Planning and Zoning Board

AGENDA

June 9, 2021
6:30 P.M.

City Council Chambers
and via Communications Media Technology*

*See notice regarding communications media technology and public participation on page 2

Notice to Visitors: All persons who desire to speak on any public hearing item must fill out an Oath Card, sign the card, and submit to one of the City Planners. Speakers will be heard in the order received by the Chairman. The applicant may make a brief rebuttal if necessary. Anyone who speaks is considered a witness. If you have photographs, sketches, or other documents, you must provide 9 copies to one of the City Planners for distribution to the board members. These items will be retained by the Board members, City Attorney and City Staff.

Purpose: The purpose of the Planning and Zoning Board is to provide recommendations to City Council about all matters that are development applications or staff initiatives relating to the City’s comprehensive plan, known as the “Horizon 2030 Comprehensive Plan” and the City’s Land Development Regulations found in Subpart B of the Municipal Code of Ordinances.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. MINUTES

Planning and Zoning Board Meeting of May 11, 2021

5. PUBLIC HEARING(S) –

a. Large Scale Comprehensive Plan Map Amendment – PMG West Melbourne – (LSA-2021-04) - request to postpone

Comprehensive Plan Amendment No. 2021-04 (LSA) proposes to amend the City’s Future - Land Use map for 51.38 acres of property from RES-2 and RES-1 (County Residential) to UD-RES (City Urban Density Residential) land use designation.

Applicant: Tara Tedrow, PA, Lowndes Law, agent for PMG West Melbourne
Location: East of the St. Johns Heritage Parkway, south of Space Coast Town Center, west of Brandywine Estates
b. **Rezoning – PMG West Melbourne – (REZ-2021-04) – request to postpone**

A request to rezone 51.38 acres of property from AU, (County Agricultural Residential Use) to R-3, (City Multiple-Family Dwelling).

*Applicant: Tara Tedrow, PA, Lowndes Law, agent for PMG West Melbourne*
*Location: East of the St. Johns Heritage Parkway, south of Space Coast Town Center, west of Brandywine Estates*

c. **Preliminary Plat – Dunes at Heritage Lakes – (PP-2021-01)**

A request for preliminary plat approval for the Dunes at Heritage Lakes subdivision on property located on the west side of I-95, west of Interstate 95 and east of St. Johns Heritage Parkway near the Ellis Road interchange.

*Applicant: Scott Glaubitz, PE, BSE Consultants for Brian Davidson of DR Horton, Inc.*
*Location: West of I-95, east of St. Johns Heritage Parkway, near the Ellis road interchange*

The proposed preliminary plat will be acted upon by City Council with a recommendation from the Planning and Zoning Board.

d. **Preliminary Plat – St. Johns Heritage Lakes North – (PP-2021-02)**

A request for preliminary plat approval for the St. Johns Heritage Lakes North subdivision on property located on the west side of I-95, west of Interstate 95 and east of St. Johns Heritage Parkway near the Ellis Road interchange.

*Applicant: Scott Glaubitz, PE, BSE Consultants for the Eden Living Development Partners*
*Location: West of I-95, east of St. Johns Heritage Parkway, near the Ellis road interchange*

The proposed preliminary plat will be acted upon by City Council with a recommendation from the Planning and Zoning Board.

e. **Development Agreement – Epoch Multi-Family – (DA-2021-03)**

A request for development agreement approval which limits the density the for Epoch Multi-Family project located on the east side of Minton Road just south of the Interstate 95 overpass.

*Applicant: Jake Wise, PE, Construction Engineering Group for Epoch Properties, Inc.*
*Location: East side of Minton Road just south of the I-95 overpass*

The proposed development agreement will be acted upon by City Council with a recommendation from the Planning and Zoning Board.
f. Development Agreement – Space Coast Business Center – (DA -2021-04)

A request for development agreement approval which limits the density/intensity for the Space Coast Business Center project located on the north side of U.S. 192, west of Interstate 95, and east of St. Johns Heritage Parkway.

Applicant: Robert Robb, PE, Robb & Taylor Engineering for Acquest Development, LLC
Location: North side of U.S 192, west of I-95 and east of St. Johns Heritage Parkway

The proposed development agreement will be acted upon by City Council with a recommendation from the Planning and Zoning Board.

6. Code Amendments to the Land Development Regulations

a. Stormwater Discharge Control

A proposed code amendment to establish methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

Applicant: City of West Melbourne
Location: Citywide

The proposed code changes will be acted upon by City Council with a recommendation from the Planning and Zoning Board.

b. Initial Site Plan Board Review Process

A proposed code amendment to provide for City Council review of, and action on, certain conceptual and initial site plans.

Applicant: City of West Melbourne
Location: Initial Site Plans for properties requiring public hearings

The proposed code changes will be acted upon by City Council with a recommendation from the Planning and Zoning Board.

7. PLANNING DIRECTOR REPORTS

8. BOARD MEMBER REPORTS

9. ADJOURN
*NOTICE REGARDING COMMUNICATIONS MEDIA TECHNOLOGY AND PUBLIC PARTICIPATION*

NOTICE IS HEREBY GIVEN that the West Melbourne Planning and Zoning Board will hold a public meeting on June 9, 2021, to which all persons are invited. The meeting will be conducted in City Council Chambers at the Veterans Memorial Complex, 2285 Minton Road, West Melbourne, Florida 32904, and by means of communications media technology.

While a quorum of the Planning and Zoning Board will be physically present at the meeting, in order to accommodate as many members of the public as possible, and in keeping with Centers for Disease Control social distancing guidelines, some members of the Board may participate in the meeting via communications media technology.

Anyone who wishes to provide public input without personally appearing at the meeting may do so by sending an email to cfischer@westmelbourne.org. Emails must be received prior to 4:00 p.m. on Tuesday, May 11, 2021. All emails will be provided to the Planning and Zoning Board members. Should you wish to have your comment read aloud by City staff at the meeting, please indicate that in your email. The reading of public comments received by email will be limited to three (3) minutes.
Planning and Zoning Board

MINUTES

May 11, 2021

6:30 P.M.

City Council Chambers

1. CALL TO ORDER

Chairman Jaudon called the meeting to order at 6:30 p.m. with the Pledge of Allegiance.

2. PLEDGE OF ALLEIGANCE

3. ROLL CALL

Present: Chairman Chris Jaudon
Vice Chair Rob Brothers
Board Member Paul Bernkopf
Board Member Jim Liesenfelt
Board Member Jennifer Spagnoli

Absent: Board Member Anna Kapnoula
School Board Appointed Board Member Jennifer Parkerson

Staff present in person: City Attorney Morris Richardson
Planning Director Christy Fischer
Planning Administrative Assistant Diane McConnell

Moved by Board Member Bernkopf, seconded by Vice Chair Brothers to excuse the absence of Board Member Kapnoula. Motion passed, 5-0.

4. MINUTES

Planning and Zoning Board Meeting of March 9, 2021

Moved by Vice Chair Brothers, seconded by Board Member Spagnoli to approve the minutes as written. Motion passed, 5-0.

5. PUBLIC HEARING(S) –

a. Large Scale Comprehensive Plan Map Amendment – PMG West Melbourne – (LSA-2021-04) - request to postpone
Comprehensive Plan Amendment No. 2021-04 (LSA) proposes to amend the City’s Future Land Use map for 51.38 acres of property from RES-2 and RES-1 (County Residential) to UD-RES (City Urban Density Residential) land use designation.

Applicant: Tara Tedrow, PA, Lowndes Law, agent for PMG West Melbourne
Location: East of the St. Johns Heritage Parkway, south of Space Coast Town Center, west of Brandywine Estates

Moved by Board Member Bernkopf, seconded by Board Member Liesenfelt to postpone items 5.a. and 5.b. until the June 9, 2021 meeting. Motion passed, 5-0.

b. Rezoning – PMG West Melbourne – (REZ-2021-04) - request to postpone

A request to rezone 51.38 acres of property from AU, (County Agricultural Residential Use) to R-3, (City Multiple-Family Dwelling).

Applicant: Tara Tedrow, PA, Lowndes Law, agent for PMG West Melbourne
Location: East of the St. Johns Heritage Parkway, south of Space Coast Town Center, west of Brandywine Estates

c. Large Scale Comprehensive Plan Map Amendment – Space Coast Business Center – (LSA-2021-03)

Comprehensive Plan Amendment No. 2021-03 (LSA) proposes to amend the City’s Future Land Use map for 36.73 acres of property from RES-2 (County: Residential Two) to PI (City: Parkway Interchange) land use designation.

Applicant: Rob Robb, PE, agent for Acquest Development, LLC
Location: East of the St. Johns Heritage Parkway, north of US 192, west of I-95

Planning Director Fischer presented the staff report for the large scale comprehensive plan amendment and rezoning request. She said the applicant desires to have a mix of commercial and industrial uses on the property, with an option for a limited quantity of multi-family residential. She compared development potential in the county versus the proposed future land use and zoning in the City of West Melbourne. She explained that the development approval process would also include a density-limiting development agreement to limit residential uses to 25% of the property instead of the 65% that is allowed in PI, as well as a Comprehensive Plan text amendment that would place that limit in the Plan. She showed the Board the other large properties in the vicinity that that have gone or are going through the process to obtain a future land use of PI with a GTWY-I zoning designation. She said staff believes the request is consistent with the Goals, Objectives, and Policies of the Future Land Use Element of the Comprehensive Plan.

Robert Robb, P.E., with Robb & Taylor, representing the applicant, was available for questions.

Vice Chairman Brothers asked if the applicant has any tenants lined up.
Mr. Robb replied the plan is conceptual at this time and there are no tenants lined up, however, the applicant develops high-end industrial and warehouse projects that use concrete tilt wall and stucco with storefront glass entries. He added that while the applicant is not a residential developer, they do not want to eliminate the possibility in the future for this site as multi-family residential would be a good transition between the property to the north and the proposed industrial warehousing on the subject property.

Planning Director Fischer reminded the Board that with the proposed apartment limitation of 25% of land area at 20 dwelling units per acre, the entire site would have a maximum of 184 dwelling units.

Board Member Spagnoli asked if the US 192 driveway would be right in/right out only.

Mr. Robb responded that they were unclear at this time what the intersection would look like, but that it was Florida Department of Transportation (FDOT) jurisdiction for US 192. He added that they do not expect to get a full intersection on to St. John’s Heritage Parkway.

Chairman Jaudon opened the public hearing for items 5.c. and 5.d.

Gregory T. Wood, owner of the property to the north, said he believes the city is working in the right direction for zoning and future land use in the interchange area and he has no opposition to what is being proposed.

No further public comment.

Moved by Board Member Brothers, seconded by Board Member Bernkopf to recommend that City Council approve transmittal of the large scale comprehensive plan map amendment LSA-2021-03 to change the future land use of the property from Residential 2 (RES-2) to Parkway Interchange (PI), conditioned on the properties being annexed and the execution of a density-limiting development agreement and Future Land Use text amendment. Motion passed, 5-0.

d. Rezoning – Space Coast Business Center – (REZ-2021-03)

A request to rezone 36.73 acres of property from AU, (Agricultural Residential Use) to GTWY-I, (Gateway Interchange).

Applicant: Rob Robb, PE, agent for Acquest Development, LLC
Location: East of the St. Johns Heritage Parkway, north of US 192, west of I-95

Moved by Board Member Spagnoli, seconded by Board Member Bernkopf to recommend that City Council approve the rezoning request from Agricultural Use (AU) to Gateway Interchange (GTWY-I) with the condition that the annexation, large scale comprehensive plan map amendment and text amendment are approved. Motion passed, 5-0.

6. PUBLIC COMMENT ON GENERAL MATTERS

None.
7. PLANNING DIRECTOR REPORTS

Planning Director Fischer verified that there will be a meeting on June 9, probably along with a couple other items. She discussed the upcoming Comprehensive Plan workshop process and described how they may need to get more creative with increasing public participation from stakeholders during these times.

Planning Director Fischer mentioned that the intersection signalization at Hollywood Boulevard and Imagine Way was a joint effort between the city and county and it was likely a year away from completion.

8. BOARD MEMBER REPORTS

Board Member Liesenfelt said he was interested to learn that Waffle House was not within the city limits.

Planning Director Fischer replied that any future redevelopment may incentivize that property to annex into the City to obtain city utilities.

Board Member Liesenfelt wondered if the property to the west of the Space Coast Business Center had any development proposals.

Planning Director Fischer confirmed she spoke to the property owner, but she is not aware of any development plans at this time. She said any future development at that site would need utilities that would be provided by the City of West Melbourne, which would require annexation.

9. ADJOURN

Chairman Jaudon adjourned the meeting at 7:26 p.m.

______________________________
Chairman Chris Jaudon

______________________________
Christy Fischer, Planning Director
PLANNING AND ZONING BOARD AGENDA ITEM

PREPARED BY: Christy Fischer, Planning Director
MEETING DATE: June 9, 2021
SUBJECT: PMG West Melbourne – request to table large scale comprehensive plan map amendment and rezoning (agenda items 5.a. and 5.b.)

The applicant’s representative requested that the large scale comprehensive plan map amendment and rezoning listed on the agenda for PMG West Melbourne be postponed until July 13, 2021 to have more time to prepare for the public hearings and finalize a new concept plan. Since the two agenda items were advertised as a public hearing, the Planning and Zoning Board must make a motion to postpone the agenda item until July 13, 2021.

The applicant’s representative is aware that they will have to pay for the cost of the new legal advertisement.

Staff’s recommended motion is:

Postpone the PMG West Melbourne’s proposed comprehensive plan map amendment and rezoning public hearings to the July 13, 2021 Planning and Zoning Board meeting.
**ATTACHMENT – EMAIL CORRESPONDENCE**

**From:** Tedrow, Tara <Tara.Tedrow@lowndes-law.com>
**Sent:** Wednesday, May 26, 2021 2:27 PM
**To:** Christy Fischer <CFischer@WESTMELBOURNE.ORG>
**Cc:** Dan Coakley <dcoakley@pmgaffordable.com>; Adrianne Hartman <ahartman@propertymg.com>; Morris Richardson <MRichardson@WESTMELBOURNE.ORG>
**Subject:** Re: PMG

Great, we will push to July for Planning Commission and will get you our new plan to review soon. Thanks!!

Tara L. Tedrow  
Shareholder  
Land Use Attorney  
Lowndes, Drosdick, Doster, Kantor & Reed  
215 N Eola Dr, Orlando, FL 32801  
407-418-6361

Sent from my iPhone

On May 26, 2021, at 8:32 AM, Christy Fischer <CFischer@westmelbourne.org> wrote:

**CAUTION: THIS IS AN EXTERNAL EMAIL**

Hello Tara

Yes, you do have that option and for the July meetings (13th P&Z and 20th Council), we need to re-advertise.

Thanks for letting us know.

Sincerely,

**From:** Tedrow, Tara <Tara.Tedrow@lowndes-law.com>
**Sent:** Tuesday, May 25, 2021 8:16 PM
**To:** Christy Fischer <CFischer@WESTMELBOURNE.ORG>
**Cc:** Dan Coakley <dcoakley@pmgaffordable.com>; Adrianne Hartman
Sorry we kept missing each other today, Christy! Since our new plans won’t be finalized by tomorrow, do we have the option of tabling our item again, without having a staff report based on the old plan released?

Thank you!

Tara Tedrow
Shareholder & Chair, Cannabis and Controlled Substances Group
Tara.Tedrow@lowndes-law.com | D: 407.418.6361 | Ext: 1361

From: Christy Fischer <CFischer@WESTMELBOURNE.ORG>
Sent: Tuesday, May 25, 2021 1:42 PM
To: Tedrow, Tara <Tara.Tedrow@lowndes-law.com>
Cc: Dan Coakley <dcoakley@pmgaffordable.com>; Adrianne Hartman <Ahartman@propertymg.com>; Morris Richardson <MRichardson@WESTMELBOURNE.ORG>
Subject: RE: PMG

CAUTION: THIS IS AN EXTERNAL EMAIL

Hello Tara

We postponed to date certain so no need to re-advertise and yes we have deadlines, tomorrow by 9 am is the deadline. I'm going to call you now.

Christy Fischer
Director, Planning & Economic Development
City of West Melbourne
2240 Minton Road
West Melbourne, FL
32904
Phone: 321-837-7778
Fax: 321-768-2390
www.westmelbourne.org
To: Honorable Members of the Planning and Zoning Board

Through: Christy Fischer, AICP, Planning Director

From: Denise Curry, Planner

Meeting: June 9, 2021

**SUBJECT**

Preliminary Plat for “The Dunes at Heritage Lakes” Subdivision.

**RECOMMENDATION**

Recommend approval to City Council of the Preliminary Plat for “The Dunes at Heritage Lakes” Subdivision.

**FISCAL IMPACT**

The funds for this advertisement of approximately $250 will be paid by the applicant after the City sends them an invoice for the newspaper advertisement.
**DISCUSSION**

**PROPERTY ADDRESS**
On the west side of I-95, east of St Johns Heritage Parkway near the Ellis Road Interchange

**APPLICANT/PROPERTY OWNER**
Scott Glabitz, PE, BSE Consultants agent for Brian Davidson of DR Horton, Inc.

**PUBLIC MEETING DATE**
June 9, 2021
June 15, 2021

**LOCATION RELATED TO SURROUNDINGS**
West of I-95 near the Ellis Road Interchange.

**BRIEF SUMMARY OF REQUEST**
The owner/applicant, DR Horton, Inc., is seeking approval of the Preliminary Plat for *The Dunes at Heritage Lakes*:

**Includes 146 SF lots and 10 Tracts – 73.66 acres**

<table>
<thead>
<tr>
<th>EXISTING ZONING</th>
<th>EXISTING LAND USE</th>
<th>SURROUNDING ZONING &amp; LAND USE</th>
<th>PROPOSED SITE IMPROVEMENTS</th>
<th>SIZE OF PROPERTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-2 (One-, Two-, and Multi-Family Dwelling)</td>
<td>MD-RES (Medium Density Residential)</td>
<td>Vacant undeveloped property and Ellis Road Interchange to the north, Interstate 95 to the east. St. John’s Heritage Parkway to the west and Vacant undeveloped property to the south.</td>
<td>Site improvements consist of the development of a single-family residential subdivision. The developer will install the infrastructure for the subdivision consisting of utilities, stormwater, private road, electricity, and other services for the 146 single-family residential lots.</td>
<td>Total Acres – 73.66</td>
</tr>
</tbody>
</table>

**EXISTING ZONING**
R-2 (One-, Two-, and Multi-Family Dwelling)

**EXISTING LAND USE**
MD-RES (Medium Density Residential)

**SURROUNDING ZONING & LAND USE**
Vacant undeveloped property and Ellis Road Interchange to the north, Interstate 95 to the east. St. John’s Heritage Parkway to the west and Vacant undeveloped property to the south.

**PROPOSED SITE IMPROVEMENTS**
Site improvements consist of the development of a single-family residential subdivision. The developer will install the infrastructure for the subdivision consisting of utilities, stormwater, private road, electricity, and other services for the 146 single-family residential lots.

**SIZE OF PROPERTY**
Total Acres – 73.66

**STAFF RECOMMENDATION**
APPROVE WITH CONDITIONS

**CONSISTENCY** with the COMPREHENSIVE PLAN
The preliminary plat is consistent with the city’s comprehensive plan and the assigned future land use designation

**PROPERTY HISTORY**
“The Dunes at Heritage Lakes” is located west of Interstate 95 on the east side of St. Johns Heritage Parkway and is south of the proposed “St. Johns at Heritage Lakes” preliminary plat. The property is zoned R-2, (One-, Two-, and Multi-Family Dwelling) which allows single-family residential development. This proposed preliminary plat is for 146 single-family residential subdivision and associated infrastructure.
CONSISTENCY with the LAND DEVELOPMENT REGULATIONS

1) **LDR Section 86-10. Preliminary plat.**
   This section outlines the documents and fees required for preliminary plat approval.
   **Staff Comments**—The applicant submitted all of the documents for the preliminary plat per this section of the Code and has paid their fees.

