



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

MARCH 15, 2022

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING CITIZEN PARTICIPATION SHOULD COMPLETE A SPECIAL APPLICATION FORM WHICH IS LOCATED ON THE STANDS OUTSIDE THE COUNCIL CHAMBERS. AFTER COMPLETING THE FORM, PRESENT IT TO THE CITY CLERK.

A. OPENING

1. Invocation by Pastor Rebecca Hyvonen of Cross Creek Community Church
2. Pledge of Allegiance
3. Roll Call

B. SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

4. Port Orange Firefighter and Police Officer of the Year Recognition
5. Government Finance Professional's Week Proclamation

C. TOWN CENTER CRA REGULAR MEETING

D. EASTPORT CRA REGULAR MEETING

E. CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only
7. Agenda Approval
8. Approval of Minutes
 - a. March 1, 2022 - Regular City Council Meeting
9. Resolution No. 22-9 - Revising Parks & Recreation Fees
10. Resolution No. 22-10 - Temporarily Waiving Late Fees and Suspending Shut Offs for Delinquent Utility Accounts

F. PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

G. COUNCIL COMMENTS

11. Comments/Concerns from Council Members

H. BOARD APPOINTMENTS, INTERVIEWS, REPORTS

12. Citizen Advisory Committee for TPO
13. Golf Advisory Board Appointments (x2)

I. PUBLIC HEARING

14. Second Reading - Ordinance No. 2022-3 - Amending Section 2-57 - Public Records Management of the Electronic Information System Standards Utilized by City Board Members
15. Approval of Development Order Modification for the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision (Case No. 21-52000001)
16. Approval of the Conditional Use Extension Request from Christ the King Community Church (Case No. 22-30000001)

J. REGULAR AGENDA

17. First Reading - Ordinance No. 2022-5 - LDC Amendment/ Chapter 9, Article II, Section 19 (Case No. 22-25000002)
18. Fourth Amendment to the Property Exchange Agreement (Former Cardwell Funeral Home Property)
19. Third Amendment to the Escrow Agreement (Former Cardwell Funeral Home Property)

K. ADDITIONAL ITEMS

20. City Attorney
21. City Manager

L. COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports
 - a. Fire Pension - Council Member Reed Foley
 - b. First Step Shelter - Council Member Chase Tramont
 - c. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette

M. ADJOURNMENT

NOTICES — PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) 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 OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), 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, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.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 OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

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

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
MARCH 1, 2022

THE REGULAR CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 6:32 p.m.

Invocation by Rev. Susan McCaffrey of Grace Episcopal Church

Pledge of Allegiance

Roll Call	Present:	Council Member Reed Foley Council Member Chase Tramont Council Member Drew Bastian Vice Mayor Scott Stiltner Mayor Donald Burnette
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	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones City Clerk Robin Fenwick
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SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

4. Flood Awareness Week Proclamation

Mayor Don Burnette read a proclamation for Flood Awareness Week.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

There were none.

6. Agenda Approval

There were no changes requested by Council.

Motion to approve the agenda as presented was made by Vice Mayor Scott Stiltner and Seconded by Council Member Chase Tramont. Motion carried unanimously by voice vote.

7. Approval of Minutes

- a. February 15, 2022 - Regular City Council Meeting
- b. February 22, 2022 - City Council Workshop

8. Bid Awards and Contract Items

- a. Approval of Contract (CA7687) Assignment from Sunstate Meter & Supply Inc. to Ferguson Enterprises LLC
- b. Approval of Renewal Agreement for Westlaw Services
- c. Approval of Adoption Agreement for Mission Square Money Purchase Plan 401a - 108525
- d. Approval of Change Order No. 1 to Piggyback Contract with Dude Solutions, Inc. for Community Development Permit Software Project (Smartgov)
- 9. Approval of Major Special Event Request – Bike Week 2022: Daytona's Endless Summer Campground at 3520 South Nova Road
- 10. Approval of Minor Special Event – Spring Landscaping Sale at Lowe's located at 1751 Dunlawton Avenue
- 11. Approval of License Agreement for 721 Pringle Road
- 12. Approval of Proportionate Fair-Share Agreement for the Port Orange Neighborhood Storage Facility Site Plan - Case No. 21-80000011

Motion to approve the Consent Agenda as presented was made by Council Member Drew Bastian and Seconded by Vice Mayor Scott Stiltner. Motion carried unanimously by roll call vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Don ??, citizen, spoke regarding his excess water usage and the lack of help he has received to reduce the water charges.

COUNCIL COMMENTS

13. Comments/Concerns from Council Members

Council Member Reed Foley asked for a report regarding the issue with the servers being down for the past three weeks.

Council Member Chase Tramont agreed with Council Member Foley and also thanked Staff for their work on the Airport Park renovations and ribbon cutting.

Vice Mayor Scott Stiltner assured residents the server issue is not a data breach; it's a storage issue.

Mayor Don Burnette is happy with the events at Riverwalk Park but is concerned with the parking available.

Council Member Drew Bastian asked about golf carts on streets. City Attorney Matt Jones will bring back a report to update Council on what's allowed and what's not.

14. First Reading - Ordinance No. 2022-3 - Amending Section 2-57 - Public Records Management of the Electronic Information System Standards Utilized by City Board Members

Mayor Don Burnette read Ordinance No. 2022-3.

ORDINANCE NO. 2022-3

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; AMENDING SECTION 2-57 RELATED TO PUBLIC RECORDS MANAGEMENT OF THE ELECTRONIC INFORMATION SYSTEMS UTILIZED BY CITY BOARD MEMBERS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2022-3 was made by Vice Mayor Scott Stiltner and Seconded by Council Member Drew Bastian. Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

15. City Attorney

There was nothing further.

16. City Manager

Wayne Clark, City Manager, spoke regarding the server issues and asked for their consensus to not shut anyone off or assess late fees. Council agreed.

COUNCIL COMMITTEE REPORTS

17. City Council Committee Reports

- a. River to Sea TPO - Council Member Reed Foley - Report provided.
- b. General Employees' Pension - Vice Mayor Scott Stiltner - Report provided.
- c. Police Pension - Council Member Drew Bastian - Report provided.

ADJOURNMENT - 7:07 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (E9) Resolution No. 22-9 - Revising Parks & Recreation Fees

DEPARTMENT: Parks & Recreation

GOAL: 5 - Fiscal Sustainability; 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve Resolution No. 22-9 and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: Each year, the Parks and Recreation Department analyzes the fees charged to the community for youth/adult sports programs, rentals, and various rental options for special events. The staff compares the City's fees to surrounding communities to make sure our fees are competitive. Staff also take into account the costs of items that affect program expenses (i.e. - athletic uniform costs, umpire/referee costs, maintenance or utility costs for a facility, etc.). The prior direction from City Council is that fees be set at a level that captures approximately 30% of the total cost of youth and adult programs.

The fees have not been revised since 2019. With the minimum wage increase and changes in supply costs, the City is experiencing increased costs that affect program and rental expenses. Therefore, changes are being recommended to the fee schedule. A complete list of changes is attached to the fee resolution and the memo explains each of the recommended changes. Some notable changes include:

- A \$50 increase to our summer camp registration. It is proposed to change from \$450 - \$500 for the summer elementary program and \$550 to \$600 for the summer teen program. The City's program remains one of the least expensive programs in the County.
- The Lakeside Center has proposed across the board rental increases. The daily rate will increase by \$5 per hour, the conference rate will increase by \$50, and the wedding package will increase by \$250. The City will continue to utilize the fee reduction matrix for non-profit organizations.
- The memorial tree and bench program is proposed to have a max range increase from \$2,000 to \$2,500.

Since 2019, parts of the fee structure have transitioned to ranges versus fixed price points. By setting a range, this allows staff to set appropriate rates per program based on factors such as size or length of the program, cost associated with running the program, and staffing requirements. For example, providing a fee range for Youth Sports allows for tennis to be charged a separate rate from baseball, which assists in maintaining Council's cost recovery direction. Staff will continue to propose moving to a range structure where applicable. Examples of fees changing to a range structure included in this item are senior sports teams, rental field prep per field, and extra uniform costs.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Res. No. 22-9 - Parks and Rec Fees	Res. No. 22-9 - Parks and Rec Fees.pdf
2.	FY22 Department Fee Memo	FY22 Department Fee Memo (2).pdf

Susan Lovallo	Created/Initiated - 3/2/2022
Susan Lovallo	Approved - 3/2/2022
John McKinney	Approved - 3/3/2022
John McKinney	Approved - 3/3/2022
Matthew Jones	Approved - 3/4/2022
Wayne Clark	Approved - 3/4/2022
Robin Fenwick	Final Approval - 3/4/2022

RESOLUTION NO. 22-9

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ESTABLISHING REVISED FEES FOR PARKS AND RECREATION FACILITY USE, ATHLETIC PROGRAMS, SENIOR PROGRAMS, AND MISCELLANEOUS SERVICES; SUPERSEDING PRIOR RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange Recreation Department offers youth and adult athletic programs, playground programs, adult and senior programs and classes; and

WHEREAS, the City of Port Orange incurs administrative expenses to organize these programs and activities, register participants and provide supervision; and

WHEREAS, additional costs are incurred in providing uniforms, supplies, equipment and officials for the athletic programs which are defrayed, in part, by sponsor fees and registration fees; and

WHEREAS, the City Council desires to have such costs borne by persons participating in designated programs and activities and by team sponsors; and

WHEREAS, Chapter 50 of the Code of Ordinances, City of Port Orange, Florida, authorizes the City Council to establish by resolution fees for recreation activities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The fees, rates and charges set forth in Exhibits A-D, attached hereto and incorporated herein by reference, are hereby established pursuant to the authority set forth in Chapter 50 of the Code of Ordinances.

Section 2. The City Council hereby authorizes the Parks and Recreation Director to adjust those fees within the approved range, as provided herein, based on costs incurred by the City for those particular services and programming that are affected by market conditions and supply chain issues.

Section 3. This resolution shall supersede Resolution No. 19-2 and any conflicting resolutions.

Section 4. The fees established in this resolution shall become effective March 16, 2022.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City

Clerk Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Exhibit A**YOUTH AND ADULT PROGRAM REGISTRATION FEES**

Youth Sports	Range \$25-\$90		
Open Gym youth			Range \$1-\$5 daily \$45-\$60 annually
Open Gym Student			Range \$2-\$10 daily \$55-\$70 annually
Specialty Camps	Range \$10-30 pp		
Summer Rec Elem.		\$500	
Elem. Trip Package	\$175		
Teen Camp		\$600	
Camp T- Rec	\$ fee set by OB	Joint program with Ormond Beach	
Registration Late Fee	\$10		

Child= child under 18 years of age by May 1

Student= person over 18 as of May 1 with valid student ID.

ADULT PROGRAMS

Open Gym Adult			Range \$3-\$15 daily \$65-\$80 annually
Adult Sports			Range \$30-\$100 PP

PP- per person

SENIOR PROGRAMS

Open Gym Senior			Range \$2-\$10 daily \$55-\$70 annually
Senior Team Sport			Range \$30-\$100 PP
Senior Games Registration fee	\$15	\$5 each addt'l. event	Golf fee set by CHGC Team fee \$50

PP- per person, Senior = 50 as of December 31 of current year

SPECIAL PROGRAMS

Parade entry fee	Range \$20-\$50 NP/NC	Range \$45-\$100 FP/C
Get Fit	\$50	
Mayor's Golf Tournament Fee	Range \$65-\$100	

(NP) – Non profit, (NC)- non commercial, (FP)- for profit, (C)- commercial

PARK & RECREATION PARTNERS PROGRAMS

Youth Sport (Half-year program)	\$3,433 per year	
Youth Sport (Full-year program)	\$6,866 per year	
Adult Center Annual Club Fee (indoors)	\$200 ½ building	\$400 whole

Exhibit B**SPONSOR FEES**

Banner sponsor	\$500 per year	\$350 renewal
Scoreboard sponsor	\$3,000 for 3 years	
Youth team sponsor	\$350 per team	
Youth league Sponsor	\$1500 per league	(min. 6 teams per league)

ATHLETIC FACILITIES

Gym (1 court) per hour	\$50	
Gym Tournament (per court)		\$600 per day
Ball Fields (1-bb or 1 soccer)		\$30 per hour
Ball Fields Tournament (per field)		\$200 per day
Light Fee per field	\$15 per hour	\$35 Tournament per day
Hard Court with lights		\$20 per hour PC
Hard Court Tournament		\$200.00 per day (per facility)
Skate Park Tournament		\$200 per day
Class	\$25 per hour	

PC = per court**ATHLETIC SERVICES**

Tournament Prep (initial chalk, lines, paper products, base painting)	\$35 Per Field Per Day
Rental Field Prep Per Field	Range \$20 - \$500
Athletic Concessionaire (food, decals, photos, etc.) BLDG	\$500 per season
Athletic Concessionaire (food, decals, photos, etc.) Cart	\$200 per season
Concession Stand (nonprofit)	\$100 per day
Temporary Fence Rental per field	\$75
Extra Uniform	Range \$10 - \$30 PP

Exhibit C**LAKESIDE CENTER**

Weekday Rate per hour	\$80 Whole	\$35 Lakeview	\$55 Community Room
Weekend Rate per hour	\$125		
Conference Rate (8:30- 5:30 weekdays only)	\$400		
Wedding Package	\$1500		
Lakeside Lawn per hour	\$17.50		
Lakeside Concession Per day	\$200 per day		
Deposit	\$100 or 50% up to \$100		

ADULT CENTER

A/C Weekday rate per hour	\$35 ½ building	\$70 Whole
A/C weekend rate per hour	\$125	
A/C Class Rental Per Hr.	\$25 ½ building	\$50 whole
Deposit	\$100	

SPECIAL EVENT FACILITIES

Amphitheater per hour	\$100	
City Center Complex per hour per section	\$50	
Riverwalk Park per hour per section	\$50	

ADDITIONAL VENUES

Picnic Pavilion per 3 hours Sm/Lg.	\$50 Sm	\$75 Lg.
Concessionaire Fee per day (based on event)	\$25-\$500	
Exhibitor Fee per day (based on event)	\$15- \$250	

Exhibit D**ADDITIONAL FEES**

Services Supplied by the City	Fee
Electrical Fee for Pedestals	\$50.00 @
Trash Cans (Rental Includes Two)	\$2.00 @
Barricades	\$2.00 @
VIPS (volunteers in police services)	N/A
Parks, Public Works/ Public Utilities Staff	\$25.00 per hr.
Water Hook-Up	\$25.00
Deposit	\$100.00
Additional Part-Time staff	\$15 per hr.
Cones	\$1.00 per cone
Electronic sign board	\$65.00 per day
Alcohol Fee	\$75
Memorial Tree, Bricks, and Benches	Range \$35 to \$2500

MEMORANDUM

To: Wayne Clark, City Manager
From: Susan L. Lovallo, Parks & Recreation Director
Date: March 4, 2022
Subj.: Fees

The Parks and Recreation Department annually reviews all rental and program fees and makes a recommendation to council as to recommended changes. Per city council direction the department's goal is to cover approximately 30% of total cost of all youth and adult programs. Each is detailed below. Please let me know if you have any questions or concerns.

