



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING JANUARY 14, 2020

**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. December 10 Workshop and Council Meeting Minutes**
- 7. CONSENT AGENDA:**

- A. Forfeiture funds for the purchase of guardian vest carriers
- B. Community Services Dept November, 2019 Report
- C. Building Division November, 2019 Report
- D. December Attorney Bill
- E. Utilize forfeiture funds for training
- 8. **REPORTS OF THE CITY ATTORNEY:**
- 9. **REPORTS OF THE CITY MANAGER:**
 - A. City Manager Report for Jan 14, 2020
- 10. **OLD BUSINESS:**
 - A. Ordinance 2019-14 revising Ord. 2019-09 Code Enforcement Enhancements
- 11. **NEW BUSINESS:**
 - A. Resolution 2020-01 in support of keeping the Daytona Tortugas Baseball team
 - B. Discussion on crosswalks
 - C. Ordinance 2020-01: City of Daytona Beach Shores and Oceans 25, LLC Development Agreement to permit the development of townhomes on the City owned property located at 2900 S. Atlantic Avenue.
 - D. Ordinance 2020-02: Future Land Use Amendment CPA12019029, Atlantic Avenue Estates, LLC-Parcel ID 6302-05-07-0150/3828 S. Atlantic Avenue

- 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 72121 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
December 10, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Councilmember Mel Lindauer, Councilmember Michael Politis, Vice Mayor Richard Bryan, Mayor Nancy Miller, Ray Branch, Councilmember Richard Frizalone
Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney Raymond Branch, Community Services Director Fred Hiatt, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

6. APPROVAL OF MINUTES

A. City Council Workshop and Regular Meeting Minutes
for November 12, 2019; Special Council Meeting
November 22, 2019

COUNCILMEMBER MICHAEL POLITIS moved, seconded by **COUNCILMEMBER MEL LINDAUER** to Approve both the City Council Workshop and Regular Meeting Minutes for November 12, 2019 and the Special Council Meeting November 22, 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

7. CONSENT AGENDA:

A. October Public Safety Monthly report

COUNCILMEMBER MEL LINDAUER moved, seconded by **COUNCILMEMBER MICHAEL POLITIS** 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

8. REPORTS OF THE CITY ATTORNEY:

Attorney Branch reported that he had previously sent his report to the Council. Included in the report were updates on the Purchase and Sale Agreement for 2900 S, Atlantic Avenue, Planning & Zoning Board workshop and the opioid litigation. There were no questions or concerns.

9. REPORTS OF THE CITY MANAGER:

City Manager Booker reported that the City had been approved for a total of \$445,000 in damage assessments from FEMA for past storms. The upcoming business expo will be held on January 24th and the spaces are filling up fast. There will be a partial lane closure in front of Oceans 1 beginning January 5th while roof work is being completed. Funds have been placed in escrow for the property at 2900 S Atlantic Avenue. Finally, the site plan was approved for the property at 2970 S. Atlantic Avenue for Chase Bank. There is no closing date yet, but the City still plans to purchase the rear portion for the bocce and shuffleboard court.

A. City Manager report

10. OLD BUSINESS:

11. NEW BUSINESS:

A. Resolution to move the City's retirement plan to the Florida Retirement System

Finance Director Swartzlander began by explaining that if the Council decided to rejoin the Florida Retirement System for general employees, it would be a two-step process. They would need to adopt the attached Resolution and authorize the Mayor and the City Manager to execute the agreement. Information was presented on the employees in various ways including the amounts to purchase past service years. The annual budget increase if the city joined would be \$22,000. CMBRS Lindauer and Frizalone wanted to make sure that the employees were aware that they had to give up their existing 401A pension accounts if they decided to opt in and have the city buy back their time. For most of the employees who join FRS, vesting would be at 65 years of age or 33 years of service whichever came first. It was explained that the previous amount discussed of \$338,000 that would cost the city to join, will increase. That number was based on figures obtained from the pension plan as of September 30, 2019. The next pension report would not be released until after December 31, 2019 and the city was hoping to join FRS as of February 1, 2020. The estimate is \$5-7,000 per month based on the stock market. A not to exceed dollar amount would be needed for the agreement.

The following employees spoke in support of the city re-joining FRS: Jose Ramos, Carlos

Rodriguez and Steve Edmunds. They explained that they understood the process and that they were willing to forfeit their 401A pension plans.

City Attorney Branch had a concern that the resolution didn't provide a buyback option into FRS. Finance Director Swartzlander assured the council that the resolution came directly from FRS and it would allow the buy back of service time for current employees. It was stated that a future Ordinance would be needed to correct the Code of Ordinances as it relates to FRS.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to Adopt Resolution 2019-23 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

CMBR BRYAN moved, seconded by CMBR LINDAUER to authorize the Mayor and the City Manager to execute with DMS the agreement with an amount not to exceed \$380,000.

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. **Resolution 2019-25- Adopting updated and revised Fee Schedule**

Community Services Director Hiatt explained that the last fee schedule update was over six years ago. The proposed schedule will include newly created fees that were adopted by the City Council and also address changes in Florida Statutes.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to Adopt Resolution 2019-25 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. **Approval Request:
Sewer Force Main Mapping/Inspection/Modeling Project
McKim & Creed**

Community Services Director Hiatt explained that this was a request to enter into a work order agreement with McKim and Creed. It was included in this year's budget. The project includes the sewer pipes that are considered force mains for the entire city that a camera can't easily be run through. This would be considered phase 1 of the project. They will evaluate how to evaluate the force main piping and make a recommendation. A GIS model would also be created.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by VICE MAYOR RICHARD

BRYAN to Approve Sewer Force Main Mapping/Inspection/Modeling Project McKim & Creed in the amount of \$107,418.

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

D. **Economic Development Commercial Lease Subsidy Program Application 12019031: Foxy Lox Hair Colour and Design, LLC - 3348 S. Atlantic Avenue, Ste. C**

City Planner Stewart Cruz explained this was the first applicant to apply for the Economic Development Lease Subsidy Program. The application was submitted on October 23rd and acquired approval to open on November 6th. The business was formerly located in the Pavilion in Port Orange. If approved, the total grant amount would be \$4,774 over a three year term. He reported that the application had been reviewed by the Finance Department and the Economic Development Committee gave their approval.

COUNCILMEMBER MEL LINDAUER moved, seconded by VICE MAYOR RICHARD BRYAN to Approve Economic Development Commercial Lease Subsidy Program Application 12019031 as presented which also includes the grant agreement.

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

12. COUNCIL COMMENTS:

CMBR Frizalone provided an update on the Treasure Island property. Ackers Financial foreclosed on the property last Friday. There is a forbearance agreement with a receiver in place. There is a Special Magistrate Hearing scheduled for December 18 to discuss the concrete issues and cracks. He stated that the forbearance would end on April 20, 2020. Mayor Miller congratulated everyone who made the parade and tree lighting a great success. CMBR Lindauer requested a resolution in support of keeping the minor baseball team, the Daytona Tortugas be placed on the next agenda.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

The following audience members: Cassandra Stewart, Brian Anderson, Gary Spence, Louise Spence, Cassie Miller and Marie Anderson all spoke regarding an upcoming zoning change to property located at 3838 S. Atlantic Avenue. The item had recently been heard at the Planning & Zoning Meeting on December 9, 2019. They were not in favor of the density change that would allow apartments to be built on the property. They cited an increase in traffic and noise. They also felt their family's safety would be in jeopardy as the apartments would overlook some of the back yards. Other concerns

were beach access and taking valuable green space away.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

The meeting ended at 7:44 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

**MINUTES
CITY COUNCIL MEETING
December 10, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

1. CALL TO ORDER BY MAYOR

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

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

2. NEW BUSINESS:

A. **Presentation on crosswalks**

Resident Christopher White made a presentation to the City Council on crosswalks. He felt most of the existing ones needed better lighting for visibility. He would like the crosswalk currently located at S. Atlantic Avenue and Oceans West Blvd. updated. It was his opinion that either installing a traffic light or blinking lights were good options. The traffic light would be more expensive but he felt having a light in that location could help assist in slowing southbound traffic. Mayor Miller commented that she had never seen anyone in the crosswalk near Oceans West Blvd. CMBR Lindauer replied that he has wanted the crosswalk moved for quite some time. The council requested an item be placed on the next agenda.

3. ADJOURNMENT:

The workshop ended at 5:57 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

**DAYTONA BEACH SHORES PUBLIC
SAFETY DEPARTMENT**

**CONTRABAND FORFEITURE
EXPENDITURE REQUEST**

December 18, 2019
File: PS19-12-01

FUNDING REQUEST

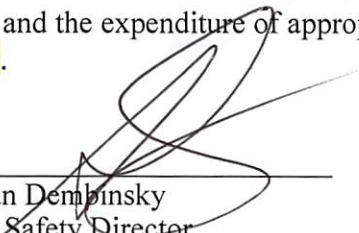
The Daytona Beach Shores Public Safety Department seeks Council approval for the expenditure of state contraband forfeiture monies under the "additional law enforcement equipment" provision of FSS 932.7055 (5) (b). The Department has determined that the following equipment is an immediate need and will be utilized to lessen the strain on backs from heavy duty belts.

Drone Equipment

The Department of Public Safety would like to utilize \$7,000 from the state contraband forfeiture account for the purchase of guardian vest carriers.

Certification of Compliance:

The undersigned, as Public Safety Director of the City of Daytona Beach Shores, Florida, hereby requests, pursuant to Section 932.704, Florida Statutes, that the City Commission authorize the appropriation to, and expenditure by, the Daytona Beach Shores Public Safety Department of funds held in the City's Special Law Enforcement Trust Fund. The request is made, and the expenditure of appropriated funds shall be in conformity with Section 932.7055 (5) (b).



Stephan Dembinsky
Public Safety Director

12-18-19

Date

COMMUNITY SERVICES DEPARTMENT

MONTHLY REPORT - NOVEMBER 2019

FACILITIES MAINTENANCE DIVISION:

Currently three positions.

Normal monthly duties:

This division is responsible for setting up and cleaning rooms for all rentals and City activities for the Senior Center, Tile Room, Council Chambers, Community Center, City Hall, and Public Safety. Two of the employees have janitorial type duties, like emptying the trash and cleaning the bathrooms in all the buildings, vacuuming the floors, dusting and taking care of whatever else is needed regarding the city buildings' cleaning needs. One employee has the maintenance type duties. He assesses any problems reported with the buildings and handles the repair if it is within his ability. He now has an a/c certification so replacing the filters he can do a lot of the repairs inhouse. He replaces light bulbs, cleans the outside windows, paints and any other general maintenance needed with the city buildings.

Additionally, this month:

The building maintenance position replaced old light units in city hall as well as delivering and setting up the city building Christmas trees. He also had toilet repairs in several of the city buildings to handle, all of which are a priority when a problem happens.

PARKS/STREETS DIVISION:

Currently eleven maintenance positions and one electrician position.

Normal monthly duties:

This division takes care of the maintenance, up keep and general appearance of all the parks, streets, sidewalks and medians daily. They mow, change out lights, restock supplies, replace plants as needed,

replace or repair street signs, check and clear the storm drains, as well as any other issues that may arise in the city. Although there are two divisions they now all share in the normal monthly duties.

[Additionally, this month:](#)

The division put pavers down in the small dog park area to help prevent the digging under the fence that was taking place. The guys started all the Christmas set up around the city, including the big tree at the Community Center and the Christmas banners along the street. Many of the banner poles needed some repairs while the Christmas banners were being hung. A new sprinkler pump was installed at McElroy as well as concrete sidewalk section repairs on Oceans West Blvd. The electrician finished working on the electric for the Christmas decorations on decorative poles down Atlantic Avenue and handled 35 power line locates this month.

[SEWER DIVISION:](#)

Currently four positions.

[Normal monthly duties:](#)

This division maintains and checks all the sewer stations daily, they do all the general maintenance of the sewer stations, generators and the property the stations are located on. This includes mowing and general outside maintenance as well as cleaning the pump areas, wet wells and floats. The division also maintains the manholes in the city, delivers past due sewer bill notices for finance every month, does cooling tower readings quarterly and has two employees in the division that are animal control officers.

[Additionally, this month:](#)

The division replaced the battery and repaired the strobe lights on the gator, did fence repairs at station 5 and checked the manholes on Atlantic Avenue. They greased the cranes on the trucks, handled 5 animal control calls, 2 pool readings and did 32 sewer line locates.

City of Daytona Beach Shores

Planning & Building Division Statistics

Monthly Report – November, 2019

Planning Division

Site Plans - Submittals and Approvals:

Submitted this Month: 1
 Submitted this Fiscal Year: 1
 Approved by Staff this Month: 0
 Approved by Staff this Fiscal Year: 1
 Approved by City Council this Month: 0
 Approved by City Council this Fiscal Year: 0
 Amendments Approved by Staff this Fiscal Year: 0

Building Division

Specific Large Projects (Over \$10,000) - Submitted This Month:

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Oceans West One	1 Oceans West Boulevard	11/1	Relocate main piping and hose station piping	\$23,450.00	\$216.25
Grand Prix Hotel	2015 South Atlantic Avenue	11/1	Install monument sign	\$12,500.00	\$70.03
Johnson Residence	124 Seaway Avenue	11/1	Construct detached garage in rear of property	\$69,639.00	\$483.76
Griggs Residence	2403 South Atlantic Avenue Unit 903	11/4	Remodel kitchen, cabinets, tops, remodel wet bar	\$13,000.00	\$137.65
Ocean Club Gift Shop	2316 South Atlantic Avenue	11/4	Wire building for lighting and electrical	\$45,000.00	\$707.25
Oceans Atrium	3023 South Atlantic Avenue	11/4	Upgrade fire alarm	\$121,100.00	\$861.72
Holman Residence	3145 South Atlantic Avenue Unit 604	11/5	Kitchen remodel, new cabinets and tops	\$18,000.00	\$172.20
Kamal Residence	2615 South Atlantic Avenue Unit 6l	11/5	Remodel bathrooms, new kitchen cabinets and tops	\$15,000.00	\$154.75
Bingham Residence	3115 South Atlantic Avenue Unit 704	11/6	Remodel master and guest bathrooms	\$10,500.00	\$120.55
Turtle Inn Beach Club	3233 South Atlantic Avenue	11/6	Demo tile from walkways, install coating on walkways	\$15,000.00	\$154.75
Caribbean Condo, Unit 1402	2425 South Atlantic Avenue, Unit 1402	11/6	Remodel kitchen, master and guest bathrooms	\$42,000.00	\$306.58
Teelon Residence	3032 South Peninsula Drive	11/7	Rebuild dock	\$20,000.00	\$475.46

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Peck Plaza	2625 South Atlantic Avenue	11/7	Install new sprinkler system from existing control assembly	\$44,417.00	\$431.38
Werger Residence	4 Oceans West Boulevard Unit 601B	11/8	Replace impact window and door	\$13,600.00	\$146.20
Hawaiian Inn	2301 South Atlantic Avenue	11/11	Re roof entry way with concrete tile	\$138,880.00	\$792.40
Skinner Residence	4 Oceans West Boulevard, Unit 303B	11/13	Replace 2 sliding glass door and 1 window	\$11,490.00	\$129.10
Sizemore Residence	3333 South Atlantic Avenue, Unit 1801	11/13	Replace 4 sliding glass doors	\$15,170.00	\$161.50
Perry's Ocean Edge Resort	2209 South Atlantic Avenue	11/13	Plumbing remodel of guest rooms	\$30,000.00	\$585.69
Hughes Residence	3145 South Atlantic Avenue Unit 404	11/14	Kitchen remodel	\$30,000.00	\$260.31
Schmitz Residence	3703 South Atlantic Avenue Unit 801	11/15	Remodel 2 guest bathrooms	\$13,700.00	\$146.20
Mango Sun Café Beachside	2221 South Atlantic Avenue	11/18	Truss and decking replacement	\$75,000.00	\$494.31
Remax Realty	3340 South Atlantic Avenue	11/18	Change out 10 roof top packages	\$10,905.00	\$110.50
Sea Club IV	3229 South Atlantic Avenue	11/18	Install brick pavers on top of existing pool deck	\$15,400.00	\$161.50
Mango Sun Café Beachside	2221 South Atlantic Avenue	11/18	Install TPO roofing system on low slope roof of restaurant	\$12,500.00,	\$137.65
Oceanside Inn	1909 South Atlantic Avenue	11/19	Modify existing ductwork	\$18,500.00	\$110.20
Tropic Shores Condo	3111 South Atlantic Avenue	11/19	Install 14 straight cool systems	\$42,000.00	\$320.20
Minor Residence	125 Key Colony Court	11/19	Replace 13 windows	\$11,015.00	\$129.10
Gonzalez Residence	2 Oceans West Boulevard Unit 1505	11/20	Interior renovations, replace kitchen cabinets, bath vanity	\$76,000.00	\$491.80
Oceans West One Condo	1 Oceans West Boulevard	11/20	Install shoring, slab jacks and concrete drop panels to parking garage columns	\$1,268,758.00	\$4026.96
Ocean Vistas	1925 South Atlantic Avenue	11/21	Repairs to swimming pool and spa	\$45,000.00	\$323.64
MAX Daytona	1903 South Atlantic Avenue	11/21	Foundation for construction of 12 story condominium	\$1,200,000.00	\$2566.60
Stobbs Residence	2987 South Atlantic Avenue Unit 1603	11/21	Bath and kitchen remodel	\$15,000.00	\$154.75
Shotwell Residence	2937 South Atlantic Avenue, Unit 1005	11/21	Remodel kitchen and 2 bathrooms	\$35,000.00	\$266.76
Baldwin Residence	3601 South Atlantic Avenue Unit 601	11/21	Replace kitchen cabinets, vanity and tub	\$11,000.00	\$120.55
Baldwin Residence	3601 South Atlantic Avenue, Unit 701	11/21	Replace kitchen cabinets, vanity and tub	\$11,000.00	\$120.55
King Residence	3425 South Atlantic Avenue Unit 506	11/21	Convert lanai into living space, remodel kitchen and 3	\$88,940.00	\$587.94

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
			bathrooms		
Silver Sands Inn	2119 South Atlantic Avenue	11/25	Repair mansard roof shingles and rotten wood	\$11,500.00	\$354.20
Swinski Residence	3815 South Atlantic Avenue Unit 901	11/27	Remodel hall and bedroom baths	\$17,660.00	\$172.20
Baue Residence	3703 South Atlantic Avenue Unit 1107	11/27	Remodel kitchen and 3 bathrooms, replace fireplace	#35,500.00	\$272.29
TOTALS	WORK ADDRESS	DATE	WORK DESCRIPTION	\$3,703,124.00	\$17,435.43

Building Division Revenue by Permit Category:

PERMIT TYPE	JUNE 2019	FISCAL YEAR-TO-DATE 2018 TO 2019	JUNE 2018	LAST FISCAL YEAR-TO-DATE 2017 TO 2018
BUILDING	\$15,573.53	\$32,003.21	\$9,119.47	\$23,093.95
ROOF	\$930.05	\$1,560.31	\$2,594.32	\$6,460.90
DEMOLITION	\$120.00	\$120.00	\$0.00	\$0.00
ELECTRICAL	\$2,826.72	\$4,340.10	\$1,420.63	\$3,046.31
MECHANICAL	\$2,213.81	\$4,861.68	\$2,920.12	\$5,476.79
PLUMBING	\$3,513.47	\$5,264.40	\$3,243.40	\$6,468.50
SIGN	\$365.03	\$964.44	\$349.75	\$469.40
POLITICAL SIGN BONDS	\$0.00	\$0.00	\$0.00	\$0.00
STORMWATER MANAGEMENT	\$0.00	\$0.00	\$0.00	\$0.00
MISCELLANEOUS	\$100.00	\$314.25	\$151.92	\$233.22
DEVELOPMENT FEES	\$25.00	\$865.40	\$665.00	\$910.00
PROMOTIONAL ACTIVITIES	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS	\$25,667.61	\$50,293.79	\$20,464.61	\$46,159.07

Building Division Activities:

ACTIVITY	JUNE 2019	FISCAL YEAR-TO-DATE 2018 TO 2019	JUNE 2018	LAST FISCAL YEAR-TO-DATE 2017 TO 2018
INSPECTIONS	278	522	313	566
FINAL CERTIFICATES OF OCCUPANCY ISSUED	0	0	0	0
TEMPORARY CERTIFICATES OF OCCUPANCY	0	0	0	0

ISSUED				
FINAL INSPECTIONS	167	352	167	323
FAILED INSPECTIONS	22	36	19	56

Annual Totals, Large Projects (Over \$10,000):

Projects Begun Current Fiscal Year-to-Date – 2019 to Present: \$6,769,788.00

Projects Begun Last Fiscal Year – 2018 to 2019: \$26,799,873.00

Projects Begun Two Fiscal Years Ago – 2017 to 2018: \$39,968,375.00

STENSTROM, McINTOSH, COLBERT & WHIGHAM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

WILLIAM L. COLBERT
FRANK C. WHIGHAM

KENNETH W. McINTOSH
RETIRED
ROBERT K. McINTOSH
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OF COUNSEL
LONNIE N. GROOT
DAVID W. HALL
RAYMOND J. BRANCH, III
STACEY R. SPRINGER

RECEIVED

JAN 2 - 2020

Office of the City Manager
City of Daytona Beach Shores

December 31, 2019

Michael T. Booker, City Manager
City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118

C-50-803

BASIC SERVICES:

Prepare for and attend City Council Meeting and Special Meeting on December 10, 2019, discussion with City Staff to obtain information and answer questions regarding the above items; general and miscellaneous telephone conferences with staff.

ADDITIONAL SERVICES:

1. CITY MANAGEMENT

Review agenda and materials; telephone conference with Vice Mayor Bryan re meeting with Florida League of Cities; attend conference call with Attorney Cruz and Vice Mayor Bryan re Bert Harris matters; meeting with Ms. Schwab; receive and review materials provided by Attorney Cruz re Bert Harris on behalf of Vice Mayor Bryan;

TIME: 7.25 hrs

2. PLANNING

Make final preparations for presentation to P&Z Board for workshop; e-mails to Mr. Cruz; conduct workshop; review agenda; review proposed ordinances; review ordinance 2019-22; e-mail to Mr. Cruz; review agenda; prepare for and attend meeting at City Hall; review analysis of City Planner re applications and proposed changes to future land use map; telephone conference with Mr. Cruz;

TIME: 9.50 hrs

3. ECONOMIC DEVELOPMENT ACTIVITIES

Voice mails to Council Member Frizalone; review PSA for necessary extensions to inspection period; review correspondence with title commitment documents; e-mail to Attorney Brock; e-mail to Council Member Frizalone; review e-mail from Attorney Brock; forward title commitment to Attorney Brock with explanation for survey requirements and exceptions; telephone conference with Council Member Frizalone; review PSA for 2900 Atlantic Ave; draft recommendation for inspection period and e-mail to EDC Members; e-mail from Attorney Brock; e-mail from Vice Mayor Bryan re 2900 S. Atlantic Ave; attend meeting at City Hall; attend meeting with Committee Members, Mr. Malone, Mr. Nielsen, Developer and Attorney Brock; receive and reply to multiple text messages re 2900 S. Atlantic; e-mail from Attorney Brock;

TIME: 8.50 hrs

4. TREASURE ISLAND/RAIT

Review Notice and Proof of Claim bankruptcy forms provided by Mr. Booker re Rait Funding, LLC; research Volusia County records to determine if Rait Funding had liens or ownership interest in property; voice mail to Mr. Hiatt; review documents provided by Mr. Hiatt; e-mails from/to Ms. Herstein; attend meeting with Mr. Hiatt and Ms. Herstein;

TIME: 6.75 hrs

5. AUDIT

Review correspondence from City Auditor; review files; prepare audit letter; e-mails to/from Mr. Swartzlander;

TIME: 1.00 hrs

6. FINANCE/PURCHASING

Meeting with Mr. Swartzlander re purchasing issue; legal research re authority to sign contracts and purchasing orders;

TIME: 1.50 hrs

7. OPIOID LITIGATION

E-mails from/to Vice Mayor Bryan; review litigation materials from Volusia County; e-mail to Mayor Miller and Council Members; receive and review correspondence from Attorney Goldberg; review e-mail and summary from Attorney Goldberg' e-mail to Mr. Booker and City Council Members; e-mail from Mr. Booker; research AGO and case law to confirm methodology; e-mail to Mr. Booker; e-mail from Council Member Frizalone;

TIME: 3.75 hrs

8. FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

E-mail to Mr. Booker; Mr. Swartzlander and Ms. Schwab re proposed agreement with DMS and resolution;;

TIME: 0.50 hrs

9. FLORIDA RETIREMENT SERVICES

Meeting with Mr. Swartzlander at City Hall;

TIME: 1.50 hrs

10. CODE ENFORCEMENT/SPECIAL MAGISTRATE

Review file; e-mail to Mr. Hiatt; prepare for and attend hearing on code violations re Treasure Island; meeting with Mr. Hiatt and Ms. Herstein; telephone conference with Council Member Frizalone;

TIME: 2.75 hrs

BASIC SERVICES	=	\$ 2,500.00
ADDITIONAL SERVICES:		
43.00 hrs @ \$170.00/hr	=	\$7,310.00
TOTAL ATTORNEYS' FEES	=	\$7,310.00
TOTAL BALANCE DUE	=	\$9,810.00

Sincerely,

STENSTROM, McINTOSH,
COLBERT & WHIGHAM, P.A.



William L. Colbert

This statement is subject to the provisions of the Florida Prompt Payment Act, Section 218, Part VII, Florida Statutes.

**DAYTONA BEACH SHORES PUBLIC
SAFETY DEPARTMENT**

**CONTRABAND FORFEITURE
EXPENDITURE REQUEST**

January 9, 2020
File: PS0-01-05

FUNDING REQUEST

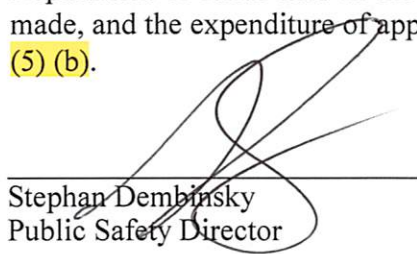
The Daytona Beach Shores Public Safety Department seeks Council approval for the expenditure of state contraband forfeiture monies under the "additional law enforcement training" provision of FSS 932.7055 (5) (b). The Department has determined that the following training is a necessity to the Department.

Training

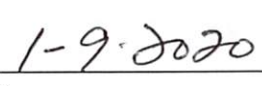
The Department of Public Safety would like to utilize \$4,000 from the state contraband forfeiture account for a two day Advanced Firearms Instructor Course for 7 employees including ammunition.

Certification of Compliance:

The undersigned, as Public Safety Director of the City of Daytona Beach Shores, Florida, hereby requests, pursuant to Section 932.704, Florida Statutes, that the City Commission authorize the appropriation to, and expenditure by, the Daytona Beach Shores Public Safety Department of funds held in the City's Special Law Enforcement Trust Fund. The request is made, and the expenditure of appropriated funds shall be in conformity with Section 932.7055 (5) (b).



Stephan Dembinsky
Public Safety Director



Date



CITY OF DAYTONA BEACH SHORES

"Life Is Better Here"
Office of the City Manager

Phone (386) 763-5373 Fax (386) 763-5360

MEMORANDUM

DATE: January 14, 2020

TO: City Council: Mayor Nancy Miller; Vice Mayor Richard Bryan, Council Member Rick Frizalone; Council Member Mel Lindauer, and Council Member Michael Politis

FROM: Michael T. Booker, City Manager 

SUBJECT: City Manager Report – January 14, 2020

Bocce/Shuffleboard/Tennis:

- Chase Bank has closed on the property adjacent to City Hall and we are trying to arrange a meeting with the proper Chase officials to finalize the City's purchase of a portion of the property.
- The USTA grant looks like a go, so everything hinges on when we obtain a portion of the property.

Follow-ups from Last Year:

- City Council photos are scheduled at 5 p.m. on January 28 (prior to the 2nd City council meeting of the month).
- We have received the Administrative Site Plan for Halifax Health Services and all is moving according to plan regarding the facility.

LED Bollard Lights on Oceans West Boulevard

- Some citizens have noticed that several lights have been out recently on Oceans West Boulevard. In an effort to be more energy conscious and provide better visibility, we are retrofitting the bollards with LED lights. Please be patient as the conversion takes place.

Safety:

- As Speed Weeks approach and there are more snow birds in town, please exercise extra care when crossing S. Atlantic Avenue and when you are behind the wheel.

Census 2020:

- Mayor Miller and I will be holding several census meetings at various condos to explain the process and the importance of being counted.
- Also, if anyone is interested, Census workers are still needed. The job pays \$16/hour and you may apply on line at the Census Bureau website.

Showcase the Shores Business Appreciation Expo:

- January 24, 6-8:30 p.m. at the Shores Community Center.
- The first 200 guests will receive a free tote and a complimentary beer/wine ticket. Admission is free.



**CITY COUNCIL AGENDA MEMORANDUM
JANUARY 14, 2020 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Ordinance 2019-14 revising Ord. 2019-09 Code Enforcement Enhancements

SYNOPSIS:

Ordinance 2019-14 revises the City's previously adopted Ordinance 2019-09.

FISCAL IMPACT STATEMENT:

The proposed changes have no fiscal impact.

BACKGROUND:

The previous enhanced Code Enforcement Ordinance 2019-09 was adopted by 2nd reading on September 9, 2019. Shortly after its adoption, the City hired a new city attorney, Mr. Raymond Branch. After discussions with staff regarding enforcement application of certain of the ordinance changes, attorney Branch suggested additional revisions to minimize liability exposure of the City.

LEGAL REVIEW:

Attorney Branch revised Ordinance 2019-09 to provide additional strength and to make it more challenge resistant. The ordinance was also modified to clean up a few housekeeping issues.

RECOMMENDATION:

Staff recommends the adoption of Ordinance 2019-14

SUGGESTED MOTION:

Move to adopt Ordinance 2019-14 on Second Reading.

ATTACHMENT: 1. Enhanced 2019-09 Code Enforcement Enhancement rev 10.28.2019

ORDINANCE 2019-__

AN ORDINANCE TO AMEND ORDINANCE 2019-09 OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO A PROGRAM OF ENHANCED CODE ENFORCEMENT; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE CONDEMNATION AND DEMOLITION OF DILAPIDATED, UNSANITARY, UNSAFE OR UNINHABITABLE BUILDINGS; PROVIDING FOR A CERTIFICATE OF CODE COMPLIANCE HABITABILITY; PROVIDING FOR ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE (AS MODIFIED); PROVIDING FOR AN ARRAY OF IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR REQUIREMENTS AND PROHIBITIONS; AMENDING SECTIONS 14- 61.1 AND 19-1.2. OF THE *CITY CODE*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has the desire to ensure that the City of Daytona Beach Shores and its environs are free from the deleterious effects of vacant buildings and structures, as well as nuisance conditions generally, for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida desires to protect the public health, safety and welfare of the citizens of the City and maintain a high quality of life for the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has implemented a modern system of code enforcement within the City, but desires to further enhance that system as set forth herein for the benefit of the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores hereby finds and determines that the provisions of this Ordinance provide for public benefits and serve public purposes; and

In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 162, *Florida Statutes*; Chapter 166, *Florida Statutes*; Section 60.05, *Florida Statutes*; Section 823.01, *Florida Statutes*; Section 823.05, *Florida Statutes*; and other applicable controlling law; 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, although neither creating or amending land development regulations, is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores*.

