

Meeting Date
October 18, 2016



AGENDA	
Section	Public Hearing
Item No.	IV.B.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Ms. Kimberly B. Rezanka, Cantwell & Goldman, P.A., on behalf of Baytree Community Development District (CDD) (Applicant): Appeal of Staff Interpretation of September 8, 2016, , Space Coast Credit Union (SCCU) March 17, 2015, Binding Development Plan (BDP) (ORB 7326/PG 1611). (District 4)
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DEPT/OFFICE:	Natural Resources Management Department (NRM)
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Requested Action:

Pursuant to Sections 62-4347 and 62-507, staff requests the Board of County Commissioners consider the Applicant’s appeal of staff interpretation of Section 62-4342 and the referenced BDP for SCCU, 8025 N. Wickham Road, Melbourne.

Summary Explanation & Background:

On September 8, 2016, Brevard County Natural Resources Management Department (NRM) issued a letter of interpretation (Interpretation) in response to a request by the Applicant (Attachment B). The attached Staff Report (Attachment A) summarizes the three specific issues of the interpretation request and staff conclusions.

On September 27, 2016, the Applicant appealed the Interpretation (Attachment C). The Applicant’s letter states that the grounds for Appeal are that the Interpretation was based upon language in a landscaping plan approved in August 2015, and “an erroneous legal interpretation that the language of the BDP – “solid Landscape Buffer” – was to be defined by Section 62-4342,” Brevard County Landscaping, Land Clearing, and Tree Protection ordinance.

Options for the Boards Consideration:

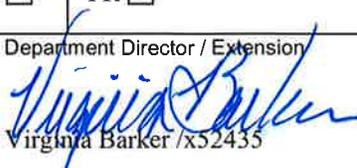
1. Deny the Appeal and apply the ordinance and BDP as presented in NRM’s September 8, 2016, letter of interpretation.
2. Grant the Appeal based on the Applicant’s letter of September 27, 2016.
3. Other direction.

Fiscal Impact: FY 16-17 – No Net Impact
 FY 17-18 – No Net Impact

Name: Virginia Barker or Darcie McGee, Natural Resources Management Department
Phone: (321) 633-2016

Clerk to the Board Instructions:

Exhibits Attached:
Attachment A – Staff Report
Attachment B – NRM Letter of Interpretation, September 8, 2016
Attachment C – Applicant Notice of Appeal, September 27, 2016
Attachment D – Seabreeze Bamboo

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension					
Stockton Whitten		 Virginia Barker /x52435					



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
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October 19, 2016

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item IV.B., Consideration of Appeal of Kimberly B. Rezanka, Cantwell & Goldman, P.A., on behalf of Baytree Community Development District (CDD) for Staff Interpretation of September 8, 2016, Space Coast Credit Union (SCCU) March 17, 2015, Binding Development Plan (BDP) (ORB 7326/PG 1611)

The Board of County Commissioners, in regular session on October 18, 2016, continued public hearing of the appeal of Kimberly B. Rezanka, Cantwell & Goldman, P.A., on behalf of Baytree CDD, for staff interpretation of September 8, 2016, SCCU March 17, 2015, BDP (ORB 7326/PG 1611), to the November 1, 2016, Board meeting.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

✓ Tammy Rowe, Deputy Clerk

/kp

cc: Planning and Development Director
County Manager
County Attorney

**ATTACHMENT A
STAFF REPORT
APPEAL OF STAFF INTERPREATION OF SPACE COAST CREDIT UNION (SCCU)
MARCH 17, 2015, BINDING DEVELOPMENT PLAN (BDP) (ORB 7326/PG 1611)**

**Requested by Ms. Kimberly B. Rezanka, Cantwell & Goldman, P.A.,
on behalf of Baytree Community Development District (CDD) (Applicant)**

October 18, 2016

Pursuant to Sections 62-4347 and 62-507, staff requests the Board of County Commissioners consider the Applicant's appeal of staff interpretation of the referenced BDP for SCCU, 8025 N. Wickham Road, Melbourne.

On September 8, 2016, Brevard County Natural Resources Management Department (NRM) issued a letter of interpretation (Interpretation) in response to a request by the Applicant (Attachment B). The three specific issues and staff conclusions were as follows:

- 1) Whether Space Coast Credit Union (SCCU) has installed a "solid Landscape Buffer" on or before six months from the date of issuance of the initial building permit for the Project that "screen(s) Building B through D," as required by ¶2 of the BDP.

Staff response: SCCU did install what the ordinance means by a "solid Landscape Buffer" on or before six months from the date of issuance of the initial building permit for the Project that "screen(s) Building B through D."

- 2) Whether the buffer installed by SCCU complies with Section 62-4342, County Code.

Staff response: The Buffer far exceeds Section 62-4342 ordinance requirements as the installed vegetation is larger in size than the code required, and the Buffer is approximately 15 feet wider than the 20 feet required by ordinance. Ordinance requires six feet of opacity. SCCU has provided an opaque fence to eight feet in height, with an adjacent vegetated berm three to four foot in height. Additionally, at maturity, the bamboo will provide screening to approximately 30 feet.

- 3) If SCCU has failed to install the "solid Landscape Buffer" – as asserted by Baytree CDD. Baytree CDD seeks an interpretation as to whether this is a violation of the BDP and the Zoning Classification, to be enforced pursuant to ¶8 of the BDP.

Staff response: It is NRM's opinion that SCCU has not failed to install the "solid Landscape Buffer," and is not in violation of the BDP.

On September 27, 2016, the Applicant appealed the Interpretation (Attachment C). The Applicant's letter states that the grounds for Appeal are that the Interpretation was based upon language in a landscaping plan approved in August 2015, and "an erroneous legal interpretation

that the language of the BDP – “solid Landscape Buffer” – was to be defined by Section 62-4342,” Brevard County Landscaping, Land Clearing, and Tree Protection ordinance.

Attachment D provides information on Seabreeze bamboo (*Bambusa malingensis*) as presented by PALMCO (<http://www.palmco.com/seabreeze-bamboo.html> - Copyright © PALMCO 2012-2016). Summarized below are Seabreeze’s attributes according to PALMCO (and as confirmed on numerous other nursery and grower websites):

- Fast growing, hardy, and bushy bamboo.
- Appropriate for coastal Florida due to its tolerance to high winds and salt breezes.
- Can handle temperatures down to 20 degrees Fahrenheit.
- Can reach heights up to 40 feet tall.
- Forms an umbrella shaped arch when mature.
- Tight, non-invasive clumping bamboo with small green leaves.
- The culms are straight and form tight, dense clumps.
- Great screening within one year.
- Can tolerate drought as well as flooding conditions.
- Can form a very tight hedge quickly and can be kept at a specific height or can be let go to achieve its maximum height.

Options for the Boards Consideration:

1. Deny the Appeal and apply the ordinance and BDP as presented in NRM’s September 8, 2016, letter of interpretation.
2. Grant the Appeal based on the Applicant’s letter of September 27, 2016.
3. Other direction.

ATTACHMENT B



Natural Resources Management Department

2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

September 8, 2016

Ms. Kimberly B. Rezanka
Cantwell & Goldman, P.A.
96 Willard Street, #302
Cocoa, FL 32922-7947

RE: Baytree Community Development District's (CDD) Request for Interpretation as to the Binding Development Plan (BDP) dated March 17, 2015 (ORB 7326/PG 1611)

Dear Ms. Rezanka:

This letter serves to provide Brevard County Natural Resources Management Department's (NRM) response to your request for a letter of interpretation of three issues.

- 1) Whether Space Coast Credit Union (SCCU) has installed a "solid Landscape Buffer" on or before six months from the date of issuance of the initial building permit for the Project that "screen(s) Building B through D," as required by ¶2 of the BDP.
- 2) Whether the buffer installed by SCCU complies with Section 62-4342, County Code.
- 3) If SCCU has failed to install the "solid Landscape Buffer" – as asserted by Baytree CDD, Baytree CDD seeks an interpretation as to whether this is a violation of the BDP and the Zoning Classification, to be enforced pursuant to ¶8 of the BDP.

