprehensive Plan; and

(c) Impact on traffic and traffic and pedestrian safety. The impact on traffic and traffic and pedestrian safety will be evaluated by the City. The evaluation will include, without limitation, potential traffic interference on the safe and efficient movement of people and property that will endanger the health, safety, and general welfare of the public, and interference with sight lines or clear zones for transportation, pedestrians or public safety purposes.

(16) Safety and Minimal Interference. All Placement and Maintenance of Communications Facilities in the Public Rights-of-Way shall be subject to this Code and other regulations of the City pertaining thereto, and shall be performed with the least possible interference with the use and appearance of the Public Rights-of-Way and the rights and reasonable convenience of the property owners who abut or adjoin the Public Rights-of-Way and in compliance with the rules and regulations of the Florida Department of Transportation. The Communications Services Provider shall at all times employ reasonable care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All Placement and Maintenance shall be done in such a manner as to minimize to the greatest extent any interference with the usual travel on such Public Rights-of-Way. The use of trenchless technology (i.e., microtunneling and horizontal directional drilling techniques) for the installation of Communications Facilities in the Public Rights-of-Way, as well as joint trenching or the co-location of Facilities in existing conduit, is strongly encouraged, and should be employed wherever and whenever feasible.

(17) Correction of Harmful Conditions. If, at any time, the City or other authority of competent jurisdiction reasonably determines that any Communications Facility is causing, or has caused, a condition that is harmful to the health, safety, or general welfare of any Person, then the Communications Services Provider shall, at its own expense, promptly correct or eliminate all such Facilities and conditions. In an Emergency, as determined by the Development Department Director, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate repairs to any Communications Facility that is damaged or malfunctioning, or has caused a sunken area or other condition which, in the Development Department Director's sole discretion, is deemed a threat to public safety, then the Development Department Director, when apprised of such an Emergency, shall have the right to remove, make repairs to, or eliminate same with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(18) Remedy of Hazardous Conditions. If, at any time, a condition exists that the City or other authority of competent jurisdiction reasonably determines is an Emergency that is potentially hazardous or life threatening to any Person or is a threat to the health or safety of the general public, and to remedy such condition the City or other authority of competent jurisdiction reasonably determines that a

Communications Services Provider must temporarily relocate or temporarily shut off service or transmissions through a specific Facility, then the City, as an appropriate exercise of its police powers, may order the Communications Services Provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the City. In such an Emergency, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific Communications Facility, then the Development Department Director shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(19) Interference with Other Facilities. A Communications Services Provider shall not, in violation of any applicable laws or regulatory standards, design, Place, or Maintain its Communications Facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire, or rescue department, the facilities of any public utility, or the Communications Facilities of another Communications Services Provider, including any cable service provider.

(20) Relocation or Removal of Facilities. Except in cases of an Emergency, a Communications Services Provider, at its own expense, shall:

(a) Upon thirty (30) days written notice, relocate or remove, as specified in said notice, its Communications Facility in the event the City finds that the particular Facility is unreasonably interfering in some way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of any Public Rights-of-Way. The City shall provide the Communications Services Provider with a notice and order as provided for in Section 337.404, Florida Statutes, or any subsequently enacted law of the State of Florida, in the event it charges the Communications Services Provider for the cost and expense of relocating or removing such Facility pursuant to this paragraph.

(b) Within a reasonable period of time from the date of written notice from the City, but not more than 120 days thereafter, relocate or remove, as specified in said notice, its Communications Facility in the event the Development Department Director determines it necessary for the construction, completion, repair, relocation, or maintenance of a City project, because the particular Communications Facility is interfering with or adversely affecting the proper operation of street light poles, traffic signals, or any communications system belonging to the City or an agency thereof or because the particular Communications Facility is interfering with the signals or facilities of the City police department, City fire rescue, or any municipal public utility. In the event the City issues any such written notice to the Communications Services Provider pursuant to this paragraph, and the Communications Services Provider fails to cause the aforementioned relocation or removal as required herein, the City shall be entitled to relocate or remove such Facilities without further notice to the Communications Services Provider and the total cost and expense shall be charged to the Communications Services Provider.

(21) Temporary Raising or Lowering of Facilities. A Communications Services Provider, upon request of any Person holding a validly-issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the Public Rights-of-Way, shall temporarily raise or lower its Communications Facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the

Communications Services Provider shall have the authority to require such payment in advance. The Communications Services Provider shall be given not less than twenty (20) days advance written notice from such Person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures performed by the City or its contractors.

(22) Coordination. In an effort to minimize the adverse impact on the Public Rights-of-Way and other municipal improvements, a Communications Services Provider may be required by the Development Department Director to coordinate the Placement or Maintenance of its Facilities with any work, Construction, installation in or repairs of the subject Public Rights-of-Way or other Communications Facilities therein that is occurring or is scheduled to occur within a reasonable time from Application for a permit as determined by the Development Department Director. Every Communications Services Providers shall make space in its trench and/or conduit within the Public Rights-of-Way available to other providers consistent with the Federal requirements of 47 U.S.C. § 224. Every Communications Services Provider shall utilize existing conduits, pathways, and other Communications Facilities whenever possible, and shall not Place or Maintain any new, different, or additional poles, conduits, pathways, or other Communications Facilities, whether in the Public Rights-of-Way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(23) Co-location and Joint Use. A Communications Services Provider, in an effort to minimize the adverse impact on the useful life of the Public Rights-of-Way, shall, whenever possible, enter into joint use agreements with the City and other parties who have Registered with, or who are expressly authorized by, the City to use its Public Rights-of-Way; provided that, the terms of such agreements are satisfactory to the Communications Services Provider. Nothing herein contained shall mandate that the Communications Services Provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional conduit or fiber in the Public Rights-of-Way, a Communications Services Provider is required to certify in writing to the Development Department Director that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Public Rights-of-Way as to the availability of existing or planned conduit or fiber that the particular Communications Services Provider could reasonably utilize to meet its needs, and that no such conduit or fiber is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The Communications Services Provider shall not be permitted to perform any Placement or Maintenance of Communications Facilities in those segments of the Public Rights-of-Way where there exists vacant or available conduit, dark fiber, or surplus fiber owned by the City, an agency of the City, or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the Communications Services Provider's System or network. Under such circumstances the Communications Services Provider shall have the opportunity to enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a permit from the City.

(24) Maintenance of Traffic. In the event that Placement or Maintenance of Communications Facilities conducted by the Communications Services Provider requires streets, traffic lanes, or bicycle lanes,

sidewalks, or multimodal paths to be closed or obstructed, the Communications Services Provider must, pursuant to the requirements of existing or subsequently-enacted City ordinances, obtain all necessary permits from the City, and shall obtain approval of its maintenance-of-traffic plan from the Development Department Director.

(25) Restoration of the Public Rights-of-Way. After completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way or each phase thereof, the Communications Services Provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the Public Rights-of-Way so disturbed in accordance with the delineated specifications stipulated in the Permit. If the Communications Services Provider fails to make such restoration within thirty (30) days following the completion of such Placement or Maintenance, the City may perform such restoration and charge the costs of the restoration to the Communications Services Provider in accordance with Section 337.402, Florida Statutes, as it may be amended. The Communications Services Provider shall, to the satisfaction of the Development Department Director, maintain and correct any restorations made pursuant hereto for a period of twelve (12) months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future permit for the Placement or Maintenance of Communications Facilities.

(26) Disruption or Destruction of Other Facilities or Property. A Communications Services Provider shall not knowingly Place or Maintain any Communications Facility in a manner that shall in any way disrupt, displace, damage, or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other Facilities, or property belonging to the City or any other Person lawfully occupying the Public Rights-of-Way, without first obtaining the consent of the City. The Communications Services Provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained and shall pay such costs upon demand.

(27) Placement within a Scenic or Gateway Corridor. Unless otherwise authorized by a franchise agreement or for public safety purposes, no new Utility Poles or above-ground Communications Facilities shall be placed within a designated Scenic or Gateway Corridor, as described in the Comprehensive Plan.

(j) General Conditions on the Utilization of the Public Rights-of-Way and the Placement or Maintenance of Communications Facilities.

(1) City Not Liable. Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the City nor its officials, boards, commissions, consultants, agents, employees, or independent contractors shall have any liability to the Communications Services Provider for any claims for any damages, costs, expenses, or losses resulting from the City's breakage, removal, alteration, or relocation of any Facilities of any Communications Services Provider which arose out of, or in connection with, any Emergency or disaster situation or was, in the sole discretion of the Development Department Director, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any Public Rights-of-Way, or the elimination, abandonment, or closure of any Public Rights-of-Way, or was found by the City Commission to be in the best interest of the health, safety, or general welfare of the public; nor shall any charge be made by the Communications Services Provider against the City for any damages, costs, expenses, or losses related thereto.

(2) No Exemption from Permits. Nothing in this Chapter shall exempt any Communications Services Provider from obtaining a permit for work done within the Public Rights-of-Way.

(3) Subject to Police Powers. The rights of the Communications Services Provider shall be subject to all lawful exercise of police powers by the City, and to such other reasonable regulation of the Public Rights-of-Way as the City shall hereafter by resolution or ordinance provide in the interest of the health, safety, and general welfare of the public. Any inconsistency or ambiguity between the provisions of this Chapter and any lawful exercise of the City's police powers shall be resolved in favor of the latter.

(4) City Inspection. The City shall have the right to make such inspections of a Communications System or Facilities Placed or Maintained in the Public Rights-of-Way as it finds necessary to ensure compliance with this Chapter. This Chapter shall not be construed to create or hold the City responsible or liable for any damage to Persons or property by reason of any inspection by the City of the Placement or Maintenance of a Communications System or Facility as authorized herein or the failure by the City to so inspect.

(5) Access to Manholes. The City, in the proper exercise of its municipal powers and duties with respect to the Public Rights-of-Way, shall have access at any time to all hand holes and manholes in the City belonging to a Communications Services Provider. Before accessing any hand hole or manhole, the City will make a reasonable good faith effort to provide the Communications Services Provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.

(6) Compatibility, Capacity, and Interference Issues. To properly manage and control the use of the Public Rights-of-Way, and to protect the health, safety, and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a Communications System or Facility to be placed in the Public Rights-of-Way and shall exercise such authority in a nondiscriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a Communications System or Facility. It shall be in the sole discretion of the Development Department Director, based on the nature, design, size, configuration, or proposed location of any Communications System or Facility, whether there is sufficient capacity in a particular section of the Public Rights-of-Way or whether such Communications System or Facility will interfere with the Facilities or equipment of any municipality, county, public utility, cable operator, or other Communications Service Provider.

(7) No Warranty of Fitness or Suitability. The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the Public Rights-of-Way for any Communications System or Facility or its right to authorize the Placement or Maintenance of any Communications System or Facility in the Public Rights-of-Way. Any performance of work, costs incurred, or services rendered by a Communications Services Provider shall be at such Provider's sole risk. Nothing in this Chapter shall affect the City's authority to acquire or add Public Rights-of-Way, or to vacate or abandon Public Rights-of-Way as provided for in this Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated, or abandoned Public Rights-of-Way for a Communications System or Facility.

(8) Annexations. Upon the annexation of any territory to the City, the provisions of this Chapter and the rules, regulations, and general conditions contained herein shall extend to the territories so annexed; and all Facilities Placed, Maintained, owned, or operated by any Communications Services Provider extending

into or already located in the Public Rights-of-Way of the territory so annexed shall thereafter be subject to all terms hereof, as the same may be amended from time to time.

~~(g)~~ **(k)** After the completion of any placement or maintenance of a communications facility in a public right-of-way or each phase thereof, a registrant shall, at its own expense, restore the public right-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.

~~(h)~~ **(l)** Removal or relocation at the direction of the city of a registrant's communications facility in the public right-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404.

~~(i)~~ **(m)** A permit from the city constitutes authorization to undertake only certain activities in public right-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public right-of-way.

~~(j)~~ **(n)** A registrant shall maintain its communications facility in the public right-of-way in a manner consistent with accepted industry practice and applicable law.

~~(k)~~ **(o)** In connection with excavation in the public right-of-way, a registrant shall, where applicable, comply with the underground facility damage prevention and safety act set forth in F.S. ch. 556.

~~(l)~~ **(p)** A registrant shall use and exercise due caution, care and skill in performing work in the public right-of-way and shall take all reasonable steps to safeguard work site areas.

~~(m)~~ **(q)** Upon request of the city, and as notified by the city of the other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public right-of-way, and a registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public right-of-way.

~~(n)~~ **(r)** A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the public right-of-way of the city.

~~(o)~~ **(s)** The city makes no warranties or representations regarding the fitness, suitability, or availability of public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred, or services provided by the registrant shall be at the registrant's sole risk. Nothing in this article shall affect the city's authority to add, vacate or abandon public right-of-way.

~~(t)~~ (t) The city shall have the right to make such inspections of communications facilities placed or maintained in a public right-of-way as it finds necessary to ensure compliance with this article.

~~(u)~~ (u) A permit application to place a new or replace an existing communications facility in a public right-of-way shall include plans showing the location of the proposed installation of facilities in the public right-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the city, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the city.

~~(v)~~ (v) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in a public right-of-way occupied by the registrant. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public right-of-way within the limits of the city and within said limits as same may from time to time be altered.

~~(w)~~ (w) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days' advance written notice to arrange for such temporary relocation.

Section 36-133 – Wireless facilities as part of a telecommunications facility

(a) A wireless facility that is a portion of a communication facility, such as an antenna, that is attached to a legally maintained vertical structure in the public right-of-way, such as a light pole or utility pole, shall be subject to the following criteria:

- (1) The wireless facility shall not extend more than 20 feet above the highest point of the vertical structure;
- (2) The wireless facility that is attached to a vertical structure located in a public right-of-way that is 15 feet or less in width and is located adjacent to real property used as a single-family residence shall be flush mounted to the vertical structure;
- (3) Such wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;
- (4) Such wireless facility shall comply with any applicable Federal Communications Commission emissions standards;

(5) The design, construction, and installation of such wireless facility shall comply with any applicable local building codes;

(6) No commercial advertising shall be allowed on such wireless facility; and

(7) Any accessory equipment and related housing in the public right-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment.

(b) Vertical structures, such as towers, whose sole purpose is to serve as mounting devices for antennas, are expressly prohibited from being placed in the public right-of-way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such public rights-of-way are located or to which they are adjacent.

(c) Generally. The Placement of telecommunication towers and Antennae anywhere in the corporate limits of the City located outside of the Public Rights-of-Way shall in all cases be subject to the City's zoning and land use regulations. Where Placement of Wireless Facilities in the Public Rights-of-Way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, Wireless Facilities attached to a permitted and legally-maintained vertical structure in the Public Rights-of-Way, such as a light pole or Utility Pole, shall, unless otherwise agreed to by the City in writing:

(1) not extend more than ten (10) feet above the highest point of the vertical structure;

(2) not have any type of lighted signal, lights, or illuminations unless required by an applicable Federal, State, or local rule, regulation, or law;

(3) comply with any applicable FCC Emissions Standards;

(4) comply with any applicable local building codes in terms of design, construction, and installation; and

(5) not contain any commercial advertising thereon.

(d) Small Wireless Facilities in the Public Rights-of-Way. The City hereby adopts the following rules that will apply to the Collocation of Small Wireless Facilities in the Public Rights-of-Way for all Applications filed on or after July 1, 2017:

(1) General Conditions. Applicants seeking permission to Collocate or install Small Wireless Facilities within Public Rights-of-Way shall comply with the Registration, permitting, rules and regulations, insurance coverage, indemnification, performance bonds, security funds, force majeure, Abandonment, City liability, and City warranties provisions contained in this Chapter; provided, however, that the Application process, review timeframes, and denial criteria of this subsection shall control when otherwise in conflict.

(2) Filing, Review, and Processing of Applications. The City shall accept Applications for permits and shall process and issue permits for the Collocation of Small Wireless Facilities in Public Rights-of-Way subject to the following requirements:

(a) The Applicant shall as a part of its Application provide information necessary to demonstrate the Applicant's compliance with the applicable provisions of this Chapter for the Placement of Small Wireless Facilities in the locations identified in the Application, and shall bear the burden of demonstrating compliance with this Chapter.

(b) Within fourteen (14) days after the date of filing the Application, the City may request that the proposed location of a Small Wireless Facility be moved to another location in the Public Rights-of-Way and Placed on an alternative City Utility Pole or support structure or may place a new Utility Pole. The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the Applicant, the Applicant must notify the City of such acceptance and the Application shall be deemed granted for any new location for which there is agreement. If an agreement is not reached, the Applicant must notify the City of such non-agreement and the City must grant or deny the original Application within ninety (90) days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

(c) The City hereby limits the height of a Small Wireless Facility to ten (10) feet above the Utility Pole or structure upon which the Small Wireless Facility is to be collocated. Unless waived by the City, the height for a new Utility Pole is limited to the tallest existing Utility Pole as of July 1, 2017, located in the same Public Right-of-Way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the City shall limit the height of the new Utility Pole to fifty (50) feet.

(d) Within fourteen (14) days after receiving an Application, the City must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the City must specifically identify the missing information. An Application is deemed complete if the City fails to provide notification to the Applicant within fourteen (14) days.

(e) The City shall process all Applications on a nondiscriminatory basis. If the City fails to approve or deny a complete Application within sixty (60) days after receipt of the Application, the Application is deemed approved. If the City does not use the 30-day negotiation period provided herein, the parties may mutually agree to extend the 60-day Application review period. The City shall grant or deny the Application at the end of the extended period.

(f) A permit issued pursuant to an approved Application shall remain effective for one (1) year unless extended by the City.

(g) The City shall notify the Applicant of approval or denial by electronic mail. The City shall approve a complete Application unless it does not meet the applicable provisions of this Chapter.

(h) If the Application is denied, the City shall specify in writing the basis for denial, including the specific Code provisions on which the denial is based, and shall send the documentation to the Applicant by electronic mail on the day the City denies the Application.

