



CITY OF DELAND
REGULAR MEETING OF THE CITY COMMISSION
JUNE 19, 2023 AT 7:00 PM
CITY HALL, COMMISSION CHAMBERS
120 SOUTH FLORIDA AVENUE

AGENDA

CALL TO ORDER

INVOCATION- Pastor T. L. Jackson, DeLand Community Church

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATIONS

1. Proclamation, DeLand Elks Lodge #1463 Day.
2. Presentation re Winter Wonder DeLand.

CONSENT AGENDA

1. Consideration re Grant of Easement to Duke Energy, East Hangar Complex, Hangar Construction.
It is recommended that the City Commission approve the grant of the temporary Utility Easement to Duke Energy Florida, LLC.
2. Consideration re Recognition of "Ground Lease" between RCH Realty, LLC (HEINZ) and the City of DeLand.
Staff recommends approval of the "Ground Lease" Agreement between RCH Realty, LLC (HEINZ) and the City of DeLand and authorizes the Mayor-Commissioner to execute the "Ground Lease" Agreement.

PETITIONS AND REQUESTS FROM THE PUBLIC PRESENT

OLD BUSINESS

1. Second Reading of Ordinance No. 2023-10, Annexing 0.76 Acre of Property Located at 230 East International Speedway Boulevard. (First Reading 4-17-2023).
The City Commission is requested to approve the annexation of the subject property for the commercial redevelopment of approximately 0.76 acre of property located at 230 East International Speedway Boulevard.
2. Second Reading of Ordinance No. 2023-11, Changing the Land Use of 0.76 Acre of Property from Volusia County's Urban Medium Intensity (UMI) to City of DeLand Highway Commercial (HC) Located at 230 East International Speedway Boulevard. (First Reading 4-17-2023).

This request is to amend the land use designation for 0.76 acre of property located at 230 East International Speedway Boulevard from Volusia County Urban Medium Intensity to City of DeLand Highway Commercial.

3. Second Reading of Ordinance No. 2023-12, Changing the Zoning from Volusia County B-4/B-4CA (General Commercial) to City of DeLand C-2 (General Commercial), for Approximately 2.32 Acres of Property Located at 210 and 230 East International Speedway Boulevard. (First Reading 4-17-2023).

The City Commission is requested to approve the rezoning of these parcels to City of DeLand C-2, General Commercial, for the purpose of redeveloping 2.32 acres of property under the city's land development regulations.

4. Second Reading of Ordinance No. 2023-13, Amending Section 33-91.03 of the Code of Ordinances re Indoor Parking Requirements in the Core Gateway District.

It is recommended that the City Commission approve the proposed Ordinance on second reading.

NEW BUSINESS

1. First Reading of Ordinance Amending Section 33-57.05 of the Code of Ordinances - Tree Replacement Reserve Account.

First Reading of Ordinance modifying how the funds for the Tree Replacement Reserve Account are accounted for and correcting a typographical error in the botanical name of the longleaf pine tree.

2. Consideration re City of DeLand and Burke Construction Group Settlement Agreement.

The Public Service Department recommends that the City commission approve the proposed Settlement Agreement with Burke Construction Group.

3. Consideration re Country Pure Payment Agreement.

Staff recommends the approval of the Payment Agreement between the City and Country Pure Foods.

4. Consideration re Designating Voting Delegate for Florida League of Cities Annual Meeting.

It is recommended that the City Commission appoint a delegate for the Florida League of Cities Annual Meeting.

CITY COMMISSION REPORTS

1. Report re Elected Officials Round Table.
2. Report re River-to-Sea TPO.
3. Report re River of Lakes Heritage Corridor.

CITY MANAGER REPORT

CITY ATTORNEY REPORT

CITY CLERK REPORT

CITY COMMISSION

ADJOURNMENT

The DeLand City Commission holds its regular meetings on the first and third Mondays of each month at 7:00 p.m. in the DeLand City Commission Chambers, 120 South Florida Avenue, DeLand. Notice of special meetings, workshops, changes in dates, times or locations are provided by separate Public Notices, which are posted at City Hall and on the City's web site.

The City of DeLand may take action on any matter during this meeting, including items that are not set forth within this agenda.

Public participation is encouraged on any matter on the agenda. If you desire to be recognized by the Mayor, please fill out a Speaker's Card and present it to the City Clerk.

Minutes of the DeLand City Commission meetings are not transcribed verbatim. If any person decides to appeal a decision made by the City Commission with respect to any matter considered at a public meeting or hearing, he/she will need a record of the proceedings including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made by a court reporter, at the person's own expense.

In accordance with the American Disabilities Act, persons needing a special accommodation in order to participate in the proceedings should notify the City Clerk's Office at least 48 hours in advance of the meeting: 626-7132.

Assisted Listening System receivers are available for the hearing impaired, and can be obtained from the City Clerk.

If you wish to obtain information regarding the City Commission's Agenda, please call the City Clerk's Office: 626-7132.

We respectfully request that all pagers and cell phones be turned OFF during City Commission meetings.

Electronic Information! City Commission agendas and short form minutes are now available on the City's web page: www.deland.org.



The CITY OF DELAND

Volusia County, Florida

Proclamation

Whereas, the DeLand Elks Lodge #1463 received their charter in 1923, and opened their doors at the 150 South Clara Avenue location in 1927; and

Whereas, in September 2018, the DeLand Elks Lodge moved into their new location at 614 South Alabama Avenue; and

Whereas, the DeLand Elks Lodge has been a vital part of the DeLand community and has had five Mayors of DeLand and numerous civic leaders within their membership; and

Whereas, the DeLand Elks Lodge has provided over \$1.6 million dollars in aide and benefits to DeLand and the surrounding community; and

Whereas, the DeLand Elks Lodge is part of the Benevolent and Protective Order of Elks, which is 156 years old and promotes programs for veterans and youth, including Elks Hoop Shoot, Army of Hope and Elks Children's Therapy Service; and

Whereas, the Elks are very supportive of the DeLand Fire Department and DeLand Police Department; and

Whereas, today the DeLand Elks Lodge #1463 is celebrating their 100th Anniversary.

Now, therefore, I, Christopher M. Cloudman, Mayor of the City of DeLand, do hereby proclaim June 23, 2023 as:

DeLand Elks Lodge #1463 Day

in the City of DeLand and urge all citizens of DeLand to recognize the DeLand Elks Lodge #1463 for their 100th Anniversary and thank them for continued support of Children and Veterans.

Done and proclaimed this 19th day of June 2023.

Christopher M. Cloudman, Mayor

Attest:

Julie A. Hennessy, City Clerk - Auditor

CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Consideration re Grant of Easement to Duke Energy, East Hangar Complex, Hangar Construction.

DEPARTMENT: Airport

PREPARED BY: John Eiff, Airport Manager

ATTACHMENTS: City of Deland TEMP Easement (2), Exhibit A - T-hangar Transformer Location

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

The T-hangar project is well underway and is expected to be completed in early 2024. The attached easement, if approved, will allow Duke Energy to install a new transformer, which will power the new T-hangars being constructed. Duke Energy will not supply power without these easements.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Preparing for the Future

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Granting an temporary easement to Duke Energy has no fiscal impact. However, the City will incur costs to Duke Energy for contributions to aid construction. Funds are available in the existing budget of the East Hangar Complex project to cover this cost.

RECOMMENDATION:

It is recommended that the City Commission approve the grant of the temporary Utility Easement to Duke Energy Florida, LLC.

BACKGROUND/DISCUSSION:

Duke Energy will not install power on construction sites without an easement. However, until the lines are installed, it is difficult to define precisely where the power easement will need to be. It is standard protocol to grant Duke a "blanket easement" over the entirety of the site in order to obtain power to the site. After the power lines are installed from the street to the site, the City will perform a survey of the exact location of the service line and prepare a legal description for the permanent easement to be issued to Duke Energy.

Prepared by: Duke Energy Florida, LLC
Return To: Duke Energy Florida, LLC
Attn: Amanda Gantert
239 Kendall Place
Elmira, NY 14901

Parcel # 602601000080
603500000203

EASEMENT

State of Florida
County of Volusia

THIS EASEMENT ("**Easement**") is made this ____ day of _____ 20____, from **CITY OF DELAND**, a Florida a municipal corporation ("**Grantor**", whether one or more), to **DUKE ENERGY FLORIDA, LLC**, a Florida limited liability company, Post Office Box 14042, St. Petersburg, FL 33733 ("**Grantee**").

Grantor, for and in consideration of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto Grantee a perpetual easement, to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify, and remove electric and communication lines including, but not limited to, all necessary supporting structures, and all other appurtenant apparatus and equipment for the transmission and distribution of electrical energy, and for technological purposes related to the operation of the electric facilities and for the communication purposes of Incumbent Local Exchange Carriers (collectively, "**Facilities**").

Grantor is the owner of that certain property described in "Exhibit A" attached hereto and incorporated herein by reference. ("**Property**").

The Facilities may be both overhead and underground and located in, upon, over, along, under, through, and across a portion of the Property within an easement area described as follows:

A strip of land ten feet (10') in uniform width, lying equidistant on both sides of a centerline, which centerline shall be established by the center of the Facilities as installed, (hereinafter referred to as the "**Easement Area**").

The rights granted herein include, but are not limited to, the following:

For Grantee's Internal Use:
Work Order #: 48993096-20 + other
associated work orders

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1. Grantee shall have the right of ingress and egress over the Easement Area, Property, and any adjoining lands now owned or hereinafter acquired by Grantor (using lanes, driveways, and adjoining public roads where practical as determined by Grantee).
2. Grantee shall have the right to trim, cut down, and remove from the Easement Area, at any time or times and using safe and generally accepted arboricultural practices, trees, limbs, undergrowth, other vegetation, and obstructions.
3. Grantee shall have the right to trim, cut down, and remove from the Property, at any time or times and using safe and generally accepted arboricultural practices, dead, diseased, weak, dying, or leaning trees or limbs, which, in the opinion of Grantee, might fall upon the Easement Area or interfere with the safe and reliable operation of the Facilities.
4. Grantee shall have the right to install necessary guy wires and anchors extending beyond the boundaries of the Easement Area.
5. Grantee shall have the right to relocate the Facilities and Easement Area on the Property to conform to any future highway or street relocation, widening, or alterations.
6. Grantor shall not place, or permit the placement of, any structures, improvements, facilities, or obstructions, within or adjacent to the Easement Area, which may interfere with the exercise of the rights granted herein to Grantee. Grantee shall have the right to remove any such structure, improvement, facility, or obstruction at the expense of Grantor.
7. Excluding the removal of vegetation, structures, improvements, facilities, and obstructions as provided herein, Grantee shall promptly repair or cause to be repaired any physical damage to the surface area of the Easement Area and Property resulting from the exercise of the rights granted herein to Grantee. Such repair shall be to a condition which is reasonably close to the condition prior to the damage, and shall only be to the extent such damage was caused by Grantee or its contractors or employees.
8. Grantee may increase or decrease the voltage and change the quantity and types of Facilities.
9. The rights granted in this Easement include the right to install Facilities wherever needed on the Property to serve future development on the Property and adjoining lands. Portions of the Facilities may be installed immediately and other portions may be installed in the future as the need develops. Facilities installed in the future shall be installed at locations mutually agreeable to the parties hereto if they are to be located outside of the Easement Area. Upon any future installations of Facilities at mutually agreed locations, the Easement Area shall be deemed to include such future locations.
10. This easement will be replaced with a Descriptive Easement, five (5) feet on either side of all Facilities installed by GRANTEE, as will be shown on a certified surveyed sketch of description to be provided by GRANTOR within sixty (60) days after the installation of Facilities by GRANTEE. If the sketch of description is not provided by GRANTOR within sixty (60) days after completion of installation, GRANTEE will record this easement.
11. All other rights and privileges reasonably necessary, in Grantee's sole discretion, for the safe, reliable, and efficient installation, operation, and maintenance of the Facilities.

The terms Grantor and Grantee shall include the respective heirs, successors, and assigns of Grantor and Grantee. The failure of Grantee to exercise or continue to exercise or enforce any of the rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time, or from time to time, to exercise any and all such rights.

TO HAVE AND TO HOLD said rights, privilege, and easement unto Grantee, its successors, licensees, and assigns, forever. The rights and easement herein granted are exclusive as to entities engaged in the provision of electric energy service. Grantor warrants and covenants that Grantor has the full right and authority to convey to Grantee this perpetual Easement, and that Grantee shall have quiet and peaceful possession, use and enjoyment of the same.

IN WITNESS WHEREOF, Grantor has signed this Easement under seal effective this ____ day of _____, 20____.

Witnesses:

CITY OF DELAND

a Florida a municipal corporation

(Witness #1)

Printed Name: _____

(Witness #2)

Printed Name: _____

Grantor(s) Mailing Address:

Attest:

_____, _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____, _____ of a municipal corporation, a Florida a municipal corporation, and that by authority duly given and as the act of said a municipal corporation, the foregoing EASEMENT was signed in its name by its _____, sealed with its official seal, and attested by herself/himself as its _____. He/she is personally known to me or has produced _____ as identification.



Notary Public: _____

Printed/ Typed Name: _____

Commission Expires: _____

For Grantee's Internal Use:
Work Order #: 48993096-20 + other
associated work orders

This instrument prepared by Manny R. Vilaret, Esquire, 10901 Danka Circle Suite C, St. Petersburg, FL 33716.

For Grantee's Internal Use:
Work Order #: 48993096-20 + other
associated work orders

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Exhibit "A"

Lots 2, 3, 6 to 10 inclusive, 17 to 24 inclusive, 27 to 32 inclusive, 36 to 38 inclusive, and 35, 39, and 44 Northwest of new highway, Blue Lake Celery Company subdivision. Excluding part deed to Florida Military School per O.R. Book 913, Page 473. Excluding irregular parcel lying East of and adjacent to Parcel B, Deland Municipal Airport, at Map Book 27, Page 284, measuring 482.05 feet on South line and measuring 313 feet on North line and measuring 298.79 feet on West line. Excluding leased parcels.

AND

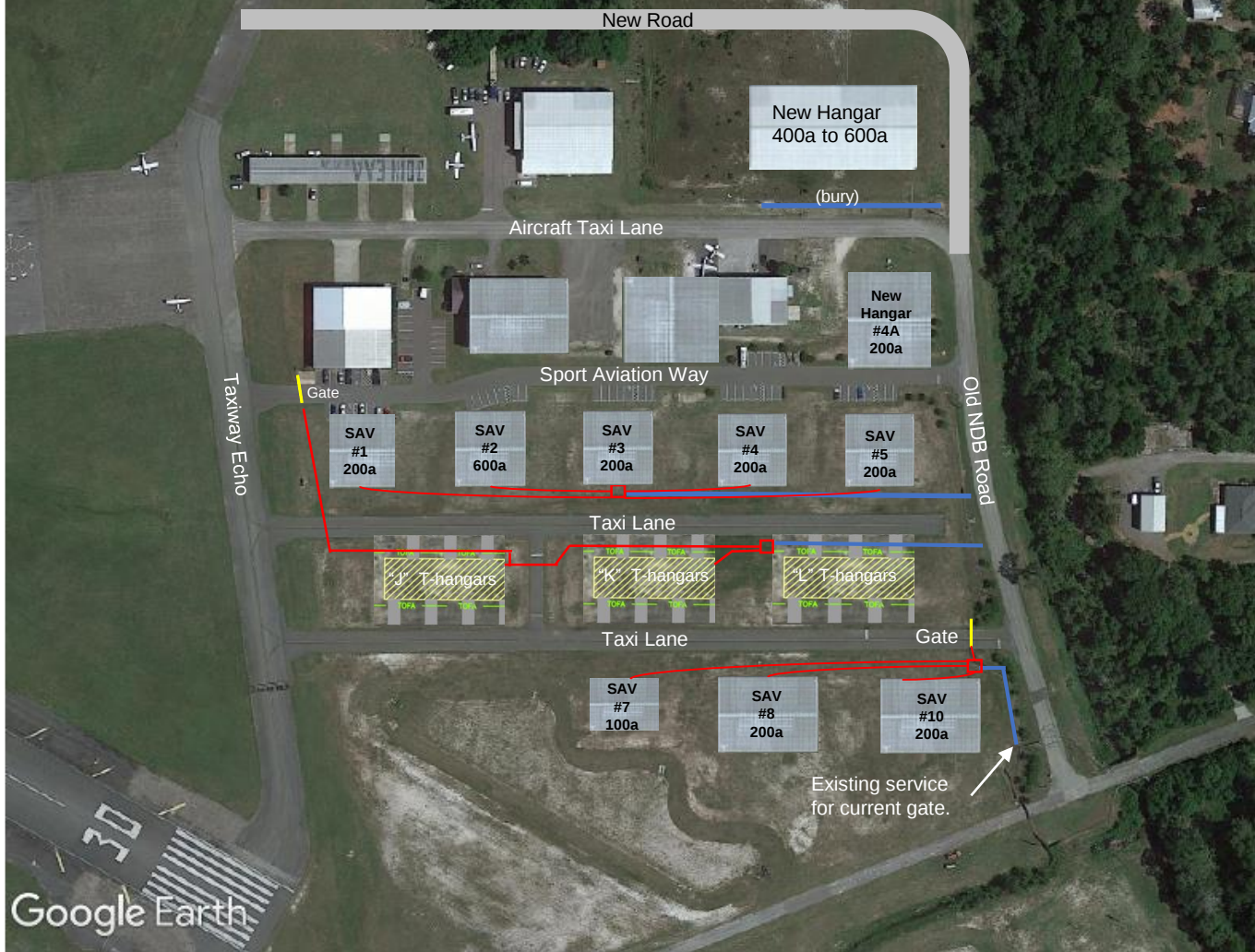
That portion of the Northwest 1/4 of Section 35, Township 16 South, Range 30 East, Volusia County, Florida, described as follows: Commencing at the southwest corner of the Northwest 1/4 of said Section 35, run thence N.00°03'19"W., along the west line thereof, a distance of 648.86 feet; thence N.88°43'38"E., a distance of 204.59 feet to the POINT OF BEGINNING; thence continue N.88°43'38"E., a distance of 240.00 feet; thence N.01°16'22"W., a distance of 160.00 feet to a point on southerly right of way of Old NDB Road; thence S.88°43'38"W., along said right of way line, a distance of 240.00 feet; thence S.01°16'22"E., a distance of 160.00 feet to the Point of Beginning; Said parcel containing (38,400 S.F.) 0.88 acres, more or less.

