



City of Stuart

A G E N D A

**REGULAR MEETING OF THE STUART CITY COMMISSION
TO BE HELD August 23, 2021
AT 5:30 PM Commission Chambers
121 SW FLAGLER AVE.
STUART, FLORIDA 34994**

CITY COMMISSION

**Mayor Eula R. Clarke
Vice Mayor Merritt Matheson
Commissioner Becky Bruner
Commissioner Troy McDonald
Commissioner Mike Meier**

ADMINISTRATIVE

**City Manager, David Dyess
City Attorney, Michael J. Mortell
City Clerk, Mary R. Kindel**

Agenda items are available on our website at <http://www.cityofstuart.us>
Phone: (772) 288-5306 . Fax: (772) 288-5305 . E-mail: mkindel@ci.stuart.fl.us

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 772-288-5306 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.

(RC) next to an item denotes there is a City Code requirement for a Roll Call vote.
(QJ) next to an item denotes that it is a quasi-judicial matter or public hearing.

WHAT IS CIVILITY? *Civility is caring about one's identity, needs and beliefs without degrading someone else's in the process. Civility is more than merely being polite. Civility requires staying "present" even with those persons with whom we have deep-rooted and perhaps strong disagreements. It is about constantly being open to hear, learn, teach and change. It seeks common ground as a beginning point for dialogue. It is patience, grace, and strength of character. Civility is practiced in our City Hall.*

PUBLIC COMMENT: *If a member of the public wishes to comment upon ANY subject matter, including quasi-judicial matters, please submit a Request to Speak form. These forms are available in the back of the Commission Chambers, and should be given to the City Clerk prior to introduction of the item number you would like to address.*

CONSENT CALENDAR: *Those matters included under the Consent Calendar are self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by one motion. If discussion on an item is desired by any City Commissioner that item may be removed by a City Commissioner from the Consent Calendar and considered separately. If an item is quasi-judicial it may be removed by a Commissioner or any member of the public from the Consent Calendar and considered separately.*

QUASI-JUDICIAL HEARINGS: *Some of the matters on the Agenda may be "quasi-judicial" in nature. City Commissioners will disclose all ex-parte communications, and may be subject to voir dire by any interested party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment without being sworn. Unsworn testimony will be given appropriate weight and credibility by the City Commission.*

ROLL CALL

PLEDGE OF ALLEGIANCE

1. ELECTION RESULTS
2. OATH OF OFFICE - BECKY BRUNER, GROUP II AND TROY MCDONALD, GROUP IV.

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

CONSENT CALENDAR

3. APPROVAL OF 7/29/2021 SCM BUDGET WORKSHOP #2, 08/05/2021 SCM, AND 08/09/2021 CCM MINUTES (RC):
4. AUTHORIZATION TO EXECUTE AMERICAN RESCUE PLAN ACT AGREEMENT (RC):

RESOLUTION No. 81-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE THE AMERICAN RESCUE PLAN ACT CORONAVIRUS LOCAL FISCAL RECOVERY FUND AGREEMENT BY AND BETWEEN THE CITY OF STUART, FLORIDA, AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT, FOR THE PURPOSE OF

PROVIDING FUNDS TO LOCAL GOVERNMENTS IN ORDER TO FACILITATE THE ONGOING RECOVERY FROM THE COVID-19 PANDEMIC, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

END OF CONSENT CALENDAR

COMMISSION ACTION

5. LEGISLATIVE PRIORITIES FOR THE 2022 LEGISLATIVE SESSION (RC):

RESOLUTION No. 76-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE ADOPTION OF LEGISLATIVE PRIORITIES FOR THE 2022 LEGISLATIVE SESSION.

6. AUTHORIZATION TO SELL 55 N.W. DIXIE HIGHWAY(RC):

RESOLUTION No. 80-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A VACANT LAND CONTRACT AND/OR ANY ADDENDUMS BETWEEN THE CITY OF STUART, FLORIDA AND MIDDLE ISLAND MANAGEMENT AND/OR ASSIGNS, FOR THE SALE OF THE CITY OWNED PROPERTY LOCATED AT 55 N.W. DIXIE HIGHWAY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

7. AUTHORIZATION TO EXECUTE CONTRACT FOR SALE OF 1.78 ACRES (OSPREY PRESERVE)(RC):

RESOLUTION No. 83-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A VACANT LAND CONTRACT AND/OR ANY ADDENDUMS BETWEEN THE CITY OF STUART, FLORIDA, AND E. CLARK GIBSON, FOR THE SALE OF THE CITY OWNED 1.78 ACRES PARCEL LOCATED SOUTH OF JENSEN BEACH BLVD. AND ADJACENT TO GREEN RIVER PARKWAY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ORDINANCE SECOND READING

8. CHAPTER 16- EMERGENCY MANAGEMENT (RC):

ORDINANCE No. 2468-2021; AN ORDINANCE OF THE CITY OF STUART AMENDING CHAPTER 16- EMERGENCY MANAGEMENT; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

ORDINANCE FIRST READING

9. THE OAKS SCHOOL AT ST. MARY'S CHURCH CONDITIONAL USE (QUASI-JUDICIAL)(RC):

RESOLUTION No. 75-2021: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, GRANTING A MAJOR CONDITIONAL USE APPROVAL TO ALLOW A SCHOOL, PRIVATE, PAROCHIAL, OR TECHNICAL, FOR THE OAKS CLASSICAL CHRISTIAN ACADEMY, INC. AT ST. MARY'S EPISCOPAL CHURCH; WITH SAID LANDS BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; PROVIDING FOR CONDITIONS; PROVIDING FOR REPEAL OF ALL DEVELOPMENT ORDERS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

10. ABANDONMENT OF A PORTION RIGHT-OF-WAY BETWEEN 26 SEMINOLE STREET AND 19 OSCEOLA STREET (RC):

ORDINANCE No. 2470-2021; A ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO PROVIDE FOR THE ABANDONMENT OF CERTAIN PUBLIC RIGHT-OF-WAY WITHIN THE CITY BEING THAT PORTION OF A PLATTED 12 FOOT WIDE ALLEY IN BETWEEN 26 S.E. SEMINOLE STREET AND 19 S.E. OSCEOLA STREET (LOTS 5 & 14, BLOCK 3) ACCORDING TO THE AMENDED PLAT OF CHARLES A. PORTER ADDITION, AS RECORDED IN PLAT BOOK 2, PAGE 75 PUBLIC RECORDS OF PALM BEACH(NOW MARTIN) COUNTY, FLORIDA, MORE CLEARLY DESCRIBED AND DEPICTED IN EXHIBITS "A" "B" & "C" ATTACHED HERETO; PROVIDING FOR PAYMENT OF A PRIVILEGE FEE: PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

11. AMENDING CHAPTER 22 FIRE PREVENTION (RC):

ORDINANCE No. 2471-2021; AN ORDINANCE OF THE CITY OF STUART AMENDING CHAPTER 22; FIRE PREVENTION; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

DISCUSSION AND DELIBERATION

ADJOURNMENT

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION**

Meeting Date: 8/23/2021

Prepared by: Mary Kindel, City Clerk

Title of Item:

ELECTION RESULTS

Summary Explanation/Background Information on Agenda Request:

City Clerk will announce 2021 Election Results.

Funding Source:

N/A

Recommended Action:

N/A

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION**

Meeting Date: 8/23/2021

Prepared by: Mary Kindel, City Clerk

Title of Item:

OATH OF OFFICE - BECKY BRUNER, GROUP II AND TROY MCDONALD, GROUP IV.

Summary Explanation/Background Information on Agenda Request:

Each Commissioner shall take the Oath of Office prior to serving their 3-year term. This term is from 2021 to 2024.

Funding Source:

N/A

Recommended Action:

Administer Oath of Office as City Commissioners.

ATTACHMENTS:

Description	Upload Date	Type
☐ Oath - Bruner	8/18/2021	Attachment
☐ Oath - McDonald	8/18/2021	Attachment



OATH OF CITY OF STUART COMMISSIONER

**STATE OF FLORIDA)
CITY OF STUART)
COUNTY OF MARTIN)**

I DO SOLEMNLY SWEAR THAT I WILL SUPPORT, HONOR, PROTECT, AND DEFEND THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES AND THE STATE OF FLORIDA; THAT I AM DULY QUALIFIED TO HOLD OFFICE UNDER THE CONSTITUTION OF THE STATE OF FLORIDA AND UNDER THE CHARTER OF THE CITY OF STUART; AND THAT I WILL WELL AND FAITHFULLY PERFORM THE DUTIES OF CITY OF STUART COMMISSIONER ON; WHICH I AM NOW ABOUT TO ENTER, SO HELP ME GOD.

Rebecca S. Bruner

**Sworn to and subscribed before me
this 23rd day of August, 2021.**

**Mary R. Kindel
Notary Public**



OATH OF CITY OF STUART COMMISSIONER

**STATE OF FLORIDA)
CITY OF STUART)
COUNTY OF MARTIN)**

I DO SOLEMNLY SWEAR THAT I WILL SUPPORT, HONOR, PROTECT, AND DEFEND THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES AND THE STATE OF FLORIDA; THAT I AM DULY QUALIFIED TO HOLD OFFICE UNDER THE CONSTITUTION OF THE STATE OF FLORIDA AND UNDER THE CHARTER OF THE CITY OF STUART; AND THAT I WILL WELL AND FAITHFULLY PERFORM THE DUTIES OF CITY OF STUART COMMISSIONER ON; WHICH I AM NOW ABOUT TO ENTER, SO HELP ME GOD.

Troy McDonald

**Sworn to and subscribed before me
this 23rd day of August, 2021.**

**Mary R. Kindel
Notary Public**

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION**

Meeting Date: 8/23/2021

Prepared by: Susej Meleqi, Deputy Clerk

Title of Item:

APPROVAL OF 7/29/2021 SCM BUDGET WORKSHOP #2, 08/05/2021 SCM, AND 08/09/2021 CCM MINUTES (RC):

Summary Explanation/Background Information on Agenda Request:

N/A

Funding Source:

N/A

Recommended Action:

Approve Minutes

ATTACHMENTS:

Description	Upload Date	Type
▣ 07292021 SCM Budget Workshop #2	8/18/2021	Cover Memo
▣ 08052021 SCM	8/18/2021	Cover Memo
▣ 08092021 CCM	8/18/2021	Cover Memo

MINUTES
SPECIAL MEETING OF THE STUART CITY COMMISSION
HELD July 29, 2021
AT 4:30 PM Commission Chambers - BUDGET WORKSHOP #2
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Eula R. Clarke

Vice Mayor Merritt Matheson

Commissioner Becky Bruner

Commissioner Troy McDonald

Commissioner Mike Meier

ADMINISTRATIVE

City Manager, David Dyess

City Attorney, Michael J. Mortell

City Clerk, Mary R. Kindel

SERGEANT AT ARMS: Lieutenant Shine



4:32 PM ROLL CALL

PRESENT: Eula Clarke, Merritt Matheson, Becky Bruner, Troy McDonald, and Mike Meier

PLEDGE OF ALLEGIANCE

COMMENTS BY CITY COMMISSIONERS

Vice Mayor Matheson

- Commented on the timing of the budget meetings and proposed to have them earlier in the year. Feels it would be beneficial to have two workshops closer together.

Mayor Clarke

- Commented on proposed new holidays as other communities seem to be adopting them, Emancipation and Juneteenth Day, and stated she has talked with the City Manager about offering one or both as a floating holiday.

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA



4:37 PM MOTION: Move for approval of the Agenda.

MOVED BY: Commissioner McDonald

SECOND BY: Commissioner Meier

Motion passed unanimously.

COMMENTS FROM THE PUBLIC (3 Minutes Max)

COMMISSION ACTION

1. FY2022 BUDGET FOR REVIEW

City Manager David Dyess presented Stuart's FY2022 Plan, reporting on the American Rescue Plan Act (ARPA) and the four support funding objectives, identifying Stuart's projected allocation and eligible uses. Recommendation of the millage rate to remain at 5.000, information on health insurance rate increases and shared cost, a 3% cost of living increase and 2% merit increase, the increase in pay ranges in relation to minimum wage increases, and the added Juneteenth Optional Holiday for employees for a total of 12 paid holidays annually.

Commissioners discussed millage rate and increases. Dyess stated that there is a proposed 13 position increase, positions identified.

Specific departments were invited before the Commission for budget review:



5:09 PM

Police Dept. – Chief Tumminelli

- Reviewed the changes to his FY22 Budget discussing the Tyler System, the increase in fuel costs, purchase of five (5) hybrid vehicles in place of the current Enterprise lease program.
- Informed Commission that he is moving toward a paperless system and reported his total requested budget.

Public Comment:

- 1) Helen McBride – Flamingo Ave; Commented on fireworks and speeders and feels we do not have enough police officers and it takes training.
- 2) Mark Brechbill – Osceola St; Commented on the Police budget would like to see money allocated to mental health resources to police and fire in place of Covid supplies.

City Manager Dyess confirmed that the County will no longer engage with the City's Interlocal Agreement to provide fire services north of the bridge and the City will then service north of the bridge for Fire Rescue. The City will service our jurisdiction for both Police and Fire. Police Chief confirmed that he feels he has an adequate number of Police officers on staff.

Commissioner Meier requested an explanation of the various funds.

Joly Boglioli, Finance Director clarified the codes that identify the departments.

 5:35 PM

Fire Dept. - Vince Felicione, Fire Chief and Troy Bowser, Operations Chief

- Presented beginning with information on the new building, explaining that it is key for operations locations backing up the City, hosting trucks and a direct Covid, noting there is not another Class 1 Fire Dept. that run 25-year-old fire engines.

McDonald asked if the County was going to do their own dispatch and if the City would be doing their own dispatch.

Felicione responded stating that as of right now things would be staying the same and, in the future, if things were to change it would be a discussion between County and City Manager.

 5:59 PM

Public Works Dept. - Milton Leggett, Public Works Director

- Briefly discussed the new positions requested in his budget.
- Spoke about different projects going on throughout the City.

Commissioner Meier asked about the Public Works Complex.

City Manager Dyess stated that the cost estimate came in much higher than what we thought or had in the rate study. This upcoming FY there will be a new rate study and dependent on that rate study then they will see if they want to move forward with the new facility.

 6:10 PM

Utilities and Engineering Dept - Tim Voelker, Utilities & Engineering Director

- Briefly discussed the three (3) new positions requested in his budget and the reasons they are needed. Several members of their workforce will soon be retiring so they are looking to bring in new people. They have been going to the schools to promote utility careers.
- Commented that this was the last year for the “sign up and save” promotion on the sewer expansion program so that is expected to slow down.
- Discussed that they checked into an electric Side Loader Garbage Truck and passed around a catalog for the Commissioners to review.

Commissioner Meier asked if Joly could explain what the debt proceeds are to the grant plan.

Finance Director Joly Boglioli stated that there was a proposal to borrow money in the stormwater funds line. Further discussed the plan.

- Mr. Voelker gave an update of the Alternative Water Supply. Will know the cost and funding on August 11, 2021.



6:30 PM

Development Dept - Kevin Freeman, Development Director and Pinal Ghandi-Savdas, CRA Administrator,

- Mr. Freeman stated the busy year the department has had and discussed the number of permits coming through, the amount of money in private investing in our City.
- Mr. Freeman briefly discussed the new position requested in his budget and the reasons it is needed.

Commissioner Meier commented that he feels that there is a need for an extra person in the engineering department due to several issues the City has had (Osprey Park & Hotel).

Mr. Freeman stated he does not think there is a need of extra personnel just working with other departments like Neighboring Services.

- Pinal commented that she works closely with Public Works and the position would also benefit the CRA as well.
- Increase in TIFF revenue, reviewed accomplishments in 2021.
- Reviewed future projects/improvements - Tree program, MLK Street design, East Stuart, and the Creek District.

Mayor Clarke asked Mr. Freeman if they had reached out to the new developers that are building and the County to see if we can assist in doing transportation stops.

City Manager Dyess answered that County is open for us to submit to them where the City would like to see these stops at, but the County currently does not have any funds to implement these stops.

The Commission discussed Form Based Code and what other locations they think would be good areas to do it.



7:01 PM MOTION: Motion not to exceed millage of 5.0.

MOVED BY: Commissioner Meier

SECOND BY: Commissioner McDonald

Motion passed unanimously.

Mayor Clarke questioned a package from Ms. Rudge and if it can be brought to the second meeting in August. Mortell has informed her that there is no actual pending lawsuits.

Attorney Mortell clarified his conversation with the Mayor stating that the question was not an actual authorization or hearing instead it was to have discussion and deliberation and give the commission history or timeline on what occurred. The question is if the commission would like to hear it.

Commission discussed what they would like to do.

Public Comment:

- 1) Caryn Hall Yost Rudge – Palm City Rd; Thanked Vice Mayor Matheson in regard to bringing up the Commissioner pay increase, noted people were upset about the timing and amount. Commented the case is open and there is pending litigation, she is angry, called the Attorney a liar and walked out.



7:07 PM

Vice Mayor Matheson stated he would like to set up a River Defense Fund. Commissioners, City Manager, City Attorney and Finance Director discussed what would happen with this fund if not used at the end of year. Matheson was asked to bring something back next Budget Meeting with more definition.



7:26 PM

Commissioner Bruner brought up her request to contribute \$50,000.00 to the Martin County Arts Council and read some information in support of the Council and building. She asked Nancy Turrell, Executive Director of the Martin County Arts Council to attend tonight's meeting in the event Commissioners had any questions. Commissioner Bruner read how this project will enhance the quality of our community.

Ms. Turrell came forward to share information about the Arts Council, immediate need is to raise the rest of the funds for renovations. If unable to contribute now, the need will be available in the future.

Public Comment:

- 1) Helen McBride – Flamingo Ave; Agrees with the donation to the Martin County Arts Council.



7:38 PM MOTION: At our next meeting, to find \$50,000 for us to get the funds between now and December.

MOVED BY: Commissioner Bruner

SECOND BY: -----

Motion dies for lack of second.



7:40 PM MOTION: Make a motion that we have the funds.

MOVED BY: Commissioner Bruner

SECONDED BY: ----

Motion withdrawn at 7:47 PM.

Vice Mayor Matheson commented that right now for the City to get involved, there are too many unknowns. Noted, the School Board owns the building and is hesitant for the City to donate at this time, two, there is a wide range of what can be done to the building.

Mayor Clarke noted her love for the arts but agrees that this may not be something they can support at this time.

Commissioner Meier commented that he agrees that it is a great historic building, but he is most interested in it spurring more revitalization on that corridor, perhaps a future CRA project.

 **7:47 PM Motion withdrawn by Commissioner Bruner.**

Commissioners discussed and voiced their concerns with providing the money in this project as is right now.

Public Comment:

- 1) Mark Brechbill – Osceola St; Improvements on Colorado Avenue Stuart Mainstreet has helped to raise revenue in the City for years. Continue to be a resource to the City, they are not a cost but a benefit.

DISCUSSION AND DELIBERATION

 **7:54 PM ADJOURNMENT**

Mary R. Kindel, City Clerk

Eula R. Clarke, Mayor

Minutes to be approved at the Regular Commission Meeting this 23rd day of August, 2021.

MINUTES
SPECIAL MEETING OF THE STUART CITY COMMISSION
HELD August 5, 2021
AT 4:30 PM COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Eula R. Clarke

Vice Mayor Merritt Matheson

Commissioner Becky Bruner

Commissioner Troy McDonald

Commissioner Mike Meier

ADMINISTRATIVE

City Manager, David Dyess

City Attorney, Michael J. Mortell

City Clerk, Mary R. Kindel

SERGEANT AT ARMS: Police Chief Joseph Tumminelli



4:36 PM ROLL CALL

PRESENT: Eula Clarke, Merritt Matheson, Becky Bruner, Troy McDonald, and Mike

PLEDGE OF ALLEGIANCE

Mayor Clarke commented that she had been asked on what the City is doing in the face of the increase in COVID outbreak and if the City was going to do a State of Emergency. Requested this meeting to be advised by the experts and invited guests to provide information.

PRESENTATIONS

1. MARTIN COUNTY HEALTH DEPARTMENT PRESENTATION

Renee Rouse, Public Information Officer for the Florida Department of Health and Carol Ann Vitani, Health Officer presented an update on COVID including a COVID Data Tracker, exhibiting cases by the month in 2021, and the trend with the changes as the public began to return to go out, cases by age group, prevention measures and CDC recommendations, and vaccines. Review of the three vaccines available and the rates to date in Martin County. Reported on vaccine outreach events and contact information was provided.

Commissioner Meier asked about demography and trends. Ms. Vitani responded that she would get that information to the Commission.

Mayor Clarke asked about death rates per age groups. Ms. Vitani commented it is mostly the elderly.

Vice Mayor Matheson asked about the “next mutation” of the virus. Ms. Vitani suggested the medical experts are the best to respond that question.

Ms. Vitani provided a website where covid statistics and facts are provided - <https://floridahealthcovid19.gov/>

Question from the public:

- 1) Caryn Hall Yost-Rudge – SW Palm City Rd; What companies are offering the free vaccines?

A: Pfizer, Moderna, and Johnson & Johnson

 **4:54 PM**

2. PRESENTATION FROM CLEVELAND CLINIC ON COVID

Mr. Robert Lord, President of Cleveland Clinic, all three local hospitals, presented with a report of the following information: currently 78 COVID patients at Martin North, overall, between Martin North and Tradition, there are 141 COVID patients. The number has gone up consistently in just one month. The average stay of a COVID patient is 10.8 days, during the surge, noted over 90% of hospitalized patients are not vaccinated. Patients that are vaccinated in the hospital tend to have some pre-existing condition but are not ending up in ICU or on ventilators. Lord commented that this is a different and more infectious illness than last year and explained the Delta variant.

Commissioner Meier asked about stories/misinformation to highlight these for the people who were against the vaccine, got COVID, and now have changed their minds and have gotten vaccinated. Lord stated that would be the choice of the individual. Meier asked what the guidance for folks who have been vaccinated and what symptoms should we be looking out for that would tell us to go get tested even though we’ve been vaccinated. Lord stated it would be the same as normal symptoms. He explained how the Delta variant hides in your system for a period of time and you could be a carrier before you realize you have it.

Commissioners and Lord continued discussion of COVID 19, Delta Variant, Vaccination, and statistics.

Lord stated that he read the Resolution and commended the Commission, recognized they are limited in what they can do. He encouraged everyone to get vaccinated, create social distance during meetings, wear masks, and figured we should deal with this as he does not believe this is the last variant.

Mayor Clarke thanked Mr. Lord for the information. Lord commented that he is retiring the end of this year and thanked the Commission for inviting him today and for all the support over the years.

 **5:30 PM**

COMMENTS BY CITY COMMISSIONERS

Vice Mayor Matheson

- Commented that he is wearing 2 masks because his wife is at home and tested positive for COVID. Commented that if we continue to fight, we will be living with this new normal. Only way to move past this is to get vaccinated.
- In Resolution would like to add to still encourage outdoor dining at same capacity and remove any barriers that would not allow that.

Attorney Mortell and Mr. Dyess stated that they would need to amend the Code or do a State of Emergency to bypass the code. Mortell read the Senate Bill 2006. Brief discussion on the possibilities of outdoor dining and removing barriers without declaring a State of Emergency.

- Vice Mayor Matheson commented to look at options to reward those employees who have gotten vaccinated and incentivize those employees who are still reluctant.

Commissioners discussed the incentives options.

Mayor Clarke

- Stated the impact of a State of Emergency.
- Announced the event for this Saturday, August 7, 2021 at the Stuart Police Dept., a school supply give-away, and vaccinations clinic from 11 to 2 p.m.

 **5:45 PM** Attorney Mortell read into the record Florida Statute 381.00316 COVID-19 Vaccine Documentation.

COMMENTS BY CITY MANAGER

COMMENTS FROM THE PUBLIC (3 Minutes Max)

 **5:47 PM**

COMMISSION ACTION

3. COVID-19 FACE COVERINGS:

RESOLUTION No. 79-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ENCOURAGING THE USE OF FACE COVERING EQUIPMENT WHILE IN PUBLIC WITHIN THE GEOGRAPHIC BOUNDARIES OF STUART, FLORIDA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Commissioner McDonald would like to approve and add that the City Manager has authority to rescind and reactivate the mask mandate as needed.

Commissioners discussed if the City Manager would need more direction with data as to when to rescind or reactivate per scientifically based information. Commissioners agreed the Manager could consult with the Health Department and local guidelines but ultimately should have the flexibility.

Commissioner Meier requested to edit Section 1 to include “indoors per CDC guidelines”.

Public Comment:

- 1) Helen McBride – Flamingo Ave.; Commented that if the Resolution passes that it needs to be truly enforced.

The Commission noted that at Monday’s meeting (8/9/21), masks are highly encouraged, but it is at a County facility, the City does not have the authority to enforce.

 **6:00 PM MOTION: Move to approve adding Commissioner McDonald’s specification giving the City Manager flexibility to withdraw and reenact the Resolution and Commissioner Meier editing Section 1 to Indoors per CDC guidelines.**
MOVED BY: Commissioner Matheson
SECONDED BY: Commissioner Meier
Motion approved unanimously.

DISCUSSION AND DELIBERATION

 **6:08 PM ADJOURNMENT**

Mary R. Kindel, City Clerk

Eula R. Clarke, Mayor

**Minutes to be approved at the Regular Commission
Meeting this 23rd day of August, 2021.**

MINUTES
REGULAR MEETING OF THE STUART CITY COMMISSION
HELD August 9, 2021
AT 4:00 PM AT THE BLAKE LIBRARY, 2351 SE MONTEREY RD.
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Eula R. Clarke

Vice Mayor Merritt Matheson

Commissioner Becky Bruner

Commissioner Troy McDonald

Commissioner Mike Meier

ADMINISTRATIVE

City Manager, David Dyess

City Attorney, Michael J. Mortell

City Clerk, Mary R. Kindel

SERGEANT AT ARMS: Police Chief Joseph Tumminelli



4:13 PM ROLL CALL

Present: Mayor Clarke, Vice Mayor Matheson, Commissioner Bruner, Commissioner McDonald, Commissioner Meier

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

1. HUNGER ACTION MONTH - SEPTEMBER 2021

Shirley Bendezu and Joyce Smith of the Treasure Coast Food Bank accepted the Proclamation and announced the partnerships in the community. All Commission and administration took a photo with their orange scarves and ties to demonstrate their support.

2. 9/11 COMMEMORATIVE ANNUAL BLOOD DRIVE - SEPTEMBER 11, 2021

Jim Menendez and partners of One Blood came forward announcing the 20th anniversary year of the 9/11 attacks and reported on upcoming Blood Drive Event, Saturday, 9/11 at 10 a.m., partners include Conchy Joes, Sea Coast Bank, and Dolphin Bar and Grill, invited all to come out and participate and passed out tee shirts to all Commissioners.

 **4:26 PM**

PRESENTATIONS

3. SERVICE AWARDS - AUGUST 2021

John Martin, Police - 15 years

Walter Hayden, Public Works - 5 years

James Hall, Police - 5 years

Christopher Giuffrida, Public Works - 5 years (unable to attend)

4. The 'HOOKS' CHAMPIONSHIP SEASON

Mayor Clarke introduced the Hooks Baseball Team and passed out their awarded prize ring necklaces. A group photo was taken with the team and coaches and all students were introduced individually.

 **4:36 PM**

5. LEGISLATIVE APPROPRIATION FOR THE ALTERNATIVE WATER SUPPLY- PHASE III

Ben Hogarth, Community Services Department, Communications Liaison, reported on the \$500,000 state appropriation fund received for the Alternative Water Supply for a total of 1.75 million in funding received this year by the State of Florida. Representative Toby Overdorf came forward and assisted in presenting the check to the Commission and announced how proud he was to be a part of the process. Community Services Director, Jim Chrulski joined Toby Overdorf for a photo with the presented check.

 **4:40 PM**

COMMENTS BY CITY COMMISSIONERS

Commissioner Brunner

- Thanked all for coming and commented on the importance that we hear from all in the public, and she is grateful for staff and commissioners.

Commissioner Meier

- Thanked staff and staff of Martin County for use of the meeting room allowing us more room.
- Reminded all of early voting.

Vice Mayor Matheson

- Announced the pandemic has hit close to home, effecting his wife and child; thankful for the opportunity to socially distance and allow Zoom Telecommunications, but public safety is top priority. Noted that hospitals are nearly overloaded, and this is the new normal. Encouraged the public to get their vaccine.

Mayor Clarke

- Complimented Police Chief Tumminelli, staff, and those who participated in the Back-to-School Bash and for those who signed up for the Vaccine Event on Saturday at the Police Department.

COMMENTS BY CITY MANAGER

City Manager Dyess requested that with the approval of the Agenda, move the Consent Calendar ahead of the Public Comment so the Public Comment could begin at 5:00 PM as advertised, as ask that a brief recess be taken ahead of time so Zoom could be fixed and when return, City Attorney Mortell could give an outline of the stipulation prior to beginning the Public Comment.

Mayor Clarke agreed.

APPROVAL OF AGENDA

 **4:48 PM MOTION: So moved.**
MOVED BY: Commissioner Meier
SECONDED BY: Commissioner McDonald
Motion approved unanimously.

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

CONSENT CALENDAR

6. APPROVAL OF 7/26/2021 CCM MINUTES

END OF CONSENT CALENDAR

 **4:48 PM MOTION: Move for approve.**
MOVED BY: Commissioner Meier
SECONDED BY: Commissioner McDonald
Motion approved unanimously.

 **4:49 PM Recess**
 **5:03 PM Resume Meeting**

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

Mayor Clarke announced that she would accept the Zoom Public Comments initially then move to the members of the public in person. City Attorney Mortell clarified the Public Comment process for this meeting, stating that a single person shall only be able to provide public comment once on the Kanner Hwy. CPUD/Costco project and they must choose to give their comment before or after the presentation.

- 1) Diane Sarno – ZOOM - SW Kanner Hwy.; Opposed to the project, feels the decision has already been made but hopes the City will put a mask on the project.
- 2) Kevin Pool – ZOOM - Walking Path; Live across from the proposed project and is in support of the project. Feels it will bring more positivity than negativity.
- 3) Gregory Kohs – ZOOM - Amelia Way; Would like Commissioners and City developers to consider being more proactive in developing projects on land that has vacant existing development instead of green space.
- 4) Sarah Merker – ZOOM - Florida Club off Kanner Hwy.; Commented that Stuart is now being overbuilt and that convenience is being put over quality of life.
- 5) Debbi Greer – ZOOM - In favor of project and feels Costco will provide needed jobs and tax revenue.
- 6) Nancy Bates – ZOOM - SE Cabana Point Circle; Uncle Valintine Martin who passed away 10 days ago., who had worked to pass the building height limits in Stuart, agrees with 1st speaker,
- 7) Randy Zarginski – Prospect Place; Works for another big box store, opposed to the project.
- 8) Doris DiPino – Sterling Circle; In favor of project, feels it will bring in good tax revenue, asks commission to welcome them.
- 9) Rachel Galbicka – Elderberry Drive, PSL; Not against Costco but is opposed to the current location chosen for it. Opposes the project.
- 10) Dru Simeone – Hobe Sound; Environmental concerns – opposes project.
- 11) Amy Pritchert – Horseshoe Place; Value to saying no, asking the commission to examine everyone's comments and stated a commissioner told her it would reduce traffic on Kanner.
- 12) Gail Goldy – 12th Terrace; Land Use Plan on Kanner and next to Martin County High School, noted the traffic problems, environmental issues, etc., opposes project.
- 13) Robert Yago – S. River Drive; Opposes the project and commented on the current traffic issues.
- 14) Thomas Strout – Monterey Way, PSL; In favor of Costco, former employee; feels it would serve people in the surrounding area in addition to the people of Stuart as well.
- 15) Walter Loyd – Cabana Point Circle; Noted the opposition is overwhelmingly residential and the surrounding area is mostly residential, quoted a local journalist that support outweighed opposition, noted a Commissioner's soliciting actions, and wants the land use to be maximized.
- 16) Tonya Roberts – Arch Ave., Jensen Bch.; Don't mind Costco and a few gas pumps but does not feel we need more apartments. Does not want this area to be like Miami and Fort Lauderdale. Please vote no.
- 17) Michael Craig – Doubleton Drive, Willoughby; Commented that this project will bring thousands of shoppers from outside areas and would like City to do a comprehensive traffic study.
- 18) Heather Schneider – Martin Commons, Palm City; In favor of project.
- 19) Lisa Miller – Fork Road; Commented that she hates what is happening to our area, opposed to the project. Feels that they as County residents have no voice and should.
- 20) Patty Beonde – Hideaway Place; Commented on the traffic and wanted the Commissioners to go by when the students are all in school and asks them to vote no. Begs of them to keep Stuart the way it is.
- 21) Michelle Schincariol – Little Oak Terrace, Palm City; Commented that they moved to Stuart for its slow growth but is paratactical in realizing growth is going to happen but is opposed to the location proposed. This is the wrong location for this development.

- 22) Laura Giobbi – Ocean Blvd.; Commented not against growth but not in growth period, were in over-growth period. Not a Costco issue, it's more with massive development accompanying it.
- 23) Virginia Sherlock – Madison Ave.; Asks the Commission to carefully review the report they received for tonight regarding protection and preservation; wetlands and wildlife, plant life shall be protected.
- 24) Armond Pasquale – Seminole Street; Opposes project, commented that development has destroyed the River and with the development brings in more sewer. Sewer is destroying the river. Blamed the Commission for the growth and destroying the area.
- 25) Robert Snyder – Kanner Hwy.; Lives next to the proposed site; Opposed to the project and commented on being angry that the laws to protect the co
- 26) Jacquelin Blake – Bobalink Way, Palm City; Commented on concerns of the water quality and supply and the development that will strain the City's resources. Opposes the project.
- 27) Jennifer Snyder – Kanner Hwy.; Commented in her property and the effect the Costco will have on it. Against the location and feels it should be more accessible to the public and she has not seen the City do so much to accommodate another project in the City. Asks the City to listen to the residents and vote no.
- 28) Leslie Gould – Bamboo; Not present
- 29) John Haley – Coco Palm Drive; Palm City; In favor of the project, tax base, jobs beneficial.
- 30) Jack Snyder – Kanner Hwy.; Commented on mixed use developments and asked that commissioners at least approve something that is beneficial.
- 31) Lydia Snyder – Kanner Hwy.; Commented that her family owns Lychee Tree Nursery and feels the area is changing to fast, Stuart is the best town to raise a family and retire in and feels it is not about the dollar signs. Opposes the project.
- 32) Frank McCrystal – Commented on the Coronavirus vaccine spike ADE causing the virus to become more infectious and on rushed production of vaccines, provided statistics and suggests the Board remains neutral on the vaccination subject because the truth is surfacing quickly. There have been reported 11,400 deaths, 10,200 life threatening cases, and 11, 200 permanent injuries but the good news, according to Dr. Malone, is second generation products are being developed without the risks that were un-addressed in the rush to get the first vaccine out.
- 33) Harry Snyder – Kanner Hwy.; Apologized for allowing the property to be available. Please vote no.
- 34) Rachel Stewart – Riverview Ave.; Opposed to the Costco project, feels it is not the right location, feels it would bring in less quality of life and would like to see us move forward with the more walkable.
- 35) Joanne Swann – Nutcracker Way, Palm City; Opposed to project, currently there are 1,700 new building projects on the books for upcoming projects.
- 36) Jimmy Smith – Apachee Ave.; Stated thank you if they vote yes for all the communities that would benefit from a Costco, representing families that need help because they have to shop so far out of town to get food for their restaurants to employ people and feed their families.
- 37) Roger Sahni – S. Ocean Drive; Commented that livelihood is more important than traffic, in favor of project.

 **6:28 PM**

38) Robin Cartwright – Hibiscus Ave.; Commented on a video that was released of the Kanner Hwy. CPUD project, a scenario if Costco were to close in the next five years and feels intimidation has been used against her for caring for her community.

*Ms. Cartwright was escorted out of the meeting for overage of public comment time.

39) Renee Georg – St. Lucie Crescent; Has lived in the area for 30 years, opposed to the project.

40) Cloe Hoffman – Cabana Point Circle; Attended school locally and commented on how she learned about the environment, doesn't understand how these decisions can be made. Opposes the project.

 **6:36 PM**

ORDINANCE SECOND READING

7. KANNER HIGHWAY CPUD - COSTCO (QUASI-JUDICIAL):

ORDINANCE No. 2466-2021; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN, THEREBY ASSIGNING A FUTURE LAND USE DESIGNATION OF "NEIGHBORHOOD SPECIAL DISTRICT" TO THE 49+/- ACRE PROPERTY, OWNED BY NEHME HOLDINGS, LLC AND WILLOUGHBY GROUP, LLC LOCATED ALONG SR-76 KANNER HIGHWAY, SOUTH OF MARTIN COUNTY HIGH SCHOOL AND ABUTTING LYCHEE TREE NURSERY; SAID LAND, ANNEXED BY ORDINANCE No. 2327-2016 AND ORDINANCE No. 2337-2017, BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; AND CONCURRENTLY ASSIGNING "CPUD" ZONING TO SAID LAND ON THE CITY'S OFFICIAL ZONING MAP; ESTABLISHING THE KANNER CPUD COMMERCIAL PLANNED UNIT DEVELOPMENT, CONSISTING OF 162,020 SQUARE FEET OF RETAIL, BULK MERCHANDISE, AND AUTOMOBILE REPAIR SERVICES BUILDING FOOTPRINT WITH A STAND ALONE KIOSK AND FUEL FACILITY, 378 RESIDENTIAL APARTMENT UNITS AND RETAIL AND RESTAURANT PADS PROVIDING FOR APPROVAL OF A MASTER SITE PLAN; PROVIDING FOR DEVELOPMENT CONDITIONS, INCLUDING A TIMETABLE OF DEVELOPMENT; DECLARING THE PROJECT TO BE CONSISTENT WITH THE CITY'S COMPREHENSIVE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; REPEALING ALL ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE, PROVIDING FOR ACCEPTANCE BY THE APPLICANT AND FOR OTHER PURPOSES.

Thirteen (13) sworn in person, two (2) on Zoom; all 13 in the room testified that they are under oath and were instructed to state their name for the record when brought forward to speak.

 **6:40 PM** Robert (Bob) Raynes, Applicant Attorney from Gunster Law Firm called Point of Order; stated he was informed only today that the Intervenor has two witnesses appearing via Zoom. Objects to the two witnesses appearing by Zoom, as this meeting was requested to be continued from July 26th to accommodate Mr. Braun. Several witnesses on the applicant's side had to make special travel arrangements to ensure their attendance and are there. Feels the Zoom effectiveness is questionable and requested that the objection not be counted against his time to address this issue.

 **6:42 PM** Linda Kay-Richards, Intervenor #1 – Reported in response that one expert witness became ill and the other had travel issues, and if they cannot appear and testify via Zoom, she requests a continuance.

Raynes – Noted his objections on the record, feels they are between a rock and hard place, stating Zoom cross examination is not reliable.

Richards – Requests a ruling to be allowed to have Zoom or a continuance.

Brian DiVentura – Intervenor #2 - No objection to continuing with the meeting tonight.

 **6:54 PM MOTION: Allow the virtual comment from the two witnesses on behalf of the Intervenor #1 and we also reflect in the record that there was an objection made by the applicant.**

MOVED BY: Commissioner Meier

SECONDED BY: Commissioner McDonald

Motion approved unanimously.

Motion made by Commissioner McDonald for no continuance. Commissioner Meier suggested that perhaps we should not vote on such a motion at this time in case something were to come up in which the meeting needed to be continued.

 **6:56 PM MOTION: No continuance and we move forward.**

MOVED BY: Commissioner McDonald

SECONDED BY: Commissioner Matheson

MOTION DIED – NO VOTE.

Tom Reetz, Senior Planner, Development Department, sworn, presented the project with all the conditions for development and a copy of the letter from the DEO, including three options.

Raynes came forward to begin his questioning of City staff. Raynes questioned Reetz about who reviews and approves the applications.

 **7:08 PM** DiVentura cross examined staff/Reetz, asking about Policy A5.5.E.vii; referring to new development and wetlands.

Opening Statements:

 **7:19 PM** Raynes – sworn; Provided expert testimony and competent and substantial evidence is what this information is based on. The First Reading was given 12 conditions, and all were met. Emails were sent to supporters; spam is not the correct word. Provided overview.

 **7:22 PM** Richards – sworn; Feels this project does not meet the City's Comprehensive Plan and does not deserve approval. Described the land as predominately native habitats and feels the applicant has submitted an incomplete and flawed report.

 **7:26 PM** DiVentura – sworn; Reviewed wetland impacts, comprehensive plan, and land development code environmental impacts.

 **7:31 PM** Raynes – Presentation
For the record – stated objection of both Intervenor #1 and #2's status per Sec. 11.03.06 of the Land Development Code and Florida Statute 163.32152, proving they are not affected parties that exceeds the general interest in the community.

Raynes introduced witnesses:

 **7:35 PM** Stephen D. Garrett – Landscape Architect, Lucido & Assoc.; sworn. Resume submitted, Exhibit #1. Garrett presented on the conditional changes including pervious parking, the fence removed, shade trees, decorative round-about, sidewalks, the connector road, the Linear Park/Greenway. Identified that the City's comp plan states that the City shall allow a mix of residential and commercial use called a Neighborhood Special District. Included a series of graphic images of the site.

 **7:58 PM** Raynes questioned Garrett.

 **8:01 PM** DiVentura questioned Garrett about stormwater expansion.

 **8:03 PM** Richards questioned Garrett about whether his 30+ projects had any regard for species. He responded they were in compliance with Comp Plans.

 **8:04 PM** Raynes called Edward R. Weinberg, sworn.
Edward R. Weinberg – EW Consultants – Environmental; Resume submitted; Exhibit #2. Reported on his environmental assessment stating it was thorough and complete analysis was completed in 2018 and their firm has been accurate and has not understated any reports as stated by Mr. Braun. Exhibit #3 - EW Consultants Memorandum

 **8:13 PM** DiVentura – Questioned Weinberg.

 **8:16 PM** Raynes called Dr. Christopher Teaf, Ph.D., sworn.
Raynes submitted resumed for Dr. Christopher Teaf, Ph.D., Exhibit #4. Teaf commented on air quality, water supply, monitoring and the data collected.

 **8:25 PM** Raynes called David Baggett – sworn for the record, Resume submitted as Exhibit #5.

 **8:28 PM** DiVentura questioned Baggett. Asked about the wetland's development code.

 **8:31 PM** Raynes called Susan O'Rourke, sworn, Traffic Engineer. Resume, Exhibit #6; multiple reports prepared.

 **8:35 PM** Concluded Raynes presentation, notes that the applicant has complied with the 12 requested conditions. He has been doing this for 24 years in Martin County and has been hearing this, how Martin Downs, then Hutchinson Island, Roosevelt Bridge was going to ruin the small-town feel, but he believes this project will fall in line with those projects and fit in. Mr. Marino has been working on this for 3 years and has worked with you as Commissioners and staff to accommodate and worked with the neighbors. This is a great project for Stuart, to provide great paying jobs, a great connector road, housing, and respectfully request your approval of Ordinance No. 2466-2021.

Commissioner Matheson asked Baggett if he has tested the runoff lately. Not lately, based on runoff characteristics, calculations of land use coverage and

Commissioner Meier asked Garrett about the sidewalk improvements, it will be requested from DOT based on tonight's decision.

Commissioner McDonald requested from staff information received from Kimley-Horn on the Fire Assessment. Reetz responded.

Mayor Clarke requested Traffic Engineer, Susan O'Rourke come forward and provide the ingress and egress report. Discussion on crosswalk accessibility.

 **8:54 PM** Intervenor #1 Linda Kay Richards - Presentation
Introduction included history in Stuart, history of the property, and effect the Kanner Hwy. CPUD Project will have on her property, life, and the life of her family. Presented a power point on why the project should not be approved.

 **8:59 PM** Richards called first witness, Dr. Patricia Tice from Winter Garden, Florida, sworn via Zoom. Richards submitted Exhibit #1; Kanner Rd. Costco Comprehensive Plan Issues. Dr. Tice presented a power point via Zoom.

 **9:35 PM** Richards concluded Tice's presentation.

 **9:36 PM** Raynes questioned Dr. Tice. Raynes requested clarification on Tice's presentation defining Stuart as a rural area. Tice stated she had not been on site in person and was in Stuart in the past year or so. Raynes asked what the land use designation is. Tice stated she was not aware. Raynes asked if Tice is an expert economist, she stated all land use engineers have to be. Raynes asked if it is speculation that Costco would be out of business in 15 years or evidence to support that. She stated it is her professional opinion.

 **9:46 PM** Richards called Greg Braun – Zoom; Sworn on Zoom, Tuscaloosa, Alabama home office. Ecologist: noted that he has been an expert witness in multiple cases Richards communicated with Braun via Zoom demonstrating photos of various wildlife and plant species on the property of the Kanner Hwy. CPUD and stated that the project will harm and threaten the endangered species, violating the Comp Plan.

 **10:00 PM Recess**

 **10:23 PM Resume Meeting**

 **10:24 PM** Richards requested 10 minutes of Intervenor #2's time.

Raynes objected, a stipulation was agreed upon and signed.

Commission will move on as stipulated.

 **10:26 PM** Richards continued with presentation with Greg Braun, reviewing photos of existing habitat. Braun noted that the City's Comp Plan specifically identifies the protection of threatened and endangered vegetation species that are designated by the state of Florida shall be protected.

 **10:36 PM** Richards concluded presentation.

 **10:37 PM** Raynes questioned Braun about when he visited the site and for how long. Question and answer period between Raynes and Braun per the report notation about wading bird species and the various wading bird species.

 **10:45 PM** DiVentura questioned Braun on Wetland 7.

 **10:48 PM** Raynes questioned Braun about SFWMD permit 4300785S. Braun stated that just because it was issued by SFWMD does not necessarily mean that it is in compliance with that element of the Comp Plan.

 **10:51 PM** Richards reviewed her presentations and requested that this project not be approved.

 **10:52 PM** DiVentura – called Tim Voelker, sworn; and questioned him about the wellfield drawdowns and protection zones. Provided a paper copy to the Comp Plan, wells 29 and 27, feels staff may have missed this in the review of the project. F1.4 of the Comp Plan – DiVentura feels it is a lack of attention to detail.

 **10:59 PM** DiVentura commented he did not receive answers to the questions he asked. Commented that if people can't be specific, probably because people don't want to purger themselves.

 **11:05 PM** Commissioner Meier commented that it is unfortunate that the witnesses on Zoom are no longer available as now they cannot be questioned. Commissioner Meier asked staff about what constitutes “protection” in the Comp Plan.

 **11:12 PM** Commissioner Meier asked Mr. Braun questions about the coding, wetlands, and what is man-made vs. natural systems.

 **11:20 PM**

Public Comment:

- 1) Nick Gulotta- Environmentalist joke and commented on what the Comp plan is for. In 1996; Maintain and enhance Stuart’s quality of life, protect Stuart’s environmentally sensitive land, and reminded them of their contract with the citizens.
- 2) Helen McBride – Flamingo Ave – Commented that the Commission should listen to the majority and how people feel that they want Costco but just want it somewhere else. This is our City, listen to the people, the residents of the City. Asks them to vote yes.
- 3) Frank McCrystal – Flamingo Ave. – Commented that the game changed tonight; no-one is against Costco, it is just in the wrong place.

Closing Statements:

 **11:29 PM** DiVentura commented that he did not see any one capable of answering his questions. Feels that if we can’t take care of the little stuff the big stuff will go right by us. Feels there is a lack of attention to detail. Things have to be done by the Comp Plan and not the Land Development codes.

 **11:34 PM** Richards stated that she shared a compelling case that this project does not comply with the City of Stuarts comprehensive plan. Stated the applicant needed to show that they are following the Comprehensive Plan and did not, so it was up to the intervenor and residents to do so. Quoted the Comp Plan and what else could go on the land.