(i) The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days after notice of the denial is sent to the Applicant. Failure by the Applicant to timely

resubmit the Application shall result in a final denial of the Application. The City shall approve or deny a timely filed revised Application within thirty (30) days after receipt or the Application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(j) An Applicant seeking to Collocate Small Wireless Facilities within the City's boundaries may, at the Applicant's discretion, file a consolidated Application with the City and receive a single permit for the Collocation of up to thirty (30) Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

(k) The City may deny a proposed Collocation of a Small Wireless Facility in the Public Rights-of-Way if the proposed Collocation:

(1) Materially interferes with the safe operation of traffic control equipment.

(2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

(3) Materially interferes with compliance with the Americans with Disabilities Act or similar Federal or State standards regarding pedestrian access or movement.

(4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

(5) Fails to comply with Applicable Codes and the applicable provisions of this Chapter.

(l) Notwithstanding anything to the contrary contained herein, the City may reserve space on City Utility Poles for future public safety uses. If replacement of a City Utility Pole is necessary to accommodate the Collocation of the Small Wireless Facility and the future public safety use, the Utility Pole replacement is subject to the make-ready provisions of this Chapter and the replaced Utility Pole shall accommodate the future public safety use.

(m) A structure granted a permit and installed pursuant to this Chapter shall comply with Chapter 333, Florida Statutes, and Federal regulations pertaining to airport airspace protections.

(n) The City does not require approval or fees for: (i) routine maintenance; (ii) replacement of existing Wireless Facilities with substantially similar Wireless Facilities; or (iii) installation, Placement, Maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Public Rights-of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

(e) Collocation of Small Wireless Facilities on City Utility Poles. The Collocation of Small Wireless Facilities on City Utility Poles is subject to the following requirements:

(1) The City shall not enter into an exclusive arrangement with any Person for the right to attach equipment to City Utility Poles.

(2) The rates and fees for Collocations on City Utility Poles must be nondiscriminatory, regardless of the services provided by the collocating person.

(3) The City hereby levies, establishes, and sets an annual rate that shall be paid by all those Applicants who file an Application to Collocate Small Wireless Facilities on City Utility Poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the same date.

(4) Agreements between the City and Wireless Providers that are in effect on July 1, 2017, and that relate to the Collocation of Small Wireless Facilities in the Public Rights-of-Way, including the Collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to applicable termination provisions. The Wireless Provider may accept the rates, fees, and terms established under this Chapter for Small Wireless Facilities and Utility Poles that are the subject of an Application submitted after the rates, fees, and terms become effective.

(5) For a City Utility Pole that supports an aerial facility used to provide Communications Services or electric service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and its implementing regulations. The good faith estimate of the Person owning or controlling the Utility Pole for any make-ready work necessary to enable the Utility Pole to support the requested Collocation must include Utility Pole replacement if necessary.

(6) For a City Utility Pole that does not support an aerial facility used to provide Communications Services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the Utility Pole to support the requested Collocation, including necessary Utility Pole replacement, within sixty (60) days after receipt of a complete Application. Make-ready work, including any Utility Pole replacement, must be completed within sixty (60) days after written acceptance of the good faith estimate by the Applicant. Alternatively, the City may require the Applicant seeking to Collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including Utility Pole replacement, and perform the make-ready work. If Utility Pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the Public Rights-of-Way. The replaced or altered Utility Pole shall remain the property of the City.

(7) The City may not require more make-ready work than is required to meet Applicable Codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any Utility Pole replacement, may not exceed actual costs or the amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(f) Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities. A Wireless Infrastructure Provider may apply to the City to place Utility Poles in the Public Rights-of-Way to support the Collocation of Small Wireless Facilities. The Application must include an attestation that Small Wireless Facilities will be Collocated on the Utility Pole or structure and will be used by a Wireless Services Provider to provide service within nine (9) months after the date the Application is approved by the City. The City shall accept and process the Application in accordance with

this Chapter and any Applicable Codes and other local codes governing the placement of Utility Poles in the Public Rights-of-Way.

(g) Application and Enforcement of Historic Preservation Zoning Regulations. Consistent with preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), and the National Historic Preservation Act of 1966, as amended, this Chapter is subject to the provisions of City codes and ordinances regarding historic preservation.

(h) Prohibited Collocations, Attachments, Installations, and Services Not Authorized by this section. This section does not authorize, and the City hereby prohibits, the following:

(1) This section does not authorize a Person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately-owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately-owned Wireless Support Structure, or other private property without the consent of the property owner.

(2) The approval of the installation, Placement, Maintenance, or operation of a Small Wireless Facility pursuant to this section does not authorize the provision of any voice, data, or Video Services or the installation, Placement, Maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in the Public Rights-of-Way.

(3) This section does not affect provisions relating to Pass-through Providers contained in this Chapter and contained in Section 337.401(6), Florida Statutes.

(4) This section does not apply to the installation, Placement, Maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by this Chapter.

(5) This section does not authorize a Person to Collocate Small Wireless Facilities or Micro Wireless Facilities on a City Utility Pole or erect a Wireless Support Structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, Placement, Maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities.

Section 36-134 – Suspension of permits

Section 36-135 – Appeals

Section 36-136 – Involuntary termination of registration

Section 36-137 – Existing communications facilities in public right-of-way

A communications services provider with an existing communications facility in the public right-of-way of the city has 60 days from the effective date of the ordinance from which this article is derived to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

The provisions of this Chapter shall be applicable to all Communications Facilities placed in the Public Rights-of-Way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities placed in the Public Rights-of-Way prior to the effective date of this Ordinance to the full extent permitted by Federal and State law, except that any provision of this Chapter regarding the size, Stealth Design, concealment, or location of Communications Facilities shall not apply to existing Communications Facilities lawfully placed within the Public Rights-of-Way prior to the effective date of this Ordinance, to the extent that such Communications Facilities may be Maintained, repaired, and replaced with a Communications Facility substantially similar in size and for the same purpose.

Section 36-138 Insurance

Section 36-139 - Indemnification

Section 36-140 - Construction bond

Section 36-141 - Security fund

Section 36-142 - Enforcement remedies

Section 36-143 – Abandonment of communications facility

Section 36-144 - Force majeure

Section 36-145 – Reservation of rights and remedies

SECTION 2: All ordinances or parts of ordinances herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: The provision of Sections 1 of this ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption

Passed on first reading the ____ day of _____, 2020.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MICHAEL J. MEIER, MAYOR

EULA R. CLARKE, VICE MAYOR

BECKY BRUNER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

MERRITT MATHESON, COMMISSIONER
TROY MACDONALD, COMMISSIONER

ADOPTED on second and final reading this _____ day of _____, 2020.

ATTEST:

MARY R. KINDEL
CITY CLERK

MICHAEL J. MEIER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL
CITY ATTORNEY

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2 An act relating to communications services; amending
3 s. 202.20, F.S.; conforming a cross-reference;
4 amending s. 337.401, F.S.; revising legislative
5 intent; specifying limitations and prohibitions on
6 municipalities and counties relating to registrations
7 and renewals of communications service providers;
8 authorizing municipalities and counties to require
9 certain information as part of a registration;
10 prohibiting municipalities and counties from requiring
11 a payment of fees, costs, or charges for provider
12 registration or renewal; prohibiting municipalities
13 and counties from adopting or enforcing certain
14 ordinances, regulations, or requirements; specifying
15 limitations on municipal and county authority to
16 regulate and manage municipal and county roads or
17 rights-of-way; prohibiting certain municipalities and
18 counties from electing to impose permit fees;
19 providing retroactive applicability; authorizing
20 certain municipalities and counties to continue to
21 require and collect such fees; deleting obsolete
22 provisions; specifying activities for which permit
23 fees may not be imposed; deleting certain provisions
24 relating to municipality, charter county, and
25 noncharter county elections to impose, or not to
26 impose, permit fees; requiring that enforcement of
27 certain ordinances must be suspended until certain
28 conditions are met; revising legislative intent
29 relating to the imposition of certain fees, costs, and

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exactions on providers; specifying a condition for
certain in-kind compensation; revising items over
which municipalities and counties may not exercise
regulatory control; authorizing municipalities and
counties to require a right-of-way permit for certain
purposes; providing requirements for processing
certain permit applications; prohibiting
municipalities and counties from certain actions
relating to certain aerial or underground
communications facilities; specifying limitations and
requirements for certain municipal and county rules
and regulations; revising definitions for the Advanced
Wireless Infrastructure Deployment Act; prohibiting
certain actions by an authority relating to certain
utility poles; prohibiting authorities from requiring
permit applicants to provide certain information,
except under certain circumstances; adding prohibited
acts by authorities relating to small wireless
facilities, application requirements, public
notification and public meetings, and the placement of
certain facilities; revising applicability of
authority rules and regulations governing the
placement of utility poles in the public rights-of-
way; providing construction relating to judicial
review of certain application denials; specifying
grounds for an authority's denial of a proposed
collocation of a small wireless facility or placement
of a utility pole in the public rights-of-way;
deleting an authority's authorization to adopt

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ordinances for performance bonds and security funds;
authorizing an authority to require a construction
bond, subject to certain conditions; requiring
authorities to accept certain financial instruments
for certain financial obligations; authorizing
providers to add authorities to certain financial
instruments; prohibiting an authority from requiring a
provider to indemnify an authority for certain
liabilities; prohibiting an authority from requiring a
permit, approval, fees, charges, costs, or exactions
for certain activities; authorizing and limiting
filings an authority may require relating to micro
wireless facility equipment; providing an exception to
a certain right-of-way permit for certain service
restoration work; providing conditions under which a
wireless provider must comply with certain
requirements of an authority which prohibit new
utility poles used to support small wireless
facilities in certain areas; providing that an
authority may require wireless providers to comply
with certain objective design standards adopted by
ordinance; authorizing an authority to waive such
design standards under certain circumstances;
providing a requirement for the waiver; revising an
authority's authorization to apply certain ordinances
to applications filed before a certain timeframe;
authorizing a civil action for violations; providing
actions a court may take; requiring that work in
certain authority rights-of-way must comply with a

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specified document; providing for statutory
construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) of section
202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.—
(2)

(b) Except as otherwise provided in this subsection,
“replaced revenue sources,” as used in this section, means the
following taxes, charges, fees, or other impositions to the
extent that the respective local taxing jurisdictions were
authorized to impose them prior to July 1, 2000.

1. With respect to municipalities and charter counties and
the taxes authorized by s. 202.19(1):

a. The public service tax on telecommunications authorized
by former s. 166.231(9).

b. Franchise fees on cable service providers as authorized
by 47 U.S.C. s. 542.

c. The public service tax on prepaid calling arrangements.

d. Franchise fees on dealers of communications services
which use the public roads or rights-of-way, up to the limit set
forth in s. 337.401. For purposes of calculating rates under
this section, it is the legislative intent that charter counties
be treated as having had the same authority as municipalities to
impose franchise fees on recurring local telecommunication
service revenues prior to July 1, 2000. However, the Legislature
recognizes that the authority of charter counties to impose such

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fees is in dispute, and the treatment provided in this section is not an expression of legislative intent that charter counties actually do or do not possess such authority.

e. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way, collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c) ~~337.401(3)(c)1.a.~~, such fees shall not be included as a replaced revenue source.

2. With respect to all other counties and the taxes authorized in s. 202.19(1), franchise fees on cable service providers as authorized by 47 U.S.C. s. 542.

Section 2. Subsection (3), paragraphs (d), (e), and (f) of subsection (6), and paragraphs (b), (c), (d), (e), (f), (g), and (i) of subsection (7) of section 337.401, Florida Statutes, are amended, paragraph (r) is added to subsection (7), and subsections (8) and (9) are added to that section, to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(3)(a) Because of the unique circumstances applicable to providers of communications services, including, but not limited to, the circumstances described in paragraph (e) and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of

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communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services, taking into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities, and, notwithstanding any other law, may not require a provider of communications services to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection or subsection (7), a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county. To register, a provider of communications services may be required only to provide its name ~~and to provide the name of the registrant;~~ the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; a statement of whether the registrant is a

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pass-through provider as defined in s. 337.401(6)(a)1.; the
registrant's federal employer identification number; and any
required proof of insurance or self-insuring status adequate to
defend and cover claims. A municipality or county may not
require a registrant to renew a registration more frequently
than every 5 years but may require during this period that a
registrant update the registration information provided under
this subsection within 90 days after a change in such
information. A municipality or county may not require the
registrant to provide an inventory of communications facilities,
maps, locations of such facilities, or other information by a
registrant as a condition of registration, renewal, or for any
other purpose; provided, however, that a municipality or county
may require as part of a permit application that the applicant
identify at-grade communications facilities within 50 feet of
the proposed installation location for the placement of at-grade
communications facilities. A municipality or county may not
require a provider to pay any fee, cost, or other charge for
registration or renewal thereof. It is the intent of the
Legislature that the placement, operation, maintenance,
upgrading, and extension of communications facilities not be
unreasonably interrupted or delayed through the permitting or
other local regulatory process. Except as provided in this
chapter or otherwise expressly authorized by chapter 202,
chapter 364, or chapter 610, a municipality or county may not
adopt or enforce any ordinance, regulation, or requirement as to
the placement or operation of communications facilities in a
right-of-way by a communications services provider authorized by
state or local law to operate in a right-of-way; regulate any

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communications services; or impose or collect any tax, fee,
cost, charge, or exaction for the provision of communications
services over the communications services provider's
communications facilities in a right-of-way.

(b) Registration described in paragraph (a) does not
establish a right to place or maintain, or priority for the
placement or maintenance of, a communications facility in roads
or rights-of-way of a municipality or county. Each municipality
and county retains the authority to regulate and manage
municipal and county roads or rights-of-way in exercising its
police power, subject to the limitations imposed in this section
and chapters 202 and 610. Any rules or regulations adopted by a
municipality or county which govern the occupation of its roads
or rights-of-way by providers of communications services must be
related to the placement or maintenance of facilities in such
roads or rights-of-way, must be reasonable and
nondiscriminatory, and may include only those matters necessary
to manage the roads or rights-of-way of the municipality or
county.

(c) Any municipality or county that, as of January 1, 2019,
elected to require permit fees from any provider of
communications services that uses or occupies municipal or
county roads or rights-of-way pursuant to former paragraph (c)
or paragraph (j), Florida Statutes 2018, may continue to require
and collect such fees. A municipality or county that elected as
of January 1, 2019, to require permit fees may elect to forego
such fees as provided herein. A municipality or county that
elected as of January 1, 2019, not to require permit fees may
not elect to impose permit fees.

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233 ~~1. It is the intention of the state to treat all providers~~
234 ~~of communications services that use or occupy municipal or~~
235 ~~charter county roads or rights-of-way for the provision of~~
236 ~~communications services in a nondiscriminatory and competitively~~
237 ~~neutral manner with respect to the payment of permit fees.~~
238 ~~Certain providers of communications services have been granted~~
239 ~~by general law the authority to offset permit fees against~~
240 ~~franchise or other fees while other providers of communications~~
241 ~~services have not been granted this authority. In order to treat~~
242 ~~all providers of communications services in a nondiscriminatory~~
243 ~~and competitively neutral manner with respect to the payment of~~
244 ~~permit fees, each municipality and charter county shall make an~~
245 ~~election under either sub-subparagraph a. or sub-subparagraph b.~~
246 ~~and must inform the Department of Revenue of the election by~~
247 ~~certified mail by July 16, 2001. Such election shall take effect~~
248 ~~October 1, 2001.~~

249 ~~a.(I) The municipality or charter county may require and~~
250 ~~collect permit fees from any providers of communications~~
251 ~~services that use or occupy municipal or county roads or rights-~~
252 ~~of-way. All fees authorized ~~permitted~~ under this paragraph ~~sub-~~~~
253 ~~subparagraph must be reasonable and commensurate with the direct~~
254 ~~and actual cost of the regulatory activity, including issuing~~
255 ~~and processing permits, plan reviews, physical inspection, and~~
256 ~~direct administrative costs; must be demonstrable; and must be~~
257 ~~equitable among users of the roads or rights-of-way. A fee~~
258 ~~authorized ~~permitted~~ under this paragraph ~~sub-subparagraph~~ may~~
259 ~~not~~ be offset against the tax imposed under chapter 202;
260 include the costs of roads or rights-of-way acquisition or roads
261 or rights-of-way rental; include any general administrative,

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management, or maintenance costs of the roads or rights-of-way;
or be based on a percentage of the value or costs associated
with the work to be performed on the roads or rights-of-way. In
an action to recover amounts due for a fee not authorized
~~permitted~~ under this paragraph ~~sub-subparagraph~~, the prevailing
party may recover court costs and attorney ~~attorney's~~ fees at
trial and on appeal. In addition to the limitations set forth in
this section, a fee levied by a municipality or charter county
under this paragraph ~~sub-subparagraph~~ may not exceed \$100.
However, permit fees may not be imposed with respect to permits
that may be required for service drop lines not required to be
noticed under s. 556.108(5) ~~s. 556.108(5)(a)2.~~ or for any
activity that does not require the physical disturbance of the
roads or rights-of-way or does not impair access to or full use
of the roads or rights-of-way, including, but not limited to,
the performance of service restoration work on existing
facilities, extensions of such facilities for providing
communications services to customers, and the placement of micro
wireless facilities in accordance with subparagraph (7)(e)3.