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

PART I. LEGISLATIVE FINDINGS AND INTENT AND CONFORMING AMENDMENTS TO CITY CODE

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance, as the legislative findings and intent of this Ordinance, the recitals (whereas clauses) to this Ordinance, the City staff report and City Council agenda memorandum relating this Ordinance.

(b). There is a public need to enhance economic activity in specific targeted areas of the City of Daytona Beach Shores, as identified by the City Council. The economic well-being of the citizens of the City of Daytona Beach Shores and the economic resources of the City of Daytona

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Beach Shores would be enhanced by the provision and implementation of selected economic development activities.

(c). Section 16-12 of the *City Code* generally defines the prohibition against nuisances as follows: “Any person who shall, upon any real property owned or occupied by him within the limits of the City, conduct or carry on any trade, business or occupation, or keep, maintain or permit any property, building or structure or other matter or thing or course of conduct which shall endanger the public health or materially interfere with the public comfort or convenience, shall be deemed to have created a public nuisance ”¹

(d). Without modifying or reducing the generality of Section 16-12 of the *City Code*, Section 19-4 of the *City Code* prohibits a wide array of public nuisances.

(e). Additionally, Section 19-1.2 of the *City Code* regulates vacant or abandoned buildings located within the City and the City Council hereby ratifies, affirms and adopts the legislative

¹ The text “and shall be guilty of a misdemeanor” is not applicable. Section 775.08, *Florida Statutes*, the Florida Legislature has specifically classified and defined the various types of offenses. That Section, in essence, defines four (4) terms which are: (1). felony; (2). misdemeanor; (3). noncriminal violation; and (4).crime. Subsection (4) of Section 775.08, Florida Statutes, provides that “[t]he term ‘crime’ shall mean a felony or misdemeanor.” Subsection (1) defines “felony” and Subsection (2) defines the term “misdemeanor”. It is clear that violation of City ordinances are not felonies and Subsection (2) states specifically that “[t]he term ‘misdemeanor’ shall not mean a conviction for . . . any municipal or county ordinance.” Subsection (3) defines the term “noncriminal violation” and also provides that a noncriminal violation “... shall not mean any conviction for any violation of any municipal or county ordinance.” Thus, in sum, the violation of a City ordinance is neither a crime nor a noncriminal violation. Violation of a City ordinance is, thus, best classified as precisely what it is - “violation of a City ordinance.” The maximum penalty for violation of a City ordinance (outside of the code enforcement board/special magistrate or hearing officer process or a State law) is confinement for sixty (60) days and a fine of \$500.00.

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findings and intent set forth in Section 19-1 of the *City Code*.² Further, it is the intent of the City Council that the cited provisions and the provisions of this Ordinance be applied and administered in harmony; provided, however, that, should any conflict arise, the more stringent provision shall be applicable.

(f). Further, Section 19-2 of the *City Code* provides for a Citywide special assessment district and the imposition of special assessments for costs relating to activities by the City to abate nuisances on real property located within the City.

(g). Section 1-8 of the *City Code* provides ~~for the general penalties for relative to code and ordinance violations of~~ with the City Code, which provision relates to the including the provisions of this Ordinance. Further, Section 1-8 authorizes said provision allowing the City to take and assert various remedies against property owners seek relief for alleged violations of this Ordinance in any manner authorized by law, including under Section 2-26 of the City Code (designed to implement the enforcement procedures and remedies such as proceeding under

2 Sec. 19-1. - 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 this ordinance. (b) The recitals set forth above in the "whereas clauses" are hereby adopted as legislative findings of the City Council of the City of Daytona Beach Shores. (c) Neglected vacant or abandoned buildings are a major source of blight in the City of Daytona Beach Shores and pose serious threats to the public's health, safety and welfare. They attract children, vagrants, gang members, and criminal activities. They are also vulnerable to fire set by transients or others using the property illegally. The presence of neglected vacant or abandoned buildings can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area. (d) It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in vacant or abandoned buildings to maintain, secure, and prevent these buildings from becoming a burden to the neighborhood and community or a threat to the public health, safety and welfare. The purpose of this ordinance is to provide standards for maintaining vacant and abandoned buildings and to establish a monitoring program for said buildings. (e) It is critical that coastal communities that are subject to the threats of hurricanes and other storm events take every reasonable action to provide for the safety or life and property during such events and ensure that property owners do likewise. (f) The provisions of this ordinance shall be construed, applied and implemented in conjunction with the provisions of the codes and ordinances of the city together with all other applicable controlling laws (as that term is used in its broadest sense). (g) The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this ordinance. In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

the special magistrate/code enforcement board provisions of Chapter 162, Florida Statutes, which provides for fines of up to \$250.00 per day for first time violations, { \$500.00 per day for repeat violations and \$5,000.00 for one time violations which are irreparable or irreversible in nature) or under Section 2-29 of the City Code (providing for an administrative citation process) or ~~to~~ issuing citations and proceeding in County Court for fines of up to \$500.00 and confinement in jail for a period of up to 60 days ~~as well as an array of diverse other remedies...~~³ and/or to seek and/or to seek damages and/or injunctive or other equitable relief as may be otherwise allowed by law.³

3 Sec. 1-8. - General penalty; continuing violations.

(a) Whenever in this Code or in any ordinance of the City any act is prohibited or is made or declared to be prohibited, unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be prohibited and unlawful in whatsoever manner, the violation of any such provision of the Code or any ordinance shall be punished by a fine not exceeding \$500.00. Any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance of the City shall be deemed a public nuisance and shall be subject to abatement and code enforcement by the City utilizing any remedy available under law. The City may prosecute violations by any means authorized by controlling law and may seek any legal remedy available under controlling law. Each occurrence (violation of a code or ordinance) shall constitute a separate violation and subject the violator to separate penalties. Any code or ordinance violation may result in the City Attorney, with the consent of the City Manager, bringing suit on behalf of the City against the person or persons, or entity or entities, causing or maintaining the violation. Notwithstanding the foregoing, the City shall not seek imprisonment as a penalty for any violation of the Code.

(b) Notwithstanding the provisions of subsection (a), the City Council may prescribe a different punishment and a tailored enforcement process for any violation of this Code.

(c) As used in this section, the phrase "violation of this Code" means any of the following: (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance. (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance. (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(d) As used in this section, the phrase "violation of this Code" does not include the failure of a City officer or City employee to perform an official duty unless the context requires otherwise.

(e) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil penalties or other administrative actions.

(f) Violations of this Code may be abated by injunctive or other equitable or civil relief, and no bond shall be required, nor proof of intent or scienter. The imposition of a penalty does not prevent equitable relief.

(g) In any litigation commenced by the City to enforce the provisions or to enjoin a violation of this Code, the City shall be entitled to reasonable attorney's fees incurred in such litigation.

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(h). The aforestated purposes and intents of the above-referenced provisions of the *City Code* are hereby ratified and affirmed by the City Council for the public interest and in order to protect the citizens of the City.

SECTION TWO: CODE ENFORCEMENT ENHANCEMENT PROGRAM.__The following provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are amended to read as follows:

Sec. 19-1.2. - Regulation of vacant or abandoned buildings.

(a) *Definitions.* The following definitions shall have the following meanings in this Section unless the context of usage clearly demands otherwise and the definitions otherwise set forth in the *City Code* and the *Florida Statutes* shall apply when the context requires and, further, the term hearing officer shall mean and include the City's special magistrate:

(1) *Abandoned* means a parcel of real property including, but not limited to, a residence, building, structure, or any structural improvement on real property, that is vacant and is (i) under a current notice of default and/or notice of trustee's sale; (ii) subject to foreclosure sale where title was retained by the mortgagee of a mortgage, by whatever name; or (iii) transferred under a deed in-lieu of foreclosure/sale and the term also means buildings or structures that have been inspected by the city and the inspection does not reveal the property owner or anyone claiming under him, her or it is presently occupying or will occupy the building or structure, or that the owner has relinquished all right, title, claim and possession of the property and the building or structure.

(2) *Deed in-lieu of foreclosure/sale* means a recorded document that transfers ownership of real property from the mortgagor to the mortgagee upon consent of the mortgagee.

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- (3) *Default* means the failure to comply or fulfill any contractual obligation under the mortgage, by whatever name.
- (4) *Director* means the director of the city department or office designated by the City Manager to administer this Section.
- (5) *Foreclosure* means the process by which real property, placed as security for a real estate loan, is sold at an auction to satisfy the debt when the mortgagor (borrower) defaults on the real estate loan.
- (6) *Mortgage (by whatever name)* means an instrument by which title to real property is lienied in favor of a mortgagee by a mortgagor as security for a real estate loan. This definition applied to any and all subsequent mortgages.
- (7) *Mortgagee* means any person, partnership, association, company, corporation, or any other person or entity holding a mortgage, by whatever name on a property and, typically, means a lender under a note secured by a mortgage, by whatever name.
- (8) *Mortgagor* means a borrower under a mortgage, by whatever name who gives a mortgage as security for the payment of a debt.
- (9) *Multi-story building* means any building with more than two stories.
- (10) *Notice of default* means a recorded notice that a default had occurred under a mortgage, by whatever name, and the mortgagee intends to proceed with a foreclosure sale of the real property or asserts any of its rights under the mortgage, by whatever name.

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(11) *Owner* means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a parcel of real property.

(12) *Real Property* means any improved real estate, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.

(13) *Unoccupied* means a commercial building, commercial structure, or hotel/motel which has no associated, authorized business operating from the premises as evidenced by lack of a current certificate of use or lack of current utility usage including water, sewer, garbage and power and/or a residential building which has no observable, authorized tenancy.

(14) *Vacant* means any building or structure which has remained unoccupied for a period of more than sixty (60) calendar days or which has been occupied by any unauthorized person for any length of time. A building or structure is not deemed to be vacant for purposes of this Section if demolition, construction, alteration, improvements, rehabilitation, or repair is in progress pursuant to a valid, unexpired building permit.

(b) *Compliance required.*

(1) Every owner of real property shall maintain the property in accordance with the requirements and provisions of this Section and all other applicable requirements of the *City Code*.

(2) Every owner of real property is liable for violation of this Section regardless of any contract or agreement the owner has with any third party.

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(3) Except as otherwise provided herein, the director shall have the authority to enforce the provisions of this Section.

(4) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(c) *Public nuisance.*

(1) Any real property in violation of this Section shall constitute a public nuisance.

(2) It is prohibited and unlawful for any building or structure to be vacant for more than sixty [60] calendar days unless one of the following conditions exist:

a. The building or structure is subject to an active building permit for demolition, construction, alteration, modification, rehabilitation, or repair and the owner is progressing diligently to complete the demolition, construction, alteration, modification, rehabilitation, or repair within the time frame set forth in the building permit-; or

b. The building or structure, including the real property on which it is located, does not otherwise constitute a public nuisance and is not reasonably likely to become a public nuisance because the real property is actively maintained and monitored. Actively maintained and monitored means that the condition of the real property complies with the minimum standards set forth in this Section and any and all other applicable provisions of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) or which is otherwise being maintained in accordance with the terms and conditions of an executed and unexpired maintenance or development agreement between the City and the property owner.

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(3) Unless a vacant or abandoned building or structure meets one of the conditions set forth in subsection ~~(2)~~ (c)(2) a. and b., the owner of any vacant or abandoned building or structure, whether unsecured or secured (i.e. boarded) ~~by~~ as a result of voluntary action of ~~by~~ the owner or following ~~as a result of~~ enforcement activity by City ; shall, within thirty (30) days of receiving a Notice of Violation from the City, or within such time as may be extended by the City , rehabilitate the unsecured or boarded building or structure ~~for occupancy, such that it complies with subsection (c)(2) a. or b. and is otherwise a safe, sanitary and sound structure which complies in accordance with all applicable City code and regulations. ; within 60 calendar days after the building is boarded.~~ Rehabilitation means taking corrective action to meet the minimum standards set forth in this Section and complies with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(4) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(d) *Structural and building standards.*

(1) All vacant or abandoned property shall be maintained in structurally sound condition and meet the following minimum building standards:

a. Complies with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. All electrical, natural gas, sanitary and plumbing facilities shall be maintained in a condition which does not create a hazard to public health or safety.

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c. All fences, walls, arbors, or other similar structures, whether made of masonry, wood, metal, vinyl or other materials, shall be maintained in a structurally sound condition in accordance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

d. The City hereby adopts by this reference thereto (a copy of which is attached to this Section and, thus, shall be maintained in the office of the City Clerk) the American Society of Civil Engineers (ASCE)² "Guideline for Structural Condition Assessment of Existing Buildings" (publication "SEI/ASCE 11-99), or the latest version of that document. This publication shall be used by City personnel in making assessments, evaluations and determinations as set forth in this Section.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(e) *Fire safety.*

(1) All vacant or abandoned property shall be maintained in a manner which does not create an unreasonable risk of fire and which meets the following minimum fire safety standards:

a. Adherence to and compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. Is maintained in a manner where the totality of the property is free of all vegetation, weeds, dry brush, ~~bush~~, garbage, trash, debris, appliances, building materials, rubbish, accumulation of newspapers, circulars, flyers, notices, except those any required by law, which may constitute a safety or fire hazard.

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- c. Is maintained in a manner where the totality of the property is free of any storage of flammable liquids or other materials which would constitute a safety or fire hazard.
- d. Is maintained in a manner where the heating and air conditioning facilities or heating and air conditioning equipment are either removed pursuant to valid permit or maintained in accordance with applicable codes and ordinances. If heating equipment is removed, any fuel supply shall be removed or terminated in accordance with applicable permits, codes and ordinances.
- e. Is maintained in a manner where all existing fire protection systems are kept in operating condition in accordance with applicable codes and ordinances, unless written authorization for removal of those systems has been granted by the City's Fire Marshal.
- f. Is maintained in a manner where no fire hydrants, including private hydrants, that provide water flow, are removed, tampered with, or taken out of service, unless authorized in writing by the City's Fire Marshal.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(f) *Security standards.*

(1) All vacant or abandoned property shall be maintained in a manner which secures it from any unauthorized entry and meets the following minimum security standards:

- a. All windows, doors, gates, fences or any other opening of such size that may allow access of persons, animals, or other elements, to the interior of the property, building or structure shall

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be secured, locked, closed, or maintained in such a manner so as to prevent unauthorized entry and from being or becoming create an attractive nuisance.

b. Windows, sliding doors, or similar openings shall provide ~~either~~ intact glazing ~~or~~ and resistance to entry equivalent to or greater than that of a solid sheet of one-quarter-inch ($\frac{1}{4}$ ") plywood, ~~or~~ Otherwise, $\frac{1}{4}$ " plywood, painted to protect it from the elements, cut to fit the opening, and securely nailed using ~~6D galvanized nails spaced not more than six inches on the center,~~ shall be used to cover any opening. Boarding may be utilized as a temporary measure for up to sixty (60) calendar days after which all openings must be re-glazed in accordance with applicable codes and regulations.

c. Doors and service openings with thresholds located ten feet or less above grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt.

d. Exterior doors, other than the operable door to be maintained, may be closed from the interior of the building or structure by toe nailing them to the door frame using 10D or 16D galvanized nails.

e. There shall be at least one operable door into each building or structure to allow access to all portions of the building or structure. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or deadlatch.

f. All locks shall be kept locked. When a door cannot be made operable and is not visible from any public right-of-way, including the beach, or neighboring property, a door shall be

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constructed of three-quarter-inch CDX plywood and shall be equipped with a lock as required in this Section.

g. There shall be a sign installed that is no less than 18 inches × 24 inches in size and no greater than 30 inches × 30 inches in size posted on the front of the exterior building or structure so it is legible from the public-right-of-way with the following information:

(i) name and 24-hour contact telephone number and address of the owner, responsible party, or property management company; and

(ii) the statement that "THIS PROPERTY MANAGED BY—————" with the appropriate name inserted and "TO REPORT PROBLEMS OR CONCERNS CALL —————" with the 24-hour telephone number listed. The sign shall be constructed and printed with weather resistant materials and shall be removed when the building is no longer vacant.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(g) *Debris removal.*

(1) All vacant or abandoned property including, but not limited to, all adjoining yard areas shall be maintained free of debris, combustible materials, litter, garbage, or any other item that gives the appearance the property is vacant or abandoned by maintaining adherence to and compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

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(h) *Appearance.*

(1) All vacant or abandoned property must be maintained in a manner which minimizes the appearance of vacancy and meets the following minimum appearance standards:

a. The property shall be maintained free of graffiti, tagging, or similar markings by removal or painting over within 24 hours with similar exterior grade paint to match the color of the exterior of the building or structure.

b. Any demolition, construction, alteration, improvements, or rehabilitation shall be completed during the term of a valid building permit or building permit extension issued by the director, building official, or their designee.

c. All exterior surfaces shall be maintained to prevent entry including, but not limited to, replacement or repair to any broken windows, doors or siding materials and be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.

d. All landscaping including, but not limited to, grass, turf, trees, hedges, shrubs, flowers, and other similar materials, shall be maintained in accordance with codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) and in such condition as not to create the appearance of a vacant or abandoned building or structure.

e. All pools, spas, or other areas of standing water shall be kept in working order so that the water remains clear and free of pollutants or debris, unless the pools, spas, or other areas are drained and kept dry. All properties with pools, spas, or other areas of standing water must meet

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the minimum fencing requirements as set forth in the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(i) *Additional responsibilities relating to multi-story buildings or structures.*

(1) Each owner of a multi-story vacant or abandoned building or structure shall provide to the City Manager, or designee, a structural engineering analysis completed by a certified State of Florida Professional Engineer detailing the existing conditions present with regard to the vacant or abandoned building or structure. The structural engineering analysis shall include details regarding the structural integrity of the building or structure and its components, shall identify all potential life safety threats, and shall address the building or structure's ability to withstand the windload it was originally built to withstand.

(2) The structural engineering analysis shall be provided to the City Manager, or designee, within thirty (30) days of the effective date of this Section and each January 1 of each year during which the vacant or abandoned building or structure remains vacant or abandoned.

(3) The structural engineering analysis shall be provided to the City at the owner's expense and the data provided will form the basis on which the determination will be made regarding whether or not the existing building or structure on the should remain in place pending potential redevelopment.

(4) If the structural engineering analysis demonstrates that the existing building or structure may remain without providing a potential threat to the public health, safety and welfare, it may

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remain in place subject to the owner's continuing obligation to keep the structure secure and the in compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(5) If the structural engineering analysis demonstrates that the existing structure represents a potential threat to the public health, safety and welfare, the owner shall expedite and facilitate the removal of said potential threat or existing building or structure.

(6) Expedient removal of said potential threat or existing building or structure shall take place ninety (90) or fewer days from said structural analysis or as prescribed by the building official.

(j) *Regulation of dangerous buildings.*

(1) As used in this Section dangerous building means any building or structure which has one or more of the following defects or conditions and is not subject to an executed and unexpired maintenance or development agreement as provided for in this Section:

a. Any door, aisle, passageway, stairway or other means of exit does not conform to the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. Any portion of the building or structure has been damaged by fire, storm, wind, flood, or by any other cause so that its structural strength or stability is appreciably less than it was before such damage and does not meet the minimum requirements of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) for a new building or structure, purpose or location.

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- c. Any part of the building or structure is likely to fall or to become detached or dislodged, or to collapse and injure persons or damage property.
- d. Any portion of the building or structure has settled to such an extent that its walls or other structural portions have materially less resistance to wind than is required in the case of new construction by the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).
- e. The building or structure or any part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support or for other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fall or give away.
- f. The building structure, or any part of the building or structure is manifestly unsafe for the purpose for which it is used.
- g. The building or structure is damaged by fire, wind, or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants or criminals, or enables persons to utilize the building or structure for committing a nuisance or an unlawful or immoral act.
- h. A building or structure used or intended to be used for dwelling or commercial, ~~or industrial~~ purposes, including the adjoining grounds, which because of dilapidation, decay, damage, faulty construction or otherwise, is unsanitary or unfit for its intended use or is in a condition that is reasonably determined, using sound and generally accepted public health

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management practices and principles, is likely to cause sickness or disease or is otherwise a dangerous building.

i. When a building or structure is vacant or dilapidated and the interior of the building is exposed to the elements or otherwise accessible for entrance by trespassers.

j. Any multi-story building not kept secure and in compliance with the City's codes and ordinances together with all applicable controlling laws (as that term is used in its broadest sense).

(2) ~~k.~~ Upon request by the City, a property owner shall provide the City with copies of insurance policies relating to property which is the subject of this Section.

~~1.~~

(3) ~~i.~~ Whenever the City Manager, or designee, determines that the whole or any part of any building or structure is a dangerous building or otherwise abandoned, the City Manager, or designee, shall issue a notice that the building or structure is dangerous or abandoned.

a. Such notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the most recent Volusia County Property Appraiser records, by certified mail return receipt requested or personal service.

b. The notice shall specify the determination made by the appropriate City official and the action that will be or can be taken by the City in order to remediate the conditions set forth in the notice.

c. Any persons receiving a copy of the notice shall have the right to appeal the determination to a hearing officer appointed by the City Council as provided for and governed by section 2-28 of the *City Code* and request a hearing within thirty (30) days after receiving a copy of the notice.

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i. All costs and fees related to the hearing shall be paid by the party requesting the hearing as established by resolution adopted by the City Council. The hearing officer shall hear all arguments made relating to whether the building or structure is a dangerous building or abandoned. The person to whom the notice is directed shall have the opportunity to show cause why the hearing officer should not order appropriate remediation of the dangerous conditions or order the building or structure to be demolished or otherwise made safe, or properly maintained. The hearing officer shall take testimony of the City staff or any other person requested by the City staff, the owner of the property or any other person requested by the owner, and any interested party as determined by the hearing officer. The hearing officer shall render its final administrative decision as to what action can be taken to order the building or structure to be demolished, otherwise made safe, or properly maintained.

ii. The decision made by the hearing officer shall be final and subject only to judicial review by a court of competent jurisdiction in which case the decision of the hearing officer shall be stayed pending a judicial determination on the matter.

iii. If it is determined by the hearing officer that the building or structure should be demolished or otherwise made safe or properly maintained, the hearing officer shall so order, fixing a time within which the owner or party in interest must comply with the order. The order may require the owner, agent, or person occupying the property to demolish or bring the building and surrounding property into compliance with the terms and conditions of the order and all applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

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iv. If the owner or party in interest fails to appear at the properly scheduled hearing officer hearing, the hearing officer may proceed with the hearing and make all findings it deems necessary to bring the property, buildings and structures into compliance with the terms of applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

v. A copy of the findings and determinations of the hearing officer at the hearing shall be served on the owner or party of interest in the manner prescribed in this Section for notices.

vi. In the event that the owner or party in interest does not comply with the decision of the hearing officer, the City Council may in its discretion, contract for the demolition, making safe, or maintaining the exterior of the building or structure or grounds adjoining the building or structure or to otherwise bring the building, structure or premises into compliance with the hearing officer's decision. The costs of the demolition, or making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure, incurred by the City Council to bring the property into conformance with this Section shall be reimbursed to the City by the owner or party in interest whose name the property appears. Costs include, but are not limited to, actual costs incurred in bringing the property into compliance with the hearing officer's decision as well as administration fees and actual attorney fees and court costs.

vii. The costs of the City may be assessed by the City as a special assessment, with any and all liens arising as a result thereof, in accordance with the provisions of controlling law.

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ii. viii. The following list is a non-exclusive list of the factors which may be considered by a hearing officer or the City Council, as the case may be, when establishing objective requirements necessary to attain compliance with this Section relative to the condition of a building, structure or premises:

{1} 1- A monitoring program for inspection and maintenance conducted on a periodic basis of no less frequency than ~~at~~ once each 12-month period to be reviewed and approved by a licensed engineer or contractor.

{2} 2- Elimination of access by the general public to the building, structure or premises. Such limitations shall include, but need not be limited to, preventing unauthorized entry or trespass to the building, structure or premises by means such as unsecured doors, windows as well as the fencing of the property. Access to a building, structure or premises shall be provided by at least an operable door with reasonable accommodation made to provide access to public safety officials to address emergency conditions or situations occurring upon or within the building, structure or premises. Signs shall be posted on the exterior of the property stating that trespassing is prohibited which signs shall be of a size and nature and posted in a manner that complies with controlling Florida law and authorized the citation, removal or other appropriate action to prosecute or remove trespassers. The property owner shall provide the City with written authorization to cite trespassers upon the property; provided, however, that the City may exercise its normative police powers relative to the property as it deems warranted and appropriate.

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~~(3)~~ 3- A monitoring program for electrical, natural gas, sanitary sewer, plumbing and other utility services relating to the property.

~~(4)~~ 4- Elimination of the risk of damage caused by airborne objects or materials with the removal of shard risks.

~~(5)~~ 5- Fire safety management and monitoring shall include, but not be limited to, the prohibition of storage of flammable liquids or materials on the property except for certain expressly provided conditions agreed upon by the City. All other fuel or flammable liquid supplies not expressly authorized by the City to be present on the property shall be removed from the property including, but not limited to, debris that could be flammable, combustible materials of every nature and solid waste such as garbage.

~~(6)~~ 6- Wind resistance and collapse prevention shall be reviewed at least every twelve (12) months.

(k) *Registration; duties and responsibilities relating to registration.*

(1) The owner of any vacant or abandoned building or structure other than a single-family residence shall register in the property in the City's "Vacant or Abandoned Building Monitoring Program" pursuant to this Section.

(2) The registration must be ~~accomplished~~ made to the City Building Official by all owners of property that is vacant or abandoned ~~within~~ for more than sixty (60) calendar days ~~of the day that the property becomes vacant or abandoned.~~

(3) The registration information shall, at a minimum, include:

a. The address of the vacant or abandoned building or structure.

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- b. The property appraiser tax parcel identification number of the real property where the vacant or abandoned building or structure is located.
 - c. The name, address, and telephone number of the owner. If a notice of default has been issued, the name, address, and phone number of the mortgagee, by whatever name, shall be included. In the case of a corporation or out of area mortgagee, the local property management company or agent responsible for the security, maintenance, and monitoring of the property shall be included.
 - d. The date the building or structure became vacant.
 - e. Any change in the information provided pursuant to this section including, but not limited to, a change in ownership, shall be filed with the director within fifteen (15) days of the change.
- (4) The owner of any vacant or abandoned building or structure which is subject to the registration requirements of this Section shall designate a responsible agent for the building or structure. Any owner who lives within sixty (60) miles of the vacant or abandoned building or structure may designate himself, herself or itself as the responsible agent.
- (5) The owner of any vacant or abandoned building or structure who lives more than sixty (60) miles from the building or structure shall name a responsible agent who lives within or whose place of business is within sixty (60) miles from the building or structure. In the event an owner is a corporation, association, or other type of entity, the owner shall either have its principal place of business within the City or may designate a responsible agent who has its principal place of business within the City or lives within sixty (60) miles from the building or structure.

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(6) The designation of responsible agent shall constitute an authorization by the owner for the responsible agent to act on behalf of the owner with regard to all requirements under this Section and may accept all notices, including all notices pursuant to this this Section, all notices of proposed abatements or code enforcement actions, of whatever type or nature, relating to the subject property.

(7) The owner's designation of a responsible agent shall not relieve the owner of any obligation to comply with the provisions of this Section.

(8) The owner or responsible agent of a vacant or abandoned building or structure which is required to be registered in the vacant or abandoned building monitoring program shall inspect or cause the inspection of such vacant or abandoned building or structure not less than one time in every two-week period.

(9) Such owner or responsible agent shall keep or cause to be kept a written log of all inspections. The log shall contain, at a minimum, the following information:

- a. The date and time of the inspection;
- b. The name and signature of the person performing the inspection;
- c. A notation of any problems or violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense);
- d. A detailed description of any corrective action performed to address any violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). A copy of the log shall be provided to the City upon request of the director, or designee.

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(10) The City Manager, upon a finding that conditions exist within the City that warrant registration of single family residences, may issue a proclamation that includes single family residences within the requirements for registration as set forth herein.

(l) *Fees.*

(1) The owner of a vacant or abandoned building or structure subject to registration shall pay a vacant or abandoned building monitoring program annual registration fee as set forth in a resolution adopted by the City Council. Until such fee is adopted by resolution, it shall be in the amount of \$25.00 per quarter of a year based upon a calendar year.

(2) The fee shall be calculated on a quarterly basis and the entire fee shall be due and owing at the time of registration. Registration fees will not be otherwise prorated.

PART II. AMENDMENTS TO *CITY CODE* RELATING TO ENHANCED CODE ENFORCEMENT PROGRAM/CONDEMNATION AND DEMOLITION

SECTION THREE: CODE ENFORCEMENT ENHANCEMENT PROGRAM; CONDEMNATION AND DEMOLITION. The following new provisions are added to *the Code of Ordinances of the City of Daytona Beach Shores* as follows:

DILAPIDATED, UNSANITARY, UNSAFE OR UNINHABITABLE BUILDINGS

Authority To Condemn.

The City Council hereby authorizes and empowers the City's special magistrate to condemn and order to be demolished and removed, or to be put in a sound state of repair, any and all buildings and structures within the City found to be in a dilapidated, unsanitary, unsafe or uninhabitable condition. Additionally, City officials, as designated herein in emergency circumstances, are authorized to demolish and remove, or to be put in a sound state of repair, any and all buildings

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and structures within the City found to be in a dilapidated, unsanitary, unsafe or uninhabitable condition as set forth in the City's codes and ordinances.

Periodic Inspection Of Buildings; Notice Of Condemnation; Hearing.

(a). The persons designated building official, the fire chief, a code enforcement inspector and such other persons designated by the City Manager, are authorized to periodically inspect buildings and structures within the City, and if such official finds any building or structure to be in a dilapidated, unsanitary, unsafe or uninhabitable condition, shall report such fact in writing to the City Manager, specifying in detail the condition of the building or structure. The City shall thereupon determine whether or not a public hearing shall be held to condemn such building or structure. If the City Manager determines such hearing will be held, he or she shall cause to be placed upon such building or structure a notice of condemnation, and simultaneously therewith direct to be delivered to the owner or owners, or any one owner, either in person or by certified or registered mail to the last known address as shown by the tax assessment rolls of the County, a notice to the owner of the property involved, that the building or structure thereon has been found by officials of the City to be in dilapidated, unsanitary, unsafe or uninhabitable condition, and that the City intends to condemn the same. Such notice shall further provide that a hearing will be held before the City's special magistrate at a stated time and at a stated place, and that at such time and place a full determination will be made by the City's special magistrate as to the condition of the building or structure. If the owner cannot be located for personal delivery or receipt of certified or registered mail of the notice, after reasonable inquiry, then the notice shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation

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published within the City and the property posted with a notice, and such service shall be deemed sufficient to show that the notice requirements of this section have been met without regard to whether or not the property owner actually received such notice.

(b). The property owner and the City Manager, or designee, at the hearing, shall be heard and to present such relevant evidence as they desire. The City's special magistrate may accept evidence from the general public as deemed appropriate for the particular case.

(c). In the event that a mortgagee is evidenced in a title search, the mortgagee shall be noticed at the address set forth on the mortgage, if any, as well as at any address indicated on reasonably available records such as the records of the Florida Department of State.

Uninhabitable, Dilapidated, Unsafe Or Unsanitary Buildings Or Structures.

