



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Addon

J.4

7/21/2020

Subject:

Banana Riverfront, LLC

Fiscal Impact:

unk

Dept/Office:

Citizen Request / Kim Rezanka, Cantwell & Goldman, P.A.

Requested Action:

Request to allow Fla. Stat. 252.363 to act as a tolling of these permits, as set forth below, and/or to allow final approval of the project, per the Settlement Agreement, prior to the performance bond expiration on October 26, 2020.

Summary Explanation and Background:

RE: Banana Riverfront, LLC: Site Plan Application No. 19ER00037; Temporary CO PERMIT# 17BC10869; & Settlement Agreement dated March 21, 2017

On October 8, 2019, the County Commission voted to allow Banana Riverfront, LLC (a/k/a/ Squid Lips Cocoa Beach) nine months to complete all improvements required under the Settlement Agreement. That deadline is July 22, 2020. If the improvements are not completed by that date, County Staff is authorized to call the performance bond without further Board action. As we expect the work to be completed by the end of the July or early August (but not sure as to inspection timeline and approvals), it is imperative that we have guidance on whether these three (3) "permits" have been tolled, or if a formal extension of that deadline is required.

Since the meeting with staff on Oct 10, 2019, MBV Engineering made its initial Engineering Revision submittal in November of 2019. After four (4) more resubmittals, a combined site plan was approved on June 2, 2020. As MBV worked with the County Staff, there were new items (such as planting the ponds and regrading area on the site) that were never contemplated. Also, due to complete business shutdown at Squid Lips from the "safer at home" order and the unexpected death of Banana Riverfront's contractor, there have been challenges to completing the work finally approved on June 2nd.

Final site plan approval was granted on June 2, 2020. The contractor that had been hired to perform all work necessary passed away unexpectedly this Spring, and Mr. Underhill was required to get new bids, once the approval was final. The surveyor completed the grade staking (74 stakes) for the revised elevations of the ponds approximately 10-14 days ago. Mr. Underhill signed the contract for the grading and plant installation

452

on June 26th, and the work was planned to commence on Monday, July 6th. However, because of the continued rains, the ponds have been full of water so grading and planting could not take place in the ponds as anticipated. Some grading has been accomplished but work has been intermittent waiting for the ponds to sufficiently dry out to allow for the grading equipment to proceed.

The contractor anticipates 7-10 days to complete the grading and an additional 2 days to install the plants (assuming no rain or other delay). Without the delays due to rain, this work would have been completed by July 22nd (deadline for completion); but upon completion of the work the surveyor will need to complete an as-built, Bruce Moia will need to review and certify completion, then the County will need to inspect. These items will take the final approval beyond July 22nd.

The entire costs for the work and as-built is approximately \$10,000, and all should be substantially completed by July 22nd, weather permitting. For the County to pull the performance bond on July 22nd would be ineffective to cause the work to be completed.

With this as background, we are asking for confirmation that Governor DeSantis' March 1, 2020 Declaration of Emergency has tolled the period of time remaining for Banana Riverfront to exercise its rights of completion under the above three (3) permits/authorizations.

As support for this position, we have attached two documents, Fla. Stat. 252.363 and Fla. AGO 2012-13. Fla. Stat. 252.363 requires the tolling and extension of development orders following the declaration of a state of emergency by the Governor. We believe it is clear that the Site Plan and Temporary CO are permits which fall under this Statute and are tolled.

The more difficult question is whether the Settlement Agreement is an "authorization" or a "development order". We believe that it is and ask that you or the County Attorney's office so advise. While the term "development order" is not defined for purposes Sec. 252.363, that phrase is defined elsewhere in the statutes. As set out in Fla. AGO 2012-13, "development order" includes a development permit, which includes "any other official action of local government having the effect of permitting the development of land." Certainly, the Settlement Order had the effect of allowing the development of the land owned by Banana Riverfront. The case of Preserve Palm Beach PAC v. Town of Palm Beach, attached, is instructional on this issue and supports that the Settlement Agreement is a Development Order.

We request that the County Commission acknowledge that Fla. Stat. 252.363 applies to the three referenced permits, including the Settlement Agreement. Should the tolling extend past the performance bond expiration on October 26, 2020, Banana Riverfront, LLC will need to provide another bond to the County.

Contact: Kimberly B. Rezanka, Cantwell & Goldman, P.A., 321-639-1320, ext. 123

Clerk to the Board Instructions:



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 22, 2020

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item J.4., Citizen Request from Banana Riverfront, LLC.


The Board of County Commissioners, in regular session on July 21, 2020, denied the citizen request by Banana Riverfront, LLC; authorized the Chair and County staff to execute any necessary documents in order to grant a 35-day extension starting today, in exchange for Banana Riverfront, LLC, waiving any tolling arguments they may have and reaffirming the remainder of the Settlement Agreement.

Upon execution of any agreement, please return a fully-executed agreement to this office for inclusion to the official record.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Kimberly Powell, Deputy Clerk

cc: Assistant County Manager Denninghoff
County Attorney

Whereas, the Principal has entered into a **Settlement Agreement dated March 21, 2017 ("Settlement Agreement") with the Obligee and has received Site plan approval for 17AD00026 on September 25, 2018**, guaranteeing only that the Principal will **complete all improvements shown on approved plan #17AD00026 including corrections of outstanding deficiencies and approved work for stormwater improvements as per the County approved cost estimate prepared by: Bruce Moia, PE of MBV Engineering, Inc. said Settlement Agreement and site plan and cost estimate, all attached** to and made a part hereof, at certain land known as 2200 Orlando Ave., Cocoa Beach, FL 32931 all of which improvements shall be completed on or before **September 25, 2020** or any extension thereof, and the Principal provides this bond as security for such agreement.



BOARD OF COUNTY COMMISSIONERS

J.4
County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

TO: Kimberly Powell, Clerk to the Board

FROM: Jessica Bayne, County Attorney's Office 

DATE: July 30, 2020

RE: Banana Riverfront, LLC

Please find enclosed the original Amendment to Mediated Settlement Agreement dated March 21, 2017 between Brevard County, Florida and Banana Riverfront, LLC dated July 22, 2020. Upon attestation by Mr. Ellis, please provide our office with a copy of same.

If you have any questions, please feel free to contact this office. Thank you.

Amendment to Mediated Settlement Agreement dated March 21, 2017 between Brevard County, Florida and Banana Riverfront, LLC

THIS AMENDMENT is entered into the date of last signature below by and between the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as the "County"), and Banana Riverfront, LLC, a limited liability corporation doing business in the State of Florida.

WHEREAS, the parties entered into a Mediated Settlement Agreement in 2017 (hereinafter referred to as the Mediated Settlement Agreement) to resolve code violations stemming from construction conducted without permits in 2016; and

WHEREAS, the Mediated Settlement Agreement allowed a method to cure violations relating to health safety and environmental issues by obtaining after-the-fact permits; and

WHEREAS, these permits were issued to allow work to be completed in order to cure violations by bringing existing improvements into compliance with applicable codes, not to authorize or approve new development; and

WHEREAS, Banana Riverfront, LLC has failed to move expeditiously; and

WHEREAS, Banana Riverfront, LLC made an initial submittal of plans on May 5, 2017 to initiate compliance actions; and

WHEREAS, the first two plans submitted by Banana Riverfront, LLC required two to three resubmittals due to deficiencies in the plans, and permit extensions were provided; and

WHEREAS, the County has granted four temporary Certificates of Occupancy for this project, the dates of issuance being February 15, 2018, August 16, 2018, February 14, 2019, and August 14, 2019; and

WHEREAS, the most recent extension was granted by the Board of County Commissioners on October 22, 2019 for a period of nine months; and

WHEREAS, the next permit application was submitted to the County for an Engineering Revision on November 5, 2019; and

WHEREAS, the November submittal required five resubmittals before a plan could be approved, and

WHEREAS, Banana Riverfront, LLC has requested yet another extension of the Mediated Settlement Agreement alleging that the settlement agreement is a development permit and that the site plan permit should be extended under Section 252.363, Florida Statutes, due to the existing state of emergency as a result of Covid-19; and

WHEREAS, the County maintains Section 252.363 does not apply to holders of permits who are in violation of the County Code, pursuant to Section 252.363(d)3., Florida Statutes, which indicates the tolling section "shall not" apply to: "the holder of a permit or other authorization who is determined by the authorizing agency to be in significant non compliance with the condition of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement or an equivalent action"; and

WHEREAS, Section 252.363(3), Florida Statutes, "does not restrict a county or municipality from requiring the property to be maintained and secured in a safe and sanitary condition in compliance with applicable laws, administrative rules, or ordinances"; and

WHEREAS, the code violations on the property caused significant health and safety issues, as demonstrated by the fire on the premises during the "cure" period; and

WHEREAS, the stormwater management system remains out of compliance with existing codes, resulting in the possible contamination of the ground water and the Banana River.

NOW, THEREFORE, in consideration of the mutual promises contained herein and such other good and valuable consideration, receipt of which are hereby conclusively acknowledged, the Parties hereto agree to amend the Settlement Agreement as follows:

1. All the recitals are adopted and included herein.
2. The Mediated Settlement Agreement is amended as follows:

Banana Riverfront, LLC recognizes and acknowledges this Mediated Settlement Agreement and associated permits are not considered development orders or permits subject to extension under Section 252.363, Florida Statutes.
3. Banana Riverfront, LLC specifically waives all claims to any tolling or extension of time provided under the referenced statute or any other extensions provided by any other statute or regulation in regard to permits associated with this agreement or subject property.
4. Brevard County hereby grants an extension of 35 days, from July 22, 2020 to August 27, 2020, for completion of all actions addressed by the Mediated Settlement Agreement. If the construction is not completed by August 27, 2020, the County shall: (a) call the bond, (b) revoke the temporary Certificate of Occupancy, and (c) institute Code Enforcement proceedings.
5. If the work has not been completed within this 35-day window, the restaurant on the property shall be closed on August 27, 2020 and shall remain closed until the property is brought into compliance with all local, state, and federal laws, ordinances, and regulations.
6. In the event the necessary work is not completed by owner or the bonding company, Brevard County is authorized to enter the property, complete the required improvements and lien the property for the cost of improvements insofar as funds are not provided by Banana Riverfront, LLC or its bonding company.

ATTEST:

BREVARD COUNTY, FLORIDA

Scott Ellis

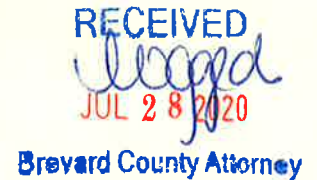
By: _____
Bryan Andrew Lober, Chair

(as approved by the Board on _____ 2020)

BANANA RIVERFRONT, LLC

By: Buzz Underill, Manager

Amendment to Mediated Settlement Agreement dated March 21, 2017 bet
Brevard County, Florida and Banana Riverfront, LLC



THIS AMENDMENT is entered into the date of last signature below by and between the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as the "County"), and Banana Riverfront, LLC, a limited liability corporation doing business in the State of Florida.