 **11:39 PM** Raynes stated that the Comp Plan has a lot of aspects of it and currently have only really heard of 1 aspect which is the Environmental part of it. Commented to the Commissioners that they are tasked with all parts of the Comp Plan and not just the one. Wetlands can be mitigated and that is in the Comp Plan. Look at the project wholistically.

 **11:44 PM**

Commission deliberation:

Commissioner Meier briefly discussed endangered or threatened species on site; wellfield protection, water quality/quantity, and see if maybe they can raise to a condition for approval.

Vice Mayor Matheson noted his concern for the wetlands, weighed the various good and bad options of the project, and thoughts on naming the connector street.

Commissioner McDonald commented that the endangered species protection wading birds may be transitory, and the plants could be transported to another location.

Mayor Clarke spoke on item #34, page 23, regarding native vegetation.

Commissioners continued discussion on what condition can be proposed to protect the threatened and endangered plants species and other way the land could be used.

Commissioner Meier commented that this may be our only shot at Martin County having a Costco.

Mayor Clarke commented on weighing the chances of getting Costco or not. Thinks that if we can take care of the endangered species and controlling that, will allow Stuart to move forward with the project. In considering what Dr. Tice brought up, the rural vs. urban land, began the discussion. Commissioners agreed that the area is not rural or suburban.

 **12:19 AM MOTION: Approve on Second Reading with condition that the any threatened endangered plant species must be protected and where possible, incorporate it into the landscaping.**

MOVED BY: Commissioner Meier

SECONDED BY: Commissioner McDonald

Motion approved unanimously.

ORDINANCE FIRST READING

DISCUSSION AND DELIBERATION

 **12:21 AM ADJOURNMENT**

Mary R. Kindel, City Clerk

Eula R. Clarke, Mayor

**Minutes to be approved at the Regular Commission
Meeting this 23rd day of August, 2021.**

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: David Dyess, City Manager

Title of Item:

AUTHORIZATION TO EXECUTE AMERICAN RESCUE PLAN ACT AGREEMENT (RC):

RESOLUTION No. 81-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE THE AMERICAN RESCUE PLAN ACT CORONAVIRUS LOCAL FISCAL RECOVERY FUND AGREEMENT BY AND BETWEEN THE CITY OF STUART, FLORIDA, AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT, FOR THE PURPOSE OF PROVIDING FUNDS TO LOCAL GOVERNMENTS IN ORDER TO FACILITATE THE ONGOING RECOVERY FROM THE COVID-19 PANDEMIC, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2, §9901) added section 603(a) to the Social Security Act ("ARPA"), which created the Coronavirus Local Fiscal Recovery Fund for the purpose of providing funds to local governments in order to facilitate the ongoing recovery from the COVID-19 pandemic. The approval of this Resolution and execution of these documents will make the City eligible for the funds.

Funding Source:

Recommended Action:

Move approval of Resolution 81-2021.

ATTACHMENTS:

Description	Upload Date	Type
☐ R81-2021 - Authorization to Execute American Rescue Plan Act Agmt.	8/12/2021	Resolution add to Y drive
☐ American Rescue Plan Act Agreement	8/12/2021	Attachment



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

RESOLUTION NUMBER 81-2021

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE THE AMERICAN RESCUE PLAN ACT CORONAVIRUS LOCAL FISCAL RECOVERY FUND AGREEMENT BY AND BETWEEN THE CITY OF STUART, FLORIDA, AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT, FOR THE PURPOSE OF PROVIDING FUNDS TO LOCAL GOVERNMENTS IN ORDER TO FACILITATE THE ONGOING RECOVERY FROM THE COVID-19 PANDEMIC, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City of Stuart, Florida, as well as the citizens of the City of Stuart, Florida have suffered and continue to suffer tremendously from the ramifications of the COVID-19 pandemic.

WHEREAS, Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2, §9901) added section 603(a) to the Social Security Act (“ARPA”), which created the Coronavirus Local Fiscal Recovery Fund for the purpose of providing funds to local governments in order to facilitate the ongoing recovery from the COVID-19 pandemic; and

WHEREAS, the State of Florida, Division of Emergency Management has received funds to disburse from the U.S. Department of Treasury that have been earmarked for non-entitlement units of local government, which includes the City of Stuart, Florida.

WHEREAS, the City of Stuart’s allocation is based upon the list of non-entitlement units published by the U.S. Department of Treasury and based upon the State of Florida’s calculation of the City’s proportional share of the total population of all non-entitlement units in the State. The City of Stuart’s total Fiscal Recovery Fund allocation is \$8,132,361.00.

WHEREAS, the Fiscal Recovery Funds are to be utilized by December 31, 2024 and are only designated to cover the following expenses: (i) Public Health and Economic Impacts; (ii) Premium Pay for Essential Workers; (iii) Revenue Loss; and (iv) Investments in Infrastructure.

WHEREAS, the City Commission hereby authorizes the City Manager to enter into and execute the American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement by and between the City of Stuart, Florida and the State of Florida, Division of Emergency Management.

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

SECTION 1: The City Commission authorizes the City Manager to enter into and execute the American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement by and between the City of Stuart, Florida and the State of Florida, Division of Emergency Management.

SECTION 2: Conflicts. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 3: Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption.

The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

follows:

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

YES	NO	ABSENT	ABSTAIN

Resolution No.: 81-2021
Auth. to Execute American Rescue Plan Agmt.

ADOPTED this 23rd day of August, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

**AMERICAN RESCUE PLAN ACT
CORONAVIRUS LOCAL FISCAL RECOVERY FUND AGREEMENT**

This Agreement is entered into by and between the State of Florida, Division of Emergency Management (the "Division") and Stuart, City of (the "Non-Entitlement Unit" or "Recipient").

RECITALS

- A. Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2, §9901) added section 603(a) to the Social Security Act ("ARPA"), which created the Coronavirus Local Fiscal Recovery Fund for the purpose of providing funds to local governments in order to facilitate the ongoing recovery from the COVID-19 pandemic ("Fiscal Recovery Funds"); and
- B. Following the enactment of ARPA, the U.S. Department of the Treasury ("Treasury" or "Secretary") released formal and informal guidance regarding implementation of ARPA, including the disbursement and expenditure of Fiscal Recovery Funds, including Treasury Interim Final Rule, 31 CFR pt. 35, 2021, attending rule guidance published in the Federal Register, Volume 86, No 93,¹ and informal guidance made publicly available by Treasury, which may be amended, superseded, or replaced during the term of this Agreement ("Treasury Guidance"); and
- C. ARPA allocated **\$7,105,927,713.00** for making payments to metropolitan cities, non-entitlement units of local government, and counties in Florida, 21% of which is to be paid directly to metropolitan cities in Florida, 59% of which was paid directly to counties in Florida, and 20% of which is to be paid to the State of Florida for distribution to non-entitlement units of local government; and
- D. The Secretary disbursed **\$5,689,502,590.00** of these funds directly to metropolitan cities and counties; and
- E. A remaining balance of **\$1,416,425,123.00** was reserved for the State of Florida to disburse to non-entitlement units of local government; and
- F. The Division has received these funds from the Secretary through the State of Florida in accordance with the provisions of ARPA; and
- G. Pursuant to the provisions of ARPA, the Division is the state entity responsible for disbursing the funds to the Recipient under this Agreement; and
- H. The Recipient is fully qualified and eligible to receive this funding in accordance with ARPA for the purposes identified therein.

Therefore, in consideration of the mutual promises, terms and conditions contained herein, the Division and the Recipient agree as follows:

- (1) **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by reference.
- (2) **TERM.** This Agreement shall be effective **upon execution** and shall end on **December 31, 2024**, unless terminated earlier in accordance with the provisions of this Agreement. Upon expiration or termination of this Agreement for any reason, the obligations which by their nature are intended to survive expiration or termination of this Agreement will survive.
- (3) **FUNDING.** The State of Florida, through the Division, will make a disbursement of each non-entitlement unit of local government's allocation based on the list of non-entitlement units published by Treasury and based upon the State's calculation of the Recipient's proportional share of the total population of all non-entitlement units in the State. The total Fiscal Recovery Funds allocation for Recipient under this Agreement is **\$8,132,361.00**.
- (4) **USE OF FISCAL RECOVERY FUNDS**
 - a. The State, through the Division, will—within 30 days of receiving payment from the Secretary, or within such other time period as may be permitted by the Secretary—make an initial disbursement to the non-entitlement

¹ <https://www.regulations.gov/document/TREAS-DO-2021-0008-0002> | Federal Register, Vol. 86, No. 93, Pg. 26786 ("Federal Register")

unit of local government of 50% of the total amount allocated to the non-entitlement unit.² Not earlier than 12 months from the date upon which the State makes the initial disbursement, the Secretary is expected to release the Second Tranche amount to the State. The State will—within 30 days of receiving payment from the Secretary, or within such other time period as may be permitted by the Secretary—make a second disbursement to the non-entitlement unit of local government.

- b. Recipients may use payments for any expenses eligible under ARPA Coronavirus State and Local Fiscal Recovery Funds. Payments are not required to be used as the source of funding of last resort.
- c. ARPA requires that Fiscal Recovery Funds may only be used to cover expenses incurred by the non-entitlement unit of local government by December 31, 2024³, such as:
 - i. to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 - ii. to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the non-entitlement unit of local government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
 - iii. for the provision of government services to the extent of the reduction in revenue of such non-entitlement unit of local government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the non-entitlement unit of local government; or
 - iv. to make necessary investments in water, sewer, or broadband infrastructure.
- d. As specified in the Treasury Guidance, Eligible Use of Fiscal Recovery Funds falls under four categories, including (1) Public Health and Economic Impacts, (2) Premium Pay for Essential Workers, (3) Revenue Loss, and (4) Investments in Infrastructure.
 - i. Public Health and Economic Impacts: Examples of eligible uses of Fiscal Recovery Funds under this category include, but are not limited to:
 - 1. COVID-19 Mitigation and Prevention expenses, such as vaccination programs, medical care, testing, personal protective equipment (PPE), and ventilation improvements;⁴
 - 2. Medical expenses, including both current expenses and future medical services for individuals experiencing prolonged symptoms and health complications from COVID-19;⁵
 - 3. Payroll expenses for public safety, public health, health care, human services, and other similar employees, to the extent that their services are devoted to mitigating or responding to COVID-19;⁶
 - 4. Efforts to remedy the economic impact of the COVID-19 public health emergency on households, individuals, businesses, and state, local, and tribal governments;⁷ and
 - 5. Efforts to remedy pre-existing economic disparities which were exacerbated by the COVID-19 public health emergency.⁸
 - ii. Premium Pay: Fiscal Recovery Funds may also be used to provide premium pay to essential workers, per Treasury Guidance's definition of "essential work."⁹ Examples of essential workers include, but are not limited to:
 - 1. Staff at nursing homes, hospitals, and home care settings;
 - 2. Workers at farms, food production facilities, grocery stores, and restaurants;
 - 3. Janitors, truck drivers, transit staff, and warehouse workers
 - 4. Public health and safety staff;
 - 5. Childcare workers, educators, and other school staff; and

² "First Tranche Amount," American Rescue Plan Act of 2021, H.R. s. 601(b)(7) "Timing"

³ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

⁴ See Federal Register, pg. 26790.

⁵ *Id.*

⁶ *Id.* at 26791

⁷ *Id.* at 26791-26797

⁸ *Id.*

⁹ *Id.* at 26797

- 6. Social service and human services staff.¹⁰
- iii. Revenue Loss: Recipients may use Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19 Public Health Emergency.¹¹
- iv. Investments in Infrastructure: Treasury Guidance specifies that Fiscal Recovery Funds may be used to improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband services.¹²
- e. Additional guidance regarding eligible uses of Fiscal Recovery Funds, as well as impermissible uses (including for pensions or to offset revenue losses from tax reductions) is set forth in Treasury Guidance.

(5) LAWS, RULES, REGULATIONS, AND POLICIES

- a. Performance under this Agreement is subject to the applicable provisions of 2 CFR Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" including the cost principles and restrictions on general provisions for selected items of cost.
 - i. The following 2 CFR policy requirements apply to this assistance listing¹³:
 - Subpart B, General provisions;
 - Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards;
 - Subpart D, Post Federal; Award Requirements;
 - Subpart E, Cost Principles; and
 - Subpart F, Audit Requirements.
 - ii. The following 2 CFR policy requirements also apply to this assistance listing: 2 C.F.R. Part 25, Universal Identifier and System for Award Management; 2 C.F.R. Part 170, Reporting Subaward and Executive Compensation Information; and 2 C.F.R. Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement). The following 2 CFR Policy requirements are excluded from coverage under this assistance listing: For 2 C.F.R. Part 200, Subpart C; 2 C.F.R. § 200.204 (Notices of Funding Opportunities); 2 C.F.R. § 200.205 (Federal awarding agency review of merit of proposal); 2 C.F.R. § 200.210 (Pre-award costs); and 2 C.F.R. § 200.213 (Reporting a determination that a non-Federal entity is not qualified for a Federal award). For 2 C.F.R. Part 200, Subpart D, the following provisions do not apply to the SLFRF program: 2 C.F.R. § 200.308 (revision of budget or program plan); 2 C.F.R. § 200.309 (modifications to period of performance); C.F.R. § 200.305 (b)(8) and (9) (Federal Payment).
- b. In addition to the foregoing, the Recipient and the Division will be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment C. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(6) NOTICES

- a. All notices under this Agreement shall be made in writing to the individuals designated in this paragraph. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the new name, title and contact information of the new representative will be promptly provided to the other party, and no modification to this Agreement is required.
- b. In accordance with section 215.971(2), Florida Statutes, the Division's Program Manager will be responsible for enforcing performance of this Agreement's terms and conditions and will serve as the Division's liaison

¹⁰ *Id.*

¹¹ *Id.* at 26799

¹² *Id.* at 26802

¹³ As defined in 2 C.F.R. § 200.1

with the Recipient. As part of his/her duties, the Program Manager for the Division will monitor and document Recipient performance.

- c. The Division's Program Manager for this Agreement is:

Erin White
Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Telephone: 850-815-4458
Email: Erin.White@em.myflorida.com

- d. The name and address of the representative responsible for the administration of this Agreement is:

Melissa Shirah
Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Telephone: 850-815-4455
Email: Melissa.Shirah@em.myflorida.com

- e. The contact information of the representative of the Recipient is:

Authorized Representative:

Title:

Address:

Telephone:

Email:

(7) PAYMENT

- a. In order to obtain funding under this Agreement, the Recipient must file with the Division Program Manager information and documentation, including but not limited to the following:
- Local government name, Entity's Taxpayer Identification Number, DUNS number, and address;
 - Authorized representative name, title, and email;
 - Contact person name, title, phone, and email;
 - Financial institution information (e.g., routing and account number, financial institution name and contact information);
 - Total NEU budget (defined as the annual total operating budget, including general fund and other funds, in effect as of January 27, 2020) or top-line expenditure total (in exceptional cases in which the NEU does not adopt a formal budget);
 - Signed Assurances of Compliance with Title VI of the Civil Rights Act of 1964. (Attachment D); and
 - Signed Award Terms and Conditions Agreement (Attachment E).
- b. Payment requests must include a certification, signed by an official who is authorized to legally bind the Recipient, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

(8) RECORDS

- a. As a condition of receiving state or federal financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.
- b. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.
- c. Florida's Government in the Sunshine Law (section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken and promptly recorded.
- d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by Florida Statute, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection.

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(9) AUDITS

- a. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient must follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 CFR §200.49, "GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).
- b. When conducting an audit of the Recipient's performance under this Agreement, the Division must use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 CFR §200.50, "GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.
- c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of and strict compliance with this Agreement and with Section 603(c) of the Social Security Act, the Recipient will be held liable for reimbursement to the Secretary of all funds used in violation of these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.
- d. The Recipient must have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor must state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine months from the end of the Recipient's fiscal year.
- e. The Recipient must send copies of reporting packages required under this paragraph directly to each of the following:
 - i.

The Division of Emergency Management
DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

ii.

The Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

- f. Fund payments are considered to be federal financial assistance subject to the Single Audit Act and the related provisions of the Uniform Guidance.

(10) REPORTS

- a. The Recipient must provide the Secretary with periodic reports providing a detailed accounting of the uses of such funds by such non-entitlement unit of local government including such other information as the Secretary may require for administration of the Coronavirus Local Fiscal Recovery Fund. Concurrently, Recipients must provide to the Division a copy of the report given to the Secretary.
- b. Failure by Recipient to submit all required reports and copies may result in the Division's withholding of further payments until all such documents are submitted to the Division and deemed to be satisfactory.
- c. The Recipient must provide additional program updates or information if requested by the Division.

(11) LIABILITY.

Any Recipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein will be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement.

(12) TERMINATION

- a. The Division may terminate this Agreement immediately for cause upon written notice to Recipient. Cause includes, but is not limited to, misuse of funds, fraud, non-compliance with ARPA, Treasury Guidance, or other applicable rules, laws and regulations, or failure by the Recipient to afford timely public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes.
- b. The Division may terminate this Agreement for convenience upon thirty (30) days' prior written notice to Recipient.
- c. In the event this Agreement is terminated, the Recipient must not incur new obligations for the terminated portion of this Agreement after it has received the notification of termination. The Recipient must cancel as many outstanding obligations as possible. Obligations incurred after receipt of the termination notice will be disallowed. The Recipient will not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, if and to the extent permitted by ARPA and Treasury Guidance, withhold payments to the Recipient for the purpose of set-off until the exact amount due the Division from the Recipient is determined and resolved.

(13) MISCELLANEOUS

- a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions

- or any material changes will, at the option of the Division and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.
- b. This Agreement must be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement will be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision is null and void to the extent of the conflict, and is severable, but does not invalidate any other provision of this Agreement.
 - c. Any power of approval or disapproval granted to the Division under the terms of this Agreement will survive the term of this Agreement.
 - d. This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.
 - e. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.
 - f. The Recipient must comply with any Statement of Assurances incorporated as Attachment D.
 - g. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.
 - h. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.
 - i. All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
 - j. Any bills for travel expenses must be submitted in accordance with section 112.061, Florida Statutes.
 - k. This Agreement, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this Agreement.
 - l. This Agreement may not be modified except by formal written amendment executed by both of the parties.
 - m. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 603 of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fiscal Recovery Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA will be grounds for unilateral cancellation of this Agreement by the Division.
 - n. The Recipient is subject to Florida's Government in the Sunshine Law (section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings must be publicly noticed, open to the public, and the minutes of all the meetings will be public records, available to the public in accordance with Chapter 119, Florida Statutes.
 - o. All expenditures of state or federal financial assistance must be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.
 - p. In accordance with section 215.971(1)(d), Florida Statutes, the Recipient may expend funds authorized by this Agreement only for allowable costs resulting from obligations incurred during the specific agreement period.

- q. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the Secretary.
- r. If the purchase of the asset was consistent with the limitations on the eligible use of Fiscal Recovery Funds provided by ARPA and Treasury Guidance, the Recipient may retain the asset. If such assets are disposed of prior to December 31, 2024, the proceeds would be subject to the restrictions on the eligible use of Fiscal Recovery Funds provided by ARPA.

(14) LOBBYING PROHIBITION

- a. 2 CFR §200.450 prohibits reimbursement for costs associated with certain lobbying activities.
- b. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”
- c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.
- d. The Recipient certifies the following:
 - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
 - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Recipient must complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities.”
 - iii. The Recipient must require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Recipients shall certify and disclose.
 - iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(15) REQUIRED CONTRACTUAL PROVISIONS

a. EQUAL OPPORTUNITY EMPLOYMENT

- i. In accordance with 41 CFR §60-1.4(b), the Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- 1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph 1(a)(ii) of this section and the provisions of subparagraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. COPELAND ANTI-KICKBACK ACT

- i. The Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

“Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this contract.”

- ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause in subsection b(i) above and such other clauses as the Secretary may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR § 5.12.

c. **CONTRACT WORK HOURS AND SAFETY STANDARDS**

If the Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

d. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**

If the Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

“Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).”

e. **SUSPENSION AND DEBARMENT**

If the Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

- i. This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the contractor is required to verify that neither the contractor, its principals (defined at 2 CFR § 180.995), nor its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
- ii. The contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction into which it enters.
- iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

f. BYRD ANTI-LOBBYING AMENDMENT

If the Recipient enters into a contract using funds authorized by this Agreement, then any such contract must include the following clause:

"Byrd Anti-Lobbying Amendment, 31 USC § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient."

(16) ATTACHMENTS. The parties agree to, and incorporate as though set forth fully herein, the following exhibits and attachments:

Exhibit 1	Funding Sources
Attachment A	ARPA Coronavirus Local Fiscal Recovery Fund Eligibility Certification
Attachment B	Certification Regarding Lobbying
Attachment C	Program Statutes and Regulations
Attachment D	Statement of Assurances
Attachment E	Award Terms and Conditions

(17) LEGAL AUTHORIZATION. The Recipient certifies that its governing body has authorized the Recipient's execution of this Agreement and that the undersigned person has the authority to legally execute and bind the Recipient to the terms of this Agreement.

RECIPIENT

Stuart, City of

By:

Name and title:

Date:

FEIN : 596000433

DUNS : 033988689

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Kevin Guthrie, Director

Date: _____

Exhibit 1

Funding Sources

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT, SUBJECT TO SECTION 215.97, FLORIDA STATUTES, CONSIST OF THE FOLLOWING:

State Project -

State awarding agency: Florida Division of Emergency Management

Catalog of State Financial Assistance title: Coronavirus State and Local Fiscal Recovery Funds (CSFRF)

Catalog of Federal Domestic Assistance number: 21.027

Amount of State Funding: \$8,132,361.00

Attachment A

ARPA Coronavirus Local Fiscal Recovery Fund Eligibility Certification

I, _____, am the Authorized Agent of Stuart, City of ("Recipient") and I certify that:

1. I have the authority on behalf of the Recipient to request fund payments from the State of Florida ("State") for federal funds appropriated pursuant to section 603 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2, Title VI (March 11, 2021).
2. I have submitted to the State the Recipient's Total Budget in effect as of January 27, 2020, as defined by the United States Department of the Treasury, the annual operating budget including general fund and other funds.
3. I understand that the State will rely on this certification as a material representation in making grant payments to the Recipient.
4. I acknowledge that the Recipient should keep records sufficient to demonstrate that the expenditure of funds it has received is in accordance with section 603(a) of the Social Security Act.
5. I acknowledge that all records and expenditures are subject to audit by the United States Department of Treasury's Inspector General, the Florida Division of Emergency Management, and the Florida State Auditor General, or designee.
6. I acknowledge that the Recipient has an affirmative obligation to identify and report any duplication of benefits. I understand that the State has an obligation and the authority to de-obligate or offset any duplicated benefits.
7. I acknowledge and agree that the Recipient shall be liable for any costs disallowed pursuant to financial or compliance audits of funds received.
8. I acknowledge that if the Recipient has not obligated the funds it has received to cover costs that were incurred by December 31, 2024, as required by the statute, those funds must be returned to the United States Department of the Treasury.
9. I acknowledge that the Recipient's proposed uses of the funds provided as grant payments from the State by federal appropriation under section 603 of the Social Security Act will be used only to cover those costs that:
 - a. to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 - b. to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the metropolitan city, non-entitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
 - c. for the provision of government services to the extent of the reduction in revenue of such metropolitan city, non-entitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, non-entitlement unit of local government, or county prior to the emergency; or
 - d. to make necessary investments in water, sewer, or broadband infrastructure.

In addition to each of the statements above, I acknowledge on submission of this certification that my jurisdiction has incurred eligible expenses during the period that begins on March 3, 2021 and ends on December 31, 2024.

By:

Signature:

Title:

Date:

Attachment B
Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned Recipient, _____, certifies, to the best of his or her knowledge that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Sec. 1352 (as amended by the Lobbying Disclosure Act of 119). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Recipient, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Recipient understands and agrees that the provisions of 31 U.S.C. Sec. 3801 *et seq.* apply to his certification and disclosure, if any.

By:

Signature:

Title: _

Date: _

Attachment C

Program Statutes and Regulations

42 U.S.C. 801 Social Security Act	Coronavirus State and Local Fiscal Recovery Funds
Title 31, Part 35, Code of Federal Regulations	Treasury Interim Final Rule
Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the “Recipient”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient’s program(s) and activity(ies), so long as any portion of the Recipient’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient’s programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

Stuart, City of

Date

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address:

Stuart, City of

Address:

DUNS Number: 033988689

Taxpayer Identification Number: 596000433

Assistance Listing Number: 21.027

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient: Stuart, City of

Authorized Representative:

Title:

Date signed:

U.S. Department of the Treasury:

Authorized Representative: Title:

Date:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and

Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are

determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

- b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR

19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: Ben Hogarth / jchrulski

Title of Item:

LEGISLATIVE PRIORITIES FOR THE 2022 LEGISLATIVE SESSION (RC):

RESOLUTION No. 76-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE ADOPTION OF LEGISLATIVE PRIORITIES FOR THE 2022 LEGISLATIVE SESSION.

Summary Explanation/Background Information on Agenda Request:

Each year the Florida Legislature meets in session for 60 days to hear and pass legislative measures including the statewide budget. The City's purpose in identifying legislative priorities every year is to communicate to the Martin County legislative delegation how they may best advocate for the interests of the people of Stuart. This year, staff recommends an appropriation consideration in the amount of \$500,000 towards the developing Alternative Water Supply Project (Phase IV). Policy priorities identified this year include:

1. Water Quality & Water Supply
2. Statewide Accountability of Multistory Infrastructure
3. Railway Safety & Investment in Statewide Infrastructure
4. Environmental Sustainability & Resiliency
5. Statewide Regulation of PFAS in Potable Water

Funding Source:

N/A

Recommended Action:

Move approval of Resolution 76-2021.

ATTACHMENTS:

Description	Upload Date	Type
☐ R76-2021: Adopting Legislative Priorities for the 2022 Legislative Session	8/18/2021	Cover Memo
☐ R76-2021: Summary of Legislative Priorities for the 2022 Legislative Session revised	8/18/2021	Cover Memo



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

RESOLUTION NUMBER 76-2021

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF
STUART, FLORIDA, AUTHORIZING THE ADOPTION OF
LEGISLATIVE PRIORITIES FOR THE 2022 LEGISLATIVE
SESSION.**

* * * * *

WHEREAS, the City of Stuart City Commission is committed to legislative advocacy in the Capital on issues that directly and indirectly impact residents, while providing meaningful input to elected representatives on issues of concern throughout the legislative process; and

WHEREAS, City Commissioners have further represented the interests of the City by serving on select legislative policy committees for the Florida League of Cities; and

WHEREAS, the City has identified as its highest legislative priority for 2022, a funding request of more than \$500,000.00 from the State for Phase IV construction of its Alternative Water Supply Project designed to provide the best modern water treatment technology for city utility customers with capacity expansion variability for the foreseeable future; and

WHEREAS, the City has also identified key legislative priorities and other critical policy issues concerning water quality & supply, reforms to multistory multifamily infrastructure

Resolution No. 76-2021
Adopting legislative priorities for the 2022 Legislative Session

regulations, investments in railway safety and other critical infrastructure, environmental sustainability, and the establishment of a statewide regulation of perfluoroalkyl substances (PFAS).

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY
OF STUART, FLORIDA, THAT:

SECTION 1: The foregoing precatory language is adopted as if set forth below.

SECTION 2: The City of Stuart, Florida and City Commission hereby approve and adopt Legislative Priorities for the 2022 Legislative Session.

SECTION 3: This Resolution shall become effective upon its adoption.

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

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

YES	NO	ABSENT	ABSTAIN

ADOPTED this ____ day of _____, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY



2022 LEGISLATIVE PRIORITIES

THE FOLLOWING LEGISLATIVE MATTERS HAVE BEEN IDENTIFIED BY THE CITY OF STUART CITY COMMISSION AS THE MOST URGENT LEGISLATIVE PRIORITIES FOR THE CITY IN THE YEAR 2022.

WE THANK THE MARTIN COUNTY DELEGATION FOR THEIR CONSIDERATION.

APPROPRIATION REQUEST:

ALTERNATIVE WATER SUPPLY PROJECT – PHASE IV - \$500,000

Background: The City of Stuart owned, and operated water treatment plant (WTP) is currently undergoing major infrastructural enhancement and retrofit to invest in its residents and utility customers water supply outlook for the next few decades. The traditional lime-softening system containing a permitted treatment capacity of 6 million gallons per day (mgd) will be improved by providing all new water treatment facilities and a new water supply alternative within the lower Floridan aquifer. The City currently treats raw water from the surficial aquifer system (SAS), which is threatened with pollution from various sources including local runoff, saltwater intrusion, and manmade synthetic and organic chemicals and compounds from historical industries. Much of this pollution is out of the scope of control of the City and would be impractical to mitigate directly. Due to these increasing threats to the existing water supply and potential for more stringent future drinking water regulations, the City needs to diversify its supply options by investing in the Floridan Aquifer System (FAS) as an alternate water supply (AWS).

The City's Public Works Department, in collaboration with its consultants, has created a plan for an AWS which includes a hybrid of Reverse Osmosis, Ion-Exchange, and utilization of the Floridan Aquifer. Phase IV of the project includes the construction of the reverse osmosis concentrate (ROC) pipeline. The reverse osmosis (RO) concentrate is a by-product of the RO process. The concentrate is essentially a solution containing the concentrated dissolved solids from the source water, which have been separated from the drinking water produced by the RO process. The ROC pipeline will connect the new RO Facility to Deep Injection Well 2, which is located at the City's Water Reclamation Facility.

The City of Stuart REQUESTS state assistance in the form of a \$500,000, non-recurring appropriations for Phase IV of its Alternative Water Supply Project.

POLICY PRIORITIES:

1. WATER QUALITY & WATER SUPPLY

Background: In order to curb the harmful impacts of freshwater discharges, state resources and funding is desperately needed for capital projects designed to retain and treat billions of gallons of freshwater, from wherever it may originate. These resources are also needed on an annual basis in order to incentivize septic users to convert to municipal sewer systems, mitigating any further local pollution impacts to the waterways. Additionally, as new science and discoveries open the way for more restrictive pollution standards, utilities like the City of Stuart will look to alternative water sources like the lower Floridan Aquifer. Funding for a new generation of water supply projects and programs will be required in order to manage these increasingly complex issues.

The City of Stuart SUPPORTS enhanced levels of State funding for water quality and supply related projects and programs, including appropriations for septic to sewer conversions and alternative water supply.

2. STATEWIDE ACCOUNTABILITY OF MULTISTORY INFRASTRUCTURE

Background: The City of Stuart supports the legislature providing a new regulatory framework for evaluating and maintaining multistory, and particularly, multifamily structures to prevent another Surfside tragedy from ever occurring again. Suggested reforms include governmental review of inspections and more regularity to inspections; establishing cash reserve requirements for HOA's, condominium associations, and other property management groups to guarantee the preservation of infrastructure and to reduce inequitable access to ownership caused by artificially elevated credit requirements; and further investment in policies and projects that will rejuvenate existing blighted areas in communities across the state.

The City SUPPORTS legislative reforms to the regulatory framework for evaluating and maintaining multistory, multifamily structures following the Surfside building collapse tragedy in 2021, which should include more accountability and regularity of inspections, higher reserve requirements for homeowner and property management organizations, and further investment in the reduction of blighted areas statewide.

3. RAILWAY SAFETY & INVESTMENT IN STATEWIDE INFRASTRUCTURE

Background: With the introduction of new high-speed passenger trains and rail lines, local governments are requesting new safety considerations at existing railway crossings. Currently local taxpayers are obligated to fund both the maintenance and capital costs associated with these critically important safety improvements, which are necessary to mitigate impacts from commercial enterprise. One such critical piece of infrastructure in Stuart is the railway bridge over the St. Lucie River, which is well past its expected lifetime

service. The City cannot and should not be expected to afford more than \$100 million to replace this structure for private interests when state investment and new federal funding in nationwide infrastructure can turn back the clock on major public works statewide.

The City of Stuart SUPPORTS legislation investing state & federal dollars towards improvements to railways and other critical infrastructure statewide.

4. ENVIRONMENTAL SUSTAINABILITY & RESILIENCY

Background: Natural resources are a precious commodity and are not in infinite supply. Efforts within the State should be made to invest in renewable sources of energy while addressing existing pollution sources. In addition, future land and growth management must prioritize considerations for long-term environmental impacts caused by human population growth and urban sprawl. Commercial industries will need both incentives for switching to sustainable alternatives coupled with the imposition of economic deterrents to disincentivize ongoing, environmentally devastating practices. Similarly, commercial businesses and other industries must switch to alternative materials for packaging products that are more environmentally friendly than plastic and polystyrene. Traditional plastics do not biodegrade at the molecular level and are therefore, enduring pollutants that cannot be easily removed once they fragment into smaller particles.

The City of Stuart SUPPORTS establishing measurable statewide objectives towards reducing the overall carbon footprint of industrial, agricultural, and consumer operations within the State as a means of addressing the growing threat of global climate change. The City of Stuart also SUPPORTS policies that will reduce or eliminate single-use plastics and polystyrene materials as a means of curbing the overall contribution of pollution into the environment.

5. FUNDING FOR REMEDIATION OF PFAS CONTAMINATION

Background: Polyfluoroalkyl Substances (PFAS) were historically utilized in the manufacturing of many household products and modern firefighting technology including clothing, carpet cleaners, stain resistant chemicals, firefighting foam, and even in the production of Teflon. These organic compounds have been linked to chronic illnesses (including cancer) over a lifetime of exposure.

The City of Stuart SUPPORTS legislation that will provide funding for research, education, infrastructure, and recurring mitigation expenses towards PFAS contamination remediation.

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: David Dyess, City Manager

Title of Item:

AUTHORIZATION TO SELL 55 N.W. DIXIE HIGHWAY(RC):

RESOLUTION No. 80-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A VACANT LAND CONTRACT AND/OR ANY ADDENDUMS BETWEEN THE CITY OF STUART, FLORIDA AND MIDDLE ISLAND MANAGEMENT AND/OR ASSIGNS, FOR THE SALE OF THE CITY OWNED PROPERTY LOCATED AT 55 N.W. DIXIE HIGHWAY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The City has received an offer from Middle Island Management, and/or assigns to purchase the property known as 55 N.W. Dixie Highway.

Funding Source:

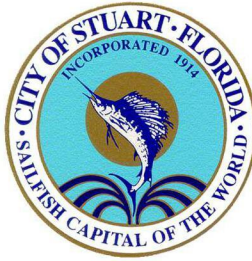
N/A

Recommended Action:

Move approval of Resolution 80-2021.

ATTACHMENTS:

Description	Upload Date	Type
□ R80-2021 Authorization to Sell 55 N.W. Dixie Highway	8/10/2021	Resolution add to Y drive
□ Vacant Land Contract	8/10/2021	Attachment



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

RESOLUTION NUMBER 80-2021

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZATING THE CITY MANAGER TO ENTER INTO AND EXECUTE A VACANT LAND CONTRACT AND/OR ANY ADDENDUMS BETWEEN THE CITY OF STUART, FLORIDA, AND MIDDLE ISLAND MANAGEMENT AND/OR ASSIGNS, FOR THE SALE OF THE CITY OWNED PROPERTY LOCATED AT 55 N.W. DIXIE HIGHWAY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City of Stuart, Florida held a Special Referendum Election on November 7, 2017, whereby the citizens of the City of Stuart approved the sale of a 2.638 acre parcel of property located at 55 N.W. Dixie Highway, known as the North Point parcel for at least it's appraised value.

WHEREAS, the City has received an offer to purchase the property from Middle Island Management, and/or assigns. Attached hereto is a copy of the Purchaser's executed Contract.

WHEREAS, the City Commission hereby authorizes the City Manager to enter into and execute the Vacant Land Contract and/or any addendums for the sale of 55 N.W. Dixie Highway.

WHEREAS, additionally, the City Commission hereby authorizes the City Manager to cancel the Vacant Land Contract and/or any addendums based upon an unacceptable appraisal without further City Commission action.

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

SECTION 1: The City Commission authorizes the City Manager to enter into and execute a Vacant Land Contract and/or any addendums between the City of Stuart and Middle Island Management and/or Assigns for the sale of 55 N.W. Dixie Highway.

SECTION 2: The City Commission authorizes the City Manager to cancel the Vacant Land Contract and/or any addendums based upon an appraisal that the City Manager deems unacceptable without further City Commission action.

SECTION 3: Conflicts. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 4: Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____

and upon being put to a roll call vote, the vote was as follows:

follows:

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

YES	NO	ABSENT	ABSTAIN

ADOPTED this 23rd day of August, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

Vacant Land Contract

1. **Sale and Purchase:** City of Stuart ("Seller")
and Middle Island Management and/or assigns ("Buyer")

(the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property") described as:

Address: 55 NW DIXIE HWY STUART FL

Legal Description: RIVERSIDE PARK, LOT B IN SEC 32-37-41 & THAT PORTION OF GOVT LOTS 2 & 3 IN SEC 05-38-41 LYING BETWEEN NW DIXIE HWY (FORMERLY US HWY 1) & FEC RAILWAY MORE PARTICULARLY DESC AS SDG PARCEL IN OR 2479/2796 AND BEING 2.5 AC M/L

SEC /TWP / /RNG of County, Florida. Real Property ID No.: 05-38-41-000-000-00030-7
including all improvements existing on the Property and the following additional property: NONE

2. **Purchase Price:** (U.S. currency) \$ See Add Terms

All deposits will be made payable to "Escrow Agent" named below and held in escrow by:

Escrow Agent's Name: Southcoast, Inc.

Escrow Agent's Contact Person: Jennifer Trent

Escrow Agent's Address: 100 SW Albany Ave. Stuart, FL 34994

Escrow Agent's Phone: 772-286-6292

Escrow Agent's Email: jtrent@naisouthcoast.com

(a) Initial deposit (\$25,000.00 if left blank) (Check if applicable) accompanies offer

will be delivered to Escrow Agent within _____ days (3 days if left blank)

after Effective Date \$ _____

(b) Additional deposit will be delivered to Escrow Agent (Check if applicable)

within _____ days (10 days if left blank) after Effective Date

within _____ days (3 days if left blank) after expiration of Feasibility Study Period \$ _____

(c) Total Financing (see Paragraph 6) (express as a dollar amount or percentage) \$ _____

(d) Other: \$ _____

(e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)

to be paid at closing by wire transfer or other Collected funds \$ _____

(f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): _____

prorating areas of less than a full unit. The purchase price will be \$ _____ per unit based on a calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in accordance with Paragraph 8(c). The following rights of way and other areas will be excluded from the calculation: _____

3. **Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy delivered to all parties on or before _____, this offer will be withdrawn and Buyer's deposit, if any, will be returned. The time for acceptance of any counter-offer will be 3 days after the date the counter-offer is delivered. The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter-offer.

4. **Closing Date:** This transaction will close on **60 days after Feasibility** ("Closing Date"), unless specifically extended by other provisions of this contract. The Closing Date will prevail over all other time periods including, but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday, Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and other items.

5. **Extension of Closing Date:** If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements

Buyer 74 (_____) and Seller (_____) (_____) acknowledge receipt of a copy of this page, which is 1 of 7 pages.

("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

6. Financing: (Check as applicable)

(a) **Buyer** will pay cash for the Property with no financing contingency.

(b) This contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s) specified below ("Financing") within N/A days after Effective Date (Closing Date or 30 days after Effective Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within _____ days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the Financing within the Financing Period, either party may terminate this contract and **Buyer's** deposit(s) will be returned.

- (1) ☐ **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ N/A or _____ % of the purchase price at (Check one) ☐ a fixed rate not exceeding _____ % ☐ an adjustable interest rate not exceeding _____ % at origination (a fixed rate at the prevailing interest rate based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to **Seller** and Broker.
- (2) ☐ **Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to **Seller** in the amount of \$ _____, bearing annual interest at _____ % and payable as follows:

The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller** to obtain credit, employment, and other necessary information to determine creditworthiness for the financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not **Seller** will make the loan.

- (3) ☐ **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to N/A LN# _____ in the approximate amount of \$ _____ currently payable at \$ _____ per month, including principal, interest, ☐ taxes and insurance, and having a ☐ fixed ☐ other (describe) _____ interest rate of _____ % which ☐ will ☐ will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds _____ % or the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing which this contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves **Buyer**, this contract will terminate; and **Buyer's** deposit(s) will be returned.

7. Assignability: (Check one) **Buyer** ☐ may assign and thereby be released from any further liability under this contract, ☒ may assign but not be released from liability under this contract, or ☐ may not assign this contract.

8. Title: **Seller** has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty deed ☐ special warranty deed ☒ other (specify) See addendum, free of liens, easements, and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____, provided there exists at closing no violation of the foregoing.

(a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay for the title search, including tax and lien search (including municipal lien search) if performed, and all other fees charged by closing agent. **Seller** will deliver to **Buyer**, at

(Check one) ☒ **Seller's** ☐ **Buyer's** expense and

(Check one) ☒ within 30 days after Effective Date ☐ at least _____ days before Closing Date,

(Check one)

- (1) ☒ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the

Buyer (Signature) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 2 of 7 pages.

amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

- (2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within 10 days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within 15 days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 8(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

9. Property Condition: **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections: (Check (1) or (2))**

- (1) ☒ **Feasibility Study:** **Buyer** will, at **Buyer's** expense and within 45 days (30 days if left blank) ("Feasibility Study Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Feasibility Study Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Feasibility Study Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

Buyer  (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 3 of 7 pages.

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(2) ☐ **No Feasibility Study:** Buyer is satisfied that the Property is suitable for Buyer's purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to Buyer. This contract is not contingent on Buyer conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect Buyer's intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has expired or if Paragraph 9(a)(2) is selected.

(c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☐ Buyer waives the right to receive a CCCL affidavit or survey.

10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 21. In addition to other expenses provided in this contract, Seller and Buyer will pay the costs indicated below.

(a) Seller Costs:

Taxes on deed
Recording fees for documents needed to cure title
Title evidence (if applicable under Paragraph 8)
Estoppel Fee(s)
Other: _____

(b) Buyer Costs:

Taxes and recording fees on notes and mortgages
Recording fees on the deed and financing statements
Loan expenses
Title evidence (if applicable under Paragraph 8)
Lender's title policy at the simultaneous issue rate
Inspections
Survey
Insurance
Other: _____

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and Buyer will pay all other amounts. If special assessments may be paid in installments, ☐ Seller ☐ Buyer (Buyer if left blank) will pay installments due after closing. If Seller is checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY

Buyer (JA) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 4 of 7 pages.

IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at closing.
- (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

11. Computation of Time: Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this contract.**

12. Risk of Loss; Eminent Domain: If any portion of the Property is materially damaged by casualty before closing or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may terminate this contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification, and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this contract and receive all payments made by the governmental authority or insurance company, if any.

13. Force Majeure: **Seller** or **Buyer** will not be required to perform any obligation under this contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to the other; and **Buyer's** deposit(s) will be returned.

14. Notices: All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by this contract, regarding any contingency will render that contingency null and void, and this contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.**

15. Complete Agreement; Persons Bound: This contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this contract.** Modifications of this contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this contract. This contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of **Seller**, **Buyer**, and Broker.

16. Default and Dispute Resolution: This contract will be construed under Florida law. This Paragraph will survive closing or termination of this contract.

- (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this contract, **Buyer** may elect to receive a return of **Buyer's** deposit(s) without thereby waiving any action for damages resulting from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

Buyer (JA) () and Seller () () acknowledge receipt of a copy of this page, which is 5 of 7 pages.

(b) **Buyer Default:** If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this contract.

17. Attorney's Fees; Costs: In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

18. Escrow Agent; Closing Agent: **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

19. Professional Advice; Broker Liability: Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that Broker does not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value.** **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract. This Paragraph will survive closing.

20. Commercial Real Estate Sales Commission Lien Act: If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

21. Brokers: The brokers named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct closing agent to disburse at closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or **Seller's** Broker to **Buyer's** Broker.

(a) Boyd Bradfield NAI Southcoast (Seller's Broker)
will be compensated by ☒ **Seller** ☐ **Buyer** ☐ both parties pursuant to ☐ a listing agreement ☐ other
(specify): 6% of purchase price, the total fee to be paid at closing

(b) Boyd Bradfield NAI Southcoast (Buyer's Broker)
will be compensated by ☒ **Seller** ☐ **Buyer** ☐ both parties ☐ **Seller's** Broker pursuant to ☐ a MLS offer of
compensation ☐ other (specify): _____

Buyer [Signature] (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 6 of 7 pages.

22 **Addenda:** The following additional terms are included in the attached addenda and incorporated into this Contract
(Check if applicable)
A. Back-up Contract
B. Other _____

23. **Additional Terms:** _____

Purchase Price to be established by Appraisal. Section 2-253 of the City Code of Ordinances states that all applications for the purchase of property owned by the City shall be made to the City Commission and the purchaser shall agree to pay for the appraisal.

The City shall have 21 days from the date it receives the appraisal to reject/cancel the contract based upon an unacceptable appraisal. If the City fails to reject the contract within the 21 days, all other terms shall be binding.

The Buyer is aware of the current status of the property including the memorandum of leases recorded on the sight. In addition, the buyer is aware that a lawsuit was filed against the City by North Point Ventures, LLC. Buyer will accept property with a title exception for the memorandums of lease as well as the claims set forth in the lawsuit pending in case number 2017-CA-0073 in Martin County, Florida. The City of Stuart agrees to indemnify the Buyer for any damages resulting from the Complaint currently pending in case number 2017-CA-0073. The buyer and seller recognize that Northpoint Ventures has filed a single count complaint against the City for damages which currently does not include a claim for possession.

Buyer has right to perform title inspection and property inspection during due diligence period and is accepting the property in as is condition. Buyer shall have right to cancel contract for any reason during due diligence including an unacceptable appraisal or title search. This contract is not contingent on the City adjusting or modifying the title to the property in any manner.

COUNTER-OFFER/REJECTION

- ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).
☐ Seller rejects Buyer's offer

This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before signing.

Buyer: [Signature] Date: 8/10/21

Print name: _____

Buyer: _____ Date: _____

Print name: _____

Buyer's address for purpose of notice:

Address: _____

Phone: _____ Fax: _____ Email: _____

Seller: _____ Date: _____

Print name: _____

Seller: _____ Date: _____

Print name: _____

Seller's address for purpose of notice:

Address: _____

Phone: _____ Fax: _____ Email: _____

Effective Date: _____ **(The date on which the last party signed or initialed and delivered the final offer or counter offer.)**

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CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: David Dyess, City Manager

Title of Item:

AUTHORIZATION TO EXECUTE CONTRACT FOR SALE OF 1.78 ACRES (OSPREY PRESERVE)(RC):

RESOLUTION No. 83-2021; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A VACANT LAND CONTRACT AND/OR ANY ADDENDUMS BETWEEN THE CITY OF STUART, FLORIDA, AND E. CLARK GIBSON, FOR THE SALE OF THE CITY OWNED 1.78 ACRES PARCEL LOCATED SOUTH OF JENSEN BEACH BLVD. AND ADJACENT TO GREEN RIVER PARKWAY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The City Commission authorizes the City Manager to enter into and execute a Vacant Land Contract and/or any addendums between the City of Stuart and E. Clark Gibson for the sale of 1.78 acres south of Jensen Beach Blvd. and adjacent to Green River Parkway.

Funding Source:

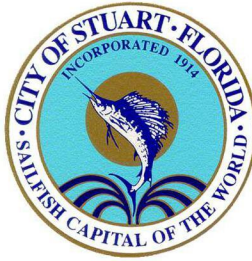
N/A

Recommended Action:

Move approval of Resolution 83-2021.