(a). A building or structure shall be uninhabitable, dilapidated, unsafe or unsanitary when:

(1). An order has been issued by the City under its codes or ordinances finding that a public nuisance exists; and

(2). The building or structure is found to have one or more of the following characteristics:

a. It is vacant, unguarded and open at doors or windows;

b. There is a deleterious accumulation of debris;

c. Its condition creates hazards with respect to means of egress and fire protection as provided for the particular occupancy;

d. There is a falling away, hanging loose or loosening of any siding, block, brick, or other building material;

e. There is deterioration of the building or structure or structural parts;

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- f. It is partially destroyed;
- g. There is an unusual sagging or leaning out of plumb of the building or structure or any parts of the building or structure and such effect is caused by deterioration or over-stressing;
- h. The electrical or mechanical installations or systems create a hazardous condition;
- i. An unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems;
- j. Combustible material is located on the property in an unsafe manner;
- ~~k.-j.~~ It is in ~~substantial~~ substantive non-compliance with the *International Property Maintenance Code* as enacted by the City.

l. The certificate of occupancy for one or more buildings on the property has been suspended or revoked by the City's building official.

(b). A building or structure found to be uninhabitable, dilapidated, unsafe or unsanitary as provided in this section shall be subject to demolition.

(c). The City shall implement the provisions of the adopted *International Property Maintenance Code*, as enacted by the City, in conjunction with the provisions of this Ordinance.

(d). The City may sell any material salvaged from any demolished building or structure and any other property contained therein or thereupon and credit the proceeds against the cost of demolition or removal, or where an independent contractor is employed to demolish or remove any such building or structure, to convey such material or property to the contractor as compensation or partial compensation for such demolition or removal. Should the proceeds from the disposition of such materials or property exceed the cost of such demolition or removal, such

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excess shall be used, applied, or paid over in accordance with the written directions of the parties entitled thereto.

(e). The City Manager is authorized to expend such funds as may be necessary to carry out the provision of this Ordinance. Nothing contained herein shall require the City Council to appropriate or the City Manager expend any funds to carry out the purpose of this Ordinance. The authority granted herein is permissive and shall not be construed to impose an obligation on the City to condemn any building or structure.

(f). Nothing herein precludes exercise of emergency powers by the City otherwise available in the face of imminent threat to public safety.

(g). The provisions of this Ordinance shall not be deemed to repeal or modify any provision of a City code or ordinance relating to condemning of buildings and structures but the provisions herein shall be supplemental and in addition to the powers that may be exercised by the City through its City Council or its officers and employees.

Order Of Condemnation; Repair Or Removal.

If the City's special magistrate determines upon hearing as provided in this Ordinance that such building or structure should be condemned, such fact shall be stated in writing to the property owner including reasonable specifications as to the deficiencies justifying such condemnation and the property owner shall be given a reasonable time, according to the size, condition and location of such building or structure, in which to cause the building or structure to be demolished and removed, the illegal conditions abated, or placed in a state of sound repair, and in the event of failure on the part of the property owner within such time period to effect the

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demolition and removal, abatement or repair, then such building or structure may be demolished and removed by the City and the cost of the same specially assessed as a lien against the land. The order of condemnation shall be delivered to the property owner or owners, or any one owner, either in person or by certified or registered mail to the last known address as shown by the tax assessment rolls of the county. The lack of a signed returned receipt shall not constitute a failure to notify owners or interested parties. Service shall be deemed complete upon mailing. The order of condemnation shall be recorded in the public records of the County as a municipal special assessment lien in accordance with the *City Code*. The recordation of such order of condemnation as a municipal special assessment lien as provided in this Section shall constitute notice to any subsequent purchasers, transferees, grantees, mortgagors, mortgagees, lessees, lienors, and all persons having, claiming or acquiring any interest in the property described therein, or affected thereby. No condemned building or structure stating that the same is condemned shall be occupied or used for any purpose during the period of time the same is condemned unless an order of the special magistrate provides to the contrary and, absent, such an order, the continuing status of the building or structure shall be that it is condemned.

Demolition By City; Municipal Special Assessment Lien.

If, within the time stated in the order of condemnation/municipal special assessment lien provided for in this Ordinance, the property owner fails to demolish and remove or repair such condemned building or structure, and has not shown cause before the City's special magistrate which justifies an extension of time, the City's special magistrate shall forthwith order such building or structure to be demolished or removed by the City and the actual costs including

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administrative costs of the same specially assessed as a municipal special assessment lien upon the land as set forth in the *City Code*. The City may enforce its municipal special assessment lien and maintain a personal action against the property owner or owners at the same time to recover such cost and any and all interest accrued thereon. In any suit by the City either at law or in equity for the collection of the amount of the lien, the City shall be entitled to recover its actual costs and attorney's fee for the suit and such costs and attorney's fee shall also become a lien upon the land. Any lien for costs and fees incurred pursuant to the implementation of this Ordinance shall constitute a lien for special assessments, and with the same penalties and rights of collection, foreclosure, sale and forfeiture as obtained for special assessment liens.

Emergency Powers.

The City Manager, or designees, shall have the power to promptly cause a building, structure or portion thereof to be made safe or cause its removal in cases of emergency which have been determined to involve imminent danger to human life or health. For this purpose such building, structure or portion thereof, or land on which such structure stands or abutting land, may be entered by such official with such assistance and at such cost as the official may deem necessary. The official may order the vacation of adjacent structures and may protect the public by appropriate fencing or such other means as may be necessary, and for this purpose may close a public or private way. All costs incurred by the City pursuant to this Section shall be assessed and enforced as stated in this Ordinance and other controlling provisions of the City's codes and ordinances.⁴

⁴ Reference is directed to the provisions of Sections 933.20 through 933.30, Florida Statutes.

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Implementing Administrative Actions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative rules, the seeking of administrative inspection warrants, and the imposition of liens; all such actions being taken in concert with the City Attorney.

PART III. AMENDMENTS TO *CITY CODE* RELATING TO CERTIFICATE OF USE, ~~AND CERTIFICATE OF COMPLIANCE FOR VACANT PROPERTY, AND HABITABILITY~~ *INTERNATIONAL PROPERTY MAINTENANCE CODE*⁵ ADOPTION

SECTION FOUR: CODE ENFORCEMENT ENHANCEMENT PROGRAM; ~~HABITABILITY COMPLIANCE~~ REQUIREMENTS. The following provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are amended to read as follows:

Sec. 14-61.1. - Zoning confirmation; certificate of use or certificate of compliance-vacant property. ~~habitability~~.

(a) A zoning confirmation and certificate of use process shall be completed for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, prior to a certificate of use being issued by the City and a certificate of use is required for all new occupancies or changes in occupancies relative to all commercial and industrial uses within the City. It is prohibited and

⁵ This model code is published by the International Code Council (ICC) which is a non-profit organization dedicated to developing model codes and standards used in the design, build and compliance process. The International Codes (I-Codes) are the widely accepted, comprehensive set of model codes used in the US and abroad to help ensure the engineering of safe, sustainable, affordable and resilient structures. All 50 states and the District of Columbia have adopted the I-Codes® at the state or jurisdictional level. Internationally, code officials recognize the need for a modern, up-to-date property maintenance. The International Property Maintenance Code® governs the maintenance of existing buildings and is designed to meet this need through model code regulations that contain clear and specific property maintenance requirements with required property improvement provisions. In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

unlawful to place commercial ~~or industrial~~ property in use without first obtaining a zoning confirmation and certificate of use from the City.

(b) ~~A~~ An application for a certificate of compliance ~~habitability~~ process shall be submitted to the City Building Official ~~completed~~ for all vacant or abandoned commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, upon a building or structure located on such property being vacant for a period exceeding sixty (60) calendar days. It is prohibited and unlawful ~~to allow~~ for the owner of a building or structure located on a commercial ~~or industrial~~ property to ~~be~~ allow said building or structure to remain vacant for more than sixty (60) calendar days without ~~timely receiving~~ applying for a certificate of compliance for vacant property ~~habitability~~ from the City's Building Official. The application shall be accompanied with an associated a plan of maintenance while the building or structure is vacant to ensure that the building or structure meets all applicable health, safety and welfare requirements of the City Code is and remains habitable and safe to the public while vacant. A certificate of compliance ~~habitability~~ shall be applied for every ~~6~~ twelve (12) months after the initial certificate of compliance ~~habitability~~ application is issued ~~due~~ and it is prohibited and unlawful to ~~maintain~~ allow a ~~vacant~~ building or structure to remain vacant without ~~being granted~~ obtaining a timely certificate of compliance ~~habitability~~ and appropriately displaying the certificate of compliance ~~habitability~~ on the vacant building or structure. A certificate of compliance ~~habitability~~ is required for each vacant building or structure located on a parcel of property.

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(c) An application for a zoning confirmation and certificate of use or a certificate of compliance ~~habitability~~ for a building or structure shall be submitted to the City in such form as the City Manager, or designee, shall prescribe. An applicant for a zoning confirmation and certificate of use or certificate of compliance shall pay an application fee as established in the schedule of fees adopted by the City Council.

(d) The owner or lessee or agent of either shall make application for zoning confirmation and certificate of use prior to commencing the use of property or for a certificate of compliance for vacant property ~~habitability~~ within five (5) calendar days after a building or structure has been vacant for a period of sixty (60) calendar days.

(e) Zoning confirmation and certificate of use ~~or a certificate of habitability~~ shall only be issued by the City when the use on the property is found to be in compliance with all applicable land development regulations of the City or the use is a legal non-conforming use.

(f) Prior to the change in occupancy relative to a parcel of real property, and as part of the zoning confirmation and certificate of use application process, a site plan shall be submitted to the City for review and approval which site plan shall include, but not be limited to, a parking plan depicting the parking lot that will serve the applicant business. Within five (5) days after a building or structure has been vacant for a period of sixty (60) calendar days, the property owner shall file an application with the City's Building Official requesting a certificate of compliance ~~habitability~~ which shall contain a statement identifying a plan of maintenance while the building or structure is vacant.

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(g) Upon acceptance of a completed application, the application shall be forwarded to the City's pertinent staff for approval of proper zoning, and compliance with the pertinent land development regulations and building regulations of the City. The Public Safety Department shall evaluate the property and inspect the property, as necessary, to ensure compliance with the fire codes and applicable safety codes.

(h) The City may engage in inspections⁶ by City inspectors as determined to be necessary and desirable with regard to the property under consideration. If it is determined that the applicant's business location does not comply with the requirements of the City's land development regulations, building codes, fire codes, or safety codes, such application shall be denied by the City and the applicant shall not be permitted to engage in the business at such location or, in the case of a vacant building or structure, administratively ordered to remedy all identified issues.

(i) Upon approval of the zoning confirmation and other matters set forth in this section by the City a certificate of use shall be issued to the applicant and the applicant shall prominently display the certificate of use at the property for which the certificate of use was issued or, in the case of a certificate of compliance for vacant property ~~habitability~~, upon approval of the vacant building or structure maintenance plan, a certificate of compliance ~~habitability~~ shall be issued.

(j) The Building Official/Community Services Director may revoke a certificate, permit or approval issued under the provisions of this section in cases where there has been any false statement or misrepresentation as to a material fact in the application or plans on which the

⁶ Reference is directed to the provisions of Sections 933.20 through 933.30, *Florida Statutes*.

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permit or approval was based or, in the case of a certificate of compliance ~~habitability~~, the vacant building or structure maintenance plan has not been adhered to.

(k) Right of appeal.

(1) If the designee of the City Manager denies a certificate of use or certificate of compliance ~~habitability~~, or the Building Official/Community Services Director revokes a certificate of use or certificate of compliance ~~habitability~~ the aggrieved party ~~applicant~~ therefore shall have the right to appeal such action to the City Manager by filing a notice of appeal with the City Manager within ten (10) days after such action. The City Manager, within fifteen (15) days of such appeal, shall hold an informal hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations. Written notice of the hearing shall be provided by the City Manager to the aggrieved party ~~applicant~~, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the action. The City Manager, after hearing from all interested parties, shall either sustain or reverse the action. The City Manager shall issue a written decision.

(2) If the ~~applicant desires to appeal~~ the decision of the City Manager is adverse, the ~~applicant~~ aggrieved party shall have the right to bring an appeal ~~the decision of the City Manager~~ to the City's special magistrate by filing a notice of appeal with the City Clerk within ten (10) days after receiving notice of the adverse decision ~~such action~~. The City's special magistrate shall, as soon as practicable, hold a hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations or if the certificate of compliance ~~habitability~~ should have been granted or not revoked. Written notice of the hearing

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shall be provided by the City Clerk to the aggrieved party ~~applicant~~, which notice shall set a date for the hearing ~~giving the applicant an opportunity to be heard on the~~ appeal action. The City's special magistrate, after hearing from all interested parties, shall either sustain or reverse the action of the City Manager and shall issue a written decision which shall be final City action on the matter.

(l) ~~applicant for a zoning confirmation and certificate of use or certificate of compliance habitability shall pay a fee for applying as well as a fee for each appeal as established in the schedule of fees adopted by the City Council.~~ An aggrieved party shall pay the appeal fee established in the schedule of fees adopted by the City Council for appeals to be heard by the Special Magistrate at the time of filing an appeal with the City Clerk.

(m) Fortunetellers, astrologers, pain management clinics and similar enterprises.

(1) No certificate of use will be issued to any person engaged in the business of fortunetelling, astrology, palmistry, spiritualists or mediums or other occupation professing to foresee or predict the future or recall past events by any physical or spiritual means, or involving a pain management clinic until such person shall furnish the following information to the City:

- a. The place or places of residence of the applicant for the five (5) years immediately preceding application.
- b. The address and nature of business engaged in for five (5) years immediately preceding the date of application.
- c. The names and present addresses of all persons, whether adults or minors, connected with or associated with the proposed business or occupation.

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(2) The City shall direct an inquiry to the Volusia County Sheriff and the City's Chief of Police in order that they can accomplish such investigation(s) and issue such report(s) as they deem appropriate in order to evaluate the moral and law abiding character of the applicant.

(3) The applicant for a pain management clinic certificate of use shall provide to the City proof of registration with the Florida Department of Health, pursuant to F.S. § 458.3265 or 459.0137, as amended, prior to the issuance of a certificate of use for the business. If the registration of a pain management clinic is revoked or suspended by the Florida Department of Health, the certificate of use shall be revoked automatically and shall not be appealable.

(4) The application for a certificate of use for a pain management clinic shall include an affidavit by the owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended, attesting to the fact that no employee, full-time, part-time, contract, independent or volunteer has been convicted of or has pled guilty or nolo contendere at any time to an offense constituting a felony in this State or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance within a five-year period prior to the date of employment at the pain management clinic.

(5) If at any time the City determines that a pain management clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this section or any other applicable code or law, the City may revoke the certificate of use through the process outlined in this Code.

(6) The application for a certificate of use for a pain management clinic shall disclose, in detail, the names and addresses of the owners and operators of the pain management clinic and

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shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended.

(7) A copy of each fortuneteller, astrologer, pain management clinic and similar enterprise's certificate of use shall be posted in a conspicuous location at or near the entrance to the business in order that it may be easily observed and read at any time.

SECTION FIVE: CODE ENFORCEMENT ENHANCEMENT PROGRAM; HABITABILITY REQUIREMENTS SUPPORT CODES ADOPTED. The following new provisions are added to *the Code of Ordinances of the City of Daytona Beach Shores* as follows:

(a). The City of Daytona Beach Shores hereby adopts the ~~2018 version of the~~ *International Property Maintenance Code*®, 2018 edition, as published by the International Code Council, as it may be amended from time to time, subject to the conditions set forth in this Section and all references to the local jurisdiction shall be to the City of Daytona Beach Shores.

(b). The general purpose of the adoption of the *International Property Maintenance Code*® is to facilitate its application is making determinations of ~~habitability~~ compliance for vacant properties as set forth in Section Four of this Ordinance.

(c). With regard to any conflict between the *International Property Maintenance Code*® and the *City Code* and *Florida Statutes*, the local and State law provisions shall prevail and apply.

(d). When a provision of the *International Property Maintenance Code*® requires the establishment of a regulatory standard or the establishment of a local fee; the standard set forth in the *City Code* or the fee adopted by the City Council shall be applicable. By way of example, Section 302.4 of the *International Property Maintenance Code*® relates to weed growth and, thus,

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the standard set forth in Section 13-5 of the *City Code* relating to and restricting the growth of weeds would be applicable. When a standard is not prescribed in the *City Code* as to a particular matter, the provision shall not be enforced by the City.

(e). With regard to processes and procedures, the processes and procedures set forth in Chapter 162, *Florida Statutes*, and the provisions of the *City Code* shall control and be applicable.

PART IV. TECHNICAL AND ADMINISTRATIVE PROVISIONS

SECTION SIX: IMPLEMENTING ADMINISTRATIVE ACTIONS.

Without in any way limiting the provisions of this Ordinance, the City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the purposes and provisions of this Ordinance as such Charter officials may deem appropriate in their respective roles and functions under the *City*.

SECTION SEVEN: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the code enforcement and nuisance abatement actions of the City of Daytona Beach Shores and any and all actions of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

SECTION EIGHT: CODIFICATION; SCRIVENER'S ERRORS.

In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

(a). The provisions of Sections One through Seven of this Ordinance shall be codified while the remaining Sections shall not be codified; provided, however, that the Code codifier shall take all actions necessary to implement the codification of the provisions of this Ordinance.

(b). 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 NINE: CONFLICTS.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION TEN: 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 ELEVEN: 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

In this Ordinance, when text is being amended, ~~striketrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

Approved as to form and legality:

RAYMOND J. BRANCH, CITY ATTORNEY

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

Adopted on second reading this day of , 2019.

In this Ordinance, when text is being amended, ~~striketrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.



**CITY COUNCIL AGENDA MEMORANDUM
JANUARY 14, 2020 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Resolution 2020-01 in support of keeping the Daytona Tortugas Baseball team

SYNOPSIS:

CMBR Lindauer requested that a Resolution be drafted in support of keeping the Daytona Tortugas Minor League Baseball team.

FISCAL IMPACT STATEMENT:

There is no fiscal impact to the City.

BACKGROUND:

The County of Volusia recently adopted a similar resolution in support of keeping the minor league team.

LEGAL REVIEW:

Reviewed and approved as to form

RECOMMENDATION:

It is recommended to adopt the Resolution.

SUGGESTED MOTION:

I move to adopt Resolution 2020-01 on first reading.

ATTACHMENT: 1. Res 2020-01 supporting Daytona Tortugas Baseball Team

RESOLUTION 2020-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, SUPPORTING THE DAYTONA TORTUGAS; AND THE CONTINUATION OF MINOR LEAGUE BASEBALL IN DAYTONA BEACH; PROVIDING FOR AN EFFECTIVE DATE.

Whereas, Daytona Beach, Florida, has been home to a minor league baseball team for a century; and

Whereas, Jackie Robinson made history when he broke the color barrier on March 17, 1946, at City Island ball park in Daytona Beach; and

Whereas, the Daytona Tortugas are the only professional sports team in Volusia County; have finished in the top three in attendance in the Florida State League each of the past twenty seasons; and have averaged over 2,000 fans per game for the past three years; and

Whereas, the Tortugas Care Foundation has given over \$150,000 over the past several years to the Miracle League of Volusia County and to various other charities; and

Whereas, the Tortugas Care Foundation financially supported the re-establishment of Little League Baseball in Daytona Beach by purchase of equipment, bats, balls and uniforms; and each year since, has supplied new uniforms; and

Whereas, each year, approximately 250,000 visitors enjoy Jackie Robinson Ballpark for games, tours or one of over 200 community events, including Bethune-Cookman University baseball games, the Volusia Manufacturing Association's Robot Brawl, Volusia-Flagler Making Strides Walk, and many large community events and runs; and

Whereas, the Daytona Tortugas provide affordable, family entertainment at a vibrant destination for all Volusia County residents and tourists to enjoy, contributing to the overall culture of Volusia County; and

Whereas, there exists strong community support for the continuation of Minor League Baseball in Daytona Beach.

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

Section One: The City Council of Daytona Beach Shores stands in solidarity with the County of Volusia and the City of Daytona Beach in their efforts to keep the minor league baseball team

known at the Daytona Tortugas playing at the historic Jackie Robinson Baseball park for all area residents to support and enjoy.

Section Two. This Resolution shall take effect immediately upon passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

MAYOR, NANCY MILLER

Attest:

CITY MANAGER, MICHAEL T. BOOKER

CITY CLERK, CHERI SCHWAB

Approved as to form and legality:

CITY ATTORNEY, RAYMOND J. BRANCH

Adopted this 14th day of January 2020

Posted this _____ day of January 2020



**CITY COUNCIL AGENDA MEMORANDUM
JANUARY 14, 2020 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Discussion on crosswalks

SYNOPSIS:

This was requested to be placed on the agenda after the workshop held on December 10th. Council wished to discuss crosswalks.

FISCAL IMPACT STATEMENT:

Fiscal Impact to be determined at a future time based upon recommendations of the City Council.

BACKGROUND:

Resident Christopher White asked the council to consider moving and changing the crosswalk near Oceans West Blvd and S. Atlantic Avenue.

LEGAL REVIEW:

Reviewed

RECOMMENDATION:

SUGGESTED MOTION:

This is discussion only.

ATTACHMENT: None



CITY COUNCIL AGENDA MEMORANDUM JANUARY 14, 2020 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2020-01: City of Daytona Beach Shores and Oceans 25, LLC Development Agreement to permit the development of townhomes on the City owned property located at 2900 S. Atlantic Avenue.

SYNOPSIS:

Ordinance 2020-01, if adopted, would approve a development agreement between the City of Daytona Beach Shores and Oceans 25, LLC to permit the development of 25 townhomes on the 2.13 acre City owned property located at 2900 S. Atlantic Avenue.

FISCAL IMPACT STATEMENT:

This agreement calls for the City to expend up to \$100,000 for the relocation of sewer lines and will be funded from the sewer fund. As part of the economic development incentive program the city will be rebating 10% of the purchase price upon issuance of a certificate of occupancy at the completion of the project. This amount will be \$80,100 and will be funded by the proceeds from the sale of the building.

Currently, this property is not on the tax rolls and generates \$0.00 in ad-valorem tax dollars for the city and the city expends funds to maintain the existing landscaping. Upon completion this property will begin generating tax dollars based upon the appraised values after completion. It is estimated that these costs will be recouped through the collection of ad-valorem taxes within 6-10 years.

BACKGROUND:

On June 25, 2019 the Daytona Beach Shores City Council approved the issuance of a Request for Proposal (RFP) regarding the purchase and development of the City owned property located at 2900 S. Atlantic Avenue. The sole respondent and awardee, Florida Lifestyle Homes and Land, Inc., has since formed Oceans 25, LLC to develop the site per the RFP. On November 12, 2019 Oceans 25, LLC and the City entered into a Purchase and Sale Agreement regarding the property in question.

The subject property is currently zoned Mixed Use District and approved for a 50ft high 60-unit condo

development with 11,400sf of commercial space. Therefore, a development agreement is necessary to permit the development of the proposed 25 townhome development. If adopted, Ordinance 2020-01 would approve the proposed development agreement and permit the development in question.

The development agreement is for a two year period, however, the developer anticipates acquiring the Final Certificate of Occupancy (CO) within nine (9) months after closing on the purchase of the property. Among other things, the development agreement also provides for the following:

1. Sec. 4(f): Three (3) deviations are granted: (i) front yard setback of 15 ft on S. Atlantic Avenue and Oceans West Boulevard and 10 feet on Ridge Road in lieu of the Mixed Use District required 30 ft; (ii) no commercial component as required by the Mixed Use District; and (iii) No loading zone as required by the Land Development Code.
2. Sec. 4(g): A limitation of 25 townhomes for construction on the site.
3. Sec. 4(h), A deed restriction requirement and covenant limiting the use of the property solely for townhome use.
4. Sec. 5(b): The City shall provide \$100,000 in escrow for the developer to utilize in the relocation of City sewer utilities on the property.
5. Sec. 5(c): The City shall grant the developer a purchase price rebate of 10% pursuant to the City's economic Development Incentive Program in the amount of \$80,100 at the issuance of the Final CO.
6. Sec. 5(d): The developer shall grant underground utility and access easement for all water and sewer facilities.

LEGAL REVIEW:

Consistent with procedures of past development projects as recommended by former City Attorney

RECOMMENDATION:

Staff recommends approval of Ordinance 2020-01 as presented.

SUGGESTED MOTION:

A City Council member may move as follows:

1. "I move to approve of Ordinance 2020-01 as presented"
- OR
2. "I move to approve of Ordinance 2020-01 with the following conditions..."
- OR
3. "I move to deny Ordinance 2020-01 on the basis of the following "

- ATTACHMENT:**
1. Ordinance 2020-01-Oceans 25 DA-CC2
 2. Ord. 2020-01 Development Agreement Exhibit-CC-RJB2
 3. DA Exhibits-CC

ORDINANCE 2020-01

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF A DEVELOPMENT AGREEMENT PERTAINING TO PROPERTY OWNED BY OCEANS 25, 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, Oceans 25, LLC and the City of Daytona Beach Shores have 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, Patrick Sullivan and William Humbert are the managers of Oceans 25, LLC; and

WHEREAS, the City of Daytona Beach Shores and Oceans 25, LLC have 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 Oceans 25, 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 Oceans 25, 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 Oceans 25, LLC 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 closing of the subject property and the full transfer of ownership from the City of Daytona Beach Shores to Oceans 25, LLC.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form:

RAYMOND J. BRANCH, CITY ATTORNEY

Passed on first reading this ___ day of _____, 2020.

Enacted on second reading this ___ day of _____, 2020.

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.

OCEANS 25, LLC, a Florida limited liability company.

Patrick Sullivan

Date: _____, 2020

William Humbert

Date: _____, 2020

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 _____, 2020.

(Affix Notary Seal)

Notary Public; State of Florida

Print Name: _____

Prepared by:

Jeffrey P. Brock, Esquire
Smith Bigman Brock, P.A.
444 Seabreeze Blvd.
Suite 900
Daytona Beach, Florida 32118

Return To:

Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

Tax Parcel Identification Number: 532706040020 (Altkey: 5085317).

**OCEANS 25, LLC/CITY OF DAYTONA BEACH SHORES
DEVELOPMENT AGREEMENT
PROPERTY PERTAINING TO 2900 SOUTH ATLANTIC AVENUE**

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between Oceans 25, LLC, a Florida limited liability company, registered and authorized to conduct business in the State of Florida, whose principal address is 1757 North Nova Road, #108G, Holly Hill, Florida 32117 and whose mailing address is Post Office Box 227, Daytona Beach, Florida 32115, to be legal and equitable owner (under a separate purchase and sale agreement between the parties), 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 future owner of real property located at 2900 South Atlantic 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, further, which property is currently owned by the CITY; and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in developing a high quality residential development 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 of the CITY in order that they may continue to enjoy a high quality of life within a well-planned community; 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 lack of certainty in the approval of development can result in a waste of economic and land resources; discourage sound capital improvement planning and financing; escalate the cost of housing and development; and discourage commitment to comprehensive planning and 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 which, in practice, it is commonly used in conjunction with; 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 City Council of the CITY has enacted a series of economic incentive programs which programs are summarized as follows:

A. LAND PURCHASE ECONOMIC DEVELOPMENT PROGRAM:

To encourage the renovation, development, redevelopment and productive use of lands and buildings within the City, the City Council may enter development agreements, which may relate to either City-owned or non-City-owned real property and provide the purchaser of the land with a grant of up to a 10% of the purchase price to allow the purchaser to use the funds to assist in the development of the real property or in order to assist in the build out of the property in a high quality plan of development.

B. ECONOMIC DEVELOPMENT COMMERCIAL LEASE SUBSIDY PROGRAM:

This Program will provide a subsidy, under appropriate circumstances, to subsidize leases relating to new businesses within the City over a 3 year period of time in order to assist selected businesses to commence economic activity and remain a going concern. Leases may be subsidized up to 30% for the first year of the lease, up to 20% for the second year of the lease, and up to 10% for the third year of the lease: Existing businesses which desire to relocate to a larger space in the City which relocation will result in enhanced business operations or employment and businesses which extend a lease for a longer term of at least 3 years when the extension will result in enhanced business operations or employment shall also be eligible for the same benefits. The total amount of this incentive may not exceed \$20,000.00.

C. ALTERNATIVE GRANT PROGRAM:

In the event that an owner of real property has engaged in or entered a business relationship in a manner which the City determines is not conducive to a lease subsidy being granted by the City, the City may enter grant agreements with such applicants such as, by way of example, facade or beautification grant agreements; provided that the City is attaining substantially or more of the same economic and other benefits that are substantially the same or greater than that the City would enjoy under a lease subsidy award. Such grants may be awarded under conditions that address the unique nature of the business arrangement within which context the real property is held or the business operated. The total amount of the grant under an agreement may not exceed \$20,000.00.

D. BUSINESS LOYALTY PROGRAM:

The owner of an eligible business may receive a reimbursement of part of its certificate of use fee and a reduction in its local business tax for a period of time.

E. ALTERNATIVE TAX RELIEF PROGRAM:

The owner of real property may receive a negotiated amount of refunds of City fees and ad valorem taxes for a negotiated period of time.

; and

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

WHEREAS, Section 166.021(8),) *Florida Statutes*, with particular emphasis on the **emphasized text**, provides as follows:

(8) (a) The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and

stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

(d) A contract between the governing body of a municipality or other entity engaged in economic development activities on behalf of the municipality and an economic development agency must require the agency or entity receiving municipal funds to submit a report to the governing body of the municipality detailing how the municipal funds are spent and detailing the results of the economic development agency's or entity's efforts on behalf of the municipality. By January 15, 2011, and annually thereafter, the municipality shall file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the municipality's website.

(e)1. By January 15, 2011, and annually thereafter, each municipality having annual revenues or expenditures greater than \$250,000 shall report to the Office of Economic and Demographic Research the economic development incentives in excess of \$25,000 given to any business during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of

Representatives, and the Department of Economic Opportunity. Economic development incentives include:

a. Direct financial incentives of monetary assistance provided to a business from the municipality or through an organization authorized by the municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.

b. Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.

c. Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions.

d. Below-market rate leases or deeds for real property.

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities.

(f) This subsection does not limit the home rule powers granted by the State Constitution to municipalities.

; 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 as the contract purchaser of the CITY-owned property.

SECTION 3. SITE , ELEVATIONS, LANDSCAPINB PLANS FOR DEVELOPMENT.

The attached conceptual site plan for development of the premises (Exhibit “B”); elevations plans (Exhibit C) and conceptual landscaping plans (Exhibit D) are 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 in accordance with the conceptual site plan for development of the premises (Exhibit “B”).

(b). The development uses, including parking, driveways and landscaping, as set forth on the conceptual site plan approved in Section 3 and attached as Exhibit "B" comply with the criteria for development in the applicable provisions in the land development regulations of the CITY applicable to this development project on the premises or as modified in this Development Agreement.

(c). 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.

(d). 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 enhancement of the City's ad valorem tax base by placing tax exempt property into economic use. Further, sale of City-owned real property shall provide necessary funding for the economic development programs of the City. Moreover, the increased residents of the CITY resulting from the economic activity and residential development set forth in this Development Agreement shall assist in the development of the critical population and resident mass that will act as a catalyst for future successful economic activity and development within the CITY.

(e). 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*.

(f). The deviations as set forth below for the proposed development of the premises in accordance with Exhibit "B" have been granted by the CITY with regard to the provisions of the CITY's land development regulations and the City agrees to the development of the premises associated with the plan of development set forth in this Development Agreement.