WHEREAS, the parties entered into a Mediated Settlement Agreement in 2017 (hereinafter referred to as the Mediated Settlement Agreement) pursuant to F. S. 70.51 and F.S. 163; and

WHEREAS, Banana Riverfront, LLC made an initial submittal of plans on May 5, 2017, and

WHEREAS, the County has granted four temporary Certificates of Occupancy for this project, the dates of issuance being February 15, 2018, August 16, 2018, February 14, 2019, and August 14, 2019; and

WHEREAS, the most recent extension was granted by the Board of County Commissioners on October 22, 2019 for a period of nine months and expired on July 22, 2020; and

WHEREAS, the next permit application was submitted to the County for an Engineering Revision on November 5, 2019; and

WHEREAS, the November submittal required five resubmittals before a plan could be approved; and

WHEREAS, Banana Riverfront, LLC has requested another extension of the Mediated Settlement Agreement alleging that the settlement agreement is a development permit and that the site plan permit should be extended under Section 252.363, Florida Statutes, due to the existing state of emergency as a result of Covid-19.

NOW, THEREFORE, in consideration of the mutual promises contained herein and such other good and valuable consideration, receipt of which are hereby conclusively acknowledged, the Parties hereto agree to amend the Settlement Agreement as follows:

1. All the recitals are adopted and included herein.
2. The Mediated Settlement Agreement is amended as follows:
 - a. Banana Riverfront, LLC specifically waives all claims to any tolling or extension of time provided under the referenced statute and any other extensions provided by any other statute or regulation in regard to permits associated with this agreement or the subject property.
 - b. Brevard County hereby grants an extension of 35 days, from July 22, 2020 to August 27, 2020, for completion of all actions addressed by the Mediated Settlement Agreement. If the

construction is not completed by August 27, 2020, the County shall call the bond and take whatever other legal actions it deems appropriate.

c. All other provisions of the Mediated Settlement Agreement remain in full force and effect.

Done and executed this 22nd day of July, 2020.

ATTEST:

BREVARD COUNTY, FLORIDA




Scott Ellis

By: 

Bryan Andrew Lober, Chair

(as approved by the Board on July 21, 2020)

BANANA RIVERFRONT, LLC



By: Buzz Underill, Manager

Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 72091314

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Paul T. Bruflat

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: Banana Riverfront, LLC

Obligee: Brevard County Board of County Commissioners

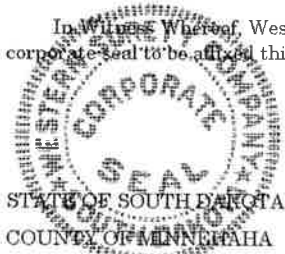
Amount: \$1,000,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

If Bond No. 72091314 is not issued on or before midnight of October 26, 2020, all authority conferred in this Power of Attorney shall expire and terminate.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 26th day of October, 2019.

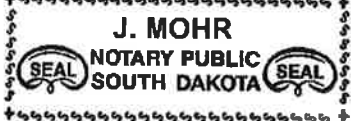


WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Vice President

On this 26th day of October, in the year 2019, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



J. Mohr

Notary Public - South Dakota

My Commission Expires June 23, 2021

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 26th day of October, 2019.

WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Vice President

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond Coverage.

50 So.3d 1176
District Court of Appeal of Florida,
Fourth District.

PRESERVE PALM BEACH POLITICAL ACTION
COMMITTEE and Patrick Henry Flynn,
Appellants,
v.
TOWN OF PALM BEACH, et al., Appellees.

No. 4D09-4947.

Dec. 15, 2010.

Rehearing Denied Feb. 4, 2011.

Synopsis

Background: Town filed complaint for expedited declaratory relief, seeking a declaration as to the constitutionality of proposed ballot initiative that sought to amend the town charter to incorporate provisions of town's agreement with a developer. The Fifteenth Judicial Circuit Court, Palm Beach County, David F. Crow, J., awarded summary judgment to town. Organization that proposed the initiative appealed.

Holding: The District Court of Appeal, Polen, J., held that initiative violated statute barring use of the initiative or referendum process in regard to any development order.

Affirmed.

- [1] **Zoning and Planning**—Approval of voters or property owners; referendum and initiative

Proposed ballot initiative that would have amended town charter to incorporate provisions of agreement with developer concerning development of certain real property, and would have required any future changes to the agreement to be approved by voter referendum, violated statute barring use of the initiative or referendum process in regard to any development order, despite contention that the agreement was not a development order; initiative attempted to subject the developer's successor to the referendum process any time it wished to do something not anticipated in the agreement, which was the very thing prohibited by the statute. West's F.S.A. §§ 163.3164(7), 163.3167(12).

Attorneys and Law Firms

*1176 Robert J. Hauser of Beasley Hauser Kramer Leonard & Galardi, P.A., West Palm Beach, and John M. Jorgensen of Scott, Harris, Bryan, Barra & Jorgensen, P.A., Palm Beach Gardens, for appellants.

John C. Randolph and Joanne M. O'Connor of Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach, for appellee Town of Palm Beach.

John W. Little, III, P.A., and Richard J. Dewitt, III, of Brigham Moore, LLP, West Palm Beach, for appellee Sterling Palm Beach, LLC.

Opinion

POLEN, J.

Appellants, Preserve Palm Beach Political Action Committee and Patrick Henry *1177 Flynn (collectively "Preserve"), appeal the trial court's order granting appellee, Town of Palm Beach's, motion for summary judgment and denying appellants' cross-motion for summary judgment.

In the underlying action, the Town filed a Complaint for Expedited Declaratory Relief seeking a determination of the constitutionality of a Charter amendment proposed by Preserve. The proposed amendment, to be voted on by the citizens of the Town in a February 2010 election, would have required that the Town of Palm Beach Charter be amended to incorporate portions of a 1979 Agreement between the Town of Palm Beach and a developer. The incorporated provisions would prohibit the construction of new buildings in Royal Poinciana Plaza and would require that the Poinciana Theater be used only as a theater of the performing arts and/or visual arts or for lectures or other special events.

The complaint pled two counts of declaratory relief. Count I sought a determination of the constitutionality of the proposed amendment based on whether the amendment conflicted with section 163.3167(12), Florida Statutes, by purporting to use the initiative or referendum process to alter a development order. Count II sought a determination of the constitutionality of the proposed amendment based on whether the amendment was clear and unambiguous as required by section 101.161(1), Florida Statutes.

The parties agreed below that there were no genuine issues of material fact. The trial court was simply asked to determine two issues: (1) whether the 1979 Agreement was a development order, and (2) whether the proposed

amendment was unconstitutional on its face.

The 1979 Agreement

The 1979 Agreement between the Town and Poinciana Properties, Ltd. (the developer), was executed in order to satisfy a precondition to the Town's granting of a variance to the developer. At a hearing on the developer's motion for variance, the Town Council granted the motion "subject to [execution of] an agreement, in a form satisfactory to the Town Attorney," which would provide for sixteen specific conditions. A town building official subsequently advised the developer that the building permit would only issue after certain procedures had been followed:

After the town has approved said agreement, and after it has been recorded by the applicant, with original copy returned to the Town for the permanent record, and after the Town has received revised plans for approval which reflect the conditions of the agreement, then the Town Building permit to authorize commencement of construction may subsequently be issued.

The resulting Agreement provided, in part:

WHEREAS, Partnership made an application for variance No. 39-78 with respect to the property known as the Royal Poinciana Plaza on Cocoanut Row in the Town of Palm Beach ...; and

WHEREAS, after public notice and a public hearing on the Partnership application, the Town Council of Palm Beach granted said variance No. 39-78 with modifications of the original plan at its meeting on February 13, 1979 subject to the following conditions; and

WHEREAS, Partnership suggested and volunteered some of said conditions and by this agreement does hereby covenant and agree with TOWN that the conditions hereinafter set forth have become binding obligations on the part of Partnership, and upon its successors and assigns.

NOW, THEREFORE, know all men by these present that in consideration of the premises hereinbefore set forth and *1178 for other good and valuable considerations, the parties do hereby agree as follows:

....

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza, the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

....

E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and for lectures or other special events.

Proposed Charter Amendment

Prompted by the threat of demolition of the theater, Preserve sponsored the following ballot title, summary, and charter amendment petition in an effort to incorporate portions of the 1979 Agreement into the Town Charter:

BALLOT TITLE: Alterations of covenants of Royal Poinciana Plaza and Royal Poinciana Playhouse only by Referendum.

BALLOT SUMMARY: Voter approval required for alterations to the covenants set forth in the 1979 Royal Poinciana Plaza Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited, concerning property known as the Royal Poinciana Plaza.

TEXT OF THE PROPOSED CHARTER AMENDMENT

(1) The Town of Palm Beach Charter [s]hall be amended to incorporate portions of the covenants set forth in the 1979 Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited concerning property known as the Royal Poinciana Plaza; which do not allow the construction of new buildings in Poinciana Plaza, and require that the Poinciana Theater only be used as a theater of the performing arts and/or visual arts or for lectures or other special events.

(2) That a majority of Voters of the Town of Palm Beach voting in a referendum must approve any alterations to the Royal Poinciana Plaza Agreement.

After Preserve collected the required number of signatures, and the Town was told to put the proposed amendment on the ballot, the Town sought a declaratory judgment as to the constitutionality of the amendment. Following a hearing on the parties' motion and cross-motion for summary judgment, the trial court determined that the 1979 Agreement was a development order. Accordingly, the court granted the Town of Palm Beach's motion for summary judgment finding that the

proposed amendment was facially unconstitutional because it conflicted with section 163.3167(12). The court then determined that the issue of whether the proposed amendment was unconstitutionally vague was moot. Preserve now timely appeals.

We agree with the trial court's order and affirm. Section 163.3167(12), Florida Statutes, provides in part:

An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment that affects five or fewer parcels of land is prohibited.

§ 163.3167(12), Fla. Stat. (2009).¹ "Development order" is defined as "any order granting, denying, or granting with conditions an application for a development permit." § 163.3164(7), Fla. Stat. (2009).

*1179 Preserve primarily argues that the Agreement is a "development agreement" and is not a "development order." In support of its argument, Preserve first contends that the 1979 Agreement is plainly not an order, which is commonly defined as a "command, direction, or instruction."² The Town of Palm Beach responds that the 1979 Agreement meets the definition of "development order" provided in section 163.3164(7) because only by the 1979 Agreement did the Town officially grant, with conditions, the developer's variance request.