In order to address these issues, NRM reviewed historical documents related to the landscape buffer (Buffer) and conducted a site inspection with Mr. Jason Bartlett, SCCU Project Manager, on July 15, 2016. A February 2016 aerial is included as Attachment A and site inspection photographs are included as Attachment B. The site inspection revealed the following:

- The Buffer continues to exhibit vigorous growth and increase in opacity. The buffer was at about 50% of the expected mature screening in January 2016; and it now looks to be about 70 to 75% of the expected mature screening in most areas.
- The trees, bamboo, and shrubs continue to get fuller, thicker, and taller.
- There is new bamboo cane growth emerging at the ground level.

Issue 1: Did SCCU install a "solid Landscape Buffer" on or before six months from the date of issuance of the initial building permit for the Project that "screen(s) Building B through D," as required by ¶2 of the BDP?

Paragraph 2 of the BDP states:

Developer/Owner shall provide and maintain a landscape buffer on the South portion of its Property starting fifty (50') feet west of its Southern Property corner with Baytree Drive and continuing West until approximately fifty (50') feet past the stormwater treatment pond where the property turns North. This landscape buffer shall be installed by Developer on or before six (6) months from the date of issuance of the initial building permit for the Project. The buffer shall be a solid Landscape Buffer, and shall screen Buildings B through D shown on Exhibit "B" from the property to the South. Developer shall be responsible for the continuing maintenance of the Landscaping Buffer. Developer shall provide the CDD with a copy of its landscape plans for the Landscape buffer fifteen business (15) days prior to Developer formally submitting it to the appropriate governmental entity for approval.

The BDP states that SCCU shall provide Baytree CDD a copy of the landscaping plan, but does not require Baytree CDD's approval of the plan. SCCU may choose any method/material to comply with the requirement to provide a solid buffer, including a fence, as described in the landscaping code. SCCU worked with a Landscape Architect (LA) to develop a Landscape Plan (approved by Brevard County in August 2015). The approved Landscaping Plan requires, "Opaque buffer providing complete screening to a minimum height of 25 feet within five years from the time of planting."

SCCU complied with the BDP requirement and, as a courtesy, involved Baytree CDD as a participant in the discussions during development of the Landscape Plan. In October 2015, SCCU agreed to additional Buffer enhancements as suggested by their LA to further address Baytree CDD's concerns as follows:

- The fence height was increased from six feet to eight feet (the maximum allowed per Brevard County Zoning regulations).
- Slats were added to the chain link fence for additional opacity.
- The number and sizes of oak and pine trees were upgraded to add additional buffering.
- The number and sizes of clumping bamboo ("Seabreeze") were upgraded. The plantings along the south property line were increased to border the entire 880 linear feet (LF) (an additional 296 LF added to the west). The addition of a row of bamboo increased the buffer from 20 feet to approximately 35 feet in width. Each mature stand of bamboo will grow to approximately 30 feet in height and have a diameter of 12 feet to 15 feet at the ground, with a wide and full canopy. The bamboo was planted 15 feet on-center, to

provide a completely opaque buffer at maturity. As of July 2016, there is new bamboo growth emerging at ground level (see attached photographs). Each year's canes will grow to three to four feet higher than the previous year's, up to mature height. As these shoots grow, each clump will continue to fully fill in between the planted installations.

The deadline for installation of the Buffer was January 30, 2016 (six months from issuance of the initial building permit for the Project). Ms. Amanda Elmore, ERM Program Manager and Certified ISA Arborist (FL1251-A), inspected the buffer on January 28, 2016, and indicated that the buffer was installed and approximately 50% opaque. She also reported:

The installed buffer along SCCU's south property line consists of an 8' tall chain link fence with privacy slats, 3-4' tall berm, and four layers of vegetation including large oaks, pines, Simpson's stopper, palmetto, wax myrtle and bamboo plantings 25-30 feet in height. I have attached a couple representative pictures. The buffer far exceeds code requirements as the installed oaks are larger than required and they have planted about four times the required vegetation. It is opaque to eight feet in height due to the fence, the code requires six feet of opacity.

It is my opinion that additional plantings would have resulted in long-term detriment, as the plantings are already bordering on overcrowding due likely to the desire to create as much instant screening as possible.

As for the BDP language, the buffer is a solid buffer to eight feet in height due to the combination of fencing and vegetation. Currently, it is about 50% opaque between 8-30 feet in height. The BDP did not specify a height and the code and BDP are the only language from which staff can review the plan and inspect. The buffer does screen the parking garage and existing building and will screen buildings B-D. However, it does not completely obscure the existing structures at this point.

By spring, I believe the Baytree residents will see a considerable difference in fullness as the bamboo grows. This particular bamboo has a fanning growth pattern and will create the screening I believe the Baytree residents desire. The CDD engineer, Melissa DeFrancesco and I met on the Baytree side of the buffer and discussed several vegetative options as the agreement allows up to \$30,000 to the CDD residents for landscape buffering and improvements on their property. We discussed continuing the large oaks, installing berms and planting native shrubs atop the berms.

It is my opinion that landscape installation on the CDD side, in addition to the planted SCCU buffer, will completely obscure the SCCU project in two-three

years. Even without the Baytree plantings, I believe the SCCU buffer will obscure the project in a few years.

Lastly, it was Ms. Elmore's opinion that planting a 40-foot high wall of vegetation would not likely result in long-term plant viability. Overplanting is a problem that is not always obvious at installation. Plants require adequate space to thrive. Crowded vegetation is more susceptible to disease and pests due to decreased air circulation. Natural form is compromised, leading to plant decline and demise. Additional planting, beyond the strategic filling in areas that would support additional vegetation at maturity, may put the installation at risk.

While Baytree's expectations seem to be that the buffer would completely block the project at installation, that language is not reflected in the actual BDP. The BDP requires a solid buffer, however; there is no height stipulated. Therefore, NRM looks to the landscaping ordinance, which specifies six feet height of opaqueness. Historical code application policy considers a chain link fence with slats to be opaque, and this methodology has been accepted at other commercial projects. Additionally, as approved in the BDP for this project, the buffer opacity is meant to be achieved through a combination of the fence, the three to four foot high berm behind the fence, and vegetation planted on both sides of the fence; not through the fence alone. Therefore, NRM considers the SCCU Buffer to be opaque to eight feet; and the vegetation and trees planted far exceed the amount required by code with regard to planted size and quantity.

The Buffer does "screen" but does not completely obscure the SCCU project at this time. The bamboo and other vegetation will continue to fan out and thicken, and should completely block the view in two to three years. It is NRM's opinion that SCCU did install what the ordinance means by a "solid Landscape Buffer" on or before six months from the date of issuance of the initial building permit for the Project that "screen(s) Building B through D."

Issue 2: Does the buffer installed by SCCU comply with Section 62-4342, County Code?

Section 62-4342, entitled Landscape Buffers, states:

The purpose of the vegetative buffering requirements set out in this section is to provide visual and physical screening and buffering between potentially incompatible uses and to reduce the effects of glare, noise and incompatible activities, to include commercial, institutional, public, and industrial uses when they abut existing residential uses.

- (1) *Type A, Compatibility Buffer. Where a fence or wall is required by Article VI of this Chapter, the Type A buffer, as defined in this subsection, may be utilized in lieu of the required fence or wall. This buffer classification shall be used to separate commercial, institutional, public or industrial uses from residential uses. The Type A buffer shall be completely opaque from the ground up to a*

height of at least six feet, except where located within 25 feet of a road, where it shall be four feet in height. In conjunction with this buffer, a minimum 20-foot vegetated area shall be provided. There shall be no parking or structures other than permitted signage located within this vegetated area.

