



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING OCTOBER 8, 2019

**6:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

- 1. CALL TO ORDER BY MAYOR**
- 2. ROLL CALL BY CITY CLERK**
- 3. PRAYER**
- 4. PLEDGE OF ALLEGIANCE**
- 5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:**
- 6. APPROVAL OF MINUTES**
 - A. Approval of minutes from September 20th and 24th**
- 7. CONSENT AGENDA:**
- 8. REPORTS OF THE CITY ATTORNEY:**

9. REPORTS OF THE CITY MANAGER:

10. OLD BUSINESS:

- A. Ordinance 2019-12 Shores 109, LLC Development Agreement

11. NEW BUSINESS:

- A. Consideration to cancel the City Council Meetings on November 26 and December 24 due to the holidays.
- B. Discussion on the City Manager Performance Evaluation Procedure

12. COUNCIL COMMENTS:

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-763-5364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

**MINUTES
CITY COUNCIL MEETING
September 20, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

CALL TO ORDER BY MAYOR

The interview session began at 1:00 pm.

ROLL CALL BY CITY CLERK

NEW BUSINESS:

A. Interviews for Special Magistrate and City Board Members.

Before the three responding firms were interviewed, Vice Mayor Bryan asked the other councilmembers to review the fee schedule from the City of Holly Hill. They use a flat fee structure instead of an hourly rate.

Jacob Schumer from the firm Shepard, Smith, Kohlmeyer & Hand explained that his firm spent 60-70% of their work with local government law. He had been with the firm for two years. He was very familiar with code enforcement and Chapter 162. He had not been a special magistrate before, but had attended Baker Act hearings. He didn't believe travel to the hearings would be a problem. When asked about a flat fee versus an hourly rate, he would prefer the hourly rate. He thought a flat fee could be a disservice to the city.

The council discussed his lack of experience in municipal government and code enforcement.

Steve deLaroche provided his background for the councilmembers. He felt his years as a judge, skilled in rules of evidence, would be beneficial. He had worked extensively with the City of Holly Hill and the County of Volusia regarding a zoning land use change. He explained that he had reviewed our ordinances and was very familiar with our area. He used to live in Oceans 6 Condominium. Mr. deLaroche stated that he could negotiate with either a flat rate or an hourly rate. He related the reason as to why he was no longer a judge. He had used a lack of judgement regarding a family problem.

The council felt he was very well prepared and very experienced.

Lori Sandman provided her background stating that she had been a planning commissioner for a small town. She had also worked as an ADR practitioner/mediator and a farm consultant in the past. When asked if she was familiar with Chapter 162 of the Florida Statutes, she admitted that she was not. She mostly worked with mediation for family matters and trusts.

The council felt that Steve deLaroche was the candidate most qualified for the Special Magistrate position due to his background and experience.

Board member interviews -

Tony Rembiszewski interviewed for Planning & Zoning member. He explained that he had been on the Board Of Adjustments for five years and also had past experience on boards in New

Jersey. He loves living in the Shores and is eager to learn about this board.

Van Alder also interviewed for the Planning & Zoning Board. He was recently on the Code Enforcement Board. He explained that he loved working with the board members and even though he did not have experience with the Planning & Zoning Board, he had a career as a Systems Engineer and knows how to read plans.

The council discussed moving one of the current alternate members, Rick deLange, to regular member. He has been serving as an alternate for the past few months and has attended every meeting. It was also discussed that with Mr. Alder's background, he would be a better fit for the regular member and appoint Mr. Rembiszewski as an alternate member.

Karen Bullard interviewed for the newly created Public Art/Beautification Committee. She explained that even though she had no prior board experience, she loved to decorate and help others.

The council had no reservation appointing her as a regular member.

ADJOURNMENT:

The meeting ended at 3:10 om.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

MINUTES
CITY COUNCIL MEETING
September 20, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

ROLL CALL BY CITY CLERK

Present: Mayor Nancy Miller, Councilmember Mel Lindauer, Councilmember Richard Frizalone, Councilmember Michael Politis, Vice Mayor Richard Bryan

Staff: City Manager Michael T. Booker, and City Clerk Cheri Schwab

NEW BUSINESS:

A. Discussion on City Manager Evaluation

Following a discussion on the purpose of the workshop, Mayor Miller distributed sample evaluation forms to the other councilmembers.

The forms she favored were from Ormond Beach, Daytona Beach and Lake Helen. The remaining members felt that using the form from the City of Ormond Beach would be a good starting point. The Mayor would like to include a few measurable items and a couple goals. CMBR Frizalone would like to see items related to economic development included. CMBR Politis suggested including anonymous staff comments. Vice Mayor Bryan felt the form was too subjective and wants to see objectives. CMBR Lindauer wanted to be sure to have enough space for comments and made the recommendation to turn the form sideways. That way comments can be written next to each item for explanation. The council spent some time discussing what measurables could be included. City Manager Booker stated that there is a misunderstanding that metrics are totally objective. Most have a variable that can be beyond our control.

The following audience members provided comments:

Rosanna Scaccia spoke for the PAC. They want to see measurable objectives established for both the City Manager and his direct reports.

Clarice Deangelis felt that the City Manager is doing a wonderful job. She felt the most important value is interpersonal skills for him and the employees.

Van Alder felt the evaluation should stay subjective. It is too hard to have measurable objectives.

Rick Delange enjoyed hearing everyone's ideas. He felt that it could be easy to measure some positions, but the City Manager is not an easy one.

Honey Burgett stated that she appreciated everyone working together.

Tony Rembiszewski stated that he would like to see the community center open more hours.

Mayor Miller wrapped up the workshop asking for each member to review the form from Ormond Beach. She would like their recommendations including measurable objectives and goals.

ADJOURNMENT:

The meeting ended at 12:20 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

**MINUTES
CITY COUNCIL MEETING
September 24, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Councilmember Mel Lindauer, Vice Mayor Richard Bryan, Councilmember Michael Politis, Councilmember Richard Frizalone

Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney William Colbert, Community Services Director Fred Hiatt, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

ROLL CALL BY CITY CLERK

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

- A. R-19-2019 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.

City Attorney Colbert read the Resolution by title for the record. The millage rate will be 5.23 mills. There had been no change from the last council meeting. CMBR Lindauer noted that the tax rate was the same rate as last year even though it is considered a tax increase.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to adopt Resolution 2019-19 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. R-20-2019 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES OF VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.

City Attorney Colbert read the resolution by title for the record. There had been no changes to the proposed budget as shown on September 9th.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to adopt Resolution 2019-20 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone,

1. APPROVAL OF MINUTES

- A. City Council Minutes September 9, 2019

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve the City Council Minutes September 9, 2019.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

2. CONSENT AGENDA:

- A. Public Safety Monthly Report
- B. Community Services July and August Monthly Report 2019
- C. Building Division Monthly Report- July and August 2019
- D. Monthly Finance Report - July
- E. August Public Safety monthly report
- F. New Purchasing Card Contract

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

3. REPORTS OF THE CITY ATTORNEY:

Attorney William Colbert introduced himself. He provided a brief history of the city under their direction and guidance. The firm had assisted with the adoption of the adult entertainment ordinance, renovating A1A, underground utilities and much more. He explained that Attorney Groot had requested that a new first chair be assigned to the city. The resume for Raymond Branch was distributed. He has been with the firm since 2011. The attorney report was distributed to the councilmembers.

4. REPORTS OF THE CITY MANAGER:

City Manager Booker read from his report. The Halifax Health lease will start on April 1,

2020. It would provide time to relocate the museum items and allow the demolition. He had recently met with Don Large regarding the relocation of the museum and reorganizing the articles into the different decades. City Staff held a Hurricane Dorian post storm assessment that was very productive. Staff had recently met with representatives of Chase Bank. They are interested in purchasing the property adjacent to City Hall. The city would then purchase a portion of the back property to relocate the bocce courts and shuffle board. The dedication of the Veteran's Park will be held on November 9th. The guest speaker will be State Representative Michael Waltz. This event will be combined with the annual resident cookout.

OLD BUSINESS:

- A. Ordinance 2019-11 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA IMPLEMENTING SECTION 3.05 (4) OF THE *CITY OF DAYTONA BEACH SHORES CITY CHARTER* RELATING DUTIES OF THE CITY MANAGER AND THE ADOPTION OF CITY BUDGETS BY ORDINANCE; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to adopt Ordinance 2019-11 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

NEW BUSINESS:

- A. Award of RFP and approval of staff authority to enter into formal negotiations of a development agreement regarding City-owned real property located at 2900 South Atlantic Avenue.

The city only received one response to the RFP to purchase the property at 2900 S. Atlantic Avenue. CMBR Frizalone explained that the conceptual plan included 24-25 high quality townhomes and that they would be a great addition to the city.

Audience member Julie Mills, who is a resident of Cloverleaf North, had some concerns regarding the property. She inquired about creating a berm, having an entrance on Ridge Road instead of Oceans West, and were the palm trees remaining. She also was concerned about any type of large vehicle and its ability to maneuver along Oceans West without having a space to turn around.

Staff explained that at this stage, they were not able to address her concerns.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to award the RFP to and approve staff to enter into formal negotiations of a development agreement regarding the City-owned real property located at 2900 South Atlantic Avenue..