2) **LDR Section 86-11. Preliminary Plat Review.**
   **Staff Comments**—The applicant submitted the documents for the preliminary plat review listed in this section of the code. The applicant understands the risk that if during the review of engineering construction drawings, the layout of tracts and lots must be significantly altered, then they will be required to revise the approved preliminary plat, and if additional lots are proposed, then preliminary plat re-approval will be needed.

3) **LDR Section 82-33(g). General street design.**
   **Staff Comments**—The proposed road tract that is shown along the 146 Lots meets the code requirement that new lots not be landlocked and have access to an improved road. Tract A, for both segments of “Dunes Avenue” is greater than 700 feet in length so, the applicant must submit a waiver request (can be a letter) for the length of approx. 1200 feet.

4) **LDR Section 86-12. Proposals to provide for preservation of endangered and threatened species and their habitats.**
   **Staff Comments**—The protection of endangered and threatened species is performed by the State of Florida mainly through the Fish and Wildlife Commission. The City of West Melbourne supports the State’s requirements and we rely on their expertise and permitting of actions on any protected animal species.

5) **LDR Section 86-15. Preliminary plat review by planning and zoning board.**
   This section lists the requirements for the preliminary plat of a subdivision.
   **Staff Comments**—The applicant’s plat meets the requirements for the Planning and Zoning Board to review.

6) **LDR Section 86-16. Preliminary plat review by City Council.**
   This section lists the requirements for the preliminary plat of a subdivision.
   **Staff Comments**—The applicant’s plat is sufficient to allow City Council deliberation. Staff has identified the conditions that will be provided to City Council.

7) **LDR Section 86-52. Name.**
   This section lists the requirement that the names for new subdivisions must be approved by City Council and shall not duplicate or resemble existing names.
   **Staff Comments**—The applicant’s subdivision is proposed to be called “The Dunes at Heritage Lakes” which does not resemble an existing subdivision name.

8) **LDR Section 86-54. Street names.**
   This section states that City Council approves street names as well as the County agency responsible for address assignment.
   **Staff Comments**—The applicant has proposed street names and at this time the City has received an approved street names letter from the County’s address assignment division, however, one of the street names will be problematic, Lindner Circle, and should be changed to be Eden Circle.

9) **LDR Section 86-57. Pedestrian access.**
   This section states that pedestrian access, if not part of the main streets, shall be provided in specific easements that are a minimum size.
   **Staff Comments**—The sidewalks to be placed along the internal road of the subdivision are part of the street in Tract A, so a separate easement is not needed (these sidewalks are built as each new lot is built). The developer must post a performance bond for any sidewalk not installed at the time of final plat.
10) **LDR Section 86-58. Community assets.**
   This section states that natural features will be protected.

   **Staff Comments** – The developer must submit a tree removal plan that includes a table that lists the trees by size to be removed plus the tree replacement ratio. The City’s Tree Preservation Code provides the specifications for trees that will be removed and must be replaced.

<table>
<thead>
<tr>
<th>ATTACHMENTS (CIRCLE)</th>
<th>SUBMITTED PLANS</th>
<th>APPLICATION Addendum</th>
<th>LEGAL NOTICE</th>
<th>LEGAL DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>OTHER AGENCIES TO REVIEW</td>
<td>SIRWMD (St. Johns River Water Management District)</td>
<td>MTWCD (Melbourne Tillman Water Control District)</td>
<td>Mailout to property owners within 500 ft. Florida Today Newspaper</td>
<td>Provided with each plat</td>
</tr>
</tbody>
</table>

**Process** –

**Zoning** - The zoning district dictates both the minimum size of proposed developments and the type of development. This property is zoned R-2 (One, Two and Multi-family dwellings) and the proposed use of a single family residential development is consistent with the zoning district.

**Traffic** - The proposed development has two separate access points to St. Johns Heritage Parkway (one on the north side and the other on the south side). The developer has submitted a traffic impact study methodology letter but the traffic study has not been completed and submitted to the City at this time for review. Staff has inserted a condition of approval of having the traffic study submitted and reviewed by the City prior to the plat being presented to City Council for approval.

**Infrastructure** - The site will have City water and sewer service for the single-family residential development. The preliminary plat and the preliminary construction drawings to build the water, sewer and stormwater ponds was submitted. The developer is proposing a private internal road, and there will be a stormwater pond to handle run off from the paved surfaces.

**Public Input and Agency Coordination:**

City staff has advertised the public hearings for the preliminary plat in Florida Today newspaper and mailed out public hearing notifications to the abutting properties within 500 feet prior to the public hearings. Since this site has the correct zoning for a mixed use subdivision, and since the current proposal conforms to the City codes, there is no reason for the project to be denied.

The developer will have to coordinate with the Florida Department of Environmental Protection (FDEP) applications for the extension of the water and sewer, and with the St. Johns River Water Management District and Melbourne Tillman (MTWCD) about their stormwater system.

**Preliminary Plat Public Hearing Process** –

The Dunes at Heritage Lakes preliminary plat will be reviewed by the Planning and Zoning Board and deliberated upon by the City Council. City Council is scheduled to consider this preliminary plat on June 15, 2021. Preliminary plats are advertised as public hearings because public input is most relevant at the beginning of a new subdivision.
Overview of the Preliminary Plat

The submitted plat is zoned R-2 (One, Two, and Multi-family dwelling)

The features of the plat are as follows – (this section does not analyze the details, but provides a written summary explaining the plat)

- 146 single-family residential lots – 24.80 acres
- 1 stormwater tract -24.03 acres
- 5 landscape and signage tracts –2.78 acres
- 1 Private Road & public utilities tract – 7.18 acres
- 3 open space, green space, landscape and mail kiosk tracts – 14.27 acres

- **146 lots** – The preliminary plat shows 146 lots for single family residential development.
- **Floodplain** – A majority of the property is in Flood Zone “AE”. The developer must submit documents removing the property from the floodplain with FEMA’s (Federal Emergency Management Administration) required justification or develop additional retention area to compensate for building in a flood zone. The floor elevation of houses may have to be higher to accommodate the flood zone.
- **Stormwater Management** – Tract “SW1” is for stormwater and open space, utilities, and landscape. Tract SW1 is a little over 24 acres of area, and is dedicated to the Property owners association for maintenance. The subdivision will be designed to meet and exceed the St. Johns River Water Management District requirements. The subdivision lots are being designed to flow to the stormwater pond.
- **Internal roadway (private)** – The preliminary plat shows an internal private road – Tract A. This means the City will not be responsible for maintenance of the road.
- **Sidewalks** – Sidewalks are required to connect all of the lots that are internal to the subdivision and to connect to existing sidewalks on roads leading out of the subdivision. The future sidewalks along the private right-of-way will either be installed or the developer will submit a sidewalk bond at the time of final plat.
- **Utility easements** – There is a 10’ wide public utility easement along the rear, a 5’wide public utility easement along the sides and a 12’ wide public utility easement along the front of all the lots. All electric, gas, telephone and TV cable utilities will be underground.
- **Fencing** – The developer is not proposing to erect a fence at this time.
- **Landscaping** - The developer is required to submit a landscape plan that is consistent with City Code with the construction drawings and with each individual plot plan for the homes.
- **Water** – City water services will be provided and the developer is working out the details in the civil engineer construction drawings being reviewed by administrative staff.
- **Sewer** – City sewer services will be provided and the developer is working out the details in the civil engineer construction drawings being reviewed by administrative staff.
- **Recreation tracts** – The developer is not proposing to have an area for recreation but is proposing to pay a recreation fee in lieu of giving the City land at the time of final plat.
- **Gated Community** – If the developer proposes a gate, a separate submittal will be required to the City meeting the basic requirements and approval by City Council.

**Use of Preliminary Plat following approval**

Approval of the preliminary plat signals that prior to submitting the final plat, the developer must:

1. Install all required improvements in accordance with the engineering construction plans and specifications or post a performance bond to cover all installation and construction of required subdivision infrastructure. All infrastructure, if installed before the final plat, shall be inspected and subject to the approval of the city.

Construction plan approval is needed to properly design and construct all necessary improvements related to stormwater drainage, water and sewer lines, and transportation infrastructure for the subdivision.

**Concurrency – Infrastructure and Public Services:**

The City’s Concurrency Code, Chapter 70, addresses the analysis of infrastructure capacity review, vesting of capacity and reservation fees. At this time, there are no capacity issues in the infrastructure systems, and if infrastructure construction begins within 18 months of approval of the preliminary plat, the capacity will be vested. Regardless, the developer is obligated to pay concurrency reservation fees at the time required by the impacted agencies. The only infrastructure systems needing reservation prior to issuance of a final plat are the parks and recreation and the potable water and sanitary sewer system. The City of West Melbourne requires payment of the parks and recreation fee “in lieu of dedicating land for parks”, or confirmation that the privately owned and maintained recreation facilities can be credited towards this requirement.

The other impact fees which can be paid with the permitting of each individual lot, are for traffic, solid waste, correction facilities, school and sewer.

**Transportation:** The developer has a traffic impact study methodology letter for the proposed Heritage Lakes of West Melbourne mixed use development traffic study of the 146 proposed single-family residential units. According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 10th Edition, the trip generation from the 146 single-family residential units is 1,482 total daily trips, however as stated, at this time, there is no indication of the traffic circulation of these trips or whether some of the trips will stay internal to the overall development once retail is constructed.

The traffic study will show what, if any improvements need to be made to accommodate the traffic generated by this development based on the trip distribution projections.

It will be a condition of approval of the preliminary plat for the traffic study to be submitted and the recommended improvements be accepted by the City.
The internal circulation in the subdivision is adequate, however, as mentioned on page 2 of this report, City staff is requesting that the name “Lindner Circle” be changed to a simpler name, “Eden Circle” to avoid location issues with E-911 and other service providers, as well as the residents.

Columbia Lane – Many years ago there was a proposal for the extension of Columbia Lane to this property, but that was prior to construction of the St. Johns Heritage Parkway. However, in the spirit of the City’s adopted comprehensive plan, Multi-modal policy 3.15. Safety Considerations which states,

“Utilize the site and development process to ensure a project’s development and environment study for roadway improvements addresses the safety concerns of all users: pedestrians, bicyclists, riders and motorists.”

The City’s Land Development Regulations Section 86-11, review for preliminary plats states that city staff can consider:

“The adequacy of public utilities and access roads or streets to provide service to the proposed subdivision.”

Based on both the comprehensive plan adopted policy, the City’s Land Development Regulations for subdivisions and the proximity to Columbia Lane, city staff has determined that McFarland Drive should have a stabilized surface beyond the “T” turn around to allow residents to access Columbia Lane during emergency closures of the St. Johns Heritage Parkway. This means that a gravel pathway should exist that can be closed to regular passage from McFarland Drive to Columbia Lane but that allows for emergency use if needed.

Schools: In March of 2021, the developer submitted the “School Facility Planning & Concurrency” application to the School Board for analysis of the impacts of the proposed 146 single-family residential units. The prospective student impact from the School Board analysis is 76 students.

The School Board’s written evaluation states there is insufficient capacity at Roy Allen Elementary School and Heritage High School in the coming years. However, there is excess capacity at Harbor City Elementary and Palm Bay Magnet High School. The developer may have to work with the school board for proportionate mitigation fees or in some other manner contribute to future school development in the South Brevard area. The developer must finalize the Concurrency Determination with the School District during the final plat process and this will be a condition of the preliminary plat.

Utilities: The City will provide water and sewer service to the subdivision.

Stormwater Management: The applicant must submit a permit from St. Johns River Water Management District for stormwater discharge and must meet minimum design standards for stormwater management during engineering review and approval. This means
that the lots are to be constructed in accordance with the drainage requirements of the Land Development Regulations (LDR) Sec. 71-08 and the St. Johns River Water Management District (SJRWMD) requirements. The developer will receive a master stormwater retention permit from SJRWMD, which cannot be exceeded.

Recreation: City Council has the ability to require the applicant to pay a recreation fee in lieu of dedication of land for a park. If City Council allows a fee in lieu of dedication of land, this is done at the final plat step. In order to calculate this fee, the applicant provides the recreation fee calculation and submits the payment.

Fire: Brevard County Fire and Rescue provides emergency services.

Police: The City of West Melbourne Police Department will serve the site.

Coordination with Outside Agencies—

As part of the subdivision plat process, the applicant is required to demonstrate that all outside agency permits and requirements be addressed prior to approval of the final plat. The developer must obtain the following permits:

- St. Johns River Water Management District (SJRWMD) for stormwater;
- Florida Department of Environmental Protection (FDEP) for water, stormwater (National Pollutant Discharge Elimination System); and sewage Permits;
- Melbourne-Tillman Water Control District stormwater permits;
- and City of Melbourne for water concurrency

Conclusion:

To address the public infrastructure needs, the developer is required to submit construction drawings as well as address any new roadway coordination impacts with the FDOT, City and County prior to final plat approval. The review of this project has been ongoing and will continue with various local and State agencies. The proposed preliminary plat is consistent with the density and lot size requirements and other performance standards in the R-2 zoning.

RECOMMENDATION

Recommend approval to City Council of the Space Coast Town Center preliminary plat with the following conditions:

1) Developer shall finalize construction drawings to comply with City Codes, the conditions of the preliminary plat, and the requirements by outside governmental agencies.
2) Developer must either install a segment of sidewalk along the private road or provide a performance bond, as they determine to meet this requirement.
3) Prior to construction drawing approval, the developer shall request the School Board’s final school capacity determination.
4) Prior to the preliminary plat being presented to the City Council, traffic study must be submitted and reviewed and accepted by the City.
5) Change the name of Lindner Circle to Eden Circle.
6) Show an emergency access easement on Tract MU-4 that calls out for the passage of vehicles on a stabilized surface from McFarland Drive to Columbia Lane.
7) Coordinate with the City and floodplain agencies to ensure that building floor elevations, drainage and other issues are addressed for those portions of the property that are in the floodzone.
8) Pay the City’s recreation fee with final plat submittal since public land will not be dedicated for a new public park for this subdivision.

**ATTACHMENTS**

1) Aerial
2) The Dunes at Heritage Lakes preliminary subdivision plat
3) The Dunes at Heritage Lakes preliminary infrastructure plan
Attachment 1 – Aerial
Attachment 2 – The Dunes at Heritage Lakes Preliminary Plat
To: Honorable Members of the Planning and Zoning Board

Through: Christy Fischer, AICP, Planning Director

From: Denise Curry, Planner

Meeting: June 9, 2021

SUBJECT

Preliminary Plat for St. Johns Heritage Lakes North Subdivision.

RECOMMENDATION

Recommend approval to City Council of the Preliminary Plat for St. Johns Heritage Lakes North Subdivision.

FISCAL IMPACT

The funds for this advertisement of approximately $250 will be paid by the applicant after the City sends them an invoice for the newspaper advertisement.
**DISCUSSION**

**PROPERTY ADDRESS**
On the west side of I-95 and east of St. Johns Heritage Parkway, near the Ellis interchange

**APPLICANT/PROPERTY OWNER**
Scott Glaubitz, PE, BSE engineer for – Heritage Lakes of West Melbourne, Inc.

**PUBLIC MEETING DATE**
June 9, 2021  Planning and Zoning Board
June 15 2021  City Council

**LOCATION RELATED TO SURROUNDINGS**
West of I-95 and on the east side of the St. Johns Heritage Parkway

**BRIEF SUMMARY OF REQUEST**
The applicant, St. Johns Heritage Lakes of West Melbourne, is seeking approval of the Preliminary Plat for the St. Johns Heritage Lakes North:

**Includes 14 Tracts** – 57.93 acres
- 1 tract Multi-family development – 27.10 acres
- 1 stormwater tract -5.69 acres
- 1 lift station tract – 0.04 acres
- 1 Private roadway tract – 3.80 acres
- 6 Future Commercial Development tracts – 9.67 acres
- 2 Signage, stormwater and open space – 1.32 acres
- 1 Signage, greenspace, landscape – 0.24 acres
- 1 utilities, open space-passive recreational use, green space, landscape – 10.07 acres

**EXISTING ZONING**
GTWY-I (Gateway Interchange)

**EXISTING LAND USE**
P-I (Parkway Interchange)

**SURROUNDING ZONING & LAND USE**
West of Interstate 95 & to the east of the St. John’s Heritage Parkway near the Ellis Rd. interchange Vacant undeveloped property to the south.

**PROPOSED SITE IMPROVEMENTS**
Site improvements consist of the development of a mixed use commercial and residential to consist of retail and multi-family residential. The developer will install the infrastructure for the subdivision – utilities, stormwater, private roads, electricity, and other services for the subdivision.

**SIZE OF PROPERTY**
Total Acres – 57.93

**STAFF RECOMMENDATION**
APPROVE
APPROVE WITH CONDITIONS
DENY

**CONSISTENCY with the COMPREHENSIVE PLAN**
The preliminary plat is consistent with the city’s comprehensive plan and the assigned future land use designation

**PROPERTY HISTORY**
“St. Johns Heritage Lakes North” is located west of Interstate 95 at the interchange area of Ellis Road and I-95 and north of the proposed “The Dunes at Heritage Lakes” preliminary plat. The property is zoned GTWY – I, (Gateway Interchange) which allows mixed use development. This proposed preliminary plat is for the northern portion of St Johns Heritage Lakes east of St. Johns Heritage Parkway. This preliminary plat will be for one lot proposed for multi-family residential development and 6 future commercial development lots and associated infrastructure.
CONSISTENCY with the LAND DEVELOPMENT REGULATIONS

1) LDR Section 86-10. Preliminary plat.
   This section outlines the documents and fees required for preliminary plat approval.
   **Staff Comments**—The applicant submitted all of the documents for the preliminary plat per this section of the Code and has paid their fees.

2) LDR Section 86-11. Preliminary Plat Review.
   **Staff Comments**—The applicant submitted the documents for the preliminary plat review listed in this section of the code. The applicant understands the risk that if during the review of engineering construction drawings, the layout of tracts and lots must be significantly altered, then they will be required to revise the approved preliminary plat, and if additional lots are proposed, then preliminary plat re-approval will be needed.

3) LDR Section 82-33(g). General street design.
   **Staff Comments**—The proposed road tract that is shown meets the code requirement that new lots not be landlocked and have access to an improved road.

4) LDR Section 86-12. Proposals to provide for preservation of endangered and threatened species and their habitats.
   **Staff Comments**—The protection of endangered and threatened species is performed by the State of Florida mainly through the Fish and Wildlife Commission. The City of West Melbourne supports the State’s requirements and we rely on their expertise and permitting of actions on any protected animal species.

5) LDR Section 86-15. Preliminary plat review by planning and zoning board.
   This section lists the requirements for the preliminary plat of a subdivision.
   **Staff Comments**—The applicant’s plat meets the requirements for the Planning and Zoning Board to review.

6) LDR Section 86-16. Preliminary plat review by City Council.
   This section lists the requirements for the preliminary plat of a subdivision.
   **Staff Comments**—The applicant’s plat is sufficient to allow City Council deliberation. Staff has identified the conditions that will be provided to City Council.

7) LDR Section 86-52. Name.
   This section lists the requirement that the names for new subdivisions must be approved by City Council and shall not duplicate or resemble existing names.
   **Staff Comments**—The applicant’s subdivision is proposed to be called “St. Johns Heritage Lakes North” which does not resemble an existing subdivision name.

8) LDR Section 86-54. Street names.
   This section states that City Council approves street names as well as the County agency responsible for address assignment.
   **Staff Comments**—The applicant has proposed street names at this time and the street names have been approved and reserved by the County’s address assignment division. During the time of final plat, the street names are assigned and placed on the final plat to be recorded. However, staff’s experience is that difficult to pronounce and spell street names become an issue with service providers and residents in single family residential neighborhoods and the proposed name of “Lindner Circle” must be changed to “Eden” Circle. During the time of final plat, the approved street names are assigned, but staff will make a condition of approval, the changing of “Lindner” to “Eden” circle.