- a. The opaque buffer may utilize a masonry wall, wood fence, Landscaped Earth Berm, planted or existing vegetation or any combination thereof that maintains a completely opaque buffer.*
 - b. Location of fences and walls. Where a fence or wall is used to fulfill the screening requirements within a vegetative buffer, it shall be located one foot inside of the property line that abuts the residential zoning. When an impediment such as a drainage easement, ditch or water body runs along a property line, an administrative waiver may be granted by the Director to allow the masonry wall or fence to be placed along the edge of the ditch or water body instead of on the property line. Where there are existing trees within the buffer area, the fence or wall shall be located so as to preserve the trees.*
- (2) Type B, Roadway Buffer. This buffer classification shall be required for all development excluding individual single-family homes not within platted subdivisions. This buffer shall be landscaped, be located adjacent to any public road and have a minimum width of 15 feet. There shall be no parking or structures other than permitted signage located within this vegetated area.*
- (3) Planting requirements. The planting requirements for the Vegetative Buffer Areas shall be consistent with Appendix B as amended, and shall be credited toward the overall landscaping requirements. Minimum buffering and landscaping of Vehicular Use Areas shall be met regardless of other requirements.*

The Buffer far exceeds Section 62-4342 ordinance requirements as the installed vegetation is larger in size than the code required, and the Buffer is approximately 15 feet wider than the 20 feet required by ordinance. Ordinance requires six feet of opacity. SCCU has provided an opaque fence to eight feet in height, with an adjacent vegetated berm three to four foot in height. Additionally, at maturity, the bamboo will provide screening to approximately 30 feet.

Issue 3: Has SCCU failed to install the “solid Landscape Buffer” – as asserted by Baytree CDD? Baytree CDD seeks an interpretation as to whether this is a violation of the BDP and the Zoning Classification, to be enforced pursuant to ¶8 of the BDP.

It is NRM's opinion that SCCU has not failed to install the "solid Landscape Buffer," and is not in violation of the BDP. However, as the vegetation has matured, there are a couple of areas where, due to the alignment of the staggered plantings, there is room for some additional plantings at berm level between the fence and the bamboo. Mr. Bartlett indicated that, upon NRM's approval, SCCU would expeditiously plant up to six additional Simpson's stoppers.

Lastly, the BDP allows for up to \$30,000 of vegetation and improvements on Baytree CDD property paid for by SCCU. Additional buffer planting by Baytree will bolster opacity. Ms. Elmore previously spoke with the CDD Engineer about different planting options; and ERM will continue to work with both SCCU and the CDD. Please note that there is a one-year timeline (from the day the Buffer is complete) in which the CDD can submit invoices to SCCU for reimbursement.

Per Section 62-507, the County shall hear appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this division. Appeals shall be taken within 30 days from the date of rendition of such decisions or determination by filing with this office. Please see Section 62-507 for specific appeal procedures. If you should have any questions please contact me at (321) 633-2016. Thank you for the opportunity to serve you in this matter.

Sincerely,



Virginia Barker
Director

Attachments: Attachment A – 2016 Aerial
Attachment B – Site Inspection Photographs
Attachment C – Applicant Submittal

cc: Ms. Robin DiFabio, Director, Brevard County Planning & Development
Mr. Scott Knox, Esquire, County Attorney, Brevard County

Law Offices of
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Also Member of District of Columbia
Bar, New York Bar, and Washington Bar

June 14, 2016

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(by appointment only)

RECEIVED

JUN 15 2016

BREVARD COUNTY
NATURAL RESOURCES MGT.

Ms. Virginia Barker, Director
Natural Resources Management Office
2725 Judge Fran Jamieson Way, A-219
Viera, FL 32940

Ms. Robin DiFabio, Director
Brevard County Planning & Development Department
2725 Judge Fran Jamieson Way, Building A
Viera, FL 32940

Scott Knox, Esquire
County Attorney, Brevard County
2725 Judge Fran Jamieson Way
Viera, FL 32940

RE: Baytree Community Development Districts' Request for Interpretation as to
the Binding Development Plan dated March 17, 2015 (ORB 7326/P1611) (the
"BDP")

Dear Ms. Barker, Ms. DiFabio and Mr. Knox:

On behalf of Baytree Community Development District ("Baytree CDD"), we request an interpretation from the County based upon Brevard County Code as to three issues. **First**, whether Space Coast Credit Union ("SCCU") has installed a "solid Landscape Buffer" on or before six (6) months from the date of issuance of the initial building permit for the Project that "screen(s) Buildings B through D", as required by ¶2 of the BDP. *A copy of the BDP is enclosed for your reference.* The deadline for installation of the solid Landscape Buffer was January 30, 2016, as that date was six (6) months from the issuance of the initial building permit. **Second**, whether the buffer installed by SCCU complies with Sec. 62-4342, County Code. **Third**, if SCCU has failed to install the "solid Landscape Buffer" – as asserted by Baytree CDD – Baytree CDD seeks an interpretation as to whether this is a violation of the BDP and the Zoning Classification, to be enforced pursuant to ¶8 of the BDP.

As you may know, Baytree CDD has met with NRMO, zoning staff, SCCU representatives and Commissioner Smith to attempt resolution of its concerns regarding the deficiencies of the solid Landscape Buffer. These meetings stemmed from an email from Amanda Elmore of NRMO dated January 29, 2016. In that email, Ms. Elmore opined, in response to the Baytree CDD's inquiry regarding the buffer, that the County Code "requires the following for Type A (incompatibility) buffer between commercial and residential users", citing County Code Sec. 62-4342. *A copy of her email and attached photos are enclosed herein.* Ms. Elmore concludes in her email the buffer installed meets County Code requirements.

While we understand Ms. Elmore's reliance on County Code, we dispute that the citation to County Code is appropriate as that is not the language of the BDP. Had the parties desired only a "Type A compatibility buffer," that is the language that would have been included in the BDP. Perhaps SCCU has complied with County Code Sec. 62-4342, which Baytree CDD disputes, but such compliance does not equal compliance with the BDP requirement to install a "solid Landscape Buffer" and "screen Buildings B through D . . . from the property to the South." If Ms. Elmore's opinion is sustained by Director Barker, then SCCU may be deemed to have complied with ¶5. However, compliance with ¶2 of the BDP is different than compliance with ¶5. In conversations with Amanda Elmore and Darcie McGee, it is obvious that they are using "solid Landscape Buffer" and "opaque buffer" to mean the same thing. Those two buffers are not the same.

More importantly, the installed buffer is not "solid". Paragraph 2 of the BDP requires a "solid Landscape Buffer" that will "screen Buildings B through D", to be installed "on or before six (6) months from the date of issuance of the initial building permit." Photographs taken February 16, 2016 (17 days after deadline) reveal that buildings are visible from the property to the South. *Four color photographs are enclosed.* When these photos are compared to the photograph taken July 12, 2012, which shows a complete, solid buffer from the property to the South, wherein no buildings can be seen, the lack of a solid buffer is apparent. *Photograph dated July 12, 2012 enclosed.* It should also be noted that the Landscape Mitigation Plan For Construction dated 07-13-2015, which was provided to the Baytree CDD by SCCU, contains a boxed statement on L-3 of 16, "opaque buffer providing complete screening to a maximum height of 25' within 5 years of planting". Baytree CDD objected to this "5 year" projection, but the objections were disregarded by SCCU.

Secondly, the installed buffer is not "opaque". The County Landscape Buffer ordinance, Sec. 62-4342(1) requires a "Type A, compatibility buffer" to be "completely opaque from the ground up to a height of at least six feet." The County has allowed SCCU to install unattractive plastic slats in a chain link fence, then deeming the buffer "opaque". The 2016 photographs show that the chain link and slats fence is not opaque -- you can see straight through it to see trees, bushes, parking, retention, light poles and buildings. Moreover, Sec. 62-4342(1)(a) provides that the "opaque buffer may utilize a masonry wall, wood fence, landscape berm, . . . vegetation or any combination thereof that maintains a completely opaque buffer." Not only is "chain link fence" and "slats" missing from the types of materials that can be utilized, the existing chain link and slats fence is translucent at best and not "completely opaque". The opinions by Ms. Elmore that the landscape buffer installed by SCCU pursuant to the BDP is

Ms. Barker, Ms. DiFabio, Mr. Knox
June 14, 2016
Page | 3

“opaque to eight feet due to the fence”, “is a solid buffer” and “does screen the parking garage and existing building” all fail when you examine the actual site. The opinions are arbitrary and without factual support.