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. Ordinance 2019-12: Shores 109, LLC Development Agreement; redevelopment of 109 Dunlawton Boulevard

City Planner Stewart Cruz read from his staff report. He explained that the proposed development agreement was unique. The site has not had an operating commercial business since 2004. There are five deviations from the Land Development Code requested by the property owner as the site has many constraints. The first is that the owner shall be permitted to have up to 40 dining seats in an outdoor dining patio area. The second is that the allowable square footage for signage can exceed the permitted footage for a commemorative sign. The third item would be that the owner will not be required to provide landscape buffers on the site. The fourth item would be that the owner shall not be required to provide the minimum fifteen feet turning radius in back up areas. The fifth and final item would be that the owner is permitted to have a two foot front yard setback to construct the outdoor dining area. In return, the city would receive seven public benefits consisting of a permanent utility easement, access easement, additional green area, a commemorative sign, architectural enhancements to the building, addition of a commercial opportunity, and the redevelopment and beautification of an abandoned, outmoded and unsightly commercial property along the gateway to the city. The owner plans to redevelop the entire site. The Planning & Zoning Board and staff recommend approval. Brendan Galbreath, the property owner, was very excited about the project. He explained that he would interview tenants to find the perfect fit with the city.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve Ordinance 2019-12 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- C. Ordinance 2019-13: Comprehensive Plan Amendment CPA12019026, Amending the Future Land Use Element to establish a Transfer of Development Rights Program.

Mayor Miller postponed this item to a future agenda.

- D. Non-Conforming Sign Removal Incentive Grant Application: Mike's Gift Shop/Dino Paspalakis, 3500 S. Atlantic Avenue

City Planner Stewart Cruz provided the details for the sign grant. All the requirements for the grant had been met. The property owner did obtain three bids but only two of them met the requirements for the grant. The owner preferred the bid from Kenko's. The award can not go over \$3900 this year and there are adequate funds in the budget. Staff recommended approval of the sign grant on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve the Non-Conforming Sign Removal Incentive Grant for Mike's Gift Shop on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

E. Consideration to award contract to Compensation & Classification firm

City Manager Booker explained that the city had not utilized an outside study of the job descriptions and compensation for some time. Staff reviewed the responses and recommended the Evergreen firm. The cost for the study is \$23,500. The RFP included an additional charge of \$5,000 to evaluate the employee evaluation form. The total cost would be \$28,500. It is expected to take 6 months.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MEL LINDAUER to award the contract for a Compensation & Classification study to Evergreen.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

F. Consideration of City Council policy regarding actions of individual City Council Members.

Vice Mayor Bryan distributed a written statement for the council to consider. He read aloud text that he would like included in the draft policy.

Mayor Miller explained that the way the policy was currently written, she felt she couldn't talk with the press and would like it made clear. None of the council want to infringe on anyone's freedom of speech, but there is an expectation when you take office, that you are representing the entire body when you speak in public. There was a brief discussion on when a council person is being independent of the office or if he is ever considered independent while in office. No one wants to disrespect the office they hold. CMBR Politis did not care for the additional wording proposed by the Vice Mayor as he felt it was too confusing. Attorney Colbert explained that if the council could come to a consensus, a new policy could be brought forward at a later date. The Mayor decided to postpone any further discussion on the item.

G. Consideration of board appointments: Planning & Zoning Board and Public Art &

Mayor Miller explained that the board interviews were performed on September 20th during a public workshop.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to appoint the following to the Planning & Zoning Board: Rick deLange from alternate to regular member, Van Alder as regular member and Tony Rembrewski as alternate member. Karen Bullard is appointed as regular member to the Public Art & Beautification Committee.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

H. Consideration to select firm as Special Magistrate for Code Enforcement Cases

The council also interviewed all three candidates on September 20th during a public workshop.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to Appoint Steven deLaroche as Special Magistrate for Code Enforcement Cases.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

I. Discussion on formation and composition of Auditor Selection Committee.

It was explained that the purpose of this discussion was to determine the composition of the audit selection committee. Recent changes in the state legislature have changed the requirements for the audit committee. Mayor Miller suggested one councilmember and two residents with a background in finance or holding a CPA. CMBR Lindauer felt the entire council should be responsible and wanted at least three councilmembers to sit on a five member board. CMBR Frizalone was not in agreement as he felt the remaining two councilmembers would have no input. Vice Mayor Bryan would like the full council plus two residents. There was a discussion between CMBR Lindauer and Finance Director Swartzlander regarding the duties of the committee. The Finance Director stated the purpose was to only review and recommend an audit firm once the RFQ was put out. CMBR Lindauer felt there were additional duties during the actual audit. CMBR Politis volunteered to be on the committee due to his previous work in corporate finance. He suggested the addition of two residents. A resolution will be drafted for the formation of the audit selection committee and brought back to council at a later date.

J. Consideration to approve the purchase of new fire apparatus

Finance Director Swartzlander explained that through negotiations and having a trade in truck, the final price with the optional items requested is \$528,675. It is under the revised budget amount.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to approve the purchase of the new fire apparatus.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

5. COUNCIL COMMENTS:

Mayor Miller thanked the council for working together during the previous workshops. She reminded the audience of the free concert on Friday, September 27th. She announced an upcoming indoors Arts and crafts show on October 26th. She also reminded everyone that the Veteran's Park dedication is on November 9th.

6. AUDIENCE REMARKS/PUBLIC COMMENTS:

Don Large felt the council should utilize technology more and display photographs or videos when describing a piece of property.

7. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

Vice Mayor Bryan would like to discuss the City Manager evaluation procedure. The Mayor explained that she had spoken with Lynn Tipton from the Florida League of Cities. The best practice is to complete the evaluation privately, meet one on one with the City Manager to review, and then provide a summary at a public meeting.

8. ADJOURNMENT:

The meeting ended at 8:39.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA PLANNING & ZONING BOARD MEETING OCTOBER 8, 2019

**6:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the P&Z Board, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.

PLANNING & ZONING BOARD AGENDA MEMORANDUM OCTOBER 8, 2019 AGENDA

TO: The Members of the Planning & Zoning Board

FROM: Stewart Cruz, City Planner

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Ordinance 2019-12 Shores 109, LLC Development Agreement

SYNOPSIS:

Applicant/owner Shores 109, LLC is applying to enter into a development agreement with the City to allow the use and redevelopment of the commercial property located at 109 Dunlawton Boulevard in a manner that is beneficial to the City's Dunlawton gateway. The subject property was last occupied by a business in 2004. If approved, the development agreement will: (a) create seven (7) benefits to the public, including, but not limited to, sewer and public access easements; (b) permit five (5) deviations from the City's Land Development Code; (c) permit the applicant to utilize that portion of the public alley that is adjacent to Dunlawton Boulevard as part of the site's redevelopment; and (d) provide payment to the developer for sewer and public access easements. The subject development agreement was submitted on August 5, 2019. If adopted, Ordinance 2019-12 would approve the subject development agreement.

FISCAL IMPACT STATEMENT:

The attached agreement will cost the City \$57,500 for the purchase of two easements.

BACKGROUND:

OVERVIEW

In early 2018 Brendan and Shannon Galbreath, corporate members of Shores 109, LLC, approached City staff concerning the purchasing and redevelopment of the property located at 109 Dunlawton Boulevard. However, in July 2018 the property was acquired by a speculating entity which eventually flipped the property to applicant/owner Shores 109, LLC in May 2019. Prior to placing the property under contract, the Galbreaths initiated negotiations with City Staff to enter into a development agreement that would foster the redevelopment of the site, subject to City Council approval.

If approved, Ordinance 2019-12 would approve the subject development agreement application DA12019025, which is a proposed land use contract between the property owner and the City. The agreement would facilitate the redevelopment of the commercial property located at 109 Dunlawton Boulevard, which has been unoccupied by a business since 2004. Section Four (6) of the agreement outlines five (5) deviations from the Daytona Beach Shores Land Development Code (LDC) development standards while Section Four (4) lists seven (7) public benefits provided to the community at large. The City's contributions to the redevelopment of the site are listed in Section Four (b) of the agreement.

The public benefits being provided by the applicant/owner to the City include, among other things, (1) a sanitary sewer easement for the sewer pump station that is on the property and (2) a public cross access easement since the adjacent alley off Dunlawton Boulevard is inaccessible (NOTE: City residents with Seaway Avenue addresses are currently utilizing the property for vehicular access to the rear of their properties).

Among other things, the City contributions include use of the adjacent east alley for parking/landscaping and payment in the amount of \$57,500 for the two needed city easements noted above.

AUTHORIZATION OF DEVELOPMENT AGREEMENT

The City Council, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within, or properties to be annexed to the City limits of the City of Daytona Beach Shores, as authorized in Sections 163.3220 through 163.3243, Florida Statutes, as it may be amended from time-to-time and Chapter 15 of the LDC. Deviations from the provisions of the City's land development regulations may be granted as part of an approval of a development agreement when the City Council finds that such approval will result in creative planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected. The City Council may also determine that vested rights have been established as to a parcel of property in the context of approving a development agreement.

DEVELOPMENT AGREEMENT CONTENT REQUIREMENTS

All applicable standards required in the development agreement are included accordingly pursuant to Sec. 15-4 of the LDC entitled "Development Agreement Content."

DEVELOPMENT AGREEMENT NOTICE REQUIREMENTS

The development agreement shall be noticed pursuant to Sec. 15-6 "Noticing Requirements" of the LDC. Evidence of the aforementioned has been provided to the City Clerk.

CITIZEN CONCERNS AND RESPONSE

See attached.

PLANNING AND ZONING BOARD

On September 9, 2019 the Daytona Beach Shores Planning and Zoning Board unanimously recommended approval of the proposed development agreement.