- (i) Front Yard Setback of 15 ft. on S. Atlantic Avenue and Oceans West Boulevard and 10 feet on Ridge Road (vs 30 feet required by CITY's land development regulations).

- (ii) No commercial component to the proposed residential use (vs. MXD (Mixed Use District) requiring a commercial component).
- (iii) No loading zone (vs. 40ft x 12 ft. loading zone required by CITY land development regulations)

(g). Notwithstanding the plan of development set forth in the conceptual site plan for development of the premises (Exhibit "B"), the maximum number of townhomes that may be constructed on the premises shall be 25.

(h). The maximum number of townhomes (25) shall be implemented as a deed restriction and a covenant that runs with and burdens the premises and the use as townhome development shall also be a limiting deed restriction that shall be implemented during the course of the closing of the purchase and sale transaction.

(i). The parties recognize that it is the intent of the PROPERTY OWNER to obtain the final certificate of occupancy for the development project contemplated under this Development Agreement no later than 9 months following the Closing of the purchase and sale of the premises.

(j). Prior to the issuance of the first certificate of occupancy the PROPERTY OWNER shall have established in accordance with controlling law, as to the reasonable satisfaction of the CITY, a mandatory homeowners association to manage and maintain common areas and matters of a similar nature.

SECTION 5. ECONOMIC DEVELOPMENT INCENTIVES AND PROPERTY OWNER CONTRIBUTIONS.

(a). The CITY has agreed to sell the premises, which is currently CITY-owned property for a sum substantially less than the appraised value of the property under the provisions of the purchase and sale agreement.

(b). The parties acknowledge that there are sewer utility facilities located on the premises (a force main, etc.) and the costs for such work shall be borne by the CITY, but shall be made a part of the PROPERTY OWNER's program of development. The payment shall be made from funds from the Closing which occurs from the purchase and sale of the premises. The sum of \$100,000.00 shall be deposited by the City with the Closing Agent at closing be held by the Closing Agent, acting as Escrow Agent (said sum representing the estimated costs of utility relocation plus a 10% contingency amount). Upon work being accomplished, the PROPERTY OWNER shall receive draws from the withheld amount to pay for contractor charges to accomplish the utility relocation. The stated sum shall be a not-to-exceed amount payable for the work by the CITY. Any balance remaining

in escrow upon the completion of the relocation shall be delivered by escrow agent to the City.

(c). With regard to benefits paid by the CITY to the PROPERTY OWNER under the CITY's economic development incentive programs, the CITY agrees as follows: The PROPERTY OWNER will receive a 10% reimbursement of \$80,100.00 for the purchase of the subject CITY-owned property at the issuance of a certificate of occupancy for the 25th town home certificate of occupancy as contemplated under the plan of development authorized under this Development Agreement.

(d) The PROPERTY OWNER shall grant to the CITY at no cost a underground utility and access easement over all water and sewer facilities located on the premises.

SECTION 6. 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. The City shall waive all City impact fees, application fees, and review fees for the development of the premises and shall expedite all review.

SECTION 7. 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 8. 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 9. 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 10. 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 11. 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 12. EXHIBITS.

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

Exhibit A - Survey and Legal Description of the Premises
Exhibit B - Conceptual Development Plan
Exhibit C - Elevations
Exhibit D - Landscaping Plan

SECTION 13. 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 14. 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 15. 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 16. 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 17. 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:

Oceans 25, LLC
Attn: Patrick E. Sullivan
1757 North Nova Road
#108G
Holly Hill, Florida 32117

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

SECTION 18. 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 19. 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 20. 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 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 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*. Substantial modification shall mean any modification that is inconsistent with the substantial compliance definition contained in Sec. 2-2 of the City's LDC.
- (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 21. 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 this 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 this Development Agreement or land which is the subject of this 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 22. 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 23. 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 24. 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 twenty-four (24) months, 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 may 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 25. 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:

Raymond J. Branch, City Attorney

ADDITIONAL SIGNATURE PAGE FOLLOWS:

Witnesses:

OCEANS 25, LLC, a Florida limited liability company

By: _____
Patrick E. Sullivan
Manager

Printed Name

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 Patrick E. Sullivan, 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 _____, 2020.

(Affix Notary Seal)

Notary Public; State of Florida
Print name: _____

Exhibit A

{Legal Description and Boundary Survey}

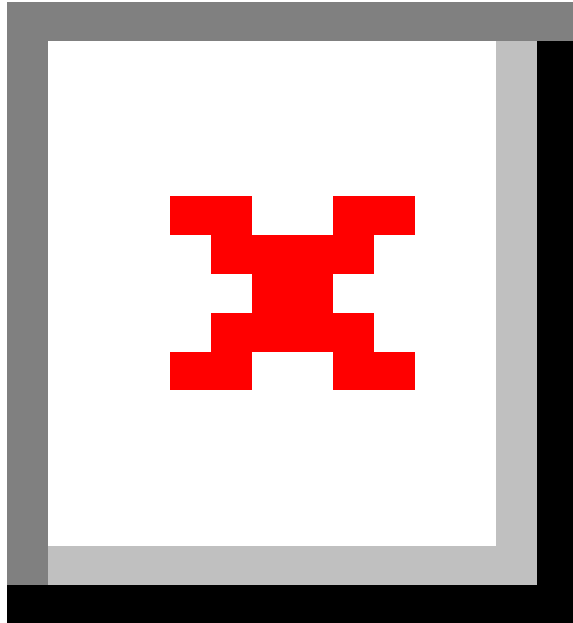


Exhibit B
{conceptual plan}

Exhibit C
{Elevations}

Exhibit D
{Conceptual Landscaping Plan}

PART OF BLOCKS D AND E, MCELROYS BELLEVIEW SUBDIVISION, AS RECORDED IN MAP BOOK 11, PAGE 98, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE, SAID POINT BEING THE INTERSECTION OF THE NORTHERLY LINE OF MCELROYS BELLEVIEW WITH THE EASTERLY LINE OF SOUTH PENINSULA DRIVE, AN 80 FOOT RIGHT-OF-WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 89°33'11" EAST ALONG THE NORTHERLY LINE OF THE AFORESAID MCELROYS BELLEVIEW A DISTANCE OF 951.56 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°33'11" EAST ALONG SAID NORTHERLY LINE OF MCELROYS BELLEVIEW A DISTANCE OF 165.72 FEET TO A POINT ON A CURVE CONCAVE EASTERLY, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY OF SOUTH ATLANTIC AVENUE, AN 80 FOOT RIGHT-OF-WAY AS PRESENTLY ESTABLISHED; THENCE ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 1349.46 FEET, AND A CENTRAL ANGLE OF 10°26'41", AN ARC LENGTH OF 246.00 FEET, AND A CHORD DISTANCE OF 245.66 FEET, BEARING SOUTH 37°35'54" WEST, TO A POINT OF REVERSE CURVATURE CONCAVE NORTHWESTERLY; SAID POINT BEING THE INTERSECTION OF THE AFORESAID WESTERLY RIGHT-OF-WAY OF SOUTH ATLANTIC AVENUE AND THE NORTHERLY RIGHT-OF-WAY OF OCEANS WEST BLVD., A 70 FOOT RIGHT-OF-WAY AS SHOWN ON PLAT OF OCEANS WEST, A PLANNED UNIT DEVELOPMENT; AS RECORDED IN MAP BOOK 38, PAGE 67, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID CURVE AND NORTHERLY RIGHT-OF-WAY TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 114°53'36", AN ARC LENGTH OF 50.13 FEET, AND A CHORD DISTANCE OF 42.14 FEET, SOUTH 13°42'12" EAST, TO A POINT OF COMPOUND CURVATURE CONCAVE NORTHERLY; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY AND CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 65.00 FEET, A CENTRAL ANGLE OF 18°24'11", AN ARC LENGTH OF 20.88 FEET, AND A CHORD DISTANCE OF 20.79 FEET, SOUTH 80°21'06" WEST TO THE POINT OF TANGENCY; THENCE SOUTH 89°33'11" WEST ALONG AFORESAID NORTHERLY RIGHT-OF-WAY 294.31 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY; THENCE ALONG SAID CURVE AND AFORESAID NORTHERLY RIGHT-OF-WAY SAID CURVE HAVING A RADIUS OF 125.00 FEET, A CENTRAL ANGLE OF 63°47'22", AN ARC LENGTH OF 139.17 FEET TO A POINT ON THE EASTERLY LINE OF OCEANS WEST, A PLANNED UNIT DEVELOPMENT AFORESAID; THENCE NORTH 27°22'EAST ALONG SAID EASTERLY LINE OF OCEANS WEST 162.05 FEET, THENCE NORTH 49°29'36" EAST, A DISTANCE OF 256.83 FEET TO THE NORTHERLY LINE OF MCELROYS BELLEVIEW, AFORESAID, AND THE POINT OF BEGINNING.

CONTAINS 2.13 ACRES MORE OR LESS.

EXHIBIT A - LEGAL DESCRIPTION

PROJECT: OCEANS 25

SCALE: NONE

FILE: 894-BASE 4

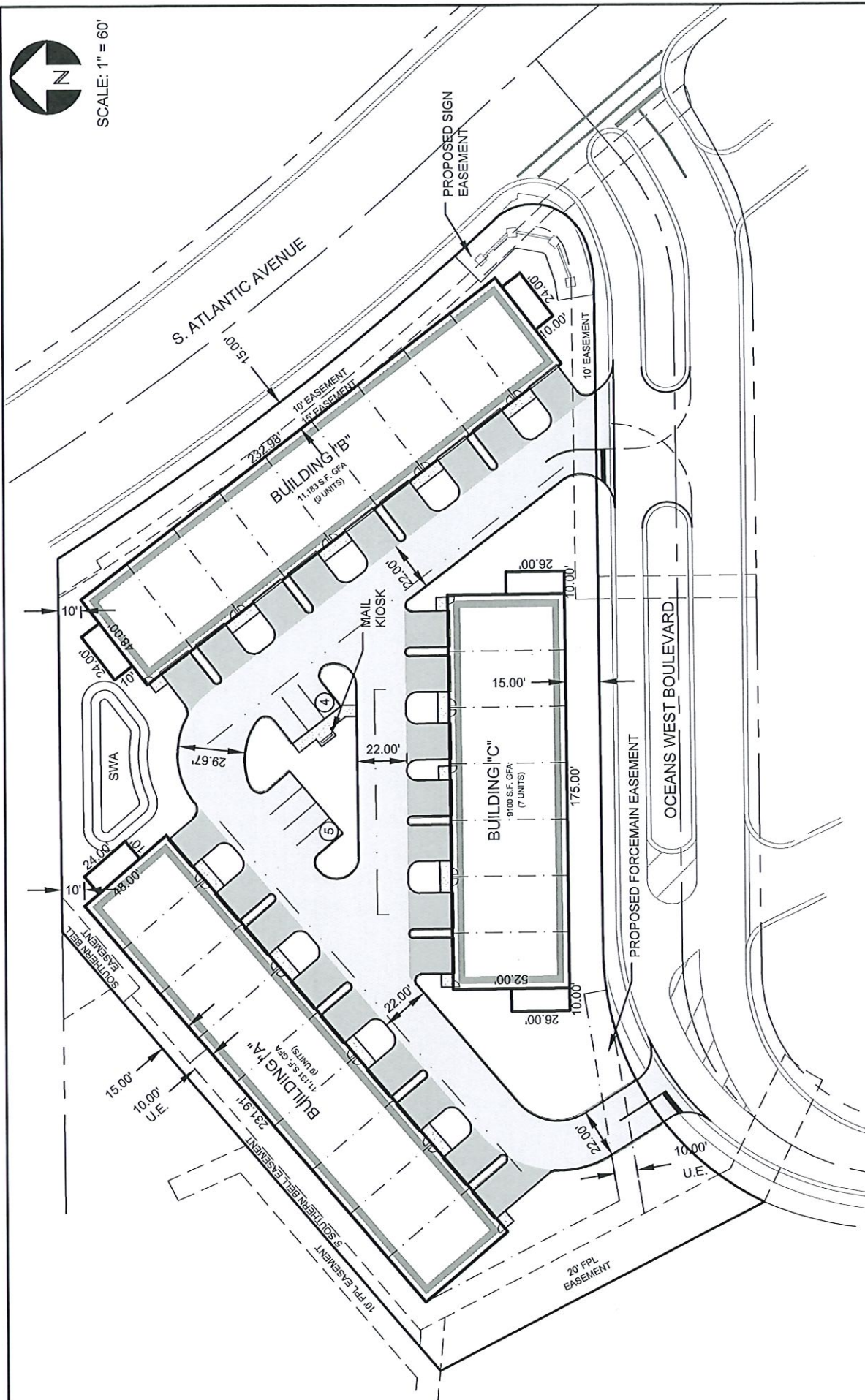
DATE: 12/18/19

THE PERFORMANCE GROUP

CIVIL ENGINEERING / PLANNING / DEVELOPMENT



JOSEPH H. HOPKINS, P.E. NO. 48059
100 MARINA POINT DR., DAYTONA BEACH, FL. 32114
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EXHIBIT B - OVERALL DEVELOPMENT PLAN

SCALE: 1"=60'

DATE: 12/18/19

PROJECT: OCEANS 25

FILE: 894-BASE 4

[illegible]



BUILDING B FRONT ELEVATION



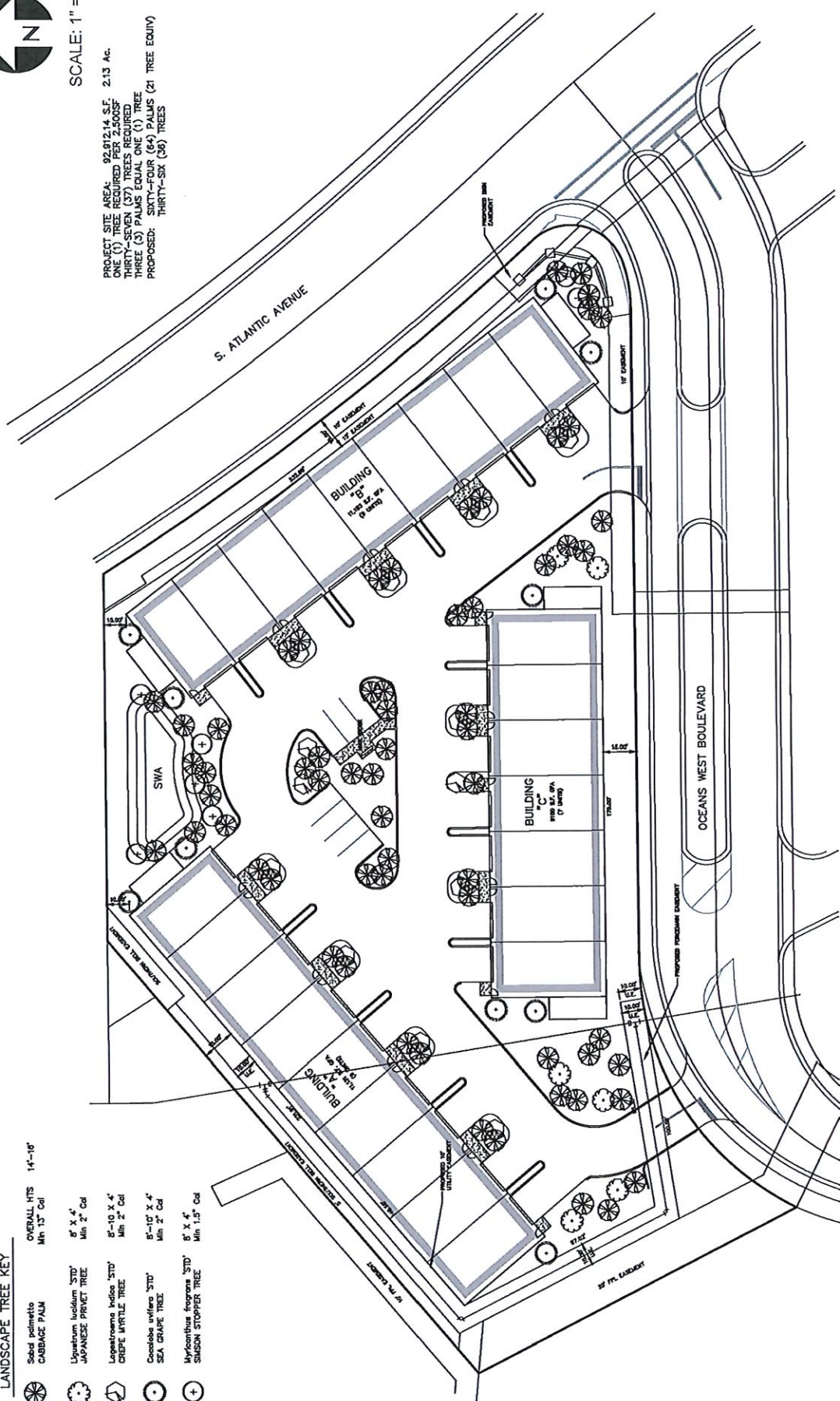
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EXHIBIT C - ELEVATIONS		SCALE: NONE	
NO.	DATE REVISION	PROJECT: OCEANS 25	DATE: 12/18/19
		FILE: 894-BASE 4	

ONE (1) TREE REQUIRED PER 2,500SF
THIRTY-SEVEN (37) TREES REQUIRED
THREE (3) PALMS EQUAL ONE (1) TREE
PROPOSED: SIXTY-FOUR (64) PALMS (21 TREE EQUIV)
THIRTY-SIX (36) TREES



LANDSCAPE TREE KEY		14'-18"
	Solid palm tree CABBAGE PALM	OVERALL HTS Min 13' Col
	Lush tree Liquarium lucidum 'STD' JAPANESE PRIVET TREE	8' X 4' Min 2' Col
	Lush tree Lagerstroemia Indica 'STD' CROPE MYRTLE TREE	8'-10 X 4' Min 2' Col
	Lush tree Conocarpus alluaudi 'STD' SEA GRAPE TREE	8'-10' X 4' Min 2' Col
	Lush tree Myrsine tomentosa 'STD' SILK TREE	8' X 4' Min 1.5' Col

THE STERN DESIGN GROUP, P.A.
Landscape Architects Land Planners

THE PERFORMANCE GROUP
CIVIL ENGINEERING / PLANNING / DEVELOPMENT



JOSEPH H. HOPKINS, P.E. NO. 48059
100 MARINA POINT DR., DAYTONA BEACH, FL. 32114
TELEPHONE: (386) 239-7166 FAX: (386) 239-7120

NO.	DATE	REVISION

EXHIBIT D - LANDSCAPING		
PROJECT: OCEANS 25		SCALE: 1"=60'
FILE: 894-BASE 4		DATE: 12/18/19



CITY COUNCIL AGENDA MEMORANDUM JANUARY 14, 2020 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2020-02: Future Land Use Amendment CPA12019029, Atlantic Avenue Estates, LLC-Parcel ID 6302-05-07-0150/3828 S. Atlantic Avenue

SYNOPSIS:

Future Land Use Map Amendment CPA12019029 was submitted to the City on October 17, 2019 by applicant/owner, Atlantic Avenue Estates, LLC. The subject application is a request to change the Daytona Beach Shores Comprehensive Plan Future Land Use Map classification of the property generally located at 3828 S. Atlantic Avenue (PID 6302-05-07-0150) from *Low Density Residential* to *Medium Density Residential*. The former permits up to 12 units per acre while the latter allows up to 35 units per acre. Ordinarily, the subject +/-0.71 acre property density entitlement would change from a total of nine (9) units to 25 residential units on the site. However, the property owner is also proposing a policy amendment to the Comprehensive Plan that would restrict the total number of units on the site to 16. The property owner's plan is to construct two 8-unit apartment buildings on site. Currently the property is approved for four (4) duplexes or a total of eight (8) units. Ordinance 2020-02 if adopted would approved the proposed Comprehensive Plan Map and policy amendment.

In addition, if approved, the property will also require a zoning map amendment to establish the appropriate zoning district classification to match the proposed future land use change.

FISCAL IMPACT STATEMENT:

The FY2019/2020 Budget has adequate funding to implement all administrative and technical functions associated with the proposed ordinance and amendment. If approved, the subject property will experience an increase in assessed taxable value subsequent to construction of the proposed development.

BACKGROUND:

A. INTRODUCTION

Atlantic Avenue Estates, LLC owner/applicant, request approval of an amendment to the Future Land

Use Map contained in the Daytona Beach Shores Comprehensive Plan (2030). The proposed amendment seeks to change the future land use designation of a vacant +/- 0.71 acre property located on the west side of the 3800 block of S. Atlantic Avenue between Emilia and Marcelle avenues across from the Blue Surf Condo (**Exhibit A.1 attached**). The subject application was received on October 17, 2019. If approved, the amendment would change the future land use classification of the subject property from *Low Density Residential* to *Medium Density Residential*. The former permits up to 12 units per acre while the latter allows up to 35 units per acre. Therefore, the property density entitlement would ordinarily change from a total of nine (9) units to 25 residential units on the site. However, the property owner is also proposing a Comprehensive Plan Policy amendment to restrict the total number of units on the site to 16 as his intention is to construct a total of 16 residential apartments on site in two separate 8-unit buildings. Each apartment building would have its own access to S. Atlantic Avenue and Cardinal Boulevard, respectively.

B. BACKGROUND

On December 8, 2015, the subject property was annexed into the corporate limits of the City of Daytona Beach Shores pursuant to the voluntary annexation process outlined in Section 171.044, Florida Statutes. The property was subsequently assigned a *Low Density Residential* Future Land Use. However, since then, the property owner has determined that the market conditions for the original four (4) duplex development have changed such that a change in land use to a greater density is required to construct apartments, which would be more responsive to the current and projected market conditions. If approved, the subject property will also require a matching change in zoning district designation.

C. ANALYSIS

Overview:

The subject site is 150'x 205' and has an area of 30,750 square feet or +/-0.71 of an acre. The current Future Land Use (FLU) and Zoning designations on the property are *Low Density Residential* (up to 12 units/acre) and "RMF-3" Multifamily Residential (Low Density) District, respectively. The adjacent future land use classifications are depicted in **Exhibit A.2** attached while the existing surrounding land uses are illustrated in **Exhibit A.3** attached.

Description, Data and Analysis:

A detailed planning staff analysis is provided in **Exhibit A.4** attached. In addition, further support and analysis is provided by the applicant in **Exhibit B** attached. Both analyses demonstrate the amendment's compliance with the City's Comprehensive Plan and general planning best practice for future land use map amendments. In conclusion, the analyses show that there will not be any significant impact on the environment, roadways, public schools and/or utilities.

Analysis by Community Services Director/Building Official, Fred Hiatt

The subject property was previously rezoned to RMF-3. Per 14-20.1 of the City's Land Development Code, the purpose and intent of the RMF-3 zoning is to provide some low density multifamily that can abut single-family zoning districts. In my opinion the previous rezoning was consistent with the city's

zoning. However, the requested zoning (RMF-2) is not intended to directly abut single-family districts. Hence, the reason this language is omitted from the RMF-2 Purpose and Intent (14-19.1).

Further, I'm not convinced the application meets the city's zoning criteria and minimum standards. Specifically, I'm concerned with Item #'s 12 and 13 found in the staff report. I don't see evidence in the application demonstrating how this change benefits anyone other than the property owner. The RMF-2 zoning would triple the allowable density from 8 units to 25 units. Even if the property owner agrees to limit the number of units to 16, it is still twice as many. Because the majority of this property directly abuts single-family (on three sides), I cannot support this request. In the future, if rezonings continue southward from the Ocean Terrace Club, it may be more appropriate, then, but not now.

D. PUBLIC INPUT

Staff has received several correspondence from members of the public. **Exhibit C** attached reflects the this input and planning staff responses.

E. DUE PUBLIC NOTICE

Pursuant to Sec. 2-2 of the the Daytona Beach Shores Land Development Code and Chapter 163, Florida Statutes, due public notice has been provided by the applicant to the office of the City Clerk.

LEGAL REVIEW:

The proposed ordinance has been reviewed and is approved as to form.

RECOMMENDATION:

Staff has varying opinions regarding the proposed ordinance and will be prepared to answer any questions that the City Council may have.

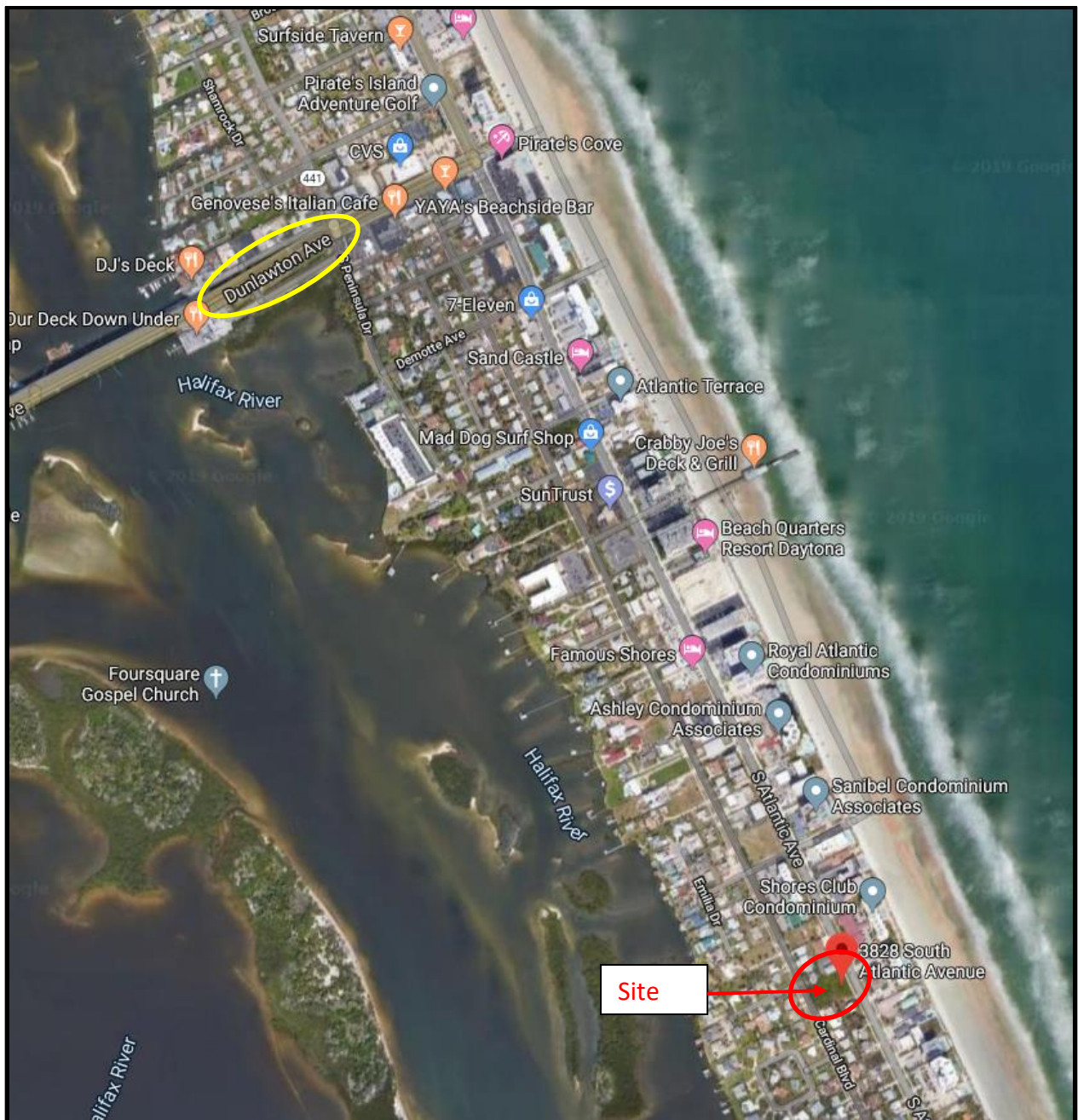
SUGGESTED MOTION:

A City Council member may move as follows:

1. "I move to approve Ordinance 2020-02 as presented"
- OR
2. "I move to approve Ordinance 2020-02 with the following conditions..."
- OR
3. "I move to deny Ordinance 2020-02 on the basis of the following"

- ATTACHMENT:**
1. EXHIBIT A
 2. Exhibit B-Zev Cohen Analysis-CC
 3. Exhibit C-Public Comments1-CC
 4. ORD 2020-02-Atlantic Avenue Estates CPA-CC

EXHIBIT A.1: Aerial Location Map



Source: GoogleMaps 2019

EXBHIT A.2: Adjacent Future Land Use

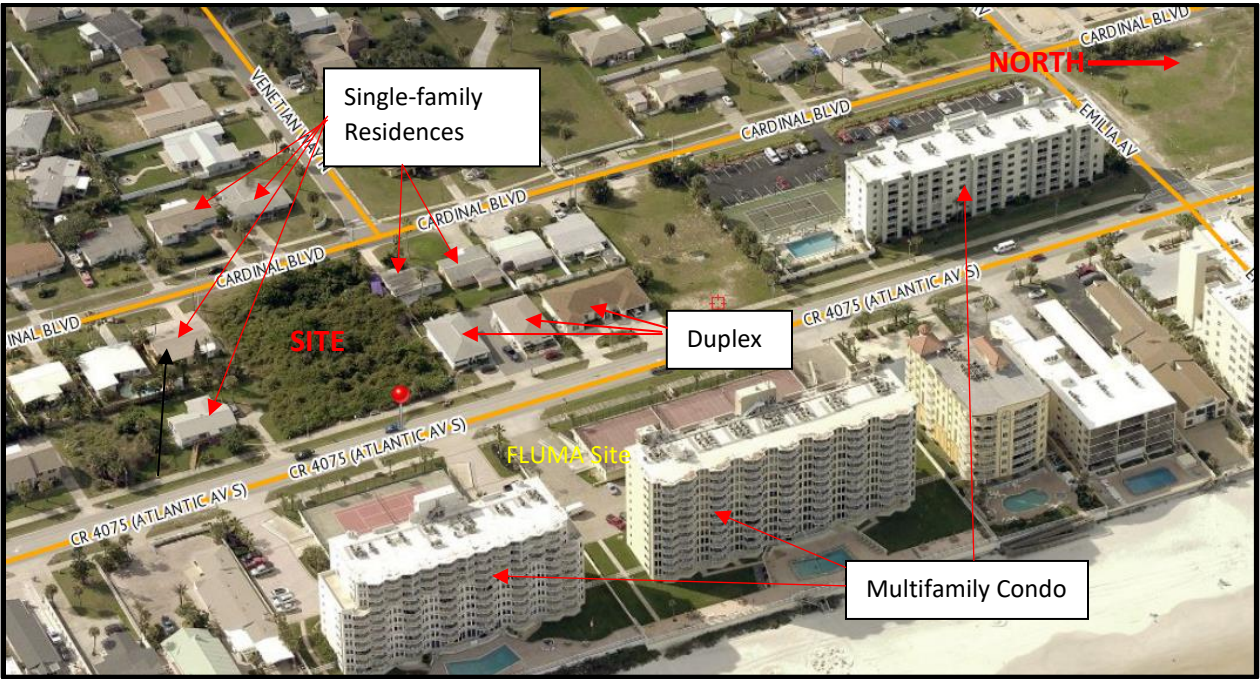
Location	Current Land Use	Future Land Use	
		Existing	Proposed
Subject Property	Vacant Lot	LDR*	MDR**
North	(NE) Volusia County Duplex & (NW) Volusia County Single Family Residence	Volusia County ULI+	
South	(SE) Single Family Residence & (SW) Volusia County Single Family Residence	LDR & Volusia County ULI	
East	Blue Surf Multifamily Residential Condominium	High Intensity	
West	Volusia County Single Family Residences	Volusia County ULI	

Notes: LDR*= Low Density Residential; MDR** = Medium Density Residential capped at 16 units; ULI+ = Volusia County Urban Low Intensity.