Finally, promises were made to the residents of Baytree by SCCU that the Project would not be visible from the Baytree property to the South. At the 11/24/14 P&Z Meeting, Phil Nohrr on behalf of SCCU stated, “You won’t be able to see it.” (He may have been referring to the “third building”, but the residents believed he meant the whole complex.) Additionally, no one in Baytree knew that the southern portion of the property – as shown in the July 12, 2012 photograph – would be clear-cut so that none of that buffer would exist to shield the new buildings. In fact, at the County Commission Meeting of December 4, 2014, Mr. Nohrr indicated that the existing barrier would remain, and it would be supplemented by the new landscaping.

In summary, it appears that Ms. Elmore interpreted “solid Landscape Buffer” in ¶2 of the BDP to require only a Type A buffer under Sec. 62-4342. Regardless, the existing landscape and fence with slats is neither solid nor opaque and should be considered a violation of the BDP. The Baytree CDD should not have to wait five years, or even two-three years (as cited by Ms. Elmore), when SCCU contractually agreed that the buffer would be solid and complete in six (6) months. Further, Baytree CDD has no obligation to provide any additional landscaping, except within one year of the “date the solid Landscape Buffer referenced in Paragraph 2 is completed.” See ¶3 of the BDP. The solid Landscape Buffer has not been completed.

Therefore, Baytree CDD respectfully requests that the appropriate Department or the County Attorney provide an interpretation as to: (1) whether a solid Landscape Buffer, as required in ¶2 of the BDP has been installed; (2) whether the chain link fence with slats meets the requirements of opacity of Sec. 62-4342(1); and (3) whether SCCU has violated the BDP and the Zoning Classification of SCCU’s Property.

Please advise if you need additional information or clarification, and of the cost of this request.

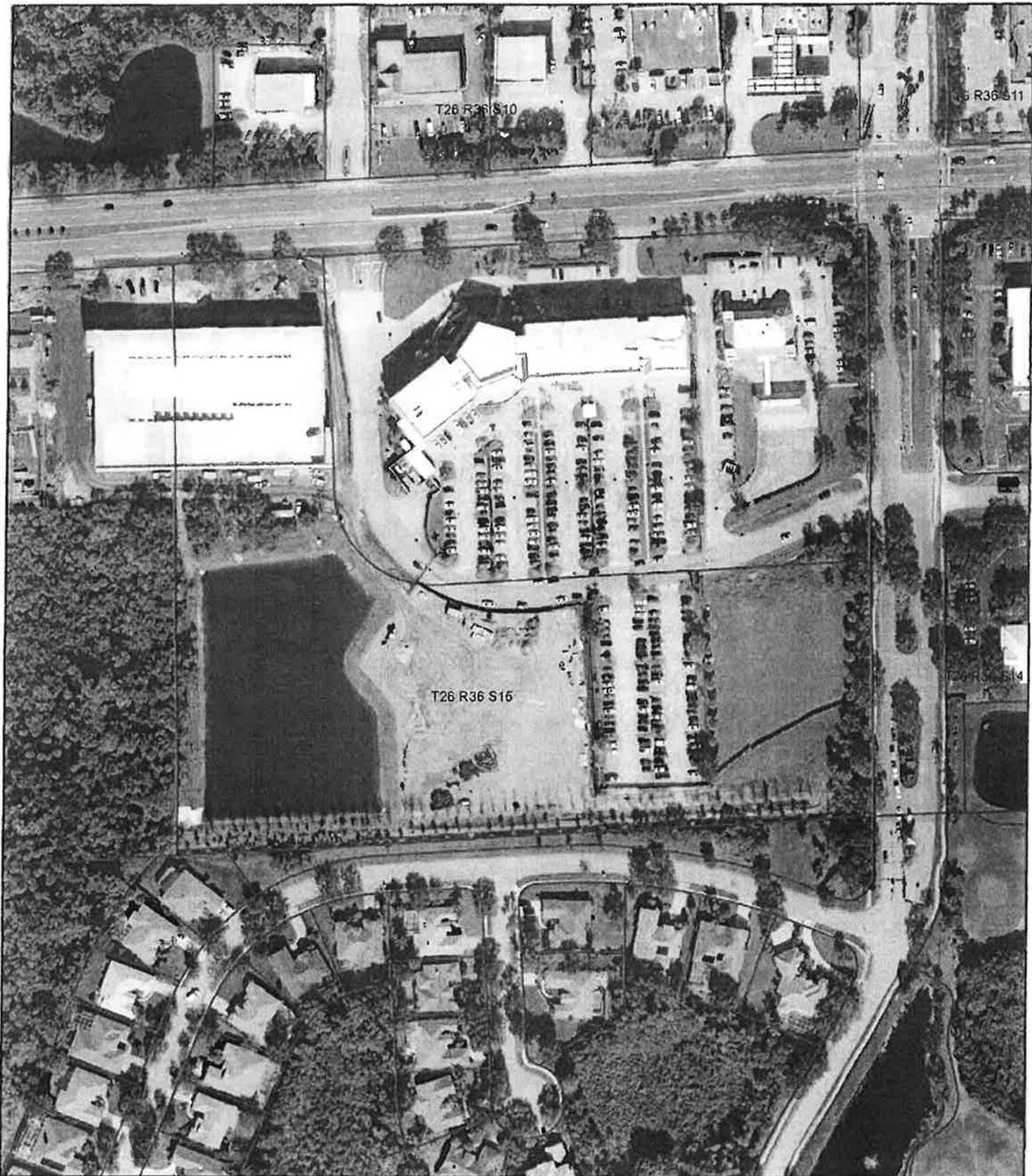
Sincerely,



Kimberly B. Rezanka

KBR: bms
enclosures

cc: Commissioner Curt Smith
Philip Nohrr, Esq.
Board of Supervisors, Baytree CDD



Attachment A
Subject Area
2016 Aerial

Legend

Attachment B Site Photographs



Looking South from Mid SCCU Property (July 2016)



Looking Southwest from Mid SCCU Property (July 2016)



Looking South from Eastern SCCU Fence Line (July 2016)
(Note additional buffering on Baytree Property to South)



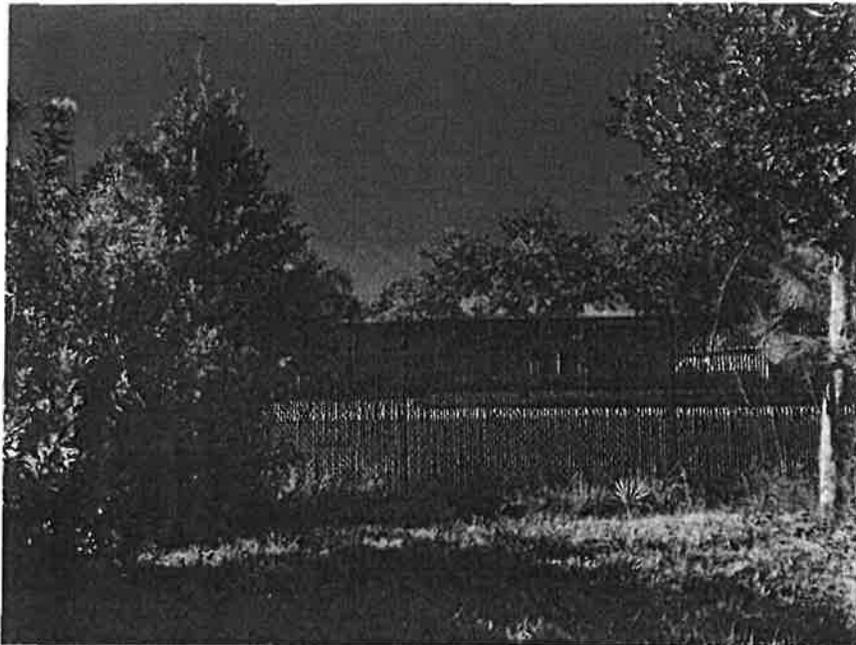
Looking South from Eastern SCCU Fence Line (July 2016)
(Note additional buffering on Baytree Property to South)



Looking South (July 2016)



Looking South from SCCU Garage (July 2016)



Area on Fence Line That Would Support the
Planting of an Additional Simpson's Stopper
(July 2016)



Area on Fence Line as Seen From Baytree (July 2016)



Buffer Plantings (January 2016)



Buffer Plantings (July 2016)



Buffer Plantings (July 2016)



New Bamboo Growth (July 2016)



Looking North from Baytree (July 2016)



Looking North from Baytree (January 2016)



Looking North from Baytree (July 2016)



Looking North from Baytree (July 2016)



Looking North from Baytree (July 2016)

Prepared by: Philip F. Nohrr
Address: Gray/Robinson, P.A.
1795 W. Nasa Blvd.
Melbourne, FL 32901

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 17th day of March, 2015, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and SPACE COAST CREDIT UNION, a State chartered credit union duly organized and existing under the laws of Florida (hereinafter referred to as "Developer/Owner"), and BAYTREE COMMUNITY DEVELOPMENT DISTRICT, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes (hereinafter referred to as "CDD").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the PUD zoning classification(s) and desires to develop the Property as office buildings, pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property ("Project"), Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property,

NOW THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements set forth in paragraphs 2 and 3 below. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest shall be responsible for the installation and maintenance of the landscape buffer described in paragraph 2, and that the Baytree Community Development District (CDD) shall be responsible for the maintenance of any landscape buffering planted per paragraph 3 below.