PLANNING ANALYSIS

See attached.

LEGAL REVIEW:

The City Attorney has reviewed the proposal and has no legal objection to the legality of the proposal.

RECOMMENDATION:

Staff recommends **adoption** of Ordinance 2019-12 as presented.

SUGGESTED MOTION:

A City Council member may motion as follow:

1. "I move to approve Ordinance 2019-12 as presented;"

OR

2. "I move to approve Ordinance 2019-12 with the following conditions..."

OR

3. "I move to deny Ordinance 2019-12 on the basis of..."

- ATTACHMENT:**
1. Ordinance 2019-12-Shores 109 LLC DA Ordinance-LNG-9-1-19 (1)
 2. Shores 109 LLC Development Agreement 9-5-19-SC-LNG-9-11-19-SC-9-11-19-SC-9-18-19
 3. 109 Dunlawton Development Agreement Exhibits-CC
 4. 109 Dunlawton Development Agreement Exhibit C-Easement Plan
 5. DA12019025 PLANNING ANALYSIS-9-18-19
 6. Citizen Communique

ORDINANCE 2019-12

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF A DEVELOPMENT AGREEMENT PERTAINING TO PROPERTY OWNED BY SHORES 109, LLC IN ACCORDANCE WITH THE PROVISIONS OF THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT” AS SET FORTH AT SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; ; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER’S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Shores 109, LLC and the City of Daytona Beach Shores has considered and processed and the City Council of the City of Daytona Beach Shores hereby approves and enacts the Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein verbatim), all of said actions occurring pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; and

WHEREAS, Brendan R. Galbreath and Shannon M. Galbreath are the members of Shores 109, LLC; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Council agenda memorandum relating to the application relating to the proposed land use approvals and authorization of zoning entitlements pertaining to the property referenced in the Development Agreement as well as the recitals (whereas clauses) to this Ordinance.

(b). The findings of the provisions of the subject Development Agreement between the City of Daytona Beach Shores and Shores 109, LLC are hereby adopted, ratified and affirmed.

SECTION TWO: APPROVAL AND ENACTMENT OF DEVELOPMENT AGREEMENT.

The Development Agreement between the City of Daytona Beach Shores and Shores 109, LLC, as set forth in the Exhibit to this Ordinance is hereby approved and enacted. The said Exhibit attached to this Ordinance is hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance

SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona Beach Shores and Shores 109, LLC, Inc. as set forth in the Exhibit to this Ordinance, and involving the subject property, are hereby ratified and affirmed.

SECTION FOUR: CODIFICATION AND IMPLEMENTATION; SCRIVENER'S ERRORS.

- (a). The provisions of this Ordinance shall be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.
- (b). The City Manager, or designee(s), is hereby authorized to take any and all actions necessary to implement the provisions of this Ordinance.
- (c). The City Attorney shall assist the City Manager in the implementation of this Ordinance as may be necessary and required.
- (d). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.
- (e). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION FIVE: CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERABILITY.

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

SECTION SEVEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this ___ day of _____, 2019.

Enacted on second reading this ___ day of _____, 2019.

DEVELOPER SIGNATURE BLOCK FOLLOWS:

PLENARY CONCURRENCE OF DEVELOPER

The undersigned developer concurs in each and every respect to the provisions of the subject amendment to the subject Development Agreement and the provisions of this Ordinance.

SHORES 109, LLC, a Florida limited liability company.

Brendan R. Galbreath
Date: _____, 2019

Shannon M. Galbreath
Date: _____, 2019

WITNESSES:

Signature of Witness

Printed Name of Witness

Signature of Witness

Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Brendan R. Galbreath and Shannon M. Galbreath, and they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided _____ as identification.

Witness my hand and official seal in the County and State last aforesaid this ____ day of _____, 2019.

(Affix Notary Seal)

Notary Public; State of Florida
Print Name: _____

This Instrument Prepared By:

Brendan Galbreath
Shores 109, LLC
4190 Halifax Drive
Port Orange, Florida 32127

Return To:

Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118
Tax Parcel Identification Number: 533503070260

**SHORES 109 LLC/CITY OF DAYTONA BEACH SHORES
DEVELOPMENT AGREEMENT PERTAINING TO RE-DEVELOPMENT OF 109
DUNLAWTON AVENUE PROPERTY**

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between Shores 109, LLC, a Florida Limited Liability Company, registered and authorized to conduct business in the State of Florida, whose address is 4190 Halifax Drive, Port Orange, Florida 32127, the legal and equitable owner, hereinafter referred to as the “PROPERTY OWNER”, and the City of Daytona Beach Shores, Florida, a municipal corporation of the State of Florida, holding tax exempt status, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as “CITY”.

W I T N E S S E T H:

WHEREAS, the PROPERTY OWNER is the owner of real property located at 109 Dunlawton Avenue in Daytona Beach Shores (Exhibit “A”) (referred to from time-to-time as the “premises” in this Development Agreement and which is the subject of the conceptual site plan referenced herein and attached as Exhibit “B” to this Development Agreement); and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in developing and re-developing an active and vibrant commercial business on the premises and to benefit the economy and well-being of the CITY as a general matter; and

WHEREAS, the CITY desires to provide economic and other benefits to the citizens and visitors of the CITY in order that they may enjoy a high quality of life with convenient services; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the CITY shall adopt and enforce land development regulations for the purpose of implementing its *Comprehensive Plan* and protecting the public health, safety, and general welfare; and

WHEREAS, pursuant to the *Florida Local Government Development*

Agreement Act, as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*, local governments are authorized to adopt, by ordinance, procedures and requirements whereby a local government may consider and enter into a development agreement with any person having a legal or equitable interest in real property located within the local government's jurisdiction and the CITY enacted Ordinance 2013-10 (now codified at Chapter 15, Appendix "G", *Land Development Code, Code of Ordinances of the City of Daytona Beach Shores*) to implement the provisions of the referenced statutory provisions; and

WHEREAS, the CITY and the PROPERTY OWNER desire to engage in sound and long range planning with regard to the premises in a manner that protects the investment backed expectations and rights of the PROPERTY OWNER while providing for an array of benefits to the citizens of the CITY; and

WHEREAS, development agreements entered into pursuant to the *Florida Local Government Development Agreement Act*, strengthen the public planning process, encourage sound capital improvement, planning and financing; assist in assuring that there are adequate capital facilities to support development; encourage private participation in comprehensive planning; and reduce the economic cost of a development by providing assurances to a developer that, upon receipt of a development permit, the developer may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement; and

WHEREAS, development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project and, although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body (the CITY's City Council) through its *Comprehensive Plan*, and consistent with any applicable specific plan; and

WHEREAS, neither the PROPERTY OWNER nor the CITY, as the local government with land use regulatory authority over lands located within the CITY, is required to enter into a development agreement and, when entered, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the CITY's ultimate approval by the City Council, but while a development agreement must advance the CITY's local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements; and

WHEREAS, development agreements are, essentially, a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways and, as such, development agreements may be viewed as an alternative to the traditional development approval process with which, in practice, it is commonly used in conjunction; and

WHEREAS, the enactment of development agreements by ordinance results in the enactment of the development agreement effectuating and memorializing the zoning and land use entitlements of the property which is the subject of each development agreement; and

WHEREAS, the enactment of development agreements does not offer relief from the CITY's *Land Development Code* and *Code of Ordinances* for items not specifically addressed in a development agreement; and

WHEREAS, the City staff must conclude and advise the City Council of the CITY that any proposed economic incentives are compliant with the ordinances that the City Council has enacted after due and required vetting and analysis; and

WHEREAS, the City Council of the CITY finds it is in the best interest and welfare of the citizens of the CITY to approve this Development Agreement with the terms and conditions set forth herein; and

WHEREAS, the City Council of the CITY has determined that the terms and conditions of this Development Agreement are in the best interests of the public health, safety and welfare of the citizens of the CITY and provide for specific public benefits; and

WHEREAS, the City Council of the CITY hereby finds and concludes that the provisions of this Development Agreement are consistent with the CITY's *Comprehensive Plan* and will result in the provision of enhanced economic development within the CITY and is consistent with the general purpose and intent of the land development regulations of the CITY and no amendments are required to the CITY's *Comprehensive Plan* or land development regulations in order to approve the development set forth in this Development Agreement; and

WHEREAS, the PROPERTY OWNER and the CITY have complied with all requirements and procedures of Florida law in processing and advertising this Development Agreement; and

WHEREAS, this Development Agreement is consistent with the goals, objectives and policies of the *Comprehensive Plan* of the City Daytona Beach Shores.

NOW, THEREFORE, in consideration of the foregoing, and the premises and the promises, covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties the PROPERTY OWNER and CITY agree as follows:

SECTION 1. RECITALS/FINDINGS.

- (a). The recitals, set forth above, are true and correct and form a material

part of this Development Agreement upon which the parties have relied.

(b). The findings, set forth above, are, and constitute, the legislative, administrative and quasi-judicial findings of the City Council of the CITY and form a material part of this Development Agreement upon which the parties have relied.

SECTION 2. PREMISES.

(a). The PROPERTY OWNER hereby designates, and the CITY hereby accepts, the following described tract of real property as the legal description for the premises for the purposes of this Development Agreement:

(LEGAL DESCRIPTION) – See attached Exhibit “A”.

(b). The legal entity having legal or equitable ownership of the premises is the PROPERTY OWNER.

SECTION 3. SITE PLAN FOR DEVELOPMENT.