Exhibit A - Programs

Open Gym Youth: Remove the duplicated daily and annual fees. Ranges are already established that capture the daily and annual rate.

Open Gym Student: Remove the duplicated daily and annual fees. Ranges are already established that capture the daily and annual rate.

Summer Rec Elementary: Increase the amount \$50 to a total fee of \$500. Program will still be one of the least expensive in the county.

Teen Camp: Increase the amount \$50 to a total fee of \$600. Program will still be one of the least expensive in the county.

Open Gym Adult: Remove the duplicated daily and annual fees. Ranges are already established that capture the daily and annual rate.

Adult Team Sport: Remove all team fees. Adult sports will now be charged per person. Participants prefer this type of payment.

Adult Sports: Remove per person fee. Ranges are already established that captures the rate.

Open Gym Senior: Remove the duplicated daily and annual fees. Ranges are already established that capture the daily and annual rate.

Senior Team Sport: Remove all team fees. Adult sports will now be charged per person. Add fee range of \$30 - \$100 per person.

Senior Dance Fee: Remove single and couple fees. Very low attendance at our Senior Dances. We are changing the type of programming offered at the Adult Center.

Youth Sport Field or Court Frequent User Fee: Remove frequent user fee. This is captured in either our class fee or our partnership fee.

Exhibit B- Sponsor Fees and Athletics Facility Rentals

Athletic Facilities: No longer offer For Profit and Non-Profit rates. For Profit fees will remain. Non-Profit organizations now have the option of utilizing the Fee Matrix which could significantly reduce their rental rates.

Rental Field Prep Per Field: Parks Department put a spreadsheet together on what the actual costs are to prep/line our fields for rentals. The implemented fee range of \$20 - \$500 will cover all scenarios.

Temporary Fence Rental Per Field: Increasing the rental fee to \$75.

Extra Uniform: Add a fee range of \$10 - \$30. Each sport season we receive multiple requests from parents to purchase additional or replacement uniforms.

Exhibit C – Recreation Facility Rentals

Weekday Rate Per Hour: Add \$5 to each rental section of the facility to stay competitive with surrounding rental facilities.

Conference Rate: Increase rental fee to \$400.

Wedding Package: Increase rental fee to \$1500.

Lakeside Lawn: Increase rental fee to \$17.50.

Deposit: We currently require a \$100 deposit for Lakeside Rentals. However, if someone rents a smaller portion of the facility the entire rental could be less than \$100. We are proposing to add a 50% deposit option for these situations.

Exhibit D – Additional Fees

Police Services: Police Department manages their own fees. Fee is being removed from the Parks and Recreation Fee Resolution.

Fire Services: Fire Department manages their own fees. Fee is being removed from the Parks and Recreation Fee Resolution.

Memorial Tree, Bricks, and Benches: Prices have been steadily climbing to purchase trees, bricks, and benches for our Memorial Program. We would like to increase our fee range to \$35-\$2500.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (E10) Resolution No. 22-10 - Temporarily Waiving Late Fees and Suspending Shut Offs for Delinquent Utility Accounts

DEPARTMENT: City Manager

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 22-10.

SUMMARY: The proposed resolution suspends late payment penalties and shut-offs on delinquent utility accounts during a grace period beginning February 11 and ending March 25. This was discussed briefly at the Council meeting on March 1 - the City Manager explained that a recent storage capacity issue has impacted the City's ability to distribute utility billing. This resolution also waives any penalties that have been assessed during this grace period and authorizes the City Manager to extend the grace period up to 30 days.

The City has resumed distribution of the utility bills as of March 3, 2022.

PRESENTER: Wayne Clark

ATTACHMENTS:

1.	Resolution 22-10 - Temp Utility Late Payment and Shut-Off Suspension	Resolution 22-10 - Temp Utility Late Payment and Shut-Off Suspension.docx
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Robin Fenwick
Matthew Jones
Wayne Clark
Robin Fenwick

Created/Initiated - 3/1/2022
Approved - 3/4/2022
Approved - 3/4/2022
Final Approval - 3/4/2022

RESOLUTION NO. 22-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ESTABLISHING A GRACE PERIOD FOR LATE PAYMENT PENALTIES AND SHUT-OFFS FOR DELINQUENT UTILITY ACCOUNTS, WAIVING LATE PAYMENTS ASSESSED DURING THE GRACE PERIOD, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has recently experienced a data storage issue which has impacted the City's ability to issue utility bills in a timely manner; and

WHEREAS, the City is working diligently to expand storage capacity and resume the normal distribution of utility billing; and

WHEREAS, many utility customers have not or will not receive a utility bill for services provided in the month of February, 2022.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City will not perform shut-offs for delinquent utility accounts or assess late payment penalties for delinquent utility accounts during a grace period beginning February 11, 2022 and ending at midnight on March 25, 2022.

Section 2. The City hereby waives any late payment penalties incurred on delinquent utility accounts during the grace period beginning February 11, 2022 and ending at midnight on March 25, 2022.

Section 3. The City Council hereby authorizes the City Manager to extend said grace period set forth herein if normal utility billing distribution has not resumed by March 25, 2022. Said extension shall not exceed thirty (30) days without further action of City

Council.

Section 4. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Matthew J. Jones, City Attorney



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (H13) Golf Advisory Board Appointments (x2)

DEPARTMENT: City Clerk

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Nominate two (2) citizens to serve on the Golf Advisory Board.

SUMMARY: Jane Taylor and Richard Lee currently serve on the Golf Advisory Board; however, their terms will expire on April 2, 2022. Both have indicated they would like to continue serving on the Board.

The City Clerk has not received any other applications from citizens wishing to serve.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Lee, Richard	Lee, Richard.pdf
2.	Taylor, Jane	Taylor, Jane.pdf

Shelby Field
Robin Fenwick
Wayne Clark

Created/Initiated - 2/28/2022
Approved - 2/28/2022
Final Approval - 3/4/2022

**CITY OF PORT ORANGE
ADVISORY BOARD AND COMMISSION
VOLUNTEER APPLICATION**

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s)/Commission(s) for which you wish to apply. If applying for more than one Board/Commission, please number in the order of preference.

☐ Audit & Budget Advisory Board	☐ Districting Commission
☐ Charter Review Board	☐ Environmental Advisory Board
☐ City Manager Selection Committee	☐ Library Advisory Board
☐ Civil Service Board	☐ Parks and Recreation Board
☐ Code Enforcement Board*	☐ Planning Commission*
☐ Construction Regulation Board*	☐ Youth Advisory Board

☒ Golf Advisory Board

CRA Boards

☐ Eastport Community Redevelopment Agency*
☐ Town Center Community Redevelopment Agency*

Pension Boards

☐ General Employees*
☐ Police*
☐ Fire*

ALL OF THE ABOVE ARE SUBJECT TO THE "SUNSHINE LAW"

MEMBERS OF THE BOARDS/COMMISSIONS WITH AN ASTERIK ARE REQUIRED TO FILE FINANCIAL DISCLOSURES WITHIN 30 DAYS OF DATE OF APPOINTMENT.

1. PERSONAL

Name Richard Lee Date of Birth 8-20-48

Address 6393 Longlake Dr Port Orange FL 32128

Home Telephone 386 492 5415

E-Mail Address RICHTBGONE@YAHOO.COM

Business Telephone _____

Are you a registered voter in Port Orange? ☒ Yes ☐ No

City Council District Scott Stiltner

How long have you been a resident of Port Orange? 8 years

Are you currently serving on a City Board? NO

Have you ever served on a City Board? NO

If yes, when and which Board? N/A

2. **REFERENCES** – Please list three references (business and/or personal)

Robert Kemp- Baird 125 Chickadee Ct. DB, 236-9750
Name, address, and telephone number

Rick & Deb Hebert 6389 Longlake Dr PO 763-1584
Name, address, and telephone number

Tom Campion 6455 Longlake Dr PO 451-0029
Name, address, and telephone number

3. **EDUCATION**

High School Gates Chili High School Date Graduated 1966

College NORTHWESTERN U Date Graduated 1995 Degree MA

4. **WORK EXPERIENCE**

FINANCIAL SERVICES - EASTMAN KODAK 32 yrs
USAF 4 yrs

5. **INTERESTS/ACTIVITIES**

Beach, golf, dedicating time to
support others HUM & DRIVE IN Christian Church, selected as
super volunteer by the News-Journal in 2015

6. **COMMUNITY INVOLVEMENT**

Cypress Head HOA's, currently
President of the Residential HOA (~ 375 Households)

7. **WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARDS?**

Nominated by the MASTER HOA of Cypress Head and support
that the HOA should have a voice on an influential asset like the
golf course

8. **A resume or separate sheet with additional information should be included.**

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

Richard Lee
Signature

5/2/2016
Date

Note: If you have questions concerning the duties and responsibilities of any of the above Boards/Commissions, please contact the City Clerk's Office at 506-5563.

Return this form to: Robin Fenwick, CMC, City Clerk,
1000 City Center Circle
Port Orange, Florida 32129

Personal: married 47 yrs., 1 son Timothy at Chase Bank NA Atlanta, GA., 1 daughter Jennifer a Psychologist/Counselor in Galesburg, IL

Education:

Graduated High School 1966

Monroe Community College, AS 1968 Computer Science

Rochester Institute of Technology, BS 1978, Accounting

Northwestern University, MM 1995, Management

Professional:

USAF 1968-1972 Honorable Discharge, Staff Sergeant

Eastman Kodak 1974-2006.. increasing roles in the financial aspects of a Fortune 500 company

Volunteerism:

Drive In Christian Church: served as Board Vice Chair 2014, Chair 2015. Currently Chair of By Laws Committee, Chair of the Legacy Fund Committee and Chair of Drive Thru Bethlehem

Community: served on Cypress Head Master HOA and Residential HOA, Currently Chair of the Cypress Head Residential HOA and serve on the Cypress Head Architectural Review Committee

Halifax Urban Ministries: deliver food to Bay Street facility weekly for repacking and distribution

Motivation

As an active resident of Cypress Head and an avid golfer I believe that the best interests of Port Orange need to be at the forefront of any Board decisions made that impact the golf course. Whatever impacts the Cypress Head Golf Course has an effect on not just Cypress Head residents but on all Port Orange residents and non- residents who utilize the course and adjoining facilities.

CITY OF PORT ORANGE ADVISORY BOARDS AND COMMISSIONS

VOLUNTEER APPLICATIONS

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s)/Commission(s) for which you wish to apply. If applying for more than one Board/Commission, please number in the order of preference.

- ☒ GOLF COURSE BOARD
- | | |
|---|---|
| ☐ Environmental Advisory Board | ☐ Library Advisory Board |
| ☐ Construction Regulation Board* | ☐ Parks and Recreation Board |
| ☐ Code Enforcement Board* | ☐ Planning Commission* |
| ☐ Charter Review Board | ☐ City Manager Selection Committee |
| ☐ Civil Service Board | ☐ Audit & Budget Advisory Board |
| ☐ Districting Commission | ☐ Youth Advisory Board |

CRA Boards

- ☐ Eastport Community Redevelopment Agency*
- ☐ Town Center Community Redevelopment Agency*

Pension Boards

- ☐ General Employees*
- ☐ Police*
- ☐ Fire*

ALL OF THE ABOVE ARE SUBJECT TO THE "SUNSHINE LAW"

MEMBERS OF THE BOARDS/COMMISSIONS WITH AN ASTERIK ARE REQUIRED TO FILE FINANCIAL DISCLOSURES WITHIN 30 DAYS OF DATE OF APPOINTMENT.

1. PERSONAL

Name JANE TAYLOR Date of Birth 07-23-45

Address 6459 CYPRESS SPRINGS PKWY

Home Telephone 386-322-9762

E-Mail Address jtaylor723@bellsouth.net

Business Telephone N/A

Are you a registered voter in Port Orange? ☒ Yes ☐ No

City Council District 3

How long have you been a resident of Port Orange? 15 YRS

Are you currently serving on a City Board? NO

Have you ever served on a City Board? NO

If yes, when and which Board? _____

SCANNED

2. **REFERENCES** – Please list three references (business and/or personal)

SUE ALDSKY 1212 SIESTA KEY CIRCLE, PORT ORANGE 760-1940
Name, address, and telephone number

TOM GOMKOWSKI 6363 CYPRESS SPRINGS PKWY, PORT ORANGE 320-4160
Name, address, and telephone number

LANCE GREEN 6469 LONGLAKE ST, PORT ORANGE 527-2656
Name, address, and telephone number

3. **EDUCATION**

High School _____ Date Graduated 1964

College AVERETT UNIVERSITY Date Graduated 1994 Degree B.A.
NEW HAMPSHIRE UNIVERSITY, MBA PROGRAM

4. **WORK EXPERIENCE** RETIRED IN 2002. 30 YRS. EXPERIENCE IN FINANCE,

HUMAN RESOURCES AND PROJECT MANAGEMENT WITH LARGE CORPORATIONS
INCLUDING BOEING AND SPRINT.

5. **INTERESTS/ACTIVITIES** OUTDOOR ACTIVITIES INCLUDING GARDENING
SWIMMING AND GOLF

6. **COMMUNITY INVOLVEMENT** I HAVE HELD EVERY OFFICE ON CYPRESS
HEAD COMMUNITY ASSN. BOARD. I HAVE BEEN PRESIDENT OF CYPRESS HEAD
WOMEN'S GOLF ASSOCIATION.

7. **WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARDS?**

I WOULD LIKE TO BECOME MORE INVOLVED WITH CITY
GOVERNMENT

8. **A resume or separate sheet with additional information should be included.**

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

Jane S. Taylor
Signature

4/11/16
Date

Note: If you have questions concerning the duties and responsibilities of any of the above Boards/Commissions, please contact the City Clerk's Office at 506-5563.

Return this form to: Robin Fenwick, CMC, City Clerk,
1000 City Center Circle
Port Orange, Florida 32129



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (I14) Second Reading - Ordinance No. 2022-3 - Amending Section 2-57 - Public Records Management of the Electronic Information System Standards Utilized by City Board Members

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve Ordinance No. 2022-3.

SUMMARY: In April 2014, Council adopted Ordinance No. 2014-12 establishing standards for the City's electronic information systems (EIS) utilized by City Board Members, which included security items, prohibited activities, and retention and production guidelines for public records created by City Board Members. These standards mirror those established for City employees.

The City Clerk has worked with IT and City Attorney Staff to update the City's General Administration Policy 1-32 relating to EIS for employees and offers this Ordinance update to coincide with Policy 1-32. The proposed changes give the City Board Members the same types of options in retaining public records they create and/or receive in connection with the transaction of official City business, removes references to text messaging on City issued cell phones since board members are not issued City cell phones, and spells out how to handle off-boarding of board members as it relates to public records.