~~(II) To ensure competitive neutrality among providers of
communications services, for any municipality or charter county
that elects to exercise its authority to require and collect
permit fees under this sub-subparagraph, the rate of the local
communications services tax imposed by such jurisdiction, as
computed under s. 202.20, shall automatically be reduced by a
rate of 0.12 percent.~~

~~b. Alternatively, the municipality or charter county may
elect not to require and collect permit fees from any provider
of communications services that uses or occupies municipal or~~

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~~charter county roads or rights-of-way for the provision of
communications services; however, each municipality or charter
county that elects to operate under this sub-subparagraph
retains all authority to establish rules and regulations for
providers of communications services to use or occupy roads or
rights-of-way as provided in this section.~~

~~1. If a municipality or charter county elects to not
require permit fees operate under this sub-subparagraph, the
total rate for the local communications services tax as computed
under s. 202.20 for that municipality or charter county may be
increased by ordinance or resolution by an amount not to exceed
a rate of 0.12 percent. If a municipality or charter county
elects to increase its rate effective October 1, 2001, the
municipality or charter county shall inform the department of
such increased rate by certified mail postmarked on or before
July 16, 2001.~~

~~e. A municipality or charter county that does not make an
election as provided for in this subparagraph shall be presumed
to have elected to operate under the provisions of sub-
subparagraph b.~~

~~2. Each noncharter county shall make an election under
either sub-subparagraph a. or sub-subparagraph b. and shall
inform the Department of Revenue of the election by certified
mail by July 16, 2001. Such election shall take effect October
1, 2001.~~

~~a. The noncharter county may elect to require and collect
permit fees from any providers of communications services that
use or occupy noncharter county roads or rights-of-way. All fees
permitted under this sub-subparagraph must be reasonable and~~

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~~commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed \$100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s.~~

~~556.108(5)(a)2. or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.~~

~~b. Alternatively, the noncharter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies noncharter county roads or rights-of-way for the provision of communications services; however, each noncharter county that elects to operate under this sub-subparagraph shall retain all authority to establish rules and regulations for providers of communications~~

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~~services to use or occupy roads or rights-of-way as provided in this section.~~

2. If a noncharter county elects to not require permit fees ~~operate under this sub-subparagraph~~, the total rate for the local communications services tax as computed under s. 202.20 for that noncharter county may be increased by ordinance or resolution by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services. ~~If a noncharter county elects to increase its rate effective October 1, 2001, the noncharter county shall inform the department of such increased rate by certified mail postmarked on or before July 16, 2001.~~

~~e. A noncharter county that does not make an election as provided for in this subparagraph shall be presumed to have elected to operate under the provisions of sub-subparagraph b.~~

~~3. Except as provided in this paragraph, municipalities and counties retain all existing authority to require and collect permit fees from users or occupants of municipal or county roads or rights-of-way and to set appropriate permit fee amounts.~~

~~(d) After January 1, 2001,~~ In addition to any other notice requirements, a municipality must provide to the Secretary of State, at least 10 days prior to consideration on first reading, notice of a proposed ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way. ~~After January 1, 2001,~~ In addition to any other notice requirements, a county must provide to the Secretary of State, at least 15 days prior to consideration at a public hearing, notice of a proposed ordinance governing a

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telecommunications company placing or maintaining
telecommunications facilities in its roads or rights-of-way. The
notice required by this paragraph must be published by the
Secretary of State on a designated Internet website. The failure
of a municipality or county to provide such notice does not
render the ordinance invalid, provided that enforcement of such
ordinance must be suspended until 30 days after the municipality
or county provides the required notice.

(e) The authority of municipalities and counties to require
franchise fees from providers of communications services, with
respect to the provision of communications services, is
specifically preempted by the state because of unique
circumstances applicable to providers of communications services
when compared to other utilities occupying municipal or county
roads or rights-of-way. Providers of communications services may
provide similar services in a manner that requires the placement
of facilities in municipal or county roads or rights-of-way or
in a manner that does not require the placement of facilities in
such roads or rights-of-way. Although similar communications
services may be provided by different means, the state desires
to treat providers of communications services in a
nondiscriminatory manner and to have the taxes, franchise fees,
and other fees, costs, and financial or regulatory exactions
paid by or imposed on providers of communications services be
competitively neutral. Municipalities and counties retain all
existing authority, if any, to collect franchise fees from users
or occupants of municipal or county roads or rights-of-way other
than providers of communications services, and the provisions of
this subsection shall have no effect upon this authority. The

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provisions of this subsection do not restrict the authority, if any, of municipalities or counties or other governmental entities to receive reasonable rental fees based on fair market value for the use of public lands and buildings on property outside the public roads or rights-of-way for the placement of communications antennas and towers.

(f) Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to paragraph (c), a municipality or county may not levy on a provider of communications services a tax, fee, or other charge or imposition for operating as a provider of communications services within the jurisdiction of the municipality or county which is in any way related to using its roads or rights-of-way. A municipality or county may not require or solicit in-kind compensation, except as otherwise provided in s. 202.24(2)(c)8., provided that the in-kind compensation is not a franchise fee under federal law. Nothing in this paragraph impairs the authority of a municipality or county to request public, educational, or governmental access channels pursuant to ~~or~~ s. 610.109. Nothing in this paragraph shall impair any ordinance or agreement in effect on May 22, 1998, or any voluntary agreement entered into subsequent to that date, which provides for or allows in-kind compensation by a telecommunications company.

(g) A municipality or county may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not

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limited to, the operations, systems, equipment, technology,
qualifications, services, service quality, service territory,
and prices of a provider of communications services. A
municipality or county may not require any permit for the
maintenance, repair, replacement, extension, or upgrade of
existing aerial wireline communications facilities on utility
poles or for aerial wireline facilities between existing
wireline communications facility attachments on utility poles by
a communications services provider. However, a municipality or
county may require a right-of-way permit for work that involves
excavation, closure of a sidewalk, or closure of a vehicular
lane or parking lane, unless the provider is performing service
restoration to existing facilities. A permit application
required by an authority under this section for the placement of
communications facilities must be processed and acted upon
consistent with the timeframes provided in subparagraphs
(7) (d) 7., 8., and 9. In addition, a municipality or county may
not require any permit or other approval, fee, charge, or cost,
or other exaction for the maintenance, repair, replacement,
extension, or upgrade of existing aerial lines or underground
communications facilities located on private property outside of
the public rights-of-way. As used in this section, the term
"extension of existing facilities" includes those extensions
from the rights of way into a customer's private property for
purposes of placing a service drop or those extensions from the
rights of way into a utility easement to provide service to a
discrete identifiable customer or group of customers.

(h) A provider of communications services that has obtained
permission to occupy the roads or rights-of-way of an

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incorporated municipality pursuant to s. 362.01 or that is otherwise lawfully occupying the roads or rights-of-way of a municipality or county shall not be required to obtain consent to continue such lawful occupation of those roads or rights-of-way; however, nothing in this paragraph shall be interpreted to limit the power of a municipality or county to adopt or enforce reasonable rules or regulations as provided in this section and consistent with chapters 202, 364, and 610. Any such rules or regulations must be in writing, and registered providers of communications services in the municipality or county must be given at least 60 days advance written notice of any changes to the rules and regulations.

(i) Except as expressly provided in this section, this section does not modify the authority of municipalities and counties to levy the tax authorized in chapter 202 or the duties of providers of communications services under ss. 337.402-337.404. This section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way.

~~(j) Pursuant to this paragraph, any county or municipality may by ordinance change either its election made on or before July 16, 2001, under paragraph (c) or an election made under this paragraph.~~

~~1.a. If a municipality or charter county changes its election under this paragraph in order to exercise its authority to require and collect permit fees in accordance with this subsection, the rate of the local communications services tax imposed by such jurisdiction pursuant to ss. 202.19 and 202.20 shall automatically be reduced by the sum of 0.12 percent plus~~

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the percentage, if any, by which such rate was increased
pursuant to sub-subparagraph (c)1.b.

b. If a municipality or charter county changes its election
under this paragraph in order to discontinue requiring and
collecting permit fees, the rate of the local communications
services tax imposed by such jurisdiction pursuant to ss. 202.19
and 202.20 may be increased by ordinance or resolution by an
amount not to exceed 0.24 percent.

2.a. If a noncharter county changes its election under this
paragraph in order to exercise its authority to require and
collect permit fees in accordance with this subsection, the rate
of the local communications services tax imposed by such
jurisdiction pursuant to ss. 202.19 and 202.20 shall
automatically be reduced by the percentage, if any, by which
such rate was increased pursuant to sub-subparagraph (c)2.b.

b. If a noncharter county changes its election under this
paragraph in order to discontinue requiring and collecting
permit fees, the rate of the local communications services tax
imposed by such jurisdiction pursuant to ss. 202.19 and 202.20
may be increased by ordinance or resolution by an amount not to
exceed 0.24 percent.

3.a. Any change of election pursuant to this paragraph and
any tax rate change resulting from such change of election shall
be subject to the notice requirements of s. 202.21; however, no
such change of election shall become effective prior to January
1, 2003.

b. Any county or municipality changing its election under
this paragraph in order to exercise its authority to require and
collect permit fees shall, in addition to complying with the

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~~notice requirements under s. 202.21, provide to all dealers providing communications services in such jurisdiction written notice of such change of election by September 1 immediately preceding the January 1 on which such change of election becomes effective. For purposes of this sub-subparagraph, dealers providing communications services in such jurisdiction shall include every dealer reporting tax to such jurisdiction pursuant to s. 202.37 on the return required under s. 202.27 to be filed on or before the 20th day of May immediately preceding the January 1 on which such change of election becomes effective.~~

~~(k)~~ Notwithstanding the provisions of s. 202.19, when a local communications services tax rate is changed as a result of an election made or changed under this subsection, such rate may ~~shall~~ not be rounded to tenths.

(6)

(d) The amounts charged pursuant to this subsection shall be based on the linear miles of roads or rights-of-way where a communications facility is placed, not based on a summation of the lengths of individual cables, conduits, strands, or fibers. The amounts referenced in this subsection may be charged only once annually and only to one person annually for any communications facility. A municipality or county shall discontinue charging such amounts to a person that has ceased to be a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the person remits taxes imposed by the municipality or county pursuant to chapter 202. Any excess amounts paid to a municipality or county shall be refunded to the person upon written notice of the excess to the municipality or county. A

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municipality or county may require a pass-through provider to provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the municipality's or county's rights-of-way. Upon request from a municipality or county, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the municipality or county making the request. The scope of the request must be limited to only those maps of pass-through facilities from which the calculation of the linear miles of pass-through facilities in the rights-of-way can be determined. The request must be accompanied by an affidavit that the person making the request is authorized by the municipality or county to review tax information related to the revenue and mileage calculations for pass-through providers. A request may not be made more than once annually to a pass-through provider.

(e) This subsection does not alter any provision of this section or s. 202.24 relating to taxes, fees, or other charges or impositions by a municipality or county on a dealer of communications services or authorize that any charges be assessed on a dealer of communications services, except as specifically set forth herein. A municipality or county may not charge a pass-through provider any amounts other than the charges under this subsection as a condition to the placement or maintenance of a communications facility in the roads or rights-of-way of a municipality or county by a pass-through provider, except that a municipality or county may impose permit fees on a pass-through provider consistent with paragraph (3)(c) ~~if the municipality or county elects to exercise its authority to~~

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~~collect permit fees under paragraph (3)(c).~~

(f) The charges under this subsection do not apply to communications facilities placed in a municipality's or county's rights-of-way prior to the effective date of this subsection with permission from the municipality or county, if any was required, except to the extent the facilities of a pass-through provider were subject to per linear foot or mile charges in effect as of October 1, 2001, in which case the municipality or county may only impose on a pass-through provider charges consistent with paragraph (b) or paragraph (c) for such facilities. Notwithstanding the foregoing, this subsection does not impair any written agreement between a pass-through provider and a municipality or county imposing per linear foot or mile charges for communications facilities placed in municipal or county roads or rights-of-way that is in effect prior to the effective date of this subsection. Upon the termination or expiration of any such written agreement, any charges imposed must ~~shall~~ be consistent with this section ~~paragraph (b) or paragraph (c). Notwithstanding the foregoing, until October 1, 2005, this subsection shall not affect a municipality or county continuing to impose charges in excess of the charges authorized in this subsection on facilities of a pass-through provider that is not a dealer of communications services in the state under chapter 202, but only to the extent such charges were imposed by municipal or county ordinance or resolution adopted prior to February 1, 2002. Effective October 1, 2005, any charges imposed shall be consistent with paragraph (b) or paragraph (c).~~

(7)

(b) As used in this subsection, the term:

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1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual ~~or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the authority upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.~~

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant to an authority for a permit to collocate small wireless

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639 facilities or to place a new utility pole used to support a
640 small wireless facility.

641 5. "Authority" means a county or municipality having
642 jurisdiction and control of the rights-of-way of any public
643 road. The term does not include the Department of
644 Transportation. Rights-of-way under the jurisdiction and control
645 of the department are excluded from this subsection.

646 6. "Authority utility pole" means a utility pole owned by
647 an authority in the right-of-way. The term does not include a
648 utility pole owned by a municipal electric utility, a utility
649 pole used to support municipally owned or operated electric
650 distribution facilities, or a utility pole located in the right-
651 of-way within:

652 a. A retirement community that:

653 (I) Is deed restricted as housing for older persons as
654 defined in s. 760.29(4) (b);

655 (II) Has more than 5,000 residents; and

656 (III) Has underground utilities for electric transmission
657 or distribution.

658 b. A municipality that:

659 (I) Is located on a coastal barrier island as defined in s.
660 161.053(1) (b) 3.;

661 (II) Has a land area of less than 5 square miles;

662 (III) Has less than 10,000 residents; and

663 (IV) Has, before July 1, 2017, received referendum approval
664 to issue debt to finance municipal-wide undergrounding of its
665 utilities for electric transmission or distribution.

666 7. "Collocate" or "collocation" means to install, mount,
667 maintain, modify, operate, or replace one or more wireless

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668 facilities on, under, within, or adjacent to a wireless support
669 structure or utility pole. The term does not include the
670 installation of a new utility pole or wireless support structure
671 in the public rights-of-way.

672 8. "FCC" means the Federal Communications Commission.

673 9. "Micro wireless facility" means a small wireless
674 facility having dimensions no larger than 24 inches in length,
675 15 inches in width, and 12 inches in height and an exterior
676 antenna, if any, no longer than 11 inches.

677 10. "Small wireless facility" means a wireless facility
678 that meets the following qualifications:

679 a. Each antenna associated with the facility is located
680 inside an enclosure of no more than 6 cubic feet in volume or,
681 in the case of antennas that have exposed elements, each antenna
682 and all of its exposed elements could fit within an enclosure of
683 no more than 6 cubic feet in volume; and

684 b. All other wireless equipment associated with the
685 facility is cumulatively no more than 28 cubic feet in volume.
686 The following types of associated ancillary equipment are not
687 included in the calculation of equipment volume: electric
688 meters, concealment elements, telecommunications demarcation
689 boxes, ground-based enclosures, grounding equipment, power
690 transfer switches, cutoff switches, vertical cable runs for the
691 connection of power and other services, and utility poles or
692 other support structures.

693 11. "Utility pole" means a pole or similar structure that
694 is used in whole or in part to provide communications services
695 or for electric distribution, lighting, traffic control,
696 signage, or a similar function. The term includes the vertical

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support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

12. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who has been certificated under chapter 364 to provide telecommunications service ~~in the state~~ or under chapter 610 to provide cable or video services in this state, or that person's affiliate, and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using

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licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than 5 feet in height.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require a registration process and permit fees in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the

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placement of small wireless facilities in the locations identified in the application. An applicant may not be required to provide inventories, maps, or locations of communications facilities in the right-of-way other than as necessary to avoid interference with other at-grade or aerial facilities located at the specific location proposed for a small wireless facility or within 50 feet of such location.

3. An authority may not:

a. Require the placement of small wireless facilities on any specific utility pole or category of poles; ~~or~~

b. Require the placement of multiple antenna systems on a single utility pole;

c. Require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocation of a small wireless facility on a new utility pole except as provided in paragraph (i);

d. Require compliance with an authority's provisions regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the department unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit;

e. Require a meeting before filing an application;

f. Require direct or indirect public notification or a public meeting for the placement of communication facilities in

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the right-of-way;

g. Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits in this subsection;

h. Prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of this subsection; or

i. Require that any component of a small wireless facility be placed underground except as provided in paragraph (i).

4. Subject to paragraph (r), an authority may not limit the placement, by minimum separation distances, of small wireless facilities, utility poles on which small wireless facilities are or will be collocated, or other at-grade communications

facilities ~~by minimum separation distances~~. However, within 14 days after the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative authority utility pole or support structure or placed on ~~may place~~ a new utility pole. The authority and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the

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authority of such nonagreement and the authority must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

5. An authority shall limit the height of a small wireless facility to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

6. ~~Except as provided in subparagraphs 4. and 5.,~~ The installation by a communications services provider of a utility pole in the public rights-of-way, other than a utility pole used designed to support a small wireless facility, ~~is shall be~~ subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way ~~and shall be subject to the application review timeframes in this subsection.~~

7. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must

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specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use the 30-day negotiation period provided in subparagraph 4., the parties may mutually agree to extend the 60-day application review period. The authority shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the authority.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. The review of a revised application is ~~Any subsequent review shall be~~ limited to the deficiencies cited in the denial. If an authority provides for administrative review of the denial of an application, the review must be complete and

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a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based. If the administrative review is not complete within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.

10. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, an authority may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

11. An authority may deny an application to collocate a ~~proposed collocation of~~ a small wireless facility or place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed small wireless facility or utility pole used to support a small wireless facility collocation:

a. Materially interferes with the safe operation of traffic control equipment.

b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

d. Materially fails to comply with the 2017 ~~2010~~ edition of the Florida Department of Transportation Utility Accommodation

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Manual.

e. Fails to comply with applicable codes.

f. Fails to comply with objective design standards
authorized under paragraph (r).

12. An authority may adopt by ordinance provisions for insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory. An authority may require a construction bond to secure restoration of the postconstruction rights-of-way to the preconstruction condition. However, such bond must be time-limited to not more than 18 months after the construction to which the bond applies is completed. For any financial obligation required by an authority allowed under this section, the authority shall accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add an authority to any existing bond, insurance policy, or other relevant financial instrument, and the authority must accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the authority is a party. An authority may not require a communications services provider to indemnify it for liabilities not caused by the provider, including liabilities arising from the authority's negligence, gross negligence, or willful conduct.

13. Collocation of a small wireless facility on an

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authority utility pole does not provide the basis for the imposition of an ad valorem tax on the authority utility pole.

14. An authority may reserve space on authority utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the authority utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

15. A structure granted a permit and installed pursuant to this subsection shall comply with chapter 333 and federal regulations pertaining to airport airspace protections.