Daytona Beach Shores Future Land Use Map: 2030



EXHIBIT A.3: Surrounding Land Uses



Source: CONNECTExplorer, 2019

EXHIBIT A.4: Planning Staff Analysis

I. IMPACTS OF PROPOSED AMENDMENT

The current *Residential Low Density* Future Land Use (FLU) classification allows a maximum density of 12 units per acre. Under the proposed *Medium Density Residential*, the maximum density allowed is 35 units per acre. Given the 0.71 acre size of the property, the proposed amendment would ordinarily allow up to 25 residential units on site, however, the applicant is also proposing a policy limit to restrict the property to no more than 16 units. The applicant has noted that two 8-unit apartments would be constructed on site, if approved.

In accordance with the Daytona Beach Shores Comprehensive Plan Update (2030) and standard practice from the Florida Department of Economic Opportunity (DEO) and other land use agencies, an impact comparison analysis of the proposed amendment has been completed based upon the theoretical maximum development potential under the current future land use designation versus the designation proposed (**Table 1** below). The following seven public facilities and services were examined and discussed briefly below: (1) Transportation, (2) Sanitary Sewer, (3) Potable Water, (4) Solid Waste, (5) Stormwater Drainage, (6) Recreation, and (7) Public Schools.

Table 1: Impact Analysis (16 unit Max. Restriction)

Development Variable	Current Future Land Use (0-12 units/acre)	Proposed Future Land Use (16 units)	Comparison Impact
Residential Units Allowed	9	16	+7
Population ¹	16	28	+12
Daily Trips/PM Peak Hour Trips ²	86/9	117/9	+31/0
Sanitary Sewer (gallons/day) ³	2,250	4,000	+1,750
Potable Water (gallons/day) ⁴	1,760	3,080	+1,320
Solid Waste (lbs./day) ⁵	160	280	+120
Stormwater Drainage ⁶	n/a	n/a	n/a
Public School Student(s) ⁷	2.5	2	-0.5

Notes:

1. Population: 1.75 persons per single-family dwelling
2. Transportation: Rates are for adjacent street traffic: *Single-family residential unit* = 9.57 Daily trips, 1.01 PM Peak Hour Trips / *Multifamily Low Rise* = 7.32 Daily trips, 0.56 PM Peak Hour Trips
3. Sanitary Sewer: 250 gallons per dwelling unit per day
4. Potable Water: 110 gallons per capita per day
5. Solid Waste: 10 pounds per capita per day
6. Stormwater Drainage: LOS standard = 25 year, 24 hour event. If property is redeveloped, drainage system will be designed to meet the requirements of the Land Development Code.
7. Public School: Generation rates = single family 0.273, multifamily 0.127.

Sources:

2010 US Census; ITE Trip Generation Manual, 9th Edition; Policy 9-1.3 Daytona Beach Shores Comprehensive Plan Update (2030); Volusia County School District 2017 Impact Fee Study.

Transportation:

The subject property is a vacant overgrown single-family lot (**Figure 1**) with vehicular access to the abutting S. Atlantic Avenue (CR 4075) and Cardinal Boulevard. Both roadways have a Federal Functional Classification of “Minor Collector-Urban” and are operating below design capacity. Both roadways connect northbound to S.R. A1A, which is a principal arterial. The City’s vested trips for these roads are negligible. Therefore, when considering the additional vehicular trips for the proposed development (**Table 1**), it is evident the adopted LOS standard will continue to be maintained¹ as the 2018 AADT and LOS are far below the design capacity for the roads in question.

Figure 1: S. Atlantic Avenue View of Site



Sanitary Sewer:

The City’s adopted LOS standard for sanitary sewer is 250 gallons per dwelling unit per day. Using this standard, the proposed land use would theoretically create a demand of 4,000 gallons per day. This potential addition can easily be served by the City of Port Orange Wastewater Treatment Plant as the facility currently has over 4.41 million gallons per day excess capacity (Port Orange 2019 Concurrency Management Report).

Potable Water:

The City’s adopted LOS standard for potable water is 110 gallons per capita per day. Using this standard, the proposed land use would theoretically create a demand of 3,038 gallons of water per day. The City of Port Orange Garnsey Water Treatment Plan has a permitted peak daily flow capacity of over 7.55 million gallons per day (Port Orange 2019 Concurrency Management Report). Therefore, the theoretical increase in demand can easily be served by said facility.

Solid Waste Collection:

The proposed land use changes would allow 16 residential units that would be expected to create a population of 28 persons. Each person is projected to generate solid waste at 10 pounds per day, which

¹ According to the most recent data (2018), the adopted Level-Of-Service (LOS) standard for S. Atlantic Avenue and Cardinal Boulevard is “E.” The respective segments of S. Atlantic Avenue within City limits are currently operating at LOS “D” (43% and 68% of design capacity). All of Cardinal Boulevard within City limits is operating at LOS “C.” (8% and 38% of design capacity).

results in a total solid waste generation of 280 pounds per day. Solid waste generated within the City of Daytona Beach Shores is collected by Waste Pro, which delivers it to the Volusia County landfill. The 3,000-acre landfill is a Class I facility with a projected life span to the year 2050.

Stormwater Drainage:

The City's adopted LOS standard for stormwater is the 25-year, 24-hour storm event. More specifically, the stormwater facilities must be capable of treating and conveying the runoff from such a storm without causing flooding of adjacent properties or polluting any receiving water bodies. In addition, the Comprehensive Plan requires that there be no net loss of stormwater retention function as a result of development. Therefore, if the property is redeveloped the parcel must have the same ability to store and discharge water after development as it does before development occurs. The applicant would be required to address stormwater retention on the property in accordance with these City standards and there should be no impact to the public drainage system.

Recreation and Open Space:

The proposed amendments would theoretically generate an additional 28 residents to the City. The City's most recent population count was 4,247 (2010 US Census). Policy 7-1.2.1 and Policy 9-1.3.1 in the City's Comprehensive plan establish the LOS standards for recreation facilities within the City. Considering the City's population and the City's recreational LOS standards, it is easy to conclude that Daytona Beach Shores currently has adequate capacity for all recreational facilities as required by the City's Adopted Comprehensive Plan and seen in **Table 2** below.

Table 2: Recreation Facilities Analysis

Type of Park/ Recreational Facility	Unit of Measure/LOS Standard	Current LOS (Number of Facilities)	Deficit
Playgrounds	one per 10,000 people	1	None
Neighborhood Park	one per 10,000 people	5	None
Community Park	one per 25,000 people	1	None
Children's Play Areas	one per 10,000 people	1	None
Baseball/Softball Field	one per 15,000 people	1	None
Tennis Courts	one per 2,000 people	5	None
Community Center	one per 20,000 people	1	None
Exercise Trail	one per 14,000 people	1	None
Nature Study Trail	one per 14,000 people	1	None

Public Schools:

Based on the Volusia County School District's student generation rate for multifamily developments, the proposed land use could generate at least two (2) full time students. Therefore, no significant impact on existing public school facilities is expected. However, consistent with the Volusia County

Interlocal Agreement for Public School Facilities, the Volusia County School District will be reviewing the subject application to formally determine the aforementioned and issue a finding of adequate capacity letter, if deemed appropriate. Public schools available to the proposed site would be Longstreet Elementary, Silver Sands Middle, and Spruce Creek High.

II. LAND USE CONSISTENCY AND COMPATIBILITY

Objective 1-1.4 of the Daytona Beach Shores Comprehensive Plan states that land uses which are inconsistent with the character and overall Future Land Use Plan of the City shall be discouraged through the prohibition of objectionable uses such as industries and warehousing. The proposed future land use and proposed zoning for a residential use, with a restriction of 16 total units, are not objectionable or inconsistent with the aforementioned policy.

From a planning perspective, compatibility does not mean the same. In general, compatibility refers to similar land uses that can exist in harmony without creating land use conflicts. The proposed amendment is for residential use, which is the prevailing land use in the area. The FLU of the surrounding area west of S. Atlantic Avenue is primarily residential low density (single-family and duplex) in character with medium density (Ocean's Terrace Club Condo) while the east side of S. Atlantic Avenue is comprised of high-rise multifamily structures and vacation homes. West of Cardinal Boulevard is single-family in nature. The subject property abuts single-family and duplex residences to the north, single-family residences to the south and west and multifamily structures to the east (**Exhibit A.3**)

For comprehensive plan amendments, compatibility may also be determined by intensity. In this case, if approved, the proposed density of the site would be 22 units per acre (current is 12 units per acre). The nearby densities are: east-60 units per acre (upa), north 4 upa, south-12 upa & 4 upa, west-4 upa. As seen, nearby density is primarily 4 upa but ranges up to 60 upa.

Considering the above along with **Table 1** contained in the body of this staff report, it is presumed that the proposed land use, is compatible with the diverse mixture of existing, future land uses and insensity of the surrounding neighborhood.

III. APPLICABLE PLANS, CODES AND REGULATIONS

Future Land Use Element (Daytona Beach Shores Comprehensive Plan):

Policy 1-1.1.5: (a) The City shall maintain at least a Level of Service standard "D" at all times on its roadway network throughout the City. This shall include Dunlawton Boulevard, including the bridge. The maintenance of this Level of Service standard is important to ensure that an efficient flow of traffic can be maintained on these primary roads in the event of a hurricane threat. (b) Maintain the clearance time of the population in the Hurricane Vulnerability Zone at sixteen (16) hours based on a level of service standard "D" during the time of a category 5-storm event as measured on the Saffir-Simpson scale. This policy is consistent with the stated objectives contained in the Coastal Management Element of the Volusia County Comprehensive Plan regarding hurricane evacuation and

Section 163.3178 (9) (b), F.S. and based on the most current East Central Florida Regional Planning Council hurricane study.

Staff finding: The proposed land use amendment will generate negligible additional traffic, therefore: (a) there will be no decrease in the adopted LOS Standards for S. Atlantic Avenue and Cardinal Boulevard; and (b) considering the aforementioned, the hurricane evacuation clearance time shall also remain more or less the same for the subject roads in question.

Policy 1-1.2.2: The City's existing policy of requiring written assurance from any entity providing sewage treatment, potable water, or solid waste disposal shall be maintained throughout the planning period.

Staff finding: Policy will be enforced during the site development plan process.

Objective 1-1.4: Land uses that are inconsistent with the character and overall Future Land Use Plan of the City shall be discouraged. This shall take the form of not allowing any objectionable uses (industrial, warehousing, etc.) in the new Land Development Code that will be adopted subsequent to this Comprehensive Plan.

Staff finding: The proposed amendment will not result in an incompatible land use designation such as industrial, warehousing, etc. The proposed medium density residential land use restricted at 16 units is compatible with the diverse residential mixture in the neighborhood and overall character of the future land use plan.

Capital Improvement Element

Policy 9-1.3: The City shall use the following Level of Service (LOS) standards in reviewing the impacts of new development and redevelopment on public facility provisions:

- (a) **Sanitary Sewers:** 250 gallons per dwelling unit per day
- (b) **Solid Waste:** 10 pounds per capita per day
- (c) **Drainage:** 25-year, 24-hour design storm
- (d) **Potable Water:** 110 gallons/capita/day (gcd) for Port Orange Service Area
150 gcd for Daytona Beach Service Area
- (e) **Roadways:** Arterials: LOS "D" at peak hour
Collectors: LOS "C" at peak hour
- (f) **Recreation:** See Table A.2 above

Staff finding: As noted elsewhere in this staff report, impacts on public facilities will be negligible and can easily be accommodated by the existing systems capacities.

IV. STAFF FINDINGS

The proposed land use amendment is consistent with overall goals, objectives, and Policies of the Daytona Beach Shores Comprehensive Plan (2030).

ATLANTIC AVENUE ESTATES FLUM & ZONING ANALYSIS

Requested Action:

The applicant is requesting an amendment to the City of Daytona Beach Shores Future Land Use Map for this vacant 0.71± acre property located on the west side of South Atlantic Avenue, approximately 670 feet south of the Amelia Avenue intersection with Atlantic Avenue. The property has 150' of frontage on both South Atlantic Avenue and Cardinal Boulevard. The Property is current designated "Low Density Residential" and is zoned RMF-3. The applicant is requesting a "Medium Density Residential" Future Land Use designation which allow up to 35 units per acre. However the applicant is proposing a text amendment to the Future Land Element that will restrict the permitted density on the subject property to no more than 16 units. The applicant is proposing to rezone the property to RMF-2.

Proposed Development:

The applicant plans to develop two 8-unit 2-story multifamily buildings in 2 phases. One building will face South Atlantic Avenue the other building will face Cardinal Boulevard. Each building will have its own parking.

Comprehensive Plan Amendment Analysis

The following provides a discussion of land use compatibility and a summary of the potential impacts on infrastructure resulting from the change in land use. There is also a discussion on how the proposed amendment is consistent with the requirements of the City of Daytona Beach Shores Comprehensive Plan.

1. Surrounding Land Uses

The area shown below depicts the existing development nearby (within 500' of the center of the property) the subject property. The area is a mixture of single family homes, duplexes and large multi-family residential land uses. Table 1 summarizes the land uses in the area. It is apparent from the table and aerial map that amending the Future Land Use Map will not introduce an incompatible use that will have a negative impact on surrounding uses, given the existing mix of residential land uses.

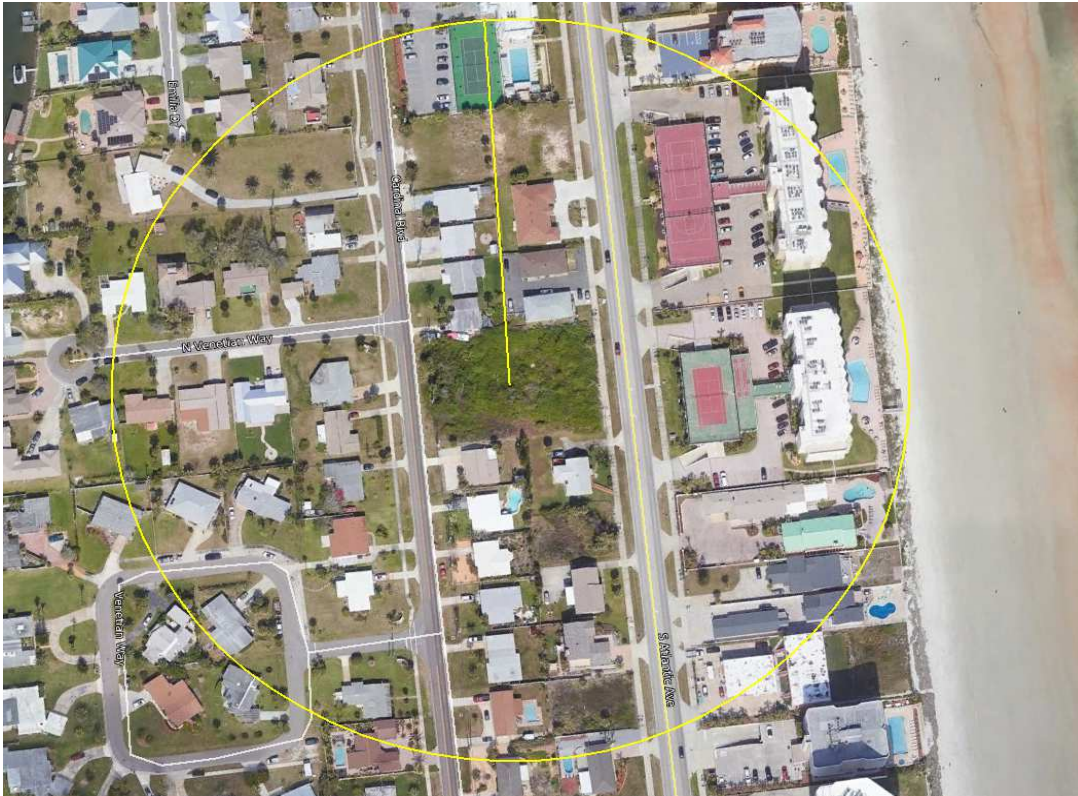


Table 1. Nearby Land Uses

Location	Future Land Use Designation	Existing Use
South	Low Density Residential, High Intensity Use & VC Urban Low Intensity	Single-Family & Multi-family Residential
East	High Intensity Use	Multi-family Residential
North	VC Urban Low Intensity & DBS Medium Density Residential	Duplexes & Multi-family Residential
West	VC Urban Low Intensity	Single-Family Residential

2. Public Facility Impacts

Potential Development Impact on Infrastructure: The following summarizes the difference in the demand for services between the current land use and the proposed amendment. The current land use designation is Low Density Residential (LDR). The LDR allows up to 12 units per gross acre. Based on the current land use and property size, the projected maximum development on the subject site could be eight (8) dwelling units. The proposed land use designation is Medium Density Residential (MDR). The MDR allows a gross density in a range of 12.1 and 35 units per acre. Based the property size, the projected maximum density is 24 dwelling units. However the applicant is proposing to restrict the density to no more than 16 units.

Demand coefficients are based on the Daytona Beach Shores concurrency management regulations. Please be aware that this analysis does not vest the project and that a further review for concurrency is required by the City prior to issuance of the development order for the project.

Table 2. Facility Demand Comparison

Public Facility/Service	Current Land Use/Zoning Demand	Proposed Future Land Use/Zoning Designation Demand
Potable Water*	2,222 gpd	4,444 gpd
Sanitary Sewer	2,000 gpd	4,000 gpd
Stormwater	Attenuation and treatment for 24-hour, 25 year event	
Solid Waste Collection	80 lbs./day	160 lbs./day

*Potable water is overly estimated in order to be consistent with projected sanitary sewer demand.

Table 2 shows the demand for services needed to accommodate the proposed change in land use. Per the Daytona Beach Shores Comprehensive Plan there must be adequate capacity available to serve the project at time of construction. Table 3 provides a summary of the capacity and capabilities of the City of Daytona Beach Shores to provide the required services to the property based on the amended Future Land Use Map.

Table 3. Facility Capacity Analysis

Public Facility/Service	Capacity
Potable Water	Net impact is an increase of 2,222 gallons per day. There is adequate capacity with both water supply and treatment for the proposed amendment.
Sanitary Sewer	Net impact is an increase of 2,000 gallons per day. There is adequate capacity for treatment and disposal of sewage.
Stormwater	Development of the site requires more intensive treatment of stormwater on-site prior to discharge into the existing system. Pre- and post-development flow and rate will be maintained. Stormwater treatment shall comply with federal, state and local requirements.
Solid Waste Collection	This reflects a net increase of 80 pounds per day and there is capacity at the Volusia County landfill.

The demand for potable water and sanitary sewer increases with the proposed amendment and there is adequate supply, treatment and distribution available to serve the proposed increase in intensity. Please note that the estimates are based on concurrency standards from the City of Daytona Beach Shores Comprehensive Plan and Land Development Code, which may overestimate the demand. The actual demand will be a function of the final design and occupancy, which is expected to be considerably less than the demand estimates in this memo. The stormwater standards will require approval from St. Johns River Water Management District (SJRWMD), as well as the City of Daytona Beach Shores. The permitting by SJRWMD and the City of Daytona Beach Shores will ensure that the amount and rate of flow of stormwater from the site is maintained at the pre-development levels and the stormwater quality is improved so as to limit potential for pollution of nearby bodies of water.

Traffic Impacts

A Traffic Impact Analysis (TIA) is not required for the proposed rezoning since the projected traffic will not trip the thresholds established by the City and the River to Sea Transportation Planning Organization (R2CTPO). ZCA completed a preliminary analysis of the transportation impact in order to compare the potential impacts resulting from the proposed Future Land Use Map amendment and rezoning. The analysis shows that under the current land use it is estimated to generate 77 daily two-way trips and 8 PM peak hour trips at build out. The proposed use is projected to 118 daily two-way trips and 9 PM peak hour trips. The net increase of trips at build out will be 41 daily two-way trips and 1 PM peak hour trips that will be distributed on the road network. This means that the transportation demand, specifically the amount of traffic traveling to and from the site, will increase. The following table reflects that the proposed amendment will not have any significant impact on the arterial roads serving the subject area since there is more than adequate capacity. Please note that the City will conduct a formal concurrency review prior to the issuance of the final site development permit.

Table 4. Traffic Impact Analysis

Use	ITE Code	Units	Daily Trip Rate	PM Peak Hour Rate Volume	Estimates Daily Trips	Estimated PM Peak Hour Trips
Single Family Home	210	8 SFDU's	9.57	1.01	77	8
Multi-family Low Rise	220	16 DU's	7.32	.56	118	9

Table 5. Transportation Network Summary

Road	From	To	2018 ADT	LOS Volume	Excess Capacity?
South Atlantic Avenue	Phyllis Avenue	Marcelle Avenue	9,970	14,740	Yes
Cardinal Boulevard	Demotte Avenue	Marcelle Avenue	5,190	13,640	Yes

Consistency with Adopted Comprehensive Plan

The Daytona Beach Shores Comprehensive Plan contains several elements that address a variety of issues. The revision of the future land use map typically involves the Future Land Use, Transportation, Utilities and Capital Improvements Elements. Other elements, such as Coastal Management, Conservation and Parks and Recreation, are not impacted by the proposed amendment.

Overall, the addition of a medium density residential development provides for a cohesive land use pattern. The proposed land use change & rezoning will facilitate the development of a vacant lot that is surrounded by existing residential and tourist land uses. The in-fill development will help in reducing the amount of vacant properties within Daytona Beach Shores. The final site plan will incorporate all any needed expansions of City facilities to meet the demand associated with the proposed development. The following lists specific goals, objectives or policies that show that the proposed Future Land Use

Map Amendment and Official Zoning Map Amendment are consistent with the adopted Comprehensive Plan:

Chapter 1. Future Land Use Element

GOAL 1-1: Effectively manage future development by designating appropriate areas for new growth that does not compromise environmental integrity, is responsive to market needs and is consistent with sound land planning practices.

Objective 1-1.1: Future growth will be managed through the preparation, adoption and implementation of a land development code that is compatible with the land use proposals set forth in this Element and coordinated with the availability of municipal facilities and services. Future land development in the City shall discourage urban sprawl through the designation of appropriate densities (see Policy 2 under this Objective) that will retain the compact development already in place. All future development in the City shall be required to maintain at least a 50-foot setback from the existing Coastal Construction Control Line (CCCL). With this, as well as adherence to the regulations being promulgated by the Department of Environmental Protection in the establishment of the new CCCL, new development shall be protected from any storm surge that occurs as a result of tropical storms that impact the area. This objective shall be measured through the implementation of the following policies.

Policy 1-1.1.2: Maintain and enforce land development regulations consistent with the following standards:

1. Residential

- a. Low Intensity: up to 4 units per gross acre
- b. Low Density: up to 12.0 units per gross acre
- c. Low Density-Riverside: between 12.1 and 15 units per gross acre. Properties shall be developed as a planned unit development (PUD) and meet the following designation criteria: (i) land shall abut the Halifax River, (ii) land shall have a minimum parcel size of three (3) acres, (iii) land must be served by public infrastructure including but not limited to potable water and wastewater lines, and (iv) land shall have direct access to a major thoroughfare.
- d. Medium Density: between 12.1 and 35.0 units per gross acre
- e. High Density: between 35.1 and 60 units per gross acre (site specific density to be controlled by Land Development Code)

Policy 1-1.1.3: Maintain and enforce land development regulations consistent with the location and extent of land uses as discussed within the Element and indicated on the Future Land Use Map. To this end, the map that accompanies the new Land Development Regulations shall reflect the Future Land Use Plan Map 2020, in terms of ensuring that zoning districts shall be consistent with the map. All new development and redevelopment activities shall be required to be consistent with the zoning district classifications.

Chapter 5. Coastal Management Element

Policy 5-1.5.5: The City shall require that all infrastructure is available to serve development or redevelopment in its coastal area at the densities proposed in the Future

Land Use Element, consistent with coastal resource protection and safe evacuation, by assuring funding for infrastructure that will be phased to coincide with the demands generated by development or redevelopment. The City recognizes that its entire land area falls within the Hurricane Vulnerability Zone. Therefore, it has a policy that it has already adopted through its building code that requires all new development to be built to withstand hurricane force winds. This policy shall remain in effect throughout the planning period.

Consistency with the Florida Administrative Code

The 2011 the Florida Community Planning Act repealed Rule 9J-5 F.A.C.

Consistency with the Volusia County Growth Management Consistency Rules

The proposed amendment is consistent with the requirements and will be submitted in accordance with the rules established by the VGMC for determination of consistency for small-scale amendments.

Zoning Review Criteria

The City of Daytona Beach Shores Land Development Code includes provisions in Chapter 82, Article V, Division 5, Sections 83-372 and 374 that require the Board of Planning and Appeals and City Commission to consider the following criteria in its review of each application. The following summarizes the criteria and applicant's response in support of the proposed change to the Official Zoning Map.

The following are the criteria established in the City of Daytona Beach Shores LDC pertaining to amendment to the Official Zoning Map. These are the standards to be used by the Planning and Zoning Board in the review of applications to amend the Official Zoning Map.

1. The proposed zoning will have a favorable or unfavorable impact on the environment and natural resources of the area affected.

The subject property is a .71 acre vacant lot that is surrounded by developed property. A review of geographical information system (GIS) data from Volusia County and St. Johns River Water Management District reveals no indicators of significant natural resources that require preservation or conservation of the land. There should be no impacts to the environmental and natural resources in the area.

2. The proposed zoning will have a favorable or unfavorable impact on the economy of the area affected.

The subject property is vacant and is not being used for its highest and best use. The rezoning to RMF-2 will allow for the development of a medium density residential development that is compatible with the surrounding uses. This will increase the taxable value of the property.

3. The proposed zoning will efficiently use or unduly burden water, sewer, solid waste disposal or other necessary public facilities, including schools.

The proposed rezoning will allow development of the property with 16 units that will have minimal impact to the infrastructure and facilities of the City.

4. The proposed zoning will efficiently use or unduly burden transportation facilities.

The development of the property with 16 units will have minimal impact on the road network in the area and will not result in the traffic to exceed the adopted levels of service.

5. The proposed zoning will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

The development of the property with 16 units will provide additional housing that is primarily in-fill development that is in close proximity to non-residential areas that provide for employment opportunities.

6. The proposed zoning is basically consistent with the comprehensive land use plan.

The rezoning of the property is consistent with the proposed amendment to the Future Land Use Map and the overall goals, objectives and policies contained in the adopted Comprehensive Plan.

7. Have conditions relative to the property in question and the surrounding area so changed as to require zoning classification boundaries be amended to reflect new conditions?

Properties adjacent to Atlantic Ave are no longer a desirable location for low density residential growth.

8. Was there a mistake in the original zoning of the property so that such zoning does not properly reflect the actual or developing conditions of the area?

No mistakes were made with the original zoning of the property.

9. Will the proposed change promulgate or encourage a physical benefit or have a stabilizing effect on the surrounding areas?

Future Land Use Map Amendment and rezoning will provide the opportunity to develop the vacant land for a residential development that is compatible and consistent with the character of the area. This will have a stabilizing effect on the surrounding area and support commercial activity.

10. Would the proposed changes constitute "spot zoning"?

No the proposed change will not constitute spot zoning since there are multiple zoning classifications assigned to all of the adjoining properties.

11. Is the proposed change a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, and would such use violate the integrity of the zoning classification?

The proposed rezoning will not allow for a "totally different" use and will not violate the integrity of the zoning classification. The proposed zoning is consistent with the surrounding residential development and provides for a reasonable use that is located immediately across from the multi-family tourist use developed on the east side of South Atlantic Avenue

12. Is the change solely for the benefit of the owner and to the detriment of the community?

While the property owner certainly hopes to benefit from the use of his property, it will not be at the expense of the community. The development of this vacant site as medium density residential will add to the tax base and provide increased customer base to support commercial activity in the City.

13. Will the proposed change especially suit the applicant's own special purpose rather than serve the community?

No, the proposed rezoning will not suit the applicant's special purpose and the proposed land use and zoning is consistent and compatible with the surrounding developed area. This is an in-fill project that will help the City in fostering redevelopment on the west side of A1A.

14. Would the requested change materially diminish the value of surrounding properties or substantially alter the characteristics of the neighborhood?

The proposed development is consistent and compatible with the residential development in the area. It will not diminish the value of surrounding properties and it will not substantially alter the characteristics of the neighborhood

Summary

- The proposed amendment to the City's Future Land Use Map is consistent with the adopted Comprehensive Plan and is compatible with the surrounding land uses.
- The rezoning to RMF-2 is consistent with the proposed amendment to the Future Land Use Map and provides for a compatible use of the property.
- The analysis shows that the theoretical increases in the demand for urban services can be adequately addressed and there is no need for expansion of these facilities in order to serve the

proposed development of the site. A detailed concurrency evaluation will be performed prior to the City of Daytona Beach Shores issuing a development permit.

- The proposed rezoning is generally consistent with the goals, objectives and policies contained in the adopted City of Daytona Beach Shores Comprehensive Plan.
- The proposed rezoning to RMF-2 complies with the requirements contained in *City of Daytona Beach Shores Code of Ordinance, Appendix G, Land Development Code, Chapter 14, Article IX-Planning and Zoning Board, Section 14-66, Supplementing or Amending the Zoning Ordinance*.