The attached conceptual site plan for development of the premises (Exhibit “B”) is hereby approved by the terms and conditions of this Development Agreement.

SECTION 4. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.

(a). In addition to all other covenants, obligations, duties and responsibilities set forth herein, the PROPERTY OWNER is approved for the following development on the premises:

(1). The development uses, including off-street parking, driveways and landscaping, as set forth on the conceptual site plan approved in Section 3 and attached as Exhibit “B”.

(2). The development uses, including off-street parking, driveways and landscaping, as set forth on the conceptual site plan attached as Exhibit “B” and approved in Section 3 comply with criteria for development approved in this Development Agreement and the applicable provisions cited in the land development regulations of the CITY applicable to the development project on the premises.

(3). The public facilities that will service the development of the premises shall continue as the premises are currently served. All necessary public facilities shall be available concurrent with the impacts of the development.

(4). The public purposes and benefits that are derived and

provided by the development of the premises as set forth in this Development Agreement include the following:

(A). The PROPERTY OWNER shall grant a permanent utility and access easement to the CITY for that portion of the premises where the existing CITY sanitary sewer pump station currently sits for the benefit of the CITY and its citizens as depicted on Exhibit "C" attached and approved in Section 3.

(B). The PROPERTY OWNER shall grant a permanent cross access and a grant of easement to the CITY for the provision of public access to adjoining rights-of-way through the premises for the benefit of the CITY and its citizens as depicted on Exhibit "C" attached and approved in Section 3 above.

(C). The PROPERTY OWNER's plan of development provides a significant amount of additional green area for the benefit of the CITY and its citizens as depicted in Exhibit "D".

(D). The PROPERTY OWNER shall incorporate Commemorative Signage on the premises, at a location and of a type, style and nature set forth in the sign plan attached as Exhibit "E" to this Development Agreement, identifying the CITY and its established/incorporated date for the benefit of the CITY and its citizens. This portion of signage located on the premises shall not count towards the allowable square footage of signage allowed for the premises by *City Code*.

(E). The PROPERTY OWNER shall provide architectural enhancements to the building located on the premises for the benefit of the CITY and its citizens as depicted on Exhibit "E" attached and approved in Section 3.

(F). The development of the premises as set forth in this Development Agreement provides for an additional commercial opportunity for the benefit of CITY and its citizens by creating a new destination for dining and entertainment within the CITY, which will further enhance the economic and tourism development of the CITY.

(G). The development of the premises as set forth in this Development Agreement provides for and encourages the redevelopment and beautification of an abandoned, outmoded and unsightly commercial property at the CITY's Dunlawton Boulevard gateway for the benefit of the CITY and its citizens.

(H). All easements to be granted, and agreements to be entered, pursuant to this Section and the Development Agreement as a whole shall be in a form approved by the City Attorney.

(5). All development permits normatively needed to be approved for the development of the premises shall be subject to the review and approval processes during the course of the development of the premises; provided, however, that, it is noted that no *Comprehensive Plan* amendments or changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the premises nor any required submissions to or approvals from Volusia County; the State of Florida (departments of Economic Opportunity, Environmental Protection, Transportation, or such other department or agency of the State as may be applicable); the United States Army Corps of Engineers; the St. Johns River Water Management District; the United States Environmental Protection Agency or any other Federal departments or agencies with competent jurisdiction over any aspect of the approved development, but such requirements are not precluded by this Development Agreement and the parties recognize and agree that the CITY is adhering to the provisions of Section 166.033, *Florida Statutes*.

(6). The following deviations have been granted by the CITY with regard to the provisions of the CITY's land development regulations:

(A). The PROPERTY OWNER shall be permitted to have up to 40 dining seats in a 748-square feet outdoor dining patio area as depicted in Exhibit "B" and Exhibit "F".

(B). The PROPERTY OWNER shall be permitted to exceed the allowable square footage for signage by the exact amount of square feet of the Commemorative Signage on the premises.

(C). The PROPERTY OWNER shall not be required to provide landscape buffers on the site and terminal landscape island adjacent to vehicular use areas as depicted in Exhibit "B".

(D). The PROPERTY OWNER shall not be required to provide the minimum 15 feet wide and a turning radius of fifteen (15) feet in back up areas as depicted in Exhibit "B".

(E). The PROPERTY OWNER shall be permitted to have a front yard setback of 2 feet for the construction of an outdoor dining patio as depicted in Exhibit "B".

(b) The City agrees to the following relative to the development of the premises associated with the plan of development set forth in this Development Agreement:

(1). The CITY shall enter into a right-of-way use agreement with the PROPERTY OWNER to permit the desired mix of private and public use within the adjoining alleyways as depicted in Exhibit "B" attached and approved in Section 3.

(2). The CITY shall not assess the CITY's portion impact fees that would otherwise be assessed upon the PROPERTY OWNER, but has no control over impact fees that may be subject to payment to other entities of government.

(3). The CITY shall waive site plan and development agreement fees.

(4). The PROPERTY OWNER shall receive a \$57,500 payment for the sanitary sewer and public access easements depicted on Exhibit "C" at the issuance of a certificate of occupancy for the plan of development set forth in this Development Agreement.

(5). The CITY and PROPERTY OWNER acknowledges that the future tenant is eligible under the plan of development set forth in this Development Agreement for a 3-year lease subsidy per the CITY's 30%/20%/10% lease subsidy program subject to the program's requirements and limitations.

SECTION 5. REASONABLE APPROVAL.

In those instances in this Development Agreement in which a party's approval, consent or satisfaction is required, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

SECTION 6. REMEDIES.

Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Development Agreement.

SECTION 7. TIME IS OF THE ESSENCE.

Time is of the essence of the lawful performance of the duties and obligations contained in this Development Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Development Agreement.

SECTION 8. HEADINGS/CAPTIONS.

All sections and descriptive headings in this Development Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 9. FORCE MAJEURE.

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 10. DEVELOPMENT AGREEMENT BINDING; RUNS WITH THE LAND.

(a). This Development Agreement shall be binding upon and inure to the benefit and burden of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Development Agreement, and that it has the legal authority to enter into this Development Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to execute this Development Agreement and bind the respective parties herein.

(b). This Development Agreement touches and concerns the premises and shall run with the land and shall be binding upon and inure to the benefit and burden of the parties hereto and their respective successors and assigns.

SECTION 11. EXHIBITS.

All exhibits to this Development Agreement are hereby incorporated into this Development Agreement by this reference thereto.

SECTION 12. PUBLIC RECORDS.

(a). The PROPERTY OWNER shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and other controlling law and which have been made or received by the PROPERTY OWNER in conjunction with this Development Agreement and shall adhere to the controlling provisions of State law relating to public records.

(b). **IF THE PROPERTY OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE PROPERTY OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS; CHERI SCHWAB, CITY CLERK, (386) 763-5353, CSCHWAB@CITYOFDBS.ORG, 2990 SOUTH ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118.**

SECTION 13. EQUAL OPPORTUNITY.

The PROPERTY OWNER agrees that it will not discriminate against any employee or applicant for employment for work relating to the services provided under this Development Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demoting or transfer; recruitment advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

SECTION 14. CONFLICT OF INTEREST.

The PROPERTY OWNER agrees that it will not commit any act that would cause or create a conflict of interest as defined by Chapter 112, Florida Statutes, to exist or occur in the performance of its obligations pursuant to this Development Agreement with the CITY.

SECTION 15. COMPLIANCE WITH LAWS AND REGULATIONS.

In performing pursuant to this Development Agreement, the PROPERTY OWNER shall abide by all statutes, ordinances, rules, and regulations pertaining to, regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. This provision shall include, but not be limited to, the provisions of the CITY's land development regulations and the codes and ordinances of the CITY. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Development Agreement.

SECTION 16. NOTICES.

(a). Whenever either party desires to give notice unto the other, notice may be sent to:

For the CITY:

Mr. Mike Booker
City Manager
City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32771

For the PROPERTY OWNER:

Brendan Galbreath

Shores 109, LLC
4190 Halifax Drive
Port Orange, Florida 32127

(b). Either party may change the address for notification by providing notice of such change to the other party.

SECTION 17. INTERPRETATION; APPLICABLE LAW; VENUE.

The laws of the State of Florida shall govern this Development Agreement. Any legal action necessary arising out of the Development Agreement will have its venue in Volusia County and the Development Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. The specific provisions of this Development Agreement shall prevail over the generality of the foregoing. In any action or proceeding required to enforce or interpret the terms of this Development Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 18. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.

This Development Agreement is the result of bona fide arms-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against either party than against any other party both parties having participated in the drafting of this Development Agreement. Whenever a decision is provided for herein which is to be made by the CITY, such decision must be in writing in order to be binding upon the CITY.

SECTION 19. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.

(a). This Development Agreement constitutes the complete, integrated and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein. This Development Agreement

may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by all parties to this Development Agreement.

(b). If the City Council of the CITY finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Development Agreement, this Development Agreement may be revoked or modified by the City Council upon affording the PROPERTY OWNER administrative due process rights in accordance with controlling law.

(c). A substantial modification of this Development Agreement shall, in the CITY's sole discretion, require approval by the City Council in accordance with the procedures set forth in Chapter 15, Appendix "G", Land Development Code, Code of Ordinances of the City of Daytona Beach Shores. This Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest; provided, however, that a substantial modification of this Development Agreement shall, in the CITY's sole discretion, require approval by the City Council in accordance with the procedures set forth in Chapter 15, Appendix "G", Land Development Code, Code of Ordinances of the City of Daytona Beach Shores.

