



AGENDA

Town of Hillsboro Beach Commission Meeting

March 1, 2022
9:00 AM



MAYOR

Honorable Deborah L. Tarrant

VICE MAYOR

Honorable Irene Kirdahy

COMMISSIONERS

Honorable Vicky Feaman
Honorable Barbara Baldasarre
Honorable Jane Reiser

TOWN MANAGER

William "Mac" Serda, ICMA-CM

TOWN ATTORNEY

Donald J. Doody

TOWN CLERK

Sherry D. Henderson, CMC

HILLSBORO BEACH TOWN HALL

1210 Hillsboro Mile
Hillsboro Beach, FL 33062
954-427-4011



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile, Hillsboro Beach, Florida 33062

March 1, 2022 | 9:00 AM

REGULAR TOWN COMMISSION MEETING AGENDA

MAYOR DEBORAH L. TARRANT
VICE MAYOR IRENE KIRDAHY
COMMISSIONER VICKY FEAMAN
COMMISSIONER BARBARA BALDASARRE
COMMISSIONER JANE REISER

TOWN MANAGER WILLIAM 'MAC'SERDA, ICMA-CM
TOWN ATTORNEY DONALD J.DOODY, ESQ
TOWN CLERK SHERRY D.HENDERSON, CMC

YOU ARE HEREBY NOTIFIED that a Regular Town Commission Meeting will be held at 9:00 a.m., Tuesday, March 1, 2022 . A quorum of the Town Commission will be physically present at the meeting. The public can attend in person. However, for health and public safety, the meeting will also utilize communications media technology to allow the public to participate via Zoom video conference. LIVE ZOOM Meeting number: 878 4736 1566 Passcode: 951699

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

I. APPROVAL OF MINUTES

- A. January 11, 2022 Board of Zoning Appeals Meeting Minutes
- B. January 11, 2022 Regular Town Commission Meeting Minutes
- C. February 1, 2022 Regular Town Commission Meeting Minutes

II. PRESENTATIONS

- A. **Update from Moffatt & Nichol**
Presented by Jackie Brower, PhD, PE
- B. **Update from Coastal Protection Engineering (CPE)**
Presented by Thomas Pierro, PE, D.CE, Principal Engineer
Tara Brenner, PG, PE, Sr. Coastal Engineer
- C. **Beach Erosion**
Hillsboro Windsor Condos, 1169 Hillsboro Mile
- D. **Introduction of Police Officer James Engle (Marine Patrol)**
Presented by Chief Szesnat
- E. **Water Plant Operations Excellence Award 2021**
Town of Hillsboro Beach Public Water System

III. SITE PLAN REVIEW

- A. **James Baron, Authorized Agent for Property Owner, is Seeking Site Plan Approval for Property Located at 971 Hillsboro Mile, Hillsboro Beach, FL 33062.**

STAFF: Presented by Joe Arenal, Development Planner (RMA)

ADDRESS: 971 Hillsboro Mile, Hillsboro Beach, FL 33062

REQUEST: The Applicant/Owner is requesting site plan approval for property

IV. ORDINANCES

- A. **Ordinance No. 2022-04**
Amendment to the Town's Code of Ordinance, Amending Ch. 12-49 "Site Plan Requirements" and Creation of Section Entitled "Excavation" (First Reading, Tabled 9/7/2021)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 12-49, ENTITLED "SITE PLAN REQUIREMENTS"; BY SPECIFICALLY CREATING SECTION 12-49 (C), ENTITLED "EXCAVATION", TO PROVIDE FOR THE USE OF BEACH COMPATIBLE SAND; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

V. DISCUSSION & POSSIBLE ACTION

- A. Discussion on Printing Quarterly Newsletter

VI. RESOLUTIONS & CONTRACTS

- A. **Resolution No. 2022-06**
Consideration to Accept and Approve the Ranking as Generally Recommended by the Evaluation and Selection Committee and Authorizing the Proper Town Officials to Execute Continuing Contracts with the Selected Firms in Response to the Town's Request for Qualifications RFQ #2021-01 for Continuing Professional Architectural and Engineering Services for Various Projects.
- B. **Resolution No. 2022-07**
Consideration to Authorize the Proper Town Officials to Enter into a Law Enforcement Mutual Aid Agreement with Broward County Sheriff's Department for Burglary/ Property Crime Apprehension Task Force.
- C. **Resolution No. 2022-08**
Consideration to Approve and Authorize the Appropriate Town Officials to Execute Contract Amendment for Coastal Protection Engineering LLC Proposal to Conduct Endangered Species Act Listed Coral Survey for the Town of Hillsboro Beach and the City of Deerfield Beach under the Contract Approved Pursuant to RFQ #21-15-JW.
- D. **Resolution No. 2022-09**
A Resolution of the Mayor and Town Commission of the Town of Hillsboro Beach, Florida Strongly Opposing House Bill 403 in the 2022 State Florida Legislature Which Seek to Enable Businesses to Sue Governments and Halt Enforcement of Local Ordinances.

VII. CONSENT

A. INVOICES FOR APPROVAL

1.	1	CG&A	Invoice #99939	service thru 01/31/2022	\$207,224.57	
	2.	LSF Shuttle	Invoice #21-1231-26	service thru Dec 2021	\$6,551.86	
	3.	LSF Shuttle	Invoice #22-0131-26	service thru Jan 2022	\$6,083.87	
	4.	Inframark	Invoice #72201	service thru Jan 2022	\$7,400.62	
	5.	Inframark	Invoice # 74078	service thru Feb 2022	\$8,874.75	
	5.	GCDE	Invoice #39933	service 1/25 thru 2/22/2022	\$5,819.85	(General Matters)
	6.	GCDE	Invoice #39934	service 1/25 thru 2/22/2022	\$1,733.20	(Development)
	7.	GCDE	Invoice #39935	service 2/16/2022	\$67.50	(Writ of Garnishment)
	8.	GCDE	Invoice #39936	service 1/31 thru 2/14/2022	\$720.00	(Richard Crusco, Charles Doherty, et al)

B. PROCLAMATION FOR APPROVAL

Problem Gambling Awareness Month (PGAM) March 2022

VIII. BEACH REPORT

IX. STAFF UPDATES

A. Police Department

Presented by Chief Jay Szesnat

1. January 2022 Activity & Fuel Report
2. Update on Lighting "Hot Zones" along the Beach - Sea Turtle Nesting Season

B. Building Department

Presented by Steve Mitchell, Building Official, CG&A

C. Code Compliance

Presented by Bernard Pita, Code Enforcement, CG&A

X. TOWN MANAGER REPORT

A. Municipal Election - Tuesday, March 8, 2022 (7am-7pm) Community Room at Town Hall

Early voting in Broward County: Saturday Feb. 26, 2022 through Sunday, March 6, 2022 (select locations)

B. Community Event - Saturday, April 30, 2022 (9am-12pm)

Household Hazardous Waste Drop-off, Prescription Drug Take Back, Electronic Recycling, FREE Shredding & Blood Drive

C. Town Hall Facade Update

XI. TOWN ATTORNEY REPORT

XII. TOWN COMMISSION COMMENTS/REPORTS

XIII. PUBLIC COMMENTS

XIV. ADJOURNMENT

PLEASE TAKE NOTICE AND BE ADVISED that if any interested person desires to appeal any decision made by the Town Commission, Special Master or any other Boards or Commissions of the Town with respect to any matter considered at this meeting or hearing, such interested person will need a record of the proceedings and for such purpose 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. The meeting/hearing may be continued from day to day, time to time, place to place, as may be found necessary during the aforesaid meeting. IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA) THIS DOCUMENT CAN BE MADE AVAILABLE IN AN ALTERNATE FORMAT (LARGE PRINT) UPON REQUEST AND SPECIAL ACCOMMODATIONS CAN BE PROVIDED UPON REQUEST WITH THREE (3) DAYS ADVANCE NOTICE. Please contact Sherry D. Henderson, IIMC-CMC, Town Clerk (954) 427-4011 Town Hall - 1210 Hillsboro Mile, Hillsboro Beach, Florida 33062.



DRAFT

**MINUTES
TOWN OF HILLSBORO BEACH
BOARD OF ZONING & APPEALS MEETING
JANUARY 11, 2022**

CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Deborah L. Tarrant called the meeting to order at 9:00 a.m. Roll was called with the Commission members and staff present as listed below.

Town Commission:

Mayor Deborah L. Tarrant
Vice Mayor Irene Kirdahy
Commissioner Jane Reiser

Commissioner Barbara Baldassarre
Commissioner Vicky Feaman

Town Staff:

Town Manager Mac Serda
DJ Doody, Town Attorney
Town Clerk Sherry D. Henderson, CMC

Town Attorney DJ Doody explained the Quasi-Judicial procedures to be followed throughout the meeting. He explained the types of evidence to be presented and the role of each party. Mr. Doody asked each member of counsel to explain the time required to make their presentations.

Debbie Orshefsky, Esq., attorney with Holland & Knight, requested 30 minutes to present on behalf of the applicant.

Attorney Scott Kleiman appeared on behalf of two (2) residents and requested five (5) minutes to present his case.

Attorney Ralf Brookes appeared on behalf of a group of residents and requested 10 minutes for his presentation.

I. QUASI-JUDICIAL PUBLIC HEARINGS

- A.** Eric Fordin, with the Related Group, authorized agent for the development project located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062, requests a variance pursuant to Section 12-283 of the Town's Code to exceed the height limitations in Section 12-142 of the Code. Variance request for height up to 130 feet and 10 stories.

Mr. Doody swore in all those giving testimony at the hearing.

Jim Hickey, Town Planner with CG&A, presented the item. He explained the applicant was requesting a variance from Section 12-142A of the Land Development Code (LDC) to allow for an increase in height and number of stories within the Residential Medium (RM-16) zoning district.

Mr. Hickey provided a background on the RM-16 district, explaining in that district there is a limit of 35 feet in height and three (3) stories. He noted most tall buildings in Town are within the RM-30 district, which has different requirements. He stated the property is made up of two (2) vacant parcels, including parcel A on the west side of the road, which is 5.4 acres between Hillsboro Mile and the Intracoastal, and parcel B, which is located on the east side of Hillsboro Mile.

Continuing, Mr. Hickey explained approximately 1/3 of parcel B is identified as a Local Area of Particular Concern (LAPC) and includes land and beach which cannot be developed. He stated the LAPC was designated in 1992 and is the only conservation area within the Town, totaling 2.78 acres on the eastern portion of the site.

Mr. Hickey noted the Board had reviewed a request at its December 7 meeting, and the applicant had resubmitted an application for 130 feet and 10 stories, a total of 95 feet above the height permitted in Code. He stated the site plan could not be approved without consideration and approval of this variance, as well as consideration of a variance for the percentage of usage of the rooftop which would be processed through a separate variance request and analysis.

Mr. Hickey reviewed the Code sections applicable to the request, including those which set forth the instances of hardship necessary and the development criteria for the zoning district. He discussed how the LAPC was addressed within the Comprehensive Plan. Mr. Hickey noted the LAPC created a unique situation in Town, as the easement runs the entire length of the parcel and requires the development be adjusted to run north/south, rather than east/west.

Board members made disclosures of ex-parte communication. Commissioner Feaman declared a conflict of interest and recused herself.

(Clerk's Note: Pursuant to Florida Statutes 112.3143, Commissioner Feaman completed and submitted Form 8B Memorandum of Voting Conflict.)

Mr. Hickey stated staff's recommendation is that the site presents unusual and practical difficulties. He reviewed four (4) conditions recommended by staff if the application were to be approved, including:

1. Proposed site plan shall be no higher than the height and number of stories approved by the Board;
2. Applicant must receive approval by Broward County for the alteration and improvement of the LAPS and conservation area;
3. Should the proposed site plan associated with this variance request not be approved, the Applicant will be required to submit a revised variance request and must be reconsidered by the Board along with the site plan approval;
4. Variance shall be in effect so long as the site plan remains active and does not expire. Once the site plan expires, the variance approval shall also expire;
5. Applicant shall work with the Town Attorney to draft a beach access easement agreement outlining the use of this easement by the Town prior to issuance of a building permit for vertical construction.

Applicant Presentation

Debbie Orshefsky, Esq., attorney with Holland & Knight, presented as counsel for the applicant. She stated prior to her presentation, she had questions for Mr. Hickey. She asked Mr. Hickey to confirm his qualifications, and that he had received the revised proposal which reduces the density on the east parcel to 72 units. Mr. Hickey confirmed his qualifications and stated he had seen the updated proposal.

Ms. Orshefsky asked whether granting the variances for the current proposal as he understands it would impair adequate light, air, and sunshine to the neighboring properties. Mr. Hickey responded that the proposal was similar to the site plan presented in December, which gives 107 feet of setback from the building to the north, and the amount of space between the parcel and its neighbors would provide adequate light, air and sunshine to neighboring properties.

Continuing her questions, Ms. Orshefsky asked whether Mr. Hickey believed the proposal would increase the danger of fire or impact the public safety. Mr. Hickey explained with the current space between the parcels, it would not.

Ms. Orshefsky noted the proposed project had been described as luxurious, and units would sell for a minimum of \$3 million. She asked Mr. Hickey whether he believed the granting of the variances would unreasonably diminish or impair the property values within the surrounding area. Mr. Hickey explained he could only speak as a planner but bringing in less density than what is permitted under land use is the best way to protect property values.

Ms. Orshefsky asked whether the granting of these variances would, in any other respect, impair the public's health, safety, comfort, or welfare of the inhabitants of the Town of

Hillsboro Beach. Mr. Hickey responded not that he was aware.

Ms. Orshefsky asked if the variances as described were a mere convenience to the applicant, or whether they alleviate some demonstrable and immediate hardship or difficulty. Mr. Hickey stated as referenced in the staff report, the actual hardship was created by the LAPC running the length of the parcel.

Ms. Orshefsky asked whether the land was an unusually shaped property in the Town of Hillsboro Beach. Mr. Hickey stated that it was unique and explained with the LAPC everything built needed to be turned to the north/south direction. He stated under the zoning district, the site could be developed as one (1) large block, three (3) story development with minimum setbacks on both sides of the street.

Completing her questions of Mr. Hickey, Ms. Orshefsky asked if unusually shaped parcels are more difficult to develop than properties of a typical length and depth. Mr. Hickey responded that they are and explained the uniqueness of the layout.

Ms. Orshefsky created a *PowerPoint* presentation on behalf of the applicant. She introduced the developers, design team, and engineers present in person and online. She asked that all materials submitted to the Town Clerk and included in the backup materials, as well as her presentations at this meeting and on December 7, be included within the public record for the meeting.

Ms. Orshefsky reviewed the applicable variance criteria within the Town Code, pointing out Mr. Hickey and Mr. Doody had explained the applicable criteria. She noted every variance provision is specific to its municipality. She reviewed the applicable variance criteria briefly and asserted Mr. Hickey had provided competent, substantial evidence that the property met the “unusual and practical difficulties or particular hardship” required to grant a variance within the Code.

Continuing, Ms. Orshefsky reviewed data regarding the height of neighboring buildings and discussed the current proposal, revised proposal, and current proposal based on feedback from the December 7. She shared a chart showing heights and setbacks for the podium and residences on each parcel.

Ms. Orshefsky explained the current proposal was for a 10-story building, 130 feet in height on the east parcel, with setbacks increased to match the setbacks previously proposed for a 15-story building. She noted this was substantially more than what is required by Code. She stated the total units for that parcel would be for 72 units.

Ms. Orshefsky showed a slide which outlined the site boundaries with a bird’s eye view of each, including the easterly building line, noting it was a critical component in

explaining the difficulties of developing parcel B. She stated the conservation area was 125,310 square feet, comprising 47 percent of parcel B net area. Continuing, she showed the “permitted” building footprint of each parcel under Code, at a height of three (3) stories and 35 feet. Ms. Orshefsky referenced remarks made by the Board as outlined in the December 7 draft meeting minutes. She noted Mayor Tarrant had expressed concern regarding the potential for a “concrete canyon” effect because the Code was not written to contemplate situations such as this property.

John McWilliams, Kimley-Horn & Associates, reviewed the current development program and the resulting trips as determined in his traffic report. He outlined projected trips for the permitted project, as well as for the original, revised, and current proposals. In response to a question from Ms. Orshefsky, Mr. McWilliams reviewed his credentials and experience as a Civil Engineer with a specialty in traffic.

Ms. Orshefsky reviewed the original site plan submittal and the revised site plan, noting the changes in response to feedback received. She noted the private marina was already permitted and pointed to changes made in response to neighbor concerns. Continuing, Ms. Orshefsky reviewed visual representations of the heights and setbacks, including renderings of the proposal from multiple angles. She noted the believed construction period is 18-30 months, but the request for five (5) years allows for the unexpected. She circulated language outlining the specific details of the requested variance and stated language had been added at the request of the Town Attorney regarding waiving certain rights under specific Governor’s orders impacting construction.

Opposing Counsel Presentations

M. Scott Kleiman, Esq., Kalis, Kleiman, & Wolfe presented on behalf of his clients in opposition to the proposal. He noted his two (2) clients represented a group of 70 property owners from across Hillsboro Beach. Mr. Kleiman asked that a letter he had emailed to the Clerk be added to the record. He outlined his experience as a Magistrate and City Commissioner, as well as specific land development experience as an attorney.

Mr. Kleiman stated the law was clear that absent a hardship which is not self-created, there can be no variance. He asserted potential benefits to the Town were not lawful basis on which to grant a variance. He referenced case law outlined in his letter and stated purchasing property with a zoning restriction equated to a self-imposed hardship. Mr. Kleiman stated the Related Group would build an aesthetically pleasing project, but the proposed building would interfere with the zoning and the rights of the property owners in the area. He discussed the character of the area and explained there was no legal basis to change it.

Attorney Ralf Brookes, presented on behalf of a group of residents residing in the Hillsboro Beach & Yacht Villas. He discussed his experience representing barrier island cities as a City and County Attorney. He objected to the legal sufficiency of the ex-parte communications, as they did not disclose the substance of the communication.

Mr. Brookes reviewed the zoning districts and allowable heights within each. He asserted the variance was not in harmony with the community and stated the variance should only be permitted if no economic use of the property was available. He stated unusual hardship great enough to present a variance had not been presented.

Continuing, Mr. Brookes discussed the hurricane evacuation time for the Town and stated the project would impact the health and safety of residents by increasing that time. He argued the additional stories requested by the applicants were “a bridge too far.”

Mr. Brookes stated the fact-based observations from residents could be considered competent evidence for a denial. He reviewed applicable case law and provided a documentation for the record, along with an appraisal of the property. He stated he had an expert planner available to testify via Zoom.

Darryl Max Forgey, Forgey Planning of Cape Coral, outlined his credentials as a planner and provided testimony on behalf of Mr. Brookes and his clients. He pointed out the applicant was seeking a variance, not a rezoning, and discussed the analysis in the staff report. He stated he disagreed with the analysis in relation to hardship and argued because the property was purchased with the land use distinctions in place, the information was known and did not meet the definition of hardship within the Code.

Mr. Forgey discussed the proposed project, and stated he was not making a judgment on the quality of the work, but on the variance itself. He asserted the property is quite developable and asked that the Board sustain the Code by denying the variance.

Jeffrey Bass, representing the applicant, cross-examined Mr. Forgey. Mr. Forgey confirmed he had been hired for the project the previous day and had not visited the property in question.

Ms. Orshefsky stated further rebuttal would be provided following the public hearing.

Public Hearing

Mayor Tarrant opened a public hearing on the item.

Frank Kolb, 1173 Hillsboro Mile, stated he joins with the attorneys that had spoken in opposition to the variance. He noted Related Group comes with a fine history, but that is

not a reason to grant a variance approval. He stated he and his wife had bought their home in 1992 with the awareness of what could be built due to the LAPC.

John S. Kennelly, Jr., 1187 Hillsboro Mile, stated his property is one of the most impacted. He asserted Related Group could build a fine product within the allowances of the Code and discussed the environmental regulations in place. He stated the property was not unusual and did not represent a need for a variance. He asked if the variance is requested, that a further setback for the podium be required.

Kristen Maxx, 1170 Hillsboro Mile, expressed concern regarding granting the variance. She stated she did not agree there was a hardship and noted listing the buildings to the south which were built a long time ago should not be considered evidence in support of the project.

Resident at 1147 Hillsboro Mile, commented on the slide showing the conservation line. He asked whether the developer was responsible for beach renourishment, and how that would be impacted by the agreement with Deerfield Beach.

Mayor Tarrant stated questions would be answered following the comments.

Stephen Drymer, 1170 Hillsboro Mile, stated he was concerned with the haste to vote on variances requested very recently. He asked whether the process could be slowed down. He stated what was being presented as a hardship was actually a cause for a windfall, and argued the discussion was a moral hazard.

Susan Maybe, 1187 Hillsboro Mile, stated she and her husband had looked at the Code for the vacant property prior to purchasing to determine what could be built there, and hearing of the proposal a few months later was disappointing. She stated she opposes the development.

Charles, (no last name or address given), reminded the Board they had been elected to represent the will of the community.

Rich Costello, 1194 Hillsboro Mile, discussed what makes Hillsboro Beach special. He asserted the project was asking to jump over an entire zoning project. He stated he was concerned the plan was to relandscape the entire mile. He asked why a rendering of the three (3) story project allowable was not being presented. He argued the project was intense and stated he hoped an agreement with the developer would be reached.

Javier Garcia, 1203 Hillsboro Mile, stated the Town lives off a small majority of super wealthy, and progress is critical for moving forward. He asserted the project would not be as beautiful or valuable without the variance.

Manny Peñate, 1170 Hillsboro Mile, argued the case had been laid out clearly before the Board and thanked them for their time in reviewing it.

Mayor Tarrant called for a recess at 11:02 a.m.

Mayor Tarrant called the meeting to order at 11:13 a.m.

Michael Weinberg, 1169 Hillsboro Mile, stated he was in opposition to the project. He discussed the traffic study and asserted it did not address the volume of traffic. He stated the photos did not show the neighboring properties proportionally. He asked that a 10-story building not be built on this site.

Larry Capogna 1150 Hillsboro Mile, stated he had been in Hillsboro Beach for 20 years and commented on traffic. He stated a variance should be granted as it would look beautiful, and asserted it was no one's business how much money the developer would make. He noted a three (3) story building would look like an office building.

Nancy Robbins, Hillsboro Island House #803, agreed with previous speakers who had said Hillsboro Beach was a beautiful gem. She asked the Board to oppose the variance and stated neighbors bought knowing development could not be more than three (3) stories.

Andy Dandell, 1194 Hillsboro Mile, stated he had been in his home 43 years and discussed the maximum heights in the zone. He discussed projects in other areas and stated he was in opposition to the variance because he wanted the Town to be preserved.

Donna Purre, 1173 Hillsboro Mile, objected to the variance. She stated the hardship reason was not appropriate and asserted the drawings were misleading. She argued the front of the building where the garage entrance was not shown because it was much closer to the road.

Chris Fleck, 1173 Hillsboro Mile, stated this was clearly not a hardship. He asserted this was a "monster building" and the podium was large and too close to the road. He discussed changes to the plan and stated there was not time to absorb them and review them properly. He stated the project was a bad deal for the Town. He asked the Commissioners to take their time and not rush into approval.

Yvonne Botsis, 1536 SE 15th Court, Deerfield Beach, stated her home would be overlooking the parcel from across the intracoastal waterway. She noted past proposals on the property and the potential for litigation. She stated the images provided were misleading and requested the project be restricted to three (3) stories to preserve the view.

Scott Gifford, 1160 Hillsboro Mile, discussed his time as Commissioner, and stated no variances were given. He asserted they had never given in to the potential for tax dollars and properties were developed according to Code. He noted building north/south was not a hardship, as it allowed for premium prices. He stated he hoped the variance was turned down.

Deborah Leveen, 1536 SE 15th Court, Deerfield Beach, asked that her building be included in the discussion as it would be impacted by construction and its mitigating factors. She noted when buying her unit, she was told there was a zoning restriction to three (3) stories and explained they would have a direct view of the property across the intracoastal waterway.

Barbara Johnson, 1160 Hillsboro Mile, spoke in opposition to the project. She stated she believed there would be legal consequences if the variance was approved.

David Ravanese, 1236 Hillsboro Mile, stated there are other buildings of 10 or 12 stories in the community and there would be beautification of the community included with the development project. He stated he was also thinking of the tax revenue generated by the project and noted the traffic would not be a negative impact.

Michael Boyna, 1187 Hillsboro Mile, stated he believed legal questions should be decided before looking at the impact on neighbors. He asserted there was a question regarding the creation of spot zoning. He asked who would bear the costs of a protracted court battle of what appeared to be a legally dubious variance.

Jim Lambert, 981 Hillsboro Mile, asked the Commission to take into consideration that the attorneys were hired to state the case, and the only legal opinion the Board should look to is that of the Town Attorney. He stated there is a large portion of the Town not opposed to the project and asked the Board look at what is best for the Town in terms of beach nourishment, tax dollars, and the potential for an eyesore on the property.

Carol Weber, 1187 Hillsboro Mile, thanked the Mayor and Commissioners for their hard work. She stated she saw some potential benefits of the project but did not see an argument had been made for the variance. She expressed concern regarding shadows cast by the building and the podium proposed. She stated she worried once a variance was requested, other developers would ask for variances, as well.

Linda Suthouse, Hillsboro Mile, stated she supports the neighbors who do not want a 10-story building. She asserted more people in a development would require additional police and fire services, which meant that the additional tax dollars were not as much a benefit as argued.

Ms. Orshefsky responded to comments. She noted the comments regarding rushing the process, and stated the proposal was submitted in July 2021 and had since gone through an extensive process working with staff.

Christy Brush, Moffat & Nichol, stated she had specialized in Coastal Construction Control Line (CCCL) permitting for more than 23 years. She addressed questions regarding the CCCL and clarified the regulations.

Ms. Orshefsky continued to respond to comments regarding communication with the community, explained the rooftop mechanical would be contained within a decorative screen, and addressed questions regarding the perspectives on the renderings. She stated they were prepared by architects and computer technicians to show heights and angles, but the renderings were not required by Code. Ms. Orshefsky noted the Town has a cost recovery Ordinance related to legal fees.

Mayor Tarrant closed the public hearing.

Commission Discussion

Mr. Doody addressed the objection filed by Mr. Brooks regarding ex-parte communication and asked that the Board revisit the issue to address the substance of any of their discussions with the developer prior to the meeting.

Mayor Tarrant stated she had direct communication with the attorney for the Related Group in a meeting which included the Town Manager and Town Attorney to review the specific details of the application.

Vice Mayor Kirdahy stated she had a separate meeting with the applicant, along with the Town Manager and Town Attorney. She noted people had sent her emails asking about engineering, so she had asked questions of the applicant. She added that all engineering would be approved by the appropriate staff.

Commissioner Reiser stated she met with representatives of the Related Group along with the Town Manager and Town Attorney to review the changes since the last meeting in December. She asserted the meeting had no influence on her opinion.

Commissioner Baldassarre stated she had a similar meeting on Friday to review the changes since the last presentation. She noted she had asked questions about the garage.

Mr. Doody asked if any Board members had conducted investigations or site visits or engaged any outside expertise regarding the action before them. Mayor Tarrant stated

she had visited the site.

Mr. Bass provided a closing argument. He stated he did not believe it was helpful to reference case law, as this was not a court of law but a zoning authority, with the job to evaluate the evidence and facts and decide based on that evaluation. He referenced the bifurcated standards included in the Code and stated it gave the Board a choice to determine whether a practical difficulty or hardship was demonstrated. Mr. Bass reviewed the permitted uses for the project and stated those uses allow for a density significantly higher than the proposal. He noted many of the comments did not consider that the lowered density would be better.

Mr. Bass stated the Board was sitting as quasi-judges evaluating evidence, which meant the emotions and opinions were irrelevant, and they had to focus their attention on the property rights at issue. He reviewed the evidence presented briefly and asserted the objectors had confused self-created and known conditions. Mr. Bass stated the applicant had shown a practical difficulty and noted the testimony of Mr. Hickey had confirmed the absence of any harm of granting the variance.

Mr. Doody asked that the Board members disclose emails they had received from residents related to the application. Each of the Board members stated they had received emails and those emails were forwarded to the Town Clerk and made part of the public record. Mayor Tarrant noted she had received hundreds, though many were from the same people.

Mayor Tarrant noted the restrictions of the Sunshine Law and stated no two (2) members of the Board had spoken to one another except during the public meeting.

Mr. Kleiman provided brief closing comments. He stated the burden of evidence was not met and asserted there was a buildable three (3) story project which could be built within the Code, therefore there was no hardship. He added that the applicable case law should be reviewed, and the application denied.

Mayor Tarrant stated in her opinion, the first thing to consider and understand when discussing a variance is exactly what the Code allows for this one (1) of a kind property. She discussed the required setbacks and stated the Code does not require three (3) story buildings in groupings, so two (2) 565-foot-long buildings were allowed on this property. She noted the conservation area leaves two (2) acres undevelopable, in addition to creating beachfront property from which you can not see the beach and made the remaining portion of the lot far narrower and less maneuverable. Mayor Tarrant stated for these reasons, she agrees with Mr. Hickey that the conservation area creates unusual and practical difficulties for building on the parcel.

Continuing, Mayor Tarrant reviewed benefits offered the Town by the developer. She noted the applicant was offering the Town a permanent, 25-foot beach access, and discussed the difficulties the Town had experienced in renourishing the beach. She asserted this access was important to the future of the Town. Mayor Tarrant explained a second benefit of the proposal was a setback more than double required on the opposite side of the road, eliminating the claustrophobic impact of the construction allowed under the Code. She noted a third benefit was a reduction in density from approximately half, from 188 units allowed to 100 proposed. She asserted a fourth benefit would be a \$4.5 million contribution to the Town's Capital Improvement fund, which could be used to bury the utilities and improve the entire Town.

Mayor Tarrant stated additional tax revenue of over \$1 million should not be minimized, noting the property had sat vacant for decades. She asserted this would provide relief against the misery of assessing for the cost of sand for future beach renourishments. She argued the takeaway was that there was a reason this property ended up being sold at auction. She asserted the hardship created by the conservation area was not only a hardship for the developer, but for every resident of the Town. Continuing, she stated the 10 stories proposed fits the height mix of the Town and was not a random number. She asserted none of the other buildings of that height had similar setbacks and noted the podium would be hidden by landscaping. She shared an image of the parcel and agreed the section north of the parcel needs to remain low rise.

Mayor Tarrant asserted concern the variance would lead to other developers requesting variances was misplaced, as this was a unique property. She stated the information being circulated by the group opposing the project was incomplete and did not consider the benefits and services for the community. She discussed a list of considerations ignored and stated all elements of the proposal should have been shared, rather than doing a disservice to fellow residents by cherry picking information.

Continuing, Mayor Tarrant stated she believes the variance is justified. She noted the Commission has to make a decision that does the most good for the most people, and reiterated the benefits she had outlined. She stated it was an opportunity to take something which had dragged the Town down for years and turn it into a positive. Mayor Tarrant thanked those gathered for their patience with her longwinded comments in explanation of the complicated issue.

Vice Mayor Kirdahy asked for clarification on a quote Mayor Tarrant had read.

Mayor Tarrant read from the Code for the record that another consideration in evaluating a variance has to be "the importance of the services provided by the proposed development to the community."

Vice Mayor Kirdahy stated she understood the personal concerns and assured those gathered the Commissioners take all sides into account. She stated they never forget that accepting the position comes with a great deal of responsibility, and there is a certain set of parameters they must go by, including looking at the good for the entire Town. Vice Mayor Kirdahy asserted this is a unique piece of property, and she can say unequivocally that none of the Commissioners was looking to profit from the project. She noted by reviewing the evidence, she was able to see the hardship and hoped the residents would appreciate the time put into making the decision.

Commissioner Baldasarre stated after listening to the attorneys and rereading the evidence, she had a different perspective than she thought she would. She noted elected officials want to please the people they represent, but it is very difficult to do that and please everyone. Commissioner Baldasarre acknowledged the developers had bought the property knowing of the hardship, but that was not necessarily the definition. She noted the difficulties which come along with that are what gives a different perspective.

Commissioner Reiser asked if there was a rendering of the complete front of the building. It was noted there was not such a rendering available.

Commissioner Reiser stated it was a very difficult position to be in and noted there were a lot of valid points made. She asserted they need to look at the big picture and what is best for the Town. She explained she does not want a 10-story building, but she also does not want two (2) huge three (3) story buildings or an empty lot of sand, so they have to be careful what they wish for.

Commissioner Baldasarre asserted there are parts of the Town which are not necessarily well kept and providing a benefit to the Town. She stated there is not a lot of consistency in landscaping or shrubbery, and whatever happens with the property, she thought it would add to the beautification of Hillsboro Mile.

Commissioner Feaman stated she had recused herself because she lives next to the property and may have a conflict of interest.

Mr. Doody reminded the Board they were sitting as the Board of Zoning and Appeals, not the Town Commission, and reviewed the Code as it pertains to variances. He discussed the definitions briefly.

Mr. Doody reviewed the amended request as presented by the applicant, including heights, setbacks, and timeframes.

Mayor Tarrant passed the gavel to Vice Mayor Kirdahy to make a motion.

Vice Mayor Kirdahy explained she came into the meeting with mixed feelings, but after reviewing the evidence she was in support as it was the best possible option for the residents of the whole Town.

Commissioner Reiser stated she had come in a resounding no, as it was creating too much animosity in the Town. She noted when reviewing the evidence and considering what was best for the Town, she had to approve.

Motion made by Mayor Tarrant, seconded by Commissioner Baldassarre, to grant the variance for 1174-1185 Hillsboro Mile due to hardships created by the conservation area's impacts and including the conditions as presented. In a roll call vote, the **motion** passed unanimously. (4-0) Commissioner Feaman recused herself from the vote.

- B. Eric Fordin, with the Related Group, authorized agent for the development project located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062, requests a variance pursuant to Section 12-283 of the Town's Code to exceed the height limitations in Section 12-142 of the Code. Variance request for use of roof beyond the maximum height of 130 feet.

Mayor Tarrant explained the variance covered the decorative features on the roof, to include the elevator shaft and mechanical on the roof of the proposed project.

Mr. Doody swore in all those giving testimony at the hearing.

Mr. Hickey explained this was a companion variance to the one (1) just heard, and the criteria looked at and findings were similar. He stated as to Section 12-142(b), a variance from Section 12-142(b) was requested to permit decorative features above the maximum height of the building. He noted the interpretation of the Code was that the decorative features of the roof allow for shielding of the mechanical. Mr. Hickey noted the Code allows for a maximum of 20 percent, and the applicant had provided a revised plan to meet that requirement. He stated the maximum height including the decorative feature would be 145 feet.

Mr. Doody asked that the Board members disclose any ex-parte communications.

Mayor Tarrant stated she had met with the applicant's team, along with the Town Manager and Town Attorney regarding the specifics of the variances request and had a separate conversation with the applicant's attorney to clarify the location of the pool. She noted she had received emails questioning the inclusions in the 15-foot area and those emails had been included in the public record.

Vice Mayor Kirdahy stated she had not met with anyone regarding the application and

had not received any emails applicable.

Commissioner Reiser stated she had met with the applicant's team (Related Group), along with the Town Manager and Town Attorney and reviewed the changes. She noted she had not received any emails.

Commissioner Baldasarre stated she had met with the applicant's team (Related Group), along with the Town Manager and Town Attorney and reviewed the changes. She stated she had received an email asking questions about the 15 feet.

Vice Mayor Kirdahy asked how tall the palm trees included on the roof would be. Mr. Hickey stated the applicant would need to comment on the function.

Commissioner Reiser expressed concern regarding the root structure of the palm tree and a tree potentially blowing off the roof in a hurricane and becoming a projectile. She noted this concern had been expressed in emails she had received.

Vice Mayor Kirdahy suggested a potted dwarf palm which could be moved inside.

Mayor Tarrant stated she had safety concerns about any large vegetation on the roof. She noted recent high winds. Mr. Hickey stated the applicant was willing to remove the trees.

Mayor Tarrant verified the sunset pool had been removed. Mr. Hickey stated it had.

Ms. Orshefsky presented on behalf of the applicant. She asked that all documentation and testimony from the first hearing be considered part of the record for the item. She noted the palms had already been removed from the site plan.

Mr. Doody confirmed the applicant was amenable to the conditions in the staff report. Ms. Orshefsky stated the conditions were accepted.

Mayor Tarrant opened a public hearing on the item.

Beth Vogl, 1170 Hillsboro Mile, requested that the Board accept her suggestion that all flora over a certain height be removed. She stated she would prefer anything which could blow off the roof not be allowed.

Mayor Tarrant stated that umbrellas and patio furniture should also be considered and noted that should be included in the condominium's by-laws.

Liza Hernandez, 1021 Hillsboro Mile, stated she was concerned with lounge chairs on the rooftop, and asked if someone would be monitoring wind.

Donna Purre, 1173 Hillsboro Mile, asked for assurances that the neighboring properties will be protected from the construction.

Mayor Tarrant closed the public hearing.

Ms. Orshefsky responded to the comments, noting the developer understands the concerns and has addressed these concerns in many other locations along the coast. She stated there would be a construction management plan incorporated in the site plan package, including a detailed roof plan and wind loading.

Eric Fordin, Related Group, stated no rooftop furniture would be provided, and there would be language added to the by-laws to address it.

Mayor Tarrant confirmed the liability would rest on the property owners. Mr. Fordin stated that was correct.

Vice Mayor Kirdahy noted there would be building management. Mr. Fordin stated on other properties there were storage closets, but that was not allowed within the Code in this instance.

Ms. Orshefsky responded to Ms. Purre's comments and noted a construction management and communication plan will be in place.

Commissioner Feaman declared a conflict of interest and recused herself.

(Clerk's Note: Pursuant to Florida Statutes 112.3143, Commissioner Feaman completed and submitted Form 8B Memorandum of Voting Conflict.)

Motion made by Commissioner Reiser, seconded by Vice Mayor Kirdahy, to grant the variance for 1174-1185 Hillsboro Mile to allow for the elevator and other necessary equipment for a 10-story building to function and including the conditions as proposed by the applicant. In a roll call vote, the **motion** passed unanimously. (4-0) Commissioner Feaman recused herself from the vote.

II. ADJOURNMENT

Motion made by Commissioner Baldasarre, seconded by Vice Mayor Kirdahy, to adjourn the meeting. In a roll call vote, the **motion** passed unanimously. (5-0)

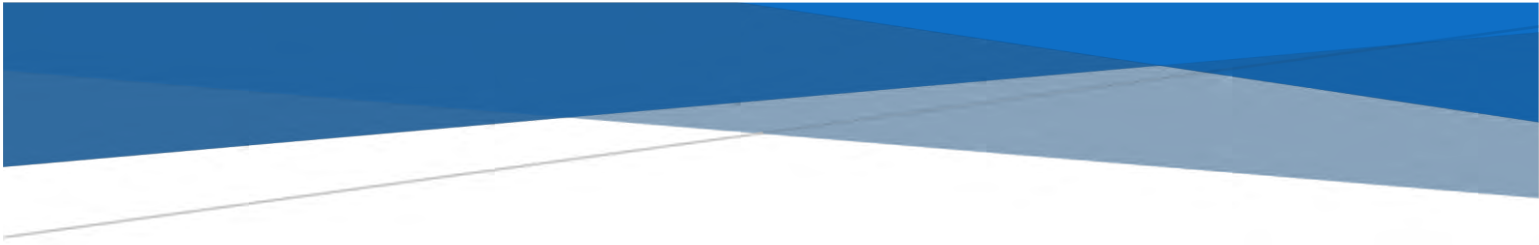
There being no further business before the Board of Zoning and Appeals, the meeting was adjourned at 1:19 p.m.

ADOPTED THIS _____ DAY OF _____, 2022

By: _____
Deborah L. Tarrant, Mayor

ATTEST:

Sherry D. Henderson, CMC, Town Clerk



WRITTEN PUBLIC COMMENTS

Public Comments emailed to the Town Clerk Entered into the Record.

Hand-outs Provided at Meeting Entered into the Record.

JANUARY 11, 2022

**Board of Zoning & Appeals
Quasi-Judicial Public Hearing**

Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062
TownofHillsboroBeach.com
954-427-4011

APPLICANTS PROPOSED CONDITIONS OF APPROVAL FOR VARIANCES

Variance #1, Section 12-142 (A) of the Town Code, to permit a building with a maximum height of 10 stories and 130 feet where 3 stories and 35 feet of height is permitted, is approved subject to the following requirements:

Density: maximum of 72 units on Parcel B (east parcel) and maximum of 28 units on Parcel A (west parcel)

Height: maximum height of 10 stories and 130 feet on Parcel B and maximum height of 3 stories and 35 feet on Parcel A

Setbacks As to Parcel B:

North and south side yard setback to podium: min. 35 feet

North and south side yard setback to 10 story portion of building: min. 107 feet

Setback from centerline of A1A podium: 45 feet

Setback from centerline of A1A to 10 story portion of building: min. 105 ft./2"

Setbacks as to Parcel A: all as depicted on the plan set entitled "Application for Final Site Plan Approval Architectural Set-Revised 12/17/21".

Variance #2, as to Section 12-142(B) of the Town Code, a variance from Section 12-142(b) to permit decorative features above the maximum height of the building of 130' so long as such decorative features comprise an area of 10,810 square feet or less and have a maximum height of 145', is approved subject to the same requirements as set forth for Variance #1 above.

As to both variances, we request the following effectiveness periods be set by the BZA:

The time limitation for completion of construction of the 10 story building on Parcel B, shall be as follows: the owner shall submit a building permit application to the Town within 1 year of approval of these variances becoming final and not subject to appeal and complete construction of the building on Parcel B within 5 years of receipt of a building permit for the 10 story building.

In the event the Governor of Florida issues an executive order pursuant to Section 252.363, Florida Statutes, tolling the time for development orders, the owner waives its rights to file the requisite notice and seek such tolling unless the subject executive order is applicable to a State of Emergency declared for an area which includes Broward County

RALF BROOKES, ATTORNEY

Board Certified in City, County and Local Government Law

REQUEST FOR AFFECTED PARTY STATUS –

JANUARY 11 QUASI-JUDICIAL HEARINGS

Board of Zoning Appeals & Town Commission (immediately thereafter)

QUASI-JUDICIAL PUBLIC HEARING - Eric Fordin, with the Related Group, authorized agent for Development Project located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062 Requests a Variance Pursuant to Section 12-283 of the Town's Code to Exceed the Height Limitations in Section 12- 142 of the Code. Variance Request for Height up to 130 feet and 10 stories.

QUASI-JUDICIAL PUBLIC HEARING - Eric Fordin, with the Related Group, Authorized Agent for Development Project Located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062 Requests a **Variance Pursuant to Section 12-283** of the Town's Code to Exceed the Height Limitations in Section 12- 142 of the Code. Variance Request for Use of Roof Beyond the Maximum Height of 130 feet.

Dear Town of Hillsboro Beach
c/o Town Attorney Donald J. Doody, Esq via email and fax

Purpose of this letter. I represent the persons listed below who are owners and residents of Hillsboro Beach and Yacht Villas. On behalf of my clients we request affected party status in the quasi-judicial proceedings, which is currently scheduled for hearing before both the Board of Zoning Appeals and the Town Council immediately thereafter, on Tuesday, January 11, 2022 and request additional time to make a group presentation.

Parties requesting adversely affected party status. On behalf of the attached list of individual property owners we request recognition of affected party status with legal standing. As proposed, the proposed 130-foot, **10-story building** within Parcel B of the development does not comply with the height requirements set forth within the RM-16 district:

ARTICLE VI. - RM-16 MULTIPLE FAMILY DWELLING RESIDENTIAL DISTRICT REGULATIONS (WITH 3-STORY MAXIMUM LIMIT)

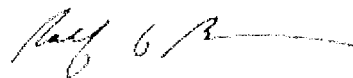
Sec. 12-142. - Height regulations. (A) For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and **shall not exceed 3 stories** above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and **shall not exceed 3 stories** above the roadway crown elevation of SR A1A adjacent to the property.

(B) It is further provided that purely decorative features such as cupolas, tower, railings, not including signs, nor containing any living areas and not covering more than 20 percent of the roof area may be erected to an additional height not to exceed 15 feet, provided that the overall height of the building shall not exceed 50 feet.

The proposed variance for an incredible additional **7 stories of height** does not meet the criteria for a variance, is not the minimum variance necessary to allow reasonable use of the land as zoned (RM16), and the additional height if granted will allow the Applicant to **more than triple (3x) the building height limits in violation of the Town Code** creating more stories of habitable space resulting in more dwelling units, more density, more persons as occupants, and will resulting in the need for more parking and creating more demand on adjacent streets, roads, and beach and will disrupt the overall zoning scheme of RM16 contrary to the bulk, mass and scale contemplated by the zoning code for RM16.

Because my clients reside within 500 feet of the subject property, they are unquestionably more affected and more aggrieved and their injuries are different in kind than the general public and my clients will be exposed to additional adverse impacts from the increased height, increased number of dwelling units, increased density, and number of occupants that will impact my clients who live in close proximity and share the same streets, roads, and beach as the proposed development to a greater degree and in a different manner than persons who live across Town.

Sincerely,



Ralf Brookes Attorney

LIST OF ADVERSELY AFFECTED PERSONS SEEKING ADVERSELY AFFECTED PARTY STATUS:

Hillsboro Beach and Yacht Villas

Charles Doherty
1194 Hillsboro Mile #27
Hillsboro Beach FL
33062

Richard Crusco
1194 Hillsboro Mile # 22
Hillsboro Beach FL
33062

Andy Dandeneau

1194 Hillsboro Mile # 28
Hillsboro Beach FL
33062

Norma Leary
1194 Hillsboro Mile #14
Hillsboro Beach FL
33062

Michael Nasir
1194 Hillsboro Mile # 1 and #8
Hillsboro Beach FL
33062

Gaspar Spina
1194 Hillsboro Mile # 8
Hillsboro Beach FL
33062

Robert Gallo
1194 Hillsboro Mile # 6
Hillsboro Beach FL
33062

Andrew Smith # 20 and # 21
1194 Hillsboro Mile # 28
Hillsboro Beach FL
33062

Douglas Carberry
1189 Hillsboro Mile #1
Hillsboro Beach, FL
33062

Richard Wu
1194 Hillsboro Mile # 19
Hillsboro Beach FL
33062



Ralf Brookes Attorney
1217 E Cape Coral Parkway #107 Cape Coral, FL 33904
Phone (239) 910-5464; fax (866) 341-6086
Ralf@RalfBrookesAttorney.com RalfBrookes@gmail.com

FLORIDA LAW REGARDING VARIANCES

A Continuing Legal Education (CLE) Program Presentation and Outline

by

Ralf Brookes, Attorney, Cape Coral/Longboat Key, Florida (**updated 2018**)

Henry Lee Morgenstern, Attorney, Gainesville/Seville, Florida (2004)

A. Introduction to Variances

A variance is, generally, permission for a landowner to go outside the limits of the zoning code, and to build something which would otherwise be illegal under the terms of the zoning code or land development regulations.

The reason or rationale behind the law allowing variances at all is that in some situations, the literal application of the zoning code would create such a "hardship", that it would not allow any use of certain parcels of property whatsoever.

Without the flexibility to allow some reasonable use of the property, such totally prohibitive zoning would constitute inverse condemnation, subjecting the zoning authority to liability for a "taking". Askew v. Gables-by-the-Sea, Inc., 333 So.2d 56 (1 DCA 1976). Thus, the legal justifications for variances, and the threshold criteria for determination of a "taking", are closely related. (See, below, criteria for granting variances, when is it a taking not to allow a variance).

A variance is sometimes mistakenly believed to be simply a tool for allowing a more intense use than would otherwise be allowed. As such, it needs to be distinguished from a special exception or conditional use.

A "special exception" or conditional use is specifically authorized in that zone, but will be allowed only if specific, listed criteria for that special exception or conditional use are met. A variance is specifically prohibited in that zone, but will be allowed only if necessary to prevent a "taking", i.e., if no authorized use is reasonably possible in its place.

Boards of adjustment have sometimes been unclear on this distinction, granting variances as a convenient expedient to avoiding the zoning and land development regulations. The criteria for obtaining variances are theoretically very strict, and the grounds for overturning illegal variances relatively easy to prove if sufficient facts and discussion of a legal hardship is not placed in the record.

An Applicant's variance request must be reviewed on its own merits, rather than on the basis of previously approved variances in the jurisdiction. See City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998). Previously issued variances do not establish controlling precedent or constitute a basis to sustain other variance applications.

B. Criteria for Granting Variances - Generally

Ordinances authorizing variances may be worded in different ways, and you should always read your specific language carefully. The standards must be definite, City of Miami v. Save Brickell Ave., 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., "shall consider criteria" means "must comply with criteria"), id.; Drexel v. City of Miami Beach, 64 So.2d 317 (Fla. 1953).

In 1985, local governments were given express authority to adopt variance criteria in their codes (most City's and County's adopted codifications of the existing law of variances with slight modifications in each locality). The repeal and replacement of Florida's standard zoning enabling act in 1985 when Florida's Growth Management Act of 1985 was adopted¹ did not diminish or substantially change the authority of local government or Florida law regarding variances, in fact previous Florida Law was codified in many local governments by ordinance. Both before and after 1985, the courts have followed long-established Florida law that a variance cannot be granted for self-created actions – and this requirement is codified in most city and county codes in Florida. Even after 1985, the courts have been very strict in their review of the hardship required to obtain a variance.

Generally, a variance is authorized if due to circumstances **unique to the applicant's property itself** and not shared by other property in the area, there exists an undue and unnecessary hardship created by the zoning regulations.

1. The hardship cannot have been self-created.

The hardship criteria found in variance provisions has a long line of cases and has been strictly construed by the courts. Josephson v. Autrey, 96 So.2d 784 (Fla. 1957).

The criteria has been interpreted to mean three things:

a. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. Burger King v. Metropolitan Dade County, 349 So.2d 210 (3 DCA 1977); Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981); Nance, supra; Crossroads Lounge v. City of Miami, 195 So.2d 232 (DCA 1967). If, however, the only allowable uses are economically impossible, then a variance would be allowed. See, Town of Indiatlantic v. Nance, 400 So.2d 37 (Fla. 5th DCA 1981), approved, 419 So.2d 1041 (Fla.1982)." (*"Nance II"*).

b. Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959).

c. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled. If the owner participated in an affirmative act which created the hardship (such as by purchasing only a substandard piece of a larger lot), then the hardship should be ruled self-created. Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The requirement that a variance hardship cannot be self-created is required by most codes and Florida case law. In Re Kellogg, 197 F. 3rd 1116, 1121 (11th Cir. 1999). Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (superceded by statute *on other grounds* in Grace v. Town of Palm Beach 656 So.2d 945 (Fla. DCA 1995); Town of Ponce Inlet v Rancourt, 627 So.2d 586, 588 (Fla. DCA 1993).

Case law, as well as the Land Development Regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations. The days of the “weeping variance” have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. Town of Indiatlantic v. Nance, 400 So.2d 37 (5 DCA 1981), affd. 419 So.2d 1041; appealed again at 485 So.2d 1318 (5 DCA 1986), rev. den. 494 So.2d 1152.

Post 1985, the First District Court of Appeals in City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998) Bernard v. Town Council of Palm Beach, 569 So.2d 853 (Fla. 4th DCA, 1990); Metropolitan Dade County v. Betancourt, 559 So. 2d 1237; Town of Indiatlantic v. Nance, 485 So.2d 1318 (Fla. 5th DCA 1986) (“*Nance I*”), Town of Indiatlantic v. Nance (“*Nance I*”), Town of Indiatlantic v. Nance, 400 So.2d 37 (Fla. 5th DCA 1981), approved, 419 So.2d 1041 (Fla.1982).” (“*Nance II*”), City of St. Augustine v. Graubard, 780 So.2d 272 (Fla. App. 2001) Maturo v. City of Coral Gables, 619 So.2d 455 (Fla. 3rd DCA 1993); Herrera v. City of Miami, 600 So.2d 561 (Fla 3rd DCA 1992) rev. denied 613 So.2d 2 (Fla. 3rd DCA 1992). In Re Kellogg, 197 F. 3d 1116, 1121 (11th Cir. 1999).

Pre 1985 cases had similar holdings and include Blount v. City of Coral Gables, 312 So. 2d 208 (Fla. 3rd DCA 1975) (“Nor are the Blounts entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance.”)(*citing other Florida cases on this issue*); Clarke v. Morgan, 327 So.2d 769 (Fla. 1975); Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959); Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The purchase of property with zoning restrictions on the property will normally not constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959). Namon v. DER 558 So. 2d 504 (Fla 3rd DCA 1990) and the cases cited therein address cases where property is purchased AFTER adoption of prohibitory regulations. The court in Namon recognized such pre-existing notice as applied to takings analysis in Florida cases, as follows:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. *See Graham v. Estuary Properties, Inc.*, 399 So.2d 1374, 1382, 1383 (Fla.), *cert. denied sub nom. Taylor v. Graham*, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981)

'...[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which [injures] the rights of others." *Namon* at 505, (original citation omitted) *see also Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005, 104 S. Ct. 2862, 2874, 81 L.E.2d 815, 834 (1984).

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need'"; *Namon* citing *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984)

"A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights"; *cf. Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA) "One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.", *cert. denied*, 116 849 (Fla. 1959).

Case law also indicates that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967).

Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

If the owner participated in an affirmative act which created the hardship (such as by purchasing a substandard size lot), then the hardship should be ruled self-created. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

2. Consistency with neighborhood and scheme of regulations.

Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a

variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." Troup v. Bird, 53 So.2d 717 (Fla. 1951).

"A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property."

Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3rd DCA 1959).

3. No reasonable legal use can be made of the property without the variance.

Some cases go so far as to say no variance can be granted if the property can still be used without the variance. This approach incorporates, to some extent, the law of taking of property without just compensation, i.e., a variance can be granted and will not be overturned if no other reasonable use can be made of the property without a variance.

"The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property." Thompson v. Planning Commission, 464 So.2d 1231 (1 DCA 1985). Herrera v. Miami, 600 So.2d 561 (3DCA 1992).

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." Hemisphere Equity v. Key Biscayne, 369 So.2d 996 (3 DCA 1979).

It is the land, and not the nature of the project, which must be unique and create a hardship. Nance, supra; Ft. Lauderdale v. Nash, 425 So.2d 578 (4 DCA 1982) (many other common violations in the neighborhood do not constitute a hardship); City of Miami v. Franklin Leslie, 179 So.2d 622 (3 DCA 1965).

When is Denial of a Variance a Taking?

A reasonable use of the property under existing zoning, requiring a denial of the variance, does not mean the owner's preferred use, or a use that will bring the owner an economic return. All that is required is a use beneficial to the owner and consistent with the zone. Metropolitan Dade Co. v. Betancourt, 559 So.2d 1237 (3 DCA 1990).

An extensive discussion of similar coastal setback beach ordinances and denial of a variance for construction seaward of such a setback appears under two, separate McNulty takings

cases – the federal takings case of McNulty v. Town of Indialantic, 727 F Supp 604 (M.D. Fla. 1989) and the state court takings case of Town of Indialantic v McNulty, 400 So. 2d 1227 (Fla. 5th DCA 1981). The cases share common facts, the Town of Indialantic denied McNulty a variance for a 12-unit condominium on the beach under a similar coastal setback provision to the line at bar resulting in both state and federal review.

"[A] diminution of property value does not, by itself, establish a taking Inability to use the property for production of an income stream or to make the highest and best use does not render the property without economically viable use". 727 F Supp 611.

The court found that when regulations seek to protect natural resources, the court should "hesitate to find a taking", comparing such regulations to "restraining... [a] public nuisance". 727 F Supp 614.