Exhibits

Aerial Location

Existing Future Land Use Map

Proposed Future Land Use Map

Existing Zoning

Proposed Zoning

Photos of Site

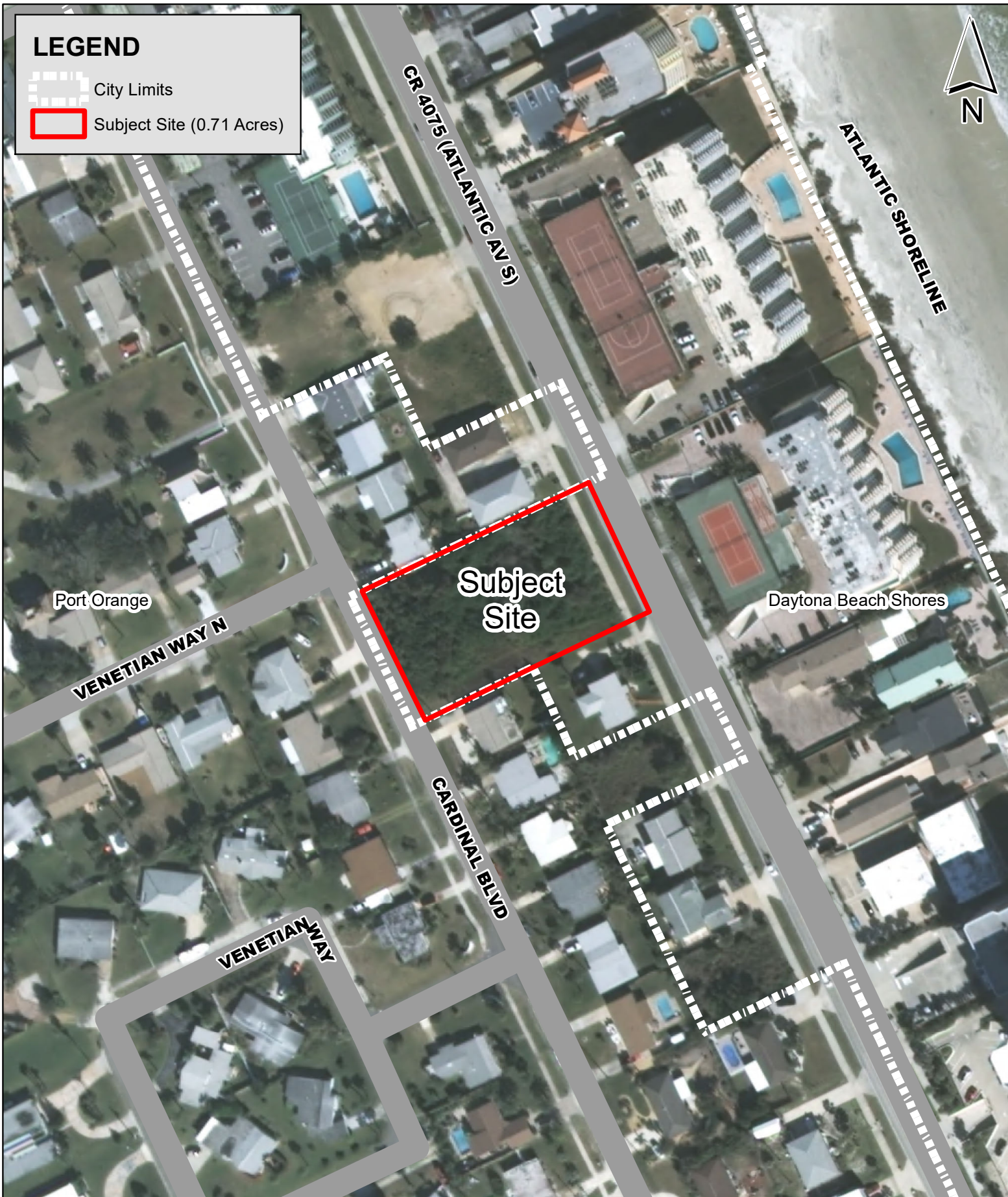
LEGEND



City Limits



Subject Site (0.71 Acres)



Date Saved: 9/27/2019

Created by: eobrien
Path: Z:\PROJECTS\2015\15200\Aerial Map(2).mxd

100 50 0 100 Feet

Aerial Map
Atlantic Avenue Estates LLC
S. Atlantic Avenue



300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482

LEGEND



City Limits



Subject Site (0.71 Acres)

FLU - Daytona Beach Shores



High Intensity Use



Low Density Residential



Medium Density Residential

FLU - Volusia County



Urban Low Intensity



CR 4075 (ATLANTIC AV S)

ATLANTIC SHORELINE

Port Orange

Daytona Beach Shores

VENETIAN WAY N

CARDINAL BLVD

VENETIAN WAY

Low Density Residential

Date Saved: 9/27/2019

Created by: eobrien
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100 50 0 100 Feet



FLU Map - Existing
Atlantic Avenue Estates LLC
S. Atlantic Avenue



300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482

LEGEND



City Limits



Subject Site (0.71 Acres)

FLU - Daytona Beach Shores



High Intensity Use



Low Density Residential



Medium Density Residential

FLU - Volusia County



Urban Low Intensity



CR 4075 (ATLANTIC AV S)

ATLANTIC SHORELINE

Port Orange

Daytona Beach Shores

VENETIAN WAY N

CARDINAL BLVD

VENETIAN WAY

**Medium Density
Residential**

Date Saved: 9/27/2019

Created by: eobrien
Path: Z:\PROJECTS\2015\15200\Proposed FLU Map.mxd

100 50 0 100 Feet

FLU Map - Proposed
Atlantic Avenue Estates LLC
S. Atlantic Avenue



300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482

LEGEND



City Limits

Subject Site (0.71 Acres)

Zoning - Daytona Beach Shores



Hotel/Motel - Multifamily Residential (High Density)



Urban Single-Family Residential



Multifamily Residential (Low Density)

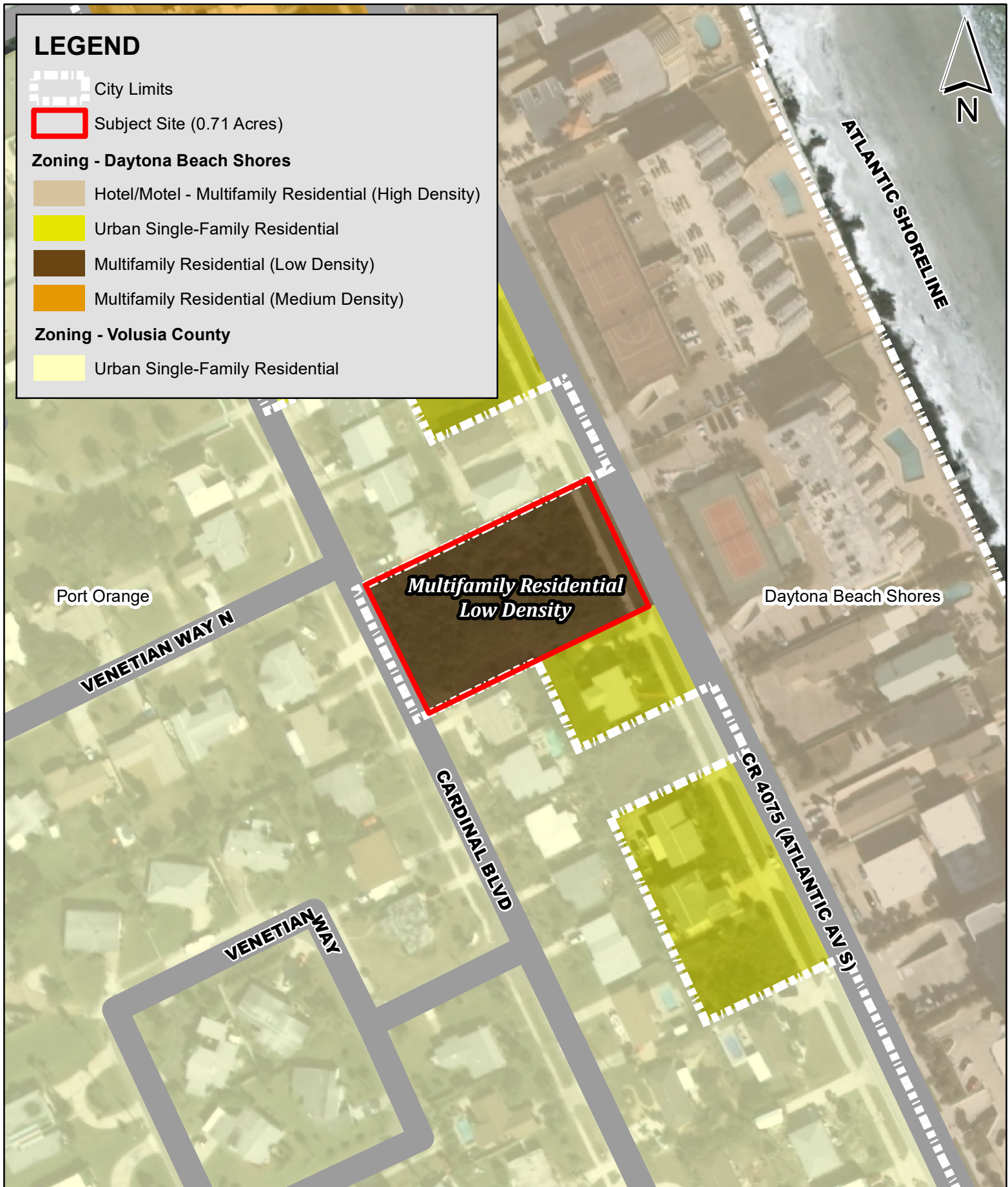


Multifamily Residential (Medium Density)

Zoning - Volusia County



Urban Single-Family Residential



Date Saved: 10/17/2019

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Zoning - Existing
Atlantic Avenue Estates LLC
S. Atlantic Avenue



300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482

LEGEND



City Limits

Subject Site (0.71 Acres)

Zoning - Daytona Beach Shores



Multifamily Residential (Medium Density)



Urban Single-Family Residential

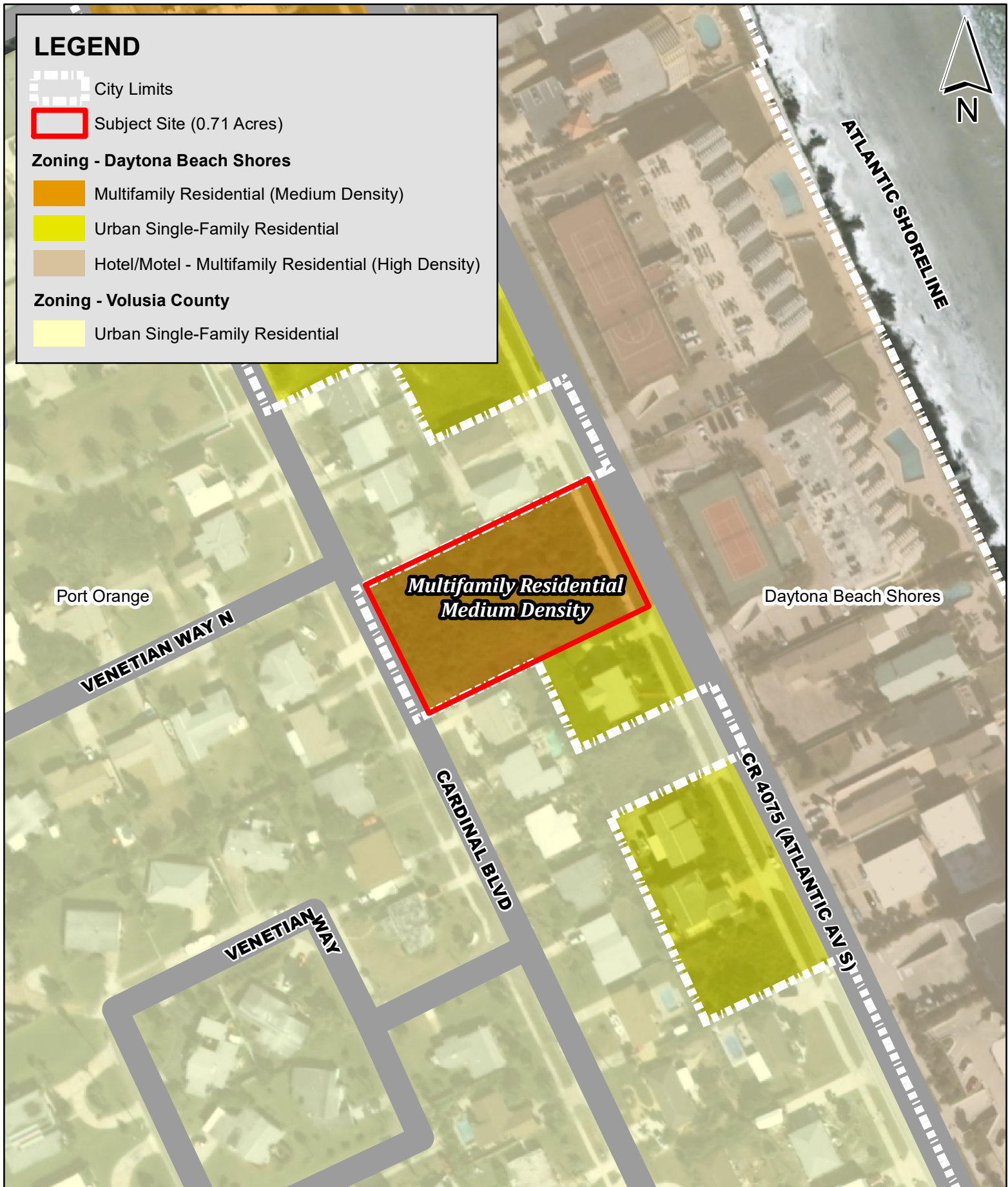


Hotel/Motel - Multifamily Residential (High Density)

Zoning - Volusia County



Urban Single-Family Residential



Date Saved: 10/17/2019

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Path: Z:\PROJECTS\2015\15200\Proposed Zoning Map.mxd

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Zoning - Proposed
Atlantic Avenue Estates LLC
S. Atlantic Avenue



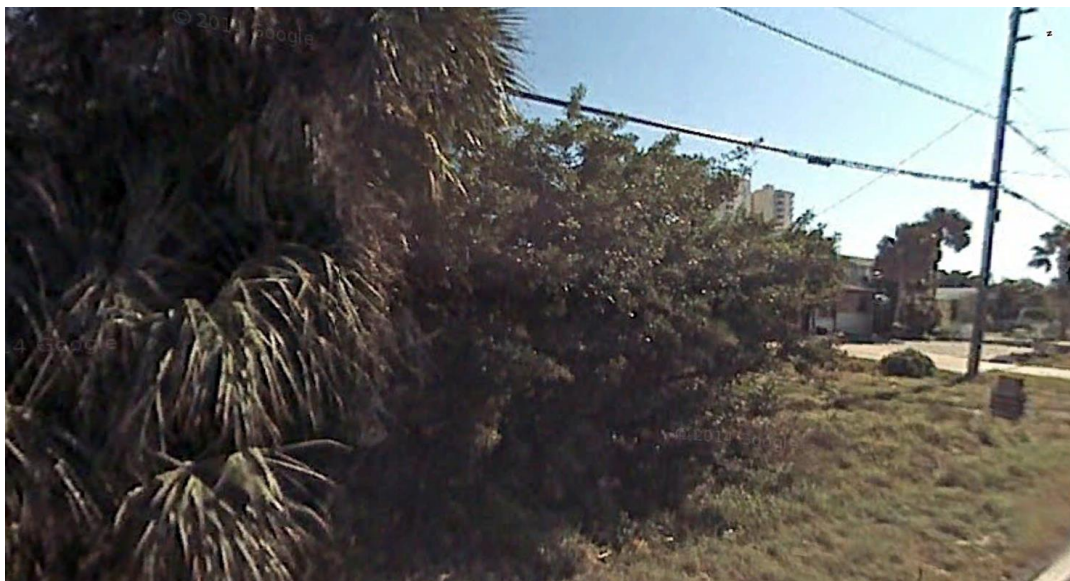
300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482



South Atlantic Avenue looking towards southwest



South Atlantic Avenue looking towards northwest



Cardinal Boulevard looking towards southeast



Cardinal Boulevard looking towards southwest

Cruz, Stewart

From: Cruz, Stewart
Sent: Tuesday, December 10, 2019 4:08 PM
To: Andy Anderson
Cc: Hiatt, Fred; Michael Booker
Subject: RE: Recommendation for Rezoning of Cardinal/Atlantic Property
Attachments: P&Z Staff Report.pdf; Exhibit B-Atlantic Avenue Estates-Application.pdf; P&Z Exhibits.pdf; EXHIBIT A.pdf

Dear Mr. Anderson,

Thank you for your inquiry. Please feel free to voice your concerns at any future public hearing you may attend. Please also find below in underline format responses to your inquiries. If you have further questions or would like to discuss in person please do not hesitate to contact me. 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: Andy Anderson <andy@rere.com>
Sent: Monday, December 9, 2019 1:38 PM
To: Cruz, Stewart <scruz@cityofdbbs.org>
Subject: Recommendation for Rezoning of Cardinal/Atlantic Property

Dear Mr Cruz,

I attended the public hearing this morning regarding the rezoning of a property from low intensity to medium intensity. I am outraged that you as a staff member and the Board working in the best interests of the City of Daytona Beach Shores can reasonably decide that his rezoning can, to paraphrase the City slogan, make "Life Better Here"!

I would appreciate an email containing the information and recommendations that were proposed at this hearing. See attached.

My family and I have lived on Venetian Way since 2000. The subject property is five lots to the north of my access onto Cardinal. I was not aware of the progress on rezoning this lot. I am a Volusia County resident. This will directly affect my life and property.

I need clarification of some observations I believe were stated in your presentation;

There was a map of the area in which the subject property was in yellow and the surrounding area was in white showing that it is County control. How can the City of Daytona Beach Shores make a decision that has a larger effect on these surrounding county residents than it does any Daytona Beach Shores residents? Local governments in the state of Florida are authorized pursuant to Chapter 163 of the Florida Statutes to make decisions regarding land use changes

within its jurisdictions. However, Future Land Use (Comprehensive Plan) Amendments will also be evaluated by various state agencies and the Volusia Growth Management Commission (VGMC) for impacts on a large resource, community and infrastructure system basis. Under Florida Law and County Charter, the aforementioned amendment does not become effective/legal until such time that the state agencies and VGMC approval is obtained. This does not make Life Better in this neighborhood! The only people benefiting from this rezoning is the Developer and his Agent and Daytona Beach Shores tax coffers.

In your presentation, staff conclusion was that changes are "not consistent but compatible" to the surrounding area? Will you explain how changing the zoning to medium density on a property that is surrounded with low density can be "compatible". I agree that it is not consistent. Consistency generally means matching (exactness) land use whereas compatible refers to the ability in which dissimilar land uses can co-exist. Therefore, based on the residential land use categories that the City has, low density and medium density would be considered compatible whereas low density and high density would not. Because the number of units on this site would be restricted to 16 (vs the 25 which the change would ordinarily permit), and because of the mixture of residential uses in the immediate vicinity (condo, vacation rental, single family and duplexes) staff determined the proposed change with the restriction to 16 units was compatible. Of course, the City Council may wholeheartedly disagree.

There was also discussion between you and the Board regarding the fact that the developer is limiting the number of units to 16 when it will be approved for 25. "Things change over time" was expressed, and a Board member stated to the affect of "we certainly hope that this is built quickly". Will there be verbiage added in the amendment limiting the increase to 16 units IF this amendment is changed. If approved, yes. Expecting the Developer to limit himself is delusional.

The observation by one of those speaking in opposition that there will be significant negative visual impact to the neighborhood is valid. I drive Cardinal Cardinal everyday, the trash on the side of the road by apartments in the area is undeniable. If these apartments are in Shores please let me know and we will have Code Enforcement deal with the issue right away.

I look forward to your response and will speak with you in the future. I can either pick up materials from the Shores office or receive digitally

Sincerely,

Brian Anderson

114 Venetian Way

386-566-2760

Andy@ReRe.com

Cruz, Stewart

From: Fernando Castellanos <fcastellanos@diocesan.com>
Sent: Monday, December 9, 2019 3:15 PM
To: Cruz, Stewart
Subject: RE: 3824 and 3832 Atlantic Complaints

Dear Stewart, thank you for your quick response, I am surprise you answer my e-mail I thought I was writing to a computer I am so glad you answer me.
Thank you and God Bless

Fernando Castellanos

Sales Representative

FCastellanos@Diocesan.com

407.955.2815

DIOCESAN
Catholic Life

Do your parishioners have a favorite parish?

FIND OUT >>

From: Fernando Castellanos [<mailto:fcastellanos@diocesan.com>]
Sent: Monday, December 9, 2019 11:45 AM
To: 'scruz@cityofdb.org'
Subject: 3824 and 3832 Atlantic Complaints

To whom it may concern.

This is a beautiful area to live and if we keep building apartments for rent we are going to ruin this city and make it like Daytona with a lots of business.

There are apartments in the back of my house and I just place a nice pvc fence for \$4,500 and they broke my fence before the week was over I asked them they said they didn't do it and that her roommate that owns the other car was in jail so yes this is the people we are talking about.
NO TO APPARTMENTS FOR RENT FOR THIS AREA.

We love this area don't ruin it. Built Houses not apartments.

Thank you and God Bless you

Attention / Urgent!! ...

This letter was sent to just 3824 and 3832 S. Atlantic. We are hereby copying - in all the other surrounding neighbors to ask for your input and concerns over the city changing this from a single-family lot(s) to "multi-family" lots and proceeding to build a couple of 3-story rental apartments on each. The time to voice your/our complaints is now! Any complaint has to be about: Health, Safety, or Infrastructure in order to be considered. Please take a moment to think about this and write down your concern(s) or forever hold your peace. Thank you!

- The Spence's,
3832 S. Atlantic

P.S. - Please copy us in on your correspondence to the city planner. Thanks!

NOTICE TO ABUTTING PROPERTY OWNERS

November 6, 2019

The builder:

Zev Cohen & Associates, Inc.
300 Interchange Blvd., Suite C
Ormond Beach, Florida 32174

Dear Property Owner:

The owners of the vacant property between 3824 S. Atlantic Avenue and 3832 S. Atlantic Avenue, which abuts your property, have submitted applications to the City of Daytona Beach Shores to change the future land use classification and the zoning district on the property. The following table shows the requested future land use classification and zoning district.

Parcel ID	Proposed Future Land Use	Proposed Zoning
630205070150	<i>from low density</i> Medium Density Residential	RMF-2 (Residential Multi-Family)

The City of Daytona Beach Shores Planning and Zoning Board and City Council will hold Public Hearings on this application as follows:

Planning and Zoning Board: December 9, 2019 at 8:30am.
City Council (1st Reading): January 14, 2020 at 6:00pm.
City Council (2nd Reading/Adoption): February 25, 2020 at 6:00pm.

The public hearings will be held in the City Council Chambers in the Daytona Beach Shores Community Center located at 3000 Bellemead Drive, Daytona Beach Shores, Florida.

All interested parties may appear at the public hearings and will be given an opportunity to be heard. If it will be necessary to reschedule this public meeting to a later date, it will be your responsibility to obtain the time, date and place of the rescheduled meeting.

Information on the future land use and zoning applications are available for public inspection at the City of Daytona Beach Shores, Building & Codes Division, 2990 South Atlantic Avenue. If you have any questions, please contact Stewart Cruz at (386) 763-5361.

1. Comprehensive Plan Future Land Use Map Amendment Schedule:

- P & Z Board: 8:30 AM, Monday, December 9th
- City Council: 6:00 PM, Tuesday, January 14, 2020 (1st Reading)
- City Council: 6:00 PM, Tuesday, February 25 (2nd Reading)

2. Rezoning Map Amendment Schedule:

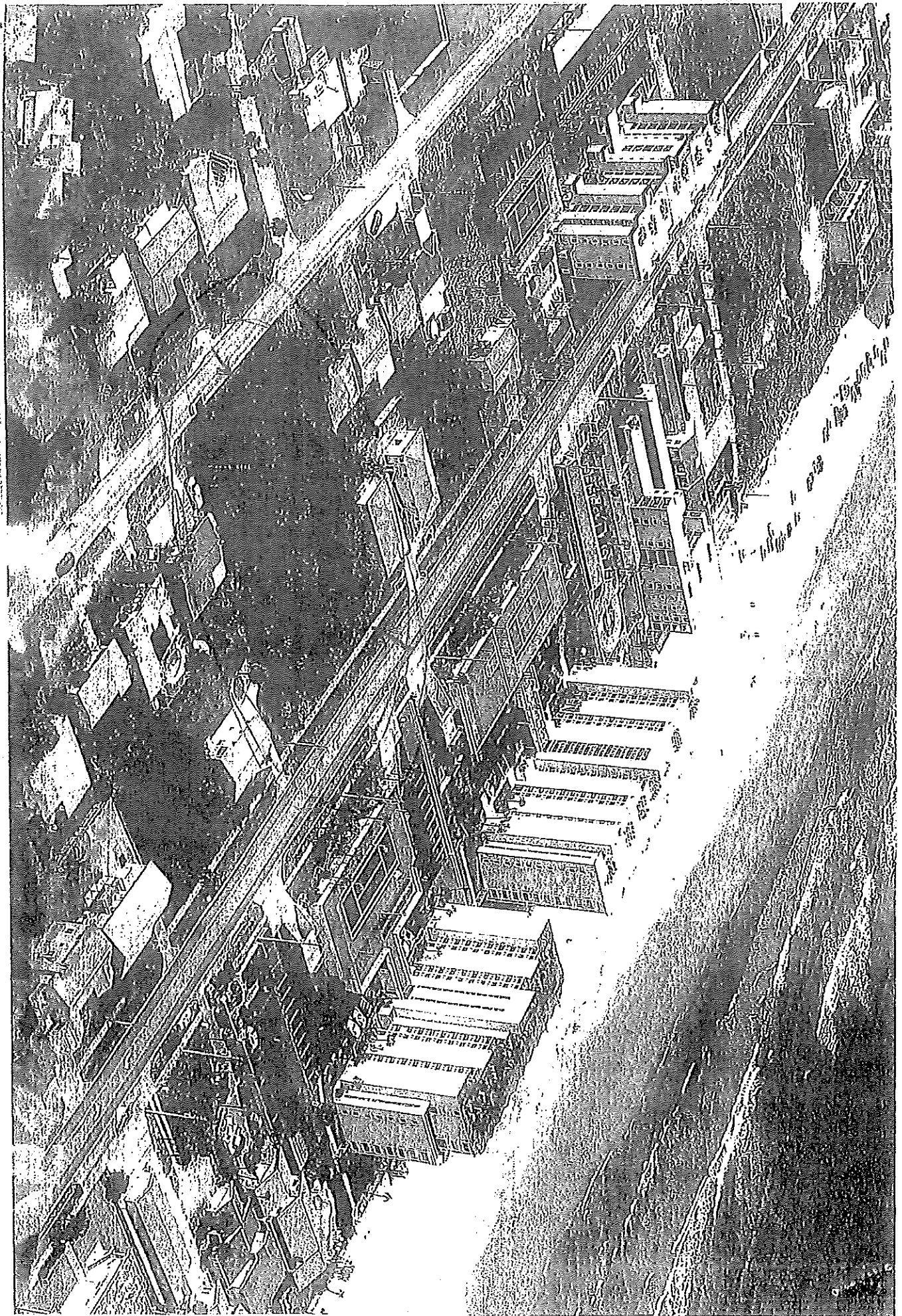
- P & Z Board: 8:30 AM, Monday, January 13
- City Council: 6:00 PM, Tuesday, January 28 (1st Reading)
- City Council: 6:00 PM, Tuesday, February 25 (2nd Reading/Adoption)

Stewart Cruz
City of PAB Shores
City Planner
2990 S Atlantic Ave.
DAB Shores FL 32118

W 386-763-5377

FAX 386 763-5370

email scruz@cityofpabshores.org



Questions: (Please add to this list and send to Stewart (cz, city planner) before Monday, December 9th at 8:30 am / Thank you!)

- How many structures will there be?
- Will it (they) be three stories high?
- Will there be separate or integrated garages?
- How many access streets will go into and out of the tract?
- Can neighborhood residents be shown a layout of the proposed?
- Since we understand they will be rental units, can we expect that they will be as well cared for as condos whose owners would most likely take better care of them?
- How much more traffic & noise will there be?

Other questions/concerns?

I live next door and am very unhappy they want to build apartment buildings in the back of my house and I just spend \$4,500 in placing a fence and in less than a week the people from these apartments broke my fence. They said it was not them and they roommate was in jail and she did not do it and the same night they broke bottles in the parking lot they should not but have

Apartment for Rent.
Keep it Residential ONLY.

Not
Renters

Cruz, Stewart

From: Cruz, Stewart
Sent: Monday, December 9, 2019 2:10 PM
To: Keith@a1acm.com
Cc: Bob Brazeau
Subject: RE: Zoning Committee - 3824-3832 South Atlantic
Attachments: Atlantic Avenue Estates LLC - Concept Plan 12-2-19.pdf

Good afternoon Mr. Lennartson.

I provided the Planning and Zoning Board with your Board's letter. The vote was 3-2 in favor of the project. The letter will also be provided to the City Council for their consideration in January. Please also see attached concept plan of development. If approved, the proposed development would be two two-story 8-unit apartments (a total of 16 units). The current approval, despite being for only eight units, is for four 3-story duplex townhomes. Please also note traffic analyses conducted by both staff and the applicant's engineer have determined there is adequate capacity on both roadways. If the project is approved, the County of Volusia Traffic Engineering Department (which has jurisdiction over the adjacent roads) will review the plans and determine what safety measures shall be implemented by the developer, if deemed warranted by the department in question. If you have any further inquiries please contact me at your convenience. 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

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From: Keith@a1acm.com <keith@a1acm.com>
Sent: Saturday, December 7, 2019 11:33 AM
To: Cruz, Stewart <scruz@cityofdbbs.org>
Cc: Bob Brazeau <bobbrazeau0@gmail.com>
Subject: Zoning Committee - 3824-3832 South Atlantic

Good day, Mr. Cruz.

As discussed, please find correspondence regarding the upcoming Zoning Committee Meeting attached.

We hope to see you there!

Keith Lennartson, LCAM

Keith Lennartson, LCAM
Portfolio Manager
South Atlantic Communities

Office: 386.236.0474



2422 South Atlantic Avenue
Daytona Beach Shores, FL 32118
www.a1are.com



6 December 2019

Mr. Stewart Cruz
City of Daytona Beach Shores
Building and Codes Division
Daytona Beach Shores, FL 32118

Dear Mr. Cruz;

Thank you again for your continued commitment to communicating with our Blue Surf Condominium community regarding the potential changes that affect us all. You have been a very valuable and accessible resource for our team.

We are writing you in concern for the latest notice regarding the vacant properties across the street from us, 3824 and 3832 South Atlantic Avenue. While we fully intend on being represented at the meeting on Monday, 9 December, it doesn't hurt to back it up in writing.

We understand that these parcels are zoned for low to medium density residential usage. Further, the developers have some latitude in their approach that range from 16 to 35 units in the new structures.

Our concerns are twofold:

- A. The traffic on South Atlantic Avenue is already challenging particularly during peak seasons and events. 35 units at an average of 2 cars per unit could create safety issues in our stretch of South Atlantic Avenue.
- B. Additional, tall building structures alter the aesthetic that has drawn many to invest in homes in our condominium as well as in our surrounding neighborhoods. Blocked sightlines and a canyon effect can occur when both sides of a thoroughfare are burdened with tall building structures.

In the end, our largest concern is point B. We trust that the City of Daytona Beach Shores can creatively engineer traffic solutions that can carry the additional burden of more cars on the beachside. However, the loss of the aesthetic that residents and visitors alike have come to love requires the highest consideration.

Please keep the buildings limited to two stories.

All the best,

Robert Brazeau, President
Blue Surf Condominium Management Association, Inc.

Cruz, Stewart

From: Cruz, Stewart
Sent: Monday, December 9, 2019 1:58 PM
To: christydelaosa@gmail.com
Cc: Hiatt, Fred; Michael Booker; Dembinsky, Stephan
Subject: RE: Parcel 630205070150
Attachments: Atlantic Avenue Estates LLC - Concept Plan 12-2-19.pdf

Greetings Mr. and Mrs. de la Osa,

Please find below my responses to your inquiry in underline format. If you have any questions or need any clarification please feel free to contact me. 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: christydelaosa@gmail.com <christydelaosa@gmail.com>
Sent: Friday, December 6, 2019 6:11 PM
To: Cruz, Stewart <scruz@cityofdbfs.org>
Subject: Parcel 630205070150

Mr. Stewart Cruz

My husband and I are writing to request that you ask the potential builders of the above mentioned parcel some questions on our behalf.

We have been residents of Daytona Beach Shores for over 9 years now and have loved watching it grow and progress. When we first moved here we were the youngest family in the area, but as time went on and the economy grew more and more younger families moved to the area.

This has been amazing and we love it. Our concern is that with an apartment complex there will be increased traffic that can lead to dangers for the young children that ride their bikes, skateboard, and cross A1A with their surf boards.

Our questions are the following:

1. How many actual units are being proposed? Two two-story eight unit apartments are being proposed for a total of 16 units.
2. Will there be garage parking, below ground, or above? Surface parking is being proposed.