(d). If State or Federal laws are enacted after the execution of this Development Agreement, which are applicable to and preclude the parties' compliance with the terms of this Development Agreement, this Development Agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws.

**SECTION 20. THIRD PARTY
BENEFICIARIES/TRANSFERABILITY.**

(a). The CITY shall not be liable to any person, firm or corporation who contracts with or provides goods or services to the PROPERTY OWNER in connection with services provided by the PROPERTY OWNER to the CITY; and there is no contractual relationship, either expressed or implied, between the CITY and any other person, firm, or corporation supplying any work, labor, services, goods or materials to the PROPERTY OWNER as a result of its services to the CITY hereunder. This Development Agreement is solely for the benefit of the formal parties to this Development Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any other third party not a formal party hereto. Nothing in this Development Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Development Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns as set forth herein.

(b). This Development Agreement is

transferable. However, so long as the land or structure or any portion thereof covered under the development agreement continues to be used for the purposes for which it was issued, then no person (including successors and assigns of the person(s) or entity(ies) who obtained the development agreement) may make use of the land except in accordance with the conditions and requirements of this Development Agreement. The provisions of this Development Agreement run with and burden the real property to which it relates until release or amended in accordance with formal action of the CITY.

SECTION 21.

ATTORNEYS FEES AND COSTS.

In the event of any action to enforce the terms of this Development Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

SECTION 22.

SEVERABILITY.

If any one or more of the covenants or provisions of this Development Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Development Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Development Agreement.

SECTION 23. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.

(a). This Development Agreement shall take effect on the date that this Development Agreement is fully executed by the parties and is recorded in the Official Records (Land Records) of Volusia County, Florida.

(b). This Development Agreement shall be in effect for a period of five (5) years, but may be extended by mutual consent of the CITY and the PROPERTY OWNER. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said Development Agreement; provided, however, that the CITY has concluded that the vested rights of the PROPERTY OWNER and the investment backed expectations of the PROPERTY OWNER warrant a renewal and continuation of the development approved for the premises herein.

(c). Prior to the completion of the project and at the issuance of a certificate of occupancy by the CITY, the CITY shall review this Development Agreement as well as at least once every twelve (12) months to

determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

SECTION 24.

COUNTERPARTS.

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

SIGNATURE PAGES FOLLOW:

IN WITNESS WHEREOF, the parties have executed this Development Agreement on the date stated below their signature.

Attest:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

Nancy J. Miller, Mayor
Date: _____

Michael T. Booker, City Manager

Approved as to form and legality:

Lonnie Groot, City Attorney

ADDITIONAL SIGNATURE PAGE FOLLOWS:

Witnesses:

PROPERTY OWNER/SHORES 109 LLC

Printed Name

By: _____
Brendan Galbreath
Managing Member

Printed Name

Acknowledgment

State of Florida)

County of Volusia)

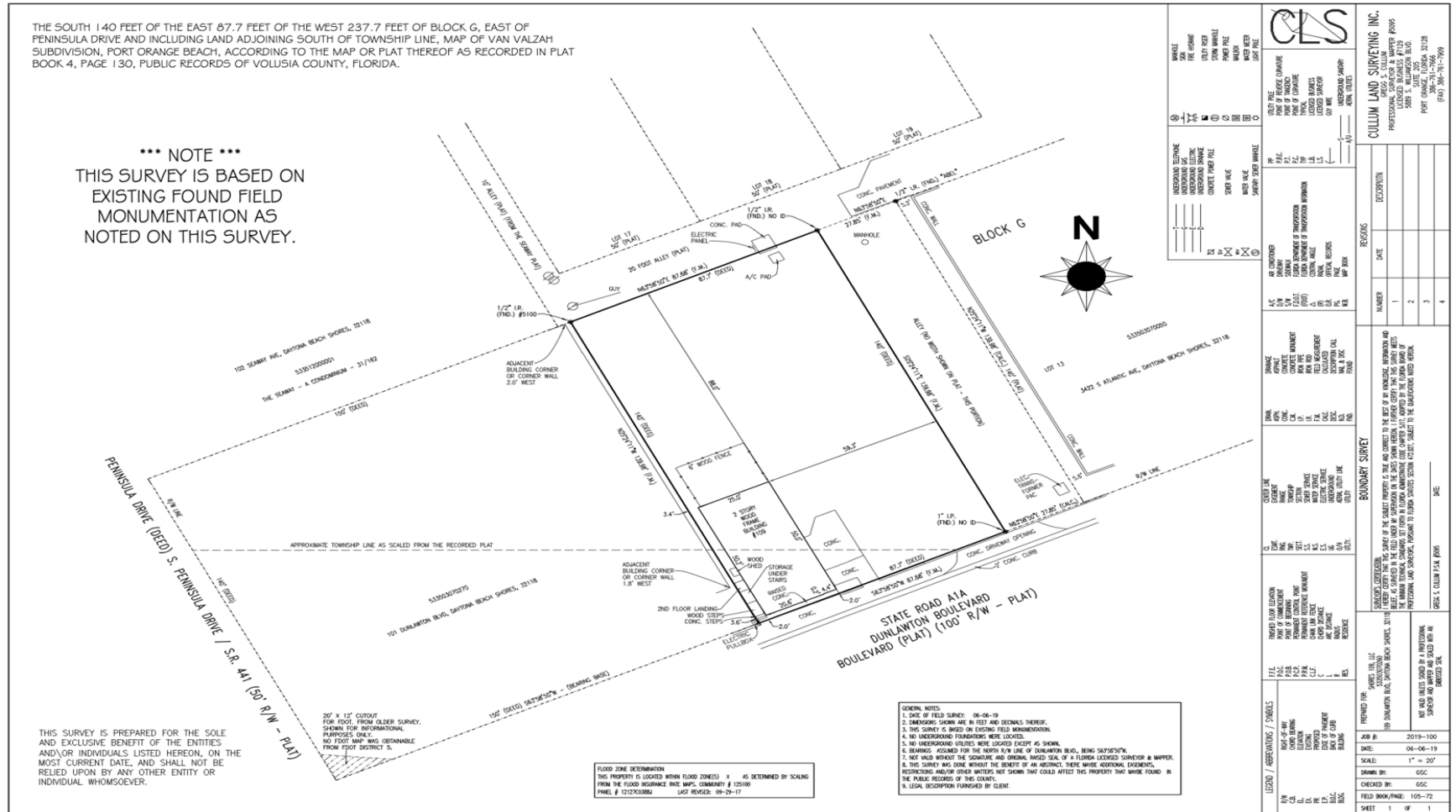
I Hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Brendan Galbreath, acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided _____ as identification.

Witness my hand and official seal in the County and State last aforesaid this ____ day of _____, 2019.

(Affix Notary Seal)

Notary Public; State of Florida
Print name: _____

Exhibit "A"
LEGAL DESCRIPTION



THE SOUTH 140 FEET OF THE EAST 87.7 FEET OF THE WEST 237.7 FEET OF BLOCK G, EAST OF PENINSULA DRIVE AND INCLUDING LAND ADJOINING SOUTH OF TOWNSHIP LINE, MAP OF VAN VALZAH SUBDIVISION, PORT ORANGE BEACH, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 130, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA

Exhibit "B"