As the trial court noted, there is no controlling authority defining a "development order" under the circumstances present here. However, a "development agreement" has been defined as "a contract between a [local government] and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits." *Morgan Co. v. Orange County*, 818 So.2d 640, 643 (Fla. 5th DCA 2002) (quoting Brad K. Schwartz, *Development Agreements: Contracting for Vested Rights*, 28 B.C. Envtl. Aff. L.Rev. 719 (Summer 2001)). The 1979 Agreement at issue did not freeze the zoning as to the developer but granted a variance from

zoning with specific conditions. The official act of the Town which allowed the development was the execution of the 1979 Agreement, and not the pronouncement of approval during the town meeting.

Much of Preserve's argument is based on the common understanding that an order, by definition, is often unilateral and non-negotiable. However, we note that development orders are often the product of negotiations between a developer and a municipality. Joseph Van Rooy, *The Development of Regional Impact in Florida's Growth Management*, 19 J. Land Use & Envtl. L. 255, 256 (Spring 2004).

The legislative history of section 163.3167(12) does not provide any guidance as to the purpose of the statute. Still, as the trial court recognized, "[I]t is not difficult to see the due process problems associated with subjecting small property owners to public referendum votes when they would otherwise be entitled to a quasi[-]judicial hearing and review procedures." The proposed amendment attempts to subject the landowner of the property at issue to the referendum process every time the landowner wishes to do something not anticipated in the 1979 Agreement. In other words, this amendment seeks to do the very thing prohibited by section 163.3167(12). The trial court was correct in determining that the amendment conflicted with Florida law.

The right of the people to vote on issues they are entitled to vote on is one of utmost importance in our democratic system of government. But there are issues—such as the right of a small landowner to use his property subject only to government regulations—which should not be determined by popular vote. Section 163.3167(12) rightfully protects the small landowner from having to submit her development plans to the general public and ensures that those plans will be approved or not, instead, by the elected officials of the municipality in a quasi-judicial process.

Affirmed.

WARNER and LEVINE, JJ., concur.

Footnotes

¹ Neither party disputes that the subject property is comprised of fewer than five parcels.

² Citing *Black's Law Dictionary* (West's 9th ed.) at 1206.

West's Florida Statutes Annotated
Title XVII. Military Affairs and Related Matters (Chapters 249-252) (Refs & Annos)
Chapter 252. Emergency Management (Refs & Annos)
Part I. General Provisions (Refs & Annos)

West's F.S.A. § 252.363

252.363. Tolling and extension of permits and other authorizations

Effective: June 28, 2019

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.
2. The expiration of a building permit.
3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.
4. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

(b) Within 90 days after the termination of the emergency declaration, the holder of the permit or other authorization shall notify the issuing authority of the intent to exercise the tolling and extension granted under paragraph (a). The notice must be in writing and identify the specific permit or other authorization qualifying for extension.

(c) If the permit or other authorization for a phased construction project is extended, the commencement and completion dates for any required mitigation are extended such that the mitigation activities occur in the same timeframe relative to the phase as originally permitted.

(d) This subsection does not apply to:

1. A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies.
2. A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

252.363. Tolling and extension of permits and other authorizations, FL ST § 252.363

3. The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action.

4. A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would be in conflict with the extensions granted in this section.

(2) A permit or other authorization that is extended shall be governed by the laws, administrative rules, and ordinances in effect when the permit was issued, unless any party or the issuing authority demonstrates that operating under those laws, administrative rules, or ordinances will create an immediate threat to the public health or safety.

(3) This section does not restrict a county or municipality from requiring property to be maintained and secured in a safe and sanitary condition in compliance with applicable laws, administrative rules, or ordinances.

Credits

Added by Laws 2011, c. 2011-142, § 494, eff. July 1, 2011. Amended by Laws 2018, c. 2018-158, § 12, eff. April 6, 2018; Laws 2019, c. 2019-165, § 13, eff. June 28, 2019.

Notes of Decisions (1)

West's F. S. A. § 252.363, FL ST § 252.363

Current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through February 27, 2020

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.



Staff Report

BOARD OF COUNTY COMMISSIONERS

SUBJECT: Banana Riverfront LLC/Squid Lips
July 21, 2020 BOCC Meeting, Item J.4.
2200 S. Orlando Ave. Cocoa Beach - District 2; Tax Account 2520254

DATE: July 20, 2020

AUTHOR: Planning & Development Department (P&D)

FISCAL IMPACT: FY20/21: \$118,000 Bond
FY21/22: None

Summary

Since 2017, Staff has reviewed four site plans related to the above referenced project. The plans were submitted in an effort to address unpermitted work and in accordance with a Settlement Agreement, dated March 21, 2017. Under Board direction and in accordance with the Settlement Agreement, Staff issued temporary certificates of occupancy (TCOs) for this site, allowing simultaneous restaurant operation and completion of site work. The maximum allowance of administratively-issued TCOs were provided on the following dates: February 15, 2018; August 16, 2018; February 14, 2019; and August 14, 2019. Multiple submittals, reconstruction, and plan amendments were made necessary as the owner continued to construct improvements in conflict with approved plans, applicable county codes and comprehensive plan policies. The Board of County Commissioners is Obligee for a \$118,000 bond submitted by Banana Riverfront, LLC (extended on September 23, 2019; expiring October 26, 2020), for the completion of all improvements shown on approved plan #17AD00026 and approved work for the stormwater system.

The Board evaluated an extension request for this project on October 22, 2019 and directed staff to allow Banana Riverfront, LLC a single nine-month extension, advising that staff was to call the performance bond in nine months without further action from the Board should the improvements outlined under the settlement agreement not be completed within the time period specified. The Board also discussed the nine-month timeline as being sufficient to address unforeseen circumstances such as weather events.

On November 5, 2019, subsequent to bond extension, Land Development received Engineering Revision 19ER00037. During the review of this engineering revision, the applicant (MBV Engineering), repeatedly proposed designs that would have violated American with Disabilities Act (ADA) requirements and other County standards which either were not addressed in the Settlement Agreement or could not be waived by the County. Further, the MBV Engineering design relied upon faulty water table information which was generated by the developer's consulting team. Such reliance resulted in design features which, if approved, would have caused numerous unacceptable site challenges, including flooding ADA accessibility paths. This was not contemplated in the Settlement Agreement as asserted.

Staff appropriately commented and rightly withheld approval until MBV Engineering eventually modified the design based on valid data approved by staff. The statements in the agenda report seemingly reference



Staff Report

BOARD OF COUNTY COMMISSIONERS

inappropriate or unnecessary comments on the part of County staff. The attached Planning & Development comment letters provide combined agency issues and show Engineering Design and Natural Resources comments that were repeatedly disregarded by the applicant. In some cases, additional staff comments were warranted due to redesign and/or receipt of new information from the applicant. Therefore, the time to achieve site plan approval was without doubt the result of slow plan production and submittals to the County and the need for the design team to make necessary changes to their own plans.

Site Plan Review Timeline

<i>March 21, 2017</i>	<i>Settlement Agreement</i>
	SITE PLAN 17SP00016
<i>May 5, 2017</i>	Application submitted for 17SP00016
<i>May 18, 2017</i>	Pre-Application Meeting
	No further action on this project
	MINOR SITE PLAN 17AD00023
<i>October 18, 2017</i>	Application submitted for minor site plan 17AD00023
<i>November 9, 2017</i>	Development Review Meeting (DRM) held
<i>November 15, 2017</i>	Resubmittal by applicant
<i>November 29, 2017</i>	Comment letter sent to applicant
<i>December 19, 2017</i>	3 rd submittal
<i>January 5, 2018</i>	Approval letter sent to applicant
	MINOR SITE PLAN 17AD00026
<i>November 15, 2017</i>	Application for minor site plan 17AD00026
<i>December 7, 2017</i>	DRM held
<i>February 15, 2018</i>	1 st TCO for Building Permit 17BC10869 issued allowing continued restaurant operation
<i>July 12, 2018</i>	Resubmittal by applicant
<i>July 18, 2018</i>	Comment letter sent
<i>August 8, 2018</i>	Resubmittal by applicant
<i>August 16, 2018</i>	2 nd TCO issued for Building Permit 17BC10869
<i>August 20, 2018</i>	Final Submittal Notification sent to applicant
<i>September 24, 2018</i>	Plans submitted and approved
<i>October 26, 2018</i>	Bond executed for Site Plan 17AD00026
<i>February 14, 2019</i>	3 rd TCO issued for Building Permit 17BC10869
<i>August 14, 2019</i>	4 th TCO issued for Building Permit 17BC10869
<i>September 23, 2019</i>	\$118,000 Bond Extended which expires October 26, 2020
<i>October 22, 2019</i>	Board approves nine-month extension for project completion



Staff Report

BOARD OF COUNTY COMMISSIONERS

ENGINEERING REVISION 19ER00037

November 5, 2019	Application submitted for Engineering Revision 19ER00037
December 4, 2019	Comment letter sent
December 19, 2019	Resubmittal by applicant
January 2, 2020	Comment letter sent
January 16, 2020	Meeting between EOR, Engineering & Natural Resources to review design concerns.
January 30, 2020	Resubmittal by applicant
February 13, 2020	Comment letter sent to applicant
February 25, 2020	Communication/Review - Applicant and Public Works outside of review process
March 12, 2020	Communication/Review - Applicant and Public Works outside of review process
March 30, 2020	Resubmittal
April 8, 2020	Fourth comment letter sent
April 22, 2020	Communication - Applicant and Public Works outside of review process
May 15, 2020	Resubmittal of plans
June 3, 2020	Final approved plans

September 25, 2020 *County deadline to notice intent to call the bond*

October 26, 2020 *Bond will expire*

Site Progress & Extension

Staff issued temporary certificates of occupancy (TCO) for this site on the following dates: February 15, 2018; August 16, 2018; February 14, 2019; and August 14, 2019. Engineering inspection staff has been conducting weekly site visits to monitor progress since the latest engineering revision was approved on June 3, 2020. They noted no progress until the week of July 13, 2020, when a contractor was present on site. Staff anticipates that the work remaining amounts to approximately two weeks of construction, provided adequate resources are allocated. The average timeframe for permit closeout is approximately three weeks, depending on production of as-built surveys and completion of punch list items. This equates to a total possible timeframe of five weeks for construction and closeout of this project.

Staff requires a minimum of 30 days (September 25, 2020) to provide proper notification to the bonding company if it becomes necessary for the County to call the bond. Therefore, any extension granted should not extend beyond this date. Conversely, a new bond could be submitted if the Board desires to allow extension beyond September 25, 2020.