9) LDR Section 86-57. Pedestrian access.
   This section states that pedestrian access, if not part of the main streets, shall be provided in specific easements that are a minimum size.
Staff Comments – The sidewalks to be placed along the internal road of the subdivision are part of the street and in the Private Roadway Tract. However, since Parcel 7 will be an apartment complex, there will need to be sidewalks internal to that development that connect to the sidewalks along Tract A, “Heritage Lakes Boulevard (these sidewalks are built as each parcel is built). The developer must post a bond for any sidewalk not installed at the time of final plat.

10) LDR Section 86-58. Community assets. This section states that natural features will be protected. Staff Comments – The developer must submit a tree removal plan that includes a table that lists the trees by size to be removed plus the tree replacement ratio. The City’s Tree Preservation Code provides the specifications for trees that will be removed and must be replaced.

<table>
<thead>
<tr>
<th>ATTACHMENTS (CIRCLE)</th>
<th>SUBMITTED PLANS</th>
<th>APPLICATION Addendum</th>
<th>LEGAL NOTICE</th>
<th>LEGAL DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mailout to property owners within 500 ft. Florida Today Newspaper</td>
<td>Provided with each plat</td>
</tr>
<tr>
<td>OTHER AGENCIES TO REVIEW</td>
<td>SRWMD (St. Johns River Water Management District)</td>
<td>MTWCD (Melbourne Tillman Water Control District)</td>
<td>FDEP (Florida Department of Environmental Protection)</td>
<td></td>
</tr>
</tbody>
</table>

Process –

Zoning - The zoning district dictates both the minimum size of proposed developments and the type of development. This property is zoned GTWY-I and there can be a mixture of uses in this subdivision. The percentages of land use mixes are as follows:

Includes 14 Tracts – 57.93 acres

<table>
<thead>
<tr>
<th>Tracts</th>
<th>Percentage of uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 tract Multi-family development – 27.10 acres</td>
<td>46% Multi-family residential uses</td>
</tr>
<tr>
<td>1 stormwater tract - 5.69 acres</td>
<td>9% Open Space/stormwater</td>
</tr>
<tr>
<td>1 lift station tract – 0.04 acres</td>
<td>Less than 1%</td>
</tr>
<tr>
<td>1 Private Roadway tract – 3.80 acres</td>
<td>6% Private Roadway</td>
</tr>
<tr>
<td>6 Future Commercial Development tracts – 9.67 acres</td>
<td>17% Commercial lots (does not include utilities which are partially associated with the commercial)</td>
</tr>
<tr>
<td>2 Signage, stormwater and open space – 1.32 acres</td>
<td>2% Signage, stormwater and open space</td>
</tr>
<tr>
<td>1 Signage, greenspace, landscape – 0.24 acres</td>
<td>Less than 1%</td>
</tr>
<tr>
<td>1 utilities, open space-passive recreational use, greenspace, landscape – 10.07 acres</td>
<td>17% utilities, open space, passive recreational use, greenspace, landscape</td>
</tr>
</tbody>
</table>

The Parkway Interchange future land use designation sets thresholds for the percentages on the maximum and minimum land use coverages as follows:

<table>
<thead>
<tr>
<th>Maximum Land Use Coverage</th>
<th>Minimum Land Use Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial &amp; Industrial up to-90%</td>
<td>Commercial and industrial -25%</td>
</tr>
<tr>
<td>Institutional up to -35%</td>
<td>Institutional-n/a</td>
</tr>
<tr>
<td>Residential-up to 65 % (totals must equal 100%)</td>
<td>Residential-n/a (setbacks)</td>
</tr>
<tr>
<td>No maximum for open space</td>
<td>Public Spaces or Open Space-10%</td>
</tr>
</tbody>
</table>
This subdivision will meet the multi-family and commercial minimum and maximum thresholds with additional clarification when the civil engineering drawings are submitted about what infrastructure such as sidewalks counts towards open space and which tracts count towards the commercial land use.

Traffic - The proposed development has two separate access points to the St. Johns Heritage Parkway with one full access and one right in right out only. The developer has submitted a traffic impact study methodology letter to the City describing what they intend on including but the traffic study has not been completed and submitted to the City at this time for review. Staff recommends a condition of approval is to have the traffic study submitted and reviewed by the City prior to the preliminary plat being presented to City Council for approval.

Infrastructure - The site will have City water and sewer service for the subdivision. The preliminary plat was submitted but the preliminary construction drawings to build the water, sewer and stormwater ponds has been submitted and is currently under review. The developer is proposing a private internal road, and there will be a stormwater pond to handle run off from the paved surfaces.

Public Input and Agency Coordination:

City staff has advertised the public hearings for the preliminary plat in Florida Today newspaper and mailed out public hearing notifications to the abutting properties within 500 feet prior to the public hearings. Since this site has the correct zoning for a mixed use subdivision, and since the current proposal conforms to the City codes, there is no reason for the project to be denied.

The developer will have to coordinate with the Florida Department of Environmental Protection (FDEP) applications for the extension of the water and sewer, and with the St. Johns River Water Management District and Melbourne Tillman (MTWCD) about their stormwater system.

Preliminary Plat Public Hearing Process –

The Heritage Lakes North preliminary plat will be reviewed by the Planning and Zoning Board and deliberated upon by the City Council. City Council is scheduled to consider this preliminary plat on June 15, 2021. Preliminary plats are advertised as public hearings because public input is most relevant at the beginning of a new subdivision.

Overview of the Preliminary Plat
The submitted plat is zoned GTWY-I
The features of the plat are as follows – (this section does not analyze the details, but provides a written summary explaining the plat)
1 stormwater tract – 5.70 acres
6 future commercial development tracts – 9.67 acres
1 lift station tract – 0.04 acres
1 multi-family residential tract – 27.10 acres
1 private road, pedestrian access, landscape, and private/public utilities tract – 3.80 acres
3 signage, green space, landscape stormwater, open space tracts – 1.56 acres
1 utilities, open space-passive recreational use, green space landscape – 10.07 acres

- **7 parcels** – The preliminary plat shows 7 parcels consisting of one parcel of 27.10 acres for multifamily residential development and six parcels for future commercial development which is allowed under the Parkway Interchange land use designation and the Gateway Interchange Zoning District.
- **Floodplain** – A majority of the property is in Flood Zone “AE”. The developer must submit documents removing the property from the floodplain with FEMA’s (Federal Emergency Management Administration) required justification or develop additional retention area to compensate for building in a flood zone. The floor elevation of houses may have to be higher to accommodate the flood zone.
- **Stormwater Management** – Tract “SW1” is a stormwater pond and open space recreation which is required in the Parkway Interchange land use designation (10% open space requirement) as long as there is some pedestrian, bicyclist or other recreation feature. Tract SW1 is almost 6 acres of area, and is dedicated to the property owners association for maintenance. The subdivision will be designed to meet and exceed the St. Johns River Water Management District requirements. The subdivision lots are being designed to flow to the stormwater pond.
- **Internal roadway (private)** – The preliminary plat shows a private road – Tract A. This means the City will not be responsible for maintenance of the road. The name of the road will be finalized at the time of final plat but the developer has received approval of street names from the County’s address assignment division.
- **Sidewalks** – Sidewalks are required to connect all of the lots that are internal to the subdivision and to connect to existing sidewalks on roads leading out of the subdivision. The future sidewalks along the private right-of-way will either be installed or the developer will submit a sidewalk bond at the time of final plat.
- **Sanitary Lift Station** – Tract “D” is for the Lift Station that will be dedicated to the City to own and maintain.
- **Utility easements** – There is a 5’ wide public utility easement along the side lot lines, and a 10’ wide public utility easement along the rear lot lines. All electric, gas, telephone and TV cable utilities will be underground.
- **Fencing** – The developer is not proposing to erect a fence at this time. There will be a fence around the proposed public lift station property so that the City can access and maintain the sanitary sewer equipment in Tract “D” (the lift station).
- **Landscaping** - The developer is required to submit a tree removal and replacement plan that is consistent with City Code with the construction drawings.
- **Water** – City water services will be provided and the developer is required to submit the details in the construction drawings.
- **Sewer** – City sewer services will be provided and the developer is required to submit the details in the construction drawings.
- **Recreation tracts** – The developer is not proposing to have an area for recreation for the multi-family portion but is proposing to pay a recreation fee in lieu of giving the City land at the time of final plat.
Gated Community – If the developer proposes a gated subdivision for the multi-family rental community, City Council approval will be required.

**Use of Preliminary Plat following approval**

Approval of the preliminary plat signals that prior to submitting the final plat, the developer must:

Install all required improvements in accordance with the engineering construction plans and specifications. All work, as installed, shall be inspected and subject to the approval of the city.

Construction plan approval is needed to properly design and construct all necessary improvements related to stormwater drainage, water and sewer lines, and transportation infrastructure for the subdivision.

**Concurrency – Infrastructure and Public Services:**

The City’s Concurrency Code, Chapter 70, addresses the analysis of infrastructure capacity review, vesting of capacity and reservation fees. At this time, there are no capacity issues in the infrastructure systems, and if infrastructure construction begins within 18 months of approval of the preliminary plat, the capacity will be vested. Regardless, the developer is obligated to pay concurrency reservation fees at the time required by the impacted agencies. The only infrastructure systems needing reservation prior to issuance of a final plat are the parks and recreation and the potable water and sanitary sewer system. The City of West Melbourne requires payment of the parks and recreation fee “in lieu of dedicating land for parks”, or confirmation that the privately owned and maintained recreation facilities can be credited towards this requirement.

The other impact fees which can be paid with the permitting of each individual lot, are for traffic, solid waste, correction facilities, school and sewer.

**Transportation:**

The developer has submitted a traffic impact study methodology letter for the proposed Heritage Lakes of West Melbourne mixed use development traffic study which includes 376 proposed multi-family residential units, along with a day care center, convenience store with gas, sit-down restaurant, fast food restaurant with drive-through and coffee/donut shop with drive through. According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 10th Edition, the trip generation from the mixed uses is 15,462 total daily trips.

At this time the traffic study has not been completed and submitted to the City. The traffic study will show what, if any improvements need to be made to accommodate the traffic generated by this development.

It will be a condition of approval of the preliminary plat for the traffic study to be submitted and the recommended improvements be accepted by the City.

**Schools:**

In April of 2021, the developer submitted the “School Facility Planning & Concurrency” application to the School Board for analysis of the impacts of the proposed 376 multi-family residential units. The prospective student impact from the School Board analysis is 163 students. At that time, the School Board’s written response was even though there was insufficient capacity at Roy Allen Elementary and Heritage High schools, there was excess capacity at Sabal Elementary and Eau
Gallie High School. The developer may have to work with the school board for mitigation fees or in some other manner contribute for future school development. The developer must finalize the Concurrency Determination with the School District and this will be a condition of the preliminary plat.

Utilities: The City will provide water and sewer service to the project as stipulated in the Master Development Plan.

Stormwater Management: The applicant must submit a permit from St. Johns River Water Management District for stormwater discharge and must meet minimum design standards for stormwater management during engineering review and approval. This means that the lots are to be constructed in accordance with the drainage requirements of the Land Development Regulations (LDR) Sec. 71-08 and the St. Johns River Water Management District (SJRWMD) requirements. The developer will receive a master stormwater retention permit from SJRWMD, which cannot be exceeded.

Recreation: City Council has the ability to require the applicant to pay a recreation fee in lieu of dedication of land for a park. If City Council allows a fee in lieu of dedication of land, this is done at the final plat step. In order to calculate this fee, the applicant provides the recreation fee calculation and submits the payment.

Fire: Brevard County Fire and Rescue provides emergency services.

Police: The City of West Melbourne Police Department will serve the site.

Coordination with Outside Agencies—

As part of the subdivision plat process, the applicant is required to demonstrate that all outside agency permits and requirements be addressed prior to approval of the final plat. The developer must obtain the following permits:

- St. Johns River Water Management District (SJRWMD) for stormwater;
- Florida Department of Environmental Protection (FDEP) for water, stormwater (National Pollutant Discharge Elimination System); and sewage Permits;
- Melbourne-Tillman Water Control District stormwater permits;
- and City of Melbourne for water concurrency

Conclusion:

To address the public infrastructure needs, the developer is required to submit construction drawings as well as address any new roadway coordination impacts with the FDOT, City and County prior to final plat approval. The review of this project has been ongoing and will continue with various local and State agencies. The proposed preliminary plat is consistent with the density and lot size requirements and other performance standards in the GTWY-I zoning.

RECOMMENDATION
Recommend approval to City Council of the Heritage Lakes North preliminary plat with the following conditions:

1) Developer will finalize construction drawings to comply with City Codes, the conditions of the preliminary plat, the requirements by outside governmental agencies, and the minimum percentage thresholds required by the Parkway Interchange future land use designation.
2) Developer must either install a segment of sidewalk along the private road or provide a performance bond to meet the sidewalk requirement.
3) Prior to the preliminary plat being presented to the City Council, traffic study must be submitted and reviewed and accepted by the City.
4) Prior to the preliminary plat being presented to City Council revise the table in Notes 21 and 22 to indicate both the jurisdictions and their respective designations.

<table>
<thead>
<tr>
<th>Adjacent Zoning</th>
<th>Adjacent Future Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North: Brevard County AU</td>
<td>North: Brevard County PUB-CONS</td>
</tr>
<tr>
<td>South: City of West Melbourne R-2</td>
<td>South: City of West Melbourne MD-RES</td>
</tr>
<tr>
<td>East: City of West Melbourne M-2 (East of I-95)</td>
<td>East: City of West Melbourne IND</td>
</tr>
<tr>
<td>West: Brevard County AU</td>
<td>West: Brevard County PUB-CONS</td>
</tr>
</tbody>
</table>

5) Prior to the preliminary plat being presented to City Council identify the tract that will contain either the subdivision or apartment complex sign.
6) Pay the City's recreation fee at the time of final plat since public land will not be dedicated for a new public park for multi-family portion in this subdivision.
7) Coordinate with the City and floodplain agencies to ensure that building floor elevations, drainage and other issues are addressed for those portions of the property that are residential and in the floodzone.

**ATTACHMENTS**

1) Aerial
2) St. Johns Heritage Lakes North preliminary subdivision plat
17. TRACT SW1 IS HEREBY DEDICATED TO THE ST. JOHNS HERITAGE LAKES NORTH PROPERTY OWNERS

5. THERE IS HEREBY DEDICATED OVER AND ACROSS THE SIDES OF PARCELS 1, 2, 3, 4, 5 AND 6, A 5.00 FOOT WIDE

21.

HOMES) (13.87 DU PER AC)

REPAIR OF THEIR RESPECTIVE FACILITIES WHICH PROVIDE SERVICE TO THE LANDS PLATTED HEREIN.

PURPOSES OF VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE BY THE OWNERS OF THE TRACTS

60' WIDE RIGHT-OF-WAY AGREEMENT TO FLORIDA POWER & LIGHT COMPANY (ORB 684, PG 773)

SOUTH: R-2

SUCCESSORS AND/OR ASSIGNS, AND IS SUBJECT TO THE EASEMENT REQUIREMENTS STATED IN ORB 998, PG 279;

SUCCESSORS AND/OR ASSIGNS

SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES. THIS SECTION SHALL NOT APPLY TO THOSE PRIVATE

THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

151.56 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE

PARKWAY, SECTION 70220, FP No 426905-3, APPROVED 10/07/16); THENCE ALONG THE ARC OF SAID CURVED

PLANTS FOR BREVARD COUNTY, FLORIDA FINANCIAL PROJECT NUMBER: 428346-4-54-01, DATED AUGUST, 2016;

RADIUS OF 125.00 FEET, A CENTRAL ANGLE OF 47°32'23", A CHORD LENGTH OF 100.77 FEET AND A CHORD

BEARING OF S41°54'09"E), A DISTANCE OF 42.38 FEET TO A POINT OF COMPOUND CURVATURE; THENCE

DISTANCE OF 909.57 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID

(SAID POINT ALSO BEING A POINT ON THE CURVED NORTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED ST.

CONTAINING 57.93 NET ACRES, MORE OR LESS

ST JOHNS HERITAGE PARKWAY AS SHOWN ON SHEET 10 OF 20 OF THE FLORIDA DEPARTMENT OF

THE EAST RIGHT-OF-WAY LINE OF ST. JOHNS HERITAGE PARKWAY ACCORDING TO THE CONSTRUCTION

ACRES, MORE OR LESS.
To: Honorable Members of the Planning and Zoning Board

From: Christy Fischer, Planning Director

Meeting Date: June 9, 2021

SUBJECT

Request for approval of a Development Agreement (DA 2019-01) between the City of West Melbourne and Epoch Properties, Inc.

RECOMMENDATION

Staff’s proposed motion is to:

Recommend approval of the development agreement to limit the use and the density of the proposed Epoch community as well as landscaping along the south side of Norfolk Parkway. This site is located on the east side of Minton Road, north of Norfolk Parkway and west of I-95.

FISCAL IMPACT

The applicant pays the $250 advertising fee.
DISCUSSION

This agreement pertains to the proposed site on the east side of Minton Road, north of Norfolk Parkway, near the Promise in Brevard apartments, and its primary purpose is to limit the proposed density as well as allowing clustering of development to the buildable upland portions of the 32.69 acres. The property has frontage along Minton Road but is not part of the corner lot which is under separate ownership by the Coraci family.

The agreement addresses the quantity of apartments on 14.69 acres out of the total 32.69 acres of land to be owned by the developer, and other development related items that benefit the general public such as enhanced architectural features, landscaping and off-site irrigation responsibilities. The development agreement binds the owners and subsequent owners to the provisions of the agreement for a period of 30 years. The following information has been compiled to assist the boards in making recommendations and determinations concerning this request.

Background Information:

Applicant: Epoch Properties, Inc. (represented by Jake Wise, P.E with CEG Consultants, Inc.)

Location: East side of Minton Road, north of Norfolk Parkway

Size: Approximately 14.69 acres for market rate apartments

Reason(s) for Agreement: Legal affirmation of the Developer’s commitment for density limits and extra landscaping.

Legal Status of development agreements

A development agreement is a legal mechanism which contains additional conditions and can contain waivers to the Land Development Regulations for a specific development. There are various types of development agreements to assure that specific conditions and waivers are adhered to by both the developer and the City, such as utility agreements, and pre-annexation agreements. But generally, when the term “development agreement” is used in the City of West Melbourne, the reference is to specific site enhancements as it relates to the Land Development Regulations (city codes).
This is a flowchart of the development agreement process

Non-Statutory Development Agreements

1. Preliminary Conference
2. Applicant Prepares Draft Development Agreement
3. Development Agreement Submitted to the City
4. Administrative Review
5. Review and Recommendation by Local Planning Agency (Planning & Zoning Board)
6. Review/Final Decision by City Council
   - Approve
   - Approve w/ Conditions
   - Disapprove
7. DA recorded within 14 days
8. DA governs all development encompassed by the agreement
Staff Analysis

Developer’s Request and City’s Review
A developer’s agreement provides the public with assurances to address any features that might add to compatibility with the surrounding area and be consistent with the City’s comprehensive plan policies. The development agreement serves to solidify that the density of the property will be capped and that per the discussion during the rezoning of the property, the commitment by the developer to add landscaping along Norfolk Parkway.

Staff Review:

Staff assesses the request in terms of urban sprawl, land use compatibility, and consistency with the policies in the Comprehensive Plan of the proposed change of the future land use map designation from Commercial (COM) to Urban Density Residential (UD-RES), and for this property to be united with the vacant Promise in Brevard property. The following sections provide information on staff’s analysis.

Development of Property in page 3, section b

This is the section where the owner commits to not build more than 280 apartments, a clubhouse, pool and dog park. The proposed community is next to other apartments, namely Promise in Brevard which is on a separate parcel of land connected by the driveway leading out to Norfolk Parkway. The developer will plant new trees and shrubs along the property perimeter as shown in Exhibit E. This aerial indicates the property ownership as referred to in page 1 of the agreement.