ATTACHMENTS:

Description	Upload Date	Type
▣ R83-2021 Auth. to Sell 1.78 Acres Green River Pkwy.	8/16/2021	Resolution add to Y drive
▣ Trustee's Deed	8/16/2021	Attachment
▣ Vacant Land Contract	8/16/2021	Attachment
▣ Ord 2371-2018 Osprey Preserve	8/16/2021	Exhibit



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

RESOLUTION NUMBER 83-2021

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A VACANT LAND CONTRACT AND/OR ANY ADDENDUMS BETWEEN THE CITY OF STUART, FLORIDA, AND E. CLARK GIBSON, FOR THE SALE OF THE CITY OWNED 1.78 ACRES PARCEL LOCATED SOUTH OF JENSEN BEACH BLVD. AND ADJACENT TO GREEN RIVER PARKWAY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, on October 22, 2018, the City Commission approved Ordinance 2371-2018, whereby the owner of the property, E. Clark Gibson, Trustee petitioned the City of Stuart to have the Future Land Use Map of the City's Comprehensive Plan amended to have the Osprey Preserve Residential Planned Unit Development established.

WHEREAS, as part of the Development Conditions included in Ordinance 2371-2018, under Number 40 – Land Contribution, the owner of the property had to, “contribute 1.78 acres of land just south of Jensen Beach Blvd. and adjacent to Green River Parkway to the City and with terms acceptable to the City Attorney prior to any site or building permits being released.”

WHEREAS, on or about December 6, 2018, pursuant to the terms of the Development Conditions, the owner of the property, E. Clark Gibson, Trustee, executed a Trustee's Deed conveying title of the 1.78 acre parcel to the City of Stuart, Florida with

the intended use of the property being the construction of a new City of Stuart Fire Station.

See a true and accurate copy of the Trustee's Deed attached hereto and incorporated herein.

WHEREAS, the City of Stuart has made the decision to forgo the building of an additional fire station on the above-referenced vacant parcel and desires to sell the property.

WHEREAS, the original owner of the property, E. Clark Gibson has offered to purchase back the vacant parcel from the City of Stuart, Florida pending an acceptable appraisal amount.

WHEREAS, the City Commission hereby authorizes the City Manager to enter into and execute the Vacant Land Contract and/or any addendums for the sale of 1.78 acres south of Jensen Beach Blvd. and adjacent to Green River Parkway.

WHEREAS, additionally, the City Commission hereby authorizes the City Manager to cancel the Vacant Land Contract and/or any addendums based upon an unacceptable appraisal without further City Commission action.

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

SECTION 1: The City Commission authorizes the City Manager to enter into and execute a Vacant Land Contract and/or any addendums between the City of Stuart and E. Clark Gibson for the sale of 1.78 acres south of Jensen Beach Blvd. and adjacent to Green River Parkway.

SECTION 2: The City Commission authorizes the City Manager to cancel the Vacant Land Contract and/or any addendums based upon an appraisal that the City Manager deems unacceptable without further City Commission action.

SECTION 3: Conflicts. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 4: Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

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

Resolution No.: 83-2021
Auth. to Sell 1.78 Acres on Green River Pkwy.

follows:

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

YES	NO	ABSENT	ABSTAIN

ADOPTED this 23rd day of August, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY



Prepared by and return to:

David B. Earle

Attorney at Law

Ross, Earle & Bonan, P.A.

789 S. Federal Highway Suite 101

Stuart, FL 34994

772-287-1745

[Space Above This Line For Recording Data]

Trustee's Deed

This Trustee's Deed made this 6th day of **December 2018** between **E. Clark Gibson, as Trustee**, whose post office address is **P.O. Box 237, Stuart, Florida 34995**, grantor, and the **City of Stuart**, whose post office address is **121 SW Flagler Avenue, Stuart, Florida 34994**, grantee:

(Whenever used herein the terms grantor and grantee include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in **Stuart, Martin County, Florida** to-wit:

BEING A PARCEL OF LAND LYING IN SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, BEING A PORTION OF LOT 15 AND 16, BLOCK 1, ST. LUCIE GARDENS, AS RECORDED IN PLAT BOOK 1, PAGE 35, ST. LUCIE (NOW MARTIN) COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PINEAPPLE PLANTATION PLAT TWO, A P.U.D., AS RECORDED IN PLAT BOOK 14, PAGE 26, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA, POINT ALSO LYING ON THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD (A 120 FOOT WIDE RIGHT-OF-WAY); THENCE SOUTH 89°27'41" EAST, ALONG THE SAID SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD, FOR A DISTANCE OF 1321.74 FEET TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD, SOUTH 00°21'24" WEST ALONG SAID EAST LINE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, FOR A DISTANCE OF 300.00 FEET TO A POINT ON A LINE THAT IS 300 FEET SOUTH OF, AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EAST LINE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, SOUTH 00°21'24" WEST, FOR A DISTANCE OF 360.00 FEET TO A POINT ON A LINE THAT IS 660 FEET SOUTH OF, AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD; THENCE DEPARTING SAID EAST LINE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST NORTH 89°27'41" WEST ALONG SAID PARALLEL LINE, FOR DISTANCE OF 215.00 FEET TO A POINT ON THE EAST LINE OF A ROAD EASEMENT (100 FOOT WIDE), AS RECORDED IN OFFICIAL RECORD BOOK 1963, PAGE 1423, MARTIN COUNTY, FLORIDA; THENCE NORTH 00°21'24" EAST ALONG EAST LINE OF SAID ROAD EASEMENT, FOR A DISTANCE OF 360.00 FEET TO POINT ON A LINE THAT IS 300 SOUTH OF AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD; THENCE DEPARTING SAID EAST LINE OF ROAD EASEMENT SOUTH 89°27'41" EAST, FOR A DISTANCE OF 215.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING 77,410 SQUARE FEET, (1.78 ACRES), MORE OR LESS.

and said grantor does hereby warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

This conveyance constitutes an unrestricted transfer and this document is prepared without the benefit of title examination. Accepted pursuant to Ordinance Number 2371-2018 recorded as Instrument #2723830 at O.R. Book 3025, Page 447, of the Public Records of Martin County, Florida.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, but subject to all easements of record.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

David B. Earle

Witness Name: David B. Earle

E. Clark Gibson

E. CLARK GIBSON, TRUSTEE

Stephanie W. Adams

Witness Name: Stephanie W. Adams

State of Florida

County of Martin

The foregoing instrument was acknowledged before me this 6th day of December, 2018 by E. Clark Gibson, as Trustee who [] is personally known or [] has produced a driver's license as identification.

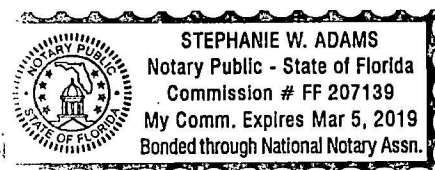
Stephanie W. Adams

Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____



E. Clark Gibson
P.O. Box 237
Stuart, FL 34995
(772) 287-1456
clark@eclarkgibson.com

VACANT LAND CONTRACT

1. SALES AND PURCHASE:

CITY OF STUART, a Municipality in Martin County, FL ("SELLER") and **E. CLARK GIBSON** ("BUYER") agree to sell and buy on the terms and conditions specified below the hereinafter described property ("Property"):

LEGAL DESCRIPTION: See attached Exhibit "A".

2. PURCHASE PRICE: \$ TBD BY APPRAISAL (See Article 16 hereunder).

(a) **\$1,000.00** deposit received upon execution of this Agreement by ROSS, EARLE, BONAN & ENSOR, P.A. (the "Escrow Agent")

(b) **\$(TBD based upon appraisal)** balance to close (not including Buyer's closing costs, prepaid items and prorations). All funds paid at closing must be paid by locally drawn cashier's check, official check or wired funds. See Article 16 hereunder.

3. CASH/FINANCING: This is a cash transaction.

4. CLOSING DATE: OCCUPANCY: This Contract will be closed and the deed and possession delivered on or before thirty (30) days from the close of the due diligence period, unless extended by other provisions of this Contract. If, on Closing Date, insurance underwriting is suspended, Buyer may postpone closing up to five (5) days after the insurance suspension is lifted.

5. CLOSING PROCEDURE; COSTS: Closing will take place in Martin County, at the offices of Buyer's attorney or closing agent and may be conducted by mail or electronic means. In addition to other expenses as provided in this Contract, Seller and Buyer will pay the costs indicated below:

(a) **Seller Costs:** Seller will pay any taxes on the deed and recording fees for any documents needed to cure title.

(b) **Buyer Costs:** Buyer will pay taxes and recording fees on any notes and mortgages, recording fees on the deed and financing statements; any loan expenses; any lender's title policy; inspections; survey and sketch; and any insurance.

(c) Title Evidence and Insurance:

The title evidence will be an owner's title insurance commitment, and later-issued title policy and the Seller will select the title agent. Seller will pay for the owner's title policy, search, examination and related charges. The title evidence and commitment will be delivered to Buyer within twenty (20) days of the Effective Date of this Agreement.

(d) Prorations: The following items will be made current and prorated as of the day before Closing Date: real estate taxes, interest, bonds, assessments, leases and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions. **PROPERTY TAX DISCLOSURE SUMMARY: Buyer should not rely on the Seller's current property taxes as the amount of property taxes that Buyer may be obligated to pay in the year subsequent to purchase. A change of ownership or property improvements triggers reassessments of the property that could result in higher property taxes. If you have any questions concerning valuation, contact the County Property Appraiser's Office for further information.**

(e) Special Assessment by Public Body: Regarding special assessments imposed by a public body, Seller will pay; (i) the full amount of liens that are certified, confirmed and ratified before closing; and, (ii) the amount of the assessment if an improvement is substantially completed on Effective Date but has not resulted in a lien before closing, and Buyer will pay all other amounts.

(f) Tax Withholding. LEFT BLANK INTENTIONALLY.

(g) 1031 EXCHANGE: If either Seller or Buyer wishes to enter into a like-kind exchange (either simultaneously with closing of after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents; provided, however that the cooperating party will incur no liability or cost related to the Exchange and that the closing shall not be contingent upon, extended or delayed by the Exchange.

6. LAND USE: Seller will deliver the Property to Buyer at the time agreed in its present "as is" condition, with conditions resulting from Buyer's Inspections and casualty damage, if any, excepted. Seller will maintain the landscaping and grounds in a comparable condition and will not engage in or permit any activity that would materially alter the Property's condition without the Buyer's prior written consent.

(a) Flood Zone: Buyer is advised to verify by survey, with the lender and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(b) Government Regulation: Buyer is advised that changes in government regulations and levels of service which affect Buyer's intended use of the Property will not be grounds for canceling this Contract if the Inspection Period has expired or if Buyer has checked choice (c)(2) below.

(c) **Inspections:** Inspection Period: Buyer will, at Buyer's expense, and within ninety (90) days from Effective Date ("Inspection Period"), determine whether the Property is suitable, in Buyer's sole and absolute discretion, for his intended use. During the Inspection Period, Buyer may conduct a Phase I environmental assessment and any other tests, analyses, surveys and investigations ("Inspections") that Buyer deems necessary to determine to Buyer's satisfaction the Property's engineering, architectural and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other approvals, and licenses; and other Inspections that Buyer deems appropriate to determine the Property's suitability for the Buyer's intended use.

Seller gives Buyer, its agents, contractors and assigns, the right to enter the Property at any time during the Inspection Period and, during the life of this Agreement, for the purpose of conducting Inspections; provided, however, that Buyer, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees, expenses and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by Buyer. Buyer will not engage in any activity that could result in a construction lien being filed against the Property without Seller's prior written consent. If this transaction does not close, Buyer will, at Buyer's expense, (1) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) release to Seller all reports and other work generated as a result of the Inspections.

Buyer will deliver written notice to Seller prior the expiration of the Inspection Period of Buyer's determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice requirement will constitute acceptance of the Property as suitable for Buyer's intended use in its "as is" condition. If the Property is unacceptable to Buyer and written notice of this fact is timely delivered to Seller, this Contract will be deemed terminated as of the day after the Inspection Period ends and Buyer's deposit(s) will be returned.

7. **RISK OF LOSS; EMINENT DOMAIN:** If any portion of the Property is materially damaged by casualty before closing or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings, or if any eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may cancel this Contract by written notice to the other within ten (10) days from Buyer's receipt of Seller's notification, failing which Buyer will close in accordance with this Contract and receive all payments made by the government authority or insurance company, if any.

8. **TITLE:** Seller will convey marketable title to the Property by statutory warranty deed.

(a) **Title Evidence:** Title evidence will show legal access to the Property and marketable title of record in Seller in accordance with current title standards adopted by

the Florida Bar, subject only to the following title exceptions, none of which shall prevent Buyer's intended use of the Property: covenants, easements and restrictions of record; matters of plat; existing zoning and government regulations; oil, gas and mineral rights of record if there is no right of entry; current taxes and encumbrances that Seller will discharge at or before closing.

(b) **Title Examination:** After the Effective Date, Buyer will promptly seek and examine the title evidence and deliver written notice to Seller within 5 days from receipt of title evidence, but no later than twenty (20) days prior to closing, of any defects that make the title unmarketable. Seller will have twenty (20) days from receipt of Buyer's notice of defects ("Curative Period") to cure the defects at Seller's expense. If Seller cures the defects within the Curative Period, Seller will deliver written notice to Buyer and the parties will close the transaction on Closing Date or within ten (10) days from Buyer's receipt of Seller's notice if Closing Date has passed. If Seller is unable to cure the defects within the Curative Period, Seller will deliver written notice to Buyer and Buyer will, within ten (10) days from receipt of Seller's notice, either cancel this Contract and receive return of all deposits, or accept title with existing defects and close the transaction.

(c) **Survey:** Buyer may, prior to Closing Date and at Buyer's expense, have the Property surveyed and deliver written notice to Seller, within five (5) days from receipt of survey but not later than five (5) days prior to closing, of any encroachments on the Property, encroachments by the Property's improvements on other lands or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and Buyer's and Seller's obligations will be determined in accordance with subparagraph (b) above. If any part of the Property lies seaward of the coastal construction control line, Seller will provide Buyer with an affidavit or survey as required by law delineating the line's location on the property, unless Buyer waives this requirement in writing.

9. **EFFECTIVE DATE; TIME:** The "Effective Date" of this Contract is the date on which the last of the parties initials or signs the latest offer. **Time is of the essence for all provisions of this Contract.** All time periods expressed as days will be computed in business days (a "business day" is every calendar day except Saturday, Sunday and national legal holidays). If any deadline falls on a Saturday, Sunday or national legal holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local time (meaning in the county where the Property is located) of the appropriate day.

10. **NOTICES:** All notices will be made to the parties and Broker by mail, personal delivery or electronic media.

11. **COMPLETE AGREEMENT:** This Contract is the entire agreement between Buyer and Seller. Modifications of this Contract will not be binding unless in writing, signed or initialed and delivered by the party to be bound. This Contract, signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or

becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. Buyer and Seller will use diligence and good faith in performing all obligations under this Agreement. This Contract will not be recorded in any public records.

12. **ASSIGNABILITY; PERSONS BOUND:** Buyer may assign this Contract without Seller's written consent. If assigned, Buyer must inform Seller promptly in writing of such Assignee who assumes Buyer's position. Upon such Notice, Buyer shall have no further rights or responsibilities under this Contract, as such shall be assigned and assumed by the Assignee. The terms "Buyer", "Seller" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives and assigns (if permitted) of Buyer and Seller.

13. **DEFAULT:**

(a) **Seller Default:** If for any reason other than failure of Seller to Make Seller's title marketable after diligent effort, Seller fails, refuses or neglects to perform this Contract, Buyer may choose to receive a return of Buyer's deposit without waiving the right to seek damages or to seek specific performance as per Paragraph 14.

(b) **Buyer Default:** If Buyer fails to perform this Contract within the time specified, including timely payment of all deposits, Seller may, as its sole and exclusive remedy, retain and collect all deposits paid and agreed to be paid as liquidated damages.

14. **DISPUTE RESOLUTION:** This Contract will be construed under Florida law. All controversies, claims and other matters in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

(a) Buyer and Seller will have thirty (30) days from the date any demands are made to attempt to resolve the dispute through mediation. If that fails, the parties will submit the dispute to a Martin County, Florida court of competent jurisdiction. Buyer and Seller will be bound by any resulting award, judgment or order.

15. **ESCROW AGENT:** Buyer and Seller authorize Escrow Agent to receive, deposit and hold funds and other items in escrow and, subject to clearance, disburse them upon proper authorization and in accordance with the Florida law and the terms of this Contract, including disbursing brokerage fees. The parties agree that Escrow Agent will not be liable to any person for misdelivery of escrowed items to Buyer or Seller, unless the misdelivery is due to Escrow Agent's willful breach of this Contract or gross negligence. If Escrow Agent interpleads the subject matter of the escrow, Escrow Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. All claims against Escrow Agent will be arbitrated, so long as Escrow Agent consents to arbitrate.

16. **ADDITIONAL TERMS:** Purchase Price to be established by an Appraisal. Section 2-253 of the City Code of Ordinances states that all applications for the purchase of property owned by the City shall be made to the City Commission and the purchaser shall agree to pay for the Appraisal. The City shall have twenty-one (21) days from the

date it receives the Appraisal to reject/cancel the Contract based upon an unacceptable Appraisal. If the City fails to reject the Contract within the twenty-one (21) days, all other terms shall be binding. Buyer shall secure the Appraiser as noted above within ten (10) days of the Effective Date and shall deliver to the City said Appraisal within three (3) days after its receipt from Appraiser.

Dated: _____

Dated: 8/13/21

CITY OF STUART

By: _____

By: 
E. Clark Gibson

Its: _____
SELLER

Its: E CLARK GIBSON
BUYER

EXHIBIT A

BEING A PARCEL OF LAND LYING IN SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, BEING A PORTION OF LOT 15 AND 16, BLOCK 1, ST. LUCIE GARDENS, AS RECORDED IN PLAT BOOK 1, PAGE 35, ST. LUCIE (NOW MARTIN) COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PINEAPPLE PLANTATION PLAT TWO, A P.U.D., AS RECORDED IN PLAT BOOK 14, PAGE 26, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA, POINT ALSO LYING ON THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD (A 120 FOOT WIDE RIGHT-OF-WAY); THENCE SOUTH 89°27'41" EAST, ALONG THE SAID SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD, FOR A DISTANCE OF 1321.74 FEET TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD, SOUTH 00°21'24" WEST ALONG SAID EAST LINE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, FOR A DISTANCE OF 300.00 FEET TO A POINT ON A LINE THAT IS 300 FEET SOUTH OF, AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EAST LINE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, SOUTH 00°21'24" WEST, FOR A DISTANCE OF 360.00 FEET TO A POINT ON A LINE THAT IS 660 FEET SOUTH OF, AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD; THENCE DEPARTING SAID EAST LINE NORTHEAST QUARTER (1/4) OF SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST NORTH 89°27'41" WEST ALONG SAID PARALLEL LINE, FOR DISTANCE OF 215.00 FEET TO A POINT ON THE EAST LINE OF A ROAD EASEMENT (100 FOOT WIDE), AS RECORDED IN OFFICIAL RECORD BOOK 1963, PAGE 1423, MARTIN COUNTY, FLORIDA; THENCE NORTH 00°21'24" EAST ALONG EAST LINE OF SAID ROAD EASEMENT, FOR A DISTANCE OF 360.00 FEET TO POINT ON A LINE THAT IS 300 SOUTH OF AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF JENSEN BEACH BOULEVARD; THENCE DEPARTING SAID EAST LINE OF ROAD EASEMENT SOUTH 89°27'41" EAST, FOR A DISTANCE OF 215.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING 77,410 SQUARE FEET, (1.78 ACRES), MORE OR LESS.

Parcel ID No.: 20-37-41-004-001-00151-0



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

ORDINANCE NUMBER 2371-2018

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN THEREBY CHANGING THE FUTURE LAND USE DESIGNATION FROM "COMMERCIAL" TO "LOW DENSITY RESIDENTIAL" FOR A 15.2 ACRE PORTION OF A 19.3 ACRE PARCEL ANNEXED BY ORDINANCE NO. 1560-97, OWNED BY E. CLARK GIBSON, LOCATED ON THE SOUTH WEST CORNER OF NW JENSEN BEACH BLVD AND NW GREEN RIVER PARKWAY, SAID LAND BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; AND FURTHER PROVIDING THAT SAID LANDS SHALL CONCURRENTLY BE REZONED FROM "CPUD" TO "RPUD" ON THE CITY'S OFFICIAL ZONING MAP; ESTABLISHING THE OSPREY PRESERVE RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) CONSISTING OF EIGHTY SIX (86) ATTACHED HOMES AND ONE (1) SINGLE FAMILY HOME; APPROVING A MASTER DEVELOPMENT PLAN; PROVIDING FOR DEVELOPMENT CONDITIONS AND A TIMETABLE FOR DEVELOPMENT, DECLARING THE PLAN TO BE CONSISTANT WITH THE CITY'S COMPREHENSIVE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

*** * * * ***

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by E. Clark Gibson Trustee, for a 15.2 acre portion of the 19.30 annexation parcel of land located on the south west corner of NW Jensen Beach Blvd. and NW Green River Parkway; and

WHEREAS, the City of Stuart has determined the need to change the Future Land Use and Land Development zoning district for said lands; and

WHEREAS, the City Commission, has considered the Petitioner's voluntary request for land use and zoning designations, and has also considered the recommendation of the City staff.

WHEREAS, the Applicant has committed to the City that its development will comply with all development codes, plans, standards and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon approval of the RPUD; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the RPUD development will be in harmony with surrounding properties and their anticipated development;

WHEREAS, the foregoing recitals are true and adopted as findings of fact and conclusions of law.

WHEREAS, the property is legally described in “**Exhibit A**” of this ordinance. A map depicting the property is attached hereto as **Exhibit “B”** and made a part hereof by reference; and development conditions including a timetable for construction of amenities attached hereto as **Exhibit “C”**;

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

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

SECTION 1: The following new documents are on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit "D"**, hereinafter the "Development Documents", shall be deemed a part of the development conditions, and shall supplement any earlier approvals:

- a. **The Master Site Plan, Sheet 1 of 1, prepared by Lucido & Associates, dated 02.19.18, last revised on 10.02.18.**
- b. **The ALTA/NSPS Land Title Survey – Osprey Preserve, by Associated Land Surveyors, Inc, dated 10.30.17.**
- c. **The Landscape Plans, Sheet 1 of 5, prepared by Lucido & Associates, dated 02.20.18, and resubmitted on 10.10.18.**
- d. **The Tree Preservation Plan, Sheet 2 of 5, prepared by Lucido & Associates, dated 02.20.18, last resubmitted on 10.10.18.**
- e. **Architectural Floor Plans and Elevations for Osprey Preserve, Sht. P-7, First & Second Floor Plan, Front & Rear Elevations #4, 5 & 6, by Kelly & Kelly Architects, Dated February 16, 2018.**
- f. **Preserve Area Management Plan by EW Consultants, Inc. dated June 2018.**

SECTION 2: The Future Land Use designation in the City's Comprehensive Land Use Plan shall be established as "Low Density Residential". This ordinance may not become effective until 31 days after adoption. If challenged within 30 days after adoption, this ordinance may not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted large scale land use amendment is in compliance as defined in s. 163.3184(1)(b).

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

SECTION 4: The Land Development (Zoning) District designation on the City of Stuart Official Zoning Map shall be established as "RPUD" Residential Planned Unit Development subject to the appeal period stated in Section 2, above.

SECTION 5: Except as otherwise provided herein, no development permits, site permits, or building permits shall be issued by the City except in compliance with the City's Land Development Code.

SECTION 6: All ordinances or parts of ordinances in conflict with this ordinance or any part thereof is hereby repealed to the extent of such conflict. If any provision of this ordinance conflicts with any contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 7: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 8: This ordinance shall be effective upon the last of the following to occur: adoption by the City Commission, and proper execution and acceptance by the Owner. However, the Future Land Use and Zoning Designations granted herein shall not be effective until thirty one (31) days after adoption, and as otherwise provided by law.

SECTION 9: Upon complete execution of this Ordinance, including the Acceptance and Agreement by the Owner, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

PASSED on First Reading this 14th day of May, 2018.

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

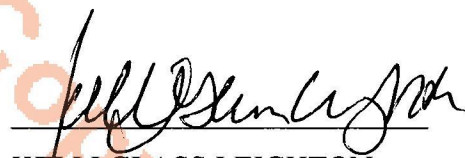
KELLI GLASS LEIGHTON, MAYOR
 BECKY BRUNER, VICE MAYOR
 EULA R. CLARKE, COMMISSIONER
 MERRITT MATHESON, COMMISSIONER
 MIKE MEIER, COMMISSIONER

<u>YES</u>	<u>NO</u>	<u>ABSENT</u>	<u>ABSTAIN</u>
Y			
Y			
Y			
Y			
Y			

ADOPTED on second and final reading this 22ND day of October, 2018.

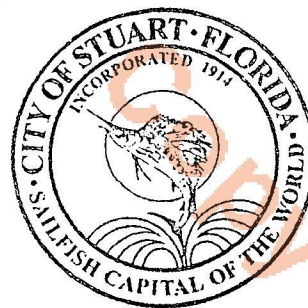
ATTEST:


 MARY R. KINDEL
 CITY CLERK


 KELLI GLASS LEIGHTON
 MAYOR

APPROVED AS TO FORM AND CORRECTNESS:


 MICHAEL MORTELL
 CITY ATTORNEY



Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

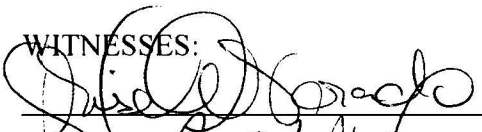
ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN A RESIDENTIAL PLANNED UNIT DEVELOPMENT AND IN ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE ABOVE ORDINANCE. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY TO DEVELOP THIS RESIDENTIAL PLANNED UNIT DEVELOPMENT ACCORDING TO THIS ORDINANCE, ITS CONDITIONS, AND THE DEVELOPMENT PLANS AND DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS ORDINANCE MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ACTIONS MAY BE TAKEN AGAINST THE UNDERSIGNED BY THE CITY, INCLUDING BUT NOT LIMITED TO CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING REVOCATIONS, AND ALL APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

Print Name:


 Print Name: José Alvarado

Print Name:


 Print Name: Tom Rantz

E. Clark Gibson as Trustee

By: 

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

OWNERS ACKNOWLEDGMENT

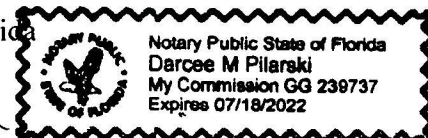
The above Ordinance, Acceptance and Agreement was acknowledged before me this 26th day
of Oct., 2018, by E. Clark Gibson as Trustee,



Notary Public, State of Florida

My Commission Expires:

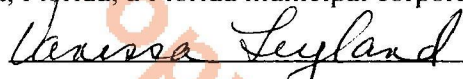
07/18/2022



Notary Seal

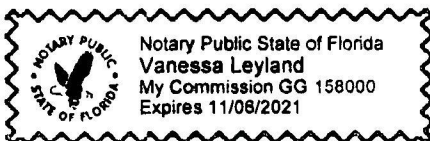
Personally Known _____ OR Produced Identification XType of Identification Produced FL DLCITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this 30 day
of October, 2018, by KELLI GLASS LEIGHTON, MAYOR, and Mary Kindel,
City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation.



Notary Public, State of Florida

My Commission Expires:



Notary Seal

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____

EXHIBIT A – LEGAL DESCRIPTION**Osprey Preserve**

BEING A PARCEL OF LAND LYING IN SECTION 20, TOWNSHIP 37 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, BEING A PORTION OF LOTS 13, 14, 15, AND 16, BLOCK 1, ST. LUCIE GARDENS, AS RECORDED IN PLAT BOOK 1, PAGE 35, ST. LUCIE (NOW MARTIN) COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PINEAPPLE PLANTATION PLAT TWO, A P.U.D., AS RECORDED IN PLAT BOOK 14, PAGE 26, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA, POINT ALSO LYING ON THE SOUTH RIGHT OF WAY LINE OF JENSEN BEACH BOULEVARD (A 120 FOOT WIDE RIGHT OF WAY); THENCE SOUTH 89°27'41" EAST, ALONG THE SAID SOUTH RIGHT OF WAY LINE OF JENSEN BEACH BOULEVARD, FOR A DISTANCE OF 976.74 FEET TO A POINT; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE OF JENSEN BEACH BOULEVARD, SOUTH 44°37'33" EAST, FOR A DISTANCE OF 42.44 FEET, TO A POINT ON THE WEST LINE OF A ROAD EASEMENT (100 FOOT WIDE), AS RECORDED IN OFFICIAL RECORDS BOOK 1963, PAGE 1423, MARTIN COUNTY, FLORIDA; THENCE SOUTH 00°21'24" WEST ALONG SAID ROAD EASEMENT, FOR A DISTANCE OF 630.08 FEET TO A POINT ON A LINE THAT IS 660 FEET SOUTH OF, AND PARALLEL WITH THE SOUTH RIGHT OF WAY LINE OF JENSEN BEACH BOULEVARD; THENCE NORTH 89°27'41" WEST, DEPARTING SAID WEST LINE OF ROAD EASEMENT AND ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 1005.37 FEET TO A POINT ON THE EAST LINE OF PINEAPPLE PLANTATION PLAT TWO, A P.U.D., AS RECORDED IN PLAT BOOK 14, PAGE 26, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA; THENCE NORTH 00°14' 17" EAST, ALONG SAID EAST LINE OF PINEAPPLE PLANTATION PLAT TWO, A P.U.D., FOR A DISTANCE OF 660.01 FEET TO THE POINT OF BEGINNING.

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

EXHIBIT B – LOCATION MAP



EXHIBIT C – DEVELOPMENT CONDITIONS**Approved Plans and Documents**

2. The Osprey Preserve RPUD project and use thereof shall comply with the following drawings:
 - a. **The Master Site Plan, Sheet 1 of 1, prepared by Lucido & Associates, dated 02.19.18, last revised on 10.2.18.**
 - b. **The ALTA/NSPS Land Title Survey – Osprey Preserve, by Associated Land Surveyors, Inc, dated 10.30.17.**
 - c. **The Landscape Plans, Sheet 1 of 5, prepared by Lucido & Associates, dated 02.20.18, and resubmitted on 10.10.18.**
 - d. **The Tree Preservation Plan, Sheet 2 of 5, prepared by Lucido & Associates, dated 02.20.18, last resubmitted on 10.10.18.**
 - e. **Architectural Floor Plans and Elevations for Osprey Preserve, Sht. P-7, First & Second Floor Plan, Front & Rear Elevations #4, 5 & 6, by Kelly & Kelly Architects, Dated February 16, 2018.**
 - f. **Preserve Area Management Plan by EW Consultants, Inc. dated June 2018.**
3. Any modifications to the Master RPUD Site Plan that exceeds 10% of the approved building footprint, building setbacks, gross square footage, building location, parking size, location and number of parking, drainage areas, and location of landscaping may be approved by the City's Development Director, provided however, the Development Director may refer the matter to the City Commission for approval via a public hearing.
4. Development of the Subject Property as a RPUD shall include an impervious area of not more than 2000 square feet per lot and no more than (60%) impervious coverage for an individual lot within the RPUD. The maximum building height within the RPUD shall be 2 stories or 30 feet. Height shall be measured from the lowest permissible finished first

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floor elevation to the surface of a flat roof or to the eave of a pitched roof. The peak of a pitched roof may not exceed 15 feet above the maximum building height.

Landscaping

5. The common areas including the projects cabana and pool area shall be provided with landscaping with an irrigation system of sufficient capacity to maintain the landscaping in a healthy growing condition.
6. The City's landscape inspector shall have the opportunity to inspect all trees and/or landscape material with the landscape architect prior to installation. The developer shall bear the pass-thru fee for landscape consulting fees not to exceed \$1,500.00.
7. A Landscape maintenance plan, executed in accordance with the Land Development Regulations, shall be submitted to the Development Department and approved prior to the issuance of a certificate of occupancy.

Required Open Space and Native Preserve Area

8. Open Space. Not less than 39% of the RPUD shall be open space as depicted on the Master Site Plan by Lucido and Associates as described in Exhibit C. Required open space may include native vegetation areas and landscape buffers between the CPUD and adjacent property; however, other required landscaping shall not count towards the open space requirement.
9. Excluding wetlands defined by the South Florida Water Management District, not less than 20% of the total development site shall remain as undeveloped and recreated native vegetation area. The required native vegetation area may include open space areas and the landscape buffer between the site and adjacent property; however, other required landscaping shall not count towards the native vegetation requirement. The location of the native vegetation shall comply with the project's landscape plan, Shts. 1 of 4 & 2 of 4 by Lucido and Associates. The project shall adhere to the Preserve area mitigation and

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monitoring plan prepared for Lucido & Associates and prepared by EW consultants dated February, 2018. The owner and developer shall adhere to the provisions of the Wetland Maintenance and Monitoring Plan and permanent maintenance will be the responsibility of the HOA.

Tree Mitigation

10. Except as follows, the project shall comply with Section 5.05.02 of the "Tree replacement and protection requirements" of the City's Land Development Code.
 - a. Prior to any development activities, in addition to the preserve area maintenance plan required herein, the developer shall provide a benchmark exhibit, acceptable to the city, prepared by the developer's environmental professional, accurately depicting the site's upland preserve areas in their final configuration, including existing and added plant materials as called for in the PAMP. This exhibit shall not include any materials planted in the preserve area for the purposes of tree mitigation.
 - b. In the event the developer proposes to meet any or all of the tree mitigation requirements of section 5.05.02 by planting within the upland preserve areas, the developer shall provide an additional exhibit, acceptable to the city, depicting the planted materials shown on the benchmark exhibit required above as well as any additional planting materials proposed for the purpose of tree mitigation. This exhibit shall include the environmental professional's certification that the addition of supplemental plantings for the purpose of tree mitigation does not compromise the environmental integrity, or sustainability of the site's preserve areas. This exhibit shall be made a part of the PAMP for the purpose of perpetual maintenance as called for therein.
 - c. In the event the developer chooses to address tree mitigation by planting in the project's preserve area or elsewhere on the site, the following shall occur: For plantings in the preserve area and upland transition zone at the lake, not less than

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85% shall consist of Pines trees or shrubs (Wax Myrtle, Green Button wood and Cocoplum) and 15% Palms (Minimum 14 feet).

- d. The developer shall provide an affidavit of spending, including receipts, prior to certificate of occupancy.
- e. Prior to Site Plan approval, the applicant shall provide replacement fund a check in the amount of \$18,000 to be deposited in the City's Tree Fund account.

Prior to Issuance of Site Permits

- 11. Applicant shall provide a digital boundary survey and civil plan prior to the issuance of a site permit.
- 12. Civil Plans shall be reviewed and approved by all applicable City departments prior to the issuance of a site permit.
- 13. All regulatory agency permits, including but not limited to the South Florida Water Management District and Army Corp of Engineers, shall be obtained by the applicant and copies provided to the City prior to the commencement of any development activities.
- 14. All development activities shall comply with the City's Concurrency Management System prior to the issuance of building permits.

Development and Construction

- 15. The Developer shall construct the project's infrastructure in one phase and is required to control the sales of lots in blocks and will create a lot sales and construction plan which shall be provided to the City's Development Department for review and approval prior to application for the first building permit.
- 16. The Developer shall install landscaping (and gate if proposed) at the development's entry as shown on the landscaping plan prior to the first certificate of occupancy for a

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

residential unit. The entry gate (if applicable) shall be made operational prior to issuance of the third certificate of occupancy.

17. The proposed cabana and pool landscaping shall be completed before the certificate of occupancy has been issued for the 10th residential unit or within 12 months from the start of any development activity.
18. The developer shall follow the guidelines for eradication of nuisance and exotic vegetation for both wetland and upland preserve areas as described in the Wetland Maintenance and Monitoring Plan by EW Consultants, Inc. dated February 2018 and be completed and inspected prior the first building permit is issued.
19. The property owner shall provide easements for licensed television services. Preserve area easements shall be dedicated to state agencies with the City of Stuart having the option to have those same easements.
20. The projects proposed drainage outfall to Green River Pkwy shall have Martin County approval before any developmental activity on the site occurs.
21. Water and Sewer Services shall be provided by Martin County Utilities. Additionally the development shall use reclaimed water (Purple Pipe) for watering common areas and make available to individual lots if made available by Martin County.
22. The Developer shall provide a decorative aluminum fence on lots with a retaining wall acceptable to the Development Department.
23. In the event of any conflict in the provisions of Exhibit 'C' Development Conditions and attached exhibits, Exhibit 'C' shall prevail.
24. Prior to certificate of occupancy of the last building, the applicant shall provide an engineer's written confirmation attesting that the RPUD's storm water system is in place and functioning in compliance with all approved plans and specifications.

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

25. Erosion and dust control measures to be implemented during construction shall be provided on the civil plans and submitted during site permit review. Water trucks shall be provided by the applicant as necessary during construction in order to reduce dust generated on-site.
26. All utility improvements constructed by the developer within Florida's Department of Transportation's right-of-way, shall be constructed in a manner and form acceptable to the FDOT. The developer shall grant any such utility easements necessary for this site as may be required by the FDOT.
27. The projects turn lanes as described on the project's Master Site plan shall be completed before the first certificate of occupancy is issued.
28. The project's storm water facilities, specifically the Native Planting schemes at the detention/retention areas/wetlands, will be designed using Low Impact Development "(LID) Techniques as described in the University of Florida IFSA Extension publication LID Practices: Integration Wetlands and Enhancing Storm water Basins". The proposed dry retention shall have native grasses along the edges of the retention area are to become part of the stormwater filtration process.
29. The developer shall construct a minimum 8' wide sidewalk along the projects frontage on Green River Parkway and connect with the existing sidewalk on Jensen Beach Boulevard.
30. Temporary or freestanding storage units are prohibited on the property once construction is complete.
31. The installation of a Knox key switch to operate the gate (if applicable) is required for City of Stuart fire rescue and Martin County Fire Rescue and the gate codes are to be posted with the City's Police Department.

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

32. Site work including but not limited to land preparation, lake excavation, clearing and grading, drainage and water, sewer and irrigation lines, and private road shall be reviewed approved by the city's public works department and the city's engineering consultant prior to permitting. Specifically,

- a. Private Road & R.O.W. including pedestrian sidewalk
- b. Proposed Lake
- c. Dry Detention Area
- d. Cabana and Pool
- e. Existing wetland and Upland Preserve

Setbacks

33. The minimum building setbacks for the development shall be:

Front = 20'

Side Corner = 14'

Side = 5'

Rear = 15'

Signage

34. All signs throughout the PUD must have a consistent treatment, as to number, location, size, height, lighting, and materials with a unified theme throughout the Planned Unit

Ordinance 2371-2018 - Osprey Preserve - Large Scale FLUM & Rezoning

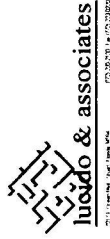
Development. The development's monument sign shall adhere to the City of Stuart Land Development Code.

Platting- HOA Requirements & Future Amendments

35. Plat approval per Section 11.01.06.1 shall occur prior to any future development permit for any development activity, no permit for development including site work and infrastructure, shall be issued by the City unless and until a plat has been approved by the City Commission and recorded in the public records.
36. The PUD may be conveyed to 87 separate home owners (two per lot), with the exception of lot 55 (a single family residence) without further amendment to this Ordinance. Prior to application for any development, the applicant/developer shall form a HOA (Homeowners Association) or other similar entity acceptable to the City Attorney, which shall be singularly responsible for the perpetual maintenance of the common site features.
37. If there are any encroachments in to the preserve area a notice of violation shall be issued to the developer or Home Owners Association which will be responsible for remedying the violation.
38. Any applications to amend this Ordinance shall be limited to the developer or the Home Owners Association.
39. The City may elect at any time to assign a future land use designation of "Conservation" to the PUD's preserve areas without objection by the owners. Further, the City may at its discretion, take over maintenance of the preserve area(s) without objection by the owners.

Land Contribution

40. The owner of the property shall contribute 1.78 acres of land just south of Jensen Beach Blvd. and adjacent to Green River Parkway to the City and with terms acceptable to the City Attorney prior to any site or building permits being released.



7011 West Park Trail, Suite 100
Fort Worth, TX 76120

Key / Location:



NTS

Project Team

Role	Name
Project Manager	Thomas P. Lucido
Lead Designer	Thomas P. Lucido
Lead Engineer	Thomas P. Lucido
Engineer	Thomas P. Lucido
Surveyor	Thomas P. Lucido
Public Engineer	Thomas P. Lucido
Environmental Consultant	Thomas P. Lucido

Osprey Preserve RPUD

City of Stuart, Martin County, Florida

Lake Littoral Landscape Plan

Date	By	Description
02.20.18	RLW	Initial Submittal
03.28.18	RLW	1st Re-submittal
04.10.18	RLW	2nd Re-submittal
10.10.18	RLW	3rd Re-submittal



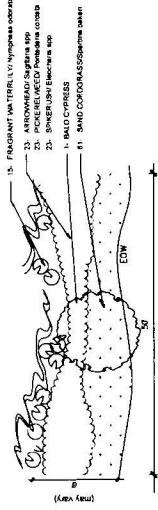
SCALE 1" = 20'

REG. # 0118

Thomas P. Lucido

2 of 5

Design: B.V.
Manager: D.F.
Project Number: 14-570
Municipal Number:
Computer File: Osprey Preserve - Landscape 1 Time Preservation The Reg
City of Stuart, Martin County, Florida
City of Stuart, Martin County, Florida
City of Stuart, Martin County, Florida
City of Stuart, Martin County, Florida



TYPICAL 6x50' SECTION - LITTORAL PLAN

NTS

QTY	COMMON NAME	Botanical Name
21	FRAGRANT WATERLILY	Nymphaea odorata
32	ARROWHEAD	Sagittaria spp.
32	PICKERELWEED	Xanthoxylum
32	SPINERUGA	Eleocharis acicularis
85	SAND CORDGRASS	Spartina patens

TYPICAL 10x50' LITTORAL PLANT SCHEDULE

LITTORAL ZONE AREA CALCULATIONS

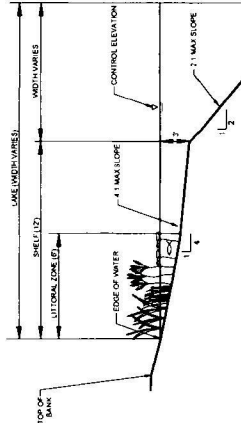
Lake Perimeter (Shoreline): 637 linear feet (ft)
Provided littoral zone area (6 ft x 637 ft): 3,822 sq ft (0.09 ac.)

LITTORAL ZONE PLANT SCHEDULE TOTAL:

COMMON NAME / Botanical Name	QTY	Notes
FRAGRANT WATERLILY (Nymphaea odorata)	21	24" x 36" container, 2' x 2' depth
ARROWHEAD (Sagittaria spp.)	32	24" x 36" container, 2' x 2' depth
PICKERELWEED (Xanthoxylum)	32	24" x 36" container, 2' x 2' depth
SPINERUGA (Eleocharis acicularis)	32	24" x 36" container, 2' x 2' depth
SAND CORDGRASS (Spartina patens)	85	4" liner, 2' x 2' depth

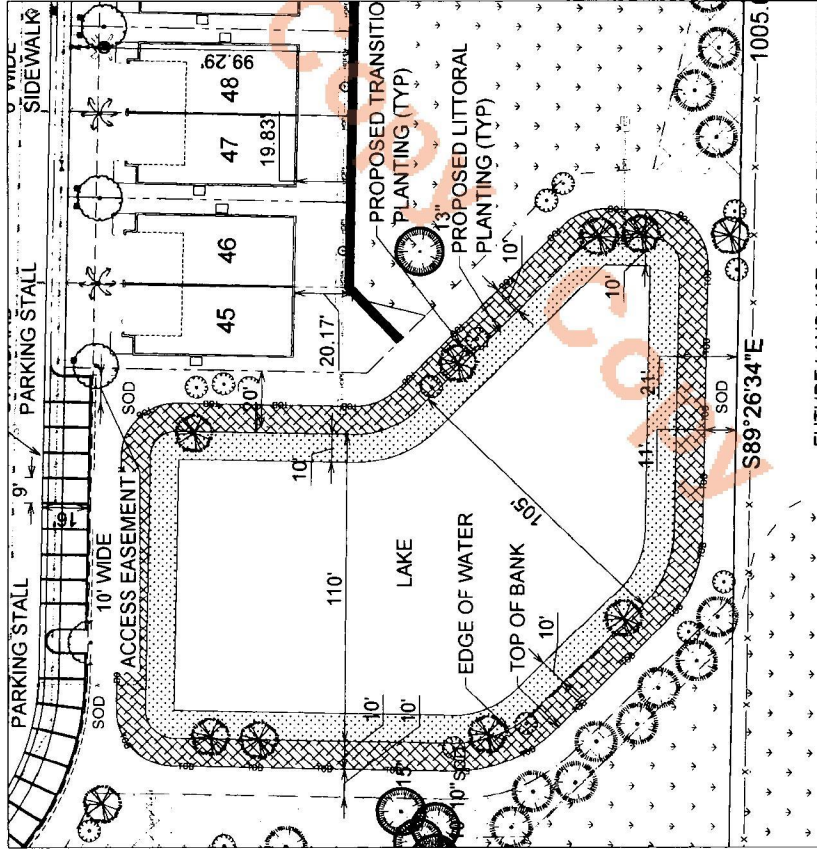
PLANT SCHEDULE UPLAND TRANSITION PLANTINGS

QTY	COMMON NAME	Botanical Name	Notes
1	FRAGRANT WATERLILY	Nymphaea odorata	24" x 36" container, 2' x 2' depth
1	ARROWHEAD	Sagittaria spp.	24" x 36" container, 2' x 2' depth
1	PICKERELWEED	Xanthoxylum	24" x 36" container, 2' x 2' depth
1	SPINERUGA	Eleocharis acicularis	24" x 36" container, 2' x 2' depth
1	SAND CORDGRASS	Spartina patens	4" liner, 2' x 2' depth



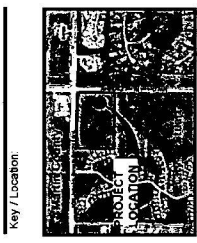
LITTORAL ZONE TYPICAL SECTION

NTS



LITTORAL ZONE PLAN

SCALE 1" = 2'



NTS

Project Team

Architect: Lucido & Associates
3711 W. Military Trail, Suite 212
Boca Raton, FL 33431

Land Planner: Lucido & Associates
3711 W. Military Trail, Suite 212
Boca Raton, FL 33431

Engineer: The City of Stuart
2700 W. Highway 1A
Stuart, FL 34907

Surveyor: American Land Surveyors, Inc.
1000 W. Highway 1A
Stuart, FL 34907

Tree Mitigation: The City of Stuart
2700 W. Highway 1A
Stuart, FL 34907

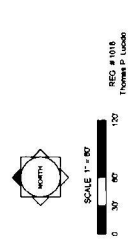
Environmental: The City of Stuart
2700 W. Highway 1A
Stuart, FL 34907

Osprey Preserve RPUD

City of Stuart, Martin County, Florida

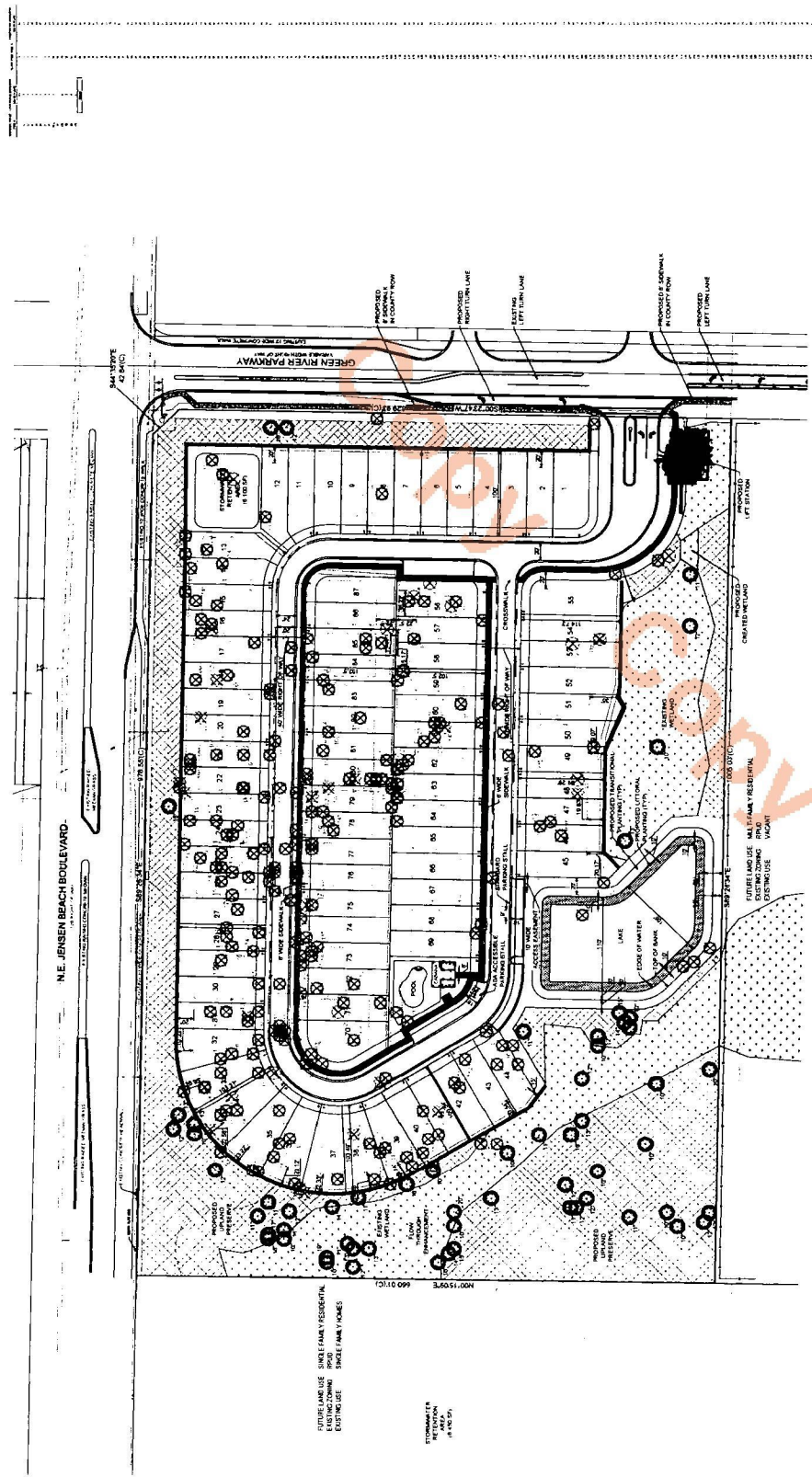
Tree Preservation Plan

Date: 02/20/18
By: BWW
Initial: BWW
Reviewed: BWW
Approved: BWW
10/10/18 BWW
2nd Draft/Revised



3 of 5

Design: BWW
Manager: DFW
Project Number: 17-546
Municipal: Normal
Computer: J. M. Osprey Preserve - Landowner Tree Preservation Plan



Tree Mitigation Legend

	Existing Tree - Tree to be Preserved
	Existing Tree - Tree to be Removed
	Existing Tree - Tree to be Preserved
	Existing Tree - Tree to be Removed
	Existing Tree - Tree to be Preserved
	Existing Tree - Tree to be Removed
	Existing Tree - Tree to be Preserved
	Existing Tree - Tree to be Removed

ESTIMATION & MITIGATION - 100% & 50% PRESERVE

GREEN RIVER PARKWAY	NUMBER	ESTIMATE	TOTAL	NUMBER	ESTIMATE	TOTAL
Restoration Tree Required	1	\$ 40	\$ 40	42	\$ 1,680	\$ 1,720
Restoration Tree Required	1	\$ 40	\$ 40	10	\$ 400	\$ 440
Restoration Tree Required	300	\$ 4,200	\$ 4,200	400	\$ 1,600	\$ 5,800
50% TOTAL ESTIMATION REQUIRED		\$ 3,740	\$ 3,740		\$ 3,680	\$ 3,680
Restoration Tree Required (1)	0	\$ 0	\$ 0	0	\$ 0	\$ 0
Restoration Tree Required (2)	44	\$ 1,760	\$ 1,760	44	\$ 1,760	\$ 1,760
Restoration Tree Required (3)	300	\$ 4,200	\$ 4,200	400	\$ 1,600	\$ 5,800
50% TOTAL ESTIMATION PROVIDED		\$ 3,960	\$ 3,960		\$ 3,360	\$ 3,360
Difference - Credit to City		\$ 1,200	\$ 1,200		\$ 320	\$ 320

NOTES:

1. All trees shown to be removed are to be removed within 180 days of the start of construction. All trees shown to be preserved are to be preserved for the life of the project.