The options for retaining public records created and/or received in connection with the transaction of official City business are to maintain, retain, and produce the public record in accordance with Florida law, submit the public record to their city-issued email account, or submit the public record to the City Clerk's Office.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Ord. No. 2022-3 - EIS for Bd Members	Ord. No. 2022-3 - EIS for Bd Members.docx
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ORDINANCE NO. 2022-3

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA, FLORIDA, AMENDING SECTION 2-57 RELATED TO PUBLIC RECORDS MANAGEMENT OF THE ELECTRONIC INFORMATION SYSTEMS UTILIZED BY CITY BOARD MEMBERS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that it is in the best interests of the citizens of the City of Port Orange to amend the standards for board members' use of the City's electronic information system as more particularly set forth hereinafter; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED, by the City Council of the City of Port Orange, Florida as follows:

SECTION 1. The City Council of the City of Port Orange hereby amends Section 2-57 of the City's electronic information system standards for board members of the City of Port Orange Code of Ordinances, as follows:

Section 2-57. Public records management.

(a) Each user of city EIS shall take responsibility for proper retention of and shall retain ~~and deliver to the city clerk~~ emails and text messages sent or received in the furtherance of city business. All members ~~who~~ have been provided a city email account and shall use the city email account ~~in furtherance of~~ when communicating about city business in order to ensure the proper maintenance, and retention ~~and delivery to the city clerk~~ of all public records in accordance with law. All emails ~~and text messages~~ sent or received using a city provided email account ~~or cell phone~~ are subject to public disclosure as required by law. In the event that unavoidable circumstances require an email or text message related to official city business be sent to or received from utilizing a personal email account or personal cell phone, the same shall be properly maintained and retained by the person subject to this policy who sent or received the communication. If the member wishes not to be responsible for the retention and potential production of said public record, the member may immediately forward the communication to the board member's city-issued email account or to cityclerk@port-orange.org within seventy-two (72) hours of being sent or received to ensure for proper maintenance, retention, and production in accordance with law. ~~delivery to the city clerk of the public record~~. Emails and Ttext messages being preserved pursuant to this ordinance in this manner shall identify the sender, recipient(s), and contents of the message along with the date and time of transmission.

(b) Members are encouraged to use personal email accounts for personal communications. Personal emails are considered those emails sent or received from a private network which are completely personal to the individual in nature and have no

relationship to city operations or official city business, and are not made in connection with the official business of any public body, officer, employee, or board member of the city or persons acting on the city's behalf. The city shall not be held liable for the public release of any email or text message that the member has received or sent from a city provided email account or cell phone.

(c) ~~All emails and text messages made or received in connection with the transaction of official city business, e~~Even emails and text messages from personal email accounts and personal cell phones made or received in connection with the transaction of official city business shall be subject to public disclosure as required by law. It shall be the responsibility of each person subject to this ordinance to retain ~~and to promptly furnish to the city clerk~~ any public record stored on a personal email account or personal cell phone in accordance with this ordinance.

(d) ~~Upon receipt of a member's written request to use a personal email address, the city clerk shall provide a notice to the member's personal email address advising that mail has been sent or received relating to city business. Once no longer serving on a city board, a volunteer's EIS account will be inactivated as part of the off-boarding process. All public records that are not already stored within city EIS shall be provided to the records custodian to be maintained in accordance with applicable law. Each person subject to this policy shall coordinate with the records custodian on the proper handling and disposition of public records in their possession prior to any destruction or disposal of public records.~~

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. This ordinance shall take effect immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the ____ day of March, 2022.

Passed and adopted on second and final reading on the _____ day of March, 2022.

Reviewed and Approved: _____
Matthew Jones, City Attorney



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (I15) Approval of Development Order Modification for the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision (Case No. 21-52000001)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the Development Order Modification to the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision.

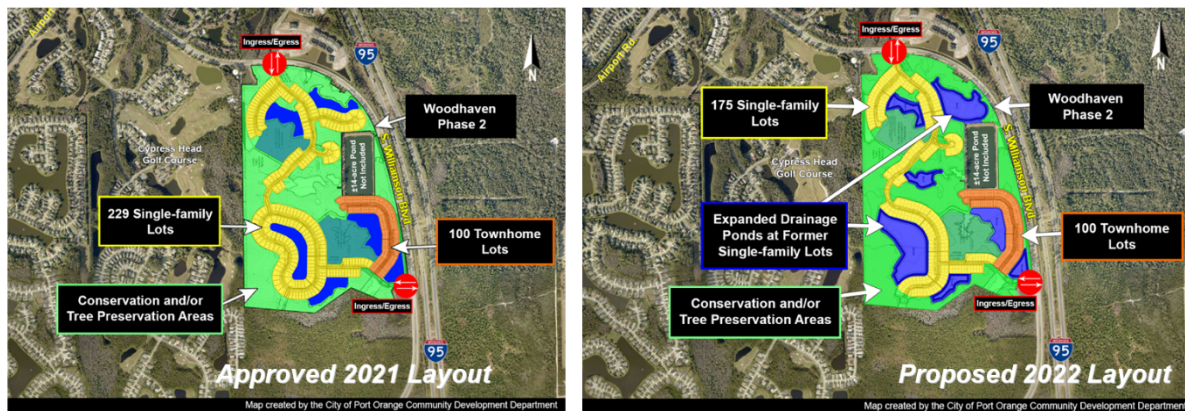
SUMMARY: Planning Commission Action (1/27/22): Recommended Approval 7-0

In August 2021, the City Council approved the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision. Phase 2 consisted of 229 single-family lots and 100 townhome lots, along with associated subdivision infrastructure improvements (streets, sidewalks, utilities, stormwater, and landscaping).

The applicant has requested the proposed modification to the plat and plans. According to the Land Development Code, minor changes to a plat that has not been recorded must be reviewed through the same process as the original review of the plat. Therefore, the proposed minor changes to the plat and plans must be reviewed by the Planning Commission and reviewed and approved by the City Council before it can be recorded.

The proposed modifications to the plat and plans include: 1) Removing 54 single-family lots, and 2) Expanding the proposed stormwater ponds at the northeast and southwest portions of Phase 2. According to the applicant, the proposed modifications are to reduce the amount of fill dirt that has to be brought to the site to grade the subdivision.

Staff has reviewed the proposed modifications to the plat and plans for compliance with the Land Development Code and the Woodhaven Planned Unit Development Master Development Agreement, and verified that public facilities and services, such as roads, public infrastructure, schools, and recreational facilities are currently available to serve the proposed 175 single-family lots and 100 townhome lots.



Comparison of Previously Approved Woodhaven Phase 2 Layout and the Proposed Modification to Reduce the Number of Lots

The staff report is attached for more information.

PRESENTER: Penelope Cruz

ATTACHMENTS:

1.	Staff Report_DO Mod Woodhaven_PH 2	Staff Report_DO Mod Woodhaven_PH 2 .pdf
2.	Exhibits 1 & 2 - Links to Modified Plat & Subdivision Plans for Woodhaven Phase 2	Exhibits 1 & 2 - Links to Modified Plat & Subdivision Plans for Woodhaven Phase 2.docx

Penelope Cruz
Tim Burman
Shannon Balmer
Wayne Clark
Robin Fenwick

Created/Initiated - 2/22/2022
Approved - 2/24/2022
Approved - 3/3/2022
Approved - 3/4/2022
Final Approval - 3/4/2022



STAFF REPORT

DEVELOPMENT ORDER MODIFICATION FOR THE FINAL PLAT AND PLANS FOR PHASE 2 OF THE WOODHAVEN SUBDIVISION

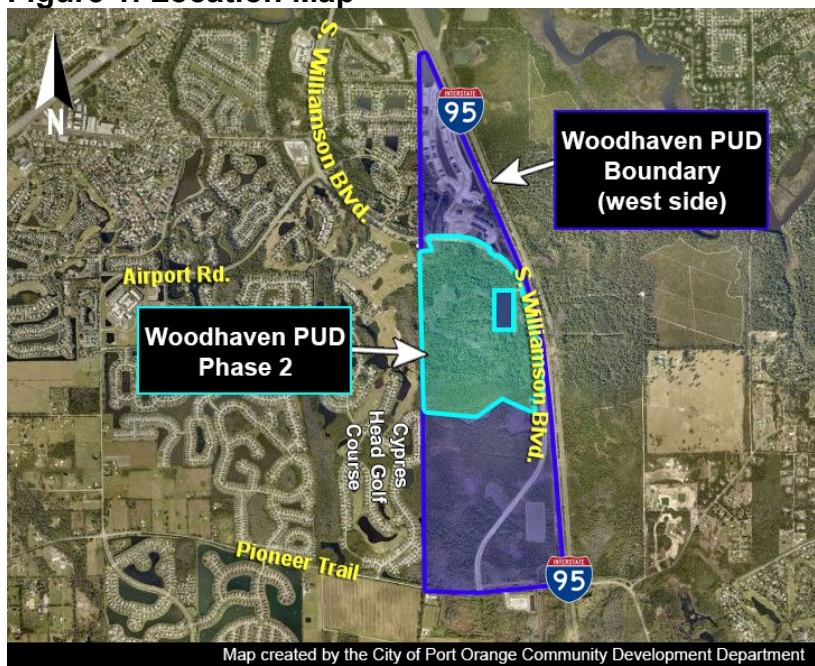
CASE NO. 21-52000001

REQUEST:	Approval of a Development Order Modification for the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision to reduce the number of single-family lots from 229 to 175
LOCATION:	South and west of Williamson Boulevard, west of I-95 (see Figure 1)
OWNER/APPLICANT:	CC Woodhaven, LLC
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval (January 27, 2022)
CITY COUNCIL:	March 15, 2022

DISCUSSION

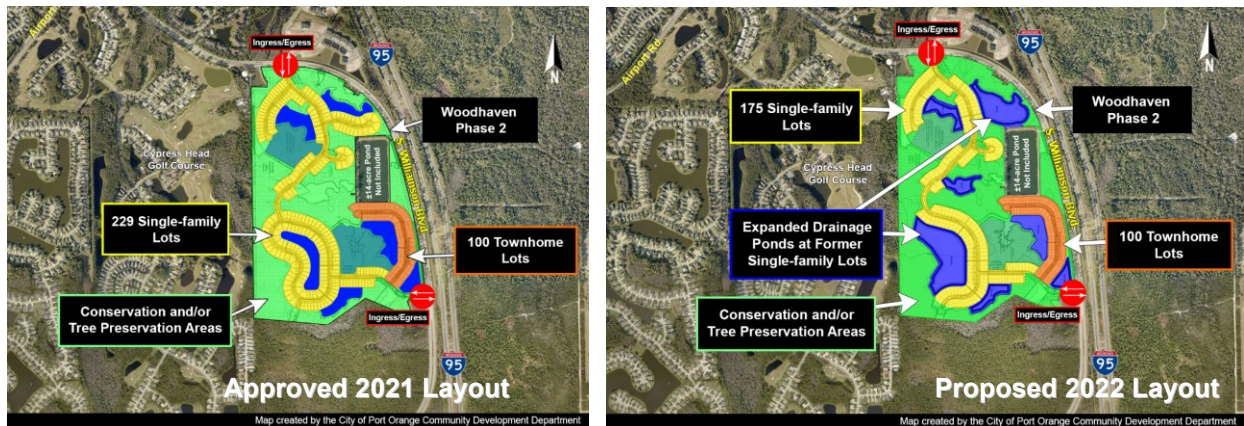
In August 2021, the City Council approved the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision. Phase 2 consisted of 229 single-family lots and 100 townhome lots, along with associated subdivision infrastructure improvements (streets, sidewalks, utilities, stormwater, and landscaping). The subject property is located south and west of Williamson Boulevard, between I-95 and the Cypress Head subdivision.

Figure 1. Location Map



The applicant has requested the proposed modification to the plat and plans (Figure 2): 1) Removing 54 single-family lots, and 2) Expanding the proposed stormwater ponds at the northeast and southwest portions of Phase 2. According to the applicant, the proposed modifications are to reduce the amount of fill dirt that has to be brought to the site to grade the subdivision.

Figure 2. Comparison of Previously Approved Woodhaven Phase 2 Layout and the Proposed Modification to Reduce the Number of Lots



According to the Land Development Code, minor changes to a plat that has not been recorded must be reviewed through the same process as the original review of the plat. Therefore, the proposed minor changes to the plat and plans will need to be reviewed by the Planning Commission and reviewed and approved by City Council before it can be recorded.

The proposed modifications to Phase 2 have been designed according to the requirements of the Woodhaven PUD Master Development Agreement (MDA) and the City's Land Development Code (LDC). The following subdivision improvements have NOT changed from the previously approved plans and still will be constructed:

- Water and sewer infrastructure.
- Private, gated local streets within the subdivision (travel lanes, 5' sidewalks, and streetlights).
- Stormwater drainage infrastructure.
- Common Areas with Tree Conservation Easements for preservation.
- 50'-wide buffers along Williamson Boulevard and the western perimeter adjacent to the Cypress Head subdivision.
- Two access points from Williamson Boulevard (Williamson Boulevard is under Volusia County's jurisdiction).

CONCURRENCY REVIEW

A concurrency analysis was conducted as part of the Final Plat and Subdivision Plans for Phase 2 of the Woodhaven Subdivision (Case No. 21-50000001) in August 2021, and at that time, sufficient public facilities and services, such as roads, public infrastructure, schools, and recreational facilities, were found to be available. The proposed Development Order Modification to Phase 2 will reduce the number of single-family lots and reduces impacts to public facilities and services.

Staff has reviewed the proposed modifications to the plat and plans for compliance with the Land Development Code and verified that public facilities and services, such as roads, public infrastructure, schools, and recreational facilities are currently available to serve the proposed 175 single-family lots and 100 townhome lots.

The Master Development Agreement for the Woodhaven PUD allows for a maximum of 1,338 dwelling units. If this Development Order Modification is approved for Phase 2, 792 residential dwelling units would be available to be developed within the Woodhaven PUD.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject property is primarily designated *Rural Transition* (0-2 units/acre), with some areas being designated *Conservation* and *Suburban Residential* (2-4 units/acre) on the City's Future Land Use (FLU) Map. The original Subdivision Final Plat and Plans for Phase 2 of Woodhaven Subdivision was found to be consistent with the City's Comprehensive Plan when it was approved in 2021. The proposed Development Order Modification to Phase 2 does not change the FLU designation for the property and is consistent with the general intent of the Comprehensive Plan.

RECOMMENDATION

Based on the proposed modifications to the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision being designed according to the requirements of the Woodhaven PUD Master Development Agreement (MDA) and the City's Land Development Code (LDC), staff recommends approval of the Development Order Modification to the Final Plat and Plans for Phase 2 of the Woodhaven Subdivision approved by City Council in 2021.