(e) An authority may not require any permit or other approval or require fees, or other charges, costs, or other exactions for:

1. Routine maintenance, the performance of service restoration work on existing facilities, or repair work, including, but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under

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chapter 202. An authority may require an initial letter from or
on behalf of such provider, which is effective upon filing,
attesting that the micro wireless facility dimensions comply
with the limits of this subsection. The authority may not
require any additional filing or other information as long as
the provider is deploying the same, a substantially similar, or
a smaller size micro wireless facility equipment.

Notwithstanding this paragraph, an authority may require a
right-of-way permit for work that involves excavation, closure
of a sidewalk, or closure of a vehicular lane or parking lane,
unless the provider is performing service restoration on an
existing facility and the work is done in compliance with the
2017 edition of the Florida Department of Transportation Utility
Accommodation Manual. An authority may require notice of such
work within 30 days after restoration and may require an after-
the-fact permit for work which would otherwise have required a
permit.

(f) Collocation of small wireless facilities on authority
utility poles is subject to the following requirements:

1. An authority may not enter into an exclusive arrangement
with any person for the right to attach equipment to authority
utility poles.

2. The rates and fees for collocations on authority utility
poles must be nondiscriminatory, regardless of the services
provided by the collocating person.

3. The rate to collocate small wireless facilities on an
authority utility pole may not exceed \$150 per pole annually.

4. Agreements between authorities and wireless providers

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that are in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory and competitively neutral and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an

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aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The authority may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

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(g) For any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to placement of communications facilities in the right-of-way related to registration, permitting, insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, that conflict with this subsection must shall be waived by the authority. An authority may not institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

(i) 1. In an area where an authority has required all public utility lines in the rights-of-way to be placed underground, a wireless provider must comply with written, objective, reasonable, and nondiscriminatory requirements that prohibit new utility poles used to support small wireless facilities if:

a. The authority, at least 90 days prior to the submission of an application, has required all public utility lines to be placed underground;

b. Structures that the authority allows to remain above ground are reasonably available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small

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wireless facilities; and

c. A wireless provider may install a new utility pole in the designated area in the right-of-way that otherwise complies with this subsection and it is not reasonably able to provide wireless service by collocating on a remaining utility pole or other structure in the right-of-way.

2. For small wireless facilities installed before an authority adopts requirements that public utility lines be placed underground, an authority adopting such requirements must:

a. Allow a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or

b. Allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with paragraph (r). ~~A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of an authority that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the authority.~~

(r) An authority may require wireless providers to comply with objective design standards adopted by ordinance. The ordinance may only require:

1. A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;

2. Reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure;

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or

3. A small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in this subsection; and

4. A new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

Such design standards under this paragraph may be waived by the authority upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole or are technically infeasible or that the design standards impose an excessive expense. The waiver must be granted or denied within 45 days after the date of the request.

(8) (a) Any person aggrieved by a violation of this section may bring a civil action in a United States District Court or in any other court of competent jurisdiction.

(b) The court may:

1. Grant temporary or permanent injunctions on terms as it may deem reasonable to prevent or restrain violations of this section; and

2. Direct the recovery of full costs, including awarding reasonable attorney fees, to the party who prevails.

(9) All work in the authority's rights-of-way under this section must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual.

Section 3. Nothing in this act shall be construed to delay

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1132 the issuance of permits for other utility work, including, but
1133 not limited to, permits related to electricity or gas work in
1134 the rights-of-way.

1135 Section 4. This act shall take effect July 1, 2019.

**CITY OF BONITA SPRINGS, FLORIDA
ORDINANCE NO. 18-01**

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, REGULATING THE PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; AMENDING BONITA SPRINGS CODE §§34-40 – 34-43 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, DIVISION 2. - COMMERCIAL USES; CREATING BONITA SPRINGS CODE CHAPTER 38, RENAMED COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, REGISTRATION, SANCTIONS FOR UNREGISTERED PROVIDERS, NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING RULES, REGULATIONS, AND GENERAL CONDITIONS TO PLACEMENT OF COMMUNICATIONS SYSTEMS AND FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; REQUIRING DUTY TO NOTIFY CITY OF RESELLERS; CONDITIONAL USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR WIRELESS FACILITIES, REVOCATION OR SUSPENSION OF PERMITS AND INVOLUNTARY TERMINATION OF REGISTRATION; SETTING FORTH AN APPEALS PROCESS; REQUIRING FEES APPLICABLE TO THOSE NOT SUBJECT TO COMMUNICATIONS SERVICES TAX, EXISTING COMMUNICATIONS FACILITY, INSURANCE, INDEMNIFICATION, CONSTRUCTION BOND, PERFORMANCE BOND, SECURITY FUND AND ENFORCEMENT REMEDIES; ABANDONMENT OF A COMMUNICATIONS FACILITY; RESERVATION OF RIGHTS; AND, FORCE MAJEURE; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bonita Springs has determined that the amendments set forth in this Ordinance promote the public health, safety, and general welfare of the residents of the City of Bonita Springs by regulating the siting of communications facilities within the public rights-of-way; and

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services within the City; and

WHEREAS, this Ordinance seeks to address new communications facilities technologies, while also protecting, preserving, and maintaining the aesthetic character of areas where such rights-of-way exist within the City; and

WHEREAS, Section 337.401, Florida Statutes, addresses the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way, and requires that rules and regulations imposed by a local government relating to

communications services providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, Section 337.401(7), Florida Statutes, addresses, *inter alia*, the authority of local governments to adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, and objective design standards requiring a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and prescribing reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, Section 337.401(7)(d)(12), Florida Statutes, provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties, provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, it is the City's intent to exercise its authority over communications services providers, communications facility providers, and pass-through providers' placement and maintenance of communications facilities in its rights-of-way; and

WHEREAS, it is the City's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively-neutral manner in exercising such authority; and

WHEREAS, the City's rights-of-way are essential for the travel of persons and the transport of goods throughout the City and are a unique and physically-limited resource requiring proper management by the City in order to maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety, and general welfare; and

WHEREAS, it is the City's intent to implement the Advanced Wireless Infrastructure Deployment Act as provided in Section 337.401(7), Florida Statutes; and

WHEREAS, it is the further intent of the City to exercise its authority to adopt reasonable and nondiscriminatory rules and regulations to the fullest extent allowed by Federal and State law; and

WHEREAS, the City Council elected to increase the Communications Services Simplified Tax rate in lieu of collecting permit fees from providers of communications services; and

WHEREAS, the City has reviewed its Code of Ordinances, and has received input from representatives of the communications service industry and other interested stakeholders, and as a result of the foregoing has concluded that the City's Code of Ordinances and the City's Land Development Code must be updated, in conformance with Federal and State laws and rules, in order to adequately regulate the placement and maintenance of existing, new, and expanded communications facilities in the City's rights-of-way; and

WHEREAS, adoption of the following Ordinance is necessary to satisfy the above objectives.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION 1. The City Council finds and declares that all statements in the preamble of this Ordinance are true and correct.

SECTION 2. Chapter 34 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, DIVISION 2. - COMMERCIAL USES, of the City Code, is amended as follows with underlined text as additions and strikethrough text as deletions.

Sec. 34-40. – Purpose, scope and intent.

It is the purpose of this division that, for the protection of the public safety, the City shall regulate the commercial use of the rights-of-way on all roads, streets, and highways within the City as set forth in Section 316.006(2), Florida Statutes, setting forth the original jurisdiction of the City. ~~street system. For purposes of this division, the term "City street system" shall be defined pursuant to F.S. § 334.03, as may be amended.~~

* * * *

Sec. 34-42. – Commercial use of rights-of-way.

It is unlawful to make any commercial use of the rights-of-way of any road, street, or highway within the City ~~street system~~. Prohibited commercial use shall include, but is not limited to:

- (1) The sale, or display for sale, of any merchandise, including vehicles;

- (2) The servicing or repair of any vehicle except for the rendering of emergency service;
- (3) The storage of vehicles being serviced or repaired on abutting property or elsewhere;
- (4) The solicitation for the sale of goods, property, or services for charitable, educational, religious or political purposes;
- (5) The solicitation of funds or donations for charitable, educational, religious or political purposes, except when performed by sworn law enforcement employed by the county sheriff's office or firefighters employed by the City fire control and rescue district within their jurisdiction, limited to no more than two weekends per year for each organization, and following the procedures set forth in the Section 316.2045, Florida Statutes; and
- (6) The display of any advertising other than that advertising in compliance with the chapter 6 of the Land Development Code, as may be amended.

Sec. 34-43. - Exceptions.

The commercial use of the right-of-way of any road, street or highway within the City ~~street-system~~ is expressly prohibited, except that the commercial uses listed below may occur in the Public Rights-of-Way, but only in compliance with requirements and conditions set forth herein:

- (1) *City permitted or sponsored special events.* Any portion of a road, street, or highway, including the rights-of-way, within the City ~~street-system~~ may be used for an art festival, parade, fair, or other special event which is properly permitted by the City. Notwithstanding section 34-42, during road closures for special events, said portion of the road may have solicitation for the sale of goods, property, or services, of funds or donations for charitable, educational, religious or political purposes by the entity holding the special events permit as a condition of the permit.
- (2) *Newspaper vending racks or machines.* Small, standard size newspaper vending racks or machines (as determined by industry standards) may be placed in Public Rights-of-Way only in compliance with division 3 of this article.
- (3) *Bus benches with signs.* Bus benches without signs shall be permitted at locations decided by the City council through placement. Bus benches with signs are not permitted.
- (4) *Utilities.* Placement of utilities in the rights-of-way of any road, street or highway within the City ~~street-system~~ shall be made only when such placement is made pursuant to, and in compliance with, all applicable regulations (including franchises, when applicable and the rules and regulations of the applicable utility provider, or other written acknowledgement. The placement of communication and wireless facilities in the rights-of-way shall be subject to Chapter 38, Communications Facilities in Public Rights-of-Ways, of the City Code.

(5) *Commercial loading or uploading.* Temporary parking or stopping for the purpose of loading or unloading of merchandise, wares or passengers being received from or delivered to adjacent property is permissible only in the event a loading zone off the right-of-way is not available.

(6) *Visitor center designation signs.*

a. Business entities representing themselves to the public as a visitor center or welcome center may only obtain signage installed in the right-of-way as representing tourism interests if the entity meets the following criteria:

1. The entity is registered as an Internal Revenue Code (IRC) §501(c)(6) organization whose mission is to promote tourism and economic development for the City;

2. The entity has administrative offices at the visitor/information center or has employed dedicated staff on site trained in assisting tourists/visitors; and

3. The area designated for tourist/visitor information must be at least 350 square feet.

b. The signage may only be installed by the City or the state department of transportation after filing the applicable permit for such signage. All costs to fabricate and install the signage will be borne by the applicant.

SECTION 3. CHAPTER 38 – TELECOMMUNICATIONS, of the City Code, is hereby amended as follows with underlined text as additions and strikethrough text as deletions.

CHAPTER 38 – ~~TELECOMMUNICATIONS~~ COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 38-1. – Purpose and intent.

The City hereby makes and declares the following findings and declares its legislative intent as follows:

(1) The Public Rights-of-Way within the City are a unique and physically-limited resource and an important amenity that are critical to the travel and transport of Persons and property in the City.

(2) The demand for telecommunications services has grown exponentially in recent years, which may include the placement of telecommunications equipment and facilities in the Public Rights-of-Way.

(3) The use and occupancy of the Public Rights-of-Way by providers of Communications Services must be subject to regulation which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce

maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.

(4) In order to promote the public health, safety, and general welfare, the City finds that it is necessary to:

(a) provide for the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way within the City limits;

(b) adopt and administer reasonable rules, regulations, and general conditions not inconsistent with applicable State and Federal law

(c) manage the Placement and Maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers;

(d) minimize disruption to the Public Rights-of-Way; and

(e) require the restoration of the Public Rights-of-Way to the delineated specifications stipulated in the Permit.

Sec. 38-2. – Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Abandonment* means the cessation of all uses of a Communications Facility for a period of one hundred eighty (180) or more consecutive days; provided that, this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be “Abandonment” of a Facility in the Public Rights-of-Way. The terms Abandonment or Abandoned are not intended to include a Dropped Line from a potential or existing customer in the event the Communications Services Provider, Wireless Infrastructure Provider, or Pass-through Provider reasonably anticipates future use of the Dropped Line.

(2) *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

(3) *Affiliate* means each Person, directly or indirectly, controlling, controlled by, or under common control with a Communications Services Provider that is Registered with the City; provided that Affiliate shall in no event mean any limited partner, member, or shareholder holding an interest of less than fifteen (15) percent in such Communications Services Provider.

(4) *Applicable Codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this Chapter. The term includes objective design standards adopted by ordinance which may require that a new Utility Pole replacing an existing Utility Pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements. The term includes objective design standards adopted by ordinance which may require a Small Wireless Facility to meet reasonable location context, color, stealth, and concealment requirements.

(5) *Applicant* means any Person who submits an Application to the City for a permit to locate a Communications Facility or Utility Pole within the Public Rights-of-Way or to Collocate Small Wireless Facilities within the Public Rights-of-Way.

(6) *Application* means a request submitted by an Applicant to the City for a permit to locate a Communications Facility or Utility Pole within the Public Rights-of-Way or to Collocate Small Wireless Facilities within the Public Rights-of-Way.

(7) *As-built Plans* means a set of drawings in a format as specified by the Department Director submitted upon completion of a project and such drawings reflect all changes made during the construction process, and show the exact dimensions, depth, geometry, and location of all elements of the work completed under the permit.

(8) *Cable Service* means the one-way transmission to subscribers of Video Programming or any other programming service; and subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

(9) *Cable Service Provider* means a Person that provides Cable Service over a Cable System.

(10) *Cable System* means a Facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple subscribers within a community, but such term does not include: a Facility that serves only to retransmit the television signals of one or more television broadcast stations; a Facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such Facility uses any Public Rights-of-Way; a Facility that serves subscribers without using any Public Rights-of-Way; a Facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act of 1934 except such Facility shall be considered a Cable System other than for purposes of 47 U.S.C. § 541(c) to the extent such Facility is used in the transmission of Video Programming directly to subscribers, unless the extent of such use

is solely to provide interactive on-demand services; any Facilities of any electric utility used solely for operating its electric utility systems; or an open video system that complies with 47 U.S.C. § 573.

(11) City means the City of Bonita Springs, a municipal corporation organized and existing under the laws of the State of Florida. Under this section:

- a. City Manager means the City Manager or designee.
- b. Department Director means the Public Works Director, or person retained by the Public Works Director, qualified to take the specific actions as required for in this article.

(12) City Utility Pole means a Utility Pole owned by the City in the Public Rights-of-Way.

(13) Collocate or Collocation means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole. The term does not include the installation of a new Utility Pole or Wireless Support Structure in the Public Rights-of-Way.

(14) Communications Facility, Facility, or Facilities means any portion of a Communications System located in the Public Rights-of-Way.

(15) Communications Services means the definition ascribed thereto in Section 202.11(1), Florida Statutes, as may be amended, and also includes, but is not limited to, Wireless Services as defined herein.

(16) Communications Services Provider means: (a) any Person, municipality, or county providing Communications Services through the use and operation of a Communications System or Communications Facilities installed, placed, and maintained in the Public Rights-of-Way, regardless of whether such System or Facilities are owned or leased by such Person, municipality, or county and regardless of whether such Person, municipality, or county has registered with the Florida Department of Revenue as a provider of Communications Services in Florida pursuant to Chapter 202, Florida Statutes; and (b) any Person, municipality, or county who constructs, installs, places, maintains, or operates Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services, including, for example, a company that places “dark fiber” or conduit in the Public Rights-of-Way and leases or otherwise provides those Facilities to another company that does provide Communications Services.

(17) Communications System or System means any permanent or temporary plant, equipment, and property placed or maintained in the Public Rights-of-Way that is

occupied or used, or is capable of being occupied or used, by a Communications Services Provider for the purpose of producing, conveying, routing, transmitting, receiving, amplifying, distributing, providing, or offering Communications Services, including, but not limited to, cables, wires, lines, conduits, fiber optics, antennae, radios, and any associated poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, and other plant, equipment, and pathway.

(18) *Construct or Construction* means to construct, install, place, or excavate Utility Poles, utility facilities, Communications Facilities, or other physical features on, above, within, or under any part of the Public Rights-of-Way.

(19) *Dealer* means any Person, municipality, or county providing Communications Services to an end user within the City through the use and operation of Communications Facilities installed, Placed, and Maintained in the Public Rights-of-Way, whether owned or leased, and who has registered with the Florida Department of Revenue as a provider of Communications Services pursuant to Chapter 202, Florida Statutes.

(20) *Department* means the Public Works Division of the City of Bonita Springs.

(21) *Dropped Line* means a Wireline Facility leading from a Utility Pole to a building and terminating in said building at a height of 13'6".

(22) *Emergency* means a condition that poses clear and immediate danger to the life, safety, or health of one or more persons, or poses clear and immediate danger of significant damage to property.

(23) *Excavation* or other similar formulation of that term means the cutting, trenching, or other disturbance to the Public Rights-of-Way intended to change the grade or level of land or which causes any cavity, gap, depression, penetration, or hole in the surface of the Public Rights-of-Way.

(24) *Existing Structure* means a structure within the Public Rights-of-Way that exists at the time an Application to place a Communications Facility on the preexisting structure is filed with the City.

(25) *FCC* means the Federal Communications Commission.

(26) *Government* means the United States of America, the State of Florida, counties, municipalities, and any of their respective agencies, departments, or bureaus.

(27) *In the Public Rights-of-Way* means in, along, on, over, under, across, or through the Public Rights-of-Way.

(28) Micro Wireless Facility means a Small Wireless Facility having dimensions no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and an exterior antenna, if any, no longer than eleven (11) inches.

(29) Pass-through Facilities means the Facilities for a Communications System that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

(30) Pass-through Provider means any Person, municipality, or county that places or maintains a Communications System or Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services to an end user within the corporate limits of the City.