2. All trees shown to be preserved are to be preserved for the life of the project.

3. All trees shown to be preserved are to be preserved for the life of the project.

4. All trees shown to be preserved are to be preserved for the life of the project.

TREE MITIGATION DATA - 100% PRESERVE					
SLASH PILES	NUMBER	INCHES	2- INCHES	NUMBER	INCHES
	222	2- 2.00	444	14	2- 2.00
	444	2- 2.00	888	28	2- 2.00
	888	2- 2.00	1776	56	2- 2.00
	1776	2- 2.00	3552	112	2- 2.00
	3552	2- 2.00	7104	224	2- 2.00
	7104	2- 2.00	14208	448	2- 2.00
	14208	2- 2.00	28416	896	2- 2.00
	28416	2- 2.00	56832	1792	2- 2.00
	56832	2- 2.00	113664	3584	2- 2.00
	113664	2- 2.00	227328	7168	2- 2.00
	227328	2- 2.00	454656	14336	2- 2.00
	454656	2- 2.00	909312	28672	2- 2.00
	909312	2- 2.00	1818624	57344	2- 2.00
	1818624	2- 2.00	3637248	114688	2- 2.00
	3637248	2- 2.00	7274496	229376	2- 2.00
	7274496	2- 2.00	14548992	458752	2- 2.00
	14548992	2- 2.00	29097984	917504	2- 2.00
	29097984	2- 2.00	58195968	1835008	2- 2.00
	58195968	2- 2.00	116391936	3670016	2- 2.00
	116391936	2- 2.00	232783872	7340032	2- 2.00
	232783872	2- 2.00	465567744	14680064	2- 2.00
	465567744	2- 2.00	931135488	29360128	2- 2.00
	931135488	2- 2.00	1862270976	58720256	2- 2.00
	1862270976	2- 2.00	3724541952	117440512	2- 2.00
	3724541952	2- 2.00	7449083904	234881024	2- 2.00
	7449083904	2- 2.00	14898167808	469762048	2- 2.00
	14898167808	2- 2.00	29796335616	939524096	2- 2.00
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	1179616588965863694311300955998519296	2- 2.00	2359233177931727388622601911997038592	7444326355874414777245203823994077184	2- 2.00
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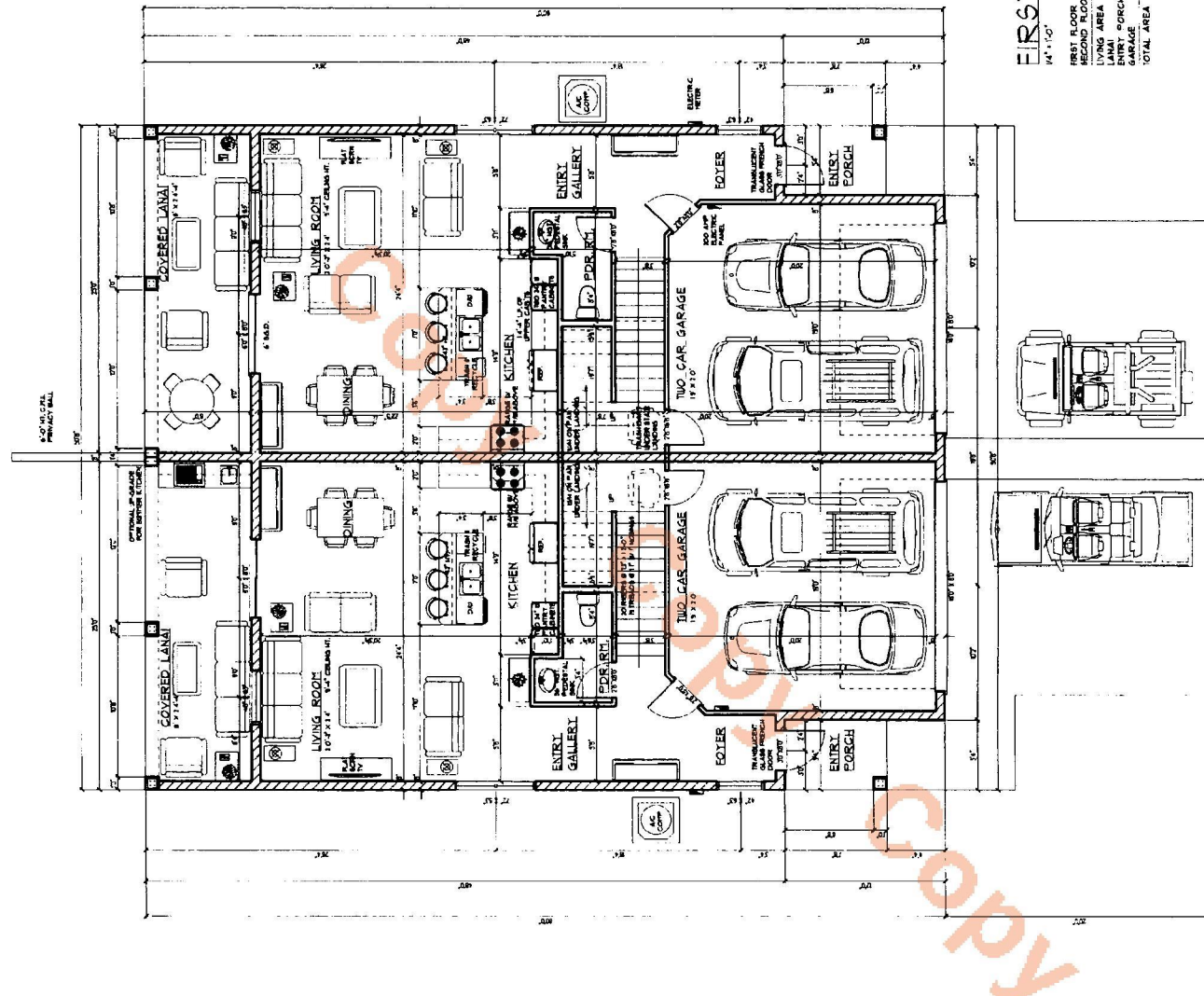


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790 S.W. 9TH STREET, SUITE 200, MIAMI, FL 33135
(305) 358-2442

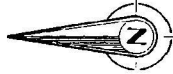


OSPREY PRESERVE
PROPOSED DESIGN FOR
MARTIN COUNTY, FLORIDA
GREENRIVER PARKWAY

171118
16 FEB 18



- WALL LEGEND**
- 8" CONCRETE WALL
 - 2 X 4 INTERIOR FRAME WALL
 - 2 X 6 INTERIOR FRAME WALL
 - 2 X 6 EXTERIOR FRAME WALL



FIRST FLOOR PLAN

FIRST FLOOR	890
SECOND FLOOR	1,456
LIVING AREA	7,346
KITCHEN	742
BATH	404
TOTAL AREA	2894 SQ. FT.

PROPERTY LINE



PROPOSED DESIGN FOR
OSPREY PRESERVE
MARTIN COUNTY, FLORIDA
GREENRIVER PARKWAY
710 S.W. 8TH STREET, SUITE 200, FT. MYERS, FL 33901-3402
KELLY & KELLY ARCHITECTS
TEL: 888-683-9482



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KELLY & KELLY ARCHITECTS
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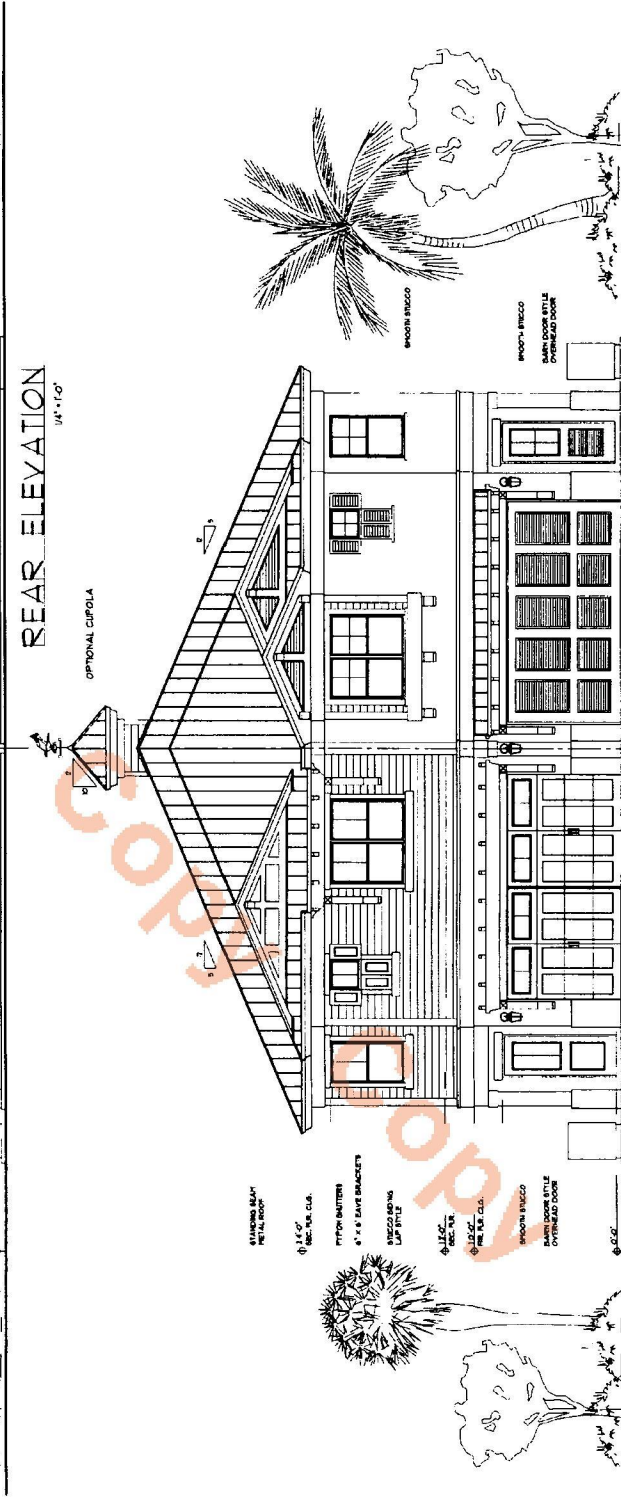
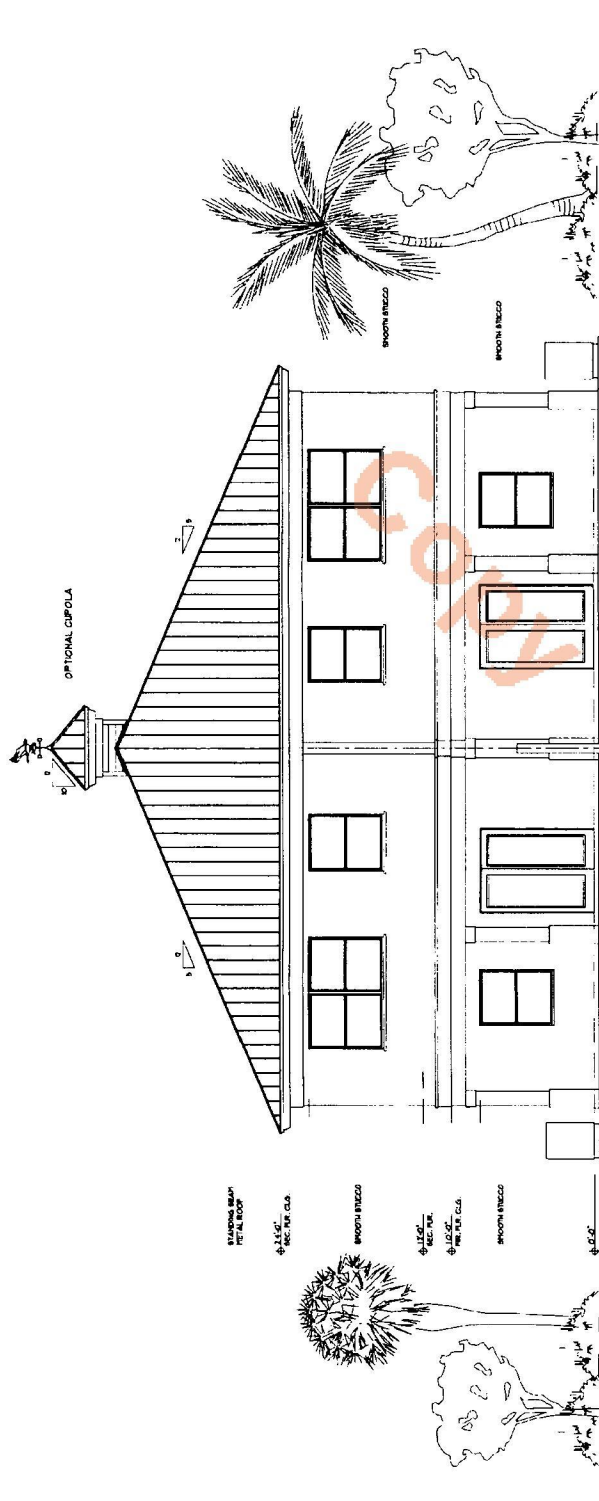
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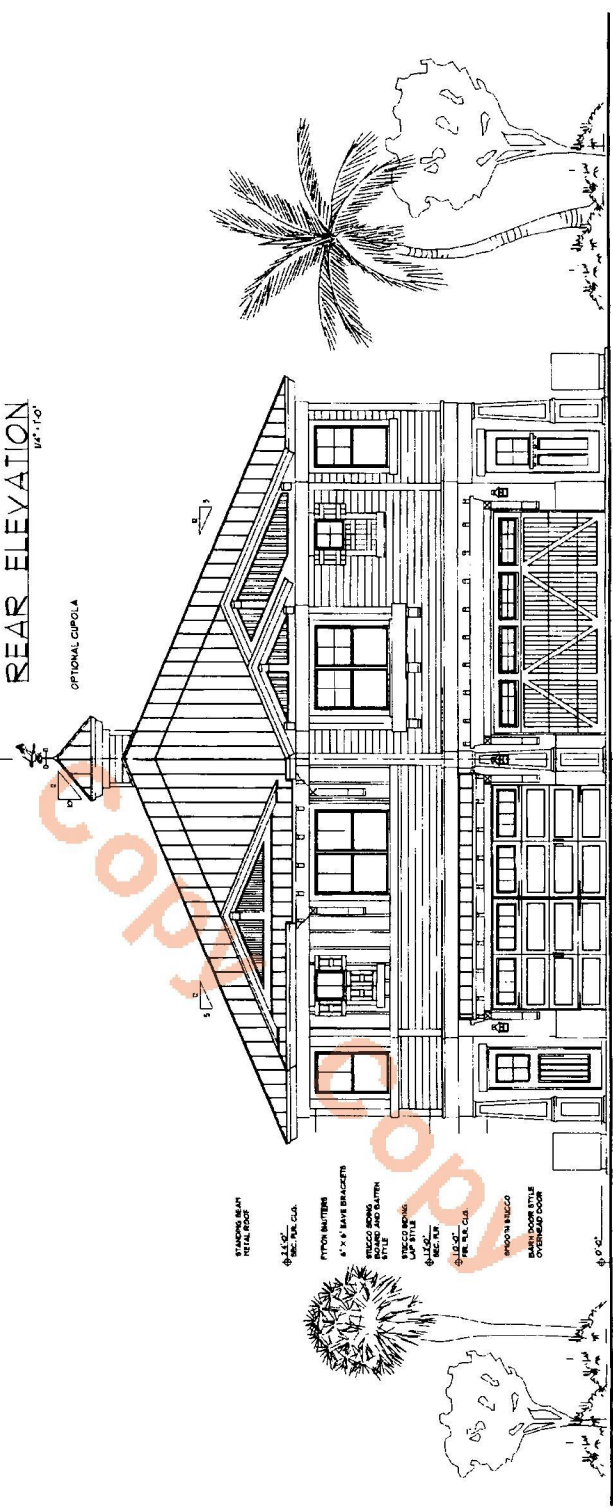
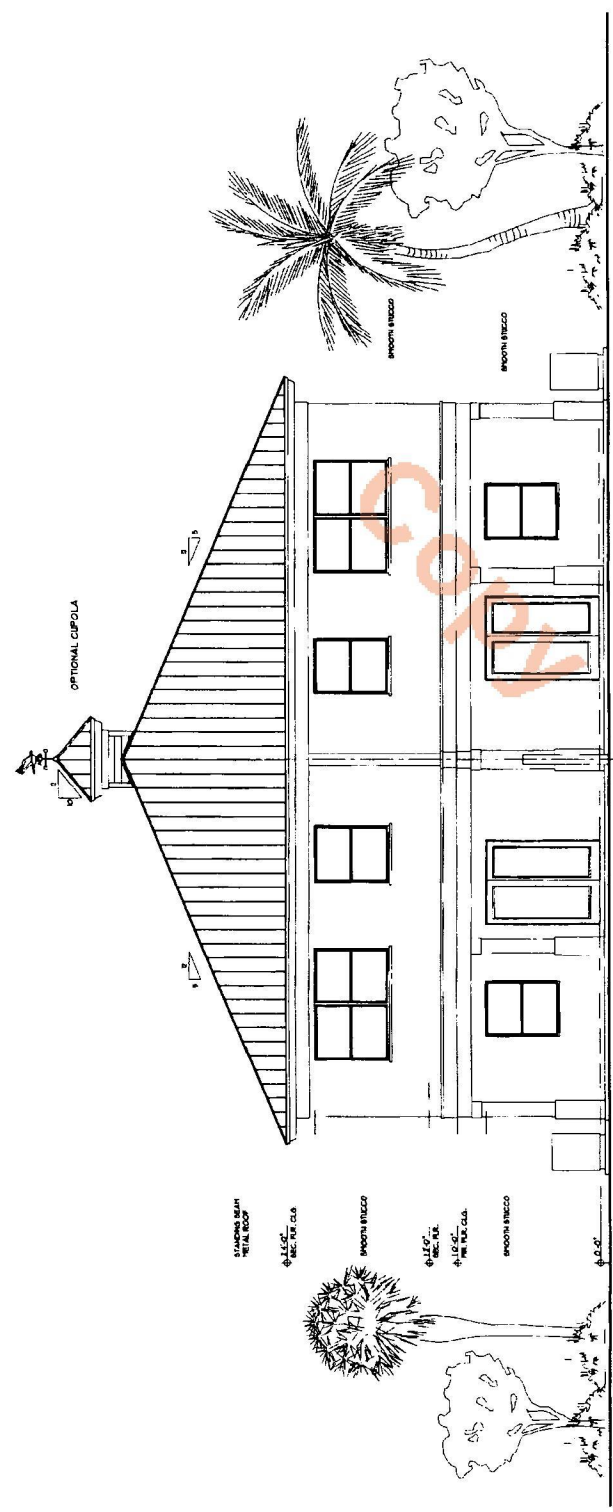
PROPOSED DESIGN FOR
OSPREY PRESERVE
GREENRIVER PARKWAY
MARTIN COUNTY, FLORIDA



KELLY & KELLY ARCHITECTS
110 S.W. 8TH STREET, SUITE 201, FT. LAUDERDALE, FL 33304
(772) 532-3482



1/4" = 1'-0"
1/8" = 1'-0"
1/16" = 1'-0"

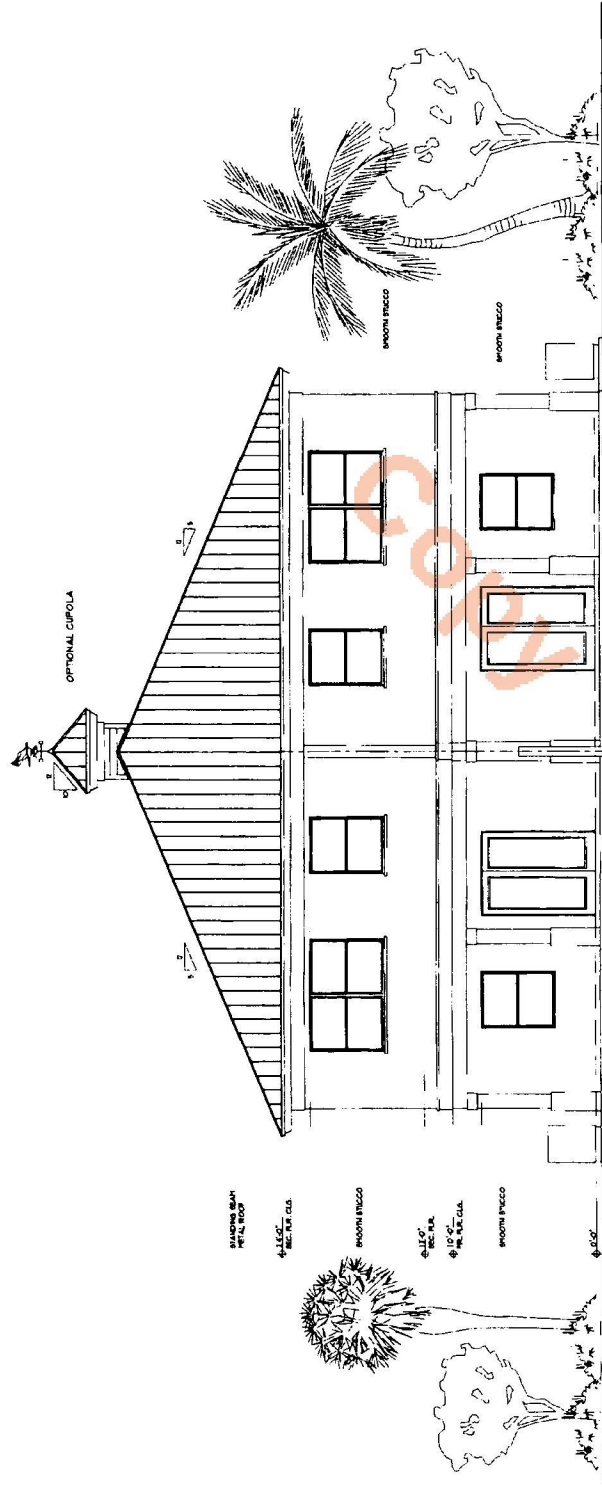




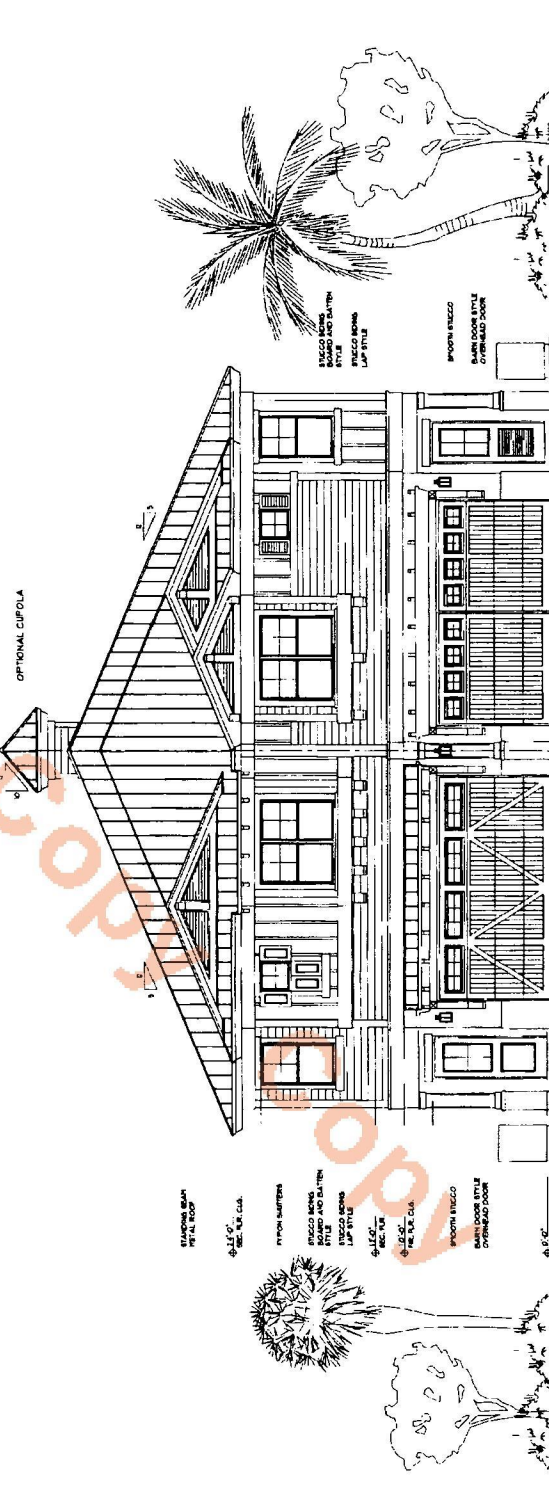
Kelly & Kelly Architects
930 S.W. 87th Street, Suite 100, Ft. Lauderdale, FL 33309
Tel: (754) 399-9493



PROPOSED DESIGN FOR
OSPNEY PRESERVE
MARTIN COUNTY, FLORIDA
GREENRIVER PARKWAY



REAR ELEVATION
1/4" = 1'-0"



FRONT ELEVATION #SIX
1/4" = 1'-0"



PROPOSED DESIGN FOR
OSPREY PRESERVE
GREENRIVER PARKWAY
MARTIN COUNTY, FLORIDA

Kelly & Kelly Architects
720 S.W. 87th STREET, SUITE 100, FT. MYERS, FL 33907-3463
(888) 666-6663

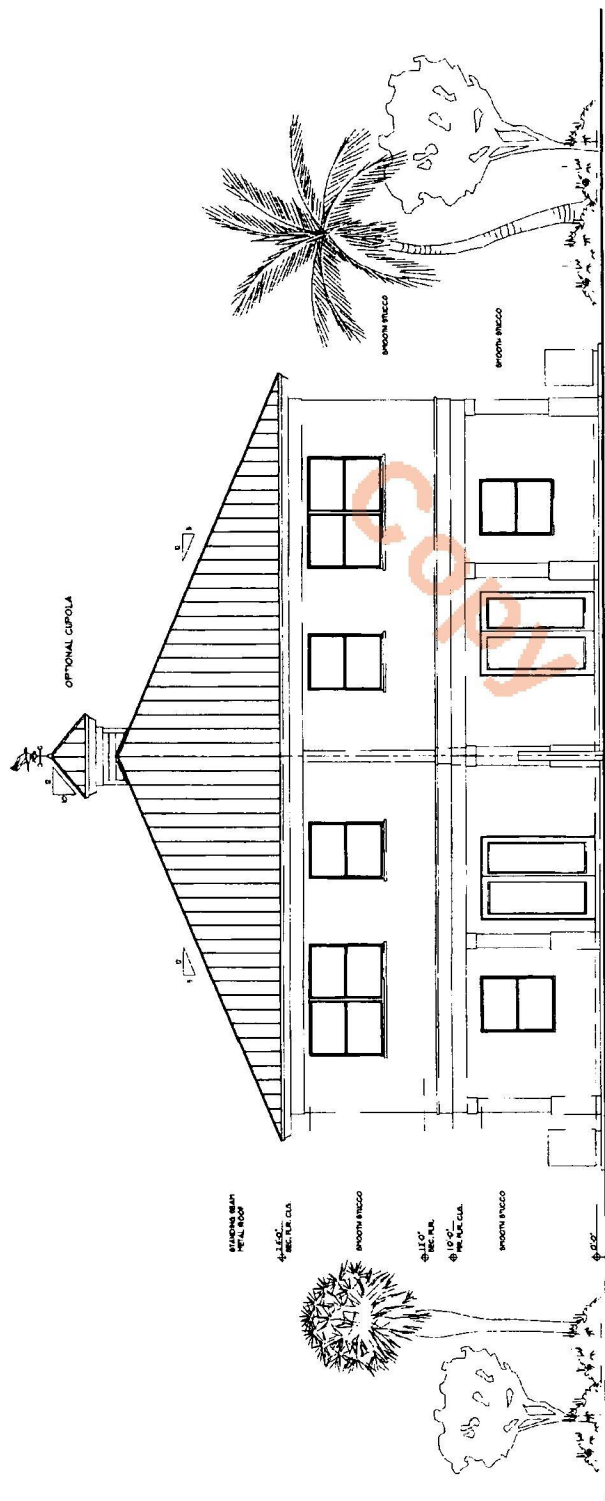


PROPOSED DESIGN FOR
OSPREY PRESERVE
GREENRIVER PARKWAY
MARTIN COUNTY, FLORIDA

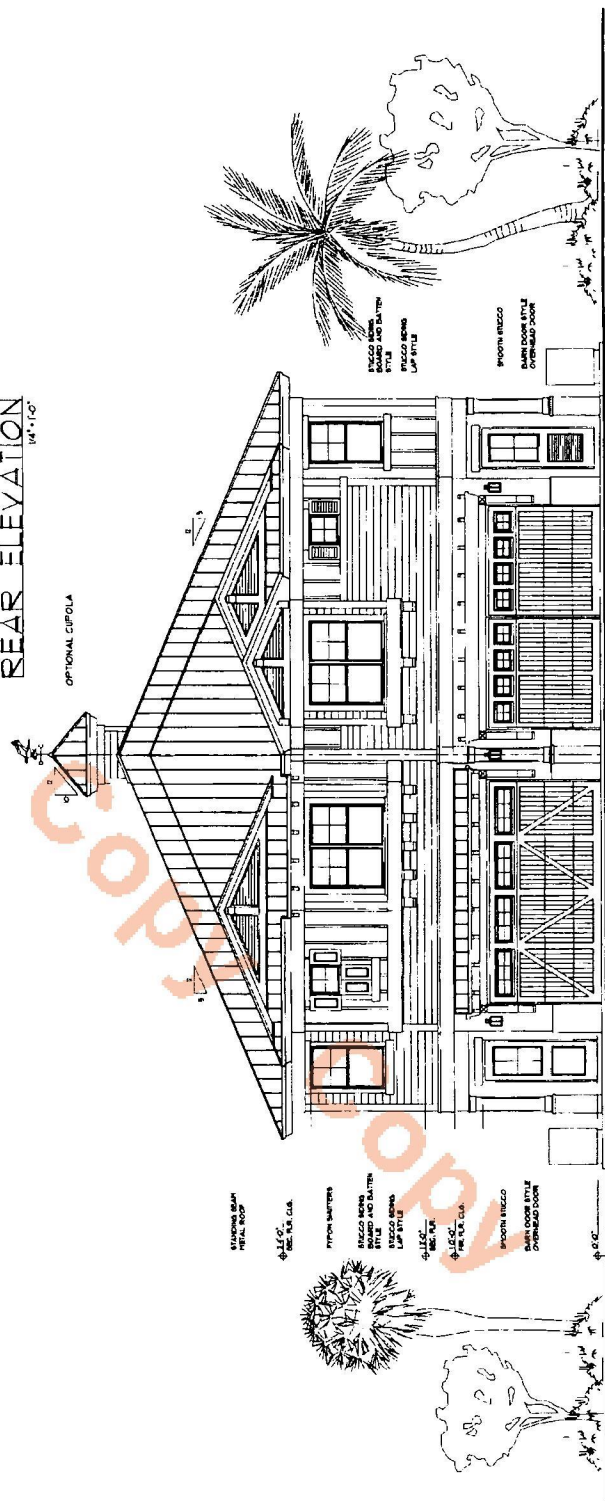
Kelly & Kelly Architects
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(888) 666-6663

PROPOSED DESIGN FOR

OSPREY PRESERVE
GREENRIVER PARKWAY
MARTIN COUNTY, FLORIDA



REAR ELEVATION
14' x 14'



FRONT ELEVATION #SIX
14' x 14'

EW Consultants, Inc.
Natural Resource Management, Wetland, and Environmental Permitting Services

CONSULTANTS, INC.



OSPREY PRESERVE RPUD

PRESERVE AREA MANAGEMENT PLAN

Prepared for:

LUCIDO & ASSOCIATES, INC.

Prepared by:

EW CONSULTANTS, INC.

February 2018

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INTRODUCTION -

This Wetland Monitoring Plan is designed for a 15.2+/- acre parcel located at the southwest corner of the Jensen Beach Boulevard/Green River Parkway intersection within the City of Stuart, in Martin County (please see Figure 1). The project site consists of residential units, associated roads, stormwater ponds, open space, and wetland and upland preserve areas. Two wetlands occur on-site: W-1 and W-2, the majority of which will be preserved and maintained in accordance with this plan, the details of which are described below.

WETLAND AND UPLAND PRESERVE AREAS -

Eradication of Nuisance and Exotic Vegetation -

All nuisance and exotic vegetation as listed by the Florida Exotic Pest Plant Council will be eradicated from the wetland and upland buffer preserve areas in perpetuity by the applicant or successors.

- All eradication will be through herbicide application, hand clearing, and removal of cut material off-site.
- The criterion for acceptance of eradication of exotic vegetation will be 100 percent kill. If initial eradication efforts do not achieve this criterion, follow up treatments will be conducted.
- Cutting/treatment of the trunk and/or stump with an appropriately labeled herbicide will eradicate all Brazilian pepper, melaleuca and other woody exotics.
- The criterion for completion of the woody exotic eradication will be 100 percent kill. If initial eradication efforts do not achieve this criterion, follow-up treatment will be conducted.
- All eradication of non-woody exotic vegetation will be through application of appropriately labeled herbicide. Any debris removed will be handled in accordance with the disposal specifications.
- The criterion for acceptance of eradication for all non-woody exotic vegetation will be 100 percent kill. If initial eradication efforts do not achieve this criterion, follow up treatment will be conducted.

The exotic vegetation eradication in the wetland and upland buffer preserve may generate vegetative debris that requires disposal. There will be a staging and storage area provided outside the limits of the preserve areas.

- Transport of vegetative debris from the wetland and upland buffer preserve area to the staging area will be conducted in a fashion that minimizes the distribution and dispersal of seeds.
- No living exotic or nuisance vegetative material will be left in the wetland and upland buffer preserve area. This plan allows for killing in place by herbicide application for non-woody plant material only.

All vegetative debris, either whole or chipped/mulched will be hauled off site and disposed of at a landfill or other such appropriately licensed facility.

Herbicides are required for the treatment of all stumps/trunks of woody vegetation to prevent re-growth, and for eradication of non-woody exotic and nuisance vegetation.

- All herbicide application activity will be conducted under the supervision of a Florida Department of Agriculture licensed applicator.
- All herbicide applied must include a visible tracer dye in the mix to facilitate observation of treated vegetation.

Replanting with Native Vegetation -

In preserves where exotic and nuisance plant eradication efforts leave un-vegetated areas, supplemental planting may be necessary. As such, the typical wetland planting plan (Figure 2) and the typical upland planting plan (Figure 3) shall be followed. Determining the number and type of plants will be done in consultation with SFWMD ERP Compliance staff after reviewing the site conditions within the preserve areas.

The vegetative success criteria for the wetland and upland buffer preserve area includes the requirement for 80 percent coverage of desirable vegetation and areal coverage of exotic vegetation at five percent and nuisance vegetation limited to 5 percent or less. After five years, the wetland and upland buffer preserve area will meet the vegetative success criteria of 80 percent coverage of desirable vegetation and areal coverage of exotic vegetation at five percent and nuisance vegetation limited to 5 percent or less.

WETLAND AND UPLAND PRESERVE MONITORING PLAN -

This monitoring plan includes one transect through the center of Wetland 1 with three photo/data collection stations, and one transect through Wetland 2 with three photo/data collection stations (see Figure 4).

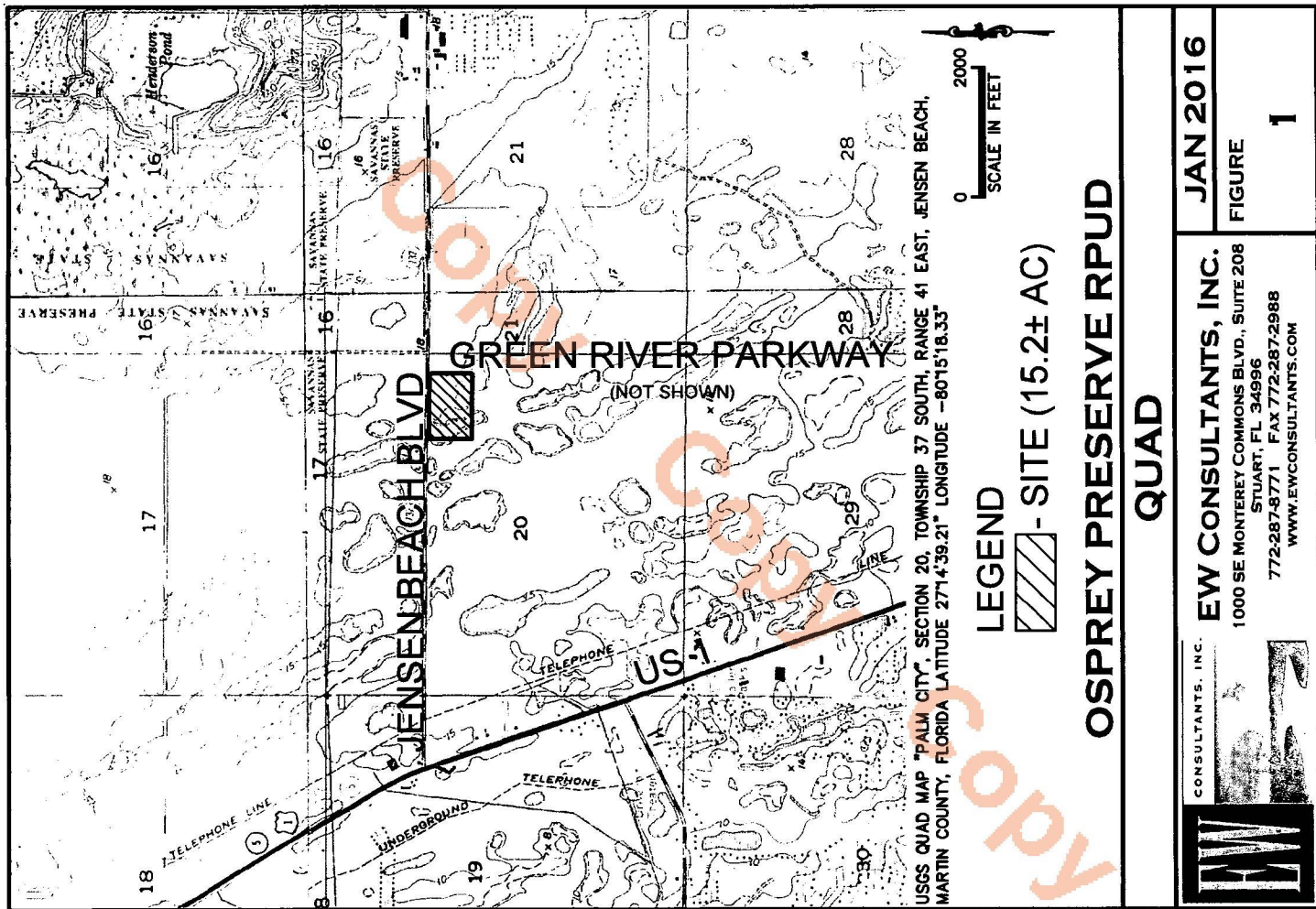
The vegetative coverage will be measured as absolute coverage within an area of approximately 2,500 square feet at each monitoring station. The vegetation will be measured in percent coverage of the canopy/understory layer and ground cover. The total percent cover will not exceed 100 percent, and each species documented will be reported in both common and Latin names. The coverage will be measured by visual observation and will extend approximately 25 feet from the observer in each direction thus covering approximately 2,500 square feet at each station. Photos will be collected from each of the established monitoring stations to provide documentation of vegetative coverage. In addition to vegetative coverage documentation, any observed wildlife utilization or indicators of wildlife (i.e. tracks, scat, etc.) will be reported.

The monitoring will be conducted on an annual basis and reports will be provided to SFWMD and City during the first five years so that maintenance activity can be closely tracked. The reports provided at the end of two years and five years will include a discussion and conclusion regarding achievement of the success criteria as per the permit.

Each monitoring report will include recommendations for maintenance, if necessary. The threshold for maintenance requirements will be any monitored area that has 5 percent or more total vegetative coverage by nuisance or exotic vegetation at any time during the monitoring period. Additionally, if the upland buffer or wetland areas have not achieved the success criteria it will be recommended for supplemental planting in order to meet the criterion. Maintenance of the upland buffer will be provided in perpetuity by the permittee in accordance with permit requirements and this plan.

In order to further protect the wetland and upland buffer preserve areas, preserve area signage will be installed as shown on Figure 4.

Activity	Months after Construction
	Permit Issuance
Record Conservation Easement	One Month
Initiate Exotic Eradication	Two Months
Complete Exotic Eradication	Four Months
Conduct/Submit Time Zero Monitoring	Six Months
Submit First Annual Monitoring Report	12 Months
Submit Second Annual Monitoring Report	24 Months
Submit Third Annual Monitoring Report	36 Months
Submit Fourth Annual Monitoring Report	48 Months
Submit Fifth Annual Monitoring Report	60 Months

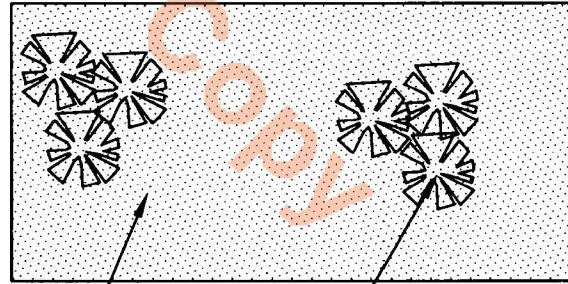


OSPREY PRESERVE RPUD.dwg QUAD

TYPICAL WETLAND

PRESERVE AREA PLANTING PLAN

NTS



GROUNDCOVER (bare root)
Pickrel Weed (*Pontederia Cordata*)
Beakrush (*Rhynchospora tracyi*)
Blue Flag Iris (*Iris virginica*)
Blue Maidencane (*Amphicarpum muhlenbergianum*)
Chairfern (*Woodwardia virginica*)
Sand Cordgrass (*Spartina bakeri*)
Maidencane (*Panicum hemitomon*)

CANOPY (7gal)
Cypress (*Taxodium spp.*)
Red Maple (*Acer rubrum*)

NOTE:

- Native vegetation to be installed to mimic typical of freshwater wetland habitat plant composition
- Plant material may be substituted with other similar native species.
- Planting quantities to be determined at time of planting as per existing field conditions.