2. Developer/Owner shall provide and maintain a landscape buffer on the South portion of its Property starting fifty (50') feet west of its Southern Property corner with Baytree Drive and continuing West until approximately fifty (50') feet past the stormwater treatment pond where the Property turns North. This landscape buffer shall be installed by Developer on or before six (6) months from the date of issuance of the initial building permit for the Project. The buffer shall be a solid Landscape Buffer, and shall screen Buildings B through D shown on Exhibit "B" from the property to the South. Developer shall be responsible for the continuing maintenance of the Landscape Buffer. Developer shall provide the CDD with a copy of its landscape plans for the Landscape Buffer fifteen business (15) days prior to Developer formally submitting it to the appropriate governmental entity for approval.

3. Developer agrees to pay up to the sum of thirty (\$30,000.00) thousand dollars to the CDD for any buffering including, but not limited to landscape material, irrigation improvements, and design costs that the CDD plants on its land bordering the

land described in paragraph 2 above or for landscaping improvements to the Baytree Drive right-of-way north of the CDD security gate facilities.. Developer/Owner shall have no obligation to maintain any buffering or landscaping installed by CDD on CDD's property. The CDD, shall on or before one (1) year from the date the solid Landscape Buffer referenced in Paragraph 2 is completed, submit invoices or other reasonable documentation for the landscape buffering or other improvements installed as set forth in this paragraph 3 in support of any request for reimbursement up to thirty (\$30,000.00) thousand dollars, and Developer shall reimburse the CDD within thirty (30) days of receipt of the payment documentation.

4. A. Exhibit "C" depicts, among other things, the Traffic Improvements (TI) that the Developer shall make on Baytree Drive, including upgrades to the signalization at the intersection of Baytree Drive and Wickham Road and the addition of turn lanes to the Northbound portion of Baytree Drive just South of Wickham Road. Exhibit "C" also depicts the monument sign on Baytree Drive remaining, and Developer agrees not to remove the monument sign. County, pursuant to the terms of its Right-of-way Maintenance Bond Agreement to be entered into in connection with the TI permitting, shall take over, and be responsible for the maintenance of the Baytree Drive road and paving. At its cost and expense, Developer shall repair or replace with items or systems of equal or better quality where practical any landscape or hardscape materials, or irrigation, electrical or lighting fixtures damaged or adversely impacted as the result of the TI. With respect to any landscape material designated for removal as a result of the TI, Developer shall provide CDD with at least ten (10) days advance written notice prior

P.F.N

to removal to give CDD the opportunity to remove such landscape material, and use the same elsewhere within the CDD.

(B) Developer shall provide the CDD with a copy of TI plans for Baytree Drive only prior to Developer formally submitting it to the County for approval.

5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

6. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida, and a copy of said recorded instrument shall be sent by Developer to CDD upon recording.

7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on December 4, 2014 as modified herein.

8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Section 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

10. Any notices or communications to the CDD as required by this Agreement shall be sent to District Manager, c/o Government Management Services, 135 W. Central Boulevard, Suite 320, Orlando, Florida 32801.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above

PPH

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]



Scott Ellis, Clerk
(SEAL)

Scott Ellis

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

[Signature]
Print Name: Robin Fisher
Print Title: Chairman
As approved by the Board on 3-17-15

WITNESSES:

[Signature]
GARY TRAGER
(Witness Name typed or printed)

DEVELOPER/OWNER
SPACE COAST CREDIT UNION
[Signature]
Print Name: TIMOTHY U. ANTONICTION
Print Title: COO
Address: 8045 N WICKHAM RD
MELBOURNE, FL 32940

[Signature]
Jan Boulay
(Witness Name typed or printed)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 19 day of
February, 2015 by Tim Antoniction
COO of SPACE COAST CREDIT UNION, who is personally
known to me or who has produced
as identification.

My commission expires
SEAL

Commission # 129568711
2/17/15
JILLION FRECKLETON-MCINTOSH
Commission # FF 036468
Expires September 21, 2017
Bonded Through Troy Fahn Insurance 800-388-7016

[Signature]
Notary Public
Jillion Freckleton-McIntosh
(Name, typed, printed or stamped)

WITNESSES:

Jeanne Moeller
Jeanne Moeller
(Witness Name typed or printed)

Philip F. Nohr
Philip F. Nohr
(Witness Name typed or printed)

BAYTREE COMMUNITY DEVELOPMENT DISTRICT

Maria Hernandez
Print Name: Maria Hernandez
Print Title: Chairperson of Board of Supervisors
Address: _____

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 19 day of February, 2015 by Maria Hernandez, Chairperson of Board of Supervisors of BAYTREE COMMUNITY DEVELOPMENT DISTRICT, who is personally known to me or who has produced her driver's license as identification.

My commission expires
SEAL
Commission No.

Jeanne M. Moeller
Notary Public
JEANNE M. MOELLER
(Name, typed, printed or stamped)

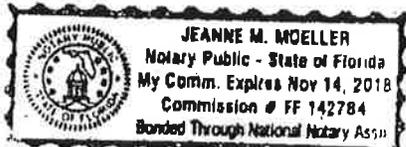
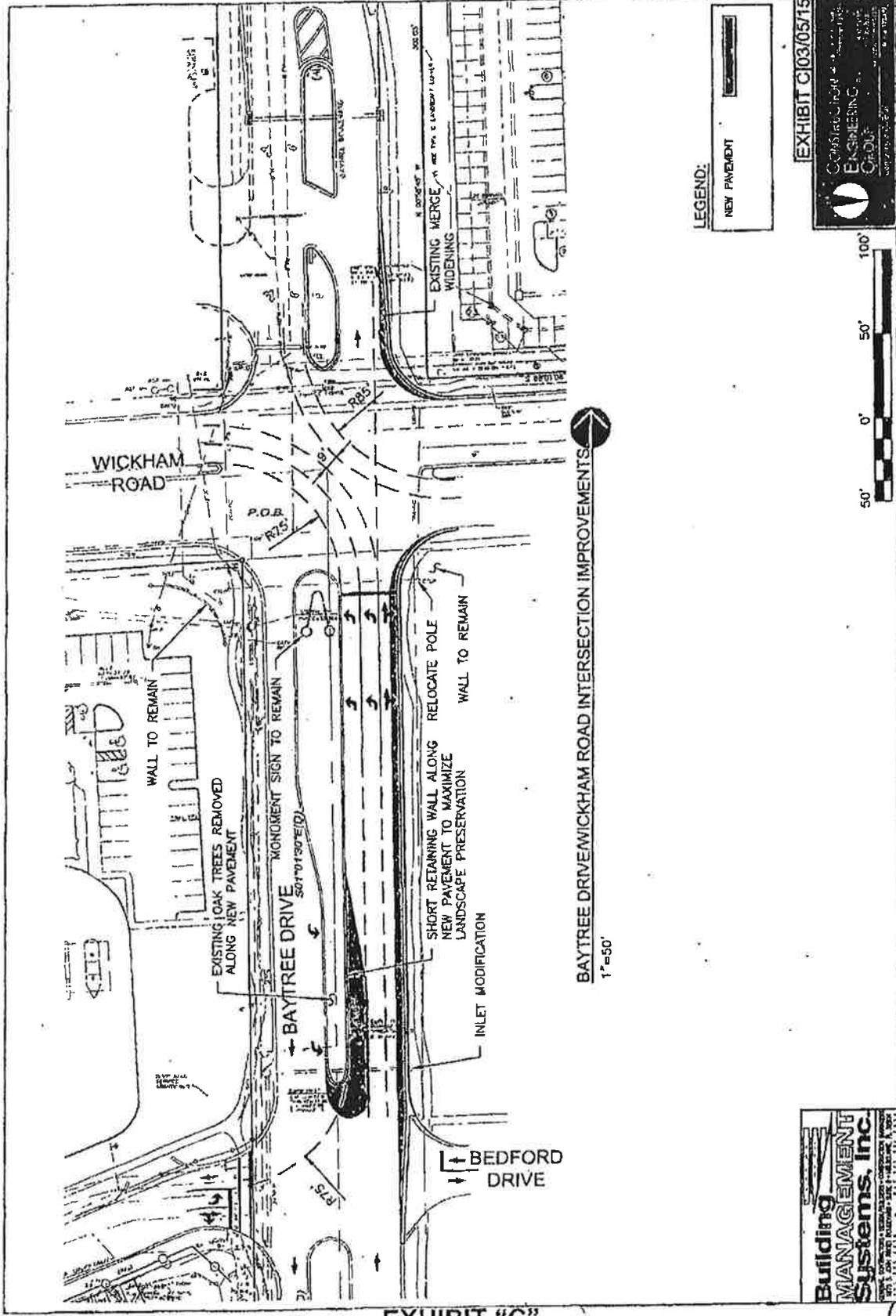