3. Will it be gated? Based on the plan proposed (attached), it does not appear to be a gated development.
4. What will be the minimum rental length and will they allow sub-rentals? I will forward your question to the developer.
5. Will any be sold as permanent residential units? It is my understanding these will all be rental units.
6. What impact will this have on our first responders (i.e.: additional police, fire, and rescue)? I will forward your question to the Public Safety Department. Please note however the Fire Division has reviewed the proposal and does not object.
7. Have any traffic studies been done (i.e.: entrance from cardinal and A1A)? Traffic analyses conducted by both staff and the applicant's engineer have determined there is adequate capacity on both roadways. If the project is approved, the County of Volusia Traffic Engineering Department will review the plans and determine what safety measures shall be implemented by the developer, if needed.
8. Will there be add crosswalks with lighting? I will forward your question to the developer. Please note however, the County of Volusia will determine this outcome based on their needs analysis.
9. How will they handle beach access? Beach access is not required however the nearest beach access is located at Emilia Avenue, which is 0.2 miles north of the property.
10. Can surrounding residents be shown the proposed layout? Yes, please see attached concept plan.
11. Will there be security for the property (i.e.: cameras, hired security)? I will forward your question to the developer.
12. What is the estimated time of completion? I will forward your question to the developer.
13. What impact will this have on our property values? I will forward your question to the developer.

We respect and encourage the growth of the city, but this end of the Shores has historically been residential. Our concern, again, is that this turns into an over populated and transient area. Many of the condos are only allowed to rent for 6 months plus and some yearly in our area. As it is there are issues with some property owners renting their homes.

Across the street from us is 3843 S. Atlantic, and I must say it has been insane. Recently they had a car club rent the home and there had to have been over 30 people there. They would pull out their cars and back up A1A as they all pulled out. Additionally, they were loud into the late hours and left trash everywhere. Please note the City has nuisance noise regulations. Therefore, should the need ever arise again in the future, please contact the Volusia County Dispatch at their non-emergency telephone number (Tel. 386-248-1777) and the DBS Public Safety Department will investigate and take appropriate actions. Please also contact the DBS Code Enforcement Division (Tel. 386-763-5377) to address the trash situation should it ever arise again in the future.

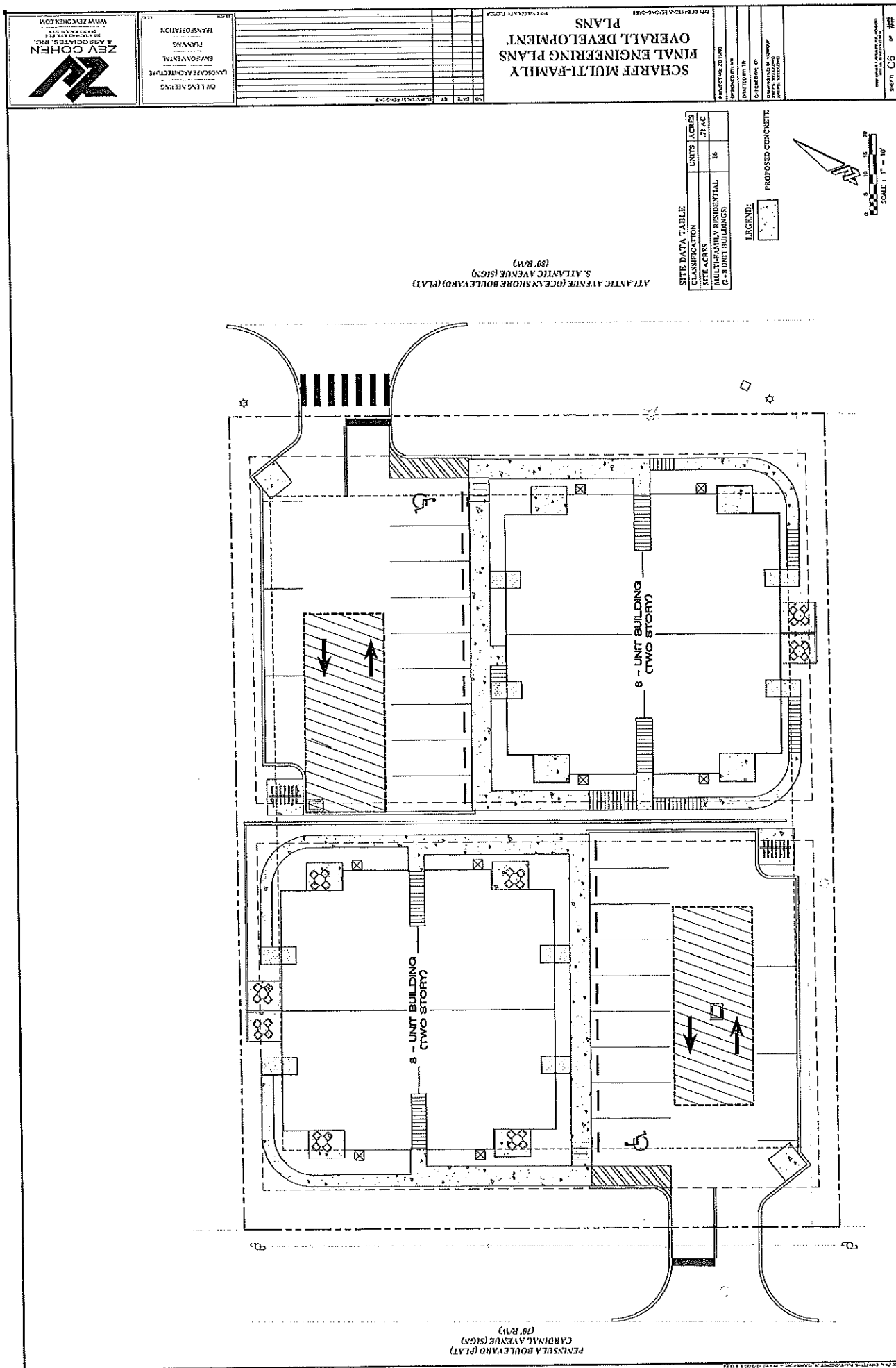
If we are to accept more rental we must be prepared to enforce codes and laws, and owners of the properties must be equally responsible. Growth is a wonderful thing, but it has a price. With the influx of young families comes more children, and we must consider this and how it will impact them. As it stands many of the bus stops are on Cardinal and there is no sidewalk on the east side. It is crazy dangerous!!!

Cardinal Boulevard is a County road under the jurisdiction of the County of Volusia and the vast majority of properties abutting Cardinal Boulevard are County properties. Please note however, except for single family homes, any new development in the Shores is required to construct sidewalks in front of the development if none exist. Therefore, if this property is ever developed, the Shores will require a sidewalk on the Cardinal side of the property.

Thank you in advance for considering our questions regarding this parcel.

Regards,
Michael and Christina de la Osa
3840 S. Atlantic Avenue
DBS, 32118

Sent from Mail for Windows 10



LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

SCHARFF MULTI-FAMILY
OVERALL DEVELOPMENT
FINAL ENGINEERING PLANS
PLANS

CITY OF ATLANTA RECORD 9-0-153
PROJECT NO. 201008
SHEET NO. 145
DATE: 08/11/15
DESIGNED BY: [blank]
CHECKED BY: [blank]
IN CHARGE: [blank]

Cruz, Stewart

From: Cruz, Stewart
Sent: Monday, December 9, 2019 1:28 PM
To: Charlie Van Derven
Cc: Hiatt, Fred; Michael Booker; Dembinsky, Stephan
Subject: RE: Questions and Safety Concerns Over Property Proposal of Vacant Lot Between 3824 S. Atlantic and 3832 S. Atlantic
Attachments: Atlantic Avenue Estates LLC - Concept Plan 12-2-19.pdf

Greetings Mr. Van Derven:

Thank you for your inquiry. Please find below responses to your questions in underline format. If you have any questions or need any clarification please advise. 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

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From: Charlie Van Derven <cvanderven@social-advisors.com>
Sent: Friday, December 6, 2019 4:44 PM
To: Cruz, Stewart <scruz@cityofdb.org>
Subject: Questions and Safety Concerns Over Property Proposal of Vacant Lot Between 3824 S. Atlantic and 3832 S. Atlantic

Hello Mr. Cruz,

I am writing with questions and to express concern over the proposed zoning change for parcel 630205070150 located between 3824 S. Atlantic and 3832 S. Atlantic. I own the single-family home at 3838 S. Atlantic, only three lots away from the proposed building site. We recently spoke about zoning for property improvement on my lot.

My questions include:

1. Is there a site plan that includes the number of structures planned for the lot? Yes, please see attached the proposed rezoning concept plan provided by the applicant.
2. Can the concerned neighbors be shown a proposed layout? Yes, it is public record. Please see attached.
3. How many residents are expected? The proposal is for 16 units. Considering the average DBS occupancy rate is 1.7 per household (US Census, 2010), it is expected that the number of new residents will be 27 (versus 14 new residents under current land use rights).

4. Has there been a study on potential traffic and noise impact? Noise impact studies are not required for land use changes, therefore none was conducted. Basic traffic analysis are required for land use changes unless the project is of major significance, then a full traffic study may be required. Both the applicant and staff's traffic impact analyses have determined that the two adjacent roadways have adequate capacity to accommodate the proposed change.
5. As these will be rental units, can we expect that they will be as well cared for as the condos that are owned units? The City has property maintenance standards and these will enforce as is currently being done throughout the City.
6. What is the planned street layout/access through the property? There is none at this time. Please see attached concept plan.
7. Will all the structures be three story? The existing plan is for three-story duplex townhomes. However, the proposed apartments are for two stories only (see attached concept plan).
8. What is the proposal for garages? Or, will it be surface parking? Issues such as these are typically not addressed during a land use or zoning change stages. However, according to the concept plan attached, surface parking is proposed.

Aside from some obvious concerns like increased traffic and increased noise, I have concerns related to the rentals in the neighborhood.

The property at 3843 S. Atlantic, across the street from my home, is used as a short term rental. During the car show weekend before Thanksgiving, there were a minimum of 30 people in that home. They partied for three days straight, including 50-75 people in front of the home and on the sidewalk on A1A. Not only were we kept awake until the early hours of the morning, I cleaned trash from my yard and my neighbors' yards both the morning of Sat 11/23 and Sun 11/24. The following morning, dozens of the renters were on the roof of the home taking photos. A clear safety issue. Please note the City has nuisance noise regulations. Therefore, should the need ever arise again in the future, please contact the Volusia County Dispatch at their non-emergency telephone number (Tel. 386-248-1777) and the DBS Public Safety Department will investigate and take appropriate actions. Please also contact the DBS Code Enforcement Division (Tel. 386-763-5377) to address the trash situation should it ever arise again in the future.

This past weekend, there was an arrest at Windward South Condo, 3845 S. Atlantic. That incident started with a fight on the beach that I witnessed with 2 of my neighbors. In three years of living at my current residence, I have never seen the two people that were in the fight and were subsequently arrested. I speculate that they were renters.

Both of these incidences brought inherent safety issues to me, my family and my neighbors. The last thing this neighborhood needs is more rental units.

If the plans go through to change the zoning, allowing for more rental units in this area, it will be a true indication that the City of Daytona Beach Shores has greater interest in their tax base than they do the safety and well-being of their residents.

Thank you for your consideration.

Charles T. Van Derven
3838 S. Atlantic Ave.
Daytona Beach Shores, FL 32118
386-846-5291

Charlie Van Derven, *Social Advisors*
Tel: 800-524-9451 | Cell: 386-846-5291
cvanderven@social-advisors.com | www.social-advisors.com

SCHARFF MULTI-FAMILY
FINAL ENGINEERING PLANS
OVERALL DEVELOPMENT
PLANS

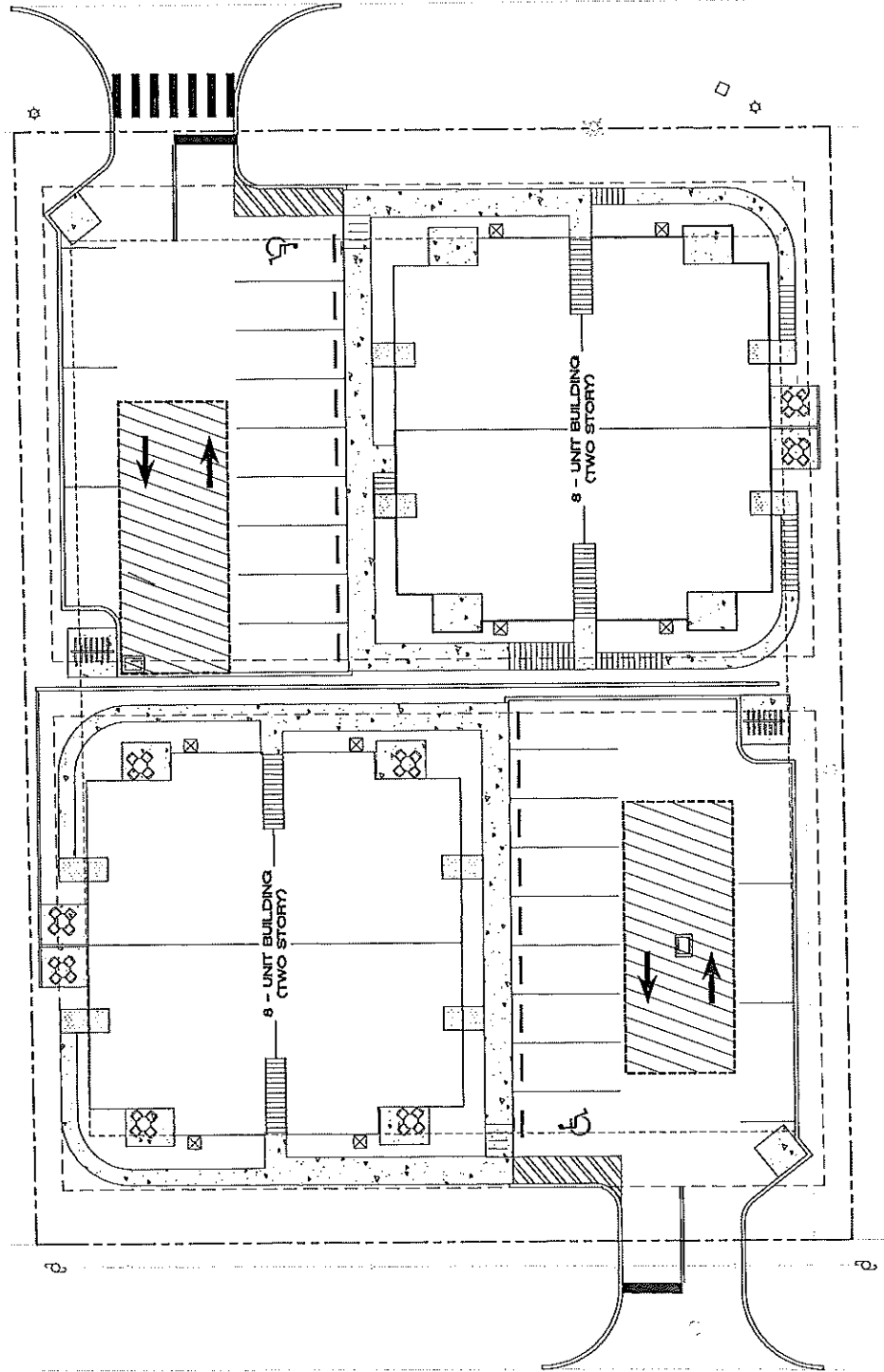


**ZEV COHEN
& ASSOCIATES, INC.**
10000 WILLOW CREEK BLVD., SUITE 200
LOS ANGELES, CA 90024
WWW.ZEVCOHEN.COM

CREATING MEETING
 LANDSCAPE ARCHITECTURE
 ENVIRONMENTAL
 PLANNING
 TRANSPORTATION

SITE DATA TABLE		
CLASSIFICATION	UNITS	ACRES
SITE ACRES		.71 AC
MULTI-FAMILY RESIDENTIAL, 2 - 8 UNIT BUILDINGS	16	

LEGEND:  PROPOSED CONCRETE



ATLANTIC AVENUE (OCEAN SHORE BOULEVARD) (PLAT)
S. ATLANTIC AVENUE (SIGN)
(30' RM)

PENINSULA BOULEVARD (PLAT)
CARDINAL AVENUE (SIGN)
(70' ROW)

Cruz, Stewart

From: Susan Spence <spencesusan9@gmail.com>
Sent: Sunday, December 8, 2019 4:54 PM
To: Cruz, Stewart
Cc: Timothy G. Spence, OD, FAAO
Subject: Presentation to Planning and Zoning Board 12-9-19
Attachments: 12-8-19 Slide presentation for Mom re Zoning and Future Land Use Maps.pdf; 12-8-19 zoning statement for Mom.pdf; LA Spence-talking pts for zoning mtg 12-14-15.pdf; SL Spence talking pts for Council mtg 1-11-16.pdf

Dear Stewart,

My mother, Louise Spence, 3832 S. Atlantic, plans to present her opposition to the proposed changes in zoning and future land use for 3830 S. Atlantic Avenue, the property to the north of her house, at the Planning and Zoning Board meeting tomorrow morning (Monday, Dec 9, 2019, 8:30 AM). I am also registering our objections to you by email in case she has any problem printing out the files and presenting them in person. Four files are attached, two of them relating to tomorrow's presentation and two from past presentations by our family on the same topic. My mother also received a letter from a neighbor that is relevant to this topic and hopefully she will be able to make copies of that, too, to submit tomorrow in case the neighbor himself does not appear.

Please let me and my brother Tim know if there are any further developments on this matter.

Thank you!

Susan Spence
H 240-242-3137; W 301-796-9122
spencesusan9@gmail.com; susan.spence@fda.hhs.gov

Tim Spence
cell 678-485-1415; timspace@bellsouth.net

Louise and Gary Spence
H 386-767-6020; cell 386-316-2510

491865

RECEIVED

DEC 10 2019

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

Dear Mr. Cruz,

My daughter asks that
you put this whole document
in the record.

Thank you,

Louise Spence

Hello,

I am Louise Spence, the owner of 3832 S. Atlantic Avenue, a single family home just south of the lot that New York City land speculator Mark Scharff has requested a change in future land use and rezoning for – a **SECOND** time now--- requesting that it be changed from County low intensity (allowing 4 units) to City low-density multi-family (allowing what was portrayed as 8 units), now to medium-density multi-family (allowing what is portrayed as 16 units, but could be as much as 25 units)-- and even from owner-occupied to rental! My family **strongly** opposes these plans.

Unlike this NY land speculator my family has owned and occupied property in this area for more than 60 years now. My father, the late Leonard Anderson of Oakmont, Pennsylvania, first bought property on this block in the late 1950s. He owned Westwood Cottages on the oceanfront, which served as a vacation and retirement property for his family and his Oakmont friends until their deaths. It may be hard for you to imagine the Daytona Beach Shores of that time. Westwood Cottages, the adjacent Day Star Motel and a few houses were the only developed properties on the block. We had a postcard made of the place in 1962 [show first picture, then second, and point to things]. These were my parents, this was a much younger me, and this was my 2-year old daughter. She's now 59 years old. In the early 1980s, my husband and I built our own retirement home on a lot our family owned on the other side of S. Atlantic Ave. My son and I still live there, and my son wants to continue to live there. This is to say that we have had some real roots in this community, and as such, we think that we should deserve more respect.

I spoke before this board on December 14, 2015 and my daughter spoke to City Council on Jan 11, 2016 to oppose the first rezoning request when Mr. Scharff, who had just acquired his property and annexed it into Daytona Beach Shores, requested low-density multi-family zoning for it. Mr. Scharff's stated plans at the time were to build 4 duplexes to house 8 families on this lot. We opposed Mr. Scharff's stated goal even then because it represented a substantial increase in population density for the neighborhood, a substantial loss of green space, and a

potential loss in property values for adjacent property owners. I pointed out that ALL properties on the non-ocean side of this block, with the exception of the condos at its far north end, the intersection of Emilia and S. Atlantic, are either single family homes or duplexes---but mostly single family homes, with only a few duplexes. Furthermore, nearly all of them are single-story structures; some, on sloping lots, have two stories in the back. The population is very low density. Our house, on a 100-foot lot about one third the size of Mr. Scharff's lot, housed-- and still houses-- just two people. The duplexes to the north of this property did and do not appear to house more than 2 couples each. The adjacent single family homes on Cardinal also have very few occupants. It's a very quiet neighborhood, and we wanted to keep it that way, as we still do.

Mr. Scharff's current request to push for even higher density on that lot is outrageous and a grave threat to others in the neighborhood. As we understand it, he now says that he wants to build two 8-unit apartment buildings, totaling 16 apartments, on his lot. As we understand it, his request to rezone from low density residential (RMF-3) to medium-density residential (RMF-2) would allow him to build up to 25 residential units on this site. This change would enable a huge increase in population density to the local area, from a current total of 0 people on this property to stated projections of 16 people then to stated projections of 44 people, but the possibility of many more people given the high housing density allowed by the zoning category sought. Such an increased density would inevitably lead to more noise, more traffic, and more disturbances in the local area, and to decreased property values to neighboring property owners particularly, we think, if the properties are to be occupied by renters without a vested interest in keeping up the neighborhood.

My daughter and my other son have looked over Mr. Scharff's zoning and land use proposal and have found much of that presentation to be misleading. First, the maps presented in the proposal are misleading in that they do not show the whole neighborhood: they omit the southern end of the block and the omit Volusia county properties, which comprise most of the non-oceanfront land on this part of the peninsula [show slide]. To ameliorate your understanding, we here show the Future Land Use and Zoning Maps from the Daytona Beach Shores

website [briefly show 2 slides]. Using the City's zoning map for the entire block plus other information retrieved from Zillow, we were able to generate a map that shows you the area more completely [Show "Map of Current Land Use including Volusia Beach Properties"]. Empty lots are indicated by green boxes, single family houses by blue boxes, and duplexes by red boxes. As you can see, pretty much this entire block--- that is, all except for one older condo at the intersection of Emilia and S. Atlantic--- consists of single family homes, with only a few duplexes. The same is true for all properties to the west of this block. Thus, a property zoned as "medium-density" would be an anomaly for this block, out of keeping with current development and the City's own current future land use plans. In addition, the developer has provided some maps on pp 35-36 of his proposal which are just plain wrong and seem meant to be misleading [Show slide "Blatant misrepresentation of the neighborhood"]. Two properties, 3816 and 3820 S. Atlantic, are depicted in orange as if they were medium-density properties, whereas on the City map, they appear as Volusia County properties with low-intensity zoning. A single family home has already been built on one of these lots.

We believe that there are also potential underestimates in the impact analysis prepared by the City [Show "Potential underestimates in staff impact analysis"]. Estimates are based on 1.75 people/housing unit and, in the traffic analysis, fewer trips made by apartment dwellers than by single family residents. We think that these may be underestimates. Either way, 183 additional peak hour trips is a BIG increase over 0 trips from this lot. It's already hard for pedestrians to find an opening in traffic to cross the street to get to the beach. Our house already sometimes shakes from the current traffic on S. Atlantic. In addition, the more people, the more potential problems. Renters have no vested interest in upkeep, and we and our neighbors have had problems with noise and thrown beer cans from area renters in the past.

The application for zoning and land use changes makes a lot of misleading statements. Some of the important ones are in the responses to the Zoning Review Criteria which appear on pp 28-29. First, we believe that the changes will have an unfavorable effect on the environment and a negligible effect on the

54.

economy, except for a decrease in surrounding property values [show slide re 1,2]. Contrary to the answers given, we believe that the proposed zoning is NOT consistent with the future land use plan. That is why the developer is asking that the future land use plan be changed [slide re 6,7]. We have come to believe that there were mistakes made in the illegal incorporation of a lot of properties on this block into the City of Daytona Beach Shores; furthermore, that the proposed change will not benefit local businesses, but will have negative impacts on traffic, noise, and litter problems for local residents [slide re 8,9]. We believe that the proposed changes do constitute "spot zoning" in that they would allow land use that is totally different from that of adjacent and surrounding properties [slide 10-11].

And we believe that this change is sought solely for the financial benefit of the owner, to the detriment of the community. We believe that the owner may just be seeking rezoning to increase his own property value for potential resale to developers (as we have seen others do in the past!). The owner currently has the property listed for resale and has used the potential rezoning of the property as a selling point. His listing price seems to be twice market value and rising. (Page 33 says that the land value is \$231K, but he's trying to sell it for \$485K.) [slide 12-13]. Here's where the owner has advertised online in a sales ad that the property can be rezoned for 21 units [show "Owner's interest in rezoning to enhance resale value of his property"]. This is not the first time that we have seen less than honest sales practices by this owner. In 2015, he was selling condos in an imaginary building at 3780 S. Atlantic, pictured here, claiming that the City had already approved the site plan. No such approval had been given [show "previous practices by this owner"].

We also believe that the proposed change will materially diminish the value of surrounding properties by bringing in short-term occupants who will make noise, add to traffic, and cause problems [show slide with misleading statement 14]. We are attaching the letter from a neighbor at 3838 S. Atlantic to exemplify the problems that occur when the City allows property owners to lie to them and then proceed to break all the rules. The owner of 3865 S Atlantic, who applied for a permit to expand his property, has recently used his house for a wild party. Just

before Thanksgiving, a wild party there attracted about 70 people and generated a lot of noise and garbage over a 3 day period. We do not want this kind of behavior to continue nor to proliferate.

We are also attaching this statement, with slides, and our previous statements to the zoning board and Council when we were concerned even about lesser changes to zoning for the property in question.

To summarize [last slide], this site is nestled among single family residences and a few duplexes, so changing future land use and rezoning to medium density is NOT in keeping with the neighborhood. We foresee problems. We also don't trust Mr. Scharff, who has already proven to be ^{less than} dishonest. The City should not change the rules to put the self-interests of a New York City land speculator ahead of the interests of its long-time residents. We ask that you deny this proposal.

Presentation of Louise Spence,
3832 S. Atlantic Ave,
Daytona Beach Shores,

to
the Planning and Zoning Board
Monday, December 9, 2019

3800 block, S. Atlantic, ca. 1962



3800 block, S. Atlantic, ca. 1962



3832 S. Atlantic, since early 1980s



Misleading Features of the Zoning and Land Use Proposal

Incomplete Representations of the Local Neighborhood

Adjacent land uses p 10-11

Daytona Beach Shores Future Land Use Map, 2030



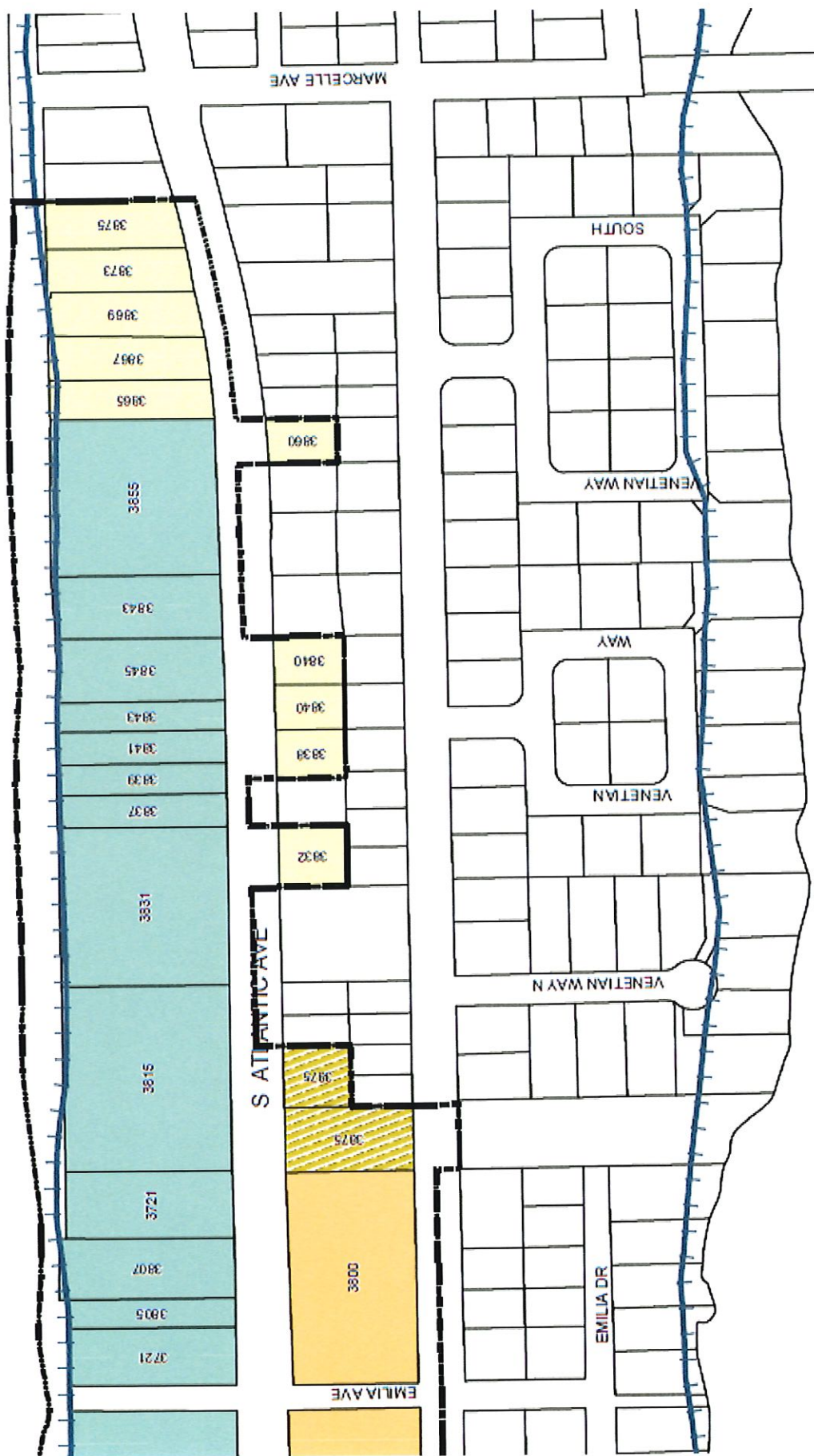
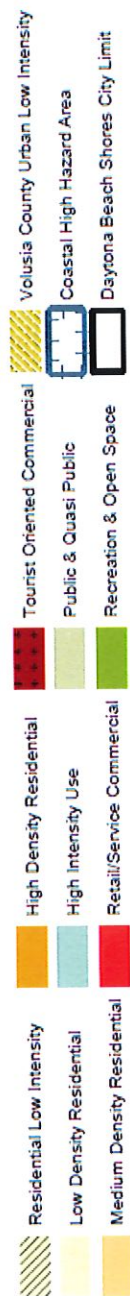
- The segment of the Future Land Use Map (2030) provided does not give a complete picture of the neighborhood. The aerial view is dated and does not show a new single family home at 3820 S. Atlantic (here mislabeled 3875 S. Atlantic.)
- **Only a portion of the block is shown, which does not give the full picture.**
- Daytona Beach Shores properties on this block are finger-like projections from Volusia County land, and probably, as such, their annexation should not have been permitted in the first place.
- **Volusia County properties are part of the neighborhood, but are not represented.**