Property ownership

A – Matthews property

B – Promise in Brevard, LLC

C – Promise, Inc. (separate Entity than Promise in Brevard)
Density in Section b, page 3

The applicant is limiting their density of the development to be no more than 25 dwelling units on the 5.37 acres and a density of 5.5 dwelling units per acre on the remaining 27.32. By including a density cap in a development agreement that lasts for thirty years, it will be clear that although redevelopment of the units might occur over time, the density level will not deviate. The only manner there can be a deviation from this density limit would be for the development agreement to be amended, which is also a public hearing process.

Architecture in Section 3d, page 4

The applicant proposes that the 5 apartment buildings plus the clubhouse be no taller than four stories (up to 60’ in height) and will have sloped roofs and not flat roofs. The images of housing styles and colors will be contained in the initial site plan documents used for public hearings. The initial site plan is part of the overall apartment complex development process for properties 5 acres and larger.

Landscaping in Section 3f, Page 4

The applicant commits to install enhanced landscaping along Norfolk Parkway in the City’s right of way and a preliminary landscape plan is attached as Exhibit E. The specific of the landscape plan related to the code requirements has not been reviewed yet since a tree survey and other site design items have not been submitted yet. The purpose of the landscape plan in the agreement is mostly to show the proposed trees along the south side of Norfolk Parkway near the sidewalk but not under the power lines, and to refer to another agreement that will be needed to address the maintenance of the trees.

Road improvements in Section 7, page 5

This section speaks to the design of the Minton Road right in/right out driveway. The developer has already spoken to Brevard County about placement of the driveway at the southernmost point of the property and a stub out to the Coraci property at the corner of Norfolk Parkway and Minton Road. This design is indicated on Exhibit D, the preliminary site plan.

Developer’s Request and Consistency with the Comprehensive Plan

The development agreement is consistent with the Comprehensive Plan as indicated with the analysis of the policies below.

The following is an excerpt from the Housing Element:

“1.2 Housing Opportunities
Utilize the planning and development review processes to implement the following community development and sustainable housing practices:

b. Site built, modular, and prefabricated homes.
c. Ownership and rental opportunities.
d. Housing for permanent residents and non-permanent residents.
e. Multi-generational housing resources.

Staff comment – The apartments are rental opportunities for persons wanting to live in close proximity to Hammock Landing and for family who may want to live near their family or friends who may be in Promise in Brevard.

The following is an excerpt from the Future Land Use Element:

“2.2 Residential Future Land Uses

….A variety of transportation alternatives (walking, biking, auto, and transit) should interconnect adjacent neighborhoods and activity centers…”

Staff comment – The proposed development offers the opportunity for future residents to walk, bicycle, and use bus transit in that area.

The following is an excerpt from the Housing Element:

“4.6 Housing Review

New development applications for housing shall be reviewed on an individual basis according to the following criteria:

a. Compatibility with surrounding land uses.
b. Availability to other city services, parks, open spaced, and basic commercial services.
c. Accessibility to multiple transportation resources.
d. Proximity of similar facilities in the area.
e. Need for housing type.”

Staff Comments – The development is compatible with the surrounding apartments, including Promise in Brevard and the Luminary apartments, and is close to basic commercial services and close to the 321 transit bus transfer station, as well as a road network that easily links to other collector and arterial roads.

Developer’s Request and Consistency with the Land Development Regulations

The proposed development agreement complies with the current criteria found in Section 66-418 and Section 66-420 of the Land Development Regulations for development agreements.

Conclusion:
The analysis above demonstrates that the request is:

- Consistent with the comprehensive plan,
• Compliant with the Land Development Regulations, and
• Consistent with the intent of density limits and a cap on the quantity of apartments as well as commitments in advance for design and landscaping along the developer’s portion of property along Norfolk Parkway.

Public Notice:

The rezoning was advertised in the legal section of the Florida Today in May. Mailed notices were also sent to neighbors (residential and commercial) in the 500 foot radius to the property.

RECOMMENDATION

Recommend to City Council to approve the Epoch apartments development agreement which is compliant with the City’s Land Development Regulations and Comprehensive Plan, and responds to Council’s request for a density cap and additional landscaping

ATTACHMENT

1. Development Agreement
CITY OF WEST MELBOURNE

EPOCH MULTI-FAMILY DEVELOPMENT AGREEMENT

THIS EPOCH MULTI-FAMILY DEVELOPMENT AGREEMENT ("Agreement") is made and executed this ______ day of _________________, 2021, by and between the CITY OF WEST MELBOURNE, a Florida municipal corporation ("City"), whose address is 2290 Minton Road, West Melbourne, Florida 32904 and EPOCH PROPERTIES, INC., d/b/a EPOCH RESIDENTIAL, a Florida corporation authorized to do business in the State of Florida ("Developer"), whose address is 359 Carolina Avenue, Winter Park, FL 32789. For purposes of this Agreement, the City and the Developer may be referred to as the “Parties”, and individually each a “Party”.

WITNESSETH:

WHEREAS, Jerry W. Matthews and Frances S Matthews are the owners of approximately 5.37 acres, more or less, of certain real property located east of Minton Road and North of Norfolk Parkway, in West Melbourne, Brevard County, Florida, and legally depicted and described on Exhibit A, attached hereto and incorporated herein (the “Matthews Property”); and

WHEREAS, the Developer is under contract to purchase and desires to change the land use designation of the Matthews Property from Commercial land use to an Urban-Density Residential land use designation with a maximum density of twenty-five (25) dwelling units per acre as limited by this Agreement and the Urban Density Residential bonus criteria; and

WHEREAS, Promise Inc. is the owner of multiple parcels in total consisting of approximately 27.32 acres, more or less, of certain real property located east of Minton Road and on both sides of Norfolk Parkway, in West Melbourne, Brevard County, Florida, and legally depicted and described on Exhibit B, attached hereto and incorporated herein (the “Promise
Property") (collectively, the Matthews Property and the Promise Property are hereinafter referred to as the “Property”); and

WHEREAS, the Promise Property is a portion of a larger property that was previously subject to that certain initial site plan approved by the City (the "Promise Site Plan" as shown on the attached Exhibit C) on June 9, 2015; and

WHEREAS, the Developer is under contract to purchase the Promise Property and desires that the Property be redeveloped and has requested approval of land use, zoning and a development plan for the Property consistent with the same; and

WHEREAS, the City has determined the Property is an appropriate location for a quality infill development; and

WHEREAS, the Developer desires to redevelop and construct an apartment complex containing not more than 280 multi-family units, swimming pool, parking and related facilities (the “Project”); and

WHEREAS, this Agreement substantially conforms to the requirements of Chapter 66, Article VI, Division 4 of the City’s Code of Ordinances for nonstatutory development agreements;

WHEREAS, the City Council desires to enter into this Agreement to allow for the redevelopment of the Property pursuant to this Agreement in accordance with the Development Schedule described herein, while ensuring that the requirements of the City Code will continue to apply and to serve the public health, safety, and welfare of the citizens and visitors of the City; and

WHEREAS, the City and Owner acknowledge that this Agreement is binding on the City and the Owner, and respective successors and assigns, for the term of this Agreement and shall constitute the entire development agreement and upon adoption and execution by the Parties

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1.0 Recitals. The foregoing Recitals are true and correct and are hereby incorporated herein by this reference.

2.0 Authority. This Agreement is entered into pursuant to the Florida Municipal Home Rule Powers Act and Section 66-417(b)(2) of the City Code.

3.0 Project Description and Requirements. Developer shall, at its expense, design, permit and construct a multi-family residential development on the Property as follows:

(a) The Property shall be developed in one (1) phase consisting of a 280-unit, market rate, for rent multi-family apartment complex, as depicted on the Preliminary Site Plan,
prepared by Construction Engineering Group, LLC (“CEG”), attached hereto and incorporated herein as Exhibit D. The Project, including but not limited to all supporting parking, utility and stormwater infrastructure, driveway connection onto Minton Road, and other associated traffic facilities including any required Norfolk Parkway improvements shall be constructed concurrently.

(b) The property is comprised of two development areas. The development areas are subject to two comprehensive plan future land use designations: Urban-Density Residential and Medium-Density Residential. The Urban-Density Residential designation (Matthews Property) allows a maximum density of twenty-five (25) dwelling units per du/ac). The Medium-Density Residential future land use designation is also subject to the Palm Bay Road Overlay designation which limits density to five and one half (5.50) dwelling units per acre (du/ac.). The project area has the following acreage breakdown:

Matthews Property: 5.37
Promise’s vacant Property: 27.32
Total Acres: 32.69

The maximum potential project residential unit count is:

Matthews Property: 134 (25 du/ac * 5.37 acres)
Promise’s vacant Property: 150 (5.5 du/ac * 27.32 acres)
Total Potential Units: 284

The parties hereby agree to limit the maximum development of the Property to 280 dwelling units. Further, the City agrees that the Owner may use the remnant density from Promise of Brevard that were not built as originally designed. This will allow the development plan to be consistent with the Preliminary Site Plan as illustrated in Exhibit D to be clustered in one area instead of spread throughout the site so long as the maximum residential unit count, excluding the built units of Promise of Brevard, does not exceed the agreed upon 280 dwelling units.

(c) The Developer agrees to limit development of the Matthews Property to a maximum of 25 dwelling units per acre, or 134 dwelling units which when combined with 146 units from the remnant Promise of Brevard property yields 280 units.

(d) The Developer agrees that no structure shall exceed four (4) stories of habitable space with a pitched roof for architectural detail.

(e) The Developer and City agree that in conjunction with the Project, Developer shall implement and install trees along the south side of Norfolk Parkway as depicted more specifically on the landscaping plan attached hereto as Exhibit E (“Landscaping Plan”). Developer
and City shall enter into such agreement as the City may require for Developer’s installation and maintenance of landscaping and irrigation to be located within City right of way.

The Project shall be constructed in accordance with the requirements set forth in this Agreement and in a manner consistent with the Preliminary Site Plan, as may be modified by approved initial and final site plans.

4.0 Development Schedule; Future Permitting; and Duration. The Project shall be developed as one comprehensive project and shall be completed within thirty-six (36) months of the later date that: (i) Developer receives all necessary governmental and quasi-governmental approvals for the Project, or sixty (60) months from the Effective Date of this Agreement.

The Developer shall be solely responsible for obtaining any and all necessary local and state permits including, but not limited to, building and environmental permit approvals which are required in order to permit the Project in compliance with local, state, and federal law. The Developer shall be responsible for all recording fees associated with this Agreement. Nothing contained herein shall be construed or interpreted as requiring the City to approve any future amendment to the Preliminary Site Plan. The City will consider and act upon said application at appropriate public hearings pursuant to the requirements of law.

Provided Developer (or its successor(s)) obtains a building permit for one or more structures within the Project not later than three (3) years from the effective date of this Agreement, this Agreement shall have an initial term of thirty (30) years and shall thereafter automatically renew for successive one (1) year periods. In the event Developer (or its successor(s)) does not obtain a building permit for a principal above-ground structure within three (3) years of the effective date of this Agreement, this Agreement shall terminate and become null and void. In the event the Developer desires to build, modify or develop a plan which is inconsistent with the Preliminary Site Plan, it shall have the right to terminate this Agreement upon thirty (30) days' written notice and attempt to negotiate the terms of a new Agreement consistent with the Owner's then-current development plans.

5.0 Representations of the Parties. The City and Developer hereby each represent and warrant to the other that it has the power and authority to execute, deliver and perform the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement will, when duly executed and delivered by the City and Developer, constitute a legal, valid and binding obligation enforceable against the Parties hereto. Upon the recording of this Agreement in the Public Records of Brevard County, Florida, the Agreement shall be a binding obligation upon the Property in accordance with the terms and conditions of this Agreement. Developer represents that it has voluntarily and willfully executed this Agreement for purposes of binding himself and the Property to the terms and conditions set forth in this Agreement.

6.0 Utilities. The Developer and the City agree that the City shall be the provider of sanitary sewer and potable water to the Property and that the Developer must connect to the
City’s municipal water and sewer systems. The City will provide “will serve” letters but the Developer must design, secure City and FDEP plan review approvals (as required), and pay all costs for any necessary on-site and off-site water and sewer facilities necessary to serve the Project.

7.0 **Application for Development Permits.** Before vertical construction may commence on the Property, the Developer agrees to submit a site plan application and secure final site plan approval and required land development approval(s) from the City applicable to the parcel(s) contemplated for vertical development, conforming to the requirements of the City’s Code of Ordinances and any other required permissions of applicable governing agencies as necessary for construction of the proposed Project.

The Developer shall, at its expense, obtain all necessary permits required by the City and any other federal, state, regional, or other local governmental entity necessary to lawfully initiate any work on the subject Property. The City agrees to take reasonable steps to diligently process support all necessary permits required to be issued by the City consistent with this Agreement, and to timely cooperate with Developer in processing and providing authorization or consent to any permit applications with federal, county, and state agencies.

8.0 **Successors and Assigns.** This Agreement shall automatically be binding upon and shall inure to the benefit of the City and Developer and their respective successors and assigns, and nothing herein shall prevent Developer from assigning its rights and responsibilities hereunder. The terms and conditions of this Agreement similarly shall be binding upon the Property and shall run with title to the same upon being duly recorded against the Property by the City.

9.0 **Applicable Law; Venue; Interpretation; Further Documentation.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any litigation arising out of this Agreement shall be in Brevard County, Florida or, for federal court actions, in Orlando, Florida. The Parties hereby agree and acknowledge that they have both participated equally in the drafting of this Agreement and no Party shall be favored or disfavored regarding the interpretation to this Agreement in the event of a dispute between the Parties.

The parties agree that at any time following a request by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party to this Agreement. Additionally, upon receipt of a written request from Developer or authorized representative with power of attorney, the City shall within thirty (30) days deliver an estoppel certificate in writing with confirmation that the Developer is in full compliance with the terms of this Agreement and is not in default hereunder, or if the Developer is in default, an estoppel certificate which states the basis for such default.
10.0 **Amendments.** This Agreement shall not be modified or amended except by written agreement duly executed by both Parties hereto (or their successors or assigns) and approved by the City Council.

11.0 **Entire Agreement; Exhibits.** This Agreement and all attached exhibits hereto supersede any other agreement, oral or written, regarding the Property and contain the entire agreement between the City and Developer as to the subject matter hereof. The Exhibits attached hereto and referenced herein are hereby fully incorporated herein by this reference.

12.0 **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect the validity or enforceability of the remainder of this Agreement.

13.0 **Effective Date; Counterparts.** This Agreement shall become effective upon approval by the City Council and execution of this Agreement by both Parties hereto.

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.

14.0 **Recordation.** Upon full execution by the Parties, this Agreement shall be recorded in the Public Records of Brevard County, Florida by the City within 30 days after the City's final approval and execution of this Agreement at the expense of Developer.

15.0 **Relationship of the Parties.** The relationship of the Parties to this Agreement is contractual and Developer is an independent contractor and not an agent of the City. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither Party is authorized to, nor shall either Party act toward third persons or the public in any manner, which would indicate any such relationship with the other. Developer shall be solely responsible for designing, permitting constructing, operating and maintaining this Project.

16.0 **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City’s right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City’s potential liability under state or federal law.

17.0 **City’s Police Power.** Developer agrees and acknowledges that the City hereby reserves all police powers granted to the City by law. In no way shall this Agreement be construed as the City bargaining away or surrendering its police powers.

18.0 **Third-Party Rights.** This Agreement is not a third-party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third party.
19.0 **Attorney's Fees.** In connection with any arbitration or litigation arising out of this Agreement, each Party shall be responsible for their own attorney’s fees and costs.

20.0 **Development Permits.** Nothing herein shall limit the City's authority to grant or deny any development permit applications or requests subsequent to the effective date of this Agreement. The failure of this Agreement to address any particular City, County, State and/or Federal permit, condition, term or restriction shall not relieve Developer or the City of the necessity of complying with the law governing said permitting requirement, condition, term or restriction, except as expressly stated in this Agreement. Without imposing any limitation on the City’s police powers, the City reserves the right to withhold, suspend or terminate any and all certificates of occupancy for any building, trailer, structure or unit if Developer is in breach of any material term and condition of this Agreement.

21.0 **Compliance with Comprehensive Plan and Land Development Regulations.** Developer shall comply with all land development regulations and ordinances of the City of West Melbourne, Florida. This Agreement provides no vested rights against changes to the City of West Melbourne Comprehensive Plan or land development regulations as they may apply to this Property, providing that such changes do not affect the approved use of the Property.

22.0 **Default.** Failure by either Party to perform each and every one of its obligations hereunder shall constitute a default, entitling the non-defaulting Party to pursue whatever remedies are available to it under Florida law or equity including, without limitation, termination of this Agreement or an action for specific performance and/or injunctive relief. Prior to any Party filing any action as a result of a default under this Agreement, the non-defaulting Party shall first provide the defaulting Party with written notice of said default. Upon receipt of said notice, the defaulting Party shall have thirty (30) days, or other reasonable time period not to exceed one hundred twenty (120) consecutive days in the event the thirty (30) day time period is not a sufficient time to cure said default to the reasonable satisfaction of the non-defaulting Party prior to filing said action.

23.0 **Termination.** In addition to those circumstances allowing termination as already provided herein, the City shall have the right, but not obligation, to terminate the Agreement if Developer permanently abandons construction of the Project, provided, however, the City shall first deliver written notice and an opportunity to cure to the defaulting Party as set forth in Section 21.0 above. If the City terminates this Agreement, the City shall record a notice of termination against the Property in the public records of Brevard County, Florida. This Agreement may otherwise be terminated by mutual written agreement of the Parties.

24.0 **Force Majeure.** The Parties agree that in the event that the failure by either Party to accomplish any action required hereunder within a specified time period (“Time Period”) constitutes a default under the terms of this Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such Party, including, but not limited to, acts of God, acts of government authority (other than the City’s own acts), acts of public enemy or war, riots, civil disturbances, pandemic, power failure, shortages of labor or
materials, injunction or other court proceedings beyond the control of such Party, or severe adverse weather conditions (“Uncontrollable Event”), then, notwithstanding any provision of this Agreement to the contrary, that failure shall not constitute a default under this Agreement and any Time Period proscribed hereunder shall be extended by the amount of time that such Party was unable to perform solely due to the Uncontrollable Event. The extended time period shall be agreed to in writing by the Parties and said agreement shall not be unreasonably withheld by either Party.

25.0 **Environmental Conditions.** All environmental concerns on the site (if any) are to be addressed and permits are to be secured from the applicable local, state, or federal agencies as required.

26.0 **Notice.** Whenever either Party desires to give notice to the other, notice shall be sent by hand delivery or certified mail, return receipt requested, and regular U.S. mail and shall be sent to:

**For the City:**
City of West Melbourne
Attn: Scott Morgan, City Manager
2240 Minton Road
West Melbourne, FL 32904-4928
Telephone: 321-727-7700
Email: smorgan@westmelbourne.org

**with copies to:**
Morris Richardson, City Attorney
2240 Minton Road
West Melbourne, FL 32904-4928
Telephone: 321-837-7772
Email: mrichardson@westmelbourne.org

**For Developer:**
Epoch Properties, Inc.
Attn: Justin Sand
359 Carolina Avenue
Winter Park, FL 32789
Telephone: 407-644-9055
Email: justin@epochresidential.com

**with copies to:**
Rossway Swan
Attn: J. Cole Oliver
1901 S. Harbor City Blvd, Ste 500
Melbourne, FL 32901
Telephone: 321-984-2700
Email: coliver@rosswayswan.com

Either Party may freely modify their respective contact person and address contained in this Paragraph by providing written notice of the modification to the other Party. Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; and if mailed, on the third business day after mailing.