EXHIBIT "A"

PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; FROM THE NORTHEAST CORNER OF SAID SEC. 15, T. 26 S., R. 36 E., BREVARD COUNTY, FLORIDA, RUN S 1°01'30" E ALONG THE EAST LINE OF SAID SEC. 15 A DIST. OF 50.04 FT.; THENCE S 86° 42'00" W A DIST. OF 50.04 FT. TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF WICKHAM ROAD, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE RUN S 1°01'30" E PARALLEL WITH SAID EAST LINE OF SEC. 15 A DIST. OF 792.63 FT.; THENCE S 86° 42'00" W PARALLEL WITH THE NORTH LINE OF SEC. 15 A DIST. OF 930.00 FT.; THENCE N 1°01'30" W. A DIST. OF 792.63 FT. TO THE SOUTH R/W LINE OF WICKHAM ROAD. AS ESTABLISHED BY DEED RECORDED ON O.R.B. 407, PG.15, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE N 86°42'00" E. ALONG SAID SOUTH R/W LINE A DIST. OF 930.00 FT. TO THE P.O.B.



BAYTREE DRIVE/WICKHAM ROAD INTERSECTION IMPROVEMENTS
1"=50'

LEGEND:

 NEW PAVEMENT

EXHIBIT C103/05/15

Consulting
ENGINEERING
 GROUP



Building
MANAGEMENT
 Systems, Inc.

1000 S. BROADWAY, SUITE 1000, DENVER, CO 80202
 TEL: 303.733.1111 FAX: 303.733.1111

EXHIBIT "C"

PFN

Begin forwarded message:

From: "Elmore, Amanda T" <Amanda.Elmore@brevardcounty.us>
Date: January 29, 2016 at 10:08:04 AM EST
To: "jshowe@gmscfl.com" <jshowe@gmscfl.com>
Cc: "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, "Sobrino, Robin M" <Robin.Sobrino@brevardcounty.us>, "Barker, Virginia H" <Virginia.Barker@brevardcounty.us>
Subject: SCCU/Batree CDD buffer inspection update

Hello Mr. Showe, I sent County management a brief synopsis of my findings yesterday regarding the buffer. This is a more detailed summary. I'm happy to continue working with Melissa regarding vegetative options for the CDD buffer side that will hopefully help meet the Baytree residents' expectations. Unfortunately, I only have the language of the BDP and the code to work with in conducting my plan review and inspection.

The language of the BDP #2 states:

Developer/Owner shall provide and maintain a landscape buffer on the South portion of its Property starting at fifty (50') feet west of its Southern Property corner with Baytree Drive and continuing West until approximately fifty (50') feet past the stormwater treatment pond where the Property turns North. This landscape buffer shall be installed by Developer on or before six (6) months from the date of issuance of the initial building permit for the Project. The buffer shall be a solid Landscape Buffer, and shall screen Buildings B through D shown on Exhibit "B" from the property to the South. Developer shall be responsible for the continuing maintenance of the Landscape Buffer. Developer shall provide the CDD with a copy of its landscape plans for the Landscape Buffer fifteen business days prior to Developer formally submitting it to the appropriate governmental entity for approval.

Code requires the following for Type A (incompatibility) buffers between commercial and residential uses:

Section 62-4342, Landscape Buffers.

The purpose of the vegetative buffering requirements set out in this section is to provide visual and physical screening and buffering between potentially incompatible uses and to reduce the effects of glare, noise and incompatible activities, to include commercial, institutional, public, and industrial uses when they abut existing residential uses.

(1) Type A, Compatibility Buffer. Where a fence or wall is required by Article VI of this Chapter, the Type A buffer, as defined in this subsection, may be utilized in lieu of the required fence or wall. This buffer classification shall be used to separate commercial, institutional, public or industrial uses from residential uses. The Type A buffer shall be completely opaque from the ground up to a height of at least six feet, except where located within 25 feet of a road, where it shall be four feet in height. In conjunction with this buffer, a minimum 20-foot vegetated area shall be provided. There shall be no parking or structures other than permitted signage located within this vegetated area.

- a. The opaque buffer may utilize a masonry wall, wood fence, Landscaped Earth Berm, planted or existing vegetation or any combination thereof that maintains a completely opaque buffer.*
- b. Location of fences and walls. Where a fence or wall is used to fulfill the screening requirements within a vegetative buffer, it shall be located one foot inside of the property line that abuts the residential zoning. When an impediment such as a drainage easement, ditch or water body runs along a property line, an*

administrative waiver may be granted by the Director to allow the masonry wall or fence to be placed along the edge of the ditch or water body instead of on the property line. Where there are existing trees within the buffer area, the fence or wall shall be located so as to preserve the trees.

The installed buffer along SCCU's south property line consists of an 8' tall chain link fence with privacy slats, 3-4' tall berm, and four layers of vegetation including large oaks, pines, simpson's stopper, palmetto, wax myrtle and bamboo plantings 25-30 feet in height. I have attached a couple representative pictures. The buffer far exceeds code requirements as the installed oaks are larger than required and they have planted about four times the required vegetation. It is opaque to eight feet in height due to the fence, the code requires six feet of opacity.

It is my opinion that additional plantings would have resulted in long-term detriment, as the plantings are already bordering on overcrowding due likely to the desire to create as much instant screening as possible.

As for the BDP language, the buffer is a solid buffer to eight feet in height due to the combination of fencing and vegetation. Currently, it is about 50% opaque between 8-30 feet in height. The BDP did not specify a height and the code and BDP are the only language from which staff can review the plan and inspect. The buffer does screen the parking garage and existing building and will screen buildings B-D. However, it does not completely obscure the existing structures at this point.

By spring, I believe the Baytree residents will see a considerable difference in fullness as the bamboo grows. This particular bamboo has a fanning growth pattern and will create the screening I believe the Baytree residents desire. The CDD engineer, Melissa DeFrancesco and I met on the Baytree side of the buffer and discussed several vegetative options as the agreement allows up to \$30,000 to the CDD residents for landscape buffering and improvements on their property. We discussed continuing the large oaks, installing berms and planting native shrubs atop the berms.

It is my opinion that landscape installation on the CDD side, in addition to the planted SCCU buffer, will completely obscure the SCCU project in two-three years. Even without the Baytree plantings, I believe the SCCU buffer will obscure the project in a few years. If you need additional information, please let me know.