Run thence S. 89° 56' 10" West, a distance of 185.55 feet to an angle point; Second Course: N. 41° 52' 00" E., a distance of 1549.31 feet to an angle point; Third Course: N. 52° 23' 50" West across Florida State Road No. 21, a distance of 854.96 feet to an angle point; Fourth Course: N. 20° 50' 10" West, continuing along the center line of said canal right-of-way and along the center line of a tract of land marked "B" on said Blue Lake Celery Company Map, a distance of 2153.61 feet to an angle point; Fifth Course: N. 17° 54' 49" West, continuing along the center line of said canal right-of-way, being the center of a tract of land marked "B" on said Blue Lake Celery Company Map, a distance of 545.69 feet to an angle point; Sixth Course: N. 1° 55' 57" E., a distance of 614.1 feet to an angle point; Seventh Course: N. 54° 27' 30" E., a distance of 354.6 feet to a point where said canal right-of-way center line is intersected by the northerly boundary of the southwest quarter of the southwest quarter of Section 26, aforementioned; run thence S. 88° 56' 40" West along the northerly boundary of the southwest quarter of the Southwest quarter of Section 26, a distance of 753.07 feet to a concrete monument set in the northwest corner of the southwest quarter of the southwest quarter of said section; run thence S. 89° 30' 09" West along the northerly line of the South half of the SE $\frac{1}{4}$ of Section 27 aforementioned, a distance of 2724.26 feet to a concrete monument set in the northwest corner of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; run thence N. 1° 23' 19" East along the westerly line of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the said section, a distance of 1362.94 feet to a concrete monument set in the NW corner of the SE $\frac{1}{4}$ of said section; run thence S. 89° 02' 44" West along the Northerly line of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said section and along the Southerly side of Pineland Avenue, as shown on the map of Pineland Heights aforementioned, and along the northerly boundary of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said section; and along the Northerly line of Government Lots 6 and 7 of Section 28, a distance of 4779.08 feet to a concrete monument set in the NW corner of the E $\frac{1}{2}$ of Government Lot 7; run thence South 1° 14' 14" East along the westerly line of the East half of Government lot 7, and along the Westerly line of the East half of Government Lot 12, a distance of 2710.28 feet to a concrete monument set at the SW corner of the E $\frac{1}{2}$ of said Government Lot 12; run thence S. 00° 45' 53" E. along the Westerly boundary of the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and along the Westerly boundary of the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sect. 33, a distance of 2644.55 feet to a concrete monument at the SW corner of the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ aforesaid; run thence N. 89° 35' 41" E. along the Southerly boundary of the East half of the SW quarter of the NE $\frac{1}{4}$ of said Section 33, a distance of 662.37 feet to a concrete monument set at the NW corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sect. 33; run thence S. 00° 45' 15" E. along the Westerly boundary of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section, a distance of 1328.08 feet to an old concrete monument located at the SW corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 33; run thence N. 89° 35' 42" E. along the Southerly boundary of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sect. 33, a distance of 1324.73 feet to a concrete monument set in the line dividing Sections 33 and 34, aforementioned; run thence S. 00° 45' 14" E. along said dividing line, a distance of 1328.09 feet to the point of beginning.

Also that tract or parcel of land lying in Sect. 3, TWP 17 S, Range 30 E, more particularly described as follows: Start at a point where the South side of Biscayne Boulevard intersects the East side of Gasoline Alley; thence run South along the East side of tract of land known as the Frank C. Shearer tract, as shown in Deed Book 239, p. 526, Volusia County Records, for a distance of 250 feet; thence at a 90° angle in a Westerly direction 250 ft.; thence run at a 90° angle in a Northerly direction to a point on the South side of Biscayne Boulevard; thence in an Easterly direction to the point of beginning.

- Primary feed
- Secondary feed
- Transformer pad

DeLand Airport East Hangar Complex



CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Consideration re Recognition of “Ground Lease” between RCH Realty, LLC (HEINZ) and the City of DeLand.

DEPARTMENT: Airport

PREPARED BY: John Eiff, Airport Manager

ATTACHMENTS: RCH Realty, LLC (Heinz) Ground Lease

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

RCH Realty, LLC (HEINZ) is a new tenant to the Sport Aviation Village at the DeLand Airport and wishes to develop Parcel #7 by constructing a 4,200 sq. ft hangar on said site and moving his Aircraft Brokerage firm to DeLand.

The City Attorney has reviewed the “Ground lease” agreement and has no objections from a legal perspective.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Regional High Value Job Creation

SUSTAINABILITY:

N/A

FISCAL IMPACT:

This “Ground Lease Agreement” will create a \$4,177.04 annual income to the DeLand Airport Enterprise Fund.

RECOMMENDATION:

Staff recommends approval of the “Ground lease” agreement between RCH Realty, LLC (HEINZ) and the City of DeLand and authorizes the Mayor's Commissioner to execute the attached “Ground Lease” agreement.

BACKGROUND/DISCUSSION:

N/A

GROUND LEASE AGREEMENT

The City of DeLand, a Florida municipal corporation (hereinafter referred to as "Lessor"), and RCH Realty, LLC., a Florida corporation, with its principal place of business at 42 Boxwood Lane, Palm Coast, Florida 32137 (hereinafter referred to as "Lessee"), in consideration of the mutual terms and conditions of this Ground Lease Agreement (hereinafter referred to as the "Agreement"), dated this 1st day of July, 2023, hereby agree as follows:

Section 1. Property. Lessor hereby leases to Lessee 0.34 acres of land described in the attached Exhibit A, which is located at 1550 Old NDB Road, the DeLand Municipal Airport in Volusia County, Florida (hereinafter referred to as the "premises" or "leased premises"). Any use of the airport outside of the leased premises shall be in accordance with any fee schedules or other regulations, rules or policies adopted by Lessor.

Section 2. Term. This Agreement shall be for a term of 20 years, beginning July 1, 2023, and ending on June 31, 2043, unless sooner terminated as provided below.

Section 3. Purposes. The premises shall be used for Aircraft Brokerage in accordance with Section 4.3 of the DeLand Municipal Airport Minimum Standards. Lessee shall make no unlawful, improper or offensive use of the premises.

Section 4. Renewals. So long as Lessee is completely current with its rent payments and is otherwise in full compliance with all of the terms, covenants and conditions of this Agreement, Lessee shall have the right and option to renew this Agreement, upon proper notice, for two (2) successive terms of 15 years each under the same terms and conditions as the initial term of this Agreement, except as those terms and conditions may be modified in accordance with this Agreement. Written notice of Lessee's intention to renew shall be sent to Lessor not less than 90 days and not more than 180 days prior to the expiration date of the initial term of this Agreement and any renewal of this Agreement.

Section 5. Rent. Lessee shall pay Lessor as base rent for the premises the sum of \$4,177.04 annually, payable in twelve (12) equal monthly installments of \$348.09, due in advance on the first day of each month. Rent will commence upon the earlier of July 1, 2024 or receipt of a certificate of occupancy for development on the leased premises. All rent payments are subject to state and/or local sales' taxes at the rate or rates then in effect, which shall be due and payable at the same time as the rent installments. This base rent shall be modified as follows:

A. Annual cost of living adjustments. At the conclusion of every year of this Agreement, the rent payable by Lessee shall be adjusted for the following year in accordance with this subsection; provided, however, that in no event shall the annual rent payable by Lessee be less than the base rent reserved in the preceding paragraph of this section; and provided further, however, that in no event shall any annual adjustment be less than 3% nor more than 6%. On May 1st of each year during the initial term or any renewal of this Agreement, Lessor shall use the latest available publications promulgated by the U.S. Department of Labor to determine the average annual change in the Cost of Living Index (All Urban Consumers) for the twelve (12) months immediately preceding that date for which data is available. On or before June 1st of each year, Lessor shall send Lessee written notice of the average annual change in the Cost of Living Index and the required adjustment, if any, in annual rent and monthly installments. The annual cost of living adjustment shall be determined by applying the change in the Consumer Price Index to Lessee's annual rent at the time the notice is sent and shall become effective for the following year beginning on the yearly anniversary date of this Agreement; provided, however, that in no event shall the annual rent payable by Lessee be less than the base rent reserved in the preceding paragraph of this Section; and provided further, however, that in no event shall any annual adjustment be less than 3% nor more than 6%.

B. Redetermination of rent for renewal term. At the end of the initial term or any renewal term of this Agreement, Lessor, in its sole discretion and at its sole option, may notify Lessee that the base rent to be paid by Lessee shall be altered and redetermined in accordance with this subsection. Written notice of Lessor's exercise of this option shall be sent to Lessee not less than 60 days prior to the expiration of the current term. The parties may then negotiate a new base rent for the ensuing term. If the parties are unable to reach agreement on the rent within 30 days of the date of notice, each party shall appoint (at its own expense) a qualified MAI appraiser, who shall then appoint a third qualified MAI appraiser (whose costs shall be borne equally by the parties). These appraisers shall inspect and appraise the rental value of the property, and arrive at a fair rental value for the premises based upon a value per square foot per year. This value for the property shall exclude the rental value of any improvements or renovations built or installed on the premises at the expense of Lessee. If the appraisers do not unanimously agree on the fair rental value of the premises, the base rent for the renewal period shall be established by averaging the two highest appraisals.

C. Adjustment when substantial part of premises unusable. If a substantial part of the premises is rendered unusable due to condemnation or force majeure, the rent payable by Lessee shall be adjusted in accordance with this subsection; provided, however, that Lessee shall continue to pay rent at the current rate until the adjustment amount has been finally determined in accordance with this subsection. Within 30 days of the condemnation action or event of force majeure, Lessee shall send Lessor written notice of its desire to adjust the rent in accordance with this subsection and include in that notice any proposed adjustment in the rent and the factual basis for same. If the parties are unable to reach agreement on the rent within 30 days after the notice is sent, the rent shall be determined by a panel of MAI appraisers selected as provided in subsection B above. The rent arrived at through this subsection shall be subject to all other adjustments provided for in this section. If the condition which renders a substantial part of the premises unusable is temporary, upon the termination or elimination of that condition, Lessee shall resume paying rent in the amount that would have been due had the condition never existed.

The taking by condemnation or otherwise of 30 feet or less of any of the premises immediately adjacent to a public or private road for purposes of improving that road shall not be deemed to be a taking of a substantial part of the premises.

Section 6. Taxes. In addition to applicable sales or other proper tax on rent installments, Lessee shall pay any and all taxes levied or assessed by any proper taxing authority upon the land; upon any personal property, buildings, fixtures or improvements belonging to Lessee and located on the leased premises, including but not limited to, all ad valorem or real estate taxes assessed against the land, and any and all taxes assessed or levied by any proper taxing authority as a result of Lessee's leasehold or possessory interest. Lessee shall pay in full all ad valorem taxes assessed against the leased premises on or before April 1st of each and every year. Nonpayment of ad valorem taxes in full by the Lessee shall create a default of this Agreement pursuant to **Section 29(B)** below. Lessee's default or termination of this Agreement shall not relieve Lessee of responsibility to pay taxes as set forth herein.

Section 7. Security deposit. Lessee, contemporaneously with the execution of this Agreement, shall deposit with Lessor the sum of \$696.18, receipt of which is hereby acknowledged, as a security for the full and faithful performance by Lessee of all the terms, covenants and conditions of this Agreement upon Lessee's part to be performed, which sum shall be returned to Lessee after Lessee has vacated the premises, provided always that Lessee has fully and faithfully carried out all of the terms, covenants and conditions as herein set forth. Lessor shall have the right, but not the obligation, to apply all or any part of said deposit to cure

any default of Lessee, and if Lessor does so, Lessee shall, upon demand, deposit with Lessor the amount necessary so that Lessor shall at all times have on hand the full deposit during the term of this Agreement. Lessee's failure to pay to Lessor a sufficient amount to restore said security deposit to the original sum deposited within three (3) days after receipt of demand therefore shall constitute a breach of this Agreement. No interest shall be payable by Lessor to Lessee on account of such security deposit. Should Lessee comply with all the terms, covenants and conditions and promptly pay all of the rental installments as they become due and all other sums payable to Lessor by Lessee hereunder, the security deposit shall be returned in full to Lessee at the end of the term of this Agreement or any renewal thereof after Lessee has vacated the premises.

Section 8. Buildings and improvements. Lessee may, at its sole cost and expense, make any changes, alterations or improvements that may be reasonable and necessary for its use of the premises. All buildings, fixtures and improvements shall remain the property of Lessee, subject to Lessor's landlord lien for rent. Lessee may remove the improvements upon the termination of this Agreement if the removal can be done in a manner that does not injure or damage the leased premises. If Lessee fails to remove the buildings, fixtures or improvements as provided, Lessor, at its option, may require Lessee to remove them. If Lessee fails to do so, Lessor may remove and dispose of the buildings, fixtures, improvements and personal property not removed by Lessee. In that case, Lessee agrees to sell, assign and transfer to Lessor all of Lessee's right, title and interest in the buildings, fixtures, improvements and personal property not removed by Lessee for the sum of \$1.00. Lessee further agrees that if Lessor removes the buildings, fixtures, improvements and personal property as provided for above, Lessee shall pay Lessor upon written demand the cost of the removal, transportation, storage and/or disposition of the property.

Section 9. Review of plans for buildings and improvements. Before applying for a building permit for the construction, erection or installation on the leased premises of any alteration, fixture, building, structure or other improvement, Lessee shall submit complete building plans for Lessor's prior review and approval, which approval shall not be unreasonably withheld. The review and approval of the plans shall be subject to all applicable federal, state and local regulations, including but not limited to all zoning and airport development regulations. In the event of a conflict among such regulations, the more restrictive shall apply. Such plans shall also be subject to the approval of the Federal Aviation Administration (FAA).

Section 10. Mortgage of Lessee's interest. Lessor may, by further agreement, consent to subordination of some of its rights as landlord to any lending institution making a loan to Lessee to be used in connection with the construction or improvement of any building or facility upon the leasehold. However, in any such subordination agreement, Lessor shall reserve the right to be made a party to any foreclosure action and shall have the right to receive absolutely all proceeds on foreclosure sale above the amount of the judgment in foreclosure, and shall have the right to bid at foreclosure sale. Any subordination agreement shall provide for maintaining current at all times all payments owed to Lessor under this Agreement.

No mortgage or foreclosure or the consent thereto shall be deemed to encumber or affect Lessor's title to the real property which is demised in this Agreement. A copy of the mortgage instrument shall be provided to Lessor not more than 30 days after execution of the mortgage. Lessee shall at that time also provide Lessor the name and mailing address of a representative of the mortgagee authorized to receive notices under this Agreement. During the period of time that the mortgage remains unsatisfied, Lessor shall send the mortgagee a copy of any notices from Lessor to Lessee at the same time that notice is sent to Lessee.

Section 11. Water and sewer connections. Lessee shall connect the water and sewer systems on the premises to the airport water and sewer systems provided by Lessor. However, Lessor

may permit Lessee to maintain additional water and sewer facilities on the premises if necessary to the carrying out of Lessee's activities on the premises.

Section 12. Mechanic's liens. The premises hereby leased shall not be subject to any mechanic's lien, and Lessee agrees that, not less than five (5) days before any construction material or services are provided to Lessee, it shall post and record in the public records of Volusia County a notice of non-responsibility of Lessor, stating that Lessor is not responsible for payment of any labor, materials or services provided Lessee and that the leased premises are not subject to any mechanics' liens.

Section 13. Repairs and maintenance generally. Lessee represents that it has inspected the leased premises and accepts them in their present condition. During the term of this Agreement, Lessee shall maintain the premises in good repair and in a neat and orderly condition at Lessee's sole cost and expense. In the event that Lessee fails or refuses to perform any required repairs or maintenance, Lessor shall have the right, but not the duty, to undertake any such repairs or maintenance, and the cost thereof, together with interest thereon, shall be collectable as additional rent. Lessor shall not be required to make any improvements or repairs to or upon the premises whatsoever.

Section 14. Maintenance of premises exteriors. Lessee recognizes that Lessor has special economic and other interests in maintaining the clean, neat and orderly appearance of grounds and the exterior of structures at the DeLand Municipal Airport. Accordingly, Lessee shall landscape the premises in a manner acceptable to Lessor and keep the grounds and the exterior of structures on the premises in a clean, neat and orderly appearance. In the event Lessee fails substantially to correct a breach of this section within ten (10) days after Lessor sends written notice of such breach, Lessor shall have the right, but not the duty, to undertake any such required maintenance or landscaping, and the cost thereof, together with interest thereon, shall be collectable as additional rent.

Section 15. Surrender of possession. Upon termination of this Agreement, Lessee shall surrender the premises quietly and peaceably and in as good order and condition as at the commencement of the Agreement term, reasonable wear, tear and damage by the elements excepted. Lessee shall also leave the premises free from all nuisances and dangerous or defective conditions.

Section 16. Compliance with laws. Lessee shall at its own cost and expense comply with all applicable federal, state and local laws, rules and regulations pertaining to Lessee's use of the premises, as they may be amended from time to time, including but not limited to the following:

- A. All building, zoning, sign, airport development and fire protection regulations.
- B. All regulations and instructions regarding the disposal of sewage, garbage and industrial or hazardous wastes promulgated or enforced by any federal, state or local agency.
- C. All regulations requiring that Lessee obtain licenses or permits for its activities on the leased premises.
- D. All regulations restricting the height of structures, natural growths or other obstructions on the leased premises promulgated by the Federal Aviation Administration (FAA).

Section 17. Utility payments. Lessee shall pay all utilities for the leased premises and shall pay when due all bills for water, sewer, stormwater and garbage collection services provided to the premises by the City of DeLand.

Section 18. Prohibited activities. The following operations, activities and uses are specifically prohibited on the leased premises:

A. The keeping or storage during any 24-hour period of any flammable liquids inside any covered or enclosed portion of the leased premises in excess of the amount of the liquids needed by Lessee for that 24-hour period. Any flammable liquids with a flash point of less than 100 degrees Fahrenheit shall be kept and stored only in safety containers of a type approved by Underwriters' Laboratories and the DeLand Fire Department. For purposes of enforcing this subsection, Lessee shall send to Lessor not more than 30 days after execution of this Agreement a list of the types, contents and quantities of any flammable liquids which will be maintained on the leased premises. Any additions to that list shall be sent within five (5) days after receipt by Lessee of the liquid in question.

B. Any improvements to or use of the property that unreasonably interferes with the use or enjoyment of adjacent or nearby premises by other lessees of Lessor.

C. Any use of the leased premises that would interfere with or adversely affect the operation or maintenance of the DeLand Municipal Airport or would otherwise constitute an airport hazard.

D. The use of the premises in violation of any applicable federal, state or local law, rule or regulation.

E. The leased premises have direct access to the Air Operations Area (AOA) of the DeLand Municipal Airport. As such, grant assurances and other Federal Aviation Administration (FAA) regulations and policies require that the leased premises and any facilities built thereon shall be used only for aeronautical activities. Accordingly, any use of the leased premises for any non-aeronautical activity or the storage of materials which are not related to an aeronautical activity being conducted on the leased premises, shall constitute a violation of this Agreement.