**IN WITNESS WHEREOF,** the Parties have hereunto set their hands and seal on the date first above written.

[SIGNATURE PAGES FOLLOW]
Signed, sealed and delivered in the presence of the following witnesses:

__________________________
Signature of Witness

__________________________
Printed Name of Witness

__________________________
Signature of Witness

__________________________
Printed Name of Witness

City of West Melbourne

By: ____________________________
   Hal J. Rose, Mayor

Date: ____________________________

ATTEST:

By: ____________________________
   City Clerk

By: ____________________________
   Morris Richardson, City Attorney

CITY SEAL

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of (___) physical presence or (___) online notarization, this ______ day of ____________, 2021, by Hal J. Rose, the Mayor of the City of West Melbourne, on behalf of the City, who is personally known to me or produced ___________________ _______________ as identification.

(Notary Public Signature)

__________________________
(Print Name)
Notary Public, State of ______________________
Commission No.: ______________________
My Commission Expires: ______________________
Signed, sealed and delivered in the presence of the following witnesses:

________________________________________
Signature of Witness

________________________________________
Printed Name of Witness

________________________________________
Signature of Witness

________________________________________
Printed Name of Witness

STATE OF ____________________________
COUNTY OF __________________________

The foregoing instrument was acknowledged before me by means of (__) physical presence or (___) online notarization, this _____ day of __________, 2021, by ________________________, the ______________ of __________________ Inc., a Florida corporation. He is personally known to me or produced ____________________________ as identification.

(Notary Seal)

________________________________________
(Notary Public Signature)

________________________________________
(Print Name)

Notary Public, State of __________________________
Commission No.: __________________________
My Commission Expires: __________________________

DEVELOPER IS HEREBY ADVISED THAT SHOULD DEVELOPER FAIL TO FULLY EXECUTE, AND DELIVER TO THE CITY, THIS AGREEMENT WITHIN THIRTY (30) DAYS FROM THE DATE THAT THE CITY COUNCIL APPROVES THIS AGREEMENT, THIS AGREEMENT, AND ANY DEVELOPMENT PERMIT APPROVALS REFERENCED HEREUNDER, SHALL AUTOMATICALLY BE DEEMED NULL AND VOID.
Signed, sealed and delivered in the presence of the following witnesses:

Matthews Property Owners:

_________________________________________
Signature of Witness

_________________________________________
Printed Name of Witness

_________________________________________
Signature of Witness

_________________________________________
Printed Name of Witness

STATE OF ________________________________
COUNTY OF ______________________________

The foregoing instrument was acknowledged before me by means of (__) physical presence or (___) online notarization, this _____ day of ____________, 2021, by ______________________, and _______________________________. He/She are personally known to me or produced ___________________________ as identification.

(NOTARY SEAL)

_________________________________________
(Notary Public Signature)

_________________________________________
(Print Name)

Notary Public, State of ________________________________
Commission No.: ________________________________
My Commission Expires: __________________________

11 of 20
Signed, sealed and delivered in the presence of the following witnesses:

Promise Property Owner: Promise Inc., a Florida corporation

______________________________
Signature of Witness

______________________________
Printed Name of Witness

Date: ________________

______________________________
Signature of Witness

______________________________
Printed Name of Witness

STATE OF __________________________
COUNTY OF __________________________

The foregoing instrument was acknowledged before me by means of (__) physical presence or (___) online notarization, this _____ day of ________, 2021, by ________________, the ________________ of ________________, Inc. a Florida corporation. He is personally known to me or produced ______________________ as identification.

(Notary Seal)

(Notary Public Signature)

______________________________
(Print Name)

Notary Public, State of __________________________
Commission No.: __________________________
My Commission Expires: ______________________
EXHIBIT A – Matthews Property
LEGAL DESCRIPTION

DESCRIPTION: LOT 9 AND THE WEST 1/2 OF LOT 10, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 164, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING SOUTH OF INTERSTATE 95 AND LESS MINTON ROAD RIGHT OF WAY AND LIMITED ACCESS RIGHT OF WAY FOR INTERSTATE 95. CONTAINING 5.37 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD.
EXHIBIT B – Promise Property

A PARCEL OF LAND BEING A PORTION OF LOTS 7, 8, 9 AND 10, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, IN SECTION 18, TOWNSHIP 28 SOUTH, RANGE 37 EAST, AS RECORDED IN PLAT BOOK 1, PAGE 164, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING SOUTH OF INTERSTATE 95 AND EAST OF MINTON ROAD, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 18, THENCE RUN NORTH 00°29'37" EAST ALONG THE WEST LINE OF SAID SECTION 18, A DISTANCE OF 809.89 FEET; THENCE SOUTH 89°30'23" EAST, A DISTANCE OF 46.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN PARCEL; THENCE NORTH 00°29'37" EAST ALONG THE EAST RIGHT OF WAY LINE OF MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.69, A DISTANCE OF 261.00 FEET; THENCE NORTH 04°48'03" EAST ALONG THE EAST RIGHT OF WAY LINE OF MINTON ROAD AS SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION MAP SECTION 70220-2401 AS RECORDED IN ROAD PLAT BOOK 1, PAGE 3, OF THE PUBLIC RECORDS OF SAID BREVARD COUNTY AND FLORIDA DEPARTMENT OF TRANSPORTATION MAP SECTION 70220 F.P. NO. 405506 3, A DISTANCE OF 249.70 FEET; THENCE SOUTH 87°20'30" EAST, A DISTANCE OF 678.21 FEET; THENCE RUN ALONG THE WESTERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 7494, PAGE 0022, OF THE SAID PUBLIC RECORDS OF BREVARD COUNTY FOR THE FOLLOWING FIVE (5) CALLS: SOUTH 00°29'37" WEST, A DISTANCE OF 365.79 FEET; THENCE SOUTH 54°03'10" WEST, A DISTANCE OF 254.38 FEET; THENCE SOUTH 35°56'50" WEST, A DISTANCE OF 77.00 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 217.16 FEET, A CENTRAL ANGLE OF 09°55'10", THENCE SOUTHWESTERLY ALONG THE ARC A DISTANCE OF 37.60 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 26°01'40" WEST, A DISTANCE OF 332.90 FEET TO THE POINT OF BEGINNING. CONTAINING 9.33 ACRES MORE OR LESS.

AND TOGETHER WITH:

PARCEL CI:

A PARCEL OF LAND, BEING A PORTION OF LOTS 5, 6 AND 7, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION IN SECTION 18, TOWNSHIP 28 SOUTH, RANGE 37 EAST, RECORDED IN PLAT BOOK 1, PAGE 164, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING WESTERLY OF INTERSTATE 95 AND EAST OF MINTON ROAD, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 18; THENCE RUN S89°21'26"E ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 742.22 FEET; THENCE RUN N00°38'34"E A DISTANCE OF 310.00 FEET; THENCE S89°44'41"E A DISTANCE OF 52.87 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED
PARCEL ALSO BEING THE INTERSECTION WITH A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 30.00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 38°53'50" FOR AN ARC LENGTH OF 20.37 FEET TO THE POINT OF TANGENCY; THENCE RUN N01°05'40"E A DISTANCE OF 44.20 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 193.54 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°12'19" FOR AN ARC DISTANCE OF 75.01 FEET TO THE POINT OF TANGENCY; THENCE RUN N23°17'59"E A DISTANCE OF 264.35 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 189.16 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°39'35" FOR AN ARC DISTANCE OF 41.80 FEET TO THE POINT OF TANGENCY; THENCE RUN N35°57'34"E A DISTANCE OF 191.87 FEET; THENCE RUN S54°02'26"E A DISTANCE OF 60.44 FEET; THENCE RUN N35°57'34"E A DISTANCE OF 9.97 FEET; THENCE RUN S54°02'26"E A DISTANCE OF 384.26 FEET; THENCE RUN S84°37'24"E A DISTANCE OF 105.38 FEET; THENCE RUN S01°05'40"E A DISTANCE OF 77.05 FEET; THENCE RUN S33°54'37"E A DISTANCE OF 37.21 FEET; THENCE RUN S43°46'07"E A DISTANCE OF 22.29 FEET; THENCE RUN S30°09'39"E A DISTANCE OF 68.50 FEET; THENCE RUN S45°16'13"E A DISTANCE OF 39.38 FEET; THENCE RUN S35°13'35"E A DISTANCE OF 95.73 FEET; THENCE RUN S36°40'46"E A DISTANCE OF 31.74 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 19.00 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°54'32" FOR AN ARC DISTANCE OF 13.90 FEET TO THE POINT OF TANGENCY; THENCE RUN S05°13'46"W A DISTANCE OF 53.57 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 54.00 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 94°37'52" FOR AN ARC DISTANCE OF 89.19 FEET TO THE POINT OF TANGENCY; THENCE RUN S89°24'06"E A DISTANCE OF 205.91 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 54.00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 81°34'09" FOR AN ARC DISTANCE OF 76.88 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 19.00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°50'36" FOR AN ARC DISTANCE OF 11.89 FEET TO THE POINT OF TANGENCY; THENCE RUN S44°48'25"E A DISTANCE OF 192.62 FEET TO THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 95 (STATE ROAD NO. 9); THENCE RUN S54°02'26"E A DISTANCE OF 50.71 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 3669.83 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°05'03" FOR AN ARC DISTANCE OF 517.79 FEET; THENCE RUN S89°21'26"W A DISTANCE OF 811.08 FEET TO THE INTERSECTION WITH A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 890.00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF
SAID CURVE THROUGH A CENTRAL ANGLE OF 44°44'02" FOR AN ARC DISTANCE OF 694.87 FEET TO THE POINT OF TANGENCY; THENCE RUN N89°52'20"W A DISTANCE OF 98.69 FEET; THENCE RUN N85°07'51"W A DISTANCE OF 200.52 FEET; THENCE RUN N89°44'41"W A DISTANCE OF 96.59 FEET TO THE POINT OF BEGINNING. CONTAINING 12.47 ACRES MORE OR LESS.

AND TOGETHER WITH:

PARCEL C2:

A PARCEL OF LAND, BEING A PORTION OF LOTS 6, 7 AND 8, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION IN SECTION 18, TOWNSHIP 28 SOUTH, RANGE 37 EAST, RECORDED IN PLAT BOOK 1, PAGE 164, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING WESTERLY OF INTERSTATE 95 AND EAST OF MINTON ROAD, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 18; THENCE RUN S89°21'26"E ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 46.00 FEET; THENCE RUN NOO°30'21"E A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE NOO°30'21"E A DISTANCE OF 155.00 FEET; THENCE RUN S89°21'26"E A DISTANCE OF 834.50 FEET; THENCE RUN N86°03'26"E A DISTANCE OF 212.77 FEET; THENCE RUN S89°25'20"E A DISTANCE OF 98.94 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 810.00 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 38°33'58" FOR AN ARC DISTANCE OF 545.21 FEET; THENCE RUN N89°21'26"W A DISTANCE OF 1651.70 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT PARCEL NO. 1 AS DESCRIBED HERE.

ALL LESS AND EXCEPT

PARCEL NO. 1:

A PARCEL OF LAND, BEING A PORTION OF LOTS 6 AND 7, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION IN SECTION 18, TOWNSHIP 28 SOUTH, RANGE 37 EAST, RECORDED IN PLAT BOOK 1, PAGE 164, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING WESTERLY OF INTERSTATE 95 AND EAST OF MINTON ROAD, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 18; THENCE RUN S89°21'26"E ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 742.22 FEET; THENCE RUN NOO°38'13"E A DISTANCE OF 310.00 FEET; THENCE S89°44'41"E A DISTANCE OF 52.87 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL ALSO BEING THE INTERSECTION WITH A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 30.00 FEET; THENCE RUN
NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 38°53'50" FOR AN ARC LENGTH OF 20.37 FEET TO THE POINT OF TANGENCY; THENCE RUN N01°05'14"E A DISTANCE OF 44.20 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 193.54 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°12'19" FOR AN ARC DISTANCE OF 75.01 FEET TO THE POINT OF TANGENCY; THENCE RUN N23°17'59"E A DISTANCE OF 264.35 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 189.16 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°39'35" FOR AN ARC DISTANCE OF 41.80 FEET TO THE POINT OF TANGENCY; THENCE RUN N35°57'34"E A DISTANCE OF 191.87 FEET; THENCE RUN S54°02'26"E A DISTANCE OF 60.44 FEET; THENCE RUN N35°57'34"E A DISTANCE OF 9.97 FEET; THENCE RUN S54°02'26"E A DISTANCE OF 366.62 FEET; THENCE RUN N77°28'35"W A DISTANCE OF 49.96 FEET; THENCE RUN N68°53'06"W A DISTANCE OF 45.42 FEET; THENCE RUN N89°11'09"W A DISTANCE OF 34.13 FEET; THENCE RUN N41°15'54"W A DISTANCE OF 67.36 FEET; THENCE RUN N36°12'52"W A DISTANCE OF 69.63 FEET; THENCE RUN S63°27'33"W A DISTANCE OF 78.20 FEET; THENCE RUN S62°55'07"W A DISTANCE OF 60.53 FEET; THENCE RUN S67°14'06"W A DISTANCE OF 36.28 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 176.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 09°54'52" FOR AN ARC DISTANCE OF 30.45 FEET; THENCE RUN S23°11'34"W A DISTANCE OF 267.96 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 176.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°06'45" FOR AN ARC DISTANCE OF 67.93 FEET; THENCE RUN S00°35'20"W A DISTANCE OF 62.86 FEET; THENCE RUN N89°44'41"W A OF DISTANCE 3.74 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8328, PAGE 1858, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.
EXHIBIT C – Approved Promise Site Plan
EXHIBIT D – PRELIMINARY SITE PLAN
To: Honorable Members of the Planning and Zoning Board

From: Christy Fischer, Planning Director

Meeting Date: June 9, 2021

SUBJECT

Request for approval of a Development Agreement (DA 2021-04) between the City of West Melbourne and Acquest Development, LLC

RECOMMENDATION

Staff’s proposed motion is to:

Recommend approval of the development agreement to limit the multi-family threshold and the density of the proposed Acquest development. This site is located on the east side of the St. Johns Heritage Parkway, north of US 192 and west of I-95.

FISCAL IMPACT

The applicant pays the $250 advertising fee.
DISCUSSION

This agreement pertains to the proposed site on the east side of the St. Johns Heritage Parkway, north of US 192, across from the development area called Space Coast Town Center. The developer has called this 36.73 acres, Space Coast Business Center. The primary development style by Acquest Development, LLC is for commercial and industrial uses. However since the developer wants to keep the option of multi-family available, the primary purpose of this development agreement is to limit the proposed density and the multi-family development threshold on the 36.73 acres.

The agreement addresses the quantity of apartments, 184 units on 25% of the total 36.73 acres of land to be owned by the developer. The development agreement binds the owners and subsequent owners to the provisions of the agreement for a period of 30 years. The following information has been compiled to assist the boards in making recommendations and determinations concerning this request.

Background Information:

Applicant: Acquest Development, Inc. (represented by Omar Abu-Sitta, Partner)

Location: East side of St. Johns Heritage Parkway, north of US 192

Size: Approximately 36.73 acres for mixed use development

Reason(s) for Agreement: Legal affirmation of the Developer’s commitment for density limits.

Legal Status of development agreements

A development agreement is a legal mechanism which contains additional conditions and can contain waivers to the Land Development Regulations for a specific development. There are various types of development agreements to assure that specific conditions and waivers are adhered to by both the developer and the City, such as utility agreements, and pre-annexation agreements. But generally, when the term “development agreement” is used in the City of West Melbourne, the reference is to specific site enhancements as it relates to the Land Development Regulations (city codes).
This is a flowchart of the development agreement process

Non-Statutory Development Agreements

Preliminary Conference

Applicant Prepares Draft Development Agreement

Development Agreement Submitted to the City

Administrative Review

Review and Recommendation by Local Planning Agency (Planning & Zoning Board)

Review/Final Decision by City Council

Disapprove

Approve

Approve w/ Conditions

DA recorded within 14 days

DA governs all development encompassed by the agreement
Staff Analysis

Developer’s Request and City’s Review

A developer’s agreement provides the public with assurances to address any features that might add to compatibility with the surrounding area. The development agreement serves to solidify that the density of the property will be capped and that per the discussion during the rezoning of the property, the commitment by the developer to self-limit the potential apartments to no more than 25% instead of a 65% threshold of the 36.73 acres and to commit to building senior housing or fee simple townhouses instead of a market rate rental community.

Staff Review:

Staff assesses the request in terms of urban sprawl, land use compatibility, and consistency with the policies in the Comprehensive Plan of the proposed change of the future land use map designation from Residential 2 (RES-2) to Parkway Interchange (PI), and for this property to have a maximum of 184 multi-family residential units. The following sections provide information on staff’s analysis.

Development of Property on pages 2 and 3

Section 5 describes both the multi-family density and non-residential intensity limits. The developer also has the ability to only have commercial, industrial and open space uses. The last column in the table on page 3 indicates the developer has potentially identified being able to build 77% of the land as commercial and industrial with 23% open space or 184 units and 65% of the land as commercial and industrial with 10% open space. As mentioned in the staff reports for the comprehensive plan map amendment and rezoning, an emphasis on commercial and industrial development near the NE intersection of US 192 and the St. Johns Heritage Parkway, within ½ mile to the I-95 interchange is a logical use for logistic companies, warehouse distribution centers and other transportation dependent uses.

The developer commits to not build more than 184 apartments with 85% occupancy of the units as senior housing or townhouse lots (fee simple ownership), and the remaining 15% as non-age restricted rentals or townhouse lots.

Utilities in Section 6, page 3

This section merely states that the City of West Melbourne is the water and sewer provider.

Architecture in Section 7, page 3
This section states that industrial metal buildings will be covered with a finish that appears like stucco or other materials. This section also commits the developer to have residential buildings have sloped roofs and concrete block with finished veneers.

Fire Protection in Section 9, Page 4

The developer will have the ability to have drafting hydrants during vertical construction if they have not extended potable water lines completely to the site. This type of arrangement has been done with other developments where potable water lines have to be extended hundreds of feet away. Potable water lines have to be cleared by the City and the Florida Department of Environmental Protection as well as other agencies who may own the road rights of way that the line will be buried in, such as FDOT, or Brevard County.

Duration in Section 22, page 6

This section speaks to the duration of the agreement terms lasting for thirty (30) years which ensures that the limitations are meaningful and last through a generation of development trends.

Developer’s Request and Consistency with the Comprehensive Plan

The development agreement is consistent with the Comprehensive Plan as indicated with the analysis of the policies below.

The following is an excerpt from the Visioning Element:

“6.9 Balanced Residential and Business Interests
Recognize that a vibrant community provides for the needs of residents and businesses by establishing land use and development practices that balance residential concerns and economic demands.”

Staff comment – By lowering the percent of multi-family and limiting the density, this project recognizes the balance of uses in this prime location as being more non-residential than residential uses.

The following is an excerpt from the Future Land Use Element:

“3.2 c Parkway Interchange
PI Uses: Parkway Interchange designations can be located at an intersection of the St. Johns Heritage Parkway and arterial roads which are in half-mile proximity to Interstate 95. This designation is intended to promote a mix of uses with the recognition that commercial types of uses will desire to be at the more prominent
intersections and residential uses may be located behind the commercial activities."

Staff comment – The fact that the developer proposes mostly commercial and industrial uses with the possibility of residential uses located behind the commercial and industrial activities.

The following is an excerpt from the Transportation Element:

“1.1 Transportation Improvements and Land Use Connection
Ensure future transportation infrastructure improvements support the city’s land use goals and community planning vision by providing for:

a. Interconnected community neighborhoods.
b. Linked commercial areas and employment centers.
c. Accessible public spaces, gathering centers, and civic resources.
d. Integrated city-wide development patterns.”

Staff Comments – The development supports the policy of linking commercial areas and industrial employment centers within the new road network.

Developer’s Request and Consistency with the Land Development Regulations
The proposed development agreement complies with the current criteria found in Section 66-418 and Section 66-420 of the Land Development Regulations for development agreements.

Conclusion:

The analysis above demonstrates that the request is:

- Consistent with the comprehensive plan,
- Compliant with the Land Development Regulations, and
- Consistent with the intent of density limits and a cap on the quantity of apartments as well as commitments in advance for design and landscaping along the developer’s portion of property along Norfolk Parkway.