EXHIBIT A.3: Surrounding Land Uses



Future Land Use Map

From DBS website 12-7-19



Zoning Map

From DBS website 12-7-19

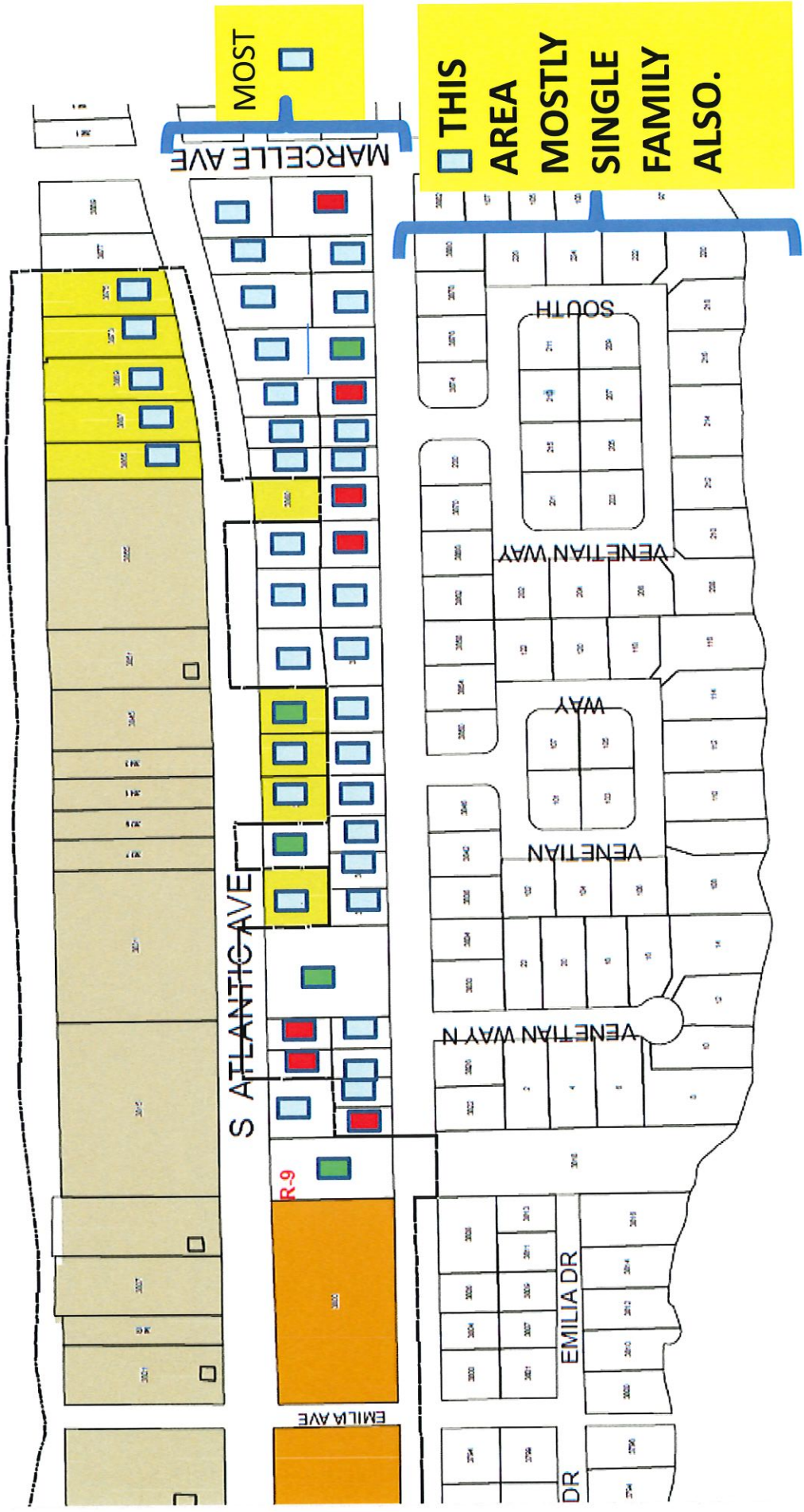
	Daytona Beach Shores	Zoning Category	 RMF-1	 T-RMF-1	 GC-1	 P
1825	Address Numbers	 RSF-1	 RMF-2	 MXD	 GC-2	
R-9	County Zoning	 RSF-2	 RMF-3	 PUD	 GC-RD	



Map of Current Land Use including Volusia County Properties

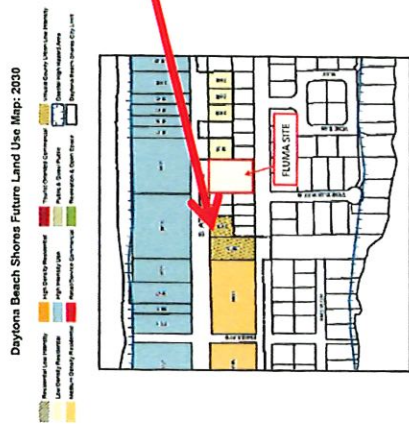
(data extracted from Zillow)

Key:  single family house  duplex  empty lot



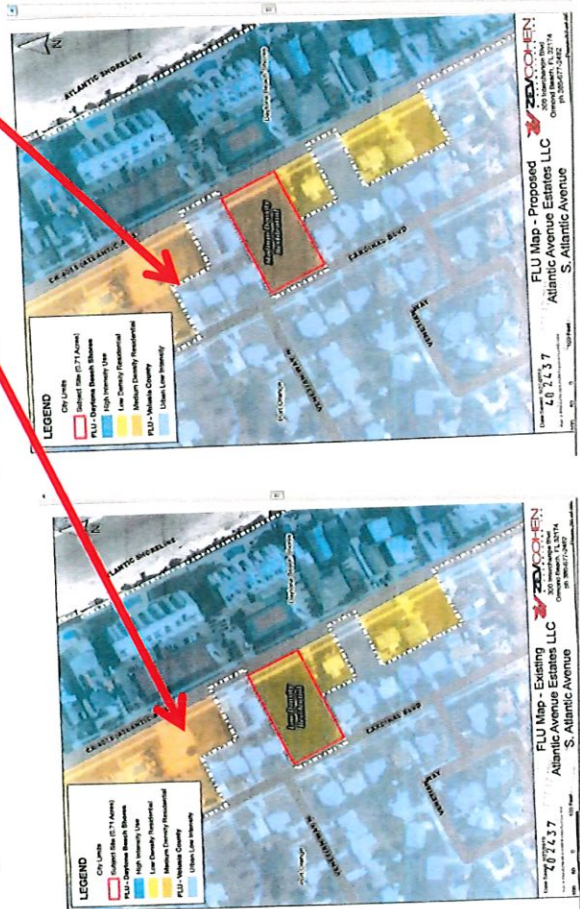
Blatant Misrepresentation of the Neighborhood

Adjacent land uses from City Map p 10-11



- The City's map indicates that 3816 S. Atlantic and 3820 are Volusia County properties with low-intensity zoning.
- **In their zoning and land use applications, the developers misrepresent these as medium-density properties.**

Adjacent land uses from the Developer, pp 35-36



- The property at 3816 is currently an empty lot. A large single family home with mother-in-law apartment has recently been built at 3820 S. Atlantic.

Potential Underestimates in Staff Impact Analysis

Impact analysis p 12

Table 1: Impact Analysis (Theoretical Max.)

Development Variable	Current Future Land Use (0-12 units/acre)	Proposed Future Land Use (0-12 units/acre)	Comparison Impact
Residential Units Allowed	9	25	16
Population ¹	16	44	28
AM / PM Peak Hour Trips ²	86/9.09	183/14	97/4
Sanitary Sewer (gallons/day) ³	2,250	6,250	4,000
Potable Water (gallons/day) ⁴	1,760	4,840	3,080
Solid Waste (lbs./day) ⁵	160	440	280
Stormwater Drainage ⁶	n/a	n/a	n/a
Public School Student(s) ⁷	2.5	3.2	0.7

Notes:

1. Population:
1.75 persons per single-family dwelling
2. Transportation:
Rates are for peak hour of adjacent street traffic: Single-family residential unit = 9.57 Daily trips, 1.01 PM Peak Hour Trips / Multifamily Low Rise = 7.32 Daily trips, 0.56 PM Peak Hour Trips
3. Sanitary Sewer:
250 gallons per dwelling unit per day
4. Potable Water:
110 gallons per capita per day
5. Solid Waste:
10 pounds per capita per day
6. Stormwater Drainage:
LOS standard = 25 year, 24 hour event. If property is redeveloped, drainage system will be designed to meet the requirements of the Land Development Code.
7. Public School:
Generation rates = single family 0.273, multifamily 0.127.

Sources:

2010 US Census; ITE Trip Generation Manual, 9th Edition; Policy 9-1.3 Daytona Beach Shores Comprehensive Plan Update (2030); Volusia County School District 2017 Impact Fee Study.

- There may be many more than 1.75 people/unit. May be entire lower-income families renting and/ or short-term stays by hordes of partying vacationers.

Unlikely that people in these units will travel less than people in single family homes. They may make MORE trips, in which case this would be an underestimate.

- **Either way , 183 additional peak hour trips is a BIG increase over 0!**

TRAFFIC:

- It's already hard for pedestrians to find an opening in traffic to cross the street to get to the beach.
- Our house already sometimes shakes from traffic on S. Atlantic.

NOISE/LITTERING/DISTURBANCES:

- The more people, the more potential problems. Renters have no vested interest in upkeep.

Misleading Statements re Zoning Review Criteria

1. The proposed zoning will have a favorable or unfavorable impact on the environment and natural resources of the area affected.

Contrary to the answer given, we believe that the impact will be unfavorable. Any development decreases green space and increases run-off, including potentially of hazardous substances, into the river and the ocean.

2. The proposed zoning will have a favorable or unfavorable impact on the economy of the areas affected.

The respondents seem to think that the proposed development will be favorable in that it increases the tax base. We think that the negative impact on adjacent property values should also be considered.

Misleading Statements re Zoning

Review Criteria

6. The proposed zoning is basically consistent with the comprehensive land use plan.

Contrary to the answer given, the proposed zoning is **NOT** consistent with the future land use plan. That is why the developer is asking that the future land use plan be changed..

7. Have conditions relative to the property in question and the surrounding area so changed as to require zoning classification boundaries be amended to reflect the new conditions.

The given answer is "Properties adjacent to Atlantic Ave. are no longer a desirable location for low density residential growth." But the residents of this area prefer low density growth and we have witnessed no problem with the sale of local single family homes and duplexes at reasonable prices.

Misleading Statements re Zoning

Review Criteria

8. Was there a mistake in the original zoning of the property so that such zoning does not properly reflect the actual or developing conditions of the area?

It appears to us that many properties on this side of S. Atlantic were annexed into Daytona Beach Shores illegally, as they are finger-like projections not contiguous with the boundaries and largely interspersed with Volusia County properties. We are considering encouraging our neighbors to secede from the City of Daytona Beach Shores..

9. Will the proposed change promulgate or encourage a physical benefit or have a stabilizing effect on the surrounding area?

The given answer is that changes to the land use plan and zoning will provide a stabilizing effect by "supporting commercial activity". We would like to point out that if local businesses are suffering, it is because the City has allowed developers to replace what used to be a thriving hotel/motel industry with high-rise condominiums bought by persons who rarely live in them. If the City wants increased commercial business, it should be looking to encourage hotel development to attract thousands of free-spending visitors. Building 16 apartments for renters will do little to increase local business but much to decrease the desirability of the area to local homeowners.

Misleading Statements re Zoning

Review Criteria

10-11. Would the proposed changes constitute “spot zoning”? Is the proposed change a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, and would such use violate the integrity of the zoning classification?

It appears to us that the proposed changes DO constitute “spot zoning”. None of the 8 lots immediately north of the lot in question, nor any of the 33 lots immediately south of the lot in question (and on the same block), nor any of the lots to the west of the lot in question are zoned for medium-density development.

Misleading Statements re Zoning

Review Criteria

12-13. Is the change solely for the benefit of the owner and to the detriment of the community? Will the proposed change especially suit the applicant's own special purpose rather than serve the community?

We believe that the change would solely benefit the owner and by increasing traffic, noise, potential littering of adjacent properties, and other problems, would be a detriment to the community. In fact, we believe that the owner may just be seeking rezoning to increase his own property value for potential resale to developers (as we have seen others do in the past!). The owner currently has the property listed for resale and has used the potential rezoning of the property as a selling point. His listing price seems to be twice market value and rising. (Page 33 says that the land value is \$231K, but he's trying to sell it for \$485K.)

Owner's Interest in Rezoning to Enhance Resale Value of His Property

https://www.zillow.com/homedetails/3830-S-Atlantic-Ave-Daytona-Beach-Shores-FL-32118/2091462774_zpid/

https://www.realtor.com/realestateandhomes-detail/3830-S-Atlantic-Ave-Daytona-Beach-Shores-FL-32118_M57885-25672

<https://www.redfin.com/FL/Daytona-Beach-Shores/3830-S-Atlantic-Ave-32118/home/101666502>

<https://www.loopnet.com/Listing/14707288/3830-S-ATLANTIC-AV-Daytona-Beach-Shores-FL/>

"BIG PRICE REDUCTION!!! LARGE BUILDING LOT WITH OCEANVIEW. UP TO 21 UNITS POSSIBLE WITH REZONING. 30,900 SF! LOCATED IN DAYTONA BEACH SHORES, SOUTH OF DUNLAWTON, BETWEEN RESIDENTIAL LOTS 3824 AND 3832 S. ATLANTIC AVE.

**HIGHLIGHTS
REZONE FOR 21 UNITS!
GREAT OCEANVIEW PROPERTY!
ACROSS FROM THE ATLANTIC OCEAN!
WALK TO THE BEACH"**

\$485,000 0.71 acres
3830 S Atlantic Ave, Daytona Beach Shores, FL 32118
Lotland Estimate: None

55 Views
687 days Time on Zillow
0 Saves

GREAT LOCATION Across street from Ocean with views with approved 4 beach side lots ZONED MF-3 total 150 x 205 with Complete approved as 4 separate lots 75' x 103' each, 2 Atlantic Ave & 2 Cardinal Ave. Currently has approved for 3 story duplex units on each lot for a total of 8 Luxury Homes 2530 living with oversize garage, decks & more, parcels are now zoned MF-3 so could also build 4 homes with legal Guest in law apt or other options. Will sell each lot separately.

Listing Agent
P. Warner

Lot #	Size	Location	Notes
Lot # 1	75' x 103'	Cardinal Blvd	
Lot # 2	75' x 103'	Atlantic Ave	Ocean Views ?
Lot # 3	75' x 103'	Cardinal Blvd	
Lot # 4	75' x 103'	Atlantic Ave	Ocean Views ?

Previous Practices by this Owner

- Last time we spoke before the P&Z board and Council, in Dec 2015, this developer was advertising that he already had approval to build and sell condos at 3870 S. Atlantic. The City Planner at the time said that no such approval existed.

<http://www.loopnet.com/Listing/19455409/3780-S-Atlantic-Ave-Daytona-Beach-Shores-FL/>

Atlantic Avenue Estates

**3780 S Atlantic Ave, Daytona Beach Shores, FL
32118**

\$1,100,000

Description

34 Unit Development site with River views from each apartment .Amenities include swimming pool, community room etc .

The City has approved the apartment count site plan & foot print. All that is needed is your final plan

The last entrance to the Daytona Drive on Beach is directly across the street.The owners can enjoy the close proximity of the beach along with outstanding views of the river in all directions



Misleading Statements re Zoning

Review Criteria

14. Would the proposed change materially diminish the value of surrounding properties or substantially alter the characteristics of the neighborhood?

We attach the letter from a neighbor at 3838 S. Atlantic to exemplify the problems that occur when the City allows property owners to lie to them and then proceed to break all the rules— and also the problems possible with renters and other short-term occupants. The owner of 3865 S. Atlantic recently applied for plans to put a second story above his garages, supposedly to house visiting family members. It appears that he is in the practice of short-term rentals to party goers. A recent party attracted about 70 people, made a lot of noise, generated a lot of garbage including some thrown into the yards of neighbors, and lasted three days straight.

Conclusion

The interests of long-term residents should count more than the financial gain of out-of-town land speculators.

PLEASE DENY THIS PROPOSAL!

From: **Charlie Van Derven** cvanderven@social-advisors.com
Subject: **Questions and Safety Concerns Over Property Proposal of Vacant Lot Between 3824 S. Atlantic and 3832 S. Atlantic**
Date: **December 6, 2019 at 4:43 PM**
To: scruz@cityofdbb.org
Bcc: mikeosa74@gmail.com, ajmiller909@gmail.com



Hello Mr. Cruz,

I am writing with questions and to express concern over the proposed zoning change for parcel 630205070150 located between 3824 S. Atlantic and 3832 S. Atlantic. I own the single-family home at 3838 S. Atlantic, only three lots away from the proposed building site. We recently spoke about zoning for property improvement on my lot.

My questions include:

1. Is there a site plan that includes the number of structures planned for the lot?
2. Can the concerned neighbors be shown a proposed layout?
3. How many residents are expected?
4. Has there been a study on potential traffic and noise impact?
5. As these will be rental units, can we expect that they will be as well cared for as the condos that are owned units?
6. What is the planned street layout/access through the property?
7. Will all the structures be three story?
8. What is the proposal for garages? Or, will it be surface parking?

Aside from some obvious concerns like increased traffic and increased noise, I have concerns related to the rentals in the neighborhood.

The property at 3843 S. Atlantic, across the street from my home, is used as a short term rental. During the car show weekend before Thanksgiving, there were a minimum of 30 people in that home. They partied for three days straight, including 50-75 people in front of the home and on the sidewalk on A1A. Not only were we kept awake until the early hours of the morning, I cleaned trash from my yard and my neighbors' yards both the morning of Sat 11/23 and Sun 11/24. The following morning, dozens of the renters were on the roof of the home taking photos. A clear safety issue.

This past weekend, there was an arrest at Windward South Condo, 3845 S. Atlantic. That incident started with a fight on the beach that I witnessed with 2 of my neighbors. In three years of living at my current residence, I have never seen the two people that were in the fight and were subsequently arrested. I speculate that they were renters.

Both of these incidences brought inherent safety issues to me, my family and my neighbors. The last thing this neighborhood needs is more rental units.

If the plans go through to change the zoning, allowing for more rental units in this area, it will be a true indication that the City of Daytona Beach Shores has greater interest in their tax base than they do the safety and well-being of their residents.

Thank you for your consideration.

Charles T. Van Derven
3838 S. Atlantic Ave.
Daytona Beach Shores, FL 32118
386-846-5291

Charlie Van Derven, Social Advisors
Tel: 800-524-9451 | Cell: 386-846-5291
cvanderven@social-advisors.com | www.social-advisors.com
SOCIAL  ADVISORS

Dec. 8, 2019

Dear Mr. Cury:

Our questions are basically the same as Charlie Van Dervan's:

1. How many structures will there be on the plot?
2. Can neighborhood residents be shown a layout of the proposed structures?
3. How high will the structures be?
4. How many residents will be anticipated?
5. About how much more traffic and noise will there be?
6. How many ^{and egress} access streets will go in and out of the tract?
7. Will there be separate or integral garages?
8. Since we understand they will be rental units, can we expect they will be as well cared for as condos whose owners would most likely take better care of them?

Members of our family have lived in this area since the late 50's. My father once owned "Westwood Cottages" where the Blue Surf Condominium now stands. I feel we should have some stake in what goes on here. (We have lived in our present location, 3832 S. Atlantic, since 1984.)

Yours very truly,

Louise A. Spence

(and son, Gary Spence)

P.S.

I have one important addition:

9. Won't safety be a real consideration, with Amelia Street crossing so close to the plot's entrances and exits?

Presented previously at Zoning Planning Meeting, December 14, 2015:

I am Louise Spence, owner of the property immediately to the south of the 150-foot frontage lot that you are considering rezoning today. My family has owned property on and/or lived on this block for more than 50 years. We are concerned that these development plans would devalue our property and change the character of our neighborhood.

I request that any building on the lot in question be required to be in keeping with the architectural style and value (that is, \$256K to \$540K range) of other homes in the area. Also, I am requesting that more thought be given to the density factor. The new owner/developer (Mark Scharff) apparently wants to put 8 or maybe even 16 families on that 150-foot frontage lot, compared to our single family home on a 100-foot frontage lot—with a household of two at present. The developer reportedly has already inquired about subdividing the lot, which would definitely not be in keeping with other properties in the area.

Furthermore, I request that the deliberations regarding the lot in question will not be used as a preamble to attempts to apply for even greater densities, such as a multi-level condominium. On the internet, this developer claims to already have city approval for building a 7-story condominium on the northwest corner of Emilia at South Atlantic. A spokesman for Daytona Beach Shores assured me that this is not true, which casts some doubt on the truthfulness of the developer.

Of further concern is the information that I heard from a neighbor, that the owner of the property at 3820 S. Atlantic (now a vacant lot) wanted to have a single family home built on this lot but was told by Daytona Beach Shores authorities that they did not want him to build a single family home there—it would have to be a duplex or more! We and other neighbors in the area want some assurance that the character of our neighborhood is not threatened and want to know why he was told that.

We would like the zoning of to remain single family, in keeping with properties south of that point, and for any structures to be approximately the same square footage and sale price as the single family residential structures south of that point. We would also like to point out that the sewer company has an easement of 20 feet or so on the south side of the lot in question.

Previously presented to DBS City Council, January 11, 2016:

I'm Susan Spence, the daughter of Louise Spence, who owns the property immediately to the south of the lot that you are considering rezoning today. My family has owned property on and/or lived on this block for more than 50 years—in fact, I made my first trip down here when I was only 2 years old, in 1962, so more than most folks, we have had a long-term interest in and commitment to this area. There have been many changes since 1962, and not all of them for the better.

I would like to start by a general comment on development. We are seeing far too many high-rises go up, particularly on the ocean side of S. Atlantic, and although this may be profitable for a bunch of New York and Chicago-based developers, in many ways it is not a good thing for the local population and the town as a whole. Unlike the developers, most of us do NOT come from New York or Chicago and do NOT want our Florida to look and feel like New York or Chicago. Some Daytona residents were attracted to sunshine and the beach. But the more that you allow the developers to build tall structures, the more that they shade the beach and other areas. Some Daytona residents were attracted by Florida's flowers, nature, and wildlife. But the more that undeveloped land is built on, the fewer green spaces remain for wildlife to flourish and for people to enjoy. Most of us came because we wanted a low-density suburban community, but Daytona Beach Shores is starting to feel more like Manhattan. It is becoming harder for anyone driving along S Atlantic to even see the ocean, which is becoming enshrouded by a tall wall of concrete.

There are NO natural beach areas, with natural sand dunes, sea oats, and saw palmetto, left in all of Daytona Beach Shores. I was very upset when you allowed development on the last one, the current location of the Sanibel Condo at South Atlantic and Emilia, and my stomach still churns every time I walk past. It would have made a fine location for a real city park, perhaps with a boardwalk winding through what was a really beautiful natural area, combined perhaps with a small building with restrooms and changing rooms to accommodate area residents not lucky enough to own beachside property.

Instead we got another tall building for wealthy people, 95% of whom, from the look of the number of lights on at night, don't even live here most of the time. The proliferation of high-rise condos has meant that there are now fewer hotels, fewer tourists, and fewer 'residents' who actually live here long enough to patronize local businesses. The only people who profit are the developers, who really don't care at all about the community—only about the profits that they can take home to New York and Chicago by exploiting its resources. I think that none of you would be very happy if China or Russia or Mexico or Syria would dictate US domestic policy, and so I ask you not to let New York and Chicago developers ruin Daytona Beach Shores. **We need more public parks and green spaces---- and NOT like the current so-called "parks"**

along the beach, which are nothing but glorified parking lots, composed primarily of more concrete.

Getting to the point of the lot in question, there is an inaccuracy in today's documents. They state that the proposed development will have no effect on recreation and open space. The truth is that, aside from undeveloped lots, there is very little green space in this city, so nearly every development has a substantial effect on recreation and open space. The photos provided to you of that lot show blackened images that are described as weeds. I would like to show you what that lot looks like to me. Almost the entire year, even in the coldest months of winter, there has been a proliferation of red flowers all over that lot, which doesn't mean much to the developers, but does mean a lot to people like me. We regularly see osprey bring their catches to the perches on that lot, we have seen sizeable tortoises, many birds, and even a bald eagle. Where are they to go when you develop?

We are also concerned that the developer who has bought the lot in question wants to increase density and that that would have the potential to negatively affect nearby property values. We strongly favor keeping this lot classified as single family in the future land use plan and keeping it zoned for single family residences, in keeping with the properties to the south and the west of it. Optimally, we would like the city to come up with some mechanism to buy up undeveloped land to preserve green space and limit development. But at very least, we would like reassurance from council that there will be no attempt to build anything on this lot that is not in keeping with style, density, and value of the adjacent properties (that is, those on the NON-ocean side of S Atlantic and Cardinal).

491865
CITY OF DAYTONA BEACH SHORES
BUILDING AND CODES DIVISION
DEC 10 2019
RECEIVED
491865

Dec. 8, 2019

491860

Dear Mr. Gury:

Our questions are basically the same as Charlie Van Dervan's:

1. How many structures will there be on the plot?
2. Can neighborhood residents be shown a layout of the proposed structures?
3. How high will the structures be?
4. How many residents will be anticipated?
5. About how much more traffic and noise will there be?
6. How many ^{and egress} access streets will go in and out of the tract?
7. Will there be separate or integral garages?
8. Since we understand they will be rental units, can we expect they will be as well cared for as condos whose owners would most likely take better care of them?

RECEIVED
DEC 09 2019
BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

Members of our family have lived in this area since the late 50's. My father once owned "Westwood Cottages" where the Blue Surf Condominium now stands. I feel we should have some stake in what goes on here. (We have lived in our present location, 3832 S. Atlantic, since 1984.)

Yours very truly,

Louise A. Spence

(and son, Gary Spence)

P.S.

I have one important addition:

9. Won't safety be a real consideration, with Amelia Street crossing so close to the plots' entrances and exits?

ORDINANCE NO: 2020-02

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING *THE CITY OF DAYTONA BEACH SHORES COMPREHENSIVE PLAN*, AMENDING CHAPTER 1, “FUTURE LAND USE ELEMENT”, BY AMENDING MAP L-4 ENTITLED, “GENERALIZED FUTURE LAND USE MAP (2030)” TO CHANGE THE FUTURE LAND USE DESIGNATION OF THE PROPERTY GENERALLY LOCATED AT 3828 S. ATLANTIC AVENUE TAX PARCEL ID 6302-05-07-0150, FROM LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL; AND BY ESTABLISHING A NEW FUTURE LAND USE POLICY RESTRICTING THE NUMBER OF UNITS ON THE PROPERTY GENERALLY LOCATED AT 3828 S. ATLANTIC AVENUE TAX PARCEL ID 6302-05-07-0150 TO A TOTAL OF SIXTEEN; PROVIDING FOR IMPLEMENTING ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Daytona Beach Shores is committed to planning and managing the future growth of the City; and

WHEREAS, the City of Daytona Beach Shores has the authority to amend its Comprehensive Plan pursuant to Part II, Chapter 163, *Florida Statutes*; and

WHEREAS, the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* directly relates to small scale development activities as provided in Section 163.3187(1)(c), *Florida Statutes*; and

WHEREAS, the Volusia County Growth Management Commission has issued a determination of consistency in accordance with Section 202.3 of the *Charter of Volusia County, Florida*, for the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan*; and

WHEREAS, the Planning and Zoning Board, which is the local planning agency of the City, and City Council of the City of Daytona Beach Shores have conducted public hearings and issued notices required by Florida law in the preparation and enactment of this Ordinance; and

WHEREAS, Atlantic Avenue Estates, LLC, owner of the real property with short tax parcel ID 6302-05-07-0150 and generally located at 3828 S. Atlantic Avenue, submitted an owner initiated future land use map amendment application to the City of Daytona Beach Shores on October 17, 2019; and

WHEREAS, Atlantic Avenue Estates, LLC is requesting the City of Daytona Beach Shores amends the future land use classification of the subject real property from Low Density Residential to Medium Density Residential; and

WHEREAS, the development of vacant westside properties is important to the economic development and tax base of the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores declares that the purpose and intent of the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* is to guide future growth and development; encourage the most appropriate use of the land, water and other resources, consistent with the public interest, promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; provide adequate facilities and services; conserve and protect natural resources within the City, while protecting private property rights; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that this Ordinance serves the best interest of the City of Daytona Beach Shores; and

WHEREAS, underlined words shall constitute additions to the original text of the Comprehensive Plan, *** shall constitute ellipses, and ~~strike through~~ shall constitute deletions to the Comprehensive Plan.

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

SECTION ONE: CHANGE IN FUTURE LAND USE ELEMENT/FUTURE LAND USE MAP. Chapter 1, “Future Land Use Element,” containing the Official Future Land Use Map (Map L-4) of the *City of Daytona Beach Shores Comprehensive Plan* is hereby amended to change the Future Land Use Designation of a +/-0.71 acre property from Low Density Residential to Medium Density Residential as to property as described in Exhibit “A” as follows:

Location Address	Short Tax Parcel ID	Daytona Beach Shores Future Land Use Designation
3828 S. Atlantic Ave.	6302-05-07-0150	Medium Density Residential Low

SECTION TWO: CHANGE IN TEXT OF FUTURE LAND USE ELEMENT. The text of Chapter 1, “Future Land Use Element,” of the *City of Daytona Beach Shores Comprehensive Plan* is hereby amended as described in Exhibit “B” attached.

SECTION THREE: IMPLEMENTING ADMINISTRATIVE ACTIONS. The Community Services Director is hereby authorized to transmit copies of the adopted amendment to the *City of Daytona Beach Shores Comprehensive Plan* to the appropriate agencies and to any other unit of local government who has filed a written request for a copy in accordance with the provisions of Section 163.3187(1)(c)2.b, *Florida Statutes* and *Volusia Growth Management Rules*.

SECTION FOUR: CONFLICTS. All ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE: SEVERABILITY. If any section or portion of a section of this Ordinance, or application of any provision of this Ordinance, proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Ordinance.

SECTION SIX. NON-CODIFICATION. This Ordinance shall be not be codified in the *City Code of the City of Daytona Beach Shore* or, the *Land Development Code of the City of Daytona Beach Shores*, or the *City of Daytona Beach Shores Comprehensive Plan* provided, however, that the actions taken herein shall be depicted in the *City of Daytona Beach Shores Comprehensive Plan* and on the Future Land Use Map of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION SEVEN: EFFECTIVE DATE. This Ordinance shall become effective, in accordance with the provisions of Section 163.3187, *Florida Statutes*, thirty-one (31) days after enactment; provided, however, if this Ordinance is challenged within thirty (30) days after enactment, this Ordinance shall not become effective until the Florida Department of Community Affairs, acting as the State Land Planning Agency, or the Administration Commission, respectively, issues a final order determining that the small scale development amendment to the *City of Daytona Beach Shores Comprehensive Plan* set forth in this Ordinance is in compliance.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

RAYMOND BRANCH, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2020.

Adopted on second reading this _____ day of _____, 2020.

EXHIBIT A

LOTS 14 15 & 16 BLK 7 OCEAN VIEW SEC HALIFAX ESTATES MB 11 PG 100 PER OR
1612 PG 0174 PER OR 4705 PGS 2478-2479 PER OR 5532 PG 4310 PER OR 7177 PG 0575
PER OR 7183 PG 2271.

EXHIBIT B

CHAPTER 1: FUTURE LAND USE ELEMENT

Policy 1-1.5.6: The 0.71± acres of land designated as Medium Density Residential lying within Parcel Number 630205070150 and generally located at 3828 S. Atlantic Avenue shall be permitted to develop with up to no more than 16 dwelling units.