(31) Person means any individual, firm, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, association, corporation, company, organization, or legal entity of any kind, including any Affiliate, successor, assignee, transferee, or personal representative thereof, and all other groups or combinations, and shall include the City to the extent that the City acts as a Communications Services Provider.

(32) Placement or Maintenance shall be broadly construed to include, among other things, Construction, erection, extension, expansion, grading, inspection, installation, location, maintenance, occupation, operation, placement, reconstruction, reconfiguration, relocation, removal, repair, replacement, undergrounding, trenching, or Excavation. Any Communications Services Provider that owns, leases, or otherwise controls the use of a Communications System or Facility in the Public Rights-of-Way, including the physical control to maintain and repair, is “placing or maintaining” a Communications System or Facility. A Person providing service only through buying wholesale and then reselling is not “placing or maintaining” the Communications Facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-Way does not constitute “placing or maintaining” Facilities in the Public Rights-of-Way.

(33) Public Rights-of-Way means a road, street, highway, bridge, tunnel, or alley that is owned by the City, publicly held by the City, or dedicated to the City for public use and over which the City has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the space above, at, or below the surface of such right-of-way. “Public Rights-of-Way” shall not include: (a) county, State, or Federal rights-of-way; (b) property owned by any Person other than the City; (c) platted utility easements that are not part of dedicated Public Rights-of-Way; (d) service entrances or driveways leading from the road or street onto adjoining property; or (e) except as described above, any real or personal property of the City, such as, but not limited to, City parks, buildings, fixtures,

conduits, sewer lines, facilities, or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

(34) *Public Service Commission* or *PSC* means the agency for the State of Florida charged with the powers and duties conferred upon it by Chapter 364, Florida Statutes.

(35) *Record Drawings* means a final and complete drawing accurately depicting the improvements as constructed. Record Drawings are not required to be signed and sealed by a Professional Surveyor and Mapper.

(36) *Registration* or *Register* means the process described in Section 38-3 herein whereby a Communications Services Provider provides certain information to the City. A Registrant is the Communications Services Provider filing for Registration with the City.

(37) *Reseller* means a Person who has entered into an agreement with a Registrant to utilize the Registrant's Communications Facility to provide Communications Services.

(38) *Shroud* means a covering or enclosure of a Utility Pole, Small Wireless Facility, and/or equipment associated with a Communications Facility other than the Antenna.

(39) *Signage* means any display of characters, ornamentation, letters, or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the Communications Services Provider, or identification of wires, cables, etc., necessary to aid in safety or hazard work or maintenance or repair work of the Communications Facility.

(40) *Small Wireless Facility* means a wireless facility that meets the following qualifications: (a) each Antenna associated with the Facility is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of Antennas that have exposed elements, each Antenna and all of its exposed elements could fit within an enclosure of no more than six (6) cubic feet in volume; and (b) all other wireless equipment associated with the Facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and Utility Poles or other support structures.

(41) *Stealth Design* means a method of camouflaging any tower, Antenna, or other Communications Facility, including, but not limited to, supporting electrical or mechanical equipment, or Utility Pole which is designed to enhance compatibility with the surrounding neighborhood and to be as visually unobtrusive as possible.

(42) *Utility Pole* means a pole or similar structure used in whole or in part to provide Communications Services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices, and does not include any pole or similar structure fifteen (15) feet in height or less unless the City grants a waiver for the pole.

(43) *Video Programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. § 522(20).

(44) *Video Service* means Video Programming services, including cable services, provided through Wireline Facilities located at least in part in the Public Rights-of-Way without regard to delivery technology, including Internet protocol technology. This definition does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d), or Video Programming provided as part of and via a service that enables end users to access content, information, electronic mail, or other services offered over the public Internet.

(45) *Video Service Provider* means an entity providing Video Service.

(46) *Wireless Facilities* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, Antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes Small Wireless Facilities. The term does not include: (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; or (b) wireline backhaul facilities; or (c) coaxial or fiber-optic cable that is between wireless structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.

(47) *Wireless Infrastructure Provider* means a Person who has been certificated to provide telecommunications service in the State of Florida, and who builds or installs wireless communication transmission equipment, Wireless Facilities, or Wireless Support Structures, but is not a Wireless Services Provider.

(48) Wireless Provider means a Wireless Infrastructure Provider or a Wireless Services Provider.

(49) Wireless Services means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

(50) Wireless Services Provider means a Person who provides Wireless Services.

(51) Wireless Support Structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting Wireless Facilities. The term does not include a Utility Pole.

(52) Wireline Facilities means an aerial facility used to provide Communications Services.

(53) Wrap means an aesthetic covering depicting scenic imagery such as vegetation, which blends with the surrounding area. Imagery in a Wrap may not contain any advertising.

Sec. 38-3. – Registration. A Communications Services Provider, Wireless Infrastructure Provider, or a Pass-through Provider that desires to Place or Maintain a Communications Facility in the Public Rights-of-Way shall first, before being eligible to receive a permit to conduct work in the Public Rights-of-Way or perform any work exempt from the permitting requirements pursuant to this Chapter, Register with the City in accordance with this Section. Subject to the provisions prescribed in this Chapter, a Communications Services Provider that has properly Registered may apply for a permit to Place or Maintain a Communications System or Facilities in the Public Rights-of-Way.

(a) Every Communications Services Provider that desires to Place or Maintain Communications Facilities in the Public Rights-of-Way, including any Pass-through Provider, shall register with the City’s Public Works Office and shall submit the following information and documentation:

(1) The name of the Applicant under which it will transact business in the City and, if different, in the State of Florida;

(2) The address and telephone number of the Applicant’s principal place of business in the State of Florida and any branch office located in the City or, if none, the name, address, and telephone number of the Applicant’s national headquarters and its Registered Agent in Florida;

(3) The name, address, and telephone number of the Applicant's primary contact Person and the Person to contact in case of an Emergency;

(4) The type of Communications Services that the Applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the Applicant is a Pass-through Provider or is intending only to place and maintain Pass-through Facilities, as the case may be;

(5) For Registrations submitted on or after January 1, 2018, a copy of both the Applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing Communications Services in the State of Florida;

(6) A copy of the Applicant's certificate of authorization, public convenience and necessity, or other similar certification issued by the PSC;

(7) The number of the Applicant's certificate of authorization or license to provide Communications Services issued by the PSC, the Florida Department of Revenue, the FCC, or other Federal authority, if any;

(8) For an Applicant that is a Pass-through Provider, in lieu of paragraphs (5), (6), and (7) above, the Applicant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate State agency or department, authorizing the company to do business in the State of Florida; and

(9) Evidence of the Applicant's insurance coverage as required under this Chapter.

(b) The City shall review the information submitted by the Applicant. Such review shall be by the City Manager or his or her designee. If it is found that the Applicant complied with the requirements in subsection (a) above, the Registration shall be effective and the City shall notify the Applicant of the effectiveness of Registration in writing. If the City determines that the Applicant is not in compliance, the City shall notify the Applicant in writing of the non-effectiveness and denial of Registration and the reasons therefor. The City shall so reply to an Applicant within thirty (30) days after receipt of the Registration and all required information from the Applicant. Non-effectiveness and denial of Registration shall not preclude an Applicant from reapplying or filing subsequent applications for Registration under the provisions of this section.

(c) An effective Registration does not, and shall not be construed to, convey equitable or legal title in the Public Rights-of-Way to any Communications Services Provider. Registration under this Chapter governs only the Placement or Maintenance of

a Communications System or Communications Facilities in the Public Rights-of-Way. Other ordinances, codes, or regulations may apply to the Placement or Maintenance in the Public Rights-of-Way of facilities that are not part of a Communications System. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on those facilities or property belonging to the City or another Person. Registration does not excuse a Communications Services Provider from complying with all other applicable City ordinances, codes, or regulations, including the rules, regulations, and general conditions set forth in this Chapter.

(d) A Communications Services Provider may cancel a Registration upon written notice to the City stating that it will no longer Place or Maintain a Communications System or any Communications Facilities in the Public Rights-of-Way and will no longer have a need to apply for a permit to perform Construction or other work in the Public Rights-of-Way. A Communications Services Provider cannot cancel a Registration if it intends to continue Placing or Maintaining a Communications System or any Communications Facilities in the Public Rights-of-Way.

(e) Registration, in and of itself, does not establish a right to Place or Maintain or a priority for the Placement or Maintenance of a Communications System or any Facility in the Public Rights-of-Way, but shall establish for the Communications Services Provider a right to apply for a permit from the City. Registrations are expressly subject to any future amendment to or replacement of this Chapter and further subject to any additional City ordinances, as well as any State or Federal laws that may be enacted.

(f) In January of each year, each Communications Services Provider that has previously complied with the Registration requirements of this Chapter shall submit an annual registration renewal to the City on a form provided by the City. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (a) above, a Communications Services Provider shall provide updated information to the City. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the City restricting the issuance of additional permits until the Communications Services Provider has complied with the Registration requirements of this section.

(g) In accordance with applicable City ordinances, codes, or regulations, a permit is required for a Communications Services Provider to Place or Maintain a Communications Facility in the Public Rights-of-Way. An effective Registration shall be a condition of obtaining such a permit. Notwithstanding an effective Registration, all permitting requirements shall apply, including the requirement to pay for any such permits, unless otherwise provided by resolution or ordinance of the City. A permit may be obtained

by or on behalf of the Communications Services Provider having an effective Registration if all permitting requirements of the City and other provisions of this Chapter are met.

Sec. 38-4. – Unregistered Providers.

To the extent that a Communications Services Provider, Wireless Infrastructure Provider, or Pass-through Provider is not Registered consistent with Section 38-3, said Person shall register with the City within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered Persons with Communications Facilities within the Public Rights-of-Way and such Persons may be subject to the enforcement remedies set forth in this Chapter.

Sec. 38-5. – Notice of Transfer, Sale, or Assignment of Assets.

If a Communications Services Provider transfers, sells, or assigns its System or any Facilities located in the Public Rights-of-Way incident to a transfer, sale, or assignment of the Communications Services Provider's assets, the transferee, buyer, or assignee shall be obligated to comply with the provisions set forth in this Chapter. Written notice of any such transfer, sale, or assignment shall be provided by the Communications Services Provider to the City Manager within thirty (30) days after the effective date of such transfer, sale, or assignment. If the transferee, buyer, or assignee is not currently Registered with the City, then the transferee, buyer, or assignee must Register as provided in Section 38-3 within sixty (60) days of the effective date of such transfer, sale, or assignment. If any Applications for a permit are pending under the Communications Services Provider's name as of the date the City receives written notice of the transfer, sale, or assignment, then the City shall consider the transferee, buyer, or assignee as the new Applicant unless otherwise notified by the Communications Services Provider.

Sec. 38-6. – Rules, Regulations, and General Conditions to Placement of Communications Systems and Facilities in the Public Rights-of-Way.

As a condition of allowing the Placement or Maintenance of a Communications System or any Communications Facility in the Public Rights-of-Way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations, and general conditions. Unless otherwise provided in this section, these rules, regulations, and general conditions shall apply to all Communications Services Providers, including those that are Pass-through Providers, irrespective of whether they place and maintain only conduit, dark fiber, or Pass-through Facilities.

(a) Rules on Utilization of the Public Rights-of-Way.

(1) Compliance with Laws. A Communications Services Provider shall at all times be in full compliance with and abide by all applicable Federal, State,

and local laws, codes, and regulations in Placing or Maintaining a Communications System or Communications Facilities in the Public Rights-of-Way.

(2) Due Care. A Communications Services Provider shall use and exercise due caution, care, and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

(3) Permits. A Communications Services Provider shall not commence to Place or Maintain a Communications Facility in Public Rights-of-Way until all applicable permits have been issued by the City and other appropriate authority, with the exception of the activities specifically listed below that do not cause any obstruction or redirection of normal traffic flow in excess of four (4) hours:

(a) Emergency actions, with the City reserving authority to require an after-the-fact permit based upon plans and Record Drawings and As-built Plans, if required by the Department Director, showing the placement or relocation of a Communications Facility undertaken in connection with the Emergency;

(b) Routine maintenance and/or repair of Communications Facilities and/or Utility Poles authorized to be located within the Public Rights-of-Way;

(c) Replacement of existing Wireless Facilities with Wireless Facilities that are substantially similar in design, material, and color, and of the same or smaller size; or

(d) Installation, Placement, Maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Public Rights-of-Way and who is remitting taxes pursuant to Section 202.19, Florida Statutes.

(e) A Person shall be allowed to Place or Maintain a Dropped Line within the Public Rights-of-Way without first obtaining a permit if such proposed work does not involve Excavation, or the closure of a sidewalk or vehicle lane.

(f) Notwithstanding this section, the City may require a right-of-way permit for work that involves Excavation, or closure of a sidewalk and/or vehicular lane(s).

(4) Emergency action. Any Person who performs work in the Public Rights-of-Way in connection with an emergency action without a permit shall immediately notify the City of the emergency action. The Person shall cease all work immediately upon completion of the emergency action. The Person shall also cease all work immediately upon receipt of a City stop work order determining the situation does not involve an Emergency or that the emergency action is no longer warranted.

(5) Unlawful continuance. Any Person who actively continues any work after having been served with a stop work order, except such work as that Person is directed by the City to perform to remove a violation or unsafe condition, shall be subject to penalties as provided by the City Code. The City retains all available legal remedies to abate the work.

(6) Application for a Permit. Prior to the issuance of a Permit to allow the Placement or Maintenance of a Communications System or Facility in the Public Rights-of-Way, the City has the right to first review and consider, and the Communications Services Provider shall provide, all of the following:

(a) The expected dates and times when the Communications Facility will be installed and the estimated time needed for Construction and Placement of the proposed Communications Facility;

(b) The location of the proposed Communications Facility, the Public Rights-of-Way affected, and a description of the Communications Facility, including the type of Communications Facility (e.g., conduit, fiber, twisted pair, etc.), the number of fibers or other cable being installed, the depth, and the approximate size of the Communications Facility (e.g., length, height, width, depth, and diameter); and

(c) Plans, drawings, photographs, and schematics (including cross section layout) prepared by a qualified engineer or technician showing where the Communications Facility is proposed to be located in the Public Rights-of-Way and showing any known Communications Facilities or utility facilities in such Public Rights-of-Way.

(d) Temporary sidewalk closure plan. The Applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate Placement or Maintenance of the Communications Facility.

(e) Temporary maintenance of traffic plan. The Applicant shall provide a temporary traffic lane closure and maintenance of traffic plan, if

appropriate, to accommodate Placement or Maintenance of the Communications Facility.

(f) Restoration plan and cost of restoration of the Public Rights-of-Way. A restoration plan and a good faith estimate of the cost of restoration of the Public Rights-of-Way to accommodate Placement and Maintenance of the Communications Facility shall be provided. Such good faith estimate shall be accepted by the City unless the City determines such estimated costs are not representative of the actual costs of the restoration of the Public Rights-of-Way.

(g) Timetable for construction or installation and intended areas of service. A timetable for Placement or Maintenance of the proposed Communications Facility, or each phase of the proposed Placement or Maintenance such Communications Facility, shall be provided, together with a description of the intended areas of service.

(h) Registrant agrees to indemnification. A statement shall be included within the Application that, by execution of the Application and by applying for the permit, the Registrant agrees to be bound to the City with respect to the indemnification provisions set forth in Section 38-15 as though such indemnification provisions are set forth verbatim in the Application.

(i) Airport Airspace Protection. The Applicant shall comply with Chapter 333, Florida Statutes, and all Federal regulations pertaining to airport airspace protections.

(j) Information regarding height limitations. For a Wireless Support Structure, the Applicant shall provide information regarding the heights of other Utility Poles located in the same Public Rights-of-Way, measured from grade in place within five hundred (500) feet of the proposed location of the Wireless Support Structure. If there is no Utility Pole within five hundred (500) feet of the proposed location of the Wireless Support Structure, the Applicant shall certify the same. Upon such certification by the Applicant, approval of the proposed location shall be in the discretion of the Department. The maximum height of wireless support structures shall be fifty (50) feet measured from grade.

(k) Additional information as reasonably required for review of an Application. Such additional information as the Department Director finds reasonably necessary to demonstrate the Applicant's compliance with

Applicable Codes, local laws, and regulations, and State and Federal law with respect to the Placement or Maintenance of the Communications Facility that is the subject of the Application may be required to be submitted for the City to complete a review of such Application.

(7) Waiver of Standards for At-grade Communications Facilities, Below-grade Communications Facilities, Wireline Facilities, Utility Poles, and Wireless Support Structures.

(a) The waiver provisions listed in this subsection apply in those circumstances where a Communications Services Provider or Pass-through Provider's use of the Public Rights-of-Way is impaired by strict application of the requirements of this Chapter.

(b) A request for a waiver shall be filed contemporaneously with the Application. The request for a waiver shall contain each section or subsection of this Chapter for which a waiver is being sought. A request for a waiver shall include the following information:

(1) A detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of this Chapter is required, including a detailed explanation addressing the relevant criteria to be considered by the City Council as provided in subsection (d) below;

(2) Distances of the proposed Communications Facility from the edge of pavement, sidewalks, and/or multi-purpose trails;

(3) Design of the proposed Communications Facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts on the surrounding neighborhood; and

(4) Any other information the City Manager may reasonably require to process the request for a waiver.

(c) The City Manager shall review the request for a waiver and shall prepare a recommendation for the City Council on the request for the waiver.

(d) The City Council shall grant or deny a request for a waiver within forty-five (45) days after the date of the request unless the Applicant

consents to a later date. The City Council shall consider the following criteria when determining whether to grant or deny a waiver:

(1) Any special conditions and circumstances affecting the proposed site which prevent compliance with the section or subsection for which a waiver is being sought;

(2) The compatibility of the proposed Communications Facility for which the waiver is sought with adjacent properties and the surrounding neighborhood;

(3) Whether there are excessive expenses associated with compliance with the section or subsection for which a waiver is being sought; and

(4) Whether the proposed waiver preserves to the City flexibility in its management of its Public Rights-of-Way.