OSPREY PRESERVE RPUD

PRESERVE AREA PLANTING PLAN

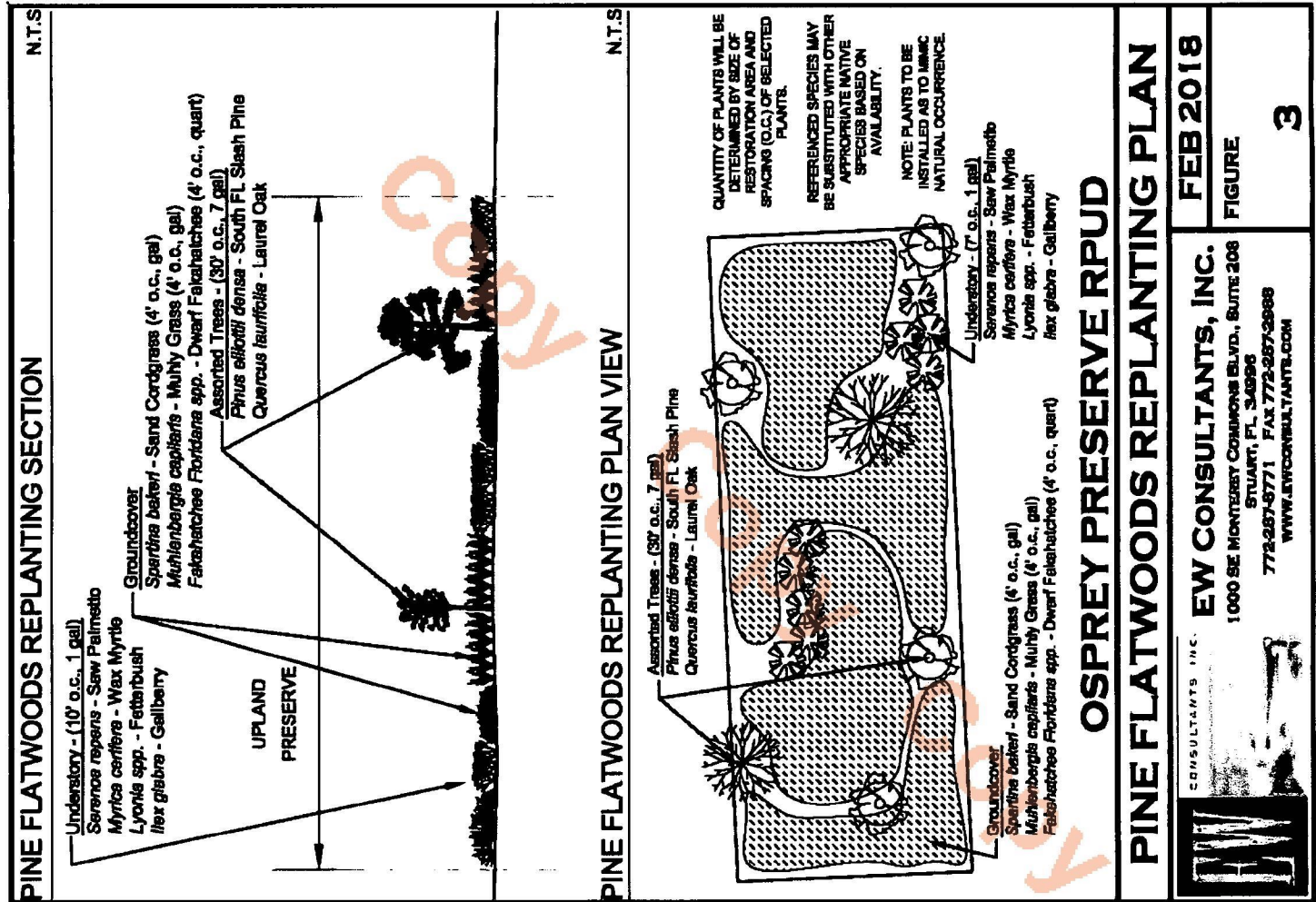


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1000 SE MONTEREY COMMONS BLVD., SUITE 208
STUART, FL 34996
772-287-8771 FAX 772-287-2988
WWW.EWCONSULTANTS.COM

JUNE 2016

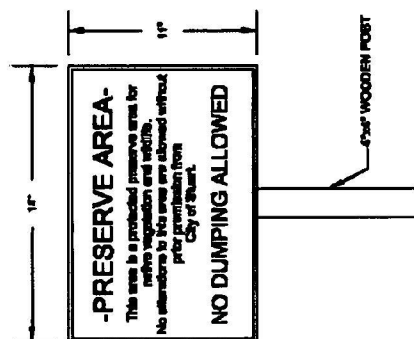
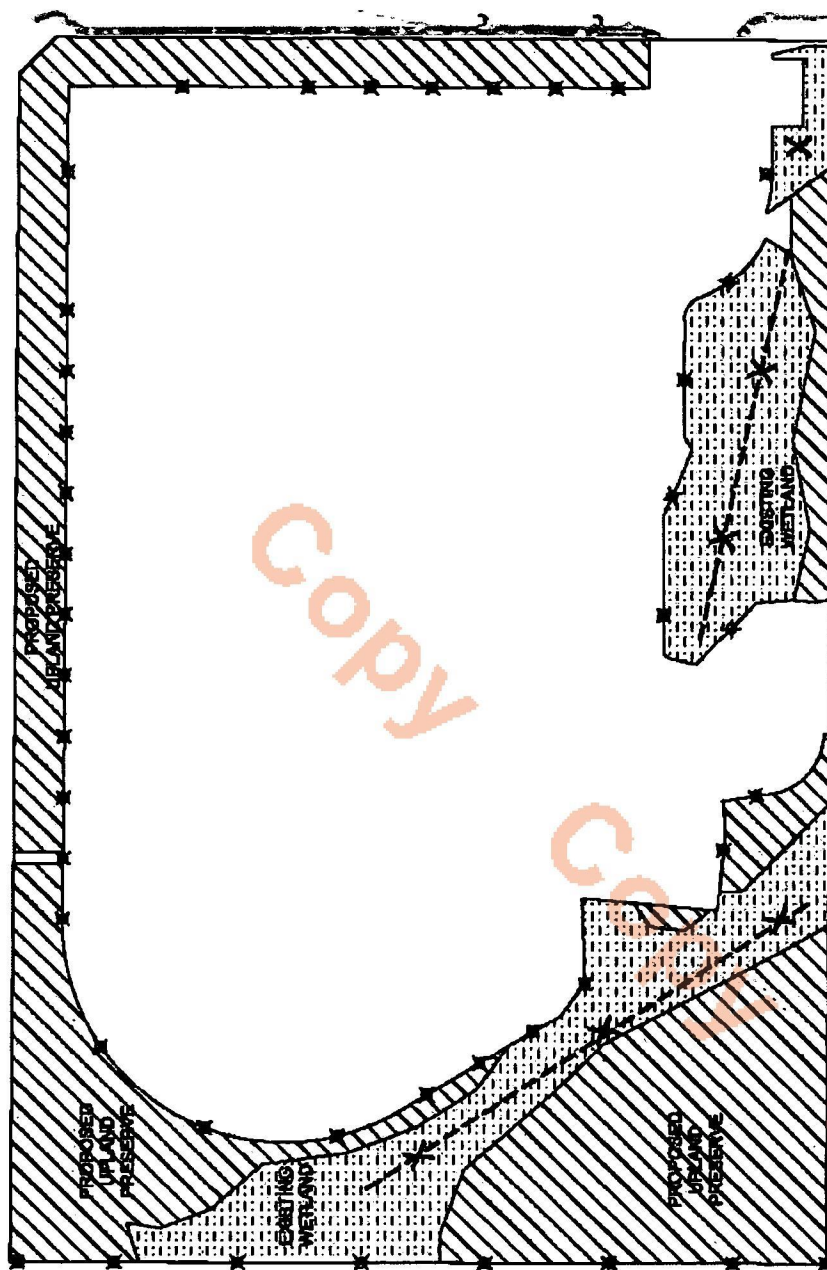
FIGURE

2



JENSEN BEACH BLVD

GREEN RIVER PARKWAY



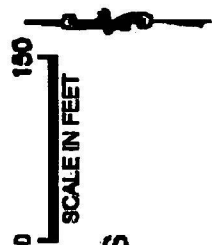
LEGEND

WETLAND PRESERVE AREA

UPLAND PRESERVE

X--X-- MONITORING TRANSECT WITH STATIONS

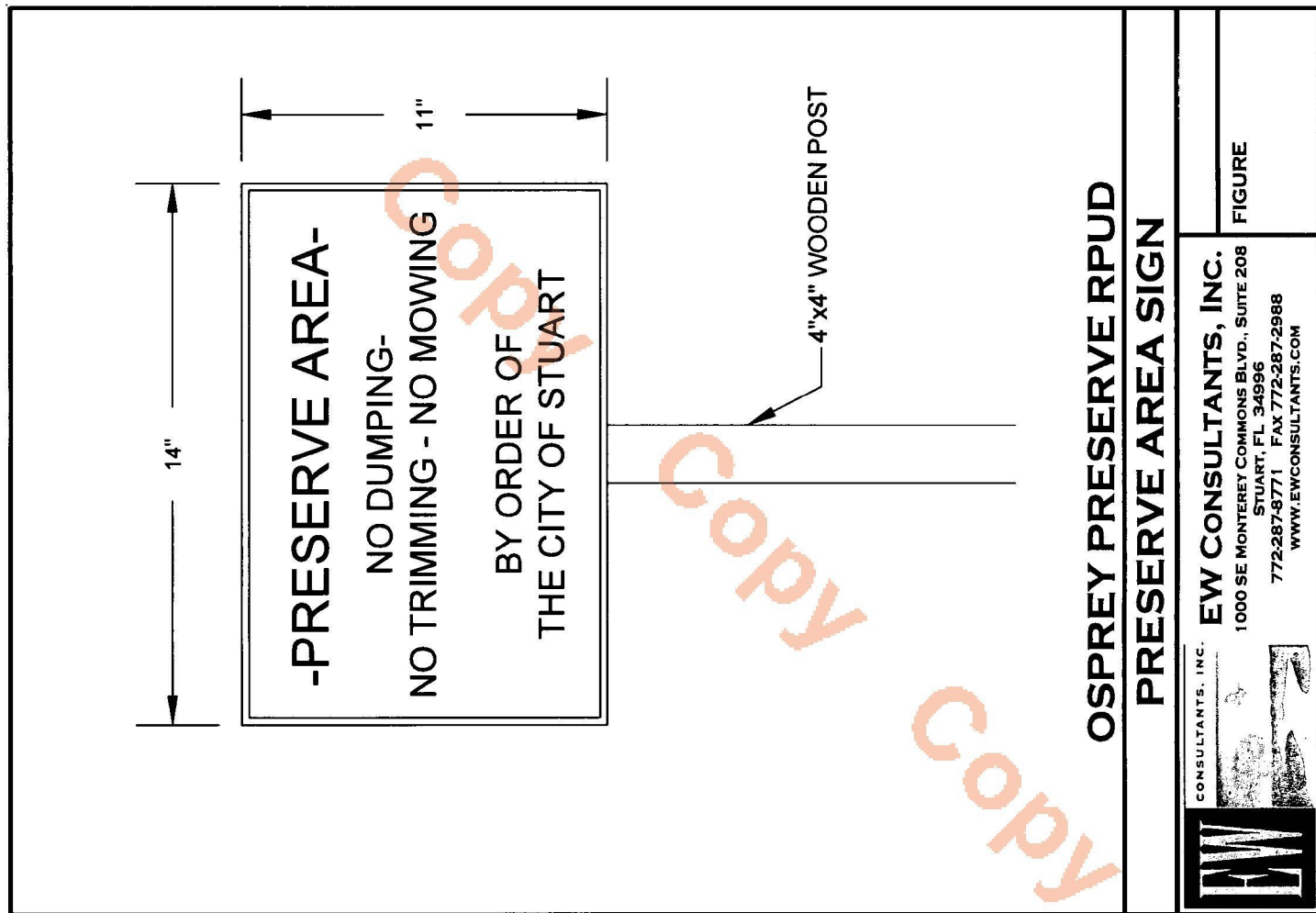
■ - PRESERVE SIGN LOCATION (42)



OSPREY PRESERVE RPUD
MONITORING MAP

FIG 3019
FIGURE 4

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Miami, FL 33156
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PRESERVE SIGN STANDARD.dwg Layout11

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: Michael J. Mortell, City Attorney

Title of Item:

CHAPTER 16- EMERGENCY MANAGEMENT (RC):

ORDINANCE No. 2468-2021; AN ORDINANCE OF THE CITY OF STUART AMENDING CHAPTER 16- EMERGENCY MANAGEMENT; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The Governor signed Senate Bill 2006 into law on May 3, 2021. To remain consistent with the State Emergency Management Statutes, changes were necessary to the City Code in Chapter 16. The new code includes time restrictions set forth by the state and authorizes the Commission to adopt emergency orders for Public Health crisis events.

This Ordinance was passed on first reading at the 7/26/21 meeting.

Funding Source:

Not Applicable

Recommended Action:

Move approval of Ordinance 2468-2021 on Second Reading.

ATTACHMENTS:

Description	Upload Date	Type
□ Ord 2468-2021 Emergency Management	8/4/2021	Ordinance add to Y drive



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

ORDINANCE NUMBER 2468-2021

**AN ORDINANCE OF THE CITY OF STUART AMENDING
CHAPTER 16; EMERGENCY MANAGMENT; PROVIDING
FOR A SEVERABILITY CLAUSE AND A CONFLICTS
CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND
FOR OTHER PURPOSES.**

WHEREAS, the City Commission for the City of Stuart, Florida, is authorized by provisions in Chapter 166, Florida Statutes, to establish programs providing for the health, safety and general welfare of the residents of Stuart, Florida; and

WHEREAS, the City finds and declares that the City is vulnerable to a wide range of emergencies, including natural, technological, and manmade disasters, all of which threaten the life, health, and safety of its people; damage and destroy property; disrupt services and everyday business recreational activities; and

WHEREAS, It is the intent of the City Commission to reduce the vulnerability of the people and property of this City of Stuart, Florida; to prepare for efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief ot persons and for the restoration of services and property; to prepare for an deficiently respond to public health emergencies; and to provide for the coordination of activities relating to emergency preparedness, response, recovery, and mitigation among and between agencies and officials of the City, County and State and with the sector; and

WHEREAS, the Governor signed Senate Bill 2006 on May 3, 2021 which amended Florida Statute 252 relating to the State Emergency Management Act.

WHEREAS, the City Commission desires to maintain continuity with Florida Statutes,

§252.31 and §870.041.

WHEREAS, the City Commission determines that it is in the best interests of the public welfare of its citizens to amend Chapter 16 relating to the declaration of local emergencies to ensure that the City remains in compliance with the State of Florida regulations.

* * * * *

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

SECTION 1: The City of Stuart Code of Ordinances, Chapter 16 – Emergency Management is amended to read as follows:

Sec. 16-1 **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:

- A) **Curfew** means a prohibition against any person walking, running, loitering, standing, riding or driving a vehicle, boat, bicycle or other conveyance upon any alley, street, highway, waterway, public property or vacant premises within the limits of the city, excepting persons officially designated to duty with reference to a disaster.
- B) **Disaster** means a condition which threatens or adversely affects the public health, safety or security, and which is or threatens to be beyond the control of those public and private agencies normally responsible for the management of such a condition, resulting from an act or imminent threat of riot, terrorism, act of war, mob or other violent act; from conflagration, explosion, hazardous materials incident or release; from a weather event such as a flood, hurricane, tornado, or earthquake; from a disruption in the city's utility system; or from any other material cause.
- C) **Emergency or local emergency** means any natural or manmade event including, but not limited to flood, conflagration, hazardous material dispersal, hurricane, tornado, earthquake, explosion or public health crisis within the limits of the city resulting in or imminently threatening the death or injury of persons, or the destruction of property, to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare.
- D) **Public Health Crisis.** Means any occurrence or threat thereof whether a natural or manmade which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins or situations involving mass casualties or natural disasters.
- E) **Normal average price** means the price at retail for merchandise, goods or services at which similar merchandise, goods or services were being sold immediately preceding a declaration of public emergency.

(Code 1995, § 26-1; Ord. No. 2055, § 2, 11-28-2005)

Sec. 16-2 **16-2. Emergency management structure.**

- A) The city manager shall perform the function of director of emergency management and may designate an incident commander or may serve as incident commander as that term is used in the national incident management system (NIMS). Notwithstanding the above, the normal progression and assumption of command used for incident commanders as provided for in the national incident management system (NIMS) shall be used unless the city manager intervenes. The city manager shall implement, manage, and report to the mayor and city commission on all actions authorized and taken under the provisions of this chapter. In the absence or inability of the city manager, the police chief shall perform the functions of director of emergency management.
- B) The city manager may appoint a risk and emergency management coordinator whose duties shall include the ongoing planning for and coordination of those actions necessary to comply with national incident management system (NIMS), and for the creation and maintenance of an effective emergency management response capability. The risk and emergency management coordinator shall further serve as chief, planning section, under the emergency operating plan of the city, and as director of the emergency operations center.

Sec. 16-3 **Powers, duties and responsibilities.**

- A) ***Director of emergency management.*** The director of emergency management shall have the following powers, duties and responsibilities:
 - 1) To recommend or make a declaration of local emergency as provided herein, and to inform the mayor and the city commission of the reasons for and status of events requiring the declaration.
 - 2) To direct the creation, revision and the exercise of emergency response plans conforming to federal, state and county emergency plans for the preparation for, mitigation of, response to, and recovery from local emergencies including public health crisis; and to exercise all powers permitted by F.S. ch. 252, and Ordinance Nos. 426 and 558, county ordinances, as amended from time to time.
 - 3) To assure cooperation by department heads and others with the efforts of the risk and emergency management coordinator in preparation for emergency conditions.
 - 4) To recommend a budget to the city commission for the creation and maintenance of an emergency response capability as provided herein.
 - 5) To issue emergency administrative regulations (EARs) necessary for the protection of life and property, establishment of public order, and control of adverse conditions affecting public welfare resulting from an emergency, not in conflict with any federal, state, county or city statute, rule, regulation, or ordinance, or any prior action of the city commission.
 - 6) The director of emergency management may call an emergency special meeting of the city commission for any other matter, item, request, or event that exceeds his normal or emergency authority.

- 7) If it is impossible to obtain a quorum of the city commission for an emergency special meeting, and except as provided elsewhere in this chapter, the director of emergency management, upon the written agreement of the director of public works, the police chief, the finance director and the city attorney, or their designees, may take any and all reasonably prudent governmental or proprietary actions required to preserve life and property, and maintain or reinstitute city services, until such time as a meeting of the city commission may be held.
- B) ***Risk and emergency management coordinator.*** The risk and emergency management coordinator shall have the following responsibilities and duties:
- 1) To supervise the development and maintenance of city emergency management plans, including annual updates, in conformance with national incident management system (NIMS), and any state or local laws;
 - 2) To plan for and develop an emergency operations center (EOC) to include equipment, manning, and operational procedures necessary for the management and control of emergency conditions;
 - 3) To develop and manage the city's emergency awareness public information program;
 - 4) To prepare and submit a proposed annual operating budget to the city manager related to emergency management activities, preparations and training. (Code 1995, § 26-3; Ord. No. 2055, § 2, 11-28-2005)

Sec. 16-4 **Declaration of a state of local emergency.**

- A) The mayor shall have the authority to declare a state of local emergency. Upon the absence or nonavailability of the mayor, the chief of police may issue such a declaration. If the mayor or chief of police is unwilling or unable to act, the city commission at a special meeting may adopt such declaration.
- B) Emergency ordinances and resolutions adopted by the city commission and EARs in furtherance of this chapter may include, but are not limited to, those relating to evacuation; curfews; declaration of areas as off limits; suspension of the sale or distribution of alcoholic beverages, explosives, or combustibles; price-gouging for goods and services; water use restrictions; suspension of City Code requirements; suspension of Florida Building Code regulations; rationing of fuel, ice and other essential commodities (the term includes but is not limited to personal protective equipment used in the event of a public health crisis; and further emergency procurement and contracting procedures.
- C) Upon the declaration of a local emergency, the city manager shall post a written notice of such declaration upon or within 50 feet of the front entrance of city hall, and shall, as promptly as practicable, file in the office of the city clerk a notice of a declared state of local emergency, or emergency measure declared or ordered and promulgated by virtue of F.S. § 870.041 et seq. The city manager shall notify the local media by any practicable means, when reasonably feasible to do so.
- D) A state of local emergency, when declared as provided within this chapter, and except as provided in section 16-5, shall continue in effect from day to day until terminated; provided, however, that a state

of emergency shall commence upon the declaration thereof and shall terminate at the end of a period of seven consecutive 24-hour days thereafter, unless, prior to the end of such seven-day period the city official declaring the emergency shall have terminated such state of emergency. An extension of the seven-day limit must be approved by resolution of the city commission. (Code 1995, § 26-4; Ord. No. 2055, § 2, 11-28-2005; Ord. No. 2229-2011, § 1, 6-27-2011)

Sec. 16-5 **Police Emergencies.**

- A) A declaration of a local emergency shall automatically invoke the emergency measures recited in F.S. § 870.044, if the emergency relates to overt acts of violence or the imminent threat of such violence. The police chief or designee may certify to the mayor that an actual or potential condition arising from violent crimes, riot, looting, mayhem or other civil disturbance, or the threat thereof, require extraordinary measures for control, including, but not limited to, calling out of off-duty and reserve personnel; assistance by outside agencies; evacuation; curfew, and other like actions. Said sections are reprinted herein, below:

1) **F.S. § 870.042, designation of local authority.**

- (a) The sheriff of each of the several counties of this state, or such other county official having the duties of a sheriff in counties operating under home rule charter, by whatever name known, shall be empowered to declare that a state of emergency exists within the unincorporated areas of the county and to exercise the emergency powers conferred in F.S. §§ 870.041—870.047.
- (b) The governing body of any municipality within this state may designate by duly adopted ordinance a city official who shall be empowered to declare that a state of emergency exists within the boundaries of the municipality and to exercise the emergency powers conferred in F.S. §§ 870.041—870.047. The designated city official shall be either the mayor or chief of police or the person who performs the duties of a mayor or chief of police in such municipality. In the absence of a duly adopted ordinance so designating the official so to act, the chief of police of such municipality is designated as the city official to assume the duties and powers hereof.
- B) A state of emergency established under this chapter shall commence upon the declaration thereof by the public official and shall terminate at the end of a period of 72 consecutive hours thereafter unless, prior to the end of such 72-hour period, the public official, the governor, or city commission shall have terminated such state of emergency. Any extension of the 72-hour time limit must be accomplished by request from the public official and the concurrence of the city commission by duly enacted ordinance or resolution in regular or special session.
- C) Whenever the public official declares that a state of emergency exists, pursuant to this chapter, he may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he may deem appropriate:
- 1) The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking, except for the provision of designated essential services such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.

- 2) The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefor.
- 3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage.
- 4) The closing of places of public assemblage with designated exceptions.
- 5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof.
- 6) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid. Any such emergency measure so ordered and promulgated shall be in effect during the period of said emergency in the area for which the emergency has been declared.

(Code 1995, § 26-5; Ord. No. 2055, § 2, 11-28-2005; Ord. No. 2229-2011, § 1, 6-27-2011)

Sec. 16-6 Fire and hazardous materials emergencies.

A state of local emergency may be declared because of fire or a hazardous materials incident emergency. The fire chief or designee may certify to the city manager that an actual or potential condition arising from fire, explosion, chemical spill or release, building or bridge collapse, or plane, train, or other vehicle accident, that requires extraordinary measures for control, including, but not limited to, calling out of off-duty and reserve personnel; assistance by outside agencies; evacuation; and other like actions.

(Code 1995, § 26-6; Ord. No. 2055, § 2, 11-28-2005)

Sec. 16-7 Utility emergencies. A state of local emergency may be declared because of utility conditions. The director of public works or designee may certify an emergency to the city manager that a condition exists or is imminently threatened, that endangers the safety, potability, quantity, availability, collection, conveyance, transmission, distribution, treatment, or storage of water or wastewater through or within the city's water or wastewater utility system; and that extraordinary actions to control and correct the situation are required, including, but not limited to, emergency purchases, call-in of off-duty personnel, assistance by other communities and agencies, and other like actions. (Code 1995, § 26-7; Ord. No. 2055, § 2, 11-28-2005)

Sec. 16-8 Weather emergencies. A state of local emergency may be declared by the mayor because of weather conditions when the national weather service or a federal, state, county or local emergency management agency informs the city or the public that emergency conditions resulting from meteorological conditions are present or imminent. Meteorological conditions covered by this section shall include, but are not limited to, hurricanes, floods, tornadoes, or other severe weather conditions and the results therefrom. (Code 1995, § 26-8; Ord. No. 2055, § 2, 11-28-2005).

Sec. 16-9

Public Health Emergency. A state of local emergency may be declared because of a public health crisis. The City Manager may certify to the Mayor that an actual or potential crisis whether natural or manmade which may result in substantial injury or harm to the public health from infectious disease,

chemical agents, nuclear agents, biological toxins or situations involving mass casualties or natural disasters that requires extraordinary measures for control, including, but not limited to, calling out of off-duty and reserve personnel; assistance by outside agencies; evacuation; and other like actions. The Mayor shall have the authority to declare an emergency as set forth in Section 16 of this Code.

- A) When a public health emergency has been declared, the City may acquire and maintain a supply of personal protective equipment when it is determined to be necessary to meet safety needs during the declared emergency.
- B) Take other action deemed necessary, incidental or appropriate for the continued operation of the City.
- C) An emergency order that limits the rights or liberties of individuals or businesses within the City of Stuart shall automatically expire 7 days after issuance but may be extended by a majority vote of the City Commission, as necessary, in 7-day increments for a total duration of not more than 42 days. This automatic expiration does not apply to orders issued in response to hurricanes or other weather-related emergencies.
- D) An emergency order such as a public health crisis that limits the rights or liberties of individuals or businesses within the City must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible. Upon the expiration of such emergency order, the City may not issue a substantially similar order.

Sec. 16-10 Suspension of local building regulations.

The mayor may authorize the full or partial suspension of local building regulations during and following a declared state of emergency. The city development director may certify to the mayor that such action is necessary for the expeditious restoration of property damaged by the emergency event. Such suspension of building regulations may be applied on a case-by-case basis as required to remedy specific conditions and to facilitate the provision of emergency housing to disaster victims. The city development director may specify the provisions of the building code to be suspended and the reasons therefor, when certifying the necessity of such suspension to the mayor. (Code 1995, § 26-9; Ord. No. 2055, § 2, 11-28-2005).

Sec. 16-11 Certification of emergency conditions.

A certification of emergency conditions to the mayor may be oral, but each oral certification shall be confirmed in writing within 24 hours following an emergency declaration. (Code 1995, § 26-10; Ord. No. 2055, § 2, 11-28-2005)

Sec. 16-12 Declaration of disaster.

- A) The mayor shall have the authority to declare that a state of disaster exists within the city. Upon the absence or nonavailability of the mayor, the police chief may issue such a declaration.
- B) Upon a declaration of a disaster, the city hereby requests the assistance of all available federal, state, county and other local agencies, along with disaster assistance from nonprofit organizations (NPOs), unless otherwise determined by the mayor. The city manager, in consultation with department directors, and others may make requests for specific types of assistance. (Code 1995, § 26-11; Ord.

Sec. 16-13 **Termination of a declaration other than a public health crisis.**

- A) A declaration of a local emergency or disaster may be terminated by a majority vote of the city commission or by the mayor, upon the written finding that the conditions leading to or causing the emergency no longer exist; or that the city's agencies and departments are able to manage the situation without extraordinary assistance or emergency measures.
- B) A state of emergency shall automatically terminate in 72 hours, as provided by law, unless, prior to the end of the 72-hour period, unless earlier terminated or extended as provided herein. Any extension of the 72-hour time limit must be in a written request from the mayor with the concurrence of the city commission, by duly enacted resolution.
- C) Notice of termination of the emergency declaration shall be made to the public by the mayor by the same means as the notice of the declaration of the state of emergency. (Code 1995, § 26-12; Ord. No. 2055, § 2, 11-28-2005)

SECTION 2: If any section, phrase, sentence or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3: – Effective date.

The ordinance from which this article derives shall take effect immediately upon adoption.

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:

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

YES	NO	ABSENT	ABSTAIN

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: ERIN WOHLITKA

Title of Item:

THE OAKS SCHOOL AT ST. MARY'S CHURCH CONDITIONAL USE (QUASI-JUDICIAL) (RC):

RESOLUTION No. 75-2021: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, GRANTING A MAJOR CONDITIONAL USE APPROVAL TO ALLOW A SCHOOL, PRIVATE, PAROCHIAL, OR TECHNICAL, FOR THE OAKS CLASSICAL CHRISTIAN ACADEMY, INC. AT ST. MARY'S EPISCOPAL CHURCH; WITH SAID LANDS BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; PROVIDING FOR CONDITIONS; PROVIDING FOR REPEAL OF ALL DEVELOPMENT ORDERS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

On July 28, 2021, the Oaks Classical Christian Academy applied for a Conditional Use to allow a private parochial school at St. Mary's Episcopal Church. The subject property is located at 623 SE Ocean Boulevard and is within the jurisdictional boundaries of the City of Stuart.

St. Mary's Church is currently zoned Residential Multi-Family/Office (R-3) and has a Future Land Use Designation of Office-Residential. Pursuant to Section 2.02.02, *Table 2: Land Uses*, of the City's Land Development Code, Schools (Private, Parochial, or Technical) at properties less than five (5) acres in size are to be approved as Conditional Uses within the R-3 zoning district.

The subject buildings classified as St. Mary's Episcopal Church were built in 1947 and 1965, respectively. Pursuant to and at the time of the recordation of Resolution 46-89, passed by the City Commission on October 23, 1989, a pre-school had previously been operating for 25 years at the subject property.

The Applicants have stated that The Oaks Classical Christian Academy is a small, private school that began in concept in 2020 by two local mothers who wanted to home educate their children but also understood the need for academic support from an additional teacher, social engagement, and a support community for both students and parents. As such, the Oaks Classical Christian Academy was incorporated in 2021 as a hybrid learning school integrating both homeschooling and in-person learning for two (2) days a week. The Oaks Classical Christian Academy has enrolled 18 students for this upcoming school year.

The Oaks Classical Christian Academy is proposing to utilize three (3) classrooms and a closet/office in the Youth Center, one (1) classroom in the Pittinger Center, and the Smith Hall buildings for morning assembly and lunch. The Applicant is not proposing to modify any existing structures and plans to utilize the existing roadways, traffic circulation, and parking areas. The submitted Application includes an Operations Plan for drop off and pick up, as summarized below:

Drop Off / Pick Up Operations:

Vehicles will enter the parking lot from SE Osceola Street and turn south on Amerigo Ave that bifurcates the subject property, taking a left-hand turn into the parking lot. All of the students will be dropped off at Smith Hall in the morning for assembly and will be picked up from the Youth Center in the afternoon. The carpool line will exit onto SE Ocean Boulevard. Drop Off time will be from 8:00am-8:15am and Pick Up time will be from 3:15pm-

3:30pm.

CONFORMANCE WITH SEC.11.01.11 CONDITIONAL USE CRITERIA

City staff has reviewed this Application and has determined that the subject Application has proved to be in substantial compliance with the Conditional Use Criteria set forth in Section 11.01.11 of the City's Land Development Code. The Applicant has demonstrated that there will be no negative impacts from the proposed Conditional Use on the subject property. Furthermore, City staff recommends approval due to the subject property's previous use as a pre-school, and based on the small number of students, limited days of property utilization, and the submitted operations plan.

RECOMMENDATION:

Approve a Conditional Use to allow the Oaks Classical Christian Academy at St. Mary's Episcopal School with conditions set forth in Resolution 75-2021.

SEE ATTACHED DOCUMENTS

- Ø Resolution No. 75-2021 with Exhibits
- Ø Application and supporting documents

Funding Source:

N/A

Recommended Action:

Move to approve R75-2021.

ATTACHMENTS:

Description	Upload Date	Type
▣ A.1 Resolution 75-2021	8/13/2021	Resolution add to Y drive
▣ A.2 Resolution 75-2021 - Exhibit D "Background Info and Proposed Use"	8/12/2021	Exhibit
▣ A.3 Resolution 75-2021 - Exhibit D "Operations Plan"	8/12/2021	Exhibit
▣ B. Staff Report	8/12/2021	Staff Report



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA
RESOLUTION NUMBER 75-2021**

AN RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, GRANTING A MAJOR CONDITIONAL USE APPROVAL TO ALLOW A SCHOOL, PRIVATE, PAROCHIAL, OR TECHNICAL, FOR THE OAKS CLASSICAL CHRISTIAN ACADEMY, INC. AT ST. MARY’S EPISCOPAL CHURCH; WITH SAID LANDS BEING MORE FULLY DESCRIBED IN EXHIBIT “A” ATTACHED; PROVIDING FOR CONDITIONS; PROVIDING FOR REPEAL OF ALL DEVELOPMENT ORDERS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

WHEREAS, on August 23, 2021, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by The Oaks Classical Christian Academy, Inc., the Applicant, and St. Mary’s Episcopal Church, the Property Owner, for a 2.47-acre property consisting of two parcels opposite one another generally located north of the intersection at SE Ocean Boulevard and SE Amerigo Avenue;

WHEREAS, the City Commission, has considered the Petitioner's voluntary request to approve a Major Conditional Use to allow a school, private, parochial, or technical at St. Mary’s Episcopal Church, and has also considered the recommendation of the City staff; and

Resolution No. 75-2021 The Oaks Classical Christian Academy at St. Mary's Episcopal Church –
Major Conditional Use

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application does not create any detrimental effects on adjacent land uses; and

WHEREAS, the owners have committed to the City that the use will comply with all development codes, plans, documents, standards and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon this resolution; and

WHEREAS, at the hearing the Applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the Major Conditional Use will be in harmony with surrounding properties and their anticipated development;

WHEREAS, the foregoing recitals are true and adopted as findings of fact and conclusions of law.

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

SECTION 1: The foregoing recitals are true and adopted as findings of fact and conclusions of law.

SECTION 2: The legal description of the property is set forth in **Exhibit 'A'** attached hereto and made a part hereof by reference. A Map depicting the Property is attached hereto as **Exhibit 'B'** and made a part hereof by reference. The conditions of development attached hereto as **Exhibit 'C'** and made a part hereof by reference, and each shall constitute one of the approved documents.

SECTION 3: The following documents are on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit 'D'**, hereinafter the 'Approved

Resolution No. 75-2021 The Oaks Classical Christian Academy at St. Mary's Episcopal Church –
Major Conditional Use

Documents', shall be deemed a part of the development conditions, and shall supplement any earlier approvals:

- a. Background Information on The Oaks & Proposed Use, prepared by *The Oaks Classical Christian Academy* for the City of Stuart Conditional Use Permit Application, dated July 28, 2021 (2 Pages);
- b. Operations Plan for the Oaks School, Correspondence from *Ashley Froehling* (Applicant) to City staff, dated August 2, 2021;

SECTION 4: Except as otherwise provided herein, no development permits, site permits or building permits shall be issued by the City except in compliance with the aforesaid Approved Documents. The failure of the Applicant to comply with the Approved Documents, or with any term or condition of development set forth in this resolution, shall be deemed a zoning violation and no further permits, or other development approvals or orders shall be issued by the City to the owner until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City. This section shall not impair the due process or other legal rights of the Developer to seek administrative or judicial redress.

SECTION 5: Following the adoption and acceptance of this by the Owner, and in addition to any other action for failure to otherwise comply with the Approved Documents, the City Development Director may obtain a hearing before the City Commission and shall thereupon give at least five (5) days written notice of the time, date and location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission the Applicant may appear and may contest the allegation of breach or explain the reason or reasons for the breach. Upon a finding of a material breach of the Approved Documents and therefore, the Resolution(s) adopting the same, the City Commission may impose any or all the following:

Resolution No. 75-2021 The Oaks Classical Christian Academy at St. Mary's Episcopal Church –
Major Conditional Use

- a. Initiate the process to amend or repeal this or any other development order pertaining to the development.
- b. Impose an administrative penalty of up to \$1,000.00 for each violation, and up to \$5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this resolution by the Applicant shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 6: All development orders in conflict with this resolution or any part thereof is hereby repealed to the extent of such conflict. If any provision of this resolution conflicts with any contractual provision between the City and the Property Owner(s) or Applicant(s) of the site, this resolution shall prevail.

SECTION 7: If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

SECTION 8: The complete execution and recording of this Resolution by the City Clerk shall occur no later than 90 days from the date of this approval, failing which this resolution shall become void.

Resolution No. 75-2021 The Oaks Classical Christian Academy at St. Mary's Episcopal Church –
Major Conditional Use

SECTION 9: Upon complete execution of this Resolution, including the Acceptance and Agreement by the Owner, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

Passed on first reading the ____ day of _____, 2021.

Commissioner _____ offered the foregoing Resolution and moved its adoption.

The motion was seconded by Commissioner _____ and upon being put to a roll call

vote, the vote was as follows:

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

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this ____ day of _____, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

CITY'S ACKNOWLEDGMENT

STATE OF FLORIDA,

COUNTY OF _____

The above Resolution, Acceptance and Agreement was acknowledged before me by means
of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021, by
EULA R. CLARKE, Mayor, and Mary R. Kindel, City Clerk, respectively, of the City of Stuart,
Florida, a Florida municipal corporation.

Personally Known OR Produced Identification

Type of ID Produced _____

Signature of Notary Public: _____

Commission Expires: _____

Notary Seal:

Resolution No. 75-2021 The Oaks Classical Christian Academy at St. Mary's Episcopal Church –
Major Conditional Use

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN A CONDITIONAL USE APPROVAL AND IN ALL EXHIBITS, ATTACHMENTS AND APPROVED DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE ABOVE RESOLUTION. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY TO COMPLY WITH THIS RESOLUTION, ITS CONDITIONS, AND THE APPROVED DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS RESOLUTION MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ACTIONS MAY BE TAKEN AGAINST THE UNDERSIGNED BY THE CITY, INCLUDING BUT NOT LIMITED TO CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING REVOCATIONS, AND ALL APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

Print Name: _____

Print Name: _____

APPLICANT: The Oaks Classical Christian Academy, Inc.

By: _____

PROPERTY OWNER: St. Mary's Episcopal Church

By: _____

OWNERS ACKNOWLEDGMENT

STATE OF FLORIDA,
COUNTY OF _____

The above Resolution, Acceptance and Agreement was acknowledged before me by means
of ☐ physical presence or ☐ online notarization, this _____ day of _____,
2021, by _____

Personally Known OR Produced Identification

Type of ID Produced _____

Signature of Notary Public: _____

Commission Expires:

Notary Seal:

EXHIBIT A – LEGAL DESCRIPTION

EDG-RIVA ALL OF BLK 15 (LESS S 13' R/W) BLK 15

HILDABRAD PARK LOTS 1 TO 12 INC BLK 11

EXHIBIT B – LOCATION MAP

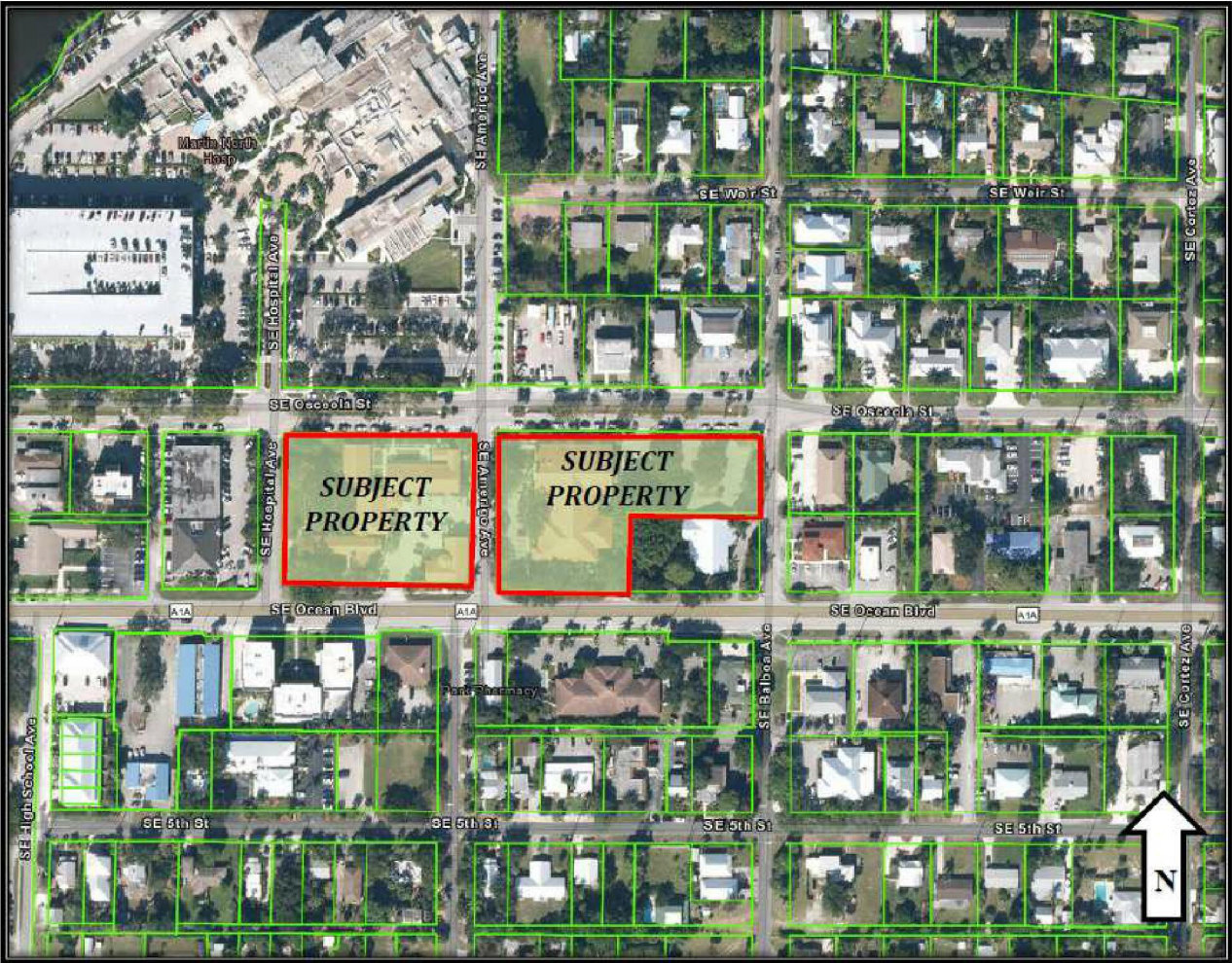


EXHIBIT C – DEVELOPMENT CONDITIONS

1. The Major Conditional Use Approval shall comply with the following documents (**Exhibit 'D'**):
 - a. Background Information on The Oaks & Proposed Use, prepared by *The Oaks Classical Christian Academy* for the City of Stuart Conditional Use Permit Application, dated July 28, 2021 (2 Pages);
 - b. Operations Plan for the Oaks School, Correspondence from *Ashley Froehling* (Applicant) to City staff, dated August 2, 2021;
2. 1. The approval shall comply with all regulations within the City's Land Development Code. Any modifications to the proposed use that exceeds a maximum of 25 students, or any other physical modifications to the subject site increase of 10% of the existing site, may be approved by the City's Development Director, provided however, the Development Director may refer the matter to the City Commission for approval via public hearing.
3. All applicable state or federal permits must be obtained before the commencement of any activities associated with this use. Issuance of this development order/permit/approval by the City of Stuart does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City of Stuart for the issuance of this order/permit/approval if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.
4. At no time shall vehicular traffic associated with this use utilize any ROW for spillover purposes onto SE Osceola Street, SE Amerigo Avenue, and SE Ocean Boulevard.

Exhibit D – APPROVED DOCUMENTS



THE OAKS
A Classical Christian Academy

Background Information on The Oaks & Proposed Use

Prepared for the City of Stuart Conditional Use Permit Application
on July 28, 2021

- **Our beginnings:** The Oaks is a small, private school that began in concept in 2020 (and incorporated in 2021) when two local moms got together and decided to create a hybrid school option for their own children and the broader community.
- **Our service:** We exist to support families who want to home educate their children, but also desire 1. academic support from an additional teacher, 2. social engagement, and 3. a support community for both students and parents. There are many hybrid/collaborative schools and homeschool services around the country with similar models, but there were none with this specific offering in Martin County so we are happy to bring it to the community.
- **Logistics:** While our lesson plans cover 5 days a week (and therefore we are a full time school), our students will only meet together 2 days per week at St. Mary's in a traditional classroom setting. The program will run from 8:15 - 3:15.
- **Building use:** We will be meeting Tuesdays and Thursdays only. At the time of application, we have 18 students (for a total of 12 families) enrolled--a group that is small, but grateful for this option and excited to get started. We will be using 3 - 4 classrooms and a larger room for a morning gathering and lunchtime. These spaces are marked on the map on the next page.
- **No expected city impact:** Our proposed use of St. Mary's classrooms will be consistent with the church's current programming (Bible studies, other support group meetings, etc.) for their congregation and the community. We will not be altering any building or outdoor space structurally or aesthetically. Therefore, the school's 2-days-a-week use should not create any additional impact to the surrounding area.



THE OAKS

A Classical Christian Academy

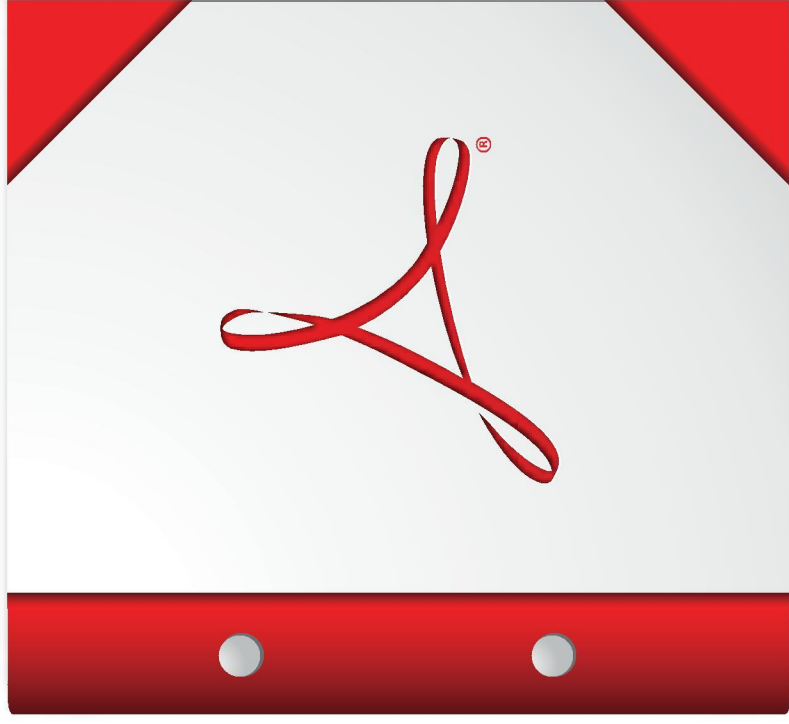
The Oaks proposed use of St. Mary's use includes (marked by Xs below):

- 3 classrooms and closet/office in the Youth Center
- 1 classroom in Pittenger Center
- Smith Hall (morning assembly and lunch)

Arrow below indicates drop-off area

**** No building
will be altered
structurally in
any way ****





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Acrobat X or Adobe Reader X, or later.**

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CITY OF STUART, FLORIDA
CITY COMMISSION
STAFF REPORT

MEETING DATE: August 23, 2021

PREPARED BY: Erin Wohlitka, Senior Planner

TITLE OF ITEM: RESOLUTION NO. 75-2021 A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, GRANTING CONDITIONAL USE APPROVAL TO ALLOW A SCHOOL, PRIVATE, PAROCHIAL, OR TECHNICAL, FOR THE OAKS CLASSICAL CHRISTIAN ACADEMY LOCATED AT ST. MARY'S EPISCOPAL CHURCH. THE SUBJECT PROPERTY IS APPROXIMATELY 2.46-ACRES AND CONSISTS OF TWO PARCELS OPPOSITE ONE ANOTHER GENERALLY LOCATED NORTH OF THE INTERSECTION AT SE OCEAN BLVD AND SE AMERIGO AVENUE; PROVIDING FOR CONDITIONS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

SUMMARY EXPLANATION/BACKGROUND INFORMATION:

On July 28, 2021, the Oaks Classical Christian Academy applied for a Conditional Use to allow a private parochial school at St. Mary's Episcopal Church. The subject property is located at 623 SE Ocean Boulevard and is within the jurisdictional boundaries of the City of Stuart.