ATTACHMENTS

- Exhibit 1 – Modified Plat for Woodhaven Phase 2
- Exhibit 2 – Modified Plans for Woodhaven Phase 2

Please click on the below links for access to the Modified Plat and Subdivision Plans

EXHIBIT 1 – Modified Final Plat

[Woodhaven Phase 2 Final Plat](#)

EXHIBIT 2 – Modified Subdivision Plans

[Woodhaven Phase 2 Plans](#)



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (I16) Approval of the Conditional Use Extension Request from Christ the King Community Church (Case No. 22-30000001)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

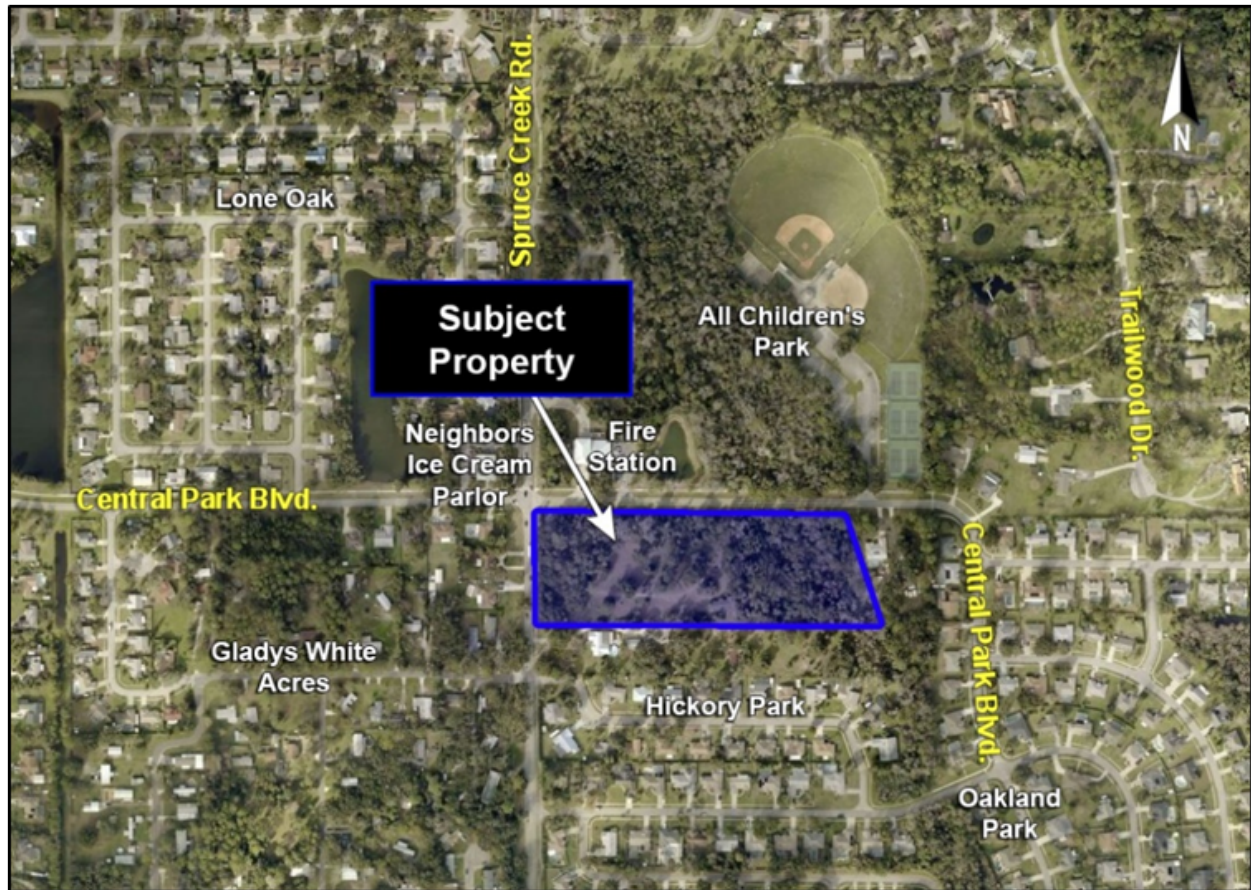
RECOMMENDED MOTION: Move to approve the Conditional Use extension for an additional two years subject to the conditions in the Staff Report.

SUMMARY: PLANNING COMMISSION ACTION (February 24, 2022): Recommended Approval 6-0

In July 2020, the City Council approved a Conditional Use request for Christ the King Community Church to temporarily utilize their property over a two-year period to hold outdoor church services and activities while the church finalized design plans and constructed their permanent facility at 6015 Spruce Creek Road. However, delays in the construction industry have prevented the church from starting construction on the permanent facility on site within the initial two-year timeframe, prior to the expiration of the Conditional Use in July 2022. Therefore, the applicant is requesting a two-year extension to the previously approved Conditional Use. The subject property is located at 6015 Spruce Creek Road, on the southeast corner of Central Park Boulevard and Spruce Creek Road.

The requested two-year extension of the Church's Conditional Use would continue to allow the church to hold outdoor services and other church related programs and meetings on site as an interim use while site construction is completed on the permanent facility. As part of the current request, the applicant has requested the ability to have a food truck/coffee vendor on-site during worship services.

Over the past two years, the church has had a site plan prepared by a licensed engineer for a ±9,100 square-foot building, along with associated site improvements on the subject property. The plan was approved in December 2021. The church initially anticipated construction to start in early 2022. However, due to delays in obtaining materials for constructing the church building, the church now anticipates construction not starting until Fall 2022. Although site work is permitted to begin at this time, the church prefers to start site work when the materials for the building are delivered to minimize the impact of construction on the surrounding neighborhood. The applicant anticipates construction to begin in Fall 2022 and be completed in early 2024.



According to the Government/Public Use (GPU) zoning district, a house of worship is a permitted use in the GPU zoning district, so the proposed Conditional Use is consistent with the subject property's current zoning. Typically, the use of a site is associated with a developed permanent building. However, in this case, the use could occur outside and without a building. The church has been using the site for this use for the past two years and there have not been any complaints.

Based on the findings of the attached Staff Report, Staff recommends approval of the Conditional Use extension to allow Christ the King Church to continue to hold outdoor church services and other church related programs for an additional two years while site construction on the permanent facility is completed, subject to the following conditions:

1. The Conditional Use will expire on July 21, 2024.
2. No more than one food truck/coffee vendor for church services.
3. Site lighting may emit no more than 0.5 foot-candles at the property line and will not spill over onto adjacent properties and rights-of-way.
4. Sound or noise projecting from this use shall not exceed dBA of 60 between the hours of 7:00am -10:00pm and dBA of 50 from 10:00pm – 7:00am. It will be the responsibility of the permit holder to monitor for noise violations.
5. The Conditional Use is only valid for Christ the King Church.
6. If other events are planned other than activities mentioned in the Conditional Use, a special event permit would need to be submitted and approved (e.g. Fall Festival).
7. The screening for equipment to remain on site, monument sign, and concrete

driveway apron is required to be maintained in good condition.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz

ATTACHMENTS:

1.	Staff Report - Christ the King Conditional Use	Staff Report - Christ the King Conditional Use.pdf
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Penelope Cruz	Created/Initiated - 2/24/2022
Tim Burman	Approved - 2/24/2022
Shannon Balmer	Approved - 3/3/2022
Wayne Clark	Approved - 3/4/2022
Robin Fenwick	Final Approval - 3/4/2022



STAFF REPORT

CONDITIONAL USE EXTENSION/CHRIST THE KING COMMUNITY CHURCH

CASE NO. 22-30000001

REQUEST:	Conditional Use Extension to hold outdoor church services and other church related programs for an additional two years while site construction on the permanent facility is completed
APPLICANT:	Scott Kirschner, Christ the King Community Church
PROPERTY OWNER:	Christ the King Community Church Port Orange, Inc.
LOCATION:	6015 Spruce Creek Road (see Figure 1)
STAFF CONTACT:	Gideon Smith, Senior Planner (386) 506-5676
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 6-0 (February 24, 2022)
CITY COUNCIL DATE:	March 15, 2022

INTRODUCTION

In July 2020, the City Council approved a Conditional Use request for Christ the King Community Church to temporarily utilize their property over a two-year period to hold outdoor church services and activities while the church finalized design plans to construct their permanent facility on the subject property. The subject property is located at 6015 Spruce Creek Road, on the southeast corner of Central Park Boulevard and Spruce Creek Road.

Figure 1: Location Map



BACKGROUND

In Fall of 2019, the subject property was rezoned from R-10SF Single-Family Residential to Government/Public Use (GPU) with the intent to construct a church and fellowship hall on site. Prior to that time, the Church rented space at Cypress Creek Elementary School on Sundays.

In July 2020, a Conditional Use was approved to allow the church to relocate its regular services to the Spruce Creek Road property while the development plans were prepared for review and approval by City staff. According to the 2020 Conditional Use application, the primary use of the property was proposed to take place on Sunday mornings and church related activities on Saturday evening and/or after 5pm on the weekdays. This Conditional Use is set to expire on July 21, 2022. As part of the initial Conditional Use approval, the applicant installed and maintains the following site improvements:

- A monument sign with landscaping around the sign base.
- Picnic tables, stage, exterior string lights, and two wood fenced storage areas for a trailer, trash receptacles, and other items for property use and maintenance.
- Set-up of a tent for church service during times with inclement weather.
- Designated parking areas on existing cleared grassed areas to accommodate up to 125 vehicles. Parking areas are required to be rotated periodically to keep grassed areas in good condition.
- A driveway apron within the right-of-way and ten-feet beyond the right-of-way off Spruce Creek Road.
- Power into the site via an existing power pole on the west property line.
- Water to the site from an existing water service on Spruce Creek Road.



Above: Subject Property Looking West Toward Spruce Creek Road



Above: Subject Property Looking East Toward Central Park Boulevard



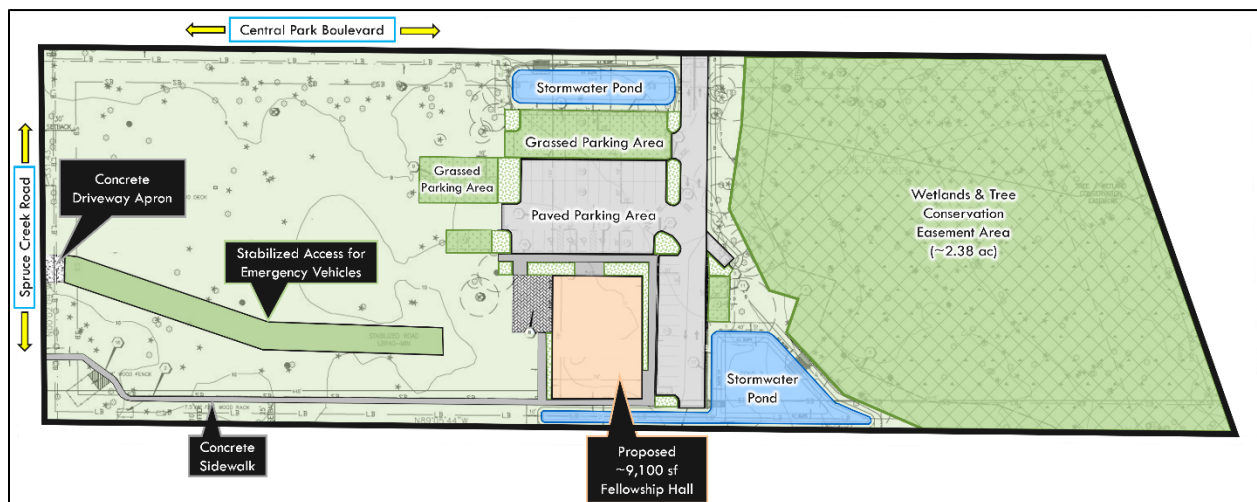
Above: Looking Southeast Toward Subject Property with Installed Monument Sign

DEVELOPMENT PROPOSAL

According to the applicant, delays in the construction industry have prevented the church from starting construction on the permanent facility on site within the initial two-year timeframe, prior to the expiration of the Conditional Use in July 2022 (See Exhibit A). As a result, the applicant is requesting a two-year extension on the previously approved Conditional Use to allow for the church to continue to hold outdoor services and other church related programs and meetings on site as an interim use while site construction is completed on the permanent facility. The applicant has also indicated that a food truck/coffee vendor occasionally arrives during worship services and has requested approval of this use as part of the Conditional Use extension request.

Over the past two years, the church had a site plan prepared by a licensed engineer and received site plan approval in December 2021 to construct a $\pm 9,100$ square-foot building, along with associated site improvements on the subject property (Case No. 21-80000004). The church initially anticipated construction of the permanent facility to start in early 2022. However, due to delays in obtaining materials for manufacturing, the church anticipates construction not starting until Fall 2022 (See Exhibit B). Although site work is permitted to begin at this time, the church prefers to start site work when the materials for the building are delivered in an effort to minimize the impacts of construction on the surrounding neighborhood. The applicant anticipates construction to begin in Fall 2022 and be completed in early 2024.

Figure 2: Applicant's Approved Site Plan



According to the Government/Public Use (GPU) zoning district, a house of worship is a permitted use in the GPU zoning district, so the proposed Conditional Use is consistent with the subject property's current zoning. Typically, the use of a site is associated with a developed permanent building; however, in this case the use could occur outside and without a building. The church has been using the site for this use for the past two years and there have not been any complaints.

REVIEW CRITERIA

When reviewing an application for a Conditional Use, the Planning Commission and City Council must consider the following requirements and criteria [Chapter 18, Section 1(d)(2) of the Land Development Code]. During the review of the 2020 Conditional Use request, the Planning Commission and City Council found that the proposed use met these requirements and criteria.

- (a) Traffic generation and access for the proposed use shall not adversely impact adjoining properties and the general public safety.*

No adverse impacts to adjoining properties and the general public safety are anticipated with the approval of the Conditional Use extension. Access to the property will be through designated access points along Spruce Creek Road and Central Park Boulevard.

According to the latest traffic counts for Central Park Boulevard, Hensel Road, and Spruce Creek Road, capacity exists on these roadways to accommodate the Conditional Use and future development of this property. The church would only be using the site on weekends for worship and small group meetings during weekdays. Therefore, staff does not foresee any adverse impacts to the safety of the general public.

- (b) Off-street parking, loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties, beyond that generally experienced in the district.*

This criterion is met. Parking will be provided throughout the grassed site. As part of the Conditional Use, the applicant does not plan to develop any impervious parking areas. The intent is to have members of the church park throughout the site in designated grass parking areas. According to the church, the anticipated number of guests is between 200 to 250. Based on the parking requirements in the Land Development Code, 66 to 84 parking spaces would be needed. According to the applicant, there has been sufficient space for church members to park on the subject property over the past year and a half.

The church has designated multiple areas for parking, so areas are not over utilized and become rutted, uneven, unable to drain properly, unsightly or unmaintained. According to the Land Development Code, if grassed parking areas are utilized so as to become rutted, uneven, unable to drain properly, unsightly or unmaintained, the city may require that the area to be paved.

- (c) Required yards, screening or buffering, and landscaping shall be consistent with the district in general and the specific needs of the abutting land uses.*

This criterion is met. The existing landscaping along the property lines and rights-of-way will remain and serve as the buffer. The applicant will be required to maintain the landscaping on site during the duration of the Conditional Use. In addition, landscaping was installed around the base of the monument sign.

- (d) Architectural and signage treatments shall comply with the general provisions applicable to permitted uses in the district, to the greatest extent possible, and be sensitive to surrounding development.*

This criterion will be addressed with the submittal of building permits for the permanent facility, consistent with the approved site plan. Items that will remain on-site to facilitate the use of the site as an outdoor church will be required to be screened, such as the equipment trailer, portable toilet, garbage cans, etc. The applicant is aware of these necessary improvements. As part of the 2020 Conditional Use approval, a permanent sign was installed with additional architectural and landscape treatment.