(e) In granting any waiver, the City Council may impose conditions to the extent the City Council concludes such conditions are necessary to minimize any adverse effects of the proposed Communications Facility on the surrounding neighborhood, or to protect the health, safety, and welfare of the public.

(8) Revised Plans. If the plans or drawings submitted showing the proposed location for installation of the Facility in the Public Rights-of-Way require revision for any reason prior to commencing Construction, the Communications Services Provider shall promptly submit revised plans and drawings to the Department Director.

(9) Power to Restrict Area. To the extent not otherwise prohibited by State or Federal law, the City shall have the power to prohibit or limit the Placement of new or additional Communications Facilities within a particular area of the Public Rights-of-Way and deny the issuance of a permit.

(10) Limited Purpose of Permit. A permit issued by the City constitutes authorization to undertake only certain activities in Public Rights-of-Way in accordance with this Chapter, and does not create any property right or other vested interest, or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way. A permit shall be granted only for specific routes or locations in the Public Rights-of-Way and for such term as described in the permit. The City's issuance of a permit shall not be construed as a warranty

that the Placement of any Communications Facility is in compliance with Applicable Codes, regulations, or laws.

(11) Responsibility for Contractors. Every Communications Services Provider that is Registered with the City shall be liable for the actions of contractor(s) hired by them to perform the Placement or Maintenance of Facilities in the Public Rights-of-Way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations, and general conditions set forth in this Chapter.

(b) Regulations on the Placement or Maintenance of Communications Facilities.

(1) Provision and Form of Record Drawings and As-built Plans. Within forty-five (45) days after completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way, the Communications Services Provider shall provide the City with Record Drawings showing the final location of such Facility in the Public Rights-of-Way, including exact GPS coordinates. Upon request by the Department Director, the Communications Services Provider shall also provide the City with As-built Plans within forty-five (45) days after completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way. The Record Drawings and As-built Plans shall be provided to the City at no cost.

(2) Production and Filing of As-builts Plans. Every Communications Services Provider that is Registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of As-built Plans of all Facilities Placed and Maintained in the Public Rights-of-Way. The location and identification of Facilities and the production of As-built Plans shall be at the sole expense of the Communications Services Provider. Within forty-five (45) days of any request by the Department Director, the Communications Services Provider must provide to the City, at no cost, copies of complete sets of As-built Plans for the indicated Public Rights-of-Way. The failure of the Communications Services Provider to produce, keep on file, or provide to the City As-built Plans as required under this Chapter is sufficient grounds for the City to deny the issuance of a permit in the future.

(3) Removal of Facilities Placed Without Permit. Any Communications Facilities placed in the Public Rights-of-Way by the Communications Services Provider without first having obtained the required permit shall be removed by the Communications Services Provider within thirty (30) days of written notice from the City to remove the same and, in default of

compliance with such notice, such Facilities may be removed by order of the Department Director and the cost of removal shall be borne and paid by the Communications Services Provider upon demand.

(4) Underground. The Placement or Maintenance of all Communications Facilities shall be underground unless otherwise approved in writing by the Department Director. Communications Facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the Department Director. All Communications Facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for and shall have two (2) feet of horizontal clearance from other underground utilities and their appurtenances. Where approved by the Department Director, Communications Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the Department Director.

(5) Above-Ground Approval. The Placement or Maintenance of Communications Facilities above-ground, including new poles and aerial wires, is subject to written approval by the Department Director. Attachment to any pole or other above-ground structure must be pursuant to a separate valid and effective pole attachment agreement or similar instrument. Location on any pole or other above-ground structure shall not be considered a vested interest of the Communications Services Provider, and such poles or structures, if owned by the Communications Services Provider, shall be removed or modified by the Communications Services Provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The lowest placement of any Communications Facility on any pole or other above-ground structure in the Public Rights-of-Way shall not be less than eighteen (18) feet from the ground. The Communications Services Provider shall, at such time as the electric utility facilities or other Communications Facilities are placed underground or are required by the City to be placed underground, concurrently place its Communications Facilities underground without cost to the City.

(a) New Utility Poles, where permitted, shall be placed between the property line and the curb line of all streets and shall not be within the roadway recovery area. The lowest wire on any of such poles, placed in any Public Rights-of-Way open to vehicular, bicycle, and/or pedestrian traffic shall not be less than eighteen (18) feet from the ground and, whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code,

the National Electrical Safety Code and the “Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines” established by the Department of Commerce, Bureau of Standards of the United States, as may be amended.

(b) New Utility Poles, where permitted, shall be made of the similar design, material, and color as other Utility Poles within the same Public Rights-of-Way; however, black enamel/paint-clad metal or concrete poles, are preferred.

(c) New Utility Poles, where permitted, shall be located at least twenty (20) feet from the edge of the drip line of existing shade, conifer, or large ornamental species trees located in the Public Rights-of-Way or on private property.

(d) Replacement Utility Poles shall be of similar design, material, and color of the existing Utility Pole being replaced; however, black enamel/paint-clad metal or concrete poles, are preferred. The replacement Utility Pole shall be located in approximately the same location as the existing pole. The replacement Utility Pole shall continue to serve its primary function. If the City has a planned future project to replace Utility Poles in the subject Public Rights-of-Way, the replacement Utility Poles proposed in the Application shall conform to the City’s updated design, material, and color.

(6) General Stealth Design requirements for Communications Facilities within Public Rights-of-Way.

(a) Antennae(s) shall be slim design and shall not exceed the diameter of the pole at the point of attachment to which it/they are attached;

(b) Electric meters and disconnect switches may be mounted on the exterior of the pole and shall be concealed with use of Shrouds that are similar to the pole color and texture;

(c) To the maximum extent possible, exposed wires, cables, conduits, and other electronic or mechanical attachments shall be placed internal to the pole or concealed with use of a Shroud or Wrap that is similar to the color and texture of the pole;

(d) Other components, such as back-haul or cooling equipment, where housed above-ground, shall be placed within a cabinet, box, or other container that is concealed with a Wrap or Shroud that is similar to the pole

color or includes other imagery in context with the location of equipment (i.e., imagery of vegetation, architectural/geometrical patterns, or equivalent);

(e) Aerial electrical power and fiber connections for new Communications Facilities are not permitted where the majority of utilities have been under-grounded; and

(f) The use of wooden poles for Placement or Maintenance of new Communications Facilities is prohibited.

(7) Placement in relation to adjacent uses of property and building facades. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e., front façade and front property line, side street façade and side street property line), or such spaces do not exist in those locations on existing properties, new Communications Facilities and new Utility Poles shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building, as defined in this Code.

(8) Location context. A proposed Communications Facility shall utilize the following location context requirements:

(a) Installation at outermost boundary of Public Rights-of-Way. At-grade Communications Facilities, Utility Poles, and Wireless Support Structures shall be placed at the farthest distance practicable from the edge of pavement unless the proposed type of Facility has a designated corridor within the Public Rights-of-Way.

(b) Equidistant requirement. Utility Poles and Wireless Support Structures shall be placed equidistant between existing Utility Poles or Wireless Support Structures, if any, within the Public Rights-of-Way; provided that, this requirement shall not limit the placement of Small Wireless Facilities by imposing minimum separation distances.

(c) Common property line. For Placement within residential blocks, Utility Poles shall be placed at the common property line of the parcels that abut the Public Rights-of-Way.

(d) Prohibition against Placement that significantly impairs view from principal structures within residential blocks. At-grade Communications Facilities, Utility Poles, and Wireless Support Structures

shall be located such that views from principal structures within residential blocks are not significantly impaired.

(e) Prohibition against Placement within a location subject to homeowners' association restrictions. Wireless Support Structures shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association.

(f) Prohibition against Placement in location where Facilities are placed underground. At-grade Communications Facilities, Wireline Facilities, and Utility Poles in the Public Rights-of-Way shall comply with nondiscriminatory undergrounding requirements of the City that prohibit aboveground structures in the Public Rights-of-Way.

(9) Grounding rods and pull boxes. The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with FDOT Standard specification 635, and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.

(10) Other associated ground-mounted facilities and equipment. Ground-mounted equipment for Small Wireless Facilities shall be located within a ten (10) foot radius of the Utility Pole supporting such Facility and, if possible, in areas with existing foliage or other aesthetic features to obscure the view of the ground-mounted equipment. The ground-mounted equipment shall use Wrap that is similar to the pole color. If the City has a planned future project to replace Facilities or equipment in the subject Public Rights-of-Way, the replacement Facilities or equipment proposed in the Application shall conform to the City's updated design, material, and color.

(11) Signs. No signs shall be permitted on or attached to Communications Facilities or Utility Poles in Public Rights-of-Way, unless otherwise required by Federal or State law. Any Existing Structure or Facility that lawfully supports signs on the effective date of this Ordinance may continue to support such signs, as otherwise permitted by City code or State or Federal law, as may be amended.

(12) Separation from driveways and hydrants. Communications Facilities and Utility Poles shall be located at least ten (10) feet from a driveway apron and at least thirty (30) feet from a fire hydrant.

(13) Additional Placement and Maintenance Standards. The Placement or Maintenance of Communications Facilities in the Public Rights-of-Way shall be performed in accordance with the standards and requirements of the following, as is applicable and as each is in force at the time of the respective Placement or Maintenance of a Communications System or Facility:

(a) the Florida Department of Transportation Utilities Accommodation Guide;

(b) the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways;

(c) the Trench Safety Act (Chapter 553, Florida Statutes);

(d) the Underground Facility Damage Prevention and Safety Act (Chapter 556, Florida Statutes);

(e) the National Electrical Code or the ANSI National Electrical Safety Code; and

(f) the “Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines” established by the Department of Commerce, Bureau of Standards of the United States.

(14) Sunshine State One-Call. Every Communications Services Provider shall utilize and, if permissible, maintain membership in the utility notification one-call system administered by Sunshine State One-Call of Florida, Inc.

(15) Sufficiency of space. An Application for a permit for Placement of Communications Facilities is also subject to the City’s consideration of the following standards and minimum requirements regarding present and future use of the Public Rights-of-Way:

(a) Sufficiency of space to accommodate present and pending Applications for use of the Public Rights-of-Way. The sufficiency of space to accommodate all of the present and pending Applications to place Wireless Support Structures, Utility Poles, and other at-grade and below-grade structures within the subject area of the Public Rights-of-way;

(b) Sufficiency of space to accommodate the need for projected public improvements. The sufficiency of space to accommodate City plans for public improvements or projects adopted as part of the City's schedule of capital improvements or other approved capital improvements lists as part of the Comprehensive Plan; and

(c) Impact on traffic and traffic and pedestrian safety. The impact on traffic and traffic and pedestrian safety will be evaluated by the City. The evaluation will include, without limitation, potential traffic interference on the safe and efficient movement of people and property that will endanger the health, safety, and general welfare of the public, and interference with sight lines or clear zones for transportation, pedestrians or public safety purposes.

(16) Safety and Minimal Interference. All Placement and Maintenance of Communications Facilities in the Public Rights-of-Way shall be subject to this Code and other regulations of the City pertaining thereto, and shall be performed with the least possible interference with the use and appearance of the Public Rights-of-Way and the rights and reasonable convenience of the property owners who abut or adjoin the Public Rights-of-Way and in compliance with the rules and regulations of the Florida Department of Transportation. The Communications Services Provider shall at all times employ reasonable care and use commonly-accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All Placement and Maintenance shall be done in such a manner as to minimize to the greatest extent any interference with the usual travel on such Public Rights-of-Way. The use of trenchless technology (i.e., microtunneling and horizontal directional drilling techniques) for the installation of Communications Facilities in the Public Rights-of-Way, as well as joint trenching or the co-location of Facilities in existing conduit, is strongly encouraged, and should be employed wherever and whenever feasible.

(17) Correction of Harmful Conditions. If, at any time, the City or other authority of competent jurisdiction reasonably determines that any Communications Facility is causing, or has caused, a condition that is harmful to the health, safety, or general welfare of any Person, then the Communications Services Provider shall, at its own expense, promptly correct or eliminate all such Facilities and conditions. In an Emergency, as determined by the Department Director, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate repairs to any Communications

Facility that is damaged or malfunctioning, or has caused a sunken area or other condition which, in the Department Director's sole discretion, is deemed a threat to public safety, then the Department Director, when apprised of such an Emergency, shall have the right to remove, make repairs to, or eliminate same with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(18) Remedy of Hazardous Conditions. If, at any time, a condition exists that the City or other authority of competent jurisdiction reasonably determines is an Emergency that is potentially hazardous or life threatening to any Person or is a threat to the health or safety of the general public, and to remedy such condition the City or other authority of competent jurisdiction reasonably determines that a Communications Services Provider must temporarily relocate or temporarily shut off service or transmissions through a specific Facility, then the City, as an appropriate exercise of its police powers, may order the Communications Services Provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the City. In such an Emergency, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific Communications Facility, then the Department Director shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(19) Interference with Other Facilities. A Communications Services Provider shall not, in violation of any applicable laws or regulatory standards, design, Place, or Maintain its Communications Facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire, or rescue department, the facilities of any public utility, or the Communications Facilities of another Communications Services Provider, including any cable service provider.

(20) Relocation or Removal of Facilities. Except in cases of an Emergency, a Communications Services Provider, at its own expense, shall:

(a) Upon thirty (30) days written notice, relocate or remove, as specified in said notice, its Communications Facility in the event the City finds that the particular Facility is unreasonably interfering in some way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of any Public Rights-of-Way. The

City shall provide the Communications Services Provider with a notice and order as provided for in Section 337.404, Florida Statutes, or any subsequently enacted law of the State of Florida, in the event it charges the Communications Services Provider for the cost and expense of relocating or removing such Facility pursuant to this paragraph.

(b) Within a reasonable period of time from the date of written notice from the City, but not more than 120 days thereafter, relocate or remove, as specified in said notice, its Communications Facility in the event the Department Director determines it necessary for the construction, completion, repair, relocation, or maintenance of a City project, because the particular Communications Facility is interfering with or adversely affecting the proper operation of street light poles, traffic signals, or any communications system belonging to the City or an agency thereof or because the particular Communications Facility is interfering with the signals or facilities of the City police department, City fire rescue, or any municipal public utility. In the event the City issues any such written notice to the Communications Services Provider pursuant to this paragraph, and the Communications Services Provider fails to cause the aforementioned relocation or removal as required herein, the City shall be entitled to relocate or remove such Facilities without further notice to the Communications Services Provider and the total cost and expense shall be charged to the Communications Services Provider.

(21) Temporary Raising or Lowering of Facilities. A Communications Services Provider, upon request of any Person holding a validly-issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the Public Rights-of-Way, shall temporarily raise or lower its Communications Facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Communications Services Provider shall have the authority to require such payment in advance. The Communications Services Provider shall be given not less than twenty (20) days advance written notice from such Person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures performed by the City or its contractors.

(22) Coordination. In an effort to minimize the adverse impact on the Public Rights-of-Way and other municipal improvements, a Communications Services Provider may be required by the Department Director to coordinate the Placement or Maintenance of its Facilities with any work, Construction, installation in or repairs of the subject Public Rights-of-Way or other Communications Facilities therein that is occurring or is scheduled to occur within a reasonable time from Application for a permit as determined by the Department Director. Every Communications Services Providers shall make space in its trench and/or conduit within the Public Rights-of-Way available to other providers consistent with the Federal requirements of 47 U.S.C. § 224. Every Communications Services Provider shall utilize existing conduits, pathways, and other Communications Facilities whenever possible, and shall not Place or Maintain any new, different, or additional poles, conduits, pathways, or other Communications Facilities, whether in the Public Rights-of-Way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(23) Co-location and Joint Use. A Communications Services Provider, in an effort to minimize the adverse impact on the useful life of the Public Rights-of-Way, shall, whenever possible, enter into joint use agreements with the City and other parties who have Registered with, or who are expressly authorized by, the City to use its Public Rights-of-Way; provided that, the terms of such agreements are satisfactory to the Communications Services Provider. Nothing herein contained shall mandate that the Communications Services Provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional conduit or fiber in the Public Rights-of-Way, a Communications Services Provider is required to certify in writing to the Department Director that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Public Rights-of-Way as to the availability of existing or planned conduit or fiber that the particular Communications Services Provider could reasonably utilize to meet its needs, and that no such conduit or fiber is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The Communications Services Provider shall not be permitted to perform any Placement or Maintenance of Communications Facilities in those segments of the Public Rights-of-Way where there exists vacant or available conduit, dark fiber, or surplus fiber owned by the City, an agency of the City, or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the Communications Services Provider's System or network. Under such circumstances the Communications Services Provider shall have the opportunity to

enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a permit from the City.

(24) Maintenance of Traffic. In the event that Placement or Maintenance of Communications Facilities conducted by the Communications Services Provider requires streets, traffic lanes, or bicycle lanes, sidewalks, or multimodal paths to be closed or obstructed, the Communications Services Provider must, pursuant to the requirements of existing or subsequently-enacted City ordinances, obtain all necessary permits from the City, and shall obtain approval of its maintenance-of-traffic plan from the Department Director.

(25) Restoration of the Public Rights-of-Way. After completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way or each phase thereof, the Communications Services Provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the Public Rights-of-Way so disturbed in accordance with the delineated specifications stipulated in the Permit. If the Communications Services Provider fails to make such restoration within thirty (30) days following the completion of such Placement or Maintenance, the City may perform such restoration and charge the costs of the restoration to the Communications Services Provider in accordance with Section 337.402, Florida Statutes, as it may be amended. The Communications Services Provider shall, to the satisfaction of the Department Director, maintain and correct any restorations made pursuant hereto for a period of twelve (12) months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future permit for the Placement or Maintenance of Communications Facilities.

(26) Disruption or Destruction of Other Facilities or Property. A Communications Services Provider shall not knowingly Place or Maintain any Communications Facility in a manner that shall in any way disrupt, displace, damage, or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other Facilities, or property belonging to the City or any other Person lawfully occupying the Public Rights-of-Way, without first obtaining the consent of the City. The Communications Services Provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained and shall pay such costs upon demand.