Amanda Elmore, Certified ISA Arborist FL1251-A
Environmental Resources Program Manager
NATURAL RESOURCES MANAGEMENT DEPARTMENT
2725 Judge Fran Jamieson Way, A-219
Viera, Florida 32940
Ph. 321.633.2016 Fax 321.633.2029
e-mail: amanda.elmore@brevardcounty.us
website: <http://www.brevardcounty.us/NaturalResources/Home>

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or

ATTACHMENT C
Law Offices of
CANTWELL & GOLDMAN, P.A.

www.cfglawoffice.com

Bradly Roger Bettin, Sr.
William H. Cantwell, II^{1,2}
Mitchell S. Goldman
J. Wesley Howze
Matthew J. Monaghan
Nina V. Rawal
Kimberly Bonder Rezanka
Michael Sjuggerud³
Jay R. Thakkar

96 Willard Street, Suite # 302
Cocon, FL 32922-7947
Telephone: (321) 639-1320
Facsimile: (321) 639-9950

474 N. Harbor City Blvd., Suite # 1
Melbourne, FL 32935
(by appointment only)

September 27, 2016

¹ Board Certified Construction Lawyer and
Board Certified Business Litigation Lawyer

² Also Member of West Virginia Bar

³ Also Member of District of Columbia
Bar, New York Bar, and Washington Bar

Ms. Virginia Barker, Director
Natural Resources Management Office
2725 Judge Fran Jamieson Way, A-219
Viera, FL 32940

HAND DELIVERY

RE: **Notice of Appeal Pursuant to Sec. 62-507, Brevard County Code**
September 8, 2016 NRMO Response to Request for Interpretation as to
The Binding Development Plan dated March 17, 2015 (ORB 7326/P1611)

Dear Ms. Barker:

As you know, this Firm represents Baytree Community Development District ("Baytree CDD"), regarding the tri-party Binding Development Plan ("BDP") dated March 15, 2015, between Brevard County, Baytree CDD and Space Coast Credit Union ("SCCU"). On June 14, 2016, Baytree CDD requested an interpretation from the County as to whether SCCU had installed a "solid Landscape Buffer", whether the buffer installed by SCCU complied with Sec. 62-4342, County Code and whether SCCU had violated the BDP and the Zoning Classification. On September 8, 2016, you replied on behalf of NRMO to the request for interpretation. This letter shall serve as Baytree CDD's Notice of Appeal as a party aggrieved by the September 8, 2016 Interpretation by NRMO (the "Interpretation"), under Sec. 62-507, Brevard County Code. **A copy of the Interpretation and the Request is enclosed herein.**

The grounds for this Appeal are that NRMO misinterpreted the BDP, disregarded the parties negotiated and bargained for terms of the BDP, and overlooked the obvious fact that the slatted fence and existing foliage did not create and has not created a "solid Landscape buffer" as contemplated by the BDP. The Interpretation was based upon language in an "approved Landscape Plan" approved by Brevard County in August of 2015, and an erroneous legal interpretation that the language of the BDP – "solid Landscape Buffer" – was to be defined by Sec. 62-4342, County Code. Ironically, the

citations to Amanda Elmore's January 28, 2016 report flatly contradicts the Director's opinion that the landscape buffer and slatted fence is "solid": *"it does not completely obscure the existing structures at this point"*; *"will completely obscure the SCCU project in two-three years"*; and *"Buffer does 'screen' but does not completely obscure the SCCU project at this time"*.

Baytree CDD viewed its Request for Interpretation to require a legal opinion as to the language of the BDP compared to the actual Buffer installed by SCCU. That is why the Request was delivered to the County Attorney and Planning and Development Director DiFabio, as well as to NRMO Director Barker. Ironically, the Interpretation by NRMO includes legal conclusions – conclusions that Baytree CDD believes are unsupported by the facts and are flawed.

The most glaring error is the supposition that because the Buffer "far exceeds code requirements", the Buffer is a "solid Landscape Buffer" as contemplated by the BDP and the parties. The BDP deliberately failed to include any citation to Sec. 62-4342, because the BDP intended that "solid" be the criteria for the Buffer, not "opaque" and not "Type A, compatibility buffer". Contrary to Ms. Elmore's belief that the language of the BDP did not "reflect" that the "buffer would completely block the project at installation", the BDP clearly stated that the buffer was to be "solid." Paragraph 2 of the BDP required SCCU to install a "solid Landscape Buffer" and "screen Buildings B through D . . . from the property to the South", within six months of the issuance of the building permit. If this was insufficient time, SCCU should have bargained for more time. Further, simply because "no height (was) stipulated" in the BDP does not mean that a solid Buffer to screen the SCCU buildings was a confusing or impossible standard. Even if SCCU installed "what the ordinance means" by a solid Landscape Buffer – which Baytree CDD disputes - the ordinance is not the proper standard by which to interpret the BDP.

Also erroneous, the Interpretation places the onus upon Baytree CDD to create the "solid Landscape Buffer". The BDP provides for the payment by SCCU to Baytree CDD of monies to be used for "buffering including but not limited to landscape material, irrigation improvements and design costs". See ¶3 of the BDP. Baytree CDD has no duty to assist SCCU in its obligation to install the solid Landscape NRMO's comment that "the buffer opacity is meant to be achieved through a combination of the fence, and the vegetations planted on both sides of the fence; not through the fence alone" is self-serving and incorrect. This was never stated in nor contemplated by the BDP.

SCCU truly created this problem by clear-cutting the existing foliage, contrary to what was anticipated during the negotiations regarding the BDP. Baytree CDD believed, from statements made by SCCU at public hearings, that SCCU would leave the existing trees and bushes. At the County Commission Meeting of December 4, 2014, Attorney

Phil Nohrr, the representative of SCCU, indicated that the existing barrier would remain, and it would be supplemented by the new landscaping installed by SCCU. Even as of July 15, 2016, the buffer was, according to NRMO's subjective opinion, at "about 70 to 75% of the expected mature screening in most areas." Seventy to Seventy-five percent (70 to 75%) does not equate to a solid Landscape Buffer.

Baytree CDD believes that SCCU has violated the terms and spirit of the BDP – the tri-party contract with the County and Baytree CDD. There are a number of maxims that govern the interpretation of contracts. Among these are the rules of construction requiring the courts to read provisions of a contract harmoniously in order to give effect to all portions of the contract, and to give effect to every term in the agreement. The cardinal rule of contract interpretation is that when the language of a contract is clear and unambiguous, the contract must be interpreted and enforced in accordance with the plain meaning. The installed buffer is not "solid"; it is not even "opaque". The Interpretation acknowledged those facts. The photographs support those facts. Without question, the existing chain link and slatted fence is translucent at best - you can see straight through it to see trees, bushes, parking, retention, light poles and buildings.

Baytree CDD is asking the County to hold SCCU to its agreement. In the interpretation of contracts, it must be assumed that each clause has some purpose. If the Commission questions whether the BDP clauses are compatible or contradictory, the Commission should interpret the BDP in such a way as to give effect to every provision, unless such an interpretation distorts the plain meaning of the agreement. In so doing, the Commission should strive to give effect to the intent of the parties in accord with reason and probability as gleaned from the whole agreement and its purpose. The members of Baytree CDD did not want to see the parking lot, retention pond, light poles or even the buildings of SCCU; they did not see these things before the expansion of SCCU was approved.

In summary, it appears that NRMO has interpreted "solid Landscape Buffer" in ¶2 of the BDP to require only a Type A buffer under Sec. 62-4342. This is incorrect. Moreover, the existing landscape and fence with slats is neither solid nor opaque and should be considered a violation of the BDP. The Baytree CDD should not have to wait five years, or three years, or even two years, when SCCU contractually agreed that the buffer would be "solid and complete" in six (6) months. More importantly, the parties agreed upon something more than a Type A buffer, and the County should require SCCU to abide by its agreement.

Therefore, Baytree CDD respectfully requests that the County Commission overturn the Interpretation and issue its own ruling that: (1) a solid Landscape Buffer, as required in ¶2 of the BDP has not been installed; (2) the chain link fence with slats does

Ms. Virginia Barker
September 27, 2016
Page | 4

not meet the requirements of opacity of Sec. 62-4342(1) in this case; and (3) that SCCU has violated the BDP and the Zoning Classification of SCCU's Property.