The McNulty state court decision noted that the "harm to be prevented [by beachfront construction] is substantial" and held that McNulty made an insufficient showing that a taking would occur if he were denied the variance. 400 So.2d 1227. In discussing the harm to be prevented, the state appellate court noted that:

"Through sad experience Florida has learned the importance of the barrier sand dunes which face its "high energy" beaches. The 'high energy beach' is a shore fronting the open ocean and dominated by sand and dunal features." Maloney and O'Donnell, Drawing the Line at the Oceanfront, 30 Fla. L. Rev. 383, 385 n.19 (1978). Sand beaches and dunes comprise a very small and unstable part of Florida's coastal zone.

Forming a narrow band along the shores of the Atlantic Ocean and the Gulf of Mexico, they offer some of the state's most attractive and most hazardous locations for real estate development. Without adequate controls on construction and excavation, oceanfront development could destroy not only man-made structures but also beaches and dunes. Maloney and O'Donnell, Drawing the Line at the Oceanfront, 30 Fla. L. Rev. 383, 389 (1978).

Various local communities, like Indialantic, have adopted similar set back ordinances to protect the dunes, bluffs and natural vegetation of their beaches, and Chapter 161, Florida Statutes (1979), the "Beach and Shore Preservation Act," has as one of its stated purposes the protection and preservation of the "beach dune system. The "construction line" drawn pursuant to this State law was west or landward of the setback line of the Town as applied to McNulty's land. In any event, the State law contemplated that cities and counties could establish stricter setback lines than those set by the State. Sections 161.052(2)(b), 161.053(4), Fla. Stat. (1979). See § 163.3177(6)(d), (f) and (g), Fla. Stat. (1979).

There can no longer be any question that the "police power" may be exercised to protect

and preserve the environment. Florida's Constitution expressly provides: It shall be the policy of the State to conserve and protect its natural resources and scenic beauty. Adequate provisions shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise. Art. V, § 7, Fla. Const. Other jurisdictions have reached a similar conclusion, without the benefit of an express constitutional provision. The wetlands and coastal areas are places of critical concern because of their important role in protecting the inland regions against flooding and storm danger."

The leading case on regulatory takings for environmental purposes is Graham v Estuary Properties, Inc., 399 So.2d 1374 (Fla. 1981). It states six criteria for considering "[w]hether a regulation is a valid exercise of the police power or a taking", and specifically holds that protection of the environment is a legitimate use of the police power. 399 So.2d at 1380-1381.

Graham has recently been applied in Lee County v Morales, 557 So.2d 652, 655-656 (2 DCA 1990) (rezoning not a taking unless no beneficial and reasonable uses remain); and Namon v DER, 558 So.2d 504 (3 DCA 1990) (no taking where owner was aware of development restrictions [fill permit], even if no construction or economic use can be made of the property; "if you bought a swamp you must have wanted a swamp").

4. **Other Code criteria.** Various codes may also include the following criteria (See, e.g., prior F.S. 163.170(8), repealed 1985):

- a. The granting of the variance will not accord applicant any special privileges;
- b. The variance is the minimum one for the reasonable use of the applicant's land;
- c. The grant of the variance will be harmonious and noninjurious to the surrounding land; and
- d. The variance will not be contrary to the public interest.

Most court cases have focused on the hardship (whether it is the result of unique physical characteristics of the land in question or whether it is really an impermissible self-created hardship). However, all variance standards must be met. The standards themselves must be definite, City of Miami v. Save Brickell Ave., 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., "shall consider criteria" means "must comply with criteria"), id.; Drexel v. City of Miami Beach, 64 So.2d 317 (Fla. 1953).

5. **Police Power Limits.** One case says that under the "arbitrary and unreasonable" test, where there is "no reasonably debatable relation to public health, safety or welfare" the court may be required to compel that a variance be granted. Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981). The case's reasoning, moreover, is at odds with the clear holding of the Supreme Court one year later:

The "fairly debatable" test should be used to review legislative-type zoning enactments, while a variance seeker must demonstrate a "unique hardship" in order to qualify for a variance."

Nance v. Town of Indialantic, 419 So.2d 1041 (Fla. 1982).

Amendments to Regulations that no longer make sense.

If the land development regulation no longer has a valid public purpose, or should be changed, the proper method is to *amend the zoning code or land development regulations* rather than grant numerous variances from the offending provision. Therefore, in some instances amending (or a recommendation to amend) the code may be more appropriate than granting variances each time the issue comes up.

6. Consistency with Comprehensive Plan.

Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." Troup v. Bird, 53 So.2d 717 (Fla. 1951). All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under Florida Statutes 163.3215 (which also establishes procedures to challenge variances on the grounds of consistency with comprehensive plan policies). Machado v. Musgrove, 519 So. 629 (Fla. 3rd DCA 1987). And the remedy awarded by courts if a development order is found to be inconsistent with a comprehensive plan policy can include demolition of offending structures. Pinecrest Lakes v Shidel, 795 So. 2d 191 (Fla. 4th DCA).

C. Use-Variances vs. Non-Use Variances

Some codes distinguish between "use" variances, and "non-use" or "area" variances. A "use" variance would be one where application was made for a non-permitted use, while "non-use" or "area" variances would apply to a permitted use, but allow laxity of a height, setback, lot size, or other dimensional rule.

Use variances are often expressly disallowed by code.

Use-Variances

The Florida Supreme Court, sitting en-banc, clearly set the limits on use variances in Josephson v. Autrey, 96 So.2d 784 (Fla. 1957). The court held that, while zoning boards could

make adjustments in height, setback, side lot, and other area problems unique to the parcel, use variances would be improper if they created a wholly inconsistent use in the zone:

"To endow such a board with the authority to amend the zoning ordinance in particular instances by authorizing a use of property prohibited by the ordinance itself would be to convey to the appeals board the authority to enact legislation, nullify the decision of the municipal legislative body, and in effect destroy the beneficial results to be obtained by comprehensive zoning. When circumscribed by reasonable bounds the appeals board serves a valid and useful purpose. If granted unrestricted power to amend the zoning ordinance by changing completely the authorized uses of the particular land, the effect would be to transfer the legislative powers of the municipality to this non-legislative administrative agency."

Although the strictness of this position was questioned in Clarke v. Morgan, 327 So.2d 769,772 (Fla. 1975), Josephson still is good law. See Walgreen v. Polk, 524 So.2d 1119 (2 DCA 88).

The cases which have allowed use variances have abided by the Josephson admonition. In addition to other variance criteria applicable to all variances (discussed below), an applicant for a use variance must also show that the proposed use is basically consistent with the neighboring uses in the area. Troup v. Bird, 53 So.2d 717 (Fla. 1951) (a lake in a residential area did not change the residential character of the area); Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (filling station not a consistent use in a motel zone); Metropolitan Dade Co v. Reineng Corp, 399 So.2d 379 (3 DCA 1981) (liquor store would "harmonize" with neighborhood); Monterey Development Co. v. Stuart Marine Center, Inc., 305 So.2d 245 (4 DCA 1974) (dry-dock boat storage consistent with marine area); Dade Co. v. Pepper, 168 So.2d 198 (3 DCA 1964) (junkyard consistent with industrial area).

II - THE ADMINISTRATIVE PROCEEDINGS BEFORE LOCAL GOVERNMENT

Typically, the applicant land owner will fill out a variance application. It will be reviewed by staff, and set for a hearing before whatever body is empowered to grant or deny variances in that jurisdiction, usually a Board of Adjustment.

A. Exhaustion of Administrative Remedies. To challenge a variance, someone with standing needs to appear and object, not only at the hearing on the variance application, but, if the variance is granted and being appealed, they must also object and use every "extra-judicial and administrative remedy which may provide the relief sought", or the later judicial appeal may be dismissed for failure to exhaust administrative remedies. City of Miami v. F.O.P., 378 So.2d 20 (3 DCA 1980).

Even parties with standing will lose their right to appeal if they do not personally appear and object at the administrative hearing. Battaglia Fruit Co. v. City of Maitland, 530 So.2d 940 (5 DCA 1988). A written objection entered into the record should suffice.

The Applicant must also exhaust his administrative remedies by asking for a variance before claiming a taking. Mackay v DER. Under Herrera, this should mean that the owner needs to prove that he has been denied the minimum economically viable use.

. Burden of Proof. The burden to prove the existence of the required hardship and unique conditions is always on the applicant. Gomez v. City of St. Petersburg, 550 So.2d 7 (2 DCA 1989). Therefore, if the owner presents no evidence that the property cannot be used without the variance, there must be a denial. Herrera v. Miami, 600 So.2d 561 (3DCA 1992). The burden is more extensive than for a party seeking a permissible use by special exception. Cf. Gomez with Pollard v. Palm Beach City, 560 So.2d 1358 (4DCA 1990).

III- JUDICIAL REVIEW OF VARIANCE DECISIONS

A. Jurisdiction.

The Circuit Court has jurisdiction to review the action of the Board of Adjustment under the authority of Florida Constitution 1968, Article V, Section 5; Florida Rules of Appellate Procedure 9.030(c)(3) and 9.100; and Florida Rules of Civil Procedure 1.630.

B. Procedure.

A petition is filed under RAP 9.100 and RCP 1.630, within 30 days of the "rendition of the matter sought to be reviewed". "Rendition" is the date of the filing of the order of the zoning board in which it makes its findings, not the date of the hearing. RAP 9.020(g)

1. Petition. The Petition should contain:
 - a. Statement of Jurisdiction
 - b. Statement of Standing
 - c. Statement of facts, all of which must be in the record
 - d. Grounds of Objection
 - e. All authorities and arguments of law

f. Statement of relief sought

g. An appendix containing the record under Rule of Appellate Procedure 9.220 or the Rules of Civil Procedure 1.630 must be attached

2. Appendix. Must include everything from the record on which you will refer or rely. Nothing outside the record presented at the hearing may be included.

A challenger should also provide the Court with copies of all ordinances on which the ruling was based. The Court cannot take judicial notice of ordinances or of amendments which were not brought before the zoning board. Nichols v. FIDC, 315 So.2d 238 (4 DCA 1975). F.S. 90.202(10) allows the court to take judicial notice of ordinances, but they must be published or first presented to the zoning board. Hill v State, 471 So.2d 567 (1 DCA 1985).

3. Filing. The petition and appendix are simply filed with the Court, no hearing or notice is required. Submit along with it a Motion for Summons in Certiorari and Order to Show Cause and proposed order (see sample forms, infra.). If the Court finds you have made a prima facie case, it will issue what RCP 1.630(d) calls "a summons in certiorari", or RAP 9.100 calls an "order to show cause", giving the zoning board a reasonable time to respond. Oral argument may be request under RAP 9.100(d)(3), but it is not required.

Since this is an appeal, and not a new proceeding, there is no discovery. The Court will only review the record created below.

4. Briefs. RAP 9.100 provides for a response by the board, and then a reply by the appellant, with a supplemental index if desired.

C. Standards for Judicial Review.

1. Circuit Court. The circuit court's certiorari review of an administrative action reviews 3 components:

a. Whether procedural due process was followed;

b. Whether the essential requirements of the law have been followed;

c. Whether the decision was supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982) However, the circuit court, like any other appellate court, may not reweigh the evidence or substitute its judgment for the administrative board's. If any competent substantial evidence was presented the decision must stand. Martin v. First Apostolic Church, 321 So.2d 471 (4 DCA 1975) [special exception to build church denied].

2. Court of Appeals. Vaillant holds that when the Court of Appeals reviews the circuit court (RAP 9.030(b)(2)(B)), it only may review the first two criteria. (a and b, above). The Court of Appeals theoretically may not reverse a circuit court on the basis of whether there was or was not competent evidence presented, so long as due process and the essential rules of law are followed. Gomez v. City of St. Petersburg, 550 So.2d 7 (2 DCA 1989).

3. Comprehensive Plan consistency. A challenge to a variance decision based on an alleged inconsistency with a particular comprehensive plan policy must be brought within 30 days pursuant to the statutory procedures set forth in Florida Statutes 163.3215. Comprehensive Plan inconsistency cases are held to different statutory procedures and a strict scrutiny standard.

e. Standing to seek judicial review of a variance in court

A person seeking to challenge a variance needs to show that the variance will have some effect on him different from the effect on the community at large, even if no different than upon others in his neighborhood. Carlos Estates v. Dade Co., 426 So.2d 1167 (3 DCA 1983). This has generally been held to mean landowners in the immediate neighborhood of the project. Hemisphere Equity v. Key Biscayne, 369 So.2d 996 (3 DCA 1979) (objectors have standing if they reside in "proximity" of project); Allapattah Community v. City of Miami, 379 So.2d 387 (3 DCA 1980) ("neighborhood" sufficient), but anyone in the same zoning district would seem to meet the Carlos Estates test.

Carlos Estates describes two subgroups in the Renard v. Dade County, 261 So.2d 832 (Fla. 1972) category 1 "special injury" classification (for standing to challenge violations of an existing zoning ordinance). Objections to variances (and special exceptions) follow the above rule. Objections to code violations by neighbors, however, according to Carlos Estates, requires "an impact unique to [the objector's] property". This distinction does not appear in Renard.

There is no rule that only landowners may object, thus a long term lease might suffice, but economic injury from business competition alone is not sufficient to create standing. Skaggs-Albertson v. Michels Pharmacy, Inc., 332 So.2d 113 (2 DCA 1976). But where the business is strictly regulated, such as with a liquor license, the economic injury does rise to the level of conferring standing. Skaggs-Albertson's v ABC Liquors, 363 So.2d 1082 (Fla. 1978).

The fact that someone is in the area required for notice is not conclusive as to standing. Battaglia Fruit v. Maitland, 530 So.2d 940 (5 DCA 1988).

Note that if you can find any grounds to challenge the variance as "void because not properly enacted", then any affected resident or citizen of the government unit has standing. Renard v. Dade County, 261 So.2d 832 (Fla. 1972); Upper Keys Citizens Coalition v. Wedel, 341 So.2d 1062 (3 DCA 1987); Save Brickell Ave., Inc. v City of Miami, 393 So.2d 1197 (3 DCA 1981).

Standing of Environmental and Citizens Groups.

In general, representative organizations have standing if they meet the criteria laid out in Florida Home Builders v. Dept of Labor, 412 So.2d 351, 353 (Fla. 1982):

- a. a "substantial number of its members, although not necessarily a majority" would have standing in their own right,
- b. the interests it seeks to protect are genuine to the organization's purpose, and
- c. neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.
- d. The organization must have a "special injury" to a special interest that exceeds in degree the general interest in community good shared by the general public (i.e., inquire into what are the organizations special interests and what are the special impacts to those interests).

Upper Keys Citizens Assoc. v. Monroe Co., 467 So.2d 1018 (3 DCA 1985); Chabau v Dade County, 385 So.2d 129 (3 DCA 1980). An organization is often felt to be unable to meet the "special injury" requirement, which must still be followed. U.S. Steel Corp v. Save Sand Key, Inc., 303 So.2d 9 (Fla. 1974). See Friends of the Everglades, 595 So.2d 186; Sailboat Key, 306 So.2d 616; Exchange Investments, 481 So.2d 1223.

Challenges to variances based on an alleged inconsistency with a specific Comprehensive Plan policy in circuit court must demonstrate a basis under the statutory standing requirements of Florida Statutes 163.3215. Putnam County Environmental Council v. Putnam County, 757 So. 2d 590(Fla. 5th DCA 2000).

-----ENDNOTES-----

¹ In 1985, the entire zoning enabling act was repealed (not just variances). Chapter 85-55 Laws of Florida, p. 235 Section 20 acknowledges that the Growth Management Act of 1985 repealed §§163.160 through 163.315, Florida Statutes and replaced it with §§ 163.3161 and 163.3215, Florida Statutes (making comprehensive plan consistency and concurrency requirements more stringent), but did not remove any of the previous zoning enabling authority:

“Section 20. It is the intent of the legislature that the repeal of the sections 163.160 through 163.315, Florida Statutes, by this act shall not be interpreted to limit or restrict the powers of ...county officials, but shall be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land. It is further the intent of the legislature to reconfirm that sections 163.3161 and 163.3215, Florida Statutes, have provided and do provide the necessary statutory direction and basis for municipal and county officials to carry out their comprehensive planning and land development regulation powers duties and responsibilities.”

The basic Florida Law of variances has not changed, as criteria for variances similar to Florida case law requirements has been incorporated into local Codes establishing similar variance criteria to be applied through slightly different procedures (Hearing Examiners v. Boards of Adjustment) for each County. But the ability to review and grant or deny variances, as well as the basic Florida law of variances, remains the same before and after 1985. *See, post-1985 cases cited above.* Since 1985, All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under the Growth Management Act of 1985, Florida Statutes 163.3215.



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January 7, 2022

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Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its Request, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its Request to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's Request, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures one the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its Request, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrara v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**"(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. **A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "**Nance possessed a viable dual three story plan that, with the exception of the parking deficiency, met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that a '**hardship**' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, '**the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.**'" *Id.* at 854-55. (Emphasis added and citations omitted).

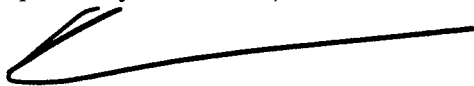
In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the Request of the Applicant for the variance sought.

Respectfully submitted,



M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

APPRAISAL OF REAL PROPERTY

**Valuation & Cost Studies on a
Multifamily Residential Site
Located at 1174-1185 Hillsboro Mile in
Hillsboro Beach, Broward County, Florida**

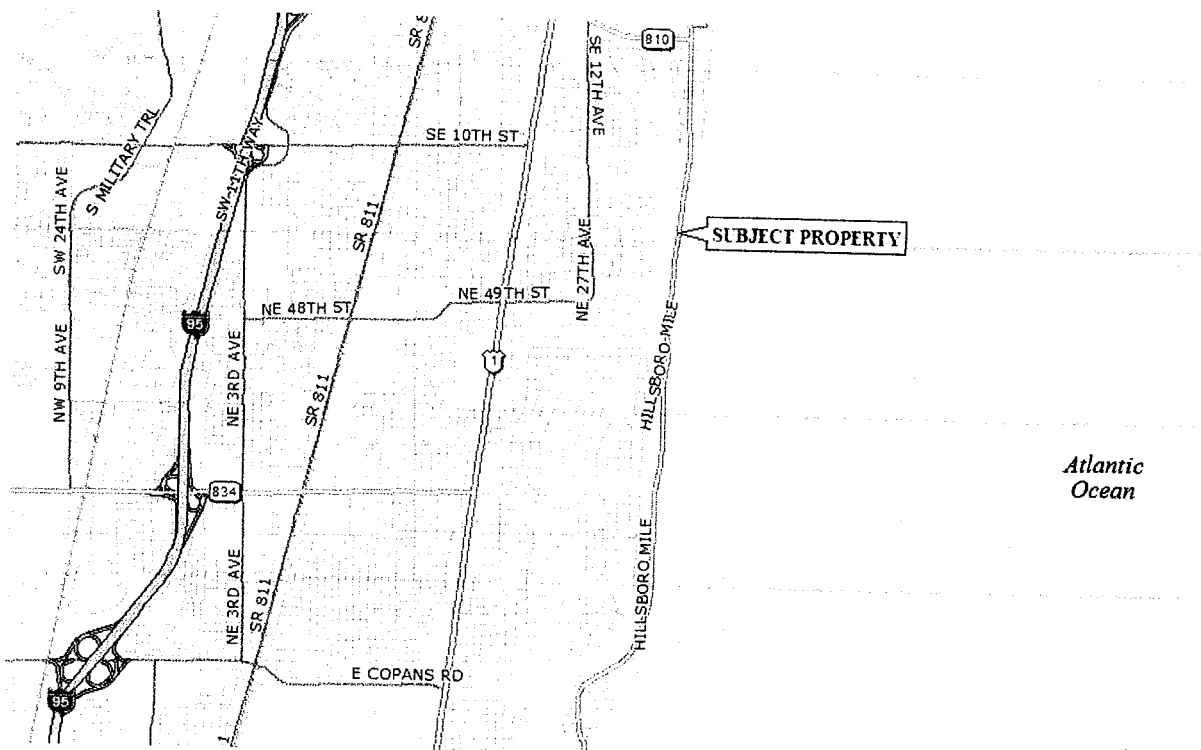
Report 202121

PREPARED FOR

**Mr. Mac Serda, ICMA-CM
Town Manager
The Town of Hillsboro Beach, Florida
1210 Hillsboro Mile
Hillsboro Beach, FL 33062**

PREPARED BY

**Atlantic Blue Consulting, Inc.
2000 North Bayshore Dr. #1103
Miami, Florida 33137
Phone: (305) 776-6131**



The subject is located in the Town of Hillsboro Beach in northern Broward County. Hillsboro Beach is solely located on the barrier island between the Atlantic Ocean and the Intracoastal Waterway north of the Hillsboro Inlet waterway across from beachfront areas of Pompano Beach to the south, and south of beachfront areas of Deerfield Beach to the north. It has a population of approximately 2,000 with a single roadway, Hillsboro Mile/State Road A1A (SR A1A) running along the spine of this narrow stretch of barrier island. State Road A1A runs through beachfront communities in Broward, Miami-Dade and Palm Beach Counties, and it connects to East Hillsboro Boulevard in Deerfield Beach to the north and East Atlantic Avenue to the south in Pompano Beach. Both East Hillsboro Boulevard and East Atlantic Avenue cross the Intracoastal Waterway for connections to U.S. Highway 1 and Interstate 95 to the west on mainland areas of Broward County.

Most land uses in Hillsboro Beach are single- and multifamily residential, with a few resort (small hotel and private club) and recreational uses also included. Through its zoning restrictions, the Town of Hillsboro Beach has sought to limit building heights in order to avoid the development of high-rise “condo canyons” of buildings found along the oceanfront in

Pompano Beach, Fort Lauderdale, and areas of Miami-Dade County to the south. The highest multifamily residential development density allowed in Hillsboro Beach is 32 units per acre. Development in Hillsboro Beach primarily occurred from the 1940s through the early 1970s, but with some infill and redevelopment activity occurring since 2000. Single-family homes in this market may carry price tags with eight figures, particularly for newer mansions that have replaced some of the older single-family homes that were originally built in this market. The estimated median household income in Hillsboro Beach in 2019 was \$75,973, or more than \$16,000 greater than the statewide figure. However, the median resident age in Hillsboro Beach was 67.4 years or 25 years greater than the statewide median, indicating a large number of retired residents and/or senior citizens.

There are no supporting commercial/retail uses in Hillsboro Beach, but such uses can be found along East Hillsboro Boulevard in Deerfield Beach to the north and areas along East Atlantic Avenue in Pompano Beach to the south.

In conclusion, Hillsboro Beach is an affluent residential oceanfront community on the barrier island of northern Broward County. Although it has been primarily built out since the 1970s, new infill and redevelopment activity continues to occur due to its attractive oceanfront location. These are favorable long-term trends for development and investment activity in this market.

SECTION II DESCRIPTIVE DATA

CURRENT PROPERTY DESCRIPTION

The subject property includes vacant two parcels (A and B) of land straddling either site of Hillsboro Mile/State Road A1A (SR A1A) in Hillsboro Beach. Parcel A is located to the west of SR A1A and fronts to the Intracoastal Waterway to the west, while Parcel B is located east of SR A1A and has frontage to the Atlantic Ocean beach to the east. Details of each of these two parcels, and that for the composite subject property, are presented in the tables below:

Parcel A

Physical Characteristics - Western Intracoastal Frontage Parcel (A)	
Gross Site Area - Sq.Ft.	234,316
Gross Site Area - Acres	5.379
Net/Upland Site Area - Sq.Ft.	222,214
Net/Upland Site Area - Acres	5.101
Primary Street Frontage	State Road A1A/Hillsboro Mile
Water Frontage	Intracoastal Waterway
Adjacent Land Uses - North	Low-rise residential condominiums
Adjacent Land Uses - South	Low-rise residential condominiums
Adjacent Land Uses - East	State Road A1A/Hillsboro Mile
Adjacent Land Uses - West	Intracoastal Waterway
<i>Source: Site inspection, survey</i>	

Parcel B

Physical Characteristics - Eastern Oceanfront Parcel (B)	
Gross Site Area - Sq.Ft.	278,316
Gross Site Area - Acres	6.389
Net/Upland Site Area - Sq.Ft.	266,214
Net/Upland Site Area - Acres	6.111
Primary Street Frontage	State Road A1A/Hillsboro Mile
Water Frontage	Atlantic Ocean
Adjacent Land Uses - North	Low-rise residential condominiums
Adjacent Land Uses - South	Low-rise residential condominiums
Adjacent Land Uses - East	Atlantic Ocean beach
Adjacent Land Uses - West	State Road A1A/Hillsboro Mile
<i>Source: Site inspection, survey</i>	

Composite Subject Property

Physical Characteristics - Composite Subject Site	
Gross Site Area - Sq.Ft.	512,632
Gross Site Area - Acres	11.768
Net/Upland Site Area - Sq.Ft.	488,428
Net/Upland Site Area - Acres	11.213
Zoning Classification	RM-16
Zoning Authority	Town of Hillsboro Beach
Adjacent Land Uses - North	Low-rise residential condominiums
Adjacent Land Uses - South	Low-rise residential condominiums
Adjacent Land Uses - East	Atlantic Ocean
Adjacent Land Uses - West	Intracoastal Waterway
Flood Panel Map:	12011C0187H
Panel Map Date:	August 18, 2014
Flood Zone:	AE & VE
Flood Area Description:	Special flood hazard areas, elevation 5 to 12 feet
Utilities	
	Provider
Water/Sewer	Hillsboro Beach Water Dept.
Electricity	Florida Power & Light
Natural Gas	People's Gas
Telecommunications	Private contractor
Trash Removal	Private contractor
Comparative Features	
Topography	At road grade
Vehicular Access	At abutting roadway
Drainage	Appeared adequate
Easements	None noted; see comments below
Encroachments	None noted; see comments below
Deed Restrictions	None noted; see comments below
<i>Source: Site inspection, FEMA, survey, Town of Hillsboro Beach, Broward County</i>	

The survey used in obtaining site sizes and other information on the subject property is from an ALTA land title survey by Schwebke Shiskin & Associates dated July 14, 2021, and is assumed to be accurate. There were no significant easements or encroachments exhibited on the parcels that would substantially limit development of the property. The Coastal Construction Line runs north/south through Parcel B approximately 196 to 210 feet east of the right-of-way for SR A1A. The Easterly Building Line from Map Book 2, Page 46 of the Broward County records, also runs north/south approximately 95 feet east of the Coastal Construction Line (CCL). The CCL is not a building setback line but special permission is required to development seaward of the CCL from the Florida Department of Environmental Protection. In general, development seaward of the CCL may be granted if other nearby buildings also encroach past the CCL (but not in all circumstances).

A 1993 agreement with Broward County created a conservation area on Parcel B nearest the Atlantic Ocean comprising 102,526 square feet of land (subject to increased building height approval). This limits the developable area of Parcel B to 175,790 square feet or 4.04 acres nearest to SR A1A. The boundary of this conservation area appears to include the areas seaward of the Easterly Building Line along with existing dunes situated near the CCL.

The subject property is within "The Enclave at Hillsboro Beach" plat as recorded in Plat Book 154, Page 31 of the Broward County records. A restrictive plat note found on page 2 of this plat states that "This plat is restricted to 6 detached single-family homes on Parcel A, and 6 detached single-family homes on Parcel B". This effectively limits the subject property's development to 12 single-family homes. This deed restriction can be amended by approval of the Broward County Board of County Commissioners. For the purposes of this valuation and cost study, it is also a Hypothetical Condition that this deed restriction has been removed, allowing for the development outlined in each of the two Development Scenarios set for this report.

The survey for Parcel A includes some areas of submerged lands below water adjacent to the Intracoastal Waterway and west of an existing concrete dock/seawall on the property. Most of the upland areas of Parcel A are generally level and at street grade, but with some depressed areas at the northwest end of Parcel A sloping downward toward the Intracoastal Waterway. This survey also indicates a submerged land lease area to the west of the western boundary of Parcel A below the waters of the Intracoastal Waterway. It is unknown whether this submerged land lease is currently active, and its area is not included with the surveyed areas of Parcel A; as such, this submerged land area is not considered a part of the subject property in this appraisal and cost study.

Parcel B has greater undulation to its topography, with a high berm of approximately six feet or more above street grade and lining most of its frontage along SR A1A. There is an opening in the berm near the southern end of the western boundary of Parcel B. East of this berm, the topography of Parcel B falls again to near street grade before rising by as much as approximately six feet again, particularly in the northern areas of Parcel B and forming dunes with vegetation near where the site survey indicates the CCL is located. Beach and dune

erosion is a primary concern when considering buildings to be allowed seaward of the CCL, thus the CCL is more likely forms a barrier to development to the east of that line at the subject property.

No adverse environmental conditions were observed by the appraiser, but an environmental assessment by a qualified engineer is recommended as the appraiser is not qualified to make such assessments on the property.

ZONING ANALYSIS

As noted above, the subject property is zoned RM-16 by the Town of Hillsboro Beach which allows for single- and multifamily residential uses up to a maximum density of 16 dwelling units per acre. General development restrictions under this zoning designation are presented below:

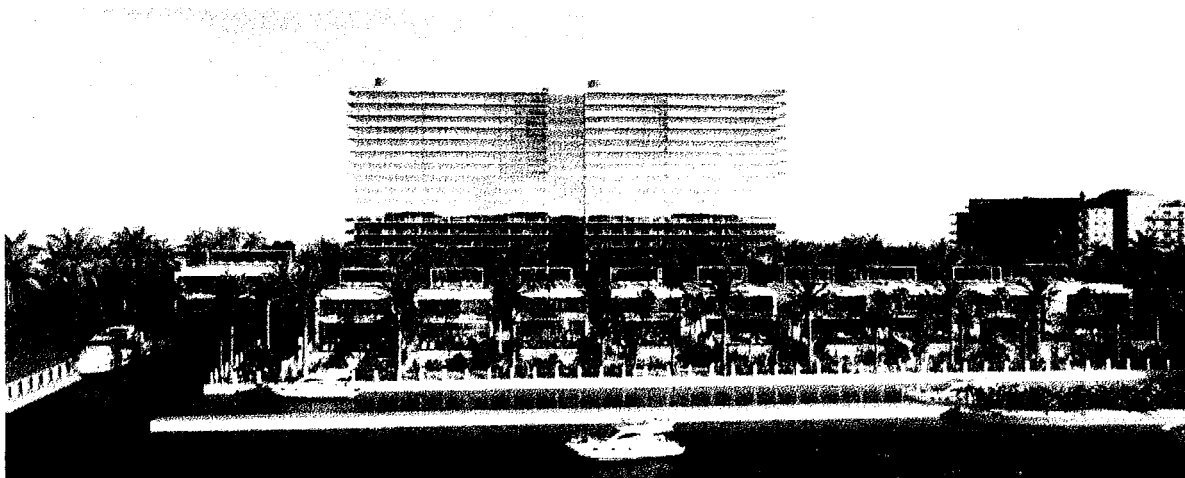
Zoning Designation	RM-16
Allowed Uses	Single- and multifamily residential
Minimum Lot Width	100 feet
Minimum Lot Depth	100 feet
Minimum Lot Size (Sq.Ft.)	25,000
Maximum Building Height	35 feet
Maximum Building Ground Coverage	35%
Maximum Recreational/Green Coverage	15%
Maximum Residential Use Density	16 units/acre
Minimum Plot Area	2,900 sq.ft./unit
Yard Setbacks:	
Front Street	85 feet from center line of SR A1A
Between Buildings	15 feet
Rear	15 feet
Minimum On-Site Parking	1 space/unit
Minimum Multifamily Unit Size (Sq.Ft.)	
1-Bedroom	1,000
2-Bedroom	1,300
3-Bedroom	1,600

PROPOSED PROPERTY DEVELOPMENT DESCRIPTIONS

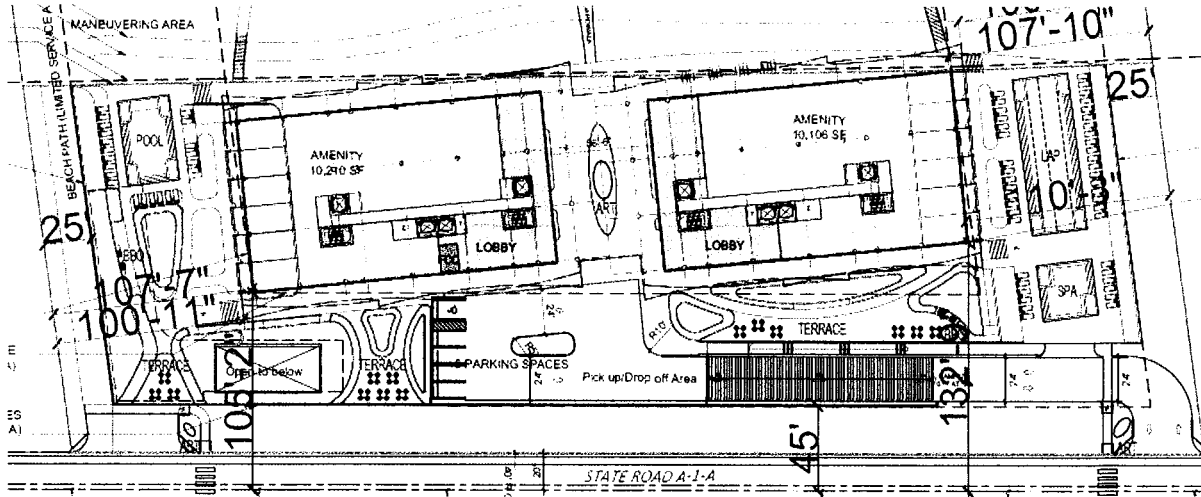
The purpose of this appraisal is to estimate the property's Prospective (Hypothetical) Market Values under two potential Development Scenarios, and to estimate the building and other costs to construct each development. The first is the High-Rise Scenario, in which the

property would be developed according to plans by Arquitectonica (ARQ) dated July 29, 2021; they include a proposed 15-story high-rise residential condominium development located on Parcel B to the east of Hillsboro Mile/State Road A1A (SR A1A) with 112 total residential units, ground floor lobby and amenity spaces, and a subterranean garage, plus nine proposed two-story residential units in detached “villas” each with a two car garage, plus an “amenity” building with 9,294 square feet, located to the west of SR A1A on Parcel B and overlooking the Intracoastal Waterway. The second valuation scenario considers a proposed multifamily residential development consistent with the property’s highest and best use and as of the current valuation date. This development is based on market conditions and the appraiser’s interpretation of the zoning code of the Town of Hillsboro Beach; it would include 188 multifamily residential units in buildings of no more than three stories, consistent with the development allowed under the property’s RM-16 zoning. Details of these two proposed development Scenarios for the subject property are described below.

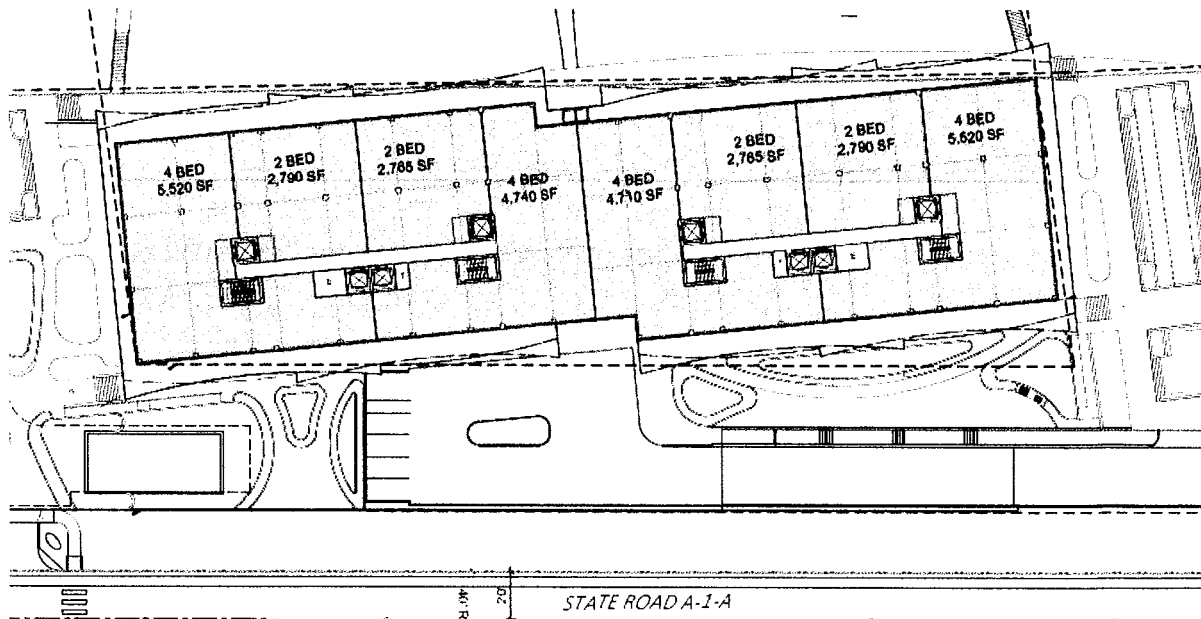
High-Rise Scenario



Under this scenario, the property would be developed according to architectural plans from Arquitectonica (ARQ) dated July 29, 2021, which are presented in the Addenda of this report. This development would include 112 one-level (flat) units in a 15-story tower on Parcel B to the east of SR A1A, above a subterranean garage. Residential units would be located on Floors 2 through 15, with a ground floor lobby and common areas.



Residential units on each floor would include four 2-bedroom units ranging in size from 2,765 to 2,790 square feet, and four 4-bedroom units ranging in size from 4,710 to 5,520 square feet in living area. All of the units on each floor would have east-facing views of the Atlantic Ocean, while the 4-bedroom units would also feature west-facing views of the evening sunsets. The total square footage of interior living space for these 112 residential units would be 442,400 square feet for an average unit size of 3,950 square feet.

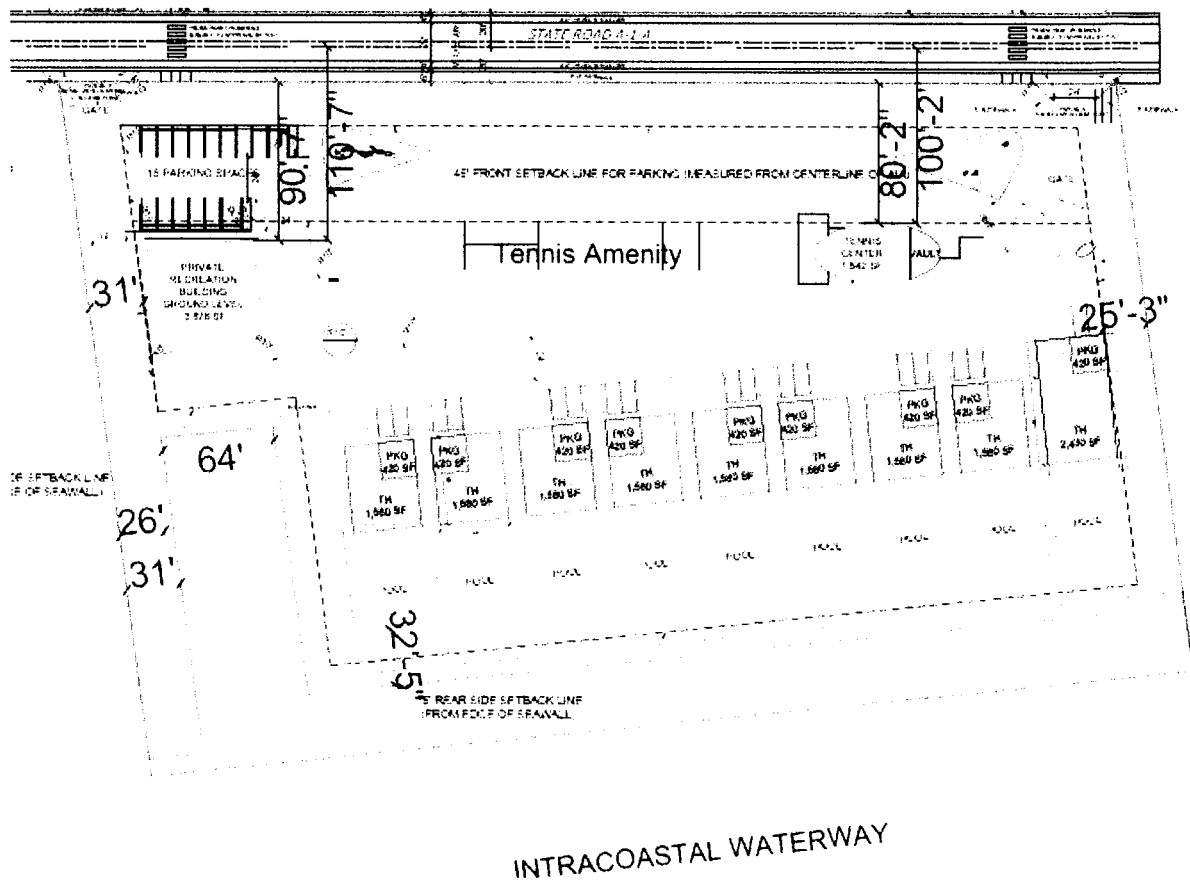


The eight 15th-floor "penthouse" units in the tower will also feature a rooftop pool and pool deck. According to these plans by ARQ, the breakdown of gross building area for this tower would be as follows:

Tower	Gross Sq.Ft.
Residential Floors 2-15	487,718
Lobby Etc.	29,977
Total	517,695
Garage	187,036

The ground floor will feature a front approach driveway with five open parking spaces, an exterior deck with a swimming pool, a lap pool and a spa pool, terraces and a covered central breezeway. The subterranean garage for this tower would have 187,036 square feet of gross building area and contain 232 parking spaces.

Across SR A1A to the west, Parcel A is proposed for development with nine detached two-story "villa" residential units which will feature views overlooking the Intracoastal Waterway. Eight of the villa units will have 3,580 square feet of living space, with the southern-most villa having 5,280 square feet. Each villa unit will also feature a two-car garage with 420 square feet, and its own ground level pool as well as a rooftop deck with pool.



The total living area of the nine villa units will be 33,920 square feet for an average unit size of 3,769 square feet. At the north end of Parcel A will be a common amenity building with a gross building area of 9,284 square feet, accompanied by 15 open parking spaces and a rooftop pool. Parcel A will also have two tennis courts and a tennis pavilion, plus driveway access to the various building improvements. A seawall will be constructed along the site's water frontage to the Intracoastal Waterway.

Details of the common amenity package for these improvements or the unit's interior finish is not provided; however, with its prime Hillsboro Beach location and ocean frontage, the tower units are expected to exhibit ultra-luxury interior finish similar to that for the recently-completed Sabbia Beach development in Pompano Beach, the proposed oceanfront Solemar condominium project (also in Pompano Beach), and the other comparable sale properties cited in the Valuation section of this report. This includes a full and high-end kitchen appliance package, top-grade kitchen cabinetry and countertops, high-quality bathroom fixtures, vanities and tile, and private balconies for each unit. Similar ultra-luxury finish is assumed for the nine villa units along the Intracoastal Waterway, along with interior upper-floor access, ground floor terraces, and balconies. As such, it is an Extraordinary Assumption that the proposed multifamily residential development under this Development Scenarios would have ultra-luxury interior and exterior furnishings commensurate with those at the newest nearby luxury condominium developments in Broward and southern Palm Beach County cited in the Valuation section of this report. However, most new condominium developments in this market feature "developer finish", meaning that only the flooring in the kitchens and baths are installed by the developer; the unit buyer is responsible for selection and installation of flooring in other parts of the unit.

Low-Rise Scenario

There are no development or architectural plans provided under this second Development Scenario. It assumes that the property would be developed according to its highest and best use, as described in the Highest and Best Use section of this report. According to that analysis, 35% of the site's 512,632 square feet can be covered by building improvements,

or 179,421 square feet of the site area. With up to three stories of building area, this allows for a maximum gross building area of 538,263 square feet, as calculated below:

Maximum Building Coverage	35% of Site
Maximum Building Height	3 Stories
Total Site Sq.Ft.	512,632
Maximum Building Coverage	35%
Maximum Ground Floor Building Area (Sq.Ft.)	179,421
Number of Allowable Floors	3
Maximum Building Sq.Ft.	538,263

With 10% to 15% of the gross building area used for common elements, this leaves approximately 475,000 square feet of building area available for units' living space. The balance of gross building area in this scenario would include common amenities for the residents such as a clubroom, fitness center, etc., plus common interior unit access hallways and elevator lobbies, fire staircases, maintenance closets, etc.

The maximum density allowed by zoning is 16 dwelling units per acre, providing for a maximum of 188 dwelling units to the property. With 475,000 square feet of living space for the dwelling units, this equates to an average unit size of 2,527 square feet under this Low-Rise Scenario. Subterranean garages could be built for the units built on Parcels A and B up to two units per acre plus some surface guest parking. The project's exterior amenities would likely include a pool and whirlpool for residents. Other site improvements would be commensurate with those for the High-Rise Scenario including access driveways and the seawall for Parcel A, but the larger number of units under this Low-Rise Scenario spread among low-rise buildings is likely to eliminate the possibility of tennis courts or other exterior amenities in these circumstances.

Under each Development Scenario, the prime location of the property remains the same, thus similar ultra-luxury interior unit finish would also be included with the residential units and common areas under this Low-Rise Scenario. This includes high-grade kitchen appliances, cabinetry and countertops, best-quality bathroom fixtures, vanities and tile, and developer finish, commensurate with the comparable sales cited for the subject in this scenario in the Valuation section of this report.

PROPERTY TAXES AND ASSESSMENTS

The subject property is assessed under the jurisdiction of Broward County, Florida. The assessment for the property is established each year as of January 1st by the County Property Appraiser's Office at 100% of "Just Value". Just Value has been equated to Market Value less closing costs. While the State of Florida requires real estate to be assessed at 100% of Just Value, in reality, the ratio of the assessed value to sales price is generally below 100 %.

The tax due is computed according to annual millage rates established by the various taxing authorities. Taxes are payable in November with a 4% discount and become delinquent on the following April 1st. Millage rates are the amount paid per \$1,000 of assessed value. As of the current valuation date, the 2020 tax year is the most recent year for which finalized assessed valuation and tax information would be available.

The total assessed values and taxes for the appraised property's folios are summarized as follows:

Folio No. 48-43-08-13-	Land Assessment	Assessor's Market Value	Assessed Value	2020 Taxes
0010	\$2,016,250	\$2,016,250	\$2,016,250	\$35,702.35
0012	\$2,077,980	\$2,077,980	\$2,077,980	\$35,795.42
0013	\$2,139,750	\$2,139,750	\$2,139,750	\$37,889.20
0014	\$2,201,480	\$2,201,480	\$2,201,480	\$38,982.28
0015	\$2,263,200	\$2,263,200	\$2,263,200	\$40,075.14
0016	\$2,324,980	\$2,324,980	\$2,324,980	\$41,169.14
0020	\$3,765,750	\$3,765,750	\$3,765,750	\$66,681.28
0021	\$3,726,530	\$3,726,530	\$3,726,530	\$65,986.79
0022	\$3,711,400	\$3,711,400	\$3,711,400	\$65,718.87
0023	\$3,698,390	\$3,698,390	\$3,698,390	\$65,488.51
0024	\$3,692,740	\$3,692,740	\$3,692,740	\$65,388.44
0030	\$3,681,550	\$3,681,550	\$3,681,550	\$65,190.31
Totals	\$35,300,000	\$35,300,000	\$35,300,000	\$624,067.73

HIGHEST AND BEST USE

According to The Dictionary of Real Estate Appraisal, published by the Appraisal Institute, the highest and best use may be defined as:

- 1 That reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of appraisal.
- 2 The reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value.

- 3 The most profitable use. Implied in these definitions is that the determination of highest and best use takes into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. Hence, in certain situations the highest and best use of land may be for parks, green belts, preservation, conservation, wildlife habitats, and the like."

Highest and best use is analyzed under two separate applications or scenarios: (1) highest and best use of the site as though vacant and (2) highest and best use of the property as improved. The highest and best use of the site as though vacant is based on the theory that land will be put to its maximally productive use and this use will determine the highest site value. It is the basis for valuing the site. Highest and best use of the property as improved determines what use or type of occupancy will create the highest value for the entire property, given any existing improvements. It is the basis for comparable selection in both the sales comparison and income capitalization approaches to value. As the property is currently unimproved, this analysis only considers the property's highest and best use as vacant.

The appraiser has evaluated the property's highest and best use. Highest and best use must meet four criteria. The use must be (1) legally permissible, (2) physically possible, (3) financially feasible, and (4) maximally productive.

Legally Permissible

The subject property is zoned RM-16 which allows for single- or multifamily residential development of up to 16 units per acre in buildings of no more than three stories. Given the site's size, this allows for a maximum development of 188 residential units at the property. However, the property is within the "The Enclave at Hillsboro Beach" plat as recorded in Plat Book 154, Page 31 of the Broward County records. A restrictive plat note found on page 2 of this plat limits development of the appraised subject to 12 single-family homes. This restriction can be amended by approval of the Broward County Board of County Commissioners. For the purposes of this value and cost study, it is a Hypothetical Condition that this deed restriction has been removed, allowing for development according to zoning (up to 16 units per acre or up to a maximum of 188 residential units).

Other zoning restrictions include a maximum building area coverage of 35% of the site. With a total site size of 512,632 square feet, building improvements can cover a maximum of 179,421 square feet of the subject's site area.

Physically Possible

The subject's two parcels have a width and depth to provide for reasonable development according to zoning. The Coastal Construction Line runs north/south through Parcel B approximately 196 to 210 feet east of the right-of-way for SR A1A. The Easterly Building Line from Map Book 2, Page 46 of the Broward County records also runs north/south approximately 95 feet east of the Coastal Construction Line (CCL). Although not a setback line, special permission is required from the Florida Department of Environmental Protection to development seaward of the CCL. In general, development seaward of the CCL may be granted if other nearby buildings also encroach past the CCL (but not in all circumstances).

A 1993 agreement with Broward County created a conservation area on Parcel B nearest the Atlantic Ocean comprising 102,526 square feet of land (subject to increased building height approval). This limits the developable area of Parcel B to 175,790 square feet or 4.04 acres nearest to SR A1A.

Otherwise, no easements or encroachments are apparent that would significantly limit development, and all primary utility connections appear to be available. Parcel A is generally level and at street grade, but a survey of this site indicates an area at the northwest end of this parcel that slopes downward toward the shoreline of the Intracoastal Waterway. Parcel B features dunes with vegetation running generally along the CCL, and a raised berm along its frontage to SR A1A with a "valley" running in between. Conservation and concerns regarding beach and dune erosion affecting development at the CCL, and the presence of a conservation area nearest the Atlantic Ocean shoreline, may provide for some limitations of development of Parcel B in areas of this parcel that are seaward of the CCL.

Financially Feasible & Maximally Productive

Up to 188 multifamily residential units are possible at the subject, in three-story buildings. Among the possible uses are luxury rental apartments or for-sale condominiums. Luxury rental projects have not been development in oceanfront locations in South Florida

(including Broward, Miami-Dade and Palm Beach Counties) since the 1990s. The amount of rent that can be charged for the best-quality luxury rental projects in South Florida typically provides for a value result of no more than \$500,000 per unit for luxury multifamily rental apartment development. In the Valuation section of this report, it is noted that the retail sale price of the subject's units under the Low-Rise Scenario is \$1,731,936 per unit (upon completion), with a net present value for these units of \$1,468,723 per unit. This indicates that the property's value is maximized when the property is developed with luxury for-sale condominiums.

From this analysis, the highest and best use of the subject property is for development of 188 multifamily residential units in three-story buildings, with the units to be sold to individual condo unit buyers. This is synonymous to the Low-Rise Scenario of development for the subject property outlined in this report. Although the number of units planned in the alternative High-Rise Scenario of development conforms to the maximum density allowed under the property's zoning, it will feature a 15-story tower; this exceeds the maximum building height currently allowed by zoning, thus development under the High-Rise Scenario would require a zoning change or variance in order to proceed. Thus, it is a Hypothetical Condition that this high-rise development can be allowed at the subject property under this High-Rise Scenario.

Sherry D. Henderson

From: Michael Hellfritz <cm.hellfritz@aliseo.de>
Sent: Tuesday, December 14, 2021 3:06 AM
To: 'townclerk@townofhillsborobeach.com'
Subject: 1174-1185 Hillsboro Mile Variance

Dear Sirs

I am writing as a Hillsboro Beach property owner to object to the granting of a variance for the property at 1174-1185 Hillsboro Beach.

In this case, property owners were aware, or should have been aware, of the zoning restrictions and the conservation easement on the subject property at the time of purchase in December 2020.

Developers have no legal grounds for claiming a hardship, other than maximizing the economic return on the property.

The so called "hardship" claimed by the developers is clearly "self-created" and contrary to settled Florida law.

Granting the variance will also change the nature and character of the community, and is also a violation of Florida Law.

For all of the reasons listed below, the Town of Hillsboro Beach may not lawfully grant the variance request.

Criteria for Granting Variances - Generally

Both before and after 1985, the courts have followed long-established Florida law that a variance cannot be granted for self-created actions – and this requirement is codified in most city and county codes in Florida. Even after 1985, the courts have been very strict in their review of the hardship required to obtain a variance.

Generally, a variance is authorized if due to circumstances unique to the applicant's property itself and not shared by other property in the area, there exists an undue and unnecessary hardship created by the zoning regulations

1. The hardship cannot have been self-created.

The hardship criteria found in variance provisions has a long line of cases and has been strictly construed by the courts. *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957).

The criteria has been interpreted to mean three things:

a. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Nance, supra*; *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967). If, however, the only allowable uses are economically impossible, then a variance would be allowed. *Nance II*.

b. Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

c. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

The requirement that a variance hardship cannot be self-created is required by most codes and Florida case law. In *Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superceded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. DCA 1993).

Case law, as well as the Land Development Regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations. The days of the "weeping variance" have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (5 DCA 1981), *affd.* 419 So.2d 1041; appealed again at 485 So.2d 1318 (5 DCA 1986), *rev. den.* 494 So.2d 1152.

Post 1985, the First District Court of Appeals in *City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Town of Indiatlantic v. Nance*, 485 So.2d 1318 (Fla. 5th DCA 1986), and *Town of Indiatlantic v. Nance* ("Nance I"), 400 So.2d 2137 (Fla. 5th DCA 1981); *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrara v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). In *Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

Pre 1985 cases had similar holdings and include *Blount v. City of Coral Gables*, 312 So. 2d 208 (Fla. 3rd DCA 1975) ("Nor are the Blounts entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance.")(citing other Florida cases on this issue); *Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959); *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959). *Namon v. DER* 558 So. 2d 504 (Fla 3rd DCA 1990) and the cases cited therein address cases where property is purchased AFTER adoption of prohibitory regulations. The court in *Namon* recognized such pre-existing notice as applied to takings analysis in Florida cases, as follows:

"Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. See *Graham v. Estuary Properties, Inc.*, 399 So.2d 1374, 1382, 1383 (Fla.), *cert. denied sub nom.* *Taylor v. Graham*, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981)

'...[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which [injures] the rights of others." *Namon* at 505, (original citation omitted) see also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005, 104 S. Ct. 2862, 2874, 81 L.E.2d 815, 834 (1984).

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need'; *Namon* citing *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984)

"A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights"; cf. *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA) "One who purchases property

while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.", cert. denied, 116 849 (Fla. 1959).

Case law also indicates that a mere economic "disadvantage" or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967).

Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

If the owner participated in an affirmative act which created the hardship (such as by purchasing a substandard size lot), then the hardship should be ruled self-created. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

2. Consistency with neighborhood and scheme of regulations.

Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." *Troup v. Bird*, 53 So.2d 717 (Fla. 1951).