Public Notice:

The rezoning was advertised in the legal section of the Florida Today in May. Mailed notices were also sent to neighbors (residential and commercial) in the 500 foot radius to the property.
RECOMMENDATION

Recommend to City Council to approve the Acquest development agreement which is compliant with the City’s Land Development Regulations and Comprehensive Plan, and responds to Council’s request for a density cap and age restrictions on occupancy of rental units.

ATTACHMENT

1. Development Agreement
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into this __ day of __________, 2021, by and between the CITY OF WEST MELBOURNE, a Florida municipal corporation whose address is 2240 Minton Road, West Melbourne, Florida 32904 (“City”), and Acquest Development Company, LLC, a New York limited liability company (“Developer”) whose address is 5554 Main Street, Williamsville, NY 14221.

WITNESSETH:

WHEREAS, the Developer desires to develop commercial, industrial and some apartment uses in a project named The Space Coast Business Center (“Project”) on a parcel of land approximately 36.73 acres in size, which property is located on the east side of the St. Johns Heritage Parkway, north of US 192 in West Melbourne (“Property”), and is more particularly described in the legal description attached as Exhibit A, and depicted on the Boundary Survey, attached as Exhibit B of this Agreement and specifically made a part of this Agreement by reference; and

WHEREAS, the Developer’s Project furthers the goals and objectives of the City’s Comprehensive Plan and anticipates the development of the Property with the Parkway Interchange designation could have industrial, commercial and multi-family uses with specific development limits: and

WHEREAS, the Developer desires to change the land use designation from Brevard County Residential Two (RES-2) with a current density of two dwelling units per acre to Parkway Interchange with a maximum density of one hundred eighty-four (184) dwelling units as limited by this Agreement; and

WHEREAS, the Developer acknowledges that the multi-family component of the Project could be targeted to either fee simple townhouse lots and condominiums for all demographics or with 85 percent occupancy by senior citizens in the community by making available independent living units specifically to meet the needs of those individuals over 55 years of age and the remaining 15% being non-age restricted housing; and
WHEREAS, the Developer agrees that this Project will be designed and constructed in accordance with the City’s Code of Ordinances, except as authorized in the Site Plan and as otherwise set forth herein in this Agreement; and

WHEREAS, this Agreement substantially conforms to the requirements of Chapter 66, Article VI, Division 4 of the City’s Code of Ordinances for nonstatutory development agreements; and

WHEREAS, the City and Developer acknowledge that this Agreement is binding on the City and the Developer, and respective successors and assigns, for the term of this Agreement and shall constitute the entire development agreement upon adoption and execution by the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenant contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated into this Agreement by reference.

SECTION 2. EFFECTIVE DATE.

The effective date of this Agreement shall be the date upon which this Agreement is recorded in the Public Records of Brevard County.

SECTION 3. DEVELOPMENT OF PROPERTY.

The City and Developer acknowledge that the Property will be developed as one lot consisting of commercial, industrial buildings and perhaps an apartment complex but there is no master concept plan for the development. All development must adhere to the City’s Zoning and development codes.

SECTION 4. CONSISTENCY WITH COMPREHENSIVE PLAN.

The City and Developer agree that, contingent upon the City’s approval of a change in land use designation from Brevard County Residential Two to City of West Melbourne Parkway Interchange, this Agreement is consistent with the City’s Comprehensive Plan.

SECTION 5. DENSITY AND INTENSITY.

The Parkway Interchange future land use designation and Gateway Interchange zoning district allows for a maximum multi-family residential density of up to twenty-five units per acre and up to 65% of the total land area could be used for multi-family for a potential total of 477 units. However, the City and the Developer agree that the Property shall be limited to a maximum density of one hundred eighty four (184) dwelling units (20 dwelling units/acre) on a maximum of
25% of the land area and that the remainder of the Project (75%) will be developed with non-residential uses as indicated in this table:

<table>
<thead>
<tr>
<th>West Melbourne Parkway Interchange</th>
<th>Density: 20 dwelling units per acre with 25% limit set in a Development Agreement</th>
<th>Dwelling units: 184 dwelling units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Intensity if strictly non-residential: 1.0 FAR with 77% being industrial and commercial</td>
<td>Non-residential building area: Commercial at 12% of the acreage = 191,995 SF with 23% open space and 65% acreage of industrial = 1,039,973 SF</td>
</tr>
<tr>
<td></td>
<td>Intensity if residential is combined: 1.0 FAR with 65% being industrial and commercial</td>
<td>10% open space = 160,127 SF 25% multi-family = 184 dwellings 65% industrial/commercial = 1,039,973 SF</td>
</tr>
</tbody>
</table>

The Developer will ensure that 85% of the multi-family population is age restricted to individuals 55 years of age with the remaining 15% non-age restricted.

**SECTION 6. UTILITIES.**

The Developer and the City agree that the City shall be the provider of sanitary sewer and potable water to the Property and that the Developer must connect to the City’s municipal water and sewer systems. The City will provide “will serve” letters but the Developer must design, secure City and FDEP plan review approvals, and pay all costs for any necessary on-site and off-site water and sewer facilities necessary to serve the project.

**SECTION 7. ARCHITECTURE.**

As part of a planned community, all exterior building materials for commercial and residential buildings will consist of concrete block construction, and sloped roofs. The exterior of industrial buildings can have flat roofs but shall not consist of exposed metal siding, but rather stone, concrete, wood or other non-metal veneers.

**SECTION 8. STORMWATER.**

There are no special circumstances concerning the drainage in the Project area except that if the property contains floodzone designation, then the Developer’s drainage may have to compensate for extra drainage storage or receive a Letter of Map Revision from the US Federal Emergency Management Agency (FEMA).

**SECTION 9. APPLICATION FOR DEVELOPMENT PERMITS; SUPPLEMENTAL CRITERIA AND STANDARDS.**

Before vertical construction may commence on the Property, the Owner agrees to submit a site plan application and secure final site plan approval, and required land development
approval(s) from the City applicable to the parcel(s) contemplated for vertical development, conforming to the requirements of the City’s Code of Ordinances:

**FIRE PROTECTION**

1. The Developer shall have the option to construct and maintain temporary private drafting hydrants and transmission lines for fire flow to the site during construction only and shall tie into the City’s improved water system when it is constructed and made available for use.

2. All fire code requirements for emergency access, fire flow and other criteria shall be met regardless of whether the system is temporary, is private, or is a permanent public water system.

**SECTION 10. CONCURRENCY / IMPACT FEES.**

The Developer shall be responsible for payment of impact fees, proportionate fair-share, or cause to construct infrastructure improvements as required by the City/County government entities as may be required to meet regional and local concurrency requirements established by the respective agencies’ Comprehensive Plan, except as may be explicitly waived or credited by the applicable agency with jurisdiction.

**SECTION 11. PERMITS.**

The Developer shall, at his/her expense, obtain all necessary permits required by the City and any other federal, state, regional, or other local governmental entity necessary to lawfully initiate any work on the subject Property. The City agrees to take reasonable steps to diligently process support all necessary permits required to be issued by the City consistent with this Agreement, and to timely cooperate with the Developer in processing and providing authorization or consent to any permit applications with federal, county, and state agencies.

**SECTION 12. DEFAULT.**

Each of the Parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party thirty (30) days from the date of its receipt of such notice within which to cure any such defaults or to commence and thereafter diligently pursue to completion good faith efforts of effect such cure and to thereafter notify the other parties of the actual cure of any such defaults. This Agreement is enforceable at law or in equity by the non-defaulting party, including, but not limited to the right of specific performance of such obligations, shall be forever barred, in that event that no action is brought against the Owner, or the Property, for such enforcement of obligations, within five (5) years after the Effective Date of the Agreement.

**SECTION 13. BINDING AGREEMENT ON SUCCESSORS.**

This Agreement shall be binding upon and shall inure to the benefit of the Owner, the City, and their respective successors and assigns; and shall run with the land, for as long as enforceable by law, or by the limitation of this Agreement.
SECTION 14. RECORDATION.

This Agreement shall be recorded by the City in the Public Records of Brevard County, Florida, within 14 days after the City's final approval and execution of the Agreement, at the expense of the Owner.

SECTION 15. APPLICABLE LAW.

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 16. FURTHER DOCUMENTATION.

The parties agree that at any time following a request by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party to this Agreement. Additionally, upon receipt of a written request from Owner or authorized representative with power of attorney, the City shall within thirty (30) days deliver an estoppel certificate in writing with confirmation that the Owner is in full compliance with the terms of this Agreement and is not in default hereunder, or if the Owner is in default, an estoppel certificate which states the basis for such default.

SECTION 17. SEVERABILITY.

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intention of the parties can continue to be affected.

SECTION 18. RECOVERY OF LEGAL FEES AND EXPENSES.

In connection with any litigation between the City and the Developer, including appellate proceedings arising out of this Agreement or the violation of any law, rule, regulation, ordinance, resolution, or permit, the prevailing party shall be entitled to recover from the other party reasonable legal fees and expenses incurred, whether incurred prior to, during or subsequent to such court proceedings, on appeal or during any bankruptcy proceedings.

SECTION 19. ENTIRE AGREEMENT.

This instrument and referenced Exhibits constitute the entire Agreement between the Developer and the City and superseded all previous discussions, understandings, and other agreements between the Owner and the City relating to the subject matter of this Agreement.

SECTION 20. AMENDMENTS TO AGREEMENT.

Amendments to and waiver of the provisions herein shall be made by the Developer and City in writing by a formal amendment process, to be approved consistent with applicable requirements for any amendment to a nonstatutory development agreement pursuant to Chapter 66 of the City Code and which shall be recorded in the Public Records of Brevard County, Florida at the Developer’s expense.
SECTION 21. COUNTERPARTS.

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.

SECTION 22. DURATION.

Provided the Developer (or its successor(s)) obtains a building permit for one or more buildings within the Project not later than two (2) years from the effective date of this Agreement, this Agreement shall have an initial term of thirty (30) years and shall thereafter automatically renew for successive one (1) year periods. In the event Developer (or its successor(s)) does not obtain a building permit for a principal above-ground structure within two (2) years of the effective date of this Agreement, this Agreement shall terminate and become null and void. In the event the Developer desires to build, modify or develop a plan which is inconsistent with the Site Plan, it shall have the right to terminate this Agreement upon thirty (30) days’ written notice and attempt to negotiate the terms of a new Agreement consistent with the Developer’s then-current development plans.

SECTION 23. ENVIRONMENTAL CONDITIONS.

All environmental concerns on the site are to be addressed and permits are to be secured from the applicable local, State and Federal agencies.

SECTION 24. RESTRICTIONS.

City Council may impose requirements that are more demanding than City Code for the public health, safety, aesthetics, or welfare for its citizens to be imposed during administrative site plan review as a result of the development agreement hearing, so long as there are no material changes to development rights vested through this Agreement.

[Signatures on Following Page]
IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first written above.

CITY OF WEST MELBOURNE:

____________________________________
By: Hal J. Rose, Mayor

Attest:

____________________________________
Cynthia Hanscom, City Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing was acknowledged before me this ___ day of June 2021 by Hal J. Rose as Mayor of the City of West Melbourne and Cynthia Hanscom, City Clerk of the said City. They are personally known to me or produced __________________ as identification and did not take an oath.

____________________________________
Notary Public
Printed Name: ______________________
Commission No.: ____________________
Commission Expires: ________________
DEVELOPER:
Acquest Development Company, LLC

By: _________________________
Mr. Omar Abu-Sitta
Director of Development
for Acquest Development Company, LLC

STATE OF NEW YORK
COUNTY:

The foregoing was acknowledged before me this ___ day of June, 2021 by , as Director of Development for Acquest Development Company, LLC, on behalf of the corporation. This person is [ ] personally known to me or [ ] produced _________________ as identification and did not take an oath.

__________________________
Notary Public
Printed Name:____________________
Commission No: ___________________
Commission Expires:_______________
EXHIBIT A

Legal Description of the Property

Parcel 1:
The West one-half of Lot 28, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION of Section 3, Township 28 South, Range 36 East, as recorded on Plat Book 2, Page 80, of the Public Records of Brevard County, Florida, LESS Road Right of Way of Record.

And

The Westerly 50 feet of Lot 21, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION of Section 3, Township 28 South, Range 36 East, as recorded in Plat Book 2, Page 80, of the Public Records of Brevard County, Florida, LESS Road Right of Way of Record.

Parcel 2:
A parcel of land lying in the Northwest 1/4 of Section 3, Township 28 South, Range 36 East, Lots 26 and 27, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, as recorded in Plat Book 2, Page 80, of the Public Records of Brevard County, Florida, described as follows: Commence at the Southwest corner of the Northwest 1/4 of said Section 3, Township 28 South, Range 36 East; thence North 0 degrees 12'58" West along West line of Northwest 1/4 of said Section 3, a distance of 1,511.80 feet; thence North 89 degrees 25'30" East, 1,368.76 feet to the POINT OF BEGINNING; thence North 0 degrees 12'58" West, 782.70 feet to North line of Section 3; thence North 89 degrees 25'30" East along said North line 511.61 feet; thence South 6 degrees 11'33" East along the East line of said Lot 27, 1,150.18 feet to Southeast corner of Lot 27; thence South 89 degrees 31'10.1" West along the South line of said Lot 27 1,199.92 feet; thence North 6 degrees 34'30" West 367.76 feet; thence South 99 degrees 25'30" West 489.31 feet to the POINT OF BEGINNING.

LESS North 20 feet for Road Right of Way and Haul Road as recorded in Official Records Book 668, Page 98 of the Public Records of Brevard County, Florida.

Together with a 25 foot ingress and egress easement for Tract 51: Commence at the Southwest corner of Northwest 1/4, Section 3, Township 28 South, Range 36 East; thence North 0 degrees 12'58" West 68 feet to North right of way of State Road 192; thence South 89 degrees 36'34" West along said right of way 189.93 feet to POINT OF BEGINNING; thence North 0 degrees 12'58" West 1,076.75 feet; thence South 89 degrees 31'20" West 189.93 feet; thence North 0 degrees 12'58" West 1,126.49 feet to a point 20 feet South of North line of Section 4, Township 28 South, Range 36 East; thence North 89 degrees 25'30" East along said North line 379.86 feet to West line of Northwest 1/4 of Section 3, Township 28 South, Range 36 East; thence North 89 degrees 29'30" East and 20 feet South of North line Section 3, Township 28 South, Range 36 East, a distance of 1,368.76 feet to West line of Tract 51; thence South 0 degrees 12'58" East along said West 25 feet; thence South 90 degrees 25'30" West 1,368.76 feet to West line of Northwest 1/4 Section 3, Township 28 South, Range 36 East; thence South 89 degrees 25'30" West, 354.85 feet; thence South 0 degrees 12'58" East 1,076.75 feet; thence North 89 degrees 31'20" East 189.93 feet; thence South 0 degrees 12'58" East, 1,103.83 feet to the North right of way of State Road 192; thence South 89 degrees 25'30" West along said Right of Way 25 feet to POINT OF BEGINNING.

LESS and EXCEPT that portion described in the Order of Taking recorded in Official Records Book 8184, Page 1303, of the Public Records of Brevard County, Florida.

DESCRIPTION: (AS PROVIDED) NO ADDRESS ASSIGNED
FILE NUMBER: 402000717L

The East 1/2 of Lot 28, of Florida Indian River Land Company Subdivision, Section 3, Township 28 South, Range 36 East, according to the map or plat thereof as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, also known as the East 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 3, Township 28 South, Range 36 East, Brevard County, Florida.

DESCRIPTION: (AS PROVIDED) NO ADDRESS ASSIGNED
FILE NUMBER: 402000750L

Lot 21, LESS the Westerly 50 feet thereof, of Florida Indian River Land Company Subdivision, Section 3, Township 28 South, Range 36 East, according to the map or plat thereof as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, also known as the East 1/2 of the Southeast 1/4 of the Northwest 1/4 of Section 3, Township 28 South, Range 36 East, Brevard County, Florida, LESS the Westerly 50 feet thereof.

CONTAINING 36.73 ACRES, MORE OR LESS
EXHIBIT B
Boundary Survey
To: Members of the West Melbourne Planning and Zoning Board

From: Morris Richardson, City Attorney

Date: June 9, 2021

SUBJECT
Illicit Discharge Detection and Elimination Ordinance

RECOMMENDATION
The City Attorney recommends that the Planning and Zoning Board:

Recommend that the City Council adopt Ordinance No. 2021-16, establishing methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process.

FISCAL IMPACT
None.
DISCUSSION

BACKGROUND

The Federal Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States. Though the CWA does not deal directly with groundwater or with water quantity issues, the statute employs a variety of regulatory and nonregulatory tools to sharply reduce direct pollutant discharges into waterways, and manage polluted runoff. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation’s waters so that they can support the protection of watersheds. To further reduce the adverse effects of stormwater runoff, the U.S. Environmental Protection Agency (EPA) instituted its Stormwater Phase II Final Rule on December 8, 1999.

Phase II Stormwater Program Administration

As authorized by the CWA, the National Pollutant Discharge Elimination System (NPDES) Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The Phase II Stormwater Program is part of the EPA’s NPDES program, which in Florida, is delegated to the Florida Department of Environmental Protection (FDEP) to administer.

Phase II Stormwater Program Regulations

The City of West Melbourne’s Municipal Separate Storm Sewer System (MS4) is a system that discharges stormwater runoff to surface water, or waters of the state. While combined sewer systems have one set of pipes to carry stormwater and wastewater, MS4s have separate lines, one set for the stormwater and another for sewage.

Phase II regulates discharges from small MS4s located in “urbanized areas” (as delineated by the Census Bureau in the most recent census) and from additional small MS4s designated by the FDEP. MS4s that discharge to surface waters are required to get NPDES permits, since they are, in effect, point source discharges of water mixed with various pollutants: oil and grease, metals, pesticides, pathogens, sediment and nutrients. Basic permit provisions for MS4s are targeted at eliminating illicit discharges and controlling runoff from construction sites and newly developed areas.

Illicit Discharge Detection and Elimination

One of the most basic requirements in permits for MS4s calls for elimination of all “non-stormwater” or “illicit” discharges. The reason for this provision is that if sewage coming from homes, businesses, industries, and other facilities goes into a MS4, that sewage will be discharged to a receiving water without going through the municipal sewage treatment plant (because of the basic design of an MS4).

Ordinance No. 2021-16 combines and formalizes many of the City’s existing programs and policies for detecting and eliminating illicit discharges in order to facilitate NPDES permit review and audit processes. As the FDEP’S guidance specifies, a municipal ordinance or other regulatory mechanism created to comply with Phase II regulations must include a prohibition of illicit discharges and an enforcement mechanism.

June 9, 2021
CONCLUSION
The City Attorney recommends that the Planning and Zoning Board, by motion, recommend that the City Council adopt Ordinance No. 2021-16 upon second reading at the City Council meeting on June 15, 2021.

ATTACHMENTS
1. Ordinance No. 2021-16, Illicit Discharge Detection and Elimination
ORDINANCE NO. 2021-16

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA, PROVIDING FOR THE REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of West Melbourne, Florida through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law; and

WHEREAS, this ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process; and

WHEREAS, the objectives of this ordinance are:

(1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;

(2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Brevard County, Florida, that:

Section 1. Recitals and findings. The foregoing Recitals are hereby ratified and incorporated as findings of the City Council and as the legislative intent of this ordinance.