Section 19. Environmental matters.

A. Lessee shall not suffer, cause or permit the contamination of the leased premises, or any environmental contamination resulting from use of the leased premises, by any hazardous or toxic materials (including but not limited to petroleum products) and shall not handle or permit polychlorinated biphenyls ("PCB's") or asbestos or substances containing PCB's or asbestos on the premises. Lessee shall immediately provide Lessor with notice of any event of an environmental nature, including any spill or other incident which could result in contamination to the premises.

B. Lessee shall conduct all of its operations at the leased premises in compliance with all federal, state and local laws, rules, regulations, ordinances or requirements, including, but not limited to, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments thereto, or any regulations promulgated pursuant thereto, or any similar state or local law, rule, regulation or ordinance ("Environmental Statutes"). Lessee shall obtain all registrations required by Environmental Statutes and shall submit to Lessor, upon request, for inspecting and copying all documents, permits, licenses, approvals, manifests and records required to be submitted and/or maintained by the provisions of the Environmental Statutes. Lessee shall also provide promptly to Lessor copies of any correspondence, notice of violation, summons, order, complaint or other document received by Lessee pertaining to compliance with Environmental Statutes.

C. Lessee shall permit Lessor and Lessor's agents, servants and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purposes of environmental inspections and sampling during regular business hours, or during other hours after reasonable notice by Lessor, or in the event of any environmental emergency. Lessee shall not restrict access to any part of the premises, and Lessee shall not impose any conditions to access. To the extent any hazardous conditions exist on the leased premises, Lessor, in its sole discretion may remedy and/or cause to be remedied at Lessee's sole expense, the defect or contamination, and Lessor reserves the right to re-inspect the leased premises after any remediation, and require Lessee to take appropriate action to remedy and/or cause to be remedied any further defect or contamination resulting from this tenancy.

D. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, losses, damages, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of action (including attorneys' fees, engineering and other professional or expert fees), of whatsoever kind or nature arising out of or in any way related to Lessee's responsibilities hereunder.

E. Notwithstanding the foregoing, Lessee shall have no liability for any hazardous conditions which may have existed on the leased premises before Lessee took possession or which may have arisen thereafter if Lessee demonstrates to the reasonable satisfaction of Lessor by substantial, competent evidence that the hazardous conditions were caused by identified, unrelated third parties acting without the express or implied consent of Lessee.

Section 20. Duties of Lessor. During the term of this Agreement, Lessor shall:

A. Continue to operate the DeLand Municipal Airport as a public airport, consistent with government regulations.

B. Allow Lessee free access to the premises over public roads leading to the leased premises and allow Lessee access to public airport facilities.

C. Not permit the construction by any other entity under its control of any improvements or structures which would interfere with Lessee's ingress and egress to the premises.

Section 21. Enjoyment of premises. Lessee acknowledges that its right to enjoy the leased premises is subject to the use of the surrounding property for industrial, commercial and airport purposes, with accompanying industrial, commercial and airport noises, odors, smoke, sonic booms and low-flying aircraft, and the danger and nuisance thereof.

Section 22. Non-assignability. Lessee shall not assign this Agreement without the prior written approval of Lessor; which approval may not be unreasonably withheld. Any attempted assignment in contravention hereof shall be void.

No assignment shall relieve Lessee of its obligation to pay the rent provided for in this Agreement in the event of a default by the assignee unless Lessee is specifically relieved of that obligation in writing by Lessor. Lessee shall send Lessor a copy of the proposed assignment not less than 60 days prior to its proposed execution, and Lessor shall send Lessee notice of its consent or refusal to consent not less than 30 days thereafter.

Section 23. Nondiscrimination covenants. Lessee, for itself, its personal representatives, successors in interest, and permitted assigns, if any, agrees as a covenant running with the land that:

A. In the event facilities are constructed, maintained or operated on the leased premises for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended, or for any other purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the latest version of Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the DOT-Effectuation of Title VI of the Civil Rights Act of 1964 (DOT Regulations).

B. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of any facilities or services of Lessee on the grounds of race, color or national origin.

C. In the construction of any improvements on, over or under any facilities on the premises, and the furnishing of services on the premises, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in such activity on account of race, color or national origin.

D. The premises shall be used in compliance with DOT Regulations.

E. Subject to appeal provisions in DOT Regulations, upon Lessee's breach of any provision of this section, Lessor may terminate this Agreement and reenter and repossess the premises, and hold the same as if this Agreement had never been made, if Lessee fails to cure and remedy the breach in a manner reasonably agreeable to Lessor within 30 days after written notice is sent to Lessee by Lessor.

Section 24. Liability insurance, indemnity and hold harmless. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, losses, damages, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions (including attorneys' fees), of whatsoever kind or nature arising out of or in any way related to the use, occupancy, management or control of the leased premises, or any act or omission of Lessee or its agents, servants, employees, independent contractors, customers, patrons or invitees, whether on the leased premises or elsewhere.

Within ten (10) days of the beginning date of this Agreement, Lessee shall, at its own cost and expense, procure and maintain comprehensive public liability insurance coverage from a company and in a form acceptable to Lessor, in its sole discretion, protecting and insuring Lessee and Lessor against any and all of the foregoing, with a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) and a general aggregate of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit commercial general liability insurance on an occurrence basis (including coverage for the Premises and Lessee's operations). All such insurance shall cover complete contractual liability, bodily injury and property damage liability. The certificate shall list the City of DeLand as an additional insured, indicate the location of the leased property by street address, and provide at least 30 days advance written notice of cancellation or change of coverage to the City of DeLand.

If the Lessee uses or stores any hazardous or toxic substances on the leased premises, then within ten (10) days of the beginning date of this Agreement, Lessee shall, at its own cost and expense, procure and maintain pollution liability and storage tank coverage from a company and in a form acceptable to Lessor, in its sole discretion, protecting and insuring Lessee and Lessor against any and all liability and costs of clean-up and remediation resulting from the storage, handling or disposal of any hazardous or toxic substances, as those terms are commonly defined, or for any other liability relating to such hazardous or toxic substances, with coverage limits in the amount not less than \$1,000,000 for any one occurrence. The certificate shall list the City of DeLand as an

additional insured, indicate the location of the leased property by street address, and provide at least 30 days advance written notice of cancellation or change of coverage to the City of DeLand.

Section 25. Nonliability of Lessor to Lessee. Lessor shall not be liable to Lessee or its agents, representatives, invitees, employees, or any other person, for any injury to or death of any of them, or for any damage to any of Lessee's property or loss of revenue, caused by any third persons in the maintenance, construction or operation of the Airport, its appurtenances, facilities or equipment, or caused by any third persons using the Airport or its appurtenances, facilities and equipment, or navigating any aircraft on or over the Airport, whether the injury, death or damage is due to negligence or not. Third persons, as used in this section, shall include the United States of America and the State of Florida, or any of their agencies, and all persons other than the City of DeLand.

Section 26. Non-exclusivity. Nothing in this Agreement shall be construed to grant Lessee the exclusive right to carry on any activity on any premises owned or subject to control by Lessor. Lessor reserves the right to lease or convey other premises to other operators of businesses or activities similar to those of Lessee upon terms and conditions set by Lessor.

Section 27. Agreement not a joint venture. Nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of partners or joint ventures between Lessor and Lessee or as constituting either party as the agent or representative of the other party for any purpose or in any manner.

Section 28. Reservation of airspace. Lessor reserves to itself for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the leased premises, together with the right to cause in the airspace such noise as is inherent in the operation of all types of aircraft, and to use the airspace for all airport and related activities, subject to Lessee's right to construct and maintain permitted improvements.

Section 29. Defaults. This Agreement shall be in default and may be terminated in any of the following events:

A. Failure to pay rent or other payments due. The failure by Lessee to pay to Lessor any sum when due, when the failure continues for three (3) or more days after written notice of default is sent to Lessee.

B. Violation of terms. The violation of or failure to perform any other term, covenant or condition of this Agreement, including the payment in full of ad valorem taxes on or before April 1st of each year, if the violation or failure to perform is not corrected or cured within ten (10) days after written notice of default is sent to the party in default. Any notice sent under this subsection shall specify the violation or failure to perform, and the steps which must be taken by that party to correct the violation or failure to perform.

C. Insolvency. If Lessee becomes insolvent or makes an assignment for benefit of creditors; or the interest of Lessee in the premises is levied upon or sold upon execution, or becomes vested by operation of law in some other person; or a receiver or trustee is appointed for Lessee.

D. Abandonment. If Lessee vacates or abandons the leased premises, or permits the premises to remain vacant or abandoned for a period of 30 days or more, regardless of whether or not rent payments are current. However, Lessor may at its sole discretion consent in writing to the vacation of the premises for a longer period of time upon terms and conditions set by Lessor.

E. Corporate Dissolution. If Lessee is a corporation and if Lessee suffers or permits its corporate franchise to be dissolved for a period of more than three (3) calendar months before seeking reinstatement.

Section 30. Remedies for default. In the event of a default as provided above, the parties shall have the following remedies:

A. Repossession by Lessor. Upon default by Lessee, Lessee's right to possession of the leased premises shall terminate, without notice or demand by Lessor, and Lessee shall surrender possession to Lessor. Lessee hereby grants to Lessor full and free license to enter the premises to take possession of the premises in any lawful manner, and to expel Lessee.

B. Damages. In addition to terminating this Agreement and retaking possession of the leased premises, Lessor may recover all damages and rent accrued or accruing under this Agreement or arising out of any breach of this Agreement. Lessor may resume possession of the premises for its own account and recover from Lessee the difference between the total rent due under this Agreement and the fair market value of the property for the remainder of the term, reduced to present value, or Lessor may resume possession of the premises and re-rent it for the remainder of the term for the account of Lessee and recover from Lessee, at the end of the term or at the time any rent becomes due under this Agreement, the difference between the rent specified in this Agreement and the rent received upon the re-renting the premises.

C. Other remedies. Lessor may pursue any other remedies provided by law for the breach of this Agreement. No right or remedy conferred upon or reserved to Lessor in this Agreement is intended to be exclusive of any other right or remedy, and each right and remedy shall be cumulative and in addition to any other right or remedy of Lessor under this Agreement, or now or hereafter existing at law or equity, or by statute.

D. Lessee's right of cancellation. Lessee may cancel this Agreement in the event of civil commotion or riot, acts of military power, damage to runways which preclude reasonable use of the airport, or court order restraining the use of the airport; however, this termination shall not create any liability to Lessee by Lessor. Lessee may also terminate this Agreement if Lessor fails to fulfill its obligations under this Agreement, upon a determination by a court of competent jurisdiction that such a default exists.

E. Attorney's fees. In any civil action brought to enforce the provisions of this Agreement, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the non-prevailing party.

Section 31. Force majeure. The performance of all provisions of this Agreement (except for the payment of rent) shall be postponed and suspended during any period that the performance thereof is prevented by acts of God, accidents, weather and conditions arising therefrom, riot, fire, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and conditions arising therefrom, the exercise of paramount power by the federal government, either through the taking of the leased premises or the imposition of regulations restricting the conduct of business on the premises, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency thereof, including any court of competent jurisdiction, or any other delay or contingency beyond the reasonable control of Lessor or Lessee.

Section 32. Eminent domain. If all or any substantial part of the leased premises is taken by any paramount public authority under the power of eminent domain, then the term of this Agreement shall cease as to the part taken from the day the possession of that part is taken for

any public purpose, and from that day Lessee shall have the right either to cancel this Agreement or to continue in possession of the remainder of the premises upon payment of an adjusted rent as provided in **Section 5** above.

All damages awarded for the taking shall belong to and be the exclusive property of Lessor, except for any portion of the award made for loss of improvements belonging to Lessee or for loss of Lessee's leasehold interest in the premises taken.

The taking of 30 feet or less of any of the leased premises immediately adjacent to a public or private road for improvement of that road shall not be deemed to be a taking of a substantial portion of the premises.

Section 33. Waiver of default; effect. The acceptance by Lessor of one or more monthly rental installments after they fall due, or after knowledge of any breach by Lessee of this Agreement, or after the sending of any notice or demand, or any other act or series of acts by Lessor except an express waiver in writing, shall not be deemed or construed as a waiver of Lessor's right to act or as a waiver of any other right given to Lessor under this Agreement, or as an election not to proceed under the provisions of this Agreement. The failure by Lessor to collect or demand any sums due under this Agreement shall not relieve Lessee's obligation to pay those sums when demanded.

Section 34. Notices. Any notices required by this Agreement, or which Lessor or Lessee may wish to serve on the other, shall be in writing and shall be deemed served, whether or not service is accepted, admitted or refused, when delivered in person to an agent or employee of the party at its place of business or when deposited in the U.S. Mail, postage prepaid, return receipt requested, addressed to the parties as follows:

Assistant City Manager
City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

Heinz Peier
RCH Realty, LLC
378 Pine Woods Road
Ormond Beach, Florida 32174

Section 35. Subject to federal deeds and agreements. This Agreement is subject and subordinate to the provisions of a deed from the United States to the City of DeLand dated June 20, 1947, and recorded at Deed Book 383, Page 508, Public Records of Volusia County, Florida, and other existing agreements and leases between Lessor and the United States and any and all future leases, deeds and agreements entered into between the United States and the City of DeLand with reference to the conveyance by the United States to the City of DeLand of any real or personal property under any existing or future federal statutes authorizing the conveyance of such property by the federal government to the City for airport purposes.

Section 36. Inspection of premises. Lessee shall allow Lessor's authorized representative access to the leased premises at all reasonable hours for the purpose of examining and inspecting said premises; for the purposes necessary, incidental to or connected with the performance of Lessee's obligations under this Agreement; or in the exercise of its governmental functions.

Section 37. Signs. Lessee shall be allowed to install signs and advertisements promoting the business conducted by Lessee subject to the written consent of the Lessor, which consent shall not be unreasonably withheld, and subject to compliance with all applicable sign, zoning, building and other codes.

Section 38. Effect on prior agreements. This Agreement supersedes all prior agreements, if any, between the parties regarding the leasing of these premises and, as of the date of this Agreement, those prior agreements shall be of no further force or effect.

Section 39. Construction of lease. This Agreement shall be construed under the laws of the State of Florida and the Code of Ordinances of the City of DeLand.

Section 40. Short form of lease. Either party may prepare for execution a short form of this Agreement for recording in the public records. The costs of recording this Agreement shall be paid by Lessee.

Section 41. Amendments to lease. This Agreement may be amended only in writing signed by both parties.

Section 42. Late charge. All unpaid sums owed to Lessor under this Agreement shall bear interest at a rate of 18 percent per annum from the date when due.

Section 43. Time of essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

Section 44. Omitted provisions. Various sections of the City's standard Ground Lease for the DeLand Municipal Airport may have been omitted if they are not applicable to this Agreement. In that event, the section headings have been retained for reference only to facilitate administrative review.

Section 45. Special terms and conditions. In the event that Lessee, for any reason whatsoever, shall fail to construct a hangar building of a size that reasonably maximizes the use of the leased premises, together with the associated site infrastructure, by July 1, 2024, then Lessor shall be entitled to cancel this lease without any liability to reimburse Lessee for rent theretofore paid for the leased premises, it being Lessor's intent to ensure that the leased premises is developed and put to economic use.

Section 46. Complete agreement. This Agreement constitutes the complete and exclusive understanding and agreement between the parties with respect to the subject matter hereof and may only be amended in writing signed by both parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties' heirs, personal representatives, successors and permitted assigns.

*** Signatures on following page ***

EXECUTED by the Lessee this ____ day of June, 2023.

EXECUTED by the Lessor this ____ day of June, 2023.

CITY OF DELAND, LESSOR

RCH REALTY, LLC, LESSEE

Christopher M. Cloudman
Mayor-Commissioner

By: _____

(Signature)

Heinz Peier, Manager

Print Name and Title

Address: City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

Address: RCH Realty, LLC
42 Boxwood Lane
Palm Coast, Florida 32137

ATTEST:

WITNESSES AS TO LESSEE:

Julie A. Hennessy
City Clerk-Auditor

(Witness' Signature)

(Print Name)

WITNESSES AS TO LESSEE:

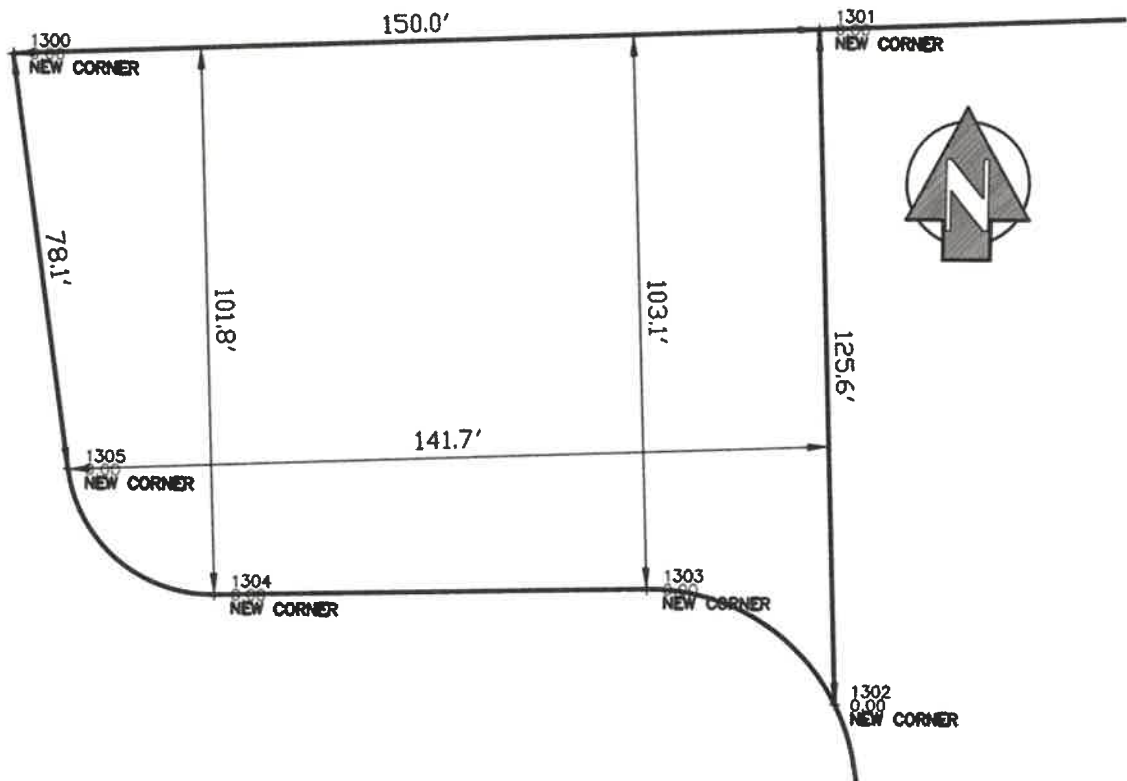
(Witness' Signature)

(Print Name)

This Instrument Prepared By:
City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

EXHIBIT "A"

TAXIWAY



This is a draft only and will be replaced with an actual survey. _____

CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Second Reading of Ordinance No. 2023-10, Annexing 0.76 Acre of Property Located at 230 East International Speedway Boulevard. (First Reading 4-17-2023).