Attachment: Planning & Development Comment Letters for Engineering Revision 19ER00037



Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 115
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

December 4, 2019

Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit H
Melbourne, FL 32935

Telephone: (321) 253-1510
E-mail: brucem@mbveng.com

Application Number: **19ER00037**
Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit two (2) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved. **Project number and name** must be referenced with the response. Also include the form **"Document Submittal for Subsequent Reviews"** found online at our website at this location <http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x58335, nicholas.gagliardo@brevardfl.gov
Deficiencies

1. Please add a legend to describe the various text sizes and styles used. Are these proposed elevations or existing elevations?
2. Sheet C-5, please clarify notes on eastern parking stall in northern unpaved area stating "Construct additional Retention Area #5..." and Additional Retention Area #1B. Will these parking spaces be demolished for two additional pond areas?
 - a. If so, please show proposed pond outlines and revise the total number of parking to exclude these parking spaces. Please show additional parking to meet the required 109 spaces total per the July 12, 2018 approved parking reduction waiver. Please cloud these areas for clarity.

3. Sheet C-6, parking spaces in southeast corner of property shown conflicting with one another. Please revise parking spaces to prevent conflict. As shown, this parking is not acceptable.
4. With the millings removed from the stabilized parking areas (noted as approximately 4-inches), please show the As-Built elevations in the parking areas on the drainage plans. If the parking areas were raised to the existing elevation, please specify the replacement material used to raise the parking area 4-inches. Replacement material shall be non-calcareous as previously approved; shell material slated for future improvement is an acceptable material. Additionally, please provide spot elevations demonstrating proposed drainage pattern for these areas. Note, unstabilized material will lead to excessive erosion in a sheet-flow condition during high intensity storm events, and will cause future maintenance issues for both the parking and pond.
5. Please clarify grading for Retention Area 3 and associated subbasin. Elevations shown (2.79) in parking appear to allow ponding in the southern accessible parking space. This was also observed on a site visit. Please provide additional spot elevations showing positive drainage to Retention Area #3 (TOB 2.80) and provide additional detail as to how water will enter this area (ie. concrete weir, etc.). Currently pond was filled in and an earthen berm was observed preventing sheet flow into the previous retention area. If no improvements are planned to be made, please remove this retention area from the stormwater calculations.
6. Please update the Stage-Storage Relationship table in the submitted Stormwater Report. Currently the pond bottoms (elevation 2.45) are shown within 1-ft of the seasonal high ground water elevation which will functional impede the ability of the ponds to recover and treat as intended. Geotechnical boring in Retention Area 1 shown as elevation 2.7 per Soil Boring Summary on Sheet C-4, elevation 1.7 in Retention Area #2, and elevation 2.0 near Retention Area 3. Per Brevard County Code of Ordinance 62-3756 Exhibit A to Division 6, Section 4.4(k) dry pond bottom shall be at least one-foot above the seasonal high-water elevation.
 - a. Based on response to comment #1 above, spot elevations shown on this engineering revision do not provide a consistent pond bottom grade and do not support the elevations used to calculate treatment volume in the stormwater calculations. Please clarify existing versus proposed elevations for the pond areas. Several pond bottom elevations are shown within one foot of the seasonal high-water elevation. Please update the plans and stormwater calcs for consistency and adherence to the code.
7. In the Stormwater Report; Please include the updated BMPTrains input and results.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

1) Reviewed by Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

2) Based on previous failed landscape inspection, it is apparent that the Crinum lilies cannot handle the conditions at that location - perhaps too much wind/salt spray, and/or not enough water/lack of irrigation. Maybe a tougher shrub such as sea grape or buttonwood would survive

the current conditions. Also, this layer should be spaced about 4 feet on center.

3) Dwarf bottlebrush has moderate aerosol salt tolerance, and will not do well in that location. Tougher alternatives will survive better such as a dwarf Pittosporum variety, Chrysobalanus icaco (cocoplum), coontie, or green island ficus. Should be spaced about 3 feet on center.

4) Shorter plantings (salt tolerant) around the sign are acceptable if necessary.

5) How will plantings be watered until established? Please specify on plans.

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Deficiencies

1. Please revise the Demolition Summary accordingly to changes proposed on Sheet C-2. Areas being removed have been reduced according to the acreage labeled on the Sheet. Please revise loading and treatment calculations based on revised impervious areas.

2. A recent visit to the site is showing water in retention areas 1 and 2. Please revise your calculations. Material in the pond must match percolation rates used in the modeling and design. In addition, a trench was cut off from the retention area 2, discharging into the lagoon.

3. Please see Engineering comments regarding retention.

4. Additional comments may be provided upon receipt of new or incomplete information.

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Lucas Siegfried, (321) 633-2091 x58384, lucas.siegfried@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

1) The project site is subject to a Mediation Settlement Agreement between Banana Riverfront, LLC and Brevard County dated March 1, 2017. Please state on the site plan that: "This site shall be developed and utilized in compliance with the terms of the Mediation Settlement Agreement between Banana Riverfront, LLC and Brevard County dated March 1, 2017." Please also state on the site plan: "Prior to having live music on the deck, Riverfront shall install both a noise curtain on the north side of the property from the hard cover canopy to the roof of the building and a 'mass-loaded vinyl' sound blanket over the bandstand area. Amplified live music on the deck shall be limited to the following times and durations: 1) Monday – Thursday: 6:00 pm – 10:00 pm; 2) Friday, Saturday, Federal Holidays and any day immediately prior to a Federal holiday: 2:00 PM – 10:00 PM with music not to exceed a 4-hour block with a minimum of 1 hour between blocks music."

2) Please state on site plan whether site is or is not required to submit Risk Management Plan (RMP) pursuant to U.S. Environmental Protection Agency (EPA) regulations. If an RMP is required, please return that information to this office. If RMP is not required, please add this note to site plan: "The uses proposed as part of this site plan do not require a submittal of a Risk Management Plan pursuant to U.S. Environmental Protection Agency (EPA) regulations and shall not exceed EPA's Risk Management Plan

3) Please ensure all signs comply with Section 62-3301-62-3319 of Article IX, Sign Code. Signs can be submitted for zoning review with site plan or wait to be reviewed through building permit process. Please either provide all sign details or have signs reviewed at permit stage and remove signs from site plan. Variances, if applicable, must be approved prior to permitting.

Thank you,

Tim Craven
Planner I



Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 115
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

January 2, 2020

Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit H
Melbourne, FL 32935

Telephone: (321) 253-1510
E-mail: brucem@mbveng.com

Application Number: **19ER00037**
Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit five (5) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved. **Project number and name** must be referenced with the response. Also include the form **"Document Submittal for Subsequent Reviews"** found online at our website at this location <http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x 58335, nicholas.gagliardo@brevardfl.gov
Deficiencies

1. Previous Comments #1, #5, #6, and #7 were not addressed, and are copied in full below. Please address in the re-submission. Additionally, based on field inspection on 12/3/19, two additional pumps were observed on-site within pond #1, one with a sump dug to drain excess standing water. If the pumps are to remain, please add to the plans, show intake elevations at or above the required treatment elevation, and show pre-condition discharge rates are not being exceeded. The continued presence of standing water further evidences that these ponds will not function properly given their proximity to the season high groundwater elevation. Additional geotechnical bores may be necessary to support any changes to the estimated season high water table in the different ponds. Previously a lower elevation of 1.73 was suggested, but the presence of standing water brings these elevations to question. Please

address with Previous Comment (P.C.) #6 below.

P.C. 1. Please add a legend to describe the various text sizes and styles used. Are these proposed elevations or existing elevations?

P.C. 5. Please clarify grading for Retention Area 3 and associated subbasin. Elevations shown (2.79) in parking appear to allow ponding in the southern accessible parking space. This was also observed on a site visit. Please provide additional spot elevations showing positive drainage to Retention Area #3 (TOB 2.80) and provide additional detail as to how water will enter this area (ie. concrete weir, etc.). Currently pond was filled in and an earthen berm was observed preventing sheet flow into the previous retention area. If no improvements are planned to be made, please remove this retention area from the stormwater calculations.

P.C. 6. Please update the Stage-Storage Relationship table in the submitted Stormwater Report. Currently the pond bottoms (elevation 2.45) are shown within 1-ft of the seasonal high ground water elevation which will functional impede the ability of the ponds to recover and treat as intended. Geotechnical boring in Retention Area 1 shown as elevation 2.7 per Soil Boring Summary on Sheet C-4, elevation 1.7 in Retention Area #2, and elevation 2.0 near Retention Area 3. Per Brevard County Code of Ordinance 62-3756 Exhibit A to Division 6, Section 4.4(k) dry pond bottom shall be at least one-foot above the seasonal high water elevation.

a. Based on response to comment #1 above, spot elevations shown on this engineering revision do not provide a consistent pond bottom grade and do not support the elevations used to calculate treatment volume in the stormwater calculations. Please clarify existing versus proposed elevations for the pond areas. Several pond bottom elevations are shown within one foot of the seasonal high water elevation. Please update the plans and stormwater calcs for consistency and adherence to the code.

P.C. 7. In the Stormwater Report; Please include the updated BMPTrains input and results.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

Reviewed by Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

Approved

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Deficiencies

1. Regarding our previous comment number one there are some discrepancies between the approved plans (17AD00026) and the last two engineering revision submittals:

a. Asphalt area to be removed (with a building that will also be removed) is labeled as 3413 sf in approved plans (17AD00026) vs 3235sf on engineering revision 19ER00037 plans. Also, "Existing asphalt" and "Total impervious removed" on the Demolition summary are not consistent throughout plans. Please revise.

b. Approved plans 17AD00026 an extra 1730sf that were to be removed and turn into a

retention area, exempt from treatment calculations. The engineering revision 19ER00037 plans is keeping this area as impervious. Please revise loading and treatment calculations based on revised impervious areas.

2. Regarding our previous comment number 2, a discussion with Engineering confirmed percolation rates are fine. However please address to Engineering comments about the pond bottom elevation in Retention Area No. 1 and proximity with Season High Water Table and request for additional geotechnical borings.

3. A trench cut off from the retention area 2, directly discharging into the lagoon is not shown on any approved or pending plans. This is an illegal discharge into the IRL. Failure to resolve this will result in potential county/state enforcement action.

4. Additional comments may be provided upon receipt of new or incomplete information.

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Lucas Siegfried, (321) 633-2091 x58384, lucas.siegfried@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

Deficiencies

Please take action regarding, not merely acknowledge, comment 1. Please simply place the two following notes on the plan:

1. "This site shall be developed and utilized in compliance with the terms of the Mediation Settlement Agreement between Banana Riverfront, LLC and Brevard County dated March 1, 2017."

2. Prior to having live music on the deck, Riverfront shall install both a noise curtain on the north side of the property from the hard cover canopy to the roof of the building and a 'mass-loaded vinyl' sound blanket over the bandstand area. Amplified live music on the deck shall be limited to the following times and durations: 1) Monday - Thursday: 6:00 pm - 10:00 pm; 2) Friday, Saturday, Federal Holidays and any day immediately prior to a Federal holiday: 2:00 PM - 10:00 PM with music not to exceed a 4-hour block with a minimum of 1 hour between blocks of music."

Thank you.

All other comments adequately addressed.

Thank you,

Tim Craven
Planner I



Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 115
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

February 13, 2020

Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit H
Melbourne, FL 32935

Telephone: (321) 253-1510
E-mail: brucem@mbveng.com

Application Number: **19ER00037**
Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit five (5) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved. **Project number and name** must be referenced with the response. Also include the form **"Document Submittal for Subsequent Reviews"** found online at our website at this location <http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x 58335, nicholas.gagliardo@brevardfl.gov
Deficiencies

Reviewed by: Nicholas Gagliardo, 321-637-5437 Extension 58335#,
nicholas.gagliardo@brevardfl.gov

1. Previous Comments were not addressed.

P.C. 1. It is unclear in the plans which elevations are existing and which are proposed. Please add a legend to the plans to clarify. Bold pond contours do not extend around the ponds; will only new pond areas be regraded? Pond elevations in the plans do not match the stormwater calculations, please update for consistency.

P.C. 5. Retention Area #3 is not currently functional based on existing grades / condition. If the intention is to leave this area unimproved, please remove this area from the required treatment volume calculations.

P.C. 6. Per Brevard County Code of Ordinance 62-3756 Exhibit A to Division 6, Section 4.4(k) dry pond bottom shall be at least one-foot above the seasonal high water elevation. Please revise pond bottom elevations accordingly. Per the Geotechnical Testing, S.H.W.T. in Retention Area #1 is 2.7, S.H.W.T. in Retention Area #2 is 1.7, S.H.W.T. in Retention Area #3 is 2.0.

P.C. 7. Please clarify basin areas for retention areas shown, and update the BMPTrains model to accurately reflect captured area. Current calculations assume 100% catchment area which is not supported with elevations and grading shown.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

Reviewed by: Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

Approved

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Approved

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Rudy Mulamba, (321) 633-2091 x58380, rudy.mulamba@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

Approved



Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 115
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

April 8, 2020

Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit H
Melbourne, FL 32935

Telephone: (321) 253-1510
E-mail: brucem@mbveng.com

Application Number: **19ER00037**
Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit three (3) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved. **Project number and name** must be referenced with the response. Also include the form **"Document Submittal for Subsequent Reviews"** found online at our website at this location <http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x 58335#, nicholas.gagliardo@brevardfl.gov

1. Previous Comment "P.C. 6": Current pond bottoms are shown within one-foot of the seasonal high groundwater level. Per 62-3756 Exhibit A to Division 6, Section 4.4(k), "[d]ry ponds may be used if the bottom of the pond is at least one-foot above the seasonal high groundwater level... If the bottom of a dry pond is less than one-foot above the seasonal high ground water level due to physical constraints of the site, or with the approval of the reviewer, the bottom of the pond shall be planted with the wetland vegetation to control cattail growth..." Please coordinate any proposed planting plan with Natural Resources, Jeanne Allen at 321.633.2016 Ext. 58433. Additional plantings within these ponds will need to be incorporated in the Landscape Plan, maintained in perpetuity and subject to the final landscape inspection.

2. Previous Comment "P.C. 1": Thank you for clarifying the grades and elevations shown. Based on this new information, the following comments have been raised:

a. Sheet C-4: Existing Retention Area #1 is only shown with existing contours and includes a note, "EXISTING RETENTION AREA #1 TOP +/- 3.0 BOTTOM +/-2.45." This note is both inconsistent with the stormwater calculations and the existing spot elevations shown mostly between 1.9 and 2.4. Please clarify if the intent for this pond. Will the pond be graded / constructed to have a top of bank at 3.0 and bottom at 2.45? The pond bottom does not meet the minimum elevation of 1-foot above the extrapolated E.S.H.W.T. (between 1.7 and 2.1) in its current state. Please review and revise the plans and calculations as needed. If the pond bottom will be within 1-foot of the E.S.H.W.T. please provide calculations for the proposed pond bottom meeting drawdown requirements and include plantings as noted in the comment above.

b. Sheet C-4: Retention Area #1a is shown with a proposed top of bank of 2.9. Pavement spot elevations in this area are shown below this elevation (2.62, 2.73, 2.51...). Please clarify drainage pattern; currently no inlets are shown for these low areas, and regrading does not appear to be specified.

c. Sheet C-4: Existing spot elevations of 3.1 and 2.4 east of Retention Area #2 do not appear to have positive drainage based on the proposed Retention Area #2, 4A, 4B, and 4C pond top of bank (T.O.B.) contour of 3.5. Will inlets be installed at these low spots to facilitate drainage? Please clarify drainage pattern, and ensure water will not stage onto the A.D.A. accessible sidewalk route. Current MODRET report shows a peak stage of 3.341 for pond #2. Please see comment #3 below for potential modeling revisions that may further affect the peak stage, and address any water staging across the A.D.A. routes as applicable.

d. Sheet C-5: Please clarify proposed grading for Retention Area #1. Will the existing Retention Area #1 T.O.B. on the north side of Pond #1B remain as a high point (at T.O.B. of 3.0?) between Retention Area #1 and #1B? Or will the existing T.O.B. be removed in this area to create one large pond? Currently, the MODRET report shows a peak stage of 3.36 for Pond #1B, which will overflow the Pond #1 T.O.B.; please clarify grading between these ponds.

e. Sheet C-5: K.S.M. Geotech report dated 2020 shows a E.S.H.W.T. elevation of 2.1 for Pond #1b. Please revise pond bottom elevation to achieve a minimum separation to the E.S.H.W.T. of 6-inches.

f. Sheet C-5: Retention Area #3 is called to have a pond bottom of 2.6 and top of bank of 2.8; however, existing spot elevation along the bottom of the pond (2.7) do not support these elevations. Please revise the calculations to exclude this pond, or show proposed contours to re-shape this pond.

g. Sheet C-5: Pavement low spot elevation of 2.88 between existing 1-story building and bicycle rack does not appear to have positive drainage. Please show how the pavement runoff is directed into the retention areas for treatment. Will a flume be constructed? Please clarify stormwater treatment for this pavement sub-basin.

h. Please verify and adjust pond stage-area values based on comments above (e.g. pond #1 top and bottom elevation, pond #1b bottom elevation, pond #3 bottom elevation) and ensure that pond area/volume within the property limits are being included in the

calculations for the pond/treatment volumes. Currently, pond #1 and #1b both appear to be including pond area/volume outside of the property limits.

3. Previous Comment "P.C. 6": Thank you for the additional geotechnical information. Per the KSM report dated March 18th, 2020, the E.S.H.W.T. at location 2 was approximately 10-inches below grade. Per Sheet C-4 of the plans, the ground elevation at the bore hole location was 2.30; however, the E.S.H.W.T. is listed as elevation 1.8 in the MODRET Model, which is not reflective of 10-inches below grade (elevation 1.5). Please clarify the E.S.H.W.T. in this retention area and update the MODRET Model accordingly.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

Reviewed by: Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

Approved

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Approved

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Rudy Mulamba, (321) 633-2091 x58380, rudy.mulamba@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

Approved

J. 4


Section 70.51(17)(a) and section 163.3181(4), Florida Statutes Mediation Settlement Agreement– Banana Riverfront, LLC and Brevard County March 1, 2017

Pursuant to section 70.51(17)(a) and section 163.3181(4), Florida Statutes, Brevard County and Banana Riverfront, LLC (“Riverfront”) (collectively, the “Parties”), through counsel, having appeared for mediation on March 1, 2017 before Miranda Fitzgerald, intending to be legally bound, agree as follows to resolve any and all claims which have been raised between the parties or which could be raised as a result of the denial of the change to the Comprehensive Plan (Resolution No. 16-223), the denial of the rezoning request (Resolution No. 16-224) and the denial of the CUP (Resolution No.16-225) or which could have been raised by the Parties against one another concerning Riverfront’s Request for Informal Mediation under Sec. 163.3181(4) , Fla. Stat. and a Request for Relief under Sec. 70.51, Fla. Stat. or any other actions at law.

WHEREAS, Banana Riverfront, LLC (“Riverfront”), has obtained verification from the Brevard County Board of County Commissioners that the structures and uses it obtained at the time of purchase on October 16, 2015, which structures are represented in the Map of Boundary Survey dated September 10, 2015, are legally nonconforming. Said Survey is attached herein as Exhibit “A”.

WHEREAS, Riverfront undertook repairs and renovations after it purchased the Property, admittedly without proper building permits. These repairs and renovations included the addition of 1970 sq. ft. of infill decking to the already existing west deck, a hard cover canopy of 4,182 sq. ft. over the old deck and infill deck (as well as part of the existing roof structure), a new stage for entertainment and a new bar area. The old entertainment stage and bar were removed.

WHEREAS, Riverfront was advised by the County that it would need to rezone the Property and obtain a new Conditional Use Permit (“CUP”), after a Comprehensive Plan



DM93309

Amendment, to make the uses and structures legal, remove the nonconforming use stigma of the Property and make Riverfront eligible to apply for permits for the repairs and renovations.

WHEREAS, the Comprehensive Plan Amendment, rezoning application and CUP were denied by the County Commission at a public hearing on November 3, 2016.

WHEREAS, the County Commission adopted Resolutions with Findings of Fact on December 20, 2016 which formally denied the Comprehensive Plan Amendment, rezoning application and CUP.

WHEREAS, the Parties seek to resolve their disputes without litigation.

WHEREAS, Riverfront desires to expand its nonconforming structures to enable more waterfront access to the public and its customers, and to improve the stormwater retention on its Property which has historically drained into the Indian River Lagoon.

NOW, THEREFORE, in consideration of the mutual promises contained herein and such other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. Structures and Stormwater Improvements:

A. Riverfront shall reduce 25% of all stormwater total suspended solids, total nitrogen, and total phosphorous loads each produced on the 2015 footprint approved by the Board of County Commissioners in February, 2017, (Exhibit A). Riverfront shall reduce 100% of all stormwater total suspended solids, total nitrogen, and total phosphorous loads caused by new impervious surface installed after the date of the 2015 footprint shown in Exhibit "B". The required load decrease must be certified by a Professional Engineer, licensed by the State of Florida, using accepted and established practices in the industry for determining and calculating loads of total suspended solids, nitrogen or phosphorous. The stormwater system complying with this standard shall be designed, constructed and maintained by Riverfront at its cost.

B. Except as provided for herein, within 90 days of the date this Agreement is executed Riverfront shall submit a site plan (Site Plan 1) relating to the improvements shown in Exhibit "B" showing stormwater and site improvements installed after the date of the 2015 meeting all Brevard County Code and Comprehensive Plan provisions. The site plan submitted shall be the same foot print and square footage shown in Exhibit "B".

C. For purposes of site plan approval, Riverfront shall simultaneously submit a separate site plan (Site Plan 2) for stormwater improvements to reduce 25% of total suspended solids, phosphorous and nitrogen loads from the property as reflected in the 2015 footprint and conditions shown in Exhibit "A." Site Plan 2 may be amended as necessary to comply with local, state, and/or federal permitting requirements.

D. The County shall review the site plans in a timely manner as provided by the Brevard County Code. Riverfront must comply with all County codes except: (1) the nonconforming use expansion provisions provided for herein, (2) the 50 foot surface water protection buffer provisions, (3) the 20 foot zoning setback from a water body, and (4) stormwater volume and discharge rate requirements.

E. Upon approval of the site plan(s) and this Agreement, no additional public hearing shall be required to impact the 50 foot surface water protection buffer or the 20 foot zoning setback from a water body shown in the site plans.

F. Upon approval of this Agreement by the Brevard County Board of County Commissioners, Riverfront shall be permitted to apply for building permits for the portions of the approved improvements which were illegally expanded in 2016, which improvements are shown on Exhibit "B". Upon approval of Site Plan 1, but during the processing of the permit applications for the Site Plan 2 stormwater improvements, Riverfront may request and obtain a temporary certificate of occupancy or certificate of completion for any formerly illegal

construction or improvement which has passed final building and fire inspections. Any temporary certificate of occupancy or certificate of completion issued for any building, construction or improvement shall expire no later than six (6) months from issuance but may be renewed for two additional six (6) month periods during final permitting approval and completion of the stormwater improvements specified in the Site Plan 2 approval. Except as provided for in Paragraph 3 herein, unpermitted structures or improvements which have not received a temporary or permanent certificate of occupancy or certificate of completion shall not be used or open to the public.

G. After Site Plan 2 approval, Riverfront shall obtain permits for and install all approved stormwater improvements within one year from permitting approvals received from the County, SJRWMD, FDOT, FDEP and any other regulatory agencies that become involved in the stormwater plan. Within 20 days after receiving County approval of Site Plan 2, Riverfront shall post a performance bond covering all improvements shown on the approved Site Plan 2 including corrections of outstanding deficiencies and approved work for the stormwater improvements. The performance bond shall be in the amount of 125% of the engineer of record's certified cost estimate for the completion of all improvements approved by the County. The approved improvements must be completed, inspected and accepted by the County within twelve (12) months from the date of approval of Site Plan 2, unless that time for completion is extended under the terms of this Agreement. Failure to obtain permitting within one year after the date of execution shall be deemed a default under the bond, unless the time for completion of the work is extended by the County whose approval will not be unreasonably withheld.

H. Riverfront shall be entitled to a certificate of completion for the approved Site Plan 2 improvements upon the construction, installation, completion and assumption of maintenance of all improvements required by the approved Site Plan 2 or upon the posting of a

performance bond covering all outstanding deficiencies and remaining work required by the approved Site Plan 2. The performance bond shall guarantee completion of all approved Site Plan 2 stormwater improvements unless Riverfront has completed such work within twelve (12) months from the date Site Plan 2 is approved. The time for completion of the approved Site Plan 2 improvements may be extended for good cause, which extension shall not be unreasonably withheld by the County.

I. Riverfront and any successors in interest shall be responsible for maintaining the stormwater improvements in perpetuity in a manner to ensure proper stormwater treatment as described in paragraph A, above. Failure to maintain those stormwater improvements shall be deemed to be a violation of this Agreement. The County shall have the right to correct such a violation if, after 30 days notice, Riverfront has not come into compliance. Any cost to correct the violation will be assessed as a lien upon Riverfront's property and Riverfront expressly agrees to the imposition of such a lien.

J. All deadlines herein may be extended upon request by Riverfront if good cause exists and documentation is submitted to support the deadline extension request.

K. Use or occupancy of the Property, or any portion thereof, or structure thereon by Riverfront, including the approved nonconforming uses and structures, that is not in full compliance with all requirements of all applicable codes and laws or this Agreement shall constitute a violation of applicable codes and this Agreement. Brevard County reserves the right to seek any and all remedies, legal, equitable or otherwise, which may be available relating to any such violations.

L. Except for noise violations, in the event Riverfront fails to strictly and timely comply with and adhere to any condition set forth herein above, the lack of compliance may be brought to the County Commission to determine if a violation has occurred and the

reasons for such violation. Should a majority of the County Commission determine that a violation has occurred, the County may demand that the Property be returned to its condition reflected in the 2015 survey.

2. Sound Mitigation Improvements and Penalties for Violation.

A. Prior to having live music on the deck, Riverfront shall install electronic noise monitoring devices at locations to be agreed upon with the County along the property lines close to residential buildings, one along each property line adjacent to residential use, in a location as provided for in County Code.

B. Prior to having live music on the deck, Riverfront shall install both a noise curtain on the north side of the property from the hard cover canopy to the roof of the building and a “mass-loaded vinyl” sound blanket over the bandstand area.

C. Amplified live music on the deck shall be limited to the following times and durations:

1) Monday –Thursday : 6:00 PM – 10:00 PM

2) Friday, Saturday, Federal Holidays and any day immediately prior to a Federal holiday: 2:00 PM – 10:00 PM with music not to exceed a 4-hour block with a minimum of 1 hour between blocks of music;

3) Sunday: 1:00 – 8:30 PM with music not to exceed a 4-hour block with a minimum of 1 hour between blocks of music

D. Any noise complaint received by the County alleging a violation of County Code decibel regulations or this agreements date and time regulations shall be subject to the following process:

1) The parties stipulate that any noise violations found by the Special Magistrate are considered irreparable violations of County Code.

2) Noise complaints will go to the Code Enforcement Special Magistrate for determination of violation. If the noise monitoring device installed on the property line confirms that the noise was less than the noise limit established by the Code at the time of the complaint, and/or that the noise did not extend beyond the dates and times agreed to in this Agreement, the complaint will be dismissed without a hearing;

3) If a noise violation is found by the Code Enforcement Special Magistrate after a hearing, or if the data from the noise monitoring device confirms a violation, the following fines will be imposed:

- a. First Violation: \$ 500.00
- b. Second Violation: \$ 2,500.00
- c. Third Violation: \$5,000.00

For all subsequent violations within any eighteen month period, the Board of County Commissioners will schedule a hearing on the Settlement Agreement to determine an appropriate remedy or penalty.

If any fine is not paid within 30 days from issuance of the Violation determination, Riverfront agrees to an immediate cessation of live music on the deck until the fine is paid. If live music on the deck has not ceased within five days following the County's issuance of a Cease and Desist Notice, Riverfront shall be deemed to have consented to issuance of a stipulated injunction halting live music on the deck until the fine is paid.

3. The County acknowledges that the Property has two areas, identified in Exhibit "C", that have not been subject to any repairs or modifications and that Riverfront may use these areas for customer seating as of the date of execution of this agreement by both parties, provided

that said areas are not accessed via unpermitted structures. Riverfront will prevent access to these areas across unpermitted structures, except for emergency ingress/egress purposes.

4. The County will allow the asphalt millings to be used for the stabilized parking in any areas where Riverfront can demonstrate the use of impervious material as of September 2015. In areas where such proof is unavailable, Riverfront may retain asphalt millings but must comply with the 100% treatment standard set forth in paragraph 1.

5. The County acknowledges that it owes Riverfront a refund of \$1,456.00, due to the County's request that Riverfront withdraw its Vested Rights Petition and the County will pay that amount to Riverfront by March 31, 2017, or apply it as a credit to any permit Applications.

6. The County shall have the right to enter upon the property to inspect the stormwater treatment system, sound mitigation improvements, and any other Code requirements.

7. The parties agree to act with diligence and good faith in the agreed to conditions, and the County will process all permit Applications in a timely manner.

8. Riverfront shall indemnify and hold harmless the County and its employees from all claims, damages, losses, and expenses, including attorney's fees, arising out of or associated with Riverfront's violation of this Agreement. Riverfront agrees that it will indemnify the County from any claims and, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with, or arising out of Riverside's violation of this Agreement and that Riverfront will satisfy, pay and discharge any and all judgments that may be entered against the County in such action or proceeding.

9. Successors. This agreement shall bind any successor in interest to Riverfront including any lessee.

10. Mutual Drafting. If any dispute arises concerning the meaning or construction of any term or terms of this Mediated Settlement Agreement, no part or term of this Mediated

Settlement Agreement shall be construed for or against any party as the drafting party. The Parties hereto recognize that the drafting of this Mediated Settlement Agreement was the joint effort of counsel of the respective Parties.

11. Choice of Forum and of Law. In any litigation to enforce this Mediated Settlement Agreement, Florida law shall govern all issues. The exclusive forum for enforcement of this Mediated Settlement Agreement shall be in the Circuit Court for Brevard County, Florida.

12. Attorney's Fees and Costs: In the event of any action to enforce the provisions of this Agreement, each party shall bear its own attorney's fees and costs. Any trial shall be non-jury.

13. This Agreement shall be recorded in the public records of Brevard County and shall be binding on all subsequent grantees, heirs and successors in interest.

Done and Executed this 21 day of March, 2017.

Brevard County

Banana Riverfront, LLC

By: 
Curt Smith, Chairman
(as approved by the Board, on 3/21/2017)

By: 
Manager
(Date: 3-15-17)

ATTEST:

SCOTT ELLIS, CLERK

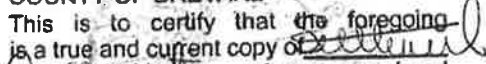
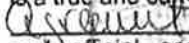

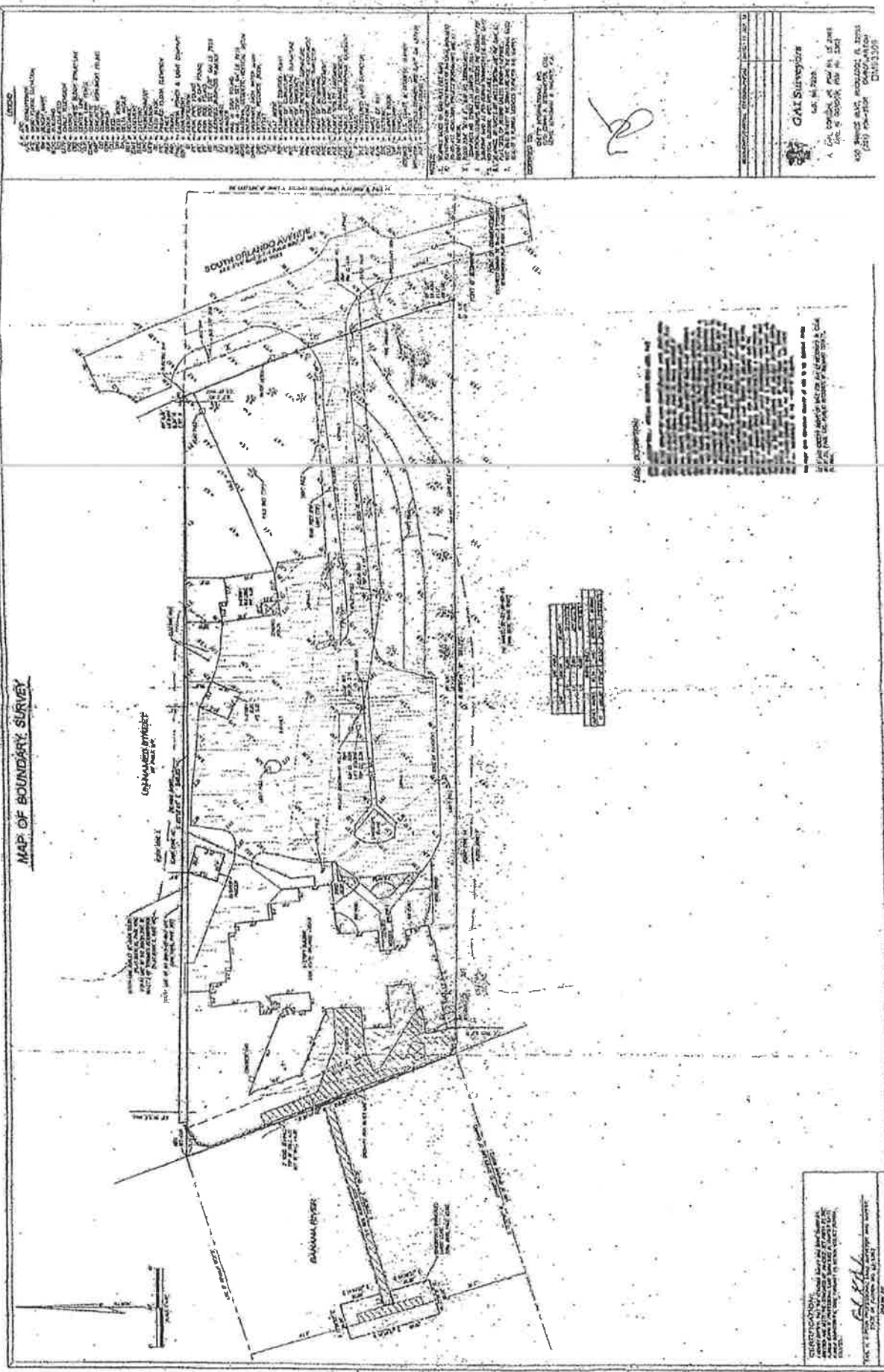
STATE OF FLORIDA
COUNTY OF BREVARD
This is to certify that the foregoing
is a true and current copy of 
 witness my hand
and official seal this 21 day of
March 2017
SCOTT ELLIS, Clerk of Circuit Court
BY  D.C.

EXHIBIT "A"
SITE PLAN 2

MAP OF BOUNDARY SURVEY



LEGEND

- 1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 2. ALL DISTANCES ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 3. ALL CORNERS ARE TO BE MARKED WITH IRON PIPES OR CONCRETE MONUMENTS UNLESS OTHERWISE SHOWN.
- 4. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 5. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 6. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 7. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 8. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 9. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 10. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 11. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 12. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 13. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 14. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 15. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 16. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 17. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 18. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 19. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.
- 20. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.

[Handwritten signature]

LEGAL DESCRIPTION

ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR HIGHWAY UNLESS OTHERWISE SHOWN.

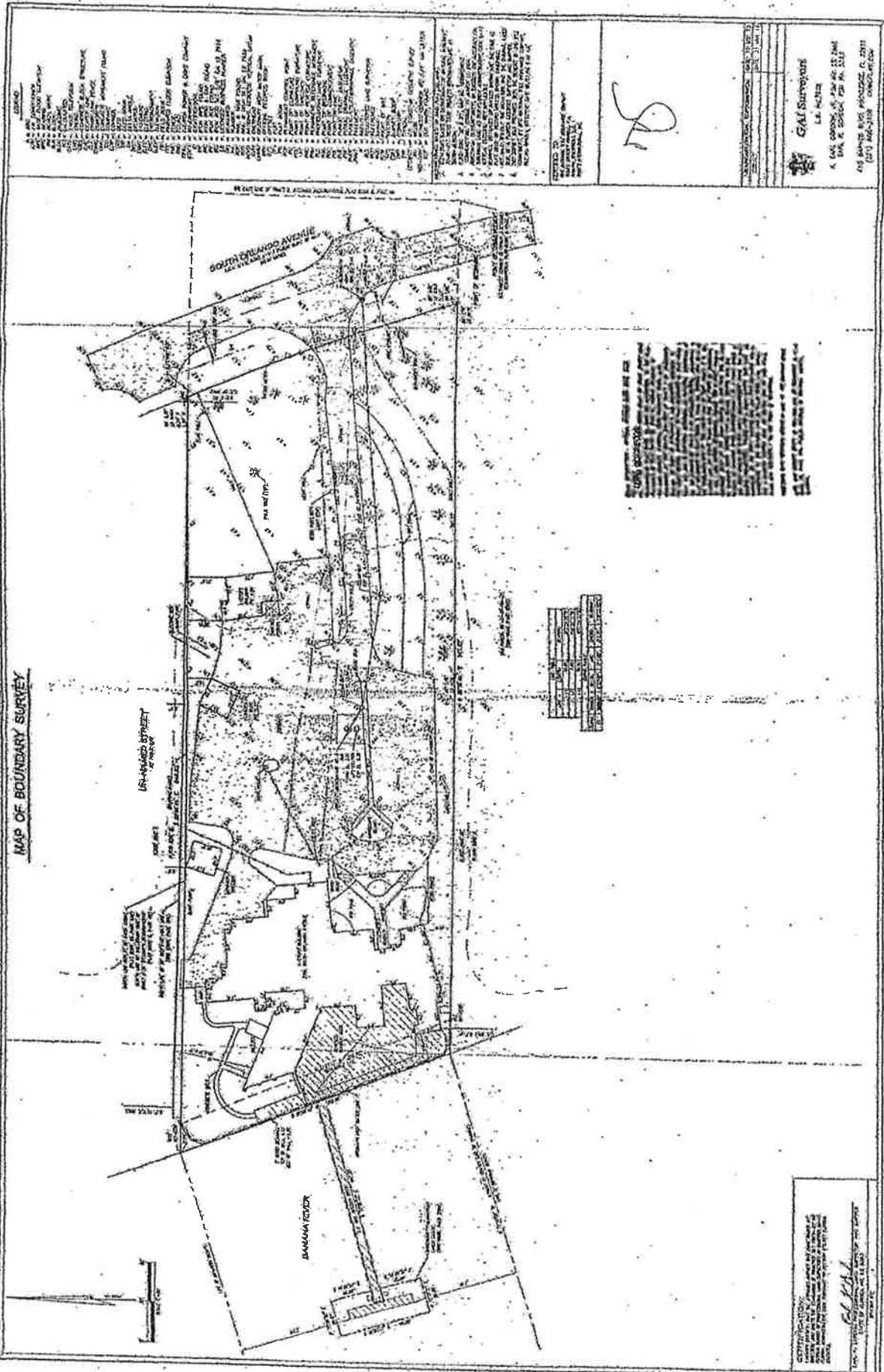
NO.	DESCRIPTION	AREA
1	LOT 1	10,000
2	LOT 2	10,000
3	LOT 3	10,000
4	LOT 4	10,000
5	LOT 5	10,000
6	LOT 6	10,000
7	LOT 7	10,000
8	LOT 8	10,000
9	LOT 9	10,000
10	LOT 10	10,000

GAL Surveyors
MAY 11, 2011

STATE OF FLORIDA
COUNTY OF PALM BEACH

EXHIBIT "B"
SITE PLAN 1

MAP OF BOUNDARY SURVEY



LEGEND

- ADJACENT PROPERTY
- EXISTING BOUNDARY
- NEW BOUNDARY
- EXISTING BUILDING
- NEW BUILDING
- EXISTING DRIVEWAY
- NEW DRIVEWAY
- EXISTING FENCE
- NEW FENCE
- EXISTING UTILITY
- NEW UTILITY
- EXISTING EASEMENT
- NEW EASEMENT
- EXISTING ENCROACHMENT
- NEW ENCROACHMENT
- EXISTING SETBACK
- NEW SETBACK
- EXISTING CORNER
- NEW CORNER
- EXISTING CURB
- NEW CURB
- EXISTING SIDEWALK
- NEW SIDEWALK
- EXISTING DRIVE
- NEW DRIVE
- EXISTING ALLEY
- NEW ALLEY
- EXISTING PATH
- NEW PATH
- EXISTING TRENCH
- NEW TRENCH
- EXISTING POLE
- NEW POLE
- EXISTING SIGN
- NEW SIGN
- EXISTING LIGHT
- NEW LIGHT
- EXISTING SIGNPOST
- NEW SIGNPOST
- EXISTING LIGHTPOST
- NEW LIGHTPOST
- EXISTING SIGNPOST AND LIGHT
- NEW SIGNPOST AND LIGHT
- EXISTING SIGNPOST AND LIGHTPOST
- NEW SIGNPOST AND LIGHTPOST
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST
- NEW SIGNPOST, LIGHT AND LIGHTPOST
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE AND SIGN
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE AND SIGN
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE AND SIGN AND LIGHT
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE AND SIGN AND LIGHT
- EXISTING SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE AND SIGN AND LIGHT AND SIGNPOST AND LIGHTPOST
- NEW SIGNPOST, LIGHT AND LIGHTPOST AND DRIVEWAY AND SIDEWALK AND DRIVE AND ALLEY AND PATH AND TRENCH AND POLE AND SIGN AND LIGHT AND SIGNPOST AND LIGHTPOST

NOTES

1. THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1908 AND 1912 AND THE RULES OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF FLORIDA.
2. THE BOUNDARIES SHOWN ON THIS MAP WERE DETERMINED BY MEASUREMENTS MADE ON THE GROUND BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
3. THE DISTANCES GIVEN ON THIS MAP WERE MEASURED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
4. THE BEARINGS GIVEN ON THIS MAP WERE MEASURED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
5. THE AREA SHOWN ON THIS MAP WAS CALCULATED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
6. THE PERIMETER OF THE PROPERTY SHOWN ON THIS MAP WAS CALCULATED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
7. THE PERIMETER OF THE PROPERTY SHOWN ON THIS MAP WAS CALCULATED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
8. THE PERIMETER OF THE PROPERTY SHOWN ON THIS MAP WAS CALCULATED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
9. THE PERIMETER OF THE PROPERTY SHOWN ON THIS MAP WAS CALCULATED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.
10. THE PERIMETER OF THE PROPERTY SHOWN ON THIS MAP WAS CALCULATED BY THE SURVEYOR AND BY THE USE OF THE TRIANGULAR METHOD.

DEED TO THE PROPERTY SHOWN ON THIS MAP

FILED IN THE OFFICE OF THE COUNTY CLERK OF ORANGE COUNTY, FLORIDA, ON THIS 12TH DAY OF 1912, AT 10 O'CLOCK A.M.

WITNESSED MY HAND AND THE SEAL OF SAID COUNTY, THIS 12TH DAY OF 1912.

CLERK OF COUNTY

[Handwritten signature]

GAI Surveys
L.S. MOORE
115 NORTH AVENUE, SUITE 100, ORLANDO, FLORIDA 32801
TEL: 305-251-1111

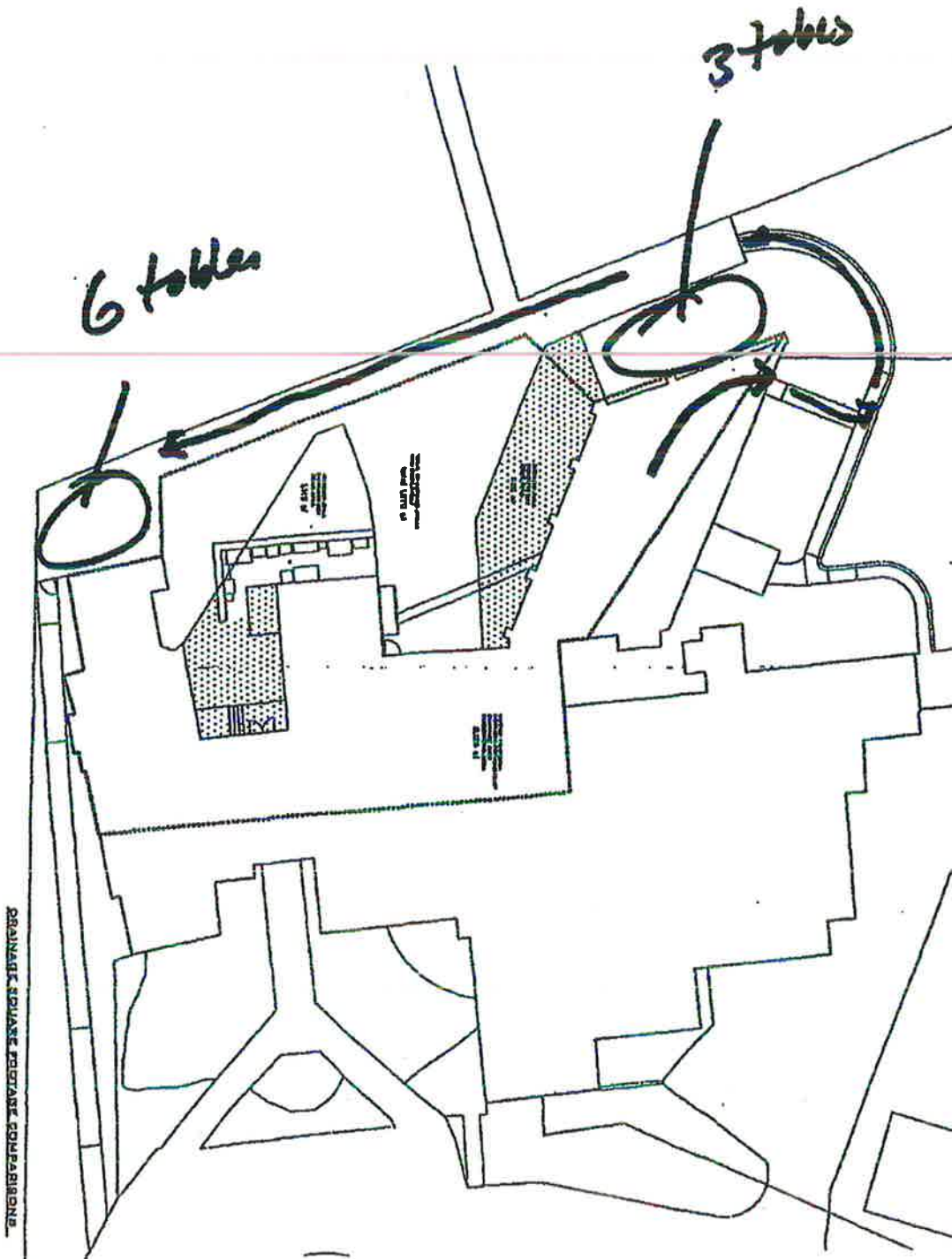
NOTICE TO THE PUBLIC

THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1908 AND 1912 AND THE RULES OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF FLORIDA.

NO. 1	100.00
NO. 2	100.00
NO. 3	100.00
NO. 4	100.00
NO. 5	100.00
NO. 6	100.00
NO. 7	100.00
NO. 8	100.00
NO. 9	100.00
NO. 10	100.00

NOTICE TO THE PUBLIC

THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1908 AND 1912 AND THE RULES OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF FLORIDA.



[Handwritten signature]

EXHIBIT "C"

DM93309

J.4

Page | 1



ASAP Onsite Septic & Sewer

PO Box 100085

Palm Bay, FL 32910

321-745-0111

July 20, 2020

Brevard County Board of Commissioners

Re: Banana Riverfront LLC

2200 S Orlando Ave

Cocoa Beach, FL 32931

To Whom It May Concern

Banana Riverfront has contracted with us to regrade the retention ponds according to the revised engineering plans approved by the county on June 2, 2020. We were initially scheduled to commence on July 6th but due to heavy rains and wet ponds we were delayed until July 14th. It is our opinion, weather permitting, the project should be complete by early next week. It is our intention to stay on the job until the pond restorations have been completed subject only to weather and any effects that rain may have on our ability to utilize equipment in the retention areas.

A handwritten signature in cursive script, appearing to read "Bill Buchman", written in black ink.

Bill Buchman

J.4
1/2

Waiting on email from Eden, that whether this should be signed or not. Nothing to Paul S. Brown

GEN

TO BE ATTACHED to and form part of Bond _____ issued by the _____, as

Surety, on behalf of Banana Riverfront, LLC of 490 N. Harbor City, Melbourne, FL 32935, hereinafter referred

to as the Principal and in favor of Brevard County Board of County Commissioners of 2725 Judge Fran Jamieson Way, Viera, FL 32940, hereinafter

referred to as the Obligee, in the sum of One Hundred Eighteen Thousand Nineteen and 00/100 Dollars (\$118,019.00), effective the 26th day of October, 2019.

NOW, THEREFORE, it is agreed that Paragraph 2 of the bond has been changed to read:
(See Attached)

IT IS FURTHER AGREED that all other terms and conditions of this bond shall remain unchanged.

THIS RIDER IS TO BE EFFECTIVE the 23rd day of September, 2019.

SIGNED, SEALED AND DATED this 23rd day of September, 2019.

Accepted By:

Br
Co

Banana Riverfront, LLC
(Principal)

By

By: [Signature] (Seal)

Approved by Board July 21, 2020

WESTERN SURETY COMPANY
(Surety)

By: Paul T. Bruflat (Seal)
Paul T. Bruflat, Vice President, Attorney-in-Fact



J4
2/2

GENERAL PURPOSE RIDER

TO BE ATTACHED to and form part of Bond Number 72091314 issued by the
WESTERN SURETY COMPANY, as
 Surety, on behalf of Banana Riverfront, LLC of
490 N. Harbor City, Melbourne, FL 32935, hereinafter referred
 to as the Principal and in favor of Brevard County Board of County Commissioners
 of 2725 Judge Fran Jamieson Way, Viera, FL 32940, hereinafter
 referred to as the Obligee, in the sum of One Hundred Eighteen Thousand Nineteen and 00/100
 Dollars (\$118,019.00), effective the 26th day of October, 2019.

NOW, THEREFORE, it is agreed that Paragraph 2 of the bond has been changed to read:
(See Attached)

IT IS FURTHER AGREED that all other terms and conditions of this bond shall remain unchanged.

THIS RIDER IS TO BE EFFECTIVE the 23rd day of September, 2019.

SIGNED, SEALED AND DATED this 23rd day of September, 2019.

Accepted By:

Banana Riverfront, LLC
 (Principal)
 By: [Signature] (Seal)
 IR

Approved by Board July 21, 2020

 WESTERN SURETY COMPANY
 (Surety)
 By: [Signature] (Seal)
 Paul T. Bruflat, Vice President, Attorney-in-Fact



J4
2/2

GENERAL PURPOSE RIDER

TO BE ATTACHED to and form part of Bond Number 72091314 issued by the
WESTERN SURETY COMPANY, as
Surety, on behalf of Banana Riverfront, LLC of
490 N. Harbor City, Melbourne, FL 32935, hereinafter referred
to as the Principal and in favor of Brevard County Board of County Commissioners
of 2725 Judge Fran Jamieson Way, Viera, FL 32940, hereinafter
referred to as the Obligee, in the sum of One Hundred Eighteen Thousand Nineteen and 00/100
Dollars (\$118,019.00), effective the 26th day of October, 2019.

NOW, THEREFORE, it is agreed that Paragraph 2 of the bond has been changed to read:
(See Attached)

IT IS FURTHER AGREED that all other terms and conditions of this bond shall remain unchanged.

THIS RIDER IS TO BE EFFECTIVE the 23rd day of September, 2019.

SIGNED, SEALED AND DATED this 23rd day of September, 2019.

Accepted By:

Brevard County Board of County Commissioners

By: BRYAN ANDREW LOBER, CHAIR

Banana Riverfront, LLC
(Principal)

By: [Signature] (Seal)

Approved by Board July 21, 2020

WESTERN SURETY COMPANY
(Surety)

By: Paul T. Bruflat (Seal)
Paul T. Bruflat, Vice President, Attorney-in-Fact