St. Mary's Church is currently zoned Residential Multi-Family/Office (R-3) and has a Future Land Use Designation of Office-Residential. Pursuant to Section 2.02.02, *Table 2: Land Uses*, of the City's Land Development Code, Schools (Private, Parochial, or Technical) at properties less than five (5) acres in size are to be approved as Conditional Uses within the R-3 zoning district.

The subject buildings classified as St. Mary's Episcopal Church were built in 1947 and 1965, respectively. Pursuant to and at the time of the recordation of Resolution 46-89, passed by the City Commission on October 23, 1989, a pre-school had previously been operating for 25 years at the subject property.

The Applicants have stated that The Oaks Classical Christian Academy is a small, private school that began in concept in 2020 by two local mothers who wanted to home

educate their children but also understood the need for academic support from an additional teacher, social engagement, and a support community for both students and parents. As such, the Oaks Classical Christian Academy was incorporated in 2021 as a hybrid learning school integrating both homeschooling and in-person learning for two (2) days a week. The Oaks Classical Christian Academy has enrolled 18 students for this upcoming school year.

The Oaks Classical Christian Academy is proposing to utilize three (3) classrooms and a closet/office in the Youth Center, one (1) classroom in the Pittinger Center, and the Smith Hall buildings for morning assembly and lunch. The Applicant is not proposing to modify any existing structures and plans to utilize the existing roadways, traffic circulation, and parking areas. The submitted Application includes an Operations Plan for drop off and pick up, as summarized below:

Drop Off / Pick Up Operations:

Vehicles will enter the parking lot from SE Osceola Street and turn south on Amerigo Ave that bifurcates the subject property, taking a left-hand turn into the parking lot. All of the students will be dropped off at Smith Hall in the morning for assembly and will be picked up from the Youth Center in the afternoon. The carpool line will exit onto SE Ocean Boulevard. Drop Off time will be from 8:00am-8:15am and Pick Up time will be from 3:15pm-3:30pm.

CONFORMANCE WITH SEC.11.01.11 CONDITIONAL USE CRITERIA

City staff has reviewed this Application and has determined that the subject Application has proved to be in substantial compliance with the Conditional Use Criteria set forth in Section 11.01.11 of the City's Land Development Code. The Applicant has demonstrated that there will be no negative impacts from the proposed Conditional Use on the subject property. Furthermore, City staff recommends approval due to the subject property's previous use as a pre-school, and based on the small number of students, limited days of property utilization, and the submitted operations plan.

RECOMMENDATION:

Approve a Conditional Use to allow the Oaks Classical Christian Academy at St. Mary's Episcopal School with conditions set forth in Resolution 75-2021.

SEE ATTACHED DOCUMENTS

- Resolution No. 75-2021 with Exhibits
- Application and supporting documents

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: Tom Reetz

Title of Item:

ABANDONMENT OF A PORTION RIGHT-OF-WAY BETWEEN 26 SEMINOLE STREET AND 19 OSCEOLA STREET (RC):

ORDINANCE No. 2470-2021; A ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO PROVIDE FOR THE ABANDONMENT OF CERTAIN PUBLIC RIGHT-OF-WAY WITHIN THE CITY BEING THAT PORTION OF A PLATTED 12 FOOT WIDE ALLEY IN BETWEEN 26 S.E. SEMINOLE STREET AND 19 S.E. OSCEOLA STREET (LOTS 5 & 14, BLOCK 3) ACCORDING TO THE AMENDED PLAT OF CHARLES A. PORTER ADDITION, AS RECORDED IN PLAT BOOK 2, PAGE 75 PUBLIC RECORDS OF PALM BEACH(NOW MARTIN) COUNTY, FLORIDA, MORE CLEARLY DESCRIBED AND DEPICTED IN EXHIBITS "A" "B" & "C" ATTACHED HERETO; PROVIDING FOR PAYMENT OF A PRIVILEGE FEE: PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The applicants, owner's of real property located at 26 SE Seminole Street and 19 SE Osceola Street, have requested the abandonment of the public Right-of-Way located at the rear and between the two properties. The 12-foot wide right-of-way abandonment is necessary for the relocated 'Enchanted Cottage' to meet its required setbacks.

The City's Public Works Department has determined that the use of the Right of Way is no longer in the public's best interest and does not object to the abandonment by the City. A fair market appraisal of the real property has determined that the market value of the property is \$2,050. (\$1,025 for each north and south half) As provided in Section 36-2 of the City's Code of Ordinances, staff recommends payment of a privilege fee in the amount of **100% of the market value, or \$2,050**, prior to the abandonment of the City's interest.

The applicants are both required to give an easement to Florida Power and Light within 6 months of approval to allow FP&L to protect the existing overhead lines.

The procedure for abandonment of City owned Right-Of-Way is set out in **Sections 36-2 thru 36-3 of The City's Code of Ordinances** which requires a privilege fee payable by the applicant into the city's property management fund within 90 days of approval.

Funding Source:

NA

Recommended Action:

Approve Ordinance No. 2470-2021, abandonment of certain Right-of-Way within the City's limits.

ATTACHMENTS:

	Description	Upload Date	Type
▣	A.1 Ordinance 2470-2021 26 SE Seminole and 19 SE Osceola Street ROW Abandonment	8/18/2021	Ordinance add to Y drive
▣	A.2 Ordinance 2470-2021 Exhibits A, B, & C	8/13/2021	Ordinance add to Y drive
▣	B.1 Appraisal	8/13/2021	Backup Material
▣	C.1 Application	8/13/2021	Backup Material



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

ORDINANCE NUMBER 2470-2021

A ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO PROVIDE FOR THE ABANDONMENT OF CERTAIN PUBLIC RIGHT-OF-WAY WITHIN THE CITY BEING THAT PORTION OF A PLATTED 12 FOOT WIDE ALLEY IN BETWEEN 26 S.E. SEMINOLE STREET AND 19 S.E. OSCEOLA STREET (LOTS 5 AND 14, BLOCK 3), ACCORDING TO THE AMENDED PLAT OF CHARLES A. PORTER ADDITION, AS RECORDED IN PLAT BOOK 2, PAGE 75, PUBLIC RECORDS OF PALM BEACH (NOW MARTIN) COUNTY, FLORIDA, MORE CLEARLY DESCRIBED AND DEPICTED IN EXHIBITS “A” “B” AND “C” ATTACHED; FOR PAYMENT OF A PRIVILEGE FEE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

*** * * * ***

WHEREAS, Steven G. Vitale and Charles E. Geary (APPLICANTS) have filed a petition for abandonment relating to the public right-of-way described below that conforms to the requirements of Section 36 of the Code of Ordinances of the City of Stuart, Florida; and

WHEREAS, at the public hearing to consider the requested abandonment the City Commission has determined that it is the best public interest that the said right-of-way be abandoned as said right-of-way is needed to provide for required setbacks for the ‘Enchanted Cottage’ relocation project at the rear of 26 S.E. Seminole Street; and

WHEREAS, Daniel K. Deighan, MAI, of Deighan Consultants conducted a fair market appraisal of said property on October 28, 2019 and determined that the market value of the real property is one thousand, twenty-five dollars (\$1,025) for each of the north and south half of right-of-way, totaling \$2,050 for both halves of R.O.W..

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ordains, as follows:

SECTION 1: That any interest vested with the City of Stuart in that certain 12-foot right-of-way, as set forth as that portion of a platted 12-foot wide alley in between lots 5 and 14, block 3, according to the amended plat of Charles A. Porter addition, as recorded in plat book 2, page 75, public records of Palm Beach (now Martin) County, Florida, Public Records as described and depicted in **Exhibits “A”** and **“B”** attached hereto is hereby abandoned.

SECTION 2: A location map depicting the subject area is hereby attached as **Exhibit “C.”**

SECTION 3: The applicants are both required to give an easement to Florida Power and Light within 6 months of approval to allow FP&L to protect the existing overhead lines.

SECTION 4: The Applicants agree to pay the privilege fee in the amount of **ONE THOUSAND, TWENTY-FIVE DOLLARS (\$1,025) for each half, totaling \$2,050 for both halves of right-of-way** to be received and deposited into the city’s property management fund within 90 days of approval, otherwise this Ordinance shall become null and void.

SECTION 5: Conflicts. All ordinances or parts of ordinances in conflict herewith shall be repealed.

SECTION 6: 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.

SECTION 7: Effective Date: This Ordinance shall become effective immediately upon adoption.

SECTION 8: The complete execution and recording of this Ordinance by the City Clerk shall occur no later than 60 days from the date of this approval, failing which this ordinance shall be void.

PASSED on First Reading this ___ day of _____, 2021.

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:

EULA R. CLARKE, MAYOR
MERRITT MATHESON, VICE MAYOR
REBECCA S. BRUNER, COMMISSIONER
TROY MCDONALD, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day _____ of, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

26 Seminole, LLC
Steven G. Vitale

_____ By: _____

Print Name: _____

Print Name: _____

East Ocean 1, LLC
Charles E. Geary

_____ By: _____

Print Name: _____

Print Name: _____

Petitioner's Acknowledgment

The above Ordinance, Acceptance and Agreement was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2021, by Steven G. Vitale, who ☐ is personally known to me or ☐ has produced _____ as identification.

(Notary Seal)

Signature of Notary Public
Printed Name: _____

Petitioner's Acknowledgment

The above Ordinance, Acceptance and Agreement was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2021, by Charles E. Geary, who ☐ is personally known to me or ☐ has produced _____ as identification.

(Notary Seal)

Signature of Notary Public
Printed Name: _____

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before The above Ordinance, Acceptance and Agreement was acknowledged before me by means of ☒ physical presence or ☐ online notarization this _____ day of _____, 2021, Eula R. Clarke, Mayor, and Mary Kindel, City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation, who ☐ are personally known to me or ☐ have produced _____ as identification.

(Notary Seal)

Signature of Notary Public
Printed Name: _____

Exhibit "A"

STEPHEN J. BROWN, INC. LICENSED BUSINESS NUMBER: 6484
SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS
619 EAST 5TH STREET, STUART, FLORIDA 34994 EMAIL: STEVE@SJBSTUART.COM (772) 288-7176

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN A PORTION OF A PLATTED 12 WIDE ALLEY IN BETWEEN LOTS 5 AND 14, BLOCK 3, ACCORDING TO THE AMENDED PLAT OF CHARLES A. PORTER ADDITION, AS RECORDED IN PLAT BOOK 2, PAGE 75, PUBLIC RECORDS OF PALM BEACH (NOW MARTIN) COUNTY, FLORIDA, AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTH LINE OF A 12 FOOT PLATTED ALLEY AND NORTHWEST CORNER OF LOT 14, BLOCK 3, THE AMENDED PLAT OF CHARLES A. PORTER ADDITION, AS RECORDED IN PLAT BOOK 2, PAGE 75, PUBLIC RECORDS OF PALM BEACH (NOW MARTIN) COUNTY, FLORIDA; THENCE DEPARTING THE NORTH LINE OF LOT 14 AND SOUTH LINE OF THE 12 FOOT ALLEY, NORTH 00°00'14" EAST, FOR A DISTANCE OF 6.01 FEET; THENCE SOUTH 86°44'00" EAST, FOR A DISTANCE OF 50.09 FEET; THENCE SOUTH 00°00'14" WEST, FOR A DISTANCE OF 6.01 FEET TO THE INTERSECTION OF THE SOUTH LINE OF SAID 12 FOOT ALLEY AND THE NORTHWEST CORNER OF SAID LOT 14; THENCE, NORTH 86°44'00" WEST, ALONG SAID SOUTH LINE OF THE 12 FOOT ALLEY AND THE SAID NORTH LINE OF LOT 14, FOR A DISTANCE OF 50.09 FEET TO THE NORTHWEST CORNER OF SAID LOT 14, AND THE POINT OF BEGINNING OF SAID PARCEL.

PARCEL CONTAINING 300.52 SQUARE FEET, +/-.

NOTE: THIS LAND DESCRIPTION SHALL NOT BE VALID UNLESS:

A. PROVIDED IN ITS ENTIRETY CONSISTING OF 2 SHEETS, WITH SHEET 2 BEING THE SKETCH OF DESCRIPTION.

B. REPRODUCTIONS OF THIS DESCRIPTION AND SKETCH ARE SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.

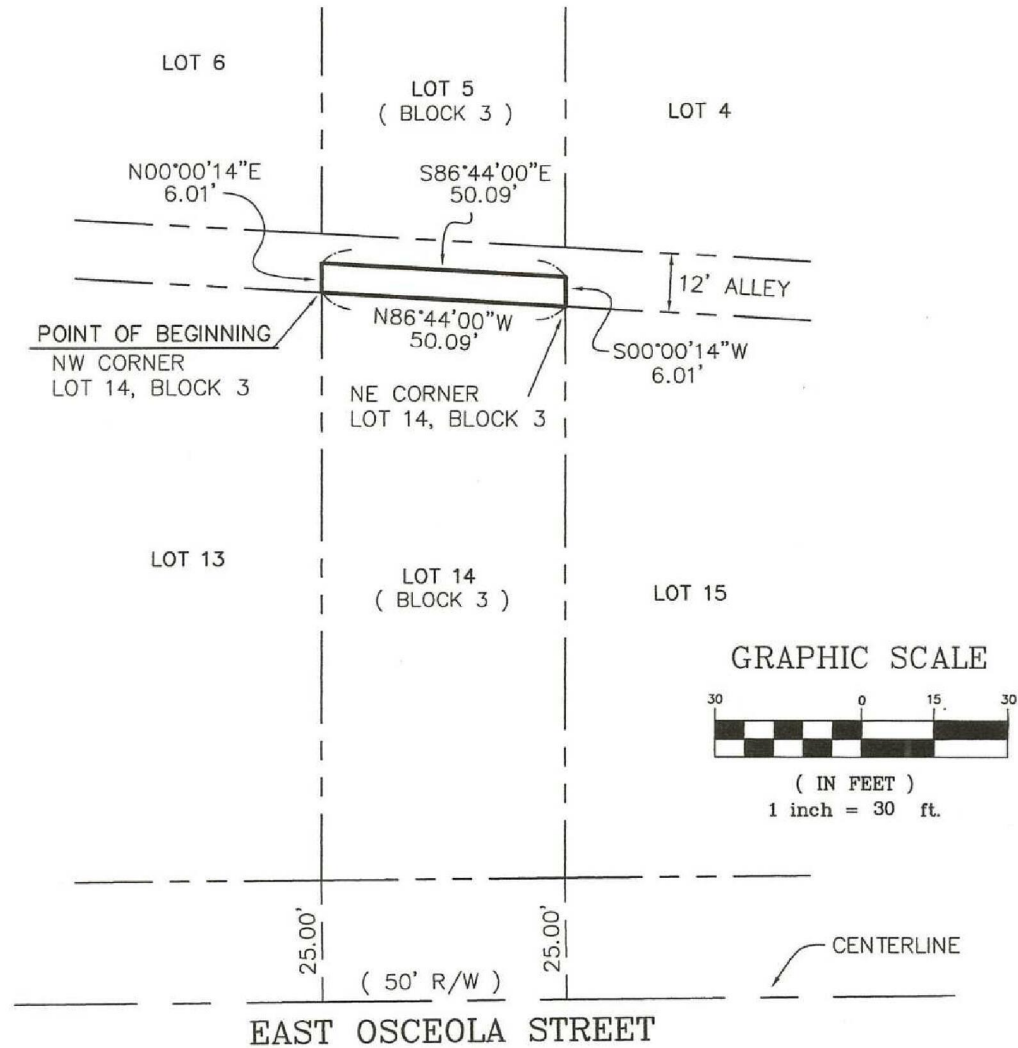
JOB #:	1071-02-04
DRAWN BY:	S.J.B.
CHECKED BY:	S.J.B.
DATE:	01/12/2021
SCALE:	N/A
SHEET:	1 OF 2

STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

619 EAST 5TH STREET, STUART, FLORIDA 34994 EMAIL: STEVE@SJBSTUART.COM (772) 288-7176



NOT A BOUNDARY SURVEY
STEPHEN J. BROWN, INC

STEPHEN J. BROWN, PROFESSIONAL SURVEYOR AND MAPPER
REGISTRATION NO. 4049, STATE OF FLORIDA

JOB #:	1071-02-04
DRAWN BY:	S.J.B.
CHECKED BY:	S.J.B.
DATE:	01/12/2021
SCALE:	1" = 30'
SHEET:	2 OF 2

Exhibit "B"

STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

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PARCEL CONTAINING 300.52 SQUARE FEET, +/-.

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SHEET:	1 OF 2

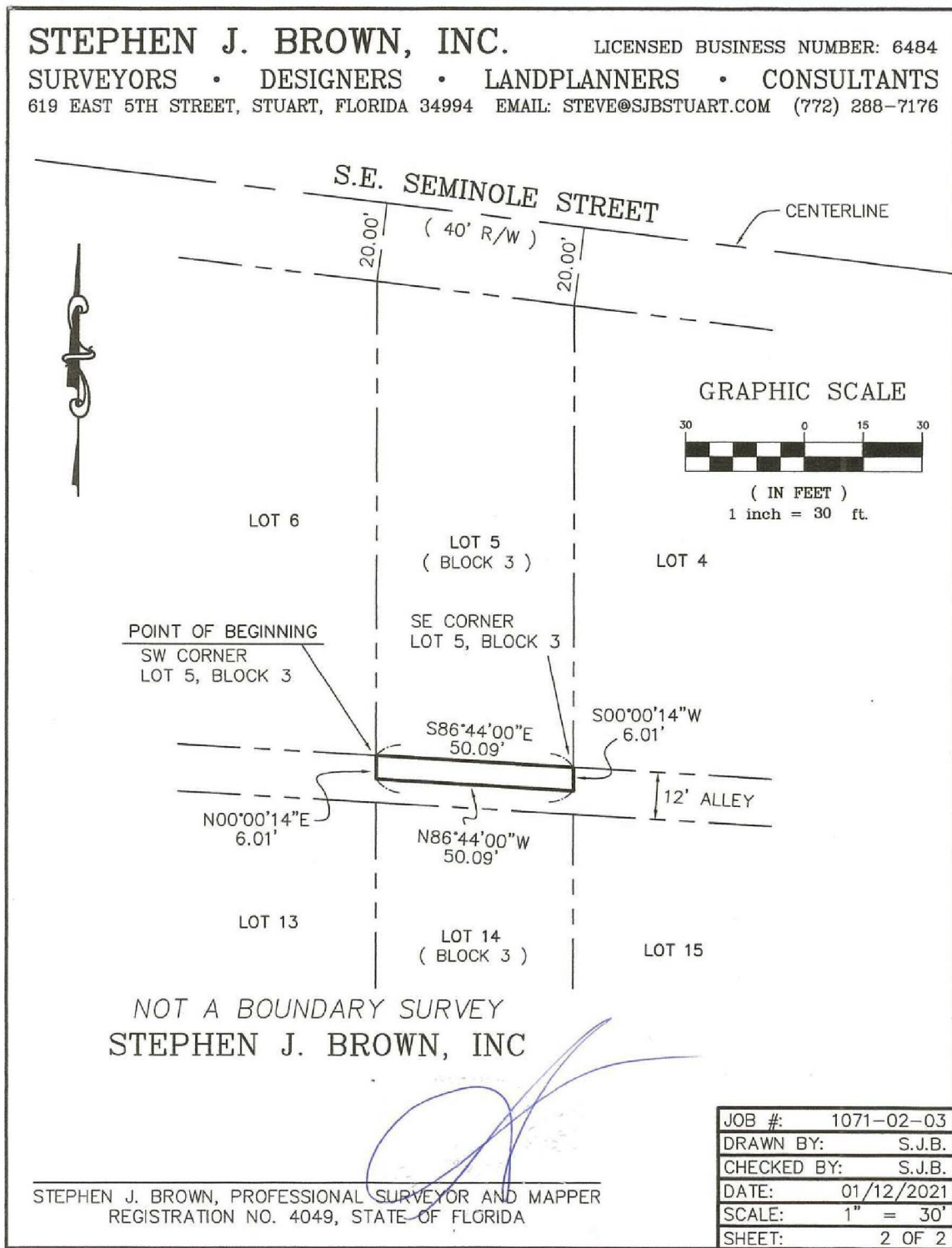


Exhibit "C"



STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

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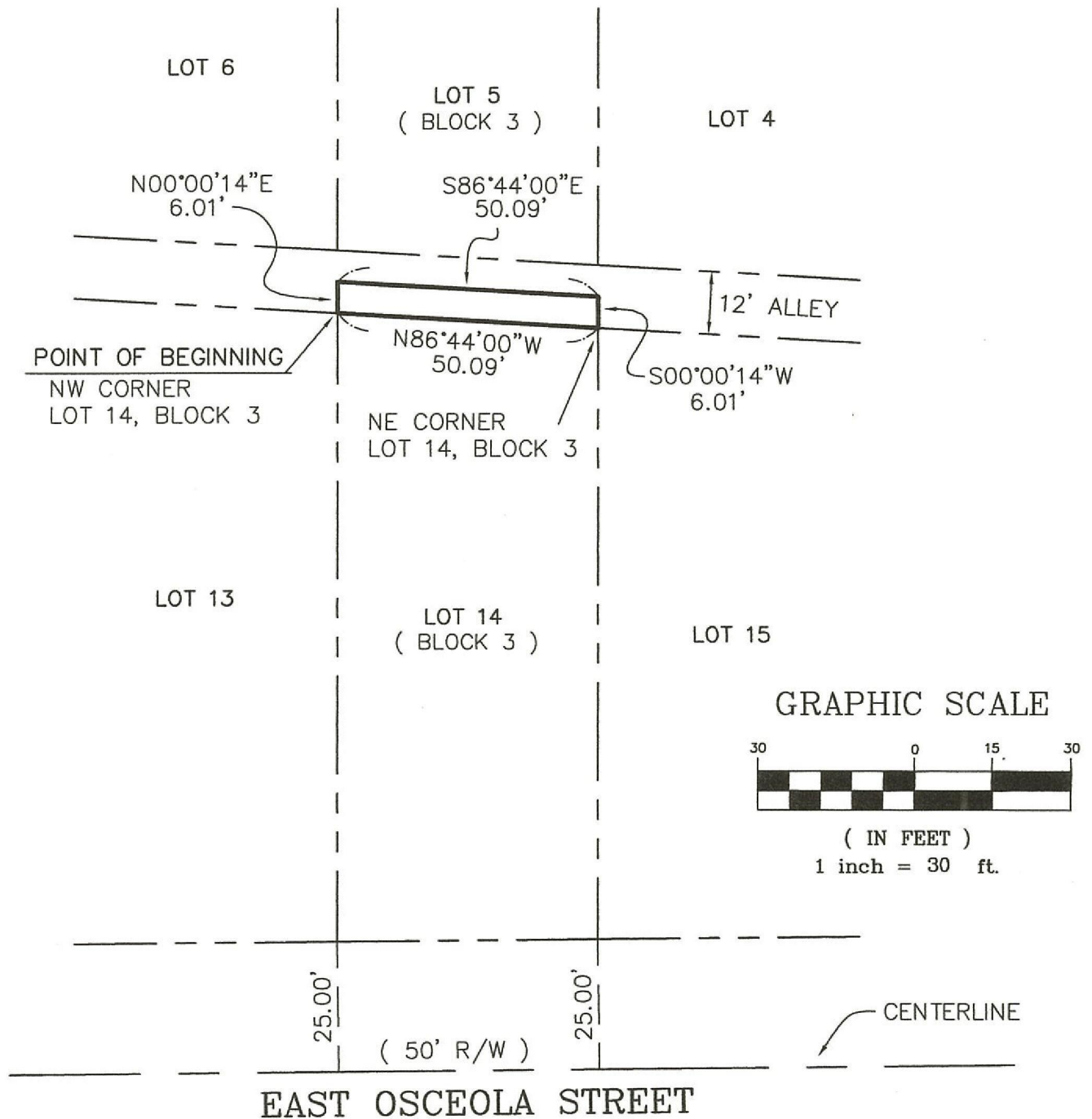
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REGISTRATION NO. 4049, STATE OF FLORIDA

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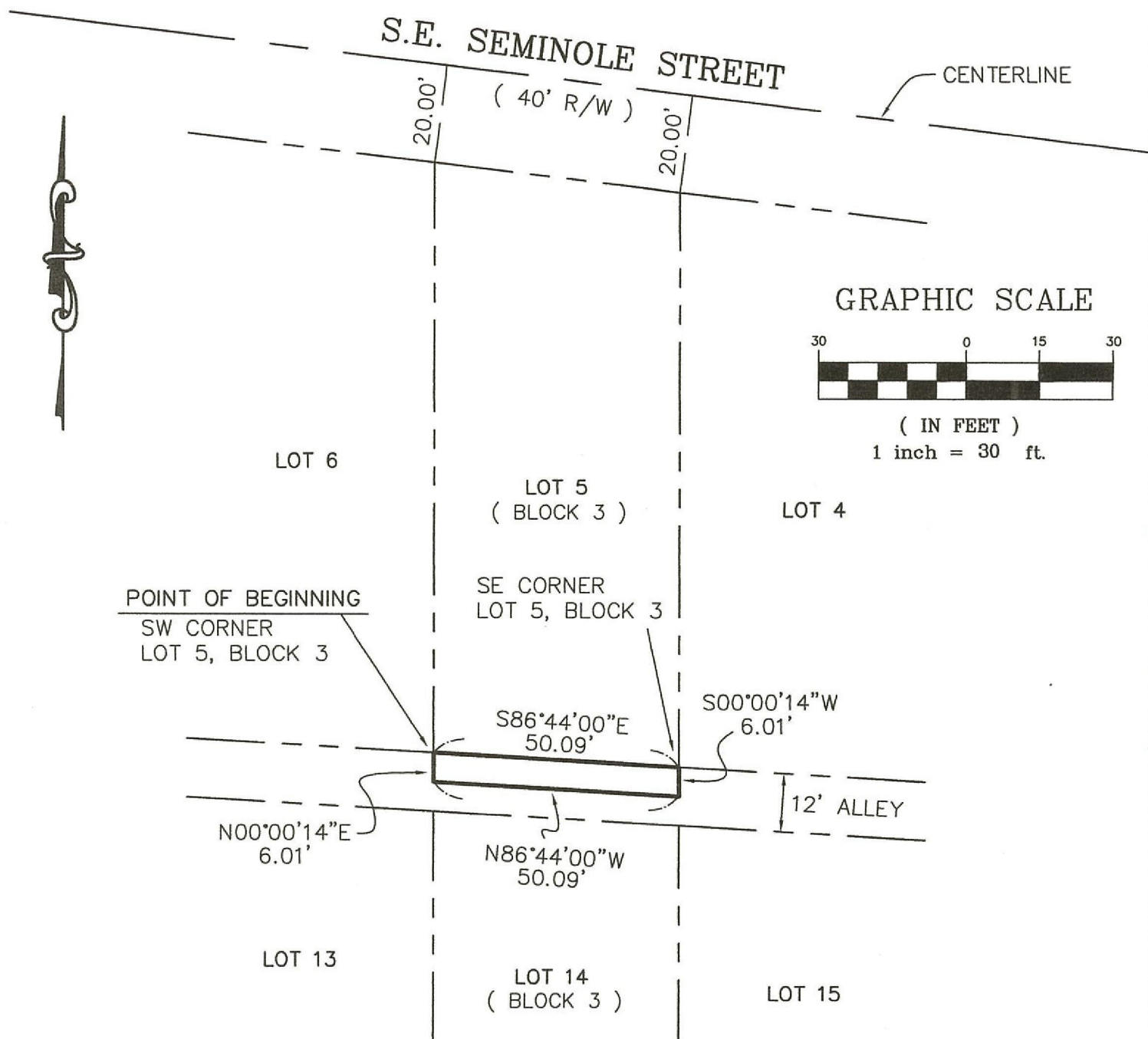
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SHEET:	2 OF 2

**AN APPRAISAL
REPORT OF A
300.52 SQUARE FOOT
VACANT PARCEL**

**FOR POSSIBLE REQUEST FOR ABANDONMENT
BY THE CITY OF STUART**

**LOCATED AT
26 SE SEMINOLE STREET
STUART, FLORIDA 34994**

**AS OF
OCTOBER 24, 2019**

FILE NUMBER DKD-2019-008

PREPARED FOR

**CHARLES E. GEARY
10 RIVERVIEW DRIVE
STUART, FLORIDA 33994**

PREPARED BY

**DEIGHAN CONSULTANTS
14 EMARITA WAY
STUART, FLORIDA 34996**

DEIGHAN CONSULTANTS

14 EMARITA WAY
Stuart, FL 34996

Daniel K. Deighan, MAI
Cert. Gen. RZ244
PHONE: (772) 221-3650

dandeighan@comcast.net

Robert W. Kunkle
Cert. Gen. RZ3185
FAX: (772) 221-3649

October 28, 2019

Charles E. Geary
10 Riverview Drive
Stuart, FL 34994

**RE: Market Value of a 300 SF Parcel
For Request for Possible Abandonment
By the City of Stuart
19 SE Osceola Street
Stuart, Florida 34994
Our File #DKD-2019-008**

Dear Mr. Geary:

As requested, to provide an opinion of the market value of the fee simple estate of the above-cited subject property, we have inspected the property, the economic environment and surrounding neighborhood, researched and inspected sales and offers of similar properties, and studied all other pertinent factors.

The **purpose** of this assignment has been to develop an opinion of the market value of the Fee Simple Estate of the subject property, as of October 24, 2019. The **function** of this report, or its intended use, is for your use in decision-making. The opinions and conclusions have been developed solely with consideration, therefore, for that function and do not address requirements for any other use or by any other party. Please refer to the assumptions and limiting conditions in this regard.

This is an appraisal report in accordance with all the exercises, procedures, and analyses necessary therefore and stipulated by USPAP Std. 1. The report is intended to conform to the appropriate and pertinent rules and regulations for appraisal as promulgated by USPAP, the Appraisal Institute, the State of Florida, and the Appraisal Foundation and associated Standards Board. A report is provided, intended to comply with the USPAP guidelines therefore -- Std. 2-2[b] -- wherein the data and analyses inherent to the complete appraisal are summarized with no excessive or extraneous discussions.

Mr. Geary
October 28, 2019

Based on all pertinent information, the investigation, and analyses, we have concluded the following market value of the fee simple estate for the subject property, as of October 24, 2019:

\$1,025

The preceding statement of value is predicate upon any and all assumptions and limiting conditions contained within this appraisal report.

The scope of this assignment includes analyzing a reasonable exposure time for the subject property, which is stated at the end of this report under *Reconciliation*. In regard to compliance with the Competency Provision of the USPAP, we have been appraising these types of properties in this area for more than 35 years.

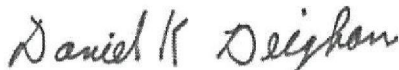
Enclosed is an appraisal report, which describes the property appraised, and shows the valuation procedures used in arriving at the preceding value conclusion.

We appreciate the opportunity to have been of service to you. If you have any questions, please call.

Very truly yours,



Robert W. Kunkle
Cert. Gen. #3185



Daniel K. Deighan, MAI
Cert. Gen. #244

rk/dkd
Enclosure

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CERTIFICATION

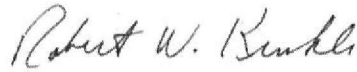
We certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property which is the subject of this report, and no personal interest with respect to the parties involved.
4. We have no bias with respect to the property which is the subject of this report, or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value which favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. Our analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice [USPAP].
8. Daniel K. Deighan, MAI, and Robert w. Kunkle, made a full personal inspection of the property, which is the subject of this report.
9. Other than the undersigned, no one has provided significant professional assistance in the analyses, conclusions and opinions of real estate values, as set forth in this appraisal report, except as may be specifically set forth elsewhere herein.
10. The Appraisal Institute conducts a voluntary program of continuing education for its designated members. MAI's who meet the minimum standards of this program are awarded periodic educational certification. As of the date of this report, Daniel K. Deighan, MAI, has completed the requirements of the continuing education program of the Appraisal Institute.
11. A list of Assumptions and Limiting Conditions is shown elsewhere in this appraisal report and is made a part hereof by reference thereto and these "Assumptions and Limiting Conditions" are a part of the valuable consideration between appraiser and client for this report.

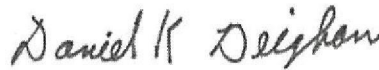
12. A list of definitions including the definition of the term Market Value is included elsewhere herein and this list of definitions is made a part hereof by reference thereto.
13. Deighan Consultants has not had any professional assignments concerning any of these parcels in the past three years.
14. Based upon our independent appraisal and exercise of our professional judgment, we conclude the market value of the fee simple estate of the subject property, as of October 24, 2019, to be:

\$1,025

Date: October 28, 2019



Robert W. Kunkle
Cert. Gen. #3185



Daniel K. Deighan, MAI
Cert. Gen. #244

ASSUMPTIONS AND LIMITING CONDITIONS
--

The following assumptions and limiting conditions apply to the attached appraisal report, our file #DKD-2019-008:

HYPOTHETICAL ASSUMPTIONS **None**

EXTRAORDINARY ASSUMPTIONS **None**

ORDINARY ASSUMPTIONS & LIMITING CONDITIONS

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. Legal access to the site is available unless otherwise stated.
3. It is assumed that all licenses, certificates of occupancy, consents, or other legislative or administrative authority from local, state or national government, or private entity or organization, have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
4. Only limited legal descriptions or surveys were furnished, so the appraiser used the county tax plat to ascertain the physical dimensions and acreage of the property. Should a survey prove these characteristics inaccurate, it may be necessary for the appraisal to be adjusted.
5. Any proposed improvements are assumed to have been completed unless otherwise stipulated; any construction is assumed to conform to building plans, if any, referenced in this report.
6. Information, estimates, and opinions furnished to the appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct; however, no responsibility for accuracy of such items furnished to the appraiser can be assumed by the appraiser.
7. The property is appraised free and clear of any or all liens or encumbrances, unless otherwise stated.
8. Responsible ownership and competent property management are assumed.
9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a non-conformity has been stated, defined and considered in the appraisal report.
10. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. The appraiser assumes no responsibility for such conditions, if any.

11. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is stated, defined and considered in the appraisal report.
12. This analysis has been prepared by the appraisers during the normal course of their inspection of the property and resulting preparation of a real estate appraisal report. Only a visual observation of the property has been made. Any form of environmental audit is both beyond the scope of this assignment and the particular expertise of the appraisers, who have not searched title, interviewed the current or prior owners of the site, or researched the property *beyond* the scope normally associated with the appraisal process, unless otherwise stated herein. The appraiser is neither trained nor qualified to identify and/or quantify any existing or potential environmental problems. The presence of hazardous waste or materials on the site and/or in any improvements thereon may affect the value of the property. The value conclusions and other related opinions expressed in this report are based, therefore, upon the assumption that the site and improvements, if any, are clean and free of any and all forms of contamination. Any statements made in this report, relative to the existence of or potential for existence of contamination or any other environmental problems, are made only to assist the users in their own determination as to whether the site requires further investigation by an appropriate environmental expert/professional. The appraisers cannot be held liable for lack of detection and/or identification of possible environmental problems.
13. The *Americans with Disabilities Act* [ADA, effective Jan. 26, 1992] is not applicable as the property being valued is vacant land.
14. Where the value of the various components of the property is shown separately, the value of each is segregated only as an aid to better estimate the value of the whole; the independent value of the various components may, or may not, be the market value of the component. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.
15. Any value estimates provided in the report apply to the entire property and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.
16. This appraisal report covers only the property described, and any values or rates used are not to be construed as applicable to any other property, however similar the properties might be. Further, it is assumed that the utilization of the land and improvements is within the boundaries of the property lines of the property described and that there is no encroachment or trespass, unless noted in the report.

17. Any sketch in the report may show approximate dimensions and is included to assist the reader in visualizing the property. The appraiser has made no survey of the property.
18. The forecasts, projections, or operating estimates contained herein are based upon current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes in future conditions.
19. Disclosure of the contents of the appraisal report is governed by the By-laws and Regulations of the professional appraisal organizations with which the appraisers are affiliated.
20. The contents of this appraisal are for the exclusive use and reliance upon by the client for whom it has been prepared and to whom it has been certified. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraiser, professional designations, reference to any professional appraisal organizations or the firm with which the appraiser is connected) shall be used for any purpose by anyone but the client specified in the report, without prior written consent of the appraiser; nor shall it be conveyed by anyone to the public through advertising, public relations, news, sales, or other media, without the prior written consent of the appraiser.
21. If the appraiser is required to give testimony of any nature whatsoever because of having made the appraisal with reference to the property in question, arrangements for payment of fees for the appraiser's services as an expert witness must be made in advance of such testimony.
22. The appraisal expresses the opinion of the signers and is not contingent upon a predetermined value. Neither the employment to make the appraisal nor the compensation in any way determined the amount of the valuation reported.
23. The contract for this appraisal of the property legally described herein is fulfilled by the signer upon delivery of this appraisal.
24. This appraisal report, including format, style, spreadsheet and tabular data, as well as Addenda, is the property of Deighan Consultants and no portion of the report may be reproduced without their express written permission.

APPRAISAL OVERVIEW

Owner of Record:	City of Stuart
Property Type:	Vacant land
Property Inspection(s):	Daniel K. Deighan, MAI, and Robert Kunkle inspected the subject October 24, 2019, at which time they were unaccompanied.
Land Area:	300.52 SF (Source – Stephen J. Brown survey dated 9/30/2019).
Area Appraised:	300.52 SF
Tax Folio No:	04-38-41-015-003-00130-6 is East Ocean 1 parcel.
Property Rights Appraised:	Fee simple
Land Use and Zoning:	Subject is in the Downtown Stuart CRA. The land use is Downtown Redevelopment and the zoning is Urban Center. Martin County Use Code designation is 1900, Professional Services/ Medical Offices
Utilities Available:	Telephone, electric, water and sewer.
Highest & Best Use:	
As Vacant	Assembled to adjoining property
As Improved	N/A
Intended Users:	Charles E. Geary and City of Stuart
Valuation:	\$1,025
Date of Value	October 24, 2019
Date of Report	October 28, 2019
Reasonable Exposure Time:	12 months or less

INTRODUCTION

<u>Location/Address:</u>	19 SE Osceola Street, Stuart, FL 34994.
<u>Legal Description:</u>	Metes and bounds as described on the Stephen J. Brown Survey. A portion of an existing alley.
<u>Property Inspection:</u>	Daniel K. Deighan, MAI, and Robert Kunkle inspected the subject October 24, 2019, at which time they were unaccompanied.
<u>Type of Property:</u>	Vacant land

History of the Property:

The property is part of an alley running east off Georgia Avenue that is owned by the City of Stuart. The subject property is in the middle of the alley.

SUBJECT LOCATION



Subject location indicated by red star.

SUBJECT AERIAL MAP



Red outline is East Ocean 1 parcel, for reference purposes only.
 Yellow outline is proposed abandonment areas, for reference purposes only.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

All photographs taken by Robert Kunkle on October 24, 2019.

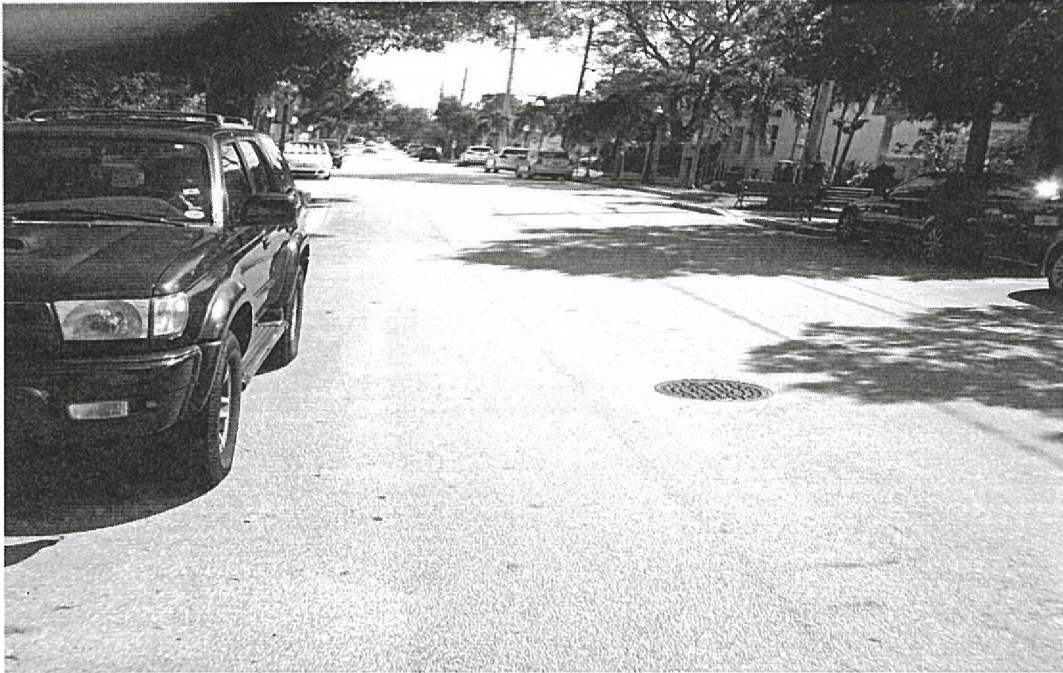


Subject side entrance on Osceola Street.



Subject parking area and alley off Osceola Street.

PICTURES OF THE SUBJECT PROPERTY



Osceola Street looking east.

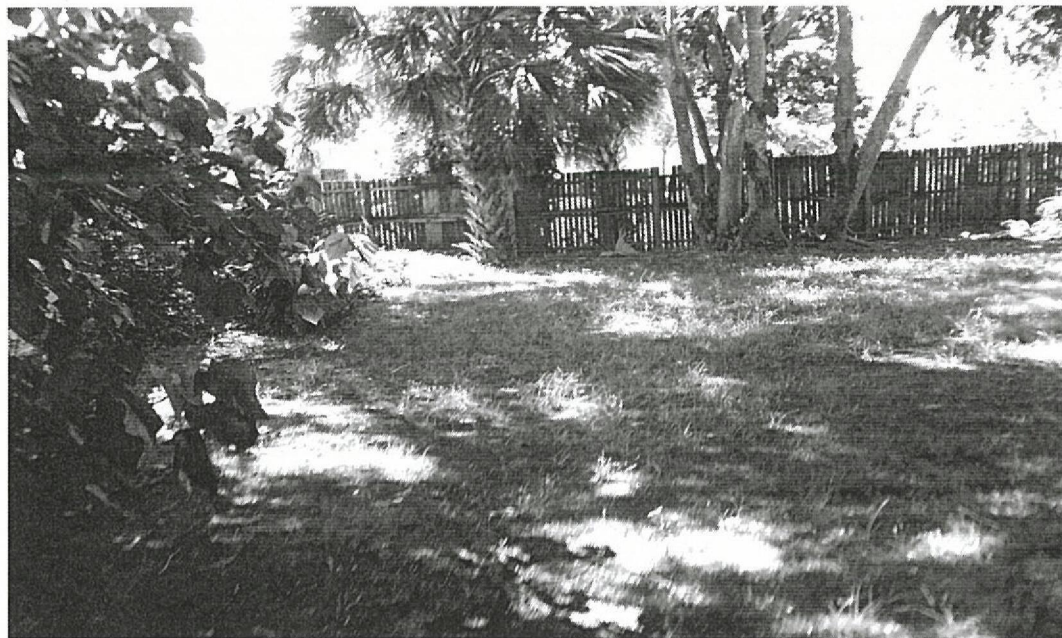


Osceola Street looking west.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

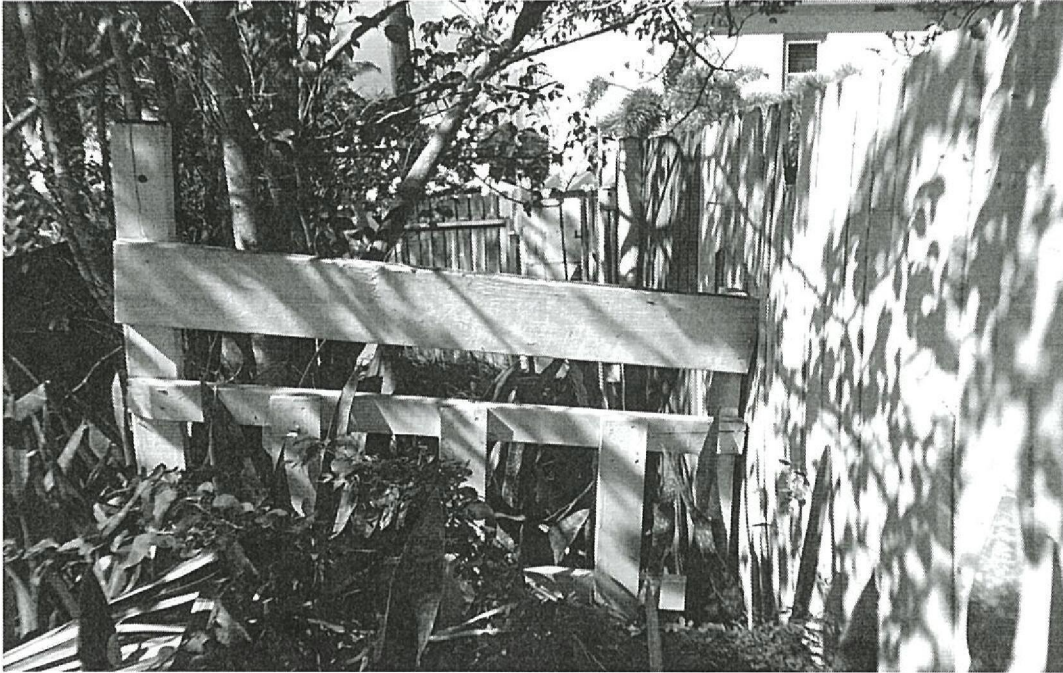


Fence in easement.



Looking south from Seminole Street showing typical easement topography.

PICTURES OF THE SUBECT PROPERTY



Picture of easement showing owner's fence and topography.

DESCRIPTION OF THE PROPERTY

LAND:

Sewer	<u>Yes</u>	Public water	<u>Yes</u>
Septic tank	<u>No</u>	Well	<u>No</u>
Electricity	<u>Yes</u>	Other water supply	<u>No</u>
Telephone	<u>Yes</u>	Curbs	<u>Yes</u>
Public sidewalks	<u>Yes</u>	Paved street	<u>Yes</u>

Size: 300.52 SF

Shape: The subject easement is triangular in shape.

Ingress/Egress: The subject has no improved access, but has legal access off Georgia Avenue. 19 SE Osceola Street has 100 FF on Osceola Street.

Utilities: Telephone, electricity, water, sewer.

Topography: Level at road grade

Drainage: Appears adequate.

Soils: Urban land. This is described in the addenda.

Flood Plain: Zone X, from Map Panel 12085C0134F, revised 10/04/2002

Site Improvements: Fence erected by owner.

Easements: None.

Encroachments: None noted.

Environmental: The appraiser has noted no overt signs of contamination having occurred on the subject tract. Please refer to Item 12 in the Assumptions and Limiting Conditions.

ZONING/LAND USE/CONCURRENCY

The subject is in the Downtown Redevelopment Land Use area of the City of Stuart with a Zoning of Urban Center. The Urban Standards are “characterized by relatively dense, walkable, mixed-use development pattern”. The Urban Center has high areas of pedestrian activity, historic restoration, shared parking and civic/cultural venues. (Source: Stuart Land Development Regulations, Section 3.01.03).

Tables of allowed uses and Land Use/Zoning compatibility are in the Stuart LDR’s, 2.01.02.

Land Use/Zoning Authority:	City of Stuart
Zoning/LDR:	Urban Center. Martin County has a Use Code designation of 1900, Professional Services, Medical Offices.
Uses Allowed:	The Land Development Regulations (LDR’s) for the Urban Center describes compatibility with 8 land use categories. Most residential and commercial uses are allowed. See section 2.02.02 of the LDR’s.
Subject Conforms:	Yes
Concurrency:	Subject is concurrent. Central water and sewer are hooked up.
Future Zoning Change:	None foreseen for development as there is an overlay zone designation on the area.