DEPARTMENT: Planning

PREPARED BY: Carol Kuhn, Deputy Planning Director

ATTACHMENTS: ORD-2023-10 , Exhibit A - Metes & Bounds Legal Description Parcel 7004-02-02-0010, Exhibit B - Location & Zoning Map, AN23-003 Staff Report

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

This request is for approval to annex 0.76 acre of property into the City of DeLand to develop a commercial project. On April 17, 2023, the City Commission unanimously recommended approval of the annexation on first reading.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Smart Growth:

As outlined in the city's Strategic Plan: "To manage growth, the City will need to institute a number of smart growth principles. For reasons of both community identity and governmental efficiency, an annexation strategy is required which will "square off" the City's boundaries." Approval of this request will further the city's goals to annex contiguous properties in order to ensure quality growth within the city limits.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Inclusion of this property into the city's tax rolls will increase funds towards city services.

RECOMMENDATION:

It is recommended that the City Commission approve, on second reading, the annexation of 0.76 acre of property into the city limits of DeLand.

BACKGROUND/DISCUSSION:

Mike Woods with Cobb Cole, represents the developer of the subject property. Applications to amend the future land use and zoning were also submitted by the applicant and are being reviewed concurrent to this request. The property is surrounded, on three sides (north, east and west), by parcels and right of way (International Speedway Blvd.) that are already in the city limits of DeLand, and part of an existing enclave. If approved, the annexation of 230 E. International Speedway Blvd. would reduce the existing enclave. The applicant has also applied for a land use amendment (SMLU23-004) as well as a rezoning request (Z23-005) for the subject property and for the parcel to the west at 210 E. International Speedway Blvd.

At their March 15, 2023 meeting, the Planning Board unanimously recommended approval of the annexation.

ORDINANCE NO. 2023 - 10

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, ANNEXING A PARCEL OF LAND TOTALING APPROXIMATELY +/- 0.76 ACRES OF PROPERTY LOCATED AT 230 EAST INTERNATIONAL SPEEDWAY BOULEVARD; AMENDING CITY BOUNDARIES TO INCLUDE THE ANNEXED PROPERTIES; AFFIRMING COMPLIANCE WITH STATUTORY PROCEDURE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Petitioner, Mike Woods, Esq., on behalf of the owner, W. Volusia Columbian Club, submitted a petition for annexation of approximately +/- 0.76 acres of land located at 230 East International Speedway Boulevard; and

WHEREAS, the parcel to be annexed is improved with a 3,500 square foot building housing the former Knights of Columbus; and

WHEREAS, the area to be annexed is contiguous to the boundaries of the City of DeLand, on the north, east and west, will not create an enclave if annexed, is reasonably compact, is not circuitous, and otherwise meets the requirements of *Chapter 171, Florida Statutes*.

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

Section 1. The following described land in Volusia County, Florida, for which a petition for annexation has been received from the Petitioner, Mike Woods, Esq., on behalf of the owner, W. Volusia Columbian Club, totaling approximately +/- 0.76 acres, located at 230 East International Speedway Boulevard, is hereby annexed and made part of the City of DeLand, subject to the jurisdiction, obligations, benefits and privileges of property within the municipality:

See legal description(s) attached hereto as Exhibit “A”

Parcel Identification No. 700402020010

Section 2. The boundary lines of the City of DeLand are hereby changed and redefined to include the lands described in Section 1 above and depicted on the map attached hereto as Exhibit “B” and by this reference made a part hereof.

Section 3. The City Commission finds that a public hearing has been held on this Ordinance prior to adoption in the Commission Chambers, City Hall, 120 S. Florida Avenue, DeLand, Florida, at 7:00 P.M., on June 19, 2023, after notice published in accordance with Florida Statutes Section 171.044.

Section 4. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 19th day of June, 2023.

Christopher M. Cloudman
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: April 17, 2023
Adopted on second reading: June 19, 2023

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

“EXHIBIT A”

LEGAL DESCRIPTION

7004-02-02-0010

7004-02-02-0010:

PARCEL 1:

THE WEST 100 FEET OF THE EAST 260 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF BLOCK B, DEANBURG, A SUBDIVISION IN SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, AS RECORDED IN DEED BOOK P, PAGE 530, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. LESS AND PORTION LYING IN THE ROAD RIGHT OF WAY.

PARCEL 2:

THE WEST 42 FEET OF THE EAST 302 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF BLOCK B, DEANBURG, A SUBDIVISION IN SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, AS RECORDED IN DEED BOOK P, PAGE 530, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. LESS AND PORTION LYING IN THE ROAD RIGHT OF WAY.

THE ABOVE DESCRIBED PROPERTY BEING MORE PARTICULARLY DESCRIBED AND SURVEYED AS FOLLOWS:

A PORTION OF BLOCK B, DEANBURG, A SUBDIVISION IN SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, AS RECORDED IN DEED BOOK P, PAGE 530, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

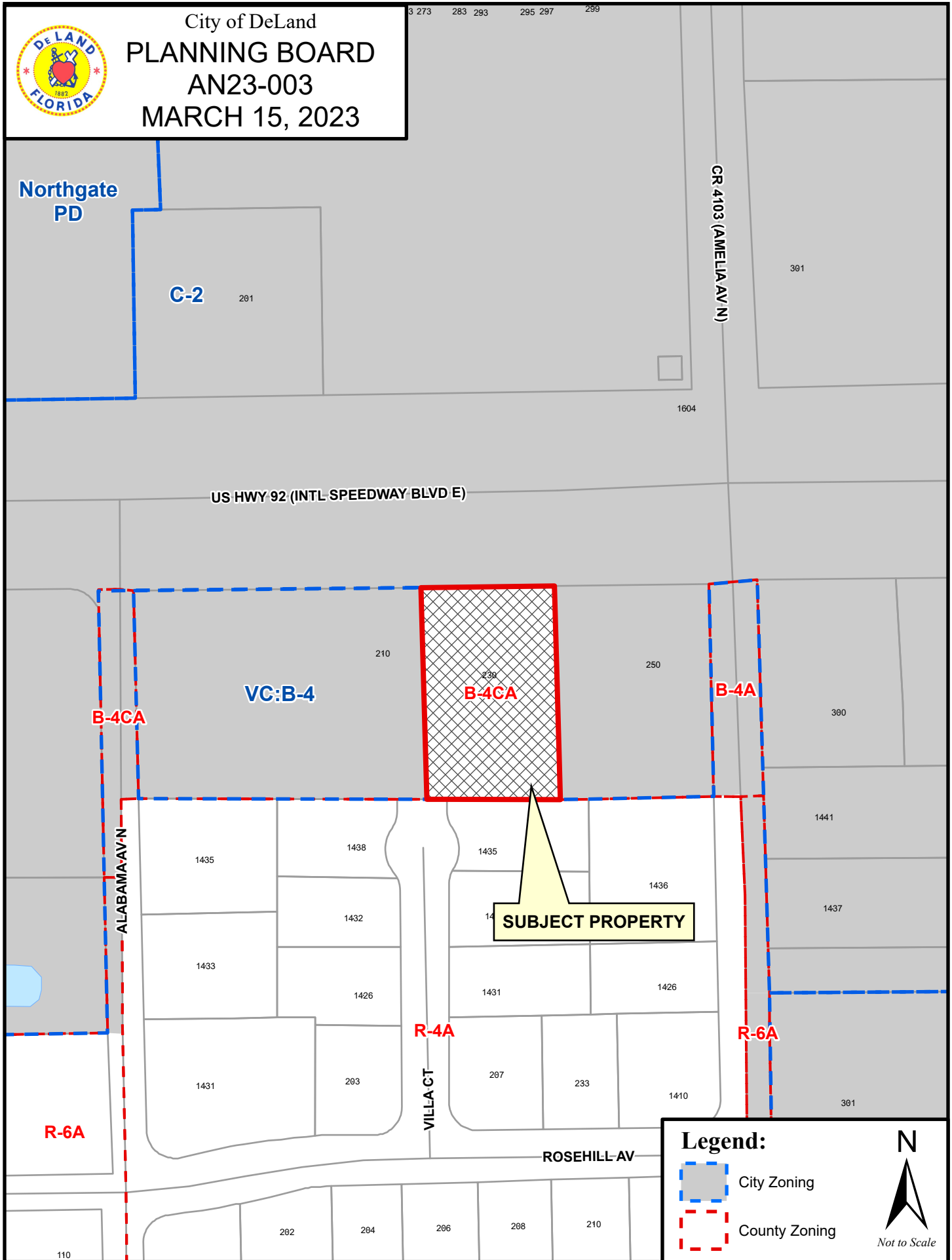
COMMENCE AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF ALABAMA AVENUE WITH THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY #92; THENCE ALONG THE SOUTH RIGHT OF WAY OF SAID U.S. HIGHWAY #92, N 88°57'36" E, 309.76 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF THE EAST 302 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF SAID BLOCK B AND THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY #92, N 89°42'36" E, 141.98 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, ALONG THE EAST LINE OF THE WEST 100 FEET OF THE EAST 260 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF SAID BLOCK B, S 01°34'21" E, 232.56 FEET; THENCE S 88°57'34" W, 141.95 FEET TO A POINT ON THE AFORESAID WEST LINE OF THE EAST 302 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF SAID BLOCK B; THENCE ALONG SAID LINE, N 01°34'21" W, 234.37 FEET TO THE POINT OF BEGINNING.

CONTAINS .76 ACRES, MORE OR LESS.

"EXHIBIT A"



City of DeLand
PLANNING BOARD
AN23-003
MARCH 15, 2023



**PLANNING DEPARTMENT STAFF REPORT
TO
PLANNING BOARD**

March 15, 2023

A. APPLICATION: AN23-003

Requested Action: Annexation of 0.76 acres of property into the City limits of DeLand

Location: 230 E. International Speedway Blvd.

Petitioner: Michael Woods, Cobb Cole

Owner: W. Volusia Columbian Club

Size of parcel(s): ± 0.76 acre

Parcel ID: 700402020010

Land Use Designation & Zoning of Subject Property:

Future Land Use: Volusia County: Urban Medium Intensity UMI

Existing Zoning: Volusia County: B-4CA

Existing Use: “Knights of Columbus”, vacant

B. SURROUNDING LAND USE & ZONING:

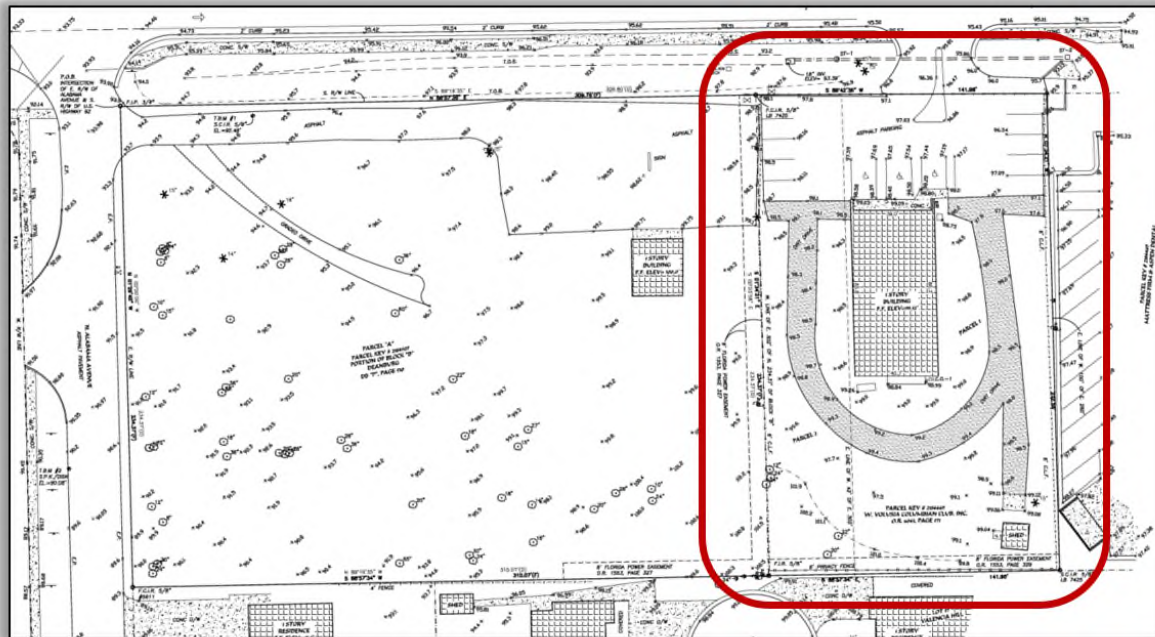
	LAND USE	ZONING
North:	HC	C-2
South:	VC: UMI	VC: R-4A
East:	HC	VC: B-4
West:	HC	C-2

C. PHYSICAL CHARACTERISTICS:

The subject property is located in unincorporated Volusia County and is currently zoned VC: B-4CA (Volusia County General Commercial) with a future land use designation of County UMI (Urban Medium Intensity). The proposed annexation consists of ± 0.76 acres of property located on the south side of E. International Speedway Blvd., between N. Alabama Ave. and N. Amelia Ave., addressed as 230 E. International Speedway Blvd. The subject property does not appear to contain any wetlands nor does it lie within the 100-year flood zone. The parcel is already a developed property with an existing $\pm 3,500$ sq. ft. building, formerly known as the “Knights of Columbus”. The applicant has submitted concurrent applications for a future land use amendment (SMLU23-004) and a rezone (Z23-005). All site improvements will require review and approval of a separate site plan or other development application.

D. PUBLIC SERVICES & UTILITIES:

The City’s Utilities Department determined the closest City water main is an 8” main on E. International Speedway Blvd., and the closest city sewer main is an 8” gravity main located on Amelia Ave., by the driveway for Valvoline (within 400 LF). Both the Police and Fire Departments will confirm that there is also adequate public safety protection available.



E. GROWTH MANAGEMENT PLAN CONSISTENCY:

The subject property is addressed as 230 E. International Speedway Blvd. and is 0.76 acres in size. Concurrent to this zoning application, the applicant submitted a request for a future land use amendment (SMLU23-004), as well as an application requesting to rezone the subject property (Z23-005). The property is situated between two properties already within the city limits of DeLand. The applicant is proposing the future land use designation be amended to City HC, Highway Commercial, the same as the property to the west and east, and compatible with the requested C-2 zoning district. Currently, the property is vacant, but was previously the location of the “Knights of Columbus” club. To the north is International Speedway Blvd. and to the south is unincorporated property, containing a single-family residential subdivision.

F. ANALYSIS:

The City’s guidelines for annexation require a property be sufficiently **contiguous** to property already within the city limits and to be accessible to public services provided, such as city water and sewer services. In addition, the State requires the property be **reasonably compact, non-circuitous**, and **does not create an enclave**. The subject property does not create an enclave, is contiguous to the City of DeLand, is reasonably compact and is non-circuitous. To the north, east and west of the parcel is all within the city’s jurisdiction. The annexation of this parcel would eliminate the existing enclave. The parcel is contiguous to the city to the north by ± 142 ft., to the east by ± 232 ft. and to the west by ± 234 ft.

G. RECOMMENDATION:

Staff recommends that the Planning Board forward this annexation petition to the City Commission, with a recommendation for approval.

Based upon the concurrency requirements of the State of Florida and the City's concurrency management plan, as adopted in Article 5, Sec. 33-41 of the Land Development Regulations, approval of the proposed annexation does not automatically provide vested development rights. At the time the developer applies for a development permit, adequate infrastructure must exist to support the proposed development. If such infrastructure does not exist, the developer may be required to incur additional expense to ensure that the necessary infrastructure is provided.

CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Second Reading of Ordinance No. 2023-11, Changing the Land Use of 0.76 Acre of Property from Volusia County's Urban Medium Intensity (UMI) to City of DeLand Highway Commercial (HC) Located at 230 East International Speedway Boulevard. (First Reading 4-17-2023).

DEPARTMENT: Planning

PREPARED BY: Kendall Story, Senior Planner

ATTACHMENTS: ORD-2023-11 SMLU, Exhibit A - Legal Description, SMLU23-004 Consistency Certification Letter, SMLU 23-004 Staff Report, SMLU23-004 Land Use Current, SMLU23-004 Land Use Change, SMLU23-004 Aerial, SMLU23-004 Zoning

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

This request is to amend the future land use designation of 0.76 acre of property from Volusia County Urban Medium Intensity (UMI), to City of DeLand Highway Commercial (HC). The subject property is located east of N. Alabama Ave. and west of N. Amelia Ave., addressed as 230 E. International Speedway Blvd.

At their April 17, 2023 meeting, the City Commission unanimously recommended approval of the land use amendment, on first reading.

On May 17, 2023, the Volusia County Growth Management Commission (VGMC) issued a Certificate of Consistency for the proposed land use amendment.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Institute Smart Growth Principles

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Once the subject property is included in the city's tax rolls, commercial development of the property will increase funds towards city services.

RECOMMENDATION:

It is recommended that the City Commission approve, on 2nd reading, the land use amendment for the subject property from Volusia County Urban Medium Intensity (UMI) to the City of DeLand Highway Commercial (HC).

BACKGROUND/DISCUSSION:

Mike Woods with Cobb Cole, represents the developer of the subject property. Applications for annexation and

to amend the zoning were also submitted by the applicant and are being reviewed concurrent to this request. The applicant's intention is to redevelop the subject property for commercial use. The land use amendment will increase the maximum residential density from 8 to 16 dwelling units per acre. The maximum allowable intensity will increase from 0.50 F.A.R. (16,500 sq. ft.) to 1.0 F.A.R. (33,100 sq. ft.). The applicant has also applied for annexation of the property (AN23-003), as well as a rezoning (Z23-005) for both the subject property and the parcel directly to the west.

At their March 15, 2023 meeting, the Planning Board unanimously recommended approval of the land use amendment.