"A variance should not be granted where
the use to be authorized thereby will
alter the essential character of the
locality, or interfere with the zoning
plan for the area and with rights of
owners of other property."

Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3rd DCA 1959).

It is the land, and not the nature of the project, which must be unique and create a hardship. *Nance, supra*; *Ft. Lauderdale v. Nash*, 425 So.2d 578 (4 DCA 1982) (many other common violations in the neighborhood do not constitute a hardship); *City of Miami v. Franklin Leslie*, 179 So.2d 622 (3 DCA 1965).

3. Other Code criteria. Various codes may also include the following criteria (See, e.g., prior F.S. 163.170(8), repealed 1985):

- a. The granting of the variance will not accord applicant any special privileges;
- b. The variance is the minimum one for the reasonable use of the applicant's land;
- c. The grant of the variance will be harmonious and noninjurious to the surrounding land; and
- d. The variance will not be contrary to the public interest.

Most court cases have focused on the hardship (whether it is the result of unique physical characteristics of the land in question or whether it is really an impermissible self-created hardship). However, all variance standards must be met. The standards themselves must be definite, *City of Miami v. Save Brickell Ave.*, 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., "shall consider criteria" means "must comply with criteria"), *id.*; *Drexel v. City of Miami Beach*, 64 So.2d 317 (Fla. 1953).

Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under Florida Statutes 163.3215 (which also establishes procedures to challenge variances on the grounds of consistency with comprehensive plan policies). *Machado v. Musgrove*, 519 So. 629 (Fla. 3rd DCA 1987). And the remedy awarded by courts if a development order is found to be inconsistent with a comprehensive plan policy can include demolition of offending structures. *Pinecrest Lakes v Shidel*, 795 So. 2d 191 (Fla. 4th DCA).

. Burden of Proof. The burden to prove the existence of the required hardship and unique conditions is always on the applicant. *Gomez v. City of St. Petersburg*, 550 So.2d 7 (2 DCA 1989). Therefore, if the owner presents no evidence that the property cannot be used without the variance, there must be a denial. *Herrera v. Miami*, 600 So.2d 561 (3DCA 1992).

As per the above, I respectfully request that the Hillsboro Beach Board of Zoning and Appeals follow settled Florida law and deny the request for variance.

Sincerely,

Michael Hellfritz
Owner 1194 Hillsboromile unit 9
Hillsboro Beach, FL 33062

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Wednesday, December 15, 2021 4:32 PM
To: Barbara Baldassarre; Deb Tarrant; Irene Kirdahy; Jane Reiser; Vicky Feaman
Cc: Sherry D. Henderson
Subject: FW: Vacant Property at 1174-1185 Hillsboro Mile

Please see attached, sent on behalf of the Mayor.

Mac

From: Deb Tarrant <dtarrant@townofhillsborobeach.com>
Sent: Monday, December 13, 2021 11:19 AM
To: Tim Donoho <timdonoho@gmail.com>
Cc: Mac Serda, Town Manager <mserda@townofhillsborobeach.com>
Subject: Re: Vacant Property at 1174-1185 Hillsboro Mile

Thanks for your thoughts, Tim. I have copied Town Manager Serda here and have asked him to share your comments with the rest of the Commission.

Wishing you and Debra a Merry Christmas!

Deb

Deb Tarrant, Mayor
Town of Hillsboro Beach



From: Tim Donoho <timdonoho@gmail.com>
Date: Monday, December 13, 2021 at 10:55 AM
To: Deborah Tarrant <dtarrant@townofhillsborobeach.com>
Subject: Re: Vacant Property at 1174-1185 Hillsboro Mile

Deb,

Thanks for a very clear, lucid and concise explanation of this major potential project in our town.

It would be an incredible benefit to the entire town to have underground utilities as I have been saying for 25 years. My daughter sells high end R/E exclusively on Palm Beach Island. Their property values are approx. 4 times ours and Manalapan is twice. Yet we have better exposure to the Ocean and the Intracoastal. While PBI is not a direct comparable for numerous reasons, Manalapan is. And yet, Manalapan has old A1A running along the water line in the ocean continuing to break up and much smaller square footage on their Intracoastal side! Underground utilities would start to ameliorate that Delta.

Second, as a homeowner who has paid for more than one beach (that never included my property) renourishment, I would be more than pleased to not have to repeat that cost.

These two enormous benefits to us as a city collectively will, in fairness, require some give on the part of the city commission. Without giving specifics, as I am unqualified to do so, I encourage you and your fellow commission members to do that which is necessary to accomplish those 2 goals.

Thank you for your service,

Tim

Everyone's life is about "something"
if yours is about nothing
then "nothing" will be the "something"
that you will be remembered for!
(Tim Donoho 2006)

Zoning Appeals Meeting, December 7, 2021 & Florida's Sunshine Law

On Tuesday, December 7, Hillsboro Beach Commissioners, serving as the Board of Zoning Appeals, reviewed a variance request from Dezer Developers/The Related Group, owners of the vacant property at 1174-1185 Hillsboro Mile, a 600' 11.7-acre parcel. The meeting was held to a full house with Town Hall at physical capacity and 116 participants via Zoom. As many residents know, the variance was requesting a 15-story structure on the east side of A1A. Following a presentation by the developer and numerous public comments, the Board quickly made it clear there was consensus that 15 stories would not blend well with the fabric of our community.

Until the December 7th public meeting, Commissioners could not share thoughts about the proposed project with one another, nor could we share opinions even with individual constituents as to how we would vote. Florida's Sunshine Law says no two members of a governing body at the municipal level can meet or talk about a subject that will ultimately require a vote unless it's at a public meeting that's been noticed and for which minutes will be taken. With a quasi-judicial hearing such as a variance request, the gag order goes even further. As a result, the December 7th meeting was the first time Commissioners were able to discuss the proposed project with one another, as well as with members of the public. Following consensus that the requested height variance would not be granted, other elements of the proposed project were evaluated.

Elements of the Project Besides Height

With 600' of frontage on both sides of the road, this property presents a problem for the Town's Code, which was written primarily for parcels with 100' and 200' of frontage. As a result, the Code falls far short in delivering a desirable final product on a parcel this size. The Code permits the developer to build 188 units in two buildings running 565' in length (one on each side of the road) and three stories in height with only 17.5 feet side setbacks and minimal front setbacks from A1A. This would create a "concrete canyon" 565' long. In order to avoid this, the developer proposed reducing the number of units to 121 and positioning the construction on the west side 100' further back from the road than what is required by our Code. The proposal also included side setbacks of 107' instead of 17.5' for the main building on the east side, with a ground floor parking structure 25' from the property line. Basically, the developer proposed a taller building on the east side in order to avoid a concrete canyon and to increase the setbacks, improving the overall open air space of the project. While the Board appreciated the improvements to the elements of density, side and front setbacks, and massing, it was still agreed that 15 stories on the east side is simply too much.

Basis for a Height Variance Request

In order to be granted a variance to deviate from our Code, there must be a "hardship" that is not self-imposed. Many people are not aware that this property has a mandated conservation area running the

entire length of the property covering two acres. Not only does the conservation area take away buildable land, it also completely blocks the view from the first floor of any structure on the east side. To complicate matters, this conservation area was mandated decades ago by Broward County. The developers were aware of this hardship when they bought the property and knew a variance would be necessary, however, they also knew that much like a pie-shaped lot at the end of a cul-de-sac, the features of the land itself would be considered a hardship. This hardship has been validated by both the Town's Zoning Consultant and the Town Attorney.

If the Code Did Not Anticipate this Situation, What's the Best Alternative for the Town?

Contrary to popular myth, Hillsboro Beach is not strictly a low-rise community. Currently the Town's top twelve mid-rise buildings include:

Building Name – Number of Floors

1. Landmark – 15
2. Hillsboro Island House – 11*
3. Opal Towers 1 – 10*
4. Opal Towers 2 – 10*
5. Opal Towers West – 10*
6. Le Baron – 10
7. Le Baron West – 10
8. Ocean Hillsboro – 9
9. Ocean Grande – 9
10. Diamondhead – 9
11. Kingsley Arms – 8
12. Hillsboro Windsor – 8*

*Buildings in the north mile of Town

Height, which is only one element of any project, does not exist in a vacuum. In denying the developer a variance to build 15 stories, it was agreed the goal would be to bring the height down while still maintaining some of the benefits offered by the developer in their 15-story scenario in terms of density, setbacks, etc., understanding that in lowering the height on the east side, other elements would be impacted.

After hearing from the public as well as the Zoning Appeals Board, the developer offered to consider 12 stories on the east side. The Board responded that 12 stories was still too high based on the existing mix of mid-rise buildings. Currently, the twelve tallest buildings in Town include five in the north mile near the 1174-1185 property, with an 11-story building less than 1000' away, three 10-story buildings, and an 8-story building one parcel over from the vacant lot. The Board requested to see what the impact would be on the positive aspects of the proposal by dropping the height to fit into this mix. The developer agreed to

bring a new proposal to the January 11, 2022, Zoning Appeals Meeting after reviewing the impact on other elements of lowering the height on the east side.

Additional Considerations

If an agreement that provides the right balance can be reached, there are three important benefits this project could bring to the Town:

1. The developer offered to grant the Town a 25' beach access easement as part of their original proposal. As a result of our agreement to cooperate with Deerfield Beach for beach nourishments for the next 30 years, this is not such a big deal right now, but for future generations, that 25' easement could be extremely important. If the developer builds to our Code, the Town loses this beach access point because side setbacks become 17.5'
2. Most of our residents are not aware that for the past several years, Hillsboro Beach has ranked at the bottom of the pile in terms of appreciation compared to the rest of Broward County. As part of the package that accompanied the original proposal, the developer offered to participate in the cost of burying utility lines for the entire Town. Buried utilities would have a tremendous, positive impact for every taxpayer and every property in Town. It would not only make our entire island safer, it would improve aesthetics dramatically and give the Town a much-needed facelift. It remains to be seen what a reduction in height would mean for a contribution to bury utilities.
3. If we reach an agreement on a project, Hillsboro Beach residents would not be assessed for beach nourishments for decades to come, possibly never again. Tax revenue from this project would more than cover the funds needed for our beach. Some people argue that *any* development on the property will generate tax revenue to cover beach expenses. This would be true, however, *for 60 years, the Town has not been able to accomplish this* – one of the reasons is that, as written, our Code creates an undesirable end-product for a parcel this size. As a result, limited tax revenue comes from this property, and current residents pick up the slack. Until a project is built on this significant parcel, that will continue to be the case as operating costs continue to rise.

Setting a Precedent for “High-rise Hell”

A concern shared by residents and Commissioners alike is that any action taken on the 1174-1185 parcel could open the door to “high-rise hell” in our quiet little Town. The best way to prevent that is to be sure there is never again another oversized parcel like 1174-1185. To that end, I have asked our Zoning Consultant and Town Attorney to re-evaluate the Land Development portion of the Town's Code to restrict future assemblage of adjacent parcels (to 200'? 300'?) and to include requirements beyond just a 17.5' side setback even for three-story projects. For the few existing parcels measuring 400', additional requirements on three-story projects would address the potential “concrete canyon” effect.

The Related Group

To avoid putting the Town at risk of being caught in a fly-by-night situation, a project of this magnitude requires an extremely financially-stable developer. The Related Group knows what they're doing, and they do it well. If the bottom falls out of this crazy market, they're not going to leave a half-finished construction project in the middle of Town. They take pride in working with the communities they choose to build in. They've been very transparent with residents, encouraging attendance at group meetings, both in-person and Zoom, as well as offering to meet with any resident who would like a one-on-one conversation. The key to having these meetings be productive is to understand the variables and parameters involved in order to come up with an end product that benefits the Town and one the Town can be proud of.

Next Steps

The developer is revising their proposal in order to resubmit plans for the January 11, 2022, Zoning Appeals Board Meeting. In the meantime, the limitations for Commissioners to discuss the project are back in place. Should the developer be given approval to move forward at the January 11 meeting, they would start the process of applying for the numerous permits needed to start construction. It's difficult to predict how long this phase of a project takes, but the developer has said if/when the permit process has been completed, actual construction would take 24 months. The Related Group is one of the few developers capable of actually meeting that kind of construction schedule for a project of this magnitude.

Opportunity

There is consensus among the Commission that by working with a world-renown architect and a developer the caliber of the Related Group, the Town has an opportunity to see this legacy property finally become something of tremendous benefit to the Town. To quote one of our residents, "With this project, the developer is preserving the dunes, protecting the wildlife, and adding beautiful landscaping along A1A, something we sorely need. Most importantly, this project would provide a significant increase to the Town's property tax to maintain our community and beautiful beaches." In addition, the developer is proposing lower density than our Code allows, which would mean less additional traffic than is permitted.

Having said all this, by no means is approval for this project a done deal. The variables have to balance and the stars have to align, but at least there is a general direction for moving forward. I want to thank the many residents who reached out with their thoughts and concerns, and I encourage folks to stay informed and involved. All documents relating to the project are available on the Town's website, www.townofhillsborobeach.com. Thank you for caring about our wonderful Town!

Sincerely,



Deb Tarrant
Mayor, Hillsboro Beach

Note: If you would like to be removed from my email list, please don't hesitate to let me know. By the same token, if you know of others who may like to receive periodic updates on Town business, feel free to forward this message to them so they can contact me directly to be added to my list.

My mailing address is:
Deb Tarrant, Mayor
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

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Sherry D. Henderson

From: Frank J. Kolb, Jr. <fjk@ehlaw.com> on behalf of Frank J. Kolb, Jr.
Sent: Tuesday, January 4, 2022 10:32 AM
To: Deb Tarrant; Vice Mayor Irene Kirdahy;; Commissioner Barbara Baldassarre;; Commissioner Jane Reiser;; Commissioner Vicky Feaman;
Cc: Sherry D. Henderson; Frank J. Kolb, Jr.
Subject: Board Of Zoning Appeals Meeting January 11, 2022 Re: 1174-1185 Hillsboro Mile

THIS IS NOT A FORM LETTER AND I WISH IT TO BE MADE A PART OF THE RECORD AND DISTRIBUTED TO ALL BOARD MEMBERS

I found a very interesting article concerning Hardship when dealing with zoning variances. I ask you to take a moment to read and digest the entire article with particular attention to the highlighted areas below. Of particular note is that the granting of a hardship should not be based upon financial considerations and the hardship must be unusual and different in kind from that affecting other parcels in the zoning district. In other words, it is unique to the subject parcel and not generally present in the overall district. The building and setback regulations apply to ALL properties in the Town which are waterfront not just the subject property and thus a hardship variance must be denied.

THE TEST OF A REAL (ZONING) HARDSHIP

You can feel confident that a hardship is in the realm of the real (in a "sacred" way) if you can affirm all the relevant bullet points that follow:

- The hardship is born out of a quality or condition that is inherent in the physicality of the land parcel (topography, lot shape, etc.).
- The hardship is imposed only by conditions that are outside the property owner's control.
- While the granting of a variance may improve personal circumstances ultimately, the hardship itself is not generated by any personal circumstance.
- The hardship is unusual and different in kind from that affecting other parcels in the same zoning district. In other words, it is unique to the subject parcel and not generally present in the overall district.
- The hardship is not based on financial considerations of the property owner. If a financial consideration is present, it is because the hardship is depriving the owner of the land's value in an egregious way, either completely or almost completely.
- The hardship is not "manufactured" (an example would be something like subdividing a parcel and then seeking variances for the resulting parcels, asserting the act of subdivision as the basis of the hardship).

If you are researching the definition of hardship, then you were probably already aware that to succeed in your quest for a zoning variance, your ask must be born from a valid hardship. A valid hardship is not so easy to come by, as discussed above. Many variances are granted every day, and many of those granted succeed without any finding of hardship. So you may wonder, "Why all the fuss with hardship?"

Because results will vary. Because every ZBA is different (and each one changes periodically). Because while it's meant to be an objective process, politics sometimes enters. Because past successes are not a guarantee of future results. I invite you to subscribe to the view that any endeavor worth doing, like seeking a variance, is worth doing to the best of one's forthright ability. A studied and thoughtful approach will lead in the direction of success (or in the least it will preclude an easy defeat), while a willy-nilly throw-it-against-the-wall approach will narrow one's opportunities for success, comparatively.

Proceed with a thinly crafted hardship at your own peril!

Are there elements to a valid hardship that are not captured here? Please leave a comment sharing what you know! Stories of zoning hardships that either floated or sank are also encouraged! Thanks for reading this and for contributing with comments! Please consider subscribing to this blog for notification of future articles related to the process and activities of ***Building On Land***.

The above appeared on page 8 of the following: <https://buildingonland.com/you-may-know-hardship-but-what-exactly-is-a-zoning-hardship/#:~:text=A%20hardship%20is%20an%20unusual,parcels%20in%20your%20zoning%20district>.

I urge you to read the entire article.

Thank you for your time

Frank J. Kolb, Jr., Esq.
Kolb & Associates, P.C.
1173 Hillsboro Mile 1-1
Hillsboro Beach, Florida 33062
203 469 4475

Confidentiality

This communication is covered by the Electronic Communications Privacy Act, 18 USC Section #2510-2521. It is legally privileged (including attachments) and is intended only for the use of the individual(s) or entity(ies) to which it is addressed. It may contain information that is confidential, proprietary, privileged, and/or exempt from disclosure under applicable law. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify the sender so that appropriate action may be taken and avoid troubling you further. If you are not the intended recipient(s)

please destroy this message, and any attachments, and notify the sender by return e-mail. Thank you.

Sherry D. Henderson

From: JOSE GOMEZ <joeandbarb@att.net> on behalf of JOSE GOMEZ
Sent: Tuesday, January 4, 2022 2:55 PM
To: shenderson@townofhillsborobeach.com
Subject: Fw: Commission Meeting on January 11th

----- Forwarded Message -----

From: Jane Reiser <jreiser@townofhillsborobeach.com>
To: JOSE GOMEZ <joeandbarb@att.net>
Sent: Tuesday, January 4, 2022, 02:46:27 PM EST
Subject: Re: Commission Meeting on January 11th

Dear Joe,

Thank you for your comments.

Kindly forward your email directly to Sherry Henderson, our Town Clerk (shenderson@townofhillsborobeach.com). Your comments can also be hand-delivered to town hall if preferred.

By sending your email directly to our Town Clerk, it reduces our duplicate public records. Thank you for your understanding.

Sincerely,

Jane Reiser
Commissioner
Town of Hillsboro Beach

On Jan 4, 2022, at 1:50 PM, JOSE GOMEZ <joeandbarb@att.net> wrote:

Dear Commissioner Reiser,

I would like to express my strong opposition to the proposed building height limit variance request to increase its limit to 10 stories. We voted for a town commission and mayor to uphold our town's established laws and not give in to deep-pocket developers. We like our town just the way it is. The construction of a ten-story building plus the proposed villas will negatively impact our view and make an already congested traffic situation even worse. Please vote this proposal down and stick to our current 3 story height limit on all new construction.

I would like this email to be part of the Public Record.

Thank you.

Joe Gomez

1160 Hillsboro Mile, Apt. 407

Sherry D. Henderson

From: JOSE GOMEZ <joeandbarb@att.net> on behalf of JOSE GOMEZ
Sent: Tuesday, January 4, 2022 4:26 PM
To: shenderson@townofhillsborobeach.com
Subject: Fw: Commission Meeting on January 11th

----- Forwarded Message -----

From: JOSE GOMEZ <joeandbarb@att.net>
To: jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>
Sent: Tuesday, January 4, 2022, 01:50:18 PM EST
Subject: Commission Meeting on January 11th

Dear Commissioner Reiser,

I would like to express my strong opposition to the proposed building height limit variance request to increase its limit to 10 stories. We voted for a town commission and mayor to uphold our town's established laws and not give in to deep-pocket developers. We like our town just the way it is. The construction of a ten-story building plus the proposed villas will negatively impact our view and make an already congested traffic situation even worse. Please vote this proposal down and stick to our current 3 story height limit on all new construction.

I would like this email to be part of the Public Record.

Thank you.
Joe Gomez
1160 Hillsboro Mile, Apt. 407

Sherry D. Henderson

From: JOSE GOMEZ <joeandbarb@att.net> on behalf of JOSE GOMEZ
Sent: Tuesday, January 4, 2022 4:26 PM
To: shenderson@townofhillsborobeach.com
Subject: Fw: Commission Meeting on January 11th

----- Forwarded Message -----

From: JOSE GOMEZ <joeandbarb@att.net>
To: bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>
Sent: Tuesday, January 4, 2022, 01:49:28 PM EST
Subject: Commission Meeting on January 11th

Dear Commissioner Baldasarre,

I would like to express my strong opposition to the proposed building height limit variance request to increase its limit to 10 stories. We voted for a town commission and mayor to uphold our town's established laws and not give in to deep-pocket developers. We like our town just the way it is. The construction of a ten-story building plus the proposed villas will negatively impact our view and make an already congested traffic situation even worse. Please vote this proposal down and stick to our current 3 story height limit on all new construction.

I would like this email to be part of the Public Record.

Thank you.
Joe Gomez
1160 Hillsboro Mile, Apt. 407

Sherry D. Henderson

From: JOSE GOMEZ <joeandbarb@att.net> on behalf of JOSE GOMEZ
Sent: Tuesday, January 4, 2022 4:26 PM
To: shenderson@townofhillsborobeach.com
Subject: Fw: Commission Meeting on January 11th

----- Forwarded Message -----

From: JOSE GOMEZ <joeandbarb@att.net>
To: ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>
Sent: Tuesday, January 4, 2022, 01:46:24 PM EST
Subject: Commission Meeting on January 11th

Dear Vice Mayor Kirdahy,

I would like to express my strong opposition to the proposed building height limit variance request to increase its limit to 10 stories. We voted for a town commission and mayor to uphold our town's established laws and not give in to deep-pocket developers. We like our town just the way it is. The construction of a ten-story building plus the proposed villas will negatively impact our view and make an already congested traffic situation even worse. Please vote this proposal down and stick to our current 3 story height limit on all new construction.

I would like this email to be part of the Public Record.

Thank you.
Joe Gomez
1160 Hillsboro Mile, Apt. 407

Sherry D. Henderson

From: JOSE GOMEZ <joeandbarb@att.net> on behalf of JOSE GOMEZ
Sent: Tuesday, January 4, 2022 4:26 PM
To: shenderson@townofhillsborobeach.com
Subject: Fw: Commission Meeting on January 11th

----- Forwarded Message -----

From: JOSE GOMEZ <joeandbarb@att.net>
To: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>
Sent: Tuesday, January 4, 2022, 01:42:13 PM EST
Subject: Commission Meeting on January 11th

Dear Mayor Tarrant,

I would like to express my strong opposition to the proposed building height limit variance request to increase its limit to 10 stories. We voted for a town commission and mayor to uphold our town's established laws and not give in to deep-pocket developers. We like our town just the way it is. The construction of a ten-story building plus the proposed villas will negatively impact our view and make an already congested traffic situation even worse. Please vote this proposal down and stick to our current 3 story height limit on all new construction.

I would like this email to be part of the Public Record.

Thank you.
Joe Gomez
1160 Hillsboro Mile, Apt. 407

meeting on January 11 in opposition to this huge height variance request from 3 stories to now 10 stories.

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Tuesday, January 4, 2022 4:58 PM
To: Sherry D. Henderson
Subject: Fwd: Hillsboro Beach Proposed Development

----- Forwarded message -----

From: **Sharon Gardzinski** <jdodeps@gmail.com>
Date: Tue, Jan 4, 2022, 2:43 PM
Subject: Hillsboro Beach Proposed Development
To: <ikirdahy@townofhillsborobeach.com>

Dear Vice Mayor Kirdahy:

I am submitting this in opposition of the proposed 10-story development in our town. If this is approved, we will begin the road of looking like Ft. Lauderdale's concrete jungle.

Sometime ago our town adopted a height restriction of no more than 3 stories to curtail developments such as this. Comparing the height of other buildings along the mile that had been grandfathered in is not a fair comparison because our elected officials then saw a vision in keeping our town's quaint appeal.

I live in the Hillsboro Island House which has been here for a long time and doesn't obstruct anyone's view due to its setback from the road. Many years ago the property to the south of us was developed and the height restriction of no more than 3 stories was followed.

If the developer is doing two-story townhouses on the west side of A1A, why not on the beach side as well, just like the ones just south of the Hillsboro Island House?

I pray that you will do the right thing when listening to the people of this town. Thank you.

I request that my submission be made part of the official record on January 11, 2022.

Sharon Julian
Hillsboro Island House, #102

Sherry D. Henderson

From: Sandi Solomon <sanduphills@bellsouth.net> on behalf of Sandi Solomon
Sent: Tuesday, January 4, 2022 5:38 PM
To: shenderson@townofhillsborobeach.com
Subject: Opposition to big developer

I am opposing the 10 story building of the new developer coming into our town of Hillsboro Beach !

I WANT MY EMAIL : Sanduphills@Bellsouth.net
TO BE PART OF THE PUBLIC RECORD” – SO IT IS IN THE
MINUTES AND OFFICIAL

Thank you !

A resident of
Ok Hillsboro island House
1160 Hillsboro Mile
Hillsboro Beach Fl.

Sent from my iPhone

Sherry D. Henderson

From: kwoody0322@aol.com
Sent: Tuesday, January 4, 2022 5:50 PM
To: shenderson@townofhillsborobeach.com
Subject: Fwd: Zoning Appeals Meeting Re: 1174 - 1185

Hello, Ms. Henderson:

Please include my email below as public record.

Thank you.

Karen Olsen

-----Original Message-----

From: kwoody0322@aol.com
To: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>; vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>; bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>; jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>
Sent: Tue, Jan 4, 2022 5:46 pm
Subject: Zoning Appeals Meeting Re: 1174 - 1185

Mayor Tarrant and Commissioners:

It was very clear at the December 2021, Quasi Meeting regarding 1174-1185, that a large group of residents who prefer to maintain the character of this special town, do not want the zoning ordinance revised to allow a highrise on the north end of town.

The previous owner of those parcels made attempts in the past for a zoning change, but the Commissioner's at that time, held true to the zoning and true to the residents they represented. I hope we the residents, can count on you this time to hold true to the zoning and to us!

I request that my email be made part of the public record.

Thank you.

Karen Olsen

Sherry D. Henderson

From: eaosborn1@juno.com
Sent: Wednesday, January 5, 2022 3:25 PM
To: TownClerk@TownofHillsboroBeach.com
Subject: Zoning appeals meeting scheduled for Tues. Jan. 11. 2022

To whom it may concern:

Please be advised that I live in the Massachusetts Building which sits on the west side of the Intracoastal just opposite the land comprising 1174-1185 Hillsboro Mile for which the developer is requesting a zoning variance to build higher than the current zoning law allows.

PLEASE do not allow this variance as it would block my view now that I am finally retired and able to enjoy the condo I own!! I was told when I purchased this unit that the city of Hillsboro Mile would not allow any building higher than 3 stories on the empty lot across from our building due to zoning ordinance and therefore my view would not be obstructed!!??

It seems this builder knew full well when the parcel was purchased that these restrictions were in place and had been so for years!!??

Why then is the Mayor considering allowing a variance which would destroy our ocean view and cause mayhem in your beautiful town which the current owners clearly DO NOT WANT!!??

It also seems there is plenty of land for the developer to build enough units while complying with the current height restrictions to allow enough tax revenue to accomplish the goals for which the current Mayor seems to be concerned.!!

I am very concerned with the possibilities which could ensue if this project goes forward without regard to the current height restrictions!!

Thank-you in advance for your attention to this matter!!

E. Osborn
1536 SE 15th Ct. Apt. 709
Deerfield Beach, FL 33441

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[NetZero.com/NortonLifeLock](https://www.netzero.com/nortonlifelock)

Sherry D. Henderson

From: Frank J. Kolb, Jr. <fjk@ehlaw.com> on behalf of Frank J. Kolb, Jr.
Sent: Wednesday, January 5, 2022 3:31 PM
To: Deb Tarrant; Commissioner Barbara Baldassarre;; Commissioner Jane Reiser;; Commissioner Vicky Feaman;; Vice Mayor Irene Kirdahy;; Donna Scheurer-Purre
Cc: Sherry D. Henderson; ddooddy@gorencherof.com
Subject: Commissioner Feaman Serving on the Board of Zoning Appeals

I wish the correspondence to be made a part of the record for the Board of Zoning Appeals Meeting concerning variances requested for 1174-1185 Hillsboro Mile.

Commissioner Feaman is an adjoining property owner and as such she has an interest(s) in the outcome of the vote.

By way of example her property values could rise or fall depending on what is eventually voted by the Board of Zoning Appeals. And an additional consideration is the view she gets or doesn't get depending on the actual structures as built. Don't forget her North side view, including through her windows, is the South side of the project proposed.

Based on the foregoing and other legal and ethical issues as may arise I respectfully request that Commissioner Feaman be excluded from sitting on the Board of Zoning Appeals when it meets on January 11, 2022.

Frank J. Kolb, Jr., Esq.
Kolb & Associates, P.C.
1173 Hillsboro Mile 1-1
Hillsboro Beach, Florida 33062
203 469 4475

Confidentiality

This communication is covered by the Electronic Communications Privacy Act, 18 USC Section #2510-2521. It is legally privileged (including attachments) and is intended only for the use of the individual(s) or entity(ies) to which it is addressed. It may contain information that is confidential, proprietary, privileged, and/or exempt from disclosure under applicable law. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify the sender so that appropriate action may be taken and avoid troubling you further. If you are not the intended recipient(s) please destroy this message, and any attachments, and notify the sender by return e-mail. Thank you.

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Wednesday, January 5, 2022 3:41 PM
To: Frank J. Kolb, Jr.; Deb Tarrant; Commissioner Barbara Baldassarre; Commissioner Jane Reiser; Commissioner Vicky Feaman; Vice Mayor Irene Kirdahy;
Cc: Sherry D. Henderson; ddoody@gorencherof.com
Subject: RE: Commissioner Feaman Serving on the Board of Zoning Appeals

Dear Commissioners

I agree with the below opinion. It seems logical and fair that Commissioner Feaman be excluded as it would be extremely hard for her to be impartial given the impact the construction adjacent would have on the value of her unit. This could have a negative or positive outcome for the developer based on how she voted. I believe she should volunteer to abstain.

From: Frank J. Kolb, Jr. <fjk@ehlaw.com>
Sent: Wednesday, January 5, 2022 3:31 PM
To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; Commissioner Barbara Baldassarre: <bbaldassarre@townofhillsborobeach.com>; Commissioner Jane Reiser: <jreiser@townofhillsborobeach.com>; Commissioner Vicky Feaman: <vfeaman@townofhillsborobeach.com>; Vice Mayor Irene Kirdahy: <ikirdahy@townofhillsborobeach.com>; Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Cc: Sherry D. Henderson <shenderson@townofhillsborobeach.com>; ddoody@gorencherof.com
Subject: Commissioner Feaman Serving on the Board of Zoning Appeals

I wish the correspondence to be made a part of the record for the Board of Zoning Appeals Meeting concerning variances requested for 1174-1185 Hillsboro Mile.

Commissioner Feaman is an adjoining property owner and as such she has an interest(s) in the outcome of the vote.

By way of example her property values could rise or fall depending on what is eventually voted by the Board of Zoning Appeals. And an additional consideration is the view she gets or doesn't get depending on the actual structures as built. Don't forget her North side view, including through her windows, is the South side of the project proposed.

Based on the foregoing and other legal and ethical issues as may arise I respectfully request that Commissioner Feaman be excluded from sitting on the Board of Zoning Appeals when it meets on January 11, 2022.

Frank J. Kolb, Jr., Esq.
Kolb & Associates, P.C.
1173 Hillsboro Mile 1-1
Hillsboro Beach, Florida 33062

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Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Thursday, January 6, 2022 12:08 PM
To: Deb Tarrant; Commissioner Barbara Baldassarre;; Commissioner Jane Reiser;; Commissioner Vicky Feaman;; Vice Mayor Irene Kirdahy;
Cc: Sherry D. Henderson; ddoody@gorencherof.com
Subject: Hardship or Not - 10 stories is not based on logic.

I wish the correspondence to be made a part of the record for the Board of Zoning Appeals Meeting concerning variances requested for 1174-1185 Hillsboro Mile.

Dear Commissioners and Interested Parties,

As you work through the new drawings in light of the new request for 10 stories based on a hardship variance, I ask that you consider the below points, making specific reference to the last point below being important should you decide that in fact and law there is a hardship for the subject property that would necessitate a variance of over 7 stories.

In my humble opinion, throwing out an arbitrary number of 10 stories at the last commission meeting without consideration to the desires of your community to not have this type of height or what that would entail seems premature and unreasonable. Given that and based on the renderings and submission, please consider the following:

- Rendering on sheet A4-01 : Building shown is **NOT** accurate and **misleading** in height based on the perspective. It appears to be the same height as the 7-story building to the south based on the perspective.
- Rendering on sheet A4-02 : **The developer should show the entire view of the building looking down the street including the garage entrance.** Just showing the portion where landscaping is shown is **misleading** as the garage entrance and building on the north side is much closer to the street, like shown on sheet A4-05 - leaving no room for landscaping there.
- The developer should show a whole frontal view of the building, just like the rear. Please request drawings that show the entire rear frontal view - only a portion is shown on sheet A4-03. Again all these views are intended to make the building appear smaller than it is because only portions are being shown instead of the entire thing and **this is misleading.**
- There appears to be Public beach access shown on north side? Sheet A4-05. **This rendering is misleading.**
- Building sections on sheets A3-01 & A3-02: **There is an additional height of +/- 20' on top of the 10 stories for the pool, pool deck and elevator access.** The 15' height dimension is measured from the pool deck level which is not including the +/- 6' for the actual pool. **This is again misleading since the maximum additional height cannot exceed 15' above the max height of 35' according to current code.** There would then be another variance required in addition to the 10-story height variance. There should be a maximum height established for this height variance, not an additional for their roof top amenities.
- The building exceeds the 85' front setback at the northern corner according to the site plan and section on sheet A1-04 and this is important and it **is misleading** on its face.
- **MOST IMPORTANTLY:** We recognize there is a conservation area that takes up roughly 33% of parcel B **based on the developers calculation.** If the commission decided that there was in fact a hardship then at the very least, the height increase should reflect this percentage. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects. **This STRONGLY needs to be considered as it is only**

fair and logical to grant a variance that correlates with the actual percentage of land that affects their buildable area.

Again, at the last meeting, 10 stories was mentioned by the Mayor as a point of reference we presume, without any logic as an option and therefore should not be written in stone.

Thank you
Donna Purre
1173 Hillsboro Mile

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Thursday, January 6, 2022 2:24 PM
To: Sherry D. Henderson
Subject: Fwd: Hardship or Not - 10 stories is not based on logic.

----- Forwarded message -----

From: **Donna Scheurer-Purre** <Donnas@foodforthe poor.com>
Date: Thu, Jan 6, 2022, 12:08 PM
Subject: Hardship or Not - 10 stories is not based on logic.
To: Deb Tarrant <dtarrant@townofhillsborobeach.com>, Commissioner Barbara Baldassarre: <bbaldassarre@townofhillsborobeach.com>, Commissioner Jane Reiser: <jreiser@townofhillsborobeach.com>, Commissioner Vicky Feaman: <vfeaman@townofhillsborobeach.com>, Vice Mayor Irene Kirdahy: <ikirdahy@townofhillsborobeach.com>
Cc: Sherry D. Henderson <shenderson@townofhillsborobeach.com>, ddoody@gorencherof.com
<ddoody@gorencherof.com>

I wish the correspondence to be made a part of the record for the Board of Zoning Appeals Meeting concerning variances requested for 1174-1185 Hillsboro Mile.

Dear Commissioners and Interested Parties,

As you work through the new drawings in light of the new request for 10 stories based on a hardship variance, I ask that you consider the below points, making specific reference to the last point below being important should you decide that in fact and law there is a hardship for the subject property that would necessitate a variance of over 7 stories.

In my humble opinion, throwing out an arbitrary number of 10 stories at the last commission meeting without consideration to the desires of your community to not have this type of height or what that would entail seems premature and unreasonable. Given that and based on the renderings and submission, please consider the following:

- Rendering on sheet A4-01 : Building shown is **NOT** accurate and **misleading** in height based on the perspective. It appears to be the same height as the 7-story building to the south based on the perspective.
- Rendering on sheet A4-02 : **The developer should show the entire view of the building looking down the street including the garage entrance.** Just showing the portion where landscaping is shown **is misleading** as the garage entrance and building on the north side is much closer to the street, like shown on sheet A4-05 - leaving no room for landscaping there.

- The developer should show a whole frontal view of the building, just like the rear. Please request drawings that show the entire rear frontal view - only a portion is shown on sheet A4-03. Again all these views are intended to make the building appear smaller than it is because only portions are being shown instead of the entire thing and this is **misleading**.
- There appears to be Public beach access shown on north side? Sheet A4-05. This rendering is **misleading**.
- Building sections on sheets A3-01 & A3-02: There is an additional height of +/- 20' on top of the 10 stories for the pool, pool deck and elevator access. The 15' height dimension is measured from the pool deck level which is not including the +/- 6' for the actual pool. This is again **misleading** since the maximum additional height cannot exceed 15' above the max height of 35' according to current code. There would then be another variance required in addition to the 10-story height variance. There should be a maximum height established for this height variance, not an additional for their roof top amenities.
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Thank you

Donna Purre

1173 Hillsboro Mile

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Friday, January 7, 2022 12:13 PM
To: shenderson@townofhillsborobeach.com
Subject: ~RE: Hardship or Not - 10 stories is not based on logic.

Good Morning, See below

From: Jane Reiser <jreiser@townofhillsborobeach.com>
Sent: Friday, January 7, 2022 12:11 PM
To: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Subject: Re: Hardship or Not - 10 stories is not based on logic.

Dear Ms. Purre,

Thank you for your comments.

For your submission to be made part of the official record on January 11, 2022, kindly forward your email directly to Sherry Henderson, our Town Clerk (shenderson@townofhillsborobeach.com). Your comments can also be hand-delivered to town hall if preferred.

By sending your email directly to our Town Clerk, it reduces our duplicate public records. Thank you for your understanding.

Sincerely,

Jane Reiser
Commissioner
Town of Hillsboro Beach

On Jan 6, 2022, at 12:08 PM, Donna Scheurer-Purre <Donnas@foodforthePoor.com> wrote:

I wish the correspondence to be made a part of the record for the Board of Zoning Appeals Meeting concerning variances requested for 1174-1185 Hillsboro Mile.

Dear Commissioners and Interested Parties,

As you work through the new drawings in light of the new request for 10 stories based on a hardship variance, I ask that you consider the below points, making specific reference to the last point below being important should you decide that in fact and law there is a hardship for the subject property that would necessitate a variance of over 7 stories.

In my humble opinion, throwing out an arbitrary number of 10 stories at the last commission meeting without consideration to the desires of your community to not have this type of height or what that would entail seems premature and unreasonable. Given that and based on the renderings and submission, please consider the following:

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- The building exceeds the 85' front setback at the northern corner according to the site plan and section on sheet A1-04 and this is important and it **is misleading** on its face.
- **MOST IMPORTANTLY:** We recognize there is a conservation area that takes up roughly 33% of parcel B **based on the developers calculation.** If the commission decided that there was in fact a hardship then at the very least, the height increase should reflect this percentage. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. **They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects. This STRONGLY needs to be considered as it is only fair and logical to grant a variance that correlates with the actual percentage of land that affects their buildable area.** Again, at the last meeting, 10 stories was mentioned by the Mayor as a point of reference we presume, without any logic as an option and therefore should not be written in stone.

Thank you
 Donna Purre
 1173 Hillsboro Mile

Sherry D. Henderson

From: Ralf Brookes <ralfbrookes@gmail.com> on behalf of Ralf Brookes
Sent: Friday, January 7, 2022 3:21 PM
To: ddooddy@gorencherof.com; Shenderson@townofhillsborobeach.com
Cc: mserda@townofhillsborobeach.com; joe@rma.us.com; Charles Doherty
Subject: REQUEST FOR AFFECTED PARTY STATUS – JANUARY 11 QUASI-JUDICIAL HEARINGS
Board of Zoning Appeals & Town Commission (immediately thereafter) 1174-1185
Hillsboro Mile, Hillsboro Beach, FL 33062
Attachments: REQUEST FOR ADVERSELY AFFECTED PARTY STATUS.pdf

R A L F B R O O K E S, A T T O R N E Y

Board Certified in City, County and Local Government Law

REQUEST FOR AFFECTED PARTY STATUS –
JANUARY 11 QUASI-JUDICIAL HEARINGS
Board of Zoning Appeals & Town Commission (immediately thereafter)

QUASI-JUDICIAL PUBLIC HEARING - Eric Fordin, with the Related Group, authorized agent for Development Project located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062 Requests a **Variance Pursuant to Section 12-283** of the Town's Code to Exceed the Height Limitations in Section 12- 142 of the Code. **Variance Request for Height up to 130 feet and 10 stories.**

QUASI-JUDICIAL PUBLIC HEARING - Eric Fordin, with the Related Group, Authorized Agent for Development Project Located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062 Requests a **Variance Pursuant to Section 12-283** of the Town's Code to Exceed the Height Limitations in Section 12- 142 of the Code. **Variance Request for Use of Roof Beyond the Maximum Height of 130 feet.**

Dear Town of Hillsboro Beach
c/o Town Attorney Donald J. Doody, Esq via email

Purpose of this letter. I represent the persons listed below who are owners and residents of Hillsboro Beach and Yacht Villas. On behalf of my clients we request affected party status in the quasi-judicial proceedings, which is currently scheduled for hearing before both the Board of Zoning Appeals and the Town Council immediately thereafter, on Tuesday, January 11, 2022 and request additional time to make a group presentation.

Parties requesting adversely affected party status. On behalf of the attached list of individual property owners we request recognition of affected party status with legal standing. As proposed, the proposed 130-foot, **10-story building** within Parcel B of the development does not comply with the height requirements set forth within the RM-16 district:

ARTICLE VI. - RM-16 MULTIPLE FAMILY DWELLING RESIDENTIAL DISTRICT REGULATIONS (WITH 3-STORY MAXIMUM LIMIT)

Sec. 12-142. - Height regulations. (A) For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and **shall not exceed 3 stories** above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and **shall not exceed 3 stories** above the roadway crown elevation of SR A1A adjacent to the property.

(B)

(B) It is further provided that purely decorative features such as cupolas, tower, railings, not including signs, nor containing any living areas and not covering more than 20 percent of the roof area may be erected to an additional height not to exceed 15 feet, provided that the overall height of the building shall not exceed 50 feet.

The proposed variance for an incredible additional **7 stories of height** does not meet the criteria for a variance, and the additional height if granted will allow the Applicant to **more than triple (3x) the building height limits in violation of the Town Code** creating more stories of habitable space resulting in more dwelling units, more density, more persons as occupants, and will resulting in the need for more parking and creating more demand on adjacent streets, roads, and beach and will disrupt the overall zoning scheme of RM16 contrary to the bulk, mass and scale contemplated by the zoning code for RM16.

Because my clients reside within 500 feet of the subject property, they are unquestionably more affected and more aggrieved and their injuries are different in kind than the general public and my clients will be exposed to additional adverse impacts from the increased height, increased number of dwelling units, increased density, and number of occupants that will impact my clients who live in close proximity and share the same streets, roads, and beach as the proposed development to a greater degree and in a different manner than persons who live across Town.

Sincerely,

Ralf Brookes Attorney

LIST OF ADVERSELY AFFECTED PERSONS SEEKING ADVERSELY AFFECTED PARTY STATUS:

Hillsboro Beach and Yacht Villas

Charles Doherty
1194 Hillsboro Mile #27
Hillsboro Beach FL
33062

Richard Crusco
1194 Hillsboro Mile # 22
Hillsboro Beach FL
33062

Andy Dandeneau

1194 Hillsboro Mile # 28
Hillsboro Beach FL
33062

Norma Leary
1194 Hillsboro Mile #14
Hillsboro Beach FL
33062

Michael Nasir
1194 Hillsboro Mile # 1 and #8
Hillsboro Beach FL
33062

Gaspar Spina
1194 Hillsboro Mile # 8
Hillsboro Beach FL
33062

Robert Gallo
1194 Hillsboro Mile # 6
Hillsboro Beach FL
33062

Andrew Smith # 20 and # 21
1194 Hillsboro Mile # 28
Hillsboro Beach FL
33062

Douglas Carberry
1189 Hillsboro Mile #1
Hillsboro Beach, FL
33062

Richard Wu
1194 Hillsboro Mile # 19
Hillsboro Beach FL
33062

Ralf Brookes Attorney
1217 E Cape Coral Parkway #107 Cape Coral, FL 33904
Phone (239) 910-5464; fax (866) 341-6086
Ralf@RalfBrookesAttorney.com RalfBrookes@gmail.com

Ralf Brookes
Ralf Brookes Attorney
P.O. Box 100238 Cape Coral Florida 33910
1217 East Cape Coral Parkway #107, Cape Coral Florida 33904
Phone/Text (239) 910-5464

Fax (866) 341-6086
RalfBrookes@gmail.com
Ralf@RalfBrookesAttorney.com



Board Certified in City, County and Local Government Law
by The Florida Bar

Please visit my website at:
www.RalfBrookesAttorney.com

Of Counsel to the Vose Law Firm at rbrookes@voselaw.com
Please visit the Vose Law Firm webpage at www.VoseLaw.com

----- Forwarded message -----

From: **Charles Doherty** <cd@rebartonage.com>
Date: Fri, Jan 7, 2022 at 2:19 PM
Subject: Fwd: Jan. 11, 2022 AGENDAS - BZA Public Hearing & Regular Commission Meeting
To: <RalfBrookes@gmail.com>

----- Forwarded message -----

From: **Sherry D. Henderson** <shenderson@townofhillsborobeach.com>
Date: Fri, Jan 7, 2022 at 1:55 PM
Subject: Jan. 11, 2022 AGENDAS - BZA Public Hearing & Regular Commission Meeting
To: Richard Crusco <rcrusco28@gmail.com>, Charles Doherty <Cd@rebartonage.com>

[Board of Zoning & Appeals](#)

NOTICE IS HEREBY GIVEN -The Board of Zoning Appeals (BZA) of the Town of Hillsboro Beach, Florida will hold **Quasi-Judicial BZA Public Hearings at 9:00 A.M., January 11, 2022**

To download the Quasi-Judicial Public Hearing Agenda Packet [click here](#)

[Regular Town Commission Meeting](#)

NOTICE IS FURTHER GIVEN – Immediately following adjournment of the BZA Public Hearings, the Town Commission will meet for a **Regular Town Commission Meeting January 11, 2022.**

To download the Regular Town Commission Agenda Packet [click here](#)

A quorum of the Governing Body will be physically present at both meetings. The public can attend in person.

However, for health and public safety during the Covid-19 pandemic, the meeting will also utilize communications media technology to allow the public to participate via Zoom video conference.

Please find the Zoom Meeting log-in details below for each meeting.

JOIN VIRTUAL ZOOM MEETING(s): January 11, 2022, beginning at 9:00 A.M. Please click to [Join Meeting](#)

Meeting number: 878 4736 1566 Passcode: 951699

Respectfully,

Sherry D. Henderson, CMC

TOWN CLERK

TOWN OF HILLSBORO BEACH, FLORIDA

1210 Hillsboro Mile | Hillsboro Beach, Florida 33062

(p): 954-427-4011 | [Email](#) | [Website](#)



The State of Florida has a very broad public records law. Most written communications to Town Officials regarding Town business are public records available to the public and media upon request.

Your e-mail communications may be subject to public disclosure as set forth in the [Public Records Act Chapter 119, Florida Statutes](#).

Sherry D. Henderson

From: M Scott Kleiman <scott@kklaw.us> on behalf of M Scott Kleiman
Sent: Friday, January 7, 2022 4:52 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com
Cc: Ddody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

Please see the attached correspondence provided on behalf of certain of the residents of Hillsboro Beach in opposition to the requested variance. I would request that this be included in the record in opposition to the variance request of Hillsboro Property Owner. I would also like to be added to the speakers list during the quasi-judicial consideration of this matter on January 11th, and would request that the City Clerk provide direction on how to do that from a virtual platform.

Thank you and have a nice weekend.

M. Scott Kleiman, Esq.
Kalis, Kleiman & Wolfe
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone: 954-791-0477
Office Fax: 954-791-0506
Direct Email: scott@kklaw.us
Office Email: info@kklaw.us
Website: www.kklaw.us

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While Kalis, Kleiman & Wolfe encourages all forms of communication, please be aware that the transmittal of an email to this email address is not certification that the email has been received (due to spam and quarantine protocols) or that it has been read, reviewed or acted upon by the recipient. To insure that emails of an urgent nature have been received, please call the intended recipient to advise of the email's transmittal or to confirm its delivery. Similarly, text messages sent after regular business hours, on weekends or on holidays may not be read or reviewed until the next business day.

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Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Friday, January 7, 2022 5:13 PM
To: M Scott Kleiman
Cc: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; joe@rma.us.com; DDoody@cityatty.com; shenderson@townofhillsborobeach.com
Subject: Re: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00257.html

Received. Thank you for your participation.

Mac Serda
Town Manager
Hillsboro Beach

Sent from my iPhone

On Jan 7, 2022, at 4:57 PM, M Scott Kleiman <scott@kklaw.us> wrote:

Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

Please see the attached correspondence provided on behalf of certain of the residents of Hillsboro Beach in opposition to the requested variance. I would request that this be included in the record in opposition to the variance request of Hillsboro Property Owner. I would also like to be added to the speakers list during the quasi-judicial consideration of this matter on January 11th, and would request that the City Clerk provide direction on how to do that from a virtual platform.

Thank you and have a nice weekend.

M. Scott Kleiman, Esq.
Kalis, Kleiman & Wolfe
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone: 954-791-0477
Office Fax: 954-791-0506
Direct Email: scott@kklaw.us
Office Email: info@kklaw.us
Website: www.kklaw.us

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Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Friday, January 7, 2022 6:10 PM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

----- Forwarded message -----

From: **M Scott Kleiman** <scott@kklaw.us>
Date: Fri, Jan 7, 2022, 4:57 PM
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
To: <dtarrant@townofhillsborobeach.com>, <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>, <mserda@townofhillsborobeach.com>, <joe@rma.us.com>
Cc: <Ddooddy@cityatty.com>, <Shenderson@townofhillsborobeach.com>

Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

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Thank you and have a nice weekend.

M. Scott Kleiman, Esq.

Kalis, Kleiman & Wolfe

7320 Griffin Road, Suite 109

Davie, Florida 33314

Telephone: 954-791-0477

Office Fax: 954-791-0506

Direct Email: scott@kklaw.us

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Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Friday, January 7, 2022 6:32 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre
Subject: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I know you all want to do right by the residents, but it also appears the developer. I am not looking forward to Tuesday or the division the variance is causing among our residents. I continue to object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

While I recognize there is a conservation area that takes up roughly 33% of parcel B based on the developers calculation, the height increase should reflect this percentage and not roughly 35% more. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects.

Please at least take more time to review the height and delay a decision and what is proposed. Please do not give into the developer and even grant a conditional variance for 10 stories, one thing that I am betting the developer will ask for.

Thank you
Donna Purre – Hillsboro Square

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Friday, January 7, 2022 6:43 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: RE: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Sorry all, Sent too quick – please include the below as part of my correspondence and official record:

P.S.
Below are some of the representative communities objecting to a 10-story variance at the time of this email:

1. Hillsboro Square East
2. Hillsboro Square West
3. Ocean Crest
4. Hillsboro Imperial
5. Hillsboro Colonnade
6. Diamond Head
7. Virginia Kaye
8. Harborside
9. Hillsboro Yacht and Tennis Club
10. Colonnade
11. Overlook
12. Hillsboro Windsor

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Sent: Friday, January 7, 2022 6:32 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Subject: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners,

I know you all want to do right by the residents, but it also appears the developer. I am not looking forward to Tuesday or the division the variance is causing among our residents. I continue to object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

While I recognize there is a conservation area that takes up roughly 33% of parcel B based on the developers calculation, the height increase should reflect this percentage and not roughly 35% more. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects.

Please at least take more time to review the height and delay a decision and what is proposed. Please do not give into the developer and even grant a conditional variance for 10 stories, one thing that I am betting the developer will ask for.

Thank you
Donna Purre – Hillsboro Square

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Friday, January 7, 2022 6:43 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: RE: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Sorry all, Sent too quick – please include the below as part of my correspondence and official record:

P.S.
Below are some of the representative communities objecting to a 10-story variance at the time of this email:

1. Hillsboro Square East
2. Hillsboro Square West
3. Ocean Crest
4. Hillsboro Imperial
5. Hillsboro Colonnade
6. Diamond Head
7. Virginia Kaye
8. Harborside
9. Hillsboro Yacht and Tennis Club
10. Colonnade
11. Overlook
12. Hillsboro Windsor

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Sent: Friday, January 7, 2022 6:32 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Subject: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners,

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Thank you
Donna Purre – Hillsboro Square

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Friday, January 7, 2022 7:47 PM
To: Sherry D. Henderson
Subject: Fwd: Property Developement Located at 1174-1185

----- Forwarded message -----

From: **Mary E. Vogl** <bvogl@att.net>
Date: Fri, Jan 7, 2022, 7:02 PM
Subject: Property Developement Located at 1174-1185
To: Deb Tarrant <dtarrant@townofhillsborobeach.com>, Irene Kirdahy <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>
Cc: Mac Serda <mserda@townofhillsborobeach.com>

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioner Feaman, Commissioner Baldasarre, and Commissioner Riser,

Ever since the 10 story plan was posted on the Town website, I have struggled with how to best communicate my reaction. On the one hand, I am thrilled to know that our Commission recognized the inappropriate height of the initial proposal and thus sent the property owners/developers back to the drawing board. On the other hand, the most recent, 10 story submission posted on the website, appears rushed and sloppy. Say what we like, the first submission was very thorough and complete. Traffic studies were included, Landscape plans were detailed, Zoning and Planning notes, questions and replies all reflected a true and complete understanding of the project. I do not have the same level of confidence in this submission.

Let's start with my concerns regarding the rooftop on the east side parcel and the part of the subject of the request for variance.

There are real inconsistencies between the renderings and the actual plans. This is particularly clear in the renderings of the roof on the east side parcel. Page A4-01 ("Rendering Looking North") and Page A4-04 ("Rendering Looking West Lot B South Property Line"). It appears in these renderings that there is a palm tree perimeter enclosing the roof top pool amenities. There is no such perimeter on the drawings labeled L1`-23, L1-30, L1-32 and L1-33. The schedule for roof top trees located on Drawing L1-31 does indicate an intention to plant 58 Coconut Palm trees each to measure 24' in height, 26 Silver Buttonwoods Trees each to measure 12' in height and 25 Green Buttonwood Trees each to measure 16' in height. The drawing labeled L1-23 (unfortunately, mislabeled as Lobby Level Shrub and Ground cover Plan) indicates 9 privacy planters/hedges separating each of the pools, as well as 2 additional planters/islands along the West facing front edge of the building. Which do you think is their intention?

Regardless of which of the plans for the roof top's landscaping is correct, I would like to know exactly how 58 24' tall Coconut Palm trees along with all of the other trees listed above, planted 130' above ground, **"do not endanger the public safety" or "in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants**

of the Town of Hillsboro Beach". (See item 4 in Attorney Orshefsky's "Argument in Support of Requested Variance") Hurricane force winds are bad enough at ground level. At 130' up in the air, these trees will become airborne torpedoes to those of us (and our property) below, adjacent or living nearby.