(27) Placement within a Scenic or Gateway Corridor. Unless otherwise authorized by a franchise agreement or for public safety purposes, no new Utility Poles or above-ground Communications Facilities shall be placed within a designated Scenic or Gateway Corridor, as described in the Comprehensive Plan.

(c) General Conditions on the Utilization of the Public Rights-of-Way and the Placement or Maintenance of Communications Facilities.

(1) City Not Liable. Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the City nor its officials, boards, commissions, consultants, agents, employees, or independent contractors shall have any liability to the Communications Services Provider for any claims for any damages, costs, expenses, or losses resulting from the City's breakage, removal, alteration, or relocation of any Facilities of any Communications Services Provider which arose out of, or in connection with, any Emergency or disaster situation or was, in the sole discretion of the Department Director, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any Public Rights-of-Way, or the elimination, abandonment, or closure of any Public Rights-of-Way, or was found by the City Council to be in the best interest of the health, safety, or general welfare of the public; nor shall any charge be made by the Communications Services Provider against the City for any damages, costs, expenses, or losses related thereto.

(2) No Exemption from Permits. Nothing in this Chapter shall exempt any Communications Services Provider from obtaining a permit for work done within the Public Rights-of-Way.

(3) Subject to Police Powers. The rights of the Communications Services Provider shall be subject to all lawful exercise of police powers by the City, and to such other reasonable regulation of the Public Rights-of-Way as the City shall hereafter by resolution or ordinance provide in the interest of the health, safety, and general welfare of the public. Any inconsistency or ambiguity between the provisions of this Chapter and any lawful exercise of the City's police powers shall be resolved in favor of the latter.

(4) City Inspection. The City shall have the right to make such inspections of a Communications System or Facilities Placed or Maintained in the Public Rights-of-Way as it finds necessary to ensure compliance with this Chapter. This Chapter shall not be construed to create or hold the City responsible or liable for any damage to Persons or property by reason of any inspection by the City of

the Placement or Maintenance of a Communications System or Facility as authorized herein or the failure by the City to so inspect.

(5) Access to Manholes. The City, in the proper exercise of its municipal powers and duties with respect to the Public Rights-of-Way, shall have access at any time to all hand holes and manholes in the City belonging to a Communications Services Provider. Before accessing any hand hole or manhole, the City will make a reasonable good faith effort to provide the Communications Services Provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.

(6) Compatibility, Capacity, and Interference Issues. To properly manage and control the use of the Public Rights-of-Way, and to protect the health, safety, and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a Communications System or Facility to be placed in the Public Rights-of-Way and shall exercise such authority in a nondiscriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a Communications System or Facility. It shall be in the sole discretion of the Department Director, based on the nature, design, size, configuration, or proposed location of any Communications System or Facility, whether there is sufficient capacity in a particular section of the Public Rights-of-Way or whether such Communications System or Facility will interfere with the Facilities or equipment of any municipality, county, public utility, cable operator, or other Communications Service Provider.

(7) No Warranty of Fitness or Suitability. The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the Public Rights-of-Way for any Communications System or Facility or its right to authorize the Placement or Maintenance of any Communications System or Facility in the Public Rights-of-Way. Any performance of work, costs incurred, or services rendered by a Communications Services Provider shall be at such Provider's sole risk. Nothing in this Chapter shall affect the City's authority to acquire or add Public Rights-of-Way, or to vacate or abandon Public Rights-of-Way as provided for in this Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated, or abandoned Public Rights-of-Way for a Communications System or Facility.

(8) Annexations. Upon the annexation of any territory to the City, the provisions of this Chapter and the rules, regulations, and general conditions

contained herein shall extend to the territories so annexed; and all Facilities Placed, Maintained, owned, or operated by any Communications Services Provider extending into or already located in the Public Rights-of-Way of the territory so annexed shall thereafter be subject to all terms hereof, as the same may be amended from time to time.

Sec. 38-7. – Duty to Notify City of Resellers; Conditional Use of Public Rights-of-Way.

Within thirty (30) days of any Registered Communications Services Provider using its Communications Facilities to carry the Communication Services of any Reseller, such Communications Services Provider shall notify the City of the name and address of such Reseller. A Reseller's lease, interconnection, or other use of Communications Facilities belonging to a Communications Services Provider duly Registered in accordance with Section 38-3 and properly permitted to Place or Maintain its Facilities in the Public Rights-of-Way does not, and shall not, afford such Reseller any right, claim, or cause of action to impede the lawful exercise of the City's rights or police powers, including, but not limited to, requiring the Registered Communications Services Provider to remove such Communications Facilities from the Public Rights-of-Way.

Sec. 38-8. – Wireless Facilities.

(a) Generally. The Placement of telecommunication towers and Antennae anywhere in the corporate limits of the City located outside of the Public Rights-of-Way shall in all cases be subject to the City's zoning and land use regulations, including those set forth in Chapter 4 of the City's Land Development Code. Where Placement of Wireless Facilities in the Public Rights-of-Way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, Wireless Facilities attached to a permitted and legally-maintained vertical structure in the Public Rights-of-Way, such as a light pole or Utility Pole, shall, unless otherwise agreed to by the City in writing:

- (1) not extend more than ten (10) feet above the highest point of the vertical structure;
- (2) not have any type of lighted signal, lights, or illuminations unless required by an applicable Federal, State, or local rule, regulation, or law;
- (3) comply with any applicable FCC Emissions Standards;
- (4) comply with any applicable local building codes in terms of design, construction, and installation; and
- (5) not contain any commercial advertising thereon.

(b) Small Wireless Facilities in the Public Rights-of-Way. The City hereby adopts the following rules that will apply to the Collocation of Small Wireless Facilities in the Public Rights-of-Way for all Applications filed on or after July 1, 2017:

(1) General Conditions. Applicants seeking permission to Collocate or install Small Wireless Facilities within Public Rights-of-Way shall comply with the Registration, permitting, rules and regulations, insurance coverage, indemnification, performance bonds, security funds, force majeure, Abandonment, City liability, and City warranties provisions contained in this Chapter; provided, however, that the Application process, review timeframes, and denial criteria of this subsection shall control when otherwise in conflict.

(2) Filing, Review, and Processing of Applications. The City shall accept Applications for permits and shall process and issue permits for the Collocation of Small Wireless Facilities in Public Rights-of-Way subject to the following requirements:

(a) The Applicant shall as a part of its Application provide information necessary to demonstrate the Applicant's compliance with the applicable provisions of this Chapter for the Placement of Small Wireless Facilities in the locations identified in the Application, and shall bear the burden of demonstrating compliance with this Chapter.

(b) Within fourteen (14) days after the date of filing the Application, the City may request that the proposed location of a Small Wireless Facility be moved to another location in the Public Rights-of-Way and Placed on an alternative City Utility Pole or support structure or may place a new Utility Pole. The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the Applicant, the Applicant must notify the City of such acceptance and the Application shall be deemed granted for any new location for which there is agreement. If an agreement is not reached, the Applicant must notify the City of such non-agreement and the City must grant or deny the original Application within ninety (90) days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

(c) The City hereby limits the height of a Small Wireless Facility to ten (10) feet above the Utility Pole or structure upon which the

Small Wireless Facility is to be collocated. Unless waived by the City, the height for a new Utility Pole is limited to the tallest existing Utility Pole as of July 1, 2017, located in the same Public Right-of-Way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the City shall limit the height of the new Utility Pole to fifty (50) feet.

(d) Within fourteen (14) days after receiving an Application, the City must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the City must specifically identify the missing information. An Application is deemed complete if the City fails to provide notification to the Applicant within fourteen (14) days.

(e) The City shall process all Applications on a nondiscriminatory basis. If the City fails to approve or deny a complete Application within sixty (60) days after receipt of the Application, the Application is deemed approved. If the City does not use the 30-day negotiation period provided herein, the parties may mutually agree to extend the 60-day Application review period. The City shall grant or deny the Application at the end of the extended period.

(f) A permit issued pursuant to an approved Application shall remain effective for one (1) year unless extended by the City.

(g) The City shall notify the Applicant of approval or denial by electronic mail. The City shall approve a complete Application unless it does not meet the applicable provisions of this Chapter.

(h) If the Application is denied, the City shall specify in writing the basis for denial, including the specific Code provisions on which the denial is based, and shall send the documentation to the Applicant by electronic mail on the day the City denies the Application.

(i) The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days after notice of the denial is sent to the Applicant. Failure by the Applicant to timely resubmit the Application shall result in a final denial of the Application. The City shall approve or deny a timely filed revised Application within thirty (30) days after receipt or the Application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(j) An Applicant seeking to Collocate Small Wireless Facilities within the City's boundaries may, at the Applicant's discretion, file a consolidated Application with the City and receive a single permit for the Collocation of up to thirty (30) Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

(k) The City may deny a proposed Collocation of a Small Wireless Facility in the Public Rights-of-Way if the proposed Collocation:

(1) Materially interferes with the safe operation of traffic control equipment.

(2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

(3) Materially interferes with compliance with the Americans with Disabilities Act or similar Federal or State standards regarding pedestrian access or movement.

(4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

(5) Fails to comply with Applicable Codes and the applicable provisions of this Chapter.

(l) Notwithstanding anything to the contrary contained herein, the City may reserve space on City Utility Poles for future public safety uses. If replacement of a City Utility Pole is necessary to accommodate the Collocation of the Small Wireless Facility and the future public safety use, the Utility Pole replacement is subject to the make-ready provisions of this Chapter and the replaced Utility Pole shall accommodate the future public safety use.

(m) A structure granted a permit and installed pursuant to this Chapter shall comply with Chapter 333, Florida Statutes, and Federal regulations pertaining to airport airspace protections.

(n) The City does not require approval or fees for: (i) routine maintenance; (ii) replacement of existing Wireless Facilities with substantially similar Wireless Facilities; or (iii) installation, Placement,

Maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Public Rights-of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

(3) Collocation of Small Wireless Facilities on City Utility Poles. The Collocation of Small Wireless Facilities on City Utility Poles is subject to the following requirements:

(a) The City shall not enter into an exclusive arrangement with any Person for the right to attach equipment to City Utility Poles.

(b) The rates and fees for Collocations on City Utility Poles must be nondiscriminatory, regardless of the services provided by the collocating person.

(c) The City hereby levies, establishes, and sets an annual rate that shall be paid by all those Applicants who file an Application to Collocate Small Wireless Facilities on City Utility Poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the same date.

(d) Agreements between the City and Wireless Providers that are in effect on July 1, 2017, and that relate to the Collocation of Small Wireless Facilities in the Public Rights-of-Way, including the Collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to applicable termination provisions. The Wireless Provider may accept the rates, fees, and terms established under this Chapter for Small Wireless Facilities and Utility Poles that are the subject of an Application submitted after the rates, fees, and terms become effective.

(e) For a City Utility Pole that supports an aerial facility used to provide Communications Services or electric service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and its implementing regulations. The good faith estimate of the Person owning or controlling the Utility Pole for any make-ready work necessary to enable the Utility Pole to support the requested Collocation must include Utility Pole replacement if necessary.

(f) For a City Utility Pole that does not support an aerial facility used to provide Communications Services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the Utility Pole to support the requested Collocation, including necessary Utility Pole replacement, within sixty (60) days after receipt of a complete Application. Make-ready work, including any Utility Pole replacement, must be completed within sixty (60) days after written acceptance of the good faith estimate by the Applicant. Alternatively, the City may require the Applicant seeking to Collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including Utility Pole replacement, and perform the make-ready work. If Utility Pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the Public Rights-of-Way. The replaced or altered Utility Pole shall remain the property of the City.

(g) The City may not require more make-ready work than is required to meet Applicable Codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any Utility Pole replacement, may not exceed actual costs or the amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(4) Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities. A Wireless Infrastructure Provider may apply to the City to place Utility Poles in the Public Rights-of-Way to support the Collocation of Small Wireless Facilities. The Application must include an attestation that Small Wireless Facilities will be Collocated on the Utility Pole or structure and will be used by a Wireless Services Provider to provide service within nine (9) months after the date the Application is approved by the City. The City shall accept and process the Application in accordance with this Chapter and any Applicable Codes and other local codes governing the placement of Utility Poles in the Public Rights-of-Way.

(5) Application and Enforcement of Historic Preservation Zoning Regulations. Consistent with preservation of local zoning authority under 47

U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), and the National Historic Preservation Act of 1966, as amended, this Chapter is subject to the provisions of City codes and ordinances regarding historic preservation.

(6) Prohibited Collocations, Attachments, Installations, and Services Not Authorized by this section. This section does not authorize, and the City hereby prohibits, the following:

(a) This section does not authorize a Person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately-owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately-owned Wireless Support Structure, or other private property without the consent of the property owner.

(b) The approval of the installation, Placement, Maintenance, or operation of a Small Wireless Facility pursuant to this section does not authorize the provision of any voice, data, or Video Services or the installation, Placement, Maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in the Public Rights-of-Way.

(c) This section does not affect provisions relating to Pass-through Providers contained in this Chapter and contained in Section 337.401(6), Florida Statutes.

(d) This section does not apply to the installation, Placement, Maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by this Chapter.

(e) This section does not authorize a Person to Collocate Small Wireless Facilities or Micro Wireless Facilities on a City Utility Pole or erect a Wireless Support Structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, Placement, Maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities.

Sec. 38-9. – Revocation or Suspension of Permits.

Subject to Section 38-11, the City Manager may revoke any permit currently issued to a Communications Services Provider for work in the Public Rights-of-Way or suspend the issuance of a permit in the future to a Communications Services Provider for, in addition to any other circumstances provided for in this Chapter, one or more of the following reasons:

(a) a violation of permit conditions, including conditions set forth in the permit, or a violation of the requirements of this Chapter or other Applicable Codes or regulations governing the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way;

(b) a misrepresentation or fraud made or committed on the part of the Communications Services Provider in the Registration process or in the Application for a permit;

(c) the failure to properly renew the Registration or the ineffectiveness of Registration; or

(d) the failure to relocate or remove Communications Facilities as may be required by the City Manager pursuant to this Chapter.

The City Manager shall provide notice and an opportunity to cure to the Communications Services Provider of any violation of paragraphs (a) through (d) above, each of which shall be reasonable under the circumstances.

Sec. 38-10. – Involuntary Termination of Registration.

(a) The City may terminate a Registration if:

(1) a Federal or State authority suspends, denies, or revokes a Communications Services Provider's certification or license to provide Communications Services;

(2) the Communications Services Provider's Placement or Maintenance of a Communications Facility in the Public Rights-of-Way presents an extraordinary danger to the general public or other users of the Public Rights-of-Way and the Communications Services Provider fails to remedy the danger promptly after receipt of written notice;

(3) the Communications Services Provider ceases to use all of its Communications Facilities in the Public Rights-of-Way and has not complied with Section 38-20; or

(4) the Communications Services Provider fails to comply with any of the rules, regulations, or general conditions set forth in this Chapter.

(b) Prior to termination of a Registration, the Communications Services Provider shall be notified by the City Manager with a written notice setting forth all matters pertinent to the proposed termination, including which of paragraphs (1) through (4) above is applicable as the reason therefore. The Communications Services Provider shall have thirty (30) days after receipt of such notice within which to eliminate the reason or within which to present a plan, satisfactory to the City Manager, to accomplish the same. If not eliminated or if the plan presented is rejected, the City Manager shall provide written notice of such rejection to the Communications Services Provider and a final determination to terminate Registration. A final determination to terminate Registration may be appealed in accordance with the procedures set forth in Section 38-11.

(c) In the event of termination, following any appeal period, the Communications Services Provider formerly Registered shall: (i) notify the City of the assumption or anticipated assumption by another Registrant of ownership of the Communications Services Provider's Facilities in the Public Rights-of-Way; or (ii) provide the City with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-Way. If a Communications Services Provider fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in Section 38-11, the City may exercise any remedies or rights it has at law or in equity, including, but not limited to, taking possession of the Communications Facilities where another Person has not assumed the ownership or physical control of the Facilities or requiring the Communications Services Provider within ninety (90) days of the termination, or such longer period as may be mutually agreed to between the City and the Communications Services Provider, to remove some or all of the Communications Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to their original condition prior to such removal.

(d) In any event, a Communications Services Provider whose Registration has been terminated shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way.

(e) In the event of termination of a Registration, this section does not authorize the City to cause the removal of Communications Facilities used to provide another service for which the Communications Services Provider or another Person who owns or exercises physical control over the Communications Facilities holds a valid certification or license with the governing Federal or State agency, if required for provision of such service, and who is Registered with the City, if required.

(f) The City's right to terminate a Registration shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding, or exercise of the right to terminate Registration will affect or preclude any other right the City may have.

Sec. 38-11. – Appeals.

Final determinations by appropriate City staff denying an initial Registration; denying an application for renewal of a Registration; terminating a Registration; or denying, revoking, or suspending any permit are subject to appeal to the City Council. A notice of appeal of such decision may be filed with the City Manager within thirty (30) days of the date of the final, written decision to be appealed. The City Manager shall have thirty (30) days from the date the appeal is filed to review the matter and render a written decision to uphold or reverse the final decision made by staff. If the City Manager upholds the final decision of staff, the appellant may file a notice of appeal with the City Clerk within thirty (30) days of the date of the written decision of the City Manager. The City Clerk shall set the matter for hearing before the City Council at any regular meeting of the City Council scheduled within forty-five (45) days of the date that the notice of appeal is filed with the City Clerk, unless waived by the Communications Services Provider. A ruling may be made at the hearing or at the next regularly scheduled City Council meeting and the Communications Services Provider shall be notified of the decision in writing within thirty (30) days thereof. Where a notice of appeal to the City Manager or the City Clerk is not timely filed as provided herein, such right to appeal shall be waived. Upon correction by the Communications Services Provider of the circumstances that gave rise to a suspension or denial of a permit, the suspension or denial shall be lifted (the same does not apply to the revocation of a permit).

Sec. 38-12. – Fees Applicable to Those Not Subject to Communications Services Tax.