ORDINANCE NO. 2023 - 11

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, AMENDING THE COMPREHENSIVE PLAN FOR THE CITY OF DELAND, BY CHANGING THE LAND USE DESIGNATION OF CERTAIN PROPERTY LOCATED AT 230 EAST INTERNATIONAL SPEEDWAY BOULEVARD; FROM VOLUSIA COUNTY'S URBAN MEDIUM INTENSITY FUTURE LAND USE DESIGNATION TO CITY OF DELAND'S HIGHWAY COMMERCIAL FUTURE LAND USE DESIGNATION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, F.S. §163.3161, et seq., creates the Community Planning Act (hereinafter the "Act"); and

WHEREAS, the Act allows each local government to approve comprehensive plan amendments related to small scale development activities at any time during the year under certain conditions; and

WHEREAS, the Act permits small area amendments to be approved without regard to statutory limits on the frequency of comprehensive plan amendments as long as:

1. The proposed amendment is a land use of 50 acres or less; and
2. The cumulative effect of the above condition does not exceed 120 acres annually; and

WHEREAS, the City Commission adopted a comprehensive plan for the future growth and development of the City pursuant to Ordinance No. 90-4, as amended, (hereinafter the "Comprehensive Plan"); and

WHEREAS, the City Commission has received a request to amend the Comprehensive Plan by changing the land use designation of approximately 0.76 +/- acres of land located at 230 East International Speedway Boulevard; from Volusia County's Urban Medium Intensity land use designation to City of DeLand's Highway Commercial future land use designation; and

WHEREAS, the Planning Board held a public hearing, after due public notice, for the purpose of recommending the adoption of the proposed Comprehensive Plan amendment; and

WHEREAS, the City Commission held a public hearing after due public notice, in accordance with F.S. §163.3184(11), for the purpose of transmitting the proposed Comprehensive Plan amendment to the Volusia Growth Management Commission and the Florida Department of Economic Opportunity.

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

Section 1. The City Commission hereby amends the Future Land Use Map for the incorporated area by changing the land use designation of that certain parcel of land located at 230 East International Speedway Boulevard; consisting of approximately 0.76 +/- acres of land from Volusia County's Urban Medium Intensity Future Land Use designation to City of DeLand's Highway Commercial Future Land Use designation, as more particularly described in the Exhibit "A" attached hereto and by this reference made a part hereof.

Section 2. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. The effective date of this Ordinance shall be the later date of the following events: (1) the date of issuance of a certificate of consistency or conditional certificate of consistency with regard to the land use designation of the subject property by the Volusia Growth Management Commission; (2) thirty-one (31) days after its adoption by the City Commission; or (3) if properly challenged by an affected person, after the state land planning agency or the Administration Commission, respectively, issues a final order determining this adopted small scale development amendment to be in compliance. No development orders, development permits or land uses dependent on this Ordinance may be issued or commence before it has become effective.

PASSED AND DULY ADOPTED this 19th day of June, 2023.

Christopher M. Cloudman
Mayor - Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: April 17, 2023
Adopted on second reading: June 19, 2023

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

“EXHIBIT A”

LEGAL DESCRIPTION

7004-02-02-0010

7004-02-02-0010:

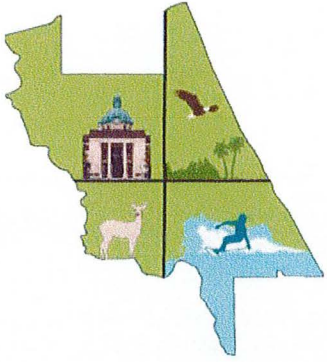
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PARCEL 2:

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CONTAINS .76 ACRES, MORE OR LESS.



Volusia Growth Management Commission

May 17, 2023

Carol Kuhn, Planning Director
City of DeLand
120 S. Florida Avenue
DeLand, FL 32720

**RE: VGMC Case #23-025 – City of DeLand
Small Scale Amendment – SMLU23-004, 230 E. International Speedway Blvd.
Certificate of Consistency**

Dear Ms. Kuhn,

VGMC Case No. 23-025 qualifies for certification in accordance with Chapter 90, Article II. of the Volusia County Code of Ordinances, Volusia Growth Management Commission Consistency Certification Rules and Organization. Based upon the lack of objection filed by another unit of local government, VGMC Case No. 23-025 is hereby deemed certified as consistent effective May 16, 2023 without the need for a public hearing.

The Volusia Growth Management Commission appreciates the efforts of the City of DeLand to further intergovernmental cooperation and coordination in Volusia County. If you have any questions regarding this matter, please do not hesitate to call me.

Sincerely,

Sid Vihlen, Jr.
VGMC Chairman

**PLANNING DEPARTMENT STAFF REPORT
TO
THE CITY OF DELAND PLANNING BOARD**

March 15, 2023

A. APPLICATION NO.: SMLU23-004

APPLICANT: Michael Woods, Cobb Cole

REQUEST: To amend the land use designation from Volusia County UMI (Urban Medium Intensity) to City of DeLand HC (Highway Commercial)

B. SITE FACTORS:

Location: 230 E. International Speedway Blvd.
Parcel ID: 700402020010
Parcel Size: ± 0.76 acres
Land Use: VC UMI
Existing Use: “Knights of Columbus”, Vacant

	SURROUNDING USE:
North:	HC (Highway Commercial)
South:	VC: UMI (VC Urban Medium Intensity)
East:	HC (Highway Commercial)
West:	HC (Highway Commercial)

C. REQUESTED ACTION & HISTORY:

A request is being made for the future land use designation to be amended for a parcel located at 230 E. International Speedway Blvd. The request is to change the future land use designation from Volusia County Urban Medium Intensity (VC: UMI), to City of DeLand Highway Commercial (HC). The parcel is currently uninhabited, but was previously the location of the “Knights of Columbus”. *A concurrent application to rezone the property, as well as the adjacent property to the west (210 E. International Speedway Blvd.) from VC: B-4/B-4CA to C-2 (Z23-005) was also submitted.*

D. CHRONOLOGY OF PAST EVENTS:

The request to amend the future land use designation consists of 0.76 acres of property owned by W. Volusia Columbian Club. With a current future land use designation of VC: UMI, the density for residential uses allows up to 8 dwelling units per acre, and the commercial floor area ratio is a maximum of 0.5 F.A.R. If the land use is changed to City HC, the density for residential uses allows up to 16 dwelling units per acre, and the commercial floor area ratio is a maximum of 1.0 F.A.R. The subject property has an existing building on site that is vacant. The applicant is unsure whether or not the existing building will be kept. However, any work done will require the proper permits as well as an approved site plan.

E. ALTERNATIVES & ANALYSIS:

The purpose of this section is to analyze the reasonableness of the applicant's request for an amendment of the land use designation for the subject property. This analysis will include a description of the current and future land uses of the site and the surrounding area, potential impacts on the transportation system, and any significant adverse environmental impacts.

1. Availability of Public Facilities (water, sewer, solid waste, drainage, traffic, recreation, and schools if residential):

SMLU23-004

1 of 4

Page 43 of 81

- a. The subject property is within the city's service area for both water and sewer and availability has been confirmed.
- b. If a Traffic Impact Analysis is required for the subject property, it will be reviewed with the site plan.
- c. The change in designation will not generate a new demand for recreational facilities.
- d. Volusia County already provides a sanitary landfill for the disposal of solid waste. The landfill has adequate capacity at this time.
- e. The City can provide an adequate LOS of Fire/Rescue & Police service.

2. Compatibility with Land Use and Other Elements:

The Future Land Use element requires that the subject property be consistent with surrounding development. Per the City of DeLand Comprehensive Plan, the Highway Commercial (HC) land use designation, "includes office uses, service-oriented and commercial establishments which provide retail and related goods and services to local/sub-regional and regional markets". Where adjacent to residential uses, significant buffering and landscaping is required to minimize negative impacts.



3. **Future Land Use Map:** The proposed change in the land use designation to Highway Commercial will be shown on the revised Future Land Use Map.
4. **Location of Lakes, Floodplains, and Wetlands:** The property does not appear to contain bodies of water or wetlands.
5. **Analysis of Natural Resources:**
 - a. *Soil types:* Astatula Fine Sand, 0-8% slope
 - b. *Presence of Endangered Species:* None known of at this time.
6. **Existing and Future Impact upon Infrastructure Capacity:**
 - a. *Water* – obtained from City – availability confirmed
 - b. *Sewer* – obtained from City – availability confirmed
 - c. *Drainage* – The City adheres to the County's 100-year frequency, 24-hour storm event standard for landlocked basins. Stormwater capture for future development will be addressed on-site and will be reviewed with the site plan application.
 - d. *Solid Waste* – Solid waste services are available for the property.
 - e. *Transportation* – Staff does not have an estimate of future traffic generations as a site plan has not been submitted. Per 2021 Volusia County Traffic Counts, this segment of US 92 has a current Daily LOS of "C", and an Allowable LOS of "E".
 - f. *Fire/Rescue Service* – The City can provide an adequate LOS of Fire/Rescue service.

- g. Police Service* - The City can provide an adequate LOS of Police protection.
7. **Impact upon Recreation and Open Space:** No need for new recreational facilities is anticipated as recreational facilities are not needed for commercial property.
 8. **New Public Facilities Needed to Serve Land Use:** No need for new public facilities is anticipated as services such as water/sewer and public safety are already in place.
 9. **Impact Upon Existing Deficiencies:** As identified in the City's Comprehensive Plan, drainage is the only existing deficiency within the City. Any future development on this site will be required to manage its own stormwater mitigation and minimize any off-site stormwater impacts that the development may create.
 10. **Impact upon Ability of the City to Fund Capital Improvements:** The development should not create an additional impact upon the City's ability to fund the projects listed in the adopted Five-Year Capital Improvement Program as this is not a publicly-funded project.
 11. **Impact upon Adopted Five-Year Schedule in Capital Improvements Element:** The proposed land use amendment will not require revision to the City's adopted Five-Year Capital Improvement Program as this is not a publicly-funded project.
 12. **Compatibility with Existing Zoning Classification:** The existing zoning classification may be amended upon approval of the land use amendment to C-2 (General Commercial) which is compatible with the HC (Highway Commercial) future land use. The zoning request is being reviewed concurrent to the land use amendment.
 13. **Will the proposed land use change impact schools?** The proposed amendment is to HC (Highway Commercial); this will not have an impact on schools as it is not a residential use.
 14. **How does this proposal fit with the guidelines developed for DeLand 2050 and the City's Strategic Plan?**
 - a. Located in the Urban Core/Employment Center Overlay (Category 1) – “retains the existing land use and development pattern in place” – *Consistent* – it is located along US 92 (International Speedway Blvd.) and adjacent to other general commercial uses such as the dental office to the east. Additionally, HC land use is consistent with the city's future land use map where the majority of parcels east and west of the subject property are already designated as HC.
 - b. DeLand 2050 Land Use Guidelines: “...Concentrate development at the core of the city or at **transit-oriented** sites and corridors. The **urban core** is the key area to focus development, maintaining a strong job base and taking advantage of existing infrastructure. Locating higher intensity along select corridors or major centers will encourage transit and lessen traffic congestion.”– *Consistent* – the redevelopment of the subject property would utilize public services that are already in place and available. Additionally, the property is located directly north of a mixture of single-family residential homes as well as apartments known as “Amelia Place” apartments. They are all within walking distance of the subject property.

F. CONCLUSION: The facility analysis presented in the above sections suggests the proposed land use should not cause any of the City's facilities to degrade below the adopted or current operational LOS. The proposed land use designation, HC (Highway Commercial), is consistent with the surrounding area, and is

not expected to create any land use incompatibilities. The subject property is situated between two commercial uses and fronts a highway (US 92).

G. STAFF RECOMMENDATION: Staff recommends approval of the proposed amendment of the subject property's future land use designation from VC: UMI (VC: Urban Medium Intensity), to City of DeLand's HC (Highway Commercial) land use.

H. VGMC INFRASTRUCTURE IMPACT ASSESSMENT:

In accordance with standard practice from the Florida Department of Economic Opportunity (DEO) and other review agencies, an impact comparison analysis of the proposed amendment has been completed based upon the theoretical maximum development potential under the currently adopted future land use designation versus the proposed designation.

The following seven public facilities and services were examined: (Table 4)

1. Schools (population)
2. Transportation
3. Sanitary Sewer
4. Potable Water
5. Recreation
6. Solid Waste
7. Stormwater Drainage

Impact Analysis Table 4 (Theoretical Max.)

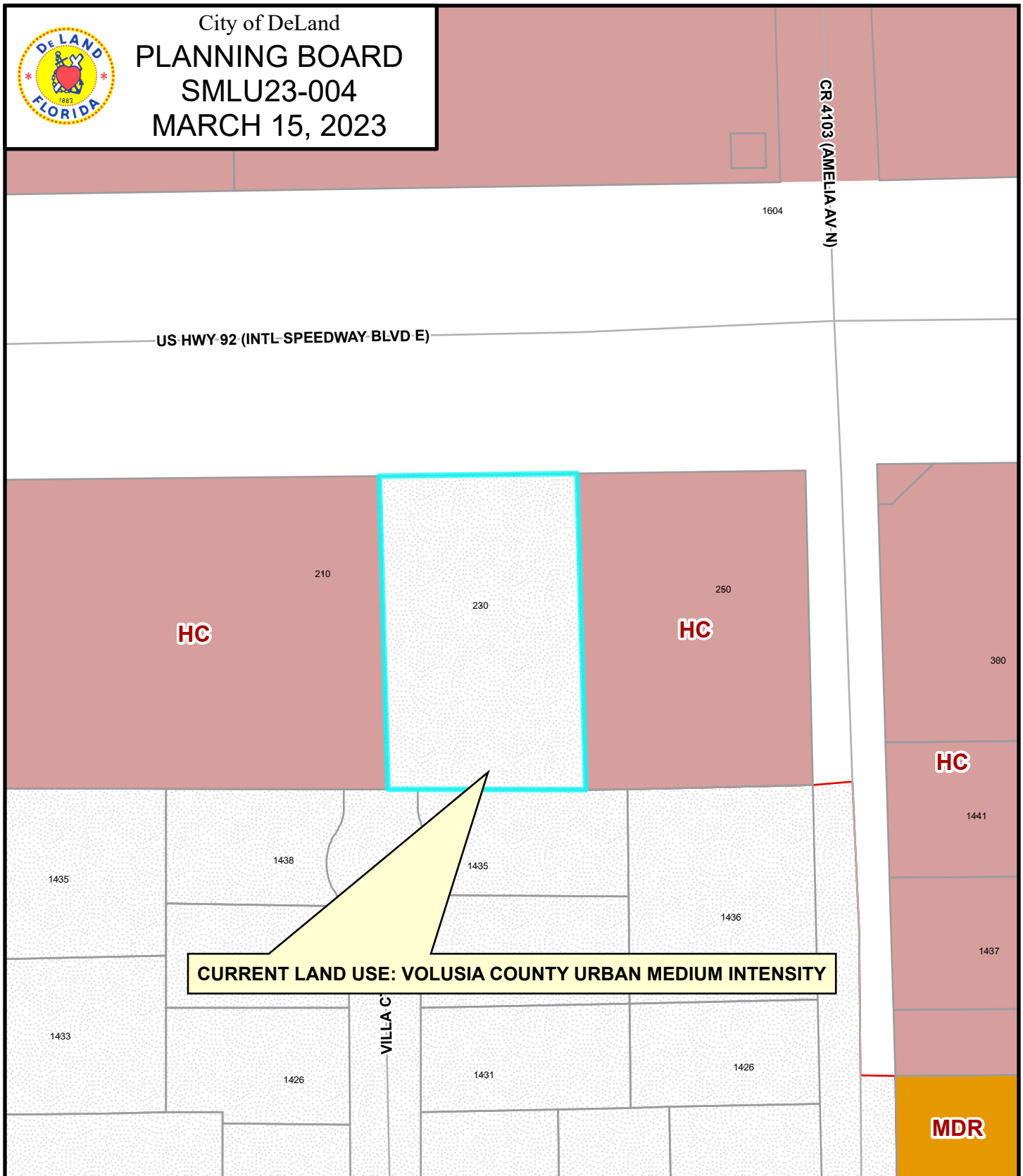
Development Variable	EXISTING Future Land Use	PROPOSED Future Land Use	Net Change
	<i>Theoretical Maximums</i>		
Permitted Density/Intensity	8 du/acre; FAR 0.5	16 du/acre; FAR 1.0	8 du/acre; 0.5 FAR
Dwelling Units	6	12	+6
Non-residential Sq. Ft.	16,500 sq. ft.	33,100 sq. ft.	+16,600
1. Population	14	29	+15
2. PM Peak Hr. Trips/Daily Trips	109 peak/898 ADT	218 peak/1802 ADT	+109/+904
3. Sanitary Sewer (gallons/day)	1,200/1,650	2,400/3,310	+1,200/+1,660
4. Potable Water (gallons/day)	1,800/1,650	3,600/3,310	+1,800/+1,660
5. Solid Waste (pounds/day)	45/165	93/331	+48/+166
6. Stormwater Drainage	N/A	N/A	N/A
7. Recreation/Open Space	0.1	0.2	+0.1

Notes:

1. Population: 2.44 persons per household (per 2020 Census)
2. Transportation: ITE Trip Generation Manual, 11th Edition; *Retail < 40ksf (822)*: 6.59 PM PEAK/1,000 sq. ft.; 54.45 AADT/1,000 sq. ft.
3. Sanitary Sewer: 200 GPD per Equivalent Residential Unit; 0.10 GPD per sq. ft. commercial use
4. Potable Water: 300 GPD per Equivalent Residential Unit; 0.10 GPD per sq. ft. commercial use
5. Solid Waste: 3.21 pounds per person per day; 10 lbs. per 1,000 sq. ft. non-residential development per day
6. Stormwater Drainage: LOS Standard 25-yr, 24-hr event. Drainage system to be designed to meet the req. of the LDC during subdivision or site plan review.
7. Rec. & Open Space: 7 acres/1,000 persons (0.007 acres/person)