Our own Town Ordinances further demand that **"The granting of a variance will not result in additional threats to public safety"**. (Ord.266 Sec.4-137 B 2) Ordinance 266 Section 4-136 Item A states in its Consideration for Issuance of Variances that the Board of Zoning Appeals shall consider **"the danger that materials and debris may be swept into other lands resulting in further injury or damage"**. Please also note that Ord. 148 Sec.6 ½-22 – Item A in addition to other items **"declares that the purpose and intent is to preserve, promote and protect the public health, safety, comfort, good order, appearance, convenience and general welfare"**. Public safety cannot be minimized on our barrier island where we are so vulnerable. I therefore urge you all to strike this landscape plan from the proposal. In other words, your collective vote should be a hard NO!

Next, let's address the inconsistencies regarding the number of units proposed. The chart on page A0-04, labeled Location Map, calls for 130 total units proposed. (28 units on the Intracoastal side and 102 on the Ocean side. The next page A0-05, labeled Zoning Data Summary, calls for 118 total units (28 units on the Intracoastal side and 90 units on the Ocean side). Which is it? Obviously, this is critical information as it affects required parking spaces, traffic studies, and overall density.

In my opinion, this haphazard rendering of such an important topic is reason enough to postpone this month's quasi-judicial Public Hearing. The owner/developers and lawyers need to get their i's dotted, and t's crossed. (I have come across at least 4 mislabeled drawings.) Beyond that, I do not see any comments or questions from Zoning and Planning in this plan's submission. Is it possible that this quasi-judicial and Commission vote could happen without the input from Zoning and Planning? As a resident in close proximity to the West side parcel, it would be good to know that the substantial proposed changes made to this parcel have been reviewed by our Town's team of professionals.

It is for the reasons stated above, I respectfully request that 1) the roof top plantings be withdrawn from the plans 2) the developer be required to resubmit corrected and accurate plans that fully and accurately disclose what he is proposing to construct on both parcels. Until then, I feel it is impossible for us to fully access and intelligently debate this plan's pros and cons.

We should not fall victim to the same nonchalance that is clearly exhibited in this developer's latest proposal.

Thank you and please enter this letter into the public record.

Best Regards,

Beth Vogl

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Friday, January 7, 2022 7:50 PM
To: Sherry D. Henderson
Subject: Fwd: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

But wait, there's more!

----- Forwarded message -----

From: **Donna Scheurer-Purre** <Donnas@foodforthe poor.com>
Date: Fri, Jan 7, 2022, 6:31 PM
Subject: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
To: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>, ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>, vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>, bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>, jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>, mserda@townofhillsborobeach.com <mserda@townofhillsborobeach.com>, joe@rma.us.com <joe@rma.us.com>, Ddooddy@cityatty.com <Ddooddy@cityatty.com>, Shenderson@townofhillsborobeach.com <Shenderson@townofhillsborobeach.com>
Cc: Donna Scheurer-Purre <Donnas@foodforthe poor.com>

Dear Mayor and Commissioners,

I know you all want to do right by the residents, but it also appears the developer. I am not looking forward to Tuesday or the division the variance is causing among our residents. I continue to object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

While I recognize there is a conservation area that takes up roughly 33% of parcel B based on the developers calculation, the height increase should reflect this percentage and not roughly 35% more. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects.

Please at least take more time to review the height and delay a decision and what is proposed. Please do not give into the developer and even grant a conditional variance for 10 stories, one thing that I am betting the developer will ask for.

Thank you

Donna Purre – Hillsboro Square

Sherry D. Henderson

From: Freny Deboo <deboofreny@gmail.com> on behalf of Freny Deboo
Sent: Saturday, January 8, 2022 9:21 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com; joe@rma.us.com
Cc: Donnas@foodforthe poor.com
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185
Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00238.html

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Freny Deboo
Jimmy Deboo
Residents at Virginia Kaye



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

♦ **MAIN OFFICE**
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone (954) 791-0477
Fax (954) 791-0506
E-Mail Info@kklaw.us

♦ **TREASURE COAST OFFICE**
P.O. BOX 13075
Fort Pierce, Florida 34979-3075
E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldasarre
VIA EMAIL: bbaldasarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the AIA setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria have been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance." (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Friday, January 7, 2022 6:32 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre
Subject: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I know you all want to do right by the residents, but it also appears the developer. I am not looking forward to Tuesday or the division the variance is causing among our residents. I continue to object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

While I recognize there is a conservation area that takes up roughly 33% of parcel B based on the developers calculation, the height increase should reflect this percentage and not roughly 35% more. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects.

Please at least take more time to review the height and delay a decision and what is proposed. Please do not give into the developer and even grant a conditional variance for 10 stories, one thing that I am betting the developer will ask for.

Thank you
Donna Purre – Hillsboro Square



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M. SCOTT KLEIMAN
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January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
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William Serda, Town Manager
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Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
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Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria have been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance." (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner’s mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town’s desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id. at 41*. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id. at 41. (Emphasis added).* So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id. at 854-55. (Emphasis added and citations omitted).*

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Saturday, January 8, 2022 9:29 AM
To: Mac Serda
Cc: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; joe@rma.us.com; DDooddy@cityatty.com; shenderson@townofhillsborobeach.com
Subject: Re: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Thanks Mac. Have a great day. I really appreciate all you do for the town. I recognize during this time. its super difficult

Sent from my T-Mobile 4G LTE Device
Get [Outlook for Android](#)

From: Mac Serda <mserda@townofhillsborobeach.com>
Sent: Saturday, January 8, 2022 9:27:21 AM
To: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Cc: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>; vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>; bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>; jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>; joe@rma.us.com <joe@rma.us.com>; DDooddy@cityatty.com <DDooddy@cityatty.com>; shenderson@townofhillsborobeach.com <shenderson@townofhillsborobeach.com>
Subject: Re: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Received.

Thank you.

Mac Serda
Town Manager
Hillsboro Beach

Sent from my iPhone

On Jan 7, 2022, at 6:43 PM, Donna Scheurer-Purre <donnas@foodforthe poor.com> wrote:

Sorry all, Sent too quick – please include the below as part of my correspondence and official record:

P.S.
Below are some of the representative communities objecting to a 10-story variance at the time of this email:

1. Hillsboro Square East
2. Hillsboro Square West
3. Ocean Crest

4. Hillsboro Imperial
5. Hillsboro Colonnade
6. Diamond Head
7. Virginia Kaye
8. Harborside
9. Hillsboro Yacht and Tennis Club
10. Colonnade
11. Overlook
12. Hillsboro Windsor

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>

Sent: Friday, January 7, 2022 6:32 PM

To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com

Cc: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>

Subject: FW: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners,

I know you all want to do right by the residents, but it also appears the developer. I am not looking forward to Tuesday or the division the variance is causing among our residents. I continue to object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

While I recognize there is a conservation area that takes up roughly 33% of parcel B based on the developers calculation, the height increase should reflect this percentage and not roughly 35% more. If 33% is taken into account for a height increase above the 35' that would bring maximum height to roughly 45.5' which is a reasonable increase based on their claimed hardship. They are proposing a building with a total height of 145' - this is roughly a 68% increase, more than double the percentage that the conservation area affects.

Please at least take more time to review the height and delay a decision and what is proposed. Please do not give into the developer and even grant a conditional variance for 10 stories, one thing that I am betting the developer will ask for.

Thank you

Donna Purre – Hillsboro Square

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Saturday, January 8, 2022 10:35 AM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

----- Forwarded message -----

From: Linda Graham <img12@comcast.net>
Date: Sat, Jan 8, 2022 at 9:42 AM
Subject: Fwd: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
To: <dtarrant@townofhillsborobeach.com>, <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>, <mserda@townofhillsborobeach.com>, <joe@rma.us.com>, <Ddoddy@cityatty.com>, <Shenderson@townofhillsborobeach.com>
Cc: Paul Phillips <twochamps@me.com>

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

508 MoreSun LLC Linda Graham

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Saturday, January 8, 2022 10:36 AM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

----- Forwarded message -----

From: **Freny Deboo** <deboofreny@gmail.com>
Date: Sat, Jan 8, 2022 at 9:20 AM
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
To: <dtarrant@townofhillsborobeach.com>, <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>, <mserda@townofhillsborobeach.com>, <Ddoody@cityatty.com>, <Shenderson@townofhillsborobeach.com>, <joe@rma.us.com>
Cc: <Donnas@foodforthepeople.com>

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Freny Deboo
Jimmy Deboo
Residents at Virginia Kaye

Sent from my iPhone

Sherry D. Henderson

From: jgail.wagner@gmail.com
Sent: Saturday, January 8, 2022 1:27 PM
To: Deborah Tarrant; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com;
Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre
Subject: Objection to Height Variance
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00215.txt

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

I have lived in Hillsboro Beach for 14 years. My late husband and I chose our location at Hillsboro Beach and Yacht Villas partly for the 3 story limit on building height. We could have bought in other beach communities with high rise buildings but we chose here for its less congested and small town vibe and have loved our town. We didn't want to live somewhere that looked like Boca Raton or Pompano Beach, and my neighbors and I don't want that now.

Our building codes have served us well over the years. Please don't change our community by allowing this variance.

Sincerely,

Johnnie I Wagner
1194 Hillsboro Mile, Villa 43
Hillsboro Beach, FL 33062



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

♦ **MAIN OFFICE**
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone (954) 791-0477
Fax (954) 791-0506
E-Mail Info@kklaw.us

♦ **TREASURE COAST OFFICE**
P.O. BOX 13075
Fort Pierce, Florida 34979-3075
E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldasarre
VIA EMAIL: bbaldasarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (*superseded by statute on other grounds in Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the “feeling sorry” for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not “entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**”(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. **A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Saturday, January 8, 2022 1:32 PM
To: Sherry D. Henderson
Subject: Fwd: Objection to Height Variance
Attachments: Opposition to Variance Letter.pdf

----- Forwarded message -----

From: <jgail.wagner@gmail.com>
Date: Sat, Jan 8, 2022, 1:27 PM
Subject: Objection to Height Variance
To: Deborah Tarrant <dtarrant@townofhillsborobeach.com>, <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>, <joe@rma.us.com>, <Ddoody@cityatty.com>, <Shenderson@townofhillsborobeach.com>
Cc: Donna Scheurer-Purre <Donnas@foodforthepeople.com>

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

I have lived in Hillsboro Beach for 14 years. My late husband and I chose our location at Hillsboro Beach and Yacht Villas partly for the 3 story limit on building height. We could have bought in other beach communities with high rise buildings but we chose here for its less congested and small town vibe and have loved our town. We didn't want to live somewhere that looked like Boca Raton or Pompano Beach, and my neighbors and I don't want that now.

Our building codes have served us well over the years. Please don't change our community by allowing this variance.

Sincerely,

Johnnie I Wagner
1194 Hillsboro Mile, Villa 43
Hillsboro Beach, FL 33062

Sent from my iPhone



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

♦ **MAIN OFFICE**
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone (954) 791-0477
Fax (954) 791-0506
E-Mail Info@kklaw.us

♦ **TREASURE COAST OFFICE**
P.O. BOX 13075
Fort Pierce, Florida 34979-3075
E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldasarre
VIA EMAIL: bbaldasarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (*superseded by statute on other grounds in Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the “feeling sorry” for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not “entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**”(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. See, e.g., *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. **A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a viable dual three story plan that, with the exception of the parking deficiency, met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship." *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Saturday, January 8, 2022 3:30 PM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf

----- Forwarded message -----

From: **Shirley Watson** <shirleywatson@watsonproperties.ca>
Date: Sat, Jan 8, 2022, 3:11 PM
Subject: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
To: <dtarrant@townofhillsborobeach.com>, <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>, <mserda@townofhillsborobeach.com>, <joe@rma.us.com>
Cc: Donna Scheurer-Purre <donnas@foodforthepeople.com>

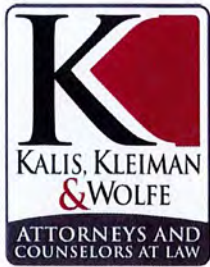
PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I oppose the granting of a height variance for the above referenced property. I have owned property in Hillsboro Beach since 1978. I have also developed property in Hillsboro Beach, abiding by the three story building height which was the current zoning. My company developed 74 units east and west of State Road A1A, which was less than the allowable number, and still secured a nice profit. There is no hardship to the Developer of 1174-1185 Hillsboro Mile by developing the property according to the legal and rightful three story zoning. I am in agreement with the attached legal letter written by Mr. Kleiman.

Sincerely yours,

Shirley Watson
Villa 48
1194 Hillsboro Mile
Hillsboro Beach, FL



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

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♦ **TREASURE COAST OFFICE**
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E-Mail info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldasarre
VIA EMAIL: bbaldasarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (*superseded by statute on other grounds in Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the “feeling sorry” for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not “entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**”(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. See, e.g., *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that a '**hardship**' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, '**the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.**'" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Manny Penate <mpenate@icloud.com> on behalf of Manny Penate
Sent: Saturday, January 8, 2022 4:03 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; shenderson@townofhillsborobeach.com
Subject: Fwd: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00185.html

Sorry for the duplication. Some of these were returned as undeliverable.

Best,
Manny Peñate
Harborside

Begin forwarded message:

From: Manny Penate <mpenate@icloud.com>
Date: January 8, 2022 at 10:53:30 AM EST
To: dtarrant@townofhillsborobeach.com, ikirdahy@townofhillsborobeach.com, vfeaman@townofhillsboro.com, bbaldasarre@townofhillsboro.com, jreiser@townofhillsboro.com, mserda@townofhillsboro.com, joe@rma.us.com
Cc: Ddoody@cityatty.com, shenderson@townofhillsboro.com, "M. Kleiman" <scott@kklaw.us>
Subject: **Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile**

Thank you Mayor and Commissioners for your time and serious consideration to this matter. Yours is not an easy decision and your roles are often not rewarded. So, let me start by thanking you for your service and the way you run our town. I love our first respondents. God bless them.

These days there is a tendency for opposing sides to demonize one another and reduce the differences to insults and accusations. I take no part in that. I respect you as individuals and your public service. I've served on Boards, an often thankless job which makes us stronger.

I do have differences with what I perceive is a disposition to allow the erection of a 10 story building in a 3 story zoning. I am not blind to the threat the developer makes to impose on our town an unattractive monolithic eye sore of a 3 story rental structure if they cannot get their way on the fictional case of "hardship" which they propose. Personally those threats only strengthen my resolve.

The centerpiece on the table is the definition of "hardship" and how it is here interpreted. I sought legal counsel not with the intent of becoming an adversary with the commission but for the purpose of educating myself and my neighbors on the matter. My only adversary here is the developer and the position they are putting us all in.

It is clear to me from the case law presented on our attorney's letter that there is no hardship in this case. The decision to erect a higher structure is purely of convenience to the developer. And I believe that the commission is inclined to consider it only on the basis that this would be a better outcome than the ugly picture they paint of a Gulag like structure that they want to scare us into believing is the only alternative which will result in a devaluation of our homes. That is a very aggressive posture.

I understand your dilemma. I've put myself in your shoes: accept what appears to be a nice 10 story building or accept the threat of an eye sore with a potentially detrimental impact to our community.

Knowing their track record for luxury (including rentals), it is unlikely that they will create a black eye on

their reputation by taking such a posture on one of the most beautiful and valuable pieces of property available.

The fact that this lot is the aggregation of other lots does not make this unique as to the definition of hardship. Our attorney's letter covers this clearly.

I believe that the variance should be denied. I believe that you will find our residents receptive to a 5-6 story structure. This should accomplish your goal of avoiding the potential threat of a 3 story monolith eye sore they claim is the only alternative while providing your neighbors, our residents a more suitable option as there is a strong resistance to 10 stories.

The residents of Hillsboro Beach are watching closely how the commission maneuvers through the difficult options the developer has imposed upon us. We believe that our town will thank you by insisting that the developer present a suitable 5-6 story option in exchange for a possible variance. Otherwise, we are willing to stay with the 3 story zoning.

Thank you for your time and everything you do.

Manny Penate
Harborside

Begin forwarded message:

From: M Scott Kleiman <scott@kklaw.us>

Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Date: Jan 7, 2022 at 4:57 PM

To: dtarrant@townofhillsborobeach.com, ikirdahy@townofhillsborobeach.com, vfeaman@townofhillsborobeach.com, bbaldasarre@townofhillsborobeach.com, jreiser@townofhillsborobeach.com, mserda@townofhillsborobeach.com, joe@rma.us.com

Cc: Ddoody@cityatty.com, Shenderson@townofhillsborobeach.com

Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

Please see the attached correspondence provided on behalf of certain of the residents of Hillsboro Beach in opposition to the requested variance. I would request that this be included in the record in opposition to the variance request of Hillsboro Property Owner. I would also like to be added to the speakers list during the quasi-judicial consideration of this matter on January 11th, and would request that the City Clerk provide direction on how to do that from a virtual platform.

Thank you and have a nice weekend.

M. Scott Kleiman, Esq.

Kalis, Kleiman & Wolfe

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January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldassarre
VIA EMAIL: bbaldassarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria have been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v. Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *aff'd*, 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**" (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Shirley Watson <shirleywatson@watsonproperties.ca> on behalf of Shirley Watson
Sent: Saturday, January 8, 2022 4:11 PM
To: shenderson@townofhillsborobeach.com
Subject: Fwd: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00180.html

Good Afternoon Ms. Henderson;

Could you please enter my email letter below into the public record. Thank you so much.

Shirley Watson
Villa 48
1194 Hillsboro Mile
Hillsboro Beach, FL 33062

Begin forwarded message:

From: Shirley Watson <shirleywatson@watsonproperties.ca>
Subject: **Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022**
Date: January 8, 2022 at 3:11:46 PM EST
To: dtarrant@townofhillsborobeach.com, ikirdahy@townofhillsborobeach.com, vfeaman@townofhillsborobeach.com, bbaldasarre@townofhillsborobeach.com, jreiser@townofhillsborobeach.com, mserda@townofhillsborobeach.com, joe@rma.us.com
Cc: Donna Scheurer-Purre <donnas@foodforthepeople.com>

PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I oppose the granting of a height variance for the above referenced property. I have owned property in Hillsboro Beach since 1978. I have also developed property in Hillsboro Beach, abiding by the three story building height which was the current zoning. My company developed 74 units east and west of State Road A1A, which was less than the allowable number, and still secured a nice profit. There is no hardship to the Developer of 1174-1185 Hillsboro Mile by developing the property according to the legal and rightful three story zoning. I am in agreement with the attached legal letter written by Mr. Kleiman.

Sincerely yours,

Shirley Watson
Villa 48

1194 Hillsboro Mile
Hillsboro Beach, FL



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

♦
MAIN OFFICE
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone (954) 791-0477
Fax (954) 791-0506
E-Mail Info@kklaw.us

♦
TREASURE COAST OFFICE
P.O. BOX 13075
Fort Pierce, Florida 34979-3075
E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldassarre
VIA EMAIL: bbaldassarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**"(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Saturday, January 8, 2022 4:37 PM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf

Sent from my T-Mobile 4G LTE Device
Get [Outlook for Android](#)

From: Cierra Watson <cierrawatson@watsonproperties.ca>
Sent: Saturday, January 8, 2022 4:35:07 PM
To: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>; vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>; bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>; jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>; mserda@townofhillsborobeach.com <mserda@townofhillsborobeach.com>; joe@rma.us.com <joe@rma.us.com>
Cc: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Subject: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022

PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I vehemently oppose the granting of a height variance for the above referenced property. I am in agreement with the attached legal letter written by Mr. Kleiman.

Respectfully,

Cierra Watson
1194 Hillsboro Mile
Hillsboro Beach, FL



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

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♦
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January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldasarre
VIA EMAIL: bbaldasarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the “feeling sorry” for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not “entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**”(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. See, e.g., *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Saturday, January 8, 2022 4:38 PM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf

Sent from my T-Mobile 4G LTE Device
Get [Outlook for Android](#)

From: Shirley Watson <shirleywatson@watsonproperties.ca>
Sent: Saturday, January 8, 2022 3:11:46 PM
To: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>; vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>; bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>; jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>; mserda@townofhillsborobeach.com <mserda@townofhillsborobeach.com>; joe@rma.us.com <joe@rma.us.com>
Cc: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Subject: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022

PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I oppose the granting of a height variance for the above referenced property. I have owned property in Hillsboro Beach since 1978. I have also developed property in Hillsboro Beach, abiding by the three story building height which was the current zoning. My company developed 74 units east and west of State Road A1A, which was less than the allowable number, and still secured a nice profit. There is no hardship to the Developer of 1174-1185 Hillsboro Mile by developing the property according to the legal and rightful three story zoning. I am in agreement with the attached legal letter written by Mr. Kleiman.

Sincerely yours,

Shirley Watson
Villa 48
1194 Hillsboro Mile
Hillsboro Beach, FL



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

♦
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♦
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E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldassarre
VIA EMAIL: bbaldassarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the AIA setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures on the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria have been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *aff'd*, 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**" (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that, with the exception of the parking deficiency, met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: nardiellomeg@bellsouth.net
Sent: Saturday, January 8, 2022 6:39 PM
To: rrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Please stop this!
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning area. I support and agree with the attached attorney's letter that there is no hardship required for a zoning variance in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable option that stays within the three-story zoning code for this area of the town.

Sincerely,

Maryann Nardiello

•

[Opposition to Variance Letter.pdf](#)

[312.9kB](#)

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Saturday, January 8, 2022 7:42 PM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf

Sent from my T-Mobile 4G LTE Device
Get [Outlook for Android](#)

From: Jeffrey Brown <jwsbrown@icloud.com>
Sent: Saturday, January 8, 2022 7:37:14 PM
To: Jeffrey Brown <jwsbrown@icloud.com>
Cc: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>; vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>; bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>; jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>; Mac Serda <mserda@townofhillsborobeach.com>; joe@rma.us.com <joe@rma.us.com>; Donna Scheurer-Purre <Donnas@FoodforthePoor.com>
Subject: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022

PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I strongly oppose the granting of a height variance for the above referenced property. I am in agreement with attached legal letter written by Mr. Kleiman.

Yours truly,

Jeffrey Brown
1194 Hillsboro Mile, Villa 48
Hillsboro Beach, FL

Jeffrey Brown | jwsbrown@icloud.com | 305.922.7160

Sherry D. Henderson

From: Frank J. Kolb, Jr. <fjk@ehlaw.com> on behalf of Frank J. Kolb, Jr.
Sent: Sunday, January 9, 2022 9:22 AM
To: Deb Tarrant; Vice Mayor Irene Kirdahy;; Commissioner Vicky Feaman;; Commissioner Barbara Baldassarre;; Commissioner Jane Reiser:
Cc: Chris Fleck (cfleck@yahoo.com); Donna Scheurer-Purre; twochamps@me.com; Tony Gardner (tony@customplasticcard.com); Koren C. Kolb; Sherry D. Henderson
Subject: NOT A FORM LETTER KINDLY INCLUDE IN THE RECORD OF THE QUASI-JUDICIAL BOARD OF ZONING APPEALS 1-11-22

Dear Commissioners:

I have read, which I will not attach to this email for fear that my correspondence will be dismissed as a form letter, Attorney M. Scott Kleiman's letter to each of you dated January 7, 2022.

As one who has practiced law for over 40 years I concur wholeheartedly with the content and legal arguments he set forth in that letter. He gives succinct reasons to deny the granting.

I ask each of you to fully digest what he has written, find no *legal* hardship and avoid potential litigation.

My recollection of the December 7, 2021 Board of Zoning Appeals meeting that the vast majority of the speakers were opposed to the granting of the requested variance with less than 5 and possibly less than 3 being the number who spoke in favor of the granting of the variances. The voices of the taxpayers, who you represent must be listened to as well as you to apply the applicable law and Code provisions.

Based on the application of the Code and law simply stated the 1174-1185 Hillsboro Mile proposal does not meet the necessary criteria for the granting of the requested hardship variances.

There is no legal hardship.

I ask each of you to consider the fact that should the Board grant the requested variances (for the sole benefit of the developer) it is most likely that litigation would ensue which would be costly to the Town taxpayers.

Thank you.

Frank J. Kolb, Jr., Esq.
Kolb & Associates, P.C.
1173 Hillsboro Mile 1-1

Hillsboro Beach, Florida 33062
203 469 4475

Confidentiality

This communication is covered by the Electronic Communications Privacy Act, 18 USC Section #2510-2521. It is legally privileged (including attachments) and is intended only for the use of the individual(s) or entity(ies) to which it is addressed. It may contain information that is confidential, proprietary, privileged, and/or exempt from disclosure under applicable law. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify the sender so that appropriate action may be taken and avoid troubling you further. If you are not the intended recipient(s) please destroy this message, and any attachments, and notify the sender by return e-mail. Thank you.

Sherry D. Henderson

From: Richard Crusco <rcrusco28@gmail.com> on behalf of Richard Crusco
Sent: Sunday, January 9, 2022 9:40 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; Jose Arenal; Ddoody@cityatty.com; Sherry D. Henderson
Subject: Save Hillsboro Beach
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

We object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more. In addition, our community has also retained an attorney to represent our voices in opposition to granting this variance request.

We want our names and emails to be entered into the public record.

Richard Crusco - rcrusco28@gmail.com
Fern Crusco - fern@panther-marketing.com
1194 Hillsboro Mile
Villa 22
Hillsborobeach, Florida 33062

Sherry D. Henderson

From: Koren C. Kolb <kory@ehlaw.com> on behalf of Koren C. Kolb
Sent: Sunday, January 9, 2022 10:00 AM
To: Deb Tarrant; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com
Cc: shenderson@townofhillsborobeach.com
Subject: 1174-1185 Hillsboro Mile

Sent from Samsung tablet

I do not want to see a 10 story building in a 3 story zoning area. Everyone I have spoken to is not in favor of this. We all know someone would build on this lot but never imagined 10 stories. We need to stay within the zoning rules

Kory Kolb
1173 Hillsboto Mile

Sherry D. Henderson

From: David Schwartz <radman619@att.net> on behalf of David Schwartz
Sent: Sunday, January 9, 2022 11:12 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Re: Action Needed - Complete before Tuesday!
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Respectfully,

David M. Schwartz
Hillsboro Windsor
1169 Hillsboro Mile-#419
Hillsboro Beach, FL

On Saturday, January 8, 2022, 06:51:26 PM EST, Save Hillsboro Beach <savehillsborobeach@gmail.com> wrote:

wire...

ek's Town Commission meeting to show opposition to the Developer's new variance requests for the 1174-118. com links become available.

ing opposition to the new variance requests. See link [click here](#).

on of the variance. Even if you have sent previous emails in the past in opposition to the development proposal,

/ or one of your authorship (trying to make it easy). MAKE SURE YOU INCLUDE YOUR COMMUNITY NAME &

[h.com](#); vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com

re link provided [HERE](#)

m. in person or via zoom.

variance and in agreement with the code and law per the attached letter. **EVEN IF YOU HAVE EMAILED in th**
Ve must show the town with emails in opposition to prove the point that there is not “only a few in opposition.”

g. I support and agree with the attached attorney’s letter that there is no hardship in this case.

) stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in
that requests a height of 68% more.

[DjGB4/view?usp=sharing](#)

This email was sent to Radman619@att.net

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Save Hillsboro Beach 111 Hillsboro Mile Hillsboro Beach FL 33062-1614 USA

Grow your business with  **mailchimp**



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TAMI R. WOLFE

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7320 Griffin Road, Suite 109
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Fax (954) 791-0506
E-Mail Info@kklaw.us

♦
TREASURE COAST OFFICE
P.O. BOX 13075
Fort Pierce, Florida 34979-3075
E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldasarre
VIA EMAIL: bbaldasarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures one the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its Request, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examinations of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance.**"(Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indialantic denied the variance request.

In upholding Indialantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area. In the instant case, the evidence reasonably supports Indialantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indialantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indialantic. **Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a viable dual three story plan that, with the exception of the parking deficiency, met all Indialantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship." *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indialantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Cierra Watson <cierrawatson@watsonproperties.ca> on behalf of Cierra Watson
Sent: Sunday, January 9, 2022 11:16 AM
To: Sherry D. Henderson
Subject: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00123.html

Hello Sherry,

Please see below my letter of opposition to be part of the public record for this Development application.

Thank you,
Cierra Watson

Begin forwarded message:

From: Cierra Watson <cierrawatson@watsonproperties.ca>
Subject: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Date: January 8, 2022 at 4:35:07 PM EST
To: dtarrant@townofhillsborobeach.com, ikirdahy@townofhillsborobeach.com, vfeaman@townofhillsborobeach.com, bbaldasarre@townofhillsborobeach.com, jreiser@townofhillsborobeach.com, mserda@townofhillsborobeach.com, joe@rma.us.com
Cc: donnas@foodforthepeople.com

PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I vehemently oppose the granting of a height variance for the above referenced property. I am in agreement with the attached legal letter written by Mr. Kleiman.

Respectfully,

Cierra Watson
1194 Hillsboro Mile
Hillsboro Beach, FL

Sherry D. Henderson

From: Ivan Eland <gazelle_czar@yahoo.com> on behalf of Ivan Eland
Sent: Sunday, January 9, 2022 11:46 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; ddoody@cityatty.com; shenderson@townofhillsborobeach.com
Subject: Revised Proposal for a 10-Story Tower at 1174-1185 Hillsboro Mile

Dear Mayor Tarrant, Esteemed Members of the Zoning Board, and Distinguished Hillsboro Town Officials,

I humbly offer my comments on the revised proposal and in support of the letter written by lawyer M. Scott Kleiman. Mr. Kleiman has comprehensively laid out the stark legal problems with the extreme variance being requested for the 10-story tower. I will briefly summarize his most important points:

--Legally, variances to zoning codes for "hardship" reasons cannot be given for economic reasons or self-generated issues (the developer clearly knew about the conservation area and height restrictions before he purchased the land). The developer decided to buy the land while cavalierly assuming the city zoning commission would just roll over and give him a whopping exemption for a tower 12 (now seven) stories taller than that existing code of three stories.

--Variances can only be given if the developer is unable to build on the property for the purpose for which it is zoned. The developer has already admitted that he could create a development that complies with the current three-story code. Again, a variance seems to be illegal.

--Mr. Kleiman also notes the bad precedent set by such a huge tower in an area zoned for three-story structures. In the future, other developers might very well see such an extreme variance (in the unlikelihood that it holds up legally, given Mr. Kleiman's expert analysis) as an indication that the Hillsboro zoning board would be an easy mark for their designs. They could buy up existing three-story properties, demolish them, and apply for variances to put up many more towers--thus changing Hillsboro Beach into a Pompano-style town. Thus, what Mr. Kleiman calls the current variance request--"spot zoning"-- would turn into a massive ink blot (with emphasis on the "blot").

--More philosophically, such spot zoning smacks of what is called "crony capitalism." The term does not mean heinous illegal bribing of government officials, but refers to major distortions of the capitalist system by rich and politically powerful vested interests getting special treatment by governments at the local, county, state, and federal level (for example, tax breaks for breeding race horses, etc.). I firmly support risk-taking business people who follow the rules earning all cash they can carry, but the capitalist system runs best when the rule of law (a fancy political science term for the same laws and rules applying equally to everyone in society) is observed. When this principle is violated, "crony capitalism" becomes the norm and the unfairness fuels leftist movements, such as communism, socialism, and social democracy. Please don't let crony capitalism reign by allowing this developer to flout the three-story code that all others need to follow when building in this area of the wonderful seaside town of Hillsboro!

Thank you for your attention,

Ivan Eland

Sherry D. Henderson

From: Claire Calandra <clairecalandra@yahoo.com> on behalf of Claire Calandra
Sent: Sunday, January 9, 2022 1:01 PM
To: Deb Tarrant; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; Mac Serda; joe@rma.us.com; ddoody@cityatty.com;
shenderson@townofhillsborobeach.com
Cc: savehillsborobeach@gmail.com
Subject: Opposition to Variance Letter.pdf - Google Drive

Dear Commissioners,

The attorney here certainly raises some very good arguments which need to be considered in addressing the current request for an extensive variance.

Thanks,
Claire Calandra
Overlook Condominiums

https://drive.google.com/file/d/1UkHP0AqOvTlmXXfA_yNu0iDNd6zOjGB4/view

Sent from my iPad

Sherry D. Henderson

From: Valorie Rauh <jrauh@neo.rr.com> on behalf of Valorie Rauh
Sent: Sunday, January 9, 2022 1:36 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: 'Donna Scheurer-Purre'
Subject: Variance Opposition
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Valorie Rauh
Unit 603
Hillsboro Windsor, Hillsboro Beach



NEAL KALIS
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TAMI R. WOLFE

♦
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January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldassarre
VIA EMAIL: bbaldassarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its **Request**, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its **Request** to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's **Request**, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures one the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its **Request**, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria have been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance." (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner’s mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town’s desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. A **prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a **viable dual three story plan that**, with the exception of the parking deficiency, **met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that **a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged “benefits” that the Applicant’s project will bring to the Town. “Sweeteners” offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to “reach for the brass ring”, the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel’s development in accordance not with the Applicant’s desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the **Request** of the Applicant for the variance sought.

Respectfully submitted,

M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: jimrauh@comcast.net
Sent: Sunday, January 9, 2022 1:48 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: 'Save Hillsboro Beach'
Subject: 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Please enter my email as public record.

Sincerely,
James Rauh
1169 Hillsboro Mile, #603
Hillsboro Windsor

Sherry D. Henderson

From: Laura Fish <fishonthemile@gmail.com> on behalf of Laura Fish
Sent: Sunday, January 9, 2022 2:01 PM
To: Deb Tarrant; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
shenderson@townofhillsborobeach.com; joe@rma.us.com; ddoody@cityatty.com
Cc: Laura Fish; Boggie; millerva@aol.com; David Nesline; deirdre.nesline@comcast.net;
michael weinberg; penny weinberg; Cathleen Vecchione; Pat Engle; jan cody; James;
vec490@gmail.com; Donna Scheurer-Purre; shdolan1@gmail.com; Neo
Subject: Opposition to Dezer/Related Group Variance Letter.pdf
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00108.html

Dear Mayor Deb, Commissioners, and All.

Please see the attached attorney's correspondence of which myself, the undersigned, along with other current and future owners of the Hillsboro Windsor- residents of Hillsboro Beach, are in full agreement with, as to why we object allowing this or any 10+ story structure to be built in our 3-story zoned community. As stated in the attached, there is no evidence of "hardship" to allow such an obvious misfitting structure both in stature and look, to be built in this section of Hillsboro Beach.

As presented and depicted in the latest submitted plans and drawings, the building on the east side of A1A, is made to look smaller and unassuming next to the 8 story, 75-family apartments of the Windsor, and in fact it will measure @145 feet which next to the Windsor's @80 foot height, will be mammoth and almost DOUBLE in height. In addition, upon closer observation, its sleek shiny look was even depicted in the drawing of the Windsor's balustrades which are nothing of the sort. Our balustrades are what contribute to the beach front charm and character of this beautiful building, which is the exact reason we and many of our Hillsboro Beach friends and neighbors chose to buy and live here and in its' proximity. The proposed project is not only insulting in being called a "hardship", it is in stark opposition and a total clash to being a cohesive fit to the surrounding area.

Please, to be clear; I, the below signed, along with current and future residents do not object to the development of this property. Again. WE DO NOT OBJECT TO THE DEVELOPMENT OF THIS PROPERTY; our objection is to the blatant disregard to our 3 story zoning laws and the audacity of these builders to think they can do what they please with total disregard to the current laws and the surrounding neighbor's rights just for their own personal monetary

gain.

We implore the commission to act on our behalves and adhere to the Hillsboro Beach zoning laws to deny this updated proposal of 10 + stories on the beach and inter-coastal sides. The law was known at the time of purchase and there is no reason to approve any 'hardship'.

We would also like to be informed on where the entire January 11th meeting pertaining to the requested variance can be viewed, since some of us may be unable to attend either via zoom or in person.

Lastly, please note we would like this correspondence to be captured for the record.

Sherry D. Henderson

From: CLARA KNIERIM <claraknierim80042@gmail.com> on behalf of CLARA KNIERIM
Sent: Sunday, January 9, 2022 2:28 PM
To: Deb Tarrant, Mayor; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; Mac Serda; joe@rma.us.com; Ddoody@cityatty.com;
Shenderson@townofhillsborobeach.com
Subject: Opposition to the Developer's new variance requests for the 1174-1185 Hillsboro Mile property.

Dear Mayor and Commissioners,

As a 41 year resident of our beloved Hillsboro Beach, I request that all of you please act on our behalf regarding above mentioned Variance.

I, Clara Knierim, object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

Clara V. Knierim
1194

Sherry D. Henderson

From: CLARA KNIERIM <claraknierim80042@gmail.com> on behalf of CLARA KNIERIM
Sent: Sunday, January 9, 2022 2:31 PM
To: Deb Tarrant, Mayor; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; Mac Serda; joe@rma.us.com; Ddody@cityatty.com;
Shenderson@townofhillsborobeach.com
Subject: Fwd: Opposition to the Developer's new variance requests for the 1174-1185 Hillsboro Mile property.
Attachments: Variance opposition legal doc 1174 lot.pdf

----- Forwarded message -----

From: **CLARA KNIERIM** <claraknierim80042@gmail.com>
Date: Sun, Jan 9, 2022 at 2:27 PM
Subject: Opposition to the Developer's new variance requests for the 1174-1185 Hillsboro Mile property.
To: Deb Tarrant, Mayor <dtarrant@townofhillsborobeach.com>, <ikirdahy@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>, Mac Serda <mserda@townofhillsborobeach.com>, <joe@rma.us.com>, <Ddody@cityatty.com>, <Shenderson@townofhillsborobeach.com>

Dear Mayor and Commissioners,

As a 41 year resident of our beloved Hillsboro Beach, I request that all of you please act on our behalf regarding above mentioned Variance.

I, Clara Knierim, object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

Clara V. Knierim
1194 Hillsboro Mile, Villa 26
Hillsboro Beach & Yacht Villas
Hillsboro Beach FL 33062

Sherry D. Henderson

From: Edward Pfleging <epfleging@gmail.com> on behalf of Edward Pfleging
Sent: Sunday, January 9, 2022 2:28 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Signed,

Edward Pfleging

1199 Hillsboro Mile
Unit 301 and 205

https://drive.google.com/file/d/1UkHP0AqOvTImXXfA_yNu0iDNd6zOjGB4/view?usp=sharing

Sherry D. Henderson

From: kevin driscoll <kevinfriscoll@gmail.com> on behalf of kevin driscoll
Sent: Sunday, January 9, 2022 2:51 PM
To: Deb Tarrant; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; Mac Serda; joe@rma.us.com; DJ Doody;
Shenderson@townofhillsborobeach.com
Subject: Objection to Zoning Variance for 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners:

Please add my email to the public record as it relates to the requested zoning variance for 1174-1185 Hillsboro Mile, Hillsboro Beach, FL.

I object to granting a variance to allow the construction of a 10-story building in 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter clearly covers why the variance for a 10-story structure should be denied. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Thank you for your attention to this matter.

Kevin Driscoll
1207 Hillsboro Mile, Villa 3F
Hillsboro Beach, FL 33062

Sherry D. Henderson

From: Pat Marmousez <marmousezpat@gmail.com> on behalf of Pat Marmousez
Sent: Sunday, January 9, 2022 4:15 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Patricia Marmousez Hillsboro Imperial

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Sunday, January 9, 2022 5:41 PM
To: kevin driscoll; Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldasarre; Jane Reiser; joe@rma.us.com; DJ Doody; Sherry D. Henderson
Subject: RE: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Good Afternoon Mr. Driscoll,

Thank you for sending your comment to the us, however if you would like your comment to be part of the public record, please send your comment directly to our Town Clerk at the email below, or you may print and deliver it to Town Hall.

shenderson@townofhillsborobeach.com

By you sending it directly to the Clerk, we can ensure it is received, recoverable, and we can avoid duplication of comments.

Thank you,
Mac

Mac Serda, ICMA
Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: kevin driscoll <kevinfriscoll@gmail.com>
Sent: Sunday, January 9, 2022 2:51 PM
To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com;
Mac Serda <mserda@townofhillsborobeach.com>; joe@rma.us.com; DJ Doody <Ddoody@cityatty.com>;
Shenderson@townofhillsborobeach.com
Subject: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners:

Please add my email to the public record as it relates to the requested zoning variance for 1174-1185 Hillsboro Mile, Hillsboro Beach, FL.

I object to granting a variance to allow the construction of a 10-story building in 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter clearly covers why the variance for a 10-story structure should be denied. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Thank you for your attention to this matter.

Kevin Driscoll
1207 Hillsboro Mile, Villa 3F
Hillsboro Beach, FL 33062

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Sunday, January 9, 2022 5:45 PM
To: Laura Fish; Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldassarre; Jane Reiser; Sherry D. Henderson; joe@rma.us.com; ddoody@cityatty.com
Cc: Boggie; millerva@aol.com; David Nesline; deirdre.nesline@comcast.net; michael weinberg; penny weinberg; Cathleen Vecchione; Pat Engle; jan cody; James; vec490@gmail.com; Donna Scheurer-Purre; shdolan1@gmail.com; Neo
Subject: RE: Opposition to Dezer/Related Group Variance Letter.pdf

Good Afternoon Ms. Fish,

Thank you for sending your comment to us, however if you would like your comment to be part of the public record, please send your comment directly to our Town Clerk at the email below, or you may print and deliver it to Town Hall.

shenderson@townofhillsborobeach.com

By you sending it directly to the Clerk, we can ensure it is received, recoverable, and we can avoid duplication of comments.

Also, kindly explain what you mean by your question of "where can the meeting be viewed" if not by zoom or in person? A link to attend the meeting virtually can be found on our homepage.

Thank you,

Mac Serda, ICMA
Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: Laura Fish <fishonthemile@gmail.com>
Sent: Sunday, January 9, 2022 2:01 PM
To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldassarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; shenderson@townofhillsborobeach.com; joe@rma.us.com; ddoody@cityatty.com
Cc: Laura Fish <fishonthemile@gmail.com>; Boggie <boggiethemile@bellsouth.net>; millerva@aol.com; David Nesline <Davidnesline@comcast.net>; deirdre.nesline@comcast.net; michael weinberg <yanks4@gmail.com>; penny weinberg <artypenny@gmail.com>; Cathleen Vecchione <missvee915@gmail.com>; Pat Engle <piengle@aol.com>; jan cody <jancody27@gmail.com>; James <jimrauh@comcast.net>; vec490@gmail.com; Donna Scheurer-Purre <donnas@foodforthepeople.com>; shdolan1@gmail.com; Neo <jrauh@neo.rr.com>
Subject: Opposition to Dezer/Related Group Variance Letter.pdf

Dear Mayor Deb, Commissioners, and All.

Please see the attached attorney's correspondence of which myself, the undersigned, along with other current and future owners of the Hillsboro Windsor- residents of Hillsboro Beach, are in full agreement with, as to why we object allowing this or any 10+ story structure to be built in our 3-story zoned community. As stated in the attached, there is no evidence of "hardship" to allow such an obvious misfitting structure both in stature and look, to be built in this section of Hillsboro Beach.

As presented and depicted in the latest submitted plans and drawings, the building on the east side of A1A, is made to look smaller and unassuming next to the 8 story, 75-family apartments of the Windsor, and in fact it will measure @145 feet which next to the Windsor's @80 foot height, will be mammoth and almost DOUBLE in height. In addition, upon closer observation, its sleek shiny look was even depicted in the drawing of the Windsor's balustrades which are nothing of the sort. Our balustrades are what contribute to the beach front charm and character of this beautiful building, which is the exact reason we and many of our Hillsboro Beach friends and neighbors chose to buy and live here and in its' proximity. The proposed project is not only insulting in being called a "hardship", it is in stark opposition and a total clash to being a cohesive fit to the surrounding area.

Please, to be clear; I, the below signed, along with current and future residents do not object to the development of this property. Again. **WE DO NOT OBJECT TO THE DEVELOPMENT OF THIS PROPERTY**; our objection is to the blatant disregard to our 3 story zoning laws and the audacity of these builders to think they can do what they please with total disregard to the current laws and the surrounding neighbor's rights just for their own personal monetary gain.

We implore the commission to act on our behalves and adhere to the Hillsboro Beach zoning laws to deny this updated proposal of 10 + stories on the beach and inter-coastal sides. The law was known at the time of purchase and there is no reason to approve any 'hardship'.

We would also like to be informed on where the entire January 11th meeting pertaining to the requested variance can be viewed, since some of us may be unable to attend either via zoom or in person.

Lastly, please note we would like this correspondence to be captured for the record.

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Sunday, January 9, 2022 5:46 PM
To: kevin driscoll; Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldasarre; Jane Reiser; joe@rma.us.com; DJ Doody; Sherry D. Henderson
Subject: RE: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

My apologies, the Town Clerk has your email, and will be part of the public record.

Mac Serda, ICMA
Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: Mac Serda <mserda@townofhillsborobeach.com>
Sent: Sunday, January 9, 2022 5:41 PM
To: 'kevin driscoll' <kevinfdiscoll@gmail.com>; Deb Tarrant <dtarrant@townofhillsborobeach.com>; Irene Kirdahy <ikirdahy@townofhillsborobeach.com>; Vicky Feaman <vfeaman@townofhillsborobeach.com>; Barbara Baldasarre <bbaldasarre@townofhillsborobeach.com>; Jane Reiser <jreiser@townofhillsborobeach.com>; 'joe@rma.us.com' <joe@rma.us.com>; 'DJ Doody' <Ddoody@cityatty.com>; Sherry D. Henderson <shenderson@townofhillsborobeach.com>
Subject: RE: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Good Afternoon Mr. Driscoll,

Thank you for sending your comment to the us, however if you would like your comment to be part of the public record, please send your comment directly to our Town Clerk at the email below, or you may print and deliver it to Town Hall.

shenderson@townofhillsborobeach.com

By you sending it directly to the Clerk, we can ensure it is received, recoverable, and we can avoid duplication of comments.

Thank you,
Mac

Mac Serda, ICMA
Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: kevin driscoll <kevinfdiscoll@gmail.com>

Sent: Sunday, January 9, 2022 2:51 PM

To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com;
Mac Serda <mserda@townofhillsborobeach.com>; joe@rma.us.com; DJ Doody <Ddoody@cityatty.com>;
Shenderson@townofhillsborobeach.com

Subject: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners:

Please add my email to the public record as it relates to the requested zoning variance for 1174-1185 Hillsboro Mile, Hillsboro Beach, FL.

I object to granting a variance to allow the construction of a 10-story building in 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter clearly covers why the variance for a 10-story structure should be denied. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Thank you for your attention to this matter.

Kevin Driscoll
1207 Hillsboro Mile, Villa 3F
Hillsboro Beach, FL 33062

Sherry D. Henderson

From: kevin driscoll <kevinfriscoll@gmail.com> on behalf of kevin driscoll
Sent: Sunday, January 9, 2022 5:47 PM
To: Mac Serda
Cc: Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldassarre; Jane Reiser; joe@rma.us.com; DJ Doody; Sherry D. Henderson
Subject: Re: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Thanks Mac. Appreciate your help.

Best--Kevin

On Sun, Jan 9, 2022 at 5:45 PM Mac Serda <mserda@townofhillsborobeach.com> wrote:

My apologies, the Town Clerk has your email, and will be part of the public record.

Mac Serda, ICMA

Town Manager

Hillsboro Beach

Ofc: 954-427-4011

Cell: 305-525-5505

From: Mac Serda <mserda@townofhillsborobeach.com>

Sent: Sunday, January 9, 2022 5:41 PM

To: 'kevin driscoll' <kevinfriscoll@gmail.com>; Deb Tarrant <dtarrant@townofhillsborobeach.com>; Irene Kirdahy <ikirdahy@townofhillsborobeach.com>; Vicky Feaman <vfeaman@townofhillsborobeach.com>; Barbara Baldassarre <bbaldassarre@townofhillsborobeach.com>; Jane Reiser <jreiser@townofhillsborobeach.com>; 'joe@rma.us.com' <joe@rma.us.com>; 'DJ Doody' <Ddoody@cityatty.com>; Sherry D. Henderson <shenderson@townofhillsborobeach.com>

Subject: RE: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Good Afternoon Mr. Driscoll,

Thank you for sending your comment to the us, however if you would like your comment to be part of the public record, please send your comment directly to our Town Clerk at the email below, or you may print and deliver it to Town Hall.

shenderson@townofhillsborobeach.com

By you sending it directly to the Clerk, we can ensure it is received, recoverable, and we can avoid duplication of comments.

Thank you,

Mac

Mac Serda, ICMA

Town Manager

Hillsboro Beach

Ofc: 954-427-4011

Cell: 305-525-5505

From: kevin driscoll <kevinfdiscoll@gmail.com>

Sent: Sunday, January 9, 2022 2:51 PM

To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com;
Mac Serda <mserda@townofhillsborobeach.com>; joe@rma.us.com; DJ Doody <Ddoody@cityatty.com>;
Shenderson@townofhillsborobeach.com

Subject: Objection to Zoning Variance for 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners:

Please add my email to the public record as it relates to the requested zoning variance for 1174-1185 Hillsboro Mile, Hillsboro Beach, FL.

I object to granting a variance to allow the construction of a 10-story building in 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter clearly covers why the variance for a 10-story structure should be denied. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Thank you for your attention to this matter.

Kevin Driscoll

1207 Hillsboro Mile, Villa 3F

Hillsboro Beach, FL 33062

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Sunday, January 9, 2022 6:18 PM
To: Sherry D. Henderson
Subject: Fwd: 1174-1185 Hillsboro Mile

Poor Sherry, it's going to take you all of Monday to get rid of duplication!
If I saw you were already copied, I didn't forward to you again.
Hope you're feeling well!
Irene

----- Forwarded message -----

From: Carla Palmore <cppalmore@gmail.com>
Date: Sun, Jan 9, 2022, 5:55 PM
Subject: 1174-1185 Hillsboro Mile
To: Deb Tarrant, Mayor <dtarrant@townofhillsborobeach.com>
Cc: <ikirdahy@townofhillsborobeach.com>, <bbaldasarre@townofhillsborobeach.com>, <vfeaman@townofhillsborobeach.com>, <jreiser@townofhillsborobeach.com>

Dear Mayor Tarrant and Commissioners -

We are writing with continued concerns regarding the proposed development at 1174-1185 Hillsboro Mile. While we appreciate that the developer is preparing a ten story option and that is a step in the right direction, it is simply not enough. The ten story option might look reasonable compared to the 15 story option but it is still way more than the three stories that were written into the code by previous commissioners looking out for the best interests of Hillsboro Beach. Ten stories is even significantly higher than the seven stories allowed at the South end of the mile.

We also understand that some of the land has been rendered unusable due to various reasons and the dunes on the ocean side have been frequently mentioned. Though the dunes may indeed reduce buildable land, it is hard for us to imagine that any developer would want to build on the dunes area given global warming, higher tides and significant beach erosion. The dunes provide a beautiful natural barrier that should help protect the properties that are ultimately constructed.

We believe Dezer Development and Related Group should provide actual three story building plans for the properties and if those are unfeasible, a seven story option could be considered. We implore the commissioners to respect former Town of Hillsboro commissioners who had the building height restrictions put in place. Obviously there were reasons why the Hillsboro building code was revised to restrict the building heights to either three or seven stories along the mile.

Thank you for considering our concerns.

Mark and Carla Palmore
1057 Hillsboro Mile

Sherry D. Henderson

From: Laura Fish <fishonthemile@gmail.com> on behalf of Laura Fish
Sent: Sunday, January 9, 2022 6:19 PM
To: Mac Serda
Cc: Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldasarre; Jane Reiser; Sherry D. Henderson; joe@rma.us.com; ddooddy@cityatty.com; Boggie; millerva@aol.com; David Nesline; deirdre.nesline@comcast.net; michael weinberg; penny weinberg; Cathleen Vecchione; Pat Engle; jan cody; James; vec490@gmail.com; Donna Scheurer-Purre; shdolan1@gmail.com; Neo
Subject: Re: Opposition to Dezer/Related Group Variance Letter.pdf

Hello Mac,

Thank you for your reply.

Shenderson has been cc:d and I greatly appreciate your concern that comments are sent in properly so they can be recorded.

Re: my question re: where the meeting might be viewed if unable to attend either in person or via live zoom- will it be recorderd perhaps? U-tubed?

I unfortunately will be in work meetings during the town hall meeting but would like very much to hear/view the town meeting if possible later Tuesday evening.

Thank you.

Best, Laura.

Sent from my iPhone

On Jan 9, 2022, at 5:44 PM, Mac Serda <mserda@townofhillsborobeach.com> wrote:

Good Afternoon Ms. Fish,

Thank you for sending your comment to us, however if you would like your comment to be part of the public record, please send your comment directly to our Town Clerk at the email below, or you may print and deliver it to Town Hall.

shenderson@townofhillsborobeach.com

By you sending it directly to the Clerk, we can ensure it is received, recoverable, and we can avoid duplication of comments.

Also, kindly explain what you mean by your question of "where can the meeting be viewed" if not by zoom or in person? A link to attend the meeting virtually can be found on our homepage.

Thank you,

Mac Serda, ICMA

Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: Laura Fish <fishonthemile@gmail.com>

Sent: Sunday, January 9, 2022 2:01 PM

To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
shenderson@townofhillsborobeach.com; joe@rma.us.com; ddoody@cityatty.com

Cc: Laura Fish <fishonthemile@gmail.com>; Boggie <boggiethemile@bellsouth.net>; millerva@aol.com;
David Nesline <Davidnesline@comcast.net>; deirdre.nesline@comcast.net; michael weinberg
<yanks4@gmail.com>; penny weinberg <artypenny@gmail.com>; Cathleen Vecchione
<missvee915@gmail.com>; Pat Engle <pjengle@aol.com>; jan cody <jancody27@gmail.com>; James
<jimrauh@comcast.net>; vec490@gmail.com; Donna Scheurer-Purre <donnas@foodforthepeople.com>;
shdolan1@gmail.com; Neo <jrauh@neo.rr.com>

Subject: Opposition to Dezer/Related Group Variance Letter.pdf

Dear Mayor Deb, Commissioners, and All.

Please see the attached attorney's correspondence of which myself, the undersigned, along with other current and future owners of the Hillsboro Windsor-residents of Hillsboro Beach, are in full agreement with, as to why we object allowing this or any 10+ story structure to be built in our 3-story zoned community. As stated in the attached, there is no evidence of "hardship" to allow such an obvious misfitting structure both in stature and look, to be built in this section of Hillsboro Beach.

As presented and depicted in the latest submitted plans and drawings, the building on the east side of A1A, is made to look smaller and unassuming next to the 8 story, 75-family apartments of the Windsor, and in fact it will measure @145 feet which next to the Windsor's @80 foot height, will be mammoth and almost DOUBLE in height. In addition, upon closer observation, its sleek shiny look was even depicted in the drawing of the Windsor's balustrades which are nothing of the sort. Our balustrades are what contribute to the beach front charm and character of this beautiful building, which is the exact reason we and many of our Hillsboro Beach friends and neighbors chose to buy and live here and in its' proximity. The proposed project is not only insulting in being called a "hardship", it is in stark opposition and a total clash to being a cohesive fit to the surrounding area.

Please, to be clear; I, the below signed, along with current and future residents do not object to the development of this property. Again. WE DO NOT OBJECT TO THE DEVELOPMENT OF THIS PROPERTY; our objection is to the blatant disregard to our 3 story zoning laws and the audacity of these builders to think they can do what they please with total disregard to the current laws and the surrounding neighbor's rights just for their own personal monetary gain.

We implore the commission to act on our behalves and adhere to the Hillsboro Beach zoning laws to deny this updated proposal of 10 + stories on the beach and inter-coastal sides. The law was known at the time of purchase and there is no reason to approve any 'hardship'.

We would also like to be informed on where the entire January 11th meeting pertaining to the requested variance can be viewed, since some of us may be unable to attend either via zoom or in person.