CONCEPT SITE PLAN

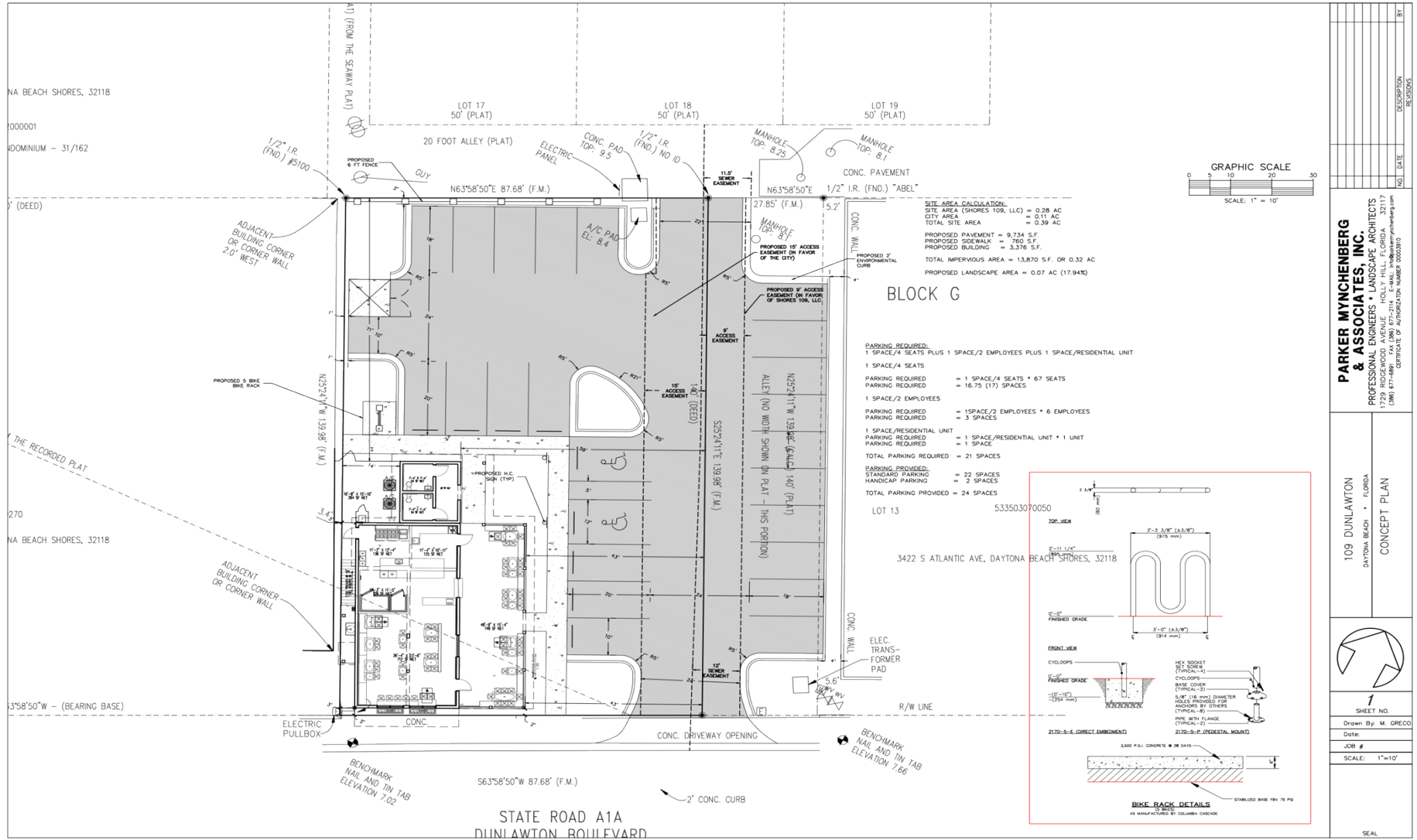
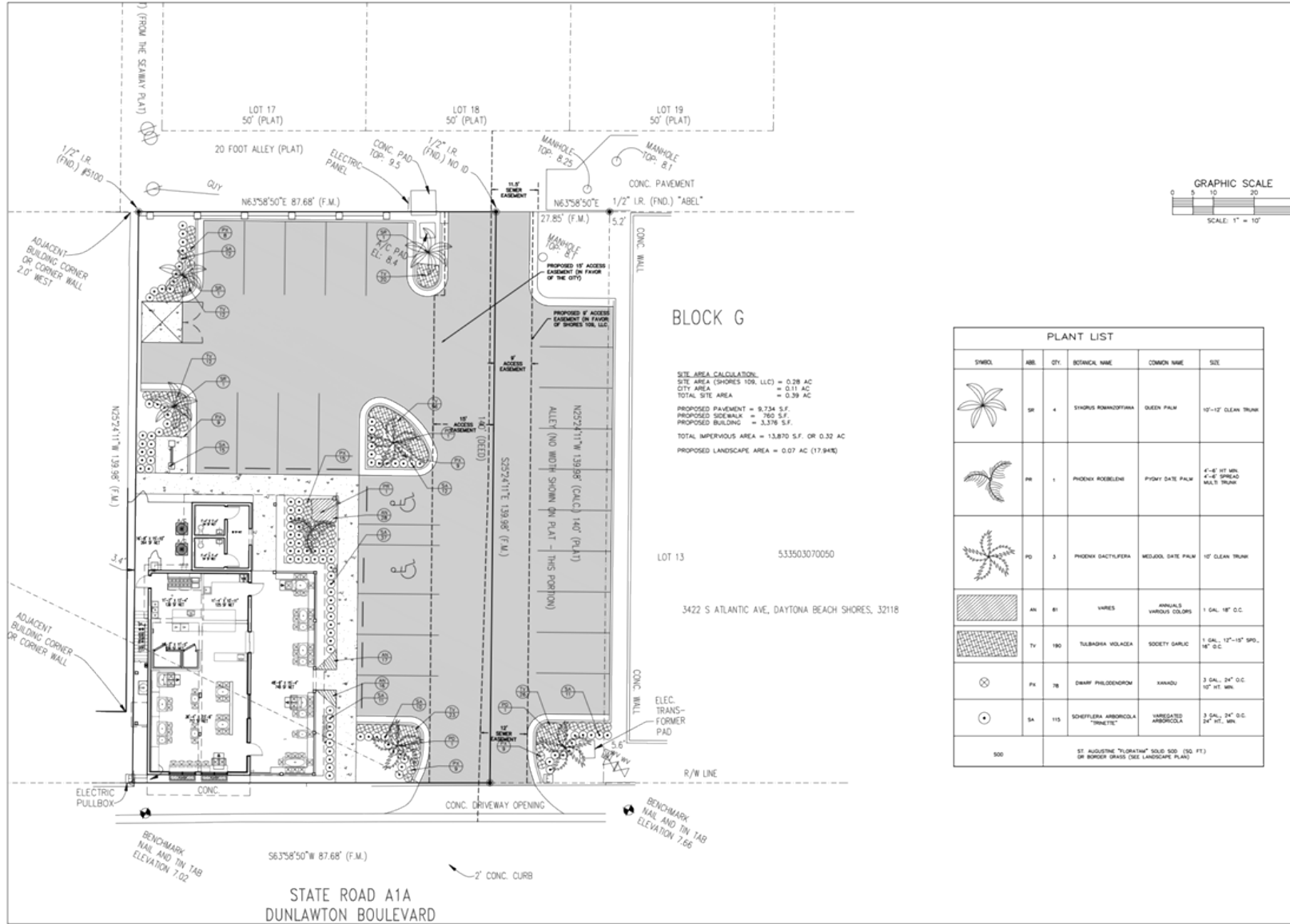


Exhibit "C"
EASEMENT AND ROW USE PLAN

To be provided under separate cover

Exhibit "D"

LANDSCAPE PLAN



PLANT LIST					
SYMBOL	ABL	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE
	SP	4	STORUS ROMANZOFFIANA	QUEEN PALM	12'-12' CLEAN
	PH	1	PHOENIX ROSELENE	PINKY DATE PALM	4'-6' HT. MIN. 4'-6' SPREAD MULTI TRUNK
	PD	3	PHOENIX DACTYLIFERA	MESQUIT DATE PALM	10' CLEAN TRUNK
	AK	81	VARES	ANNUALS VARIOUS COLORS	1 GAL. 18" O.C.
	TV	190	TULBAGIA VOLAREX	SOCIETY SARUJ	1 GAL., 12"-15" SP. 18" O.C.
	FX	78	DIWAF PHLOENDROW	KIRANU	3 GAL., 24" O.C. 10' HT. MIN.
	SA	115	SOEPHIERA AMBOICOLA "TRINETE"	VAREGATED AMBOICOLA	3 GAL., 24" O.C. 24" HT. MIN.
500	ST AUGUSTINE "FLORATHAM" SOLD 500 (50 FT) OR BORDR GRASS (SEE LANDSCAPE PLAN)				

**PARKER MYNCHENBERG
& ASSOCIATES, INC.**
PROFESSIONAL ENGINEERS • LANDSCAPE ARCHITECTS
729 RIDGEWOOD AVENUE • HOLLY HILL, FLORIDA 32111
(386) 837-4991 FAX (386) 837-7114 E-MAIL: info@parkermynchenberg.com
CERTIFICATE OF AUTHORIZATION NUMBER 00003910

109 DUNLAWTON
DAYTONA BEACH • FLORIDA
LANDSCAPE PLAN

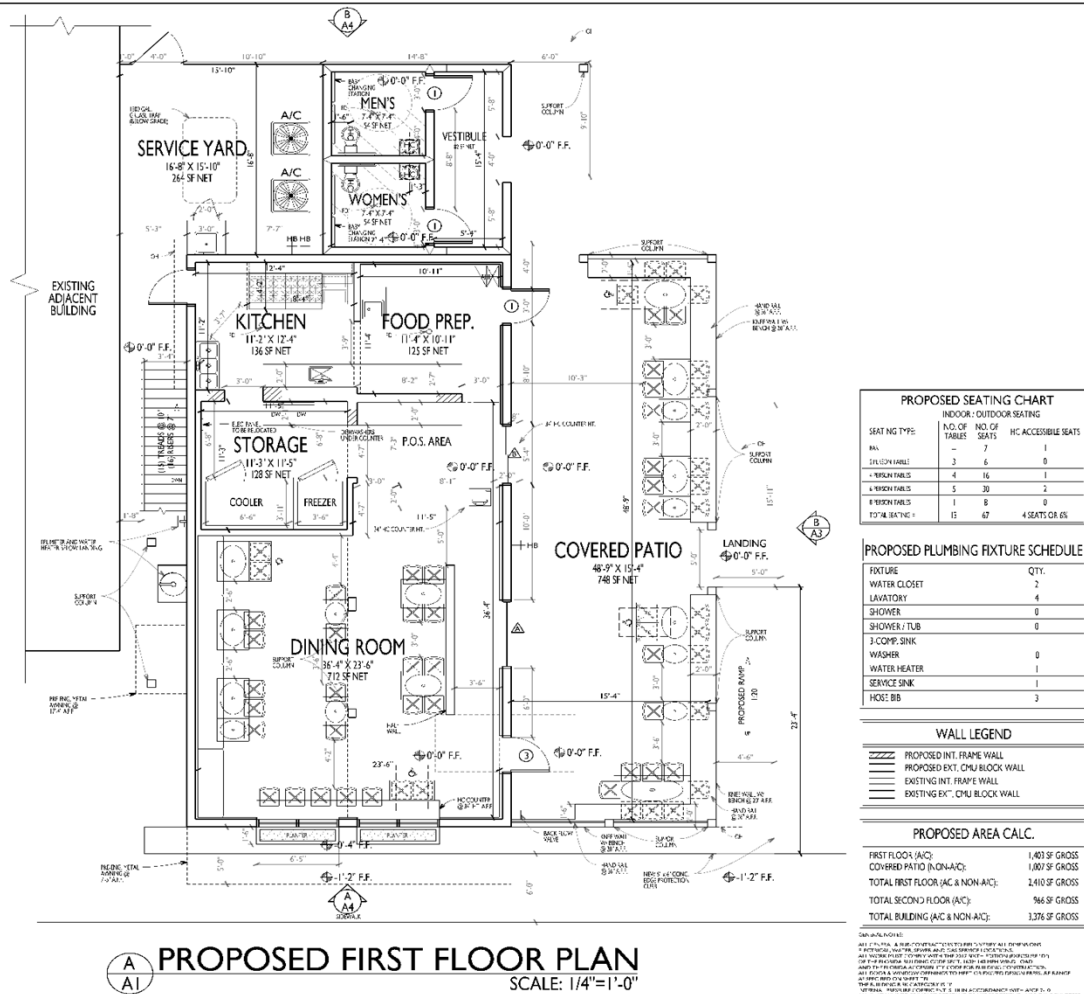


SHEET NO.
Drawn By: M. GRECO
Date:
JOB #
SCALE: 1"=10'