The applicant is aware that tents greater than 10' x 10' require a building permit to ensure proper installation and must be submitted to install a tent if there is pending inclement weather over a weekend so that service can occur. The applicant is also aware that the timeframe the tent could remain up would be limited. To date, the applicant has complied with this requirement.

- (e) Size, location or number of conditional uses in an area shall be limited so as to maintain the overall character of the district as intended by this code.*

This criterion is met. The 2020 Conditional Use approval established the first use of this type in this area and as an interim use it will be removed once the permanent church is built. The conditional use is intended to establish a timeframe and parameters for the temporary use of the site for outdoor church service until their permanent building is constructed.

In granting a Conditional Use, the Planning Commission may recommend, and the City Council may prescribe, appropriate conditions and safeguards to ensure compliance with the requirements of Land Development Code. Such conditions may include time limits for the duration of the Conditional Use, specific minimum or maximum limits to regular code requirements, or any other conditions reasonably related to the requirements and criteria of this chapter.

RECOMMENDATION

Based on the findings of this report, Staff recommends **approval** of the Conditional Use extension to allow Christ the King Church to continue to hold outdoor church services and other church related programs for an additional two years while site construction on the permanent facility is completed, subject to the following conditions:

1. The Conditional Use will expire on July 21, 2024.
2. No more than one food truck/coffee vendor for church services.
3. Site lighting may emit no more than 0.5 foot-candles at the property line and will not spill over onto adjacent properties and rights-of-way.
4. Sound or noise projecting from this shall not exceed dBA of 60 between the hours of 7:00am -10:00pm and dBA of 50 10:00pm – 7:00am. It will be the responsibility of the permit holder to monitor for noise violations.
5. The Conditional Use is only valid for Christ the King Church.

6. If other events are planned other than activities mentioned in the Conditional Use, a special event permit would need to be submitted and approved (e.g. Fall Festival).
7. The screening for equipment to remain on site, monument sign, and concrete driveway apron is required to be maintained in good condition.

ATTACHMENTS

Exhibit A – Letter of Request from Applicant

Exhibit B – Building Contractor Documentation/Support

Exhibit C – Concept Plan

EXHIBIT A



January 13, 2022

Dear Port Orange Planning Team, Planning Board & City Council,

Our Christ the King family is requesting a 24-month extension on our approved 24-month Conditional Usage which expires summer of 2022.

We purchased the 7.5 acre lot located at 6015 Spruce Creek Road, Port Orange, FL 32127 in December of 2019. We have worked diligently to clear this property and make it beautiful for our church family to use and for our neighbors to enjoy! This location has served us well during the pandemic when many are concerned about meeting indoors. In addition to our regular weekend services, we have been able to have successful large community gatherings. These include Easter & Christmas Eve services, as well as Trunk or Treat and Church Birthday Picnics. Spruce Creek High School's Cross Country has also used it for their year end banquets over the past few years. Our neighbors often enjoy the beauty of our park like space. It has been a pleasure to offer our property to them!

To date, we are approaching \$400,000 in investment between the property down payment, mortgage payments, improvements to the site and architectural and engineering services for our proposed 9,000 square foot multipurpose facility.

Our new building loan is currently in underwriting with MainStreet Community Bank. We are waiting on final build estimate numbers to proceed with this loan. We do hope to have these numbers by the end of January and close in February or March of 2022.

The construction industry, as many of you know, is in an unprecedented time. A shortage of building materials, slow down in manufacturing & supply lines, high demand in building needs and a lack of adequate laborers has led to delays everywhere. The building process has not gone according to our plans but despite this our church family has been patient. We have seen healthy growth while meeting in our beautiful outdoor chapel and a very positive response from our neighbors. Many of them have now chosen to worship with us, which we are grateful for!

We anticipate our site development and building to begin between late spring and early summer. We are hopeful that this project can be completed by the summer or fall of 2023. We have submitted our site development plans to the city planning department and it has been approved. We are awaiting our preconstruction meeting at this time.

We are asking for a 24-month extension to our conditional usage to allow ample time and contingency for the unexpected in this building process.

We appreciate your consideration and understanding!

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Kirschner', with a long horizontal flourish extending to the right.

Scott Kirschner, Lead Pastor

(386) 986-8434

Christ the King Community Church Port Orange

Mailing Address: 1723 Creekwater Blvd., Port Orange, FL 32128

Physical Address: 6015 Spruce Creek Road, Port Orange, FL 32127

www.ctkportorange.com

EXHIBIT B

Smith, Gideon

From: Scott Kirschner <scott.kirschner@ctkonline.com>
Sent: Thursday, February 3, 2022 6:20 PM
To: Smith, Gideon; Cruz, Penelope
Subject: [EXT] Fwd: Good afternoon! The City Of Port Orange is asking for some documentation for our request for extension for conditional use of our property to meet outdoors while we're waiting on building materials. Could you please provide some documentatio...

Sent from my iPhone

Begin forwarded message:

From: Darwin Schneider <dschneider@steelmasterind.com>
Date: February 3, 2022 at 2:42:27 PM EST
To: Scott Kirschner <scott.kirschner@ctkonline.com>, Debra Frank <dfrank@steelmasterind.com>, Debi Johnston <djohnston@steelmasterind.com>
Subject: RE: Good afternoon! The City Of Port Orange is asking for some documentation for our request for extension for conditional use of our property to meet outdoors while we're waiting on building materials. Could you please provide some documentation that add

Pastor Scott, In response to your request for material lead time update. The last several months have been extremely trying in our business. We have been experiencing astronomical delays in material deliveries and cost increases. Our current lead time from our primary supplier for projects such as yours are 8-12 weeks from order inception until release of column base reactions. Production times are running 24 to t8 weeks after receipt of approval drawings if everything goes well. I hope this information helps you.

Sincerely,

Darwin Schneider

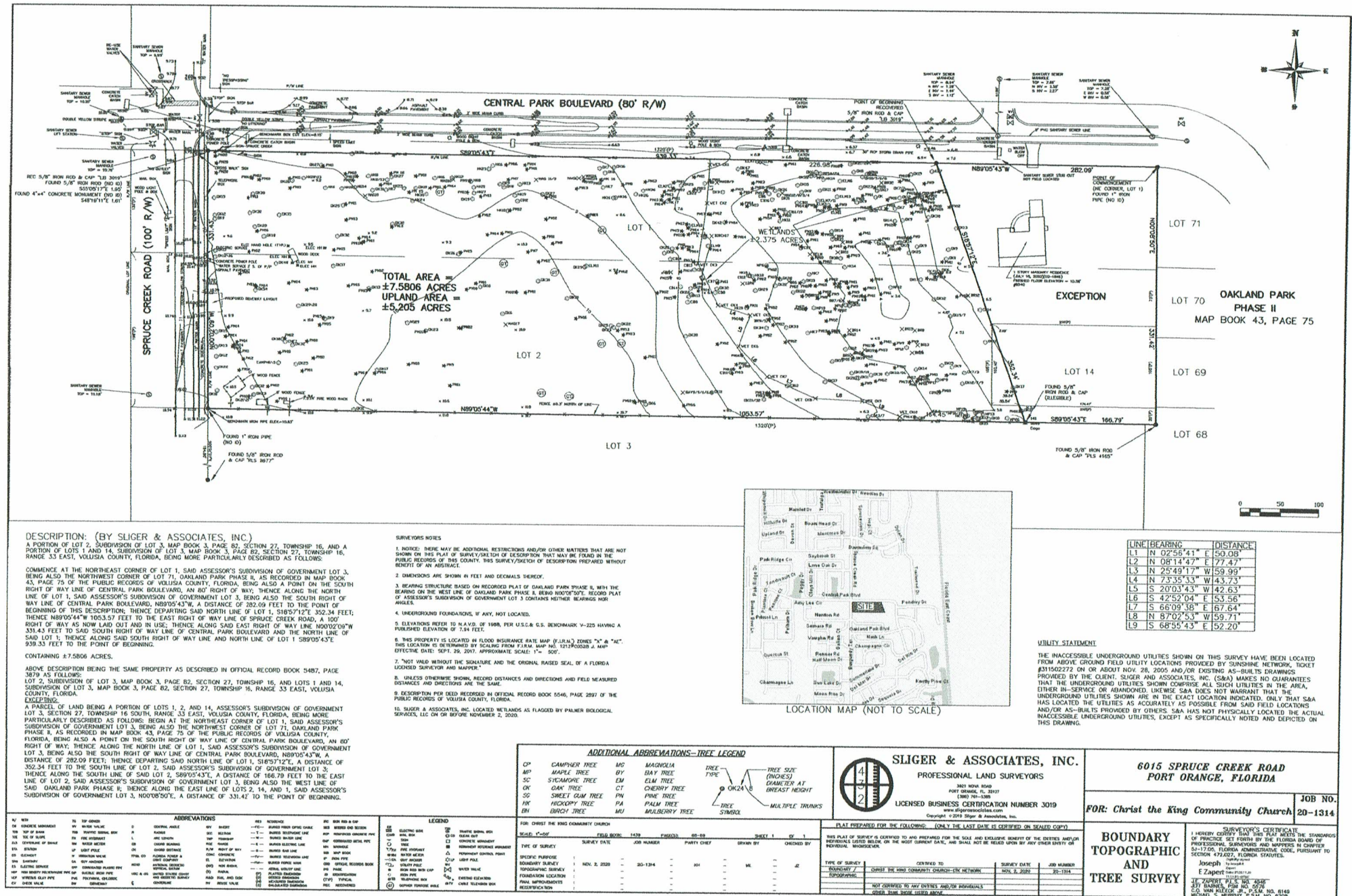
From: Scott Kirschner <scott.kirschner@ctkonline.com>
Sent: Thursday, February 3, 2022 1:09 PM
To: Darwin Schneider <dschneider@steelmasterind.com>; Debra Frank <dfrank@steelmasterind.com>; Debi Johnston <djohnston@steelmasterind.com>
Subject: Good afternoon! The City Of Port Orange is asking for some documentation for our request for extension for conditional use of our property to meet outdoors while we're waiting on building materials. Could you please provide some documentation that addr...

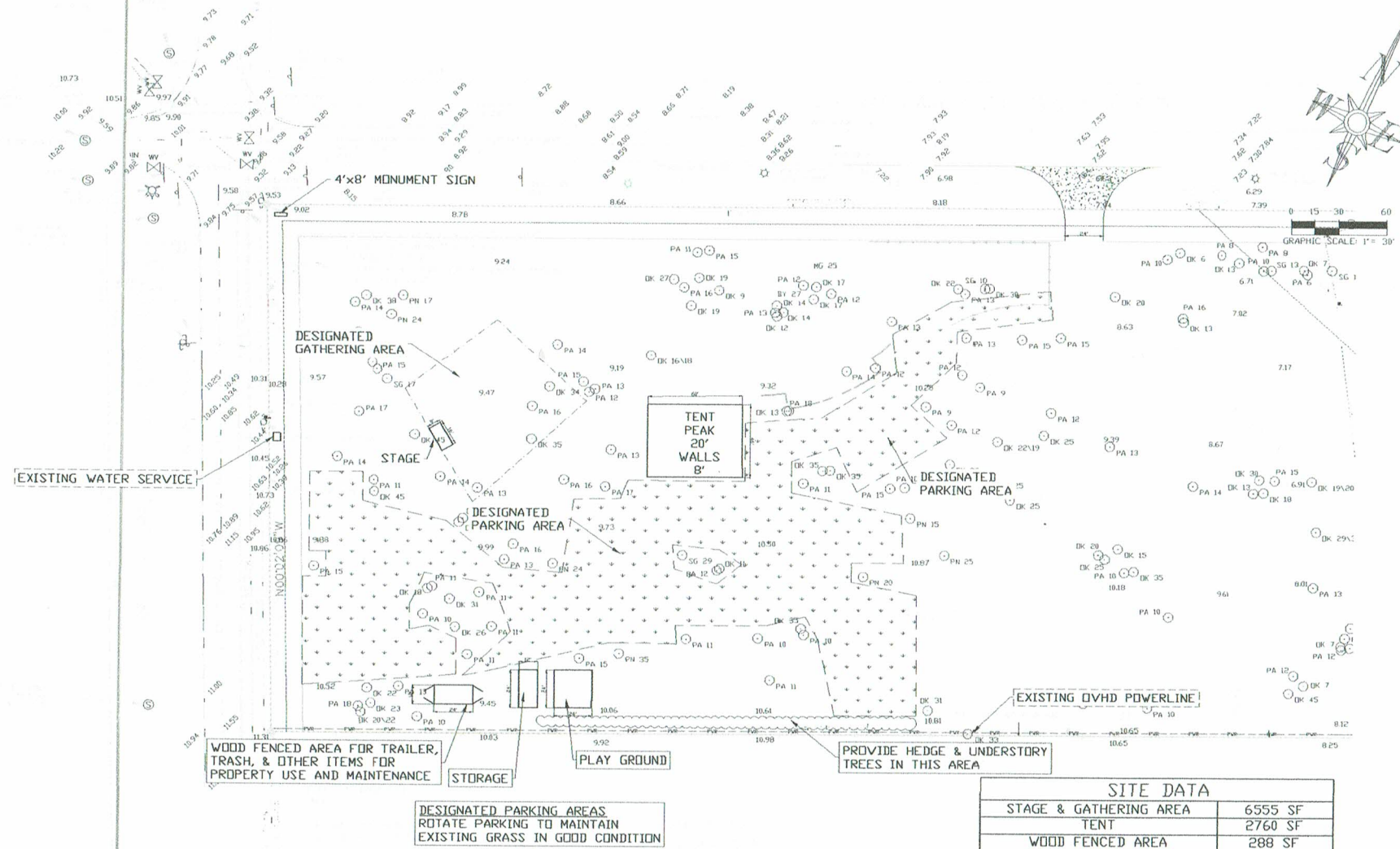
Sent from my iPhone

Begin forwarded message:

From: "Smith, Gideon" <gidsmith@port-orange.org>
Date: February 3, 2022 at 12:23:18 PM EST

Page 50 of





DATE	REVISION	BY	DATE
08-11-18	1	WV	08-11-18

Zahn Engineering, Inc.
 Civil Engineering • Land Planning • Permitting
 150 South Howard Avenue, Suite 201, Daytona Beach, Florida 32114
 Ph: (386) 252-0020 • Fax: (386) 252-0050
 www.zahneng.com

DATE	BY	DATE	BY
08-11-18	WV	08-11-18	WV

CONCEPT PLAN FOR CONDITIONAL USE
CHRIST THE KING COMMUNITY CHURCH
 6015 SPRUCE CREEK ROAD, PORT ORANGE
 VOLUSIA COUNTY, FL

PROJECT NUMBER
108

NOT VALID WITHOUT SEAL

ED-0005290
 P.E. NO. 15063 & R2255

SHEET **C01** OF **1**

PROGRESS SET FOR REVIEW ONLY - NOT FOR CONSTRUCTION



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (J17) First Reading - Ordinance No. 2022-5 - LDC Amendment/ Chapter 9, Article II, Section 19 (Case No. 22-25000002)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2022-5, amending Chapter 9, Article II, Section 19 of the Land Development Code.