City of DeLand
PLANNING BOARD
SMLU23-004
MARCH 15, 2023



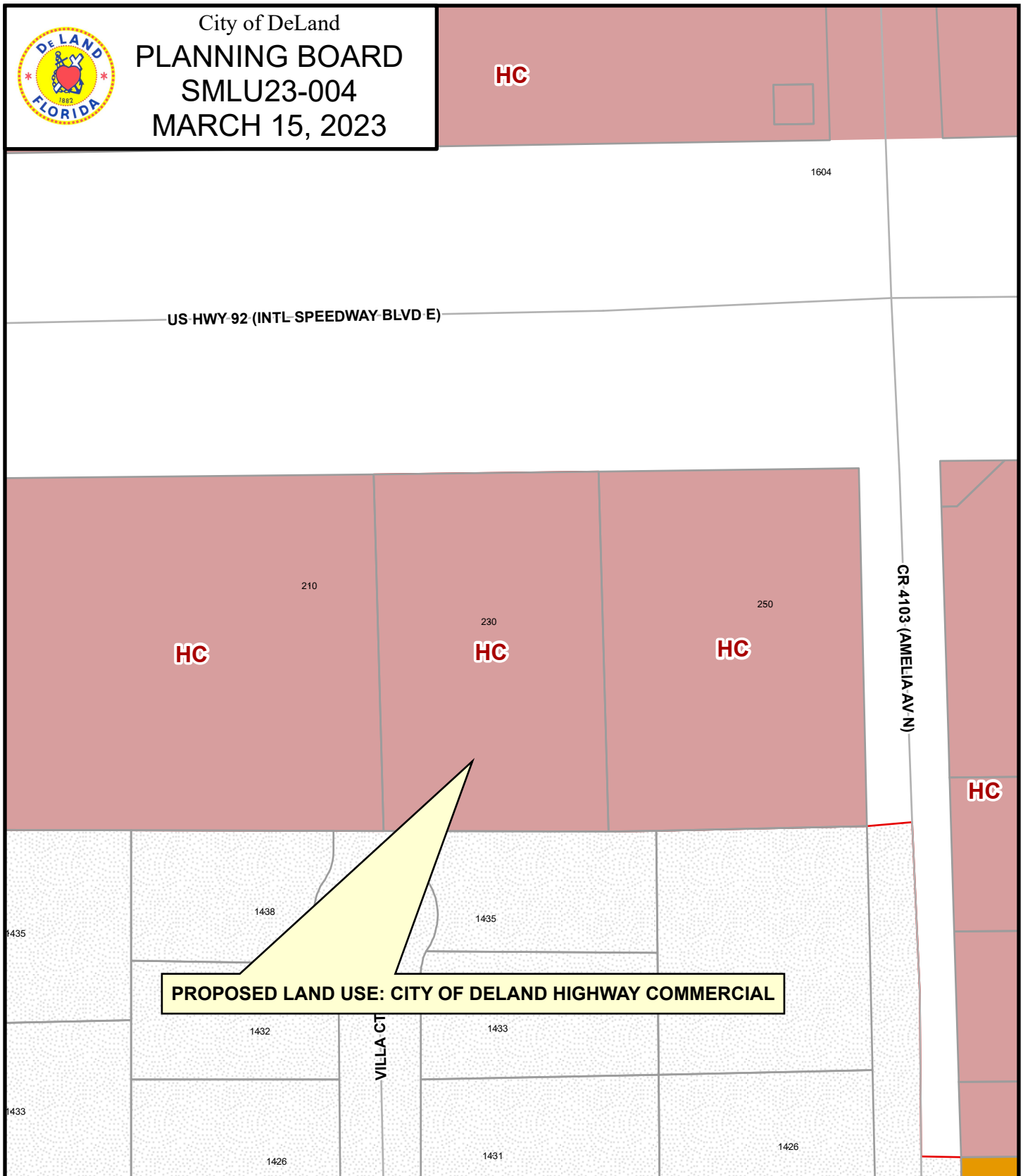
DeLand Future Land Use:

Agricultural Conservation	Educational	Downtown Commercial	New Community Development
Urban Low Intensity	Mixed Office - Residential	Redevelopment	Community
Low Density Residential	Mixed Commercial	Gateway	Commerce
Medium Density Residential	Business Retail	Rail Spur	West Central District
High Density Residential	Highway Commercial	Industrial	County





City of DeLand
PLANNING BOARD
SMLU23-004
MARCH 15, 2023



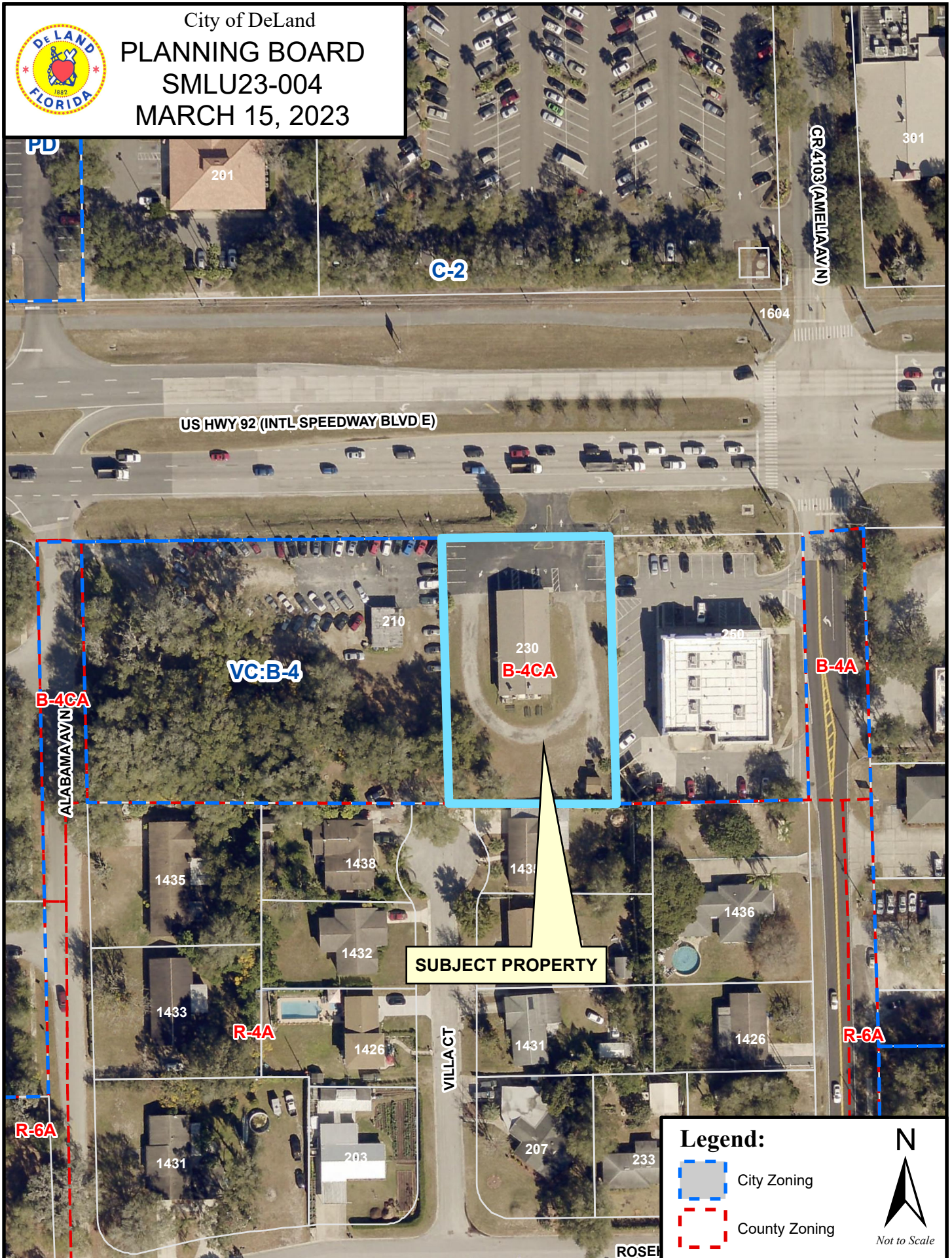
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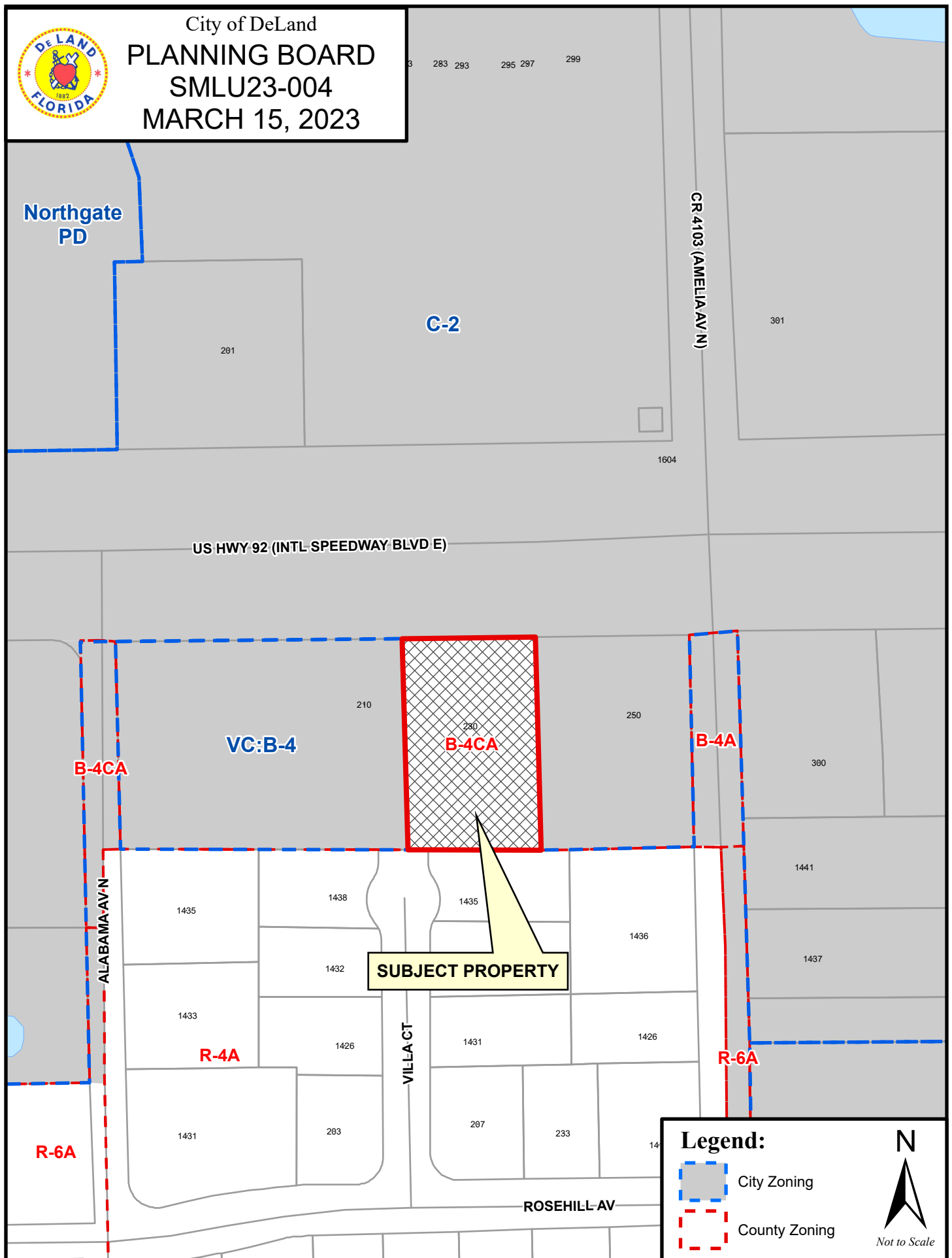


City of DeLand
PLANNING BOARD
SMLU23-004
MARCH 15, 2023





City of DeLand
PLANNING BOARD
SMLU23-004
MARCH 15, 2023



CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Second Reading of Ordinance No. 2023-12, Changing the Zoning from Volusia County B-4/B-4CA (General Commercial) to City of DeLand C-2 (General Commercial), for Approximately 2.32 Acres of Property Located at 210 and 230 East International Speedway Boulevard. (First Reading 4-17-2023).

DEPARTMENT: Planning

PREPARED BY: Kendall Story, Senior Planner

ATTACHMENTS: ORD-2023-12 , Exhibit A - Legal Description (both parcels), Z23-005 Staff Report, Z23-005 Zoning & Location Map, Z23-005 Aerial Map

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

The applicant, Michael Woods of Cobb Cole, is requesting to amend the zoning designations for property from Volusia County General Commercial (B-4/B-4CA) to City of DeLand General Commercial (C-2). The subject property contains a total of 2.32 acres and is located on the south side of E. International Speedway Blvd., situated between N. Alabama Ave. and N. Amelia Ave., more particularly known as 210 & 230 E. International Speedway Blvd. The applicant intends to redevelop the subject property with commercial, retail and service-related uses.

At the April 17, 2023 meeting, the City Commission unanimously recommended approval of the requested rezoning to C-2, General Commercial.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Smart Growth:

As outlined in the city's strategic plan under Strategic Focus Area – Institute Smart Growth Principles Strategic Context: to manage growth, the city will need to institute a number of smart growth principles. For reasons of both community identity and governmental efficiency, an annexation strategy is required which will “square off” the city's boundaries.

At 230 E. International Speedway Blvd., the building on site was previously used by the “Knights of Columbus” and is no longer in use. At 210 E. International Speedway Blvd., there once existed a used car lot business, but that has also been left vacant.

The Action Steps in the strategic plan includes the encouragement of redevelopment and growth that preserves the character of the city. The redevelopment of the parcels shall only include uses that are permitted within the C-2 zoning district, such as retail and service-related uses. All redevelopment must follow the Community Design Standards as outlined in the Land Development Code, thus preserving the character of the city.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

If approved, the rezoning of the subject property to the city's C-2 (General Commercial) zoning district will allow the applicant to redevelop the property under the city's land development regulations and increase its contribution to the city's tax base.

RECOMMENDATION:

It is recommended that the City Commission approve the rezoning of this property, on second reading, from Volusia County – B-4/B-4CA (General Commercial) to City of DeLand – C-2 (General Commercial).

BACKGROUND/DISCUSSION:

Mike Woods with Cobb Cole, represents the developer. An application for annexation (AN23-001) and an application for a future land use amendment (SMLU23-004) were also submitted by the applicant and are being reviewed concurrent to this request. Once annexed into the city, the properties for which the rezoning designation is sought must have a City of DeLand land use and zoning designation that are compatible with each other, the surrounding area and development trends. According to the Future Land Use Map, the E. International Speedway Blvd. corridor, on the north and south side of the boulevard, consists of other Highway Commercial land use for adjacent parcels, and a rezone to the city's C-2 district is a compatible zoning designation under the Highway Commercial (HC) future land use. Additionally, the development trend in the surrounding area, which abuts the boulevard, includes a range of commercial businesses.

At the March 15, 2023 meeting, the Planning Board unanimously recommended approval of the requested rezoning to C-2, General Commercial.

ORDINANCE NO. 2023 - 12

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, CHANGING THE ZONING FROM VOLUSIA COUNTY'S B-4/B-4CA, GENERAL COMMERCIAL TO CITY OF DELAND'S C-2, GENERAL COMMERCIAL ON PROPERTIES LOCATED AT 210 AND 230 EAST INTERNATIONAL SPEEDWAY BOULEVARD; MAKING FINDINGS OF CONSISTENCY WITH THE COMPREHENSIVE LAND USE PLAN FOR THE CITY OF DELAND; DIRECTING CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT ORDERS ON A DETERMINATION OF CAPACITY; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, properties located at 210 and 230 East International Speedway Boulevard and more particularly described in the attached Exhibit "A", are currently zoned as Volusia County's B-4/B-4CA, General Commercial, pursuant to Volusia County's Zoning Ordinances; and

WHEREAS, both properties currently have a Land Use Designation of Highway Commercial pursuant to the City of DeLand's Land Use Plan; and

WHEREAS, a proper and complete application has been received requesting that the zoning be changed to City of DeLand's C-2, General Commercial,

WHEREAS, the C-2, General Commercial zoning designation is consistent with the Comprehensive Plan of the City of DeLand.

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

Section 1. The City Commission has held a public hearing on the application for a change of zoning from Volusia County's B-4/B-4CA, General Commercial to City of DeLand's C-2, General Commercial zoning designation, for the following described properties:

See legal description attached hereto as Exhibit "A"

Tax Parcel Identification Nos. 700402020050 and 700402020010

Section 2. The City Commission hereby finds that the C-2, General Commercial zoning designation is consistent with the properties Highway Commercial future land use designation.

Section 3. Pursuant to the determination made at public hearing, the City Commission hereby amends the Comprehensive Zoning Map of the City of DeLand and changes the zoning from Volusia County's B-4/B-4CA, General commercial to City of DeLand's C-2, General Commercial zoning designation on the parcels described in Section 1.

Section 4. The Planning Director is hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

Section 5. No rights to obtain final development orders nor any rights to develop the property have been granted or implied by this Ordinance. Final development orders for the

property including, but not limited to building permits and site plan approval shall be subject to a determination of capacity.

Section 6. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 7. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 19th day of June, 2023.

Christopher M. Cloudman
Mayor - Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: April 17, 2023
Adopted on second reading: June 19, 2023

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

"EXHIBIT A"

LEGAL DESCRIPTION

7004-02-02-0010 & 7004-02-02-0050

PARCEL A (7004-02-02-0050):

THE NORTH 234.37 FEET OF BLOCK "B", LYING SOUTH OF U.S. HIGHWAY #92, DEANBURG, A SUBDIVISION IN SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, AS RECORDED IN DEED BOOK "P" AT PAGE 530 IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, EXCEPT THE EAST 302.00 FEET THEREOF, AND RESERVING THE NORTH 50 FEET THEREOF FOR A PUBLIC ROAD RIGHT OF WAY.

THE ABOVE DESCRIBED PROPERTY ALSO BEING DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF ALABAMA AVENUE WITH THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY #92 AND RUN S 89°19'35" E, ALONG THE SAID RIGHT OF WAY LINE OF U.S. HIGHWAY #92, A DISTANCE OF 309.80 FEET; THENCE RUN S 00°03'58" E, A DISTANCE OF 234.37 FEET; THENCE N 89°19'35" W, A DISTANCE OF 310.07 FEET; THENCE RUN NORTH ALONG THE EAST RIGHT OF WAY LINE OF ALABAMA AVENUE A DISTANCE OF 234.37 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.56 ACRES, MORE OR LESS.

TOGETHER WITH:

7004-02-02-0010:

PARCEL 1:

THE WEST 100 FEET OF THE EAST 260 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF BLOCK B, DEANBURG, A SUBDIVISION IN SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, AS RECORDED IN DEED BOOK P, PAGE 530, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. LESS AND PORTION LYING IN THE ROAD RIGHT OF WAY.

PARCEL 2:

THE WEST 42 FEET OF THE EAST 302 FEET OF THE NORTH 234.37 FEET OF THE SOUTH 313.38 FEET OF BLOCK B, DEANBURG, A SUBDIVISION IN SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, AS RECORDED IN DEED BOOK P, PAGE 530, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. LESS AND PORTION LYING IN THE ROAD RIGHT OF WAY.

CONTAINS .76 ACRES, MORE OR LESS.

**PLANNING DEPARTMENT STAFF REPORT
TO
PLANNING BOARD**

March 15, 2023

A. APPLICATION NO.: Z23-005

APPLICANT: Michael Woods, Cobb Cole

REQUEST: Rezone from County B-4/B-4CA (General Commercial), to City of DeLand C-2 (General Commercial)

APPLICABLE REGULATIONS:

Article IV OVERLAY AND FLOATING ZONES

Sec. 33-32 – Planned Development District.