Section 2. Short title. This article shall be known and may be cited as the “City of West Melbourne Illicit Discharge Ordinance.”
Section 3. Definitions. For the purposes of this ordinance the following terms shall have the meanings set forth below:

a. Authorized Enforcement Agency means the department within the city that is designated by the city manager as having the responsibility to enforce this article, or the city’s code enforcement department.

b. Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

c. Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

d. Construction activity means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.

e. Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

f. Illicit connection means either:

(1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

(2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

g. Illicit discharge or illegal discharge means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 71-169 of this article, or discharge to
the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits.

h. **Industrial activities** means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14), or amendments thereto, or any unit operation, complex, area, or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.

i. **Municipal separate storm sewer system (MS4) or storm drain system** means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.

j. **National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit** means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.

k. **Non-stormwater discharge** means any discharge to the storm drain system that is not composed entirely of stormwater.

l. **Person** means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.

m. **Pollutant** means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

n. **Premises** means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

o. **Receiving bodies of water** means any water bodies, watercourses and wetlands into which surface waters flow.

p. **Stormwater** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
q. **Stormwater management system** means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.

r. **Wastewater** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

s. **Water body** means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

t. **Watercourse** means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

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**Section 4. Applicability.** This article shall apply to all pollutants entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**Section 5. Compatibility with other regulations.** This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment, as determined by the city manager or designee, shall control.

**Section 6. Ultimate responsibility.** The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Section 7. Control of pollutant contributions from interconnected MS4s.** Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

**Section 8. Prohibitions.**

(a) **Illicit/illegal discharges.** No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping
connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

(1) petroleum products, including, but not limited to, oil, gasoline, grease;
(2) solid waste;
(3) paints;
(4) steam cleaning waste;
(5) pesticides, herbicides or fertilizers;
(6) degreasers, solvents;
(7) sanitary sewage;
(8) chemically treated cooling water;
(9) antifreeze and other automotive products;
(10) lawn clippings, leaves, branches, etc.;
(11) animal carcasses and feces;
(12) recreational vehicle waters;
(13) dyes;
(14) construction materials;
(15) water from a commercial car wash;
(16) chlorinated water used for pressure cleaning;
(17) any liquids in quantity or quality that are capable of causing a violation of the city's NPDES stormwater permit; and
(18) solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city’s storm drain system.

(b) Illicit connections.

(1) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the city that results in any discharge in violation of any provision of federal, state, city of other laws or regulations.

(2) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

(3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(c) Violation of permits. Any discharge into the stormwater system of the city in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.
Section 9. Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.

(a) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated, and managed on site using best management practices so as not to cause an illicit or illegal discharge to the city’s MS4 or regulated waters.

(b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the city’s land development regulations, shall be properly implemented, installed, operated, and maintained.

(c) Authorized discharges to the city’s MS4 shall be controlled so that they do not impair the operation of the city’s MS4 or contribute to the failure of the city’s MS4 to meet any applicable local, state, or federal law or regulation.

(d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

(e) Any person who has been issued an NPDES permit authorizing discharges to the MS4 shall submit a complete copy of the permit to city engineering department within 30 days after the issuance of a permit.

Section 10. Authorized exemptions.

(a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:

   (1) water line flushing;
   (2) flushing of reclaimed water lines;
   (3) street cleaning;
   (4) construction dust control;
   (5) landscape irrigation;
   (6) diverted stream flows;
   (7) rising ground waters;
   (8) foundation and footing drains;
   (9) dechlorinated swimming pool discharges;
   (10) uncontaminated ground water infiltration (as defined at 40 CFR 35.205(20));
   (11) uncontaminated pumped ground water;
   (12) discharges from potable water sources;
   (13) air conditioning condensate;
   (14) irrigation water;
   (15) springs;
(16) lawn watering;
(17) individual residual car washing
(18) flows from riparian habitat and wetlands; and
(19) discharges or flows from emergency firefighting activities and
emergency response activities done in accordance with an adopted
spill response/action plan.

(b) The prohibition shall not apply to any non-stormwater discharge permitted
under an NPDES permit, waiver, or waste discharge order issued to the
discharger and administered under the authority of the Florida Department of
Environmental Protection, provided that the discharger is in full compliance
with all requirements of the permit, waiver, or order and other applicable laws
and regulations, and provided that written approval has been granted for any
discharge to the storm drain system.

Section 11. Emergency conditions and suspension of MS4 access.
Notwithstanding any other provisions of this article, whenever the authorized
enforcement agency determines that conditions or activities requiring immediate action
to protect public health, safety or welfare, or to provide for compliance with these
regulations, rules promulgated hereunder, or city approved construction plans, city
forces are authorized to enter at a reasonable time in or upon any property for the
purpose of testing, inspecting, investigating, measuring, sampling and correcting such
emergency conditions. Failure to admit personnel responding to emergency, conditions,
as determined and authorized by the authorized enforcement agency, shall constitute a
separate violation of this article.

(a) Suspension due to illicit discharges in emergency situations. The authorized
enforcement agency may, without prior notice, suspend MS4 discharge
access to a person when such suspension is necessary to stop an actual or
threatened discharge, which presents or may present imminent and
substantial danger to the environment, or to the health or welfare of persons,
or to the MS4 or waters of the United States. If the violator fails to comply with
a suspension order issued in an emergency, the authorized enforcement
agency may take such steps as deemed necessary to prevent or minimize
damage to the MS4 or waters of the United States, or to minimize danger to
persons.

(b) Suspension due to the detection of illicit discharge. Any person discharging
to the MS4 in violation of this article may have their MS4 access terminated if
such termination would abate or reduce an illicit discharge. The authorized
enforcement agency will notify a violator of the proposed termination of its
MS4 access. The violator may petition the authorized enforcement agency for
a reconsideration and hearing. It is considered an offense of this article if the
person reinstates MS4 access to premises terminated pursuant to this section
without the prior approval of the authorized enforcement agency.
**Section 12. Inspection and monitoring for compliance.** City personnel and city agents shall be granted access for inspection of facilities discharging or suspected of discharging to the city’s MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the city’s MS4, as well as records relating to them, shall be made accessible to city personnel and city agents for this purpose.

**Section 13. Reporting requirements.** Illicit discharges to the MS4 are prohibited. Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 71-167, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the city, the county public safety office, the county health department, and the Florida Department of Environmental Protection.

**Section 14. Enforcement.**

(a) Notice of violation.

(1) Whenever the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

a. the performance of monitoring, analyses, and reporting;
b. the elimination of illicit connections or discharges;
c. the issuance of cease and desist orders;
d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;
e. advice as to the possible amount of fines; and
f. the implementation of source control or treatment BMPs.

(2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the
established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.

(b) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the code enforcement board or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the code enforcement board. A person who has been determined to have violated a provision of this article may be sentenced to pay a fine as specified in section 1-16, in addition to any other punishment described in section 1-16.

(c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of the authorized enforcement agency, shall be liable to the city for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.

(d) Persons responsible for violation of this article shall be liable for all costs incurred by the city in sampling, analyzing and/or monitoring the discharge, together with all state and/or federal fines imposed as a result of the discharge and cost of removing, remediating or properly treating the discharge.

(e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the city’s legal recourse, be subject to prosecution before the code enforcement board of the city, pursuant to this Code. Each day of violation shall constitute a separate violation.

(f) The city may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.

Section 15. Use of penalty awards. Any funds received by the city as a result of the enforcement of this ordinance which are not used for specific purposes set forth in this ordinance shall be deposited in the stormwater utility fund.

Section 16. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 17. Inclusion in Code. It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance shall be made a part of the City
of West Melbourne Code of Ordinances in substantially the form of attached Exhibit A, and the sections may be renumbered to accomplish such intention.

Section 19. Effective Date. This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of West Melbourne, Brevard County, Florida, this 15th day of June, 2021.

ATTEST:

CYNTHIA HANSCOM, CITY CLERK

________________________________
HAL J. ROSE, MAYOR

Reviewed as to form and legal sufficiency:

_______________________________
Morris Richardson, City Attorney

1st READING: June 1, 2021
2nd READING: June 15, 2021
EXHIBIT A

Chapter 71 – Natural Resources and Stormwater

ARTICLE VI. – ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sec. 71-161. – Short title.

This article shall be known and may be cited as the “City of West Melbourne Illicit Discharge Ordinance.”

Sec. 71-162. – Definitions.

a. **Authorized Enforcement Agency** means the department within the city that is designated by the city manager as having the responsibility to enforce this article, or the city’s code enforcement department.

b. **Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

c. **Clean Water Act** means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

d. **Construction activity** means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.

e. **Hazardous materials** means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

f. **Illicit connection** means either:

   (1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
(2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

g. **Illicit discharge** or **illegal discharge** means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 71-169 of this article, or discharge to the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits.

h. **Industrial activities** means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14), or amendments thereto, or any unit operation, complex, area, or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.

i. **Municipal separate storm sewer system (MS4) or storm drain system** means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.

j. **National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit** means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.

k. **Non-stormwater discharge** means any discharge to the storm drain system that is not composed entirely of stormwater.

l. **Person** means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.

m. **Pollutant** means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
n. **Premises** means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

o. **Receiving bodies of water** means any water bodies, watercourses and wetlands into which surface waters flow.

p. **Stormwater** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

q. **Stormwater management system** means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.

r. **Wastewater** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

s. **Water body** means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

t. **Watercourse** means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

**Sec. 71-163. – Applicability.**

This article shall apply to all pollutants entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**Sec. 71-164. – Compatibility with other regulations.**

This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment, as determined by the city manager or designee, shall control.

**Sec. 71-165. – Ultimate responsibility.**

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Sec. 71-166. – Control of pollutant contributions from interconnected MS4s.**

Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving
MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

**Sec. 71-167. – Prohibitions.**

(a) *Illicit/illega discharges.* No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

1. petroleum products, including, but not limited to, oil, gasoline, grease;
2. solid waste;
3. paints;
4. steam cleaning waste;
5. pesticides, herbicides or fertilizers;
6. degreasers, solvents;
7. sanitary sewage;
8. chemically treated cooling water;
9. antifreeze and other automotive products;
10. lawn clippings, leaves, branches, etc.;
11. animal carcasses and feces;
12. recreational vehicle waters;
13. dyes;
14. construction materials;
15. water from a commercial car wash;
16. any liquids in quantity or quality that are capable of causing a violation of the city’s NPDES stormwater permit;
17. chlorinated water used for pressure cleaning; and
18. solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city’s storm drain system.

(b) *Illicit connections.*

1. No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the city that results in any discharge in violation of any provision of federal, state, city of other laws or regulations.

2. This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.
(3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(c) **Violation of permits.** Any discharge into the stormwater system of the city in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.

Sec. 71-168. – Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.

(a) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated, and managed on site using best management practices so as not to cause an illicit or illegal discharge to the city’s MS4 or regulated waters.

(b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the city’s land development regulations, shall be properly implemented, installed, operated, and maintained.

(c) Authorized discharges to the city’s MS4 shall be controlled so that they do not impair the operation of the city’s MS4 or contribute to the failure of the city’s MS4 to meet any applicable local, state, or federal law or regulation.

(d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

(e) Any person who has been issued an NPDES permit authorizing discharges to the MS4 shall submit a complete copy of the permit to city engineering department within 30 days after the issuance of a permit.

Sec. 71-169. – Authorized exemptions.

(a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:

(1) water line flushing;
(2) flushing of reclaimed water lines;
(3) street cleaning;
(4) construction dust control;
(5) landscape irrigation;
(6) diverted stream flows;
(7) rising ground waters;
(8) foundation and footing drains;
(9) dechlorinated swimming pool discharges;
(10) uncontaminated ground water infiltration (as defined at 40 CFR 35.205(20));
(11) uncontaminated pumped ground water;
(12) discharges from potable water sources;
(13) air conditioning condensate;
(14) irrigation water;
(15) springs;
(16) lawn watering;
(17) individual residual car washing
(18) flows from riparian habitat and wetlands; and
(19) discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

(b) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Sec. 71-170. – Emergency conditions and suspension of MS4 access.

Notwithstanding any other provisions of this article, whenever the authorized enforcement agency determines that conditions or activities requiring immediate action to protect public health, safety or welfare, or to provide for compliance with these regulations, rules promulgated hereunder, or city approved construction plans, city forces are authorized to enter at a reasonable time in or upon any property for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency, conditions, as determined and authorized by the authorized enforcement agency, shall constitute a separate violation of this article.

(a) Suspension due to illicit discharges in emergency situations. The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized
enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

Sec. 71-171. – Inspection and monitoring for compliance.

City personnel and city agents shall be granted access for inspection of facilities discharging or suspected of discharging to the city’s MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the city’s MS4, as well as records relating to them, shall be made accessible to city personnel and city agents for this purpose.

Sec. 71-172. – Reporting requirements.

Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 71-167, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the city, the county public safety office, the county health department, and the Florida Department of Environmental Protection.

Sec. 71-173. – Enforcement.

(a) Notice of violation.

(1) Whenever the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

a. the performance of monitoring, analyses, and reporting;

b. the elimination of illicit connections or discharges;

c. the issuance of cease and desist orders;

d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;

e. advice as to the possible amount of fines; and

f. the implementation of source control or treatment BMPs.
(2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.

(b) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the code enforcement board or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the code enforcement board. A person who has been determined to have violated a provision of this article may be sentenced to pay a fine as specified in section 1-16, in addition to any other punishment described in section 1-16.

(c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of the authorized enforcement agency, shall be liable to the city for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.

(d) Persons responsible for violation of this article shall be liable for all costs incurred by the city in sampling, analyzing and/or monitoring the discharge, together with all state and/or federal fines imposed as a result of the discharge and cost of removing, remedying or properly treating the discharge.

(e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the city's legal recourse, be subject to prosecution before the code enforcement board of the city, pursuant to this Code. Each day of violation shall constitute a separate violation.

(f) The city may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.

Sec. 71-174. – Use of penalty awards.

Any funds received by the city as a result of the enforcement of this ordinance which are not used for specific purposes set forth in this ordinance shall be deposited in the stormwater utility fund.
To: Members of the West Melbourne Planning and Zoning Board

Through: Christy Fischer, Planning Director

From: Morris Richardson, City Attorney

Date: June 9, 2021

**SUBJECT**

Site Plan Review by City Council

**RECOMMENDATION**

The City Attorney recommends that the Planning and Zoning Board:

Review Ordinance No. 2021-17 regarding City Council review of initial site plans, and recommend that the City Council approve, approve with revisions, or not approve Ordinance No. 2021-17 on first reading.

**FISCAL IMPACT**

None.
DISCUSSION

In November 2007, the residents of the City of West Melbourne voted in favor of a referendum that amended the City Charter to create an independent Board of Adjustment. In 2008, the City Council adopted Ordinance No. 2008-15, defining the duties of the newly formed Board of Adjustment. Approximately a month later, the City Council adopted Ordinance No. 2008-14, distributing some of the Council’s land development review duties to the Board of Adjustment and the Planning and Zoning Board. The City Council turned over the duties of approving large site plans and certain small subdivision plats to these boards. The following year, the City Council adopted Ordinance No. 2009-16, further amending the City’s land development regulations to consistently incorporate the redistribution of site plan and subdivision plat review duties throughout the city Code. Each of those three ordinances was adopted with the unanimous approval of the City Council at the time.

According to a contemporaneous staff report, the distribution of development review duties from the City Council to the Planning and Zoning Board and Board of Adjustment was done to “lessen Council’s work load and allow Council to deliberate on other policy matters.”

The following table depicts the current distribution of development review duties among the City Council, Planning and Zoning Board, and Board of Adjustment.

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<tr>
<th></th>
<th>City Council</th>
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<th>Board of Adjustment</th>
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<tr>
<td>Subdivision Plats</td>
<td>Review and act</td>
<td>Review and recommend</td>
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At the City Council meeting on May 18, 2021, Council Member Stephen Phrampus asked that the City Attorney be directed to prepare ordinance changes moving the ultimate responsibility for review and action on all subdivision plats, as well as initial site plans currently acted on by the Planning and Zoning Board or Board of Adjustment, back to the City Council. His request included the continued review of subdivision plats and site plans by the respective advisory boards, with recommendations being submitted to the City Council. The City Council approved that request by consensus.

June 9, 2021
Proposed Ordinance No. 2021-17 would implement the requested changes to the land development regulations.¹ The following table depicts how development review duties will be distributed among the City Council, Planning and Zoning Board, and Board of Adjustment, if Ordinance No. 2021-17 is approved.

<table>
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</tbody>
</table>

**CONCLUSION**

The City Attorney recommends that the Planning and Zoning Board review proposed Ordinance No. 2021-17 and, by motion, recommend that the City Council approve, approve with revisions, or not approve Ordinance No. 2021-17 on first reading.

**ATTACHMENTS**

1. Ordinance No. 2021-17

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¹ The subdivision code was amended last year by Ordinance No. 2020-04 to provide for City Council approval of all plats. However, Section 66-157 of the land development regulations, setting forth the powers and duties of the Planning and Zoning Board, still states that the Planning and Zoning Board, not City Council, acts on certain small subdivision plats (residential plats with less than 55 lots, and other subdivisions that will generate less than 500 average daily trips). That is inconsistent with both longstanding practice and the 2020 subdivision code amendment. Proposed Ordinance No. 2021-17 would amend Section 66-157 for clarity and consistency.

*June 9, 2021*
ORDINANCE NO. 2021-17

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, PROVIDING FOR CITY COUNCIL REVIEW OF CERTAIN CONCEPTUAL AND INITIAL SITE PLANS PREVIOUSLY SUBJECT TO REVIEW BY THE PLANNING AND ZONING BOARD OR THE BOARD OF ADJUSTMENT; AMENDING CHAPTER 66, ADMINISTRATION, ARTICLE III, BOARDS, COMMITTEES, COMMISSIONS, DIVISION 3, BOARD OF ADJUSTMENT, DIVISION 4, PLANNING AND ZONING BOARD, AND ARTICLE X, SITE PLANS; AMENDING CHAPTER 71, NATURAL RESOURCES AND STORMWATER, ARTICLE V, HABITAT MANAGEMENT; AMENDING CHAPTER 86, SUBDIVISIONS, ARTICLE I, IN GENERAL; AMENDING CHAPTER 98, ZONING, ARTICLE III, DISTRICTS, DIVISION 6, ONE-, TWO- AND MULTIPLE-FAMILY DWELLING DISTRICT, DIVISION 7, R-3 MULTIPLE-FAMILY DWELLING DISTRICT, DIVISION 15, P-1 INSTITUTIONAL DISTRICT, DIVISION 16, TR-1 PLANNED RESIDENTIAL DEVELOPMENT FOR MOBILE HOME PARKS, DIVISION 17, TRC-1 SINGLE-FAMILY MOBILE HOME COOPERATIVE DISTRICT, DIVISION 18, TR-2 SINGLE-FAMILY MOBILE HOME RESIDENTIAL DISTRICT, AND DIVISION 19, RV-P PLANNED DEVELOPMENT FOR RECREATIONAL VEHICLE PARKS DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to amend the Land Development Regulations of the Code of Ordinances of the City of West Melbourne to provide for City Council review of, and action on, certain conceptual and initial site plans that are currently subject to Planning and Zoning Board or Board of Adjustment final action; and

WHEREAS, the City Council desires to amend the Land Development Regulations of the Code of Ordinances of the City of West Melbourne to make clear that the City Council acts on all subdivision plats, and that no subdivision plats are subject to a final determination by the Planning and Zoning Board; and

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (**) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
WHEREAS, the City Council desires that the Planning and Zoning Board and Board of Adjustment review and submit recommendations to the City Council regarding certain site plans on which those boards previously took action; and

WHEREAS, the City Council finds that the amendments to the Land Development Regulations set forth herein are in compliance with the comprehensive plan and in the best interests of the public health, safety, and general welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Brevard County, Florida, that:

Section 1. Chapter 66, Administration, Article III, Boards, Committees, Commissions, Division 3, Board of Adjustment, Section 66-117, Powers and duties, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-117. – Powers and duties.

The board of adjustment shall have the powers listed in this section. In exercising the powers, the board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be required in order to do justice, and to that end, shall have all of the powers of the administrative official from whom the appeal was taken. The board of adjustment shall have the power to:

* * *

(4) Review applications and submit recommendations to the city council for site plan approval that are referred to the board by the city staff for industrial, commercial, and professional office uses based on the size of the property. The board’s recommendations to the city council on site plans may include approval, denial, or approval with conditions and/or modifications.
Section 2. Chapter 66, Administration, Article III, Boards, Committees, Commissions, Division 4, Planning and Zoning Board, Section 66-157, Powers and duties, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-157. – Powers and duties.