SUMMARY: Planning Commission Action (2/24/22): Recommended Approval 6-0

The proposed amendment is to allow the City's tree bank to fund educational outreach programs and tree giveaways to residents and business owners of the City of Port Orange to plant on their property. Currently, the Land Development Code (LDC) states that funds from the City's tree bank can only be used for the planting of trees, and to cover any other ancillary costs including, but not limited to, landscaping, sprinkler systems, labor, consultant services and other services or materials necessary and proper for the preservation, maintenance, relocation or restoration of tree ecosystems on any public land within the City of Port Orange.

The proposed amendment would allow the City, Environmental Advisory Board (EAB), or other designated City boards to use funds from the tree bank funds to purchase trees to giveaway to residents and business owners during community events (Arbor Day, Earth Day, Family Days, etc.), as well as to create educational outreach programs that encourage the preservation of the City's tree canopy.

In conjunction with the proposed amendment, a Tree Bank Policy will be established by resolution to specify the type and size of trees that may be purchased for giveaways, along with the percentage of funds from the tree bank that can be used for tree giveaways and educational outreach.

The staff report is attached for more information.

PRESENTER: Penelope Cruz

ATTACHMENTS:

1.	Ordinance 2022-5	Ord 2022-5 tree education.pdf
2.	Staff Report - LDC Tree Bank Amendment	Staff Report - LDC Tree Bank Amendment.pdf

Robin Fenwick	Created/Initiated - 2/24/2022
Tim Burman	Approved - 2/24/2022
Shannon Balmer	Approved - 3/4/2022
Wayne Clark	Approved - 3/4/2022
Robin Fenwick	Final Approval - 3/4/2022

ORDINANCE NO. 2022-5

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA AMENDING CHAPTER 9,
ARTICLE II OF THE LAND DEVELOPMENT CODE, TO
ALLOW FUNDS FROM THE CITY'S TREE BANK TO BE
USED FOR EDUCATIONAL OUTREACH PROGRAMS AND
TREE GIVEAWAYS; PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the proposed amendment is necessary to improve the content of the existing Land Development Code ("Code") by expanding the use of the City's Tree Bank funds to include educational outreach programming and tree giveaways; and

WHEREAS, it is the City Council's intent to establish by resolution a City Tree Bank Policy allowing for the use of funds for educational outreach and tree giveaways; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 9 , Article II of the of the Land Development Code, City of Port Orange, to read as follows:

Chapter 9 – ENVIRONMENTAL PROTECTION

ARTICLE II: - TREE PRESERVATION

Section 19: - Tree replacement or mitigation.

[No changes to subsections (a) through (d)]

(e) *Tree bank*. The city finance director shall establish a separate project account for the tree bank for the deposit of mitigation payments as required in chapter 9, article II. All monies deposited for use as specified in section 19(e) of this article, shall be deposited in a separate project account established and maintained apart from other project accounts of the City of Port Orange. The funds in said account shall be expended, utilized and disbursed for the planting of trees, and to cover any other ancillary costs including, but not limited to, landscaping, sprinkler systems, labor, consultant services and other services or materials necessary and proper for the preservation, maintenance, relocation or restoration of tree ecosystems on any public land within the jurisdiction of the City of Port Orange, and to fund educational outreach programs and tree giveaways for residents and business owners of the City of Port Orange, as established by resolution. These monies may also be utilized to purchase land intended for conservation, tree preservation or public open space.

SECTION 2: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3: The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange and the sections of this ordinance may be renumbered or re-lettered to accomplish such intention. The code codifier is granted liberal authority to codify the provisions of this ordinance.

SECTION 4: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5: This Ordinance shall take effect immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney



STAFF REPORT

CASE NO. 22-25000001

LDC Amendment/Chapter 9, Article II, Section 19

REQUEST:	Amend Chapter 9, Article II, Section 19 of the Land Development Code to allow funds from the City's Tree Bank to be used for educational outreach programs and tree giveaways to residents and business owners of the City of Port Orange to plant on their property.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	Recommended Approval 6-0 (February 24, 2022)
CITY COUNCIL DATE:	March 15, 2022

SUMMARY OF PROPOSED AMENDMENT

The proposed amendment is to allow funds from City's tree bank to fund educational outreach programs and tree giveaways to residents and business owners of the City of Port Orange to plant on their property. Currently, the Land Development Code (LDC) states that funds from the City's tree bank can only be used for the planting of trees, and to cover any other ancillary costs including, but not limited to, landscaping, sprinkler systems, labor, consultant services and other services or materials necessary and proper for the preservation, maintenance, relocation or restoration of tree ecosystems on any public land within the City of Port Orange.

The proposed amendment would allow the City, Environmental Advisory Board (EAB), or other designated City boards to use funds from the tree bank funds to purchase trees to giveaway to residents and business owners during community events (Arbor Day, Earth Day, Family Days, etc.), as well as to create educational outreach programs that encourage the preservation of the City's tree canopy.

In conjunction with the proposed amendment, a Tree Bank Policy will be established to specify the type and size of trees that may be purchased for giveaways, along with the percentage of funds from the tree bank that can be used for tree giveaways and educational outreach.

The City's Tree Bank receives funds when a developer chooses to remove trees from a required landscape buffer or any specimen as part of a new commercial or residential development. According to the LDC, if a developer chooses to remove trees 6" dbh¹ or greater from a required buffer or specimen trees (Oak, Elm, Maple, Cypress, Sweetgum,

¹ Diameter at breast height (DBH). Trunk diameter of tree measured four and one-half feet above soil level. If a tree forks within four and one-half feet of the soil line, each fork shall be considered a separate tree.

Hickory, and Sycamore trees that are 18" dbh or greater; and Magnolia, Cedar, Turkey Oak and Bay trees 12" dbh or greater), a payment toward the City's Tree Bank is required.

PROPOSED AMENDMENT

CHAPTER 9

ARTICLE II: - TREE PRESERVATION

Section 19: - Tree replacement or mitigation.

[No changes to subsections (a) through (d)]

(e) *Tree bank*. The city finance director shall establish a separate project account for the tree bank for the deposit of mitigation payments as required in chapter 9, article II. All monies deposited for use as specified in section 19(e) of this article, shall be deposited in a separate project account established and maintained apart from other project accounts of the City of Port Orange. The funds in said account shall be expended, utilized and disbursed for the planting of trees, and to cover any other ancillary costs including, but not limited to, landscaping, sprinkler systems, labor, consultant services and other services or materials necessary and proper for the preservation, maintenance, relocation or restoration of tree ecosystems on any public land within the jurisdiction of the City of Port Orange, and to fund educational outreach programs and tree giveaways for residents and business owners of the City of Port Orange, as established by resolution. These monies may also be utilized to purchase land intended for conservation, tree preservation or public open space.

RECOMMENDATION

Approval of the amendment to Chapter 9, Article II, Section 19 of the Land Development Code.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (J18) Fourth Amendment to the Property Exchange Agreement (Former Cardwell Funeral Home Property)

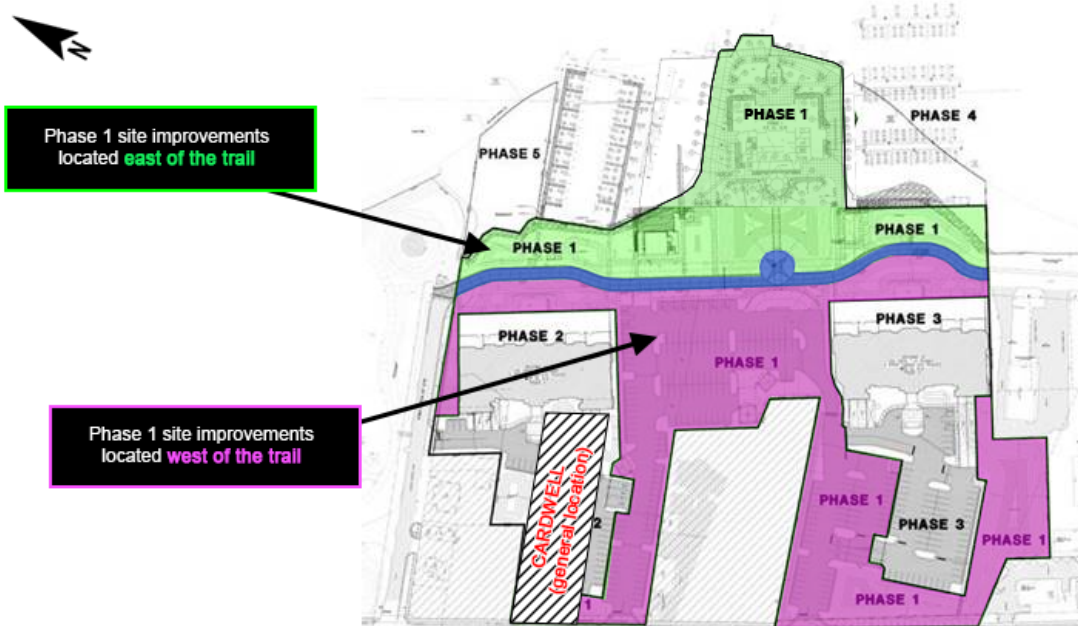
DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the Fourth Amendment to the Property Exchange Agreement (Cardwell Funeral Home Property); authorize City Manager and City Attorney to finalize the Post-Closing Agreement, and authorize Mayor and City Clerk to sign all necessary documents on behalf of the City in furtherance of the transfer of Cardwell Funeral Home Property

SUMMARY: The current Property Exchange Agreement between the City of Port Orange, Port Orange Town Center CRA, and Halifax River Partners (HRP) establishes the framework for HRP to receive the deed for the Cardwell Funeral Home Property, currently owned by the CRA, in exchange for HRP's completion of all Phase 1 site improvements as defined in the Riverwalk Amended and Restated Master Development Agreement. The Phase 1 site improvements include a 23' wide public trail, landscaping along the trail, stormwater infrastructure, parking lots, turn lanes, landscaping in the parking lot, sidewalks, site furnishings, irrigation, utility infrastructure (water, sewer, and reclaim), burying of power lines, and walklights. If the Phase 1 site improvements are not completed by March 21, 2022, the CRA would retain ownership of the Cardwell Funeral Home property.

HRP is requesting approval of the proposed Fourth Amendment to the Property Exchange Agreement for the deed to the Cardwell Funeral Home property to be held in an Escrow until the Riverwalk Phase 1 site improvements are completed or bonded on or before March 21, 2022. According to HRP, it is anticipated that most of the site improvements located west of the Riverwalk Trail will be completed on or before March 21, 2022, except for certain site improvements that require outside agency approval or have been delayed for reasons outside of HRP's control. In addition, the site improvements located east of the Riverwalk Trail are not anticipated to be completed by March 21, 2022, due to the logistics associated with the completion of the Fysh Bar and Grill Restaurant and likely damage that would occur to those site improvements as construction of the restaurant is completed. According to HRP, the site improvements east of the trail are anticipated not to be completed by March 21, 2022, including sidewalks, stormwater, site furnishings, landscape, railing/fencing, irrigation, wood bridges, and light poles, and the delay in completing these site improvements is due to the ongoing construction of the restaurant.



HRP indicates that all site improvements east and west of the Public Trail and Park could be completed by March 21, 2022. However, completing the site improvements east of the trail while the restaurant is still under construction could lead to said improvements being damaged or broken and having to be repaired or replaced, causing further delay in completion of the restaurant. The completion of certain site improvements west of the trail requires outside agency action or approval beyond HRP's control (For example, FPL removal of infrastructure to complete sidewalk panels along Ridgewood Avenue). Therefore, HRP is requesting to use a payment and performance bond for the remaining site improvements that will not be completed by March 21, 2022, for the deed to the Cardwell Funeral Home property to be transferred from the CRA to HRP. The bond would be in the amount of 150% of the estimated cost, as certified by a Florida licensed civil engineer, for completing the outstanding site improvements. If the site improvements are not completed within six (6) months from execution of the Fourth Amendment to the Property Exchange Agreement, the City would be able to call the bond and complete the remaining Phase 1 site improvements. The terms and conditions of HRP's bonding for the remaining Phase I site improvements would be set forth in a post-closing agreement, substantially in the form attached to the Fourth Amendment to the Property Exchange Agreement as Exhibit F. In addition, the staff is recommending council authorize the City Manager and City Attorney to finalize the language in the post-closing agreement.

PRESENTER: Margaret Tomlinson, Penelope Cruz

ATTACHMENTS:

1.	Fourth Amendment to Property Exchange Agreement with exhibits	Fourth Amendment to Property Ex w SB rev 2-25-22 w TB rev 3-3-22 w SB 3-6 w SB remove lang east 3-9-22.pdf
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Melanie Schmotzer

Created/Initiated - 3/2/2022

Tim Burman
Shannon Balmer
Wayne Clark
Robin Fenwick

Approved - 3/2/2022
Approved - 3/10/2022
Approved - 3/10/2022
Final Approval - 3/10/2022

FOURTH AMENDMENT TO THE PROPERTY EXCHANGE AGREEMENT

THIS FOURTH AMENDMENT TO THE PROPERTY EXCHANGE AGREEMENT (the “Fourth Amendment”), is entered into by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company, (“HRP”) Josif Atanasoski, Manager, having a mailing address of 1800 No. U.S. Highway 1, Ormond Beach, FL 32174 and the CITY OF PORT ORANGE, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, FL 32129 (the “City”) and the COMMUNITY REDEVELOPMENT AGENCY OF PORT ORANGE TOWN CENTER, a special purpose unit of local government organized and existing under Chapter 163, Part III, the laws of the State of Florida (the “CRA”), (collectively the “Parties”), who hereby agree and covenant as follows:

WHEREAS, the Parties previously entered into that certain Property Exchange Agreement dated September 20, 2016 (the “Agreement”) for the exchange of real property as amended by the First Amendment to the Property Exchange Agreement dated September 17, 2019 (“First Amendment”) and as further amended by the Second Amendment to the Property Exchange Agreement dated September 16, 2020 (“Second Amendment”) and as further amended by the Third Amendment to the Property Exchange Agreement dated September 21, 2021 (“Third Amendment”); and
and

WHEREAS, the Parties wish to further amend the Property Exchange Agreement as more particularly set forth below.

NOW THEREFORE, the Parties hereby agree as follows;

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Paragraph 1 c. of the Agreement is hereby deleted in its entirety and replaced with the following:

“c. The Parties agree that the exchange shall be contingent on the escrow agreement and escrow closing on the real property interests. The Escrow Agreement shall be in the form attached hereto as Exhibit B. The delivery for recording of the deed to HRP shall be contingent upon HRP’s completion of the construction of the Public Trail and Park together with all other Phase 1 site improvements in accordance with the scope and timeline set forth in the MDA, said time for completion being on or before March 21, 2022.