Article XII ADMINISTRATION AND ENFORCEMENT

Sec. 33-135 – Procedure for text amendments & rezoning.

B. SITE FACTORS:

Location: 210 & 230 E. International Speedway Blvd.

Parcel ID: 700402020050; 700402020010

Parcel Size: ±2.32 acres

Land Use: HC, Highway Commercial

Existing Zoning: Volusia County B-4/B-4CA

Existing Use: “Knights of Columbus”, vacant

	SURROUNDING LAND USE:	SURROUNDING ZONING:
North:	HC (Highway Commercial)	C-2 (General Commercial)
South:	VC: UMI (VC Urban Medium Intensity)	VC: R-4A (VC: Urban Single Family)
East:	HC (Highway Commercial)	VC: B-4/B-4CA (VC: General Commercial)
West:	HC (Highway Commercial)	C-2 (General Commercial)

C. ANALYSIS:

The subject property consists of 210 & 230 E. International Speedway Blvd. and totals 2.32 acres in size. Concurrent to this zoning application, the applicant submitted a request to annex part of the property located at 230 E. International Speedway Blvd. (AN23-003) (0.76 acres out of the entire 2.32 acre site), as well as a request for a future land use amendment (SMLU23-004). The property is sandwiched in between two properties already within the city limits of DeLand. The applicant is proposing the future land use designation be amended to City HC, Highway Commercial, the same as the property to the west and east, and compatible with the requested C-2 zoning district. Currently, the property is vacant, but was previously the location of the “Knights of Columbus” club and is currently zoned for commercial uses (B-4).

The applicant intends on redeveloping the subject property under the proposed C-2 zoning district with uses such as restaurant and retail, all of which are compatible with the proposed C-2 zoning district. Prior to development of any kind, an approved site plan is required.



Section 33-135 of the Land Development Regulations provides the following criteria, which the City Commission shall utilize in reviewing a rezoning request:

1. Is the proposed rezoning consistent with the Comprehensive Land Use Plan, the land use, zoning pattern and character of the surrounding area?

The development is consistent with the Comprehensive Plan with an underlying land use designation of HC, Highway Commercial; the HC designation accommodates a full range of sales and service activities such as the proposed plan. Additionally, to both the east and west of the subject property is HC land use.

The proposed development program is consistent with uses that align with the C-2 zoning designation and maintains the same general character of the surrounding area.

2. Will the proposed rezoning have an impact upon the environment or natural resources?

The rezoning of this property should not impact any environment or natural resources. It is considered a redevelopment property, as it was previously developed and contains existing structures. Said structure is currently vacant.

3. Will the proposed rezoning have an impact upon the economy of the affected area?

Subsequent commercial development of the currently vacant, unoccupied property will increase the taxable value of the subject property and allow it to be developed in a way that will match the character of the surrounding property.

4. Will the proposed rezoning have an impact upon governmental services?

The proposed use of the property is anticipated to have little to no impact on governmental services, as existing services, such as police and fire, are already available.

5. Are there changes in the circumstances or conditions affecting the area since the original assignment of zoning that will support the proposed zoning?

The subject property is located on one of the city's main entryways into the city and lies within the Emerging Area Gateway Overlay District. According to section 33-36 of the land development code, the purpose of the gateway overlay districts is to:

- *Ensure that the main streets and entryways to the City of DeLand are developed into well-landscaped, scenic gateways;*
- *Provides uniform design standards to promote high quality new development;*
- *Promote redevelopment and adaptive reuse of existing properties in a manner consistent with the historic character of the city;*

- *Prevent visual pollution caused by unplanned and uncoordinated uses, buildings and structures;*
- *Utilize natural and transplanted trees to shade and soften the appearance of nonresidential parking areas; and*
- *Maximize pedestrian access and safety.*

When developed, the property will be held to the gateway overlay standards, therefore meeting the intent of said section of the code.

6. Was there a mistake in the original classification?

There was no known mistake.

7. Will the proposed rezoning have any effect upon the use or value of the affected area?

The subject property lies on a main thoroughfare that is already commercial in nature. The C-2 zoning request is appropriate for its location is supported by both the underlined land use of Highway Commercial, the 2050 Vision, as well as the city's Future Land Use Map.

When developed, all applicable development regulations will apply, including the Emerging Gateway Overlay standards, as previously discussed, as well as architectural standards stated in Sec. 33-94, Community Design Standards. This will add value to the affected area.

8. Will the proposed rezoning have an impact upon public health, safety and welfare?

It is not anticipated that there will be any adverse impacts upon public health, safety or welfare as a result of this zoning change, and this rezoning would make the property consistent with the surrounding Highway Commercial land uses.

D. CONCLUSION:

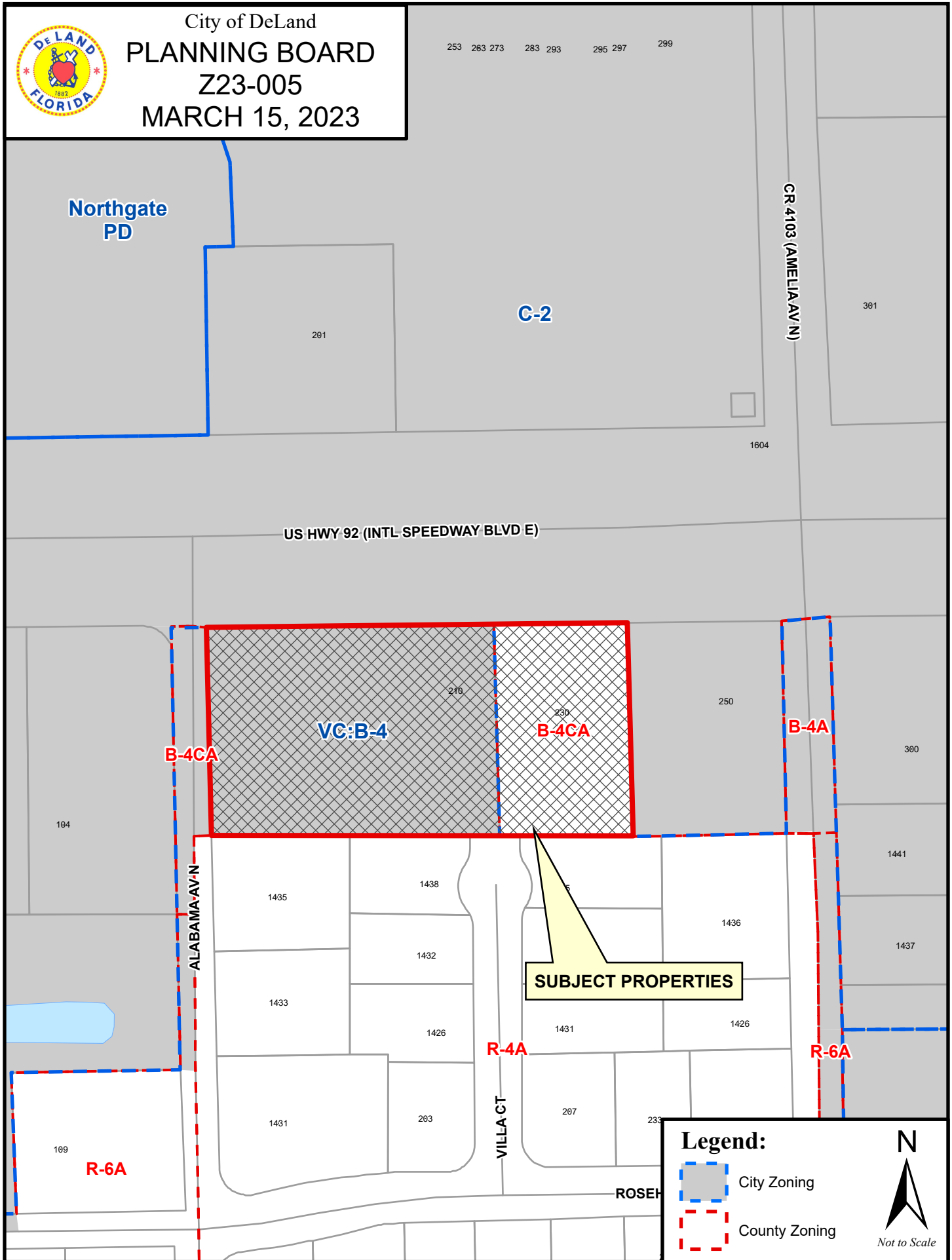
The Applicant is proposing to rezone the subject property to the C-2 zoning district which is compatible with the HC (Highway Commercial) future land use designation, as well as the existing characteristics of the area.

E. STAFF RECOMMENDATION:

Staff recommends that the Planning Board forward the application to the City Commission with a recommendation of approval of zoning change from VC B-4/B-4CA (General Commercial), to City of DeLand C-2 (General Commercial).



City of DeLand
PLANNING BOARD
Z23-005
MARCH 15, 2023





City of DeLand
PLANNING BOARD
Z23-005
MARCH 15, 2023



CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Second Reading of Ordinance No. 2023-13, Amending Section 33-91.03 of the Code of Ordinances re Indoor Parking Requirements in the Core Gateway District.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: ORD-2023-13

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

An ordinance is proposed which will amend Section 33-91.03 of the Code of Ordinances by removing the existing requirement for two indoor (garage) parking spaces solely within the Core Gateway Zoning District while maintaining the current requirements for the total number of parking spaces per residential unit.

At the June 5, 2023 meeting, the City Commission recommended approval of the proposed Ordinance.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Preparing for the future/sustainability.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

No direct measurable fiscal impact is expected.

RECOMMENDATION:

It is recommended that the City Commission approve the proposed Ordinance on second reading.

BACKGROUND/DISCUSSION:

On May 16, 2022, the City Commission adopted Ordinance 2022-07 which made a plethora of changes to the City's Land Development Regulations in an effort to facilitate infill development and otherwise provide greater opportunities for affordable housing. City staff had proposed removing the existing requirement for two indoor (garage) parking spaces solely within the Core Gateway Zoning District. After a lengthy, thoughtful discussion related to parking, amongst many other issues, the motion that was ultimately made and voted upon provided that the parking requirements would remain the same. However, after listening to the audio recording of the City Commission meeting, it appears that it was the intent of the City Commissioners to approve staff's recommendation to remove the requirement for two indoor parking spaces in the Core Gateway Zoning District. As such, City staff is bringing this item back to the City Commission for consideration.

ORDINANCE NO. 2023 - 13

**AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA,
AMENDING SECTION 33-91.03 OF THE CODE OF ORDINANCES OF
THE CITY OF DELAND RELATED TO INDOOR PARKING
REQUIREMENTS IN THE CORE GATEWAY DISTRICT; PROVIDING
FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

WHEREAS, the City Commission of the City of DeLand adopted Ordinance 2022-07 which made a plethora of changes to the City's Land Development Regulations in an effort to facilitate infill development and otherwise provide greater opportunities for affordable housing; and

WHEREAS, Section 21 of the aforesaid ordinance made changes to Section 33-91.03 of the Code of Ordinances which related to the number of parking spaces required for residential development; and

WHEREAS, the City Commission desires to further amend Section 33-91.03 of the Code of Ordinances by removing the existing requirement for two indoor (garage) parking spaces solely within the Core Gateway Zoning District; and

WHEREAS, the City Commission of the City of DeLand has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of DeLand and to further the public health, safety and welfare; and

WHEREAS, this Ordinance is enacted pursuant to the statutory and constitutional home rule powers of the City of DeLand as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; and Chapter 166, *Florida Statutes*, and other applicable controlling law to include, but not be limited to, Chapter 163, *Florida Statutes*; and

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

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text, ~~strike-through~~ shall constitute deletions to the original text, and minor edits have been made without legislative coding.

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

Section 1. Chapter 33 of the Code of Ordinances of the City of DeLand is hereby amended by amending Section 33-91.03 "Number and type of parking spaces required" subsection (f) "Matrix." by inserting the new underlined language and by deleting the ~~strike-through language~~, to be read in full as follows:

33-91.03 *Number and type of parking spaces required.*

(f) Matrix.

Residential Uses	Minimum Off-Street Parking Requirement	Notes
Single-family and duplex	1, 2, 3 bedrooms: 2 4 interior spaces/ per unit 4 or more bedrooms: 3-5 spaces/ per unit	Single-family or duplex residential parking spaces may be tandem. <u>In all zoning districts except the Core Gateway District, a Mminimum of 2 outdoor of the required parking spaces for each unit must be indoor spaces to also be provided per lot. No indoor parking spaces are required within the Core Gateway District.</u> Parking is prohibited on front lawns.

*** Matrix ***

*** Text ***

Section 2. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 3. Codification; Direction to Code Codifier and City Staff; Correction of Scrivener's Errors.

(a). The provisions Section 1 of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of DeLand*, with all other sections not being codified.

(b). The Code codifier shall instruct the Municipal Code Corporation to make all changes necessary in the *Code of Ordinances of the City of DeLand* to implement the provisions of this Ordinance and is granted liberal authority to codify the provisions of this Ordinance in such manner and in such places as deemed advisable.

(c). In accordance with the City's ongoing codification program; the City Clerk, in conjunction with the City Attorney, may make corrections to the provisions of this Ordinance relative to Scrivener's errors of whatever type or nature.

Section 4. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED this 19th day of June, 2023.

Christopher M. Cloudman
Mayor - Commissioner

ATTEST:

Julie A. Hennessy, MMC, City Clerk - Auditor

Passed on first reading: June 05, 2023

Adopted on second reading: June 19, 2023.

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind, City Attorney

CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: First Reading of Ordinance Amending Section 33-57.05 of the Code of Ordinances - Tree Replacement Reserve Account.

DEPARTMENT: Finance

PREPARED BY: Daniel Stauffer, Finance Director

ATTACHMENTS: Tree Ordinance

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

An Ordinance is proposed to the City Commission to amend Section 33-57.05 of the *Code of Ordinances* relating to the funding of the Tree Replacement Reserve Account by placing the said account within the City's Grants and Special Revenue Fund rather than the City's General Fund. In addition, a typographical error in that same section relating to the botanical (scientific) name of the longleaf pine tree.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

There is no fiscal impact from this ordinance.

RECOMMENDATION:

Staff recommends the City Commission approve the first reading of the attached Ordinance amending the Tree Replacement Reserve Account and correcting the botanical name of the longleaf pine as presented.

BACKGROUND/DISCUSSION:

When property is being developed, or redeveloped, and there is not sufficient space on the property to plant all required replacement trees, the City Code requires the applicant to place a designated amount of money into the City's Tree Replacement Reserve Account. The ordinance as currently written requires this account to be placed within the City's General Fund. However, City staff believe it is much more appropriate to place this account within the City's Grants and Special Revenue Fund. This change will not affect how much money is collected or how the money is actually used, but is purely an accounting issue.

Section 57.05(c) related to the protection of specimen trees has a typographical error in that the wrong botanical name (also called the scientific name) is listed for the longleaf pine. The ordinance currently lists it as *Liquidambar styraciflua* (the botanical name for the sweet gum which is the next tree listed in the ordinance) but the name is *Pinus palustris*. This ordinance will correct that error.

ORDINANCE NO. 2023 -

**AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA,
AMENDING CHAPTER 33 “LAND DEVELOPMENT REGULATIONS”
OF THE CODE OF ORDINANCES FOR THE CITY OF DELAND; BY
AMENDING SECTION 33-57.05 “PROTECTED TREES REMOVAL AND
REPLACEMENT”; PROVIDING FOR CONFLICTS, CODIFICATION,
SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the City’s Land Development Regulations contain a provision for developers to provide monetary contributions to the “Tree Replacement Reserve Account” when space is not available for planting replacement trees; and

WHEREAS, Section 33-57.05, as written, requires the “Tree Replacement Reserve Account” to be designated within the general operating fund of the City; and

WHEREAS, City staff has determined that it is appropriate to place the “Tree Replacement Reserve Account” within the City’s Grants and Special Revenue Fund; and

WHEREAS, it is necessary to amend Section 33-57.05 of the Code of Ordinances of the City of DeLand, in order to provide that the “Tree Replacement Reserve Account” shall be held within the City’s Grants and Special Revenue Fund; and

WHEREAS, Section 33-57.05(c) of the Code of Ordinances of the City of DeLand has a typographical error in that the botanical name for the longleaf pine is incorrect and this Ordinance also serves to correct that error; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text, strikethrough shall constitute deletions to the original text.

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

Section 1. Chapter 33 of the Code of Ordinances of the City of DeLand is hereby amended by amending Section 33-57.05 “*Protected trees removal and replacement*” subsection (b) “*Replacement of removed trees*” by inserting the new underlined language and by deleting the ~~strikethrough~~ language:

33-57.05. *Protected trees removal and replacement.*

(b) *Replacement of removed trees.*

5. When space is not available for planting replacement trees (either canopy or understory) on-site, a developer may, after demonstrating to the satisfaction of the city that it is not practical for the replacement trees to be planted on the development site, elect to make a monetary contribution to the "Tree Replacement Reserve Account" to be established by the city within the ~~general operating fund~~ Grants and Special Revenue Fund. The contribution shall equal or exceed the amount required to purchase, plant and maintain for one year a sufficient number of replacement trees to meet the developer's minimum tree coverage and specimen tree requirements set forth in sections 33-57.05 and 33-57.07 respectively of this article. The city commission shall establish the required contribution amount by resolution on an annual basis. All contributions to the Tree Replacement Reserve Account shall be to purchase and maintain trees on city property or along public rights-of-way as the city commission may determine, to protect, preserve and enhance tree cover in DeLand, Florida to purchase lands for preservation as green belt areas or passive recreational uses; to purchase nursery stock and supplies or to fund the Landscape Assistance Program. The Landscape Assistance Program is a local grant program to fund requests from existing development for assistance in landscaping.