The planning and zoning board shall act in an advisory capacity to the city council in all matters relating to the comprehensive plan and this subpart B and shall serve as the local planning agency pursuant to F.S. § 163.31.74. Duties assigned to the planning and zoning board include, but are not limited to the following:

* * *

(3) Consider and act on applications and submit recommendations to the city council for site plan approval that are referred to the board by the community development department for institutional and multifamily uses based on the size of the property. The board’s recommendations to the city council on site plans may include approval, denial, or approval with conditions and/or modifications.

(4) Review applications for subdivision plat approval and submit recommendations to the city council. The board’s recommendations to the city council on subdivision plats may include approval, denial, or approval with conditions and/or modifications. Consider applications for subdivision plat approvals as follows:

a. Act on applications for subdivision plat approval that are referred to the board by city staff for projects generating less than 500 average daily trips. The board’s actions on site plans may include approval, denial, approval with conditions and/or modifications. Plats that can be referred to the planning and zoning board will be either:

1. Residential plats with less than 55 lots, or the amount of lots according to the Institute of Transportation Engineers Manual to equate to 500 average daily trips for residential development.

2. Nonresidential plats containing lots able to accommodate buildings with less than 25,000 square feet of gross floor area (combined under one roof), or the amount of maximum building space according to the latest version of the Institute
of Transportation Engineers Manual to equate to 500 average daily trips or more.

b. Review applications and submit recommendations to the city council for subdivision plats that are projected to generate 500 average daily trips or more.

(5) Update the land use and zoning designations in the city and interpreting boundary lines with the assistance of staff.

(6) Issue findings of fact and conclusions of law for every determination of the planning and zoning board in enforcement of the land development regulations known as subpart B.

Section 3. Chapter 66, Administration, Article X, Site Plans, Section 66-553, Criteria for planning and zoning board or board of adjustment action, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-553. – Criteria for city council, planning and zoning board or board of adjustment action.

(a) The planning and zoning board shall review and take actions submit recommendations to the city council on conceptual and initial site plans meeting any one of the following criteria:

(1) The size of the site is five acres or greater for multifamily developments.

(2) Any new institutional development or change of use within the institutional district or increase in size of the use in the institutional district.

(b) The board of adjustment shall review and take actions submit recommendations to the city council on initial site plans meeting any one of the following criteria: when the site is five acres or greater for industrial, or three acres or greater for commercial or professional office developments.

(1) The size of the site is five acres or greater for industrial, commercial or professional developments.

(2) A conditional use is required in order to grant approval of the site plan.

(3) A variance is required in order to grant approval of the site plan.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (*) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
(c) The board of adjustment shall review and take action on initial site plans that do not meet the criteria of subsection (b) herein, but meet any one of the following criteria:

(1) A conditional use is required in order to grant approval of the site plan.

(2) A variance is required in order to grant approval of the site plan.

Section 4. Chapter 66, Administration, Article X, Site Plans, Section 66-554, Authority for administrative review, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-554. – Authority for administrative review.

(a) For those site plans not subject to planning and zoning board city council or board of adjustment action, the city manager or his designee shall have the authority to approve or approve subject to changes, the site plan as provided for in the applicable sections of this article, unless the city manager, based on an increase in total site acreage that meets the criteria listed in section 66-553, determines that review and recommendation by the planning and zoning board or the board of adjustment, and action by the city council, is appropriate in view of the size of the site plan being considered.

(b) The city manager shall additionally have the authority to disapprove any site plan if the administrative review provided for by this article determines that the proposed site plan does not meet the requirements of this article for site plan approval.

Section 5. Chapter 66, Administration, Article X, Site Plans, Section 66-555, Preapplication conference, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-555. – Preapplication conference.

* * *

(g) For those site plans not subject to the criteria set forth in section 66-553, the city staff, in a timely manner following the preapplication conference, shall make a recommendation to the city manager to allow the site plan to

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (*** *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
be reviewed administratively or to require site plan review and recommendation by the planning and zoning board or board of adjustment, and action by the city council. The city manager, with recommendations from the city staff and in his discretion, shall determine whether the site plan can be reviewed administratively.

* * *

Section 6. Chapter 66, Administration, Article X, Site Plans, Section 66-556, Submittal requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-556. – Submittal requirements.

(a) Application requiring planning and zoning board or board of adjustment review and city council action. An application for site plan review requiring planning and zoning board or board of adjustment review and recommendation shall be filed with the city no later than the first business day of the month preceding the month of the next regularly scheduled meeting of the approving such advisory board. Meeting this submittal deadline does not guarantee that the initial site plan will be on the agenda for the next scheduled planning and zoning board or board of adjustment meeting if the submittal does not contain sufficient information to allow staff and the board to analyze the request. After the initial site plan has been approved or approved with conditions, the applicant may proceed with the submittal of a final site plan. An additional site plan application is not required for final site plan if an application was previously submitted for the initial site plan public hearing process. Copies of the site plan, along with a digital copy, shall be submitted to the city staff at the time of application. The number of copies required shall be as determined by the city staff.

* * *

Section 7. Chapter 66, Administration, Article X, Site Plans, Section 66-557, Content for site plans, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-557. – Content for site plans.

* * *

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
(b) Additional final site plan requirements. The following additional items shall be shown on final site plan submittals and shall constitute the additional criteria for final site plan review. If applicable, the final site plan shall include any changes required by the planning and zoning board, city council or board of adjustment during the initial site plan process. The city staff shall review all final site plan submittals based on the additional requirements which follow:

* * *

Section 8. Chapter 66, Administration, Article X, Site Plans, Section 66-560, Review by board of adjustment, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-560. – Review by board of adjustment.

(a) Following the submittal of an initial site plan that meets the criteria for board of adjustment review in subsection 66-553(b), the board of adjustment shall hold a public hearing at which comments of the applicant and public may be heard. A minimum of 14 days’ notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.

(b) The board of adjustment shall review the initial site plan together with the city staff’s technical comments and shall make a decision as to whether the applicant has sufficiently addressed the requirements for the site plan as set forth in this article.

(c) No initial site plan shall be approved unless and until the applicant has adequately addressed all outstanding review comments to the city’s satisfaction.

(d) If the initial site plan is denied, the applicant shall have the option to resubmit an application pursuant to all requirements, including payment of fees, as set forth in this article, or appeal the decision per section 66-158.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
Section 9.  Chapter 66, Administration, Article X, Site Plans, Section 66-561, Review by planning and zoning board, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-561. – Review by planning and zoning board.

(a)  Following the submittal of an initial site plan that meets the criteria for planning and zoning board review in subsection 66-553(a), the planning and zoning board shall consider the initial site plan at a public hearing at which comments of the applicant and public may be heard. A minimum of 14 days’ notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.

(b)  The planning and zoning board shall review the initial site plan together with the city staff’s technical comments and shall make a decision recommendation to the city council to approve, approve subject to conditions, or disapprove the site plan. The decision shall be based on, but not limited to: the review comments of the city staff, the functional aspects of the site plan, the requirements of this subpart B, and the board’s determination as to whether the applicant has sufficiently addressed the requirements for the site plan as set forth in this article.

(c)  No initial site plan shall be approved unless and until the applicant has adequately addressed all outstanding review comments to the city’s satisfaction.

(d)  If the initial site plan is denied, the applicant shall have the option to resubmit an application pursuant to all requirements, including payment of fees, as set forth in this article, or appeal the decision per section 66-158.

Section 10.  Chapter 66, Administration, Article X, Site Plans, Section 66-562, Reserved, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-562. – Reserved Review by city council.

(a)  Following the recommendation of the planning and zoning board or board of adjustment on an initial site plan that meets the criteria for review in subsection 66-553(a) or 66-553(b), the city council shall hold a public hearing at which comments of the applicant and public may be heard. A
minimum of 14 days’ notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.

(b) The city council shall review the initial site plan together with the city staff’s technical comments and shall approve, approve subject to conditions, or disapprove the site plan. The decision shall be based on, but not limited to: the review comments of the city staff, the functional aspects of the site plan, the recommendation of the advisory board, the requirements of this subpart B, and the city council’s determination as to whether the applicant has sufficiently addressed the requirements for the site plan as set forth in this article.

Section 11. Chapter 66, Administration, Article X, Site Plans, Section 66-565, Phased construction, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-565. – Phased construction.

(c) If the concept of a phased project is approved by the planning and zoning board, city council, board of adjustment, or city staff, the phased project shall be in accordance with the following:

Section 12. Chapter 71, Natural Resources and Stormwater, Article V, Habitat Management, Section 71-131, Administrative review, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 71-131. – Administrative review.

(b) For those site plans requiring action by the planning and zoning board or the board of adjustment and action by the city council, the review comments shall be submitted to the approving advisory board and city council as part of the review procedure set forth in this article. In addition, city staff shall provide copies of the city staff’s review comments to the applicant prior to the required meeting.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
Section 13. Chapter 86, Subdivisions, Article I, In General, Section 86-15, Preliminary plat review by planning and zoning board, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 86-15. – Preliminary plat review by planning and zoning board.

(a) Following the submittal of a preliminary plat which requires planning and zoning board review or decision, the planning and zoning board shall hold a public hearing at which comments of the applicant and public may be heard. A minimum of 14 days’ notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.

***

Section 14. Chapter 98, Zoning, Article III, Districts, Division 6, One-, Two- and Multiple-Family Dwelling District, Section 98-281, Interpretation of criteria as minimum requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-281. – Interpretation of criteria as minimum requirements.

The criteria as set forth by this division for the R-2 one-, two- and multiple-family dwelling district shall be deemed the minimum necessary for compliance. The planning and zoning boardcity council shall reserve the right to determine, at the time of site plan approval, such additional requirements as may be necessary to ensure the safety, health and general welfare of the residents.

Section 15. Chapter 98, Zoning, Article III, Districts, Division 7, R-3 Multiple-Family Dwelling District, Section 98-326, Interpretation of criteria as minimum requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-326. – Interpretation of criteria as minimum requirements.

The criteria as set forth by this division for the R-3 multiple-family dwelling district shall be deemed the minimum necessary for compliance. The planning

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and zoning board \textit{city council} shall reserve the right to determine, at the time of site plan approval, such additional requirements as may be necessary to ensure the safety, health and general welfare of the residents.

\textbf{Section 16.} Chapter 98, Zoning, Article III, Districts, Division 15, P-1 Institutional District, Section 98-646, General requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

\textbf{Sec. 98-646. – General requirements.}

All plans for uses constructed within the P-1 institutional district shall be reviewed by the city planning and engineering department and the police and fire departments, with plans and written comments being forwarded to the planning and zoning board for review, and the City Council for action. The planning and zoning board, City Council, and planning and engineering departments will ascertain that proposed lot sizes, lot coverage, building heights, yard requirements, off-street parking provisions and other provisions are adequate to meet the requirements of this chapter and, further, that such uses are harmonious to the adjacent uses and to the area.

\textbf{Section 17.} Chapter 98, Zoning, Article III, Districts, Division 15, P-1 Institutional District, Section 98-647, Site plans, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

\textbf{Sec. 98-647. – Site plans.}

As part of the supplementary data required to complete an application for a public hearing for a P-1 institutional district, a site plan, meeting all requirements of article X of chapter 66 shall be submitted, and if the application is approved, the development shall be built substantially in accordance with such plan. If the building official deems that there is a proposed substantial change from that which is shown on the approval application, the developer shall be required to return to the planning and zoning board \textit{city council} to receive approval for such change as an amendment to the approved site plan. If construction is not begun within 18 months after the site plan has been approved or if a change to any other use within this district is requested, the approval shall lapse and terminate and site plan approval must be reobtained or the planning and zoning board \textit{city council} shall instigate proceedings to rezone the property to its original category or a more appropriate one. The 18-month period shall commence on the date of approval by the planning and zoning board of the initial zoning of the property in question to the P-1 classification.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (\textit{* * *}) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
If the planning director deems that there is a proposed substantial change from that which is shown on the approval application, the developer shall be required to return to the planning and zoning board/city council in order to receive approval for such change as an amendment to the approved site plan. If construction is not begun within 18 months after the site plan has been approved or if a change to any other use within this district is requested, the approval shall lapse and terminate and site plan approval must be reobtained or the planning and zoning board/city council shall instigate proceedings to rezone the property to its original category or a more appropriate one. The 18-month period shall commence on the date of approval by the planning and zoning board of the initial zoning of the property in question to the P-1 classification.

Section 18. Chapter 98, Zoning, Article III, Districts, Division 15, P-1 Institutional District, Section 98-648, Minimum dimensional requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-648. – Minimum dimensional requirements.

The minimum dimensional requirements in the P-1 institutional district are as follows:

* * *

(7) Parking requirements: The planning and engineering department, the planning and zoning board, and the city council will ascertain that off-street parking standards are met on the submitted site plan according to article II of chapter 74.

Section 19. Chapter 98, Zoning, Article III, Districts, Division 16, TR-1 Planned Residential Development for Mobile Home Parks, Section 98-681, Intent, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-681. – Intent.

The intent of the TR-1 planned residential development for mobile home parks is to provide for mobile home parks developed in such a manner as to make efficient, economical and aesthetically pleasing use of the land, so restricted that the mobile home parks will be continually maintained by the owner. When such is provided for in a carefully drawn site plan, the planning and zoning board/city council may permit, or if the proposed planned residential development is for a subdivision, the city council or planning and zoning board, depending on the size of the property, the...
of the subdivision such development providing the conditions of this division are met.

**Section 20.** Chapter 98, Zoning, Article III, Districts, Division 16, TR-1 Planned Residential Development for Mobile Home Parks, Section 98-683, Expansion of existing mobile home parks, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

**Sec. 98-683.** – Expansion of existing mobile home parks.

In the TR-1 planned residential development for mobile home parks, whenever the owner of a mobile home park proposes expansion, plans for such expansion shall be submitted and approved in the same manner as plans for new mobile home parks. Mobile home park expansion plans shall comply with new park requirements unless such compliance is found to be impracticable by the planning and zoning board or city council, in which case minor variations of new park standards may be approved by the board of adjustment. Improvement of substandard conditions in existing parks may be required as a precedent to expansion of such parks.

**Section 21.** Chapter 98, Zoning, Article III, Districts, Division 16, TR-1 Planned Residential Development for Mobile Home Parks, Section 98-685, Site plan, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

**Sec. 98-685.** – Site plan.

* * *

(8) Such other plans and tabulations and other data that the planning and zoning board or city council may require.

**Section 22.** Chapter 98, Zoning, Article III, Districts, Division 17, TRC-1 Single-Family Mobile Home Cooperative District, Section 98-733, Site plans, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

**Sec. 98-733.** – Site plans.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (**) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
As part of the supplementary data required to complete an application for a public hearing for a TRC-1 single-family mobile home cooperative district development, a reproducible, scaled and dimensioned plot or site plan of the development shall be submitted as part of such application. If the application is approved, the mobile home cooperative shall be built substantially in accordance with such a plan. If the building official deems that there is a substantial change from that which is shown on the original application, the developer shall be required to return to the planning and zoning board/city council to receive approval for such changes as an amendment to the original site plan. The plot or site plan shall include but not be limited to the location of all lots; parking facilities; service areas, including garbage disposal areas; landscaping; walls; public streets; all common facilities, open space and walkways; and utilities showing the utilities underground where such is required. In addition, lot areas, open space, and density shall be included as data on such plans. Adequate access for firefighting and emergency purposes and access to service areas shall be provided. Information concerning abutting land areas, such as land use, zoning, existing structures, and existing streets, shall also be included. Site plan approval is limited to 18 months, but may be extended for an additional year by the planning and zoning board/city council, for demonstrated progress. If construction is not substantially underway within 18 months after the approval of the site plan, the site plan may be voided by the planning and zoning board/city council which at that time may initiate a rezoning of the property to an appropriate classification. A construction schedule showing beginning and completion dates for major structures shall be provided. A completion bond may be required by the planning and zoning board/city council. The property shall be platted in accordance with chapter 86.

Section 23. Chapter 98, Zoning, Article III, Districts, Division 17, TRC-1 Single-Family Mobile Home Cooperative District, Section 98-734, Mixture of uses, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-734. – Mixture of uses.

In the TRC-1 single-family mobile home cooperative district, if there is a mixture of land uses, i.e., commercial, common recreational, industrial, public, etc., the general location and concept of these uses shall be made a part of the site plan requirement. Detail regarding building orientation, ingress, egress, buffer areas, parking and service areas, landscaping, etc., shall be presented to the planning and zoning board/city council for its approval at the time of the issuance of the building permit.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
Section 24. Chapter 98, Zoning, Article III, Districts, Division 18, TR-2 Single-Family Mobile Home Residential District, Section 98-774, Site plans, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-774. – Site plans.

In the TR-2 single-family mobile home residential district, as part of the supplementary data required to complete an application for a public hearing for a mobile home subdivision development, a reproducible, scaled and dimensioned plot or site plan of the development, or subdivision plat if a subdivision is proposed, shall be submitted as part of such application. If the application is approved, the mobile home development shall be built substantially in accordance with such a plan. If city staff deems that there is a substantial change from that which is shown on the original application, the developer shall be required to return to the planning and zoning board/city council in order to receive approval for such changes as an amendment to the original site plan or subdivision plat which may require city council review depending on the impact of the development as defined in section 66-157. The plot or site plan shall include but not be limited to the location of all lots, service areas, public streets, walkways, and utilities showing the utilities underground where such is required. Adequate access for firefighting and emergency purposes and access to service areas shall be provided, such that there are at least two access points, not adjacent to each other for developments with more than 50 units. Information concerning abutting land areas, such as land use, zoning, existing structures and existing streets, shall also be included. Site plan approval is limited to 18 months, but may be extended for an additional year by the planning and zoning board/city council. If construction is not substantially underway within 18 months after the approval of the site plan, the site plan may be voided by the planning and zoning board/city council which at that time may initiate a rezoning of the property to an appropriate classification. A completion bond may be required by the planning and zoning board/city council. The property shall be platted in accordance with chapter 86, if a site plan is not proposed.

Section 25. Chapter 98, Zoning, Article III, Districts, Division 19, RV-P Planned Development for Recreational Vehicle Parks District, Section 98-81, Site plans, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-815. – Site plans.

As part of the data required to complete an application for a public hearing for an RV-P planned development for recreational vehicle parks district, a site plan, In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
If the application is approved, the development shall be built substantially in accordance with such plan. If the building official deems that there is a proposed substantial change from that which is shown on the original application, the developer shall be required to return to the planning and zoning board/city council in order to receive approval for such change as an amendment to the approved site plan. If construction is not begun within 18 months after the site plan has been approved or if a change to any other use within this district is requested, the approval shall lapse and terminate and site plan approval must be reobtained or the planning and zoning board/city council shall instigate proceedings to rezone the property to its original category or a more appropriate one. The 18-month period shall commence on the date of approval by the planning and zoning board/city council of the initial zoning of the property in question to the RV-P classification.

**Section 26. Severability.** It is hereby declared to be the intention of the Council that the section, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clauses sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**Section 27. Conflict with Other Ordinances.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 28. Inclusion in Code.** It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance hereto shall be made a part of the City of West Melbourne Code of Ordinances and the sections be renumbered to accomplish such intention.

**Section 29. Effective Date.** This Ordinance shall become effective immediately upon adoption in accordance with the Charter of the City of West Melbourne, except as otherwise specified above.

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.
PASSED AND ADOPTED by the City Council of the City of West Melbourne, Brevard County, Florida, this 20th day of July, 2021.

________________________________
HAL J. ROSE, MAYOR

ATTEST:

_______________________________  Reviewed as to form and legal sufficiency:
CYNTHIA HANSCOM, CITY CLERK

Planning and Zoning Board: June 9, 2021
1st READING: June 15, 2021
2nd READING: July 20, 2021

Morris Richardson, City Attorney

In interpreting this ordinance, underlined words indicate additions to existing text and stricken words indicate deletions from existing text. Asterisks (* * *) indicate a deletion from the ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.