In support of its appeal, Baytree CDD may call several witnesses. These witnesses are: G. Mel Mills, the Landscape Chairman of Baytree CDD (address in care of Cantwell & Goldman); Jason Showe, the District Manager and agent of Baytree CDD (address in care of Cantwell & Goldman); and Willson McBurney, a registered landscape architect of Atkins North America, Inc., 482 South Keller Road, Orlando, Florida. Mr. Mills and Mr. Showe will testify regarding the negotiations with SCCU, their understanding of the agreement and the lack of a "solid" Landscape Buffer. Mr. McBurney will testify that it was and is possible to create an actual solid landscape buffer with trees and other plantings.

Thank you for your consideration of this appeal. Should you need any additional information, please do not hesitate to contact me. We look forward to presenting the full appeal to the Board of County Commissioners as the earliest opportunity.

Sincerely,



Kimberly B. Rezanaka

KBR: bms
enclosures

cc: Commissioner Curt Smith (via email)
Board of Supervisors, Baytree CDD (via email)
Scott Knox, Esq., County Attorney, Brevard County (via email)

**ATTACHMENT D
SEABREEZE BAMBOO INFORMATION**

October 18, 2016

Seabreeze bamboo grows up to 40 feet tall with 2 and ½ inch culms. It is cold hardy to 20 degrees. Seabreeze bamboo is one of the toughest and fastest growing clumping bamboos available in the United States. Seabreeze bamboo is excellent for screening out undesired views very quickly. It is said to tolerate sea breezes and typhoons, hence its common name.





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bamboo

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- Blaze Asper
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- Emerald
- Golden Goddess
- Golden Hawaiian
- Graceland
- Manastery
- Nana
- Ocham
- Seabreeze
- Timor Black
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BAMBOO: SEABREEZE



STATS

Common Name: Seabreeze
 Scientific Name: *Bambusa multiplex*
 Zone: 10-11
 Origin: Southern China
 Typical Height: 40-50'
 Growth: 3' / Day
 Branches: Branching, dense, fine node
 Habit: Tight, dense clump
 Leaves: 5-6"
 Uses: Screening, or windbreak

DESCRIPTION

Seabreeze *Bambusa multiplex* is a fast growing, tough, hard, and dense bamboo with attractive clustable canes.

Seabreeze is native to Southern China. This bamboo is a perfect coastal bamboo for Florida, Texas, and Southern California because of its tolerance to high winds and salt breezes. Great wind breaking bamboo.

Bambusa multiplex can handle temperatures down to 20 degrees Fahrenheit.

Seabreeze Bamboo can reach heights up to 40 feet. The Seabreeze bamboo is a modified bamboo. This bamboo forms a graceful umbrella shaped arch when mature. It has four color canes so you can see the distinctive canes.

This bamboo is a tight form, as well as clumping bamboo with small green leaves. The culms are straight and form tight dense clumps.

This bamboo is great for screening with one caveat, you should have great screening from that side, and put front of that side, neighbor next door, or maybe you need to hide that ugly grey pipe (equipment) in your yard.

Seabreeze can tolerate drought as well as flooding conditions.

The Seabreeze bamboo has many attributes as to plants and to earth and desert.

Seabreeze can form a very tight hedge quickly and can be kept at the height you want or you can let it go and let it be its maximum height.

Call Palmco today, at 405-965-1600 or 209-231-1228 and ask us about this tough, beautiful bamboo.



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14401 Harbor Drive, Bonnell, FL 33922
 Tel: 209-231-1228 Fax: 209-281-4684
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PUBLIC NOTICE

NOTICE IS HEREBY GIVEN THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, ON OCTOBER 18, 2016 AT 9:00 A.M., IN THE BOARD ROOM AT 2725 JUDGE FRAN JAMIESON WAY, BUILDING C, FIRST FLOOR, VIERA, FLORIDA, 32940, WILL HOLD A PUBLIC HEARING TO CONSIDER AN APPEAL CONCERNING THE INTERPRETATION OF THE MAR. 17, 2015, BINDING DEV PLAN (ORB 7326/PG 1611) AND SEC. 62-4342, LANDSCAPE BUFFERS. THE SUBJECT PROPERTY (SPACE COAST CREDIT UNION) IS LOCATED AT 8025 N. WICKHAM RD, MELBOURNE, FL. THE APPELLANT IS MS. KIMBERLY REZANKA ON BEHALF OF THE BAYTREE COMMUNITY DEVELOPMENT DISTRICT. FOR MORE INFORMATION PLEASE CONTACT THE NATURAL RESOURCES MANAGEMENT DEPT AT (321) 633-2016. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND SECTION 286.26, FLORIDA STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COUNTY MANAGER'S OFFICE NO LATER THAN 48 HOURS PRIOR TO MEETING AT (321)633-2001 FOR ASSISTANCE.

Meeting Date
October 18, 2016



AGENDA	
Section	Public Hearing
Item No.	<i>TVB</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Ms. Kimberly B. Rezanka, Cantwell & Goldman, P.A., on behalf of Baytree Community Development District (CDD) (Applicant): Appeal of Staff Interpretation of September 8, 2016, , Space Coast Credit Union (SCCU) March 17, 2015, Binding Development Plan (BDP) (ORB 7326/PG 1611). (District 4)
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DEPT/OFFICE:	Natural Resources Management Department (NRM)
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Requested Action:

Pursuant to Sections 62-4347 and 62-507, staff requests the Board of County Commissioners consider the Applicant's appeal of staff interpretation of Section 62-4342 and the referenced BDP for SCCU, 8025 N. Wickham Road, Melbourne.

Summary Explanation & Background:

On September 8, 2016, Brevard County Natural Resources Management Department (NRM) issued a letter of interpretation (Interpretation) in response to a request by the Applicant (Attachment B). The attached Staff Report (Attachment A) summarizes the three specific issues of the interpretation request and staff conclusions.

On September 27, 2016, the Applicant appealed the Interpretation (Attachment C). The Applicant's letter states that the grounds for Appeal are that the Interpretation was based upon language in a landscaping plan approved in August 2015, and "an erroneous legal interpretation that the language of the BDP – "solid Landscape Buffer" – was to be defined by Section 62-4342," Brevard County Landscaping, Land Clearing, and Tree Protection ordinance.

Options for the Boards Consideration:

1. Deny the Appeal and apply the ordinance and BDP as presented in NRM's September 8, 2016, letter of interpretation.
2. Grant the Appeal based on the Applicant's letter of September 27, 2016.
3. Other direction.

Fiscal Impact: FY 16-17 – No Net Impact
FY 17-18 – No Net Impact

Name: Virginia Barker or Darcie McGee, Natural Resources Management Department
Phone: (321) 633-2016

Clerk to the Board Instructions:

Exhibits Attached:
Attachment A – Staff Report
Attachment B – NRM Letter of Interpretation, September 8, 2016
Attachment C – Applicant Notice of Appeal, September 27, 2016
Attachment D – Seabreeze Bamboo

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten		<i>Virginia Barker</i> Virginia Barker /x52435

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, ON OCTOBER 18, 2016 AT 9:00 A.M., IN THE BOARD ROOM AT 2725 JUDGE FRAN JAMIESON WAY, BUILDING C, FIRST FLOOR, VIERA, FLORIDA, 32940, WILL HOLD A PUBLIC HEARING TO CONSIDER AN APPEAL CONCERNING THE INTERPRETATION OF THE MAR. 17, 2015, BINDING DEV PLAN (ORB 7326/PG 1611) AND SEC. 62-4342, LANDSCAPE BUFFERS. THE SUBJECT PROPERTY (SPACE COAST CREDIT UNION) IS LOCATED AT 8025 N. WICKHAM RD, MELBOURNE, FL. THE APPELLANT IS MS. KIMBERLY REZANKA ON BEHALF OF THE BAYTREE COMMUNITY DEVELOPMENT DISTRICT. FOR MORE INFORMATION PLEASE CONTACT THE NATURAL RESOURCES MANAGEMENT DEPT AT (321) 633-2016. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND SECTION 286.26, FLORIDA STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COUNTY MANAGER'S OFFICE NO LATER THAN 48 HOURS PRIOR TO MEETING AT (321)633-2001 FOR ASSISTANCE.