Section 2. Chapter 33 of the Code of Ordinances of the City of DeLand is hereby amended by amending Section 33-57.05 "*Protected trees removal and replacement*" subsection (c) "*Specimen tree protection*" by inserting the new underlined language and by deleting the ~~striketrough~~ language for the purpose of correcting the botanical name of the longleaf pine:

33-57.05. *Protected trees removal and replacement.*

(c) *Specimen tree protection.*

1. *Specimen tree.* The following species of trees with the minimum specified DBH are determined to be specimen trees in the City of DeLand, Florida:

Common Name	Botanical Name	Minimum DBH
Bald cypress	<i>Taxodium distichum</i>	12 inches
Bay, loblolly	<i>Gordonia lasianthus</i>	12 inches
Bay, red	<i>Persea borbonia</i>	12 inches
Bay, swamp	<i>Persea borbonia</i>	12 inches
Bay, sweet	<i>Magnolia virginiana</i>	12 inches
Cedar, eastern red	<i>Juniperus virginiana</i>	12 inches
Cedar, southern red	<i>Juniperus silicicola</i>	12 inches
Elm	<i>Ulmus spp.</i>	18 inches
Hickory	<i>Carya spp.</i>	18 inches
Magnolia	<i>Magnolia grandiflora</i>	12 inches

Maple	<i>Acer spp.</i>	18 inches
Oak, live	<i>Quercus virginiana</i>	10 inches
Oak, sand live	<i>Quercus virginiana var. geminata</i>	10 inches
Oak, turkey	<i>Quercus laevis</i>	12 inches
Pine, Longleaf	<i>Liquidambar styraciflua</i> <i>Pinus palustris</i>	18 inches
Sweet gum	<i>Liquidambar styraciflua</i>	18 inches
Sycamore	<i>Platanus occidentalis</i>	18 inches

Section 3. Conflicts. All Ordinances or parts of Ordinances and other actions of the City Commission in conflict with this Ordinance are hereby repealed.

Section 4. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 5. Codification; Directions to Code Codifier; Correction of Scrivener's Errors.

(a). The provisions of Sections 1 and 2 of this Ordinance shall become and be made a part of the Code of Ordinances of the City of DeLand and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 3 through 6 shall not be codified.

(b). The Code codifier shall instruct the Municipal Code Corporation to make all changes necessary in the Code of Ordinances of the City of DeLand to implement the provisions of this Ordinance and is granted liberal authority to codify the provisions of this Ordinance in such manner and in such places as deemed advisable.

(c). In accordance with the City's ongoing codification program; the City Clerk, in conjunction with the City Attorney, may make corrections to the provisions of this Ordinance relative to Scrivener's errors of whatever type or nature.

Section 6. Effective Date. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this ____ day of _____, 2023.

Christopher M. Cloudman
Mayor – Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Passed on first reading:
Adopted on second reading:

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Consideration re City of DeLand and Burke Construction Group Settlement Agreement.

DEPARTMENT: Public Service

PREPARED BY: Chad Gamble, Public Services Director

ATTACHMENTS: Burke Settlement Agreement

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

On November 17, 2022 the City elected to terminate its contract with Burke Construction Company (Burke) for convenience. This contract's scope related to improvements to Melching Field. At the time of termination there were outstanding payments owed to Burke and several deliverables owed to the City that had yet to be provided. In order to close this contract, the City and Burke have agreed to resolve these issues by the City paying Burke the sum of \$100,000 as outlined in the Settlement Agreement.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

\$100,000 will be paid upon approval of this settlement.

RECOMMENDATION:

Staff recommends that the City Commission approve the proposed Settlement Agreement with Burke Construction Group.

BACKGROUND/DISCUSSION:

There is \$267,676.02 remaining in the budget for the Burke Construction contract. As such, no additional funds will need to be budgeted as a result of this settlement. At the point of termination, Burke offered to terminate the contract and waive all claims for additional compensation in exchange for payment of the sum of \$180,848.09. The city has withheld payment of the retainage and last pay application from Burke, pending this resolution. There may be some outfield work that will need to be remediated during the off-season, which will be performed, if necessary, by a different contractor retained by the City. The city is waiving any warranty claims against Burke with this settlement.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered effective this ____ day of June, 2023 ("Effective Date"), by and between Burke Construction Group, Inc. ("Burke"), on the one hand, and the City of DeLand, Florida ("City"), on the other hand (each, a "Party;" all, collectively, the "Parties").

RECITALS

WHEREAS, the Parties to this Agreement have existing between them certain differences and disputes arising out of a construction agreement dated June 7, 2022 (hereinafter referred to as "Contract") for field improvements at Melching Field, located at 555 S Woodland Blvd, DeLand, Florida 32724 (the "Project").

WHEREAS, prior to the completion of the work, the City terminated the Contract for convenience pursuant to Section 16.03 of the Contract.

WHEREAS, after the termination, Burke alleges it was not paid in full for the work it performed prior to termination, including but not limited to, additional work for which the City has refused to execute a change order, progress payments, and retainage (the "Work").

WHEREAS, after the termination the City alleges that a portion of the work performed by Burke was not built to specifications (collectively, the "Dispute").

WHEREAS, the Parties desire to enter this Agreement for the purposes of resolving all issues between them relating to the Contract, the Project, the Work, and the Dispute, as set forth herein.

NOW, THEREFORE, in consideration of the execution of this Agreement, and for other good and valuable consideration, the Parties hereto agree as follows:

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

2. As-Builts. Burke and the City will physically exchange As-Builts of the Project for the settlement payment.

3. Payment. The City shall pay Burke the total amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) ("Settlement Payment"). The Settlement Payment shall be exchanged for the as-builts for the project.

4. Release by Burke. In consideration of payment of the Settlement Payment and the terms and conditions of this Agreement, Burke, for itself and its predecessors, successors, officers, directors, board members, shareholders, members, managers, principals, heirs, employees, parent entities, subsidiaries, related entities, executors, administrators, subrogees, assignors, assignees, attorneys, and insurers, hereby forever discharges, releases, and remises the City and its predecessors, successors, officers, directors, board members, shareholders, sureties, members,

managers, principals, heirs, employees, parent entities, subsidiaries, related entities, executors, administrators, subrogees, assignors, assignees, attorneys, and insurers from any and all past, present, and future claims, including claims against any payment bonds related to the site of the Work, claims of lien, rights, counts, causes of action, disciplinary or administrative complaints, obligations, expenses, debts, demands, notices of claim, attorneys' fees, costs, and liabilities of every kind and nature, known or unknown, latent or patent, direct or consequential, foreseen or unforeseen, suspected or unsuspected, matured or unmatured, whether or not accrued, that have been or could have been asserted by Burke against the City and pertaining to, arising out of, or related to the Contract, the Project, the Work, and the Dispute, with the exception of the Parties' respective obligations pursuant to this Agreement.

5. Release by the City. In consideration of payment of the Settlement Payment and the terms and conditions of this Agreement, the City, for itself and its predecessors, successors, officers, directors, board members, shareholders, members, managers, principals, heirs, employees, parent entities, subsidiaries, related entities, executors, administrators, subrogees, assignors, assignees, attorneys, and insurers, hereby forever discharges, releases, and remises Burke and its predecessors, successors, officers, directors, board members, shareholders, members, managers, principals, heirs, employees, parent entities, subsidiaries, related entities, executors, administrators, subrogees, assignors, assignees, attorneys, and insurers from any and all past, present, and future claims, claims of lien, rights, counts, causes of action, disciplinary or administrative complaints, obligations, expenses, debts, demands, notices of claim, attorneys' fees, costs, and liabilities of every kind and nature, known or unknown, latent or patent, direct or consequential, foreseen or unforeseen, suspected or unsuspected, matured or unmatured, whether or not accrued, that have been or could have been asserted by the City against Burke and pertaining to, arising out of, or related to the Contract, the Project, the Work, and the Dispute, with the exception of the Parties' respective obligations pursuant to this Agreement. This release by the City expressly includes a full waiver and release of any and all warranty obligations of Burke associated with the Project or the Work.

6. Time. Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement and for the Parties' obligations hereunder. The City acknowledges Burke's reliance on the City's timely performance of its obligation to pay the Settlement Payment as a material inducement to Burke's execution of this Agreement.

7. Entire Agreement. This Agreement contains the entire agreement between the Parties as to the subject matter stated herein and may be modified only in a writing executed in the same manner as the original Agreement. No agreements, representations, or statements of any party not contained herein shall be binding on such party; the Parties acknowledge and agree that there are no prior or contemporaneous agreements or representations of any character, written or oral, relating to the subject matter of this Agreement.

8. No Fraud. The Parties agree that no inducements, statements or representations have been made that are not set forth in this Agreement and that they did not rely on any inducements, statements or representations not set forth herein. The Parties further declare that they are of sound mind and body to enter into this Agreement, that they are aware that this Agreement has significant legal meaning, and that they enter into this Agreement freely and

voluntarily.

9. Enforcement. Any of the Parties shall have the right specifically to enforce this Agreement, except for any provisions which subsequently may be held invalid or unenforceable by a court of competent jurisdiction.

10. Waiver of Breach. No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

11. Choice of Law and Forum Selection. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, as they are applied to contracts made and to be wholly performed in this state, regardless of any choice of law principles to the contrary. Venue for any action arising from or related to this Agreement shall be in Volusia County, Florida.

12. Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees, expenses, and costs incurred with respect to the negotiation and implementation of this Agreement and all other matters not otherwise set forth above. However, should any action at law or in equity be necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, in addition to any other relief to which said party may be entitled.

13. Construction and Interpretation. The Parties agree that this Agreement is the product of negotiations and joint drafting between all Parties and their counsel. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. As used in this Agreement, the singular or plural shall be deemed to include the other whenever the context so indicates or requires.

14. Severability of Invalid Provisions. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

15. Savings Provision. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the remaining parts, terms or provisions shall remain valid unless declared otherwise by the court. Any part, term or provision which is determined to be illegal or invalid shall be deemed not to be a part of this Agreement.

16. Binding Nature. This Agreement shall be binding upon the Parties and their respective heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefits of the Parties.

17. Counterparts and Originals. The Parties may execute this Agreement in

counterparts. Each executed counterpart shall be deemed an original, and all of them together shall constitute one document.

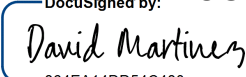
18. Acknowledgements. The Parties represent that they have carefully read and fully understand all the provisions of this Agreement, that they are entering into this Agreement voluntarily, and that they have consulted with an attorney of their choice and at their expense before executing it.

19. Cooperation. The Parties agree to work together to execute any other necessary document pertaining to this Agreement.

20. Confidentiality and Non-Disparagement. The Parties to this Settlement Agreement agree and acknowledge that the issues and the terms of this settlement are and shall remain Confidential and not be disclosed to any third party absent agreement of the Parties or Order of Court. The Parties further agree to refrain from making any disparaging remarks or claims against each other arising out of or related to the Contract, or the Project. For purposes of this section, "disparaging" shall mean and include false, misleading, or injurious remarks or claims regarding the other Party.

NOW, THEREFORE, the Parties have executed this Agreement, freely and voluntarily, as of the date first written above.

BURKE CONSTRUCTION GROUP, INC.

BY: 
 804EA14BD54C480...

DATE: 6/12/2023

PRINT NAME: David Martinez

ITS: CFO

CITY OF DELAND, FLORIDA

BY: _____

DATE: _____

PRINT NAME: _____

ITS: _____

CITY OF DELAND
Request for Commission Action
June 19, 2023

SUBJECT: Consideration re Country Pure Payment Agreement.

DEPARTMENT: Public Service

PREPARED BY: Chad Gamble, Public Services Director

ATTACHMENTS: Country Pure Foods - Payment Agreement 6-13-2023

APPROVED BY: Michael Grebosz, Asst. City Manager, June 14, 2023

SUMMARY/HIGHLIGHT:

Over the course of the 2022 calendar year, Country Pure Food's (CP) on site treatment facilities failed to perform to the level required by their Industrial Wastewater Treatment Discharge Permit (IDP). As such, and in accordance with the Utilities Ordinances and detailed in their IDP, the City fined them a total of \$1,010,746.90. The City and CP have reached a tentative Payment Agreement requiring a cash payment of 50% of this fine over time and providing capital investment credits in the form of monies spent investing in short term and long term improvements to their onsite treatment plant. The Utilities Department staff in conjunction with CP's staff and consultants have worked tirelessly to collaborate on improvements to their onsite plant that have bore the fruit of a facility that is operating within their IDP permit limitations, AND, creating incentives to transform CP's onsite treatment facility into the most environmentally friendly and capable in their company portfolio.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government & Sustainability

SUSTAINABILITY:

Natural Resource Protection and Optimization

FISCAL IMPACT:

This agreement will cause fines to be paid in cash to the City Utility Fund in the amount of \$505,373.46 and require the same amount of long term and short term improvements to CP's on-site treatment processes.

RECOMMENDATION:

Staff recommends the approval of the Payment Agreement between the City and Country Pure Foods.

BACKGROUND/DISCUSSION:

N/A

PAYMENT AGREEMENT

COUNTRY PURE FOODS

This Payment Agreement (the “Agreement”) is made and entered into between the City of DeLand, Florida, a Florida municipal corporation, with a mailing address of 120 S. Florida Avenue, DeLand, Florida 32720 (the “City”) and Ardmore Farms, LLC, a foreign corporation, doing business as Country Pure Foods, with a mailing address of 222 S. Main Street, Suite 401, Akron, Ohio 44308 (“Country Pure”).

Whereas, Country Pure is the holder of an industrial wastewater discharge permit numbered 20-003-SU issued by the City (the “Permit”); and

Whereas, Country Pure employs hundreds of people located in the greater DeLand area and is a valued corporate citizen; and

Whereas, as a result of instances of non-compliance with the Permit, the City has issued invoices to Country Pure in the total amount of ONE MILLION TEN THOUSAND SEVEN HUNDRED FORTY-SIX AND 92/100 DOLLARS (\$1,010,746.92) which sums are fixed and calculated in accordance with Section 30-23.5(3) of the City’s Utility Ordinance (the “Invoices”); and

Whereas, Country Pure and the City have entered into a Consent Order dated March 6, 2023 related to the aforementioned Permit violations (the “Consent Order”); and

Whereas, the Consent Order contains a series of actions that Country Pure is required to take in relation to its industrial wastewater pre-treatment operations at its processing plant located in DeLand, Florida; and

Whereas, Country Pure has undertaken many of the actions required by the Consent Order, but many of the required actions will necessarily take place over a period of years and require significant capital investment in Country Pure’s DeLand facility; and

Whereas, the City and Country Pure agree to reduce the amount due to the City for the Invoices in recognition of capital expenditures made by Country Pure pursuant to the Consent Order.

Now, Therefore, the City and Country Pure agree as follows:

1. Initial Payment. Country Pure will pay to the City the sum of TWO HUNDRED NINETY-THREE THOSAND ONE HUNDRED THIRTY-ONE AND 49/100 DOLLARS (\$293,131.49) on or before September 29, 2023.

2. Second Payment. Country Pure will pay to the City the additional sum of ONE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED TWELVE AND 04/100 DOLLARS (\$151,612.04) on or before July 1, 2024.

3. Automatic Reduction. Upon payment of the total amounts set forth in Sections 1 and 2 above, the City will reduce the amount of the Invoices by the sum of TWO

HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED EIGHTY-SIX AND 73/100 DOLLARS (\$252,686.73). This is in recognition of the sum of money heretofore spent by Country Pure in accordance with the Consent Order.

4. Replacement Plant Credits. Country Pure has identified additional capital improvements necessary for their treatment facility as set forth in the Mead and Hunt Country Pure Foods Wastewater Treatment System Evaluation Report dated April 11, 2023 and identified therein under the heading "Treatment Plant Solutions" (the "Replacement Plant Improvements"). The outstanding balance of the Invoices shall be reduced by the amount Country Pure actually and reasonably spent on the Replacement Plant Improvements prior to January 1, 2027. This credit shall include the sum of TWENTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$27,500.00) which represents one half of the cost spent on the Pre-treatment Plant Mechanical Integrity Test. The reduction provided for in this Section 4 shall be capped at TWO HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED EIGHTY-SIX AND 73/100 DOLLARS (\$252,686.73). If Country Pure has spent less than \$252,686.73 on the Replacement Plant Improvements as of January 1, 2027, the remaining balance of the Invoices shall be immediately due and payable on or before January 30, 2027. Country Pure will provide the City, prior to January 1, 2027, with invoices and proof of payment, and any other documentation reasonably requested by the City in order to substantiate the amounts spent on the Replacement Plant Improvements.

6. Future Charges. Any charges imposed by the City and against Country Pure from and after the date of execution of this Agreement by the City shall in no way affect the amount of the Invoices or any other matter provided for in this Agreement.

7. Entire Agreement. This Agreement sets forth the entire understanding of the parties and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance. Each party hereto is represented by that party's own counsel (or has had the opportunity to confer with counsel of their own choosing) and has had the benefit of such counsel's advice in reviewing, commenting upon, and modifying this Agreement.

8. Modification of Agreement. This Agreement may not be amended or modified except by written instrument signed by all the parties hereto, and the parties agree that this provision may not be waived except in writing.

9. Waiver. The rights of the parties under this Agreement are to be considered cumulative, and the failure on the part of any party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered a waiver by such party of any such covenant or condition herein. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

10. Time is of the Essence. Time is of the essence of this Agreement.

11. Headings. The headings used in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Settlement Agreement or the intent of any provision in it.

12. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, whether on its face or as applied, the remaining provisions shall remain in full force and effect.

13. Benefit and Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures by electronic transmission of this Agreement shall be acceptable and binding upon the parties. A copy hereof shall be as binding as the executed original.

14. Governing Law. This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of laws.

ARDMORE FARMS, INC.

By: 

Date Executed: June 13, 2023

Print Name: Anthony Muscato

Title: Chief Executive Officer

CITY OF DELAND

By: _____
Michael P. Pleus, City Manager

Date Executed: _____



To: Key Official

From: Eryn Russell, Florida League of Cities

Date: June 6, 2023

Subject: 97th Annual Conference Voting Delegate Information

The Florida League of Cities Annual Conference will be held at the Hilton Orlando Bonnet Creek in Orlando, Florida, from August 10-12, 2023. This conference will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

We ask that each member municipality sending delegates to the Annual Conference designate one of their officials to cast their votes at the Annual Business Session, which will be held on **Saturday, August 12**. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will vote on matters affecting the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida.

Conference registration materials were sent to each municipality via the League's e-newsletter and are available online at flcities.com.

If you have any questions about voting delegates, please email erussell@flcities.com. **Voting delegate forms must be received by the League no later than July 31, 2023.**

Attachments: Form Designating Voting Delegate



97th Annual Conference
Florida League of Cities, Inc.
August 10-12, 2023
Orlando, Florida

It is important that each member municipality sending delegates to the Annual Conference of the Florida League of Cities designate one of their officials to cast their votes at the Annual Business Session. League By-Laws require each municipality to select one person to serve as the municipality's voting delegate. *Municipalities do not need to adopt a resolution to designate a voting delegate.*

Please fill out this form and return it to the League office so that your voting delegate may be properly identified. **Voting delegate forms must be received by the League no later than July 31, 2023.**

Designation of Voting Delegate

Name of Voting Delegate: _____

Title: _____

Delegate Email: _____

Municipality of: _____

AUTHORIZED BY:

Name

Title

Return this form to:
Eryn Russell
Florida League of Cities, Inc.
Post Office Box 1757
Tallahassee, FL 32302-1757
Email: erussell@flcities.com