Notwithstanding the foregoing, in lieu of completing the construction of certain Phase 1 site improvements, as more specifically described in **Exhibit “E”**, attached hereto and made a part hereof by reference (“Improvements”), HRP shall deliver to the City on or before March 21, 2022, by close of business (5:00 PM EST), a payment and performance bond in the amount of 150% of the estimated cost (as certified by a Florida licensed civil engineer) for completing those certain Phase 1 site improvements as set forth in Exhibit “E” in substantially the same form marked **Exhibit “F”**, attached hereto and made a part hereof by reference.

If HRP opts to timely provide a payment and performance bond for the completion of the site improvements as set forth in Exhibit “E”, then Parties agree that the terms and conditions to exercise the provision of a payment and performance shall be set forth in a Post-Closing Agreement in substantially the form marked **Exhibit “G”**, attached hereto and made a part hereof by reference. Furthermore, the Parties agree from and after closing on the property described in Exhibit “A” that the Post-Closing Agreement shall govern those outstanding obligations of HRP and the remedies available to the City and CRA as they relate to the completion of those Improvements, referenced and described herein.”

3. Paragraph 1 d. of the Agreement is hereby deleted in its entirety and replaced with the following:

“d. The Escrow Agreement shall be closed within 30 days of HRP’s timely completion and delivery of the Public Trail and Park and the Phase 1 site improvements, or, in the alternative, HRP’s timely provision of a payment and performance bond for those certain Phase 1 site improvements set forth in Exhibit “E” pursuant to paragraph 1 (c), hereinabove. The City Manager shall be authorized to act on behalf of Port Orange to authorize the final language of the Escrow Agreement, in accordance with the requirements of Chapter 286, Florida Statutes.”

4. Paragraph 10 of the Agreement is hereby deleted in its entirety and replaced with the following:

“10. Closing. Closing shall occur within 30 days after the timely completion and acceptance of the Public Trail and Park and Phase 1 site improvements or, in the alternative, HRP’s timely provision of a payment and performance bond for those certain Phase 1 site improvements set forth in Exhibit “E” pursuant to paragraph 1 (c), hereinabove. In the event the Public Trail and Park and Phase 1 site improvements are not timely completed or bonded pursuant to paragraph 1 (c), hereinabove, this Agreement shall terminate. G. Larry Sims, Esquire, a Florida licensed attorney who does not represent a Party, shall serve as Escrow Agent. On or before closing, the Escrow Agent shall provide the City’s Closing Agent, Columbia Title Corporation, with the closing deposits and documents required to transfer all the Property Interest as set forth in this Agreement and pursuant to the terms and conditions of the Escrow Agreement.”

5. This Fourth Amendment shall be effective on the date set forth below.

6. All the provisions of the Agreement not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this Fourth Amendment. The Agreement shall survive the execution of this Fourth Amendment.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment to the Property Exchange Agreement, by and through their duly authorized representatives, on the respective dates shown below.

**PORT ORANGE TOWN CENTER COMMUNITY
REDEVELOPMENT AGENCY**

Attest:

Stan Schmidt, Chairman

Robin L. Fenwick, Agency Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____, 2022, by Stan Schmidt, as the Chairman of the Port Orange Town Center Community Redevelopment Agency, on behalf of the Agency. Said person [] is personally known to me or [] has produced _____ as identification.

[Notary Stamp]

Notary Public, State of Florida at Large

Commission Expires: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____, 2022, by _____, as Agency Clerk of the Port Orange Town Center Community Redevelopment Agency, on behalf of the Agency, on behalf of Agency. Said person [] is personally known to me or [] has produced _____ as identification.

[Notary Stamp]

Notary Public, State of Florida at Large

My Commission Expires: _____

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____
Donald O. Burnette, Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2022, by DONALD O. BURNETTER and ROBIN L. FENWICK, Mayor and City Clerk, respectively, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

HALIFAX RIVER PARTNERS, LLC

WITNESSES:

Signature

Printed Name

Signature

Printed Name

By: _____
Josif Atanasoski, Manager

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2022, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large

My Commission Expires:

EXHIBIT "E"**PARKER MYNCHENBERG & ASSOCIATES, INC.**

1729 Ridgewood Avenue
 Holly Hill, Florida 32117
 (386) 677-6891
 FAX (386) 677-2114
 E-Mail: info@parkermynchenberg.com

Mr. Tim Burman
 Community Development Director
 City of Port Orange
 1000 City Center Circle
 Port Orange, FL 32129

March 3, 2022

**Re: RIVERWALK – EAST OF TRAIL
 Engineer's Certification of Cost**

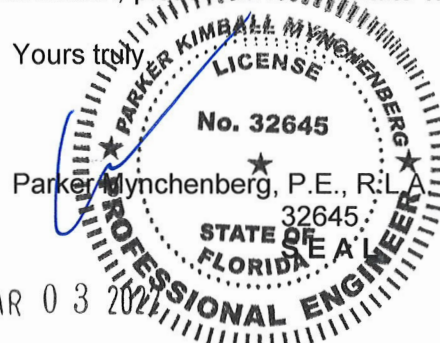
Dear Mr. Burman:

By copy of this letter and based on the attached proposals, I hereby certify the construction cost for site improvements on the above referenced project is \$256,775.50.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Concrete Sidewalk Point	750	LF	\$ 35.00	\$ 26,250.00
2	Construct Dry Retention Swales	1	LS	\$ 5,000.00	\$ 5,000.00
3	Sod	1	LS	\$ 5,000.00	\$ 5,000.00
4	Landscaping	1	LS	\$ 129,089.50	\$ 129,089.50
5	Irrigation	1	LS	\$ 9,275.00	\$ 9,275.00
6	Sea Wall Railing	1	LS	\$ 38,400.00	\$ 38,400.00
7	Service Area	1	LS	\$ 4,880.00	\$ 4,880.00
8	Dumpster Gates	1	LS	\$ 5,890.00	\$ 5,890.00
9	"C" Inlets	3	EA	\$ 3,800.00	\$ 11,400.00
10	4" PVC (SDR-26)	53	LF	\$ 20.00	\$ 1,060.00
11	6" PVC (SDR-26)	116	LF	\$ 22.00	\$ 2,552.00
12	10" PVC (DR-26)	30	LF	\$ 24.00	\$ 720.00
13	10" PVC (DR-18)	147	LF	\$ 27.00	\$ 3,969.00
14	12" PVC (DR-26)	40	LF	\$ 32.00	\$ 1,280.00
15	15" RCP	51	LF	\$ 30.00	\$ 1,530.00
16	18" RCP	35	LF	\$ 35.00	\$ 1,225.00
17	24" RCP	33	LF	\$ 40.00	\$ 1,320.00
18	2' x 3' Concrete Splash Pad	7	EA	\$ 200.00	\$ 1,400.00
19	Mitered End	2	EA	\$ 2,500.00	\$ 5,000.00
20	Junction Manhole	1	EA	\$ 35.00	\$ 35.00
21	Cleanouts	3	EA	\$ 500.00	\$ 1,500.00
				Subtotal:	\$ 256,775.50

Should you have any questions or need additional information, please do not hesitate to contact me at 386-677-6891.

Yours truly



PM/kh
 Enclosures
 cc: Mr. Josif Atanasoski

MAR 03 2022

AAA Fence

A Division of Fence Service, Inc.

801 Orange Ave.
www.aaafence.com
Daytona Beach, FL 32114

Phone: (386) 253-4212
Fax: (386) 253-2878

February 25, 2022

Proposal To:

SAT Development
Attn: Scott Tobin
(386) 566-7258

Job Location:

Riverwalk Restaurant
3633 Ridgewood Ave.
Port Orange, FL 32127

AAA Fence Company does hereby propose to provide materials, labor, equipment, tools and all items necessary to install fencing for this project as per the plans and specifications provided. All work shall be performed in a professional and workmanlike manner, in accordance with standard practices.

Scope of Work:

Sea Wall Railing

370' of 42" high White Standard Mushroom Cap Railing\$27,750.00

- Actual field dimensions required to build the Railing
- ¾" pickets with standard picket spacing & plated posts to mount to concrete wall & sidewalk
- Sidewalk to be poured with elevation & pitch TBD
- SS Anchors are required

142' of 42" high White Standard Mushroom Cap Railing along Sidewalk10,650.00

Service Area

2 – Approx 4' Walk Gates Ornamental to match Railing Look x 8' tall4,880.00

- Aluminum posts to be mounted to wall to hang the gates from
- 2" x 2" outside frames with 3 horizontal 1" x 2" rails & ¾" pickets
- Gates include ½" Flattened expanded aluminum attached to gates to allow air flow
- Latch to be slide type (padlockable)
- Shop drawing can be submitted for approval

Dumpster Gates

1 – Approx 21' Double Gate White PVC attached to galv frames5,890.00

- White PVC with Deco Rails attached to 2" Sq galv welded frames
- Gate frames are braced & trussed
- 2 SS drop rod assemblies included w/ pipe sleeves for open & closed positions
- 2 – 6 5/8" Galvanized Schedule 40 posts set in concrete

Dolphin Irrigation Plus Landscape Division
PO Box 1448
Bunnell, FL 32110
(386) 445-0284
dolphinsirrigationplus@gmail.com
dolphinsirrigationplus.com



Estimate

ADDRESS

S.A.T. DEVELOPMENT
1368 NORTH US HIGHWAY 1
ORMOND BEACH, FL 32174

ESTIMATE # 1426
DATE 12/04/2020

DESCRIPTION	QTY	RATE	AMOUNT
PH1 East of walkway Irrigation System Built to desgin	1	9,275.00	9,275.00
TOTAL			\$9,275.00

Accepted By

Accepted Date

Dolphin Irrigation Plus Landscape Division
 PO Box 1448
 Bunnell, FL 32110
 (386) 445-0284
 dolphinirrigationplus@gmail.com
 dolphinirrigationplus.com



Estimate

ADDRESS

S.A.T. DEVELOPMENT
 1368 NORTH US HIGHWAY 1
 ORMOND BEACH, FL 32174

ESTIMATE # 1408

DATE 11/25/2020

DESCRIPTION	QTY	RATE	AMOUNT
P1 East.			
3g Jasmine	83	12.50	1,037.50
3g Garlic	0	12.50	0.00
3g Arboricola	44	12.50	550.00
3g Yaupon	61	12.50	762.50
3g Orange Bird of Paradise	10	28.50	285.00
3g Red sister	46	12.50	575.00
7g Green Pitt	0	36.00	0.00
7g Virburn suspen	84	34.50	2,898.00
7g Croton Mammy	25	37.50	937.50
7g Hawthorn	102	35.50	3,621.00
7g Podo	4	36.50	146.00
7g Var. Ginger	55	36.50	2,007.50
7g Philodendron	3	36.50	109.50
30g Tree form Ligustrum	10	175.00	1,750.00
30g Crape multi	14	175.00	2,450.00
65g Hollies tree form	0	425.00	0.00
30g Robelleni	4	150.00	600.00
Regen Sable 12-14 ct	41	325.00	13,325.00
Sylvester Palm 12-14 ct	13	2,750.00	35,750.00
Washington Palm 12-14	3	475.00	1,425.00
Medjool 12-14	11	4,950.00	54,450.00
30g Bald Crypress	0	175.00	0.00
65g Maginola	0	425.00	0.00
45g Live Oak	0	275.00	0.00
Pine bark mulch yard (est)	25	50.00	1,250.00
St. Augustine sod (Qty based upon how much is disturbed. est only)	12,000	0.43	5,160.00

All Quotes valid for 10 days

TOTAL

\$129,089.50

Accepted By

Accepted Date

EXHIBIT "F"

PAYMENT AND PERFORMANCE BOND

BOND NO. _____

PRINCIPAL:

Developer or Contractor: Halifax River Partners, LLC
Principal Business Address: 1800 North U.S. Highway 1
Ormond Beach, Florida 32174
Contact Person: Josif Atanasoski, Member

SURETY:

Address: _____

Contact Person: _____
Phone Number: _____

OBLIGEE:

City of Port Orange, Florida, a chartered municipal corporation
1000 City Center Circle
Port Orange, Florida 32129-4144
Contact Person: City Manager
Phone Number: (386) 506-5501

Amount: \$ _____ City Case/Project No. _____

Description of Work: _____

Project Location: Ridgewood Avenue
Port Orange, Volusia County, Florida

Legal Description: See attached Exhibit "A"

Front Page

All other pages are subsequent to this page regardless of any numbers that may be printed thereon.

Riverwalk Exchange Agreement for Bond Legal Description
_____ Ridgewood Avenue, Port Orange, FL 32129

Parcel ID:

Legal Description:

DRAFT

EXHIBIT "A"

EXHIBIT "A"

Phase I Site Improvements for Riverwalk Fysh Restaurant

Project No. _____

Bond No. _____

COMBINATION PAYMENT AND PERFORMANCE BOND

Guaranty for Construction of Improvements

BY THIS BOND, We, **HALIFAX RIVER PARTNERS, LLC**, a Florida limited liability company, as Principal, and _____ insurance company, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, as Obligee, herein called "City," in the sum of _____ **& NO/100 DOLLARS (\$_____)**, being 150% of the cost estimate for the construction of the required improvements, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

1. THE CONDITION OF THIS BOND is that if Principal performs the obligations set forth in the Post-Closing Agreement, having an effective date of _____, recorded in OR Book _____, Page _____, Public Records of Volusia County, Florida, hereinafter sometimes referred to as the Contract, entered into between Principal and City for construction of those certain improvements referenced therein and reflected on the plans approved by the City Council, as prepared by Parker Mychenberg, P.E., Florida Registration No. _____, of the engineering firm Parker Mynchenberg & Associates, Inc., being made a part of this bond by reference, at the times and in the manner prescribed in the Contract, then this Bond shall be released; otherwise it shall remain in full force and effect.; and

2. DEFAULT: Principal and Surety jointly and severally understand, in the event the Principal fails or refuses to complete the obligations required by the Post-Closing Agreement and this Bond, the CITY has the right to:

- (1) demand that the Surety promptly remedy the default; or
- (2) demand payment by the Surety of the amount due to City up to the face amount of the Bond by letter signed by the City Manager, or a designee, stating that the Principal has defaulted on his or her obligations as set forth in the Post-Closing Agreement and this Bond, which obligations were a condition of approval of Post-Closing Agreement; or
- (3) institute an immediate suit against Surety to recover the full amount of this Bond for the purposes of completing the obligations set forth herein. Notice to City that this Bond will expire prior to performance of Principal's obligations shall be deemed a default.

3. Principal and Surety jointly and severally understand that failure to complete the obligations required by the Post-Closing Agreement and this Bond in accordance with any time periods set forth therein, or at the latest, to commence or recommence completion of the obligations within thirty (30) days after written notice by the City Manager, or a designee, to do so, shall be deemed to be a failure or refusal to complete such obligations.

4. Principal and Surety also understand that in the event the City elects to institute suit against Surety and the funds recovered thereby prove insufficient to complete the obligations required by the Post-Closing Agreement and this Bond, the Principal shall be liable hereunder to pay the City, any sums required to complete the obligations hereunder, including, but not limited to, legal and contingent costs, together with any damages, direct or

consequential, which the City may sustain because of Principal's failure to comply with all of the requirements hereof.

