EXHIBIT A

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Prepared by and returned to:
City of Deltona, City Clerk
2345 Providence Blvd.
Deltona, FL 32725

City of Deltona
Staff Drafted
DEVELOPMENT AGREEMENT
Deltona Village BPUD
For property located in the Areawide DRI at 2160 Normandy Boulevard

THIS DEVELOPMENT AGREEMENT ("Agreement") entered into and made as of the 15th day of February, 2010, by and between the **CITY OF DELTONA, FLORIDA** (hereinafter referred to as the **"City"**), and Deltona Retail Holdings, LLC, a Florida limited liability company and Eleanor J. DeMarsh, as Trustee of the Eleanor J. DeMarsh Revocable Trust dated May 20, 1992 as Restated on March 21, 1994 (hereinafter referred to as the **"Owner/Developer"**).

WITNESSETH

WHEREAS, the Owner/Developer warrants that it or an entity on whose behalf it is authorized to act hereunder holds legal title to the property described in Paragraph 2 below and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer desires to facilitate the orderly development of the subject property, in compliance with the laws and regulations of the City and of other governmental authorities, and the Owner/Developer desires to ensure that its development is compatible with other properties in the area; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein; and

WHEREAS, the Owner/Developer has sought the City's approval for plans to develop the subject property, and the City Commission of the City of Deltona, Florida, has approved a Business Planned Unit Development (**"BPUD"**) on February 15, 2010, with an Overall Development Plan/Master Development Plan (**"ODP/MDP"**) subject to the covenants, restrictions, and easements contained herein, and in the Business Planned Unit Development rezoning ordinance, Ordinance No. 21-2009, and further subject to all other applicable requirements of law.

WHEREAS, the City of Deltona adopted Ordinance No. 05-2003 on July 7, 2003 which approved the Development Order of the Interstate 4/State Road 472 Area wide Development of Regional Impact ("DRI"), and all development shall be consistent with this adopted ordinance;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. INCORPORATION. The recitals herein contained are true and correct and are incorporated herein by reference.

2. OWNERSHIP. The Owner/Developer represents that it or an entity on behalf of which it is authorized to act is the present owner of the following described property (hereinafter referred to as the **"Subject Property"**):

Attached hereto as Exhibit "A"

3. TITLE OPINION/CERTIFICATION. The Owner/Developer has provided to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing marketable title to the Subject Property to be in the name of the Owner/Developer or an entity on behalf of which it is authorized to act and showing all liens, mortgages, and other encumbrances not satisfied or released of record.

4. DEVELOPMENT CONDITIONS

A. The Owner/Developer shall develop the subject property in conformance with the requirements of the approved BPUD and approved ODP/MDP. In the event of the expiration or sooner termination, or amendment to the DRI, or any of the provisions of the Code of Ordinances of the City or the Deltona Land Development Code, all rights and entitlements to which the Owner/Developer was entitled at the time of the expiration or sooner termination, or amendment to the DRI, or any of the provisions of the Code of Ordinances of the City or the Deltona Land Development Code, shall, at the option of the Owner/Developer, vest in the Owner/Developer and not be subject to the expiration, termination or amendment.

B. Site Plan(s). The Owner/Developer shall submit a Final Site Plan application for each proposed Lot and shall secure a Final Site Plan Development Order pursuant to the BPUD, ODP/MDP, and City Land Development Code. Each site proposed for development shall be platted

into one or more lots prior to commencement of development and as a condition for Final Site Plan approval.

C. **Platting.** Subdivision of any Lot or Outparcel shown on the approved Plat that creates a maximum of four (4) new conforming Lots or Parcels shall be considered a minor amendment, and shall be approved by City staff as an administrative subdivision and does not require an amendment to the BPUD, ODP/MDP, the Plat or approval of the City Commission. Any further subdivisions of any Lot or Outparcel shall be a major amendment, and shall be approved only after City Commission's approval as may be required by law in effect at the time the amendment application is submitted to the City. Combination of any whole platted Lots and/or Outparcels with one or more other whole platted Lots and/or Outparcels shall be considered a minor amendment.

The submission of a sketch plan and ODP/MDP plan prior to the application for approval of a Subdivision Preliminary Plat Development Order as required by the Code of Ordinances of the City is satisfied by the approval of the ODP/MDP, and the City shall not require the submission of any additional sketch plan nor overall development plan as a part of the Plat approval process.

A final site plan application may be accepted and reviewed concurrently with the preliminary plat application if such final site plan application shall provide all information and analyses that is determined by the City staff to be necessary to show consistency and coordination with the proposed preliminary plat, and any public and common improvements that are planned, or approved, or funded, or under construction, or required in connection with the preliminary plat, including the future phases of development.

5. **PHASING.** The Owner/Developer may choose to develop the Subject Property in multiple phases or sub-phases in any order the Owner/Developer desires. Stormwater calculations for the build out of each phase or sub-phase of the development shall be provided with the Preliminary Plat application, along with the design and construction details of all commonly or publicly owned or maintained stormwater facilities.

6. **PERMITTED USES.**

A. Permitted Land Uses.

The permitted land uses and their customary incidental and subordinate accessory uses on the Subject Property shall be as described in the BPUD Ordinance No. 21-2009 or if not specifically stated in said Ordinance, such similar uses as approved by the Development Services Director.

7. **SITE DEVELOPMENT STANDARDS.**

A. Site Development Standards shall be as set forth in the ODP/MDP and this Agreement. Any non-substantial or minor amendments or modifications to the ODP/MDP, as such is determined by the Planning and Development Services Director, who may request a review by the DRC, may be approved by the Planning and Development Services Director.

B. Building Architecture.

Building architecture shall conform to design guidelines as approved by the Director of Planning and Development Services.

C. Impact Fees.

The City acknowledges that the parties hereto reasonably expect any and all applications for Final Site Plan review for any phase or sub-phases of this Project to be submitted within the period in which the City has adopted a legal moratorium on the imposition of or obligation to pay any impact fees or mobility fees or similar or like fees. It is anticipated by all parties to this Agreement that no impact fees or mobility fees or any other similar or like fees or obligations shall be required by the City for the development of the Subject Property. The Owner/Developer shall be entitled to the benefit of the City moratorium so long as an application for a building permit has been submitted by the expiration date of the moratorium and the application is diligently pursued.

D. Miscellaneous.

a. The parties recognize that additional Police and Sheriff Department services shall be required for the theatre and the Subject Property. The

City hereby acknowledges the availability of such services and agrees to provide such services to the Subject Property that are consistent with or similar to services provided throughout the City.

b. The City acknowledges that the proposed alignment of Graves Avenue is no longer the preferred roadway network. The City acknowledges that the ODP/MDP contains the preferred alignment for the roadway network within and bordering the Subject Property.

8. NATURAL RESOURCE PROTECTION

A. Wetlands - There are no known wetlands on the Subject Property. The City Commission acknowledges no payment shall be due of any funds, whether a fee, charge, or otherwise, to the City and/or the City's Environmental Improvements Trust Fund, pursuant to City Resolution No. 2006-13, or any other applicable ordinance, resolution or rule.

B. Endangered Wildlife: - The Owner/Developer has submitted a report indicating that no scrub jays inhabit the site. The Owner/Developer shall submit a gopher tortoise study for each Lot as part of the final site plan approval process and if applicable, secure the appropriate permits from the applicable agencies.

C. Archeological Assessment. The Owner/Developer has complied with the standard permitting condition of the Division of Historical Resources regarding fortuitous finds or unexpected discoveries during ground disturbing activities on the property. The Division of Historical Resources letter dated September 15, 2005, DHR No. [redacted] indicates no significant archeological or historical sites or structures are within the Subject Property, and further examination of the surrounding region suggests that a low potential for the identification of archaeological resources in that area exists.

D. Open Space Requirements. The City acknowledges that due to hurricanes and other damage, and in accordance with the proper permits, the Subject Property was cleared of debris and dead trees and there were no trees on the site that could be preserved. Accordingly, the City shall not require tree preservation, except for the impervious area, landscaping and buffer specifically provided herein.

9. **SITE ACCESS.**

A. **Rhode Island Extension Right of Way**: The Owner/Developer shall dedicate 80' of right of way along a portion of the eastern boundary of the Property upon the City's issuance of a Preliminary Plat Development Order and a Certificate of Capacity. This 80' right of way shall be utilized for the future construction of a segment of Rhode Island Extension. In the event the City/County does not construct the Rhode Island Extension within ten years from the date hereof, that portion of the 80' right of way that has not been constructed shall revert back to the Owner/Developer without further notice or hearing. At the option of the Owner/Developer, the City/County may retain the 80' right of way upon either i) the conveyance or transfer to the Owner/Developer or its assigns, of any and all development rights as to that portion of the property; or ii) the City/County shall pay Owner/Developer a fair market value for the fee simple rights to the subject property which may be paid by the granting of impact fee credits or mobility credits or such similar or like credits which may be transferred to third parties for development within five miles of the Subject Property and the City/County shall facilitate the sale, transfer or assignment of said credits to third parties for such valuable consideration as determined by Owner/Developer. In the event the Owner/Developer elects to make any improvements beyond those required for the development of the Subject Property by Owner/Developer, the City/County shall grant to Owner/Developer such impact fee credits or mobility credits or such similar or like credits as is available pursuant to Florida Statutes and City Code of Ordinances for such additional improvements.

B. **Cross Access**: The Owner/Developer shall provide cross access and easements as may be necessary for real property surrounded by the Subject Property that is owned by third parties that are not parties to this Agreement ("surrounded parcel"), and include cross access implementation measures in the Preliminary Plat, Final Plat, and Final Site Plans submitted to the City for its review and approval. If and when the Owner/Developer acquires from said third party a surrounded parcel, then that easement to the surrounded parcel will no longer be required, and if the easement was created it may be eliminated by the Owner/Developer. Said submittals shall not be deemed to be complete until reasonable cross access provisions meeting sound engineering standards have been included on the submitted plans. If such surrounded parcels are provided access within the internal access system, the City shall require the third party owners of the

surrounded parcel(s) to pay their pro rata share of expenses related to the common area improvements and maintenance expenses within the BPUD.

C. **Mass Transit:** Owner/Developer shall provide land for a bus shelter or bus-stop adjacent to the Subject Property in a location reasonably acceptable to Owner/Developer and which does not negatively impact the value of the Subject Property or unreasonably interfere with the use of the Subject Property and Owner/Developer's plan for development of the Subject Property. Any voluntary contributions of land by Owner/Developer for mass transit facilities or parking area shall be in exchange for i) an equivalent development entitlement; or ii) the reduction or elimination of an equivalent fee imposed by the City or County.

D. **Traffic Mitigation**: The applicant has completed a Traffic Impact Analysis ("**TIA**") which identified traffic impacts and necessary mitigation measures for the approval of this BPUD. The traffic mitigation and fair share payments pursuant to Sections 163.3180(11) and 163.3180(16), *Florida Statutes* are set forth in paragraphs 10 and 11 hereinbelow. The methodology utilized for the TIA is consistent with the methodology adopted by the Deltona Activity Center DRI. The City acknowledges that due to the poor economic conditions which exist in retail development industry, the TIA phase completion dates shall be extended to coincide with the recovery of the national economy.

10. FAIR SHARE OF COSTS OF ROADWAY IMPROVEMENTS.

The overall project is a commercial project planned to consist of up to 900,000 square feet of commercial retail uses on the Subject Property and on adjacent property controlled by the Owner/Developer, subject to final site plan approvals by the City.

The Owner/Developer submitted a Traffic Impact Analysis (dated December 2009) ("TIA") prepared for the City of Deltona for the first 96,000 square feet of development within the Subject Project. The Owner/Developer submitted a TIA (dated December 2009) prepared for the County of Volusia for an additional 804,000 square feet of development within the Subject Project and on adjacent property controlled by the Owner/Developer. The TIA phases, which refer to thresholds of developable square footage, do not equate to the lot arrangement phases reflected in this Agreement and the ODP/MDP. The two (2) TIA reports submitted to the County and City take into account all phases or sub-phases of development on the Subject

Property and adjacent property controlled by Owner/Developer. The TIA includes all phases of the Subject Property and an exhibit depicting such phases is attached hereto as **Exhibit B**, which is incorporated herein by this reference.

Based upon the TIA reports, the Owner/Developer shall pay to the County or to the City as the collecting agent for the County, a fair share assessment amount prior to the issuance of building permits by the City. Payment may be in the forms authorized pursuant to Sections 163.3180(11) and 163.3180(16), *Florida Statutes*. The total fair share assessment amount due by phase is stipulated below and shall not exceed the amounts below:

	Square Feet	Mitigation
City TIA Phase	96,000	0
County TIA Phase I	301,000	$125,000
County TIA Phase II	269,000	$803,605
County TIA Phase III (Build Out)	234,000	$984,122
Cumulative Total	900,000	$1,912,727

Prior to the construction of any improvements within the County TIA Phase III, the City shall put all fair-share contributions and impact fee payments into an escrow account. The phases outlined above are defined based upon the Trip Reservations enumerated in Paragraph 11 of this Agreement. In the event that the Owner/Developer chooses to further subdivide the phases outlined above into additional sub-phases, the fair share assessment due will be calculated based on the pro-rata share of net new p.m. peak hour external trips being allocated to that specific sub-phase versus the net new p.m. peak hour external trips allocated to the entire phase of development.

Prior to the issuance of a building permit for any development within County TIA Phase III and subject to the execution of an impact fee credit agreement with the County, the Owner/Developer shall design and construct the following improvements:

a. 2nd northwest-bound left-turn lane at the Howland Boulevard/Graves Avenue intersection;

b. 2nd westbound travel lane on Graves Avenue from Howland Boulevard to the westernmost driveway of the development on the north side of Graves Avenue located approximately 400 feet east of the I-95 overpass;

c. extension of the eastbound right-turn lane on Graves Avenue such that the lane begins immediately east of an existing driveway on the south side of Graves Avenue at a location approximately 250 feet east of the I-95 overpass;

d. a 265-foot (including a 50-foot taper) westbound left-turn lane on Graves Avenue into the site at a location approximately 600 feet east of Normandy Boulevard.

The Owner/Developer and County shall enter into an impact fee credit agreement which shall provide that all eligible costs associated with improvements set forth in paragraphs a, b, and c above shall be entitled to impact fee credit against Volusia County Road Impact Fees at the time the contributions are made to the County. The costs of improvements set forth in paragraphs a, b, and c above for which the Owner/Developer shall be responsible shall be limited to $1,912,727 or such lesser mitigation costs as are required by the County. The impact fee credit agreement shall establish the process the Owner/Developer and County must follow relative to the County/City transferring of monies from the escrow account back to the Owner/Developer to allow the Owner/Developer to proceed with the design and construction of such improvements set forth in a, b, and c above. The County and the Owner/Developer shall also enter into an agreement to relocate the County owned retention pond and to convey or transfer certain surplus properties.

If the City or County modifies its Code of Ordinances with respect to the Concurrency Management System (CMS) subsequent to the execution of this Agreement, or if a change in circumstances such that the method or manner of payment of the total fair share assessment outlined above, does not represent the method most beneficial to the Owner/Developer for mitigation of transportation impacts, at the request of the Owner/Developer the City or County may pursue such other method or methods so long as the rights and obligations granted herein to

the Owner/Developer are not adversely impacted and remain unchanged and the costs to the Owner/Developer do not increase. Furthermore, should the City's CMS be eliminated or otherwise negated subsequent to the execution of this Agreement, such as, but not limited to, action of the Florida Legislature, the Owner/Developer (at Owner/Developer's option) may waive or be released from the requirement to pay the total fair share assessments by phase, subphase or otherwise, as outlined above. No such waiver or release shall eliminate the Owner/Developer's Impact Fee Credits for fair share assessments already paid. Should the City or County change to a mobility fee or similar form of transportation concurrency system, the Owner/Developer, at Owner/Developer's option, may opt to apply its fair share assessment contributions and related impact fee credits towards such fees. It is the intent of this paragraph to allow the Owner/Developer to benefit from any legislative changes that reduce the financial obligations for mitigation or fees of any nature or kind for transportation concurrency and to limit the financial exposure of the Owner/Developer to that which is stated in this Agreement.

11. **TRIP RESERVATIONS.**

The Subject Property is planned as a part of the Phase I of the Interstate 4/SR 472 Areawide DRI, theretofore, the trip generation rate utilized for the project, as approved by the City and County, was based on the approved total trip generation for Phase I of the DRI. The Subject Property gross trip generation rate was based on the gross trip generation rate for the retail component of Phase I of the DRI. The gross P.M. peak hour trip generation rate for Phase I of the DRI was calculated as the approved gross P.M. peak hour trips for the Phase I retail uses of the DRI (4,830 P.M. peak hour trips) divided by the retail square footage approved in Phase I of the DRI (2,200 ksf) (4,830 P.M. peak hour trips divided by 2,200 ksf equals 2.1955 gross p.m. peak hour trips per ksf). The gross daily trip generation rate for Phase I of the DRI was calculated as the total daily trip generation for the retail sues for Phase I of the DRI (49,745 daily trips) divided by the retail square footage approved in Phase I of the DRI (2,200 ksf) (49,745 daily trips divided by 2,200 ksf equals 22.6114 gross daily trips per ksf). Once the gross trip generation rates for Phase I of the DRI were calculated, the gross trip generation for the project was calculated by multiplying the gross trip generation rates for Phase I of the DRI by the project's square footage by phase.

By its approval and execution of this Agreement, the City hereby agrees to issue and vest to the Owner/Developer the following net new external daily trip reservations by phase, and the net new p.m. peak hour external trip reservations by phase within the Interstate 4/SR 472 Areawide DRI:

CUMULATIVE PHASING	Square Feet	Net New External Trip Ends P.M. Peak Hour	Daily
City TIA Phase	96,000	122	1,900
County TIA Phase I	301,000	381	5,956
County TIA Phase II	570,000	723	11,278
County TIA Phase III (Build Out)	804,000	1,019	15,908
Combined City and County			
City TIA Phase	96,000	122	1,900
County TIA Phase I	397,000	503	7,856
County TIA Phase II	666,000	845	13,178
County TIA Phase III (Build Out)	900,000	1,141	17,808

BY PHASE	Square Feet	Net New External Trip Ends P.M. Peak Hour	Daily
City TIA Phase	96,000	122	1,900
County TIA Phase I	301,000	381	5,956
County TIA Phase II	269,000	342	5,322
County TIA Phase III (Build Out)	234,000	296	4,630
Total County	804,000	1,019	15,908
Combined City and County			
City TIA Phase	96,000	122	1,900

County TIA Phase I	301,000	381	5,956
County TIA Phase II	269,000	342	5,322
County TIA Phase III (Build Out)	234,000	296	4,630
Total Combined City and County	900,000	1,141	17,808

The Subject Property is planned as a part of the Interstate 4/SR 472 Areawide DRI, therefore the land uses are subject to the DRI Development Equivalency Matrix. The Interstate 4/State Road 472 Activity Center DRI Development Equivalency Matrix, as obtained from the City of DeLand DRI Development Order (Resolution 2003-28), which is included in **Exhibit C,** attached hereto and incorporated by this reference. The Development Equivalency Matrix is based on the trip generation rates for the DRI, therefore utilization of the Matrix by the Applicant will not require additional traffic studies by City or County. No trip reservations hereunder shall expire if Owner/Developer submits a final site plan application for any portion of the development within the City TIA Phase I (as described above) on or before January 30, 2015 and a final site plan application for any portion of the development of County TIA Phase I on or before December 30, 2020, and Owner/Developer has paid the fair share assessment or impact/mobility fees required by the City and County for the development of such phases or sub-phases. In such an event, the Owner/Developer shall be entitled to retain all trips reserved as stated herein for all other phases or sub-phases. Upon the submittal by the Owner/Developer of any final site plans for development within the Subject Property that causes the cumulative total floor area to exceed 600,000 square feet of floor area , the Owner/Developer shall be required to seek approval for any portion of development that exceeds 600,000 square feet of floor area prior to obtaining final approval of such final site plan from the City of up to a total of 900,000 square feet in accordance with the Owner/Developer 's approved TIA, if otherwise required.

12. UTILITIES.

A. Sanitary Sewer. Owner/Developer shall install underground sanitary sewer utilities as are required to provide service to the Subject Property at Owner/Developer's cost and expense. Provided however, the City/County shall provide a sanitary sewer connection at or near the Subject Property at the City's/County's cost.

B. Water. Owner/Developer shall install underground water utilities as are required to provide service to Subject Property at Owner/Developer's cost and expense. Provided however, the City/County shall provide a connection for water at or near the Subject Property at the City's/County's cost.

C. Irrigation: If available at the boundary of the Subject Property or any Lot or phase within the Subject Property, the Subject Property shall use the following sources for non-potable water, in order of priority, for surface irrigation of common and private areas of the Subject Property.

a. Treated wastewater made available to the Subject Property by the City/County;

b. Surface water stored on-the Subject Property in surface water storage ponds; and

c. If no other source is available, private irrigation wells, or potable water shall be permitted.

d. In the event the Owner/Developer is required to construct and install any water or sewer lines for the benefit of other third parties in connection with the development of the Subject Property, Owner/Developer shall receive reimbursement from the City/County for any other users of such facilities as such users are required to connect into said system.

13. STORMWATER MANAGEMENT

Stormwater management and design for the Subject Property shall comply with City, State and Federal requirements. The Subject Property shall have a master stormwater management system in compliance with closed basin standards.

14. OBLIGATIONS. Should the Owner/Developer fail to undertake and complete its obligations as described in this Agreement to the City's specifications, the City shall give the Owner/Developer thirty (30) days' written notice to commence and ninety (90) days thereafter to complete said required obligation (provided, however, that if any such obligation takes longer than ninety (90) days to complete, in the exercise of reasonable due diligence, such time permitted shall be extended by such additional time may be required if Owner/Developer commences the obligation within the ninety (90) day period and thereafter prosecutes it to completion with due diligence). If the Owner/Developer fails to complete the obligations within

such period, the City, without further notice to the Owner/Developer or its successors in interest, may, without prejudice to any other rights or remedies it may have, perform such obligations. Further, the City is hereby authorized to assess the actual and verified cost of completing such obligations against the Subject Property. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments.

15. ENFORCEMENT. In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement which costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. In the event that enforcement of this Agreement by the Owner/Developer becomes necessary, and the Owner/Developer is successful in such enforcement, the City shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement.

16. COMPLIANCE. The Owner/Developer agrees that it, will abide by the provisions of this BPUD Agreement, ODP/MDP, the City's Comprehensive Plan, and the City's Land Development Code, including the site plan regulations of the City which are incorporated herein by reference. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals, should the Owner/Developer fail to comply with the terms of this Agreement.

17. UTILITY EASEMENTS. The Owner/Developer shall provide to the City, prior to the City's approval of the Final Plat and Final Site Plans, such easements and other legal documentation, in form mutually acceptable to the City Attorney and the Owner/Developer, as the City may deem reasonably necessary or appropriate for the installation and maintenance of the utility and other services necessary to service the Subject Property , including but not limited to, sewer, potable water, and reclaimed water services, electric, cable, fire protection and

telecommunications. The Owner/Developer shall also provide access and utility easements to all parcels of property owned by a third party and located within the boundaries of the Subject Property. Such easements shall not unreasonably impede or impair the use of the Subject Property by the Owner/Developer or interfere with the Owner/Developer's plan of development.

18. NOTICES. Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or overnight courier. Said notice shall be sent to the following, as applicable, and shall be deemed to be given and received if by hand delivery, and otherwise on the date of delivery or of first attempted delivery if delivery is impossible or refused.

OWNER/DEVELOPER'S REPRESENTATIVES:

Deltona Retail Holdings, LLC
c/o Frank DeMarsh
EPIC Theatres, Inc.
P.O. Box 2076
DeLand, Florida 32721-2076
Phone: 386-736-6830
Fax: 386-738-2596
email: fd@epictheatres.com

With a Copy to:
Kim C. Booker, Attorney at Law
Booker & Associates, P.A.
1019 Town Center Drive, Suite 201
Orange City, Florida 32763
Telephone 386-774-6552

With a Copy to:
LENDERS:
Comerica Bank
Attn.: David Sass
101 North Main Street
Suite 200 MC 9403
Ann Arbor, Michigan 48104
Telephone 734-930-2442

CITY'S REPRESENTATIVE:

City Clerk and Planning & Development Services Director
2345 Providence Boulevard
Deltona, Florida, 32725
Telephone 386-878-8600, Fax 386-878-8601

Should any party identified above change or should any party elect to add an additional person or entity to receive notices hereunder, it shall be said party's obligation to notify the remaining parties of the change or addition in a fashion as is required for notices herein.

19. CAPTIONS. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.

20. FORCE MAJURE. Notwithstanding anything contained in this Agreement, each party shall be excused from performing any obligation under this Agreement and any delay in the performance of any obligation under this Agreement shall be excused, if, but only for as long as, the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, actions or the elements, war, riots, mob violence, Inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party (other than lack of or inability to procure monies to fulfill its commitments and obligations under the Agreement).

Notwithstanding any specific references in certain provisions of this Agreement to this Section 20, the absence of such specific reference in any other provision shall not be deemed to diminish the general applicability of this Section 20.

21. BINDING EFFECT. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest and the City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

22. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Agreement is declared severable.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Signature of Witness # 1
Eduardo M. Vega
Print or type name

Christine M Morris
Signature of Witness #2
Christine M. Morris
Print or type name

DELTONA RETAIL HOLDINGS, LLC
a Florida limited liability company

BY: William F DeMarsh
Print or type name: William F DeMarsh

Signature of Witness # 1
Eduardo M. Vega
Print or type name

Christine M Morris
Signature of Witness #2
Christine M. Morris
Print or type name

ELEANOR J. DEMARSH, AS TRUSTEE OF THE ELEANOR J. DEMARSH REVOCABLE TRUST DATED MAY 20, 1992, AS RESTATED MARCH 21, 1994

BY: Eleanor DeMarsh
Print or type name: Eleanor DeMarsh

ATTEST: Edith D Lawrence
Signature
Edith D. Lawrence
Print or type name
AS: Member

Mailing Address: P.O. Box 2076
DeLand FL 32721-2076

STATE OF FLORIDA

COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 23rd day of March 20 10, by William Frank DeMarsh and _____, respectively, of Deltona Retail Holdings LLC, who is/are personally known to me or who has/have produced _____ as identification and who did not (did) take an oath.

Christine M Morris
Signature

(Notary Stamp) Christine M. Morris
Print or type name

CHRISTINE M. MORRIS
MY COMMISSION # DD 915978
EXPIRES: August 12, 2013
Bonded Thru Budget Notary Services

STATE OF FLORIDA

COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 23rd day of March 20 10, by Eleanor J. DeMarsh, as Trustee of the Eleanor J. DeMarsh Revocable Trust dated May 20, 1992, as Restated March 21, 1994, who is personally known to me or who has produced ____ _____ as identification and who did not (did) take an oath.

Christine M Morris
Signature

(Notary Stamp) Christine M. Morris
Print or type name

CHRISTINE M. MORRIS
MY COMMISSION # DD 915978
EXPIRES: August 12, 2013
Bonded Thru Budget Notary Services

ACCEPTED FOR THE CITY OF DELTONA

By: _____
Dennis Mulder, Mayor
Date: 5-14-10

Mailing Address:
City of Deltona
2345 Providence Boulevard
Deltona, Florida, 32725

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of MAY 2010, by Dennis Mulder as Mayor of the City of Deltona, Florida, who is personally known to me and acknowledges executing the same freely and voluntarily under authority vested in him.

JEAN W. OERTLI
Commission DD 769462
Expires July 17, 2012
Bonded Thru Troy Fain Insurance 800-385-7019
(Notary Stamp)

_____ Signature of Notary
JEAN W. OERTLI
Print or type name

This instrument approved by:
James Fowler, Acting City Attorney
as to form and legality for use andreliance by the
City of Deltona.

This instrument prepared by:
City of Deltona
Department of Development Services
2345 Providence Boulevard
Deltona, Florida 32725

Instrument# 2010-101853 # 20
Book: 6482
Page: 4253

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT made this _____ day of _____ 20__, by _____ whose address is _____, referred to as "Mortgagee."

WITNESSETH:

The Mortgagee of the property described in the foregoing Developer's Agreement which property is owned by _____, does hereby agree to subordinate all its interests and rights contained in the property to the foregoing Developer's Agreement which property is owned by _____ entered into by _____ as Owner/Developer and the CITY OF DELTONA. This Subordination Agreement shall bind all successors, assigns, and representatives of the Mortgagee.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

MORTGAGEE:

BY: _____

Signature _____

Print or type name

_____

Signature of Witness # 1

_____

Print or type name

_____

Signature of Witness #2

_____

Print or type name

ATTEST:

_____

Signature

_____

Print or type name

AS: _____

Mailing Address: _____

_____

_____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____day of _____ 20___, by _____ and _____, _____ and _____, respectively, of _____, who are personally known tome or who have produced _____ as identification and who did (did not) take an oath.

_____

Signature_____

Print or type name

(Notary Stamp)

Instrument# 2010-101853 # 22
Book: 6482
Page: 4255

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT made this 12th day of March 2010, by Comerica Bank whose address is _____, referred to as "Mortgagee."

WITNESSETH:

The Mortgagee of the property described in the foregoing Developer's Agreement which property is owned by Deltona Retail Holdings, LLC, does hereby agree to subordinate all its interests and rights contained in the property to the foregoing Developer's Agreement which property is owned by Deltona Retail Holdings, LLC entered into by Deltona Retail Holdings, LLC as Owner/Developer and the CITY OF DELTONA. This Subordination Agreement shall bind all successors, assigns, and representatives of the Mortgagee.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

MORTGAGEE:

BY: _____

Signature DAVID T. SAAS

Print or type name

_____

Signature of Witness # 1

MARY ANN EMRICK

Print or type name

_____

Signature of Witness #2

Heide L. Lewiston

Print or type name

ATTEST:

_____

Signature

_____

Print or type name

AS: _____

Mailing Address: _____

_____

_____

Instrument# 2010-101853 # 23
Book: 6482
Page: 4256

STATE OF MICHIGAN

COUNTY OF Washtenaw

The foregoing instrument was acknowledged before me this 12th day of March 2010, by David J. Sass, Sr Vice President respectively, of Comerica Bank, who is personally known tome or who has produced

_____ as identification and who did (did not) take an oath.

Signature _____

Print or type name

(Notary Stamp)

DIANA K STAMPER
Notary Public - Michigan
Washtenaw County
My Commission Expires Mar 14, 2011
Acting in the County of

Instrument# 2010-101853 # 24
Book: 6482
Page: 4257

EXHIBIT "A"

LEGAL DESCRIPTION:

LEGAL DESCRIPTION: OVERALL (WRITTEN)

A parcel of land lying in and being a part of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, lying East of the Easterly Right of Way of Normandy Boulevard, as now established, and South of the Southerly Right of Way of Howland Boulevard, as now established, being more particularly described as follows: Commencing at the Southwest corner of said NE 1/4 , run thence S 89°47'13" E along the South line of said NE ¼ a distance of 526.96 feet to a point lying on said Easterly Right of Way and the Point of Beginning. Run thence N 00°10'55" W along said Right of Way a distance of 169.22 feet to a point of curve, concave to the Northwest, having a radius of 1959.86 feet and a delta of 11°35'31" with a chord bearing and distance of N 05°29'05" E, 395.84 feet, run thence Northeasterly along said curve and Right of Way an arc distance of 396.51 feet; run thence N 00°18'41" W continuing along said Right of Way a distance of 765.22 feet to a point on the North line of the SW ¼ of the NE ¼ of said Section 7; run thence N 00°19'01" W continuing along said Right of Way and entering into the NW ¼ of the NE ¼ of said Section 7 a distance of 815.24 feet; run thence S 89°32'05" E along said Right of Way a distance of 20.00 feet; run thence N 00°19'01" W along said Right of Way a distance of 413.27 feet to aforesaid Southerly Right of Way of Howland Boulevard; run thence S 89°28'24" E along said Southerly Right of Way a distance of 74.70 feet; run thence N 00°20'22" W along said Right of Way a distance of 22.62 feet; run thence S 85°04'51" E along said Southerly Right of Way a distance of 135.25 feet; run thence S 00°21'46" E along said Right of Way a distance of 12.25 feet; run thence S 89°28'24" E along said Right of Way a distance of 1841.57 feet to the East line of said NE ¼; run thence S 00°37'22" E along said East line a distance of 2545.72 feet to the Southeast corner of said NE ¼; run thence N 89°47'13" W along the South line of said NE ¼ a distance of 2124.49 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

AND

A parcel of land lying in and being a part of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, lying West of the Westerly Right of Way of Normandy Boulevard, as now established, and South of the Southerly Right of Way of Howland Boulevard, as now established, being more particularly described as follows: Beginning at the Southwest corner of said NE 1/4 , run thence N 00°14'38" W along the West line of said NE ¼ a distance of 2560.14 feet to a point on said Southerly Right of Way of Howland Boulevard; run thence S 89°28'24" E along said Right of Way a distance of 464.02 feet to a point on said Westerly Right of Way of Normandy Boulevard; run thence S 00°19'01" E along said Westerly Right of Way a distance of 1228.82 feet to a point on the South line of the NW ¼ of the NE ¼ of said Section 7; run thence S 00°18'41" E continuing along said Right of Way and entering into the SW ¼ of the NE ¼ of said Section 7 a distance of 604.50 feet; run thence N 89°40'16" W along said Right of Way a distance of 15.00 feet; run thence S 00°18'41" E continuing along said Right of Way a distance of 387.24 feet; run thence S 89°43'50" E along said Right of Way a distance of 1.32 feet to a point on a curve, concave to the Northwest, having a radius of 1859.86 feet and a delta of 08°41'21", with a chord bearing and distance of S 10°59'15" W, 281.79 feet; run thence Southwesterly along said curve and Right of Way an arc distance of 282 .06 feet; run thence S 28°57'24" W continuing along said Right of Way a distance of 68.76 feet to the South line of said NE

¼; run thence N 89°47'13" W a distance along said South line a distance of 364.80 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "A" (WRITTEN)

Lots 10 through 19, inclusive, Block 8, Davis Park, Second Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 175, Public Records of Volusia County, Florida and that part of the W ½ of Persimmon Street lying East of and contiguous thereto, all being more particularly described as follows: Commencing at the Northeast corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 00°37'22" E along the East line of said NE ¼ a distance of 1172.73 feet; run thence N 89°37'03" W a distance of 495.38 feet to the Point of Beginning. Continue thence N 89°37'03" W a distance of 165.12 feet; run thence N 00°31'40" W a distance of 251.05 feet; run thence S 89°35'12" E a distance of 165.02 feet; run thence S 00°33'05" E a distance of 250.96 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "B" (WRITTEN)

Lots 12 through 15, inclusive, Block 11, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of Florida Avenue lying South of and contiguous thereto, and that part of the E ½ of Clara Street Lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°47'13" E along the South line of said NE ¼ a distance of 828.50 feet to the Point of Beginning. Run thence N 00°21'19" W a distance of 160.68 feet; run thence S 89°45'07" E a distance of 165.64 feet; run thence S 00°22'41" E a distance of 160.64 feet to said South line of the NE ¼; run thence N 89°47'13" W along said South line a distance of 165.70 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "C" (WRITTEN)

Lots 16 through 19, inclusive, Block 7, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of the E ½ of Araminta Street lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°14'38" W along the West line of said NE ¼ a distance of 437.94 feet; run thence S 89°43'25" E a distance of 165.53 feet to the Point of Beginning. Run thence N 00°16'01" W a distance of 100.80 feet; run thence S 89°42'47" E a distance of 165.49 feet; run thence S 00°17'23" E a distance of 100.77 feet; run thence N 89°43'25" W a distance of 165.53 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "D" (WRITTEN)

Lots 18 and 19, Block 1, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of the E ½ of Crystal Street lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Southeast corner of the SW ¼ of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°25'56" W along the East line of said SW ¼ of the NE ¼ a distance of 848.99 feet to the Point of Beginning. Run thence N 89°41'13" W a distance of 165.45 feet; run thence N 00°24'02" W a distance of 50.29 feet; run thence S 89°40'47" E a distance of 165.42 feet to the East line of said SW ¼ of the NW 1/4; run thence S 00°25'56" E along said East line a distance of 50.27 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "E" (WRITTEN)

Lots 1 through 46, inclusive, Block 3, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of the N ½ of Alabama Avenue lying South of and contiguous thereto and that part of the W ½ of Clara Street lying East of and contiguous thereto and that part of an un-named alley lying South of Lots 1 through 9, and contiguous thereto, all lying East of the Easterly Right of Way of Normandy Boulevard, as now established, and all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°14'38" W along the West line of said NE ¼ a distance of 664.83 feet; run thence S 89°41'52" E a distance of 566.54 feet to the aforesaid Easterly Right of Way of Normandy Boulevard; run thence N 00°18'41" W along said Right of Way a distance of 30.00 feet to the Point of Beginning. Continue thence N 00°18'41" W a distance of 634.16 feet; run thence S 89°37'50" E a distance of 260.16 feet; run thence S 00°21'23" E a distance of 633.86 feet; run thence N 89°41'52" W a distance of 260.66 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "F" (WRITTEN)

Lot 24, Block 4, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida, lying West of the Westerly Right of Way of Normandy Boulevard, as now established, and being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°14'38" W along the West line of said NE ¼ a distance of 825.63 feet; run thence S 89°41'27" E a distance of 330.91 feet to the Point of Beginning. Run thence N 00°17'23" W a distance of 25.19 feet; run thence S 89°41'11" E a distance of 135.44 feet to the aforesaid Westerly Right of Way of Normandy Boulevard; run thence S 00°18'41" E along said Right of Way a distance of 25.18 feet; run thence N 89°41'27" W a distance of 135.45 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "G" (WRITTEN)

Lots 11 through 20, inclusive, Block 4, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida, and that part of the S ½ of an un-named alley lying North of and contiguous thereto, all lying West of the Westerly Right of Way of Normandy Boulevard, as now established, and all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°14'38" W along the West line of said NE ¼ a distance of 926.48 feet; run thence S 89°40'25" E a distance of 330.83 feet to the Point of Beginning. Run thence N 00°17'23" W a distance of 259.40 feet; run thence S 89°38'37" E a distance of 135.31 feet to the aforesaid Westerly Right of Way of Normandy Boulevard; run thence S 00°18'41" E along said Right of Way a distance of 259.33 feet; run thence N 89°40'25" W a distance of 135.41 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "H" (WRITTEN)

Lots 16 and 17, Block 6, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, lying West of the Westerly Right of Way of Normandy Boulevard as now established, and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, run thence S 00°14'38" E along the West line of said NE ¼ a distance of 1081.75 feet; run thence S 89°36'17" E a distance of 330.19 feet to the Point of Beginning. Continue thence S 89°36'17" E a distance of 135.08 feet to the aforesaid Westerly Right of Way of Normandy Boulevard; run thence S 00°19'01" E along said Right of Way a distance of 50.84 feet; run thence N 89°36'40" W a distance of 135.10 feet; run thence N 00°17'39" W a distance of 50.86 feet to the Point of Beginning. Being subject to any Easement or Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "I" (WRITTEN)

Lots 20, 21 and 22, Block 4, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, and that part of Araminta Street lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 00°14'38" E along the West line of said NE ¼ a distance of 513.90 feet; run thence S 89°32'05" E a distance of 164.83 feet to the Point of Beginning. Run thence N 00°16'16" W a distance of 75.64 feet; run thence S 89°31'26" E a distance of 164.83 feet; run thence S 00°17'39" E a distance of 75.62 feet; run thence N 89°32'05" W a distance of 164.86 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "J" (WRITTEN)

Lot 6, Block 3, Davis Park, Second Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 175, Public Records of Volusia County, Florida, and that part of the N ½ of an unnamed driveway lying South of and contiguous thereto, all lying South of the Southerly Right of Way of Howland Boulevard, as now established, and being more particularly described as follows: Commencing at the Northeast corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 00°37'22" E along the East line of said NE ¼ a distance of 100.00 feet to a point on said Southerly Right of Way of Howland Boulevard; run thence N 89°28'24" W along said Southerly Right of Way a distance of 658.75 feet to the Point of Beginning. Run thence S 00°34'31" E a distance of 102.85 feet; run thence N 89°28'43" W a distance of 24.95 feet; run thence N 00°34'14" W a distance of 102.85 feet to the aforesaid Southerly Right of Way; run thence S 89°28'24" E along said Right of Way a distance of 24.95 feet to the Point of Beginning. Being subject to any Easements of Record.

LEGAL DESCRIPTION: EXCEPTION "K" (WRITTEN)

Block 4, Davis Park, Second Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 175, Public Records of Volusia County, Florida, and that part of the E ½ of Grape Street lying West of and contiguous thereto, and the W ½ of Orange Street lying East of and contiguous thereof and the N ½ of Tennessee Avenue lying South of and contiguous thereto and that certain unnamed alley lying South of Lots 1 through 10, and contiguous thereto, all lying South of the Southerly Right of Way of Howland Boulevard, as now established, and being more particularly described as follows: Commencing at the Northeast corner of the NE ¼ of section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 00°37'22" E along the East line of said NE ¼ a distance of 100.00 feet to a point on said Southerly Right of Way of Howland Boulevard; run thence N 89°28'24" W along said Southerly Right of Way a distance of 823.43 feet to the Point of Beginning; run thence S 00°30'15" E a distance of 567.57 feet; run thence N 89°33'07" W a distance of 329.83 feet; run thence N 00°27'24" W a distance of 568.02 feet to the aforesaid Southerly Right of Way; run thence S 89°28'24" E along said Right of Way a distance of 329.37 feet to the Point of Beginning. Being subject to any Easement of Record.

LEGAL DESCRIPTION: EXCEPTION "L" (WRITTEN)

Lots 6 through 10,inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, and that part of the N ½ of an un-named driveway lying South of and contiguous thereto, all lying South of the Southerly Right of Way of Howland Boulevard, as now established and East of the Easterly Right of Way of Normandy Boulevard, as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°28'24" E along the North line of said NE ¼ a distance of 583.89 feet; run thence S 00°19'01" E a distance of 100.00 feet to the Point of Beginning lying on said Southerly Right of Way of Howland Boulevard; run thence S 89°28'24" E along said Right of Way a distance of 74.70 feet; run thence S 00°20'22" E a distance of 103.49 feet; run thence N 89°29'34" W a distance of 74.74 feet to said Easterly Right of Way of Normandy Boulevard; run thence N 00°19'01" W along said Easterly Right of Way a distance of 103.51 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "M" (WRITTEN)

Lots 15, and 16, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, lying East of the Easterly Right of Way of Normandy Boulevard as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°28'24" E along the North line of said NE ¼ a distance of 583.89 feet; run thence S 00°19'01" E a distance of 100.00 feet to a point lying on the Southerly Right of Way of Howland Boulevard, as now established, said point also lying on said Easterly Right of Way of Normandy Boulevard; run thence S 00°19'01" E along said Easterly Right of Way a distance of 211.75 feet to the Point of Beginning. Run thence S 89°30'10" E a distance of 74.78 feet; run thence S 00°20'24" E a distance of 50.37 feet; run thence N 89°30'38" W a distance of 74.80 feet to aforesaid Easterly Right of Way; run thence N 00°19'01" W along said Right of Way a distance of 50.38 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "N" (WRITTEN)

Lots 19, and 20, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, lying East of the Easterly Right of Way of Normandy Boulevard as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°28'24" E along the North line of said NE ¼ a distance of 583.89 feet; run thence S 00°19'01" E a distance of 100.00 feet to a point lying on the Southerly Right of Way of Howland Boulevard, as now established, said point also lying on said Easterly Right of Way of Normandy Boulevard; run thence S 00°19'01" E along said Easterly Right of Way a distance of 312.51 feet to the Point of Beginning. Run thence S 89°31'06" E a distance of 74.82 feet; run thence S 00°20'24" E a distance of 50.37 feet; run thence N 89°31'35" W a distance of 74.84 feet to aforesaid Easterly Right of Way; run thence N 00°19'01" W along said Right of Way a distance of 50.38 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "O" (WRITTEN)

Lots 23 through 34, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, and that part of the W ½ of Clara Street lying East of and contiguous thereto and the N ½ of Tennessee Avenue lying South of and contiguous thereto, all lying East of the Easterly Right of Way of Normandy Boulevard as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°28'24" E along the North line of said NE ¼ a distance of 583.89 feet; run thence S 00°19'01" E a distance of 100.00 feet to a point lying on the Southerly Right of Way of Howland Boulevard, as now established, said point also lying on said Easterly Right of Way of Normandy Boulevard; run thence S 00°19'01" E along said Easterly Right of Way a distance of 413.27 feet to the Point of Beginning. Run thence S 89°32'05" E a distance of 74.86 feet; run thence N 00°20'24" E a distance of 50.37 feet; run thence S 89°31'35" E a distance of 164.84 feet; run thence S 00°21'46" E a distance of 202.15 feet; run thence S 89°33'07" W a distance of 259.82 feet to the aforesaid Easterly Right of Way of Normandy Boulevard; run thence N 00°19'01" W along said Right of Way a distance of 155.95 feet; run thence S 89°32'05" E continuing along said Right of Way a distance of 20.00 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "P" (WRITTEN)

A parcel of land lying in and being a part of Blocks 8, 9 and 10 and Mangoe Street, Persimmon Street and Florida Avenue, Davis Park, Fourth Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 222, Public Records of Volusia County, Florida, being more particularly described as follows: Commencing at the Southeast corner of said Davis Park, Fourth Addition said point also being the Southeast corner of the SE ¼ of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 89°47'13" W along the Southerly boundary of said Fourth Addition also being the South line of said SE ¼ of the NE ¼ a distance of 110.00 feet; run thence N 00°36'47" W a distance of 30.00 feet to a point on the centerline of said Florida Avenue and the Point of Beginning. Run thence N 89°47'13" W along said centerline a distance of 460.00 feet; run thence N 00°36'47" W a distance of 280.00 feet; run thence S 89°47'00" E.a distance of 460.00 feet; run thence S 00°36'47" E a distance of 280.00 feet to the Point of Beginning. Being subject to any Easement and Rights of Way of Record.

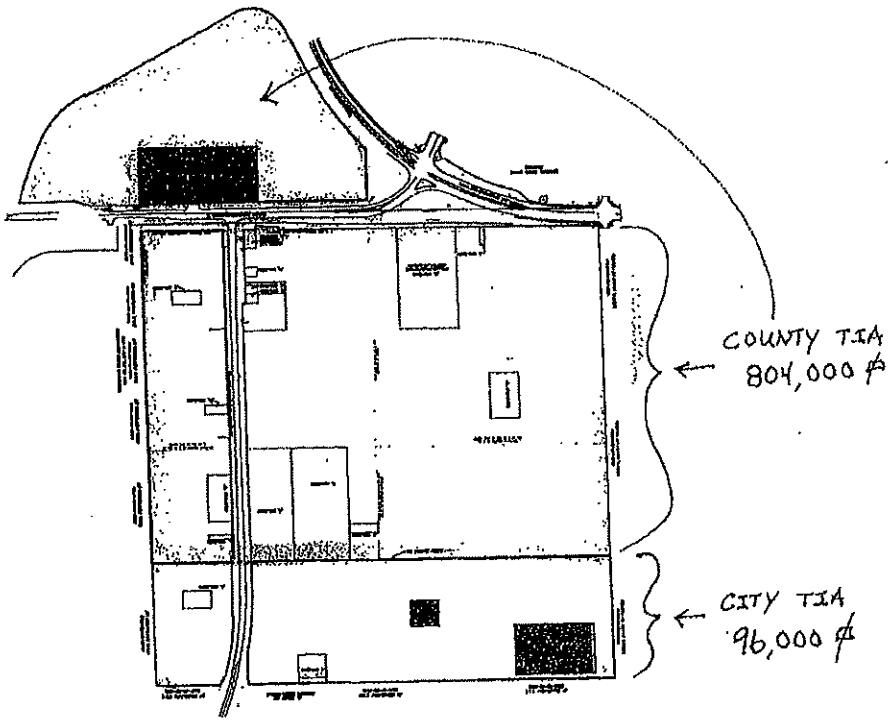
LEGAL DESCRIPTION: EXCEPTION "Q" (WRITTEN)

Lots 35 through 40, inclusive, Block 7, Davis Park, Fourth Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 222, Public Records of Volusia County, Florida, and the East ½ of Grape Street lying West of and contiguous thereto and being more particularly described as follows: Commencing at the Southeast corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 89°47'13" W along the South line of said NE ¼ a distance of 994.38 feet; run thence N 00°28'48" W a distance of 311.16 feet to the Point of Beginning; run thence N 89°45'11" W a distance of 165.60 feet; run thence N 00°27'23" W a distance of 150.75 feet; run thence S 89°44'09" E a distance of 165.54 feet; run thence S 00°28'48" E a distance of 150.70 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "R" (WRITTEN)

Lots 1 through 46, inclusive, Block 2, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida, and the East ½ of Clara Street lying West of and contiguous thereto and the North ½ of Alabama Avenue lying South of and contiguous thereto and the West ½ of Crystal Street lying East of and contiguous thereto and that certain alley lying South of Lots 1 through 10, and contiguous thereto and being more particularly described as follows: Commencing at the Northeast corner of the SW ¼ of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°37'50" W along the North line of said SW ¼ of the NE ¼ a distance of 165.19 feet to the Point of Beginning; run thence S 00°24'02" E a distance of 633.48 feet; run thence N 89°41'52" W a distance of 330.86 feet; run thence N 00°21'23" W a distance of 633.86 feet to said North line; run thence S 89°37'50" E along said North line a distance of 330.38 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

Instrument# 2010-101853 # 32
Book: 6482
Page: 4265



"B"

Instrument# 2010-101853 # 33
Book: 6482
Page: 4266

to mean land uses which generate five percent (5%) of the external daily trips allocated to the respective local government during this time frame. Infrastructure shall include, but not limited to, the construction of roads, water and sewer utilities, and stormwater management systems.

9. This development order shall comply with the requirements of the Volusia Growth Management Commission as articulated in their resolution No. 95-06 dated May 24, 1995, as such requirements may be amended and in effect from time to time.

Development Equivalency Matrix

10. The City may approve an increase or decrease of a particular land use within the approved development program identified on Exhibit B by using a conversion table, attached as Exhibit C, which is based on equivalent peak hour directional trip ends. Use of the matrix may increase or decrease the total amount of each land use by no more than the amount allowed for in the substantial deviation criteria identified in Chapter 380.06(19)(b) 1-14, Florida Statutes, unless the Development Order is amended to accommodate such a change. Greater changes than those discussed above, considered cumulatively, shall be subject to normal Development Order amendment processes. Any time the matrix is used, DCA, ECFRPC, and the FDOT must be provided notice of the proposal at least 30 days in advance of the change. Use of the matrix will be reported on an individual and cumulative basis and Project impacts documented in the biennial report. The change notice shall show that there are not additional impacts to schools, affordable housing or other public facilities. Any future Notice of Proposed Change (NOPC) shall incorporate any changes due to the use of the matrix.

Archeological Resources

11. Prior to initiating project related land clearing or ground disturbing activities within the project area, a systematic professional archaeological and historical survey shall be conducted for that area is to locate and assess the significance of archaeological and historic properties present. The resultant survey report shall be consistent with Rule 9J2-043, F.A.C. and shall conform to the specifications set forth in Chapter 1A-46, FAC and shall be forwarded to the Florida Department of State, Division of Historical Resources (DHR). All correspondence with DHR regarding the survey and findings will be copied to the DCA, and the local government of jurisdiction, City of DeLand.

12. Project construction personnel shall be notified, through posted advisories or other methods, of the potential for artifact discoveries on the site and to report suspected findings to the project manager. In the event of discovery of artifacts of historic or archaeological significance during project construction, the developer shall stop construction at the site of discovery and notify the local government of jurisdiction and the Division of Historic Resources (DHR) of the Florida Department of State. From the date of notification, construction shall be suspended within a 100-foot radius of the site of discovery for a period of up to 120 days to allow evaluation of the site. The developer shall provide proper protection of the discovery, to the satisfaction of the DHR consistent with Rule 9J-2.043, F.A.C.

"C"

Instrument# 2010-101853 # 34
Book: 6482
Page: 4267
Diane M. Matousek
Volusia County, Clerk of Court

SENT BY: CITY OF DELAND ; 9857405771; OCT-27-04 10:57AM; PAGE 25/25

EXHIBIT C

Interstate 4/State Road 472 Activity Center DRI
Development Equivalency Matrix

Change To:	Change From >	Light Industrial (KSF)	Office (KSF)	Retail (KSF)	Multi Family (Unit)	Single Family (Unit)	Hotel (Room)	PM Peak Hour External Outbound Trip Rate per Unit of Land Use*	
Light Industrial (KSF)			1.170	1.394	6.341	3.264	4.010	1.005	per 1 KSF Light Industrial
Office (KSF)		0.855		1.191	5.420	2.790	3.428	0.859	per 1 KSF Office
Retail (KSF)		0.717	0.839		4.549	2.342	2.877	0.721	per 1 KSF Retail
Multi Family (Unit)		0.158	0.184	0.220		0.515	0.632	0.158	per 1 Unit Multi Family
Single Family (Unit)		0.306	0.358	0.427	1.943		1.229	0.308	per 1 Unit Single Family
Hotel (Room)		0.249	0.292	0.348	1.581	0.814		0.251	per 1 Room Hotel

* Land use exchanges based on net external PM peak hour outbound project traffic
Trip rates derived from Table 21-6 per DRI Second Sufficiency Response - December 2002
Industrial, Office & Retail trip rates are averaged from multiple phase external trip totals (refer to Tab 21-6)

Example Exchanges:

To Add 10 KSF Retail by Reducing Office Space:
10 KSF Retail x .839 KSF Office = 8.39315; Reduce Office by 9.39 KSF

To Add 25 KSF Office by Reducing Hotel Rooms:
25 KSF x 3.428 Rooms/KSF = 85.6694 Rooms; Reduce Hotel Rooms by 86 Rooms

"C"

EXHIBIT B

Staff Report

To: Planning & Zoning Board

From: Joseph Ruiz, Interim Director, Community Services

Date: March 7, 2023

Re: **Ordinance No. 04-2023, An ordinance of the City of Deltona, Florida, providing for an amendment to the Deltona Village Business Planned Unit Development (BPUD) Overall Development Plan/Master Development Plan increasing the number of multi-family unit allocation for the BPUD from 414 units to 652 units; amendment to the development agreement approved by Ordinance No. 21-2009; and rezone an additional ±26.57 acres of land to be included within the Deltona Village BPUD; providing for severability; and providing for an effective date.**

Summary of Application:

Applicant:

Frank DeMarsh, Deltona Retail Holdings, LLC,

Request:

To amend the Deltona Village BPUD Overall Development Plan/Master Development Plan (ODP/MDP) to increase the multi-family unit cap to 652 units, amend the written Development Agreement approved by Ordinance No. 21-2009, and to include additional land totaling approximately 26.57 acres to the BPUD. The parcels to be included within the Deltona Village BPUD are as follows:

Reference	Tax ID	Description	Size
Exception "B"	8107-04-11-0120	Lots 12 - 15, BLK 11, Davis Park, 16th Add. Including Clara Street & Florida Ave. ROWs	0.61 Acre
Former Interchange Commercial Center	8106-04-00-0542	Refer to attached survey	

BPUD Parcel (Ordinance No. 22-2004)			25.96 Acres
Former Interchange Commercial Center BPUD Parcel (Ordinance No. 22-2004)	8106-04-00-0691	Refer to attached survey	

Tax Parcel Numbers:

The following parcel numbers are associated with the original and previously amended, approximately 140-acre, Deltona Village BPUD property:

Lot 1: 8107-06-00-0010 – Vacant, east side of N. Normandy Blvd.

Lot 2: 8107-06-00-0020 – Vacant, east side of N. Normandy Blvd.

Lot 3: 8107-06-00-0030 – Vacant, east side of N. Normandy Blvd.

Lot 4: 8107-06-00-0040 – Epic Theater site

Tract A: 8107-06-00-0001 – Roadway Access – John Wayne Tr.

Tract B: 8107-06-00-0002 – Stormwater site

Lot 5: 8107-06-00-0050 – Vacant, large tract extending south of Graves Av.

Lot 7: 8106-06-00-0070 – Vacant, east of the N. Normandy corridor.

Exception "F": 8107-04-04-0240

Exception "H": 8107-03-06-0160

Exception "I": 8107-03-04-0200

Exception "J": 8107-01-03-0060

Exception "K": 8107-01-04-0010

Exception "M": 8107-03-03-0150

Exception "Q": A portion of 8107-06-00-0050

Exception "R": A portion of 8107-04-02-0010

Property Acreage:

BPUD is approximately 140 acres. Total land proposed to be added to the BPUD site is approximately 26.57 acres. This will bring the BPUD to a total of approximately 166.57 acres.

Property Location:

The three (3) subject parcels to be added to the Deltona Village BPUD are located 1.) east of John Wayne Trail and south of Lot 4 of Deltona Village, and 2.) North of Graves Avenue adjacent to the Maschmeyer Properties concrete plant site.

Legal Descriptions: See attached Exhibit "A"

Existing & Proposed Zoning:

Existing: Agriculture (Parcel ID: 8107-04-11-0120) & Interstate Commerce Center (ICC) BPUD (Parcel IDs: 8106-04-00-0542 & 8106-04-00-0691). The Agriculture classification represents a placeholder zoning. The ICC BPUD parcels were previously rezoned; however, the development agreement was never recorded.

The City Comprehensive Plan Future Land Use Map has the subject three (3) parcels being located within the City of Deltona Activity Center. Under the Activity Center guidelines, the land ideally would be used for commercial or office type uses. However, under the Activity Center uses, certain residential formats can be contemplated through the Planned Unit Development zoning process.

Proposed: The applicant proposes to include the three (3) parcels within the Deltona Village BPUD Zoning Designation via this ordinance.

Background:

The property within the Deltona Village has a long history with regard to development. The majority of the Deltona Village property was once envisioned as a residential subdivision. The subdivision known as Davis Park was platted in the 1920's. Davis Park consisted of numerous roughly 40-acre areas referred to as 'additions' and was designed as a traditional grid subdivision with lots accessed by a network of north/south aligned roadways. The lots were either (depending on addition) 25 feet or 30 feet in width and mostly had 135 feet of depth.

The Davis Park subdivision for many decades did not develop. In the 1980's and 1990's before the incorporation of the City, the County established plans for the

area that would become Deltona Village and surrounding vacant land on both sides of Interstate 4 associated with the Interstate 4 and SR 472 interchange. The goal, in recognition of the strategic interchange location, was to earmark the area as a future employment and service hub which would become known as the Southwest Volusia Activity Center. After incorporation, Deltona's first Comprehensive Plan recognized the Activity Center with special planning provisions and land use guidelines. In the early 2000's, with the intent of promoting development within the Activity Center, the County of Volusia sponsored an area wide Development of Regional Impact (DRI) for an approximately 1,400-acre area. The 1,400-acre area wide DRI was located on both east and west sides of Interstate 4. The DRI was approved but contrary to expectations, the DRI designation did not encourage development within the Activity Center. By 2010, based on inactivity, the DRI incorporated area east of Interstate 4 was determined by the City of Deltona to be expired. However, the City Activity Center planning provisions were maintained within the City's Comprehensive Plan.

In 2004, the City Commission approved an ordinance for the Interchange Commercial Center Business Planned Unit Development located north of Graves Avenue and south of the I-4 exit ramp. This PUD development agreement, although approved via Ordinance No. 22-2004, was never executed or recorded. Therefore, although the zoning map reflects the zoning, the land use entitlements were voided.

On February 15, 2010, the Deltona Village Business Planned Unit Development (BPUD) was approved via Ordinance No. 21-2009. The approved BPUD uses include traditional retail, office, service commercial, and also allowed light industrial uses. Finally, there were Conditional Use options including an allocation of up to 414 multi-family units. The intensity of the Deltona Village BPUD was capped at 900,000 square feet of retail. The 900,000 square-foot cap was also extended to a 38-acre parcel (ICC BPUD site) under similar ownership located north of Graves Av. and south of the I-4/SR 472 eastbound interchange off-ramp. The square-foot cap regarding allowed uses such as multi-family residential was reconciled through an equivalency matrix. The equivalency matrix is a tool used to convert densities and intensities so the overall intensity cap is not exceeded.

In 2018, the Deltona Village BPUD (Ordinance No. 10-2018) was amended by the City to modify minimum lot width and sizes. In addition, the 2018 amendment changed the 414-unit multi-family conditional use entitlement to a permitted use within the BPUD.

In 2021, the City Commission approved a second amendment to the Deltona Village BPUD to include an additional 10.3 acres of Deltona Retail Holdings, LLC, acquired properties by rezoning into the BPUD with no additional intensity/density entitlements.

To date, Deltona Village has developed the Epic movie theater, Race Trac gas station, and a Burger King fast-food restaurant. Various site plans have been approved for a Starbucks immediately west of Burger King (SP21-0011), a 301 multi-family unit complex (currently under construction) for Integra Myst (SP21-0004), and a 52,800 square-foot light manufacturing facility (SP22-0007).

The current requested amendment via Ordinance No. 04-2023, requests the following:

1.) Amendment to the Overall Development Plan/Master Development Plan to increase the number of multi-family unit allocation for the BPUD from 414 units to 652 units;

2.) Amendment to the development agreement approved by Ordinance No. 21-2009, to update the multi-family unit cap, include the 26.57 acres, and to clarify remaining entitlements between the landowner and the City; and

3.) Rezone an additional ±26.57 acres of land to be rezoned and included within the Deltona Village BPUD.

Multi-family Unit Allocation:

The applicant requests to increase the multi-family unit cap to 652 units from the existing 414 units allowed. The Deltona Village BPUD vested a total of 900,000 square-feet of commercial retail, for the original BPUD land and the ICC BPUD area referenced above. Based on the amount of retail square-footage vested, the average daily trips allocated for this project was capped at 17,808 average daily trips, and 1,141 PM Peak Hour Trips. Based on (City & County) calculations of the current buildouts of the Deltona Village BPUD, which include Race Trac, Burger King, Epic Theater, and Integra Myst (301 multi-family units), the average daily trip count is currently anticipated well below the 17,808 trip cap and PM Peak Hour Trips are anticipated to be 767. These totals are currently within the trip allocations vested within the approved Deltona Village BPUD Traffic Impact Analysis and outlined within the development agreement approved via Ordinance No. 21-2009. A proposal for an additional 351 multi-family units from the 301 units already under construction, will produce approximately 1,598 average daily trips and 137 PM Peak Hour Trips. Adequate trips are available per the Deltona Village trip vestiges.

Development Agreement Amendment:

The applicant is amending the development agreement to update the multi-family unit cap of the project. The amended document has also been requested to be revised to incorporate clarification to the land owner's proportionate fair share obligations.

Rezone and Inclusion of Property

When the Deltona Village BPUD was approved, there were several property inholdings/hold out parcels located within and along the margin of the BPUD property not included within the PUD. These inholdings/hold out parcels represent legacies of the past that can be traced to the original 1920's vintage Davis Park subdivision. As part of the 2010 Deltona Village BPUD, these inholdings were referred to as "exception" parcels. There was recognition the Deltona Village owner would continue to better unify the BPUD project by acquiring the exception parcels. However, although these parcels have come under unified ownership, a rezoning to incorporate them within the PUD is required. Part of the intent of this amendment to the Deltona Village BPUD is to incorporate one (1) exception parcel into the BPUD and a portion of the former ICC property. According to the City Land Development Code Sec. 110-319(k)(5)d., the addition of acreage to a Planned Unit Development constitutes a major amendment. A major PUD amendment needs to be reviewed by the City and ultimately decided by the City Commission. The process involves the approval of an ordinance and requires due public notice (advertising) and a minimum of three (3) public hearings (One (1) hearing with the Planning and Zoning Board and two (2) hearings with the City Commission).

The request to add the one (1) inholding/Exception "B" parcel will essentially add approximately 0.61-acre of land to the Deltona Village BPUD. The two (2) former ICC BPUD parcels will approximately add an additional 25.96 acres. The addition of land to the project will better unify the project and allow for greater control over development in the area. While the addition of extra land does materially alter the BPUD, the applicant/owner is not requesting the uses, intensity cap of 900,000 square feet, nor any other development parameter be altered to account for the additional acreage. If incorporated into the Deltona Village BPUD, the 26.57 acres of land would be subject to the current BPUD use allocations, dimensional requirements, density/intensity controls, etc.

Support Information:

Public Facilities:

a. Potable Water: Volusia County Utilities
b. Sanitary Sewer: Volusia County Utilities
c. Fire Protection: Deltona Fire Station 65
d. Law Enforcement: Volusia Sheriff's Office (VSO)
e. Electricity: Duke Energy

Matters for Consideration:

Section 110-1101, Code of City Ordinances, states that the City shall consider the following matters when reviewing applications for amendments to the Official Zoning Map:

1. ***Whether it is consistent with all adopted elements of the Comprehensive Plan.***

   The Comprehensive Plan is the City long range master planning document. The Plan includes numerous policies intended to guide growth and development to achieve City goals including viable land use patterns, a sustainable economy, and the efficient use of City infrastructure. Staff reviewed the proposed amendment to the Deltona Village BPUD in light of the Comprehensive Plan and deems the request consistent per the following goal and policies:

   Goal FLU2 – Specific Land Use Guidelines

   5. MULTIFAMILY RESIDENTIAL DENSITY GUIDELINE: Multi-family may be permissible along the periphery of the Deltona Activity Center or as ancillary uses for non-residential development. The density for standalone multifamily uses should be a minimum of eight dwelling units per acre to a maximum of 20 dwelling units; however density maybe less when residential uses are considered as ancillary to commercial development. In any case, density may not exceed 20 units per acre. The total area to be used for multi-family shall not exceed 15% of the area designated for the Deltona Activity Center.

   The guideline listed above provides for a limitation of land that can be allocated for multi-family built in to the provisions of the Activity Center. "The total area to be used for multi-family shall not exceed 15% of the area designated for the Deltona Activity Center." The Deltona Activity Center

consists of approximately 800 acres of land. Therefore, no more than approximately 120 acres shall be designated or constructed for multi-family uses. The Integra Myst development encompasses 17.76 acres of land. The Halifax Crossings Mixed Planned Unit Development designated another 57.5 acres of various types of multi-family uses. This is a net total of 75.26 acres, leaving approximately 45 acres of Deltona Activity Center land available for multi-family uses. Therefore, lands still remain within the activity center to allow more multi-family development consistent with the above guideline.

Policy FLU1-2.3

The City shall expand commercial, industrial, and mixed-use developments in appropriate locations in order to discourage sprawl and to promote energy efficient development patterns.

The increase in multi-family units and the addition of the 26.57 acres will result in a more unified and efficient development pattern, and therefore, further this provision. The mixed-use nature of this request will further attract synergy of uses and accommodate live, work, and play concepts. Furthermore, it unifies the former ICC PUD property, originally contemplated together within the Deltona Village BPUD property for vested square-footage and trip allocations per the original development agreement, will not add any additional entitlements.

Policy FLU1-7.16

Applicants requesting amendments to the Zoning and/or Future Land Use Map shall be evaluated with respect to consistency with the Goals, Objectives and Policies of all Elements, other timely issues, and in particular the extent to which the proposal, if approved, would:

a. *Satisfy a deficiency in the Future Land Use Map to accommodate projected population or economic growth of the City;*
b. *Maintain and/or improve the City's ratio of non-residential lands to residential lands available for economic use. Support efforts to increase the provision of a viable mixture of land uses in a compact, walkable area that is accessible to the full range of feasible non-motorized and motorized transportation modes;*
c. *Enhance or impede the provision of services at adopted LOS Standards;*
d. *Be compatible with abutting and nearby land uses;*
e. *Enhance or degrade environmental resources; and*

f. *Based on the ability to provide adequate potable water and/or sanitary sewer resources.*

The request to increase in the multi-family unit cap to 652 multi-family units is a direct correlation of the population and economic growth occurring within the City (subsection a.). The unit increase will provide greater opportunity for job creation in an area of great development interest where urban housing opportunities are available.

The inclusion of the subject parcels within the Deltona Village BPUD will ensure a more unified and master planned development. Greater unification of the Deltona Village area will encourage a more viable mixture of land uses (subsection c.), protect adopted LOS standards (subsection d.), improve land use compatibility (subsection e.). The Activity Center area utilities are provided and serviced by Volusia County Utilities (subsection f.).

Policy FLU1-7.19

Zoning on specific parcels of land shall be consistent with the Future Land Use Map.

The multi-family unit cap increase, and incorporating the subject parcels within the Deltona Village BPUD is consistent with the Activity Center Future Land Use designation.

Policy FLU2-1.5

Future development within the Activity Center shall require rezoning to a Planned Unit Development (PUD) or amendment to an existing PUD. Provided, however, that any development of an existing parcel that is 0.5 acres or less in size and which is permissible by the existing zoning classification assigned the parcel shall not require rezoning to PUD if the existing zoning classification is consistent with the Activity Center Plan future land use designation.

Including the subject parcels within the Deltona Village BPUD through a major amendment to the BPUD constitutes a rezoning of the parcels to a PUD and is consistent with the above policy.

Policy FLU2-1.10

The City shall require the use of common access arrangements, shared parking and internal access during the development review process for the Activity Center.

A more unified development pattern will result in greater opportunity for internal access, shared parking, etc. The 0.61-acre Exception "B" parcel is adjacent to the private internal roadway known as John Wayne Trail. The 25.96 acres of the former ICC PUD property will likely have limited access points off of Graves Avenue only. Due to the irregular shape of this piece of land, it will require the design to incorporate common access and internal arrangements.

The request to increase the multi-family unit cap is anticipated to accommodate a second phase to the Integra Myst project. Phase 1 access is internally through the Epic Movie Theater's Hollywood Boulevard and Energy Avenue (private roads). Per discussions with the land owner, Phase 2 of multi-family development is proposed immediately adjacent to the east of Phase 1. Therefore, accomplishing internal and shared access.

Policy ED1-2.1

The City shall pursue land use entitlements that are appropriately allocated to promote economic development.

Inclusion of the 26.57 acres within the Deltona Village BPUD will appropriately grant land use entitlements to the subject parcels. However, the addition of land does not provide an overall increase in vested intensities/densities for the Deltona Activity Center BPUD.

The multi-family cap increase promotes greater living opportunities adjacent to growing job opportunities within the developing area.

Policy ED2-1.2

The City shall ensure the integrity of the land uses within the Deltona Activity Center are maintained, and include any uses deemed beneficial to the Activity Center, and maintain concurrency.

The request to increase the multi-family unit cap allowed within the project to 652, is a request for an additional 238 units more than originally granted. The increase in multi-family entitlements prompts concurrency concerns for aspects such as traffic and schools. The applicant has submitted a school concurrency application to Volusia County Schools for a finding of adequate capacity. Staff anticipates the School Board determining there is adequate capacity. In regards to traffic concurrency, a proposal for an additional 351 multi-family units from the 301 units already under construction, will produce approximately 1,598 average daily trips and 137 PM Peak Hour Trips. The trip generation numbers along with the original development equivalency matrix

approved for Deltona Village in 2009, still maintains the project within the vested allocations for square-footage and trips (900,000 sf, 1,141 PM Peak, & 17,808 average daily trips).

Incorporation of the subject parcels will promote greater land use integrity by incorporating the adjacent and internal land into the greater Deltona Village development plan.

2. ***Its impact upon the environment or natural resources***

The subject parcels requested for inclusion within the BPUD are vacant and undeveloped. The parcels remain in a natural condition represent remnant forested sites and are fragmented from other natural areas by roadways, development, and agricultural activity. While these small areas are habitat for small birds and mammals, these areas may also provide cover for larger animals like deer. Listed species that could utilize these properties include gopher tortoises and scrub jays. While the pastured parcels are utilized for active agriculture, these areas could also support gopher tortoises. In some cases, tortoise populations per acre can be quite high within improved and semi-improved pasture landscapes. While the habitat associated with exception parcels is not conducive scrub jay habitat, the interface of the scrub and pasture area may support jays. It is not uncommon for jays to occupy these transition areas, however, these edge areas represent marginal jay habitat.

With regard to listed species, individual developments will be responsible for the surveying of listed species, and if present, formulating habitat management plans.

A portion of the ICC site proposed is situated within the 100-year floodplain, Zone A, along the northeast portion of the property. The 'A' flood zone designation does not disqualify the land from development, however, requires a professional determination of a base flood elevation by a surveyor or engineer. This is normally reviewed at time of site plan/subdivision review.

Topography of the parcels is generally flat to mildly rolling. All of the parcels' soils are sandy and well drained.

3. ***Its impact upon the economy of any effected area.***

The request to increase the multi-family unit cap to 652 units from the original 414 units approved within Ordinance No. 21-2009, is reflective of the modern-day state of the economy and growth within the area. The 414 multi-family unit

allocation was granted prior to the development of the Amazon Warehouse facility, and Portland Industrial site located directly west and south, respectively, of the Deltona Village BPUD. With more than two (2) million square feet of industrial uses built and under construction providing for thousands of jobs, the economy of scale has changed significantly in regards to multi-family needs within this area. The mix of apartments with large job creators and retail services provided and to be provided within the Deltona Village PUD is anticipated to impact the area's economy in a beneficial and significant way.

The inclusion of the 26.57 acres of subject parcels within the Deltona Village BPUD will facilitate a more unified development pattern with larger less interrupted land masses available to support modern development formats. The provision of infrastructure, including internal access, will be more linear and efficient. While the BPUD entitlement package will not change as a result of the inclusion of the 26.57-acre net total of parcels, the addition of the property will represent a much less constrained Deltona Village development package. Also, adding the subject parcels to the BPUD will better position the Deltona Village project for development. Therefore, the inclusion of the exception parcel within the Deltona Village BPUD will be economically beneficial for the City by facilitating a more complete development package able to support larger, more unified development products and patterns.

4. ***Notwithstanding the provisions of Article XIV of the Land Development Code, Ordinance No. 92-25 [Chapter 86, Code of Ordinances], as it may be amended from time to time, its impact upon necessary governmental services, such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste or transportation systems.***
    a. *Schools*: The addition of the 238 multi-family units is anticipated to produce an additional 30 students based on the current student generation rate (.127) per multi-family unit. The applicant is awaiting a confirmation of finding of adequate capacity from Volusia County Schools.
    b. *Sewage Disposal*: Sanitary sewer (Volusia County Utilities).
    c. *Potable Water*: Central water (Volusia County Utilities).
    d. *Drainage*: Appropriately designed and constructed on-site drainage facilities will address stormwater run-off.
    e. *Transportation Systems*: Traffic studies were established within the Activity Center DRI and Deltona Village BPUD. The end result was a square foot cap for the entire project of 900,000 square feet, including

1,141 PM Peak Hour and 17,808 average daily trip caps. The 900,000 square-foot threshold was extended to include property also owned by the applicant located north of Graves Av. south of the eastbound Interstate 4 off-ramp (Former ICC BPUD property). As part of the Deltona Village BPUD a development equivalency matrix is used to convert entitlements while maintaining adherence to the 900,000 square-foot entitlement cap.

The increase to the multi-family unit cap will be within the vested allocations of the approved Deltona Village TIA and Development Agreement, as demonstrated above within Matter of Consideration No. 1. It is also important to note, design improvements required for the future phase of development will dictate whether the total units can be developed. Engineering plans have not been developed at this time by the applicant and/or representative.

The addition of the subject parcels to the Deltona Village BPUD will increase the size of the project by 26.57 acres. However, the entitlements of the project will not change and the addition of extra area to the BPUD will essentially reduce the intensity of the project. Therefore, traffic generation volumes will not change.

Furthermore, incorporation of the parcels within the BPUD will more readily facilitate cross access and connection to an internal roadway network. The result will be more efficient traffic patterns, greater opportunity for internalized traffic and less impacts on the City roadway network.

The following transportation-oriented provisions from the Comprehensive Plan are applicable:

Policy T1-1.4
The City of Deltona shall maintain land use regulations, including, but not limited to, access control/management and cross access easements, to facilitate safe and efficient mobility on the City transportation network.

Policy T1-3.2
The City of Deltona shall maintain land use regulations, including access management, which provide for the continued safe and efficient movement of local traffic. Such regulations also maintain and enhance roadway level of service, capacity, and mobility.

5. Any changes in circumstances or conditions affecting the area.

The acquisition of the one (1) exception parcel by the applicant/Deltona Village owner, and the decision to include a portion of the former ICC PUD does represent a change of circumstances. Unifying these parcels under the Deltona Village BPUD is logical and represents appropriate method to ensure a more functional development pattern.

6. ***Any mistakes in the original classification.***

   The existing Agriculture zoning classification was intended to represent a place holder type of zoning with the expectation the Deltona Activity Center sub-element urban oriented land use guidelines would be applied through a Planned Unit Development zoning action. The ICC BPUD rezoning, which occurred through a City Commission action (Ordinance No. 22-2004), never achieved execution or recording of development agreement, therefore, voiding the land use entitlements. The request to bring the subject parcels under the Deltona Village BPUD development plan does not represent a mistake or oversight but is an orderly transition of land use entitlement.

7. ***Its effect upon the public health, safety, or welfare.***

   Ordinance No. 04-2023 represents an amendment to Ordinance No. 21-2009, Ordinance No. 10-2018, and lastly Ordinance No. 06-2021. As previously stated, Ordinance No. 04-2023 adds approximately 26.57 acres of land to the Deltona Village BPUD through the addition of one (1) inholding parcel, and the former ICC BPUD parcels.

   With the exception of Exception "B", and a portion of the land directly east of the Maschmeyer concrete plant, the majority of land requested for inclusion was previously cleared under agricultural exemptions. Therefore, any impacts to the environment will be minimal upon development.

CONCLUSION/STAFF RECOMMENDATION:

The Deltona Village BPUD is a significant element of the City of Deltona Activity Center. The Deltona Village project is allocated for a range of commercial service uses, potential residential opportunities, and employment-oriented development, including general and medical office. The request is to increase the multi-family unit cap to 652 units, amend the development agreement to memorialize changes approved, and add 26.57 acres of land to the Deltona Village BPUD. These parcels have been over the years obtained by the applicant/owner. The multi-family unit cap will increase the units permitted, however the increase will comply with the vested square-footage and trips approved within the original BPUD. Because of the added land, there will be no increase of density/intensity, the use allocation will not change

nor will other parameters of the Deltona Village BPUD. The BPUD amendment will create opportunity for a more unified and integrated development pattern being managed by a single entity. More functional development patterns offered by the amendment is consistent with the Comprehensive Plan and furthers City economic development goals for a greater service sector presence and expanded employment opportunity.

Staff recommends the Planning & Zoning Board recommend approval to the City Commission of Ordinance No. 04-2023 for the amendment to the Deltona Village BPUD to increase the multi-family unit cap to 652 units, amend the written Development Agreement and the Overall Development Plan/Master Development Plan (ODP/MDP) approved by Ordinance No. 21-2009, and include additional land totaling approximately 26.57 acres to the BPUD.

Attachments:
Map Series
Ordinance No. 04-2023
Exhibit 'A' – Deltona Village DA Amendment (Staff Edit)
Exhibit 'B' – Legal Description
Exhibit 'C' - Deltona Village ODP/MDP dated March 3, 2023
Exhibit D – Deltona Village DA dated February 15, 2010

EXHIBIT C

City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Regular Commission Meeting

City Commission

Mayor Avila
Vice Mayor Bradford
Commissioner Avila-Vazquez
Commissioner Burbank
Commissioner Colwell
Commissioner JodyLee
Commissioner McCool

Monday, April 3, 2023 | **6:30 PM** | **Deltona Commission Chambers**

1. CALL TO ORDER:

2. ROLL CALL – CITY CLERK:

3. INVOCATION AND PLEDGE TO THE FLAG:

A. Invocation Presented by District #4 Commissioner.

Background: At the Regular City Commission Meeting on Monday, October 17, 2011, the City Commission approved to have each Commissioner by District schedule someone to present the invocation at each Regular City Commission meeting rotating each Commissioner by District starting with District #1, #2, #3, #4, #5, #6 and the Mayor.

4. APPROVAL OF MINUTES & AGENDA:

A. Approval of minutes of the Regular Commission Meeting of March 20, 2023, as presented. - Joyce Raffery, City Clerk (386) 878-8502.

Background: N/A

Attachments: March 20, 2023 RCM Minutes

5. PRESENTATIONS/AWARDS/REPORTS:

A. Super Star Student of the Month Certificates for March 2023

Background: Super Star Student of the Month awards for March 2023 will be presented to:

1. Deltona Lakes Elementary, Rosely Borroto Gonzalez, 5th Grade
2. Discovery Elementary, Liam Alexander, 5th Grade

3. Enterprise Elementary, Chaverika Plaza Robles, 4th Grade
4. Forest Lake Elementary, London Ramos, 2nd Grade
5. Friendship Elementary, Da'Vona Gilbert, Kindergarten
6. Pride Elementary, Chloee Wilson, 5th Grade
7. Spirit Elementary, Ky Foster, 2nd Grade
8. Sunrise Elementary, Rylee Hammond, 4th Grade
9. Timbercrest Elementary, Amar'E Hinds, 3rd Grade
10. Volusia Pines Elementary, Sienna Johnson, 4th Grade
11. Deltona Middle School, Zachariah Lewis, 8th Grade
12. Galaxy Middle, Alice Barton, 7th Grade
13. Heritage Middle, Darielle Alderman, 7th Grade
14. Deltona High, Kyle Kerns, 10th Grade
15. Pine Ridge High, William Faulk, 10th Grade

B. Proclamation - Child Abuse Prevention Month

Background: Proclamation - declaring the month of April as Child Abuse Prevention Month to promote awareness of abuse and neglect of children, and urge all Floridians to engage in activities whose purpose is to provide the optimal environment for healthy child development.

OPTIONS:

C. Proclamation - Water Conservation Month

Background: A proclamation to recognize the month of April as "Water Conservation Month" in the City of Deltona and encourage each resident, visitor and business to help protect our precious resource by practicing water conservation measures and becoming more aware of the need to conserve water.

D. Presentation - Quarterly Reports of City Advisory Boards/Committees - Joyce Raftery, City Clerk (386) 878-8502.

Background: Quarterly Reports of City Advisory Boards/Committees:

1) Affordable Housing Advisory Committee - (Written Report Only)
2) Planning and Zoning Board - (Written Report Only)
3) Team Volusia - (Written Report only)

Attachments: Affordable Housing Adv. - Q1 2023
Planning and Zoning Board - Q1 2023
Team Volusia EDC Deltona - Q1 2023

6. PUBLIC FORUM: Citizen comments are limited to issues and concerns not on the agenda and comments on items listed on the agenda will take place after discussion of each item. Please be courteous and respectful of the views of others. Members of the City Commission shall not enter into discussion or respond to individuals' comments during the public forum other than to give directions or to ask for clarification. However, individual Commissioners may wish to respond under their "City Commission Comments". Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor. Citizen comments for any items. (4 minute maximum length per speaker).

7. ORDINANCES AND PUBLIC HEARINGS:

A. Public Hearing - Ordinance No. 04-2023, Request to amend the Deltona Village Business Planned Unit Development (BPUD) overall Development Plan/ Master Development Plan increasing the number of multi-family unit allocation for the BPUD from 414 units to 652 units; amendment to the Development Agreement approved by Ordinance No. 21-2009; and rezone an additional 26.57 acres of land to be included within the Deltona Village BPUD.

Strategic Goal: Provide a diversity of housing choices in the City.

Background:

On February 15, 2010, the Deltona Village Business Planned Unit Development (BPUD) was approved via Ordinance No. 21-2009. The approved BPUD uses include traditional retail, office, service commercial, and also allowed light industrial uses. There were Conditional Use options including an allocation of up to 414 multi-family units. The intensity of the Deltona Village BPUD was capped at 900,000 square feet of retail. The 900,000 square-foot cap was also extended to a 38-acre parcel (ICC BPUD site) under similar ownership located north of Graves Av. and south of the I-4/SR 472 eastbound interchange off-ramp. The square-foot cap regarding allowed uses such as multi-family residential was reconciled through an equivalency matrix. The equivalency matrix is a tool used to convert densities and intensities so the overall intensity cap is not exceeded.

In 2018, the Deltona Village BPUD (Ordinance No. 10-2018) was amended by the City to modify minimum lot width and sizes. In addition, the 2018 amendment changed the 414-unit multi-family conditional use entitlement to a permitted use within the BPUD.
In 2021, the City Commission approved a second amendment to the Deltona Village BPUD to include an additional 10.3 acres of Deltona Retail Holdings, LLC, acquired properties by rezoning into the BPUD

with no additional intensity/density entitlements.

To date, Deltona Village has developed the Epic movie theater, Race Trac gas station, and a Burger King fast-food restaurant. Various site plans have been approved for a Starbucks immediately west of Burger King (SP21-0011), a 301 multi-family unit complex (currently under construction) for Integra Myst (SP21-0004), and a 52,800 square-foot light manufacturing facility (SP22-0007).

The current and third requested amendment via Ordinance No. 04-2023, requests the following:

1.) Amendment to the Overall Development Plan/Master Development Plan to increase the number of multi-family unit allocation for the BPUD from 414 units to 652 units;
2.) Amendment to the development agreement approved by Ordinance No. 21-2009, to update the multi-family unit cap, include the 26.57 acres, and to clarify remaining entitlements between the landowner and the City; and
3.) Rezone an additional ±26.57 acres of land to be rezoned and included within the Deltona Village BPUD.

On March 15, 2023, the Planning and Zoning Board voted (6 to 1) to recommend approval of Ordinance No. 04-2023 by the City Commission on March 15, 2023.

For more information please refer to the attached staff report and attachments.

Attachments:

Staff Report
BPUD Map Series
Ordinance 04-2023
Exhibit A - Deltona Village DA Amendment
Exhibit B - Legal Description
Exhibit C - Deltona Village ODP/MDP dated March 3, 2023
Exhibit D - Deltona Village DA dated February 15, 2010
VCSB Capacity Letter - Deltona Village
Deltona Village 3rd Amendment_CC
Ordinance 04-2023 ad

8. OLD BUSINESS:

9. NEW BUSINESS:

A. Request for approval of recommendations for scholarship awards from the William S. Harvey Deltona Scholarship Advisory Board - Joyce Raftery, City Clerk's Department (386) 878-8502.

Strategic Goal: Internal and External Communication.

Background: The application packets were mailed to each school, placed on the website and distributed to City facilities. The William S. Harvey Deltona Scholarship Advisory Board selected 23 applicants to receive the 2023 scholarship awards. The selections were based on the following criteria: 1) financial need; 2) academic achievement; 3) school; 4) community and/or leadership activities; 5) special skills and/or talents; and 6) an essay of 500 to 750 words.

The board met on March 23, 2023 and made two requests. The first is that the City Commission increase the scholarship funds for 2024 from $30,000 to $50,000. The second is to change the 2024 packet contents to reflect the award range of no more than $5,000 (up from $3,000) and no less than $1,000 to qualified applicants.

Attachments: 22-23 score sheet-1

10. COMMENTS ON CONSENT ITEMS: Citizen comments are limited to issues and concerns on the Consent Agenda item(s). Please complete a public participation slip and indicate in the subject line the issue you wish to address. Members of the City Commission shall not enter into discussion or respond to individuals' comments during the public forum other than to give directions or to ask for clarification. Please be courteous and respectful of the views of others. Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor.

11. CONSENT AGENDA: The Consent Agenda contains items that have been determined to be routine and non-controversial. If discussion is desired by any member of the City Commission, that item must be removed from the Consent Agenda and considered separately. All other matters included under the Consent Agenda will be approved by one motion. Citizens with concerns should address those concerns by filling out a public participation slip and giving it to the Deputy City Clerk prior to Consent Agenda items being pulled.

12. CITY COMMISSION SPECIAL REPORTS AND REQUESTS:

13. CITY ATTORNEY COMMENTS:

14. CITY MANAGER COMMENTS:

15. CITY COMMISSION COMMENTS:

16. ADJOURNMENT:

NOTE: If any person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk, Joyce Raffery 3 business days in advance of the meeting date and time at (386) 878-8500.

EXHIBIT D

VOLUSIA COUNTY SCHOOLS

School Board of Volusia County

Ms. Jamie M. Haynes, Chairman
Mrs. Anita Burnette, Vice Chairman
Mr. Ruben Colón
Mr. Carl Persis
Mrs. Jessie Thompson

Carmen J. Balgobin, Ed.D
Superintendent of Schools

School Adequate Capacity Determination
Finding of Adequate Capacity Letter

March 27, 2023

Mr. Chester C. DeMarsh
Deltona Retail Holdings, LLC
939 Hollywood Blvd
Deltona, FL 32725

RE : Deltona Village – City of Deltona
School Concurrency Case # 23-02-28-001-A

Dear Mr. DeMarsh:

The County Charter requires any Comprehensive Plan Amendment or Rezoning that allows increased residential density to be effective only when adequate public schools can be timely planned and constructed to serve the projected increase in student population. The district uses this requirement as the guiding principle behind the school adequate capacity review.

District staff reviewed the updated information for the proposed Deltona Village associated with 17+/- acres of property located at or near the intersection of E Graves Ave and Howland Blvd within Deltona city limits. Proposed project would provide for three hundred and fifty-two (352) multi-family apartment units.

The district uses a county wide Student Generation Rate (SGR) of (0.127) per multi-family dwelling unit to calculate projected students. By applying the SGR to the use types in Table 1 below, the project could generate forty-five (45) full time students.

Table 1

UNIT TYPE	SGR	UNIT COUNT	STUDENTS GENERATED
Single Family Dwelling Unit	0.273	0	0
Multifamily Dwelling Unit	0.127	352	45
Manufactured Home Dwelling Unit	0.047	0	0
	Total	352	45

When performing adequate capacity review district staff evaluates the effects of the proposed change compared to any remaining permanent capacity within the impacted schools, up to 100%, Table 2 (next page). The projected increase in student population may be over 100% if there are plans to serve increased student population in that planning area within the long-term planning horizon. A finding of adequate capacity may be issued in either case.

Table 2

Schools	SY 2022/23 Enrollment	% of Permanent Capacity	Plans for Capacity Increase Long-Term	Traditional K-12 students projected
Timbercrest Elementary	793	123%	No	20
Galaxy Middle	1,056	93%	No	10
Southwest CSA (Deltona High)	1,852	98%	No	11
Other				4

The student projections generated by this project **will** increase the existing percentage above 100% permanent capacity at the elementary school levels. However, when evaluated against the adjacent concurrency service area (CSA), which is Deltona Lakes Elementary, the average level of service (LOS) of 101% for both schools fall below mitigation thresholds. Based on this, the school district has no objections to the proposed development plan. Minimum planning considerations should include pedestrian and vehicular access, safety, connectivity, and buffering.

All future development orders, such as site plans and subdivisions, are subject to school concurrency review. School concurrency will be evaluated at the time when the impact of development is specifically quantified and known. Only funded school improvements and then current capacity will be considered at that time.

No student reservations have been made at this time.

Please note the School Board has the right to adjust the attendance boundaries to balance the student enrollment populations at these area schools. Consequently, students generated from this project may not attend the current assigned schools.

Should you need additional information, please contact me at (386) 947-8786, extension 50709.
Sincerely,

Stephanie B. Doster,
Coordinator, Planning

CC: Carmen J. Balgobin, Ed.D, Superintendent of Schools
Ron Young, Director, Planning and Construction
Joseph L. Ruiz, Interim Director of Community Services, City of Deltona
Lisa V. Divina, Volusia County School Board Project File

VOLUSIA COUNTY SCHOOLS

Finding of Adequate School Capacity

VOLUSIA COUNTY SCHOOL BOARD

Project Information	
Project Name	Deltona Village
VCSB Project #	**23-02-28-001-R**
Jurisdiction Project #	
Parcel ID Numbers	8107-06-00-0050
Project Location	E Graves Ave and Howland Blvd
Potential Residential Units	352 Multi-Family Apartments
Property Owner/Applicant	Chester C. DeMarsh, Deltona Retail Holdings LLC
Notes: Additional review will be required at the time of subdivision/site plan submittal(s). No Student Reservations have been made.	

Based upon the Findings of Fact, pursuant to School Board Policy 612 and Section 206 of the County Charter, the school district has determined at this time that school capacity is adequate to serve the proposed increase in residential density. This Finding shall constitute competent substantial evidence that adequate public school capacity is likely to be available at the time it is required to serve the planned new development.

Capacity is <u>not</u> being reserved with this Finding unless otherwise noted on this document. This Finding of Adequate School Capacity allows this subject project to continue through the Comprehensive Plan Amendment and/or rezoning process; however, it may be subject to additional school capacity review in the future.

Stephanie B. Doster
Coordinator, Planning

March 27, 2023
Issue Date

VCSB Schools Impacted by Development

School Concurrency Review - Deltona Village

VOLUSIA COUNTY SCHOOLS

Created by Facilities Services
March 2023

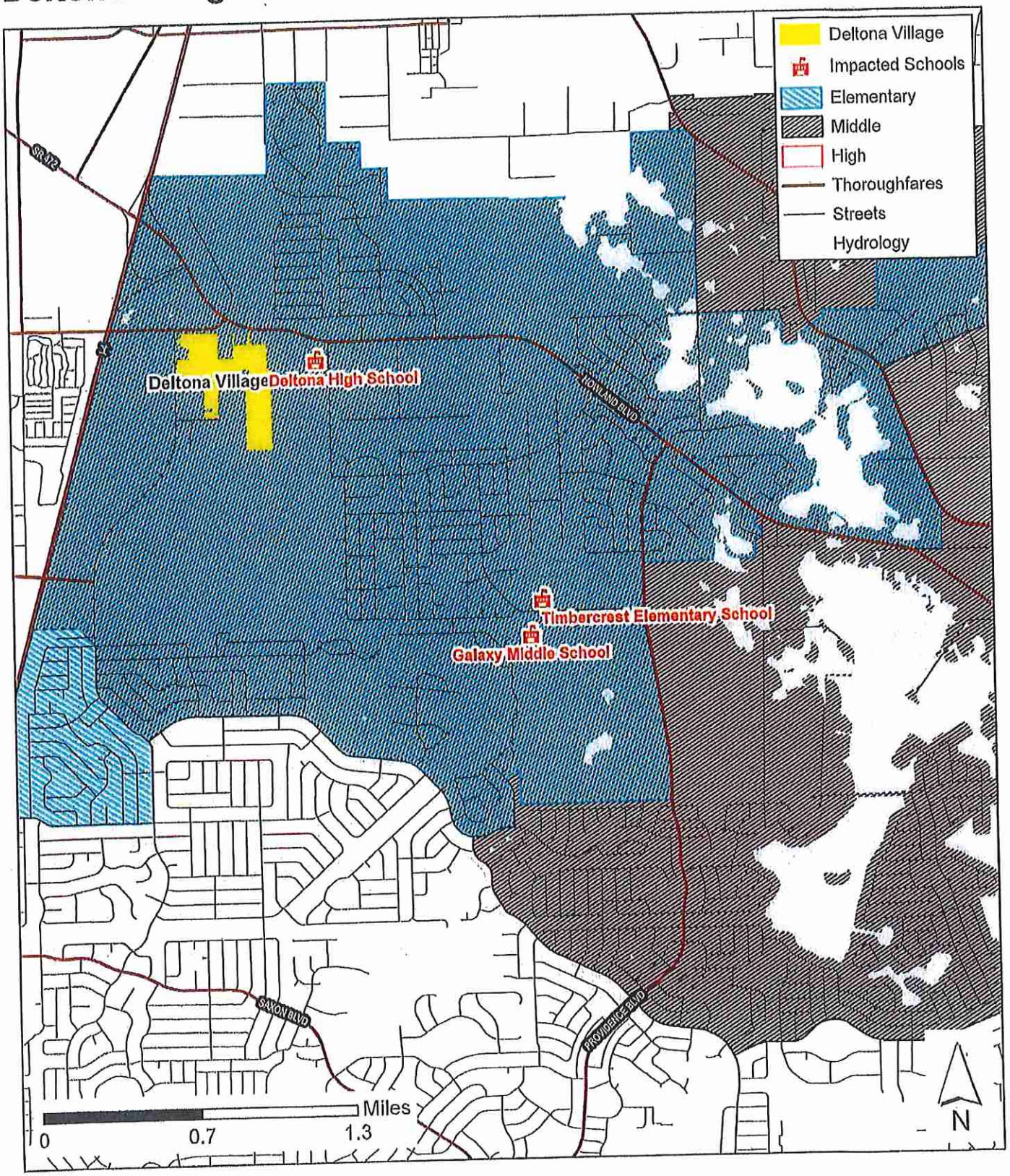


EXHIBIT E

City of Deltona

Revised 4/5/2023

April 4, 2023

Mr. William F. DeMarsh
Deltona Retail Holdings, LLC
939 Hollywood Boulevard
Deltona, FL 32725

Re: RZ22-0002, Deltona Village BPUD – 3rd Amendment (Ordinance No. 04-2023)

Dear Mr. DeMarsh,

Please accept this correspondence as a rendition of the April 3, 2023, City Commission hearing on the above-referenced rezoning request. The request was to amend the Deltona Village Business Planned Unit Development (BPUD) overall Development Plan/Master Development Plan increasing the number of multi-family unit allocation for the BPUD from 414 units to 652 units; amend the Development Agreement (DA) approved by Ordinance No. 21-2009, and rezone an additional ±26.57 acres of land to be included within the Deltona Village BPUD.

On April 3, 2023, at first reading, the City Commission voted 4 to 3 to deny the amendment to the Deltona Village BPUD. Therefore, the rezoning was considered denied.

Per the City of Deltona Land Development Code (LDC), Section 110-1004, "Any person aggrieved by any decision of the City Commission may apply to the circuit court for review by certiorari, within 30 days after the rendition of the decision of the City Commission. He shall notify all interested persons, and all persons entitled by this chapter to receive notice of the original public hearing, by certified mail, return receipt requested, of his taking of such appeal."

In addition, per the LDC, Section 110-1005, "If it is alleged that the city commission, as the case may be, has overlooked or misapprehended some facts or points of law, a rehearing of any decision of the may be granted by the commission either on the motion of any member voting on the prevailing side, or on the motion of any person aggrieved by its decision. The motion shall be in writing, shall be filed with the enforcement official within ten working days after the rendition of the decision, and shall state its grounds. The movant shall serve it by certified mail or hand delivery upon the mayor and the city manager and all adjoining property owners previously notified of the hearing, together with a notice stating the date, time and place it will be orally presented to the commission. If the city commission grants such a motion, it shall state its reasons for doing so, and set a time, date and place for another public hearing upon due public notice. The city commission shall not otherwise rehear a

petition based upon the same or similar facts, proposals, or issues until at least one year has elapsed from the date of rendition."

If there are any questions, feel free to contact me at (386) 878-8624.

Sincerely,

Joseph Ruiz,
Interim Director, Planning and Development Services

Cc. Mr. James V. Chisholm, Interim City Manager
Marsha Segal-George, City Attorney

EXHIBIT F

City of Deltona

December 11, 2019

Mr. Frank DeMarsh
Manager, Deltona Retail Holdings, LLC.
939 Hollywood Blvd.
Deltona, FL 32725

Re: Deltona Village BPUD, Ordinance No. 21-2009 and Project Normandy, Ordinance No. 13-2019

Dear Mr. DeMarsh,

The City and interests from Deltona Retail Holdings (DRH) conducted a meeting on November 25, 2019 to discuss entitlements and other elements associated with the above mentioned projects. At the meeting, three basic topics were discussed. The topics included a land swap between DRH and the County, an acknowledgement letter dated November 1, 2019, and access/signalization matters related to Energy Av. and Hollywood Blvd. The items are discussed below:

1) **Land Swap**

The City does not oppose the land swap between the DRH and the County; however, the City is still reviewing the swap proposal in light of existing stormwater capacity, conveyance, and future needs. Ensuring there is ample stormwater volume is critical to support needed improvements to N. Normandy Blvd. including the eventual lane mile expansion of the road. An expanded N. Normandy Blvd. will be needed to support future development in the area including projects occurring within Deltona Village.

2) **Attorney Booker November 1, 2019 Acknowledgement Letter**

City responses below are cross referenced to the items outlined in the November 1, 2019 acknowledgement letter.

i) With regard to the Deltona Village BPUD (Ordinance No. 21-2009), the City recognizes and otherwise reaffirms the vested entitlements outlined within the approved Development Agreement and accompanying Master Development Plan/Overall Development Plan (MDP/OPD) including but not limited to DRH's satisfaction of all conditions within the time frames established in paragraph 11 entitled "Trip Reservations" as to all TIA phases and sub-phases. Also, the City acknowledges the transportation improvements within the Deltona Village BPUD have been accomplished or are going to be constructed under the Project Normandy IPUD (Ordinance No. 13-2019). In addition, the fair share payments discussed within paragraph 10 of the

Deltona Village BPUD are also determined to be satisfied by the past actions of DRH and the transportation improvements associated with the Project Normandy IPUD.

ii) Those vested rights include access as illustrated as part of the MDP/OPD and all traffic trip reservations as set forth in paragraph 10 and 11 of the Deltona Village BPUD Development Agreement for all TIA phases and sub-phases which shall not expire.

iii) No additional traffic impact analysis shall be required by the City for any future development by DRH so long as said development is consistent with the uses approved by the ODP/MDP adopted and incorporated into the Deltona Village BPUD. However, with regard to individual developments that may be processed within the Deltona Village BPUD, consistent with the Land Development Code, the City may require an access management/roadway geometry evaluation associated with an entitled access point for an individual development to ensure safe and effective traffic movements.

iv) Any development occurring within the Deltona Village project will be responsible for paying City and County impact fees as per fee schedules in effect at the time of building permit issuance in lieu of performing any required improvements because said improvements have been constructed by DRH or will be constructed by the developer of Project Normandy.

v) For property associated with the Deltona Village BPUD (Ordinance No. 21-2009), DRH shall not be responsible for any additional proportionate fair share assessment or impact/mobility fees related to the traffic mitigation improvements constructed by DRH and/or the developer for Project Normandy. However, any impact fee credit for constructing those improvements will be to the benefit of the party constructing said improvements.

vi) The full movement at Driveway 1/Energy Avenue is vested under Ordinance No. 21-2009 for DRH's development and the City shall not require any additional traffic impact analysis regarding future DRH development. However, the City may require an access management/roadway geometry evaluation associated with to ensure safe and effective traffic movements.

vii) No major amendment to the Deltona Village BPUD (Ordinance No. 21-2009) will be required so long as such development is in accordance with the Deltona Village BPUD Development Agreement and MDP/ODP as per Ordinance No. 21-2009.

3) **<u>Energy Av./Hollywood Blvd. Intersections and Related Signalization</u>**

With regard to the proposed entrance to Deltona Retail Holdings property at Energy Av., the Deltona Village Development Agreement (Ordinance No. 21-2009) contemplates a full intersection movement at this location. It is understood that if adjustments to signal timing are required as a result of development occurring as part of the Deltona Village BPUD or other development programs in the area, said signal facility/timing improvements intended to promote safe and efficient travel will be the responsibility of the City of Deltona.

With regard to the proposed entrance to Deltona Retail Holdings property at Hollywood Boulevard the Deltona Village Development Agreement (Ordinance No. 21-2009) contemplates a full intersection movement at this location. It is understood that if a signal is warranted in the future or if adjustments to signal timing are required, said timing improvements intended to promote safe and efficient travel will be the responsibility of the City of Deltona.

If there are any questions with regard to this matter feel free to contact me at (386) 878-8850.

Sincerely,

Jane K. Shang

Jane K. Shang, City Manager

EXHIBIT G

SECTION 9
PUBLIC SCHOOL FACILITIES ELEMENT
GOALS, OBJECTIVES, and POLICIES

Table of Contents

GOAL PSF1 3

OBJECTIVE PSF1-1 3

OBJECTIVE PSF1-2 3

OBJECTIVE PSF1-3 4

OBJECTIVE PSF1-4 5

GOAL PSF2 6

OBJECTIVE PSF2-1 6

OBJECTIVE PSF2-2 7

OBJECTIVE PSF2-3 9

OBJECTIVE PSF2-4 12

OBJECTIVE PSF2-5 13

GOAL PSF1

Collaborate and coordinate with the School Board of Volusia County to provide and maintain a public education system, which meets the needs of Volusia County's current and future population.

OBJECTIVE PSF1-1

The City shall implement and maintain mechanisms designed to coordinate with the School Board to provide consistency between local government comprehensive plans and public school facilities and programs.

Policy PSF1-1.1

Pursuant to the procedures and requirements of the adopted interlocal agreement, the City shall coordinate with the School Board on growth and development trends, general population and student projections to ensure that the plans of the School Board and the City are based on consistent data.

Policy PSF1-1.2

At the time of transmittal of the Public Schools Facilities Element, the City developed a report of projects not subject to school concurrency and submitted the report to the School Board. The report included the type, number and location of residential units that have received subdivision or site plan approval and provided a projected annual rate of growth for such projects.

Policy PSF1-1.3

The City shall provide the representative of the School Board with copies of all meeting agendas and staff reports.

OBJECTIVE PSF1-2

The City shall coordinate with the School Board on the planning and siting of new public schools and ancillary facilities to ensure school facilities are coordinated with necessary services and infrastructure and are compatible and consistent with the Comprehensive Plan.

Policy PSF1-2.1

The City shall coordinate with the School Board to assure that proposed public school facility sites are consistent with the applicable land use categories and policies of the Comprehensive Plan. Schools shall be permitted in all future land use classifications except for Industrial land use classifications and environmentally restricted land use classifications.

Policy PSF1-2.2

Coordination of the location, acquisition, phasing and development of future school sites and ancillary facilities shall be accomplished through the procedures adopted in the interlocal agreement.

Policy PSF1-2.3
The City and School Board will jointly determine the need for and timing of on-site and off-site improvements necessary to support each new school or the proposed renovation, expansion or closure of an existing school. If deemed necessary, the parties may enter into a written agreement as to the timing, location, and party or parties responsible for constructing, operating and maintaining the required improvements.

Policy PSF1-2.4
The City shall encourage the School Board to land bank sites for future use as school facilities. The City shall coordinate with the School Board on the acquisition and use of land banked sites in the same manner as established for other sites in order to ensure adequate infrastructure is planned and constructed in advance of school construction.

Policy PSF1-2.5
The City shall protect schools and land banked school sites from the adverse impact of incompatible land uses by providing the School District with the opportunity to participate in the review process for all proposed development adjacent to school.

Policy PSF1-2.6
In developing capital improvements plans and programs for public services, the City shall consider required infrastructure to service existing and proposed schools and any land banked school sites.

OBJECTIVE PSF1-3
The City shall enhance community and neighborhood design through effective school facility design and siting standards and encourage the siting of school facilities in order to serve as community focal points and are compatible with surrounding land uses.

Policy PSF1-3.1
The City shall coordinate with the School Board on opportunities for the expansion and rehabilitation of existing schools, so as to support neighborhoods and redevelopment.

Policy PSF1-3.2
The City shall collaborate with the School Board on the siting of public facilities such as parks, libraries, and community centers near existing or planned public schools, to the extent feasible.

Policy PSF1-3.3
The City shall look for opportunities to co-locate and share the use of public facilities when preparing updates to the comprehensive plan's schedule of capital improvements and when planning and designing new or renovating existing, community facilities. Co-located facilities shall be governed by a written agreement between the School Board and the City specifying operating procedures and maintenance and operating responsibilities.

Policy PSF1-3.4

The City shall reduce hazardous walking conditions consistent with Florida's safe ways to school program. In conjunction with the School Board, the City shall implement the following strategies:

1. New developments adjacent to schools shall be required to provide a right-of-way and direct safe access path for pedestrian travel to existing and planned schools and shall connect to the neighborhood's pedestrian network.
2. New development and redevelopment within two miles of a school shall be required to provide sidewalks within or adjacent to the property for the corridor that directly serves the school or qualifies as an acceptable designated walk or bicycle route to the school.
3. In order to ensure continuous pedestrian access to public schools, the City shall consider infill sidewalk and bicycle projects connecting networks serving schools as part of the annual capital budget process. Priority shall be given to hazardous walking conditions pursuant to Section 1006.23, Florida Statutes.
4. The City shall coordinate with the Metropolitan Planning Organization to maximize the funding from the Florida Department of Transportation and other sources that may be devoted to improving pedestrian networks serving schools.

Policy PSF1-3.5

The City and School Board shall coordinate with Volusia County Emergency Services on efforts to build new school facilities, and facility rehabilitation and expansion, to be designed to serve as and provide emergency shelters as required by Section 1013.372, Florida Statutes.

OBJECTIVE PSF1-4

Manage the timing of new development to coordinate with adequate school capacity as determined by the Volusia County School District.

Policy PSF1-4.1

The City shall take into consideration the School Board comments and findings on the availability of adequate school capacity in the evaluation of comprehensive plan amendments and other land use decisions including but not limited to developments of regional impact. School Board review shall follow the policies and procedures set forth in the interlocal agreement.

Policy PSF1-4.2

Amendments to the future land use map shall be coordinated with the School Board and the Public School Facilities Planning Maps.

Policy PSF1-4.3

Where capacity will not be available to serve students from the property seeking a land use change or other land use determination that increases residential density, the City shall not

approve the proposed land use change until such time as the School Board can find that adequate public schools can be timely planned and constructed to serve the student population or that the applicant has provided adequate mitigation to offset the inadequacies in anticipated school capacity.

GOAL PSF2

The City shall assure the future availability of public school facilities to serve new development consistent with the adopted level of service standards. This goal will be accomplished recognizing the School District's statutory and constitutional responsibility to provide a uniform system of free and adequate public schools and the City's authority for land use, including the authority to approve or deny comprehensive plan amendments, re-zonings or other development orders that generate students and impact the public school system. The City shall operate and maintain in a timely and efficient manner adequate public facilities for both existing and future populations consistent with the available financial resources.

OBJECTIVE PSF2-1

The City through coordinated planning with the School District and implementation of its concurrency management system shall ensure that the capacity of schools is sufficient to support residential subdivisions and site plans at the adopted level of service standard within the period covered by the five-year schedule of capital improvements. These standards and the concurrency management system shall be consistent with the interlocal agreement approved by the School Board and the local governments in Volusia County.

Policy PSF2-1.1

The level of service standards for schools shall be applied consistently by all the local governments in Volusia County and by the School Board district-wide to all schools of the same type.

Policy PSF2-1.2

Consistent with the interlocal agreement, the uniform, district-wide level-of-service standards are set as follows:

1. Elementary Schools: 115% of permanent FISH capacity for the concurrency service area
2. K-8 Schools: 115% of permanent FISH capacity for the concurrency service area.
3. Middle Schools: 115% of permanent FISH capacity for the concurrency service area
4. High Schools: 120% of permanent FISH capacity for the concurrency service area
5. Special Purpose Schools: 100% of permanent FISH capacity

Policy PSF2-1.3

The following schools shall achieve the adopted level of service no later than the identified date.

School	LOS	DATE
Orange City Elementary	117%	July 1, 2012
Horizon Elementary	158%	July 1, 2012
Freedom Elementary	126%	July 1, 2012
Osceola Elementary	117%	July 1, 2012
Ortona Elementary	150%	July 1, 2012
Ormond Beach Elementary	116%	July 1, 2012
Southwestern Middle	120%	July 1, 2013
New Smyrna Beach Middle	122%	July 1, 2014

(Note: This policy designates a tiered LOS for those schools that exceed the desired levels at the end of the first five year capital improvements program.)

Policy PSF2-1.4

The (local government) and School Board recognize and agree that short-term changes in enrollment unrelated to new development approvals can and do occur, and that students enrolling in their assigned school will be accepted consistent with the School District's constitutional obligations regardless of the utilization levels at the assigned school.

Policy PSF2-1.5

If there is a consensus to amend any level of service, the amendment shall be accomplished by execution of an amendment to the interlocal agreement by all parties and the adoption of amendments to each local government's comprehensive plan. The amended level of service shall not be effective until all plan amendments are effective and the amended interlocal agreement is fully executed. No level of service standard shall be amended without showing that the amended level of service standard is financially feasible and can be achieved and maintained within the five years of the capital facilities plan.

OBJECTIVE PSF2-2

The City shall establish School Concurrency Service Areas as the area within which an evaluation is made of whether adequate school capacity is available based on the adopted level of service standard. Maps of the School Concurrency Service Areas are adopted in the Volusia County Interlocal Agreement for Public School Facilities Planning.

Policy PSF2-2.1

The concurrency service area for elementary schools shall be the elementary school attendance boundary as represented on the map series "Public School Facilities Element Elementary School

Concurrency Service Areas" adopted as part of the Volusia County Comprehensive Plan and which is incorporated herein by reference.

Policy PSF2-2.2
The concurrency service area for middle schools shall be the middle school attendance boundary as represented on the map series "Public School Facilities Element Middle School Concurrency Service Areas" adopted as part of the Volusia County Comprehensive Plan and which is incorporated herein by reference.

Policy PSF2-2.3
The concurrency service area for high schools shall be as represented on the map series "Public School Facilities Element High School Concurrency Service Areas" adopted as part of the Volusia County Comprehensive Plan and which is incorporated herein by reference.

Policy PSF2-2.4
The concurrency service area for special use schools shall be district wide.

Policy PSF2-2.5
The concurrency service area maps designate three areas where school capacity is not anticipated for the planning period.

Policy PSF2-2.6
Amendments to the School Concurrency Service Areas shall be completed according to the procedures specified in the Volusia County Interlocal Agreement for School Facilities Planning. Amendments to concurrency service areas shall consider the following criteria:

1. Adopted level of service standards shall not exceed the level of service standard within the initial five-year planning period.
2. The utilization of school capacity is maximized to the greatest extent possible taking into account transportation costs, court approved desegregation plans, proximity to schools, ethnic and socio-economic diversity, subdivisions and neighborhoods, demographic changes, future land development patterns, crossing guard availability and other relevant factors.

Policy PSF2-2.7
Within the central concurrency service areas all current and future students shall be assigned to schools designated for them as part of the School District's normal school assignment procedures. Requests for development orders for new development consistent with the future land use designations and existing residential zoning densities shall be evaluated for concurrency based on the assigned school and that school's concurrency service area. If adequate capacity is not available in the assigned concurrency service area, the proposed development shall be evaluated in comparison to the concurrency service areas adjacent to the assigned concurrency service area, subject to the limitations of Volusia County Policy 2.3.7. The

school district shall maintain a listing of assigned and adjacent concurrency service areas for each central school concurrency service area.

Policy PSF2-2.8
Requests to develop properties within the central school concurrency service areas at residential densities and intensities greater than the current land use or zoning designations shall be done via a comprehensive plan amendment consistent with the Volusia County Charter provision 206 regarding school planning. The comprehensive plan amendment shall demonstrate how school capacity will be met consistent with the terms of the First Amendment to the Interlocal Agreement for Public School Facility Planning effective July 2007 and Section 206 of the Volusia County Charter. If the project area is to be annexed by a municipality, the comprehensive plan amendment shall include an amendment of the central concurrency service area boundary by Volusia County to exclude the subject parcel.

OBJECTIVE PSF2-3

In coordination with the School Board the City will establish a process for implementation of school concurrency which includes applicability and capacity determination, availability standards and school capacity methods. The City shall manage the timing of residential subdivision approvals and site plans to ensure adequate school capacity is available consistent with the adopted level of service standards for public schools.

Policy PSF2-3.1
School concurrency applies to residential development not otherwise exempt as specified by Policy 2.3.3.

Policy PSF2-3.2
Development orders may be issued for residential development where:

1. Adequate school capacity, as determined by the School Board, exists or will be under construction for each level of school in the affected concurrency service area within three years after the issuance of the development order allowing the residential development.
2. Adequate school facilities, as determined by the School Board, are available within an adjacent concurrency service area subject to the limitations of Policy 2.3.7. Where capacity from an adjacent concurrency service area or areas is utilized, the impacts of development shall be shifted to that area. If capacity exists in more than one concurrency service area or school within a concurrency service area, the School District shall determine where the impacts of development shall be allocated based on the School District policies for student assignment.
3. The developer executes a legally binding commitment with the School Board and City to provide mitigation proportionate to the demand for public school facilities to be created

by the actual development of the property as provided by Objective 2.4 and its supporting policies.

Policy PSF2-3.3

The following residential development shall be considered exempt from the school concurrency requirements:

1. Single family lots of record existing as such at the time School Concurrency implementing ordinance is adopted which otherwise would be entitled to build, shall be exempt from School Concurrency requirements.
2. Any residential development or any other development with a residential component that received approval of a Final Development Order or Functional Equivalent prior to the implementation date of school concurrency or is exempt from concurrency under the City concurrency regulations is considered vested for that component which was previously approved for construction and shall not be considered as proposed new residential development for purposes of school concurrency.
3. Amendments to residential development approvals which do not increase the number of students generated by the development based on the student generation rates for each school type.
4. Age restricted developments that are subject to deed restrictions prohibiting the permanent occupancy by a resident under the age of fifty-five (55). Such deed restrictions must be recorded and be irrevocable for a period of at least thirty (30) years.
5. Group quarters that do not generate students including residential facilities such as jails, prisons, hospitals, bed and breakfast, hotels and motels, temporary emergency shelters for the homeless, adult halfway houses, firehouse dorms, college dorms exclusive of married student housing, and religious non-youth facilities.

Policy PSF2-3.4

The creation of subdivisions and/or single family lots equal to or less than ten (10) units shall be subject to school concurrency as part of an annual concurrency management review. The City shall report such projects to the School Board as part of the annual planning coordination process established by the interlocal agreement and these units shall be included by the School Board in planning student allocations by school.

Policy PSF2-3.5

By February 1, 2008, the City shall adopt a school concurrency ordinance, which establishes the application procedures and process for evaluating school capacity and making concurrency determinations consistent with the provisions of the interlocal agreement.

Policy PSF2-3.6
The School Board shall conduct a concurrency review that includes findings and recommendations of whether there is adequate capacity to accommodate proposed development for each type of school within the affected concurrency service area consistent with the adopted level of service. The School Board may issue a certificate of school concurrency if sufficient capacity exists for the proposed development or the School Board may set forth conditions required to satisfy the requirements of school concurrency including proportionate share mitigation.

Policy PSF2-3.7
If the adopted level of service standard cannot be met within a particular concurrency service area as applied to an application for development order and if the needed capacity is available in one or more contiguous concurrency service areas or then this capacity shall be applied to the concurrency evaluation of the application for development approval subject to the following limitations:

1. Areas established for diversity at schools shall not be considered contiguous.
2. Concurrency service areas generating excessive transportation costs shall not be considered contiguous. Excessive transportation costs are defined as transporting students requiring a transport time of fifty minutes one way as determined by School District transportation routing staff.
3. Concurrency service areas shall not be considered contiguous when the concurrency service areas are separated by a natural or man-made barrier such as a river, water body, or interstate highway that requires indirect transport of students through a third concurrency service area.
4. When capacity in an adjacent concurrency service area is allocated to a development application, assignment of the students to the school with available capacity may be accomplished by applying any of the techniques used to establish school attendance zones including modification of existing attendance zone boundaries or creation of island zones.
5. Student transportation not in conformance with the conditions established in Items 1 through 4 above shall be permitted to allow student assignments based on specific educational programming options; to comply with State and Federal mandatory transfer opportunities; or for other transfer opportunities that School Board shall deem appropriate for the specific circumstances of an individual student.

Policy PSF2-3.8
If the adopted level of service cannot be met within a particular concurrency service area, the School Board may apply one or more of the following techniques to maximize use of available capacity and provide for adequate numbers of student stations to meet current and future demand:

1. Construct new school facilities.
2. Construct additions to current facilities.
3. Adjust program assignments to schools with available capacity.
4. Modify attendance boundaries to assign students to schools with available capacity.
5. Eliminate variances to overcrowded facilities that are not otherwise restricted by State or Federal requirements.

OBJECTIVE PSF2-4

The City shall provide for mitigation alternatives that are financially feasible and will achieve and maintain the adopted level of service standard consistent with the School Board's adopted financially feasible work program.

Policy PSF2-4.1

In the event that sufficient school capacity is not available in the affected concurrency service area, the developer shall have the option to propose proportionate share mitigation to address the impacts of the proposed development.

Policy PSF2-4.2

Mitigation shall be directed toward a permanent capacity improvement identified in the School Board's financially feasible work program, which satisfies the demands created by the proposed development consistent with the adopted level of service standards.

Policy PSF2-4.3

Mitigation shall be directed to projects on the School Board's financially feasible work program that the School Board agrees will satisfy the demand created by the proposed development approval and shall be assured by a legally binding development agreement between the School Board, the City, and the applicant which shall be executed prior to the City issuance of the subdivision or site plan approval. If the School Board agrees to the mitigation, the School Board shall commit in the agreement to placing the improvement required for mitigation in its work plan.

Policy PSF2-4.4

The applicant's total proportionate share obligation shall be based on multiplying the number of needed student stations generated from the proposed project times the School Board's current cost per student station plus land cost for each type of school. The applicant's proportionate share mitigation obligation shall be credited toward any impact fee or exaction fee imposed by local ordinance for the same need on a dollar for dollar basis. (For example, if the proportionate share mitigation provides only for land, the credit is applied only against that portion of the impact fee or other exaction devoted to land costs.)

Policy PSF2-4.5
The student generation rates used to determine the impact of a particular development shall be the student generation rates adopted in the most recent school impact fee study.

Policy PSF2-4.6
The cost per student station shall be the most recent actual costs per student station, and capitalization costs if applicable, paid by the School Board for the equivalent school facility.

Policy PSF2-4.7
Mitigation options must consider the School Board's educational delivery methods and requirements and the State Requirements for Educational Facilities and may include, but not be limited to, the following:

1. Donation of buildings for use as a primary or alternative learning facility.
2. Renovation of existing buildings for use as learning facilities.
3. Funding dedicated to, or construction of permanent student stations or core capacity.
4. For schools contained in the School Board's adopted five-year capital facilities work program, upon agreement with the School Board, the applicant may build the school in advance of the time set forth in the five-year work program.
5. Dedication of a school site as approved by the School Board.
6. Up front lump sum payment of school impact fees.
7. Upfront payment of interest and other costs of borrowing.
8. Payment of off-site infrastructure expenses including but not limited to roads, water, and/or sewer improvements.
9. Payment of transportation costs associated with the movement of students as a result of overcapacity school.
10. Funding assistance with acquisition of school sites.
11. Phasing of construction or delay of construction in order to timely plan for the availability of school capacity and to use resources wisely.
12. Establishment of an educational facilities benefit district.
13. Establishment of educational facilities mitigation banks.

OBJECTIVE PSF2-5

The City shall ensure existing deficiencies and future needs are addressed consistent with the adopted level of service standards for schools.

Policy PSF2-5.1
In accordance with the adopted interlocal agreement, the City shall collaborate with the School Board in locating required school sites as identified in the School Board's five, ten and twenty year Capital Facilities plan.

Policy PSF2-5.2
The City shall ensure that future development pays a proportionate share of the costs of capital facilities capacity needed to accommodate new development and to assist in maintaining the adopted level of service standards via impact fees and other legally available and appropriate methods.

Policy PSF2-5.3
The City adopts by reference the School Board's five-year work program approved annually each September, as part of the overall School District budget. The City shall review the annual work program to verify that it is financially feasible and will maintain the level of service standards by the end of the five-year period.

EXHIBIT H

City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Regular Commission Meeting

City Commission

Mayor Avila
Vice Mayor Bradford
Commissioner Avila-Vazquez
Commissioner Burbank
Commissioner Colwell
Commissioner JodyLee
Commissioner McCool

Monday, December 12, 2022	6:30 PM	Deltona Commission Chambers

1. CALL TO ORDER:

2. PUBLIC FORUM: Citizen comments are limited to issues and concerns not on the agenda and comments on items listed on the agenda will take place after discussion of each item. Please be courteous and respectful of the views of others. Members of the City Commission shall not enter into discussion or respond to individuals' comments during the public forum other than to give directions or to ask for clarification. However, individual Commissioners may wish to respond under their "City Commission Comments". Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor. (6:30 to 7:00 PM)

Citizen comments for any items. (4 minute maximum length per speaker)

3. ROLL CALL – CITY CLERK:

4. INVOCATION AND PLEDGE TO THE FLAG:

A. Invocation Presented by District #3 Commissioner.

Background: At the Regular City Commission Meeting on Monday, October 17, 2011, the City Commission approved to have each Commissioner by District schedule someone to present the invocation at each Regular City Commission meeting rotating each Commissioner by District starting with District #1, #2, #3, #4, #5, #6 and the Mayor.

5. APPROVAL OF MINUTES & AGENDA:

A. Approval of minutes of the Special Commission Meeting of October 12, 2022 and the Regular Commission Meeting of November 28, 2022 as presented. - Joyce Raftery, City Clerk (386) 878-8502.

Background: N/A

Attachments: October 12, 2022 SCM Minutes
November 28, 2022 RCM Minutes

6. PRESENTATIONS/AWARDS/REPORTS:

A. Proclamations to Glenn Ritchey, Sr. and Halifax Health for their generous donations to the City of Deltona's Thanksgiving Turkey Drive-Thru event.

Background: The City of Deltona is proud to recognize Glenn Ritchey, Sr. along with Halifax Health for their generous donations to help make the City of Deltona's Thanksgiving Turkey Drive-Thru event a success for the residents of Deltona.

7. ORDINANCES AND PUBLIC HEARINGS:

A. Public hearing - Request for approval of the program year 2021-2022 CDBG Consolidated Annual Action Performance and Evaluation Report (CAPER) - Ron A. Paradise, Director, Community Services (386) 878-8610.

Strategic Goal: Community Development

Background: The U.S. Department of Housing and Urban Development (HUD) requires the CAPER be submitted annually to remain federally grant compliant. The CAPER is a summary of City activities accomplished under Title 24 of the HUD funded Community Development Block Grant (CDBG) program. The purpose of the report is to document the proper use of HUD funds by the City for activities and projects accomplished within a HUD program year (PY). For this PY, activities include park upgrades, housing assistance, social service funding, administration and CARES act expenditures.

The CAPER is associated with the Five-Year Consolidated Plan (CP) which establishes strategic goals for the City CDBG activities listed in the Annual Action Plan (AAP). The current CP for 2018-2022 is updated annually by the AAP to report the implementation of the CP for grant compliance. The CAPER consists of narratives, tables, and charts documenting the appropriate spending of grant funds and highlighting efforts made by the City to improve citizen quality of life. Finally, in accordance with the required citizen participation plan, the City has observed a 15-day public comment period and no comments were received verbally or in writing.

For more information see the attached PY 2021-2022 Consolidated Annual Action Performance and Evaluation Report.

Attachments: Community Development Block Grant 21-22 CAPER

B. Public Hearing - Ordinance No. 22-2022, amendment to the City's Future Land Use Map by changing the Future Land Use designation on a ±34.8-acre area from Commercial (C) to Medium Density Residential (MDR), at second and final hearing - Ron A. Paradise, Community Services Director, (386) 878-8610.

Strategic Goal: Community Development

Background:

The City of Deltona received an application to amend the City's Future Land Use Map by changing the Future Land Use designation on a ±34.8-acre area from Commercial (C) to Medium Density Residential (MDR). The Future Land Use Map amendment is being processed pursuant to State planning law as a small-scale amendment because the property is less than 50 acres in size.

To date, the amendment area, notwithstanding the property being entitled under both a BPUD for a shopping center and a straight zoning of C-1 (Retail Commercial District), has not developed at a commercial capacity. The attached staff report contains a detailed analysis as to why the property has not developed as a retail center. The staff report also illustrates the amendment area has potential for other more employment oriented commercial uses like office and flex space (dock high warehouse).

The requested Medium Density Residential (MDR) allows low to midrise residential development formats, including multi-family, within a density range of 6.1 to 12 dwelling units per acre. A proposed residential project for the amendment area is being processed as part of a Residential Planned Unit Development (RPUD) development request. In general, the proposed RPUD is to facilitate a residential development type known as 'build to rent'. The project will include a residential mixture of single family "cottages" duplexes and townhomes, none of which are proposed to be owner occupied.

Please refer to the attached Staff Report for further information.

On October 19, 2022, the Planning and Zoning Board heard the Future Land Use Map amendment request. The Board voted 4 to 3 to recommend the City Commission approve the Future Land Use Map amendment. On November 7, 2022 the City Commission voted to approve and transmit the amendment to the Volusia Growth Management Commission (VGMC) for a consistency review pursuant to the Volusia Growth Management Commission rules. VGMC certification was granted on December 6, 2022. See attached letter from VGMC.

Upon reviewing information relating to the final project presented by the applicant at the Planning and Zoning Board and November 7, 2022 meeting, the initial position of staff has changed from a recommendation of denial to approval. The build to rent project, while not representing a commercial development, does improve the tax base of City. None of the units will be owner occupied and will not be eligible for tax exemptions such as a homestead exemption. The project will also result in more housing options for the City. Staff also suggests the project can be adequately managed/designed through the upcoming Residential Planned Unit Development (RPUD) rezoning request which will be heard by the City Commission at first reading on December 12, 2022 to facilitate a high quality, long term viable community. The following list illustrates some of the elements staff will be emphasizing to ensure the project will be first-rate show piece now and into the future (this is not an exhaustive list):

1) Stipulation the project will not be converted to an owner-occupied format without City Commission approval;
2) Provision of extensive amenities to include clubhouse, trails, covered parking, pools, etc;
3) Landscaping to buffer and beautify the project;
4) Robust architectural requirements; and
5) Fair share payment for transportation upgrades;

The Interim City Manager has the authority to make corrections of scrivener's errors and the like.

Attachments:

Catalina Pointe Staff Report
Map Series
Catalina Pointe-TIA Methodology
Catalina Pointe Methodology Review Comments
Volusia County School Board Capacity Letter
ORDINANCE NO. 22-2022
Exhibit A for Ord No.22-2022 - Legal Description
Exhibit B for Ord22-2022
22-072 VGMC Consistency Certification Letter
Ordinance 22-2022 Ad

C. Public Hearing - Ordinance No. 24-2022, amendment to the Official Zoning Map to rezone approximately 34.83 acres of land from Business Planned Unit Development (BPUD) and Retail Commercial District (C-1) to City of Deltona Residential Planned Unit Development (RPUD) at first reading - Ron A. Paradise, Community Development Director, (386) 878-8610.

Strategic Goal: Community Development

Background:

The City of Deltona received an application to rezone approximately 34.83 acres of land from Business Planned Unit Development (BPUD) and Retail Commercial District (C-1) to Residential Planned Unit Development (RPUD). The goal is to facilitate a low-profile multi-family residential project consisting of no more than 280 units. The units will include standalone non-fee simple cottages, duplexes, and townhomes. The project will be a "build to rent" development where there will be no individual fee simple ownership rights associated with the units (condominium association or other ownership instruments).

For more information see the attached staff report and supporting documentation including the written RPUD Development Agreement.

On November 16, 2022, the Planning and Zoning Board heard the rezoning request. The Board voted six (6) to one (1) to recommend the City Commission approve the rezoning. Part of the motion made by the P/Z Board included a recommendation the Howland Blvd. and Catalina Blvd. sidewalk system fronting the property be upgraded to an 8-foot wide facility and a 6-foot wide facility, respectively. Board members also mentioned a preference there be provision for covered parking and ensuring development phasing is appropriately managed

Upon further evaluation of the recommendation to widen the sidewalk system, there are concerns about logically transitioning the multi-width sidewalk segments into a functioning pedestrian network. However, the applicant has determined that there could be an arrangement for paying for the frontage improvement when the local pedestrian network is upgraded to 8 and 6-foot facilities. Staff and the applicant agree there will be a garage/covered parking component to the project. In addition, the RPUD Development Agreement will contain language about the order of events related to the timing of development within the project.

All Planned Unit Developments are associated with a written Development Agreement (DA). The attached DA is a draft. City staff and the applicant are working on adding more detail to the DA. The work on the DA is intended, in general, to accomplish the following:

1) Limit the density to 280 units and describe unit types;
2) Detail the amenity package to include a clubhouse, dog park, trail system, playground, etc.;
3) Facilitate a high level of architectural controls/requirements including requiring a certain percentage of garage/covered parking, describing entryway and monumentation, and detailing treatments for buildings, and amenities;
4) Promote land use separation including buffers and a masonry

wall separating the project from an existing neighborhood;
5) Define transportation improvements including access management and fair share allocations for off-site upgrades; and
6) Determine an appropriate development sequence.

The DA will be complete for the second and final hearing on January 17, 2023.

Finally, the RPUD rezoning request is associated with a Comprehensive Plan Future Land Use Map Amendment - Ordinance No. 22-2022. Ordinance No. 22-2022 will appear on the December 12, 2022 hearing before this rezoning request. If the Future Land Use Map amendment under Ordinance No. 22-2022 is not adopted, then this RPUD rezoning would not be eligible for approval.

The Interim City Manager has the authority to make corrections of scrivener's errors and the like.

Attachments:
Catalina Pointe RPUD Staff Report
Catalina Pointe Maps
Catalina Pointe TIA and Methodology
VCSB Capacity Letter - Catalina Pointe
Ordinance No. 24-2022
Exhibit A - Redline Development Agreement
Exhibit B -Legal Description
Exhibit C - MDP
Exhibit D - Elevations
Legal Ad Ord 24-2022

8. OLD BUSINESS:

A. Consideration of one (1) alternate Commission representative to the River To Sea Transportation Planning Organization (R2S TPO) - Joyce Raftery, City Clerk Department (386) 878-8500.

Strategic Goal: Internal/External Communications

Background:

At the Regular Commission Meeting held on November 28, 2022 the City Commission appointed Commissioner McCool as the new City representative to the River To Sea Transportation Planning Organization and directed staff to place the appointment of an alternate member to the R2S TPO on the next agenda.

The Volusia TPO Board meets on the fourth Wednesday of every month and all meetings are properly noticed and open to the public. Board meetings are held at the Volusia TPO Office, 2570 W. International Speedway Blvd., Suite 100, Daytona Beach, Florida and begin promptly at 9:00 a.m.

9. NEW BUSINESS:

A. Consideration of appointment of a City representative to the Tourist Development Council (TDC) - Joyce Raftery, City Clerk's Office (386) 878-8100.

Strategic Goal: Internal and External Communications

Background: The City Commission at the Regular Commission Meeting held on February 3, 2020 appointed former Commissioner Ramos as the City's representative and this item is so the City Commission can appoint a replacement. Also, the appointed representative will need to fill out the attached Volusia County Board Application.

The advisory council makes recommendations to the Volusia County Council for the effective operation of the special projects or of the uses of the tourist development tax revenue. Members include the County Chair, elected officials from municipalities, and persons involved in the tourism industry. The advisory council meets on a quarterly basis.

Florida Statutes do not provide for alternate members to this board and the county has not passed an ordinance or resolution allowing for such. The board requires the attached application be completed and submitted by the newly appointed representative.

Attachments: Volusia County Board Application

B. Request for approval of Resolution No. 2022-46, Budget Amendments for Community Development Block Grant (CDBG) and the General Fund, - Mari Leisen, Finance Director, (386) 878-8553.

Strategic Goal: Fiscal Issues - Maintain a Balanced Budget

Background: The Commission approved the annual budget for FY 2022-23 on September 19, 2022. Staff has submitted the attached budget amendments for the 2022-23 fiscal year as detailed in attached:

- Carry forward remaining FY 2021-2022 budget for Community

Development Block Grant (CDBG) still in progress in FY 2022-2023 (Attachment A)

- Additional appropriation for General Fund to budget for software in FY 2022-2023 (Attachment B and C)

Attachments: 2022-46 Reso - Carry forward 12-12-2022
Exhibit A - CDBG BA2023-008
Exhibit B - BA 2023-012 OpenGov Software
Exhibit C - OpenGov Software presentation

10. COMMENTS ON CONSENT ITEMS: Citizen comments are limited to issues and concerns on the Consent Agenda item(s). Please complete a public participation slip and indicate in the subject line the issue you wish to address. Members of the City Commission shall not enter into discussion or respond to individuals' comments during the public forum other than to give directions or to ask for clarification. Please be courteous and respectful of the views of others. Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor.

11. CONSENT AGENDA: The Consent Agenda contains items that have been determined to be routine and non-controversial. If discussion is desired by any member of the City Commission, that item must be removed from the Consent Agenda and considered separately. All other matters included under the Consent Agenda will be approved by one motion. Citizens with concerns should address those concerns by filling out a public participation slip and giving it to the Deputy City Clerk prior to Consent Agenda items being pulled.

12. CITY COMMISSION SPECIAL REPORTS AND REQUESTS:

13. CITY ATTORNEY COMMENTS:

14. CITY MANAGER COMMENTS:

15. CITY COMMISSION COMMENTS:

16. ADJOURNMENT:

NOTE: If any person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk, Joyce Raftery 3 business days in advance of the meeting date and time at (386) 878-8500.

EXHIBIT J

City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Minutes

City Commission

Tuesday, January 17, 2023 **6:30 PM** **Deltona Commission Chambers**

1. CALL TO ORDER:

The meeting was called to order at 6:30 p.m. by Mayor Avila.

3. ROLL CALL – CITY CLERK:

Present: 7 - Mayor Avila
Vice Mayor Bradford
Commissioner Avila-Vazquez
Commissioner Burbank
Commissioner Colwell
Commissioner JodyLee
Commissioner McCool

4. INVOCATION AND PLEDGE TO THE FLAG:

A. Invocation Presented by District #5 Commissioner.

2. PUBLIC FORUM: Citizen comments are limited to issues and concerns not on the agenda and comments on items listed on the agenda will take place after discussion of each item. Please be courteous and respectful of the views of others. Members of the City Commission shall not enter into discussion or respond to individuals' comments during the public forum other than to give directions or to ask for clarification. However, individual Commissioners may wish to respond under their "City Commission Comments". Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor. (6:30 - 7:00 PM)

Rafael Ramirez, Halifax Hospital, spoke about the upcoming Health Fair.

Kathy Bryan, Deltona, spoke about public forum, agenda order, moratorium and the Land Development Code (LDC), landscaping, and Deltona Community Gardens.

Lisa Hayer, DUCC and Nitty-Gritty, spoke about food drive.

5. APPROVAL OF MINUTES & AGENDA:

A. Approval of minutes of the Special Commission Meeting of December

21, 2022 and the Regular Commission Meeting of January 3, 2023 as presented. - Joyce Raftery, City Clerk (386) 878-8502.

Motion by Vice Mayor Bradford, seconded by Commissioner JodyLee, to approve the minutes of the Special Commission Meeting of December 21, 2022 and the Regular Commission Meeting of January 3, 2023, as presented. The motion carried by the following vote:

For: 6 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

Against: 1 - Commissioner Burbank

6. PRESENTATIONS/AWARDS/REPORTS:

7. ORDINANCES AND PUBLIC HEARINGS:

A. Public Hearing - Ordinance No. 24-2022, amendment to the Official Zoning Map to rezone approximately 34.83 acres of land from Business Planned Unit Development (BPUD) and Retail Commercial District (C-1) to City of Deltona Residential Planned Unit Development (RPUD) at second and final hearing - Ron A. Paradise, Community Development Director, (386) 878-8610.

Strategic Goal: Community Development

Planning & Development Services Director Ron Paradise gave a brief explanation of the item.

The City Attorney explained the quasi-judicial process and asked that everyone with and without standing who would like to provide testimony on this item to stand to be sworn in.

Each Commissioner expressed their ex-parte communications.

Mr. Paradise gave a brief presentation on the project to include signs, buffers, easements, access, maintenance, cottage units, club house and mail kiosk, playground, commercial out parcel and recommendation for approval.

The Commission, staff and Attorney Storch discussed the transportation study, if concerns were addressed, a tri-county agreement, operational improvements, turn lanes, impact fee credits, county impact fees, intersection improvements, non-fee simple ownership, the sale of units, it's a build to rent project, process for changes, due process, zoning changes, the Development Agreement, tax based benefits, school education concurrency and capacity, the HOA (Homeowners Association) and/or management office, the project time fame, Section 8 housing, it's a market rate project, housing choices, protection and maintenance standards, landscaping standards, trip threshold, concept drawings, restructuring, the

mortgage terms, criteria for selling units, and not binding the hands of the future Commission.

Attorney Glenn Storch, representing the applicant, Storch Law Firm, 420 S. Nova Road, Daytona Beach, gave a presentation on the project to include the quality, the Comprehensive Plan, representations, the Development Agreement, staff negotiations and clarifications, required amenities, conceptual rendering/elevations, high-end finishes, amenities, architectural design standards, conceptual elevation-townhomes, rental cottages & townhomes, specific terms, working with neighbors, commercial out parcel, and economic benefits to the City.

The Commission and Attorney Storch discussed verbiage, the proposed zoning, legal ambiguity, and subleasing.

Motion by Vice Mayor Bradford, seconded by Commissioner McCool, to adopt Ordinance No. 24-2022, amending the Official Zoning Map to rezone ?34.83 acres of land from Business Planned Unit Development (BPUD) and Retail Commercial District (C-1) to City of Deltona Residential Planned Unit Development (RPUD) at second and final hearing. The Interim City Manager has the authority to make corrections of scrivener's errors and the like.

Mayor Avila opened the public hearing.

Tara D'Errico, Deltona, spoke about traffic study and turn lanes, safety, and the difference between what's required and what's right.

Mayor Avila closed the public hearing.

The City Attorney read the title of Ordinance No. 24-2022 for the record.

The motion carried by the following vote:

For: 7 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

B. **Public Hearing - Emergency Ordinance No. 02-2023, waiving the enforcement of provisions of the City Code of Ordinances that restrict or limit the use of temporary living arrangements for residents whose properties have been damaged as part of Hurricane Ian and/or Nicole to reside at their properties in temporary housing including travel trailers and recreational vehicles - Ron A. Paradise, Community Services Director (386) 878-8610.**

Strategic Goal: Effective Governance

Motion by Commissioner JodyLee, seconded by Vice Mayor Bradford, to adopt Emergency Ordinance No. 02-2023. The Interim City Manager has the authority to make corrections of scrivener's errors and the like. The motion carried by the following vote:

For: 7 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

8. OLD BUSINESS:

A. Review and discussion re: Executive Search Firm Selection - Interim City Manager (386) 878-8858.

Strategic Goal: Internal and External Communications

The Commission discussed previous applicants for interim City Manager and reaching out to them, using a search firm vs. using the Human Resources Department, previous City Managers, the questionnaires, a national search, qualified candidates, advertising, the process, setting parameters, community forum, rushing the process, thinking outside the box, cost, hiring an Assistant City Manager, out of State applicants, interim hiring process, and in-person interviews.

Vice Mayor Bradford suggested to have a workshop on this item and to have no other topics on that agenda.

The Interim City Manager stated the process is very familiar to anyone who has been a City Manager for any length of time. They know that they have to interview with the Commission and they should interview with anyone who wants to come to a joint meeting of the community. It does not have to be a formal setting but, an informal setting where you really see both sides of the applicants' personality. More importantly, it is the applicants' opportunity to find out about this community. The applicants are going to do an evaluation of the Commission and the people in the community. The City has a wide variety of personalities in the community but, the goal is to get everyone to attend and not just a few. The Commission needs to talk briefly about what they are looking for in a manager and he can share what he thinks the Commission should be looking for. The information that was sent out during the Interim City Manager process can be sent out to not only the ones that applied before but, to solicit others. A pre-analysis can be done and one of the Commissioners should sit down with staff to do that as the Commission's representative. The Commission should bring in four or five candidates to interview and the City will pay for their travel, hotel and meals.

The Interim City Manager stated he would look at the calendar and set up a workshop, he does not see any reason to delay this and the Commission

concurred.

Mayor Avila opened the public hearing.

Elbert Bryan, Deltona, spoke about former City Managers, City Manager turnover, no consistency, City Manager qualities, resident involvement, former Mayor, interview questions, and national search.

Robert Trombetta, Deltona, spoke about pool of candidates, the process, hiring and standards, workshop, interview questions, HR Department, qualifications, good decisions and candidates.

Mayor Avila closed the public hearing.

9. NEW BUSINESS:

A. Request for consideration of one appointment to the Firefighters' Pension Plan, Board of Trustees - Joyce Raftery, City Clerk's Department (386) 878-8502.

Strategic Goal: Internal & External Communication

Motion by Commissioner JodyLee, seconded by Commissioner Burbank, that Robert Lindemann be appointed to the Firefighters' Pension Plan, Board of Trustees for terms to expire on January 15, 2025. The motion carried by the following vote:

For: 6 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, and Commissioner JodyLee

Against: 1 - Commissioner McCool

B. Request for consideration of appointment/appointments to the Affordable Housing Advisory Committee - Joyce Raftery, City Clerk's Office, (386) 878-8502.

Strategic Goal: Internal and External Communication.

Motion by Commissioner Avila-Vazquez, seconded by Vice Mayor Bradford, to appoint Jean Armstrong to the Affordable Housing Committee with a term to expire October 4, 2023. The Interim City Manager has the authority to correct scrivener's errors and the like.

The motion and second were withdrawn.

The Commission concurred to have staff provide a breakdown of which position each applicant qualifies for and to place this item on the next Regular Commission Meeting.

C. **Consideration of two appointments to the Planning and Zoning Board - Joyce Raftery, City Clerk (386) 878-8502.**

Strategic Goal: Internal and external communication.

Motion by Commissioner Colwell, seconded by Commissioner Burbank, to appoint Stony Sixma to the Planning and Zoning Board for a term to expire on March 15, 2023. The motion carried by the following vote:

For: 7 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

Motion by Commissioner JodyLee, seconded by Vice Mayor Bradford, to appoint Captain Ron Gonzalez to the Planning and Zoning Board for a term to expire on March 15, 2023. The motion carried by the following vote:

For: 7 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

D. **Consideration of one appointment of a City representative to Team Volusia's Executive Committee and Board of Directors - Joyce Raftery, City Clerk's Office (386) 878-8100.**

Strategic Goal: Internal and External Communications

Motion by Commissioner Burbank, seconded by Vice Mayor Bradford, to appoint Commissioner Jodylee as the City's representative to both Team Volusia's Executive Committee and the Board of Directors. The motion carried by the following vote:

For: 7 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

10. COMMENTS ON CONSENT ITEMS: Citizen comments are limited to issues and concerns on the Consent Agenda item(s). Please complete a public participation slip and indicate in the subject line the issue you wish to address. Members of the City Commission shall not enter into discussion or respond to individuals' comments during the public forum other than to give directions or to ask for clarification. Please be courteous and respectful of the views of others. Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor.

11. CONSENT AGENDA: The Consent Agenda contains items that have been determined to be routine and non-controversial. If discussion is desired by any member of the City Commission, that item must be removed from the Consent Agenda and considered separately. All other matters included under the Consent Agenda will be approved by one motion. Citizens with concerns should address those concerns by filling out a public participation slip and giving it to the Deputy City Clerk prior to Consent Agenda items being pulled.

A. **Request approval of a contract with OpenGov to purchase OpenGov Budgeting and Planning Software Services for creating an American Disabilities Act compliant budget book and Annual Comprehensive Financial Report (ACFR) for a cost of $195,257 - Mari Leisen, Finance (386) 878-8553.**

Strategic Goal: Fiscal Issues/Balanced Budget

Motion by Vice Mayor Bradford, seconded by Commissioner JodyLee, to approve the contract with OpenGov to purchase budgeting and planning software services and financial report software for a total cost of $195,257. The Acting City Manager has the authority to make corrections of scrivener's errors and the like. The motion carried by the following vote:

For: 7 - Mayor Avila, Vice Mayor Bradford, Commissioner Avila-Vazquez, Commissioner Burbank, Commissioner Colwell, Commissioner JodyLee, and Commissioner McCool

12. CITY COMMISSION SPECIAL REPORTS AND REQUESTS:

A. **Request by Mayor Avila to have the DeBary, Deltona, Orange City Rotary Club and HalifaxHealth make a presentation before the Commission at one of the upcoming City Commission meetings.**

Mayor Avila requested to have presentations from Halifax Health and the Rotary Club at a future meeting.

Commissioner Burbank requested to also have the YMCA make a presentation and Vice Mayor Bradford requested to have Advent Health make a presentation.

After discussion, the Commission concurred to have Halifax Health, the Rotary Club, YMCA and Advent Health make presentations at upcoming meetings.

Commissioner Avila-Vazquez requested that the City advertise the Landmark Lodge No. 383 F&AM Free Pancake Day event and Commissioner McCool requested the event be posted on the website and the Commission concurred.

13. CITY ATTORNEY COMMENTS:

14. CITY MANAGER COMMENTS:

The Interim City Manager stated he provided a copy of the presentation that was made to the legislative delegation requesting about $115 million worth of projects. Staff is getting together a more approvable approach, that was just the total value of the package that is necessary at this time. Staff will also refine that down to something we think can get funded.

15. CITY COMMISSION COMMENTS:

Commissioner Burbank spoke about the February 18th Enterprise Historic Society Annual Chili Cook Off and his Town Hall Meeting on February 2nd at Harris Saxon Community Center.

Commissioner McCool spoke about State Representative Barnaby on her pod cast, outfall study, writing the legislature, ADA (Americans with Disabilities Act) complaints, and the Union contract.

Commissioner Avila-Vazquez spoke about the legislative meeting, the MLK (Martin Luther King Jr.) Luncheon, and January 20th the Rotary Club's Hops and Vines event at The Center.

Commissioner Jodylee spoke about the Interim City Manager looking into pay raises, hiring shortage and the hiring process, loosing employees, gassing up City vehicles and bulk fuel, and vehicle GPS trackers.

Vice Mayor Bradford spoke about Lake Theresa erosion, thanked going to state to request funds, FEMA (Federal Emergency Management Agency) at The Center, people re-applying for assistance, increasing patrols on Howland Blvd. and the panhandling ordinance.

Mayor Avila spoke about tomorrow's Q&A (Question & Answer) with FEMA, residents' complaints regarding Code Enforcement, Building Dept. staff shortage, and redoing the Land Development Code (LDC).

16. ADJOURNMENT:

There being no further business, the meeting adjourned at 8:31 p.m.

Santiago Avila, Jr., MAYOR

ATTEST:

Joyce Raftery, CMC, MMC, CITY CLERK

EXHIBIT I

VOLUSIA COUNTY SCHOOLS

Carmen J. Balgobin, Ed.D
Superintendent of Schools

School Board of Volusia County

Mr. Ruben Colón, Chairman
Ms. Jamie M. Haynes, Vice Chairman
Mrs. Anita Burnette
Mrs. Linda Cuthbert
Mr. Carl Persis

School Adequate Capacity Determination
Finding of Adequate Capacity Letter

September 20, 2022

Mr. Alan Benenson
MAS Development Corp
3323 NE 163rd St, PH-704
North Miami Beach, FL 33160

RE : Catalina Pointe – City of Deltona
School Capacity Review #22-09-06-003-A

Dear Mr. Benenson:

The County Charter requires any Comprehensive Plan Amendment or Rezoning that allows increased residential density to be effective only when adequate public schools can be timely planned and constructed to serve the projected increase in student population. The district uses this requirement as the guiding principle behind the school adequate capacity review.

District staff reviewed the updated information for the proposed Catalina Pointe associated with 34.83 +/- acres of property located at or near the intersection of Howland Blvd and Catalina Blvd within Deltona city limits. Proposed project would provide for two hundred and seventy-nine (279) multi-family apartment and townhome units.

The district uses a county wide Student Generation Rate (SGR) of (0.127) per multi-family dwelling unit to calculate projected students. By applying the SGR to the use types in Table 1 below, the project could generate thirty-six (36) full time students.

Table 1

UNIT TYPE	SGR	UNIT COUNT	STUDENTS GENERATED
Single Family Dwelling Unit	0.273	0	0
Multifamily Dwelling Unit	0.127	279	36
Manufactured Home Dwelling Unit	0.047	0	0
	Total	279	36

When performing adequate capacity review district staff evaluates the effects of the proposed change compared to any remaining permanent capacity within the impacted schools, up to 100%, Table 2 (see next page). The projected increase in student population may be over 100% if there are plans to serve increased student population in that planning area within the long-term planning horizon. A finding of adequate capacity may be issued in either case.

Catalina Pointe – City of Deltona
September 20, 2022

Table 2

Schools	SY 2022/23 Enrollment	% of Permanent Capacity	Plans for Capacity Increase Long-Term	Traditional K-12 students projected
Timbercrest Elementary	795	119%	No	16
Galaxy Middle	1,045	93%	No	8
Southwest CSA (Deltona High)	1,852	103%	No	8
Other				4

The student projections generated by this project **will** increase the existing percentage above 100% permanent capacity at the elementary and high school levels. The projected increase in student enrollment at Timbercrest Elementary will also exceed the adopted level of service (LOS) standard of 115% for elementary schools. When evaluating based on the adjacent concurrency service area (CSA), Deltona Lakes Elementary, the average LOS then falls below the 115% threshold for mitigation. Deltona High School and the Southwest CSA is also at or over 100% but below 120% for concurrency. Based on this, the school district has no objections to the proposed development plan. Minimum planning considerations should include pedestrian and vehicular access, safety, connectivity, and buffering.

All future development orders, such as site plans and subdivisions, are subject to school concurrency review. School concurrency will be evaluated at the time when the impact of development is specifically quantified and known. Only funded school improvements and then current capacity will be considered at that time.

No student reservations have been made at this time.

Please note that the School Board has the right to adjust the attendance boundaries to balance the student enrollment populations at these area schools. Consequently, students generated from this project may not attend the current assigned schools.

Should you need additional information, please contact me at (386) 947-8786, extension 50709.
Sincerely,

Stephanie B. Doster,
Coordinator, Planning

CC: Carmen J. Balgobin, Ed.D, Superintendent of Schools
Steven Grube, Director, Planning and Construction
Ron Paradise, Director for Planning & Development Services, City of Deltona
Lisa V. Divina, Volusia County School Board Project File

VOLUSIA COUNTY SCHOOLS

Finding of Adequate School Capacity

VOLUSIA COUNTY SCHOOL BOARD

Project Information	
Project Name	Catalina Pointe
VCSB Project #	**22-09-06-003-A**
Jurisdiction Project #	
Parcel ID Numbers	8109-0000-0070; 8109-0000-0064
Project Location	Howland Blvd and Catalina Blvd
Potential Residential Units	191 Multi-Family Apartment Homes 88 Multi-Family Townhomes
Property Owner/Applicant	Alan Benenson, MAS Develoment Corp
Notes: Additional review will be required at the time of subdivision/site plan submittal(s). No Student Reservations have been made.	

Based upon the Findings of Fact, pursuant to School Board Policy 612 and Section 206 of the County Charter, the school district has determined at this time that school capacity is adequate to serve the proposed increase in residential density. This Finding shall constitute competent substantial evidence that adequate public school capacity is likely to be available at the time it is required to serve the planned new development.

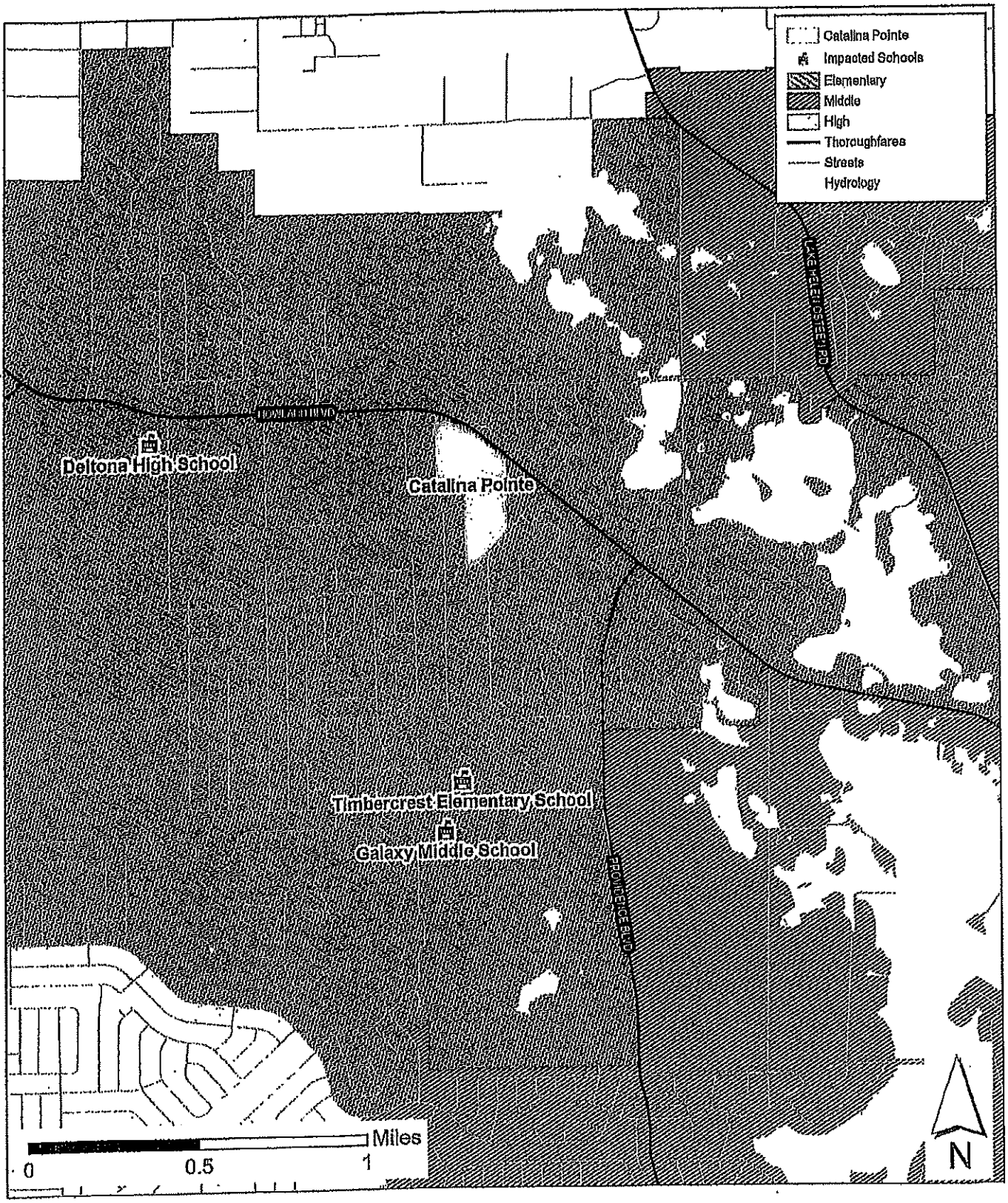
Capacity is <u>not</u> being reserved with this Finding unless otherwise noted on this document. This Finding of Adequate School Capacity allows this subject project to continue through the Comprehensive Plan Amendment and/or rezoning process; however, it may be subject to additional school capacity review in the future.

Stephanie B. Doster
Coordinator, Planning

September 20, 2022
Issue Date

VCSB Schools Impacted by Development

School Concurrency Review - Catalina Pointe

VOLUSIA COUNTY SCHOOLS

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