Lastly, please note we would like this correspondence to be captured for the record.

Sherry D. Henderson

From: Laura Fish <fishonthemile@gmail.com> on behalf of Laura Fish
Sent: Sunday, January 9, 2022 6:19 PM
To: Mac Serda
Cc: Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldasarre; Jane Reiser; Sherry D. Henderson; joe@rma.us.com; ddody@cityatty.com; Boggie; millerva@aol.com; David Nesline; deirdre.nesline@comcast.net; michael weinberg; penny weinberg; Cathleen Vecchione; Pat Engle; jan cody; James; vec490@gmail.com; Donna Scheurer-Purre; shdolan1@gmail.com; Neo
Subject: Re: Opposition to Dezer/Related Group Variance Letter.pdf

Hello Mac,
Thank you for your reply.
Shenderson has been cc:d and I greatly appreciate your concern that comments are sent in properly so they can be recorded.

Re: my question re: where the meeting might be viewed if unable to attend either in person or via live zoom- will it be recorderd perhaps? U-tubed?
I unfortunately will be in work meetings during the town hall meeting but would like very much to hear/view the town meeting if possible later Tuesday evening.

Thank you.
Best, Laura.

Sent from my iPhone

On Jan 9, 2022, at 5:44 PM, Mac Serda <mserda@townofhillsborobeach.com> wrote:

Good Afternoon Ms. Fish,

Thank you for sending your comment to us, however if you would like your comment to be part of the public record, please send your comment directly to our Town Clerk at the email below, or you may print and deliver it to Town Hall.

shenderson@townofhillsborobeach.com

By you sending it directly to the Clerk, we can ensure it is received, recoverable, and we can avoid duplication of comments.

Also, kindly explain what you mean by your question of "where can the meeting be viewed" if not by zoom or in person? A link to attend the meeting virtually can be found on our homepage.

Thank you,

Mac Serda, ICMA

Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: Laura Fish <fishonthemile@gmail.com>

Sent: Sunday, January 9, 2022 2:01 PM

To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
shenderson@townofhillsborobeach.com; joe@rma.us.com; ddoody@cityatty.com

Cc: Laura Fish <fishonthemile@gmail.com>; Boggie <boggiethemile@bellsouth.net>; millerva@aol.com;
David Nesline <Davidnesline@comcast.net>; deirdre.nesline@comcast.net; michael weinberg
<yanks4@gmail.com>; penny weinberg <artypenny@gmail.com>; Cathleen Vecchione
<missvee915@gmail.com>; Pat Engle <pjengle@aol.com>; jan cody <jancody27@gmail.com>; James
<jimrauh@comcast.net>; vec490@gmail.com; Donna Scheurer-Purre <donnas@foodforthepeople.com>;
shdolan1@gmail.com; Neo <jrauh@neo.rr.com>

Subject: Opposition to Dezer/Related Group Variance Letter.pdf

Dear Mayor Deb, Commissioners, and All.

Please see the attached attorney's correspondence of which myself, the undersigned, along with other current and future owners of the Hillsboro Windsor-residents of Hillsboro Beach, are in full agreement with, as to why we object allowing this or any 10+ story structure to be built in our 3-story zoned community. As stated in the attached, there is no evidence of "hardship" to allow such an obvious misfitting structure both in stature and look, to be built in this section of Hillsboro Beach.

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We would also like to be informed on where the entire January 11th meeting pertaining to the requested variance can be viewed, since some of us may be unable to attend either via zoom or in person.

Lastly, please note we would like this correspondence to be captured for the record.

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Sunday, January 9, 2022 6:38 PM
To: Laura Fish
Cc: Deb Tarrant; Irene Kirdahy; Vicky Feaman; Barbara Baldassarre; Jane Reiser; Sherry D. Henderson; joe@rma.us.com; DDooddy@cityatty.com; Boggie; millerva@aol.com; David Nesline; deirdre.nesline@comcast.net; michael weinberg; penny weinberg; Cathleen Vecchione; Pat Engle; jan cody; James; vec490@gmail.com; Donna Scheurer-Purre; shdolan1@gmail.com; Neo
Subject: Re: Opposition to Dezer/Related Group Variance Letter.pdf

Our meetings are audio recorded and minutes are prepared.

I'm not sure if we will have a video recording of the meeting. I will see what can be arranged.
Mac

Mac Serda
Town Manager
Hillsboro Beach

Sent from my iPhone

On Jan 9, 2022, at 6:18 PM, Laura Fish <fishonthemile@gmail.com> wrote:

Hello Mac,
Thank you for your reply.
Shenderson has been cc:d and I greatly appreciate your concern that comments are sent in properly so they can be recorded.

Re: my question re: where the meeting might be viewed if unable to attend either in person or via live zoom- will it be recorded perhaps? U-tubed?

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Sent from my iPhone

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shenderson@townofhillsborobeach.com

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Mac Serda, ICMA
Town Manager
Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

From: Laura Fish <fishonthemile@gmail.com>

Sent: Sunday, January 9, 2022 2:01 PM

To: Deb Tarrant <dtarrant@townofhillsborobeach.com>; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
shenderson@townofhillsborobeach.com; joe@rma.us.com; ddoody@cityatty.com

Cc: Laura Fish <fishonthemile@gmail.com>; Boggie <boggiethemile@bellsouth.net>; millerva@aol.com;
David Nesline <Davidnesline@comcast.net>; deirdre.nesline@comcast.net; michael weinberg
<yanks4@gmail.com>; penny weinberg <artypenny@gmail.com>; Cathleen Vecchione
<missvee915@gmail.com>; Pat Engle <pjengle@aol.com>; jan cody <jancody27@gmail.com>; James
<jimrauh@comcast.net>; vec490@gmail.com; Donna Scheurer-Purre <donnas@foodforthe poor.com>;
shdolan1@gmail.com; Neo <jrauh@neo.rr.com>

Subject: Opposition to Dezer/Related Group Variance Letter.pdf

Dear Mayor Deb, Commissioners, and All.

Please see the attached attorney's correspondence of which myself, the undersigned, along with other current and future owners of the Hillsboro Windsor-residents of Hillsboro Beach, are in full agreement with, as to why we object allowing this or any 10+ story structure to be built in our 3-story zoned community. As stated in the attached, there is no evidence of "hardship" to allow such an obvious misfitting structure both in stature and look, to be built in this section of Hillsboro Beach.

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We implore the commission to act on our behalves and adhere to the Hillsboro Beach zoning laws to deny this updated proposal of 10 + stories on the beach and inter-coastal sides. The law was known at the time of purchase and there is no reason to approve any 'hardship'.

We would also like to be informed on where the entire January 11th meeting pertaining to the requested variance can be viewed, since some of us may be unable to attend either via zoom or in person.

Lastly, please note we would like this correspondence to be captured for the record.

Sherry D. Henderson

From: Mark Boettcher <markwboettcher@gmail.com> on behalf of Mark Boettcher
Sent: Sunday, January 9, 2022 8:13 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: M Scott Kleiman <scott@kklaw.us>
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with attorney Kleimman's letter stating that there is no hardship in this case.

I believe the variance should be denied for 10 stories. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

I am a Florida resident and reside at Palm Hills Villas, 1212 Hillsboro Mile in Hillsboro Beach, FL.

Mark Boettcher | markwboettcher@gmail.com | 414-588-3358
Palm Hills Villas, Apt 16, Hillsboro Beach, FL

Sherry D. Henderson

From: George Zikratov <gzikratov@verizon.net> on behalf of George Zikratov
Sent: Sunday, January 9, 2022 9:20 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: 1174-1185 variance request
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

We attended Board meeting on Dec 7, 2021 where we learned a lot of details about Lot 1174-1185 variance request. Based on that meeting, we feel that the developer did not present sufficient evidence that the allowed by town's code 35-foot building is not profitable.

In fact, there was very little discussion on the allowed 3-story 35-foot option for this site. Without clear understanding of the limitations, we object granting any variance to the developer.

We also reviewed the attached attorney's letter which indicates no hardship in this case.

Please insist that the developer presents some lower story options before considering any variance.

Please include our letter in Public Records.

George and Lana Zikratov
1194 Hillsboro Mile, Unit 24
Hillsboro Beach, FL 33062

Sherry D. Henderson

From: BARBARA GILLERANJOHNSON <bgilleranjohnson@aol.com> on behalf of BARBARA GILLERANJOHNSON
Sent: Sunday, January 9, 2022 11:07 PM
To: dtarrant@townofhillsborobeach.com; joe@rma.us.com;
vfeaman@townofhillsborobeach.com; BBaldasarre; jreiser@townofhillsborobeach.com;
Sherry D. Henderson
Subject: 1174-1185 Hillsboro Mile property.

Dear Mayor and Commissioners,

Thank you for giving me the opportunity to comment on the request for a variance regarding 1174-1185. I respectfully submit that I am **opposed** to the developers request for a variance for 10 stories. The developers have failed to show a hardship and the Mayor and commissioners should deny their request.

I have carefully listened to arguments from both sides and strongly believe the arguments not to grant the variance are more in keeping with the overall landscape of the beautiful town known as Hillsboro Beach.

I am hoping you will be able to find a happy medium that is consistent with the actual conservation easement that permits 33% of the property be developed and not one that requests a height of 68% or more.

Once you open Pandora's box you put in motion a process that will only create problems in the future with future developers. There is no such thing as making this a one time exception. Other developers or even these same developers may purchase properties in the future and request additional height variances .

Hillsboro Beach was officially incorporated in 1947 don't make 2022 which marks 75 years of Hillsboro Beach's existence the year that Hillsboro Beach charm, character and ambience was negatively altered forever.

Please enter my email into the official record as opposition to the variance as currently requested by the developers.

Respectfully Submitted.

Barbara Johnson
Hillsboro Island House
1160 Hillsboro Mile
Hillsboro Beach, FL

Sherry D. Henderson

From: Laureen Fleck <laureenfleck@yahoo.com> on behalf of Laureen Fleck
Sent: Monday, January 10, 2022 6:38 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Fw: 2 Fwd: Opposition to Variance Request of Hillsboro Property Owner< LLC -
1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. Do not rush this process.

Regards,
Laureen Fleck
1173 Hillsboro Mile

From: M Scott Kleiman <scott@kklaw.us>
Sent: Friday, January 7, 2022 4:52 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com
Cc: Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile

Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

Please see the attached correspondence provided on behalf of certain of the residents of Hillsboro Beach in opposition to the requested variance. I would request that this be included in the record in opposition to the variance request of Hillsboro Property Owner. I would also like to be added to the speakers list during the quasi-judicial consideration of this matter on January 11th, and would request that the City Clerk provide direction on how to do that from a virtual platform.

Thank you and have a nice weekend.

M. Scott Kleiman, Esq.

Kalis, Kleiman & Wolfe

7320 Griffin Road, Suite 109

Davie, Florida 33314

Telephone: 954-791-0477

Office Fax: 954-791-0506

Direct Email: scott@kklaw.us

Office Email: info@kklaw.us

Website: www.kklaw.us

Emails sent after regular business hours, on weekends or on holidays will not be read or reviewed until the next business day.

While Kalis, Kleiman & Wolfe encourages all forms of communication, please be aware that the transmittal of an email to this email address is not certification that the email has been received (due to spam and quarantine protocols) or that it has been read, reviewed or acted upon by the recipient. To insure that emails of an urgent nature have been received, please call the intended recipient to advise of the email's transmittal or to confirm its delivery. Similarly, text messages sent after regular business hours, on weekends or on holidays may not be read or reviewed until the next business day.

NOTICE: This e-mail message and any attachment(s) hereto contain confidential information that may be legally privileged. If you are not the intended recipient, you must not review, retransmit, copy, convert to hard copy, use or disseminate this e-mail or any attachment(s) to it. If you have received this e-mail in error, please notify us immediately by return e-mail or telephone at 954-791-0477 and delete this message. Please note that if this e-mail contains a forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachment(s) may not have been produced by M. Scott Kleiman, Esq., or Kalis, Kleiman & Wolfe.

Sherry D. Henderson

From: PAUL GOLTZ <paulgoltz@cs.com> on behalf of PAUL GOLTZ
Sent: Monday, January 10, 2022 8:00 AM
To: shenderson@townofhillsborobeach.com
Subject: Fwd: Opposition to Variance Request at 1174-1185 Hillsboro Mile

Dear Sir or Madam,

This letter is to express my concern about granting a variance to the owners of the above mentioned property to construct 10 story towers. Per the current zoning requirements, any structures constructed on this property should not exceed 3 stories in height.

Further, I am concerned about the size of the **footprint of the garage which is being planned and will invade substantially into the plotted conservation area by the sea.** Even if it is permitted as it is planned to be "subterranean", there is still a strong possibility that wind and water erosion will occur over time and that the garage structure will become visible. Its presence may even act to accelerate erosion of the dunes. The garage area should not at all be permitted to extend all the way into the conservation area - nor above the ground, nor under the ground.

Also, the **developer plans to punch multiple pedestrian pathways through and across the dunes for condo owners to reach the beach.** Considering the aesthetics of the dunes and the current limited access respected by other buildings along the coastline, I feel that permitting multiple pathways to the beach on this property is excessive and that pedestrian traffic should be limited to only one or two pathways. We need to conserve the beauty of Hillsboro Beach.

Last, **I wholly agree with and support all the points presented in Mr. M. Scott Kleiman's letter (from Kalis, Kleiman& Wolfe LLC) dated January 7, 2022.**

Please do not permit the modified variance request for 10 story towers now being requested by the current owners of 1174-1185 Hillsboro Mile. Again, the owners knew the building restrictions in place when they purchased the property and they should not be permitted to alter those restrictions.

Thank you for respecting the current and long term interests of the owners on Hillsboro Beach in this precedent setting decision.

Sincerely,

Paul Goltz
Owner, 1169 Hillsboro Mile #607

Sherry D. Henderson

From: Nancy Robbins <nldr13@icloud.com> on behalf of Nancy Robbins
Sent: Monday, January 10, 2022 8:41 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; Mac Serda; joe@rma.us.com; Ddoody@cityatty.com;
shenderson@townofhillsborobeach.com
Cc: info@kklous.us
Subject: Hillsboro Beach Meeting
Attachments: Letter with attorney's letter.pdf; Untitled attachment 00033.html

Please note that I am from Hillsboro Island House and I wish my letter to be added to the record.

January 9, 2022

Dear Sir or Madam:

I wish to add my objection along with the attorney letter attached. I have clearly stated in previous correspondence to Hillsboro Commission regarding the proposed project that there is no hardship nor environmental merit as presented by developers.

Nor is this project desirable by Hillsboro Beach citizens whom you represent. There are a substantial number who have organized and have written letters and been in communication with you beyond a handful.

IF built it would be monstrosity in the skyline forever marking "HB" as it topples awkwardly over, and around three-story buildings built according to zoning. The height of this is beyond acceptable as proposed in past or current plans.

A created self-induced hardship on part of developers. Only financial if they do not get what they want but they bought knowing.

This calls for reserve on the part of you, Our Commission, to stop this travesty.

This could never be undone. And clearly the right answer is no!

Developers will find a more suitable project that works. Or they will sell to someone who is willing to work with existing zoning regulations.

There is no need to feel threatened or the conundrum cannot be resolved. It can.

Have the courage to say NO!

I would ask that my comments and remarks be added on record. I also wish to be available in person on Tuesday, January 11, 2022.

Sincerely,

Nancy Robbins



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

♦ **MAIN OFFICE**
7320 Griffin Road, Suite 109
Davie, Florida 33314
Telephone (954) 791-0477
Fax (954) 791-0506
E-Mail Info@kklaw.us

♦ **TREASURE COAST OFFICE**
P.O. BOX 13075
Fort Pierce, Florida 34979-3075
E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant
VIA EMAIL: dtarrant@townofhillsborobeach.com
Vice Mayor Irene Kirhady
VIA EMAIL: ikirdahy@townofhillsborobeach.com
Commissioner Vicky Feamon
VIA EMAIL: vfeaman@townofhillsborobeach.com
Commissioner Barbara Baldassarre
VIA EMAIL: bbaldassarre@townofhillsborobeach.com
Commissioner Jane Reiser
VIA EMAIL: jreiser@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner
Via Email: joe@rma.us.com
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its Request, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." *See Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its Request to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's Request, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the A1A setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures one the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine,"

The Applicant has, in its Request, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law is abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria have been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute on other grounds in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *aff'd*, 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance." (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that “A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it.” In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that “One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.”

Florida court holdings also clearly hold that that a mere economic “disadvantage” or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *See, e.g., Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, “The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property.”

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *affd.* 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indialantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indialantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. **A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (Citations omitted and emphasis added).

Importantly, and identically to the Applicant's Request in this case, the Court found that "**Nance possessed a viable dual three story plan that, with the exception of the parking deficiency, met all Indiatlantic zoning requirements, including the height restriction....The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (Emphasis added). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that a 'hardship' **may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'**" *Id.* at 854-55. (Emphasis added and citations omitted).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged "benefits" that the Applicant's project will bring to the Town. "Sweeteners" offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to "reach for the brass ring", the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel's development in accordance not with the Applicant's desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the Request of the Applicant for the variance sought.

Respectfully submitted,



M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Nancy Robbins <nbdr13@icloud.com> on behalf of Nancy Robbins
Sent: Monday, January 10, 2022 8:41 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; Mac Serda; joe@rma.us.com; Ddoody@cityatty.com;
shenderson@townofhillsborobeach.com
Cc: info@kklous.us
Subject: Hillsboro Beach Meeting
Attachments: Letter with attorney's letter.pdf; Untitled attachment 00033.html

Please note that I am from Hillsboro Island House and I wish my letter to be added to the record.

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Monday, January 10, 2022 8:56 AM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Variance Request at 1174-1185 Hillsboro Mile

----- Forwarded message -----

From: **PAUL GOLTZ** <paulgoltz@cs.com>
Date: Mon, Jan 10, 2022, 7:57 AM
Subject: Fwd: Opposition to Variance Request at 1174-1185 Hillsboro Mile
To: ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>

Dear Sir or Madam,

This letter is to express my concern about granting a variance to the owners of the above mentioned property to construct 10 story towers. Per the current zoning requirements, any structures constructed on this property should not exceed 3 stories in height.

Further, I am concerned about the size of the **footprint of the garage which is being planned and will invade substantially into the plotted conservation area by the sea.** Even if it is permitted as it is planned to be "subterranean", there is still a strong possibility that wind and water erosion will occur over time and that the garage structure will become visible. Its presence may even act to accelerate erosion of the dunes. The garage area should not at all be permitted to extend all the way into the conservation area - nor above the ground, nor under the ground.

Also, the **developer plans to punch multiple pedestrian pathways through and across the dunes for condo owners to reach the beach.** Considering the aesthetics of the dunes and the current limited access respected by other buildings along the coastline, I feel that permitting multiple pathways to the beach on this property is excessive and that pedestrian traffic should be limited to only one or two pathways. We need to conserve the beauty of Hillsboro Beach.

Last, **I wholly agree with and support all the points presented in Mr. M. Scott Kleiman's letter (from Kalis, Kleiman& Wolfe LLC) dated January 7, 2022.**

Please do not permit the modified variance request for 10 story towers now being requested by the current owners of 1174-1185 Hillsboro Mile. Again, the owners knew the building restrictions in place when they purchased the property and they should not be permitted to alter those restrictions.

Thank you for respecting the current and long term interests of the owners on Hillsboro Beach in this precedent setting decision.

Sincerely,

Paul Goltz
Owner, 1169 Hillsboro Mile #607

Sherry D. Henderson

From: Thom Misbrener <thom@anthonythomas.com> on behalf of Thom Misbrener
Sent: Monday, January 10, 2022 10:03 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: carrie misbrener
Subject: Developer's variance requests for the 1174-1185 Hillsboro Mile property
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00274.html

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case. Given the fact that the developer will be essentially creating a higher elevation than what is currently on the mile, the 10 story building will essentially be on the scale of a 12-13 story building. That said, we could certainly support a 6-8 story structure.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Signed,

Thom and Carrie Misbrener
The Windsor
1169 Hillsboro Mile, Hillsboro Beach, FL 33062

Sherry D. Henderson

From: Stevenson, Maureen <MStevenson@aaanortheast.com> on behalf of Stevenson, Maureen
Sent: Monday, January 10, 2022 10:19 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: Donnas@FoodforthePoor.com
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Maureen & Thomas Stevenson

Hillsboro Colonnade

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Sherry D. Henderson

From: michael weinberg <yanks4@gmail.com> on behalf of michael weinberg
Sent: Monday, January 10, 2022 12:11 PM
To: Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre; Deb Tarrant; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; joe@rma.us.com; mserda@townofhillsborobeach.com; Ddoody@cityatty.com
Subject: objection to proposed variance
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00359.html

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

NAME - Hillsboro Windsor
Michael Weinberg
Penny Weinberg

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Monday, January 10, 2022 12:14 PM
To: Sherry D. Henderson
Cc: michael weinberg; Mac Serda
Subject: FW: objection to proposed variance
Attachments: Opposition to Variance Letter.pdf

Good Morning,

I am forwarding as a convenience to Mr. and Mrs. Weinberg the below and attached so that this may be part of the public record. Mac, let me know if you have any others that did not copy Sherry. All that have sent emails to the commissioners should be part of the public record.

From: michael weinberg <yanks4@gmail.com>
Sent: Monday, January 10, 2022 12:11 PM
To: Shenderson@townofhillsborobeach.com
Cc: Donna Scheurer-Purre <Donnas@FoodforthePoor.com>; Deb Tarrant <dtarrant@townofhillsborobeach.com>; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; joe@rma.us.com; mserda@townofhillsborobeach.com; Ddoody@cityatty.com
Subject: objection to proposed variance

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

NAME - Hillsboro Windsor
Michael Weinberg
Penny Weinberg

Sherry D. Henderson

From: Jeffrey Brown <jwsbrown@icloud.com> on behalf of Jeffrey Brown
Sent: Monday, January 10, 2022 12:15 PM
To: shenderson@townofhillsborobeach.com
Subject: Fwd: Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00366.html

For public record

Jeffrey Brown | jwsbrown@icloud.com | 305.922.7160

Begin forwarded message:

From: Jeffrey Brown <jwsbrown@icloud.com>
Subject: **Opposition to Variance Request of 1174-1185 Hillsboro Mile - Board of Zoning Appeals Meeting for January 11, 2022**
Date: January 8, 2022 at 7:37:14 PM EST
To: Jeffrey Brown <jwsbrown@icloud.com>
Cc: dtarrant@townofhillsborobeach.com, ikirdahy@townofhillsborobeach.com, vfeaman@townofhillsborobeach.com, bbaldasarre@townofhillsborobeach.com, jreiser@townofhillsborobeach.com, Mac Serda <mserda@townofhillsborobeach.com>, joe@rma.us.com, donnas@foodforthepeople.com

PLEASE ENTER THIS LETTER ON RECORD IN OPPOSITION TO THE ABOVE STATED REQUEST FOR VARIANCE

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioners Feaman, Baldasarre, Reiser, and Mr. Serda, and Mr. Arenal;

I strongly oppose the granting of a height variance for the above referenced property. I am in agreement with attached legal letter written by Mr. Kleiman.

Yours truly,

Jeffrey Brown
1194 Hillsboro Mile, Villa 48
Hillsboro Beach, FL

Sherry D. Henderson

From: Katie Sheahan <ksheahan@weigels.com> on behalf of Katie Sheahan
Sent: Monday, January 10, 2022 2:20 PM
To: 'dtarrant@townofhillsborobeach.com'; 'ikirdahy@townofhillsborobeach.com';
'vfeaman@townofhillsborobeach.com'; 'bbaldasarre@townofhillsborobeach.com';
'jreiser@townofhillsborobeach.com'; 'mserda@townofhillsborobeach.com';
'ddoody@cityatty.com'; 'Shenderson@townofhillsborobeach.com'
Cc: 'Donnas@FoodforthePoor.com'
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185
Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf
Importance: High

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

William B Weigel – Hillsboro Mile

Katie Sheahan
Real Estate



3100 Weigel Lane
Powell, TN 37849
865.938.2042 Office
865.938.2065 Fax
ksheahan@weigels.com

Sherry D. Henderson

From: Elizabeth B <eebeisiegel@gmail.com> on behalf of Elizabeth B
Sent: Monday, January 10, 2022 4:58 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Save Hillsboro Beach from Becoming Fort Lauderdale/Miami
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter to this email that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Signed,

Elizabeth Beisiegel - Hillsboro Windsor

--

Elizabeth B.

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Monday, January 10, 2022 6:47 PM
To: 'dtarrant@townofhillsborobeach.com'; 'ikirdahy@townofhillsborobeach.com'; 'vfeaman@townofhillsborobeach.com'; 'bbaldasarre@townofhillsborobeach.com'; 'jreiser@townofhillsborobeach.com'; 'mserda@townofhillsborobeach.com'; 'ddoody@cityatty.com'; 'Shenderson@townofhillsborobeach.com'
Cc: Donna Scheurer-Purre
Subject: Opposition to Variance Request of Hillsboro Property Owner< LLC - 1174-1185 Hillsboro Mile LIST

Good Evening All,

In support of the opposition to the 10-story hardship variance as brought forth by Scott Kleiman, Esq. in his letter to the town, below is a partial list of names and communities that oppose a 10-story hardship variance request on a property that is zoned for 3-stories. Some of the below people you may have heard from, some not and still others that may not be on this list below may have written to you.

Please include this correspondence as part of the official public record representing the opposition of the below residents to the 10-story variance request.

Celinda Sawtelle	Diamond Head
Carol Loss	Diamond Head
Carol Arcshus	Diamond Head
Allesandra marchisotto	Diamond Head
David Ronemus	Diamond Head
John Carter	Diamond Head
Abigail Stole	Diamond Head
Jerry Escobedo	Diamond Head
Robert Perlstein	Diamond Head
Erma keller	Diamond Head
John and patrica thiel	Diamond Head
Bruce gerleman	Diamond Head
And cynthia fodor	Diamond Head
Dr susan Schneider	Diamond Head
Dick maggiore	Diamond Head
Robert Perlstein	Diamond Head
Beverly Olini	Harborside
Caroline Gauthier	Harborside
Dave Woodworth	Harborside
Betty Woodworth	Harborside
David Greenberg	Harborside
Helene Greenberg	Harborside
Elly Perez	Harborside

Frank Williams	Harborside
Jacques Prud'homme	Harborside
Kim Dahle	Harborside
Kris Smith	Harborside
Kristen Maxx	Harborside
Linda Gravel Prud'homme	Harborside
Ellen DeLalla	Harborside
Manny Penate	Harborside
Marc Gabrielle	Harborside
Mark Winter	Harborside
Mary-Beth Williams	Harborside
Ralph Squaglia	Harborside
Cathy Squaglia	Harborside
Richard Petrocelli	Harborside
Scott Williams	Harborside
Stephen Drymer	Harborside
Douglas Winter	Harborside
Terri Winter	Harborside
Claudia Petrocelli	Harborside
Richard Perez	Harborside
Jeffrey Brown	Hillsboro Beach and Yacht Villas
David Sabbagh	Hillsboro Beach and Yacht Villas
Jane Sabbagh	Hillsboro Beach and Yacht Villas
Cierra Watson	Hillsboro Beach and Yacht Villas
Shirley Watson	Hillsboro Beach and Yacht Villas
Johnnie I Wagner	Hillsboro Beach and Yacht Villas
Bob \Schaake	Hillsboro Beach and Yacht Villas
Traci Schaake	Hillsboro Beach and Yacht Villas
Maria Corrie	Hillsboro Beach and Yacht Villas
William B Weigel	Hillsboro Beach and Yacht Villas
Robert Kelly	Hillsboro Colonnade
Jean Kelly	Hillsboro Colonnade
Cathy Mason	Hillsboro Colonnade
Larry Mason	Hillsboro Colonnade
Thomas Stevenson	Hillsboro Colonnade
Maureen Stevenson	Hillsboro Colonnade
Linda Feurer	Hillsboro Square
Mark Raphael	Hillsboro Square
Deabi Raphael	Hillsboro Square
Alan Meltzer	Hillsboro Square
Jill Meltzer	Hillsboro Square
Pattanne Sricharoenchit Forst	Hillsboro Square
Frank Kolbe	Hillsboro Square
Kory Kolbe	Hillsboro Square
Donna Purre	Hillsboro Square

Chris Fleck	Hillsboro Square
Laureen Fleck	Hillsboro Square
Joe Campanelli	Hillsboro Square
Joyce Campanelli	Hillsboro Square
David Rosenthal	Hillsboro Square
Valorie Rauh	Hillsboro Windsor
Penny Weinberg/705	Hillsboro Windsor
Michael Weinberg/705	Hillsboro Windsor
Victor Miller/717	Hillsboro Windsor
Deirdre Nesline/601	Hillsboro Windsor
Dave Nesline/601	Hillsboro Windsor
Valorie Rauh/ 603	Hillsboro Windsor
James Rauh/ 603	Hillsboro Windsor
Stephanie Dolan/ 417	Hillsboro Windsor
Joh Dolan/ 417	Hillsboro Windsor
Cathleen Vecchione/ 309	Hillsboro Windsor
Felix Vecchione/205	Hillsboro Windsor
Sheila Dolan/803	Hillsboro Windsor
Jan Cody/ 817	Hillsboro Windsor
Pat Engle/ 421	Hillsboro Windsor
Laura Fish	Hillsboro Windsor
David Boeggeman	Hillsboro Windsor
Ivan Eland	Massachusettes Condos - Deerfield
Bonnie Eland	Massachusettes Condos - Deerfield
Jamie Muldoon	Massachusettes Condos - Deerfield
Deabi Raphael	Ocean Crest
Mark Raphael	Ocean Crest
John Brandano	Ocean Crest
Meodie Phillips	Private
Paul Phillips	Private
Gail Wiser	Private
Nancy Robbins	Private
Freny Deboo	Virginia kaye
Jimmy Deboo	Virginia kaye
Kelly Cartwright David	Virginia kaye
Randy Nazette	Virginia kaye
Sally Nazette	Virginia kaye

Thank You
Donna Purre
1173 Hillsboro Mile

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Monday, January 10, 2022 7:04 PM
To: Sherry D. Henderson
Subject: Fwd: Opposition to Height Variance Request at Hillsboro Beach
Attachments: image001.png

----- Forwarded message -----

From: **Katie Sheahan** <ksheahan@weigels.com>
Date: Mon, Jan 10, 2022, 1:50 PM
Subject: Opposition to Height Variance Request at Hillsboro Beach
To: ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>

Vice Mayor Kirhady,

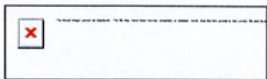
I, William B Weigel of #49, strongly OPPOSE the height variance request at Hillsboro Beach.

Thank you,

William Weigel

Katie Sheahan

Real Estate



3100 Weigel Lane

Powell, TN 37849

865.938.2042 Office

865.938.2065 Fax

ksheahan@weigels.com

Sherry D. Henderson

From: KAREN GUZIK <karenguzik@aol.com>
Sent: Monday, January 10, 2022 7:12 PM
To: TownClerk@townofhillsborobeach.com
Subject: Variance Request 1174-1185

Dear Mayor and Commissioners,

This is our second letter to you objecting to this variance request. We don't agree that this request is a hardship. We are concerned with the protection of the dunes, one of our few true green spaces. Additionally, the excessive height of the structures which will obliterate many current resident's views and decrease their property value. Not to mention increased already heavy traffic which will result from the many new residents that will be crammed into the high rise building.

Therefore, we urge you to please reject approval of this variance.

Sincerely,

Tom and Karen Guzik
Overlook Condominium
1167 Hillsboro Mile

Sent from my iPad

Sherry D. Henderson

From: Irene Kirdahy <ikirdahy@townofhillsborobeach.com> on behalf of Irene Kirdahy
Sent: Monday, January 10, 2022 7:26 PM
To: Sherry D. Henderson
Subject: Fwd: Letter for public record - Opposition to requested variance re 1174-1185 Hillsboro Mile

----- Forwarded message -----

From: **Stephen Drymer** <sdrymer@woods.qc.ca>
Date: Mon, Jan 10, 2022, 2:22 PM
Subject: Letter for public record - Opposition to requested variance re 1174-1185 Hillsboro Mile
To: dtarrant@townofhillsborobeach.com <dtarrant@townofhillsborobeach.com>, ikirdahy@townofhillsborobeach.com <ikirdahy@townofhillsborobeach.com>, vfeaman@townofhillsborobeach.com <vfeaman@townofhillsborobeach.com>, bbaldasarre@townofhillsborobeach.com <bbaldasarre@townofhillsborobeach.com>, jreiser@townofhillsborobeach.com <jreiser@townofhillsborobeach.com>

Dear Mayor Tarrant, Vice Mayor Kirdahy, Commissioner Feaman, Commissioner Baldasarre, and Commissioner Reiser,

We ask that this letter be immediately entered into the public record in relation to the proposed development of the property located at 1174-1185 Hillsboro Mile, and that it be considered by you in advance of tomorrow's Quasi-Judicial and Commission votes on the requested variance.

We write as your neighbors and fellow members of the Hillsboro Beach community who are deeply concerned by the proposed development of the property located at 1174-1185 Hillsboro Mile, and by the apparent rush to judgement by the Town of Hillsboro Beach in relation to the variance requested by the developer in order to proceed with the proposed project.

As so many members of our community, we decided to invest and live in Hillsboro Beach in part because it was specifically *not* like so much of the rest of South Florida – high rise buildings (fancy or not) marching up the coast, swallowing towns, degrading communities, shading beaches (one of the glories of the State) slowly but surely, mile after mile.

To be clear, our opposition to the 1174-1185 project should not be confused with any sort of anti-development stance. We are not opposed to development. We are opposed to this development, and to the manner in which the Town seems to be willing to ignore its own ordinances, bylaws, rules & regulations, , and the glaring – even to lay people such as us – defects with the project itself as it currently stands.

We refer to the letter addressed to you by the law firm Kalis Kleiman & Wolfe on behalf of Mr. Manny Penate and many others, dated January 7, 2022. We agree with and support many of the allegations and much of the analysis presented in that letter. But our concerns go beyond the reasons expressed in that letter.

We see no reason – and we do not believe that the developer has shown – why the Commission should consider the current site plan, including the requested 10-storey height variance, as the only reasonable or commercial solution to the so-called “hardship” claimed by the developer. Manifestly, it is not. As far as we can tell, approximately 1/5 of the 11-acre site, a total of 2 acres or so, is designated LOPC. As we understand the applicable zoning ordinance, this means that the remaining 9 acres would allow for the construction of a total of 144 units **while respecting the existing height restriction**. That the developer may propose to build fewer, larger, more profitable units is its own choice. That it should claim such a massive height variance in order to satisfy that choice is vastly disproportional to any constraints genuinely associated with the site. It seems clear that the developer never truly intended to build according to the Town’s existing rules, and that it has no desire even to try to do so, notwithstanding its recent, forced change in the plan. The proposed development should not be allowed.

We note as well that in what seems to be an arrogant belief that it can bully the Town and the Commission into rushing the project through, the developer seems either not to realize, or not to care, that its current, revised proposal is flawed on its face. Unlike the developer’s initial submission, which at least was carefully documented and supplemented (even though we disagreed with it) the current plan seems hastily put together and betrays a serious lack of attention to detail.

Again, we are not experts. But even we are aghast to note that the proposed 10-storey structure would be crowned by ... a palm forest. Facing the Atlantic. In hurricane path. If this were the only problem with the developer’s latest proposal, it might be funny, since such an obvious potential threat to public safety would be easy to fix. However, we note other, more substantive problems and inconsistencies in the project documents which, as we say, show either a lack of knowledge or a lack of care – either of which should cause the Commission to deny the variance request. For example, the “location map” refers to 130 total units. The “zoning data”, however, refers to 118 units. The difference is important, since (again, as we understand it) the number of units has a direct bearing on key parameters of the development such as parking, traffic studies (which we’ve seen and do not quibble with) and, perhaps most importantly, density – the very issue that we understand the Town considers paramount. It also appears to us that there are a number of differences between the plans and the renderings submitted by the developer in support of the variance request. Is the Town even aware of this? Our point is that the entire approach to the variance seems rushed, and the Town seems to be playing into such tactics.

We request that the Quasi-Judicial and Commission members stand up for the Town and its residents, and vote “no” to the variance request.

In the alternative, we ask that any vote on the variance be postponed until the developer submits correct, accurate and comprehensive plans for the revised project.

Thank you for your attention.

Caroline Gauthier and Stephen Drymer
1170 Hillsboro Mile ("Harborside"), #206

Sherry D. Henderson

From: kristen@cdrinternational.net
Sent: Monday, January 10, 2022 7:41 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com;
donnas@foodforthe poor.com
Subject: Resident opposition to site variance request
Attachments: Opposition to Variance Letter (1).pdf

Dear Mayor and Commissioners,

We object to allow the erection of a 10-story building in a 3-story zoning at the 1174-1185 Hillsboro Mile property. We support and agree with the attached attorney's letter to this email that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Signed,

Kristen Maxx and Mark Gabrielle

Harborside Condominium - 1170 Hillsboro Mile, #304

Please add this email to public record, thank you.

Sherry D. Henderson

From: Wanda Gozdz <wicked-wanda@att.net> on behalf of Wanda Gozdz
Sent: Monday, January 10, 2022 9:03 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Hillsboro Drivers of Potential Legal Action Against 10-Story Building Across the
Intracoastal Want Our Help
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning area. I support and agree with the attached attorney's letter that there is no hardship required for a zoning variance in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable option that stays within the three-story zoning code for this area of the town.

Sincerely,

Wanda E. Gozdz
1536 SE 15th CT #506
Deerfield Beach, FL 33441
954.401.5948

Sherry D. Henderson

From: Mark Raphael <MRaphael@riverrealty.com> on behalf of Mark Raphael
Sent: Monday, January 10, 2022 9:51 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; Vicky Feaman; bbaldasarre@townofhillsborobeach.com; Commissioner Jane Reiser;; Mac Serda; joe@rma.us.com; Ddoody@cityatty.com; Sherry D. Henderson
Subject: Opposition to the revised 10 story Ocean front condo in Hillsboro Beach
Attachments: Opposition to Variance Letter (1).pdf

Dear Mayor and Commissioners,

I object to the proposal to erect a 10-story building in a 3-story zoning district. I support and agree with the attached attorney's letter that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories.. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. What is being proposed here is incongruous with the neighboring 2 to 3 story buildings and will stand out like a behemoth in an area of low rise buildings.

It will permanently ruin the aesthetics and feel of the Northerly area of the Hillsboro Beach Mile and negatively affect traffic (which is already congested) and the quality to life in the area.

Mark L. Raphael
owner of 1172 Hillsboro Mile Bldg 4 unit 2 and 1189 Hillsboro Mile #3, 6, 12 and 16
845-656-2226
mraphael@riverrealty.com

Sherry D. Henderson

From: Yvonne Botsis <livingdoll@att.net> on behalf of Yvonne Botsis
Sent: Monday, January 10, 2022 10:25 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Objection to 1174-1185 Hillsboro Mile Variance
Attachments: Opposition to Variance Letter copy.pdf

Dear Mayor and Commissioners,

January 10, 2022

I object to allow the erection of a 10-story building in a 3-story zoning area. I support and agree with the attached attorney's letter that there is no hardship required for a zoning variance in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable option that stays within the three-story zoning code for this area of the town.

Sincerely,

Yvonne Botsis
Eastway Harbor
Massachusetts Building
1536 S.E. 15th Ct #708
Deerfield Beach, Florida 33441

Sherry D. Henderson

From: Carla Palmore <cppalmore@gmail.com>
Sent: Monday, January 10, 2022 11:31 PM
To: townclerk@townofhillsborobeach.com
Subject: Fwd: 1174-1185 Hillsboro Mile

I should have copied you on this email I sent yesterday. The email is regarding tomorrow's Quasi judicial hearing. Thank you for including it in the records.

Begin forwarded message:

From: Carla Palmore <cppalmore@gmail.com>
Date: January 9, 2022 at 5:54:53 PM EST
To: "Deb Tarrant, Mayor" <dtarrant@townofhillsborobeach.com>
Cc: ikirdahy@townofhillsborobeach.com, bbaldasarre@townofhillsborobeach.com, vfeaman@townofhillsborobeach.com, jreiser@townofhillsborobeach.com
Subject: 1174-1185 Hillsboro Mile

Dear Mayor Tarrant and Commissioners -

We are writing with continued concerns regarding the proposed development at 1174-1185 Hillsboro Mile. While we appreciate that the developer is preparing a ten story option and that is a step in the right direction, it is simply not enough. The ten story option might look reasonable compared to the 15 story option but it is still way more than the three stories that were written into the code by previous commissioners looking out for the best interests of Hillsboro Beach. Ten stories is even significantly higher than the seven stories allowed at the South end of the mile.

We also understand that some of the land has been rendered unusable due to various reasons and the dunes on the ocean side have been frequently mentioned. Though the dunes may indeed reduce buildable land, it is hard for us to imagine that any developer would want to build on the dunes area given global warming, higher tides and significant beach erosion. The dunes provide a beautiful natural barrier that should help protect the properties that are ultimately constructed.

We believe Dezer Development and Related Group should provide actual three story building plans for the properties and if those are unfeasible, a seven story option could be considered. We implore the commissioners to respect former Town of Hillsboro commissioners who had the building height restrictions put in place. Obviously there were reasons why the Hillsboro building code was revised to restrict the building heights to either three or seven stories along the mile.

Thank you for considering our concerns.

Mark and Carla Palmore
1057 Hillsboro Mile

Sherry D. Henderson

From: Kelly David <FL_KellyC@comcast.net> on behalf of Kelly David
Sent: Tuesday, January 11, 2022 12:04 AM
To: I Kirhady; V Feaman; B Baldasare; J Reiser; Joe; M Serda; D Doody; S Henderson; Deb Tarrant
Cc: Donnas@foodforthe poor.com
Subject: Opposition to Variance Letter.pdf
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00022.txt

To Whom It May Concern:

I am an owner at the Virginia Kaye and I oppose the construction of a 10 story residence and variance for the reasons cited in the attached letter.

Thank you for your consideration,

Kelly Cartwright David
Virginia Kaye owner

Sherry D. Henderson

From: seabuoy954 actiicom.com <seabuoy954@actiicom.com> on behalf of seabuoy954 actiicom.com
Sent: Tuesday, January 11, 2022 8:23 AM
To: dtarrantdtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: ZONING & VARIANCE 1174-1185 Hillsboro Mile

Please follow the Law and do the right thing!
(Unless of course there is something in it for you personally which is the talk of the town)

DHG

Sherry D. Henderson

From: seabuoy954 actiicom.com <seabuoy954@actiicom.com> on behalf of seabuoy954 actiicom.com
Sent: Tuesday, January 11, 2022 8:27 AM
To: dtarrant@townofhillsborobeach.com
Cc: mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning area. I support and agree with the attached attorney's letter that there is no hardship required for a zoning variance in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable option that stays within the three-story zoning code for this area of the town.

Sincerely,

Dennis Goodman

Sherry D. Henderson

From: Michael Allen <mwa515@comcast.net> on behalf of Michael Allen
Sent: Tuesday, January 11, 2022 8:36 AM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Opposition to requested variance for 1174-1185 Hillsboro Mile
Attachments: Opposition to Variance Letter.pdf

Town of Hillsboro Beach Commissioners and town officials:

My name is Michael Allen. I reside at Palm Hills Villas, 1212 Hillsboro Mile #26, Hillsboro Beach.

I am writing to express my opposition to the requested variance for 1174-1185 Hillsboro Mile.

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter to this email that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Please include this letter in the public record regarding this matter.

Regards,

Michael Allen
1212 Hillsboro Mile #26
Palm Hills Villas

Sherry D. Henderson

From: Frank J. Kolb, Jr. <fjk@ehlaw.com> on behalf of Frank J. Kolb, Jr.
Sent: Tuesday, January 11, 2022 8:40 AM
To: Deb Tarrant; Commissioner Vicky Feaman;; Commissioner Jane Reiser;; Vice Mayor Irene Kirdahy;; Commissioner Barbara Baldassarre;
Cc: Sherry D. Henderson; ddood@gorencherof.com; frankjkolbjr@gmail.com; mbwilliams123@gmail.com; scott@wowadvisors.com; krismithart@gmail.com; jeromew@comcast.net; lkvalentine@comcast.net; pvogl@att.net; kristen@kristenmaxx.com; cdrimarc@gmail.com; greenbergh123@gmail.com; mpenate@me.com; mraphael@riverrealty.com; deabiraphaelraphael@icloud.com; deabiraphaelraphael@msn.com; polkaj2@sbcglobal.net; joe@campanelli.com; ammeltzer@comcast.net; drose4@hotmail.com; cfleck@yahoo.com; pattanee_9@hotmail.com; asjc357@gmail.com; bravol1172@gmail.com; mpenate@icloud.com; bvogl@att.net; celindasawtelle@gmail.com; Frank J. Kolb, Jr.; Koren C. Kolb; yocyfeuer@gmail.com; fishonthemile@gmail.com; frankjkolbjr@gmail.com; rkelly6448@aol.com; boggiethemile@bellsouth.net; yanks4@gmail.com; mazette@nazettelaw.com; joyacht1635@gmail.com; FL_KellyC@comcast.net; deboofreny@gmail.com; jrauh@neo.rr.com; James; nbdr13@icloud.com; cathy.mason3554@gmail.com; gailwiser@outlook.com; shirleywatson@watsonproperties.ca; twochamps@me.com; atshore@bellsouth.net; jgail.wagner@gmail.com; maria11787@aol.com; schaaake@comcast.net; twochamps@me.com; Tony Gardner (tony@customplasticcard.com)
Subject: 1174-1185 Variance request. Kindly include in the record

Various correspondence has been circulated tooting the virtues of the developer such as financial resources, abilities, past projects etc. Those attributes are not legal criteria for the granting of the requested the requested variances.

Please listen to the people, apply the code and applicable law and find for the reasons stated by the people and as contained in attorney Klieman's letter no LEGAL HARDSHIP exists and deny the request. How dare the developer say, give us what we want or we will give you an unsightly, substandard eyesore finished product conforms to the 3-story code. Is that a way to start to be the good new neighbor? Sounds like extortion.

As someone who has practiced law for over 40 years, I envision that if this commission votes to grant the requested so-called hardships litigation will ensue which will be costly to the Town and consequently the taxpayers. Do you really want to do something that will most likely embroil the town in litigation?

The larger the project the more disruption to the citizens, not just the abutting properties during the construction process. We are looking at approximately 2 years of heavy construction vehicles, traffic disruption, noise, road closures etc. We want peace and tranquility. We bought as did the developer knowing what the code was applicable to the 1174-1185 property. It is 3 stories and no more.

Another issue that I have raised in emails to all commissioners and to town attorney Doody is the fact that commissioner Feaman owns property which abuts the proposed development (her north boundary is their south) and that gives her a potential monetary interest in the

variance process. A good project increases her property value and a bad lowers her property value. The current proposal is for Town homes on that section of the development abutting her property and 2 10 story condo towers on the East. With this potential financial benefit or loss to commissioner Feaman but I see she is sitting and has not been disqualified or refused herself.

Frank J. Kolb, Jr., Esq.
Kolb & Associates, P.C.
1173 Hillsboro Mile 1-1
Hillsboro Beach, Florida 33062
203 469 4475

Confidentiality

This communication is covered by the Electronic Communications Privacy Act, 18 USC Section #2510-2521. It is legally privileged (including attachments) and is intended only for the use of the individual(s) or entity(ies) to which it is addressed. It may contain information that is confidential, proprietary, privileged, and/or exempt from disclosure under applicable law. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify the sender so that appropriate action may be taken and avoid troubling you further. If you are not the intended recipient(s) please destroy this message, and any attachments, and notify the sender by return e-mail. Thank you.

Sherry D. Henderson

From: Marie Rizzo <marierizzo916@yahoo.com> on behalf of Marie Rizzo
Sent: Tuesday, January 11, 2022 1:40 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; ddooddy@cityatty.com; shenderson@townofhillsborobeach.com
Cc: Joseph Rizzo; Marie Rizzo
Subject: Opposition to Variance Request of Hillsboro Property Owner, LLC 1174-1185 Hillsboro
Mile (the "Parcel") Development
Attachments: SELLER INFORMATION FORM FOR REAL ESTATE TRANSACTION - Opposition to
Variance Letter-1.pdf

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning area. I support and agree with the attached attorney's letter that there is no hardship required for a zoning variance in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable option that stays within the three-story zoning code for this area of the town.

Sincerely,
Marie Rizzo



NEAL KALIS
M. SCOTT KLEIMAN
TAMI R. WOLFE

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E-Mail Info@kklaw.us

January 7, 2022

Mayor Deb Tarrant

VIA EMAIL: dtarrant@townofhillsborobeach.com

Vice Mayor Irene Kirhady

VIA EMAIL: ikirdahy@townofhillsborobeach.com

Commissioner Vicky Feamon

VIA EMAIL: vfeaman@townofhillsborobeach.com

Commissioner Barbara Baldasarte

VIA EMAIL: bbaldasarte@townofhillsborobeach.com

Commissioner Jane Reiser

VIA EMAIL: jreiser@townofhillsborobeach.com

Town of Hillsboro Beach

1210 Hillsboro Mile

Hillsboro Beach, Florida 33062

William Serda, Town Manager
Via Email: mserda@townofhillsborobeach.com

Town of Hillsboro Beach

1210 Hillsboro Mile

Hillsboro Beach, Florida 33062

Joe Arenal, Urban Design Planner

Via Email: joe@rma.us.com

Town of Hillsboro Beach

1210 Hillsboro Mile

Hillsboro Beach, Florida 33062

Re: Opposition to Variance Request of Hillsboro Property Owner, LLC
1174-1185 Hillsboro Mile (the "Parcel") Development

Dear Mayor Tarrant, Vice Mayor Kirhady, Town Commissioners, Mr. Serda and Mr. Arenal:

This law firm represents Manny Penate, a resident of Harborside at Hillsboro Beach Condominium, which is two parcels from the subject site, and Donna Purre a resident of Hillsboro Square, which is next door. Mr. Penate and Ms. Purre are representatives of over sixty other individuals who reside in ten developments in Hillsboro Beach. This correspondence is provided to the Town of Hillsboro Beach (the "Town") on their behalf in opposition to the variance request sought by Hillsboro Property Owner, LLC (the "Applicant") to permit the construction of a residential building of in excess of the height of a structure permitted by the Municipal Code of the Town of Hillsboro Beach (the "Code"). The Applicant had originally sought a variance to construct a fifteen (15) story building; however, by virtue of its Revised "Appeal of Hillsboro Property Owner, LLC Submitted Pursuant to Section 12-283 of the Code of Ordinances of the Town of Hillsboro Beach Regarding a Variance from Section 12-142 of the Code" submitted to the Town on December 17, 2021 (the "Request"). The Request has been amended to seek a variance for the construction of a ten (10) story building, where only three (3) stories are permitted.

A simple but careful review of the variance application and request clearly demonstrates that the Applicant failed to show the existence of legal or factual basis, or any hardship which would warrant the granting of a variance. As such, the Board of Zoning Appeals (the "Board") has only one option in this case, which is to deny the Applicant's requested height variance.

Section 12-142(A) of the Code provides that

For property on the east side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the dune elevation. For property on the west side of SR A1A, no building or structure shall be erected or altered to a height exceeding 35 feet and shall not exceed 3 stories above the roadway crown elevation of SR A1A adjacent to the property.

In order for the Applicant to erect its intended ten (10) story building, the Applicant must secure a variance from the provisions of Section 12-142(A). As properly noted by the Applicant in its Request, the Board has the power and authority under Section 12-283 of the Code to review and determine this matter.

In an appeal brought before the Board, it is the Applicant's burden to show that "a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship." See *Section 12-283(C)(2)*. A variance or relief on an appeal may be granted by the Board, "but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected." Despite the Applicant's December 17, 2021, revision of its Request to the Board, the Applicant fails to meet the burdens imposed by the Code and by law so as to justify the Board, on Applicant's Request, granting the requested variance.

By way of background, as the Town is well aware and as the Mayor has publicly indicated, the Applicant's parent company is a well-known and respected developer. It would be incomprehensible to think or to believe that the Applicant, prior to closing on the subject property, did not perform reasonable due diligence for its intended acquisition. Reasonable and prudent due diligence on a parcel such as this would typically include requesting a zoning letter from the municipality in which the property was located and verifying the zoning and development requirements for the parcel intended to be acquired. Additionally, it would likely have included researching and crafting its intended plan of development, and even meet with municipal officials, prior to closing so as to justify the consummation of the land acquisition.

Presuming that the Applicant performed this basic and typical level of due diligence, the Applicant knew, prior to closing on the subject parcel, of the height restriction imposed by the Town's Code. It would be unfathomable to believe anything to the contrary. Knowing what the Code provided and allowed as to the height limitations were, the Applicant proceeded with the purchase anyway. As Mayor Tarrant publicly acknowledged in an open letter published on the Port de Mer Community website, the Applicant knew of the limitation (which is not a hardship). Yet, the Applicant chose to ignore the provision of the Code in preparing its development plans which were contrary to the Code. The Applicant cannot now come to the Town claiming hardship or unique circumstances where it walked right into the hardship with full knowledge of the Code limitations pertaining to the parcel. The Parcel is not some pie-shaped lot on a cul-de-sac which has setbacks that make development virtually impossible; rather, development of this Parcel is entirely possible under current zoning regulations without the necessity of a variance.

In attempting to demonstrate "unusual and practical difficulties or particular hardship" imposed by the subject height restriction, the Applicant recites the previously existing restrictions known and associated with the Parcel in the form of the Conservation Area and the setback requirements under the Code relating to the 85 foot setback from the centerline of A1A/Hillsboro Mile. These items could not have come as a surprise to the Applicant. The Applicant elected to close on the Parcel with full knowledge of these matters. The Applicant could have elected not to proceed with the purchase of the Parcel, knowing that the Code allowed only a three story building on what Applicant refers to as the "East Parcel"; but the Applicant proceeded anyway. The fact

that these matters of record and Code reduce the developable portion of the Parcel do not impose a hardship that precludes the Applicant's use. To reiterate, the Parcel can be developed in accordance with existing zoning regulations and restrictions without a variance.

Does the lot possess physical characteristics which renders the lot undevelopable, which would be a factor in finding an exceptional or unique hardship? Quite simply, the answer is "no." While the Applicant has gone to great lengths to argue how the Conservation Area and the AIA setback requirement reduce the buildable envelope to 135 feet of depth, the Applicant has still successfully created a development plan which soars ten stories over the sands of Hillsboro Beach from one singular footprint. This footprint clearly demonstrates that there is a useable, developable and buildable footprint from which a three (3) story Code compliant residential building can be erected. Applicant's own plans unequivocally demonstrate and evidence that the physical characteristics of the land render it completely and absolutely developable in accordance with the Town's building and zoning regulations. It may not be to the Applicant's liking or within the parameters of what it wants to build, but clearly, the Applicant can develop the subject parcel in accordance with the Code within the same parameters of the ten (10) story aberration it is seeking to build. The Applicant knew the Code provisions applicable to the parcel, and the restrictions imposed by the Conservation Area and the Code setback requirements, and elected to take a financial gamble.

Even assuming that the Conservation Area is unique to the subject property, it was a known matter and does not otherwise impact the ability of the Applicant to develop the Parcel in accordance with the requirements of the Code. The Applicant can still build a compliant three (3) story building. Quite certainly, the existence of the Conservation Area does not warrant a height variance, particularly one which is of the magnitude sought by the Applicant. Regardless, the Applicant knew of the Conservation Area and that, notwithstanding the same, the Parcel was entirely buildable in strict compliance with the Code and the height regulations.

The Applicant next argues that the variance sought is "in harmony with the general purposes and intent" of Chapter 12 of the Code, citing, in large part, to the generalized policy considerations of Policy 2.23.3 and 2.23.4 of the Broward County Land Use Plan, relating to the adoption of "innovative land development regulations" to protect "Local Areas of Particular Concern and environmentally sensitive lands." It is certainly questionable whether a variance is an innovative land development regulation; rather, a variance is a departure from an existing land development regulation.

Additionally, while simply reciting certain policy provisions of the Broward County Land Use Plan, the Applicant has failed to demonstrate, in any way, how its intended development and the granting of a variance further the quoted policy considerations and purposes. Instead, the Applicant, without any factual basis, merely jumps to the unsupported conclusion that the "requested variance is an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area."

Applicant's argument on this point is a work of fiction. As Applicant's intended development plan reflects, the environmentally sensitive lands in the Conservation Area were not and are not in any danger. There is and should be no concern about the preservation of these areas since the Applicant is precluded from developing in the Conservation Area. It cannot and will not be untouched by the Applicant's development of the Parcel. The Applicant knew and knows that it cannot impact the Conservation Area and its plan contemplates this. There is nothing "innovative" about what the Applicant is proposing, other than the fact that it violates the existing provisions of the Code.

The Applicant next argues that the granting of a variance will not serve as a convenience to the it. Respectfully, the entirety of Applicant's Request is all about convenience. If the Applicant were to comply with the edicts of the Code, it can only build a three story building. In so doing, the Applicant could not secure the same profits as a ten story building. That would be both inconvenient and detrimental to the Applicant's potential financial

benefits from this acquisition and project. As the Applicant has made abundantly clear, it can construct a Code compliant three story building on the exact same footprint from which it seeks to reach for the heavens. Being required to comply with the height provisions and restrictions of the Code is and would be a multi-million dollar inconvenience for the Applicant.

Applicant fails to show that there is a demonstrable or unusual hardship in this case. The Applicant can build a condominium project without a variance. The Applicant can do so under and in compliance with the same restrictions apply to neighboring and adjacent parcels. In fact, the granting of such a variance is nothing less than a slippery slope. Armed with a variance on the Parcel, what is to then prevent the next profit oriented developer from coming into the Town and buying out all of the owners in one of the adjacent and similarly height restricted parcels in order to then demolish the existing structure and redevelop it into a similar ten story building, followed by the next building, and the one after that? Each parcel in the area subject to 12-142(A) is presently subject to the same limitations and restrictions as Applicant's Parcel. It is a limitation and restriction common to this Parcel and its neighbors. It is neither unique nor unusual.

The Applicant further argues that the "2.1 acre portion of the Conservation Area to the Easterly Building Line" reduces the developable area of the Parcel by one-third. While this may be true, and is a fact known to the Applicant prior to acquiring the Parcel, the Applicant disingenuously argues that, on a smaller developable parcel of land, a "canyon" effect would result from a three story building, and that site lines and better views would result from a ten story building instead.

If held to its submitted site plan at a code compliant three stories, the Applicant's own argument contradicts its own facts and plans. The Applicant contends that the intended building would provide a greater separation between the "East Building" and its neighbors to the north and south than would be provided by the otherwise permitted 17.5 foot setback, and that there would be a "greater supply of light, air and sunshine." Yet, the Applicant's site plan shows garage and storage structures one the north and south sides of the main building that are set back a mere 25 feet from the property lines. So, instead of a 17.5 foot set back, the "new and improved" greater separation gains a mere 7.5 feet of additional setback. Less than the height of the regulation height of a basketball hoop. This is *de minimis* at best.

Lastly, the Applicant attempts to address the provisions of Code Section 12-283(C)(3) that the granting of the variance "it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach." The Applicant asserts that it is "agreeing" to only build 130 total residential units in the project, instead of the "potential" 188 units, thereby which ostensibly fortifying a fictional argument that traffic impacts would be minimized. A three story building code compliant building would result in far fewer trips and traffic on Hillsboro Mile. This is in addition to the clearly gratuitous argument previously addressed concerning the greater separation between the "East Building" and its neighbors to the north and south providing a "greater supply of light, air and sunshine."

The Applicant has, in its Request, attempted to qualify its pursuit of the variance under two of the three categories under which the Board has the authority to grant an easement, i.e., Sections 12-283(B) and 12-283(C) of the Code. The burden of proof is on the Applicant and, as discussed herein, the Applicant has relied heavily on conclusions without any material reliance on facts. Once the Applicant has made, or attempted to make its case, the obligation to review and make a determination on an appeal and variance falls on the Board.

In granting a variance, Code Section 12-283(B) is quite clear concerning the circumstances under which an exception to the Code can be made. The Board has the power to grant an exception only in the instances specifically enumerated by Section 12-283 of the Code, which are to:

- 1) Permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this chapter;
- (2) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan; and
- (3) Permit the erection and use of a building or the use of premises for public utility or municipal purposes.

None of these instances apply in this case.

Beyond the Code, Florida law is abundantly clear concerning the granting of variances and the burden of proof to be met by a party seeking a variance. A careful examination of the legal standards and principles clearly demonstrates that the Applicant is not entitled to the variance sought.

Florida law in abundantly clear that the hardship cannot have been self-created. There is a long line of Florida court opinions concerning the hardship criteria, which has been strictly construed by the courts of Florida. *See, Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957). These criteria has been interpreted to mean three things:

1. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.
2. The purchase of property with zoning restrictions on it or reliance by a purchaser that zoning will not change, will not constitute a hardship.
3. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled.

The requirement that a variance hardship cannot be self-created is required by most municipal and county codes and Florida case law. *See, In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999); *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (*superseded by statute on other grounds in Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. 4th DCA 1995); *Town of Ponce Inlet v. Rancourt*, 627 So.2d 586, 588 (Fla. 5th DCA 1993). Case law, as well as the land development regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations, as is the case with the Town and its Code. The days of the "feeling sorry" for a property owner as basis for a variance have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indianalantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *aff'd*, 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152. *See also, City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998) *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237; *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3rd DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla. 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). *In Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).

In *Blount v. City of Coral Gables*, 312 So.2d 208, 209 (Fla. 3rd DCA 1975), the Third District Court of Appeal held that the applicants in the case, the Blounts, were not "entitled to a variance from the above zoning ordinance...as the hardship was self-created because **they knew of the restricted zoning ordinance**." (Emphasis added). *See also, Clarke v. Morgan*, 327 So.2d 769 (Fla. 1975); *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959); *Coral*

Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) and the cases cited therein address cases where property is purchased with prohibitory regulations in place at the time of purchase, just as in the matter before the Board.

The court in *Namon v. DER*, 558 So. 2d 504 (Fla. 3rd DCA 1990) recognized such pre-existing notice as applied to takings analysis in Florida cases, finding that:

"Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. (citations omitted).

Id. at 505. The *Namon* court, citing to *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984) for the proposition that "A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights.... The property continues to exist in the state in which appellants have contracted to acquire it." In *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3rd DCA 1959), *cert. denied*, 116 So. 2d 849 (Fla. 1959), the Third District Court of Appeal held that "One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property."

Florida court holdings also clearly hold that a mere economic "disadvantage" or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. See, e.g., *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3rd DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (Fla. 3rd DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (Fla. 3rd DCA 1967). In the matter before this Board, the Applicants desire to develop the Parcel in a particular manner, or the Town's desire that project be taller than wide, do not justify the granting of the desired variance.

The Florida courts have also had that neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (Fla. 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

In addition to the hardship criteria, granting the variance must not adversely affect the zoning scheme as a whole. As the Florida Supreme Court found, the granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). "A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property." *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959). In this case, a ten story building would not only be violative of the zoning plan in place for this particular area, it would alter the essential character of this area, which is comprised on low-rise and Code compliant buildings.

The Florida courts and case law provide that no variance can be granted if the property can still be used without the variance. In other words, a variance cannot be granted and the denial of the variance will not be disturbed and overturned if other reasonable use can be made of the property without a variance. As the Court in *Thompson v. Planning Commission*, 464 So.2d 1231 (Fla. 1st DCA 1985) held, "The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property."

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (Fla. 3rd DCA 1979).

Quite simply, **it is the land, and not the nature of the project**, which must be unique and create a hardship. *Town of Indiatlantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), *aff'd*, 419 So.2d 1041; *appealed again at* 485 So.2d 1318 (Fla. 5th DCA 1986), *rev. den.* 494 So.2d 1152.

Of particular note is *Town of Indiatlantic v. Nance*, 400 So.2d 37 (Fla. 5th DCA 1981), the Court upheld the Town of Indiatlantic, Florida's denial of a variance. In that case, the petitioner/land owner sought a height variance to build a six story building where the applicable code, as in this matter before Board, only permitted a three story building. Indiatlantic denied the variance request.

In upholding Indiatlantic's denial of the variance, the Fifth District Court of Appeal held that "the evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance." *Id.* at 41. In reaching this conclusion, the Court found that

By whatever name it is called, the task of a court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand. **A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by any other property owners in the area.** In the instant case, the evidence reasonably supports Indiatlantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indiatlantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indiatlantic. **Indiatlantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.**

Id. at 40 (*Citations omitted and emphasis added*).

Importantly, and identically to the Applicant's Request in this case, the Court found that "Nance possessed a viable dual three story plan that, with the exception of the parking deficiency, met all Indiatlantic zoning requirements, including the height restriction....**The viability of this dual three-story plan itself demonstrates a lack of hardship.**" *Id.* at 41. (*Emphasis added*). So too, the Applicant's ten story plan can viably be a three story building on the same footprint. For this reason, as in the *Indiatlantic* case, there is no hardship.

Further encapsulating the requirements to be considered and met, the Fourth District Court of Appeal, which includes Broward County, and the burdens to be satisfied, followed the *Nance* Court in *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA 1990). In the *Bernard* case, the Fourth District Court of Appeal held that "[a]n applicant who seeks a variance must demonstrate a 'unique hardship' in order to qualify for a variance. Also, it has been held that a 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'" *Id.* at 854-55. (*Emphasis added and citations omitted*).

In the matter before the Board, the Applicant has not and cannot reasonably demonstrate that it is virtually impossible to use the land for the purpose for which it is zoned. Unquestionably and undeniably, the Parcel can be used for the purpose for which it was zoned.

There have been publicly made references to the alleged "benefits" that the Applicant's project will bring to the Town. "Sweeteners" offered up by the Applicant, such as the granting of a beach access easement or participating in the cost of burying utility lines, and other extrinsic matters, such as additional tax revenues which may supplement items such as the cost of beach renourishment, have no place in the consideration of a variance. A variance must be based on the findings and evidence mandated by the Code and the law. The legal standards have been and are clearly established.

While there is always the desire to "reach for the brass ring", the decision to grant and provide the Applicant with a variance cannot and must not be based on convenience – whether for the convenience of the Applicant or of the Town. Under the existing Code, the Applicant has failed to meet the burden of demonstrating any unique hardship which would preclude the development of the Parcel under the Code, as it exists today. The property can be developed in accordance with the existing zoning regulations without the granting of a variance. If the Town wishes to permit such high-rise development, the answer is to amend the Code such that an entire district can take advantage of the provisions thereof, and not to engage in what could be viewed as spot zoning by the granting of variances.

The Board must ask the Applicant, and then the members of the Board must ask themselves, about the uniqueness of the hardship and whether the Code would afford the Parcel's development in accordance not with the Applicant's desires and economic self-interest, but with the Code. This is not some pie-shaped parcel in a cul-de-sac that needs a set back variance just to build. The alleged hardship was clearly know and has existed for years. The Applicant knew of the restrictions on height. Is this enough to justify the granting of a variance more than tripling the allowable height. My clients, and those whom they stand for who live in several associations within the Town, think not, nor does the law support the granting of such a variance. My clients expect that the Board, comprised of their elected officials, will uphold the Code and follow the law and applicable legal standards, and do what it must morally and legally do. Deny the Request of the Applicant for the variance sought.

Respectfully submitted,



M. Scott Kleiman

cc: DJ Doody, Hillsboro Beach Town Attorney (via email: Ddoody@cityatty.com)
Sherry Henderson, Hillsboro Beach Town Clerk (via email: Shenderson@townofhillsborobeach.com)

Sherry D. Henderson

From: Craig Berger <craigb918@rocketmail.com> on behalf of Craig Berger
Sent: Tuesday, January 11, 2022 2:37 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
vfeaman@townofhillsborobeach.com; bbaldassare@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com;
joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Cc: Nancy Robbins
Subject: 1174-1185 Hillsboro Mile Development Proposal

Dear Mayor and Commissioners,

I object to allow the erection of a 10-story building in a 3-story zoning. I support and agree with the attached attorney's letter to this email that there is no hardship in this case.

The attached letter covers why the variance should be denied for 10 stories very clearly. Please act on our behalf to insist that the developer present a suitable lower story option in exchange for a possible variance. One that is logical to the actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

Craig Berger

1160 Hillsboro Mile, Hillsboro Island House

Hillsboro Beach, Florida 33062

Sherry D. Henderson

From: MARGARET CARVIN <margaretcvvn@aol.com> on behalf of MARGARET CARVIN
Sent: Tuesday, January 11, 2022 2:47 PM
To: dtarrant@townofhillsborobeach.com
Cc: vfeaman@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; mserda@townofhillsborobeach.com; joe@rma.us.com; Ddoody@cityatty.com; Shenderson@townofhillsborobeach.com
Subject: Our opposition to the granting of a variance on vacant property 1174-1185 in Hillsboro Beach
Attachments: Opposition to Variance Letter.pdf; Untitled attachment 00093.html

Dear Mayor Tarrant,

We are strongly opposed to your granting a variance to allow for a 10-story building in a 3-story zoning on the vacant property 1174-1185 in Hillsboro Beach. As described in the attached attorney's letter, there is no hardship in this case that would allow for an exception to this current zoning requirement.

The attached letter specifies why the variance should be denied for the proposed 10 stories. You, Vice Mayor Kirhady, and the Commissioners must act on behalf of our community to insist that the developer follow the zoning requirements and present a suitable lower story option. The option should be an actual conservation easement that takes 33% of the property and not one that requests a height of 68% more.

We appreciate the consideration of our concerns. Please enter this email as part of the public record.

Margaret and Michael Carvin
1207 Hillsboro Mile

Sherry D. Henderson

From: Deb Tarrant <dtarrant@townofhillsborobeach.com> on behalf of Deb Tarrant
Sent: Wednesday, January 12, 2022 10:53 PM
To: Frank J. Kolb, Jr.
Cc: Sherry D. Henderson; ddoody@gorencherof.com; frankjkolbjr@gmail.com; mbwilliams123@gmail.com; scott@wowadvisors.com; krismithart@gmail.com; jeromew@comcast.net; lkvalentine@comcast.net; pvogl@att.net; kristen@kristenmaxx.com; cdrimarc@gmail.com; greenbergh123@gmail.com; mpenate@me.com; mraphael@riverrealty.com; deabiraphaelraphael@icloud.com; deabiraphaelraphael@msn.com; polkaj2@sbcglobal.net; joe@campanelli.com; ammeltzer@comcast.net; drose4@hotmail.com; cfleck@yahoo.com; pattanee_9@hotmail.com; asjc357@gmail.com; bravol1172@gmail.com; mpenate@icloud.com; bvogl@att.net; celindasawtelle@gmail.com; Koren C. Kolb; yocyfeuer@gmail.com; fishonthemile@gmail.com; frankjkolbjr@gmail.com; rkelly6448@aol.com; boggiethemile@bellsouth.net; yanks4@gmail.com; rnazette@nazettelaw.com; joyacht1635@gmail.com; FL_KellyC@comcast.net; deboofreny@gmail.com; jrauh@neo.rr.com; James; nbdr13@icloud.com; cathy.mason3554@gmail.com; gailwiser@outlook.com; shirleywatson@watsonproperties.ca; twochamps@me.com; atshore@bellsouth.net; jgail.wagner@gmail.com; maria11787@aol.com; schaake@comcast.net; twochamps@me.com; Tony Gardner (tony@customplasticcard.com)
Subject: Re: 1174-1185 Variance request. Kindly include in the record

As a practicing attorney for over 40 years, it would seem you would understand the importance of factual information. To my knowledge, the developers have never once threatened to build something other than a beautiful project, regardless of height, or said anything remotely resembling "give us what we want or we will give you an unsightly, substandard eyesore finished product conforms to the 3-story code." They have never threatened reprisals in any way, shape or form as far as I am aware. I believe that is an assumption on your part.

In fact, from my perspective, more closely resembling a threat is your statement "if this commission votes to grant the requested so-called hardships litigation will ensue which will be costly to the Town and consequently the taxpayers. Do you really want to do something that will most likely embroil the town in litigation?" This comment makes it appear to me you may not be aware that any challenge to the Board of Zoning's decision will be defended by the Related Group/Dezer, not the Town of Hillsboro Beach.

Regardless of what gets built, "peace and tranquility" are going to be interrupted for residents while the project is underway. Any time there is construction of any kind in Town, peace and tranquility are disrupted, especially for the immediate neighbors. The developer's proposal includes a deep front setback on the west side, affording a large staging area which should reduce disruption on A1A. A similar staging area would not be available if the project included two three-story buildings.

By now, you are obviously aware that Commissioner Feaman recused herself. Recusing means she doesn't vote, not that she doesn't sit on the dais.

Lastly, I'm not sure where your description of "2 10 story condo towers on the East" comes from. Nothing presented to me ever showed two 10-story buildings.

Regards,

Deb

Deb Tarrant, Mayor
Town of Hillsboro Beach



From: "Frank J. Kolb, Jr." <fjk@ehlaw.com>

Date: Tuesday, January 11, 2022 at 8:40 AM

To: Deborah Tarrant <dtarrant@townofhillsborobeach.com>, "Commissioner Vicky Feaman:" <vfeaman@townofhillsborobeach.com>, "Commissioner Jane Reiser:" <jreiser@townofhillsborobeach.com>, "Vice Mayor Irene Kirdahy:" <ikirdahy@townofhillsborobeach.com>, "Commissioner Barbara Baldassarre:" <bbaldassarre@townofhillsborobeach.com>

Cc: "Sherry D. Henderson" <shenderson@townofhillsborobeach.com>, "ddoody@gorencherof.com" <ddoody@gorencherof.com>, "frankjkolbjr@gmail.com" <frankjkolbjr@gmail.com>, "mbwilliams123@gmail.com" <mbwilliams123@gmail.com>, "scott@wowadvisors.com" <scott@wowadvisors.com>, "krismithart@gmail.com" <krismithart@gmail.com>, "jeromew@comcast.net" <jeromew@comcast.net>, "lkvalentine@comcast.net" <lkvalentine@comcast.net>, "pvogl@att.net" <pvogl@att.net>, "kristen@kristenmaxx.com" <kristen@kristenmaxx.com>, "cdrimarc@gmail.com" <cdrimarc@gmail.com>, "greenbergh123@gmail.com" <greenbergh123@gmail.com>, "mpenate@me.com" <mpenate@me.com>, "mraphael@riverrealty.com" <mraphael@riverrealty.com>, "deabiraphaelraphael@icloud.com" <deabiraphaelraphael@icloud.com>, "deabiraphaelraphael@msn.com" <deabiraphaelraphael@msn.com>, "polkaj2@sbcglobal.net" <polkaj2@sbcglobal.net>, "joe@campanelli.com" <joe@campanelli.com>, "ammeltzer@comcast.net" <ammeltzer@comcast.net>, "drose4@hotmail.com" <drose4@hotmail.com>, "cfleck@yahoo.com" <cfleck@yahoo.com>, "pattanee_9@hotmail.com" <pattanee_9@hotmail.com>, "asjc357@gmail.com" <asjc357@gmail.com>, "bravol1172@gmail.com" <bravol1172@gmail.com>, "mpenate@icloud.com" <mpenate@icloud.com>, "bvogl@att.net" <bvogl@att.net>, "celindasawtelle@gmail.com" <celindasawtelle@gmail.com>, "Frank J. Kolb, Jr." <fjk@ehlaw.com>, "Koren C. Kolb" <kory@ehlaw.com>, "yocyfeuer@gmail.com" <yocyfeuer@gmail.com>, "fishonthemile@gmail.com" <fishonthemile@gmail.com>, "frankjkolbjr@gmail.com" <frankjkolbjr@gmail.com>, "rkelly6448@aol.com" <rkelly6448@aol.com>, "boggiethemile@bellsouth.net" <boggiethemile@bellsouth.net>, "yanks4@gmail.com" <yanks4@gmail.com>, "rnazette@nazettelaw.com" <rnazette@nazettelaw.com>, "joyacht1635@gmail.com" <joyacht1635@gmail.com>, "FL_KellyC@comcast.net" <FL_KellyC@comcast.net>, "deboofreny@gmail.com" <deboofreny@gmail.com>, "jrauh@neo.rr.com" <jrauh@neo.rr.com>, James <jimrauh@comcast.net>, "nbdr13@icloud.com" <nbdr13@icloud.com>, "cathy.mason3554@gmail.com" <cathy.mason3554@gmail.com>, "gailwiser@outlook.com" <gailwiser@outlook.com>, "shirleywatson@watsonproperties.ca" <shirleywatson@watsonproperties.ca>, "twochamps@me.com" <twochamps@me.com>, "atshore@bellsouth.net" <atshore@bellsouth.net>, "jgail.wagner@gmail.com" <jgail.wagner@gmail.com>, "maria11787@aol.com" <maria11787@aol.com>, "schaake@comcast.net" <schaake@comcast.net>, "twochamps@me.com" <twochamps@me.com>, "Tony Gardner (tony@customplasticcard.com)"

<tony@customplasticcard.com>

Subject: 1174-1185 Variance request. Kindly include in the record

Various correspondence has been circulated tooting the virtues of the developer such as financial resources, abilities, past projects etc. Those attributes are not legal criteria for the granting of the requested the requested variances.

Please listen to the people, apply the code and applicable law and find for the reasons stated by the people and as contained in attorney Klieman's letter no LEGAL HARDSHIP exists and deny the request. How dare the developer say, give us what we want or we will give you an unsightly, substandard eyesore finished product conforms to the 3-story code. Is that a way to start to be the good new neighbor? Sounds like extortion.

As someone who has practiced law for over 40 years, I envision that if this commission votes to grant the requested so-called hardships litigation will ensue which will be costly to the Town and consequently the taxpayers. Do you really want to do something that will most likely embroil the town in litigation?

The larger the project the more disruption to the citizens, not just the abutting properties during the construction process. We are looking at approximately 2 years of heavy construction vehicles, traffic disruption, noise, road closures etc. We want peace and tranquility. We bought as did the developer knowing what the code was applicable to the 1174-1185 property. It is 3 stories and no more.

Another issue that I have raised in emails to all commissioners and to town attorney Doody is the fact that commissioner Feaman owns property which abuts the proposed development (her north boundary is their south) and that gives her a potential monetary interest in the variance process. A good project increases her property value and a bad lowers her property value. The current proposal is for Town homes on that section of the development abutting her property and 2 10 story condo towers on the East. With this potential financial benefit or loss to commissioner Feaman but I see she is sitting and has not been disqualified or refused herself.

Frank J. Kolb, Jr., Esq.
Kolb & Associates, P.C.
1173 Hillsboro Mile 1-1
Hillsboro Beach, Florida 33062
203 469 4475

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DRAFT

**MINUTES
TOWN OF HILLSBORO BEACH
REGULAR COMMISSION MEETING
JANUARY 11, 2022**

CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Deborah L. Tarrant called the meeting to order at 1:49 p.m. Roll was called with the Commission members and staff present as listed below.

Town Commission:

Mayor Deborah L. Tarrant
Vice Mayor Irene Kirdahy
Commissioner Jane Reiser

Commissioner Barbara Baldassarre
Commissioner Vicky Feaman

Town Staff:

Town Manager William "Mac" Serda, ICMA-CM
Donald J. Doody, Town Attorney, Esq.
Town Clerk Sherry D. Henderson, CMC

Mayor Tarrant recognized the attack on Pearl Harbor 80 years ago on this date. She noted an evening bulletin from the Honolulu Star was present at the front of the room. Those in attendance honored a moment of silence in memory of those who lost their lives or were injured in the attack.

APPROVAL OF AGENDA

Mayor Tarrant asked if Resolution 2022-01 should be removed from the agenda. Town Attorney DJ Doody explained the item should remain for discussion and motion to table.

I. APPROVAL OF MINUTES

A. Minutes of the December 7, 2021 Board of Zoning & Appeals Public Hearing

Motion made by Commissioner Baldassarre, seconded by Commissioner Reiser, to approve the minutes from the December 7, 2021 Board of Zoning & Appeals Public Hearing as presented. In a roll call vote, the **motion** passed unanimously. (5-0)

B. Minutes of the December 7, 2021 Regular Commission Meeting

Motion made by Commissioner Baldasarre, seconded by Commissioner Reiser, to approve the minutes from the December 7, 2021 Regular Commission Meeting as presented. In a roll call vote, the **motion** passed unanimously. (5-0)

II. PRESENTATIONS

None.

III. SITE PLAN REVIEW

A. Quasi-Judicial Public Hearing – Eric Fordin, with Related Group, authorized agent for property owner, is seeking Site Plan Approval for property located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062.

Mr. Doody swore in those wishing to provide testimony.

Pedro Gassant, counsel for the applicant, asked that the item be tabled to the February meeting.

Mr. Doody asked if the applicant agreed to be responsible for any costs of readvertising. Mr. Gassant stated that they did.

Commissioner Feaman declared a conflict of interest and recused herself.

(Clerk's Note: Pursuant to Florida Statutes 112.3143, Commissioner Feaman completed and submitted Form 8B Memorandum of Voting Conflict.)

Motion made by Commissioner Baldasarre, seconded by Commissioner Feaman, to table the site plan for 1174-1185 Hillsboro Mile to the February 1 Town Commission meeting. In a roll call vote, the **motion** passed unanimously. (4-0) Commissioner Feaman abstained.

Mr. Gassant asked that related item 6a also be tabled.

Commissioner Feaman declared a conflict of interest and recused herself.

(Clerk's Note: Pursuant to Florida Statutes 112.3143, Commissioner Feaman completed and submitted Form 8B Memorandum of Voting Conflict.)

Motion made by Commissioner Baldasarre, seconded by Commissioner Reiser, to table Resolution 2022-01 to the February 1 meeting. In a roll call vote, the **motion** passed unanimously. (4-0) Commissioner Feaman abstained.

IV. ORDINANCES

A. Ordinance No. 2021-09 Amendment to the Town's Code of Ordinance, Chapter 12 Land Development Code, Amending Sec. 12-396 to Provide for the Use of Artificial Synthetic Turf. (Second Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 12 ENTITLED "LAND DEVELOPMENT CODE,"; BY SPECIFICALLY AMENDING SECTION 12-396 ENTITLED "APPROPRIATE PLANT SELECTION, LOCATION, AND ARRANGEMENT" TO PROVIDE FOR THE USE OF ARTIFICIAL TURF; PROVIDING FOR AN AMENDMENT TO PROCEDURE, REVIEW CRITERIA, AND DESIGN STANDARDS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Doody read the Ordinance by title only.

Mayor Tarrant stated the Ordinance had been pursued because requests had become so common, it was determined regulations were needed.

Mayor Tarrant opened public comment on the Ordinance, however there being none to speak, closed the public comment.

Mayor Tarrant asked why the Hillsboro Club was left out on line 31.

Mr. Doody stated the listing included commercial operations, which would include the Hillsboro Club.

Mayor Tarrant asserted she wanted to be clear it included all of Town. She asked who was authorized to generate a site plan. She noted Lighthouse Point requires a landscape architect.

Jim Hickey, Town Planner with CG&A, referenced a request for a putting green as an example and noted he had requested review by a landscape architect. He recommended the words "licensed professional" be added. Discussion ensued as to how to best evaluate the landscaping as part of a site plan.

Mr. Doody stated the language would be updated to state the site plan must be generated by a landscape engineer, engineer, or architect.

Mayor Tarrant pointed to the reference to manufacturing in the United States and asked if there needed to be clarification regarding assembly. Discussion ensued, and it was determined to leave the wording as-is.

Mayor Tarrant stated she disagreed with the requirement to have a General Contractor. She noted that would lead to a tendency to select a turf provider that was lowest cost. She asked that the installation require a registered company only. Discussion ensued as to the definitions, and it was determined to leave the language as-is.

Mayor Tarrant commented on the requirement of an area around trees and noted the material is porous. Discussion ensued and it was determined to amend the distance from six (6) feet to three (3) feet.

Mayor Tarrant asked for clarification on the language related to using the material as a screen where required. Mr. Hickey explained it was not to be attached to fences.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Baldassarre, to amend Ordinance 2021-09 on first reading to include the changes outlined below. In a roll call vote, the **motion** passed unanimously. (5-0)

- Page 1, Line 32, add “and all commercial establishments located in Town.”
- Page 2, Line 1, add “site plan is to be prepared by a landscape engineer, engineer, or architect
- Page 3, Line 17, change a minimum of six (6) feet to a minimum of three (3) feet.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Feaman, to adopt Ordinance 2021-09 as amended. In a roll call vote, the **motion** passed unanimously. (5-0)

B. Ordinance No. 2022-01 Amendment to the Town’s Code of Ordinance, Amend Hours of Operation of Lawn Maintenance Equipment. (First Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN’S CODE OF ORDINANCES BY AMENDING ARTICLE VII ENTITLED “NOISES” BY SPECIFICALLY AMENDING SECTION 7-93 TO AMEND THE HOURS OF OPERATION OF LAWN MAINTENANCE EQUIPMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Tarrant noted this Ordinance was brought forward to clarify the Code, as it contradicted itself, and to further restrict lawn maintenance.

Mr. Doody explained the amendments.

Mayor Tarrant asked whether they wanted to have dinner listening to lawn equipment.

Mr. Serda stated the time had been changed to match other legislation within the Code.

Commissioner Reiser agreed she would prefer the restriction to 4 p.m. but thought the concession to 6 p.m. was necessary because Saturdays were being taken away.

Discussion continued regarding landscaping needs of condominiums and single-family homes and restrictions in other communities.

Town Clerk Sherry D. Henderson noted a typographical error leaving Saturdays off the amendment. The error was corrected to included Saturdays, Sundays, and holidays.

Mayor Tarrant asked whether the title should be amended to say lawn and landscaping maintenance rather than lawn maintenance. Discussion ensued, and it was determined to leave the title as is.

Mayor Tarrant asked that tree trimmers be added to the list of landscape activities specifically listed in the Ordinance.

Motion made by Commissioner Reiser, seconded by Vice Mayor Kirdahy, to amend Ordinance 2022-01 on first reading to include the changes outlined below. In a roll call vote, the **motion** passed unanimously. (5-0)

- Addition of Saturday on line two (2)
- Addition of tree trimmers in the second section

Motion made by Commissioner Reiser, seconded by Vice Mayor Kirdahy, to approve Ordinance 2022-01 on first reading as amended. In a roll call vote, the **motion** passed unanimously. (5-0)

C. Ordinance No. 2022-02 Amendment to the Town's Code of Ordinance, Amending Section 6-132 Providing for Suspension in Enforcement in an Event of Emergency. (First Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING ARTICLE VI ENTITLED "NUISANCES" BY SPECIFICALLY AMENDING SECTION 6-132 ENTITLED "LANDSCAPING"; PROVIDING FOR A SUSPENSION IN ENFORCEMENT IN AN EVENT OF AN EMERGENCY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Tarrant explained this Ordinance suspended Ordinance 2022-01 in the event of an emergency.

Mr. Doody read the Ordinance by title only.

Mayor Tarrant asked if Section 7-93 should also be amended to match. Mr. Doody responded it was not required, as the wording included “any other sections.”

Motion made by Commissioner Feaman seconded by Vice Mayor Kirdahy, to approve Ordinance 2022-02 on first reading as presented. In a roll call vote, the **motion** passed unanimously. (5-0)

D. Ordinance No. 2022-03 Amendment to the Town’s Code of Ordinance, Chapter 12 Land Development Code, Amending Sec. 12-261 to Provide for an Exception to the Height Regulations of Chapter 12 for Elevator Equipment. (First Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN’S CODE OF ORDINANCES BY AMENDING CHAPTER 12 ENTITLED “LAND DEVELOPMENT CODE,”; BY SPECIFICALLY AMENDING SECTION 12-261 ENTITLED “HEIGHT REGULATIONS” TO PROVIDE FOR AN EXCEPTION TO THE HEIGHT REGULATIONS OF CHAPTER 12 FOR ELEVATOR EQUIPMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Doody read the Ordinance by title only.

Mayor Tarrant stated this was another example of why the Land Development Code is in need of serious work. She noted the Ordinance covers radio and TV antennas but does not discuss elevator components.

Motion made by Commissioner Baldasarre, seconded by Vice Mayor Kirdahy, to approve Ordinance 2022-03 on first reading as presented. In a roll call vote, the **motion** passed unanimously. (5-0)

V. DISCUSSION & POSSIBLE ACTION

A. Discussion on Limiting Assemblage of Parcels

Mayor Tarrant stated she had asked for the item to be added, as the Commission had recently learned how problematic it was that the Code was written for 100 and 200-foot lots. She asserted in order to maintain the laid-back feel of Hillsboro Beach, further assemblage of parcels should be restricted.

Mr. Hickey explained his staff was reviewing the issue, looking for averages based on other municipalities. He noted there may be additional wording needed regarding the maximum building length without a break.

Mayor Tarrant asked if the staff recommendation was not to allow consolidating lots at all.

Mr. Hickey stated the Code currently allows the current owners to go into the County Appraiser and combine lots into a single. He explained there was platting research to be done to be sure staff was putting together a defensible plan.

Mr. Doody stated they wanted to put together legal requirements that would stand up to judicial scrutiny while maintaining the character of the Town and allowing for development.

Commissioner Reiser asked what the largest single-family lot is currently. Discussion ensued as to projects which combine lots and those which are on larger lots.

Mr. Hickey stated he believed single-family and multi-family needed to be treated with their own intricacies.

Mr. Doody added that they could not prevent someone from making an application, but they could strengthen the criteria within the Code.

Mr. Hickey stated he wanted to give the issue appropriate time and noted he would provide an update on February 1.

Mr. Doody explained a survey of the Town was required to develop consistent criteria. He stated a period of months would be required.

B. Discussion on Updates to the Land Development Code

Mayor Tarrant stated in addition to the combination of parcels, she thought the Commission should discuss rooftops and how they equate to living space.

Vice Mayor Kirdahy explained she had previous experience with Code Compliance, and when she came on the Commission, she had wanted to review the Code. She suggested a committee be formed to review the Code for updates.

Mayor Tarrant asserted this was a good idea but should be led by Mr. Hickey.

Mr. Hickey stated things will pop up, and a lot of communities have issues when they don't change with the times. He agreed a committee was a good idea, and they could address a list of zoning issues which have come up rather than doing a complete review of the Code.

Vice Mayor Kirdahy referenced the discussion at the December meeting regarding additional height for elevators and stated there are many similar things changing. She noted she was

willing to work with a committee.

Mr. Serda asked the vision for the committee. Discussion continued.

Vice Mayor Kirdahy stated she would review the Land Development Code to identify an initial list of topics to address.

Mr. Doody suggested involving residents on a committee was not a good idea, as it would expose the Town to liability. He noted municipalities have planning staff for this purpose.

Vice Mayor Kirdahy clarified she meant a committee of professionals.

Discussion ensued regarding rooftop amenities.

VI. RESOLUTIONS & CONTRACTS

A. Resolution No. 2022-01

CONSIDERATION TO APPROVE AND AUTHORIZE THE APPROPRIATE TOWN OFFICIALS TO EXECUTE AND DELIVER A LETTER OF NO OBJECTION TO THE PLAT NOTE AMENDMENT AND THE NON-VEHICULAR ACCESS LINE AMENDMENT FOR THE DEVELOPMENT PROJECT LOCATED AT 1174-1185 HILLSBORO MILE, HILLSBORO BEACH, FLORIDA 33062.

Item previously tabled.

B. Resolution No. 2022-02

CONSIDERATION TO ACCEPT THE RECOMMENDATION OF THE EVALUATION AND SELECTION COMMITTEE AND DETERMINING THAT GRAU & ASSOCIATES IS THE MOST RESPONSIVE AND MOST RESPONSIBLE PROPOSER FOR PROFESSIONAL EXTERNAL AUDIT SERVICES RFP NO. 2021-02.

Mr. Doody read the Resolution by title only.

Mayor Tarrant thanked Vice Mayor Kirdahy for representing the Town on the committee.

Mr. Serda stated the Statute and procurement rules were followed.

Motion made by Commissioner Baldasarre, seconded by Commissioner Feaman, to adopt Resolution 2022-02 and approve Grau & Associates as the auditor. In a roll call vote, the **motion** passed unanimously. (5-0)

VII. CONSENT AGENDA

A. Invoices for Approval

1. **GCDE Invoice #38761 Services Dec 2021 \$5,169.80** (General Matters)
2. **GCDE Invoice #38762 Services Dec 2021 \$3,262.50** (Development)
3. **GCDE Invoice #38763 Services Dec 2021 \$157.50** (Writ of Garnishment)
4. **LSF Shuttle: Invoice #21-1231-26 Services Dec 2021 \$6,551.86**
5. **CG&A: Invoice #91656 Services Dec 2021 \$32,292.48**
6. **RMA: Invoice #4649 Services Nov 2021 \$6,325.00**

Motion made by Commissioner Baldassarre, seconded by Commissioner Feaman, to approve the Consent Agenda as printed. In a roll call vote, the **motion** passed unanimously. (5-0)

VIII. BEACH REPORT

A. Update on Beach Renourishment Project with City of Deerfield Beach

Mr. Serda stated Deerfield Beach was moving forward on their individual renourishment, and on the joint project, progress was being made on design and reactivating the Army Corps of Engineers permit. He stated he had a meeting with staff from Pompano Beach to discuss backpassing. He stated so far, the discussion had been received favorably.

Mayor Tarrant referenced a State Statute regarding backpassing was key, and noted legal counsel was reviewing the issue.

B. Coastal and Waterway Consultant

Mr. Serda stated he had not yet posted the position. He noted there was not space to house the position on premises.

Mayor Tarrant discussed the need for the position and agreed they did not need to be on the premises.

VIII. STAFF UPDATES

A. Police Department

Police Chief Jay Szesnat presented his report. He introduced the new hire, Officer Russell L. Gonglewski, a 15-year veteran of the Coconut Creek Police Department.

Officer Gonglewski introduced himself briefly.

B. Building Department

Mayor Tarrant recognized Steven Mitchell for his recent honor as Broward County Building Official of the Year.

Steve Mitchell, Building Official, CG&A, presented the Building Services report. He stated the department is tremendously busy and is working on processes to simplify workflow.

Mayor Tarrant stated when Mr. Mitchell first came to Hillsboro Beach, CG&A was concerned there was not enough projects to keep him busy.

Mr. Mitchell stated there were going to be more permits issued in January than in previous years. He noted Opal Towers West had again started work without permits. He stated Code Enforcement would be opening a case against the Condo Association.

Commissioner Baldasarre stated there had been a presentation at the Broward League of Cities on the alliance of platinum permitting programs, and Hillsboro Beach was listed as a member. She congratulated Mr. Mitchell on his work in this area.

C. Code Compliance

Bernard Pita, Code Enforcement, CG&A, presented his report. He shared a brief review of the recent turtle season and stated he was looking at the possibility of a lighting workshop as a proactive approach for residents. Continuing, he discussed an uptick in complaints regarding building permits, and discussed collaboration regarding fire inspections and police outreach to increase voluntary compliance.

Commissioner Feaman asked how many vacation rentals are in the Town. Mr. Pita stated there were 41 listed in violation, but staff was working on compiling a list.

Mr. Serda provided additional detail regarding vacation rentals.

Mayor Tarrant shared information on 2021 turtle nests in Broward County and noted Hillsboro Beach is far and away the largest contributor to the turtle population. She recognized Mr. Pita's efforts.

Mr. Pita stated those numbers were awesome, and thanked Mayor Tarrant for sharing the visual representation.

Mr. Serda stated he was in conversation with Mr. Pita regarding increasing the presence of Code Enforcement to address issues with unmarked trucks.

IX. TOWN MANAGER REPORT

A. Town Hall Improvements Update

Mr. Serda provided a brief update on the Town Hall renovation, stating it had run into a stop after problems with the subcontractors conducting stucco repair. He noted the building official had recommended an architect create plans.

X. TOWN ATTORNEY REPORT

Mr. Doody stated he had an initial conference with the consultant on the excavation ordinance and hoped to bring that back shortly.

Mr. Serda thanked Mr. Doody for taking over the work on the excavation ordinance.

XI. TOWN COMMISSION COMMENTS/REPORTS

A. Commissioner Jane Reiser

None.

B. Commissioner Vicky Feaman

None.

C. Commissioner Barbara Baldassarre

None.

D. Vice Mayor Irene Kirdahy

None.

E. Mayor Deborah L. Tarrant

None.

XII. PUBLIC COMMENTS

Beth Vogl, 1170 Hillsboro Mile, stated she was surprised by the slide during the Board of Zoning and Appeals meeting from Attorney Debbie Orshefsky regarding the original, revised, and current proposals for 1174-1185 Hillsboro Mile. She asserted the current proposal was not online and expressed concern regarding the timeline for next steps.

Mayor Tarrant stated the only change to the plan from the original 15-floor plan was to remove five (5) stories.

Mayor Tarrant left the meeting at 3:15 p.m.

Ms. Vogl stated the roof was causing all kinds of problems for her, and the west side looked different from what was originally proposed. She asserted she needed more than two (2) or three (3) days to review the plans online prior to the meeting.

Mr. Serda agreed it was a tight timeframe and stated as soon as the site plan was received by staff, it would be placed online. He asked counsel for direction regarding notice requirements.

Mr. Doody stated the agenda was to be provided with 10 days' notice, but he would investigate requirements regarding the notice requirement of backup materials.

XIII. ADJOURNMENT

Motion made by Commissioner Feaman, seconded by Commissioner Reiser, to adjourn the meeting at 3:20 p.m. In a roll call vote, the **motion** passed unanimously. (4-0)

ADOPTED THIS _____ DAY OF _____, 2022

By: _____
Deborah L. Tarrant, Mayor

ATTEST:

Sherry D. Henderson, CMC, Town Clerk



DRAFT

**MINUTES
TOWN OF HILLSBORO BEACH
REGULAR COMMISSION MEETING
FEBRUARY 1, 2022**

CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Deborah L. Tarrant called the meeting to order at 9:00 a.m. Roll was called with the Commission members and staff present as listed below.

Town Commission:

Mayor Deborah L. Tarrant
Vice Mayor Irene Kirdahy
Commissioner Jane Reiser

Commissioner Barbara Baldassarre
Commissioner Vicky Feaman

Town Staff:

Town Manager William "Mac" Serda, ICMA-CM
Town Attorney Donald J. Doody, Esq.
Town Clerk Sherry D. Henderson, CMC

Mayor Tarrant recognized the passing of Commissioner Baldassarre's husband, Constantino "Connie" Baldassarre.

APPROVAL OF AGENDA

Town Manager Serda recommended approval of minutes be removed from the agenda, as they were not in the packet for approval.

Motion made by Commissioner Feaman, seconded by Commissioner Reiser, to amend the agenda to remove the approval of minutes. In a roll call vote, the **motion** passed unanimously. (5-0)

Motion made by Commissioner Baldassarre, seconded by Commissioner Feaman, to approve the agenda as amended. In a roll call vote, the **motion** passed unanimously. (5-0)

I. APPROVAL OF MINUTES

Item removed from the agenda.

II. PRESENTATIONS

None.

III. SPECIAL PERMISSION AND SITE PLAN REVIEW

- A. Special Permission** – Diane Gacicia, Authorized Agent for Hillsboro Ocean Club located at 1155 Hillsboro Mile, Hillsboro Beach, FL 33062 requests special permission for replacing signs where more than two (2) signs exist. As the Code permits two (2) signs, additional signs require special approval.

Mr. Doody swore in those wishing to provide testimony.

Joe Arenal, Development Planner with RMA, explained the item and presented the staff report. He reviewed the documents submitted and noted staff recommends approval of the Site Plan.

Diane Gacicia, Property Manager for Hillsboro Ocean Club, explained they were looking to replace the entrance and exit signs on the property. She stated there was a problem with people accidentally utilizing the exit as an entrance.

Mayor Tarrant pointed out for the record that this request was for Special Permission, not a Variance as was mistakenly referenced in the backup material.

Mayor Tarrant stated she found the font submitted to be hard to read and recommended revision for clarity.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Feaman, to approve the Special Permission to replace the entrance and exit signs on the property. In a roll call vote, the **motion** passed unanimously. (5-0)

- B. Quasi-Judicial Public Hearing** – Eric Fordin, with Related Group, authorized agent for property owner, is seeking Site Plan Approval for property located at 1174-1185 Hillsboro Mile, Hillsboro Beach, FL 33062.

Mr. Doody swore in those wishing to provide testimony.

Jim Hickey, Town Planner with CG&A, presented the item. He explained the plan was to construct 100 residential units on two (2) parcels, located on the east and west side of A1A. He briefly explained the section of parcel B which is identified as a Local Area of Particular Concern (LAPC). Continuing, Mr. Hickey reviewed the documents submitted and provided a brief history of the application, including the two (2) Variances previously approved and the conditions of approval required by each.

Mr. Hickey discussed the changes to the submittal since the last meeting, including reducing and moving the podium inward and reduction of parking space. He addressed side setbacks briefly, noting the dimensions had been added to the plan to make the measurement to the balconies clearer. He noted the dimensions had not changed but were more clearly delineated.

Mr. Hickey stated based on the analysis of staff, the following conditions were recommended if the Commission chose to approve the site plan:

1. Proposed site plan shall be consistent with the two (2) variances approved by the Zoning Board of Appeals;
2. All buildings and accessory structures shall be consistent in design;
3. Applicant shall respond to comments provided in Appendix A and shall provide a revised set of plans to the Town staff prior to submittal of a building permit;
4. Applicant shall work with the Town Attorney to draft a beach easement agreement outlying the use of this easement by the Town prior to issuance of a building permit for vertical construction.

Mr. Hickey noted there were also two (2) conditions of approval recommended by the applicant and explained the applicant would explain further. Those conditions are summarized as follows:

5. Developer hereby voluntarily agrees to contribute \$4,500,000 to the Town, which shall be used by the Town to offset the cost of undergrounding utilities on the Hillsboro Mile and/or to offset the cost of any expenses incurred by the Town for beach renourishment.
6. The Town Commission hereby grants an extension of the effective period of final site plan approval as follows: if, after the expiration of two (2) years from the date site plan approval by the Town Commission becomes final and not subject to appeal, a period of 90 days occurs in which no valid building permit is in effect, the final site plan approval shall be null and void unless further extended by the Town Commission.

Attorney Pedro Gassant, Holland & Knight, briefly introduced the team and provided an overview of the plan on behalf of the applicant.

Mr. Doody asked for clarification on the voluntary contribution of \$4.5 million toward undergrounding contemplated in the applicant's recommended conditions.

Mr. Gassant confirmed the contribution was voluntary and that the applicant did not object to the Town identifying other capital projects for the funds.

Mayor Tarrant noted despite the total construction timeline provided of five (5) years, the anticipated construction is 24-30 months. She pointed out the additional time was included to address unforeseen circumstances. Mr. Hickey added that additional time was included in condition six (6) because the Town's Code requires the project be completed within one (1) year of pulling the building permit.

Mayor Tarrant asked what exactly was in the circular structure identified as the tennis center. Eric Fordin responded the tennis center was not fully designed but was intended for spending time prior to playing tennis and to include the bathrooms.

Mayor Tarrant asked for clarification on the kids' area. Mr. Fordin stated it was a placeholder to create a place for residents to bring their children and grandchildren. Mayor Tarrant confirmed the Town would have no liability related to any playground equipment.

Mayor Tarrant noted palm trees shown on the roof. Mr. Gassant stated they were happy to remove them but had not been able to do so before the submittal. He asserted there would be no trees on the roof.

Mr. Doody asked for clarification as to whether there would be vegetation of any sort. Mr. Gassant stated the plan was for greenery in planters which were secured to the roof and would not include trees or anything above the railing.

Mayor Tarrant asked about the amenity space and how it would be kept from disrupting the neighbors. Mr. Fordin explained the soundproofing and noted it would be passive amenity space with no amplified sound.

Mayor Tarrant asked for clarification regarding a reference in the staff report to a shaded area on the roof. Mr. Hickey stated the shaded areas had been removed and the reference was a typographical error in the report.

Mayor Tarrant inquired about the materials used on the Town's easement and whether it was artificial turf for walking dogs. Architect Paul Del Canal, Arquitectonica, stated the applicant would have no issue in swapping the material out if required. Mayor Tarrant explained the recently approved Ordinance 2021-09 related to artificial turf.

Mayor Tarrant asked whether the garage door would be hydraulic. Mr. Fordin confirmed.

Mayor Tarrant asked about the 40-foot stacking space at the entrance to the property and explained she wanted to make sure it did not include the utility easement.

John McWilliams, Kimley-Horn and Associates, traffic engineer on the project, clarified that the 40 feet did include the utility easement. He provided additional explanation regarding coordination of deliveries at the property and the dimensions of the loading area shown on the plan. Discussion continued regarding the logistics of the entrance.

Mayor Tarrant asked about the breezeway and noted she had requested an elevation. She shared concerns about creating a wind tunnel in the space. She asked for clarification on delivery spaces. Mr. Fordin explained the valet would manage vehicles and stated a pedestrian wind study would be conducted and considered in building the breezeway.

Mayor Tarrant commented on shade-tolerant vegetation, driveway widths, and the setbacks. She pointed out all setbacks were larger than that required by the Town.

Mayor Tarrant asked that a condition be added that the excavation requirements for beach-compatible sand would be followed, even though the Ordinance has not yet been finalized. Mr. Serda responded with additional explanation.

Mayor Tarrant noted there were concerns from residents regarding the Construction Management Plan. She confirmed there would be fence and screening around all sides of the parcel, and the Department of Environmental Protection (DEP) permit issued ahead of time regarding dust control. She asked that water trucks be provided in summer. Mr. Fordin stated water trucks would be at the entrance and exit to attempt to keep dust and debris on site.

Mayor Tarrant asked that a hurricane plan be in place to respond to any debris and keep it on site, that a contact number for the project manager be provided to all residents within 1,000 feet, and that the Fish and Wildlife rules be followed regarding wildlife on the site.

Mr. Doody asked that the Commissioners make any disclosures of ex-parte communications.

Mayor Tarrant stated she had spoken with Attorney Debbie Orshefsky regarding what should be presented at the meeting. The remaining commissioners stated they had no contact since the last meeting.

Vice Mayor Kirdahy asked about supply chain guarantees. She expressed concern the project would be stopped due to the current climate. Mr. Fordin explained Related Group is a large organization that conducts bulk buys and provided assurance. He noted it was hard to predict, but they are planning for lead time on specialty items.

Vice Mayor Kirdahy inquired as to the plan for chairs and umbrellas. Mr. Fordin stated it would be a full-service building with a location within the structure to store amenities.

Commissioner Baldasarre inquired as to the number of employees expected on site. Mr. Fordin stated he did not have a plan finalized, but it would be a significant investment and a five (5) star service.

Mayor Tarrant opened the public hearing.

Beth Vogl, 1170 Hillsboro Mile, stated the inconsistencies in the plan give cause for pause. She asserted there had been no comments made regarding the marina, and she has many questions. She asked if boat slips would be available to those not deeded owners, whether there would be a gas pump, whether boat owners would be allowed to live on their boats, how much parking was available for the marina, and how it would impact the noise ordinance. Mayor Tarrant responded.

Ms. Vogl asked if the break wall was under land contract. She stated she had gone to the DEP for information but not found what she wanted to learn.

Mayor Tarrant stated it was actually the Army Corps of Engineers, so the Town has very little control over what happens with it.

Mr. Gassant stated they would go through the Army Corps of Engineers and DEP as necessary.

Ms. Vogl stated she wanted the silt fence to be much taller to protect flora and fauna on the neighboring properties.

Steve Mitchell, Building Official, explained the requirements. He noted the applicant was providing a six (6) foot chain link fence around the perimeter of the property with fabric designed to screen the project. He noted the silt fence was to provide protection against run off and explained how that would be installed to keep soil on the site.

Chris Black, 1173 Hillsboro Mile, asserted the project was approved with specific 107-foot setbacks and the balconies were not included as an exception. He stated the portions of the plan being presented were cherry-picked and said the Commission was rushing and working off plans which were not final or consistent.

Attorney Ralf Brookes filed his objection on behalf of four (4) neighbors. He stated the site plan exceeds the height limit as applicable and stated he had filed a request for judicial review the previous day regarding the variance as granted. He argued the building was contrary to the overall zoning scheme and should not be approved.

Danielle DiNapoli, 1161 Hillsboro Mile, stated she is happy with the density of the project of 100 units compared to the 188 potential units. She asserted the proposal presented would not hurt the neighboring properties.

Max Forgey, Certified Planner, stated the site plan violates the height as stated in the Town's Zoning Code. He referenced his comments at the January 11 hearing and asked that they be added to the record at this time.

(Clerk's Note: included with written comments)

Carol Weber, 1189 Hillsboro Mile, asked if the beach access would be open to the general public, and asked for clarification on the materials used.

Mr. Gassant explained the beach access would be for the Town's use for beach renourishment and maintenance with no public access.

Mayor Tarrant closed the public hearing.

Mr. Gassant responded to the balcony comment and noted the balconies had been on the original plan. Mayor Tarrant agreed and noted the balconies had always been included.

Mr. Hickey stated the original submittal had shown 107 feet to the building and the balconies had also been shown with dimensions. He reviewed the changes as discussed, including correction of three (3) typographical errors and an addition of a condition seven (7), an agreement to comply with the excavation requirements regarding compatibility of soil, regardless of Ordinance and DEP requirements

Mr. Doody asked for clarification that there would be no shaded area on the roof. Mr. Hickey noted that issue would be remedied with the correction of the typographical errors.

Mr. Doody asked whether Mr. Hickey believed the site plan was in condition to be brought forward and considered by the Commission today. Mr. Hickey stated it was.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Reiser, to approve the site plan for 1174-1185 Hillsboro Mile with the staff conditions as listed, the applicant's conditions, the correction of the typographic errors, the extension of the expiration of final site plan approval as requested by the applicant. In a roll call vote, the **motion** passed unanimously. (5-0)

1. Proposed site plan shall be consistent with the two (2) variances approved by the Zoning Board of Appeals;
2. All buildings and accessory structures shall be consistent in design;

3. Applicant shall respond to comments provided in Appendix A and shall provide a revised set of plans to the Town staff prior to submittal of a building permit;
4. Applicant shall work with the Town Attorney to draft a beach easement agreement outlying the use of this easement by the Town prior to issuance of a building permit for vertical construction;
5. Developer hereby voluntarily agrees to contribute \$4,500,000 to the Town, which shall be used by the Town to offset the cost of undergrounding utilities on the Hillsboro Mile and/or to offset the cost of any expenses incurred by the Town for beach renourishment;
6. The Town Commission hereby grants an extension of the effective period of final site plan approval as follows: if, after the expiration of two (2) years from the date site plan approval by the Town Commission becomes final and not subject to appeal, a period of 90 days occurs in which no valid building permit is in effect, the final site plan approval shall be null and void unless further extended by the Town Commission;
7. Applicant agrees to comply with the excavation requirements regarding compatibility of soil, regardless of Ordinance and DEP requirements.

IV. ORDINANCES

A. Ordinance No. 2022-01 Amendment to the Town's Code of Ordinance, Amend Hours of Operation of Lawn Maintenance Equipment. (Second Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING ARTICLE VII ENTITLED "NOISES" BY SPECIFICALLY AMENDING SECTION 7-93 TO AMEND THE HOURS OF OPERATION OF LAWN MAINTENANCE EQUIPMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Doody read the Ordinance by title only and explained the amendments.

Mr. Serda recommended amendments for consideration, including listing out the holidays specifically in place of the wording "legal holidays" and changing the effective date to April 1 to give staff time to educate on the change.

Mayor Tarrant noted she would like consideration of changing the time to 5 p.m. Discussion ensued regarding the cut off time and difference in impact on condominiums and private residences.

Mayor Tarrant opened a public hearing on the item, however there being none to speak, closed the public hearing.

Motion made by Commissioner Reiser, seconded by Commissioner Baldasarre, to approve amendments to Ordinance 2022-01, including listing the holidays, an effective date of April 1, and an end time of 5 p.m. In a roll call vote, the **motion** passed unanimously. (5-0)

Motion made by Commissioner Baldasarre, seconded by Commissioner Feaman, to approve Ordinance 2022-01 as amended. In a roll call vote, the **motion** passed unanimously. (5-0)

B. Ordinance No. 2022-02 Amendment to the Town's Code of Ordinance, Amending Section 6-132 Providing for Suspension in Enforcement in an Event of Emergency. (Second Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING ARTICLE VI ENTITLED "NUISANCES" BY SPECIFICALLY AMENDING SECTION 6-132 ENTITLED "LANDSCAPING"; PROVIDING FOR A SUSPENSION IN ENFORCEMENT IN AN EVENT OF AN EMERGENCY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Doody read the Ordinance by title only.

Mr. Serda noted the same amendments were required regarding the holidays and time.

Mayor Tarrant opened a public hearing on the item, however there being none to speak, closed the public hearing.

Motion made by Commissioner Baldasarre, seconded by Commissioner Feaman, to approve amendments to Ordinance 2022-02, including listing the holidays and an end time of 5 p.m. In a roll call vote, the **motion** passed unanimously. (5-0)

Motion made by Commissioner Feaman seconded by Vice Mayor Kirdahy, to approve Ordinance 2022-02 as amended. In a roll call vote, the **motion** passed unanimously. (5-0)

C. Ordinance No. 2022-03 Amendment to the Town's Code of Ordinance, Chapter 12 Land Development Code, Amending Sec. 12-261 to Provide for an Exception to the Height Regulations of Chapter 12 for Elevator Equipment. (Second Reading)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 12 ENTITLED "LAND DEVELOPMENT CODE,"; BY SPECIFICALLY AMENDING SECTION 12-261 ENTITLED "HEIGHT REGULATIONS" TO PROVIDE FOR AN EXCEPTION TO THE HEIGHT REGULATIONS OF CHAPTER 12 FOR ELEVATOR EQUIPMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Doody read the Ordinance by title only.

Mayor Tarrant explained the Code allows for chimneys, flags, and antennas, but does not allow for elevators.

Mayor Tarrant opened a public hearing on the item, however there being none to speak, closed the public hearing.

Motion made by Commissioner Baldasarre, seconded by Vice Mayor Kirdahy, to approve Ordinance 2022-03 as presented. In a roll call vote, the **motion** passed unanimously. (5-0)

V. DISCUSSION & POSSIBLE ACTION

A. Discussion on Amending Ch 12-49 "Site Plan Requirements and Creation of Section Entitled "Excavation"

Mr. Doody stated he was working with a consultant regarding the issue and was looking for direction from the Commission on the suggested changes before bringing the item forward for first and second reading.

Mayor Tarrant pointed to typographical errors and asked for clarification on the inclusion of Coastal Engineering. Discussion ensued regarding the recommendation to bring in beach compatible sand if the sand was found to not be compatible and the potential impacts of pending legislation at the State level.

Matter will come before the Commission as first reading at the March 1, 2022 Meeting.

VI. RESOLUTIONS & CONTRACTS

A. Resolution No. 2022-01

CONSIDERATION TO APPROVE AND AUTHORIZE THE APPROPRIATE TOWN OFFICIALS TO EXECUTE AND DELIVER A LETTER OF NO OBJECTION TO THE PLAT NOTE AMENDMENT AND THE NON-VEHICULAR ACCESS LINE AMENDMENT FOR THE DEVELOPMENT PROJECT LOCATED AT 1174-1185 HILLSBORO MILE, HILLSBORO BEACH, FLORIDA 33062.

Mayor Tarrant explained the item had been tabled on January 11, 2022.

Mr. Doody read the Resolution by title only.

Mr. Hickey explained this item was in conjunction with the site plan approved earlier in the meeting. He noted two (2) items require County review and approval and stated a letter of no objection is required from the Town to move forward with that process.

Mr. Hickey reviewed the plat note currently in place, which allows for six (6) units on each parcel A and parcel B and stated the amendment would include a specific breakdown of the number of units allowable to show 28 garden apartments on parcel A and 72 units on parcel B. Continuing, Mr. Hickey explained the FDOT and County requirements, including the number of units and the number of entrances allowable on the property. He stated staff recommends approval with conditions

Mr. Doody asked for clarification that the changes requested would be to the letter, not the Resolution. Mr. Hickey agreed and explained.

Mr. Doody stated the Resolution would be adopted subject to staff review. He asked whether this was acceptable to the applicant. Mr. Gassant stated it was.

Mayor Tarrant asserted this was a confusing matter to a lot of people. She noted the Comprehensive Plan and asked for clarification on the number of units allowed. Mr. Hickey explained the reasoning behind the plat notes.

Mr. Doody asked the date of the original plat note. Mr. Hickey stated the current plat note was completed in 1993.

Mr. Doody explained this was a normal process at the County level to adapt to current conditions. He stated the Resolution allows for Mr. Hickey to write a letter.

Motion made by Commissioner Baldassarre, seconded by Commissioner Feaman, to adopt Resolution 2022-01, subject to the review of Mr. Hickey. In a roll call vote, the **motion** passed unanimously. (5-0)

B. Resolution No. 2022-03

CONSIDERATION TO AUTHORIZE THE PROPER TOWN OFFICIALS TO EXECUTE THE FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING (MOU) REGARDING COLLABORATIVE STUDY AND SUBSEQUENT DEVELOPMENT OF THE INTEGRATED SOLID WASTE AND RECYCLING SYSTEM BY AND AMONG BROWARD COUNTY GOVERNMENT AND MUNICIPALITIES LOCATED WITHIN BROWARD COUNTY THAT APPROVE AND EXECUTE THE FIRST AMENDMENT.

Mr. Doody read the Resolution by title only.

Mr. Serda explained this would allow the Town to participate in the County-wide study of the disposition of solid waste. He stated the Town's share was \$569.00 and noted Commissioner Feaman is the Town's representative on the Solid Waste Working Group.

Mayor Tarrant stated the process has been working at a glacial pace and commented on the history of the issue and the studies. Mr. Serda provided additional detail on what the study would be reviewing and the participation.

Discussion continued regarding the state of recycling and ongoing changes.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Baldasarre, to adopt Resolution 2022-03. In a roll call vote, the **motion** passed unanimously. (5-0)

C. Resolution No. 2022-04

CONSIDERATION TO APPROVE AND AUTHORIZE THE PURCHASE OF A REPLACEMENT LIME PUMP FOR THE WATER DEPARTMENT FROM ARROYO PROCESS FOR \$22,052.00.

Mr. Doody read the Resolution by title only.

Mr. Serda explained this pump was for redundancy. He noted one (1) of the Town's two (2) pumps in the water plant is broken and unrepairable.

Mr. Doody asked Mr. Serda to clarify that Arroyo Process is the sole source. Mr. Serda confirmed and explained.

Motion made by Commissioner Reiser, seconded by Vice Mayor Kirdahy, to adopt Resolution 2022-04. In a roll call vote, the **motion** passed unanimously. (5-0)

D. Resolution No. 2022-05

CONSIDERATION TO APPROVE AND AUTHORIZE THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE MOFFAT & NICHOL CONTRACT AMENDMENT FOR FEMA COORDINATION.

Mr. Doody read the Resolution by title only.

Mr. Serda explained the amendment allowed for FEMA coordination of reimbursements of the multiple claims outstanding. He noted the charge from Moffat & Nichol was fully reimbursable by FEMA.

Motion made by Commissioner Baldasarre, seconded by Commissioner Feaman, to adopt Resolution 2022-05. In a roll call vote, the **motion** passed unanimously. (5-0)

VII. CONSENT AGENDA

A. Invoices for Approval

1. **Moffat & Nichol** Invoice #38762 Services through 12/25/21 \$57,000.00
2. **Goren Cherof Doody & Ezrol** Invoice #39160 Services 12/30/21 – 1/24/22
\$6,143.90 (General Matters)
3. **Goren Cherof Doody & Ezrol** Invoice #39161 Services 1/3/22 – 1/10/22
\$6,132.50 (Development)
4. **RMA:** Invoice #4657 Dec 2021 \$6,300.00

Mr. Serda asked that item #1 (Moffat & Nichol Invoice #38762) be removed so he could pursue additional information prior to payment.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Baldassarre, to approve Consent Agenda items two (2), three (3), and four (4). In a roll call vote, the **motion** passed unanimously. (5-0)

VIII. BEACH REPORT

A. Hillsboro Inlet District Update

Mr. Serda provided a brief update on a plan for working with the Hillsboro Inlet District (HID) and outlined the next steps to reach out to the Chair of the HID.

Mayor Tarrant commented on the situation with the Inlet regarding the sand placed on the beach and the study funded by FEMA. Discussion continued regarding the beach management plan.

Mr. Serda stated the small project by Deerfield Beach was still moving forward with a March date to move the sand from their parking lot to the dry portion of the beach. He noted he does not know what percentage of the sand was compatible after sifting and screening or what the total would be. Mr. Serda stated there were beach presentations planned for the next meeting.

VIII. STAFF UPDATES

A. Police Department

Deputy Chief Rob O'Neill presented the report on behalf of Police Chief Jay Szesnat. He discussed the hiring of a new Police Officer – Russell Gonglewski and stated the launch of the *Package Program* has been a huge success.

Mayor Tarrant asked Deputy Chief O'Neill to explain the *Package Program*. Deputy Chief O'Neill outlined the steps the Police Department had taken to deter “porch pirates” from taking delivered packages from homes.

Deputy Chief O'Neill explained the department was working on an initiative to provide a safe & secure space with camera surveillance and lighting for exchanges in the parking lot at the Police Station. Mr. Serda stated the equipment was in place but the program had not been rolled out fully. Discussion continued regarding the initiative.

Mayor Tarrant asked for an update on the beach unit. Deputy Chief O'Neill stated it had taken a while to get parts, but the beach unit is once again operational.

Mayor Tarrant inquired about a noise-related complaint. Mr. Serda explained the complaint had been in relation to pickleball games where a court did not exist and noted there had been more than one (1) complaint generated by the incident. He stated he believed this case was an anomaly, but the response to noise issues was a work in progress. Discussion continued regarding the incident.

Commissioner Reiser asked about instances of trespassing listed. She noted it had dropped from 78 last December to four (4) this December. Mayor Tarrant responded it was related to the beaches being closed last year for COVID-19.

Vice Mayor Kirdahy commented on the increasing use of Onewheel recreation boards moving fast on the driveways and in parking lots.

Discussion regarding recreation ensued. Mr. Serda stated staff would investigate the issue and the related regulations.

B. Finance Department – 1st Quarter Report

Stephen Bloom, Inframark, presented the first quarter report. He noted 89.8 percent of property taxes were collected through December. He stated other revenue sources were also coming above budget for the quarter and spending was below budget at 23 percent, which were both good signs.

Continuing, Mr. Bloom reviewed the Special Revenue Funds and explained activity within each. He discussed the Water Fund, including operations, debt service, and capital improvements. Mr. Bloom provided a water use comparison year over year and month-to-month. He discussed an analysis of fuel costs as well as Workers' Compensation claims and costs.

Discussion ensued regarding fuel prices. Mr. Serda stated the fuel vendor on the Town's bid was still being utilized to get the best price for the Town.

Vice Mayor Kirdahy inquired as to ongoing Workers' Compensation expenses. Mr. Bloom explained the claims were still open for potential medical expenses related to the original claim.

Mayor Tarrant inquired about the Town Clerk's budget for temporary labor. Mr. Serda explained the cost of labor and the plan to replace the position with a full-time employee. He noted the timeline was pushed back due to COVID-19 issues.

C. Building Department

Steve Mitchell, Building Official, CG&A, presented the Building Services report. He stated the first quarter revenue was exceeded in January alone and explained adjustments made in his department to cover costs over time.

Vice Mayor Kirdahy asked for clarification on how permit fees are set. Mr. Mitchell explained the factors included.

Mayor Tarrant asked for an explanation of digital plan review. Mr. Mitchell outlined the process for online review and marking of plans. Discussion continued regarding the benefits for the environment and customer service.

Mr. Mitchell stated the Building Department has been pursuing expired and abandoned permits and was having success in clearing that back log. He noted he would be interviewing staff to add a permit tech.

Commissioner Reiser asked if there was anything the Town could do in response to vendors having a habit of not closing permits. Mr. Mitchell explained the legislature no longer allowed permits to be withheld from repeat offenders. He noted in most cases, the condo association would have more options available to them than he would.

D. Code Compliance

Bernard Pita, Code Enforcement, CG&A, presented his report. He stated he would begin work on annual fire inspection reports and discussed that process. He explained ongoing work on the vacation rental compliance.

Mayor Tarrant commended Mr. Pita on the detail of the report. She stated it gave the Commission a better sense of what was going on.

IX. TOWN MANAGER REPORT

A. Town Hall Improvements Update

Mr. Serda provided a brief update on the Town Hall renovation. He stated the architect was now working directly with the Town, and explained they were looking at moving forward the panels on the façade at the front of the Town Hall to make space for conduit on each side of the entrance doorway and to look nicer from the street. He stated staff was evaluating the options. He explained the light fixtures were still on order.

Discussion continued regarding the Town Hall project and progress on the improvements.

B. Undergrounding of Utilities

Mr. Serda provided an update on the restarted effort to secure the easements for the underground utilities project, including the Police Department and the contractor. He noted the incentives to complete the project.

Vice Mayor Kirdahy asked about the expected costs. Mr. Serda discussed estimates from varying sources.

Mayor Tarrant asked if it was possible to lock Florida Power & Light (FPL) into a cost for their portion of the undergrounding. Discussion continued.

X. TOWN ATTORNEY REPORT

Mr. Doody stated he had circulated a memorandum regarding the action filed in appeal of the variance granted to the Related Group for 1174-1185 Hillsboro Mile development project. He asked Commissioners with questions to reach out to him by telephone.

Vice Mayor Kirdahy asked if the litigation would impact the timeline of the project. Mr. Doody stated it would. He provided additional detail on the appellant process.

Mayor Tarrant asked whether the Related Group had the option to move forward at their own risk. Mr. Doody confirmed they did and provided additional procedural detail.

XI. TOWN COMMISSION COMMENTS/REPORTS

A. Commissioner Jane Reiser

Commissioner Reiser reminded the public of the election on March 8 and encouraged residents to do their civic duty and vote.

B. Commissioner Vicky Feaman

None.

C. Commissioner Barbara Baldasarre

Commissioner Baldasarre stated the Hillsboro Beach Condo Presidents and Property Managers Forum was scheduled for the following Thursday.

D. Vice Mayor Irene Kirdahy

Vice Mayor Kirdahy stated the most recent Metropolitan Planning Organization (MPO) meeting had been canceled.

E. Mayor Deborah L. Tarrant

None.

XII. PUBLIC COMMENTS

None.

XIII. ADJOURNMENT

Motion made by Commissioner Feaman, seconded by Commissioner Reiser, to adjourn the meeting at 1:03 p.m. In a roll call vote, the **motion** passed unanimously. (5-0)

ADOPTED THIS _____ DAY OF _____, 2022

By: _____
Deborah L. Tarrant, Mayor

ATTEST:

Sherry D. Henderson, CMC, Town Clerk



WRITTEN PUBLIC COMMENTS

Public Comments emailed to the Town Clerk - Entered into the Record.

FEBRUARY 1, 2022

Regular Town Commission Meeting

Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062
TownofHillsboroBeach.com
954-427-4011

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Monday, January 31, 2022 3:21 PM
To: Barbara Baldassarre; Deb Tarrant; Irene Kirdahy; Jane Reiser; Vicky Feaman
Cc: debikaye@aol.com; Sherry D. Henderson
Subject: Resident comment

Ms. Kushner asked the following email to be sent to you.

Mac

Mac Serda, ICMA
Town Manager
Hillsboro Beach
Ofc: 954-427-4011

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Subject: Fwd:

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Sent: Mon, Jan 31, 2022 3:16 pm
Subject: Fwd:

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From: **Debi Kaye** <myconfidential1155@gmail.com>
Date: Sat, Jan 29, 2022 at 4:31 PM
Subject:
To: <debikaye@aol.com>

Ms. Sherry D. Henderson, CMC Town Clerk

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I am a resident of Hillsboro Ocean Club Condominium Association, Inc. , my name is Debra Kushner unit # 302.

I was taken by surprise by the hearing as a condominium association member , this is the first time I am hearing about three signs even being considered by our condominium association.

Correct me if I am wrong, would this be a material alteration which per Florida Statutes 718.113, because there hasn't been a vote on the signs to my knowledge. Is the hearing regarding the signs we have now, which are enter and exit then the name of our condominium which states Hillsboro Ocean Club?

I don't know if Ms. Gacicia is seeking to find out if the signs would be allowed prior to taking a vote although Ms. Gacicia is our Licensed Community Association Manager, although she has not obtained a management agreement.

Per **718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.**— Ms. Gacicia has been employed by our association directors since 2020. I sent a representative on a "Official Records" inspection in 2020 he is a certified auditor, his report states there is no management agreement in the "Official Records" for Ms. Gacicia. Personally, I asked our President Mr. Advocat, if Ms. Gacicia has a management agreement the reply was "No, we are self managed."

A "Self Managed" condominium is run by association "volunteers" and are not paid. Ms. Gacicia uses her LCAM title and is paid. Under the Florida Statutes 718.3025 it is clearly stated if an association hires an LCAM which our condominium requires us to hire an LCAM because our annual revenues are over \$ 500,000.00 they must have a management agreement. If the LCAM does not have a management agreement under FS 718.3025, if there is no agreement, anything Ms. Gacicia states regarding our property would not be valid as there is no agreement.

In the notice our town has sent out it states Diane Gacicia, authorized agent for Hillsboro Beach Ocean Club Condominium, Inc. which should read Hillsboro Beach Condominium Association, Inc.. Ms. Gacicia is not an authorized agent, according to Sunbiz.org our Registered Agent is Robert Kaye, of Kaye Bender Rembaum. HILLSBORO OCEAN CLUB CONDOMINIUM ASSOCIATION, INC.

Filing Information

Document Number 762099 FEI/EIN Number 59-2480055 Date Filed 02/24/1982 State FL Status ACTIVE Last Event REINSTATEMENT Event Date Filed 01/30/1986

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There is a legal investigation by the DBPR in regard to Ms. Gacicia.

Sherry D. Henderson

From: Mac Serda <mserda@townofhillsborobeach.com> on behalf of Mac Serda
Sent: Monday, January 31, 2022 3:22 PM
To: Donald J. Doody
Cc: Melissa Augustin; Sherry D. Henderson
Subject: FW:

Hello DJ,

Please see below.

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From: debi <debikaye@aol.com>
Sent: Monday, January 31, 2022 3:19 PM
To: mserda@townofhillsborobeach.com
Subject: Fwd:

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From: debi <debikaye@aol.com> on behalf of debi
Sent: Monday, January 31, 2022 3:47 PM
To: mserda@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com;
dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com;
jreiser@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com
Cc: shenderson@townofhillsborobeach.com
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Debra Kushner

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To: Barbara Baldasarre <bbaldasarre@townofhillsborobeach.com>; Deb Tarrant <dtarrant@townofhillsborobeach.com>; Irene Kirdahy <ikirdahy@townofhillsborobeach.com>; Jane Reiser <jreiser@townofhillsborobeach.com>; Vicky Feaman <vfeaman@townofhillsborobeach.com>
Cc: debikaye@aol.com; Sherry D. Henderson <shenderson@townofhillsborobeach.com>
Sent: Mon, Jan 31, 2022 3:21 pm
Subject: Resident comment

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Ofc: 954-427-4011

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There is a legal investigation by the DBPR in regard to Ms. Gacicia.

Sherry D. Henderson

From: chris fleck <CFLECK@YAHOO.COM> on behalf of chris fleck
Sent: Monday, January 31, 2022 3:54 PM
To: deb tarrant; Vice Mayor Irene Kirdahy;; Sherry D. Henderson; Commissioner Barbara Baldasarre;; Commissioner Jane Reiser;; Vicky Feaman
Subject: 1185 Site plans

Mayor, Vice Mayor, and Commissioners,

The site plan should not be approved by the commission.

On 1/11/22 at the town meeting the developer representatives presented " Applicants proposed conditions for approval for variances". This included Setbacks As to Parcel B:

"North and south side yard setback to 10 story portion of building: min 107 feet"

The signed variance signed by the Mayor states:

Setbacks;

"North and south side. yards setback to 10 story portion of building: a minimum of 107 feet.

There are no asterisks or footnotes on either document regarding balconies.

On architectural plans dated 1/19/22 published on the town website Now includes a statement on page 24, showing balcony encroachment: North side Max 6' 8" and south side Max 6' 10".

This means the site plans for the **building structure could now be 13.5 feet wider than approved.**

The building structure does not fit inside the "box" as described by mayor and approved by the commission.

This is a material and significant difference. Therefore the plans should be rejected.

There are other major issues with the variance as well. This is in addition.

Please include this in the public comments.

Thank you

Chris Fleck
1173 Hillsboro Mile

Sherry D. Henderson

From: debi <debikaye@aol.com> on behalf of debi
Sent: Monday, January 31, 2022 4:14 PM
To: mserda@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; vfeaman@townofhillsborobeach.com
Cc: shenderson@townofhillsborobeach.com
Subject: Re: Resident comment

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To: debi <debikaye@aol.com>; Barbara Baldasarre <bbaldasarre@townofhillsborobeach.com>; Deb Tarrant <dtarrant@townofhillsborobeach.com>; Irene Kirdahy <ikirdahy@townofhillsborobeach.com>; Jane Reiser <jreiser@townofhillsborobeach.com>; Vicky Feaman <vfeaman@townofhillsborobeach.com>
Cc: Sherry D. Henderson <shenderson@townofhillsborobeach.com>
Sent: Mon, Jan 31, 2022 4:09 pm
Subject: RE: Resident comment

Hello Ms. Kushner,

The meetings are audio taped, minutes are prepared and you may record the public meetings on your own.

Thank you,

Mac

Mac Serda, ICMA
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Hillsboro Beach
Ofc: 954-427-4011
Cell: 305-525-5505

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Correct me if I am wrong, would this be a material alteration which per Florida Statutes 718.113, because there hasn't been a vote on the signs to my knowledge . Is the hearing regarding the signs we have now, which are enter and exit then the name of our condominium which states Hillsboro Ocean Club ?

I don't know if Ms. Gacicia , is seeking to find out if the signs would be allowed prior to taking a vote although Ms. Gacicia is our Licensed Community Association Manager, although she has not obtained a management agreement.

Per **718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.**— Ms. Gacicia has been employed by our association directors since 2020. I sent a representative on a "Official Records" inspection in 2020 he is a certified auditor, his report states there is no management agreement in the "Official Records" for Ms. Gacicia. Personally, I asked our President Mr. Advocat, if Ms. Gacicia has a management agreement the reply was "No , we are self managed."

A "Self Managed" condominium is run by association "volunteers" and are not paid. Ms. Gacicia uses her LCAM title and is paid. under the Florida Statues 718.3025 it is clearly stated if an association hires an LCAM which our condominium requires us to hire an LCAM because our annual revenues are over \$ 500,000.00 they must have a management agreement. If the LCAM does not have a management agreement under FS 718.3025, if there is no agreement, anything Ms. Gacicia states regarding our property would not be valid as there is no agreement.

In the notice our town has sent out it states Diane Gacicia , authorized agent for Hillsboro Beach Ocean Club Condominium , Inc. which should read Hillsboro Beach Condominium Association, Inc. . Ms. Gacicia is not an authorized agent , according to Sunbiz. org our Registered Agent is Robert Kaye, of Kaye Bender Rembaum.
HILLSBORO OCEAN CLUB CONDOMINIUM ASSOCIATION, INC.

Filing Information

Document Number762099FEI/EIN Number59-2480055Date Filed02/24/1982StateFLStatusACTIVELast EventREINSTATEMENTEvent Date Filed01/30/1986

. Ms. Gacicia in accordance with our FS 718 since Ms. Gacicia is employed by the association , yet does not have a contract.**718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.**—

(1) No written contract between a party contracting to provide maintenance or management services and an association which contract provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the party contracting to provide maintenance or management services.

There is a legal investigation by the DBPR in regard to Ms. Gacicia.

Sherry D. Henderson

From: Donna Scheurer-Purre <Donnas@FoodforthePoor.com> on behalf of Donna Scheurer-Purre
Sent: Monday, January 31, 2022 5:08 PM
To: dtarrant@townofhillsborobeach.com; ikirdahy@townofhillsborobeach.com; shenderson@townofhillsborobeach.com; bbaldasarre@townofhillsborobeach.com; jreiser@townofhillsborobeach.com; vicsails@bellsouth.net
Cc: Donna Scheurer-Purre
Subject: 1185 Site plans

Mayor, Vice Mayor, and Commissioners,

I am continuing to object to the variance as to height, and now the site plan which was submitted. I contend that the site plan **should not** be approved by the commission.

At the 1/11/22 town meeting, the developer representatives presented "Applicants proposed conditions for approval for variances". This included Setbacks as to Parcel B: "North and south side yard setback to 10 story portions of building: minimum of 107 feet"

The signed variance signed by the Mayor states:

Setbacks; "North and south side. yards setback to 10 story portion of building: a minimum of 107 feet.

However, on architectural plans dated 1/19/22 published on the town website, there is now the inclusion of a statement on page 24, showing balcony encroachment: North side Max 6' 8" and south side Max 6' 10".

This means the site plans for the building structure could now be 13.5 feet wider than approved.

The building structure does not fit inside the "box" as described by mayor and approved by the commission. **This is misleading.**

This is a material and significant difference. Therefore the plans should be rejected.

There are other major issues with the variance as well, as communicated at the last meeting and now through appeal and relevant case law.

Please include this in the public comments.

Thank you

Donna Purre
1173 Hillsboro Mile

**BOARD OF ZONING & APPEALS MEETING
JANUARY 11, 2022**

Darryl Max Forgey, Forgey Planning of Cape Coral, outlined his credentials as a planner and provided testimony on behalf of Mr. Brookes and his clients. He pointed out the applicant was seeking a variance, not a rezoning, and discussed the analysis in the staff report. He stated he disagreed with the analysis in relation to hardship and argued because the property was purchased with the land use distinctions in place, the information was known and did not meet the definition of hardship within the Code.

Mr. Forgey discussed the proposed project, and stated he was not making a judgment on the quality of the work, but on the variance itself. He asserted the property is quite developable and asked that the Board sustain the Code by denying the variance.

Jeffrey Bass, representing the applicant, cross-examined Mr. Forgey. Mr. Forgey confirmed he had been hired for the project the previous day and had not visited the property in question.



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Update from Moffatt & Nichol
Presented by Jackie Brower, PhD, PE

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS: 1. 2022 March - TOHB Presentation to Commission - MN Rev1



Beach Management Summary

March 1, 2022



Moffatt & Nichol (M&N)
Jackie Brower, PhD, PE



moffatt & nichol

Introductions & Background

Moffatt & Nichol (M&N)

Tim Blankenship, PE Principal Engineer (PIC)
Christy Brush, Environmental Regional Manager
Jackie Brower, PE, PhD Coastal Engineer (PM)
Peter Seidle, PE, Senior Coastal Engineer

› Working with the
Town since 1998...

Tim Blankenship



**Principal In Charge
(PIC)**

Christy Brush



Jackie Brower



**Project Manager
(PM)**

Peter Seidle



Agenda

- ▶ Beach Updates
 - ▶ Overview - Nourishments
 - ▶ Current Activities
 - ▶ Reimbursements
- ▶ Feasibility Study
 - ▶ Topics
 - ▶ Volumetric Changes
 - ▶ Sediment Budget
 - ▶ Beach Management Strategy



› Working with the Town since 1998

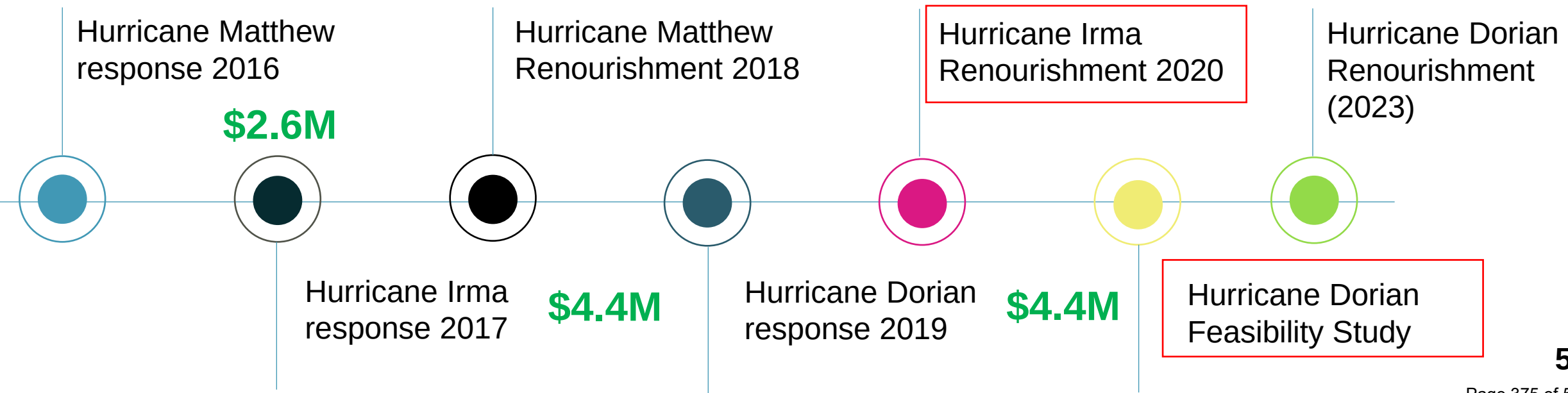


Beach Overview

- ▶ Shift in Nourishment Opportunities & Methodology
 - ▶ Offshore Hydraulic Dredge (1998, 2011)
 - ▶ Truck Haul (2015, 2018, 2020)



FEMA



Beach Status

- ▶ Year 2 of 2020 Nourishment – Irma Funding – 100% Reimbursable
- ▶ Monitoring & Permit Compliance:
 - ▶ Winter (February): Shorebird Monitoring & Tilling (Turtles)
 - ▶ Summer (August): Biological & Physical Monitoring
- ▶ Working with the Town to keep permits active and in compliance



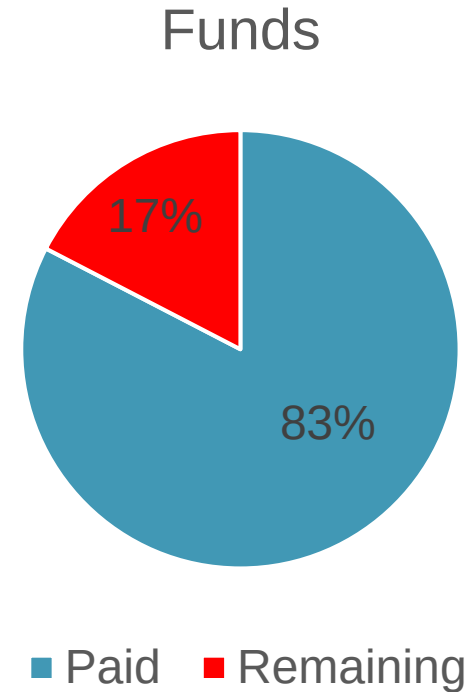
2020 Project Reimbursements – Hurricane Irma

Total Paid to Date:
\$3,624,576.88

➤ Status:

➤ Obligated Amount: \$4.68M = 100% Funded

- FEMA (90%) \$4.22M
- State (5%) \$232K
- Supplemental (5%) \$232K



➤ Actions:

- \$223K – Direct Admin Cost, Pilot (requesting to move to Dorian)
- Supplemental Funding – amendment & coordinate with FDEP – Feb 2022
- FL Public Assistance (PA) reimbursement once proof of payments are received
- Execute proposed spend plan for remaining funds

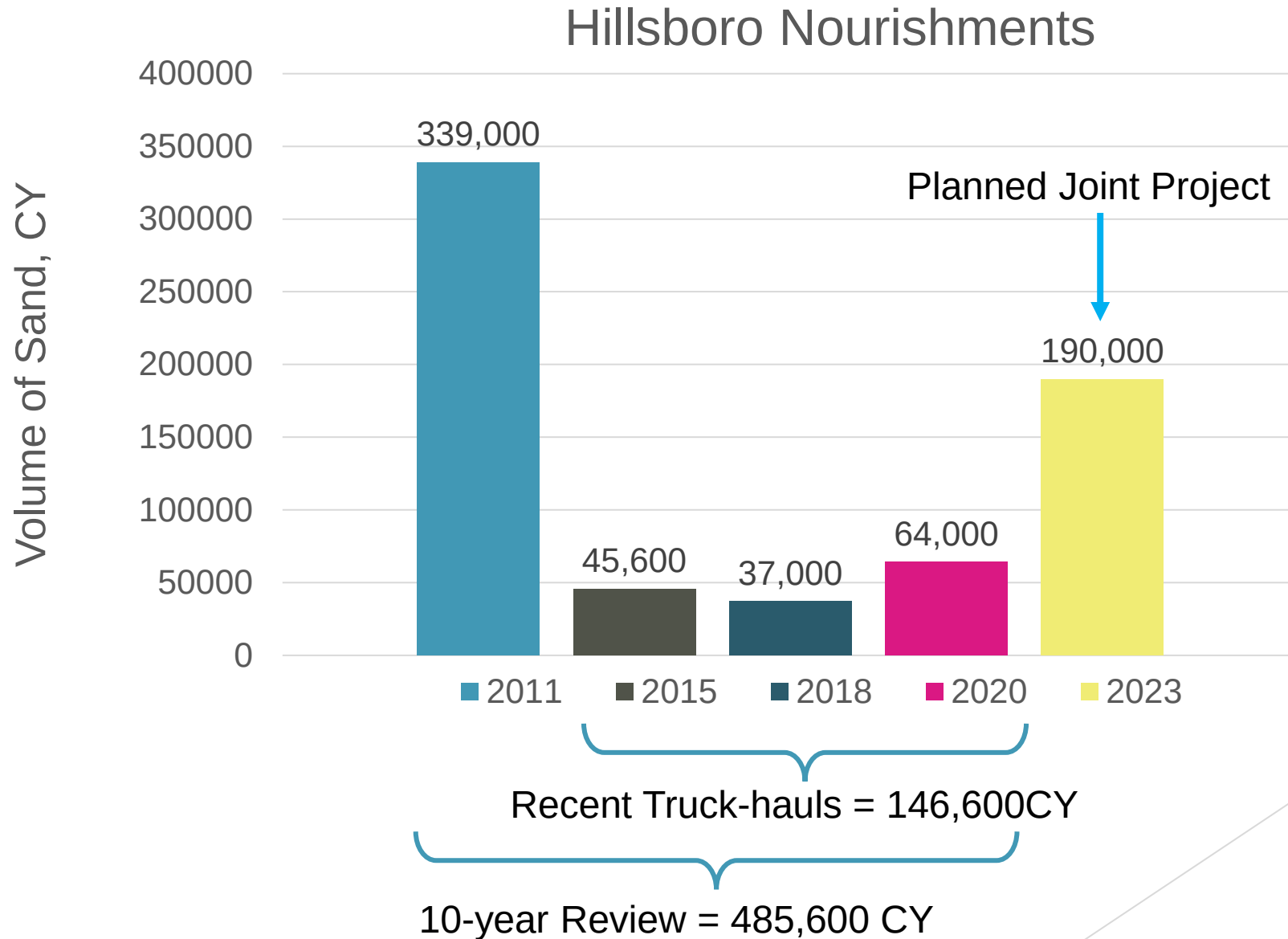
2020 Nourishment



- Truck Haul
- Sand Source
- Traffic A1A
- Peak Season
- Turtle Nesting
- Access Points
- Loss of Sand



> Nourishments





Beach Management Plan Hillsboro Beach, Florida- Defined Beaches

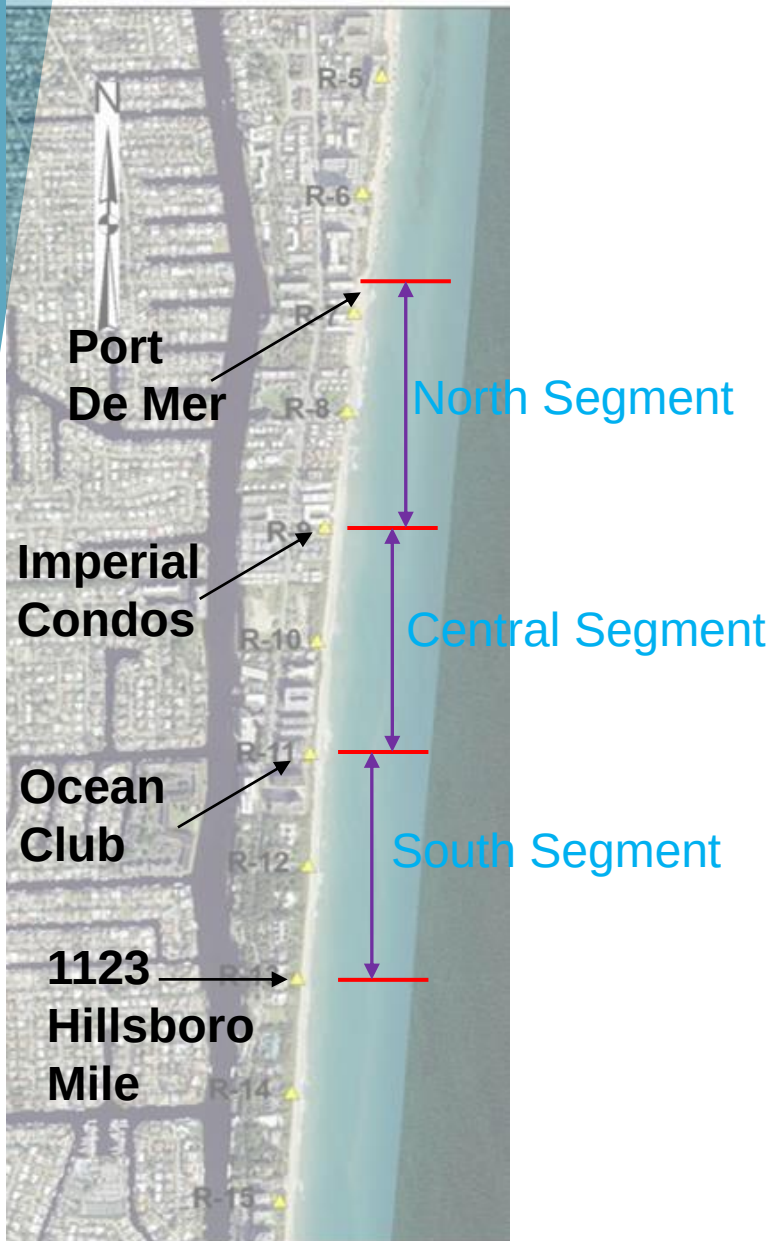
FEMA Engineered Beach

- ✓ R-6+750 to R-13
 - ✓ Eligible for Federal Funding
 - ✓ Requires an active Management Plan
- FEMA program has provided funding support for 3 nourishments (~\$10M in funding)
 - Feasibility Study & active beach management plan required to remain eligible for future reimbursements

› Feasibility Study

- FEMA Public Assistance (PA) Funding – Hazard Mitigation Project – Dorian (2019)
 - 75% Funded by FEMA & 12.5% Funded by the State
 - **Beach Management Plan (required for future FEMA funding)**
 - Topics:
 - Volumetric Changes
 - Sediment Budget
 - Beach Management Strategy
 - Inlet-to-Inlet Approach
 - Alternatives Analysis*

Beach Management Plan Hillsboro Beach, Florida - Beach Conditions



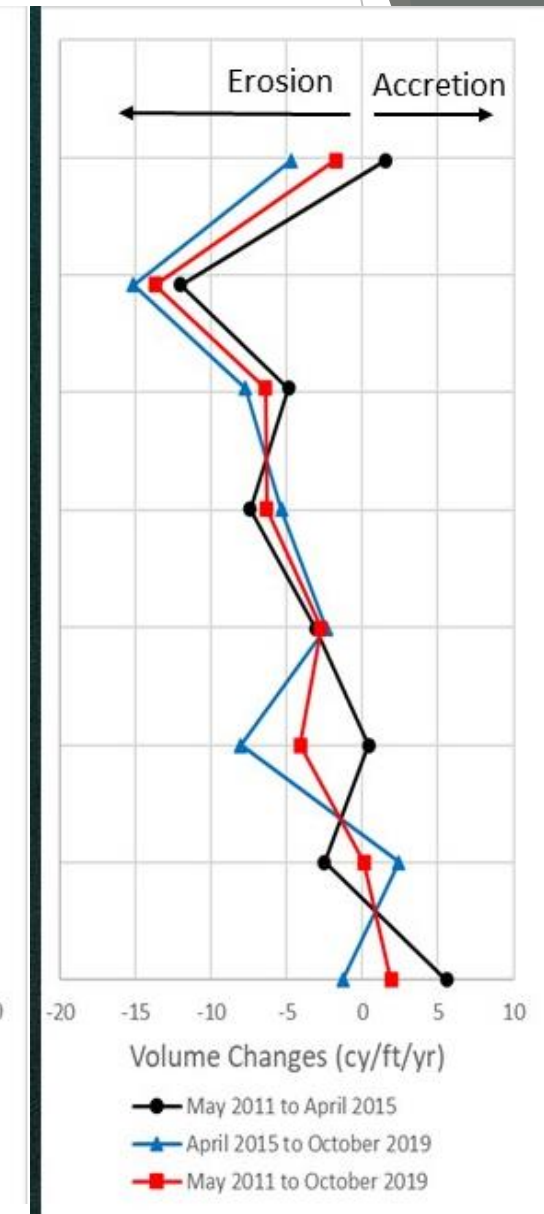
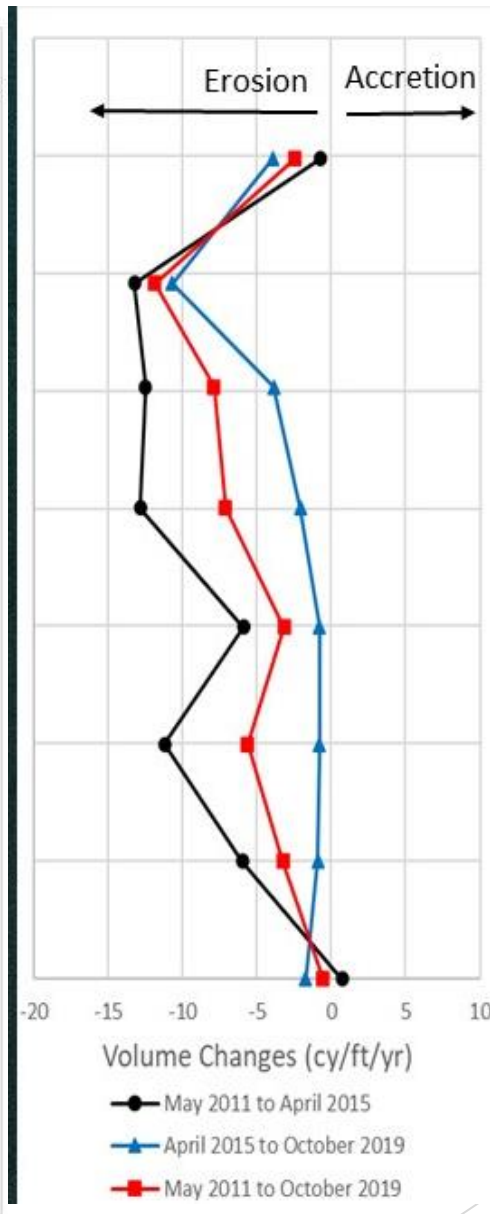
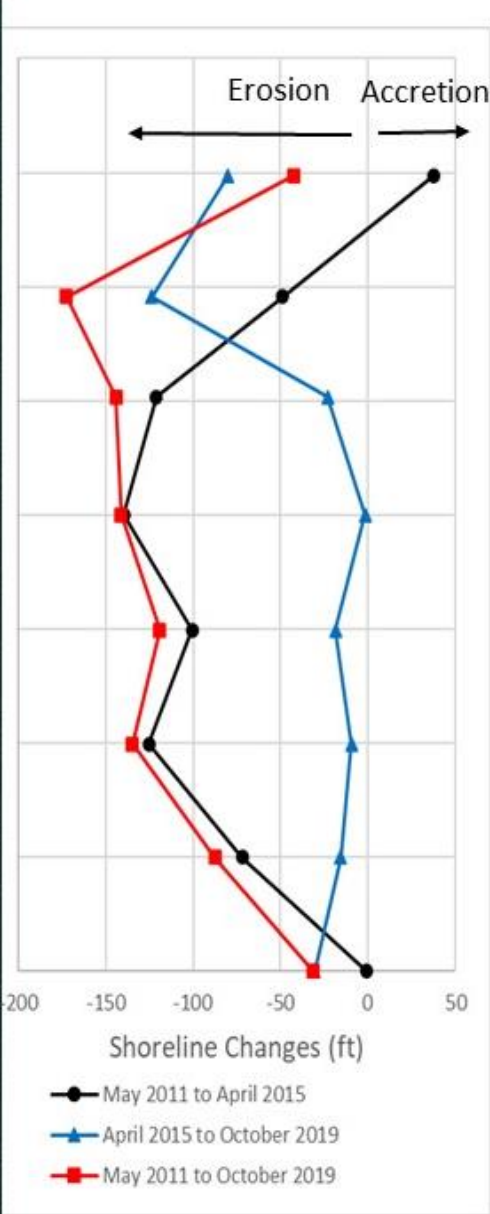
1. Shoreline Changes
2. Volume Changes
3. Sediment Budget

- Recent period: April 2015 to October 2019
- Longer term period: May 2011 to October 2019

Three Segments:

- North Segment: R-6+750 to R-9
- Central Segment: R-9 to R-11
- South Segment: R-11 to R-13

Shoreline & Volumetric Changes



Regional Sediment Budget

- **FDEP Strategic Beach Management (SBMP) – State-level effort for Beach Management that sets targets for inlet bypassing volumes.**
- FDEP SBMP Bypassing cubic yards (cy) per year (yr)
 - Boca Raton Inlet: 83,000 cy/yr
 - Hillsboro Inlet: 120,000 cy/yr
- Between Apr. 2015 and Oct. 2019, the analyzed net annual longshore transport rate is approximately 67,850 cy/yr at north border.
- Between May 2011 and Oct. 2019, the analyzed net annual longshore transport rate is approximately 45,180 cy/yr at north border.

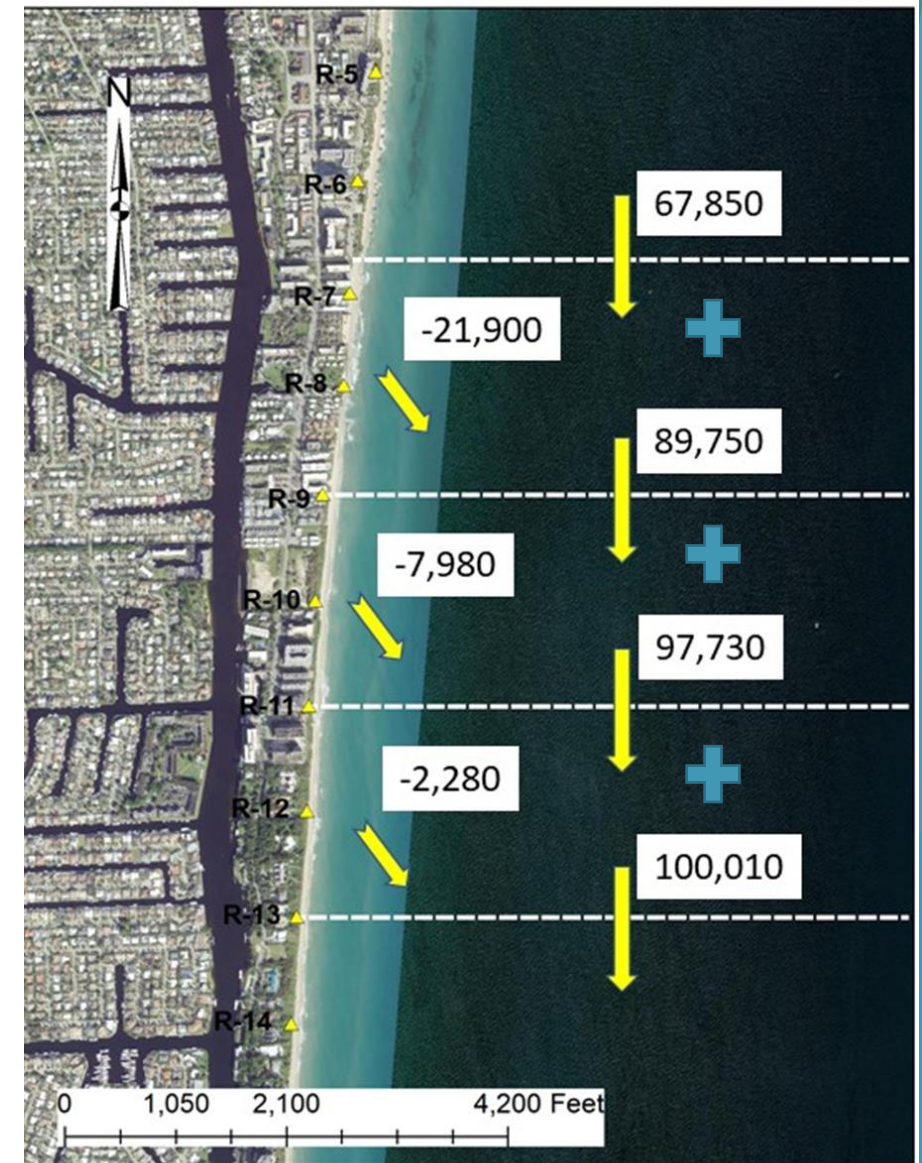


Figure 4. Regional Sediment Budget (cy/yr, Apr. 2015 to Oct. 2019)

Regional Sediment Budget

Findings: (May 2011 to Oct. 2019)

- Estimated longshore transport rates are between 45,180 cy/yr and 73,320 cy/yr from R-7 to R-13.
- To be able to offset the historical erosion, the annual beach nourishment rates of approximately 19,760 cy/yr is required between R-6+750 and R-9.
- To be able to offset the historical erosion, the annual beach nourishment rates of approximately 28,240 cy/yr is required between R-6+750 and R-13.