5. BOND TO REMAIN IN FULL FORCE AND EFFECT: This Bond shall be kept in full force and effect by the Principal at all times, including any warranty/maintenance period, as provided herein. In the event of any material change, cancellation, expiration or non-payment of premiums, Surety shall notify City by certified mail or registered mail, return receipt requested, at least thirty (30) days prior to the effective date of the change, cancellation, or expiration of said Bond. Notice to City that this Bond will expire prior to performance of Principal's obligations shall be deemed a default pursuant to section B above.

6. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by registered or certified mail, return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving notice shall remain such until it shall have been changed by written notices in compliance with the provisions of this paragraph. For the present, the parties designate the place as specified on the Bond Cover Sheet, hereinabove, for giving notice.

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this _____, day of _____, 20____.

Attest:

HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company

(As to Corporate Principal) Secretary

By: _____
Josif Atanasoski, Manager

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

By: _____
Name: _____
(Attorney-in-Fact)

(Corporate Seal)

NOTE: **Date of BOND must not be prior to date of Contract.** If Developer/Principal is Partnership, all partners should execute BOND. All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.
IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

EXHIBIT "G"

Post-Closing Agreement

THIS POST-CLOSING AGREEMENT ("Agreement") is made as of _____, 2022, by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company, Josif Atanasoski, Manager, having a mailing address of 1800 No. U.S. Highway 1, Ormond Beach, FL 32174 ("HRP") and the CITY OF PORT ORANGE, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, FL 32129 (the "City") and the COMMUNITY REDEVELOPMENT AGENCY OF PORT ORANGE TOWN CENTER, a special purpose unit of local government organized and existing under Chapter 163, Part III, the laws of the State of Florida (the "CRA"), (collectively the "Parties"),

RECITALS:

WHEREAS, the Parties previously entered into that certain Property Exchange Agreement dated September 20, 2016 (the "Agreement") for the exchange of real property, as amended by the First Amendment to the Property Exchange Agreement dated September 17, 2019 ("First Amendment") and as further amended by the Second Amendment to the Property Exchange Agreement dated September 16, 2020 ("Second Amendment") and as further amended by the Third Amendment to the Property Exchange Agreement dated September 21, 2021 ("Third Amendment") and as further amended by the Fourth Amendment to the Property Exchange Agreement dated March _____, 2022 ("Fourth Amendment") (collectively, "Exchange Agreement"; and

WHEREAS, the Exchange Agreement between the Parties imposes certain obligations upon HRP, which are specifically outlined below, as part of the consideration for transfer of the property subject to the Exchange Agreement, being described as Parcel ID. 6303-10-02-0030, located at 3571 Ridgewood Avenue, Port Orange, Florida 32129 ("Cardwell Funeral Home Property"); and

WHEREAS, HRP owns the property where those certain Phase 1 site improvements are required to be completed in order to complete the transfer of the Cardwell Funeral Home Property, said property being more fully described hereinbelow; and

WHEREAS, the Exchange Agreement, in lieu of completing, contemplates the provision of bonding certain Phase I site improvements, more particularly described hereinbelow, in lieu of timely completion of certain obligations as set forth in the Exchange Agreement; and

WHEREAS, HRP desires to exercise the provision of bonding those certain site improvements in furtherance of the transfer of the property subject to the Exchange Agreement; and

WHEREAS, Parties desire to set forth the terms and conditions of completing those certain site improvements and setting forth the obligations and remedies afforded to the Parties.

NOW, THEREFORE the Parties hereby agree to the following:

1. **Recitals:** The above recitals are incorporated hereinbelow as if set forth.
2. **Subject Property for Phase I Site Improvements:** HRP is the owner of the property where the Phase I site improvements are required to be timely completed or bonded. Said property being more fully described in **Exhibit "A"**, attached hereto and made a part hereof by reference, ("Subject Property").
3. **Phase I Site Improvements Work:** HRP warrants that it will complete those certain Phase I site

improvements as set forth in **Exhibit “B”**, attached hereto, and made a part hereof by reference (“Improvements”). The Improvements shall be completed in accordance with the Site Plan stamped “Approved for Construction,” referenced as **Project No. _____**, and the Port Orange Land Development Code, and any other applicable regulations, ordinances or laws of the City or State.

4. **Completion.** All Improvements shall be completed and accepted by the City within six (6) months of the effective date of this Agreement, said date being _____, 2022.
5. **Default.** Execution of this Agreement shall allow HRP the right to provide a financial guarantee prepared and recorded in the public records of Volusia County and as acceptable to the City, in an amount equal to one hundred fifty percent (150%) of the engineer's signed and sealed estimated construction costs for the completion of the required Improvements. If the required Improvements are not completed as agreed under this Agreement, the City shall be authorized to draw upon the financial guarantee funds to pay for completion of said Improvements, including reasonable administrative costs in the completion of the construction.
6. **Post-Closing Remedies.** If after the transfer of the Cardwell Funeral Home Property (“Closing”), HRP fails to perform its obligations which expressly survive the Closing pursuant to this Agreement, then the City may exercise any remedies available to it at law or in equity, in any order it deems appropriate in its sole and absolute discretion. In such event, the provision of the financial guarantee contained in Section 4, hereinabove, will not limit nor be an offset against City's recoverable damages.
7. **Release of the Funds.** The financial guarantee shall continue until receipt of notice from the City and CRA directing the Surety to release the bond held on behalf of HRP's obligations, Surety shall release said bond as directed in such notice. Upon such release, the Surety shall have no further liability under this Agreement.
8. **Certificate of Occupancy.** Notwithstanding the foregoing, no certificate of occupancy shall be issued for the **Riverwalk Fysh Restaurant** located on the Subject Property until all Improvements reflected on the plans approved by the City referenced in Paragraph 2, above, have been completed and accepted by the City.
9. **Counterparts:** This Agreement may be executed in counterparts. When each party has executed a copy of this Agreement, the executed copies taken together shall have the same force and effect as if executed in one document. Facsimile signatures on this Agreement shall be deemed original signatures.
10. **Notices:** Any notice required under this Agreement shall be given in writing at the addresses set forth at the end of this Agreement and by: (a) certified or registered mail, postage prepaid, (b) overnight courier guaranteeing next day delivery, (c) personal delivery, or (d) facsimile. All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery or facsimile (with proof of transmission).
11. **Binding:** This Agreement shall be recorded in the Public Records of Volusia County, Florida. The provisions of this Agreement shall constitute covenants running with the land applicable to all of the subject property described herein or any portion thereof. This Agreement shall inure to the benefit of the parties hereto and the Subject Property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by the parties as of the respective dates shown below.

WITNESSES:

HALIFAX RIVER PARTNERS, LLC

Signature

By: _____
Josif Atanasoski, Manager

Printed Name

Date: _____

Signature

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of March, 2022, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large
My Commission Expires:

**COMMUNITY REDEVELOPMENT AGENCY
FOR PORT ORANGE TOWN CENTER**

WITNESS:

Signature

Printed Name

Signature

Printed Name

By: _____
Stan Schmidt, Chairman

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of March, 2022, by Stan Schmidt, Chairman of the COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER, on behalf of the Agency. He is personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by ROBIN L. FENWICK, MMC, City Clerk of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. She is personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____
Donald O. Burnette, Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by Donald O. Burnette, Mayor, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by ROBIN L. FENWICK, Clerk of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

Exhibit A

To Be Inserted

DRAFT

Exhibit “B”
ENGINEER’S COST ESTIMATE
(to be attached)

DRAFT



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 3/15/2022

SUBJECT: (J19) Third Amendment to the Escrow Agreement (Former Cardwell Funeral Home Property)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the Third Amendment to the Escrow Agreement subject to removing the language releasing the \$48,000 cash bond, and authorizing the Mayor and City Clerk to sign all necessary documents related to the Escrow Agreement in furtherance of the transfer of Cardwell Funeral Home Property.

SUMMARY: The current Escrow Agreement requires an amendment in order to accommodate Halifax River Partners' (HRP) request to bond certain Phase 1 site improvements located east and west of the Public Trail and Park and for consistency with the similarly requested amendment to the Property Exchange Agreement. The amended language allows for the provision of bonding said improvements in lieu of completion of all Phase 1 site improvements. According to HRP, the site improvements located east of the trail anticipated not to be completed by March 21, 2022, include sidewalks, stormwater, site furnishings, landscape, railing/fencing, irrigation, wood bridges, and light poles, and the delay in completing these site improvements is due to the ongoing construction of the Fysh Bar and Grill Restaurant. HRP indicates that all site improvements could be completed by March 21, 2022, but completing some of the site improvements while the restaurant is still under construction could lead to these site improvements being damaged or broken and having to be repaired or replaced and causing further delay in the completion of the restaurant. As for the site improvements located west of the Riverwalk Trail, HRP has indicated there are certain site improvements that require outside agency (FPL, FDOT, STJWMD) action or approval which could delay the completion of certain site improvements west of the Riverwalk Trail. Therefore, HRP is requesting this amendment, in part, to bond the remaining Phase 1 site improvements that will not be completed by March 21, 2022, in order for the deed to the Cardwell Funeral Home property to be transferred from the CRA to HRP.

In addition to the requested amended language hereinabove, HRP is requesting an amendment to the current Escrow Agreement to add language to allow a \$48,000 cash bond to be released by the City to HRP upon the completion of the Phase 1 site improvements or, alternatively, provide a bond for said improvements as indicated in the proposed Fourth Amendment to the Property Exchange Agreement (See highlighted language in the attachment). Staff cannot recommend approval of the proposed Third

Amendment to the Escrow Agreement with this additional language as said language proposed conflicts with the current Amended and Restated Master Development Agreement (MDA). The current MDA requires the cash bond to be released upon completion of the Phase 1 site improvements, including the Fysh Bar and Grill Restaurant.

HRP was required by the Riverwalk Amended and Restated Master Development Agreement to provide a bond to the City in the amount of two (2) years of the net income for the Cardwell Funeral Home or \$48,000 to guarantee completion of the 23' Public Trail and Phase 1 site improvements before September 2019. As part of the 1st Amendment to the Riverwalk Amended and Restated Master Development Agreement, the requirement to release the cash bond was changed to require the 23' Public Trail and Park be completed by November 2019, and all remaining Phase 1 improvements, including completion of the restaurant, to be completed before September 2020. The 23' Public Trail was completed in October 2019, ahead of the amended deadline for completion. However, the remaining Phase 1 improvements, including the restaurant, were not completed in September 2020, and the date to complete the remaining Phase 1 improvements, including the restaurant, has been extended two more times through amendments to the MDA. The current MDA requires all Phase 1 improvements, including the restaurant, to be completed by March 21, 2022, and if not completed by March 21, 2022, HRP forfeits the \$48,000 cash bond.

PRESENTER: Margaret Tomlinson, Penelope Cruz

ATTACHMENTS:

1.	Third Amendment to Escrow Agreement w highlight of language for CC consideration	Third Amendment to Escrow Agreement w highlight of language for CC consideration 3-6-22-ca-asstatty01-vdi.pdf
----	--	---

Melanie Schmotzer	Created/Initiated - 3/2/2022
Tim Burman	Approved - 3/2/2022
Shannon Balmer	Approved - 3/7/2022
Wayne Clark	Approved - 3/10/2022
Robin Fenwick	Final Approval - 3/10/2022

THIRD AMENDMENT TO THE ESCROW AGREEMENT

THIS THIRD AMENDMENT TO THE ESCROW AGREEMENT is made and entered into as of this ____ day of March, 2022, by and among **CRA/CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation with a mailing address of 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as “**Port Orange**” and the **HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company** with a mailing address of 1800 North U.S. Highway 1, Ormond Beach, Florida 32174 hereinafter referred to as “**Developer**” and **G. LARRY SIMS, ESQUIRE** of Doran Sims, Wolfe and Ciochetti, with a mailing address of P.O. Box 15110, Daytona Beach, FL 32115-5110 hereinafter referred to as “**Escrow Agent**”, collectively the “Parties”.

WHEREAS, the Parties previously entered into that certain Escrow Agreement dated September 20, 2016 to effectuate that certain Property Exchange Agreement dated September 20, 2016 (“Exchange Agreement”) for the property identified as Tax Parcel ID 630310020030, located at 3571 Ridgewood Avenue, Port Orange, Florida 32129 as amended by the First Amendment to Escrow Agreement dated September 17, 2019 and as further amended by the Second Amendment to the Escrow Agreement dated September 15, 2020 (the “Agreement”); and

WHEREAS, Port Orange and Developer desire to further amend the Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Section 3.1, “Completion of the Public Trail and Park and Phase I horizontal site improvement of the Riverwalk Project” is hereby amended to read as follows:

Section 3.1 Completion of the Public Trail and Park and Phase I horizontal site improvements of the Riverwalk Project. If on or before March 21, 2022, Developer has completed the Public Trail and Park and the horizontal site improvements for Phase I of the Riverwalk Project as set forth in paragraph 6.g. of the MDA, as amended, or, alternatively, bonded off certain Phase I site improvements pursuant to paragraph 1 (c) of the Exchange Agreement, and the City and other governing entities have accepted the Public Trail and Park improvements and Phase I horizontal site improvements or said bond pursuant to paragraph 1 (c) of the Exchange Agreement, then the City shall provide the Escrow Agent (copying Developer) with written notice of the same. Upon receipt of said notice, the Escrow Agent shall deliver to Columbia Title Corporation, as closing agent, the following: (1) the Escrow Deposits for the transfer tax, recording, and closing costs; (2) the plans and permits for the park improvements; and (3) the Special Warranty Deed and cause the deed for the Exchange Property (Cardwell) to be recorded in the

Public Records of Volusia County Florida. Upon notice from the closing agent of the recording of the deed, the Escrow Agent shall release the \$48,000 cash bond to Developer.

3. This Third Amendment to the Escrow Agreement shall be effective on the date set forth below.
4. All provisions of the Agreement not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this Third Amendment. The Agreement shall survive execution of this Third Amendment.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by the parties as of the respective dates shown below.

WITNESSES:

HALIFAX RIVER PARTNERS, LLC

Signature

By: _____
Josif Atanasoski, Manager

Printed Name

Date: _____

Signature

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of March, 2022, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large
My Commission Expires:

**COMMUNITY REDEVELOPMENT
AGENCY FOR PORT ORANGE TOWN
CENTER**

WITNESS:

Signature

Printed Name

Signature

Printed Name

By: _____
Stan Schmidt, Chairman

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of March, 2022, by Stan Schmidt, Chairman of the COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER, on behalf of the Agency. He is personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by ROBIN L. FENWICK, MMC, City Clerk of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. She is personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____
Donald O. Burnette, Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by Donald O. Burnette, Mayor, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by ROBIN L. FENWICK, Clerk of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

WITNESSES:

ESCROW AGENT

Signature

By: _____
G. Larry Sims, Esquire

Printed Name

Date: _____

Signature

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by G. LARRY SIMS, ESQUIRE, of DORAN SIMS WOLFE AND CIOCCHETTI. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large
My Commission Expires: