

FROM: Deltona Retail Holdings, LLC ("Petitioner")

TO: James Chisolm, City Manager & Santiago Avila, Mayor
("Enforcement Officials")

DATE: April 14, 2023

RE: **Section 110-1005: Rehearing and Administrative Res Judicata of the City of Deltona Land Development Code** – Motion for Rehearing of denial of Petitioner's application/petition No. RZ22-0002 (Ordinance No. 04-2023) to amend Deltona Village BPUD Ordinance No. 21-2009 at a Public Hearing before the City Commission on April 3, 2023 ("Public Hearing") and that certain Rendition City Letter dated April 4, 2023, as revised on April 5, 2023, from Joseph Ruiz, Interim Director of Planning and Development Services of City of Deltona.

MOTION FOR REHEARING

NOW THEREFORE, the Petitioner hereby files this Motion for Rehearing, pursuant to City of Deltona ("City") Land Development Code ("LDC") Section 110-1005, for rehearing and reconsideration of the quasi-judicial action by the City Commission of Deltona ("City Commission") on April 3, 2023 at a duly noticed Public Hearing and subsequent rendition letter of said denial of the rezoning application No. RZ 22-0002 sent by email on April 4, 2023, as revised on April 5, 2023, in which the City Commission overlooked or misapprehended certain facts and points of law. The Petitioner hereby requests a rehearing of the Petitioner's Application (as herein defined in ¶3), under the criteria set forth in Section 110-1005 of the LDC, to properly consider the Petitioner's vested rights conferred to Petitioner by the City pursuant to the Deltona Village BPUD Development Agreement dated February 15, 2010, the consistency with the Comprehensive Plan for Multi-family within the Deltona Activity Center¹, consistency with concurrency requirements set forth in the LDC², Comprehensive Plan, and Florida law³; and

¹ Exhibit G, Section 9, Comprehensive Plan, Goal FLU 2- Specific Land Use Guidelines (5) Multifamily.

² Sections 86-27 and 86-34, LDC.

³ Fla. Stat. 163.3180 (6), Concurrency.

consider the finding of adequate capacity by the Volusia County Schools and Section 163.3180 (6), Fla. Stat., LDC and Comprehensive Plan goals, policies and objectives, and states as follows:

HISTORY OF THE CASE

1. Petitioner, Deltona Retail Holdings, LLC, a Florida limited liability company, (“DRH” or “Petitioner”) whose principal office address is 939 Hollywood Boulevard, Deltona, Florida 32725.

2. On February 15, 2010, at a duly noticed public hearing, the City Commission approved the Deltona Village Business Planned Unit Development together with an Overall Development Plan/Master Development Plan and the City and DRH entered into a Development Agreement (“Deltona Village BPUD”), which is recorded in Public Records of Volusia County as Instrument #2010-101853 in Book 6482, Pages 4234-4267. A copy of the Deltona Village BPUD Development Agreement is attached hereto and incorporated herein by this reference as Exhibit “A.”

3. On or about March 21, 2022, Petitioner applied for a third amendment to the Deltona Village BPUD (Ordinance No. 04-2023), in which Petitioner specifically applied for the following: (1) increase the multi-family unit cap from 414 units to 652 units, (2) amend the written Development Agreement approved by Ordinance No. 21-2009, to update the multi-family unit cap, and (3) to rezone land totaling approximately 26.57 acres to be rezoned and included within the Deltona Village BPUD (collectively, “Petitioner’s Application”).

4. On March 7, 2023, the City Planning and Zoning Interim Director issued a Staff Report recommending approval of the Petitioner’s Application based upon the Applicant’s vested trip reservations under the Development Agreement, and on the sound analysis that the project promotes a “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 extended employment opportunity.”⁴ In addition, the presentation included a letter for adequate capacity from the Volusia County School Board, which was received after the Staff Report was completed. A copy of the Staff Report on the Petitioner’s Application is attached hereto and incorporated herein by this reference as Exhibit “B.”

5. On March 15, 2023, at a duly noticed public hearing, the Planning and Zoning Board voted (6 to 1) to recommend the City Commission approve Ordinance No. 04-2023.⁵ A copy of the City of Deltona City Commission Agenda for April 3, 2023, is attached hereto and incorporated herein by this reference as Exhibit “C.”

6. On March 27, 2023, Petitioner received a letter from Stephanie B. Doster, Planning Coordinator for Volusia County Schools, establishing that there is adequate capacity for the proposed development and stating that the school district has no objection to the proposed development plan. A copy of the Volusia County Schools Letter Finding Adequate Capacity is attached hereto and incorporated herein by this reference as Exhibit “D.”

7. On April 3, 2023, at the Public Hearing, the City Commission voted (4 to 3) to deny the Petitioner’s Application to amend the Deltona Village BPUD.⁶ On April 4, 2023, as revised on April 5, 2023, Joseph Ruiz, Interim Director of Planning and Development Services of the City, issued a rendition letter of the denial by the Commission of the Petitioner’s Application RZ22-0002 to amend the Deltona Village BPUD. A copy of the City’s Letter denying Petitioner’s Application is attached hereto and incorporated herein by this reference as Exhibit “E.”

⁴ Exhibit B, page 15, ¶1.

⁵ Exhibit C, page 4, ¶3.

⁶ See Exhibit F, pages 1-2, ¶2.

ARGUMENT

1. In accordance with City of Deltona Land Development Code ("LDC") Section 110-1005, a rehearing of a decision by the City Commission may be granted when the City Commission has "overlooked or misapprehended some facts or points of law." Section 110-1005 further states as follows:

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.

2. In this case, the City Commission overlooked the Petitioner's vested rights⁷ set forth in the Deltona Village BPUD Development Agreement which vest the Petitioner with specified Trip Reservations (as herein defined), which consist of 17,808 daily trips and 1,141 trips during P.M. Peak Hours and specific vested land uses which include 900,000 square feet of commercial retail space. Pursuant to Section 86.24 (a), LDC, "vested rights" for concurrency improvements is defined by the following test:

§ 86-34. Vested rights.

(a) Based upon the following four-part test for vested rights:

- (1) Upon some act or omission of the city;
- (2) A property owner relying in good faith;
- (3) Has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired; and
- (4) That the development has commenced and is continuing in good faith.

3. More specifically, "vested rights" are established for the following under subsection (b) (7) of Section 86-34, LDC, as follows:

⁷ Section 86-34, LDC, (a)(b) and (7).

(7) Any commercial or business planned unit development under the city's zoning ordinance, as amended, [chapter 110, Code of Ordinances], which was reviewed and approved under the provisions of this chapter and has commenced and is continuing in good faith as of the effective date of this ordinance.

4. Despite these vested entitlements and despite the fact that multifamily generates less traffic than retail use, Petitioner's Application was denied by the City Commission because the dissenting commissioners desired updated traffic analysis prior to approval of the rezoning request and raised concerns that the proposed development would increase traffic congestion. However, the reasoning of the City Commission is not supported by the facts in evidence and is contrary to law when sufficient traffic studies and analysis were previously completed, and trip reservations were vested in the Deltona Village BPUD Development Agreement. Furthermore, the Petitioner may not be held responsible for costs to eliminate any deficiencies created by later development.⁸ The requested change from commercial retail to multifamily will effectively reduce the traffic impacts as multi-family creates less trips than retail development.⁹ More importantly, the Commissions decision disregards the existence of the Equivalency Matrix contained within the Deltona Village BPUD, which expressly allows for the exchange of such land uses, establishes the method for calculating the "vested" Trip Reservations and specifically states that no further traffic studies will be required.¹⁰

5. The City Commission erroneously categorized the Volusia County Schools Letter Finding Adequate Capacity as conflicting and causing the schools to exceed levels of capacity, which is a gross mischaracterization of the letter issued by Volusia County Schools explicitly establishing adequate capacity in the schools for this service area.¹¹ More importantly, the

⁸ Fla. Stat. 163.3180(h)(3)(c)(I) and (II)

⁹ Exhibit B.

¹⁰ Exhibit A, ¶ 11 of Deltona Village BPUD Development Agreement.

¹¹ See Exhibit D, in which Volusia County Schools states: "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 order, such as site plans and subdivisions, are subject to school concurrency review."

Applicant complied with the City procedure to obtain a capacity determination from the Volusia County School Board which is set forth in Section 86-24 (c)(7), LDC, in part, as follows:

- (b) A determination of adequate capacity shall be provided for the following designated public facilities and services prior to the issuance of a development order for final site plans, master development plan (MDP), and residential plats:
 - (7) Public school facilities (for residential uses only).

Furthermore, the Petitioner's Application met the standard established by the City for the satisfaction of a school capacity determination which is set forth below in Section 86-24(d), LDC, as follows:

- (d) A determination of adequacy shall be satisfied through written correspondence received from the department or agency responsible for providing volume/capacity data stating that the designated public facilities or services are currently adequate to support the proposed development or redevelopment.

6. Here, the School Board indicated that the level of service ("LOS") was consistent with the standards set forth in Policy PSF2-1.2 of the Public School Facilities Element ("PSF") of the Comprehensive Plan, the standards adopted by the LDC, and the interlocal agreement between the City and School Board, and pursuant to the standards set forth in Fla. Stat. 163.3180 (6) (2022), which governs local government school capacity determinations. However, the Commission's decision is contrary to Fla. Stat. 163.3180 (6) and the Commission completely disregarded its own policy and LDC, which establishes standards for LOS for school capacity. Moreover, the Commission's decision in this matter was inconsistent with prior approvals previously granted to other projects with the same determination.¹² For those reasons, a motion for rehearing and reconsideration should be granted because the City Commission misapprehended these facts pertaining to school capacity.

¹² Exhibit G, section 9, page 6, Policy PSF 2-1.2.

7. The Petitioner's Application, in part, seeks to increase the multi-family unit cap from 414 units to 652 units. This increase of 238 multi-family units is consistent with the FLU 2 of the Comprehensive Plan, Multifamily Residential Density Guideline, which expressly states: "The total area to be used for multi-family shall not exceed 15% of the area designated for the Deltona Activity Center."¹³ The Deltona Activity Center consists of approximately 800 acres of land and only 120 acres of which land shall be multi-family units. Because there are currently forty-five (45) acres of Deltona Activity Center land available for multi-family uses,¹⁴ the proposed development is consistent with the Comprehensive Plan, and LDC and therefore, a rehearing on these facts is warranted.

8. In accordance with the above-mentioned points of law and facts, the Petitioner is entitled to a rehearing on this matter and the City Commission should approve the Petitioner's Application for the reasons discussed below.

A. UNDER THE DELTONA VILLAGE BPUD, PETITIONER HAS VESTED RIGHTS AS TO TRAFFIC TRIP RESERVATIONS AVAILABLE TO UTILIZE WITHOUT FURTHER TRAFFIC IMPACT ANALYSIS ("TIA").

1. Pursuant to Sections 10 and 11 of the Deltona Village BPUD Development Agreement, the Petitioner is entitled to vested traffic trips in the amount of 17,808 daily trips and 1,141 trips during P.M. Peak Hours for the development of 900,000 square feet of commercial retail available for the project ("Trip Reservations"). More specifically, in Section 11 of the Deltona Village BPUD, the City expressly vested the Petitioner "the following net new external daily trip reservations" ("Vested Trip Reservations Table")¹⁵ as set forth below:

¹³ Exhibit B, page 7, ¶ Goal FLU2 – Specific Land Use Guidelines.

¹⁴ Exhibit B, page 8, ¶ 1.

¹⁵ The Vested Trip Reservations Table is a table included in Exhibit A, page 11-12, recorded in Public Record of Volusia County in Book 6482, Pages 4244-4245.

CUMULATIVE PHASING

	<u>Square Feet</u>	<u>Net New External Trip Ends</u>	
		<u>P.M. Peak Hour</u>	<u>Daily</u>
City TIA Phase	<u>96,000</u>	<u>122</u>	<u>1,900</u>
County TIA Phase I	301,000	381	5,956
County TIA Phase II	570,000	723	11,278
County TIA Phase III (Build Out)	<u>804,000</u>	<u>1,019</u>	<u>15,908</u>
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)	<u>900,000</u>	<u>1,141</u>	<u>17,808</u>

BY PHASE

	<u>Square Feet</u>	<u>Net New External Trip Ends</u>	
		<u>P.M. Peak Hour</u>	<u>Daily</u>
City TIA Phase	<u>96,000</u>	<u>122</u>	<u>1,900</u>
County TIA Phase I	301,000	381	5,956
County TIA Phase II	269,000	342	5,322
County TIA Phase III (Build Out)	<u>234,000</u>	<u>296</u>	<u>4,630</u>
Total County	<u>804,000</u>	<u>1,019</u>	<u>15,908</u>
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)	<u>234,000</u>	<u>296</u>	<u>4,630</u>
Total Combined City and County	<u>900,000</u>	<u>1,141</u>	<u>17,808</u>

2. Accordingly, the Petitioner has vested rights¹⁶ of daily Trip Reservations in the amount of 17,808 daily trips and 1,141 trips during P.M. Peak Hours as reflected in the Vested Trip Reservations Table.¹⁷ The Commission may not ignore the vested rights of the Petitioner without depriving the Petitioner of its private property rights.

3. Furthermore, Section 11 of the Deltona Village BPUD Development Agreement adopts and incorporates a DRI Development Equivalency Matrix ("Development Equivalency Matrix")¹⁸ which consists of the following table¹⁹:

**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)	Light Industrial (KSF)	1.170	1.394	8.341	3.264	4.010	1.045	per 1 KSF Light Industrial
Office (KSF)	Office (KSF)	0.355	1.191	5.420	2.799	3.428	0.899	per 1 KSF Office
Retail (KSF)	Retail (KSF)	0.717	0.839	4.549	2.342	2.977	0.721	per 1 KSF Retail
Multi-Family (Unit)	Multi-Family (Unit)	0.158	0.184	0.220	0.515	0.632	0.159	per 1 Unit Multi-Family
Single Family (Unit)	Single Family (Unit)	0.306	0.358	0.427	1.943	1.229	0.304	per 1 Unit Single Family
Hotel (Room)	Hotel (Room)	0.249	0.292	0.348	1.531	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 = 8.3915; Reduce Office by 8.39 KSF

To Add 25 KSF Office by Reducing Hotel Rooms:
25 KSF x 3.428 Rooms/KSF = 85.684 Rooms; Reduce Hotel Rooms by 86 Rooms

4. The Development Equivalency Matrix entitles the Petitioner to exchange land uses while maintaining that Petitioner's vested Trip Reservations, as reflected in the Vested Trip Reservations Table. According to Section 11 of the Deltona Village BPUD, which is provided in part below:

¹⁶See *Sch. Bd. of Miami-Dade Cnty. v. Carralero*, 992 So. 2d 353, 355 (Fla. 3d DCA 2008) (defining a vested right as "A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment...it must have become a title, legal or equitable, to the present or future enforcement of a demand.").

¹⁷ See Vested Trip Reservations Table in subsection (A), ¶1.

¹⁸ Exhibit A, page 12, lines 2-3. A copy of the Equivalency Matrix is incorporated into Exhibit A and is located in the Public Records of Volusia County in Book 6482, Pages 4266-4267.

¹⁹ Exhibit A, page 12, lines 1-6. See also Exhibit C incorporated therein, which is in the Public Record of Volusia County in Book 6482, Page 4267.

The Development Equivalency Matrix is based on the trip generation 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.²⁰ (emphasis added)

5. Under the Development Equivalency Matrix, the Petitioner's Application to increase the cap on multi-family units from 414 units to 652 units, which is a total increase of 238 units, means the Petitioner shall reduce the total retail square footage development proportionately pursuant to the Development Equivalency Matrix. The traffic congestion concerns expressed by the City Commission were erroneous because the proposed amendment to increase multi-family units will generate fewer traffic trips than retail use.

6. According to the Staff Report written by Joseph Ruiz, Interim Director of Community Services of the City of Deltona, to the Planning and Zoning Board, the following findings were made:

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 Hours 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 21-2009. A proposal for an additional 351 multi-family units from the 301 already under construction, will produce approximately 1,598 average daily trip and 137 PM Peak Hour Trips. ***Adequate trips are available*** per the Deltona Village trip vestiges.²¹ (emphasis added)

²⁰ Exhibit A, Page 12, lines 6-14.

²¹ Exhibit C, Page 5, ¶4.

7. Petitioner has a vested interest in daily Trip Reservations in the amount of 17,808 daily trips and 1,141 trips during P.M. Peak Hours as reflected in the Vested Trip Reservations Table.²² The “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 P.M. Peak Hour Trips.”²³

8. The Petitioner’s Application would only use 1,598 average daily trips out of the 17,808 daily trips that the Petitioner is entitled to under the Deltona Village BPUD. The Petitioner’s Application would only utilize 137 P.M. Peak Hour Trips out of the 1,141 trips available to it during the P.M. Peak Hours. Therefore, this Motion for rehearing and reconsideration should be granted based on the following two factual points misapprehended by the City Commission: (1) requesting an additional 351 multi-family units would continue to significantly underutilize the number of vested Trip Reservations; and (2) increasing the multi-family units in turn decreases the commercial development, which *reduces* traffic congestion that is generated with commercial retail use developments.

9. Consequently, the City Commission erred in their decision to deny the Petitioner’s Application on the basis of traffic concerns because the Petitioner has vested rights in 17,808 daily trips and 1,141 trips during P.M. Peak Hours and the Petitioner’s Application is well below the amount of vested Trip Reservations that it is entitled to under the Deltona Village BPUD. Accordingly, in the City’s letter dated December 11, 2019, the City already recognized that the Petitioner has completed traffic mitigation plan and is not required to provide any updated TIA to utilize the vested number of Trip Reservations.²⁴

²² See Vested Trip Reservations Table in subsection (A), ¶1.

²³ Exhibit B, page 5, ¶4

²⁴ Exhibit F, page 2.

10. Even though the City Commission denied the Petitioner's Application on the basis of concerns for traffic congestion as a result of the proposed development, the City has already recognized the Petitioner's vested rights in these Trip Reservations stated above and the Petitioner's satisfaction of all proportionate share obligations to vest such Trip Reservations.²⁵

11. In a letter dated December 11, 2019, by Jane K. Shang, City Manager, the City expressly recognized and reaffirmed the Petitioner's vested entitlements outlined in the Development Agreement, "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."²⁶ A copy of the letter from the City dated December 11, 2019 acknowledging the Petitioner's vested rights is attached hereto and incorporated herein by this reference as Exhibit "F" ("City Letter").

12. In the City Letter dated December 11, 2019, by City Manager Shan, the City's position regarding the Petitioner's vested rights are as follows:

(ii) Those vested rights [of the Petitioner] 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*.²⁷

(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.²⁸

²⁵ Exhibit F, paragraph (2)(i-iii)

²⁶ Exhibit F, paragraph (2), subsection (i).

²⁷ Exhibit F, paragraph (2), subsection (ii).

²⁸ Exhibit F, paragraph (2), subsection (iii).

13. The Petitioner clearly possesses, as recognized by the City of Deltona²⁹ and recognized by Joseph Ruiz in the Staff Report,³⁰ vested rights for all traffic Trip Reservations stated in Sections 10 and 11 of the Deltona Village BPUD and reflected on the Vested Trip Reservations Table.³¹ The Petitioner has satisfied all traffic mitigation requirements by completing construction of improvements to Normandy, Graves and Howland intersections, as set forth in the Deltona Village BPUD Development Agreement and has satisfied all proportionate share obligations to the City which is further evidenced by the Staff Report and City Letter. For the City to deny the Petitioner's Application on the basis that the Petitioner has not obtained *updated* TIA or concerns of traffic congestion, clearly deprives the Petitioner of its vested rights under the Deltona Village BPUD³² and is contrary to the law and facts in this case.

14. Under Section 110-1005 of the LDC, any person aggrieved may move for a rehearing when the City Commission "overlooked or misapprehended some facts or points of law." As a matter of law, the Petitioner's vested rights as to the traffic Trip Reservations stated in Sections 10 and 11 of the Deltona Village BPUD and as defined by Section 86-34 (7), LDC, were not considered by the City Commission and for this reason, the Petitioner's Application was wrongfully denied.

15. The City Commission should grant a rehearing on the Petitioner's Application because the initial denial infringed on the Petitioner's vested rights. Under the doctrine of equitable estoppel, the Petitioner is entitled to enforce its vested property rights as to the traffic

²⁹ Exhibit F, paragraph (2), subsections (i)-(iii).

³⁰ Exhibit B, page 5, ¶4, which states: "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."

³¹ See Vested Trip Reservations Table in subsection (A), ¶1.

³² The Development Equivalency Matrix expressly states that no further TIA is required by the Petitioner: "The Development Equivalency Matrix is based on the trip generation for the DRI, therefore utilization of the Matrix by the Applicant will *not require additional traffic studies by City or County.*"

trip reservations set forth and vested in the Deltona Village BPUD,³³ which were recognized by the City as vested rights.³⁴ Section 86-34, LDC; Fla. Stat. 163.3180 (6)(h); *See Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15 (Fla. 1976) (equitable estoppel applies when a property owner relies “(1) in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or has incurred such extensive obligations that it would be highly inequitable and unjust to destroy the right he acquired.”)

16. The Petitioner possesses vested interests stated in the Deltona Village BPUD and has relied on those entitlements thereunder by continuing to extensively develop this area and incur significant developmental costs. Petitioner has continued to develop and enter into contracts with third parties in reliance of the entitlements that the City conferred to Petitioner in the Deltona Village BPUD and recognized in previous, good faith dealings with the Petitioner.³⁵

17. In the event that the City decides not to grant a rehearing on these matters, Petitioner will take any and all legal action necessary to enforce its vested rights under the Development Agreement pursuant to Section 15 of the Deltona Village BPUD.

B. A REHEARING ON THE PETITIONER’S APPLICATION SHOULD BE GRANTED BECAUSE THE VOLUSIA COUNTY SCHOOL DISTRICT ISSUED A LETTER OF ADEQUATE CAPACITY AND DID NOT FIND THAT THE DEVELOPMENT WOULD ADVERSELY AFFECT THE SCHOOL DISTRICT, DID NOT REQUIRE ANY MITIGATION, AND THE APPLICATION SATISFIED COMPREHENSIVE PLAN ADOPTED STANDARDS FOR LEVELS OF SERVICE AND SECTION 163.3180(6) FLA. STAT.

1. The City Commission, in part, denied the Petitioner’s Application because the City Commission erroneously interpreted the Volusia County Schools Letter Finding Adequate Capacity as stating the schools would be over capacity and thus, inconsistent with the LDC; however, this characterization of the Volusia County Schools Letter is incorrect.

³³ Exhibit A, section 10 and 11.

³⁴ Exhibit F, paragraph (2), subsections (i)-(iii).

³⁵ Exhibit F, paragraph (2), subsections (i)-(iii).

2. The Volusia County Schools Letter Finding Adequate Capacity clearly states as follows:

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 Lake 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.³⁶ (emphasis added)

3. Accordingly, under Section 110-1005, a rehearing of a decision by the City Commission may be granted when a fact is overlooked or misapprehended and, in this instance, the Volusia County Schools Letter Finding Adequate Capacity was clearly misinterpreted and contrary to the standards adopted in its Comprehensive Plan and Section 163.3180(6), Florida Statutes.

4. As stated above, an additional 351 multi-family units, as requested by Petitioner, places Volusia County Schools' average level of service ***below*** mitigation thresholds, which is why Volusia County Schools concluded that there is adequate capacity for the proposed development.³⁷

5. Even though Volusia County Schools does not object to the proposed development, school concurrency review will be evaluated for all future development orders, including site plans and subdivisions, which "will be evaluated at the time when the impact of the development is specifically quantified and known."³⁸ Furthermore, Fla. Stat. Section 163.3180 (6) provides, in part, that a "development order" may not be denied if capacity is determined to be consistent with the standards adopted in the Comprehensive Plan and no mitigation is required. To deny this application when the

³⁶ Exhibit D, page 2, ¶ 1.

³⁷ Exhibit D, page 2, ¶ 1.

³⁸ Exhibit D, page 2, ¶ 2.

School Board has stated that there is no mitigation required, is to deprive the Petitioner of its private property rights when the Petitioner has met the standards established by the LDC, Comprehensive Plan, and Florida law. Further review will occur at the site plan stage of development under the City's LDC.

6. Pursuant to Section 110-1101(e)(4) of the LDC, the City Commission is obliged to consider the impact that the Petitioner's Application has upon necessary governmental services, including schools. However, in this instance, the City Commission identified the Volusia County Schools Letter Finding Adequate Capacity as an *adverse* effect but that was not the position of the County. Volusia County Schools does not object to the proposed development and will subject the development to concurrency review at the proper development stage.³⁹ Again, no mitigation is being required and further review will be completed at the site plan phase of development.

7. City Commission based their denial of the Petitioner's Application, in part, on the Volusia County Schools' finding that the schools would be over capacity; however, the City Commission did not reconcile Volusia County Schools' finding that the pertinent schools' level of service would fall *below* mitigation thresholds under Policy PSF2-1.2.⁴⁰ A copy of Section 9 of Public School Facilities Element: Goals, Objectives, and Policies is attached hereto by this reference as Exhibit "G." Finally, this decision is in violation of Fla. Stat. Section 163.3180 (6) which states that the local government cannot deny a "development" when the standards for level of service adopted in the Comprehensive Plan are satisfied and mitigation is not required.

³⁹ Exhibit D, page 2, ¶ 2.

⁴⁰ Exhibit G, section 9, page 6, Policy PSF 2-1.2.

8. The City Commission's decision in this case is inconsistent with its prior decision rendered under Section 110-1101(e)(4) of the LDC. The City Commission reviewed and approved⁴¹ an amendment to the Official Zoning Map to rezone approximately +/- 34.83 acres of land from Business Planned Unit Development and Retail Commercial District to the City of Deltona Residential Planned Unit Development for Catalina Pointe ("Catalina Pointe").⁴² A copy of the City Commission Agenda for December 12, 2022 is attached hereto and incorporated herein by this reference as Exhibit "H." A copy of the minutes for the City Commission public hearing on January 17, 2023 is attached hereto and incorporated herein by this reference as Exhibit "I."

9. At public hearings on December 12, 2022⁴³ and January 17, 2023,⁴⁴ the City Commission considered a similar letter from Volusia County Schools finding an Adequate Capacity Determination ("Catalina Pointe School Letter") for this project. A copy of the Catalina Pointe School Letter is attached hereto and incorporated herein by this reference as Exhibit "J."

10. The City Commission reviewed the Catalina Pointe School Letter which stated, similarly to the Petitioner's letter from Volusia County Schools, that although the project will *increase* the permanent capacity above 100%, the school does not object to that proposed development because the level of service falls below the 115% threshold for mitigation.⁴⁵

⁴¹ Exhibit I, page 3.

⁴² Exhibit H, page 4.

⁴³ Exhibit H, page 4.

⁴⁴ Exhibit I, page 3.

⁴⁵ Exhibit J, Page 2.

11. In considering the Catalina Pointe application, the City Commission unanimously voted to grant their motion⁴⁶ and did not deny their application for concerns dealing with school capacity. However, in this case, the City Commission denied⁴⁷ the Petitioner's Application based on the letter received by Volusia County Schools finding adequate capacity. Clearly, the Commission is not applying the same standard to all applications presented to them. The City Commission's denial of this Petitioner's Applicant is an arbitrary decision, not founded on law or fact and is an inequitable interpretation given the prior decisions of the Commission. Finally, this arbitrary interpretation of the school capacity letter is depriving the Petitioner of its private property rights when there is no mitigation required at this time.

12. Accordingly, under Section 110-1005 of the LDC, a rehearing of a decision by the City Commission may be granted when a fact is overlooked or misapprehended and, in this instance, the City Commission denied the Petitioner's Application as a result of an inconsistent and arbitrary mischaracterization of the Volusia County School letter issued to the Petitioner. The Petitioner's Application received the same Volusia County School finding of adequate capacity as Catalina Pointe, but the City Commission denied the Petitioner's Application based on the same findings of school concurrency as approved Catalina Pointe's application.⁴⁸ It is clear that there is a misapprehended fact and failure to properly and consistent apply the law as to the Volusia County School letter.

⁴⁶ Exhibit J, Page 2.

⁴⁷ Exhibit E.

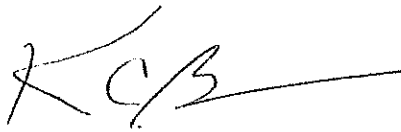
⁴⁸ See Exhibit E, Exhibit I, and Exhibit J.

13. Therefore, a rehearing is warranted to consider the Petitioner's Application based upon the Volusia County Schools' determination of adequate capacity and the Commission's obligation to consistently apply the standards for levels of service adopted by the Comprehensive Plan, LDC and Florida Statutes to all projects in Deltona.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests the City Commission grant a rehearing on the Petitioner's application for the third Amendment to the Deltona Village BPUD finding that the City Commission's reasoning for denying the application violated the Petitioner's vested rights as to traffic Trip Reservations established by the LDC and the Deltona Village BPUD Development Agreement, the request was consistent with the Comprehensive Plan and Fla. Stat. Section 163.3180(6); and the Volusia County School Board issued a letter of adequate capacity for the Petitioner's Application, thereby warranting the City Commission to rehear and reconsider the Petitioner's application in light of misapprehended facts and points of law.

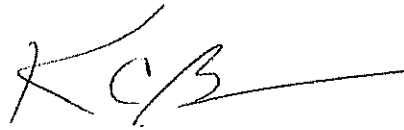
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'KCB', with a long horizontal line extending to the right.

Kim C. Booker, Attorney at Law
Attorney for Petitioner
Booker & Associates, P.A.
Florida Bar No.: 0854352
1019 Town Center Drive, Suite 201
Orange City, Florida 32763
Telephone (386) 774-6552
Telecopier (386) 774-5997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, in accordance with City of Deltona Land Development Code section 110-1005, that this Motion for Rehearing was served by certified mail or hand delivery upon the mayor and 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.

A handwritten signature in black ink, appearing to read 'KCB', followed by a horizontal line.

Kim C. Booker, Attorney at Law
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that, in accordance with City of Deltona Land Development Code section 110-1005, that this Motion for Rehearing was filed with the Enforcement Officials, in writing, within ten working days after the rendition of the decision and states its grounds for rehearing and reconsideration.

A handwritten signature in black ink, appearing to read 'KCB', followed by a horizontal line.

Kim C. Booker, Attorney at Law
Attorney for Petitioner

TABLE OF CONTENTS

EXHIBIT A	Development Agreement dated February 15, 2010 approving Deltona Village BPUD recorded in Public Records of Volusia County as Instrument #2010-101853 in Book 6482, Pages 4234-4267
EXHIBIT B	Planning and Zoning Staff Report on the Petitioner's Application dated March 7, 2023
EXHIBIT C	City of Deltona City Commission Agenda for April 3, 2023
EXHIBIT D	Volusia County Schools Letter Finding Adequate Capacity for Petitioner's Application
EXHIBIT E	City of Deltona Letter dated April 4, 2023, as revised on April 5, 2023, denying Petitioner's Application
EXHIBIT F	City of Deltona Letter dated December 11, 2019 regarding acknowledgment of vested rights
EXHIBIT G	Section 9 of Public School Facilities Element: Goals, Objectives, and Policies
EXHIBIT H	City Commission Agenda December 12, 2022
EXHIBIT I	City Commission Minutes for January 17, 2023
EXHIBIT J	Catalina Pointe School Letter