ASSESSED VALUE AND TAXES

The subject does not have a parcel ID number and there are no taxes. The data below is for 19 SE Osceola Street, which is a medical office building.

Taxing Authority: Martin County

Tax Folio No: 04-38-41-015-003-00130.6

Current Assessment/Taxes:

Assessment:	\$361,800
Taxes:	\$6,925.85
Special Assessment:	\$136.95

Special Assessment is for City of Stuart Fire Department.

Public and Private Restrictions: None noted.

Property Interest Appraised: **Fee Simple Estate** - absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Appraisal Purpose, Function, and Problem: The **purpose** of this assignment has been to develop an opinion of the value of the subject property, as of October 24, 2019.

The **function** of this report, or its intended use, is for your use in internal decision-making.

SCOPE OF ASSIGNMENT/APPRaisal PROBLEM

The subject is a 300.52 SF parcel that is part of a legal, unimproved alley going east from Georgia Avenue. The only improvements are a fence erected by the property owner. The appraisal problem involves developing an opinion of the market value of the fee simple estate for the subject land only, as it now exists. To that end, the format of the analysis follows that stipulated by USPAP.

In concluding the opinion of market value, we have considered and analyzed sales, contracts, and offers of similar uses/tracts, occurring in this market since April 2018 in the Sales Comparison Approach. The Income Approach and Cost Approach are not used as the subject of this appraisal is vacant land.

The scope of the appraisal has involved inspection of the subject property. Note that we have inspected all the comparable properties relied upon herein if possible, and are cognizant of their physical characteristics and in selecting the data for analysis have relied upon those deemed most comparable to the subject property. All the

sales, listings, contracts, and other comparable data relied upon herein have been verified, unless otherwise stated herein.

The Sales Approach has been used for concluding an opinion of value for the subject property. The sources for these data typically include public records, MLS, our in-house databases (including Marshall Valuation Service), interviews and discussions with knowledgeable brokers active in this market, discussions with the Property Appraiser's office, personnel in the county utilities and growth management departments, and the tax office. Demographics from the overall market, zoning trends, and the like are considered in determining highest and best use.

The scope of this appraisal does not include any form of environmental audit of the subject property. Upon physical inspection of the property, the appraiser makes note of any existing uses or conditions on the immediate site and on adjacent sites, which could have the potential for or could have caused contamination. This observation is made in the normal course of inspection, and the reader's attention is directed to the appraiser's lack of expertise in this field.

HIGHEST AND BEST USE

Highest and best use is defined in the Addenda. Our conclusions as to highest and best use for the subject property are based on the following criteria which summarize the four tests inherent in Highest and Best Use analyses:

1. **Legal uses**
2. **Physically possible uses**
3. **Financially feasible uses**
4. **Maximally productive uses**

Highest and Best Use as Vacant:	Assemble with neighboring property
Highest and Best Use as Improved:	N/A

Reasoning:

- 1) The highest and best use concluded and identified above is legally permissible. The Urban Center Overlay Zone designation allows for numerous residential and commercial uses. The small size of the property precludes any development. Assemblage to next door properties is the only private use possible.
- 2) The subject site is 300.52 SF. It has no improved access. It is too small to be developed as it stands now. Assemblage with the next-door property is the only possible use as no other adjacent parcel owners have legal access.
- 3) The subject is too small to be leased for anything. The cost to assemble is low enough for the owner, East Ocean 1, to benefit from the additional land by adding to their landscaping or private space.
- 4) Assemblage allows for the full use of a small parcel that cannot be developed by itself.

In summary, the highest and best use of the subject site is for assemblage with East Ocean 1. This use is legally permissible, physically possible, appropriately supported in the market, and maximally productive.

APPRAISAL PROCESS

We are only using the Sales Comparison Approach as the land is vacant. The techniques and methods used in appraising the subject property are described and explained in the Addenda.

SALES COMPARISON APPROACH

The area of the subject is 300.52 SF. This area was determined by a survey by Stephen J. Brown dated September 30 2019. There are no sales of vacant land in the area that are not waterfront. We have extracted the land value from recent sales of improved properties. The Property Appraiser's card separately lists the current Market Values of the land and improvements. The percentage of land value of the current market value is then applied to the sale price of the property to yield the value of the land for that transaction.

Here is an example of this technique. The Property Appraiser lists the Market Total Value of a property at \$2,000,000. The land size for this property is 20,000 SF. This is the sum of the Market Land Value and the Market Improvement Value. If the Land Value is \$400,000 then the percentage of land value is:

$$\begin{aligned} &\text{Market Land Value divided by the Market Total Value:} \\ &\$400,000 / \$2,000,000 = 20.0\% \end{aligned}$$

If the property sells for \$2,500,000, the percentage of the sale price allocated to land is then:

$$\$2,500,000 \times 20.0\% = \$500,000$$

This is then divided by the land size to yield at \$/SF value.

$$\$500,000 / 20,000 \text{ SF} = \$25.00/\text{SF}$$

This technique will be applied to the comparable sales to determine a land value per square foot that will then be applied to the subject size of 300.52 SF.

The subject has a use code of 1900, Professional Services/Medical Offices. However this area of downtown has a majority of transitional properties on the side streets. The subject was built in 1981, while many properties in the neighborhood were built in the 1950's through the 1980's. We therefore will use transitional properties for our comparables. All sales have a Use Code of 0110, Single Family Transitional. These typically are residential properties being converted to a commercial use, such as office space or small business ventures such as doctor offices, law groups, nail or hair salons, artist use, and the like. The subject is currently being used as a doctor's office.

Sale #1 is the February 2019 transfer for \$790,000. The building at 417 SW Akron Avenue is a duplex still being used as a residence and currently has a market value for

the land of \$43,450 and a total market value of \$496,450. The 8.75% land value percentage applied to the \$790,000 sale price yields \$69,125 for the land. The land size of the property is 3,049 SF, for a \$22.67/SF land value.

Sale #2 is the September 2018 transfer for \$450,000. The 2-story residence at 516 SW California Avenue currently has a market value for the land of \$44,540 and a total market value of \$362,440. The 12.3% land value percentage applied to the \$450,000 sale price yields \$55,350 for the land. The land size of the property is 3,123 SF, for a \$17.72/SF land value.

Sale #3 is the July 2018 transfer for \$420,000. The property at 510 SW Camden Avenue is now the Lady Ann's Tea Room and Restaurant and currently has a market value for the land of \$44,540 and a total market value of \$362,440. The 12.3% land value percentage applied to the \$420,000 sale price yields \$51,660 for the land. The land size of the property is 3,123 SF, for a \$16.54/SF land value.

Sale #4 is the April 2018 transfer for \$318,000. The building at 412 SW California Avenue is a residence and currently has a market value for the land of \$89,060 and a total market value of \$236,920. The 37.6% land value percentage applied to the \$318,000 sale price yields \$119,568 for the land. The land size of the property is 6,251 SF, for a \$19.13/SF land value.

The following table summarizes the data presented above.

	Sale 1	Sale 2	Sale 3	Sale 4
Sale Price	\$790,000	\$450,000	\$420,000	\$318,000
Sale Date	Feb. 2019	Sept. 2018	July 2018	April 2018
Land Value	\$43,450	\$44,540	\$44,540	\$89,060
Total Value	\$496,450	\$362,440	\$362,440	\$236,920
% Land Value	8.75%	12.3%	12.3%	37.6%
Land \$ of Sale Price	\$69,125	\$55,350	\$51,660	\$119,568
Land Size SF	3,049 SF	3,123 SF	3,123 SF	6,251 SF
Indicated \$/SF	\$22.67	\$17.72	\$16.54	\$19.13

Based upon the preceding analyses, we accord greatest weight to Sale 1, with lesser weight to Sales 2 and 3, and least weight to Sale 4. We conclude a value for the subject property would fall in the middle to upper portion of the indicated unadjusted \$16.54/SF to \$22.67/SF range after adjustments are made. Thus, I have concluded a value for the subject per unit value (\$/SF), prior to reductions due to lack of developability, of:

\$20.00/SF

This value has been derived from properties that are usable, developable, and capable of standing alone in the market. A 300.52 SF portion of an unimproved dead-end alley is not usable, developable, or capable of standing alone in the market. The alley itself is 12 feet wide and cannot be used for 2-way traffic. One-way traffic needs a 12-foot pavement width which leaves no room for a shoulder. "The minimum pavement width shall be 20 feet for two-way street and 12 feet for a one-way street." Per the City of Stuart Land Development Code Section 6.01.02 E-1-a.

The subject has legal, but not improved, access. The alley dead ends to the east at the rear of Molly's House. The west end of the alley is at Georgia Avenue. It is highly unlikely the alley will be improved as it would serve no purpose. We therefore consider the parcel to have no access. We have completed numerous assignments for St. Lucie County that required appraising wetlands that had no improved or legal access, or legal access that will never be improved. These parcels, using paired sales analysis, have consistently shown a 50% reduction in value. We were the lead real estate appraisers for Martin County when they were purchasing Pal Mar lots at the south end of the county. These parcels had no access and consistently showed a 50% reduction in value. It is our opinion the subject 300.52 SF should be reduced in value by 50% for lack of access.

The size of 300.52 SF makes the parcel undevelopable by itself. The market has shown surplus land to be less valuable than that of a parent tract. The loss in value ranges considerably depending on the size, with smaller parcels worth less as they have less chances of development. There is some limited value in the parcel in adding to the landscaping. Outdoor storage for materials or equipment is also possible.

There is only one potential buyer for the parcel. The abandonment area is triangular in shape with two sides abutting the easement and one side rabutting 19 SE Osceola Street. It makes no economic sense for the owner, East Ocean 1, to pay \$20.00/SF (\$6,010) for such a small parcel; they do not need it. The increase in value to the parent tract is very minimal as they already have 18,295 SF of property. This would increase their property size by only 1.6%, a minimal amount. Studies have shown parcels with only one potential buyer would be discounted anywhere from 24% to 41% with an average of 33%. This is because a potential buyer can walk away from a deal without receiving a discount.

Other studies by firms experienced with low utility parcels have published in appraisal magazines such as *Valuation* and *The Appraisal Journal* that show a limited buyers' market can reduce a parcel's value by an average of 24% to 50%. The discount can vary by as little as 15% to as much as 83%.

The Firm's experience with low utility parcels

Deighan Consultants, for Martin County, has appraised thousands of isolated, limited access parcels in Pal Mar, where owners had a quarter-, half-, and one-acre parcels and zoning required a minimum of 20 contiguous acres.

Deighan Consultants, for St. Lucie County, has appraised severely limited-use parcels acquired for the Savannahs Reserve, north of Port St. Lucie and south of Fort Pierce.

We will apply a 33% discount because of the very limited buyers' market.

Section 36-2(b) of the City of Stuart Land Development Regulations states "The privilege fee shall be determined and fixed by computing 100 percent of the value added to the adjoining real property of the petitioner by the resulting addition of the interest abandoned by the city;". This means the City of Stuart requires the Grantee pay an amount equal to the added value the abandonment would bring to the parent tract.

The 300.52 SF subject is located at the rear of the property, without frontage on SE Osceola Street or SE Seminole Street. It has no improved access, although it does have legal access being part of an alley that connects to SE Georgia Avenue. The alley dead-ends just east of the subject. The parcel is not developable because of its size. It would also not be developable because of the access and exposure.

The lack of access, undevelopable size, and lack of open market (one potential buyer) devalues the parcel considerably. Our data indicates an 83% reduction in value is appropriate (50% + 33%). Therefore, the value of the 300.52 SF subject parcel, as of October 24, 2019, is:

$$\$20.00/\text{SF} \times (100\% - 83\% = 17\%) = \$3.40/\text{SF}$$

$$\$3.40/\text{SF} \times 300.52 \text{ SF} = \$1,025 \text{ (R)}$$

It is therefore our opinion the abandoned parcel, when annexed, would have much less value than the rest of the parent tract. The increase in value of the parent tract is equal to the value of abandonment, which, as of October 24, 2019, is:

\$1,025

RECONCILIATION

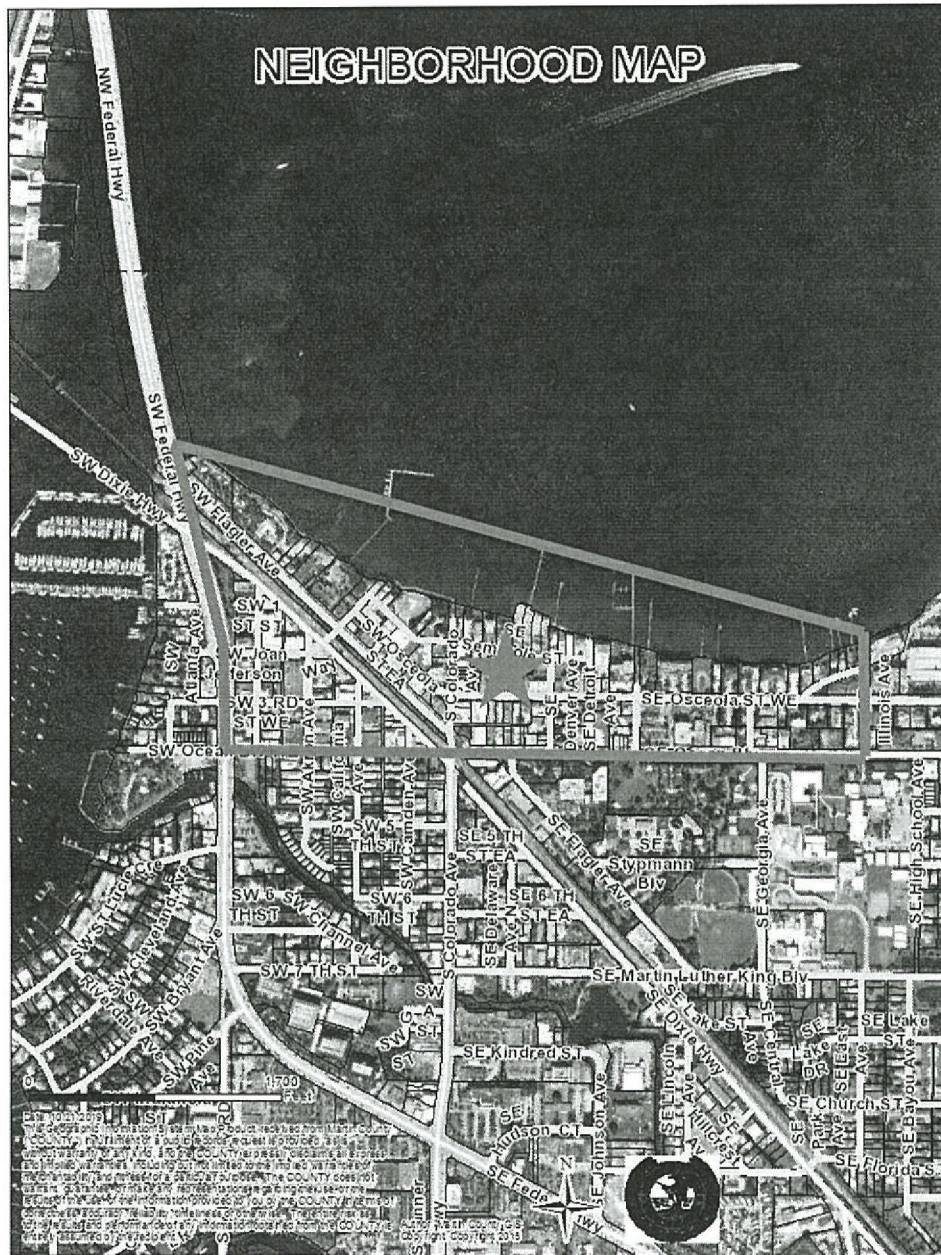
Cost Approach:	N/A
Income Approach:	N/A
Sales Comparison Approach	\$1,025

Only the Sales Comparison Approach was utilized so reconciliation is unnecessary. Based on the above analysis and discussion, we conclude the following value of the fee simple interest for the subject property, as is, as of October 24, 2019:

**ONE THOUSAND TWENTY-FIVE DOLLARS
(\$1,025)**

Reasonable Exposure Time and Reasonable Marketing Period: Based on our analyses, and upon the definitions of these concepts [supplied in the Addenda], we would conclude a reasonable exposure time for the subject of 12 months or more, which is also representative of the reasonable marketing period.

ADDENDA



Blue star approximates the subject location.

NEIGHBORHOOD DESCRIPTION

USPAP requires inclusion of a neighborhood and area description in appraisal reports. The *Regional Analysis* has been relegated to the Addenda. Following is a brief neighborhood description pertaining to the subject of this report.

Neighborhood Data

The neighborhood boundaries are considered to be:

North:	St. Lucie River
South:	East Ocean Boulevard
East:	Illinois Avenue
West:	US 1

The neighborhood consists mainly of office buildings for doctors, lawyers, small business owners and commercial uses. Many older homes in the neighborhood have been remodeled into professional offices such as financial advisors, doctors and lawyers.

Along the St. Lucie River on the west side of the neighborhood there are some residences along Seminole Street including the subject which is a vacation rental home. Across from the subject are the Sandcastle Apartments. A new waterfront condominium called River House is under construction.

SE Osceola Street has the Lou Ronzo Restaurant, older homes converted to medical offices, law offices, and some real estate uses. The Acacia Fraternal Lodge is also here. Continuing east along Osceola are a small bookstore, hair salon and the large Gary Law offices. Osceola Street through downtown has small businesses, which on the west side also front Flagler Street. Businesses include Spritz City Bistro, Black Marlin Restaurant, Lyric Theater, an art gallery, real estate office, hair salon, several boutiques, and Duffy's Sports Grill.

East Ocean Boulevard is the main east-west corridor through this part of Stuart. From Colorado Avenue going east is a retail strip center and office condos on the south side of the road. Next is the large Martin County Courthouse Complex with Memorial Park to the east and The Esplanade office center to the west. Stuart Middle School and the Martin County School Board complex are between Georgia Avenue and High School Avenue.

The north side of East Ocean Boulevard is very similar with a retail strip center at Colorado Avenue, 3-story office condos, law office, health spa, former gas/convenience store (now Ocean Market), dental office and the Christian Science Church. Continuing east is a Martin Memorial Health building, St. Mary's Church, Lucido land planning, Patty Downing Interiors and the Wells Fargo Bank Building.

At the roundabout north of East Ocean, which has the sailfish sculpture, is a new apartment complex called Azul Apartments. Continuing north on Dixie Highway to the Old Roosevelt Bridge is a real estate office and the Sailor's Return Restaurant at the marina.

Between Colorado Avenue and US 1 is an area of old homes, many of which have been repurposed into offices. Others have been remodeled and are still used as residences. Businesses in the area include Kibbey Wagner law firm, Sailfish Tax and Accounting, Lady Ann's Tea Room and Restaurant, psychologist office, financial planning office, and many similar types of small businesses.

In summary, because of the wide variety of land uses, we felt a more detailed description of the businesses was necessary. This area has been nearly completely built out with medical, dental and law offices, churches, schools, and retail uses. New construction is generally remodeling and repurposing existing buildings. Any future growth would likely be in this same vein.

MARTIN COUNTY REGIONAL ANALYSIS – MAP OF REGION



Red star approximates subject location.

REGIONAL ANALYSIS –MARTIN COUNTY

Size:	555.7 square miles land area, 197.2 square miles water area
Population:	159,923 in 2017 (Florida Demographics by Cubit). Florida population is 20,984,400 as of July 2017. Stuart has 16,204 residents while 14,318 people live in Hobe Sound.
Location:	Martin County, Treasure Coast Region, along the east coast of South Florida, between St. Lucie and Palm Beach counties, east of Okeechobee County.
MSA:	Port St. Lucie Metropolitan Statistical Area [MSA], which includes Martin County.
County Seat:	Stuart
Ocean Front:	The mainland is separated from the Atlantic Ocean by barrier islands and the Indian River, which runs the length of the tri-county area, offering three inlets to the Atlantic Ocean.
Median Income:	The per capita income was \$52,262 in 2016 (Florida Demographics by Cubit). Stuart median income was \$39,470 and Hobe Sound has a median income of \$40,060. The Florida per capita income was \$48,900.
Employment:	In February 2019 the unemployment rate for Martin County was 3.4%, compared to 3.8% in January and 3.7% in February 2018. The unemployment rate in February 2019 for the State of Florida was 3.5% per the Florida Department of Economic Opportunity.
Housing:	February 2019 median sale prices for homes in Martin County were down 7.9% over February 2018 at \$327,000 and the number of homes sold was down 0.6% at 168 units. The inventory of homes for sale was up 15.7%. Condominium sales for February 2019 were down 27.8% at a median sale price of \$155,000, up 14.3% year over year. (Florida Realtors).

DEFINITIONS AND EXPLANATIONS

Property Rights Appraised: **Fee simple estate**, which is absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Property Interest Appraised: **Permanent Easement** – a (perpetual) interest in real property that conveys use, but not ownership, of a portion of an owner's property. Or: An easement conveyed in perpetuity. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Property Interest Appraised: **Temporary Construction Easement** – this is an easement granted for a specific purpose and applicable for a specific time period, that is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Definition of Reasonable Exposure Time: Reasonable exposure time is one of a series of conditions in most definitions of market value and is always presumed to **precede** the effective date of appraisal. it may be defined thus: "The estimated length of time the property interest being appraised would have been offered on the market, prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events, assuming a competitive and open market." It is noted that the concept encompasses adequate, sufficient and reasonable time [on the market], as well as adequate, sufficient and reasonable effort [to expose said property to the market].
[Source: USPAP, 2010]

Definitions of Value:

Market Value -- The most probable price which a property should bring in a competitive and open market, under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars, or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Uniform Standards of Professional Appraisal Practice, 2010, The Appraisal Foundation.)

Neighborhood Definition A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises. [*The Dictionary of Real Estate Appraisal*, Fifth Ed.] Byrl N. Boyce, ed., *Real Estate Appraisal Terminology*, explains further - A portion of a larger community, or an entire community, in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have more than a casual community of interests. Neighborhood boundaries may consist of well-defined natural or man-made barriers, or they may be more or less well defined by a distinct change in land use or in the character of the inhabitants.

Highest and Best Use Highest and best use is defined as "the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and which results in the highest value." [*The Appraisal of Real Estate*, 12th. Ed.]

When the purpose of an appraisal is the estimation of market value, the Highest and Best Use of the subject must be determined to identify the most profitable, competitive use to which the property can be put. Highest and best use is shaped by competitive forces within the subject market. As the Cost Approach requires valuation of the property as if vacant, the highest and best use of the property, as if vacant, must be identified. Many appraisals include an allocation of value between the land and its associated improvements, also requiring the determination of highest and best use as if vacant. Land value, therefore, depends upon the uses to which the property can be put.

The highest and best use of a property as improved is determined to identify a projected (or present) use that will produce the highest capital return to the property, and to identify and use comparable properties in valuation procedures.

The highest and best use concept is based on traditional appraisal theory and reflects the attitudes of typical buyers and sellers who recognize that value is predicated on future benefits. This theory is based on the wealth maximization of the owner, with consideration to community goals. A use which does not meet public needs, will not meet the above highest and best use criteria.

APPRAISAL PROCESS/DESCRIPTION OF VALUATION METHODS

In any estimation of value, the local market is researched for sales and offerings of properties and contracts similar to the subject, rentals of similar properties and their operating expenses, current rates of return on investments, construction costs and factors of depreciation, demand for property types similar to the subject, and general economic conditions. The cost, sales comparison, and income capitalization approaches are used to process these data into a final estimate of value. The three approaches are interdependent, requiring that data and assumptions from all three are reciprocal. Generally, however, insufficient market data render varying value conclusions that must be reconciled into a final estimate of value.

The sales comparison approach compares recent transactions of similar, competitive properties on the basis of various units, including land and improvements, as well as

gross income. This approach directly reflects the actions of buyers and sellers in the open market.

Flood Zone Zone B is an area between limits of the 100-year flood and 500-year flood, or certain areas subject to 100-year flooding with depths of less than one foot or contributing drainage area is less than one square mile, or areas protected by levees from the base flood.

Soils

Urban land is more than 70 percent covered by development. The natural soils cannot be observed. Unoccupied areas have generally been altered by fill, grading and shaping.

(Source: U.S. Department of Agriculture)

DANIEL K. DEIGHAN, MAI
FLORIDA STATE-CERTIFIED GENERAL APPRAISER #RZ244
PROFESSIONAL QUALIFICATIONS

Professional Designations

MAI American Institute of Real Estate Appraisers [now known as the Appraisal Institute]
Daniel K. Deighan has completed the requirements of the continuing education program of the Appraisal Institute including all ordinary, normal and required courses and seminars.

Professional Experience

State-Certified General Appraiser, Florida, #RZ244; Member of the Appraisal Institute
2004-Present Deighan Consultants, Stuart, Florida
1982-2004 Licensed Broker and Owner of Deighan Appraisal Associates, Inc., Stuart, Florida
1980-1982 Broker-Salesman and Appraiser, Geisinger Realty, Inc., Stuart, Florida
1971-1981 President, Deighan Real Estate, Inc., Lake Placid, New York
1967-1971 Chief Appraiser, John M. Wilkins, MAI, Lake Placid, New York
1966-1971 Review Appraiser, NY State Dept. of Mental Hygiene
1965-1966 Staff Appraiser, NY State Dept. of Transportation

Qualified as Consultant Appraiser with the Following Agencies/Authorities and Utilities

FL Dept. of Environmental Protection and FL Communities Trust; South Florida Water Management District; FL Dept. of Revenue; FL Dept. of Transportation; FHA; US GSA [General Services Admin.]; Veterans Admin.; Martin County; St. Lucie County; Palm Beach County; Florida Power & Light; US Bureau of Census; FL Turnpike Authority; BellSouth; Cities of Stuart, Port St. Lucie, and Fort Pierce; Treasure Coast Regional Planning Council

Private-Industry Appraisal Clients [Partial List]

Local – First Peoples Bank; Riverside National Bank; First National Bank & Trust; Coldwell Banker Co.; Bank of Indiantown; Wachovia; Harbor Federal; Palm Beach Bank & Trust; Martin Memorial Hospital

National -- American Oil Company; McDonald's Corp.; Mobil Oil Company; Walgreen's; Shell Oil Company; Texaco, U.S.A.

Property Types Appraised [Partial List]

Automobile dealerships, citrus groves, gas stations, power centers, mini-power centers, all forms of commercial space including restaurants and banks, all forms of residential uses including subdivisions, apartment complexes, mobile home parks, and condominiums, hospitals, resorts and hotels/motels, mines, numerous easements including conservation and power line, wetlands, batch plants and other heavy industrial uses, industrial subdivisions, schools, leasehold interests, and riparian rights.

Expert Witness Testimony: Circuit Courts of Volusia, Indian River, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties, Florida; New York State Court of Claims and Supreme Court; and before various Commissioners on tax assessment cases.

Educational Background

- ° Bachelor of Arts Degree, Siena College, Loudonville, NY, 1965
- ° All required and necessary continuing education courses to achieve and maintain MAI.
- ° Taught Real Estate Principles, Practices and Law (REE 1000) course at Indian River Community College, Ft. Pierce, Florida.
- ° Guest Lecturer, University of Florida
- ° Guest Lecturer, Florida Association of Realtors

Professional Association

- ° MAI
- ° Licensed Real Estate Broker in Florida and New York
- ° Former Chairman, Grievance Committee, Stuart Board of Realtors.
- ° Past President, Economic Development Council of Martin County
- ° Past President, Tri-County Tec, Martin County

ROBERT KUNKLE, CGA
FLORIDA STATE-CERTIFIED GENERAL APPRAISER #3185

PROFESSIONAL QUALIFICATIONS

EDUCATION:

Associate of Arts, Indian River Community College, June 2000
Certified General Appraiser, May 2008

CONTINUING EDUCATION SEMINARS & COURSES:

Florida Law and Regulations
USPAP
Manufactured Housing
FHA Standards
Cost Approach
Income Approach
Mortgage Fraud
Hotel Valuation
Apartments Valuation

PROFESSIONAL EXPERIENCE:

- Real Estate Appraisal Research – Florida Property Consultants Group, June 1997 to March 2000
- Real Estate Appraisal – Deighan Consultants, January 2002 to Present

HAS APPRAISED:

Commercial Space	Restaurants	Office Buildings
Residential Subdivisions	Vacant Land	Industrial Buildings
Gas Stations	Condominiums	Leasehold Interests
Easements	Homes	Churches
Multi-Family Housing	Marinas	Road Right-of-Way
Riparian Rights	Airport Hangar	

PARTIAL LIST OF APPRAISAL CLIENTS

Martin County	St. Lucie County	City of Stuart
City of Port St. Lucie	Gulfstream Bank	Core Communities
Independent Bank	City of Fort Pierce	Trust for Public Land
Florida Communities Trust	Law Firms	Private Individuals

**AN APPRAISAL
REPORT OF A
300.52 SQUARE FOOT
VACANT PARCEL**

**FOR POSSIBLE REQUEST FOR ABANDONMENT
BY THE CITY OF STUART**

**LOCATED AT
26 SE SEMINOLE STREET
STUART, FLORIDA 34994**

**AS OF
OCTOBER 24, 2019**

FILE NUMBER DKD-2019-008

PREPARED FOR

**CHARLES E. GEARY
10 RIVERVIEW DRIVE
STUART, FLORIDA 33994**

PREPARED BY

**DEIGHAN CONSULTANTS
14 EMARITA WAY
STUART, FLORIDA 34996**

DEIGHAN CONSULTANTS

14 EMARITA WAY
Stuart, FL 34996

Daniel K. Deighan, MAI
Cert. Gen. RZ244
PHONE: (772) 221-3650

dandeighan@comcast.net

Robert W. Kunkle
Cert. Gen. RZ3185
FAX: (772) 221-3649

October 28, 2019

Charles E. Geary
10 Riverview Drive
Stuart, FL 34994

**RE: Market Value of a 300 SF Parcel
For Request for Possible Abandonment
By the City of Stuart
19 SE Osceola Street
Stuart, Florida 34994
Our File #DKD-2019-008**

Dear Mr. Geary:

As requested, to provide an opinion of the market value of the fee simple estate of the above-cited subject property, we have inspected the property, the economic environment and surrounding neighborhood, researched and inspected sales and offers of similar properties, and studied all other pertinent factors.

The **purpose** of this assignment has been to develop an opinion of the market value of the Fee Simple Estate of the subject property, as of October 24, 2019. The **function** of this report, or its intended use, is for your use in decision-making. The opinions and conclusions have been developed solely with consideration, therefore, for that function and do not address requirements for any other use or by any other party. Please refer to the assumptions and limiting conditions in this regard.

This is an appraisal report in accordance with all the exercises, procedures, and analyses necessary therefore and stipulated by USPAP Std. 1. The report is intended to conform to the appropriate and pertinent rules and regulations for appraisal as promulgated by USPAP, the Appraisal Institute, the State of Florida, and the Appraisal Foundation and associated Standards Board. A report is provided, intended to comply with the USPAP guidelines therefore -- Std. 2-2[b] -- wherein the data and analyses inherent to the complete appraisal are summarized with no excessive or extraneous discussions.

Mr. Geary
October 28, 2019

Based on all pertinent information, the investigation, and analyses, we have concluded the following market value of the fee simple estate for the subject property, as of October 24, 2019:

\$1,025

The preceding statement of value is predicate upon any and all assumptions and limiting conditions contained within this appraisal report.

The scope of this assignment includes analyzing a reasonable exposure time for the subject property, which is stated at the end of this report under *Reconciliation*. In regard to compliance with the Competency Provision of the USPAP, we have been appraising these types of properties in this area for more than 35 years.

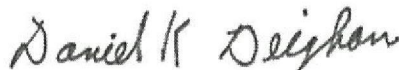
Enclosed is an appraisal report, which describes the property appraised, and shows the valuation procedures used in arriving at the preceding value conclusion.

We appreciate the opportunity to have been of service to you. If you have any questions, please call.

Very truly yours,



Robert W. Kunkle
Cert. Gen. #3185



Daniel K. Deighan, MAI
Cert. Gen. #244

rk/dkd
Enclosure

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CERTIFICATION

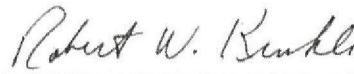
We certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property which is the subject of this report, and no personal interest with respect to the parties involved.
4. We have no bias with respect to the property which is the subject of this report, or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value which favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. Our analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice [USPAP].
8. Daniel K. Deighan, MAI, and Robert w. Kunkle, made a full personal inspection of the property, which is the subject of this report.
9. Other than the undersigned, no one has provided significant professional assistance in the analyses, conclusions and opinions of real estate values, as set forth in this appraisal report, except as may be specifically set forth elsewhere herein.
10. The Appraisal Institute conducts a voluntary program of continuing education for its designated members. MAI's who meet the minimum standards of this program are awarded periodic educational certification. As of the date of this report, Daniel K. Deighan, MAI, has completed the requirements of the continuing education program of the Appraisal Institute.
11. A list of Assumptions and Limiting Conditions is shown elsewhere in this appraisal report and is made a part hereof by reference thereto and these "Assumptions and Limiting Conditions" are a part of the valuable consideration between appraiser and client for this report.

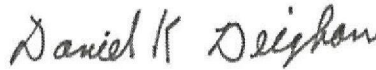
12. A list of definitions including the definition of the term Market Value is included elsewhere herein and this list of definitions is made a part hereof by reference thereto.
13. Deighan Consultants has not had any professional assignments concerning any of these parcels in the past three years.
14. Based upon our independent appraisal and exercise of our professional judgment, we conclude the market value of the fee simple estate of the subject property, as of October 24, 2019, to be:

\$1,025

Date: October 28, 2019



Robert W. Kunkle
Cert. Gen. #3185



Daniel K. Deighan, MAI
Cert. Gen. #244

ASSUMPTIONS AND LIMITING CONDITIONS
--

The following assumptions and limiting conditions apply to the attached appraisal report, our file #DKD-2019-008:

HYPOTHETICAL ASSUMPTIONS **None**

EXTRAORDINARY ASSUMPTIONS **None**

ORDINARY ASSUMPTIONS & LIMITING CONDITIONS

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. Legal access to the site is available unless otherwise stated.
3. It is assumed that all licenses, certificates of occupancy, consents, or other legislative or administrative authority from local, state or national government, or private entity or organization, have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
4. Only limited legal descriptions or surveys were furnished, so the appraiser used the county tax plat to ascertain the physical dimensions and acreage of the property. Should a survey prove these characteristics inaccurate, it may be necessary for the appraisal to be adjusted.
5. Any proposed improvements are assumed to have been completed unless otherwise stipulated; any construction is assumed to conform to building plans, if any, referenced in this report.
6. Information, estimates, and opinions furnished to the appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct; however, no responsibility for accuracy of such items furnished to the appraiser can be assumed by the appraiser.
7. The property is appraised free and clear of any or all liens or encumbrances, unless otherwise stated.
8. Responsible ownership and competent property management are assumed.
9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a non-conformity has been stated, defined and considered in the appraisal report.
10. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. The appraiser assumes no responsibility for such conditions, if any.

11. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is stated, defined and considered in the appraisal report.
12. This analysis has been prepared by the appraisers during the normal course of their inspection of the property and resulting preparation of a real estate appraisal report. Only a visual observation of the property has been made. Any form of environmental audit is both beyond the scope of this assignment and the particular expertise of the appraisers, who have not searched title, interviewed the current or prior owners of the site, or researched the property *beyond* the scope normally associated with the appraisal process, unless otherwise stated herein. The appraiser is neither trained nor qualified to identify and/or quantify any existing or potential environmental problems. The presence of hazardous waste or materials on the site and/or in any improvements thereon may affect the value of the property. The value conclusions and other related opinions expressed in this report are based, therefore, upon the assumption that the site and improvements, if any, are clean and free of any and all forms of contamination. Any statements made in this report, relative to the existence of or potential for existence of contamination or any other environmental problems, are made only to assist the users in their own determination as to whether the site requires further investigation by an appropriate environmental expert/professional. The appraisers cannot be held liable for lack of detection and/or identification of possible environmental problems.
13. The *Americans with Disabilities Act* [ADA, effective Jan. 26, 1992] is not applicable as the property being valued is vacant land.
14. Where the value of the various components of the property is shown separately, the value of each is segregated only as an aid to better estimate the value of the whole; the independent value of the various components may, or may not, be the market value of the component. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.
15. Any value estimates provided in the report apply to the entire property and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.
16. This appraisal report covers only the property described, and any values or rates used are not to be construed as applicable to any other property, however similar the properties might be. Further, it is assumed that the utilization of the land and improvements is within the boundaries of the property lines of the property described and that there is no encroachment or trespass, unless noted in the report.

17. Any sketch in the report may show approximate dimensions and is included to assist the reader in visualizing the property. The appraiser has made no survey of the property.
18. The forecasts, projections, or operating estimates contained herein are based upon current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes in future conditions.
19. Disclosure of the contents of the appraisal report is governed by the By-laws and Regulations of the professional appraisal organizations with which the appraisers are affiliated.
20. The contents of this appraisal are for the exclusive use and reliance upon by the client for whom it has been prepared and to whom it has been certified. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraiser, professional designations, reference to any professional appraisal organizations or the firm with which the appraiser is connected) shall be used for any purpose by anyone but the client specified in the report, without prior written consent of the appraiser; nor shall it be conveyed by anyone to the public through advertising, public relations, news, sales, or other media, without the prior written consent of the appraiser.
21. If the appraiser is required to give testimony of any nature whatsoever because of having made the appraisal with reference to the property in question, arrangements for payment of fees for the appraiser's services as an expert witness must be made in advance of such testimony.
22. The appraisal expresses the opinion of the signers and is not contingent upon a predetermined value. Neither the employment to make the appraisal nor the compensation in any way determined the amount of the valuation reported.
23. The contract for this appraisal of the property legally described herein is fulfilled by the signer upon delivery of this appraisal.
24. This appraisal report, including format, style, spreadsheet and tabular data, as well as Addenda, is the property of Deighan Consultants and no portion of the report may be reproduced without their express written permission.

APPRAISAL OVERVIEW

Owner of Record:	City of Stuart
Property Type:	Vacant land
Property Inspection(s):	Daniel K. Deighan, MAI, and Robert Kunkle inspected the subject October 24, 2019, at which time they were unaccompanied.
Land Area:	300.52 SF (Source – Stephen J. Brown survey dated 9/30/2019).
Area Appraised:	300.52 SF
Tax Folio No:	04-38-41-015-003-00130-6 is East Ocean 1 parcel.
Property Rights Appraised:	Fee simple
Land Use and Zoning:	Subject is in the Downtown Stuart CRA. The land use is Downtown Redevelopment and the zoning is Urban Center. Martin County Use Code designation is 1900, Professional Services/ Medical Offices
Utilities Available:	Telephone, electric, water and sewer.
Highest & Best Use:	
As Vacant	Assembled to adjoining property
As Improved	N/A
Intended Users:	Charles E. Geary and City of Stuart
Valuation:	\$1,025
Date of Value	October 24, 2019
Date of Report	October 28, 2019
Reasonable Exposure Time:	12 months or less

INTRODUCTION

<u>Location/Address:</u>	19 SE Osceola Street, Stuart, FL 34994.
<u>Legal Description:</u>	Metes and bounds as described on the Stephen J. Brown Survey. A portion of an existing alley.
<u>Property Inspection:</u>	Daniel K. Deighan, MAI, and Robert Kunkle inspected the subject October 24, 2019, at which time they were unaccompanied.
<u>Type of Property:</u>	Vacant land
<u>History of the Property:</u>	

The property is part of an alley running east off Georgia Avenue that is owned by the City of Stuart. The subject property is in the middle of the alley.

SUBJECT LOCATION



Subject location indicated by red star.

SUBJECT AERIAL MAP



Red outline is East Ocean 1 parcel, for reference purposes only.
 Yellow outline is proposed abandonment areas, for reference purposes only.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

All photographs taken by Robert Kunkle on October 24, 2019.

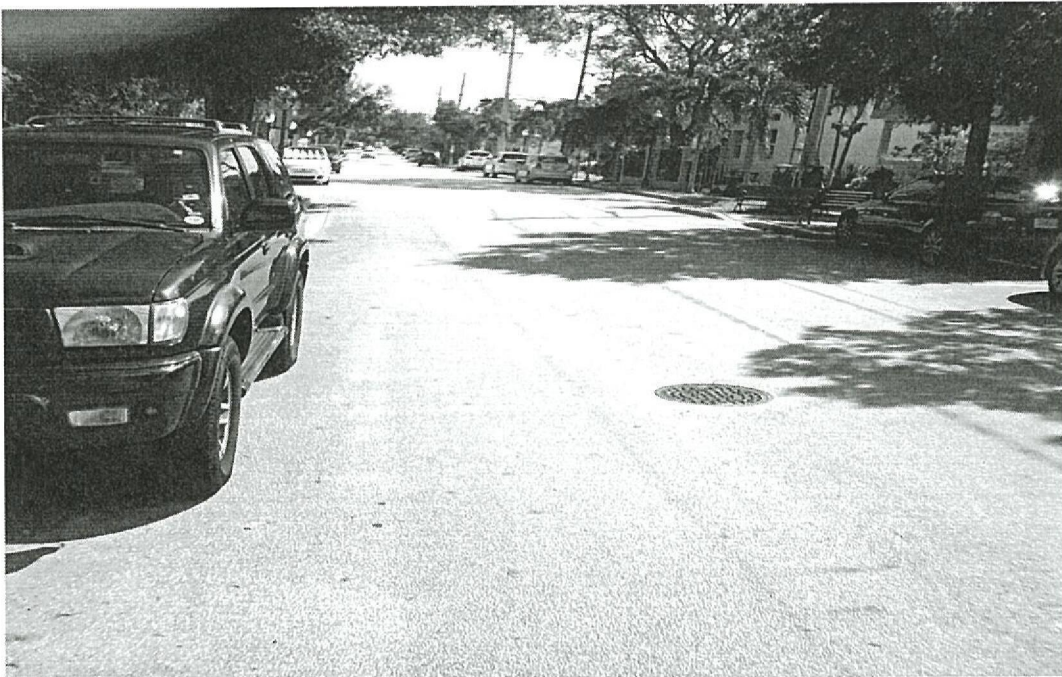


Subject side entrance on Osceola Street.



Subject parking area and alley off Osceola Street.

PICTURES OF THE SUBJECT PROPERTY

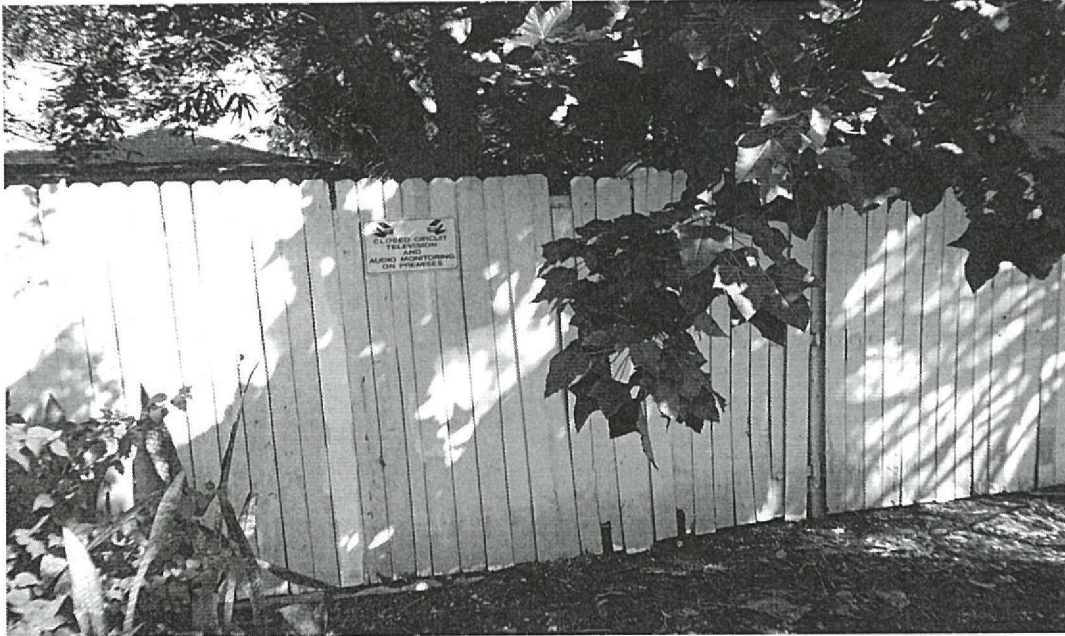


Osceola Street looking east.

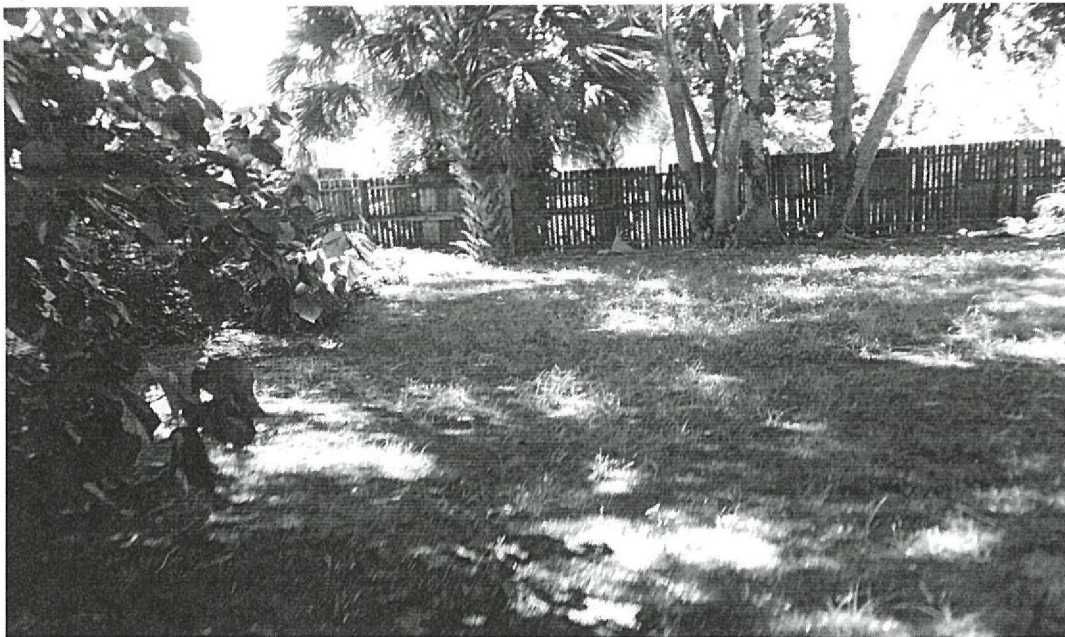


Osceola Street looking west.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

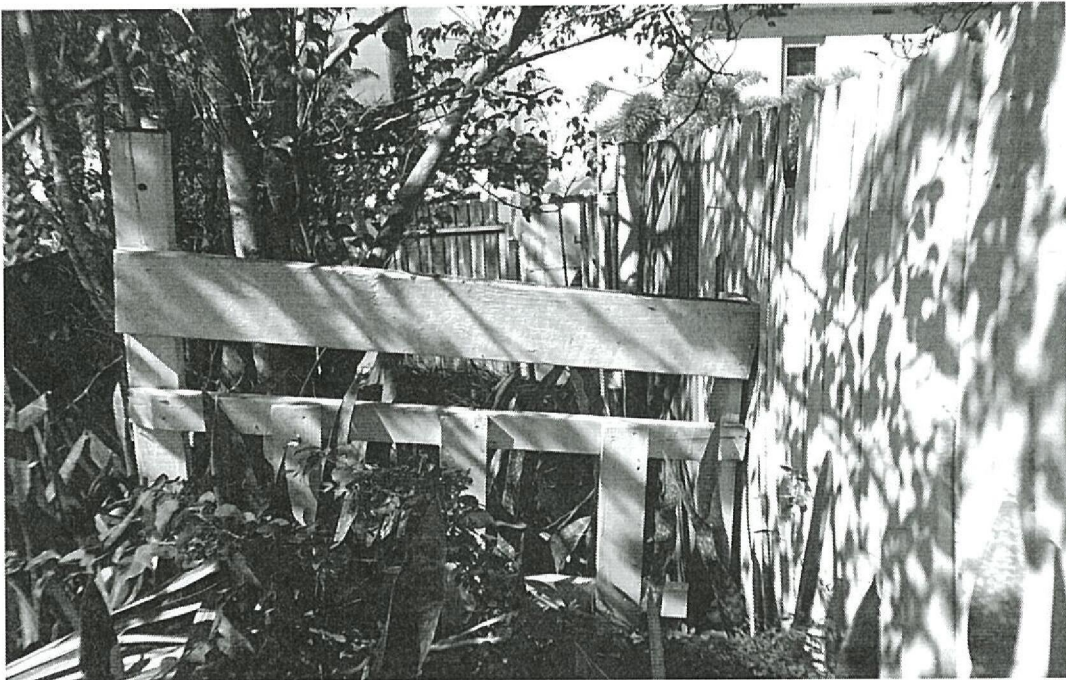


Fence in easement.