Exhibit "E"
COLOR RENDERING
NOTE: Signage Are Indicative of Style and Placeholders Only



Exhibit "F"
FLOOR PLAN



REVISIONS

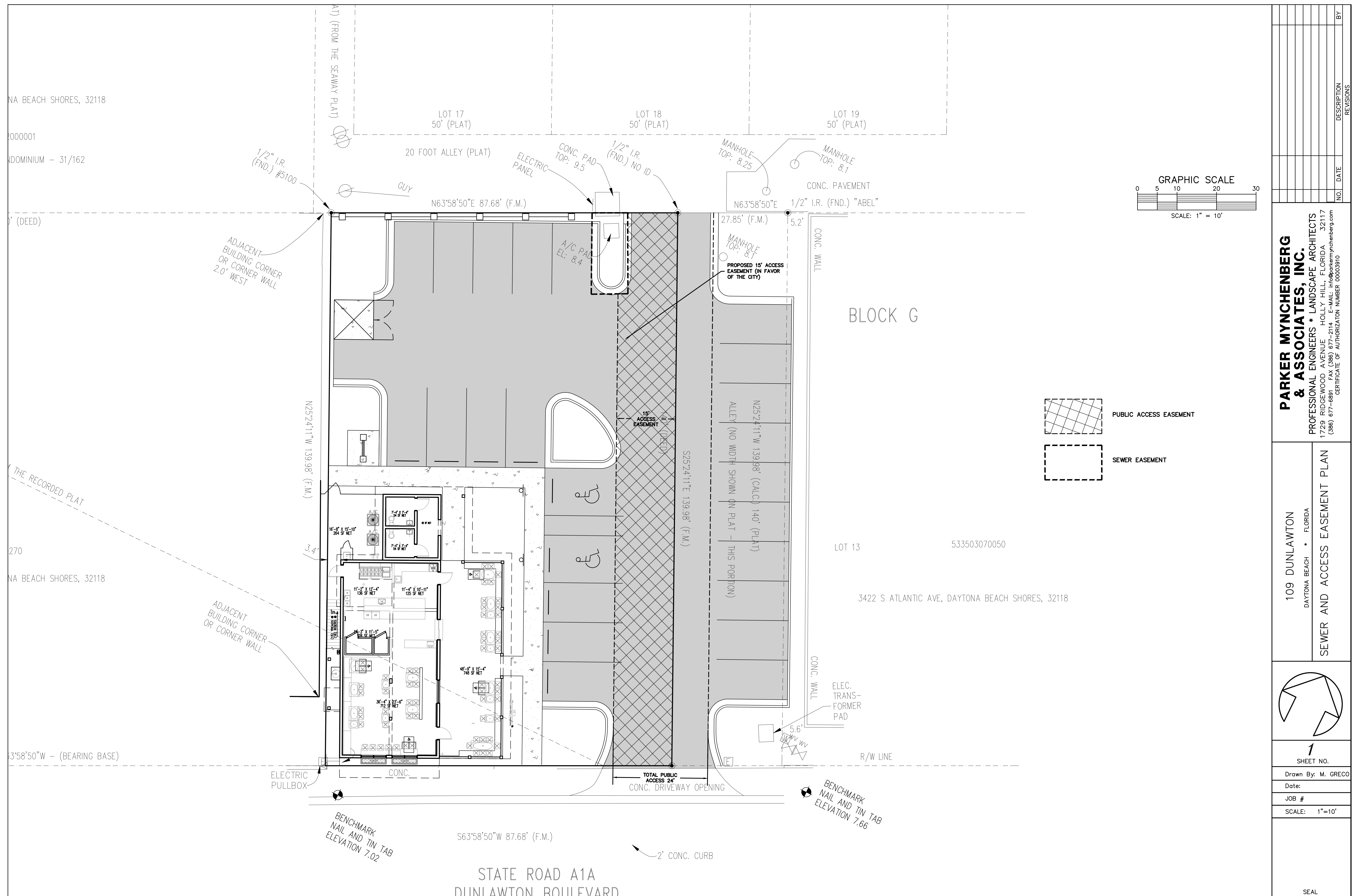
109 DUNLAWTON BLVD. - INT. / EXT. MODIFICATION

OWNER/DEVELOPER: BRYAN CALBERTH, OWNER, 3005 109 DUNLAWTON BLVD. POST OFFICE BOX 109, DUNLAWTON, FL 32014
PROJECT LOCATION: 109 DUNLAWTON BLVD. DUNLAWTON BEACH, FL 32018
GENERAL CONTRACTOR: HEBBELL CONSTRUCTION, INC. 1000 HEBBELL PROJECT MANAGER: COLIN HEBBELL, 1000 HEBBELL PROJECT MANAGER, FL 32018, PH: 386.255.4471

BPE
DESIGN INCORPORATED
400 S. 1ST ST. SUITE 100, DUNLAWTON, FL 32018
BRYAN CALBERTH, AIA, PROJECT MANAGER
DANIEL BACCHUS, AIA, ARCHITECT
400 S. 1ST ST. SUITE 100, DUNLAWTON, FL 32018
PH: 386.255.4471, FAX: 386.255.4472
EMAIL: bcalbert@bpe.com, dbacchus@bpe.com

PROPOSED FIRST FLOOR PLAN
SHEET NO. A1

ARCHITECT'S / ENGINEER'S SEAL



DA12019025 PLANNING ANALYSIS

(1) DEVELOPMENT PROPOSAL

The development site is 88' (frontage) x 140' (depth) or 0.28acres and located at 109 Dunlawton Boulevard (**Figure 1** below). The applicant/owner is seeking to redevelop the site by remodeling the existing two-story building on site. The existing grandfathered residential apartment on the second story will remain while the first floor will be used as a restaurant. In addition, a 748sf covered outdoor dining patio will be added to the eastern side of the building (**Exhibit E**). Further, the building façade will be upgraded and the parking lot will be repaved and combined with a portion of the eastern city alley, which connects to Dunlawton Boulevard.

Figure 1: Aerial View Development Site



Source: CONNECTExplorer, 2019

According to the development agreement concept plan, the site will maintain access from Dunlawton Boulevard. Twenty-four parking spaces will be provided, of which two (2) will be ADA accessible as required. The entrance to the public alley from Dunlawton Boulevard is closed with concrete curbing and blocked by an electric transformer and

decorative lamp pole (Figure 2). Therefore, residents on the north side of the alley currently utilize the owner's property for vehicular access. To address this issue, the owner is proposing a cross access easement to the public through the property for continued vehicular access and requesting usage of adjacent eastern alley for parking and landscaping (**Exhibit B**).

Figure 2: Street View of Dunlawton Boulevard Alley



Source: GoogleMaps 2019

(2) VARIANCES

No variances are anticipated to be associated with this project. Inconsistencies with the LDC are being addressed through the deviation process of the subject development agreement. It should be noted if the owner/applicant elected to address the above issues via the variance process, the public benefits noted in Section 4 of the agreement and the table below may not have been offered to the community.

(3) STAFF AND BOARD REVIEW

COMMUNITY SERVICES – Fred Hiatt, Director / Building Official

The Director has reviewed the development agreement and his comments have been addressed.

PUBLIC WORKS – Brian Edwards, Deputy Director / Facilities Superintendent

The Facilities Superintendent has reviewed the development agreement and his comments have been addressed.

PUBLIC SAFETY – Terry Griffiths, Commander / Fire Marshal

The Commander/Fire Marshal has reviewed the development agreement and his comments have been addressed.

ENGINEERING – Burl Reardon, P.E. - Tetra Tech HAI

Engineering review is not required at this time but will be conducted during the formal site plan review process.

PLANNING AND ZONING BOARD

On September 9, 2019 the Daytona Beach Shores Planning and Zoning Board will provide a courtesy review of the subject proposed development agreement pursuant to Sec. 14-63 of the LDC.