While the Florida Legislature has prohibited municipalities from requiring providers of Communications Services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to Placing or Maintaining Communications Facilities in the Public Rights-of-Way, the City expressly reserves the right to require the payment of consideration or regulatory fees by Persons using or occupying the Public Rights-of-Way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

(a) Dealer. Except as provided in paragraph (23) of Section 38-6, a Communications Services Provider who meets the definition of Dealer as set forth in this Chapter and who has Registered in accordance with Section 38-3 is not required to enter into a franchise agreement or license arrangement with the City as a condition to

Placing or Maintaining Communications Facilities in the Public Rights-of-Way, nor is a Dealer required to make payment of any franchise fees, license fees, or other user fees to the City as consideration for the use or occupancy of the Public Rights-of-Way for the provision of Communications Services.

(b) Pass-through Provider and Pass-through Facilities. A Communications Services Provider who meets the definition of Pass-through Provider as set forth in this Chapter and who is not subject to the City's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes, shall pay the City the maximum annual amount allowed under Section 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each separate Utility Pole or tower installed or maintained by a Pass-through Provider for purposes of supporting Antennas for other over-the-air radio transmission or reception equipment in the Public Rights-of-Way shall comprise a separate Communications Facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401(6)(b), Florida Statutes, whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2018. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any Facilities in the Public Rights-of-Way.

(c) Other Persons. All other Persons, except a Government, are required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way for the Placement or Maintenance of Communications Facilities, an amount based on and in accordance with Section 38-12(b).

(d) Government. A Government is not required to pay the City consideration for the use or occupancy of the Public Rights-of-Way for the Placement or Maintenance of Communications Facilities, unless such Facilities are being used by such Government or a Communications Services Provider, including Resellers, to offer or provide Communication Services other than for such Government's internal non-commercial use, in which event the Government, where not subject to the City's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes, is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Communications Facilities placed therein after October 1, 2017, an amount based on and in accordance with Section 38-12(b), or such other amount or rate of compensation as mutually agreed to in writing by the Government and the City.

Sec. 38-13. – Existing Communications Facility.

The provisions of this Chapter shall be applicable to all Communications Facilities placed in the Public Rights-of-Way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities placed in the Public Rights-of-Way prior to the effective date of this Ordinance to the full extent permitted by Federal and State law, except that any provision of this Chapter regarding the size, Stealth Design, concealment, or location of Communications Facilities shall not apply to existing Communications Facilities lawfully placed within the Public Rights-of-Way prior to the effective date of this Ordinance, to the extent that such Communications Facilities may be Maintained, repaired, and replaced with a Communications Facility substantially similar in size and for the same purpose.

Sec. 38-14. – Insurance.

(a) At all times during the use or occupancy of the Public Rights-of-Way, including any time during Placement or Maintenance of Communications Facilities, the Communications Services Provider shall obtain, pay all premiums for, and maintain satisfactory to the City the types of insurance policies and coverage limits described in this Chapter. Nothing contained in this section shall limit a Communications Services Provider's liability to the City to the limits of insurance certified or carried.

(1) Commercial general liability insurance valid in the State of Florida, including contractual liability and products-completed operations liability coverage on an occurrence basis, which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than Two Million and No/00 Dollars (\$2,000,000.00) policy aggregate for each personal injury liability, broad form property damage (without exclusions related to explosion, collapse and underground ("XCU") exclusions), contractual liability and products-completed operations liability.

(2) Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) combined single limit, including bodily injury and property damage covering owned, leased, hired, and non-owner vehicles.

(3) Workers' Compensation valid in the State of Florida which policy limit shall be in an amount not less than the statutory limit for Workers' Compensation.

(4) Employer's liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) each accident for employer's liability.

(b) All insurance providers used shall be admitted and duly authorized to do business in the State of Florida and shall have assigned by A. M. Best Company a minimum Financial Strength Rating of "A" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000.00 to \$500,000,000.00 based on capital, surplus, and conditional reserve funds). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. All liability policies shall name the City, its council members, officers, and employees as additional insureds with respect to any covered liability arising out of the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way or other activities under this Chapter. Each Communications Services Provider shall furnish annually to the City certificates showing proof of all required insurance coverage. All liability coverage must be in occurrence form and in accordance with the limits specified. Claims made policies are not acceptable. No insurance policy shall be canceled, nor shall the occurrence or aggregate limits set forth herein be reduced, until the City has received at least thirty (30) days' advance written notice by registered, certified, or regular mail or facsimile of any cancellation, intent not to renew, or reduction in policy coverage. Each Communications Services Provider shall be responsible for notifying the City of such cancellation, intent not to renew, or reduction in coverage. All Certificate(s) of Insurance, including all endorsements and riders, evidencing insurance coverage shall be submitted to the City within thirty (30) days after the date of Registration with the City in order for a Communications Services Provider to obtain a permit required for Construction in the Public Rights-of-Way. Each Communications Services Provider shall, in the event of any such notice described above, obtain, pay all premiums for, and file with the City written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Communications Services Provider of such notice.

(c) The Certificate(s) of Insurance forms must be properly executed by the authorized representative of the insurance provider and must include all endorsements, riders and notices. Each Communications Services Provider shall file and maintain with the City on an annual basis the required Certificate(s) of Insurance. The Certificate(s) of Insurance must indicate the following:

(1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; that the policy coverage "pertains to the requirements of Section 38014"; policy expiration date; and specific coverage amounts;

(2) any applicable deductibles or self-insured retentions;

(3) that the City, its council members, officers, and employees are additional insureds;

(4) that the City shall receive thirty (30) days' advance written notice of cancellation, intent not to renew, or reduction in coverage; and

(5) that the commercial general liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(d) Under extraordinary circumstances a Communications Services Provider may satisfy the insurance requirements of this section by providing documentation of self-insurance that, in the sole discretion of the City's Director of Human Resources and Risk Management, demonstrates incontrovertibly the adequacy to defend and cover claims of any nature that might arise from the Placement and Maintenance of Facilities in the Public Rights-of-Way. The Communications Services Provider must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

Sec. 38-15. – Indemnification.

(a) Except with respect to the willful misconduct, negligence, or gross negligence of the City, a Communications Services Provider, by act of Registering with the City as such, shall be obligated, at its sole cost and expense, to defend, indemnify and hold harmless the City, its Council members, officials, commissioners, agents, and employees, from and against any and all claims, suits, causes of action, proceedings, liabilities, and judgments for damages or equitable relief, and costs and expenses, arising out of or in connection with the Placement or Maintenance of its Communications Facilities in the Public Rights-of-Way by the Communications Services Provider or its agent or hired contractor. This indemnification provision shall include, but not be limited to, such damages and penalties arising out of claims: (1) by any Person whatsoever on account of: (i) bodily injury to a Person or Persons; (ii) death of a Person or Persons; or (iii) property damage, where any of the foregoing is occasioned by the operations of the Communications Services Provider, or alleged to have been so caused or occurred; or (2) involving the Communications Services Provider's violation of any easement or private property rights.

(b) Nothing contained in this section shall prohibit the City from participating in the defense of any litigation by its own counsel if in the City's reasonable belief there exists or may exist a conflict, potential conflict, or appearance of a conflict.

(c) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees in defending against any such claim, suit, or proceeding, and shall also include the reasonable value of any services rendered by the City Attorney and his/her assistants, or any consultants, agents, and employees of the City. The City will attempt to notify the Communications Services Provider, in writing, within a reasonable time of the City's receiving notice of any issue it determines may require indemnification.

(d) Nothing contained in this section shall be construed or interpreted: (1) as denying the City, the Communications Services Provider, or any Person any remedy or defense available to them under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

(e) The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

Sec. 38-16. – Construction Bond.

(a) Prior to issuance of any permit where the type of work allowed under the permit will require restoration of the Public Rights-of-Way, the Communications Services Provider or the contractor performing such work on its behalf shall obtain, pay for, and file with the City a construction bond. The construction bond shall serve to guarantee the timeliness and quality of the Construction and restoration work and to secure, and enable the City to recover, all costs related to the restoration of the Public Rights-of-Way in the event the Communications Services Provider or its contractor fails to make such restoration to the City's satisfaction or causes damage to the Public Rights-of-Way during Construction. The construction bond must name the City as Obligee and be in the face amount of either Fifteen Thousand and No/00 Dollars (\$15,000.00) or 110% of the estimated cost of the project, whichever is greater, conditioned upon the full and faithful completion of Construction and restoration of the Public Rights-of-Way to the delineated specifications stipulated in the Permit. Six (6) months following completion and inspection of the restoration of the Public Rights-of-Way satisfactory to the City Manager, the Communications Services Provider or its contractor, as the case may be, may reduce the face amount of the construction bond to Five Thousand and No/00 Dollars (\$5,000.00) and, thereafter, may allow the bond to lapse in accordance with its terms. However, for any subsequent work in the Public Rights-of-Way, the Communications Services Provider or its contractor will be required to replenish any existing construction bond or provide a new

construction bond in the face amount of Fifteen Thousand and No/00 Dollars (\$15,000.00). The construction bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Manager and authorized by the Florida Department of Insurance to issue surety bonds in this State.

(b) The construction bond must be issued as non-cancelable and be for a term of not less than twelve (12) months. In the event the term of any construction bond expires, or is reasonably expected to expire, prior to the completion of Construction, restoration, and City inspection, the Communications Services Provider, or the contractor acting on its behalf, shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a construction bond is not in lieu of any additional bonds that may be required under this Chapter or through the permitting process. The City's right to recover under the construction bond shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding, or exercise of a right with respect to the construction bond will affect or preclude any other right the City may have.

Sec. 38-17. – Performance Bond.

(a) Before any Communications Services Provider is permitted to begin the Placement or Maintenance of an initial build, any substantial rebuild, upgrade, or extension of its Communications System, or when construction plans show that there would be at least 1,000 feet of open trenching in the Public Rights-of-Way at any given time, the Communications Services Provider is required to obtain, pay for, and file with the City a performance bond. The performance bond must name the City as Obligee and be in the face amount of Two Hundred Fifty Thousand and No/00 Dollars (\$250,000.00) conditioned upon the full and faithful compliance by the Communications Services Provider with all requirements, duties, and obligations imposed by the provisions of this section during, and through completion of, the Placement or Maintenance project. The performance bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Manager and authorized by the Florida Department of Insurance to issue performance bonds in this State.

(b) The performance bond must be issued as non-cancelable and be for a term consistent with the reasonably expected duration of the particular Placement or Maintenance project (including restoration and City inspection), but in no event less than eighteen (18) months. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to the completion of such Placement or Maintenance project, including restoration and City inspection, the Communications Services Provider shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a performance bond is not in lieu of any additional bonds that may be required under this Chapter or through the permitting process. The City's right to recover under the performance bond shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding, or exercise of a right with respect to the performance bond will affect or preclude any other right the City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the Communications Services Provider's failure to comply with the responsibilities imposed by this Chapter, including, but not limited to, attorney's fees and costs of any action or proceeding, and the cost of removal or abandonment of any property.

Sec. 38-18. – Security Fund.

Every Communications Services Provider shall make a Twenty-Five Thousand and No/00 Dollar (\$25,000.00) cash deposit, or shall file with the City an irrevocable letter of credit or acceptable equivalent in the same amount, which shall serve, and be referred to, as the “Security Fund.” The Security Fund shall be conditioned upon the full and faithful compliance with and performance by the Communications Services Provider of all requirements, duties, and obligations imposed by the provisions of this Chapter at all times. The letter of credit shall be in a form and issued by an institution acceptable to the City Manager. Should the City draw upon the Security Fund, it shall promptly notify the Communications Services Provider, and the Communications Services Provider shall promptly restore the cash deposit or letter of credit to the full amount. The Security Fund shall be maintained until the later of: (a) the effective date of transfer, sale, or assignment by the Communications Services Provider of all its Facilities in the Public Rights-of-Way; (b) twelve (12) months after the removal or Abandonment by the Communications Services Provider of all of its Facilities in the Public Rights-of-Way; or (c) six (6) months after the termination of Registration, including any appeals undertaken pursuant to Section 38-11. Upon the later of these events, the cash deposit will be returned without interest or the letter of credit may be cancelled. In the event a Communications Services Provider fails to perform any requirement, duty, or obligation imposed upon it by the provisions of this Chapter, there shall be recoverable, jointly and severally from the Security Fund, any damages or losses suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal, relocation, or Abandonment of any Facilities in Public Rights-of-Way, plus a reasonable allowance for attorneys’ fees, up to the full amount of the Security Fund.

Sec. 38-19. – Enforcement Remedies.

(a) No provision of this Chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this Chapter, the Registration provisions, or any rule, regulation or general condition provided for hereunder, whether administratively, judicially, or both. Neither the existence of other remedies identified in this Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties, or monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Communications Services Provider. The remedies available to the City shall be cumulative and in addition to any other remedies provided by law or equity. The laws of the State of Florida shall govern with respect to any proceeding in law or equity pertaining to the enforcement of this Chapter or any cause of action arising out of or in connection herewith.

(b) A Communications Services Provider's failure to comply with provisions of this Chapter shall constitute a City Code violation and shall subject the Communications Service Provider to the code enforcement provisions and procedures as provided in Chapter 2, Article V, City Code, and may be punishable as provided in Section 162.22, Florida Statutes, as it may be amended.

(c) In any proceeding before the City Council where there exists an issue with respect to a Communications Services Provider's performance of its obligations pursuant to this Chapter, the Communications Services Provider shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Chapter. The City may find a Communications Services Provider who does not demonstrate compliance with the terms and conditions of this Chapter in default and apply any appropriate remedy or remedies as authorized by this Chapter. In determining which remedy is appropriate, the City Council shall take into consideration the nature of the violation, the Person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City Council determines are appropriate to the public interest.

(d) The City Manager, or his/her designee, shall be responsible for administration and enforcement of this Chapter, and is authorized to give any notice required herein or by law.

(e) Failure of the City to enforce any requirements of this Chapter shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 38-20. – Abandonment of a Communications Facility.

(a) Upon Abandonment of any Facility owned by a Communications Services Provider in the Public Rights-of-Way, the Communications Services Provider shall notify the City within sixty (60) days.

(b) The City may direct the Communications Services Provider, by written notice, to remove all or any portion of such Abandoned Communications Facility at the Communications Services Provider's sole expense if the City determines that the Abandoned Communications Facility's presence interferes with the public health, safety, or welfare, which shall include, but shall not be limited to, a determination that such Communications Facility: (1) compromises safety at any time for any Public Rights-of-Way user; (2) compromises the safety of other Persons performing Placement or Maintenance of Communications Facilities in the Public Rights-of-Way; (3) prevents another Person from locating other facilities in the area of the Public Rights-of-Way where the Abandoned Communications Facility is located when other alternative locations are

not reasonably available; or (4) creates a maintenance condition that is disruptive to the use of the Public Rights-of-Way. In the event condition (2) is present, the City may require the third Person to coordinate with the Communications Services Provider who owns the existing Communications Facility for joint removal and Placement, where agreed to by the Communications Services Provider.

(c) If the Communications Services Provider fails to remove all or any portion of an Abandoned Communications Facility as directed by the City within the time period specified in the written notice, which time period must be reasonable under the circumstances, the City may perform such removal and charge the cost of the removal against the Communications Services Provider.

(d) In the event that the City does not direct the removal of the Abandoned Communications Facility, the Communications Services Provider, by its notice of Abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of such abandoned Facility by the City or other Person, provided that the cost of the alteration or removal is not borne by the Communications Services Provider.

Sec. 38-21. – Reservation of Rights.

The City hereby expressly reserves all of the following rights:

(a) To exercise its municipal home rule powers, now or hereafter, to the fullest extent allowed by law with regard to the access, use, and regulation of the Public Rights-of-Way.

(b) To amend this Chapter as it shall find necessary in the lawful exercise of its municipal authority.

(c) To adopt or enact by resolution or ordinance, in addition to the provisions contained herein and in any existing applicable ordinances, such additional reasonable regulations as the City Council finds necessary in the exercise of the City's police powers.

(d) To exercise the power of eminent domain, consistent with applicable Federal and State law, to acquire property that may include that property owned or leased by a Communications Services Provider.

(e) As and when deemed necessary by the City Council to be in the interest of the City or its residents, to abandon or vacate portions of the Public Rights-of-Way within the proper exercise of its municipal authority and without notice to or the consent of any Communications Services Provider. The City shall not be responsible for any costs, damages, loss, or other expense to the Communications Services Provider as a result of the City's abandonment or vacation of any Public Rights-of-Way.

(f) To place and maintain, and franchise or permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables, or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in the Public Rights-of-Way occupied by any Communications Services Provider.

(g) Without limitation, the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of any Public Rights-of-Way within the City limits and within said limits as the same may from time to time be altered.

(h) To require a Reseller to Register in accordance with Section 38-3 to the extent such Reseller wants the right to place or maintain Facilities in the Public Rights-of-Way. Any Person using or leasing Facilities owned by a Registered Communications Services Provider is not, therefore, entitled to any rights to Place or Maintain Communications Facilities in the Public Rights-of-Way, unless such Person individually Registers with the City.

Sec. 38-22. – Force Majeure.

In the event the City's or Registrant's performance of or compliance with any of the provisions of this Chapter is prevented by a cause or event not within the City's or Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For the purposes of this section, cause or events not within the City's or Registrant's control shall include, but not be limited to, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes, and restraints imposed by order of a governmental agency or court. Causes or events within a Registrant's control, and thus not falling within this section shall include without limitation, Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors, or agents.

SECTION 4. CONFLICTS OF LAWS

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statutes, the most restrictive requirements shall apply.

SECTION 5: SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion of the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision application.

SECTION 6: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this Ordinance shall become and be made part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not effect the intent may be authorized by the City Manager, or the City Manager’s designee, without need or public hearing, by filing a corrected or recodified copy of same with the City Clerk.

SECTION 7: EFFECTIVE DATE

The effective date of this Ordinance shall be thirty (30) days from its adoption date, pursuant to Section 29(c) of the City Charter which requires thirty (30) days after its adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 3rd day of January, 2018.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye	Slachta	Aye
O'Flinn	Aye		

Date filed with City Clerk: _____