Looking south from Seminole Street showing typical easement topography.

PICTURES OF THE SUBECT PROPERTY



Picture of easement showing owner's fence and topography.

DESCRIPTION OF THE PROPERTY

LAND:

Sewer	<u>Yes</u>	Public water	<u>Yes</u>
Septic tank	<u>No</u>	Well	<u>No</u>
Electricity	<u>Yes</u>	Other water supply	<u>No</u>
Telephone	<u>Yes</u>	Curbs	<u>Yes</u>
Public sidewalks	<u>Yes</u>	Paved street	<u>Yes</u>

Size: 300.52 SF

Shape: The subject easement is triangular in shape.

Ingress/Egress: The subject has no improved access, but has legal access off Georgia Avenue. 19 SE Osceola Street has 100 FF on Osceola Street.

Utilities: Telephone, electricity, water, sewer.

Topography: Level at road grade

Drainage: Appears adequate.

Soils: Urban land. This is described in the addenda.

Flood Plain: Zone X, from Map Panel 12085C0134F, revised 10/04/2002

Site Improvements: Fence erected by owner.

Easements: None.

Encroachments: None noted.

Environmental: The appraiser has noted no overt signs of contamination having occurred on the subject tract. Please refer to Item 12 in the Assumptions and Limiting Conditions.

ZONING/LAND USE/CONCURRENCY

The subject is in the Downtown Redevelopment Land Use area of the City of Stuart with a Zoning of Urban Center. The Urban Standards are “characterized by relatively dense, walkable, mixed-use development pattern”. The Urban Center has high areas of pedestrian activity, historic restoration, shared parking and civic/cultural venues. (Source: Stuart Land Development Regulations, Section 3.01.03).

Tables of allowed uses and Land Use/Zoning compatibility are in the Stuart LDR’s, 2.01.02.

Land Use/Zoning Authority:	City of Stuart
Zoning/LDR:	Urban Center. Martin County has a Use Code designation of 1900, Professional Services, Medical Offices.
Uses Allowed:	The Land Development Regulations (LDR’s) for the Urban Center describes compatibility with 8 land use categories. Most residential and commercial uses are allowed. See section 2.02.02 of the LDR’s.
Subject Conforms:	Yes
Concurrency:	Subject is concurrent. Central water and sewer are hooked up.
Future Zoning Change:	None foreseen for development as there is an overlay zone designation on the area.

ASSESSED VALUE AND TAXES

The subject does not have a parcel ID number and there are no taxes. The data below is for 19 SE Osceola Street, which is a medical office building.

Taxing Authority: Martin County

Tax Folio No: 04-38-41-015-003-00130.6

Current Assessment/Taxes:

Assessment:	\$361,800
Taxes:	\$6,925.85
Special Assessment:	\$136.95

Special Assessment is for City of Stuart Fire Department.

Public and Private Restrictions: None noted.

Property Interest Appraised: **Fee Simple Estate** - absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Appraisal Purpose, Function, and Problem: The **purpose** of this assignment has been to develop an opinion of the value of the subject property, as of October 24, 2019.

The **function** of this report, or its intended use, is for your use in internal decision-making.

SCOPE OF ASSIGNMENT/APPRAISAL PROBLEM

The subject is a 300.52 SF parcel that is part of a legal, unimproved alley going east from Georgia Avenue. The only improvements are a fence erected by the property owner. The appraisal problem involves developing an opinion of the market value of the fee simple estate for the subject land only, as it now exists. To that end, the format of the analysis follows that stipulated by USPAP.

In concluding the opinion of market value, we have considered and analyzed sales, contracts, and offers of similar uses/tracts, occurring in this market since April 2018 in the Sales Comparison Approach. The Income Approach and Cost Approach are not used as the subject of this appraisal is vacant land.

The scope of the appraisal has involved inspection of the subject property. Note that we have inspected all the comparable properties relied upon herein if possible, and are cognizant of their physical characteristics and in selecting the data for analysis have relied upon those deemed most comparable to the subject property. All the

sales, listings, contracts, and other comparable data relied upon herein have been verified, unless otherwise stated herein.

The Sales Approach has been used for concluding an opinion of value for the subject property. The sources for these data typically include public records, MLS, our in-house databases (including Marshall Valuation Service), interviews and discussions with knowledgeable brokers active in this market, discussions with the Property Appraiser's office, personnel in the county utilities and growth management departments, and the tax office. Demographics from the overall market, zoning trends, and the like are considered in determining highest and best use.

The scope of this appraisal does not include any form of environmental audit of the subject property. Upon physical inspection of the property, the appraiser makes note of any existing uses or conditions on the immediate site and on adjacent sites, which could have the potential for or could have caused contamination. This observation is made in the normal course of inspection, and the reader's attention is directed to the appraiser's lack of expertise in this field.

HIGHEST AND BEST USE

Highest and best use is defined in the Addenda. Our conclusions as to highest and best use for the subject property are based on the following criteria which summarize the four tests inherent in Highest and Best Use analyses:

1. **Legal uses**
2. **Physically possible uses**
3. **Financially feasible uses**
4. **Maximally productive uses**

Highest and Best Use as Vacant:
Highest and Best Use as Improved:

Assemble with neighboring property
N/A

Reasoning:

- 1) The highest and best use concluded and identified above is legally permissible. The Urban Center Overlay Zone designation allows for numerous residential and commercial uses. The small size of the property precludes any development. Assemblage to next door properties is the only private use possible.
- 2) The subject site is 300.52 SF. It has no improved access. It is too small to be developed as it stands now. Assemblage with the next-door property is the only possible use as no other adjacent parcel owners have legal access.
- 3) The subject is too small to be leased for anything. The cost to assemble is low enough for the owner, East Ocean 1, to benefit from the additional land by adding to their landscaping or private space.
- 4) Assemblage allows for the full use of a small parcel that cannot be developed by itself.

In summary, the highest and best use of the subject site is for assemblage with East Ocean 1. This use is legally permissible, physically possible, appropriately supported in the market, and maximally productive.

APPRAISAL PROCESS

We are only using the Sales Comparison Approach as the land is vacant. The techniques and methods used in appraising the subject property are described and explained in the Addenda.

SALES COMPARISON APPROACH

The area of the subject is 300.52 SF. This area was determined by a survey by Stephen J. Brown dated September 30 2019. There are no sales of vacant land in the area that are not waterfront. We have extracted the land value from recent sales of improved properties. The Property Appraiser's card separately lists the current Market Values of the land and improvements. The percentage of land value of the current market value is then applied to the sale price of the property to yield the value of the land for that transaction.

Here is an example of this technique. The Property Appraiser lists the Market Total Value of a property at \$2,000,000. The land size for this property is 20,000 SF. This is the sum of the Market Land Value and the Market Improvement Value. If the Land Value is \$400,000 then the percentage of land value is:

$$\begin{aligned} &\text{Market Land Value divided by the Market Total Value:} \\ &\$400,000 / \$2,000,000 = 20.0\% \end{aligned}$$

If the property sells for \$2,500,000, the percentage of the sale price allocated to land is then:

$$\$2,500,000 \times 20.0\% = \$500,000$$

This is then divided by the land size to yield at \$/SF value.

$$\$500,000 / 20,000 \text{ SF} = \$25.00/\text{SF}$$

This technique will be applied to the comparable sales to determine a land value per square foot that will then be applied to the subject size of 300.52 SF.

The subject has a use code of 1900, Professional Services/Medical Offices. However this area of downtown has a majority of transitional properties on the side streets. The subject was built in 1981, while many properties in the neighborhood were built in the 1950's through the 1980's. We therefore will use transitional properties for our comparables. All sales have a Use Code of 0110, Single Family Transitional. These typically are residential properties being converted to a commercial use, such as office space or small business ventures such as doctor offices, law groups, nail or hair salons, artist use, and the like. The subject is currently being used as a doctor's office.

Sale #1 is the February 2019 transfer for \$790,000. The building at 417 SW Akron Avenue is a duplex still being used as a residence and currently has a market value for

the land of \$43,450 and a total market value of \$496,450. The 8.75% land value percentage applied to the \$790,000 sale price yields \$69,125 for the land. The land size of the property is 3,049 SF, for a \$22.67/SF land value.

Sale #2 is the September 2018 transfer for \$450,000. The 2-story residence at 516 SW California Avenue currently has a market value for the land of \$44,540 and a total market value of \$362,440. The 12.3% land value percentage applied to the \$450,000 sale price yields \$55,350 for the land. The land size of the property is 3,123 SF, for a \$17.72/SF land value.

Sale #3 is the July 2018 transfer for \$420,000. The property at 510 SW Camden Avenue is now the Lady Ann's Tea Room and Restaurant and currently has a market value for the land of \$44,540 and a total market value of \$362,440. The 12.3% land value percentage applied to the \$420,000 sale price yields \$51,660 for the land. The land size of the property is 3,123 SF, for a \$16.54/SF land value.

Sale #4 is the April 2018 transfer for \$318,000. The building at 412 SW California Avenue is a residence and currently has a market value for the land of \$89,060 and a total market value of \$236,920. The 37.6% land value percentage applied to the \$318,000 sale price yields \$119,568 for the land. The land size of the property is 6,251 SF, for a \$19.13/SF land value.

The following table summarizes the data presented above.

	Sale 1	Sale 2	Sale 3	Sale 4
Sale Price	\$790,000	\$450,000	\$420,000	\$318,000
Sale Date	Feb. 2019	Sept. 2018	July 2018	April 2018
Land Value	\$43,450	\$44,540	\$44,540	\$89,060
Total Value	\$496,450	\$362,440	\$362,440	\$236,920
% Land Value	8.75%	12.3%	12.3%	37.6%
Land \$ of Sale Price	\$69,125	\$55,350	\$51,660	\$119,568
Land Size SF	3,049 SF	3,123 SF	3,123 SF	6,251 SF
Indicated \$/SF	\$22.67	\$17.72	\$16.54	\$19.13

Based upon the preceding analyses, we accord greatest weight to Sale 1, with lesser weight to Sales 2 and 3, and least weight to Sale 4. We conclude a value for the subject property would fall in the middle to upper portion of the indicated unadjusted \$16.54/SF to \$22.67/SF range after adjustments are made. Thus, I have concluded a value for the subject per unit value (\$/SF), prior to reductions due to lack of developability, of:

\$20.00/SF

This value has been derived from properties that are usable, developable, and capable of standing alone in the market. A 300.52 SF portion of an unimproved dead-end alley is not usable, developable, or capable of standing alone in the market. The alley itself is 12 feet wide and cannot be used for 2-way traffic. One-way traffic needs a 12-foot pavement width which leaves no room for a shoulder. "The minimum pavement width shall be 20 feet for two-way street and 12 feet for a one-way street." Per the City of Stuart Land Development Code Section 6.01.02 E-1-a.

The subject has legal, but not improved, access. The alley dead ends to the east at the rear of Molly's House. The west end of the alley is at Georgia Avenue. It is highly unlikely the alley will be improved as it would serve no purpose. We therefore consider the parcel to have no access. We have completed numerous assignments for St. Lucie County that required appraising wetlands that had no improved or legal access, or legal access that will never be improved. These parcels, using paired sales analysis, have consistently shown a 50% reduction in value. We were the lead real estate appraisers for Martin County when they were purchasing Pal Mar lots at the south end of the county. These parcels had no access and consistently showed a 50% reduction in value. It is our opinion the subject 300.52 SF should be reduced in value by 50% for lack of access.

The size of 300.52 SF makes the parcel undevelopable by itself. The market has shown surplus land to be less valuable than that of a parent tract. The loss in value ranges considerably depending on the size, with smaller parcels worth less as they have less chances of development. There is some limited value in the parcel in adding to the landscaping. Outdoor storage for materials or equipment is also possible.

There is only one potential buyer for the parcel. The abandonment area is triangular in shape with two sides abutting the easement and one side rabutting 19 SE Osceola Street. It makes no economic sense for the owner, East Ocean 1, to pay \$20.00/SF (\$6,010) for such a small parcel; they do not need it. The increase in value to the parent tract is vey minimal as they already have 18,295 SF of property. This would increase their property size by only 1.6%, a minimal amount. Studies have shown parcels with only one potential buyer would be discounted anywhere from 24% to 41% with an average of 33%. This is because a potential buyer can walk away from a deal without receiving a discount.

Other studies by firms experienced with low utility parcels have published in appraisal magazines such as *Valuation* and *The Appraisal Journal* that show a limited buyers' market can reduce a parcel's value by an average of 24% to 50%. The discount can vary by as little as 15% to as much as 83%.

The Firm's experience with low utility parcels

Deighan Consultants, for Martin County, has appraised thousands of isolated, limited access parcels in Pal Mar, where owners had a quarter-, half-, and one-acre parcels and zoning required a minimum of 20 contiguous acres.

Deighan Consultants, for St. Lucie County, has appraised severely limited-use parcels acquired for the Savannahs Reserve, north of Port St. Lucie and south of Fort Pierce.

We will apply a 33% discount because of the very limited buyers' market.

Section 36-2(b) of the City of Stuart Land Development Regulations states "The privilege fee shall be determined and fixed by computing 100 percent of the value added to the adjoining real property of the petitioner by the resulting addition of the interest abandoned by the city;". This means the City of Stuart requires the Grantee pay an amount equal to the added value the abandonment would bring to the parent tract.

The 300.52 SF subject is located at the rear of the property, without frontage on SE Osceola Street or SE Seminole Street. It has no improved access, although it does have legal access being part of an alley that connects to SE Georgia Avenue. The alley dead-ends just east of the subject. The parcel is not developable because of its size. It would also not be developable because of the access and exposure.

The lack of access, undevelopable size, and lack of open market (one potential buyer) devalues the parcel considerably. Our data indicates an 83% reduction in value is appropriate (50% + 33%). Therefore, the value of the 300.52 SF subject parcel, as of October 24, 2019, is:

$$\$20.00/\text{SF} \times (100\% - 83\% = 17\%) = \$3.40/\text{SF}$$

$$\$3.40/\text{SF} \times 300.52 \text{ SF} = \$1,025 \text{ (R)}$$

It is therefore our opinion the abandoned parcel, when annexed, would have much less value than the rest of the parent tract. The increase in value of the parent tract is equal to the value of abandonment, which, as of October 24, 2019, is:

\$1,025

RECONCILIATION

Cost Approach:	N/A
Income Approach:	N/A
Sales Comparison Approach	\$1,025

Only the Sales Comparison Approach was utilized so reconciliation is unnecessary. Based on the above analysis and discussion, we conclude the following value of the fee simple interest for the subject property, as is, as of October 24, 2019:

**ONE THOUSAND TWENTY-FIVE DOLLARS
(\$1,025)**

Reasonable Exposure Time and Reasonable Marketing Period: Based on our analyses, and upon the definitions of these concepts [supplied in the Addenda], we would conclude a reasonable exposure time for the subject of 12 months or more, which is also representative of the reasonable marketing period.

ADDENDA



27

NEIGHBORHOOD DESCRIPTION

USPAP requires inclusion of a neighborhood and area description in appraisal reports. The *Regional Analysis* has been relegated to the Addenda. Following is a brief neighborhood description pertaining to the subject of this report.

Neighborhood Data

The neighborhood boundaries are considered to be:

North:	St. Lucie River
South:	East Ocean Boulevard
East:	Illinois Avenue
West:	US 1

The neighborhood consists mainly of office buildings for doctors, lawyers, small business owners and commercial uses. Many older homes in the neighborhood have been remodeled into professional offices such as financial advisors, doctors and lawyers.

Along the St. Lucie River on the west side of the neighborhood there are some residences along Seminole Street including the subject which is a vacation rental home. Across from the subject are the Sandcastle Apartments. A new waterfront condominium called River House is under construction.

SE Osceola Street has the Lou Ronzo Restaurant, older homes converted to medical offices, law offices, and some real estate uses. The Acacia Fraternal Lodge is also here. Continuing east along Osceola are a small bookstore, hair salon and the large Gary Law offices. Osceola Street through downtown has small businesses, which on the west side also front Flagler Street. Businesses include Spritz City Bistro, Black Marlin Restaurant, Lyric Theater, an art gallery, real estate office, hair salon, several boutiques, and Duffy's Sports Grill.

East Ocean Boulevard is the main east-west corridor through this part of Stuart. From Colorado Avenue going east is a retail strip center and office condos on the south side of the road. Next is the large Martin County Courthouse Complex with Memorial Park to the east and The Esplanade office center to the west. Stuart Middle School and the Martin County School Board complex are between Georgia Avenue and High School Avenue.

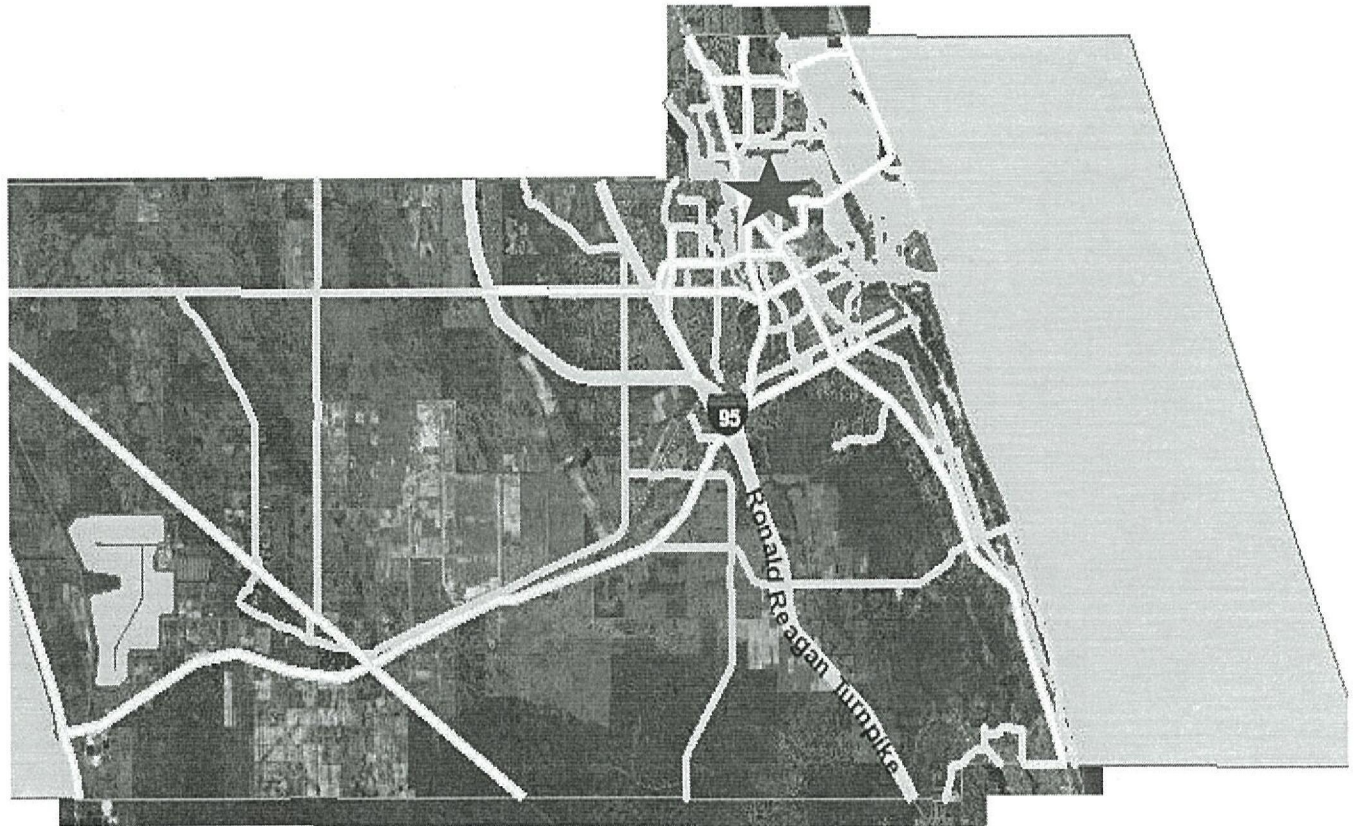
The north side of East Ocean Boulevard is very similar with a retail strip center at Colorado Avenue, 3-story office condos, law office, health spa, former gas/convenience store (now Ocean Market), dental office and the Christian Science Church. Continuing east is a Martin Memorial Health building, St. Mary's Church, Lucido land planning, Patty Downing Interiors and the Wells Fargo Bank Building.

At the roundabout north of East Ocean, which has the sailfish sculpture, is a new apartment complex called Azul Apartments. Continuing north on Dixie Highway to the Old Roosevelt Bridge is a real estate office and the Sailor's Return Restaurant at the marina.

Between Colorado Avenue and US 1 is an area of old homes, many of which have been repurposed into offices. Others have been remodeled and are still used as residences. Businesses in the area include Kibbey Wagner law firm, Sailfish Tax and Accounting, Lady Ann's Tea Room and Restaurant, psychologist office, financial planning office, and many similar types of small businesses.

In summary, because of the wide variety of land uses, we felt a more detailed description of the businesses was necessary. This area has been nearly completely built out with medical, dental and law offices, churches, schools, and retail uses. New construction is generally remodeling and repurposing existing buildings. Any future growth would likely be in this same vein.

MARTIN COUNTY REGIONAL ANALYSIS – MAP OF REGION



Red star approximates subject location.

REGIONAL ANALYSIS –MARTIN COUNTY

Size:	555.7 square miles land area, 197.2 square miles water area
Population:	159,923 in 2017 (Florida Demographics by Cubit). Florida population is 20,984,400 as of July 2017. Stuart has 16,204 residents while 14,318 people live in Hobe Sound.
Location:	Martin County, Treasure Coast Region, along the east coast of South Florida, between St. Lucie and Palm Beach counties, east of Okeechobee County.
MSA:	Port St. Lucie Metropolitan Statistical Area [MSA], which includes Martin County.
County Seat:	Stuart
Ocean Front:	The mainland is separated from the Atlantic Ocean by barrier islands and the Indian River, which runs the length of the tri-county area, offering three inlets to the Atlantic Ocean.
Median Income:	The per capita income was \$52,262 in 2016 (Florida Demographics by Cubit). Stuart median income was \$39,470 and Hobe Sound has a median income of \$40,060. The Florida per capita income was \$48,900.
Employment:	In February 2019 the unemployment rate for Martin County was 3.4%, compared to 3.8% in January and 3.7% in February 2018. The unemployment rate in February 2019 for the State of Florida was 3.5% per the Florida Department of Economic Opportunity.
Housing:	February 2019 median sale prices for homes in Martin County were down 7.9% over February 2018 at \$327,000 and the number of homes sold was down 0.6% at 168 units. The inventory of homes for sale was up 15.7%. Condominium sales for February 2019 were down 27.8% at a median sale price of \$155,000, up 14.3% year over year. (Florida Realtors).

DEFINITIONS AND EXPLANATIONS

Property Rights Appraised: **Fee simple estate**, which is absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Property Interest Appraised: **Permanent Easement** – a (perpetual) interest in real property that conveys use, but not ownership, of a portion of an owner's property. Or: An easement conveyed in perpetuity. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Property Interest Appraised: **Temporary Construction Easement** – this is an easement granted for a specific purpose and applicable for a specific time period, that is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Definition of Reasonable Exposure Time: Reasonable exposure time is one of a series of conditions in most definitions of market value and is always presumed to **precede** the effective date of appraisal. it may be defined thus: "The estimated length of time the property interest being appraised would have been offered on the market, prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events, assuming a competitive and open market." It is noted that the concept encompasses adequate, sufficient and reasonable time [on the market], as well as adequate, sufficient and reasonable effort [to expose said property to the market].
[Source: USPAP, 2010]

Definitions of Value:

Market Value -- The most probable price which a property should bring in a competitive and open market, under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars, or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Uniform Standards of Professional Appraisal Practice, 2010, The Appraisal Foundation.)

Neighborhood Definition

A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises. [*The Dictionary of Real Estate Appraisal*, Fifth Ed.] Byrl N. Boyce, ed., *Real Estate Appraisal Terminology*, explains further - A portion of a larger community, or an entire community, in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have more than a casual community of interests. Neighborhood boundaries may consist of well-defined natural or man-made barriers, or they may be more or less well defined by a distinct change in land use or in the character of the inhabitants.

Highest and Best Use

Highest and best use is defined as "the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and which results in the highest value." [The Appraisal of Real Estate, 12th. Ed.]

When the purpose of an appraisal is the estimation of market value, the Highest and Best Use of the subject must be determined to identify the most profitable, competitive use to which the property can be put. Highest and best use is shaped by competitive forces within the subject market. As the Cost Approach requires valuation of the property as if vacant, the highest and best use of the property, as if vacant, must be identified. Many appraisals include an allocation of value between the land and its associated improvements, also requiring the determination of highest and best use as if vacant. Land value, therefore, depends upon the uses to which the property can be put.

The highest and best use of a property as improved is determined to identify a projected (or present) use that will produce the highest capital return to the property, and to identify and use comparable properties in valuation procedures.

The highest and best use concept is based on traditional appraisal theory and reflects the attitudes of typical buyers and sellers who recognize that value is predicated on future benefits. This theory is based on the wealth maximization of the owner, with consideration to community goals. A use which does not meet public needs, will not meet the above highest and best use criteria.

APPRAISAL PROCESS/DESCRIPTION OF VALUATION METHODS

In any estimation of value, the local market is researched for sales and offerings of properties and contracts similar to the subject, rentals of similar properties and their operating expenses, current rates of return on investments, construction costs and factors of depreciation, demand for property types similar to the subject, and general economic conditions. The cost, sales comparison, and income capitalization approaches are used to process these data into a final estimate of value. The three approaches are interdependent, requiring that data and assumptions from all three are reciprocal. Generally, however, insufficient market data render varying value conclusions that must be reconciled into a final estimate of value.

The sales comparison approach compares recent transactions of similar, competitive properties on the basis of various units, including land and improvements, as well as

gross income. This approach directly reflects the actions of buyers and sellers in the open market.

Flood Zone Zone B is an area between limits of the 100-year flood and 500-year flood, or certain areas subject to 100-year flooding with depths of less than one foot or contributing drainage area is less than one square mile, or areas protected by levees from the base flood.

Soils

Urban land is more than 70 percent covered by development. The natural soils cannot be observed. Unoccupied areas have generally been altered by fill, grading and shaping.

(Source: U.S. Department of Agriculture)

DANIEL K. DEIGHAN, MAI
FLORIDA STATE-CERTIFIED GENERAL APPRAISER #RZ244
PROFESSIONAL QUALIFICATIONS

Professional Designations

MAI American Institute of Real Estate Appraisers [now known as the Appraisal Institute]
Daniel K. Deighan has completed the requirements of the continuing education program of the Appraisal Institute including all ordinary, normal and required courses and seminars.

Professional Experience

State-Certified General Appraiser, Florida, #RZ244; Member of the Appraisal Institute
2004-Present Deighan Consultants, Stuart, Florida
1982-2004 Licensed Broker and Owner of Deighan Appraisal Associates, Inc., Stuart, Florida
1980-1982 Broker-Salesman and Appraiser, Geisinger Realty, Inc., Stuart, Florida
1971-1981 President, Deighan Real Estate, Inc., Lake Placid, New York
1967-1971 Chief Appraiser, John M. Wilkins, MAI, Lake Placid, New York
1966-1971 Review Appraiser, NY State Dept. of Mental Hygiene
1965-1966 Staff Appraiser, NY State Dept. of Transportation

Qualified as Consultant Appraiser with the Following Agencies/Authorities and Utilities

FL Dept. of Environmental Protection and FL Communities Trust; South Florida Water Management District; FL Dept. of Revenue; FL Dept. of Transportation; FHA; US GSA [General Services Admin.]; Veterans Admin.; Martin County; St. Lucie County; Palm Beach County; Florida Power & Light; US Bureau of Census; FL Turnpike Authority; BellSouth; Cities of Stuart, Port St. Lucie, and Fort Pierce; Treasure Coast Regional Planning Council

Private-Industry Appraisal Clients [Partial List]

Local – First Peoples Bank; Riverside National Bank; First National Bank & Trust; Coldwell Banker Co.; Bank of Indiantown; Wachovia; Harbor Federal; Palm Beach Bank & Trust; Martin Memorial Hospital

National -- American Oil Company; McDonald's Corp.; Mobil Oil Company; Walgreen's; Shell Oil Company; Texaco, U.S.A.

Property Types Appraised [Partial List]

Automobile dealerships, citrus groves, gas stations, power centers, mini-power centers, all forms of commercial space including restaurants and banks, all forms of residential uses including subdivisions, apartment complexes, mobile home parks, and condominiums, hospitals, resorts and hotels/motels, mines, numerous easements including conservation and power line, wetlands, batch plants and other heavy industrial uses, industrial subdivisions, schools, leasehold interests, and riparian rights.

Expert Witness Testimony: Circuit Courts of Volusia, Indian River, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties, Florida; New York State Court of Claims and Supreme Court; and before various Commissioners on tax assessment cases.

Educational Background

- ° Bachelor of Arts Degree, Siena College, Loudonville, NY, 1965
- ° All required and necessary continuing education courses to achieve and maintain MAI.
- ° Taught Real Estate Principles, Practices and Law (REE 1000) course at Indian River Community College, Ft. Pierce, Florida.
- ° Guest Lecturer, University of Florida
- ° Guest Lecturer, Florida Association of Realtors

Professional Association

- ° MAI
- ° Licensed Real Estate Broker in Florida and New York
- ° Former Chairman, Grievance Committee, Stuart Board of Realtors.
- ° Past President, Economic Development Council of Martin County
- ° Past President, Tri-County Tec, Martin County

ROBERT KUNKLE, CGA
FLORIDA STATE-CERTIFIED GENERAL APPRAISER #3185

PROFESSIONAL QUALIFICATIONS

EDUCATION:

Associate of Arts, Indian River Community College, June 2000
Certified General Appraiser, May 2008

CONTINUING EDUCATION SEMINARS & COURSES:

Florida Law and Regulations
USPAP
Manufactured Housing
FHA Standards
Cost Approach
Income Approach
Mortgage Fraud
Hotel Valuation
Apartments Valuation

PROFESSIONAL EXPERIENCE:

- Real Estate Appraisal Research – Florida Property Consultants Group, June 1997 to March 2000
- Real Estate Appraisal – Deighan Consultants, January 2002 to Present

HAS APPRAISED:

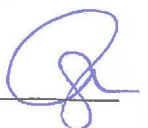
Commercial Space	Restaurants	Office Buildings
Residential Subdivisions	Vacant Land	Industrial Buildings
Gas Stations	Condominiums	Leasehold Interests
Easements	Homes	Churches
Multi-Family Housing	Marinas	Road Right-of-Way
Riparian Rights	Airport Hangar	

PARTIAL LIST OF APPRAISAL CLIENTS

Martin County	St. Lucie County	City of Stuart
City of Port St. Lucie	Gulfstream Bank	Core Communities
Independent Bank	City of Fort Pierce	Trust for Public Land
Florida Communities Trust	Law Firms	Private Individuals

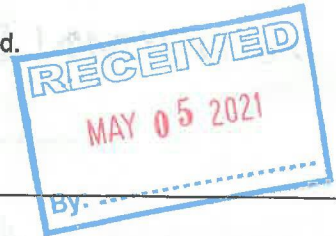


CITY OF STUART
DEVELOPMENT DEPARTMENT
RIGHT OF WAY ABANDONMENT APPLICATION

Reviewed By: 

Application must be legible with all relevant fields completed.

Project ID# 221050001
(Staff Entry)



Pre-App Conference Date:	Application Date:
Project Name:	
Parcel ID# <u>04-38-41-015-003-00040-5</u> <u>and 04-38-41-015-003-00130-6</u>	Project Address: <u>26 SE Seminole Street</u> <u>and 19 SE Osceola Street</u>
Zoning/CRA Sub-district:	
Subdivision: <u>Amended Plat of Charles A. Porter Addition</u>	Lot(s): <u>Lots 5 and 14, Block 3</u>
Fee: \$787.00 plus 100% of appraised value (This does not include fees that may be charged as a result of application reviews by the City's consultants or any required recording fees)	
Submittal Requirements: A completed application form, the payment of fees, and pertinent information as determined by the Development Director.	
Approving Authority: The Development Director is required to prepare a staff report and recommendation concerning this application for the City Commission public hearing.	
Justification: Please provide justification supporting the request for the abandonment, vacation or change of name of any street, alley, road, or public way (include additional pages if needed): Abandonment of alley is required in order to provide for required setbacks for the "Enchanted Cottage" relocation project.	

(over)

General Information

(Please Print or Type)

1. Property Owner, Lessee, Contract Purchaser, or Applicant (circle one):

Name: 26 SEMINOLE, LLC	City/State/Zip Code: Stuart FL 34994
Title:	Telephone Number: 772-215-3437
Company:	Facsimile Number: 772-781-1999
Company Address: 211 S. Colorado Ave #2 Stuart FL 34994	Email Address (optional): SV41969@aol.com

2. Agent of Record (if any): The following individual is designated as the Agent of Record for the property owner, lessee, or contract purchaser and should receive all correspondence related to the application review.

Name: Steven G. Vitale	City/State/Zip Code: Same as above
Title: Authorized Member	Telephone Number: Same as above
Company:	Facsimile Number: Same as above
Company Address: Same as above	Email Address (optional): Same as above

3. The Undersigned, as the Property Owner, Lessee, Contract Purchaser, or Applicant (circle one), acknowledges responsibility for all City expenses associated with the referenced application (s) including time spent by the City's consultants and further acknowledges that payment of consultant fees will be made prior to the receipt of the consultant comments.

Name: 26 Seminole, LLC and East Ocean, LLC	City/State/Zip Code: Same as above
Title:	Telephone Number: Same as above
Company:	Facsimile Number: Same as above
Company Address: Same as above	Email Address (optional): Same as above.

I hereby certify that all information contained herein is true and correct.

4. Signed this 26 day of March, 2021.

Signature of Property Owner, Lessee, Contract Purchaser or Applicant (circle one)

Steven Vitale
Manager of 26
Seminole, LLC

Charles E. Gentry
Manager of East Ocean, LLC

As of January 01, 2020, Any and all notarial certificates prepared under Florida law must indicate whether the principal appeared by means of physical presence or by online notarization. Florida Statue 117.05

(a) For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of _____ physical presence or _____ online notarization, this _____ day of _____ () By _____ (name of person making statement).

Personally Known OR Produced
Identification Type of Identification Produced

(Signature of Notary Public - State of Florida) (Print, Type, or Stamp of Notary Public)

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of _____ physical presence or _____ online notarization,
This _____ day of _____ () By _____ (name of person acknowledging).

Personally Known OR Produced
Identification Type of Identification Produced

(Signature of Notary Public - State of Florida) (Print, Type, or Stamp of Notary Public)

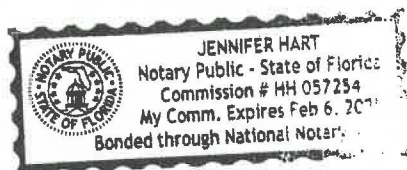
~~(c)~~ For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me by means of ☒ physical presence or _____ online notarization,
This 26 day of March 2021 by Charles F. Gentry (name of person) as (type of authority, e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed).

Personally Known OR Produced
Identification Type of Identification Produced

Jennifer Hart
(Signature of Notary Public - State of Florida) (Print, Type, or Stamp of Notary Public)



As of January 01, 2020, Any and all notarial certificates prepared under Florida law must indicate whether the principal appeared by means of physical presence or by online notarization. Florida Statute 117.05

(a) For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of _____ physical presence or _____ online notarization, this _____ day of _____ () By _____ (name of person making statement).

Personally Known OR Produced
Identification Type of Identification Produced

(Signature of Notary Public - State of Florida) (Print, Type, or Stamp of Notary Public)

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of _____ physical presence or _____ online notarization,
This _____ day of _____ () By _____ (name of person acknowledging).

Personally Known OR Produced
Identification Type of Identification Produced

(Signature of Notary Public - State of Florida) (Print, Type, or Stamp of Notary Public)

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF Martin

The foregoing instrument was acknowledged before me by means of X physical presence or _____ online notarization,
This 26th day of March 2021 () by Steven Vitek (name of person) as (type of authority, e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed). Manager

Personally Known OR Produced
Identification Type of Identification Produced

26 Gemini, LLC
Jennifer Hart
(Signature of Notary Public - State of Florida) (Print, Type, or Stamp of Notary Public)



CITY OF STUART, FLORIDA AGENDA ITEM REQUEST CITY COMMISSION

Meeting Date: 8/23/2021

Prepared by: V. Felicione, Fire Chief

Title of Item:

AMENDING CHAPTER 22 FIRE PREVENTION (RC):

ORDINANCE No. 2471-2021; AN ORDINANCE OF THE CITY OF STUART AMENDING CHAPTER 22; FIRE PREVENTION; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

This is a request to amend the fire prevention ordinance to comply with state law and to adopt the Florida Fire Code as the prevailing fire code for the City of Stuart.

Funding Source:

N/A

Recommended Action:

Motion To Approve Amendments

ATTACHMENTS:

	Description	Upload Date	Type
□	Ord 2471-2021 Amendment to Chapter 22 Fire Prevention	8/2/2021	Ordinance add to Y drive



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

ORDINANCE NUMBER 2471-2021

**AN ORDINANCE OF THE CITY OF STUART AMENDING
CHAPTER 22; FIRE PREVENTION; PROVIDING FOR A
SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE;
PROVIDING FOR AN EFFECTIVE DATE AND FOR
OTHER PURPOSES.**

WHEREAS, the Fire Chief for the City of Stuart, Florida, is authorized by provisions in Chapter 633.118, Florida Statutes, to enforce the Florida Fire Prevention Code for the general welfare of the residents of Stuart, Florida; and

WHEREAS, The Florida Fire Prevention Code is adopted by the State Fire Marshal at three-year intervals as required by Chapter 633.202 Florida Statutes. This complex set of fire code provisions are adopted for use statewide every three years without adoption by local governments; and

WHEREAS, Local amendments adopted by local governments shall be effective only until the next version of the Florida Fire Protection Code new edition is released.

WHEREAS, It is the intent of the City Commission to maintain the highest of standards as it relates to fire protection and prevention. To reduce the vulnerability of the people and property of this City of Stuart, Florida; and

WHEREAS, the City Commission desires to maintain continuity with Florida Statutes, Chapter 633.

WHEREAS, the City Commission determines that it is in the best interests of the public welfare of its citizens to amend Chapter 22 relating to fire prevention to ensure that the City remains in compliance with the State of Florida regulations.

* * * * *

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

SECTION 1: The City of Stuart Code of Ordinances, Chapter 22 – Fire Prevention is amended to read as follows:

ARTICLE I. IN GENERAL

Sec. 22-1. Volunteer firefighters authorized.

The fire chief may appoint such number of volunteer firefighters as he deems advisable. Such volunteers shall have the qualifications and perform the duties prescribed by the chief.

(Code 1981, § 8-1; Code 1995, § 42-1)

Sec. 22-2. ~~Flow testing~~ Testing, inspection, repair and maintenance of privately-owned fire hydrants.

- (a) As used in this section, a privately-owned fire hydrant is any fire hydrant(s) not owned by the city that is connected to the city water system. A privately-owned fire hydrant connected to the city water system may be located outside the municipal boundary of the city.
- (b) The owner of a privately-owned fire hydrant(s) is responsible for the inspection, ~~flow-~~ testing, repair and maintenance of their fire hydrant(s) to ensure that they ~~are~~ hydrant is- fully operational at all times. ~~per the Florida Fire Prevention Code and NFPA 25. A flow-~~ test of a privately-owned fire hydrant shall be completed not less than once every 12 months by a person knowledgeable in the operation of fire hydrants who is competent in the opinion of the chief of the fire-rescue department to certify that the fire hydrant is in good working order. The results of a fire hydrant flow test shall be provided to the city fire-rescue department within ten days of the test.
- (c) ~~The chief of the fire-rescue department may, if he believes that a particular hydrant may not be functioning properly, order that such hydrant be flow tested. Such test shall be completed by the owner and the results filed with the city fire-rescue department within 30 days of the notice to test the hydrant.~~

(Code 1995, § 42-2; Ord. No. 1973, §1, 4-26-2004)

Sec. 22-3. Fees.

Fees for fire protection and fire prevention inspections, new construction plan reviews and activities shall be as currently established or as hereafter adopted by resolution of the city commission from time to time in appendix A to this Code.

(Code 1995, § 42-91; Ord. No. 1682, § 2, 7-12-1999; Ord. No. 2006, § 4, 11-8-2004; Ord. No. 2043, § 1, 10-10-2005; Ord. No. 2182-09, § 4, 7-13-2009)

Secs. 22-4—22-23. Reserved.

ARTICLE III. FIRE CODES

Sec. 22-61. **Fire Codes and ~~publications~~regulations adopted.**

- (a) ~~The Florida Fire Prevention Code is adopted by the State Fire Marshal at three-year intervals as required by Chapter 633.202 Florida Statutes. This complex set of fire code provisions are enforced by the local fire official within each county, municipality, and special fire district in the state. The most recent edition of the Florida Fire Prevention Code, along with the adopted publications in FAC 69A-60.005, code collectively known as the National Fire Protection Association National Fire Codes~~ is hereby adopted as the fire code of the City of Stuart~~city~~. In cases where Fire Codes and the Florida Fire Prevention Code differ, the more stringent requirements shall be applied.
- ~~(b) Intention of article. This article is intended as a minimum requirement for affected buildings. In cases where the Florida Fire Prevention Code or adopted fire codes are more stringent, the requirements of the applicable code shall preempt those of this article.~~

(Code 1981, § 8-14; Code 1995, § 42-26)

~~Sec. 22-62. Fire lanes.~~

~~Fire lanes shall be provided for all buildings which are set back more than 150 feet from a public road, for all buildings which exceed 30 feet in height and are set back over 50 feet from a public road, and as required by the fire chief.~~

~~(Code 1981, § 8-15; Code 1995, § 42-27)~~

~~Sec. 22-63. Fire protection systems.~~

~~(a) Installation required.~~

- ~~(1) *Sprinklers.* Fire sprinkler systems which comply with the requirements of the latest edition of NFPA 13 (Standard for the Installation of Sprinkler Systems) shall be installed in all newly constructed buildings that are three or more stories in height.~~
- ~~(2) *Standpipes.* Class I standpipe systems which comply with the requirements of NFPA 14 (Standard for the Installation of Standpipe and Hose Systems), except as noted below, shall be installed in all newly constructed buildings that are three or more stories in height. Except where National Fire Codes specifically require both fire sprinkler and standpipe systems, standpipe systems installed in conjunction with sprinkler systems required by subsection (a)(1) of this section shall be exempt from the minimum pressure requirements of NFPA 14.~~

- ~~(b) *Buildings affected.* The installation requirements of subsection (a) of this section shall apply to all buildings whether of an institutional, residential or commercial nature; including, but not limited to, the following specific types of buildings: Hospitals, nursing homes, homes for the aged, convalescent centers, jails and penal institutions, nurseries caring for children, residences, but not including single family or duplex dwelling units, apartment buildings,~~
-

~~hotels, motels, boardinghouses, condominiums, dormitories, orphanages, banks, office buildings and other structures and uses of a similar nature to those herein stated without regard to the type of construction. Automatic fire sprinkler protection installed pursuant to the applicable provisions of the National Fire Protection Association National Fire Codes No. 13 is an acceptable alternative to standpipe protection in buildings of three stories or more, except where National Fire Codes specifically require both fire sprinkler and standpipe systems.~~

~~(c) *Underground sprinkler required.* Belowgrade parking garages or parking garages that are underneath the main structure or building shall have an approved sprinkler and standpipe system.~~

~~(Code 1981, § 8-16; Code 1995, § 42-28)~~

~~Sec. 22-64. Using cooking or heating devices in unventilated areas.~~

~~It shall be unlawful for any person to use or cause to be used any charcoal stoves, grills and similar devices, including gasoline stoves or heaters, liquefied petroleum gas stoves and all other similar heating or cooking devices and appliances, within any screened enclosure, in any hallway, corridor, on a balcony or within the confines of any building or structure which is not provided with safeguards to ensure adequate ventilation or not intended for such use.~~

~~(Code 1981, § 8-17; Code 1995, § 42-29)~~

~~Sec. 22-65. Using cooking or heating devices near combustibles or under overhang.~~

~~All cooking or heating appliances and devices shall be used and operated a sufficient distance from any combustible materials or structures as may be required to prevent the ignition thereof and spread of fire outside the area of intended confinement. No such device or appliance shall be used or operated directly under an overhang of any structure regardless of the distance removed from combustible materials.~~

~~(Code 1981, § 8-18; Code 1995, § 42-30)~~

~~Sec. 22-6662. Fire Code Appeals from fire chief.~~

~~Any decision or order of the fire chief under the Florida Fire Prevention Code, FSS 633.118, the National Fire Codes or this chapter may be appealed to the city magistrate pursuant to chapter 26, article II, as a de novo hearing.~~

~~(Code 1981, § 8-19; Code 1995, § 42-31)~~

~~Sec. 22-67. Burning in incinerators.~~

~~No person shall burn refuse in any incinerator or container which has not been approved by the fire chief, nor cause any fire to be made in an incinerator or container which is less than 15 feet from any building.~~

~~(Code 1981, § 8-20; Code 1995, § 42-32)~~

~~Sec. 22-68. Open burning.~~

~~(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:-~~

~~*Open burning* means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney or spark-arresting mechanism, and shall include but shall not be limited to the burning of: solid waste, vegetative waste, wood treated with preservatives, materials composed of petrochemicals (plastics, fuels, oils, etc.), and other noxious or poisonous materials, in an outdoor area.-~~

~~(b) Prohibited. Open burning is prohibited within the city, without a permit issued by the fire chief or designee.-~~

~~(c) Notwithstanding the foregoing section (b) of this section, nothing contained herein shall be construed to prohibit the use of a fireplace, oven, grill, fire pit, or other outdoor fire containment structure which meets the requirements of all applicable codes and used for the cooking of food, or as an architectural feature, unless:-~~

~~(1) The use is temporarily restricted by the city fire marshal or designee, or by state law, due to the threat of wildfire or other atmospheric or physical conditions, and upon due public notice; or~~

~~(2) The structure is determined by the fire marshal or designee to be a fire hazard.-~~

~~(Code 1981, § 8-21; Code 1995, § 42-33)~~

SECTION 2: If any section, phrase, sentence or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3: – Effective date.

The ordinance from which this article derives shall take effect immediately upon adoption.

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:

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

YES	NO	ABSENT	ABSTAIN

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY