

Meeting Date
November 1, 2016



AGENDA	
Section	Public Hearing
Item No.	<i>IV.A</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

Continued from 10-18-16

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)
DEPT/OFFICE:	Natural Resources Management Department (NRM)

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 No PR

County Manager

Assistant County Manager

Department Director / Extension

Stockton Whitten

Virginia Barker
Virginia Barker /x52435



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

November 2, 2016

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item IV.A., 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 November 1, 2016, approved Option 1, to deny the appeal of Kimberly B. Rezanka, Cantwell & Goldman P.A., on behalf of Baytree CDD, and to apply the Ordinance and BDP as presented in Natural Resources Management's September 8, 2016, letter of interpretation.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: County Attorney

VERBATIM TRANSCRIPT OF REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS BREVARD COUNTY, FLORIDA

ITEM IV.A., CONSIDERATION OF APPEAL OF KIMBERLY B. REZANKA, CANTWELL &
GOLDMAN P.A., ON BEHALF OF BAYTREE COMMUNITY DEVELOPMENT
DISTRICT(CDD), RE: STAFF INTERPRETATION OF SEPTEMBER 8, 2016,
SPACE COAST CREDIT UNION (SCCU) MARCH 17, 2015, BINDING
DEVELOPMENT Plan (BDP) (ORB 7326/PG1611)

NOVEMBER 1, 2016

Rezanka: Good morning Chairman Barfield and members of the County Commission. My name is Kim Rezanka. I am here on behalf of Baytree Community Development District also known as Baytree CDD. This is a very unique process; this is an appeal of a staff interpretation. I have five witnesses. I know you've got to time clock them for five minutes but, I ask that be waived to allow all of us to present our time. This is a due process issue. This is you acting as a court.

Barfield: (unclear)

Rezanka: I know. Yes. I am here with Jason Showe, the CDD District Manager, Michael Pawelczyk the CDD District Counsel, Mel Melville a member of the Board of Supervisors, and Wilson McBurney, McBurney a landscape architect with Atkins, which is the district engineer. The Baytree Community Development District is a local special purpose government created by Ordinance as an alternative method of planning, acquiring, operating, and maintaining community wide improvements in the Baytree Subdivision. The Baytree Subdivision consists of 461 homes. The Kingswood community in Baytree has 48 homes. Kingswood is the street that abuts the Space Coast Credit Union to the south. The Baytree CDD is here today, fully represented by its agents and members because the Board of Supervisors and many, many, many of the Baytree residents believe Space Coast Credit Union has violated the BDP. Space Coast Credit Union has violated the BDP in failing to install a solid landscape buffer as required by paragraph two of the BDP. This is a community wide issue and does not impact a mere five residents as stated by Susan Hall at the October 18 community, County Commission Meeting. How many times have you heard residents ask, "how are we going to hold the developer's feet to the fire to abide by its promises that it makes in its binding development plan?" The response is always, "come back to us and we will enforce it." That is what Baytree CDD is doing today. It first asked Natural Resources Department for help and Natural Resources responded, "it meets Code." More telling, Natural Resources stated in January 2016 that the buffer was only 50 percent opaque. Natural Resources opined in September of 2006 a purely subjective opinion that the buffer was 70 to 75 percent of the expected mature screening in most areas. How is 50, 70, or 75 in most areas equal to opaque? This is one of the pictures that was taken on January 20, excuse me, October 24, just last week. As you can see, you can see straight through this fence, you can see the parking garage, you can see the new building that's being built, you can see everything through the screen, slatted fence. Opaque is from the Latin word meaning dark; and by any dictionary definition means not able to be seen through, impenetrable to sight, not transparent or translucent, not allowing light to pass through. This is not opaque. What is

important to recognize in this appeal is Baytree CDD is not claiming that Space Coast Credit Union violated Brevard County Code Section 62-4342 a type A compatibility buffer. A page 243, which your, your Agenda don't have page numbers, which I didn't realize. But it does have the definition of the landscape buffer requirements Section 62-4342, and the type A compatibility buffer says where a fence or wall is required a type A buffer may be utilized in lieu of a fence or wall. And a fence or wall would be required between Space Coast Credit Union and the Baytree CDD. It's a residential Subdivision. The type A buffer shall be completely opaque from ground up to a height of at least six feet, a minimum 20 foot wide vegetative area shall be provided. The opaque buffer may utilize a masonry wall, wood fence, landscape earth berm, planting or existing vegetation, or any combination thereof that maintains the completely opaque buffer. The true issue before you is whether Space Coast Credit Union has lived up to its promises as reflected in the Binding Development Plan, not whether it lived up to a type A buffer. What does Space Coast Credit Union promise to do regarding the installation of the buffer to mitigate impacts of this large residential community? Space Coast Credit Union promised three things, if you look at the Binding Development Plan which is on page 233 of your Agenda packet, the Binding Development Plan, paragraph two says, the landscape buffer shall be installed by developer on or before six months from the date of issuance of the initial building permit of the project. The buffer shall be a solid landscape buffer and shall screen buildings B through D as shown on exhibit B. So they were to install a landscape buffer within six months, it was supposed to be solid, and was supposed to screen buildings B through D. This is exhibit B of the Binding Development Plan, this is the green slatted fence, this is Kingswood Way, this is building D, that is now under construction that you saw in that photograph, and this is the building that is to be constructed, this is part of the Binding Development Plan. So on October 24, 2016, the buffer is not solid, not within six months, and it doesn't buffer existing buildings or building B under construction. Space Coast Credit Union's response to Baytree CDD has been frankly dismissive. Space Coast Credit Union claims it did more than the Code requires. Space Coast Credit Union stated to you on October 18, that it anticipated the buffer to be complete Quote, "after a reasonable amount of time, three to five years". Baytree CDD did not negotiate a Binding Development Plan merely to have Space Coast Credit Union meet Code requirements of a type A landscape buffer. And Baytree CDD never understood the buffer would not be complete for three to five years. Baytree CDD....

Barfield: Ms. Rezanka are you doing all this, going to read all this, or you going have somebody else speak, because we're way over the five minutes, already.

Rezanka: With all due respect Commissioner, this is an appeal, this is a quasi-judicial proceeding; we need time to present our witnesses.

Barfield: We go by the cards here, so if you can finish up, let somebody else who has a card speak we will move forward.

Rezanka: Alright. Space Coast Credit Union, as you'll see in your packets, promised that the landscape buffer would be...stay as existing. And it stated that a throughout the representatives through your presentations to you, to P, to

P&Z and to the a ...to you at County Commission. In the Agenda packet from the December 4, 2014, Agenda there was presented to you an Agenda packet a site plan that said the buffer between Baytree to the south and this project was previously approved to be a mix of fencing, and preserved vegetation. As you can see from the photographs that are in the packet, the existing landscape was completely destroyed. It did not leave it, in fact Mr. Norris stated to you on December 4, because I watched the video again last night, that the buffer would remain, the buffer would stay. The representatives repeatedly said the buffer would stay so this was in your Agenda packet from December 2014, on the back side is an exhibit that was provided to you, that Mr. Nohrr provided to you that shows what they did is they merely put a overlay on the existing conditions and they showed the landscape that was existing, so Baytree CDD believed if reasonable that the existing landscape would stay. The exhibit shows that you've seen in your packet that, that existing landscape did not stay. If you look in your pictures, Space Coast Credit Union clearly cut almost all existing vegetation. If that's what they planned to do, that should be forthcoming. They failed to live up to the requirements of the Binding Development Plan to install a solid landscape buffer within six months. Baytree CDD never asked for the buffer to screen the existing buildings, which it does not because it justifiably relied upon Space Coast's representation that the existing buffer would stay.

Barfield: Ms. Rezanka can you please finish up?

Rezanka: I am, I am. And I...

Barfield: We've read the package, and I think and, and we need to get to the... let the comments. If we have any questions we'll ask you though.

Rezanka: Thank you

Barfield: Next will be Jason Showe, Showe. Thank you. Good morning.

Showe: Good morning.

Barfield: Name and address for the record.

Showe: My name is Jason Showe, my business address is 135 West Central Boulevard, Suite 32, Orlando, Florida 32801. I work for Governmental Management Services and we serve as the district manager for the Baytree Community Development District. We've done that proudly for over nine years. My responsibilities include running the day to day operations of the Baytree CDD under direction of the Board of Supervisors. In your Agenda package we took some photos of the site and I believe they start about page 298, but they were taken, as Kim indicated, on October 24, 2016. This is approximately nine months after the buffer was installed. The first photo you see is from Kingswood Way and Ashburn Court. It's approximately 50 feet south of the property line. The next three feet... the next three photos are to the west, which is 8017 Kingswood Way, and that's about 65 feet from the

property line. I took those straight from the driveway without any zoom. What you'll see in all these photos is that you can see straight through the fence and in any case, where that building's being constructed, you can see that building clear as day, from every angle. The next photo we included actually shows that you see through their site, through their buffer, through Wickham Road, and you can see the car repair place on the north side of Wickham Road. Additionally, we took some photos where you can see the parking lot, and you can actually see the construction site's vehicles right through the fence. Finally, we provided some photos from 8007 Kingswood Way, which is the far east of the project. That's approximately 35 feet south of, south of the property line, again with all of these photos you can see directly through the fence, even with the slats, and you can see that building being constructed. We've also provided some video, which I'd ask to be run now, and again these are videos taken the same day, which again demonstrate you can see directly through the fence and you can see the building being constructed now. And we took these from those same different angles that we took those photos. Again, you can see clear through the...

Infantini: Would you rather have a, like a concrete wall, is that preferred?

Showe: We do have a landscape architect who will speak to some preferred options that we have.

Infantini: Ok, I just didn't know if you, you know...

Showe: Sure

Infantini: ...to be able to not see through.

Showe: We will, we do have a landscape architect who will address those. Again, all of these photos and demonst... a videos demonstrate that the buffer that is in place is neither solid nor does it screen buildings B through D, which was a specific requirement of that Binding Development Plan. Additionally, I do want to point out that the Baytree CDD has been incredibly proactive in not coming here today. We wanted to resolve these issues far in advance and to do that we've provided you some memos that we've sent directly from our office. The first memo is from April 2015, and I think we've handed those out to you. But I do want to read some key highlights of this memo. Again, this is April 2015, we noted that much of the existing vegetation will be destroyed during construction, again, that speaks to the fact that they did change their plans after we saw it. We noted that the bamboo as planned would not provide the buffer, and we asked for a tighter planting of bamboo. We also asked for a berm which would go the entire length of the project, which would help plants grow and also provide a better visual buffer. We did not receive any comments of substance on that, in response, and that was sent to both the Space Coast Credit Union and Robin Sobrino, Planning. Additionally, we reviewed the final landscape plan in July 2015, and we sent this memo, again with our concerns, and I'll read a couple of the key points of this. The silver, a point number two, the Silver Saw Palmetto will take several years to provide

any value buffering. We noted that the Oak trees, Pine trees, and Bamboo will not provide immediate buffering. Point six, we again noted that the soil should be bermed up to help the plants grow, and also provide a big buffer. And finally point seven, this is the most important part, we wanted to clarify this very specifically, the BDP requires a solid landscape buffer that shall screen buildings B through D. The BDP does not limit the height of the buffer or allow for a five-year grow-in period. The screening shall perform upon installation, and that was the expectation of the Binding Development Plan. Again, we did not receive any comments of substance from that either. Once we saw construction, we did send this letter which went to the County Manager, it went to Space Coast Credit Union, it went to Planning, and I'll highlight just the, kind of the bottom here, and I think this wraps it all up for us. During several public meetings, prior, this is the bottom of the first page, prior to the recording of the BDP, Space Coast Credit Union represented to the Districts, to the District, the residents of Baytree, and the County that once the landscape buffer was installed the residents of Baytree would not be able to see any portion of the SCCU Project. Based on that representation we prepared to require the solid landscape buffer at the time of installation and all parties to the BDP agreed to that clear and unambiguous standard. And it is with this evidence that I present to you, that we believe, again, the buffer is not solid, does not screen buildings B through D, which is a requirement of the BDP.

Fisher: Can I ask you a question, sir?

Showe: Sure.

Fisher: Was, Was there a, if I remember correctly, wasn't the option at one time to put a wall up?

Showe: I do not believe that option was ever presented to us during this process.

Fisher: Ok. I thought that I remember, I thought at one time...

Showe: That may have been prior to our time, I know there was, that may, discussion may have happened earlier. But, that's... I don't believe that, that happened during this.

Fisher: Was that ever offered? Am I missing that?

Bartlett: I believe that was discussed the first...

Fisher: You can come to the mike.

Bartlett: It is my understanding, in the initial building construction, I believe in 2000-2001, I was not around, but I believe that Baytree, the CDD, did not want a wall or any kind of concrete wall, so Space Coast elected to use an entire landscape buffer over the developed portions of the property.

Fisher: Yeah, ok, thank you. I thought at one point in time, I heard that, and, and, and not having a wall, I don't, I just didn't understand how from day one when you got any kind of new development you can get 100 percent no, you know, 100 percent blockage without having some kind of growth, waiting on a period of growth, so I never thought, from my standpoint, that we were approving, you know, that you won't see anything. But next card, sir. I just...

Barfield: Michael Pawelczyk

Pawelczyk: Thank you.

Barfield: Did I say that right?

Pawelczyk: You know what, that was actually very close, a lot closer than most people get, so. It's Pawelczyk, so thank you for that.

Barfield: Ok.

Pawelczyk: Again, Mike Pawelczyk from the Law Firm of Billing, Cochran, Lyles, Mauro, Ramsey, down in Fort Lauderdale, 515 East Las Olas Boulevard, Sixth Floor, Fort Lauderdale, Florida. My firm and myself have served as District Counsel for Baytree for approximately 10 years. We came in right before Mr. Showe did, as District Manager. When the new Board came in, they were changing professionals in there. I want to be brief, but my experiences, this isn't my first agreement that I've ever looked at. I've been doing special district work for 10 years. Out of law school I have, since law school, passed the bar 1995, I've been a municipal lawyer, so I've served in positions of your County Attorney, at the municipal level for numerous cities in house in Fort Lauderdale, in house in Boyton Beach during, especially trying development times, when it was very busy at those cities. Negotiated, reviewed, looked at, thousands of agreements during my career since 1995. So I have been involved in this, including interlocal agreements, like the development agreement we have here, the BDP, and similar types of documents. This item came to me in 19, 2014, sometime in 2014, when this issue was presented and the District was concerned that their monument was going to be removed, the monument at Baytree and Wickham. That's what really reciprocated this. So the District met, we were able to contact the County staff, Commission, eventually a SCCU through their counsel, Phil Nohrr came to the Board meeting and we started talking about this. At the CDD board meeting in December of 2014, the primary focus that was presented by the board were the following: Protect the monument, we don't want to upset the monument, we understand we need to make some traffic concerns there, but we want the monument to stay; number two was, we were concerned about the buffering of the Kingswood Way corridor, I'm going to refer to it as, you all know about that by now, whilst at the same time maintaining the aesthetics that are there at Baytree now, ok. So there was a landscape buffer as was presented, already there, it might have included invasives, but it was already there. So we were under the impression in that what was going to happen was that, that buffer was going to stay, the invasives were going to be removed, not that the whole

thing was going to be clear cut, and that the landscape plan, which had not been presented to us yet because it was not done, was going to include supplementing that so it would in fact be a quote unquote, solid landscape buffer. Regardless of what you thought you were, you were looking at, that's what was always intended. That was what was represented to myself, by counsel for SCCU, Mr. Nohrr. That's what was represented to the Board of Supervisor's by Mr. Nohrr, and those presenting to the CDD Board. That's in fact what I represented to Commissioner Smith when he came to a Board meeting that I spoke regarding this matter. So that was always clear in that regard. If we were to negotiate any agreement that said we want, that the landscape buffer meet the minimum requirements of the Brevard County Code that's what we would've put in the agreement. We wouldn't have called it a solid landscape buffer. There was documentation and, and slides, and, and poster boards presented that showed a site triangle from the top of, I believe it was building D, don't get me wrong, but one of the buildings that showed that the top of that building, once the solid landscape buffer was installed, you wouldn't be able to see a Baytree home, and therefore the Baytree home would not be able to see that, the top of that building. Why? Because a solid landscape buffer would be installed. So that was, that was always the intent. And that was what was represented to us, what we understood. One other thing I want to address is the slats on the fence. We never discussed putting slats on the fence to make it opaque because it was already opaque. The buffer was already opaque, it might included invasives, but we understood that the chain link fence would stay or a new fence would be installed and that the landscaping would grow through the fence, the new landscaping with the existing fencing, and therefore it would in fact be opaque or a solid landscape buffer, not up to six feet of the fence, but up to, so you couldn't see from a Baytree home on the other side of Kingswood Way, couldn't see the SCCU commercial development. I know I'm running out of time. If, if you indulge me in another minute, I promise I'll finish up then. The a...one other thing I want to point out is there's been a lot of mention that I've heard, and I don't know if it's come from staff or County Commissioners, there's an item in paragraph three that says, that SCCU will provide the District with \$30,000, ok. That \$30,000 was intended to supplement the solid landscape buffer and to lessen the impacts that this development was imposing upon the Baytree Community. You'll notice paragraph three does not say that all that landscaping has to go along Kingswood Way to help buffer the SCCU property there. We included it because we weren't sure of what the impacts were going to be on Baytree Drive where the monument is, so that's why we made that particular provision flexible, so we could do irrigation, we could upgrade the landscaping along Baytree Drive where the monument is, all the way up to where the entrance of the, of, of the District or the residential community, and so we could possibly use that limited space that we have between Kingswood Drive and the SCCU property to put some additional trees in there to help buffer, or supplement the solid landscape buffer, not the class A buffer that their referring to, or the buffer that meets the minimum standards required by the Code. So I was asked to just basically say what the intent was. I, I hope that that is not going to be contradicted because that's what was discussed, that's what my notes reflect and my

telephone calls with Mr. Nohrr. That's what the minutes reflect in the Baytree CDD meetings in which SCCU appeared and that's what was represented to us. And I think that that position, once they realized that, that the creation of a solid landscape buffer was very difficult after they clear cut the property, that I think they changed their position. So, with that, I think a hopefully this appeal will be successful, and we'll find a way to have a solid landscape buffer, which, which was negotiated by the parties, reviewed by the parties, the Agreement was in fact drafted by Mr. Nohrr...

Barfield: Ok.

Pawelczyk: ...and it was reviewed by the County Attorney's Office and County Staff.

Barfield: Thank you.

Pawelczyk: Thank you very much.

Barfield: Melvin Mills. Good morning.

Mills: Good morning. Commissioner Infantini...

Barfield: Name and address, please.

Mills: Commissioner Smith, Mr. Barfield... Melvin Mills, 8200 Compton Way, Baytree. I've been a resident of this beautiful County for 14 years having come from Maryland. I can appreciate all of your input and concern for the County, especially economic development. I was politically involved up in Maryland, served on the Economic Development Commission up there for 20 something years, also the Baltimore Regional Planning Council. I would like to introduce first of all our Board. Nancy O'Hara who happens to be here today. Nancy would you stand up? Maria Hernandez, and Ed Rizzotti, as well as the residents of Baytree. Would you please stand? We represent 461 homes in Baytree, 923 voters, with over \$2 million dollars in taxes. We take care of our own streets, we take care of our own sidewalks, and all of the common area that we the residents of Baytree enjoy every day. I can certainly, like I said before, appreciate economic development but there's two sides to economic development. One is reducing the tax burden on residential home owners. One of the things that you have done, or they have done, SCCU, is put the burden on we the Baytree residents. This is not just a Kingswood issue. This is a Baytree Community issue. As you come in the front gate, if you look to the right you see construction going on, and I'm not going to repeat what has already been said. We were told that there would be 25 foot trees minimum, we have 18 foot. That is not what we understood would be there. We watched as the installation of their buffer was put in. We saw that they took out the slats in the fence that we did not ask for, that was a County input to make it a solid buffer. Fence is not landscape, its hardscape, which you will hear later. In summary, I'm going to ask you, the County Commissioners, to see favorably for our appeal, and go ahead and enforce the BDP. Thank You.

Barfield: Thank you. Wilson McBurney. Good morning.

McBurney: Good morning Commissioners. Thank you for allowing me to speak on behalf of the Board. I'm Willson McBurney. I'm a landscape architect; I live in Winter Park, Florida, 321 Gilbert Road, Winter Park, Florida, 32792. I work with a company called Atkins, who is the CDD engineer and I'm here to speak on behalf of the CDD Board and the Baytree residents, specifically about this landscape buffer. It's probably a record today. You've heard about two landscape buffers on November 1, so I hope the, hope that record stands for a long time. I won't repeat what others have said as well, but the residents along with some of the staff have understood that the solid landscape buffer would be solid when it was planted, that the buffer would in fact buffer, screens, buffer buildings B through D. The buffer is not solid. The buffer does not screen the development and in my opinion, there's really, this buffer is only about 50 percent effective today. It's also my opinion that in order for a buffer like this to be achievable, there are three variables, time, space, and money. And I think those variables really haven't been met in order to achieve this buffer. Proper planning and design of a buffer of this type really needs to happen up front during the site planning process of a project like this. Many times commercial development sites just don't, aren't designed to accommodate large landscape areas. This, this site is designed to accommodate parking and buildings, and drainage, and utilities, and things like that, and many times buffers like this are not designed early, and, and upfront in the process. Many times the space required for these buffers just, just isn't even considered. I think this is a specific case where this buffer design should have been considered early. In, in my opinion, again, this BDP buffer should have consisted of eight foot tall earth and berm in order to elevate these plantings, that would eliminate the need for slats in a fence or a wall which, which is hardscape, you heard Mel mention. I believe, that 20 foot tall trees could be planted 10 to 15 feet apart in order to achieve this type of buffer. The bamboo that's been used should have been 25 feet tall upon installation and probably should have been planted about six to eight feet apart. Again, this is in order to provide a solid immediate buffer. Evergreen shrubs would've been, should've been installed at about eight feet tall, six to eight feet apart. Again, you can get the picture, this is we really do want to design a solid buffer by doing this. Again, I mentioned the fence wouldn't be necessary, except for security, but the slats in the fence wouldn't be necessary because an eight foot berm would provide us that eye level buffer that's necessary to screen cars in the parking lot, lights at night, things like that. This type of densely planted buffer does require special care. When we pack trees and shrubs like that together, we do need to make sure that we manage that. We are creating in fact a forest and need to manage that forest. In the buffers current state, what could be done to fix it? I think there are some things that could be done to amend it. Again, I mentioned before, 25 foot tall trees, I think that's what the residents were expecting. Plant some more of those on tighter spacings. Additional bamboo, bamboo's a great plant, but it should be planted tighter. It's a relatively slow growing plant width wise and to accommodate the width at the base we need to consider planting

those tighter. An even more dense understory of shrubs could be considered. I think that in order to effectively plant a buffer in this place that has been allowed, we're talking about tripled number of plants, than were actually installed, and larger plants than were actually installed. There's been some conversation about applying, (unclear) put a vine on the fence, that's certainly a viable option to hide the fence. There's other issues with that, technically we have wet soils in those areas, vines don't typically like wet soils but it can be done. There's wind loading, there's other issues with adding a vine on the fence in order to block the view of that. Again, you've heard before that the Baytree residents have heard from the developer that they expected a 26 to 30 foot tall buffer in order to screen those trees. They really haven't gotten that. I hope that my comments help you help them make a decision. Thank you.

Barfield: Thank you. Rich Mercadante. Did I mess that one up? Wow, I'm doing good today. Name and address for the record please.

Mercadante: Sure. Good morning, my name is Rich Mercadante and I live at 8017 Kingswood Way, directly across from the Space Coast Credit Union construction project. The issue is simple, as you heard today, the credit union entered into a three-way binding agreement with the County and the Baytree CDD, in which they committed to installing a solid landscape buffer that would completely screen the buildings from our community, just as we had before the project. That solid buffer was to have been completed six months from the time the first permit was issued. In other words, by this past January 30. It's now nine months since that deadline past, excuse me, and they have completely and utterly failed to meet that commitment. On any given day, my wife, who's here day with me, and I look at the construction equipment, portable toilets, construction activity, and the backside of the headquarters building. Last week I sent you all pictures of the buffer before the project. What it looked like in April after the deadline had past and again last week. It's only got worse. Furthermore, the security fence is not part of the landscaping plan. No one is asking the credit union to over plant immature landscaping in order to provide the solid buffer. What they needed to do, just as any other major business, as a good neighbor was to plant mature landscaping to give the needed density and height. You have a line of sight and now (unclear) your package today using the credit unions own plan. My house is 190 feet from the berm and 390 feet from the closest building. At 55 feet in height above the ground, that's says that the trees along the berm need to be at least 27 and a half feet tall. Add five feet for height of eye, and you get 32 and a half feet in height. Other buildings, other, excuse me, for other homes along Kingswood Way that requirement ranges from 39 feet to over 33 feet. We do not want a wall or a fence. We did not build our homes along I-95. Simply put, the landscaping needs to be at least 30 feet in height and mature to provide the coverage that was committed to. I urge you to support the CDD's appeal and enforce the Binding Agreement that this Board approved. Thank you in advance and thank you again for your time.

Barfield: Thank you.

Mercadante: Sure.

Barfield: I'm not sure on the spelling on this. Edward Rizzott. Rizzotti, ok. Thank you sir. Richard Bosseler. Good morning.

Bosseler: Good morning. Richard Bosseler 8015 Kingswood Way. I live next door to Rich and Jamie Mercadante. I'll be very brief. I, you've heard a lot of testimony today. I just want to share with you, a picture that was taken from my front yard prior to everything that happened. You've seen enough of the posts. I want to share with you, a very clear picture of the berm. (Unclear).

Barfield: Albert Feucht. I know I messed that one up.

Smith: What was the date of this picture? Approximately 15 (unclear) November of 15?

Barfield: Morning.

Feucht: Hi. Alber Feucht, 905 Chadsworth Drive. I live in Baytree. I support, and I ask you to support, the appeal that Baytree has given. I attended a meeting at the CDD meeting, where the representative from SCCU promised that you couldn't see anything. Recently I was at Gatto having my car repaired and as I was sitting there, I was looking across Wickham. What could I see, but the houses on Kingswood Way, so to me the current situation with the buffer is unacceptable. That's all.

Barfield: Thank you Sir. Maria Hernandez. Good morning.

Hernandez: Good morning. Maria Hernandez, 317 Santrose Drive, Melbourne, Florida. I live in Baytree. I concur with all of our professionals and our residents who have spoken before me and our Supervisors as well. We have a signed agreement with the SCCU which has been violated. We did not get what was promised. Our residents in the Kingswood neighborhood of Baytree have been awakened in the middle of the night with major construction noise that rattled the dishes in their china closets. Construction at this time of night is in violation of County regulations, yet they continue to violate these regulations. Where's the enforcement? Most of the residents of Baytree go to court at the residents expense to get County Regulations enforced. We, we've made our case to you today, and I hope that you will seriously consider what you've heard. We've been promised so much that has not been fulfilled, and we need your help to protect the residents of our community from a major eye sore. Thank you so much for your consideration.

Barfield: Thank you ma'am. Nancy O'Hare. Good morning.

O'Hare: Good morning.

Barfield: Name and address for the record, please.

O'Hare: Nancy O'Hare, 512 Royston Lane, Melbourne, Florida, 32940. I am, I live within the Baytree Community Development District. I also represent 461 homes and 923 registered voters as a Supervisor of the Baytree CDD. I wanted to echo and support my fellow residents in the District. The Space Coast Credit Union has not lived up to the terms of the mutually agreed upon Binding Development Plan. The buffer is not a solid landscape buffer which is required by the Agreement. As a Supervisor on the Board, we worked extremely hard to craft a document that was fair to all parties and mutually agreed to. We were promised and in the BDP told we would have a solid landscape buffer that shall screen buildings B through D from the south, which is Kingswood Way. Building B is under construction now and can be seen from all angles. This is not what we negotiated and we need the County to enforce the Zoning Ordinance and the BDP. I strongly urge the Commission to approve the appeal before you today and ensure the Space Coast credit Union lives up to the commitments it made before the Baytree CDD Board and in front of this Commission. Thank you.

Barfield: Thank you ma'am. Jason Bartlett. Good morning.

Bartlett: Good morning Chairman, Commissioners. My name is Jason Bartlett, 1675 South John Road Boulevard, Melbourne, Florida with Building Management Systems, representing Space Coast Credit Union. I have a few points to talk about today, but I would like to address a couple of items that were brought up earlier. There seems to be some confusion over whether or not we took down a landscape buffer. When you look, and I, I had a meeting with Commissioner Barfield yesterday, where I explained this, but the original landscape buffer from the initial construction consisted of 150 to 160 feet of that 900 feet of the entire property. We had a small parking lot going all the way back that abutted the Baytree property and along that parking lot was where we had installed a landscape buffer to maintain. The entire 750 feet of the balance of that property was uncleared, or non-developed commercial property zoned AU, so in order to install a required landscape buffer, we had to clear the undeveloped property and install the appropriate 20 foot width landscape buffer so that, just to have a clarification, the entire property from one corner to the other was not a landscape buffer that we took down. There was only a small portion, less than 20 percent of that was a landscape buffer that was removed in order to install contiguous buffer across the entire property. Another aspect was the, the issue of the \$30,000 to be used for Kingswood Way improvements, as well as Baytree Drive improvements. Our initial draft Binding Development Plan had limited that expenditure to the Kingswood Way corridor, and that was Space Coast Credit Union's intent, initial intent for that and upon negotiations Space Coast Credit Union conceded as the request was made and further plans to be able to use that funds in other places on the property. Space Coast did concede that, but the initial request and initial draft was made for Kingswood Way. As far as the first building permit was issued on 8/7/2015 and the, if you look at the six months that's stated in Binding Development Plan, that would have the, the Brevard County Natural Resources accepted the buffer on 1/28, which is well

before the required six months, so from Space Coast Credit Union's standpoint, we called in the inspection. We operated on the last nine months assuming Brevard County has accepted the landscape buffer and we have installed it in the time required in the request by Brevard County. The landscape plans were submitted according to the Binding Development Plan to the Baytree CDD 15 days prior to our very first submission to Brevard County. We specifically did not give the Baytree CDD approval rights, but review rights anticipating that they would make comments, provide those comments to Brevard County staff, and let Brevard County staff through the permit approval process mitigate and apply the comments that they deemed appropriate according with the Code and the Binding Development Plan. So we did follow the Plan and we did give them the 15 days required prior to our very first admission. Based on the initial comments of those plans made by Baytree CDD and Brevard County staff we did make revisions prior to permitting approval to increasing the density as requested by the Baytree CDD. We increased the intensity and the plantings of the Oak trees and the Pine trees and then we added large Wax Myrtles and Simpson Stoppers and to quote on the second review of our final plan the Baytree CDD landscape architect Willson McBurney during his review of the final approved Plan, the Stoppers and the Wax Myrtles to quote will provide a very nice under storage buffer upon planting and he also went on to state that the oak trees, the Pine trees, and the Bamboo are sized and spaced to provide a very nice buffer upon planting. Those are his words and those are after our review of our final Plan showing that we made adjustments based on their comments. Additionally, Mr. McBurney commented that the Bamboo will provide the quickest buffer, but is only directly adjacent to the new parking lot. It does not continue past the retention pond to give a complete screening from one corner to the other corner of the property. The Bamboo... Space Coast Credit Union elected to spend an additional \$20,000 based on those comments to increase the density of the Bamboo and we also continued the Bamboo, that is not on the Plans that you see before you, it's something that Space Coast elected to do at their own cost, to continue the Bamboo screening all the way from one property corner to the other within the buffer, immediately behind the buffer. And I just want to add Space Coast Credit Union has made the following offerings in good faith. Brevard County Code requires that a Type A buffer be 20 feet wide. Space Coast Credit Union has a native buffer that is 20 feet wide, but they've also added an additional 15 feet to the buffer, beyond the Code to add the Bamboo plantings for a total buffer of 35 feet. By doing this, Space Coast Credit Union has donated over a quarter acre of commercial land on Wickham Road, which has probably close to a quarter million dollar value to a landscape buffer that has no benefit to the credit union. They've donated that land. Space Coast Credit Union has increased the height of the Bamboo for 15 feet on the approved Plan to 25 feet upon planting. It was a hard process. There was only one grower in the State of Florida in Tampa that we had to find that had 25 foot Bamboo, and we went and found it, and bought every single plant he had. Space Coast Credit Union increased the quantity and the density of planting from 37 Bamboo trees to 60, making a tighter spacing as requested. Brevard County requested that a six foot high chain link fence with slats be installed. Space Coast Credit

Union, on their own, elected to install an eight foot chain link fence because they saw that the property line was about two feet lower than the grade elevation of their Baytree Road, so we elected, at our cost, to increase the cost of the fence and the size of the fence 25 percent. Space Coast Credit Union elected to use the most expensive and largest mitigation Oak trees and Pine trees required for the rear buffer. By using these mitigation Oak trees and putting them in the rear of the buffers Space Coast Credit Union received no benefit to this property where they could have taken the largest trees that they were required to put in, put them in the front of their property where they could have received benefit and curb appeal, but instead used these trees in the back for the landscape buffer for the Baytree CDD. Space Coast Credit Union has always been a good neighbor, and in almost 20 years of commercial construction, I've never seen a development or commercial business make the sacrifices or dedicate the resources Space Coast Credit Union has had to abide by this Binding Development Plan. The question before you is important because it is going to set a precedent. The County Code requires a solid landscape buffer and really if we're saying that it will not be achieved with landscaping, the Code requires a combination of fencing, a wall, vegetation, or any combination thereof. If a developer can see that he'll never achieve a solid buffer with landscaping, you are going to have a cross all incorporated Brevard County a six foot wooden fence from a developer's standpoint, the cheapest application across, and that's what the Code would require, if, if you make this motion today, if that's the only way to achieve is with a wall, if you use the term solid buffer. With all of this being said, on behalf of Space Coast Credit (unclear) Commission accept Option One, deny the appeal and apply the Ordinance and the Binding Development Plan as presented by Natural Resources letter dated September 8. Thank you.

Barfield: Ok. Thank you.

Bartlett: I've also brought a Susan Hall as well to answer any questions that you would need.

Barfield: Ms. Hall you're next. Would you like to speak or just for questions? Ok. Ok, that's my, that was the last card. I would like to go back to staff. Board's alright with staff, discuss this, their findings and all that.

Barker: This is a, this is a difficult issue because I think what it comes down to is everybody, when they hear the word solid and buffer, they have a different interpretation of what that's going to look like. So, the way the process has worked, Space Coast Credit Union got a zoning change with an understanding they were going to enter into a BDP. That Binding Development Plan includes one paragraph on landscaping and Ms. Rezanka read you most of that paragraph, that talks about the buffer should be a solid landscaping buffer and shall screen buildings B and D shown on exhibit B from the property to the south. The developer shall be responsible for continuing maintenance of the landscaping buffer. The last sentence that wasn't read previously, "The developer shall provide the CDD with a copy of its landscaping plans for the landscape buffer 15 days prior to the developer

formally submitting it to the appropriate governmental entity for approval", that's what Mr. Bartlett was just speaking about. The Space Coast Credit Union developed that landscaping plan and they provided it to Baytree to review ahead of time. There was a meeting, there were comments received, the landscaping plan was amended as, as Mr. Bartlett just described, extending plants, putting in larger plants. That was, what the County received, which we believe was after fair negotiation between the two parties as to what that landscaping plan would achieve, it contained two and a half times the planting required by our Code. The Code requires trees and shrubs, and small ground cover. Everything was larger, denser, thicker, wider than what the Code requires. So, when we were asked to interpret the Binding Development Plan, did Space Coast Credit Union meet the Binding Development Plan, did they meet their landscaping Plan, we looked to our Code. We looked at what we have to go on. Space Coast Credit Union installed what was specified, what was agreed to in that landscaping plan, and what they did exceeds our Code. If the intent of the BDP, use of the word solid, was to, was something more than what the landscaping plan said, staff would have no way to read people's minds to know that. What we did was we insured that the landscaping plan that was submitted to us was implemented.

Barfield: Mr. Anderson.

Anderson: Virginia, (unclear), they, you know, went over and above our landscaping and tree Ordinance, something I've complained about for eight years on this Commission, that I think it's burdensome and onerous on especially small business owners, but as far as exotic invasives, does our Code address whether those have to be removed when they redevelop a property, or can they use the pepper trees that exist as part of their buffering or landscaping, or do they have to remove them?

Barker: I, I believe we have to remove them. I, you'll notice I'm flying solo here today without; we had medical appointments, so.

Anderson: So the intent is to get rid of it, exotic invasives?

Barker: That's certainly an opportunity...

Anderson: Right, right.

Barker: ...that occurs at the time of development that we...

Anderson: Ok, thank you.

Barfield: Any further discussion? Pleasure of the Board. It's our turn. Ms. Infantini.

Infantini: When I think of the word solid I think of a wall and when I think of a buffer I think of trees. And you know, you, you can plant trees really, really dense, you can stagger them such that, that, I mean I just look at the trees that we planted at my property back in 2001 and then when we sold it in 2015, and

my goodness, it looks like we over planted. I mean the, the next guy came in and tore out probably 50 percent of the trees that we had planted because there was so much shrubbery and trees there. You know, my point is that the trees are going to grow and grow and fill in all the gaps, but if you were to plant all of the space so that there was without a gap, that would mean having to stagger, and I don't know that there's the right amount of space to stagger and yet still have the same height because you're going to need shrubs to fill in that lower space and you're going to need trees to have that higher buffer. I don't, I don't actually see how a solid landscape buffer is, you know, achieved by the way you're interpreting it. I understand what you're thinking, but I don't see how you could actually achieve it unless you had, like I said, full mature trees that are already tall and then in between layers of trees you had shrubs that were lower so that you, you couldn't see between it. I, I don't think it's actually achievable unless you build a wall, and I, I don't think a, a community like Baytree would be well served with a wall. I think it would be more of a detractor and so for the short term I think you're going to have less buffering than you would prefer, but I think in the close long term, I think that you'll have it. I'm, I'm not in favor of putting up a wall and I... it seems as if they've complied with our Ordinance, and I, I read through the BDP and I can't see where it says how many feet and how close. And I tried to find the definition of a solid landscape wall and it say solid wall is concrete wall, landscape is... I can't find a definition as the way you're putting it forward, personally.

Fisher: I have a question.

Barfield: Mr. Smith.

Smith: Commissioner Infantini, I think you're correct where, where I think the biggest bone of contention here is the definition of solid, and I don't know, I have not been able to find a definition of solid that, when it comes to landscape, that says it's like a wall and you can't see through it. This picture was taken in November 15, now is this an example of what you think it should look like, or this is an example of what you think it shouldn't look like? You can come to the mike.

Bosseler: Richard Bosseler. It's an example of what it used to look like. If you could see on the top right corner, you can see the building that was the...

Smith: Right.

Bosseler: ...initial building.

Smith: Right.

Bosseler: It took 13 years. I moved in 13 years ago. It was fairly sparse, the way it is today. It took 13 years for that to grow so we couldn't see anything. Now if you allow Space Coast Credit Union to get away with this, it's going to take a minimum of 13 years to get solid again. And most of us in Baytree don't have 13 years. Thank you.

Infantini: But this picture isn't solid. I can, I mean, and, and, and I'm, I'm, I'm not trying to put, you understand what I'm saying. I can still see the building through here. It's not as visible as it currently is, but I will say...

Bosseler: Yeah.

Infantini: ...I can still see through it here. So by the definition that we're being presented, I don't see how I would ever be able to achieve that standard.

Anderson: And I think, and it's hard to see in this small picture, but I could identify some pepper trees in there, that we make an effort to remove throughout the County. So.

Mercadante: Rich Mercadante.

Barfield: Well my...

Mercadante: 8017 Kingswood Way.

Smith: Sir.

Mercadante: I would like to answer the question, because...

Smith: I didn't ask you the question.

Barfield: Sir, thank you. You can sit down.

Smith: My point is that I'm looking at this and it is, it is rather dense but it also has many gaps, so this has, does not represent a solid quote, unquote, buffer because if you had a building here in the gaps, you'd be seeing the building. It's a difficult question and obviously emotion has gotten involved with this. Whenever emotion gets involved in something, facts go out the window and emotion takes over, and then it becomes like a burr under a saddle. It, it just won't go away and, and it's problematic. You have an architect that I've spoken with when I was at your meeting last year and, you know, he made the comment that they did a very good job, he couldn't have done a better job unless he had more money to spend and he applauded the types of Bamboo that were picked because they would spread and they would grow. I share your concern because if I lived there and I had the idea that I wasn't going to see this construction site, I wouldn't want to see the construction site. But, we have rules to go by and rules to live by and that's, you know, I'm caught between the two. I've spent a lot of time on the phone with Mr. Bartlett, I've spent a lot of time on the phone with Ms. Rezanka, trying to resolve this without even getting this far. You both have legitimate reasons and, and purposes, and I think the last time I spoke to both of you, I said, you know, there's nothing else I can do. It's you know, it's, it's going to have to come before this Board and if that doesn't satisfy you guys, then you're going to have to go somewhere else, and I would hate to see that because I'm, I'm big

on compromise. But I don't see any compromising in this position. I just don't.

Barfield: Mr. Fisher.

Fisher: Yep. I just want to get some clarity on the 15 day prior to the development. What exactly did the homeowner's association see, when you say landscaping plan and was that, did that actually have the materials on there with height and was it defined in the, and did you build to that, to that, and was that plan approved once the home owners association saw it? Can somebody, can I ask staff, do you have that answer?

Barker: Yes, so the, the Binding Development Plan just says that there will be a, a landscaping plan. The landscaping plan is sort of the layout of the property and it's got circles for all of the different kinds of trees and shrubs and there's a, a...

Fisher: Do we, do we have that? I, I, I've got so much paperwork up here right now. I'm not sure...

Barker: No I don't think you do have it in...

Fisher: Does anybody have a copy of that?

Barker: ...your packet.

Rezanka: I got copies for everyone.

Fisher: Yeah. Ok, thanks. So, so this plan gets presented to the Board, and it's, it's, it specs out the trees and stuff for what.

Barker: Right, the, the...

Fisher: Ok.

Barker: ...the varieties of trees, the counts of trees, the sizes of the trees, the placement of where they will go.

Fisher: And that's, and that's...

Barker: And so what Ms. Rezanka's just passed out is the plant list.

Fisher: Ok. I'm not sure. This is the plant list?

Anderson: Yes, (unclear)

Fisher: Ok. But I'm looking at this sketch here. This here actually shows, so that, they actually, they actually show. That's what their...

Barker: Right, that shows where the plants go and the different sizes and shapes of

circles represent different kinds of plants that are on that plant list.

Fisher: And so this plant list was approved by their, their Board?

Barker: No, not, they didn't actually sign off on it.

Fisher: Ok.

Barker: They, they received it and there was a meeting to discuss it.

Fisher: And, did they make recommendations on it?

Barker: Their, sorry, conversation, there, I was not party to any of these conversations, so I'm trying to put the history together...

Fisher: Ok.

Barker: ...like you are. But...

Fisher: Ok.

Barker: ...there were amendments made...

Fisher: What's this?

Barker: ...to the landscaping plan, based on comments received from Baytree, so there had to be some sort of communication, and I don't know whether you want folks here to fill in the gap.

Fisher: One minute, one minute, if you don't mind sir. Yes or no did you, did you.

Bartlett: Yes sir. The a, there was a 15-day process. We received an initial round of comments on April 24. That was the initial comments on the initial plan. We knew there was going to be a lot of back and forth with Brevard County. During the permitting process there were three or four different reviews, changes, reviews, back and forth, so we took these comments, these comments were provided to the Brevard County so they could incorporate any other comments. One of the comments, not relating to the landscaping was that we re-pave Baytree Drive from the intersection back to ours, so Brevard County had these comments and they took what they deemed was appropriate and applied it to our comments to make changes.

Fisher: How about the homeowner's association, though. I want to get, to understand what they, what they (unclear).

Bartlett: Correct, they made comments on April 24.

Fisher: Ok.

Bartlett: We looked at them, Brevard County looked at them, comments were made, we incorporated comments that we deemed were appropriate, and then a new set of comments were generated. And I guess after the final review, and some of those comments, even incorporated that, acknowledges the changes that were made.

Fisher: Ok, thank you, sir.

Infantini: In, in fairness we have to...

Fisher: Yep, yeah.

Infantini: I think we need to allow them to say whether or not...

Fisher: I said a minute a piece, so.

Infantini: Ok. Yeah.

Rezanka: The Binding Development Plan just said they have to show it to us. They didn't have to listen to us, they didn't have to negotiate with us, they showed it to us. Their plan was approved in July, we provided comments in August. Mr. Showe went through them, there's a whole list that were provided, and number four said, I don't think the proposed building and parking lot in the back will be immediately buffered with this planting. This was August. They made no changes from July to our last set of comments. Baytree CDD asked for a meeting with the landscape, about the landscape and they were denied a meeting after these August comments. So they didn't have the ability to negotiate. They got what they got. They were told they would get 26 foot trees, they got 20 foot trees.

Infantini: Where, did you make suggestions as to, because you said they, said that this will not provide an immediate buffer. Did you make a suggestion as to what should be used instead?

Rezanka: It was the landscape architect sent the email that went to Space Coast Credit Union representatives and the County and said this won't do it. Let's have a meeting. And they never got a meeting after August.

Infantini: Ok, so nothing else happened?

Rezanka: Nothing else happened; they just got what they got.

Infantini: Ok.

Fisher: I have some more questions.

Infantini: (unclear) may have wanted to follow up on that.

Fisher: So, alright. And so the, the fence was the County's suggestion and not the

homeowners association's suggestion, to create more of a buffer?

Barker: Apparently.

Fisher: Ok. And then I was trying to, I mean, under, under, that current zoning what all could go there? I mean from a...

Barker: Yeah so it, it was originally BU-1 so business use and so a residential use next to a business use would have been required to have a the type buffer that the County was reviewing this plan against.

Fisher: But a Walmart, a Lowe's, a Home Depot or something like that could have been out in front of that property? In front of Baytree?

Barker: Correct, some other business use.

Fisher: Yeah. Which for Wickham Road, that's what, that's if you want to put a, a, a one of those type big box stores, you would probably put it on that site there. You know I'm having a hard time because the, the restriction, no...the Plan...I think it's down there. I'm having a hard time because they exceeded the Code that we have in place. That they actually went to the homeowner's association and submitted a plan that got comments, whether they liked them or not, but the comments were to add additional a buffering and trees, and then we add a fence, six foot fence, and if you would've had a Lowe's or big box or whatever, you could have had pipes sticking up there from Home Depot or Lowe's, you know, in the back of their stores, that the home owners could have been looking at also. I mean, I, I think a, I think Space Coast with the median and the \$30,000 have gone way out of their way to accommodate the residents that back up to a commercial site that and their doing, I think they're trying to do their best to please them, and I think we're being unfair to them if we don't approve it.

Barfield: Mr. Anderson.

Anderson: I guess, this summarizes what Commissioner Fisher said, they abide, you know, they did everything we asked in the BDP, about when we when we originally approved this. They're not only in compliance, well above our landscaping Ordinance, so I, I can't beat up on somebody that's doing more than our Code requires, so my motion is deny the appeal.

Infantini: Second.

Fisher: In discussion we talked about government not making development so hard. Here we are making them double it, put \$30,000 in it, and do that. It's not fair.

Barfield: I have to say, I, I think they've gone over and above what they needed to do, especially dealing with the Code we have and what they've done. I think, I mean, I think they've gone way, way above it. Do you have something Commissioner Smith?

Smith: Yeah, I would just like to appeal to Mr. Bartlett and, and I know your employers have dug in their heels as these folks have, and when both sides dig in their heels there's, you're not going anywhere. But I would request that SCCU to perhaps reach out to their landscape architect and see if some more compromise is possible. Just, just because. Let's take the emotion out of it, and let's see if Mr. McBurney and your architect can come up with something that's reasonable, that both sides can live with. That would be my request. Sure.

Bartlett: To address your point, there is a \$30,000 that has not been spent that could create a substantial, additional buffer on their side of the property. And when you talk about landscape buffers and you talk about screening and line of sight diagrams. When you look at a line of sight diagram, the closer you are to the screen, if I have, if I have a wall right there and I'm all the way back here, I can see over it, but if I walk up next to this wall, my view would be more restrictive the closer I get to it. So if we could take that \$30,000 that we haven't spent yet and add it to density and put it closer to the houses that screening will be increased, and that height that we can achieve with \$30,000 with the help of their landscaping architect could make a bigger impact for the screening. I just want to propose that, now that could be a, a great consideration in working with that.

Fisher: Ok.

Barfield: Ok. We had a motion for denial? Who made the motion? Mr. Anderson?

Infantini: I seconded it.

Barfield: Ok, which is option one. We have a Motion by Commissioner Infantini, I mean Commissioner Anderson, and seconded by Commissioner Infantini, to deny, option number one. All in favor say Aye.

Fisher, Barfield, Infantini, Smith, Anderson: Aye. I

Barfield: All opposed? Ok. Passes 5:0.

STATE OF FLORIDA
COUNTY OF BREVARD

This is to certify that the above is a true and correct transcript of Item IV.A. from the Board of County Commissioners of Brevard County, Florida, regular meeting of November 1, 2016, to the best of my knowledge.

Witness my hand and the seal of said Board of County Commissioners this 8th day of November, 2016.

(SEAL)



BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

By: Tammy Rowe
Tammy Rowe, Deputy Clerk

Brevard County Board of County Commissioners Meeting

October 31, 2016

- PRESENTED ON BEHALF OF -

Baytree Community Development District

IV.A.

**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)**

KIMBERLY BONDER REZANKA, ESQ.
Cantwell & Goldman, P.A.
96 Willard Street, Suite 302
Cocoa, FL 32922

From: Jason Showe <jshowe@gmscfl.com>
Subject: Fwd: Baytree CDD Comments - SCCU Plans Review
Date: April 27, 2015 at 8:46:32 AM EDT
To: "Sobrino, Robin M" <Robin.Sobrino@brevardcounty.us>
Cc: Alan Scheerer <ascheerer@gmscfl.com>, Stacie Vanderbilt <svanderbilt@gmscfl.com>, "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>

Please see the comments below from the Baytree CDD to the SCCU Expansion plans. Thanks.

PLEASE NOTE NEW EMAIL ADDRESS BELOW

Jason Showe
District Manager
Governmental Management Services, Central Florida
135 W. Central Blvd.
Suite 320
Orlando, FL 32801
407-841-5524 X 105 - Office
407-839-1526 - Fax
407-470-8825 - Cell
jshowe@gmscfl.com

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

History.—s. 1, ch. 2006-232.

Begin forwarded message:

From: Jason Showe <jshowe@gmscfl.com>
Subject: Baytree CDD Comments - SCCU Plans Review
Date: April 27, 2015 at 8:33:06 AM EDT
To: Jason Bartlett <jason@bmsconstruct.com>, Philip Nohrr <Philip.Nohrr@gray-robinson.com>, Jake Wise <jwise@cegengineering.com>, john@kabboord.com, Doug Padgett <doug@bmsconstruct.com>
Cc: Maria hernandez <mghernandez1@bellsouth.net>, Nancy O'Hare <neveraminute@aol.com>, "G. Melvin Mills Jr." <gmmills@cfl.rr.com>, Ed Rizzotti <erizzotti@cfl.rr.com>, cewitcher@pciol.net, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>, "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, Alan Scheerer <ascheerer@gmscfl.com>, Stacie Vanderbilt <svanderbilt@gmscfl.com>

Good morning,

Please see comments below from the Baytree CDD District Engineer upon review of the landscape and Baytree Dr plans. Please let me know if you have any additional comments. Thanks.

PLEASE DO NOT REPLY TO ALL

PLEASE NOTE NEW EMAIL ADDRESS BELOW

Jason Showe
District Manager
Governmental Management Services, Central Florida
135 W. Central Blvd.
Suite 320

Orlando, FL 32801
407-841-5524 X 105 - Office
407-839-1526 - Fax
407-470-8825 - Cell
jshowe@gmscfl.com

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History.—s. 1, ch. 2006-232.

Begin forwarded message:

From: "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>
Subject: Baytree - SCCU Plans Review
Date: April 26, 2015 at 10:41:27 AM EDT
To: "jshowe@gmscfl.com" <jshowe@gmscfl.com>
Cc: "ascheerer@gmscfl.com" <ascheerer@gmscfl.com>, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>, "McBurney, Willson S" <Willson.McBurney@atkinsglobal.com>

Jason,

I have attached a memo with comments on the SCCU landscape buffer and Baytree Drive modifications. Please distribute to the CDD Board for review and consideration.

Mike - I believe that this should also go directly to the SCCU attorney as well since he provided the plans. Let me know if you would like it to go to someone other than Phil Nohrr.

Thanks.

Melissa DeFrancesco, P.E., LEED Green Associate
Project Manager, Engineering

ATKINS

7175 Murrell Road, Melbourne, Florida, 32940 Tel: +1 (321) 775-6645 | Fax +1 (321) 242-6101 Cell +1 (321) 288-7323 |
Email: melissa.defrancesco@atkinsglobal.com |
Web: www.atkinsglobal.com/northamerica www.atkinsglobal.com

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Memo

To:	Baytree Community Development District		
From:	Melissa DeFrancesco	Email:	melissa.defrancesco@atkinsglobal.com
Phone:	(321) 775-6645	Date:	24 Apr 2015
Ref:	SCCU Expansion	cc:	GMS
Subject:	SCCU Design Plans Review - Landscape and Baytree Drive Improvements		

Dear Board Members,

Atkins has reviewed the plans provided by Space Coast Credit Union on 4/2/15. The review was performed specifically on the proposed landscape buffer and the Baytree Drive modifications. I offer the following for consideration by the Baytree CDD and SCCU:

Baytree Drive Modifications:

1. Sheet C-1: Note 2-33 indicates two (2) light poles will be relocated to accommodate the road widening. Please provide the lighting plan that indicates where the poles will be relocated. I believe Baytree CDD maintains these poles. Condition of the poles shall be documented prior to commencement of construction.
2. Sheet C-1: Note 2-2 indicates tree and shrub removals in the median to make room for the proposed turn lanes. The CDD should consider removing salvageable plant material within the demolition limits prior to commencement of construction. I would suggest a site meeting between the SCCU contractor and Baytree CDD personnel prior to construction to clearly identify the limits of removal.
3. Sheet C-2D: I recommend that the contractor mill and resurface the widened portion of Baytree Drive from Bedford Drive to Wickham Road so the roadway has a cohesive appearance upon completion.
4. Sheet C-2D: Please place a note on the plans indicating that all disturbed areas within the Baytree right-of-way shall be restored to pre-construction condition or better. This would include but not be limited to sod, landscape plants/shrubs/trees, irrigation and other utilities disturbed during the course of construction.
5. Sheet C-4D: Please provide the detail for the Offset Type 4 Curb Inlet specified in Note 2-1.

Landscape Buffer:

1. Please be more specific about which Invasive species are proposed to be removed as a part of this work (ref sheet L-8, Additional Requirements, note 7)
2. Please confirm if an irrigation system is part of this project.
3. It is doubtful that much "existing vegetation" buffer will be left intact after construction (ref sheet L-4 and L-5). A design, to meet code requirements, to supplement the existing vegetation/buffer is recommended.
4. At 15' OC, the Bamboo will provide a dense vertical buffer after some time, perhaps several years. A tighter spacing to provide a more immediate horizontal buffer is recommended.
5. The proposed Pines in the wet soils in this area may struggle. Perhaps some soil amendments or berms should be considered to elevate the pines from the water table.
6. Perhaps a berm for the entire length of the parking lot and building pad is a consideration to eliminate high water table issues and to gain immediate elevation while plants can grow into an effective buffer.

Please feel free to contact me with any questions or concerns.

Melissa DeFrancesco

From: Jason Showe <jshowe@gmscfl.com>
Subject: Fwd: Baytree CDD - SCCU Expansion Project
Date: August 10, 2015 at 2:47:11 PM EDT
To: "Sobrino, Robin M" <Robin.Sobrino@brevardcounty.us>
Cc: "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>

We wanted to provide you our comments below to the SCCU as an FYI. Thanks.

PLEASE NOTE NEW EMAIL ADDRESS BELOW

Jason Showe
District Manager
Governmental Management Services, Central Florida
135 W. Central Blvd.
Suite 320
Orlando, FL 32801
407-841-5524 X 105 - Office
407-839-1526 - Fax
407-470-8825 - Cell
jshowe@gmscfl.com

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History.—s. 1, ch. 2006-232.

Begin forwarded message:

From: Jason Showe <jshowe@gmscfl.com>
Subject: Baytree CDD - SCCU Expansion Project
Date: August 10, 2015 at 2:14:06 PM EDT
To: Jason Bartlett <jason@bmsconstruct.com>, Jake Wise <jwise@cegengineering.com>, Doug Padgett <doug@bmsconstruct.com>
Cc: Maria hernandez <mghernandez1@bellsouth.net>, Nancy OHare <neveraminute@aol.com>, "G. Melvin Mills Jr." <gmmills@cfl.rr.com>, Ed Rizzotti <erizzotti@cfl.rr.com>, cewitcher@pciol.net, Sandy Schoonmaker <schoon67@cfl.rr.com>, Stacie Vanderbilt <svanderbilt@gmscfl.com>, Alan Scheerer <ascheerer@gmscfl.com>, "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>

Building Management Systems Team,

At the request of the Baytree CDD Board of Supervisors, I am writing to cordially request an open line of communication on your Space Coast Credit Union expansion project.

In order to streamline the process, the Board has asked that I be the point of contact for you, if you are willing, to provide periodic updates or other items to our Board and residents. This is done in the spirit of cooperation to help make the expansion as easy as possible from both perspectives.

Our District Engineer has reviewed the plans we received and I am attaching those to this email as recommendations/comments on the plans from the Baytree CDD perspective.

From: DeFrancesco, Melissa B Melissa.DeFrancesco@atkinsglobal.com
Subject: Baytree CDD - SCCU 7/31/15 Plans Review
Date: August 5, 2015 at 9:39 AM
To: jshowe@gmscfl.com
Cc: Alan Schaeerer aschaeerer@gmscfl.com, Michael J. Pawelczyk mpawelczyk@bchm.com



Jason,

The plans provided by SCCU on 7/31/15 were reviewed by Atkins staff with regard to the landscape buffer and Baytree Drive traffic improvements. I am providing the initial review comments and observations for distribution to the Board ahead of today's CDD meeting. We can discuss further at the meeting and finalize our comments back to SCCU afterward.

Comments and Observations provided by Willson McBurney, RLA:

1. The revised plans show an increase in Live Oak and Slash Pine. It does appear that the density of the buffer trees has increased. This may be the reason the plan quantities increased.
2. The revised plans show the use of Silver Saw Palmetto in the buffer which can provide an understory buffer to the pines and oaks when their respective canopies mature. However, in the size proposed, 3 gallon, it will be many years before those plants provide any buffering value.
3. The revised plans also show large (30/45 gallon) Stoppers and Wax Myrtle which will provide a nice understory buffer upon planting.
4. The oak trees, pine trees and bamboo are sized and spaced to provide a very nice buffer upon planting. I do not think that the proposed building and parking lot, in the background, will be immediately buffered with this planting. That being said, with irrigation the proposed buffer should provide a nice screen in several years. I cannot determine if the future building "D" would be seen after initial planting. I do think the buffer will mature to provide a good buffer to that building in the future.
5. My overall impression is that the proposed design will provide a reasonable buffer at planting and a very dense buffer in several years. The bamboo will provide the quickest buffer but is only directly adjacent to the new parking lot. It may not provide buffering of the building "D" from eastbound Kingswood Way.
6. I still have some concerns about the planting of the oaks and pines in the existing soils. I'll again recommend the consideration of a berm to elevate plantings and to elevate rootballs from the wet existing soils. I understand the planting space is limited, but a quick analysis of the cross section between the proposed parking and Kingswood way could help to determine if this is a viable option. Slopes of 4:1 or 3:1 are easily plantable.
7. It would not be inappropriate for the CDD to request a "line of sight" graphic depicting views from the residences to the proposed improvements. This illustration could show a cross section across the SCCU site to the homes on Kingswood Way. These types of graphics are simply meant as a means to communicate the buffering needs and the proposed design.

Comments provided by Melissa DeFrancesco, PE:

1. Please provide anticipated schedule dates for work along the Kingswood property line

- and for Baytree Drive demolition and improvements.
2. Please confirm whether fencing shown on the plans at the Kingswood property line is the construction fence recently installed or a permanent fence. The plans do not call out the fence or provide a legend for the fence line types.
 3. Item 2-24 on C-4D indicates relocation of the light poles on Baytree Drive to be coordinated with the utility owner. Who is the owner? As stated in the April comments, I believe Baytree CDD maintains those light poles.
 4. Baytree CDD should review the existing landscape material in the Baytree Drive islands with Tropi-care to determine if any material should be salvaged ahead of the demolition.
 5. SCCU provided mill and resurface of the widened section of Baytree Drive as requested in the April comments.
 6. SCCU did not add a note to the plans as requested for restoration of any disturbed areas within Baytree ROW. I suggest photo documentation of the Kingswood property line (trees, shrubs, any above grade utilities, curb and lawn) and Baytree Drive (any facilities maintained by the CDD such as sidewalks, light poles, landscape).
 7. Sheet L-3: The note on the plan for the Kingswood landscape buffer description says the buffer will be opaque providing complete screening with a **maximum** height of 25 feet within 5 years of planting. Sheet L-11 indicates a **minimum** height of 25 feet within 5 years of planting. The BDP requires a solid buffer that shall screen Buildings B-D. The BDP does not limit the height of the buffer or allow a 5 year growth period. The screening shall perform upon installation and shall grow to a height necessary to provide full screening of the SCCU development from Baytree residents.

Traffic Signal Comments provided by Paul Mannix, PE, PTOE:

1. Sheet T-4: Have the yellow and red times been calculated following the most recent TEM methods?
2. Sheet T-4: Have the turning movements for the Baytree Drive northbound and southbound left turns been checked to ensure they can run concurrently?
3. Sheet T-4: Add movement 7 to the red flashing operation in Controller Operations Note 3.
4. Sheet T-4: Indicate whether new wires are needed for the new signal heads.
5. Sheet T-4: Are the wires long enough for the existing signal head relocations?
6. Sheet T-4: Please indicate where Pay Item 690-10 is being removed.
7. Sheet T-4: It does not appear that the proposed signal head locations line up with the lanes. Please verify and adjust accordingly.
8. Sheet T-4: Add a guide stripe for the dual left turns from northbound Baytree Drive onto Westbound Wickham Road.
9. Sheet T-4: Add Pay Item 670-5-400 indicating modification of Traffic Control Assembly.
10. General: Other comments are related to FDOT Pay Item numbers.

Thanks.

Melissa DeFrancesco, P.E., LEED Green Associate
Project Manager, Engineering

Baytree
Community Development District

135 W. Central Blvd, Suite 320, Orlando FL, 32801
Phone: 407-841-5524 - 877-855-5251- Fax: 407-839-1526

October 15, 2015

Stockton Whitten, County Manager
Brevard County
2725 Judge Fran Jamieson Way, Bldg. C
Viera, Florida 32940

Timothy Antonion, COO
Space Coast Credit Union
8045 N. Wickham Road
Melbourne, Florida 32940

**Re: Baytree Community Development District ("District")
Binding Development Plan – Space Coast Credit Union Project**

Gentlemen:

Brevard County, the Space Coast Credit Union ("SCCU"), and the District are parties to the Binding Development Plan, dated March 17, 2015, approved by the Board of County Commissioners, and recorded at Official Records Book 7326, Page 1611 of the public records of Brevard County (the "BDP"), a copy of which is enclosed for your convenience. The purpose of the BDP is to mandate certain conditions that must be satisfied by SCCU in order to mitigate the "negative impact on abutting land owners and affected facilities or services" associated with the development of the SCCU Property. The SCCU Project is now well underway.

Since the SCCU Project began, the existing landscape buffer located along the southern border of the SCCU property has been removed exposing the construction site and activities to those Baytree residents living just to the south of the SCCU property. My office and County code enforcement staff have also been informed of certain after-hour construction activity that took place soon after SCCU broke ground on its project. While the code enforcement matter appears to have been remedied for the time being, District residents recently appeared at the October District Board of Supervisors (the "District Board") meeting to express their concerns with respect to the landscape buffer that, pursuant to Paragraph 2 of the BDP, is required to be completed by SCCU no later than January 30, 2016, which is six months from the date of issuance of the initial building permit for the SCCU project.

In light of the many concerns expressed to the District Board and District staff by the residents of Baytree, the District Board has directed my office to transmit this correspondence to you so as to avoid any future disputes or misunderstandings pertaining to the Landscape Buffer referenced in Paragraph 2 of the BDP. First, it is important to note that the Landscape Buffer of the southern boundary of the SCCU property "shall be a solid Landscape Buffer, and shall screen Building B through D...from the property to the South." The "property to the South" is the Baytree property, and more particularly the subdivision of Kingswood. During several public meetings prior to the recordation of the BDP, SCCU represented to the District, the residents of Baytree, and the County that once this Landscape Buffer was installed, the residents of Baytree would not be able to see any portion of the SCCU Project. Based on those representations, the

BDP was prepared to require the "solid Landscape Buffer" at the time of installation and all parties to the BDP agreed to that clear and unambiguous standard.

Second, we have been asked by the District Board to point out what can only be scrivener's errors on the landscape plans that were submitted to the County by SCCU for the referenced Landscape Buffer. In certain locations on said plans, there are references that the landscape material installed at the Landscape Buffer be installed at a "minimum" height of twenty-five (25') feet, while in another location there is a reference that the landscape material installed at the Landscape Buffer be installed at a "maximum" height of twenty-five (25') feet. In addition, the landscape plans mistakenly state, in contravention to the clear and unambiguous language of the BDP, that the Landscape Buffer will "provide complete screening within five (5) years." It is certainly clear when reading the unambiguous and agreed upon terms and conditions set forth in the BDP, as well as common sense, that the correct standard to measure the height of the installed Landscape Buffer is that it be installed at a minimum height of twenty-five (25') feet and that the Landscape Buffer be "solid" to prevent the residents of Baytree from being able to see any portion of SCCU Buildings B through D, including the buildings, lighting parking areas, and vehicles at the SCCU property.

It is the District's hope that this letter be distributed by the recipients to the appropriate persons within their respective organizations, so that the standards and timeframes agreed upon with respect to the Landscape Buffer set forth in the BDP and all other requirements of the BDP are achieved by the parties without further reminders from the District. Should you have any questions or wish to discuss this further, please do not hesitate to contact me at 407-841-5524, ext. 105.

Sincerely,



Jason Showe
District Manager

Enclosure

cc: Curt Smith, County Commissioner (via email only)
Vanessa Valdengo, Assistant County Manager (via email only)
Robin Sobrino, Director, Planning & Development Department (via email only)
Jason Bartlett (via e-mail only)
Jake Wise (via e-mail only)
Doug Padgett (via e-mail only)
Members of the Board of Supervisors of the Baytree CDD (via email only)
Michael J. Pawelczyk, District Counsel (via email only)
Melissa DeFrancesco, District Engineer (via e-mail only)

Willson S. McBurney, PLA

Atkins

Sr. Landscape Architect

Willson McBurney has 29 years of land planning and landscape architecture experience including site suitability studies, master planning, detailed site design, and construction administration. His career has focused on providing cost effective Context Sensitive Solutions to transportation agencies across the country. His work experience shows a special emphasis of Roadway Landscape Architecture and the preparation Design Guides for Toll Agencies who are concerned with transportation aesthetics issues.

Mr. McBurney's representative project experience includes the following:

- Central Florida Expressway Authority (CFX) landscape architecture, Orange County, FL
 - FDOT District One landscape architecture, Bartow, FL
 - FDOT District Two landscape architecture, Lake City, FL
 - FDOT District Three, landscape architecture, Chipley, FL
 - FDOT District Five landscape architecture, Deland, FL
 - FDOT District Seven, landscape architecture, Tampa, FL
 - FDOT, Florida's Turnpike Enterprise, Orlando, FL
 - Seminole Expressway, Landscape Architecture, Seminole County, FL
 - Sunshine Skyway Bridge Landscape Architecture, Hillsborough County, FL
 - Triangle Expressway Landscape Design Guide, Raleigh, NC
 - Monroe Parkway Aesthetic Design, Stallings, NC
 - Cape Fear Skyway concepts and visualizations, Wilmington, NC
 - Garden Parkway practical design workshop, Charlotte, NC
 - Monroe Bypass Design Guidelines, Raleigh, NC
 - I-15 Aesthetics Design Guidelines Concepts, Las Vegas, NV
 - Hill Country Parkway Design Guidelines, Austin, TX
 - Aesthetic Design Guidelines, Central Texas Turnpike, Austin, TX
 - Suncoast Parkway Aesthetic Design Guidelines, West Central FL
 - Polk County Parkway Landscape Design Guide, Lakeland, FL
 - Golden Oak, Disney Development Company, Lake Buena Vista, FL
 - Grand Floridian Conference Center, Disney Development Company, Lake Buena Vista, FL
 - Eagle Pines Osprey Ridge Golf Club, Disney Development Company, Lake Buena Vista, FL
 - Osceola Heritage Park Master Plan, Osceola County, FL
 - Mack Overstreet/College Station Master Plan, Osceola County, FL
 - Poinciana TOD, Osceola County, FL
 - US 192 East CRA Streetscape Guidelines, Osceola County, FL
-



Education

B.S., Landscape Architecture, Purdue University, 1988

Registrations/licenses

Professional Landscape Architect:

- Florida LA0001426, 1991
- Nevada 810, 2009
- North Carolina 1623, 2010

Professional affiliations

- American Society of Landscape Architects (ASLA) Transportation Research Board
- (TRB) Committee on Landscape and the Environment (AFB40), Full member

FDOT honors

- Director's Award for Outstanding Achievement, Roadway Aesthetics Community of Practice, October 2012
- Davis Productivity Award, FDOT Staff Hour Task Team, 2002

**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 32941

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
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
Paul T. O'Quinn
Nina V. Rawal
Kimberly Bonder Rezanka
Michael Sjuggerud³
Jay R. Thakkar

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

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

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

June 14, 2016

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

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

(M.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.

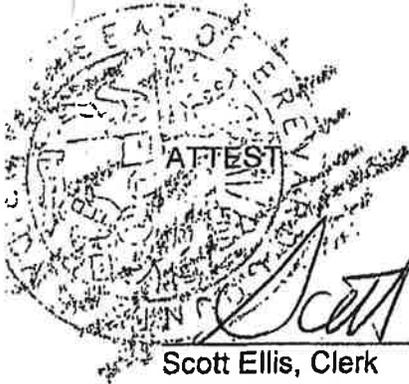
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of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



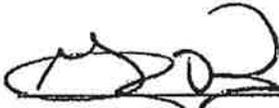
Scott Ellis, Clerk
(SEAL)

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


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

WITNESSES:

DEVELOPER/OWNER
SPACE COAST CREDIT UNION


GARY PRAGER
(Witness Name typed or printed)


Print Name: TIMOTHY H. ANTONATION
Print Title: COO
Address: 8045 N WICKHAM RD
MELBOURNE, FL 32940

Jan Boulay
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 Antonation
COO of SPACE COAST CREDIT UNION, who is personally
✓ known to me or who has produced
_____ as identification.

My commission expires
SEAL

Commission No. JILLION FRECKLETON-MCINTOSH
Commission # FF 036468
Expires September 21, 2017
Bonded Through Fidelity Insurance 800-385-7018


Notary Public
JILLION FRECKLETON-MCINTOSH
(Name, typed, printed or stamped)

WITNESSES:

Jeanne Moeller
Jeanne Moeller
(Witness Name typed or printed)

Philip F. Kohr
Philip F. Kohr
(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)

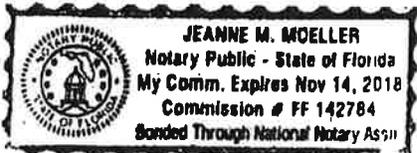


EXHIBIT "A"

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.

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@atkinglobal.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/Flora>

"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
Cocoa, 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
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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. Rezanika

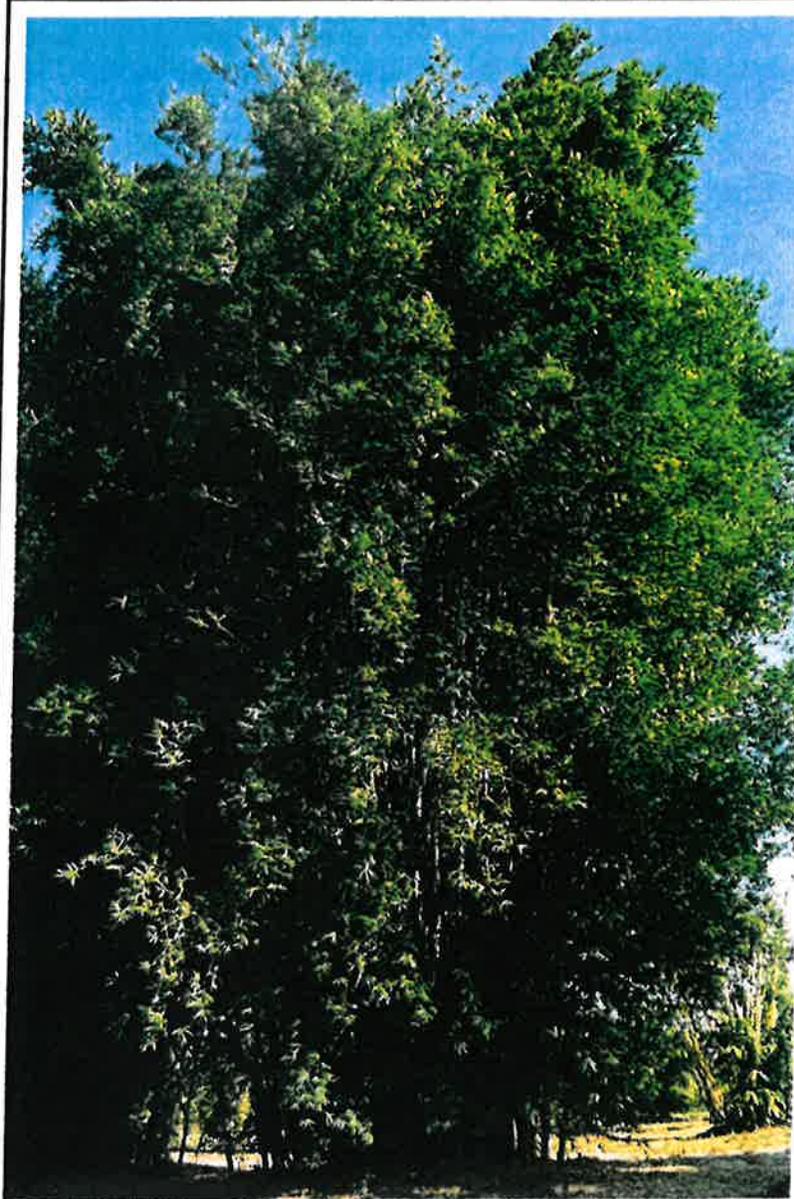
KBR: bms
enclosures

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 1/2 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.



Seabreeze or maling bamboo 45g (bambusa malingensis)



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bamboo

- Alphonse Palm
- Angel Mist
- Kishu Lemon
- Black Asper
- Dwarf Buddha Belly
- Emerald
- Golden Goddess
- Golden Hawaiian
- Gracilar
- Monastery
- Nana
- Oghami
- Seabreeze
- Timber Block
- Tropical Blue

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BAMBOO: SEABREEZE



STATS

Common Name: Seabreeze
Scientific Name: *Bambusa multiplex* s.s.
Zone: DDFF
Origin: Southern China
Typical Height: 40' GA
Curves: 2 5' Dm
Branches: Branching (lowest inflorescence)
Hard: Tight erect culms
Leaves: Emerald
Uses: Screening, privacy screen

DESCRIPTION

Seabreeze or *Bambusa multiplex* is a fast-growing, tough, hardy and easy bamboo with attractive silvery-green canes.

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

Bambusa multiplex can handle temperatures down to 20 degrees Fahrenheit.

Seabreeze Bamboo can reach heights up to 40 feet tall. The Seabreeze bamboo is a multi-colored bamboo. The bamboo forms a graceful umbrella-shaped arch when mature. It has few lower branches so you can admire the distinctive canes.

The bamboo is a tight, non-invasive clumping bamboo with small canes. The culms are straight and form tight, dense clumps.

This clumping bamboo is great for screening with a nice yellow glow. It has great screening from the noisy road, but not from the noisy neighborhood. You may be able to use it to hide the unsightly piece of equipment in your yard.

Seabreeze can tolerate drought as well as flooding conditions.

The Seabreeze bamboo has many structures that prevent wind damage and damage.

Seabreeze can form a very tight hedge quickly and can be kept at the height you want of your privacy screen and achieve its maximum height.

Call Palmco today at 1-888-Go-Palms or 352-633-1225 and ask us about this tough, beautiful bamboo.

PALMCO

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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.

10/19/2016

BCPAO - Property Search

Owner | Address | Parcel ID | Property ID



Account: 2614038
 Sale: 3/30/1995 12:00:00 AM \$1,010,000 - Vacant
 Market Value: \$1,324,470
 Owners: Spure Coast Credit Union
 Address: 8045 N Wickham Rd Unit Recold Melbourne FL 32940

[Zoom](#) | [Details](#) | [Hide](#)

[Disclaimer](#)



From: Matthew Miller [mailto:matt.miller@bcpao.us]
Sent: Tuesday, October 25, 2016 11:28 AM
To: Kimberly Bonder Rezanka
Subject: RE: 2016 aerial Space Coast Credit Union

Hey,

Sorry about the delay.

The date on the photo is 1/05/2016

Thanks,
Matt

From: Kimberly Bonder Rezanka [mailto:kim@cfglawoffice.com]
Sent: October 25, 2016 9:25 AM
To: Matthew Miller
Subject: FW: 2016 aerial Space Coast Credit Union

Matt,

What is the date of this photo?

Thank you,

Kimberly Bonder Rezanka, Esq.

From: Matthew Miller [mailto:matt.miller@bcpao.us]
Sent: Monday, October 24, 2016 3:00 PM
To: kim@cfglawoffice.com
Subject: 2016 aerial Space Coast Credit Union

Here ya go.

Matt Miller, CCF
GIS & Cadastral Services Department
Brevard County Property Appraiser
400 South St, Titusville Fl, 32780
321.225.3031
matt.miller@bcpao.us
www.bcpao.us

LOCAL PLANNING AGENCY MINUTES

The Local Planning Agency convened as the Planning and Zoning Board and met in regular session on Monday, November 24, 2014, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

Board members present were: Henry Minneboo, Chair; Peter Aydelotte, Bill Cannon, Bruce Moia, Aneta Ott, Vice Chair; Andy Barber, Robert LaMarr, Harry Smith, Loretta Goggin, and Ron Bartcher

Staff members present were: Christine Lepore, Assistant County Attorney; Cindy Fox, Zoning Manager; and Jennifer Jones, Special Projects Coordinator II

The Chair, Henry Minneboo, called the meeting to order at 3:00 p.m.

Henry Minneboo – This is the LPA, the Local Planning Agency, and we're an advisory board to the Board of County Commissioners, which ultimately have the final decision on anything that happens today. Item III.B.1., III.2., and III.B.6., are scheduled to be heard by the Commission on Thursday, December 4th, at 5:00 p.m., so if any of those items are pertinent to you, you need to mark down 5:00 p.m. Item 1 on the LPA agenda has been removed by staff and will return at a later date. Did everybody have an opportunity to look at the minutes from October 20th?

Motion by Andy Barber, seconded by Aneta Ott, to approve the minutes from the LPA meeting on October 20, 2014, as submitted. The vote was unanimous.

III.B.1. (14PZ-00096) – SPACE COAST CREDIT UNION AND SAN MARCO CENTER, LLC – (Jake Wise, P.E.) – request a change of classification from BU-1 to PUD, and removal of existing BDP's, on 18.25 +/- acres, located on the southwest corner of N. Wickham Rd. and Baytree Dr. (8025 N. Wickham Rd.; 8045 N. Wickham Rd.; and 8145 (Bldg. A) N. Wickham Rd, Viera)

P&Z Recommendation: Barber/Goggin – Approved. Vote was 7:1, with Aneta Ott voting nay.

Cindy Fox read aloud the request.

Henry Minneboo – Is the applicant here? Mr. Nohrr, I don't need to tell you, because you've been here before, but I'm going to give you a total of 15 minutes.

Phil Nohrr – Good afternoon, and thank you. My name is Phil Nohrr, my business address is 1795 W. Nasa Blvd., Melbourne, Florida. I'm here today representing the Space Coast Credit Union. I believe all of you have in your package a diagram of what we believe is a very exciting expansion of the headquarters of the Space Coast Credit Union that we're taking our initial steps with you folks here today to try and get approval of. By way of just some general background, the Space Coast Credit Union is headquartered here in Brevard County and has been a neighbor for us for a long time, and as of today, you're looking at a facility – or a company – that has over \$3.2 billion in assets. It employs over 800 people, and it is headquartered here in Brevard County. It has had a substantial amount of success over the years and it is that success that brings us in front of you all today. What they want to do is, over time, expand their headquarters, and rather than look somewhere else, they want to expand their headquarters and stay in Brevard County by putting up an additional 140,000 + square-feet and add an additional 600 employees to allow them to further grow as a credit union. So, this is an exciting thing. This is something that we believe this company has already benefitted Brevard County and we're fortunate to have them here as their headquarters and we would like to see that continue, and will do so with your help. Now, prior to coming here today, we did meet with the board – the homeowner's association board – about a week ago to go over the plan with them. In general, I believe that meeting went well. There was some concern, which we will address today, as far as the height of our buildings and the impact it may have on that neighborhood. As you look at the diagram you'll see there will be three new buildings. The building immediately to the south and on the west side will be phase 1, about 45,000 square feet with a height of 55 feet. It will be connected to the main building that some of you perhaps have seen on Wickham Road, and at the same time they will be building a 4-story garage with 500 spaces to accommodate

all those folks that work there and will be working as a result of the expansion. That first phase building will be connected to the existing building and will be connected to the garage. The diagram in front of you also shows a phase 2 building, which will be on the east side. Again, that will be connected to the existing building, and I believe the new building coming up. Finally, down the road in the future there will be a phase 3, which will be the southernmost building. The history on this is that in about 2000, the Space Coast Credit Union came to the County and said, "Let us build our headquarters". At that time, they said they needed a height of 55 feet, and through the variance process they were granted that height. The zoning at that time, I believe, was BU-1. Due to changes that have been made in the Zoning Code, we no longer can have that height in BU-1, and that's one of the reasons we're here today asking for a change from BU-1 to PUD. In fact, our building now is nonconforming, so one of the benefits that we'll be getting is that our existing headquarters building will become a conforming use and that is something we would very much like to see happen. When we get finished, the total complex will have about 230,000 +/- square feet. It will be done in a campus-like fashion. It will have recreation on board when we get finished, and it will be able to serve the needs for Space Coast Credit Union for the very foreseeable future. We think it is a plus for the economy; it is a plus for the neighborhood. We're not bringing in anything that hasn't already been built. We've already set the pattern for what's going on, and in doing that we've paid particular attention to our south, the residents to the south. Under the existing Code, at the time we were required to build a wall on the south – because we were abutting the residents to the south – those good folks came to us and said they don't want a wall, they were okay with a fence, but they wanted heavy vegetation. That's what they wanted and that's what we delivered on back in 2001. In our meeting with the HOA board last week, that same concern came up. "We don't want a wall. We want a continuation of fencing and vegetation". That's what they will get. What you see now on the ground is what they will get. We're not going to deviate from that. Some concerns were raised as to, "This might still encroach into our neighborhood because people can see." That is just not the case. When the third building is built, which will be the closest to the property, the nearest that building will be to the closest house is 300 feet. That's the front of the house, not the back of the house. And although I thought the issue had been put to bed at that meeting, I can assure this board that there will be no visual – we will not visually be of any detriment to the nearest or any of the other houses, the front or the back. You won't be able to see it. Next week we will be in front of the Community Development District Council. Unfortunately, I do not have a diagram here today to show you, but I want to go on record by saying we will bring that diagram and show you the site lines. It will be prepared by professional engineers, and it will not intrude on the neighbors. That is a flat statement that we're making, and we're making it on the public record. The Space Coast Credit Union has lived up to all of its commitments in the past, and it will continue to do so. It will also be made in front of the County Commission when we go there for the next meeting. I apologize for not having a visual here today, but again, I can assure you we will not intrude on any of our neighbors' privacy. The other thing I just want to briefly mention is that as we go ahead and build this, we're going to make improvements to Wickham Road that will benefit the entire area. There will be a new decel lane and a new left-turn lane from Wickham Road. We're going to dedicate dual left-turn lanes as you leave Baytree Boulevard to come onto Wickham, and we're going to improve the signalization there, and we're going to add a left-turn lane on Wickham and Capron Trail, east of the property. These are things that are not going to just benefit this development, it's going to benefit our good neighbors to the south and it's going to benefit other residents in the Suntree area. In closing, let me say this is an exciting project, it's a project to keep a valued corporate entity in our community, which we should be proud of whenever we have corporate headquarters. We've been in this location since 2001, you see our buildings, you know what you're going to get. So, with that, I thank you for your consideration. I have our engineer and our builders here, so if there are any technical questions we'd be glad to take them at the time.

Henry Minneboo – Anybody have any questions for Mr. Nohrr? Okay, I guess everybody is here to talk about this. If we possibly can – this board is pretty sharp up here, other than the Chairman – let's try not to be redundant, but if you still feel the need to talk, you are more than welcome. We don't cut anybody off here, but we'd like to try to get you all out of here by 4:00 or 5:00 tonight. If you've got some new information we'd appreciate it, if you want to repeat it that's up to you all, but we'll try to get you out of here in a reasonable time. Do we have a spokesman? Great, that would help. Please identify yourself and your address.

**MINUTES OF MEETING
BAYTREE COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Baytree Community Development District was held Wednesday, December 3, 2014 at 1:30 p.m. at the Baytree National Golf Links Meeting Room, 8207 National Drive, Melbourne, Florida.

Present and constituting a quorum were:

Maria Hernandez	Chair
Nancy O'Hare	Vice Chair
G. Melvin Mills	Supervisor
Edward Rizzotti	Supervisor
Carolyn Witcher	Supervisor

Also present were:

Jason Showe	District Manager
Michael Pawelczyk	District Counsel
Melissa DeFrancesco	District Engineer
Alan Scheerer	Field Manager
Jake Wise	Space Coast Credit Union
Phillip Nohrr	Space Coast Credit Union
Doug Patrick	Space Coast Credit Union
Several Residents of Baytree	

FIRST ORDER OF BUSINESS

Roll Call

Mr. Mills called the meeting to order and Ms. Bell led the pledge of allegiance.

SECOND ORDER OF BUSINESS

Organizational Matters

A. Administration Oaths of Office

Mr. Mills stated now we will do the Administration Oath of Office to Ms. Witcher, Mr. Rizzotti, and Ms. Hernandez.

Mr. Showe stated as part of the election process we have distributed new Oaths for Ms. Witcher, Mr. Rizzotti, and Ms. Hernandez, so if they would affirm on record, sign them, and send them my way I will notarize them.

Mr. Showe read the Oath of Office.

Ms. Hernandez stated I do.

Ms. Hernandez stated well since you have seniority how about you take landscaping.

Mr. Mills stated alright.

Ms. Hernandez asked Ms. O'Hare would you like to keep the package you have since you haven't had it for very long or would you prefer something else?

Ms. O'Hare stated that is what I was going to suggest. I have only had it for a couple of months. I would like to keep it if I can.

Ms. Hernandez stated okay, great. Mr. Rizzotti?

Mr. Rizzotti stated I have the budget and finances and I have had it for a long time, so I would like to keep it.

Ms. Hernandez stated right and your expertise is in that area.

Mr. Showe stated that leaves security and streets and sidewalks.

Ms. Witcher stated streets and sidewalks.

Ms. Hernandez stated I guess I am left with security.

Mr. Pawelczyk stated this Board is unlike a lot of the other boards that Mr. Showe and I deal with separately and together. I want to make it clear to the public as we talk about assigned responsibilities. Each of these Board members try to have a separate responsibility to provide a greater oversight over those particular areas, because Mr. Showe and Mr. Scheerer are not here every day, so the Board came up with this several years ago and it has seemed to work. When they talk about responsibility they can't make any decisions without going to the Board. It is just for oversight and someone for Mr. Showe to go ask a question to.

Ms. Hernandez stated our Board makes decisions. Mr. Showe is our Manager and Mr. Scheerer is in charge of the building and grounds. They do the work. All we do is oversee it and we split that overseeing into different departments, so there is not too much for one person to do and I think it works pretty well that way.

THIRD ORDER OF BUSINESS

Presentation on Space Coast Credit Union Expansion

Ms. Hernandez stated let's move on. I would like to introduce to you some representatives of the Space Coast Credit Union who are going to give us a presentation on their proposed expansion. Gentlemen if you would be kind enough to get up and introduce yourselves I would appreciate it.

Mr. Nohrr stated good afternoon my name is Phillip Nohrr and I am the attorney for Space Coast Credit Union on this project.

Mr. Wise stated I am Jake Wise civil engineer for the project.

Mr. Patrick stated I am Doug Patrick with Building Management Systems and we are the design developer for the credit union.

Ms. Hernandez stated thank you. It is all yours, gentlemen. If you would like, there is a microphone there. It might be helpful so the people in the back can hear.

Mr. Wise stated once again I am Jake Wise civil engineer for the project and what I would like to do is give you an overview of the project and then answer any questions you have. Going back to the history of how we started here this property right here is Space Coast Credit Union. We have Wickham Road to the north and Baytree Drive to the east and then Bedford Way, which goes off to the commercial area east of here. This is Kingwood Drive here south of us. What is out there today and what was approved around 2001 and finished around 2003 was this 80,000 square foot building here and this bank on the corner. The 80,000 square foot building was approved with the current zoning that it has today. The height that they needed to make the building work and that was 55 feet. That three story office building was approved with a height variance back then and when the project was approved then we worked with the HOA and one of the County rules is that it has a six foot high wall along the boundary that is next to residential. When working with the HOA here and the residents we were told they preferred to put in a fence and heavy duty landscaping. So that is why there is not a wall there today and we are proposing to do the same thing. If there is any other feedback today any different than that I would love to hear that, but that is what we are proposing to do. Right now, where my hand is, you have all surface parking and then there is another existing parking lot here that goes close to the southern boundary. We have an existing driveway here at the east and existing driveway here at Wickham Road with a median cut. Then an existing driveway here that is a right in right out which means there is no median cut and there is no left turn from there. Of course there is a signalized intersection here at Baytree and Wickham Road. We have a storm water pond here that is existing and then we have a green area here which is used for a walking trail for employees and there is a play ball field there as well. When they were first looking at this property it was actually a Publix that was looking to go in there prior to Space Coast Credit Union. One of the great things about a bank as a neighbor is the hours. They are not there on weekends or late at night and you don't have delivery trucks at 5 o'clock in the morning. You don't have giant dumpsters set back behind the building and most Publix are set back pretty far.

signs. Space Coast Credit Union because they are the ones disturbing the existing sign are willing to pay for that relocation of one or two signs whatever is the preference. As far as the rest of the phasing goes phase one is all those roadway improvements including the traffic signal and parking garage. Phase two would be this first building here which is about 45,000 square feet. We are proposing it be the same height as the existing building and that is because we are trying to create a corporate campus. It is the corporate headquarters that we are proposing to be here. In fact, they are even proposing between the parking garage and all of the buildings ultimately to have a third level walking pedestrian ramp between them so that all the buildings are interconnected and feel like one. The next phase building C is about 46,000 square feet and then the final phase is building D which is a little bit further to the south. When we were first planning this project our effort and goals has been to push everything as far north as possible and to buffer as much as we can to the south for the residential. One of the configurations that we have gone through is the parking garage was actually over and ran north to south like this, but Space Coast Credit Union wanted to go ahead and push that as far north as we could. On the Wesche property their building is only half the site but they have a much bigger parking lot, storm pond, and green area that is building pad ready. Through a lengthy time delay and great expense we were able to negotiate a contract to purchase half of that. We are not only purchasing half of that we are also going to take on their storm water and give them some additional parking. We did that to push that building up further away from the area to the south here. Going through the process we are requesting the rezoning to a PUD. The reason we are requesting that rezoning is the current zoning doesn't allow variance for height, but the PUD does allow us to request that height. What we are requesting for these three buildings and the parking garage that all be allowed to be the same height to allow the pedestrian bridge interconnect on the third level in creating that campus here. We also have some additional surface parking here towards the south. That also would be one of the later phases as this building would be. One of the concerns we heard in some of the correspondences and also a meeting last week was the potential visual impact to the south along Kingwood Way. Prior to that meeting we had walked it and looked at it and this existing building isn't able to be seen, but we wanted to verify that would still be the case after we constructed these buildings, because we want to be good neighbors. We want to make sure we aren't going to have any kind of visual impact either. This is an exhibit we created to show that. We surveyed the height of the existing

trees along this other boundary and those are the same trees that we already committed to preserving with a fence instead of the wall. The average height of those trees is 26 feet some are a little lower, but the rest are higher. What we looked at was what would be the line of sight from the sidewalk on Kingwood Way and from the front porch, but also what would be the line of sight from someone in the third story looking back in this direction. What this graphic shows is with the existing vegetation standing on the sidewalk a six foot tall person or shorter you would not have visibility of the southernmost building. That is about 212 feet away from the property line and the closest house would be about 87 feet away. The required setback for us is 110 feet per code, so we are almost double the required setback. If there are ever any gaps in the trees whether it is due to construction, storm, or something Space Coast Credit Union is saying they will plant new trees and we have already talked to the landscape architect to make sure we can get trees that are this same height. Also, from the front porch of any of these houses the building is not visible. The other concern we heard was if someone is in that third level looking back towards the residential whether they could see them in their backyards and they wouldn't have visibility either. We know that was a definite concern and we wanted to make sure that we showed graphically to do what we can to eliminate that. What we have done already is have the LPA meeting last week and that is a recommending body to the County Commission. The County Commission makes ultimate decision whether to approve this plan put conditions on the plan or disapprove the plan. At the LPA we had one no vote on us moving forward and the discussion afterwards was they wanted us to have more time basically to coordinate with you guys. We are doing that and we have been, just so everybody understands, reaching out to the HOA for quite a long time now and following the direction on what was the best way to meet with you guys. This is the second such meeting that we have done the first I don't think there was a lot of information for people that knew we were doing this and we have a lot more people here so that is great. Third stage will be the County Commission hearing this and the Commission is voting on whether or not to approve the project, provide conditions, or disapprove the project. With that I would be happy to answer any questions you might have.

Mr. Jim Peters asked does the presentation you are taking Thursday exclude Baytree Drive?

Mr. Wise stated no it includes the work we are doing on Baytree Drive.

and it is really overgrown. Most of it is trashy stuff that has just kind of grown in there. When the leaves fall off we can see right into your property along Kingswood Way. I think that when you say you are going to leave that as is right now that is not acceptable right now. Therefore, from our perspective you are going to have to take immediate action to get landscaping on your side of the fence.

Mr. Wise stated we appreciate that. On this aerial view you can see where the property line is approximately. It is not exact. There is vegetation on your side and there is also vegetation on our side as well. We had it surveyed. We are not going to do anything in your right-of-way that will touch your existing vegetation at all. What we would do is make improvements on our side with anything that needs it.

Ms. Schoonmaker stated if you are correct down on the Baytree end it is all overgrown. Along where the houses are we have pictures that you can look through the bushes and we can see your property.

Mr. Patrick stated more than likely you are probably correct, because we have never developed that piece. That has never been part of the permanent development. As we move forward with this plan we will take care of that.

Ms. Schoonmaker stated it is in your original plans that you are going to put landscaping in. I just wanted you to be aware that we will expect something immediately done.

Mr. Wise stated that is the commitment by Space Coast Credit Union in phase one to take care of any areas that don't have screen visibility.

Mr. Gilbert stated I have a question relating to the ownership and easements of the property on Wickham Road back to the main gate of Baytree. There is landscaping on both sides coming in and out of Baytree. Who owns that property and who will have responsibility?

Mr. Wise stated it is a county public right-of-way. We thought there was some kind of agreement you guys have for maintaining it. You have been maintaining it. We just can't find the agreement for the landscaping, lighting, and signage within that county right-of-way.

Mr. Gilbert stated I have been measuring out there for your left turn lane. What is the minimum lane requirement for the County?

Mr. Wise stated they follow DOT criteria and it is in the traffic report. I don't know right off the top of my head. I am not a traffic engineer.

Mr. Gilbert stated probably 11 or 12 feet. The right turn lane is about 13.6 feet.



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MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on December 4, 2014 at 5:04 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

5:00 PM Meeting called to order on December 4, 2014 at Board Room, Board Room, Viera, FL.

Attendee Name	Title	Status	Arrived
Robin Fisher	Chairman	Present	
Jim Berfield	District 2 Commissioner/Vice Chairman	Present	
Trudie Infantini	Commissioner District 3	Present	
Curt Smith	Commissioner	Present	
Andy Anderson	Chairman/Commissioner District 5	Present	

INVOCATION

Invocation was given by Reverend Ivan Corbin, Grace United Methodist Church, Merritt Island.

PLEDGE OF ALLEGIANCE

Commissioner Smith led the assembly in the Pledge of Allegiance.

ITEM III., PUBLIC HEARINGS

Chairman Fisher called for a public hearing on Planning and Zoning recommendations of November 10, 2014 and November 24, 2014.

ITEM III.B.1., MORTGAGE INVESTMENT FUND I, LLC - REQUESTS AN AMENDMENT TO AN EXISTING CUP FOR COMMERCIAL ENTERTAINMENT, AND AMUSEMENT ENTERPRISES, TO INCLUDE RACING, SWAP MEETS, AND VEHICLE SHOWS FOR CARS, AIR BOATS, TRACTORS, TRUCKS, RIDING LAWN MOWERS, GO CARTS, AND ATY'S WITH SPECTATOR SEATING, CONCESSIONS, AND A GRANDSTAND FOR AWARDS AND LIVE MUSIC, WITH A WAIVER OF 50 FEET FROM THE REQUIRED 75 FEET SETBACK FOR A BUILDING, MOBILE HOME, TRAILER, VEHICLE, OR MAINTENANCE EQUIPMENT

Cynthia Fox, Planning and Zoning Manager, stated Mortgage Investment Fund I, LLC are requesting an expansion and change of the existing Conditional Use Permit, for Commercial Entertainment and Amusement Enterprises. She added they have previously been approved for that, but they want to expand some of the activities on the property.

Chairman Fisher stated there are a couple cards on the item.

Patrick Berker stated this is an industrial zoned area, with heavy industrial businesses there; Paw Prints Road is a private road, on his property; and this is a self mitigation flood control area. He went on to say they have their own St. Johns Water Management permit and pumps that they operate to control the flood waters on about 120 acres there; and this applicant is doing an amendment concerning three parcels of property as it is stated on his applications on parcels 751, 753, and 766. He advised parcel 751 is on Eau Gallie Boulevard, and has a complete long length of access and does not border Paw Prints at all, this applicant is trying to do a big, commercial, public event utilizing their private road that runs through a heavy industrial area. He stated they have a truck operation that operates 24 hours a day, with fuel tankers, and their proposal involves hundreds of cars of families and occupants coming down the little, skinny, private road; and he inquired why their not using their own access off of Eau Gallie Boulevard. He noted parcel number 753 does not include the set track of their operation and does border Paw Prints; Parcel 766 does not border Paw Prints Road at all, and it is the main site of the track; and this also borders the common ownership parcel 750, which is 126 acres. He stated they feel it is not consistent at all with the proper usage; and they believe there would be a significant problem if there is an emergency involving fire trucks having to get back in that area; Paw Prints is a very narrow road; they could have tractors or trailers on there, hundreds of vehicles, and think there is a disaster pending there. He pointed out there are buildings back there on their property; there is some marble businesses that just moved in, with no occupational licenses; these are industrial operations with absolutely no licenses or no fire inspections in there, certification of septic tanks, water quality, or no fire extinguishers present; and they very concerned about this; they have moved their business into this area and have been hiring a lot of people in this area; and they are doing very nicely with the neighbors there. He stated they think there is a significant safety concern by combining all of these things together; and they do not think it is consistent and compliant with Administrative Policies of the Future Land Use Element, Policies 2, 3, 4, 5, 6, and 7 criteria. He went on to say the original permit was for a wet track, now they are trying to go to a dry race track and, again, he thinks if there is an ability to look back on the Planning and Zoning discussion and notes, they did not approve that conditionally, it was a flat denial because of significant compliance issues. He stated they have three Sheriff reports concerning the property owner trespassing, property damage, blocking the canals, and the neighbors having an excess of six different police reports with these same individuals; there

major business that has loud noises, bright lights, P.A. systems, and the like; that would interfere with the homes directly up to Waeili Drive; another problem would be the traffic coming from Waeili Drive through Bulternut, and onto Myrtlewood Road; and Myrtlewood Road gets a lot of traffic now, and it is a 20 mile per hour road. She advised most people go 35-40 miles per hour and they cut through because they do not want to wait on the light at Waeili. She stated she is worried about the traffic in her neighborhood if a lot of businesses move into the area.

Robert Usherson stated his home backs up to Waeili Drive, as do many more in the subdivision, and the principal concern is that the subject parcels are just a small fraction of a larger area that is currently giving the neighborhood great comfort by its treatment in the Comprehensive Plan; there is a scattered array of some commercial uses between the Florida East Coast Railroad track and Waeili Drive, which is a north/south road, west of and paralleling the railroad track, which is in their backyards; a good portion of the area was designated in the Comprehensive Plan, and continues to be designated, for neighborhood commercial use, not community commercial use; not withstanding that scatter of existing businesses over in that area; that was done for good planning purposes; and that is to provide for compatible commercial uses, so the neighborhood would not be overwhelmed with all of the full range of uses allowed, as of right, in the BU-1, BU-2 zoning classification. He stated their concern is not just with the acre or acre and one-half portion of the much larger development, it is with the precedent that would be set by the amendment to the Comprehensive Plan in this area, from Waeili Drive down to the west of the area; and that is why they are so concerned with this. He advised they met with the developer, he has been very forthcoming; he has offered a proposed development agreement; and they have seen a draft of this document a couple of days ago. He added if the Board changes the Comprehensive Plan, to Community Commercial with this deed restriction, it would not set a precedent that would invite, or burden, the Board to approve similar Comprehensive Plan amendments throughout the rest of this area in the future; and the neighborhood would be willing to agree.

Mr. Leng stated that they agree with the speakers, they would like to work with the community, they want to be a good neighbor, and to develop a nice project that the County and town is glad to have.

Chairman Fisher inquired if the Binding Development Plan will have some certain things that will be prohibited in that typical zoning. Ms. Fox responded yes, it appears that item number two lists a number of uses that would be prohibited on the property; they have talked about limiting the freestanding signs to not exceed 10-feet in height, and to limit themselves to not exceeding a gross floor area ratio of the Neighborhood Commercial Comprehensive Plan category, which is 0.75; and she would also like the applicant to clarify, when staff adopts the rezoning with this Binding Development Plan, that he understands that when he vacates those areas that are on the plat, that legal description for those vacated areas needs to be included as an exhibit as part of this document.

Mr. Leng stated he will comply with that.

There being no further comments, the Board approved KMM-FL, LLC's request for a change of classification from GU and RU-2-10 to BU-2 on 1.38 acres+/-, located on the east side of Waeili Drive, approximately 0.28 mile north of Wickham Road.

RESULT:	ADOPTED (UNANIMOUS)
MOVER:	Curt Smith, Commissioner
SECONDER:	Jim Barfield, District 2 Commissioner/Vice Chairman
AYES:	Fisher, Infantini, Anderson, Smith, Barfield



ITEM III.B.10., SPACE COAST CREDIT UNION AND SAN MARCO CENTER, LLC - REQUESTS A CHANGE OF CLASSIFICATION FROM BU-1 TO PUD, AND REMOVAL OF EXISTING BDP'S ON 18.25 +/- ACRES, LOCATED ON THE SOUTHWEST CORNER OF NORTH WICKHAM ROAD AND BAYTREE DRIVE

Cynthia Fox, Planning and Zoning Manager, stated this item is Space Coast Credit Union and San Marco Center, LLC's to request a change from BU-1 to PUD; and removal of existing Binding Development Plans.

Chairman Fisher stated he has had some conversations with some people about this item, but has not talked to Mr. Wells, but it has definitely been a topic in his office.

Commissioner Barfield stated the applicant gave a presentation to him about what the project was about.

Commissioner Smith stated he met with the applicant yesterday.

Commissioner Anderson stated he met with the applicant and received the same emails that he assumed all of the Board received by the homeowners.

Commissioner Infantini stated she also met with the applicant.

Philip Nohrr stated most of the Board and audience is familiar with the project at hand. He added the Credit Union has been in this community for quite a while, it is headquartered here, and through its growth over the years, there is now a \$3.2 billion financial institution; and that equates to 80 branches and 800 employees; and it is headquartered out of Brevard County. He noted back in 2000 or 2001, the Credit Union was forward thinking and decided it needed to move to a bigger location, and by 2002, it had relocated to its present location on Wickham Road. He advised at that time, the zoning was C-1, and with that, they were allowed a variance of height back then, and when they went through and did their planning, they needed a 55 foot high structure, which the County gave them in the form of a variance. He stated they built about 80,000 square feet; he believes they are a good neighbor; and during that process, in order to look to the residents of the south, they committed to building a landscape buffer to further avoid the impact on that additional structure on Wickham Road. He stated in fast forwarding a number of years, the Space Coast Credit Union had the opportunity to expand into South Florida, and have been successful, and that has put a lot of pressure on the Credit Union as to continue its capital expenditure growth. He went on to say that is what brings them here tonight, the growth of this Credit Union, that has caused some further development and to bring a substantial number of new jobs into the community. He stated the diagram that most people have seen calls for a number of things to happen; on Wickham Road, they are taking away some of the parking in the area and parking behind the existing building,

and going to build a parking garage that will accommodate 500 parking spaces. He added it is laid out running east and west, and is there for a reason; they have been trying to move what they can, as far north as they can, away from the residents to the south; if this is approved, they will go into the final permitting process; and he hopes to be out by the end of March or April 2015; and they hope the parking garage is up by mid to late summer. He stated after that, then they would jump into Building B, which is the first phase of offices that the Board can see on the diagram; it is a wing coming off of the existing building, towards the west side, it is a three-story, almost 46,000 square foot building. He added that is very important, because the Credit Union, if it wants to bring in another employee today, it cannot; that job basically goes south, but there is no more room for another employee; and they would like to have that building. He went on to say it will be part of the signature of the campus that the Credit Union is trying to bring to this area; on the back end of Building B, there is a diagram which looks like a bridge, that is key to what they are trying to do, they are trying to connect all of the buildings so that there truly is a campus; and from a management point of view, it helps to unite all of the employees so they can work together. He advised when that building is filled up, Building C will come behind it; the timeline for that is unknown and depends on growth, but they know it is coming. He added they know historically it comes and will continue to come; after that, then comes Building D. He noted he cannot speak for the people in the audience, but in his meetings and emails, he believes they have some concerns with Building D, which the Board will hear about. He stated Building D will be the last built; he does not know when, it could be five or ten years or more, but that building has been pushed back as far north as they can push it back; and the bridge can be seen that connects to it. He stated the bridge is sort of important, because under County Code, they have to make that bridge high enough so that Emergency vehicles can get under it, if needed. He added that is one of the forces driving the height as to where that bridge will go; it does not drive the force as to the height of the building, because that is the building height, that square footage, to take care of the plan expansion of the Credit Union. He advised overall, this will be a \$30 million project, \$10 million more of it is on the front end, the parking lot and the first building; in addition to that, the traffic improvements that have been identified by staff that are needed, which comes to maybe \$1 million, covers all three buildings that will be built now; and whatever excess capacity there is to that, the public will enjoy immediately. He went on to say looking at Building D in the exhibit, this is a line of sight exhibit showing the distance and the effect of the house in Baytree to Building D; from a point of view of distance, it is basically a football field away from the southern end of Building D and the first house; there is natural buffer of a football field away; when this whole thing started the residents asked for additional buffers, even though the only building was on Wickham Road, and they got it; and the residents were entitled to a wall, but at that time they did not want it they wanted a fence and additional vegetative buffer. He noted it is his understanding if this project goes through the residents would like additional vegetation and fencing and not a wall; if that is the residents' wishes, the Credit Union will put it in; and it should accomplish the same results as what the Board sees on the exhibit. He stated when they met with some of the residents yesterday, they asked if they would assist them at least financially, and if not financially physically, with some buffering on their side of the property line; and the Credit Union is willing to do that. He pointed out it shows they are willing to go additional steps because they want to be good neighbors. He stated one of the residents main concerns seems to be the monument sign on Wickham Road at the intersection of Baytree; it seems to be a significant symbol for them the residents want to keep; as they went through the process, it was talked about and felt it was no alternative but to put in two left hand turn lanes so everyone would have a designated left turn, but unfortunately the monument had to go; and that was a pretty good sticking point. He noted by reaching out to the residents, they said they were sorry and they could not do anything differently, but if they could come up with anything it is fine with them; the Credit Union has committed up to \$700,000 to put in one or two monument signs; and they asked the residents to decide what type of monuments. He stated the Board has in front of it a revised diagram; it has not been officially approved by the County; John Denninghoff, Public Works Director, has indicated as the professionals receive the documents that it will be acceptable; if the County will approve it, they will approve it and leave the monument in place which will make their life easier; and it may tone down some of the objections. He went on to say if someone comes up with another way to save that monument, they are on record to do it if the County staff will approve it. He advised the Board they will answer any questions it may have.

Jake Wise stated he wants to add that the handouts the Board received are the two exhibits it saw, and the third page of it is the updated diagram they worked closely with County staff, which identifies saving the monument in the median.

Chairman Fisher inquired if they shared the diagram with the residents. Mr. Wise responded they emailed it to them and provided hard copies to some of them.

Scott Krasny, Attorney for San Marco Center, LLC, and also Weiche Jewelers, stated in terms of the site plan and development, another entity significantly impacted are San Marco Center and Weiche Jewelers; and they both support Space Coast Credit Union. He asked the Board to approve the request.

Joy Morgan stated she is appealing to the Board to deny the proposal for rezoning of that area; the Credit Union is proposing to put in three, three-story buildings, which will increase their employees by several hundred people when the project is done; currently the traffic on Wickham Road backs up daily to the Suntree Plaza; she believes this will cause a public safety concern, it will be an issue for the pedestrians, and for the residents in the area who walk daily, as well as to the small businesses in the area; and a campus such as the one proposed by the Credit Union is better suited for such an area like the Viera Government Center where there are similar campus buildings. She requested the Board deny the request for rezoning.

Maris Hernandez, Elected Chair of the Board of Supervisors of the Baytree Community Development District (BCDD), stated she has been designated by the board to present to the Board a resolution No. 2015-03, passed and adopted by the BCDD board at the meeting yesterday; yesterday was when they had the presentation by the Credit Union of what they were planning to do; and she talked about a few items of the resolution. She pointed out with respect to the proposed space for the Credit Union rezoning, they want to identify the issues that directly impact the community; and before the rezoning moves forward they want to be sure that the request that we have made in this resolution is considered, and the request that this zoning application be tabled until they have had an opportunity to hopefully get those things they think are extremely important. She went on to say this resolution of the BCDD is requesting the Application No. 14PZ-0096, filed by the Space Coast Credit Union and San Marco Center, LLC, be tabled or deferred by the Board to a later date to allow the BCDD to meet with the applicants the development alternative options to the proposed configuration and changes to the Baytree Drive right-of-way, as well as options for improving the buffer to be located on the southern border of the applicants property, which was addressed today by the applicant; and they have been very cooperative in that respect. She noted they want to be able to agree to the design changes to the Baytree Drive right-of-way tract consistent with County traffic requirements which preserve the districts monument and are in the interest of public safety; and a buffer plan whereby the applicant provides for a dense landscape or other buffer to address the impact on the Baytree residential community, which buffer could include filling in and landscaping, and she believes they have agreed to that. She stated the Board of Supervisors of the Baytree Community Development District respectfully request that the item be tabled to a reasonable date and time to allow the appropriate representatives and professionals of the district to meet the representative of the Space Coast rezoning

applicant to address and develop with greater certainty and agree on alternative options to the proposed configuration and changes to Baytree Drive that preserve the existing monument in place as well as ensuring the landscape buffer; and should it be approved after tabling the item, the applicant securing the approval of any proposed modifications to Baytree Drive prior to submitting the same to Brevard County or any other appropriate governmental agency for permitting, with the emphasis of such modifications being to preserve the existing Baytree monument in place while satisfying Brevard County traffic engineering requirements, and the applicant cleaning up, filling in, and regularly maintaining a landscape buffer on the southern boundary of the applicants property. She asked the Board to give their request its complete consideration prior to granting it.

Richard Bosseler stated the Space Coast Credit Union has addressed his second concern, which was the buffer; he lives along Kingswood; he and many of the neighbors feel the building is going to be very offensive; and he appreciates the applicant ensuring the residents the buffer will be there. He stated his home faces north towards the Credit Union property; they have been residents of Baytree for over 11 years; and during this time, the Credit Union has been a very good neighbor. He went on to say a few weeks ago they received notification that the Credit Union was going to do their four-story parking garage and add three, three-story buildings; he is representing the neighbors of Kingswood whose property is adjacent to the property; they are concerned about the loss of property value to the property as a result of the aspects of the Credit Union's plan; specifically, they are concerned of the height of Building B, which borders Kingswood Way; and their opinion is this three-story building will be visible to the houses along Kingswood Way and will allow occupants of their building to look down up the residences. He pointed out it would greatly affect the property values; they would like to propose that Building D, the largest of their three buildings, be limited to only one story and be not more than 15 feet. He noted there are 150 homes that go back into the Kingswood Way development area of Baytree; they have several people who will be traveling Kingswood Way and have to view the back of the building; and he disagrees with the fact that the site line will be covered by the landscaping.

Art Breilner stated what he is going to address is the removal of the monument; the Space Coast Credit Union has come up with a plan to maintain it; he agrees with Ms. Hernandez's recommendation that the Board hold off so everyone can understand what that plan is; and the preservation of the monument is very important to the residents.

Sandra Schoonmaker stated she is speaking on behalf of the homes in the Kingswood neighborhood. She stated the Kingswood neighborhood is not opposed to the majority of the plan that has been put forth to the Board; they realize the importance of jobs to the community; and they are satisfied with the majority of the plan. She went on to say they want to emphasize the potential damage to the home values if all aspects are approved; they are appreciative of the fact the Space Coast Credit Union is keeping the monument in place; they have had issues with the visibility of the building; the buffer originally between Kingswood Way and the Credit Union was really never accomplished; and they want to make sure there is written documentation that assures them that what the gentleman are saying is actually implemented. She stated they know the Credit Union did try to contact the community in a timely manner so their plan could be assessed, but for whatever reason it was not accomplished as efficiently as possible; and it resulted in the residents of Baytree being anxious in what is to be expected. She stated the homeowners association met officially on Tuesday, and the BCCD board only saw the official plan yesterday afternoon at 1:30; obviously there has not been much time to digest this; at both meetings the residents did mention the concerns; and the Credit Union seems to be listening. She asked the Board to consider postponing a decision of the Credit Union's proposal until the January meeting; she stated the residents of Kingswood need to meet with the Credit Union to ensure they have reached common ground on the issues of the height of the building and what the exact nature of the buffering is going to be; and if it is approved today, she would like any changes discussed and approved tonight, including the preservation of the monument, the traffic plan, the buffering along Kingswood Way, and the height of the building to be negotiated be put into a binding development plan, so there is a guarantee that these things will occur as indicated. She asked the audience to raise their hands if they were from the Baytree area and is in support of what was being said today to give the Board a sense.

David Taylor, President of the Baytree Community Association, stated he wants to thank the developers for reaching out and starting a dialog; he was disappointed the County procedure is to communicate those within a certain geographic distance; and they did not get a great deal of time to consider these plans. He stated in general the homeowners are concerned about impact on the property values, primarily the fourth building closest to the border; additionally, the traffic as has been commented on previously, backs up from I-95 to the Publix Plaza; and the traffic they see now is an issue, and this will not help. He noted there are also safety issues; the street behind the CVS reaches what is now the southern entrance into the Space Coast Credit Union property has a large number of accidents there; and the bus stop for the children is within 50 yards of that. He requested the Board give some time for the residents to look at some of the adjustments.

Bob Eksten stated the expansion which is a rather aggressive expansion by Space Coast Credit Union reflects a great deal of growth and jobs for the area; for that everyone should feel very grateful; the residents have concerns that have been addressed by a number of people; and they have concerns regarding the monument. He noted if the golf course is impacted, the residents are impacted. He expressed his appreciation to the applicant for trying to meet the residents' concerns.

Mr. Nohr stated the anticipation of the property value issue, they asked Hanson Appraisal come out and take a look at what the effect would be of the expansion with a buffer being added; the report says if a buffer is placed between commercial and residential property, there will be no impact on property values; and the site plan and line of sight has been included. He stated with the upgrades, they will increase the safety of the traffic; and they will end up better off than they are now. He noted if there is a need for commitment to maintain the buffer being put in on the Credit Union property it will be placed in writing; they are willing to

Commissioner Smith stated he has been amerced in this subject for the last three days; he has spoken with the developers; and he was very impressed with their willingness to work with the residents. He went on to say he is impressed with the residents' willingness and desire to work with the developers. He inquired if Space Coast Credit Union follows proper and timely notifications. Ms. Fox responded yes, it is part of the rezoning. Commissioner Smith stated he asked that because it came up several times that the folks say they have not had enough time. He stated this is a good business with a good business plan; Space Coast Credit Union seems to have bent over backwards; and the two questions were what to do with the monument and what to do about the tall Building D. He stated Mr. Denninghoff and staff came up with a plan that should work; the Palm Trees are going up; the monument is going to be saved; traffic is going to be improved; and he cannot think of any reason why this cannot be voted on today. He pointed out it is clean industry; there will be several hundred jobs created; a lot of County money will not be spent; the applicant is fixing the roads; and he thinks it is a go.

Commissioner Barfield stated he is all for the jobs; he does not feel comfortable the residents are comfortable yet with what needs to happen; this does not have to be rushed into; but he wants to make absolutely sure the residents are good with what is going on. He stated the residents were there first, and the applicant needs to work with the residents before he can say go.

Commissioner Infantini stated she has seen Space Coast Credit Union transform over the years; she met with Mr. Samuels and Mr. Nohr this afternoon; and she is thrilled they were able to expand and keep their home base here. She stated they are a great neighbor; and she thinks the plan should be approved.

Commissioner Anderson stated this is not the last time to hear this item; they still will be able to interact with the community; and they have to come back to the Board on a couple of other issues. He stated they can continue their conversations with the community.

Chairman Fisher asked staff to go over what exactly would be required even if this item is approved tonight.

Ms. Fox advised the Board they would be required to submit a binding development plan, which is a voluntary agreement between them and the County that lists those items they agree to tonight, preserve the monument, provide the buffer between their property and the residents in that area, and the many other things they have suggested tonight; that agreement will be reviewed by the County; and it will come back to the Board one more time on the Consent Agenda, and the Board will have another opportunity to discuss it if it wishes.

Commissioner Smith stated Space Coast Credit Union has indicated it would work with the residents regarding the buffer, because the residents made the comment to him yesterday that the buffer at times has not been very well maintained; if it is 10 years before the third building is built, some good size trees can be planted now, and in 10 years they will be way up there; and that would increase the height.

Chairman Fisher stated they agreed in the plan to maintain that as well.

There being no further comments, the Board approved Space Coast Credit Union and San Marco Center, LLC's request for a change of classification from BU-1 to PUD, and removal of existing Blending Development Plan's on 18.25 ± acres, located on the southwest corner of North Wickham Road and Baytree Drive.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Curt Smith, Commissioner
AYES:	Fisher, Infantini, Anderson, Smith, Barfield

ITEM III.B.11., CENTENNIAL BANK - REQUESTS A CHANGE OF CLASSIFICATION FROM BU-1 TO GML (H), ON 3.71 ACRES, LOCATED ON THE WEST SIDE OF HIGHWAY A1A, APPROXIMATELY 0.62 MILE SOUTH OF OAK STREET

Cynthia Fox, Planning and Zoning Manager, stated this is for Centennial Bank, representing City of Melbourne; and this is to change from BU-1 to GML(H), for a water booster plant for the south beaches.

There being no further comments, the Board approved a change of classification from BU-1 to GML(H), on 3.71 acres, located on the west side of Highway A1A, approximately 0.62 mile south of Oak Street.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Chairman/Commissioner District 5
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Infantini, Anderson, Smith, Barfield

ITEM III.C., PUBLIC HEARING, RE: ADOPTION OF COMPREHENSIVE PLAN PACKAGE 2014-2 PLAN AMENDMENTS

Chairman Fisher called for a public hearing to consider adoption of the 2014 - 2 Comprehensive Plan Amendment, including one private application for Eagle Properties of Viera LLC (2014-2.1).

There being no comments or objections, the Board adopted Ordinance No. 14-34, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", setting forth plan amendment 2014-2.1; amending Section 62-501, entitled "Contents of the Plan"; specifically amending Section 62-501, Part XI, entitled Future land Use Element and Future Land Use Map Series; providing for internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

**MINUTES OF MEETING
BAYTREE
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Baytree Community Development District was held Wednesday, May 4, 2016 at 1:30 p.m. at the Baytree National Golf Links Meeting Room, 8207 National Drive, Melbourne, Florida.

Present and constituting a quorum were:

Nancy O'Hare	Chairman
Carol Witcher	Vice Chairman
G. Melvin Mills	Supervisor
Edward Rizzotti	Supervisor
Maria Hernandez	Supervisor

Also present were:

Jason Showe	District Manager
Michael Pawelczyk	District Counsel
Melissa DeFrancesco	District Engineer
Alan Scheerer	Field Operations Manager
Mark Sweat	Universal Protection Security
Several Residents	

FIRST ORDER OF BUSINESS

Roll Call

Ms. O'Hare called the meeting to order.

Mr. Showe called the roll.

All in attendance recited the pledge of allegiance.

SECOND ORDER OF BUSINESS

**Discussion of SCCU Landscaping with
Special Counsel**

Ms. Rezanka: I was here on April 6th to give an update on the buffer issue and also the right way issue with the Baytree sign. As you may know the CDD maintains the entrance way, monument signs, trees, lighting, and also along the sides there. There has never been an agreement with the county, they own it but you all have put all of the improvements in and maintained it. We are trying to do a formalized agreement so the issue with Space Coast Credit Union coming in and wanting to take it out will not be an issue in the future. We are working on

and he may have further suggestions or more information but I have not spoken with him about this issue since April 4th. Are there are any questions or comments?

Mr. Mills: I was assigned by the Board to work with the residents in Kingswood. I had asked our Engineer to get their landscape architect engineer to take a look at what was there. He has designed and built many properties for Disney with a solid vegetation buffer. The BDP was a contract between Space Coast Credit Union and this Board and the residents of Baytree. It is not in compliance with what the County requires you have them do but as an individual contract between the understanding of this Board, Community, and Space Coast Credit Union. The environmental impact with what the County says meets what we have is fine, but it doesn't meet what the document says it should be met with. I'm going to ask our landscape architect from Atkins to stand up and review with everyone what he would have done if he designed this.

* Mr. McBurney: I'm glad Mel invited me back. I realized that it was 2005 the last time I stood in the corner talking to you all about tree restoration after the hurricane and native plants. I have had the opportunity to work with a lot of great clients, Disney being one. My primary focus has been transportation and dealing with buffering along transportation systems. I understand the issues that we are dealing with here and I understand the desire to not be seen. It is a very difficult thing that we are talking about because we are talking about living, breathing plants that do not always act the way we want them to act. I heard conversation earlier about the annuals at a particular sign that they are struggling. That is not the way they look in the nursery and if I read the book it says that they are going to get this big, this tall, and this color. There are a lot of things that have to be exactly perfect for that to happen. With that being said, there are several ways to attack a project like this. I think the buffer that has been established is a well-designed buffer to be blocked some day. I think the plants and species are appropriate and the size of them. If I was asked to do something similar in that space, I might have held my hand up to say that this is going to be very difficult because of the size of the buildings that we are trying to block. One of the things that I may have said is that it needs more dirt and more space in order to get a plant that is tall enough or a berm that is tall enough to buffer. If I was doing this I might suggest that we change the engineering a little bit and perhaps share some dirt with the adjacent property owners to create a berm that might be tall enough. We aren't going to do that and I understand that we don't have that opportunity. I think there could be two ways to attack this. One way is perhaps there are larger and more plants installed on the Credit Union side of the

fence and there is also some opportunity to do some buffering on Baytree's side of the fence. That is to distract the eye. I think because of the amount of physical space that is there to work with and with the budget that you have to work with, I think it is appropriate to consider a combination of both. I have looked at the Credit Union plants and as I mentioned they are good plants. Does the bamboo blend with what you are doing here on your side of the fence? Yes I think it does. You have expressed a desire here to not to be totally Florida native plant pallet and that is okay. I think that the plants they have used is going to get immediate height when they mature and you will get a nice broad buffer. There are some other options for the Credit Union to consider; one being a couple of native plants that are durable and set into the southern red cedar or maybe a southern magnolia tree but it could be a little fussy in the wet soils that we have around here. Even another variety of bamboo that might get a little taller with a broader leaf on it and that might give us a quicker buffering. There are drawbacks to every plant that we put into the ground. For example, a southern red cedar tip might be the height that we want to match the building but there is a lot of room here that isn't buffered. That is where this blended plant material is appropriate, the oak setter there and down at the fence level with the buttonbush that they've got are great eye level buffers. The pine trees will give us great canopy and oak trees are another great eye level buffer. The point is that there are options and we aren't too concerned what it might cost to do that on their side of the fence. I will say that there is only so much land in order to dig holes and plant in larger trees so we have to take that into account. If I was being asked to design that buffer I might have done something a little bit differently, but I probably would've been given a budget.

Resident: Can you touch on the overplanting?

Mr. McBurney: Mel mentioned the buffer that we worked on and it was a residential buffer between a busy road and large homes. This buffer was very different because we had about 250 feet between the road and the back of the property. We were able to create a berm about 7 feet tall and then on top of that we were able to plant 22 - 25 foot tall trees. We packed those trees in there because the residents didn't want to see the road on day one. That came at a very high cost but that is the kind of mission and budget that was provided to do that. The overplanting is good now but not necessarily in the future as the trees mature. Over time they begin to thin out and get leggy. If you go and look at the forest, the forest doesn't stay dense all the way to the ground. They begin to mature and branches are lost so there is constant evolution

May 4, 2016

Baytree CDD

of that from a growth perspective. Even that understory that is planted now will begin to change as the sun and shade changes over time. There are pro's and con's to planting a very dense buffer immediately.

Mr. Brekner: I understand what you are saying that when the trees that are planted mature that they will block a lot more of the buildings that we currently see. How long will it take for those trees to mature to that point?

Mr. McBurney: In my experience, a buffer like that will take probably five years. It could even be two or ten.

Mr. Brekner: Using your best estimate.

Mr. McBurney: I would say three to five years.

Mr. Brekner: It is going to be three to five years before we get some sort of blocking view of the building that we thought we were going to have initially. That is my question.

Mr. McBurney: I think the thing to remember is I used the word distract earlier. The easiest way to describe buffering to people is if you hold your hand in front of your face and you look at your hand, what do you see behind your hand? Not much but if you look behind your hand you can see everything. It is the same with trees; you don't know what a live oak is going to look like when it grows up. The bamboo is an interesting plant too and the one that was picked is one that grows like this. It was a great plant to pick to fill in those gaps. I'm not a bamboo expert and I haven't planted a lot of it myself but the research to me says that it is a pretty good cultivar variety that they specified to do that. They could've picked a taller one, but the taller one wouldn't give us the eye level buffer that we might want in the future. I've heard the discussion about removing the slats and I think you are going to see right through that fence then. Then that would require more eye level buffering immediately, which could mean a whole different series of shrubs that should be 8 feet tall to accomplish what those slats are doing. Slats in a PVC fence perform a function but I don't know if I would want one in my backyard either.

Mr. Bosseler: I appreciate your time and thank you for coming. We have ten homes that are directly affected by the discussion that we are having here. I believe our issue is the Space Coast Credit Union fulfill their obligation. We can meet with this gentleman and Mel and come up with five different solutions or additions to the plan. We could submit it to Space Coast and that would be great, but I don't think we are here today to talk about what we can add or subtract. I think we are here today to talk about the failure of Space Coast Credit Union whose Attorney

Mr. Mills: It was to be a no-see-through buffer. Not what the County says or requires, but what the BDP says will happen.

Mr. Smith: Did I miss that?

Ms. Rezanka: The BDP says a solid landscape buffer.

Mr. Smith: As Mr. McBurney said again, as we are in a construction zone, they grow and get nasty and then they diminish and go away. We have plants that have to grow and have to have time to grow. He is saying two to five years and my feeling was that we had eight years before the third building is going to be built so I missed the part about this being a solid buffer. Had I heard that, I would've said that is unrealistic because plants you put in the ground do not mature five years over night. You are saying they haven't met the obligation to make it opaque, so what is preventing them from giving you the \$30,000 to do your part so you will help them make that opaque?

Mr. Mills: There is no way that \$30,000 can begin to achieve the results. If they complied, the \$30,000 was for us to fill in where they did not adequately do so. We just got two bids, one was for \$65,000 and the other was \$45,000.

Ms. O'Hare: The \$30,000 was not meant to be part of their obligation for the buffer. It was to landscape our side of the buffer because of having to tear things out. It was not intended as part of their side.

Mr. Smith: I misunderstood that too because it seems in my mind that if you are going to put a buffering on this side, that is going to add to the overall opaqueness that you are looking for.

Mr. Mills: We have our Attorney on the phone.

Mr. Pawelczyk: We negotiated an agreement between the District, Space Coast Credit Union, and the County in that BDP. Since we wanted to negotiate a solid landscape buffer consistent with the Code of Ordinances of Brevard County, we stated that in the BDP. If we wanted to negotiate an agreement that said the landscape buffer would provide an opaque or solid landscape buffer within eight to ten year, we would've negotiated that in the BDP. We met with Phil Nohrr and he presented to the Baytree CDD Board of Supervisors on the record "You won't be able to see anything."

Mr. Smith: Then that is on Phil Nohrr. I wasn't a part of that discussion.

Mr. Pawelczyk: From the time period he said you wouldn't be able to see anything and that is how the BDP was negotiated and that is what the parties agreed to. I assume that is what the County staff reviewed when they reviewed the BDP they presented it to the County Commission and it was signed by the parties. The \$30,000 as Ms. O'Hare stated, was merely supplemental. That was additional money so we could fill in our side of the buffer because all of the other plants were being removed. We knew that we would have to supplement that somehow and that is what they agreed to do. They agreed that they would provide a solid landscape buffer from the time period set forth from the BDP, which has expired already. Then they said they would give us \$30,000 to use for landscaping and we could use that on the Kingswood buffer or in the Monument median on Baytree Drive. As long as we use it in connection with the project, that money could be used at either location. It was the Board of Supervisors that said we would use the money at the Kingswood area even though the BDP has flexibility for the District to use the \$30,000 for landscaping purposes in other locations. I think the Board and myself do not understand how three parties can enter into an agreement that says one thing and then someone is telling us something different. Even though it is very clear what the intent was when we negotiating a solid landscape buffer and I'm pretty sure there is not a resident in the audience that did not understand it any other way. There is not a Board member or any member of the District Staff that didn't understand it any other way and I would guess that Phil Nohrr didn't understand it any other way either. We talked about it and he put it in the agreement, he drafted it. That is the history on my end and I just want to make sure we are clear.

Mr. Smith: Thank you. I wasn't part and parcel of what Phil Nohrr told anybody. All I know is from what I discussed in my meetings with the people from Baytree and the people from Space Coast Credit Union.

Ms. Schoonmaker: I am one of the four people that met with you at the onset of all of this. I just wanted to clarify one thing. You mentioned all of the issues that we talked about but you forgot one. The other thing that we were extremely concerned about was a five-story parking garage. Besides the construction, which we all understand that it is going to happen, we have a five-story parking garage with lights on it that shine into our neighborhood and we did discuss that with you. That has always been one of the major concerns of the neighbors. We don't want to see the five-story parking garage and I just wanted to clarify that we did talk about that.

Ms. Rezanka: That is because your staff has said they are abiding by the Development Code. The County is not going to send that repeatedly that it is opaque. The language is a solid landscape buffer shall be installed on or before six months from the day of issuance of the initial building permit, which is long passed. Further, it says a violation of this is a Violation of Zoning Code. We could go after Space Coast Credit Union originally and say that they are violating this, but the County can do it because now it is a Violation of Zoning. This is what we were asking staff to define.

Mr. Smith: Whom have you been speaking with? Virginia?

Ms. Rezanka: Darcy and Amanda. I haven't gotten to speak with Virginia but I have to do the letter to Virginia so she can give a staff interpretation so it can come back to you. However in talking with Willson, he hasn't given me an exact answer but they can make a solid landscape buffer within the next two weeks if they wanted to. It may take a lot of money and pulling plants out but they can do that. That is not what they want to do. I am not in favor of going after anyone but I am in favor of trying to a compromise that makes everyone happy with a solid landscape buffer.

Mr. Smith: Willson, I know plants have to have time to grow. Is it reasonable to expect that they can plant all of these plants within two weeks and make the building disappear?

Ms. Rezanka: It's not the building it's the solid landscape buffer.

Mr. Smith: What is the buffer designed to do as far as make the buildings disappear?

Ms. Rezanka: It is supposed to do two different things. There is supposed to be a solid landscape buffer and screen buildings B and D. Building B and D aren't built yet so the problem is they have got to be able to at least stop being able to see through it. They also have the issue of the parking garage, which is not included in screening of this.

Ms. DeFrancesco: Part of the negotiation for the Binding Development Plan was to screen those buildings. Those buildings are new and it was never the intent that the original building would not be screened at all because the existing buffer that you saw was there. We didn't know at the time that the buffer would disappear. In the Development Plan it indicates that new buildings would be screened. The intent is that whatever goes up right now or should've gone up six months ago, should have at the time screened the original buildings and screen the new buildings as well. Kim is right and we understand that, but there is no way that they should be able to see the back of the original building when they couldn't see it before.

* [Mr. Smith: My question to you Willson is the same, is this something that is reasonable and we can expect them to do?

Mr. McBurney: It is possible.

Mr. Smith: I will see what I can do.

Mr. Mills: I think we all understand economic development and we all understand that there is a partnership between business and residents. We live here and we work here. We have got to understand that there needs to be a blend between the citizens and the businesses. Those six hundred people that are coming up from lower Florida could buy his house, but they won't do it because of the situation. It has also affected some of the sales of real estate not even in Kingswood because they come in the front gate, look to the right and see all of that. We are a community that pays for streets, sidewalks, and the infrastructure in Baytree. All we need is for you as a County to support what we need to happen to solve that issue.

Mr. Smith: If we can get a solid buffer out there do you think that is going to help you sell your house?

Ms. Hernandez: Absolutely that is what we are asking for. We want what we were promised from the beginning.

Ms. Mercadante: How would you feel if you went from this to this and you had to look at that?

Mr. Smith: Personally, I wouldn't have it but at the same time this stuff has to grow and you put a buffer in here that is landscaped.

Mr. Schoonmaker: At the meeting we had with you in November, I was there and I spoke, the two major concerns were the monument and what is going to happen as far as the residents having to see the buildings. You couldn't see anything.

Mr. Smith: And a reasonable person would think that it was going to continue to look like that.

Mr. Schoonmaker: Exactly.

Mr. Smith: Kim said they had to rip it out.

Mr. Schoonmaker: A lot of people were there and their representative stood up and said very clearly beyond any doubt that when they got done you will not see anything.

Mr. Smith: I will call Phil and see where we can go from here and see if we can't get some kind of an instant buffer out there that would solve the problem.



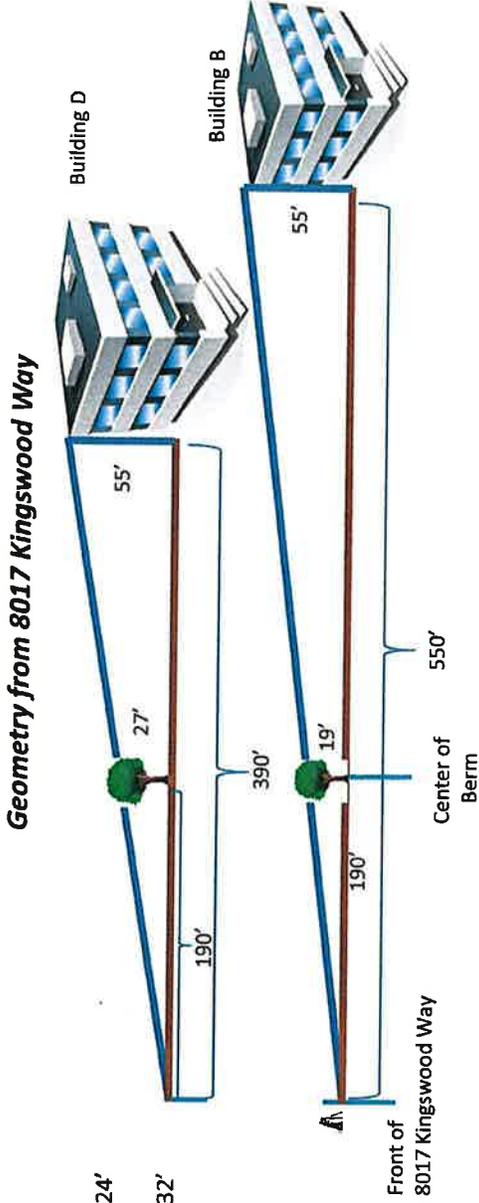
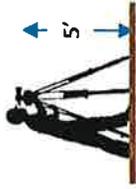
Proposed Locations of Buildings and Distances to Selected Residences

Derivation of Geometries – Buffer Height Needed to Shield Buildings/Lights

To Block View of 55' Building (Berm at 190')

- Building B at 550' distance
 $X = 190' \times (55' / 550') = 19'$ plus 5' height of eye = 24'
- Building D at 390' distance
 $X = 190' \times (55' / 390') = 27'$ plus 5' height of eye = 32'

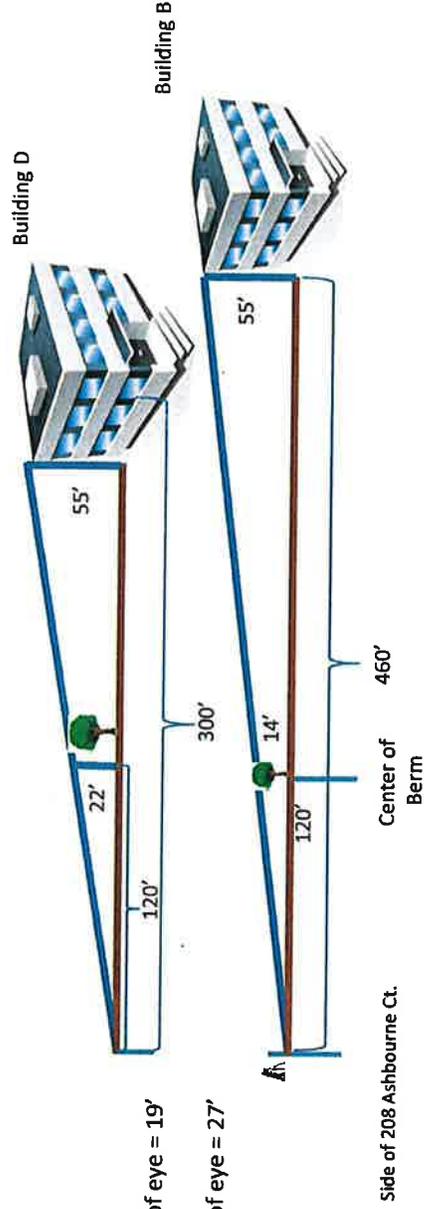
Minimum tree height = 32'



Geometry from 208 Ashbourne Ct.

To Block View of 55' Building (Berm at 120')

- Building B at 460' distance
 $X = 120' \times (55' / 460') = 14'$ plus 5' height of eye = 19'
- Building D at 300' distance
 $X = 120' \times (55' / 300') = 22'$ plus 5' height of eye = 27'

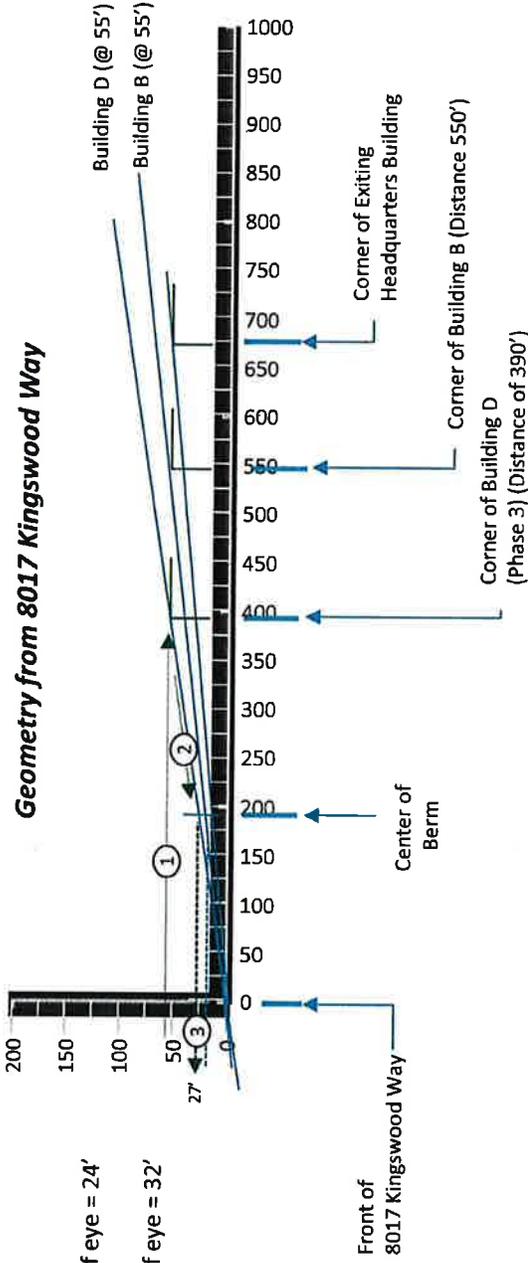


Derivation of Geometries – Buffer Height Needed to Shield Buildings/Lights

To Block View of 55' Building (Berm at 190')

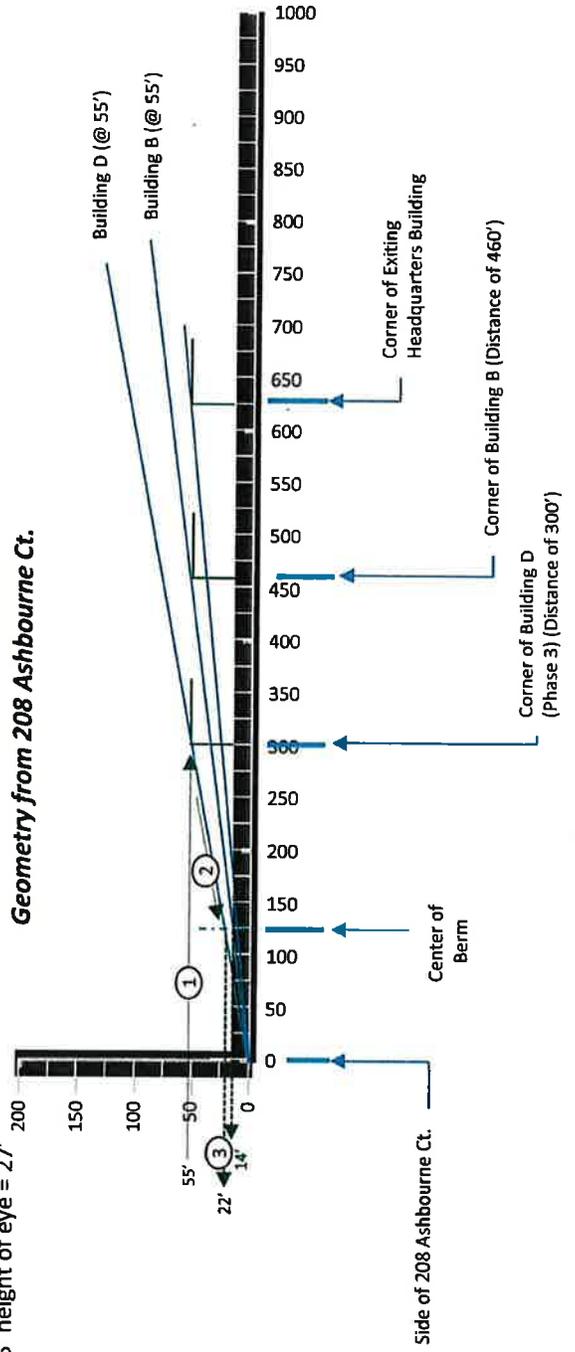
- Building B at 550' distance
 $X = 190' \times (55'/550') = 19'$ plus 5' height of eye = 24'
- Building D at 390' distance
 $X = 190' \times (55'/390') = 27'$ plus 5' height of eye = 32'

Minimum tree height = 32'

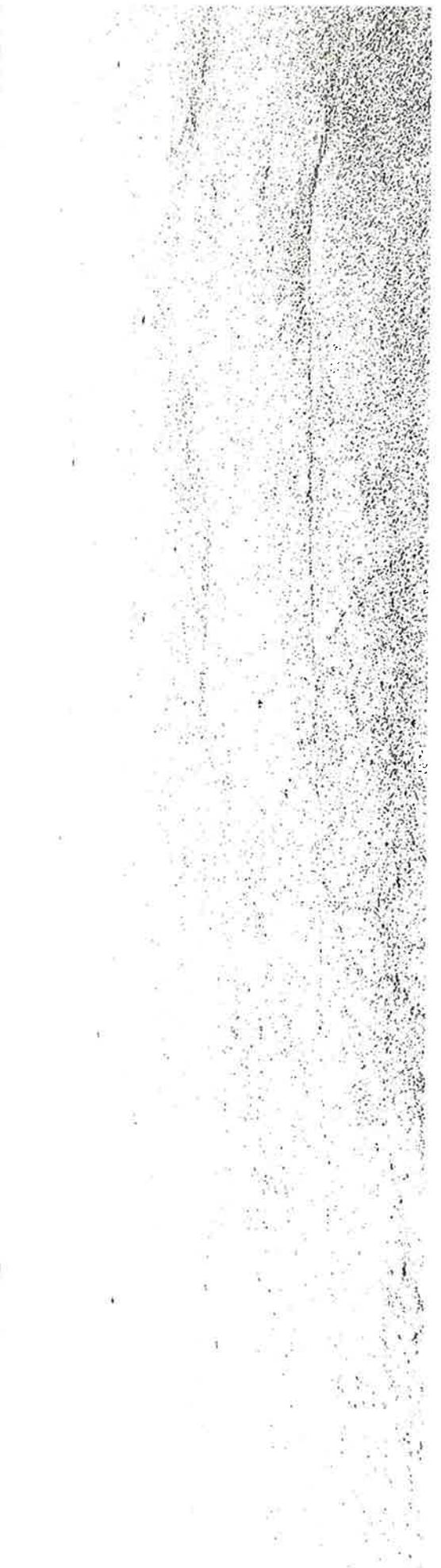


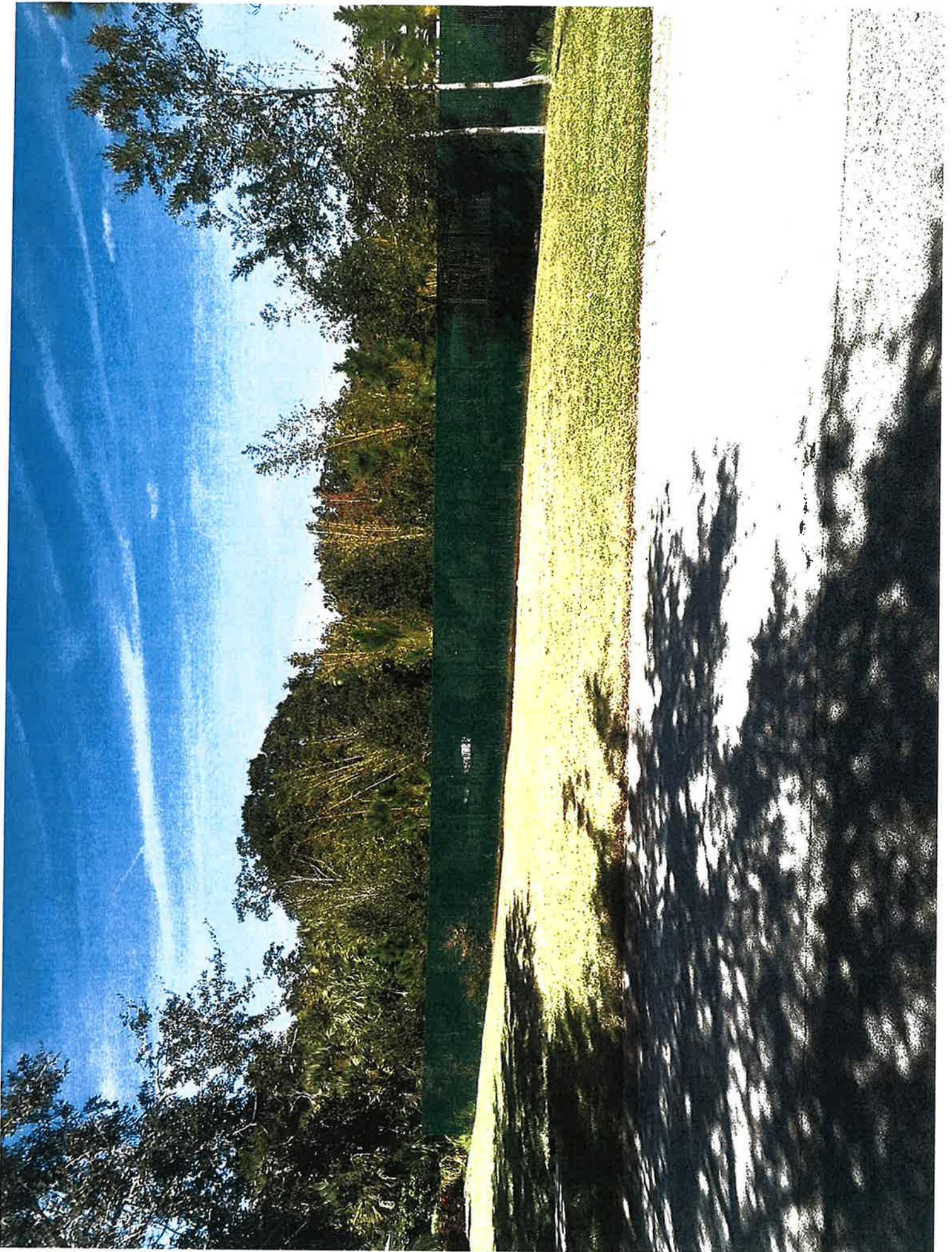
To Block View of 55' Building (Berm at 120')

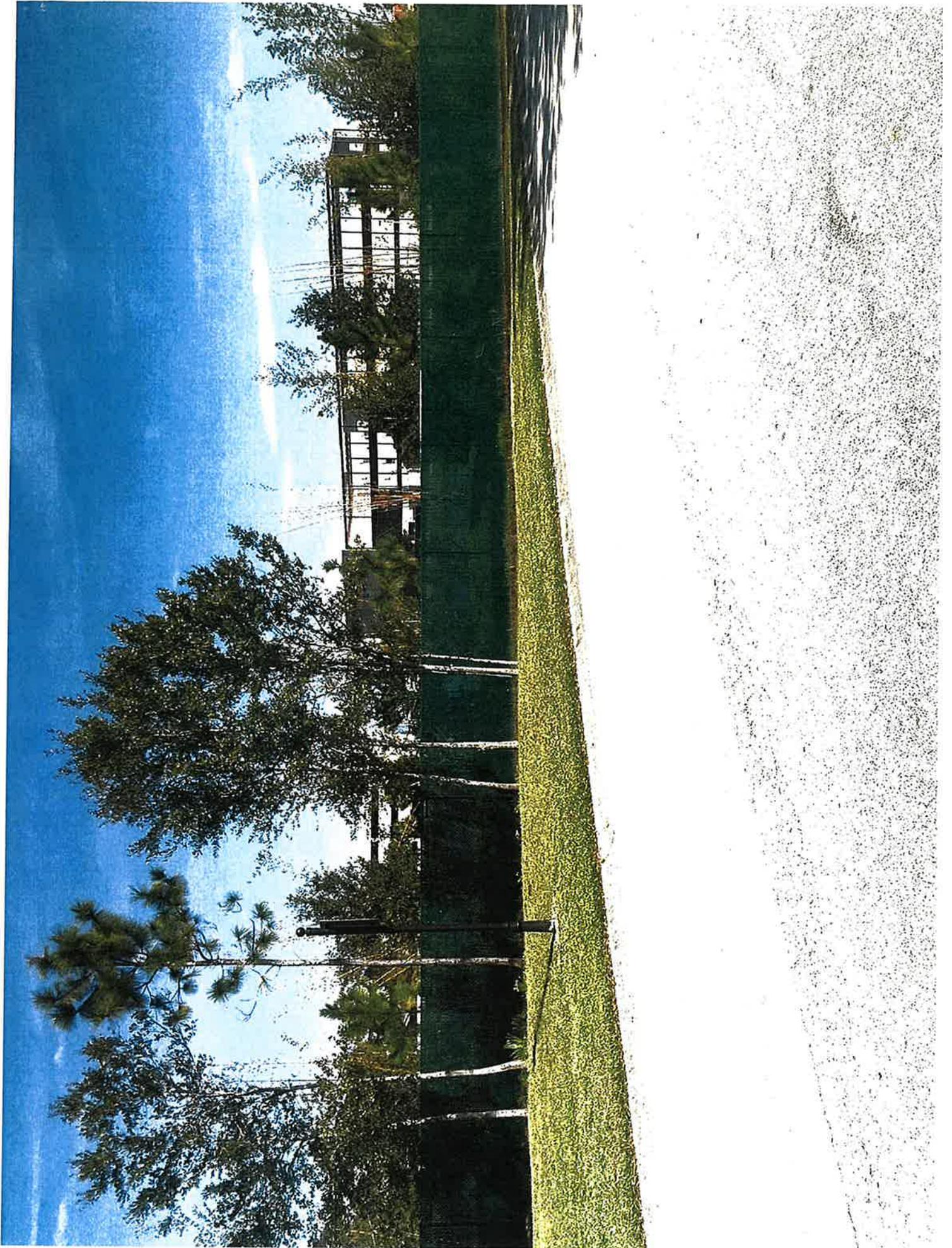
- Building B at 460' distance
 $X = 120' \times (55'/460') = 14'$ plus 5' height of eye = 19'
- Building D at 300' distance
 $X = 120' \times (55'/300') = 22'$ plus 5' height of eye = 27'

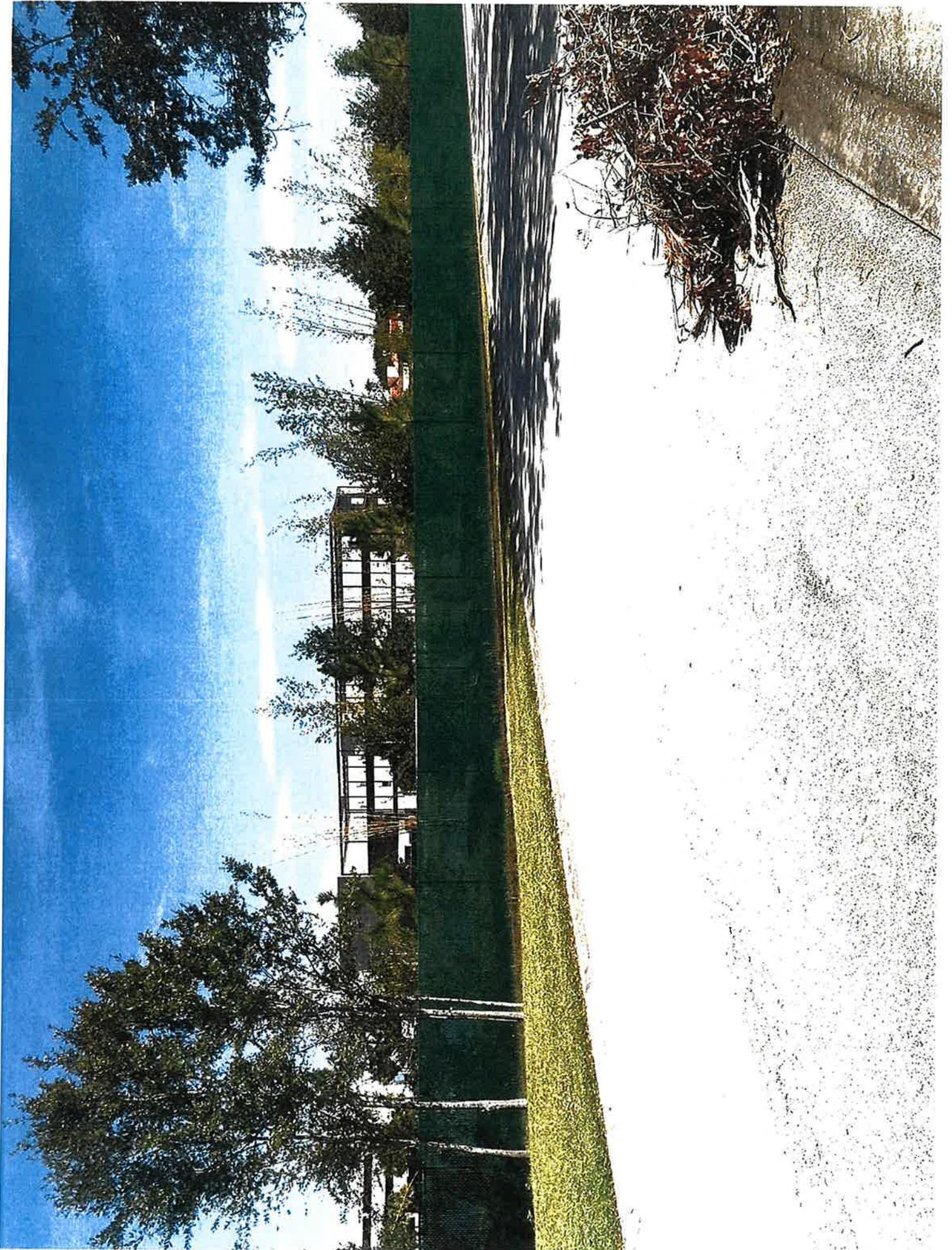


Photographs taken 10/24/16









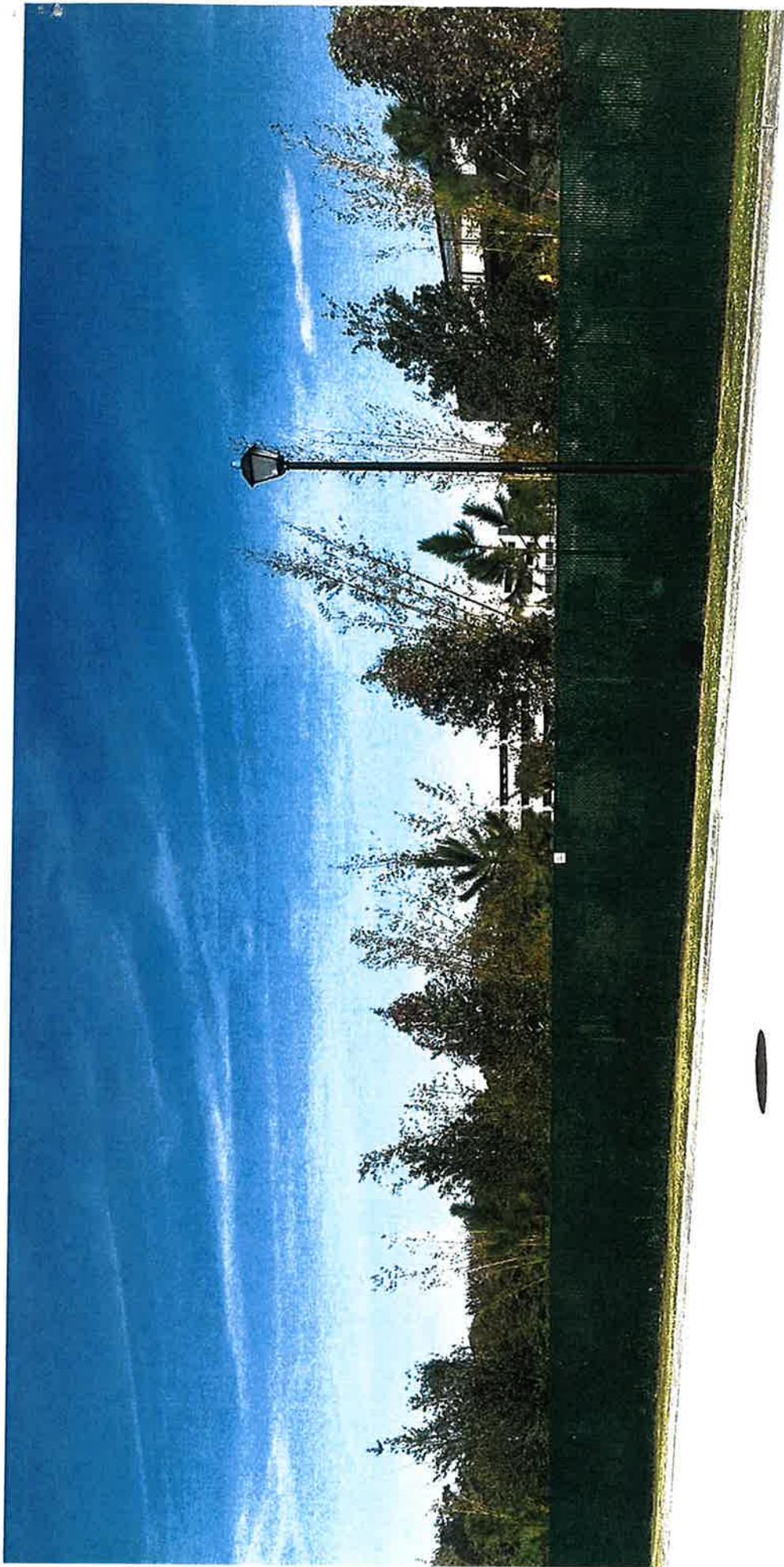














Brevard County Board of County Commissioners Meeting

October 31, 2016

- PRESENTED ON BEHALF OF -

Baytree Community Development District

IV.A.

**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)**

**KIMBERLY BONDER REZANKA, ESQ.
Cantwell & Goldman, P.A.
96 Willard Street, Suite 302
Cocoa, FL 32922**

From: Jason Showe <jshowe@gmscfl.com>
Subject: Fwd: Baytree CDD Comments - SCCU Plans Review
Date: April 27, 2015 at 8:46:32 AM EDT
To: "Sobrino, Robin M" <Robin.Sobrino@brevardcounty.us>
Cc: Alan Scheerer <ascheerer@gmscfl.com>, Stacie Vanderbilt <svanderbilt@gmscfl.com>, "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>

Please see the comments below from the Baytree CDD to the SCCU Expansion plans. Thanks.

PLEASE NOTE NEW EMAIL ADDRESS BELOW

Jason Showe
District Manager
Governmental Management Services, Central Florida
135 W. Central Blvd.
Suite 320
Orlando, FL 32801
407-841-5524 X 105 - Office
407-839-1526 - Fax
407-470-8825 - Cell
jshowe@gmscfl.com

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

History.—s. 1, ch. 2006-232.

Begin forwarded message:

From: Jason Showe <jshowe@gmscfl.com>
Subject: Baytree CDD Comments - SCCU Plans Review
Date: April 27, 2015 at 8:33:06 AM EDT
To: Jason Bartlett <jason@bmsconstruct.com>, Philip Nohrr <Philip.Nohrr@gray-robinson.com>, Jake Wise <jwise@cegenengineering.com>, john@kabboord.com, Doug Padgett <doug@bmsconstruct.com>
Cc: Maria hernandez <mghernandez1@bellsouth.net>, Nancy O'Hare <neveraminute@aol.com>, "G. Melvin Mills Jr." <gmmills@cfl.rr.com>, Ed Rizzotti <erizzotti@cfl.rr.com>, cewitcher@pciol.net, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>, "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, Alan Scheerer <ascheerer@gmscfl.com>, Stacie Vanderbilt <svanderbilt@gmscfl.com>

Good morning,

Please see comments below from the Baytree CDD District Engineer upon review of the landscape and Baytree Dr plans. Please let me know if you have any additional comments. Thanks.

PLEASE DO NOT REPLY TO ALL

PLEASE NOTE NEW EMAIL ADDRESS BELOW

Jason Showe
District Manager
Governmental Management Services, Central Florida
135 W. Central Blvd.
Suite 320

Orlando, FL 32801
407-841-5524 X 105 - Office
407-839-1526 - Fax
407-470-8825 - Cell
jshowe@gmscfl.com

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History.—s. 1, ch. 2006-232.

Begin forwarded message:

From: "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>
Subject: Baytree - SCCU Plans Review
Date: April 26, 2015 at 10:41:27 AM EDT
To: "jshowe@gmscfl.com" <jshowe@gmscfl.com>
Cc: "ascheerer@gmscfl.com" <ascheerer@gmscfl.com>, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>, "McBurney, Willson S" <Willson.McBurney@atkinsglobal.com>

Jason,

I have attached a memo with comments on the SCCU landscape buffer and Baytree Drive modifications. Please distribute to the CDD Board for review and consideration.

Mike - I believe that this should also go directly to the SCCU attorney as well since he provided the plans. Let me know if you would like it to go to someone other than Phil Nohrr.

Thanks.

Melissa DeFrancesco, P.E., LEED Green Associate
Project Manager, Engineering

ATKINS

7175 Murrell Road, Melbourne, Florida, 32940 Tel: +1 (321) 775-6645 | Fax +1 (321) 242-6101 Cell +1 (321) 288-7323 |

Email: melissa.defrancesco@atkinsglobal.com |

Web: www.atkinsglobal.com/northamerica www.atkinsglobal.com

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Consider the environment. Please don't print this e-mail unless you really need to.

Memo

To:	Baytree Community Development District		
From:	Melissa DeFrancesco	Email:	melissa.defrancesco@atkinsglobal.com
Phone:	(321) 775-6645	Date:	24 Apr 2015
Ref:	SCCU Expansion	cc:	GMS
Subject:	SCCU Design Plans Review - Landscape and Baytree Drive Improvements		

Dear Board Members,

Atkins has reviewed the plans provided by Space Coast Credit Union on 4/2/15. The review was performed specifically on the proposed landscape buffer and the Baytree Drive modifications. I offer the following for consideration by the Baytree CDD and SCCU:

Baytree Drive Modifications:

1. Sheet C-1: Note 2-33 indicates two (2) light poles will be relocated to accommodate the road widening. Please provide the lighting plan that indicates where the poles will be relocated. I believe Baytree CDD maintains these poles. Condition of the poles shall be documented prior to commencement of construction.
2. Sheet C-1: Note 2-2 indicates tree and shrub removals in the median to make room for the proposed turn lanes. The CDD should consider removing salvageable plant material within the demolition limits prior to commencement of construction. I would suggest a site meeting between the SCCU contractor and Baytree CDD personnel prior to construction to clearly identify the limits of removal.
3. Sheet C-2D: I recommend that the contractor mill and resurface the widened portion of Baytree Drive from Bedford Drive to Wickham Road so the roadway has a cohesive appearance upon completion.
4. Sheet C-2D: Please place a note on the plans indicating that all disturbed areas within the Baytree right-of-way shall be restored to pre-construction condition or better. This would include but not be limited to sod, landscape plants/shrubs/trees, irrigation and other utilities disturbed during the course of construction.
5. Sheet C-4D: Please provide the detail for the Offset Type 4 Curb Inlet specified in Note 2-1.

Landscape Buffer:

1. Please be more specific about which Invasive species are proposed to be removed as a part of this work (ref sheet L-8, Additional Requirements, note 7)
2. Please confirm if an irrigation system is part of this project.
3. It is doubtful that much "existing vegetation" buffer will be left intact after construction (ref sheet L-4 and L-5). A design, to meet code requirements, to supplement the existing vegetation/buffer is recommended.
4. At 15' OC, the Bamboo will provide a dense vertical buffer after some time, perhaps several years. A tighter spacing to provide a more immediate horizontal buffer is recommended.
5. The proposed Pines in the wet soils in this area may struggle. Perhaps some soil amendments or berms should be considered to elevate the pines from the water table.
6. Perhaps a berm for the entire length of the parking lot and building pad is a consideration to eliminate high water table issues and to gain immediate elevation while plants can grow into an effective buffer.

Please feel free to contact me with any questions or concerns.

Melissa DeFrancesco

From: Jason Showe <jshowe@gmscfl.com>
Subject: Fwd: Baytree CDD - SCCU Expansion Project
Date: August 10, 2015 at 2:47:11 PM EDT
To: "Sobrino, Robin M" <Robin.Sobrino@brevardcounty.us>
Cc: "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>

We wanted to provide you our comments below to the SCCU as an FYI. Thanks.

PLEASE NOTE NEW EMAIL ADDRESS BELOW

Jason Showe
District Manager
Governmental Management Services, Central Florida
135 W. Central Blvd.
Suite 320
Orlando, FL 32801
407-841-5524 X 105 - Office
407-839-1526 - Fax
407-470-8825 - Cell
jshowe@gmscfl.com

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

History.—s. 1, ch. 2006-232.

Begin forwarded message:

From: Jason Showe <jshowe@gmscfl.com>
Subject: Baytree CDD - SCCU Expansion Project
Date: August 10, 2015 at 2:14:06 PM EDT
To: Jason Bartlett <jason@bmsconstruct.com>, Jake Wise <jwise@cegengineering.com>, Doug Padgett <doug@bmsconstruct.com>
Cc: Maria hernandez <mghernandez1@bellsouth.net>, Nancy OHare <neveraminute@aol.com>, "G. Melvin Mills Jr." <gmmills@cfl.rr.com>, Ed Rizzotti <erizzotti@cfl.rr.com>, cewitcher@pciol.net, Sandy Schoonmaker <schoon67@cfl.rr.com>, Stacie Vanderbilt <svanderbilt@gmscfl.com>, Alan Scheerer <ascheerer@gmscfl.com>, "DeFrancesco, Melissa B" <Melissa.DeFrancesco@atkinsglobal.com>, "Michael J. Pawelczyk" <mpawelczyk@bchlm.com>

Building Management Systems Team,

At the request of the Baytree CDD Board of Supervisors, I am writing to cordially request an open line of communication on your Space Coast Credit Union expansion project.

In order to streamline the process, the Board has asked that I be the point of contact for you, if you are willing, to provide periodic updates or other items to our Board and residents. This is done in the spirit of cooperation to help make the expansion as easy as possible from both perspectives.

Our District Engineer has reviewed the plans we received and I am attaching those to this email as recommendations/comments on the plans from the Baytree CDD perspective.

From: DeFrancesco, Melissa B Melissa.DeFrancesco@atkinsglobal.com
Subject: Baytree CDD - SCCU 7/31/15 Plans Review
Date: August 5, 2015 at 9:39 AM
To: jshowe@gmscfl.com
Cc: Alan Scheerer ascheerer@gmscfl.com, Michael J. Pawelczyk mpawelczyk@bchfm.com

Jason,

The plans provided by SCCU on 7/31/15 were reviewed by Atkins staff with regard to the landscape buffer and Baytree Drive traffic improvements. I am providing the initial review comments and observations for distribution to the Board ahead of today's CDD meeting. We can discuss further at the meeting and finalize our comments back to SCCU afterward.

Comments and Observations provided by Willson McBurney, RLA:

1. The revised plans show an increase in Live Oak and Slash Pine. It does appear that the density of the buffer trees has increased. This may be the reason the plan quantities increased.
2. The revised plans show the use of Silver Saw Palmetto in the buffer which can provide an understory buffer to the pines and oaks when their respective canopies mature. However, in the size proposed, 3 gallon, it will be many years before those plants provide any buffering value.
3. The revised plans also show large (30/45 gallon) Stoppers and Wax Myrtle which will provide a nice understory buffer upon planting.
4. The oak trees, pine trees and bamboo are sized and spaced to provide a very nice buffer upon planting. I do not think that the proposed building and parking lot, in the background, will be immediately buffered with this planting. That being said, with irrigation the proposed buffer should provide a nice screen in several years. I cannot determine if the future building "D" would be seen after initial planting. I do think the buffer will mature to provide a good buffer to that building in the future.
5. My overall impression is that the proposed design will provide a reasonable buffer at planting and a very dense buffer in several years. The bamboo will provide the quickest buffer but is only directly adjacent to the new parking lot. It may not provide buffering of the building "D" from eastbound Kingswood Way.
6. I still have some concerns about the planting of the oaks and pines in the existing soils. I'll again recommend the consideration of a berm to elevate plantings and to elevate rootballs from the wet existing soils. I understand the planting space is limited, but a quick analysis of the cross section between the proposed parking and Kingswood way could help to determine if this is a viable option. Slopes of 4:1 or 3:1 are easily plantable.
7. It would not be inappropriate for the CDD to request a "line of sight" graphic depicting views from the residences to the proposed improvements. This illustration could show a cross section across the SCCU site to the homes on Kingswood Way. These types of graphics are simply meant as a means to communicate the buffering needs and the proposed design.

Comments provided by Melissa DeFrancesco, PE:

1. Please provide anticipated schedule dates for work along the Kingswood property line

- and for Baytree Drive demolition and improvements.
2. Please confirm whether fencing shown on the plans at the Kingswood property line is the construction fence recently installed or a permanent fence. The plans do not call out the fence or provide a legend for the fence line types.
 3. Item 2-24 on C-4D indicates relocation of the light poles on Baytree Drive to be coordinated with the utility owner. Who is the owner? As stated in the April comments, I believe Baytree CDD maintains those light poles.
 4. Baytree CDD should review the existing landscape material in the Baytree Drive islands with Tropi-care to determine if any material should be salvaged ahead of the demolition.
 5. SCCU provided mill and resurface of the widened section of Baytree Drive as requested in the April comments.
 6. SCCU did not add a note to the plans as requested for restoration of any disturbed areas within Baytree ROW. I suggest photo documentation of the Kingswood property line (trees, shrubs, any above grade utilities, curb and lawn) and Baytree Drive (any facilities maintained by the CDD such as sidewalks, light poles, landscape).
 7. Sheet L-3: The note on the plan for the Kingswood landscape buffer description says the buffer will be opaque providing complete screening with a **maximum** height of 25 feet within 5 years of planting. Sheet L-11 indicates a **minimum** height of 25 feet within 5 years of planting. The BDP requires a solid buffer that shall screen Buildings B-D. The BDP does not limit the height of the buffer or allow a 5 year growth period. The screening shall perform upon installation and shall grow to a height necessary to provide full screening of the SCCU development from Baytree residents.

Traffic Signal Comments provided by Paul Mannix, PE, PTOE:

1. Sheet T-4: Have the yellow and red times been calculated following the most recent TEM methods?
2. Sheet T-4: Have the turning movements for the Baytree Drive northbound and southbound left turns been checked to ensure they can run concurrently?
3. Sheet T-4: Add movement 7 to the red flashing operation in Controller Operations Note 3.
4. Sheet T-4: Indicate whether new wires are needed for the new signal heads.
5. Sheet T-4: Are the wires long enough for the existing signal head relocations?
6. Sheet T-4: Please indicate where Pay Item 690-10 is being removed.
7. Sheet T-4: It does not appear that the proposed signal head locations line up with the lanes. Please verify and adjust accordingly.
8. Sheet T-4: Add a guide stripe for the dual left turns from northbound Baytree Drive onto Westbound Wickham Road.
9. Sheet T-4: Add Pay Item 670-5-400 indicating modification of Traffic Control Assembly.
10. General: Other comments are related to FDOT Pay Item numbers.

Thanks.

Melissa DeFrancesco, P.E., LEED Green Associate
Project Manager, Engineering

Baytree
Community Development District

135 W. Central Blvd, Suite 320, Orlando FL, 32801
Phone: 407-841-5524 - 877-855-5251- Fax: 407-839-1526

October 15, 2015

Stockton Whitten, County Manager
Brevard County
2725 Judge Fran Jamieson Way, Bldg. C
Viera, Florida 32940

Timothy Antonition, COO
Space Coast Credit Union
8045 N. Wickham Road
Melbourne, Florida 32940

**Re: Baytree Community Development District ("District")
Binding Development Plan – Space Coast Credit Union Project**

Gentlemen:

Brevard County, the Space Coast Credit Union ("SCCU"), and the District are parties to the Binding Development Plan, dated March 17, 2015, approved by the Board of County Commissioners, and recorded at Official Records Book 7326, Page 1611 of the public records of Brevard County (the "BDP"), a copy of which is enclosed for your convenience. The purpose of the BDP is to mandate certain conditions that must be satisfied by SCCU in order to mitigate the "negative impact on abutting land owners and affected facilities or services" associated with the development of the SCCU Property. The SCCU Project is now well underway.

Since the SCCU Project began, the existing landscape buffer located along the southern border of the SCCU property has been removed exposing the construction site and activities to those Baytree residents living just to the south of the SCCU property. My office and County code enforcement staff have also been informed of certain after-hour construction activity that took place soon after SCCU broke ground on its project. While the code enforcement matter appears to have been remedied for the time being, District residents recently appeared at the October District Board of Supervisors (the "District Board") meeting to express their concerns with respect to the landscape buffer that, pursuant to Paragraph 2 of the BDP, is required to be completed by SCCU no later than January 30, 2016, which is six months from the date of issuance of the initial building permit for the SCCU project.

In light of the many concerns expressed to the District Board and District staff by the residents of Baytree, the District Board has directed my office to transmit this correspondence to you so as to avoid any future disputes or misunderstandings pertaining to the Landscape Buffer referenced in Paragraph 2 of the BDP. First, it is important to note that the Landscape Buffer of the southern boundary of the SCCU property "shall be a solid Landscape Buffer, and shall screen Building B through D...from the property to the South." The "property to the South" is the Baytree property, and more particularly the subdivision of Kingswood. During several public meetings prior to the recordation of the BDP, SCCU represented to the District, the residents of Baytree, and the County that once this Landscape Buffer was installed, the residents of Baytree would not be able to see any portion of the SCCU Project. Based on those representations, the

BDP was prepared to require the "solid Landscape Buffer" at the time of installation and all parties to the BDP agreed to that clear and unambiguous standard.

Second, we have been asked by the District Board to point out what can only be scrivener's errors on the landscape plans that were submitted to the County by SCCU for the referenced Landscape Buffer. In certain locations on said plans, there are references that the landscape material installed at the Landscape Buffer be installed at a "minimum" height of twenty-five (25') feet, while in another location there is a reference that the landscape material installed at the Landscape Buffer be installed at a "maximum" height of twenty-five (25') feet. In addition, the landscape plans mistakenly state, in contravention to the clear and unambiguous language of the BDP, that the Landscape Buffer will "provide complete screening within five (5) years." It is certainly clear when reading the unambiguous and agreed upon terms and conditions set forth in the BDP, as well as common sense, that the correct standard to measure the height of the installed Landscape Buffer is that it be installed at a minimum height of twenty-five (25') feet and that the Landscape Buffer be "solid" to prevent the residents of Baytree from being able to see any portion of SCCU Buildings B through D, including the buildings, lighting parking areas, and vehicles at the SCCU property.

It is the District's hope that this letter be distributed by the recipients to the appropriate persons within their respective organizations, so that the standards and timeframes agreed upon with respect to the Landscape Buffer set forth in the BDP and all other requirements of the BDP are achieved by the parties without further reminders from the District. Should you have any questions or wish to discuss this further, please do not hesitate to contact me at 407-841-5524, ext. 105.

Sincerely,



Jason Showe
District Manager

Enclosure

cc: Curt Smith, County Commissioner (via email only)
Vanessa Valdengo, Assistant County Manager (via email only)
Robin Sobrino, Director, Planning & Development Department (via email only)
Jason Bartlett (via e-mail only)
Jake Wise (via e-mail only)
Doug Padgett (via e-mail only)
Members of the Board of Supervisors of the Baytree CDD (via email only)
Michael J. Pawelczyk, District Counsel (via email only)
Melissa DeFrancesco, District Engineer (via e-mail only)

Willson S. McBurney, PLA

Atkins

Sr. Landscape Architect

Willson McBurney has 29 years of land planning and landscape architecture experience including site suitability studies, master planning, detailed site design, and construction administration. His career has focused on providing cost effective Context Sensitive Solutions to transportation agencies across the country. His work experience shows a special emphasis of Roadway Landscape Architecture and the preparation Design Guides for Toll Agencies who are concerned with transportation aesthetics issues.

Mr. McBurney's representative project experience includes the following:

- Central Florida Expressway Authority (CFX) landscape architecture, Orange County, FL
 - FDOT District One landscape architecture, Bartow, FL
 - FDOT District Two landscape architecture, Lake City, FL
 - FDOT District Three, landscape architecture, Chipley, FL
 - FDOT District Five landscape architecture, Deland, FL
 - FDOT District Seven, landscape architecture, Tampa, FL
 - FDOT, Florida's Turnpike Enterprise, Orlando, FL
 - Seminole Expressway, Landscape Architecture, Seminole Country, FL
 - Sunshine Skyway Bridge Landscape Architecture, Hillsborough County, FL
 - Triangle Expressway Landscape Design Guide, Raleigh, NC
 - Monroe Parkway Aesthetic Design, Stallings, NC
 - Cape Fear Skyway concepts and visualizations, Wilmington, NC
 - Garden Parkway practical design workshop, Charlotte, NC
 - Monroe Bypass Design Guidelines, Raleigh, NC
 - I-15 Aesthetics Design Guidelines Concepts, Las Vegas, NV
 - Hill Country Parkway Design Guidelines, Austin, TX
 - Aesthetic Design Guidelines, Central Texas Turnpike, Austin, TX
 - Suncoast Parkway Aesthetic Design Guidelines, West Central FL
 - Polk County Parkway Landscape Design Guide, Lakeland, FL
 - Golden Oak, Disney Development Company, Lake Buena Vista, FL
 - Grand Floridian Conference Center, Disney Development Company, Lake Buena Vista, FL
 - Eagle Pines Osprey Ridge Golf Club, Disney Development Company, Lake Buena Vista, FL
 - Osceola Heritage Park Master Plan, Osceola County, FL
 - Mack Overstreet/College Station Master Plan, Osceola County, FL
 - Poinciana TOD, Osceola County, FL
 - US 192 East CRA Streetscape Guidelines, Osceola County, FL
-



Education

B.S., Landscape Architecture, Purdue University, 1988

Registrations/licenses

Professional Landscape Architect:

- Florida LA0001426, 1991
- Nevada 810, 2009
- North Carolina 1623, 2010

Professional affiliations

- American Society of Landscape Architects (ASLA) Transportation Research Board
- (TRB) Committee on Landscape and the Environment (AFB40), Full member

FDOT honors

- Director's Award for Outstanding Achievement, Roadway Aesthetics Community of Practice, October 2012
- Davis Productivity Award, FDOT Staff Hour Task Team, 2002