(4) PUBLIC PURPOSE/BENEFITS & LAND DEVELOPMENT CODE DEVIATIONS

DA Reference No.	Public Purposes/Benefits Provided by Owner:	Deviations from the Land Development Code to allow:
Sec. 4(4)a.	Grant of permanent utility and access easement for sewer. Comment: <i>A portion of the City's sewer pump station lies on the owner's property. This easement will allow the city permanent use and access on the property regardless of future ownership.</i>	
Sec. 4(4)b.	Grant of permanent cross access easement to the public. Comment: <i>Property owners on Seaway Avenue utilize the Dunlawton Alley for</i>	

	vehicular access to the rear of their properties from Dunlawton Boulevard. However, the alley access from Dunlawton Boulevard is currently unusable so property owners have been cutting through the 109 property for access to the east-west portion of the public alley and hence their properties.	
Sec. 4(4)c.	Additional green area for the benefit of the City: Comment: <i>The minimum green area required in the GC-2 District is 10% of the land area. The applicant is providing 18%. Additional green area has environmental and aesthetic value.</i>	
Sec. 4(4)d.	Incorporation of commemorative signage on premises. Comment: <i>Commemorative signage provides identification, aesthetic and historical value to the gateway.</i>	
Sec. 4(4)e.	Provide architectural enhancements to the building: Comment: <i>The current building is not visually appealing. The proposed exterior upgrade will add aesthetic and economic value to the City's Dunlawton gateway.</i>	
Sec. 4(4)f.	Add commercial opportunity to the City: Comment: <i>The development will create a new dining and entertainment destination within the City.</i>	
Sec. 4(4)g.	Development of abandoned and outmoded commercial property: Comment: <i>The property has been abandoned since 2004. The DA will encourage the redevelopment, beautification and modernization of this critical gateway property.</i>	
Sec. 4(6)a.		Permit up to forty outdoor dining seats in a 748sf patio area. Comment (Sec. 14-

		58.2.1.A, LDC): <i>Outdoor dining is generally permitted through a conditional use permit. Developer has opted to utilize the development agreement process in lieu of the temporary conditional use process.</i>
Sec. 4(6)b.		Exceed wall signage requirements (Sec. 6-8.15, LDC).: <i>Comment: This is necessary to facilitate the commemorative signage provided by the applicant for the benefit of the City.</i>
Sec. 4(6)c.		Non-compliance with landscape design requirements for eastern vehicular use area (Sec. 14-46.5, LDC). <i>Comment: A landscape buffer currently exists in this area. Additionally, the northeastern terminal landscape island was eliminated to allow city sewer crew to access the adjacent sewer facilities.</i>
Sec. 4(6)d.		Non-compliance with back up area dimensional requirements (Sec. 14-48.5.4, LDC). <i>Comment: The site is constrained so meeting these requirements would result in a loss of parking and landscaping, two features that are important to the site's redevelopment.</i>
Sec. 4(6)e.		Allow for a two-foot front yard setback (Sec. 14-23.5, LDC). <i>Comment: The existing building has a nonconforming two-foot front yard setback. This deviation will permit the owner to line up the outdoor patio with the existing building in the front yard.</i>

As seen in the table above, owner/applicant will provide seven (7) additional public benefits to the City and community of Daytona Beach Shores. These contributions are not required by the City's LDC and are being provided voluntarily by the owner. In addition, as noted in the table above, the conceptual site plan shows a need for five (5) deviations from the City's LDC. These deviations are not harmful or injurious to the

development or surrounding neighborhood and are only required so that the applicant/owner would have the ability to develop the site into a successful commercial establishment consistent with the City's economic development program goals and objectives.

(5) FINDINGS

(a) CONSISTENCY WITH THE COMPREHENSIVE PLAN UPDATE 2030

According to the City's Adopted Comprehensive Plan (2030) Future Land Use Map, the future land use (FLU) classification of the subject property is Retail/Service Commercial. Said FLU classification allows commercial uses such as the proposed fellowship restaurant development. The proposed use and plan also meet all relevant comprehensive plan policies. Therefore, the proposed development is consistent with the City's Adopted Comprehensive Plan (2030) and the designated FLU classification.

(b) CONSISTENCY WITH THE LAND DEVELOPMENT CODE

The subject property is zoned "GC-2 Retail/Service Commercial" District. The proposed restaurant development is listed as a permitted principal use in the "GC-2" District pursuant to Sec. 14-23 of the City's LDC. Save the proposed deviations listed in the development agreement, the proposed conceptual site plan substantially meets the development standards contained in the GC-2 District and LDC. However, if the development agreement is approved, a formal site plan review of the development will occur to ensure consistency with stormwater and other site plan development standards.

(c) REQUIRED AMENDMENTS TO THE COMPREHENSIVE PLAN AND/OR LAND DEVELOPMENT CODE

There are no required amendments to the City's adopted Comprehensive Plan and/or the City's Land Development Code necessary for the project to be approved.

(6) CITY CONTRIBUTION

In order to facilitate and incentivize the redevelopment of the site and in exchange for the sanitary sewer pump station easement and public cross access easement, the owner/applicant is proposing that the City make contributions outlined in Sec. 4(b) of the development agreement. By way of the City contributions, the City will be gaining easement access to the pump station, which encroaches on the owner's property as well as a cross access easement for usage by the City residents who currently traverse the owners property to access the rear of their Seaway Avenue properties. Additionally, the City's contributions include: (1) permitting the owner/applicant to utilize the City's alley by means of a right-of-way use agreement for parking and landscaping considering the owner/applicant's provision of a cross access easement for the benefit of the public; (2)

not assessing impact fees and a waiver of site plan and development agreement fees, which is a common incentive offered by local governments to entice development; (3) City and Property owner acknowledging that the future tenant is eligible for lease subsidies subject to the limitations of the City's Economic Development Program.

Cruz, Stewart

From: Cruz, Stewart
Sent: Wednesday, September 11, 2019 1:00 PM
To: Janet Zar
Cc: Schwab, Cheri; Hiatt, Fred; Booker, Mike
Subject: Re: To whom it may concern,

Greetings Mr. and Mrs. Zar, I forwarded your concerns to the City Clerk who provided your concerns to the board and City Council for their consideration. In addition, I would like to point out the following:

- 1) The proposed opaque fence (50-55 feet in length) will be located on the north west side of the owner's property and will be long enough to cover the entire width of your property across the alley. This should offer additional privacy to your property and others in the vicinity on the north side of the adjacent alley.
- 2a) The new paved public access easement being provided by the owner through his property will provide access from Dunlawton Boulevard to the east west portion of the alley system. This public access will be 22 ft to 24 ft wide, which is the standard driveway width for two way traffic in the City.
- 2b) The driveway access for the existing unpaved north-south alley that connects the east-west alley to Dunlawton Boulevard does not provide adequate access as the alley is physically closed with curbing and a pedestrian sidewalk along Dunlawton Boulevard. There is also a decorative lamp post and transformer in the alley near the sidewalk. The aforementioned occurred during the underground utility project.
- 3) The east-west alley will remain unchanged.
- 4) Considering #2 & #3 above, your access from Dunlawton will actually become enhanced and legal.
- 5) In terms of the operation side of the outdoor dining, staff will recommend that conformity with the city's current outdoor dining regulations not addressed in the development agreement, ie compliance with noise ordinance, operations limited from 7am to 10pm, etc.
- 6) Concerning #6 above, alcohol sales and music is allowed according to rules and regulations of the City and State of Florida.

Please let me know if you have further questions or need any clarification. Thank you.

Stewart Cruz, AICP
City Planner
City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Tel. # 386.763.5361
Fax. # 386.763.5370

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the City of Daytona Beach Shores officials and employees regarding public business are public records available to the public and media upon request. Your e-mail communications may be subject to public disclosure. The views expressed in this message may not necessarily reflect those of the City of Daytona Beach Shores. If you received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

From: Janet Zar <janetdzar@msn.com>

Sent: Friday, September 6, 2019 8:14 PM

To: Cruz, Stewart

Subject: To whom it may concern,

Hi Stewart,

Attached is my concerns and would like it to be given to the Planning and Zoning Board hearing on Sept 9,2019.

To whom it may concern,

I am unable to be there in person, please see attached statement.

I am concerned that the patio and area for parking will be too large and it will impact on my ability to access the rear of my property. I am concerned that I will not be able to access my property if the proposed fence, in the area proposed is put up directly behind the alley. Would a smaller patio and less parking be an option? I am interested in finding out exactly how I would be able to drive behind my property at 104 Seaway Ave and get my car and my boat in there. The 20 feet alley doesn't seem large enough and some access could cut off by the length of the fence. What would be the length of the fence? My home would be the most affected by accessibility issues.

If a smaller patio and area would be sent to council for approval I would be concerned with the following:

I am concerned and I would ask that the patio be closed after a certain time in the evening. Also, I am concerned about the serving of alcohol. Will that be an issue? Also, will there be any music outside? I would be concerned about the noise.

I hope these issues will be addressed with the covered patio and before any approval or sending to council.

I hope I am kept informed of what the decisions are and what the process will be.

Sincerely,

Janet Zar and David Magurczek

104 Seaway Ave
Daytona Beach Shores, FL 3211



**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 8, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration to cancel the City Council Meetings on November 26 and December 24 due to the holidays.

SYNOPSIS:

Past history shows that the second meeting in both November and December have been cancelled due to the holiday season.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

There is no legal review required.

RECOMMENDATION:

SUGGESTED MOTION:

I move to cancel the meetings for November 26 and December 24, 2019 due to the holiday season.

ATTACHMENT: None



**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 8, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on the City Manager Performance Evaluation Procedure

SYNOPSIS:

This item was requested by Vice Mayor Bryan.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

This is for discussion only.

ATTACHMENT: None