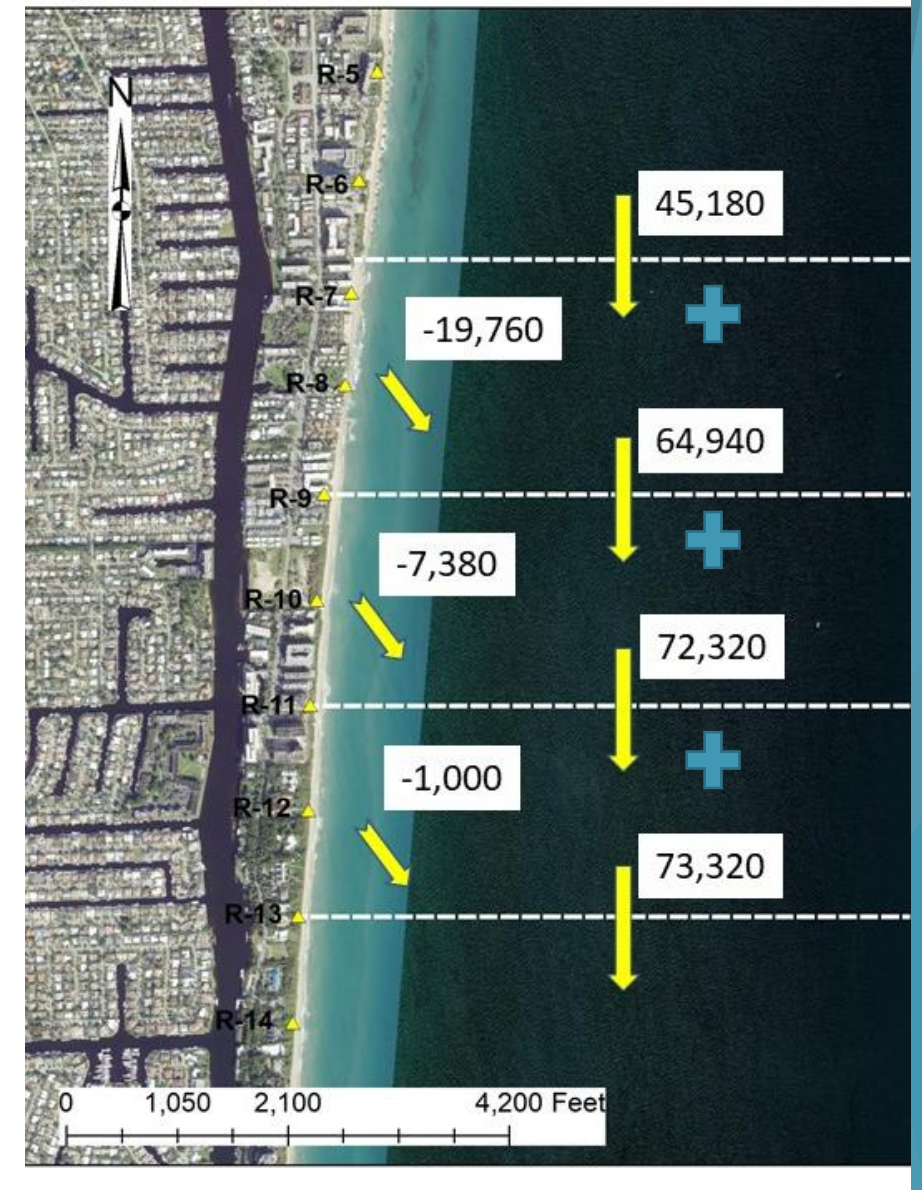
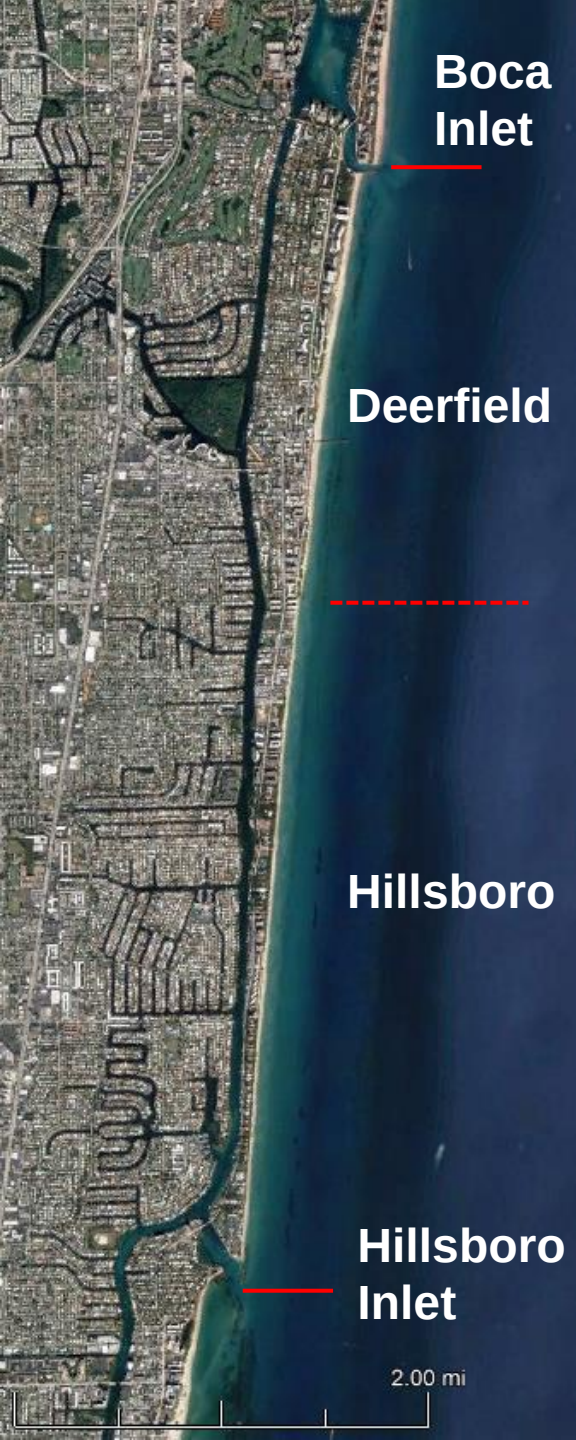
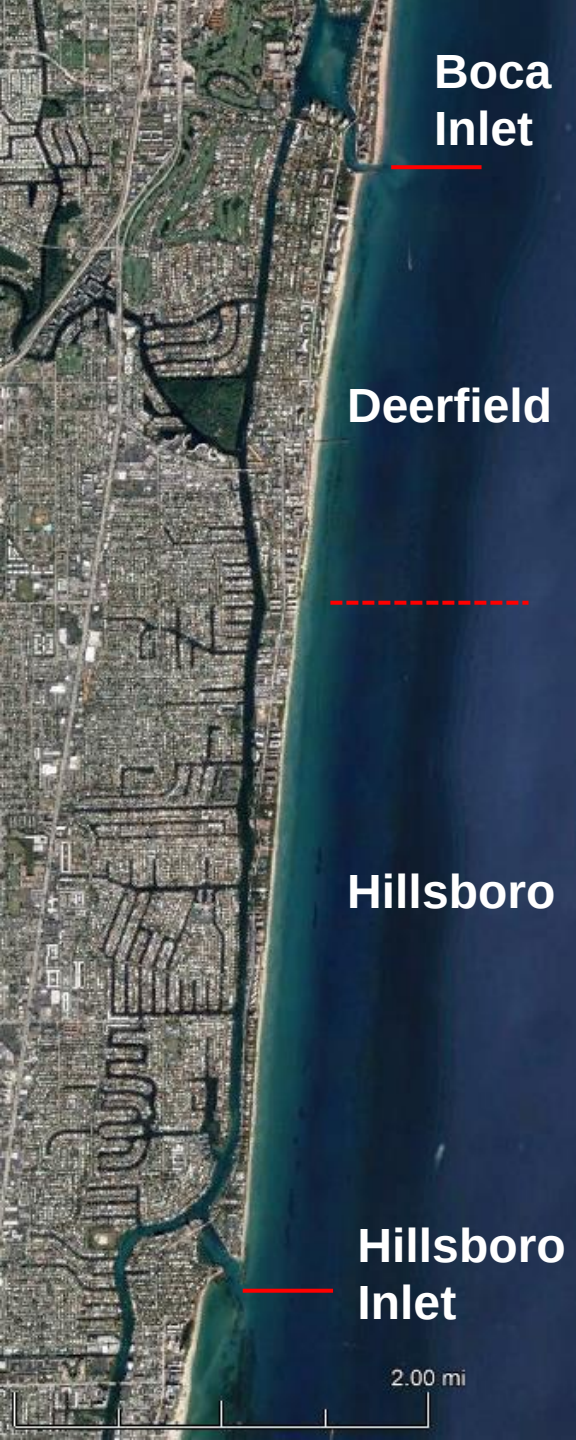


Figure 5. Regional Sediment Budget (cy/yr, May 2011 to Oct. 2019)



Strategic Beach Management

- ✓ Holistic approach to beach management
- ✓ Regional Inlet-to-Inlet Approach
 - Boca Inlet
 - Hillsboro Inlet District
- ✓ Nourishment volumes, frequency, beach longevity
- ✓ Building the foundation
 - 2020 Nourishment
 - Feasibility Study
 - 2022/23 Joint Nourishment
 - Sustainable Management Program
 - ✓ State, Federal, Local Buy-In



2022/23 Joint Nourishment

- ✓ The right team in place – Hillsboro, Deerfield, Moffatt & Nichol, and CPE
- ✓ Potential coordination with Boca
 - ✓ Boca ebb shoal has 300,000 to 400,000 cy in permitting dredge template, but limited space in their placement template
 - ✓ The City of Boca can better maintain controlling depths for boating by allowing Hillsboro use of the permitted ebb shoal borrow area
- ✓ Continued coordination with State (FDEP, FDEM) and Federal (FEMA, USACE) agencies
- ✓ Another building block for the sustainable beach management of Hillsboro Beach



Thank you!



Moffatt & Nichol (M&N)

Tim Blankenship, PE,

Christy Brush

Jackie Brower, PhD, PE



moffatt & nichol



TOWN OF HILLSBORO BEACH

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Agenda Item Cover Memo

Agenda Item: Update from Coastal Protection Engineering (CPE)
Presented by Thomas Pierro, PE, D.CE, Principal Engineer
Tara Brenner, PG, PE, Sr. Coastal Engineer

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS: 1. 2022.3.1 Hillsboro Beach Update - CPE (1)

HILLSBORO/DEERFIELD BEACH NOURISHMENT PROJECT STATUS UPDATE MEETING

March 1, 2022



Coastal Protection Engineering (CPE)

Thomas Pierro, PE, D.CE, Principal Engineer
Tara Brenner, PG, PE, Sr. Coastal Engineer



COASTAL
PROTECTION
ENGINEERING

PROJECT TEAM



Coastal Protection Engineering (CPE)

Thomas Pierro, PE, D.CE, Principal Engineer

Thomas Campbell, PE, D.CE, Principal Advisor

Tara Brenner, PG, PE, Sr. Coastal Engineer

Stacy Buck, Sr. Marine Biologist

Dylan Nestler, PE, Coastal Engineer



moffatt & nichol

Moffatt & Nichol (M&N)

Tim Blankenship, PE, Coastal Engineer

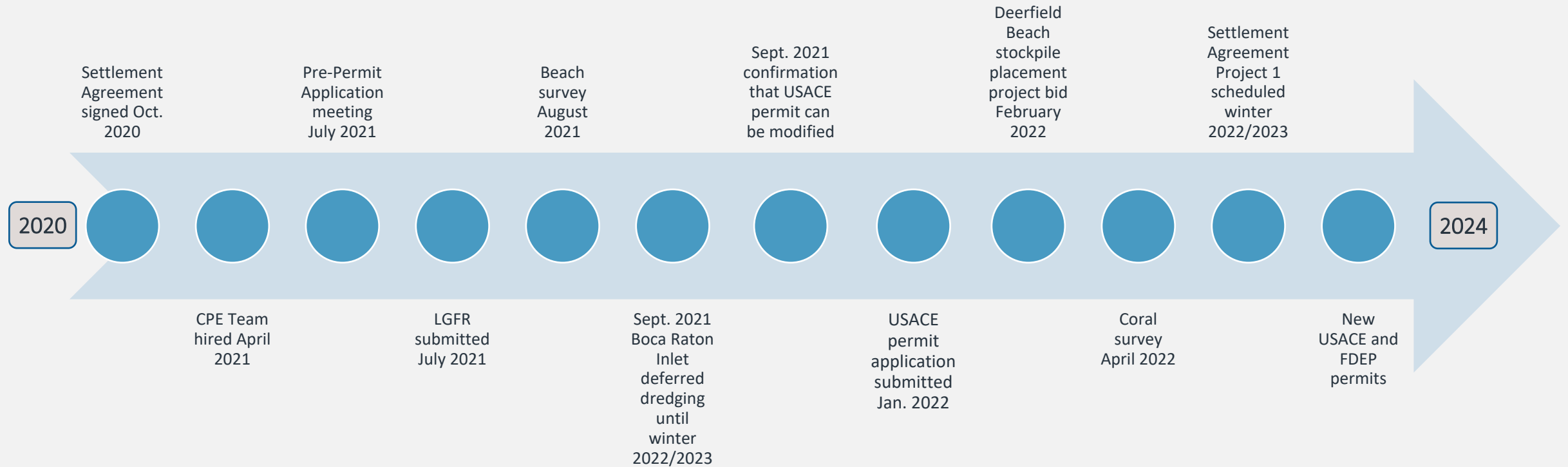
Jackie Brower, PE, PhD, Coastal Engineer & Scientist

PRIMARY PROJECT OBJECTIVES

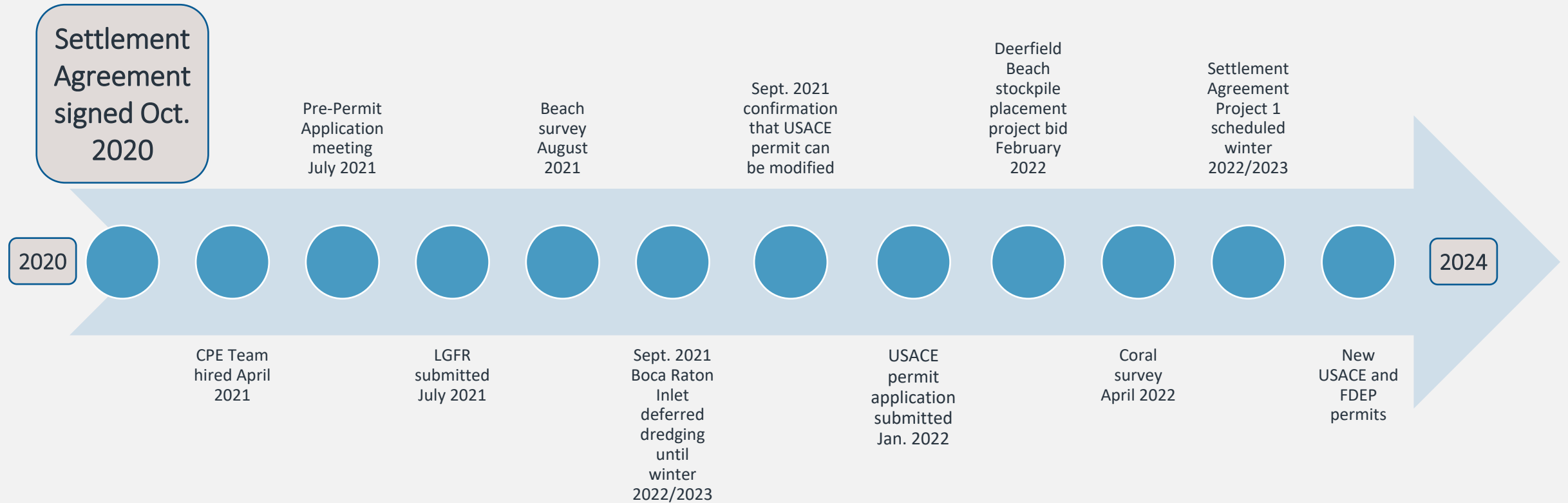
- Joint beach nourishment with City of Deerfield Beach
- Comply with Oct. 2020 Settlement Agreement
- Obtain cost sharing from State and Federal governments
- Immediate approach:
 - 1st project to be complete in 2023
 - Utilize existing/previous regulatory authorizations
 - Evaluate both upland and inlet sand source options
- Long term planning:
 - Develop program with 30-year planning horizon
 - Reformulate project based on performance monitoring and feasibility study
- Work together



PROJECT TIMELINE



PROJECT TIMELINE

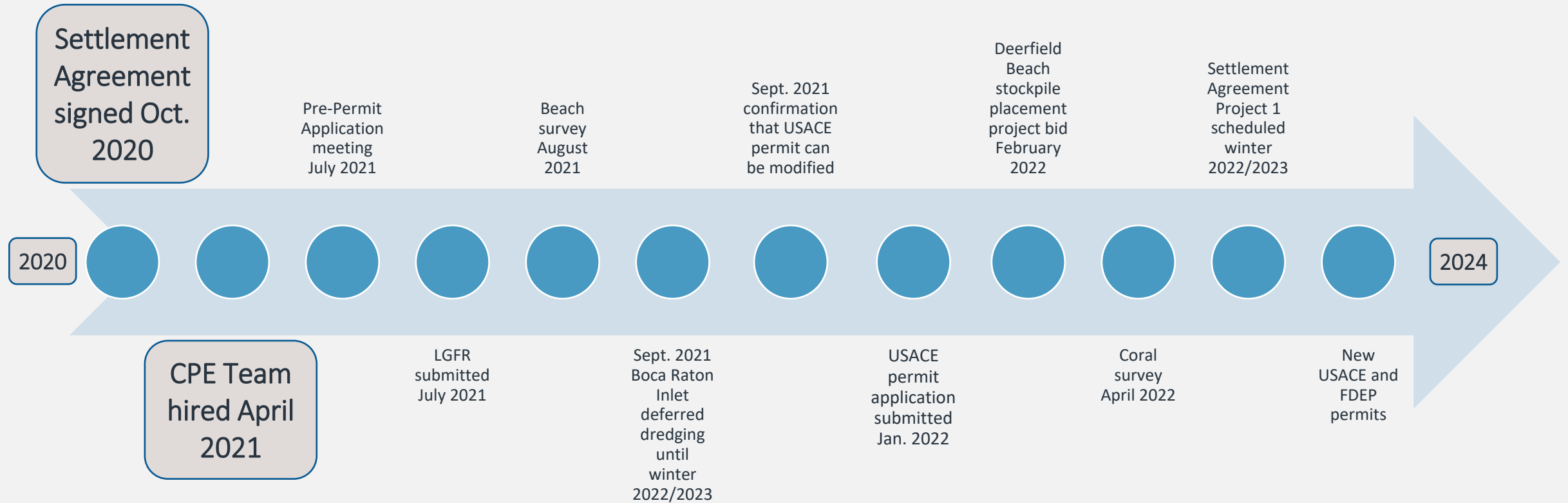


SETTLEMENT AGREEMENT

- Effective Date: October 8, 2020
- Beach nourishment every 5 years for 30 years
- Initial construction between 2021 and 2023
- City of Deerfield Beach
 - 1,500 feet: SE 6th St (R-5+350) to SE 10th St (R-6.7)
 - Coordinate with City of Boca Raton
- Town of Hillsboro Beach
 - 2,300 feet - SE 10th St (R-6.7) to R-9
 - Coordinate with Hillsboro Inlet District
- Provisions: bury rock groins, extend ECL, jointly manage and monitor



PROJECT TIMELINE



PROJECT PERMITS

- FDEP 0289706-001-JC
 - Issued 12/15/2010 Expires 12/15/2025
 - Valid for future use
- USACE SAJ-1997-02355
 - Issued 12/19/1997 Expires 2/12/2023
 - Event constructed 2020
 - Not valid for future use
- Broward County DF-1082
 - Issued 10/20/2014 Expires 10/20/2024
 - Future use being coordinated with County



**FLORIDA DEPARTMENT OF
Environmental Protection**

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

**CONSOLIDATED JOINT COASTAL PERMIT AND
SOVEREIGN SUBMERGED LANDS AUTHORIZATION**

PERMITTEE: Town of Hillsboro Beach Mayor Deborah Tarrant 1210 Hillsboro Mile Hillsboro Beach, FL 33062	PERMIT INFORMATION: Permit Number: 0289706-001-JC Project Name: Hillsboro/Deerfield Beach Nourishment
AGENT: Christy Brush Moffat & Nichol 2937 SW 27 th Ave, Suite 101A Miami, FL 33133	County: Broward County Issuance Date: December 15, 2010 Expiration Date: December 15, 2025

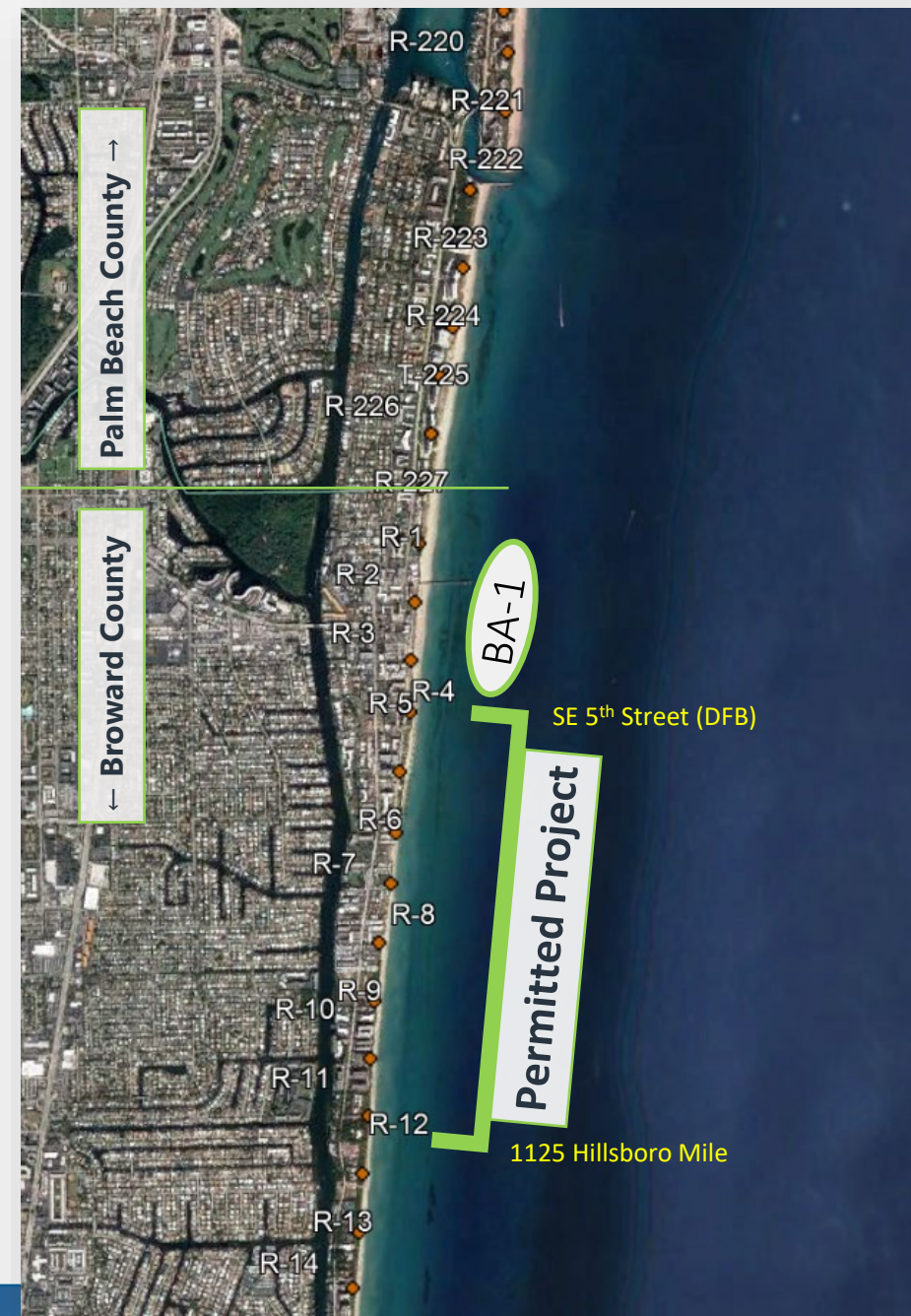
REGULATORY AUTHORIZATION:
This is issued under the authority of Chapter 161 which includes consideration of the provisions contained in Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

PROJECT DESCRIPTION:
The project is to nourish and maintain 7,175 linear feet of shoreline, from DEP monuments R-5 to R-12+400 feet, using material obtained from the Broward County Borrow Area 1 (BA-1), or from an approved upland sand mine (E.R. Jahna Industries, Inc., Ortona Mine; the Vulcan Materials Company's, Witherspoon Mine; the Stewart Materials', Immokalee Mine or the Garcia Sand Mine).

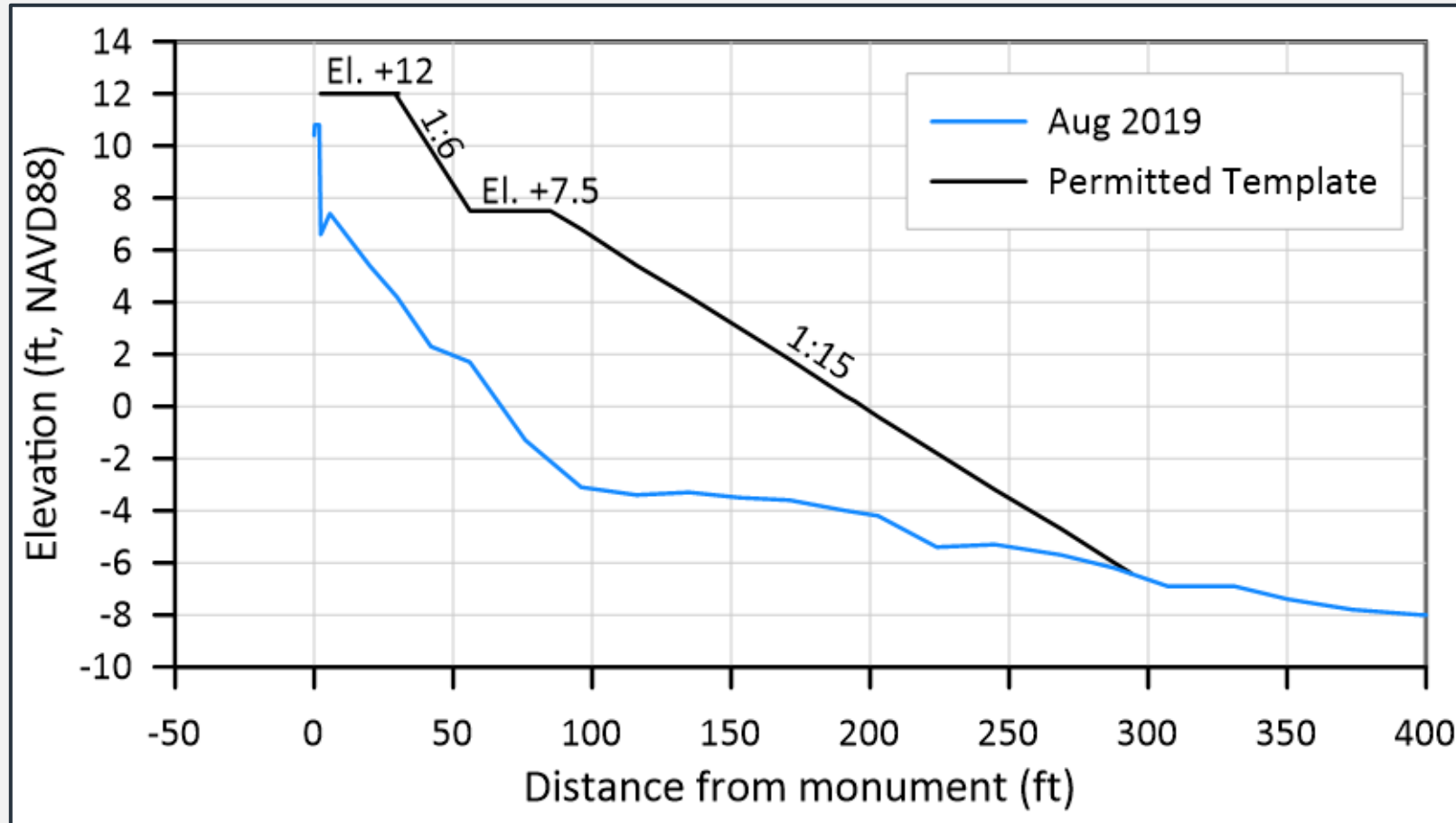
Approximately 5,000 cubic yards of material will be used to construct a dune north of R-6.5, where it will be placed entirely landward of the MHW line. Approximately 370,000 cubic yards of material will be used to nourish the beach in the southern portion of the project area, from R-6.5 to R-12+400 feet. The existing berm height will be raised to +7.5 feet NAVD with a design profile consisting of a 1:15 (vertical:horizontal) foreshore slope transitioning to a 1:30 nearshore slope. The dune will have a crest elevation of +12 NAVD, with a slope of 1:6.

FDEP PERMIT

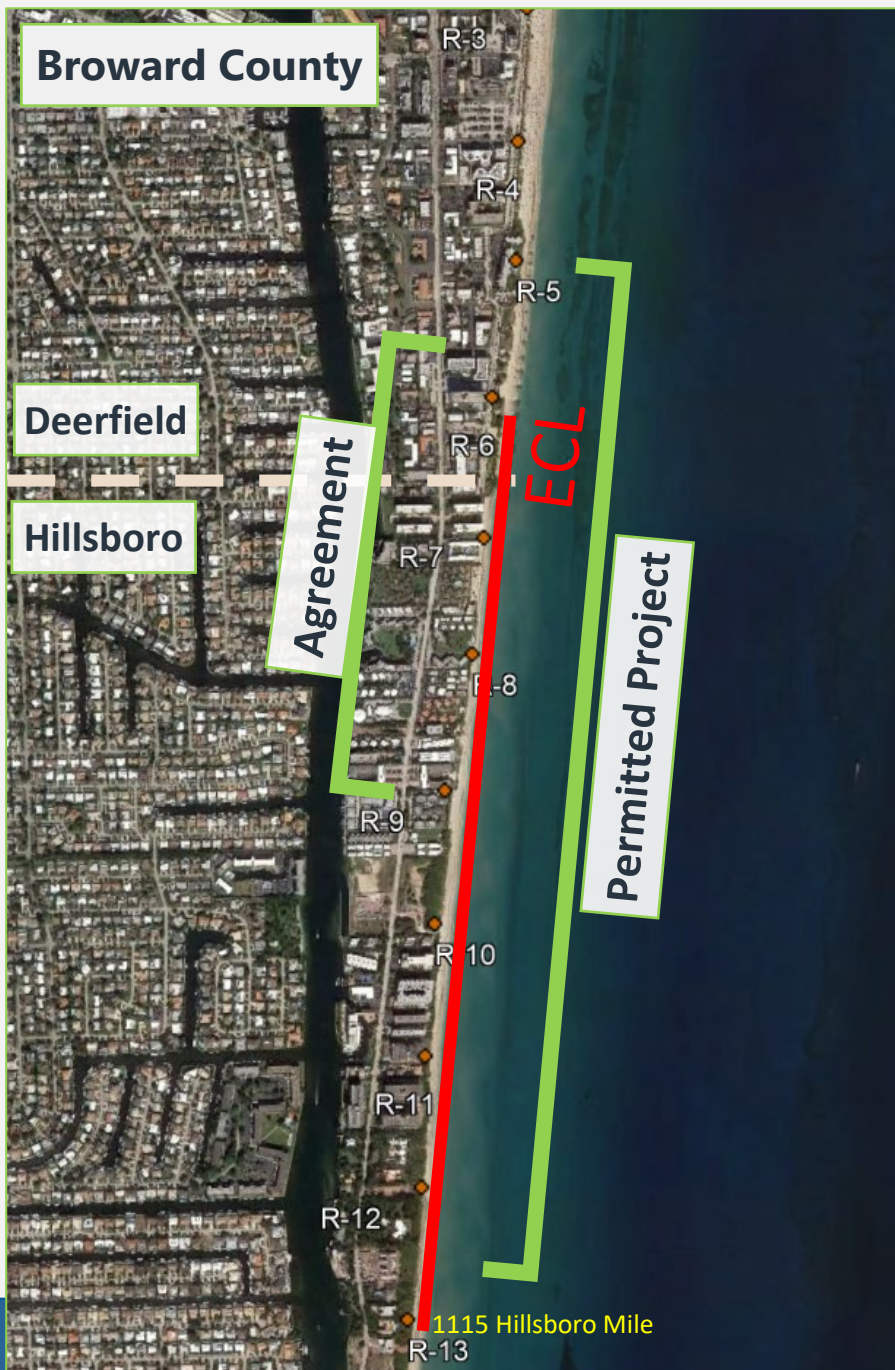
- 7,175 linear feet of shoreline
- R-5 to R-12+400 (~1.3 mi)
- Approved Sand Sources:
 - Offshore Borrow Area BA-1
 - Four upland sand mines
- Modified to add stockpiled sand as an approved source



PERMITTED FILL TEMPLATE



- Dune crest elevation +12' NAVD with 1:6 slope
- Berm elevation +7.5' NAVD with 1:15 slope
- Variations alongshore
- Volume depends on beach conditions



PROJECT EXTENTS

- Permitted project area between R-5 and R-12+400 (~1.3 mi)
- Settlement Agreement area from R-5+350 to R-9 (~0.7 mi)
- Sand placement above MHW from R-5 to R-6.5
- Sand placement may extend below MHW from R-6.5 to R-12+400
- ECL in place from R-6 to R-13

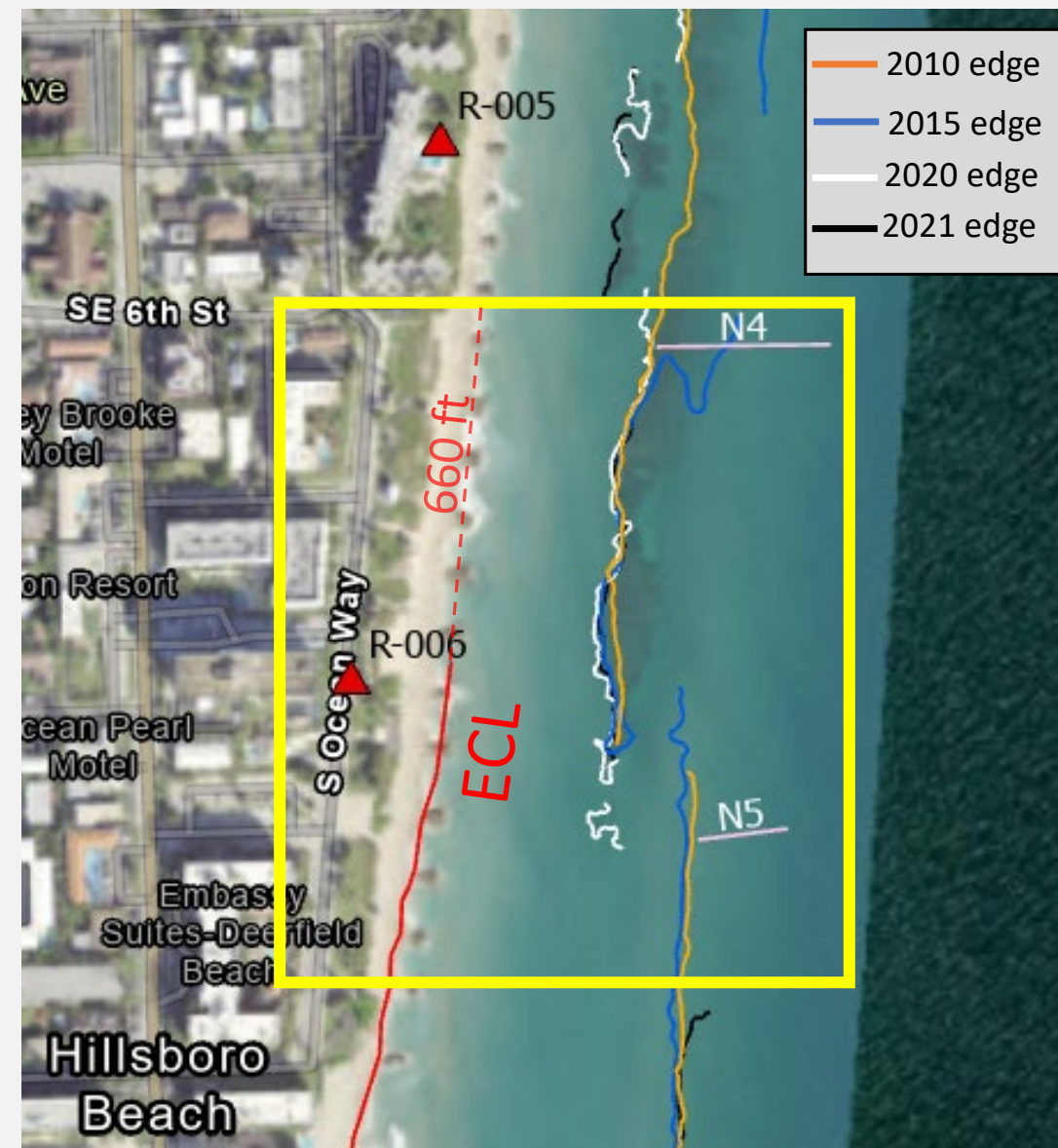
EROSION CONTROL LINE (ECL)

- Defined in Florida Statutes: Ch. 161.141
- Boundary of sovereign submerged land and upland ownership
- Required for beach projects that advance the mean high water line (MHWL)
- Not needed for fill placement above mean high water (no MHWL advance)

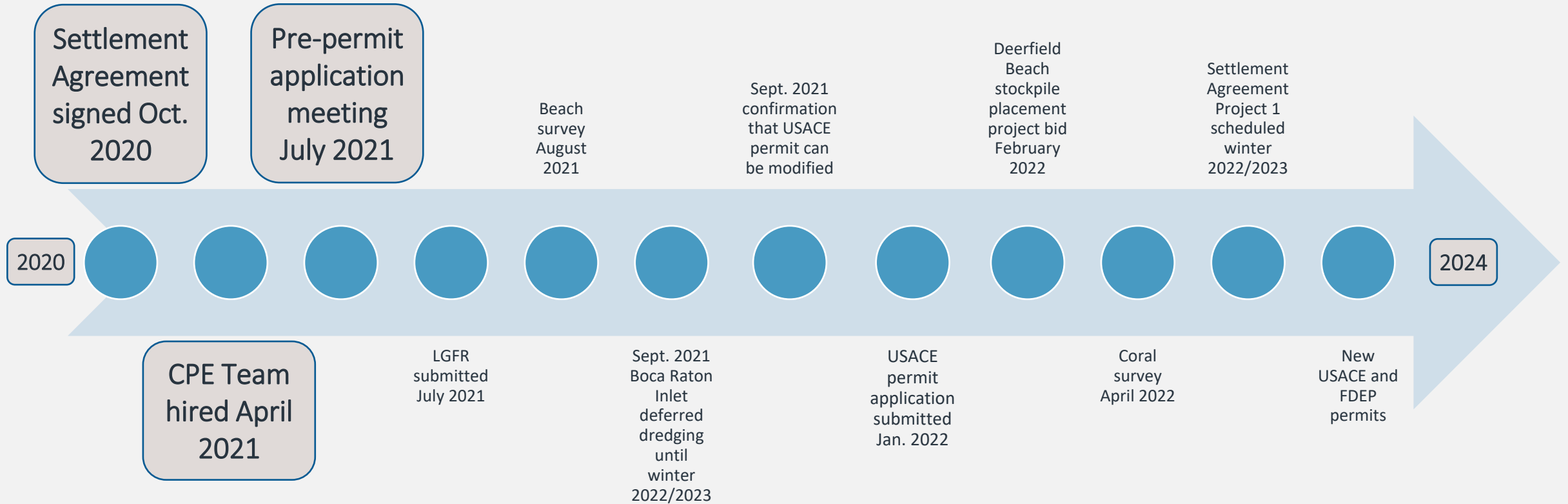


ECL EXTENSION PROCESS

- MHWL survey, workshop, and hearing
- Survey should not be more than approx. 6 months old at the time of the ECL hearing
- Risk of “redo” if the project is not ready to be constructed within 2-years
- Typically, 6 months to 1 year for all tasks
- Fill placement in water limited by nearshore environmental resources



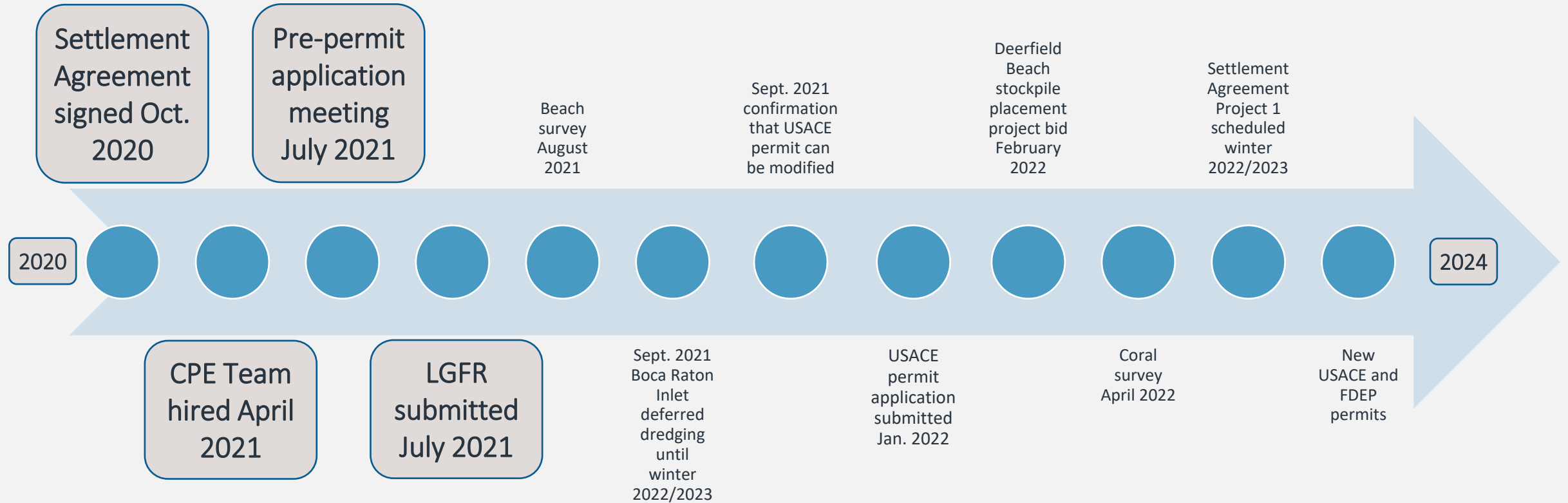
PROJECT TIMELINE



PRE-APPLICATION MEETING

- Presented proposed project to FDEP and USACE on July 15, 2021
- FDEP supports regional approach and modification of existing permit
- USACE challenges:
 - Current federal permit authorization was used for 2020 Hillsboro Truck Haul
 - New permit authorization will be required
 - Must comply with new 2020 SARBO requirements
- Permitting plan:
 - Utilize existing FDEP and Broward County permits and modify as needed
 - Apply for new USACE permit to reauthorize previous fill template

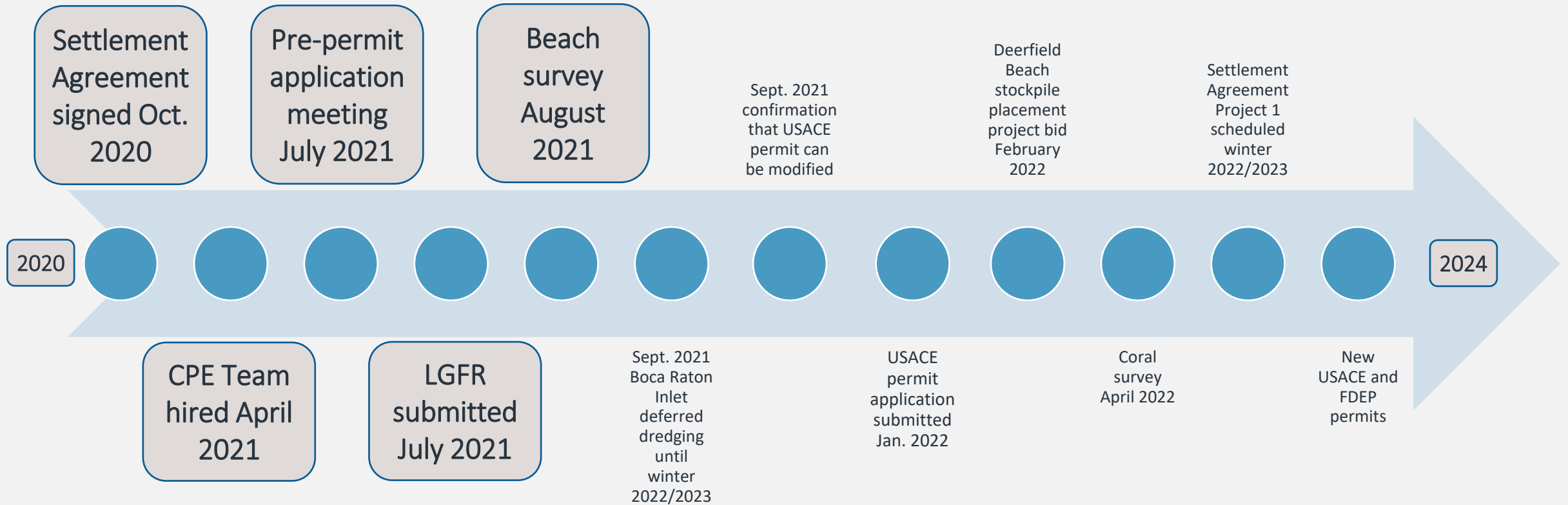
PROJECT TIMELINE



LOCAL GOVERNMENT FUNDING REQUEST (LGFR)

- Additional points received for regional cooperation
- Submitted request for state cost share of \$5,225,000 for FY2022/2023
- FDEP determined 100% of the project is eligible for state cost sharing
 - Results in maximum State Cost Share percent of 50% (after federal share)
 - Potential initial Grant Funding of \$2,612,500 (reimbursable basis)
- Statewide project requests are presently under review by Legislature
- Adjustments of amount can be requested in multiple future funding cycles both pre-project and up to 3 years post-project

PROJECT TIMELINE



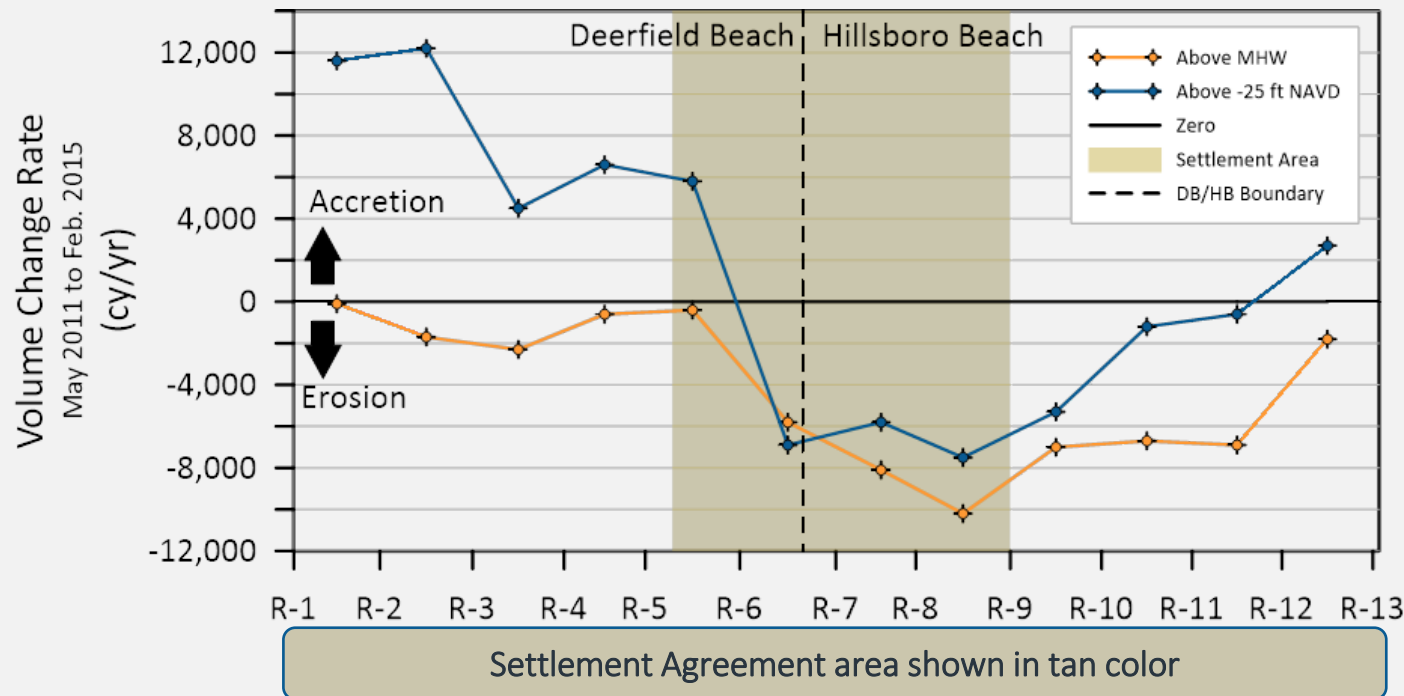
AUGUST 2021 SURVEY

- Coordinated with M&N survey team to avoid duplication of effort
- 2021 beach condition was similar on average to summer 2020 conditions
- Estimated fill template capacity:
 - 401,400 cy in permitted project area (R-5 to R-12+400)
 - 190,700 cy in Settlement Agreement area (R-5+350 to R-9)

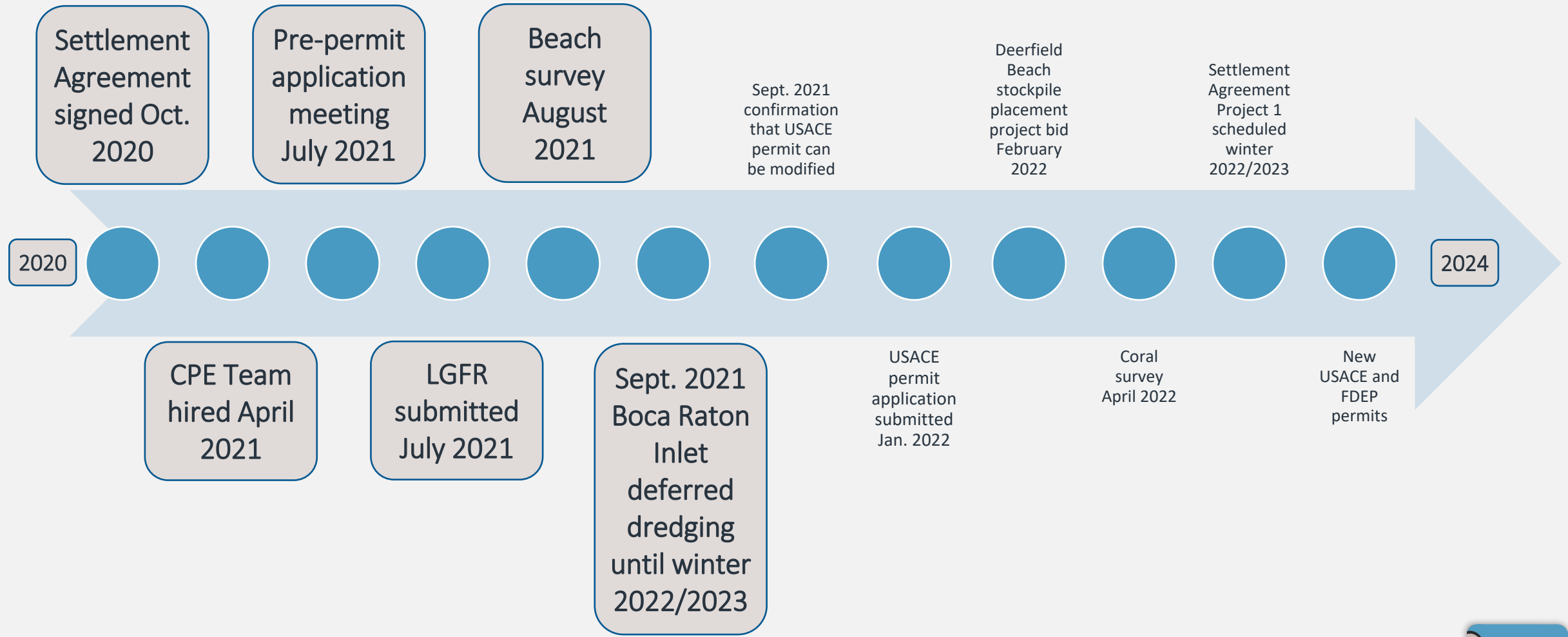


PAST BEACH PERFORMANCE

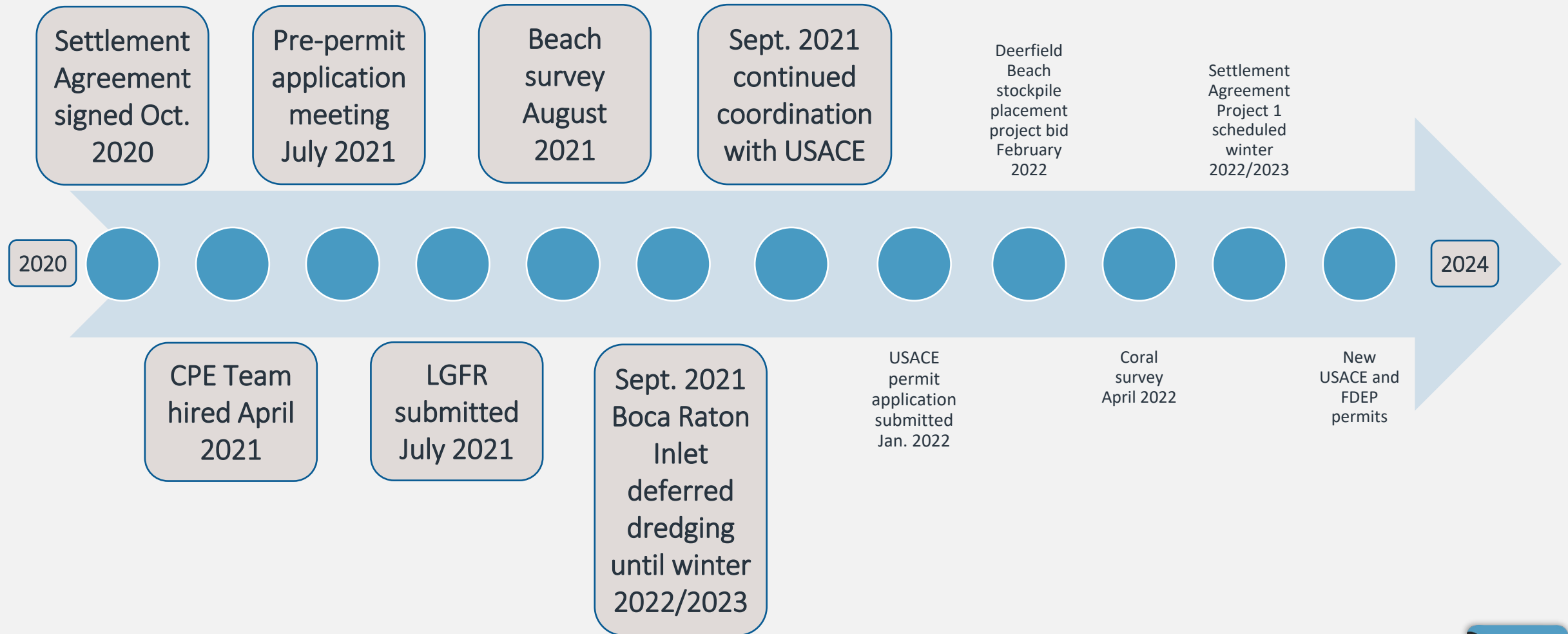
- Volumetric erosion from 2011 to 2015:
 - -20,300 cy/yr from R6 to R9
 - Projection of ~101,500 cy over 5 years



PROJECT TIMELINE



PROJECT TIMELINE

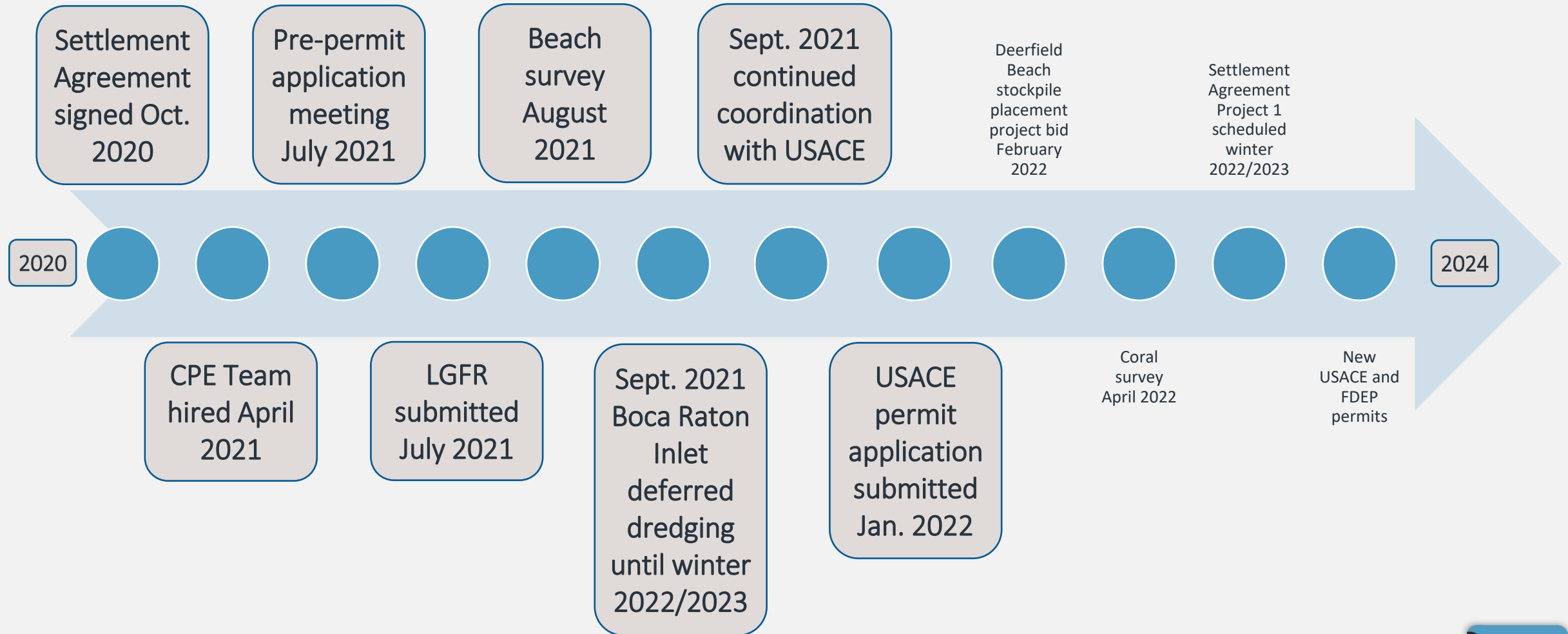


USACE UPDATE - JANUARY 2022

USACE recommendation to apply for a new multiple-use permit:

- Permit review time for re-authorization expected to be abbreviated
- No external agency review expected if project stays within the previously permitted construction template
- Project must comply with 2020 SARBO requirement for coral survey
- New permit will be authorized for multiple projects and sand sources

PROJECT TIMELINE



USACE PERMIT APPLICATION SUBMITTAL

- Awaiting application review from USACE
- Anticipate RAI for new coral survey requirement (SARBO)

Your application for a Department of the Army, Corps of Engineers permit has been processed and assigned to a Project Manager. The project is known as:

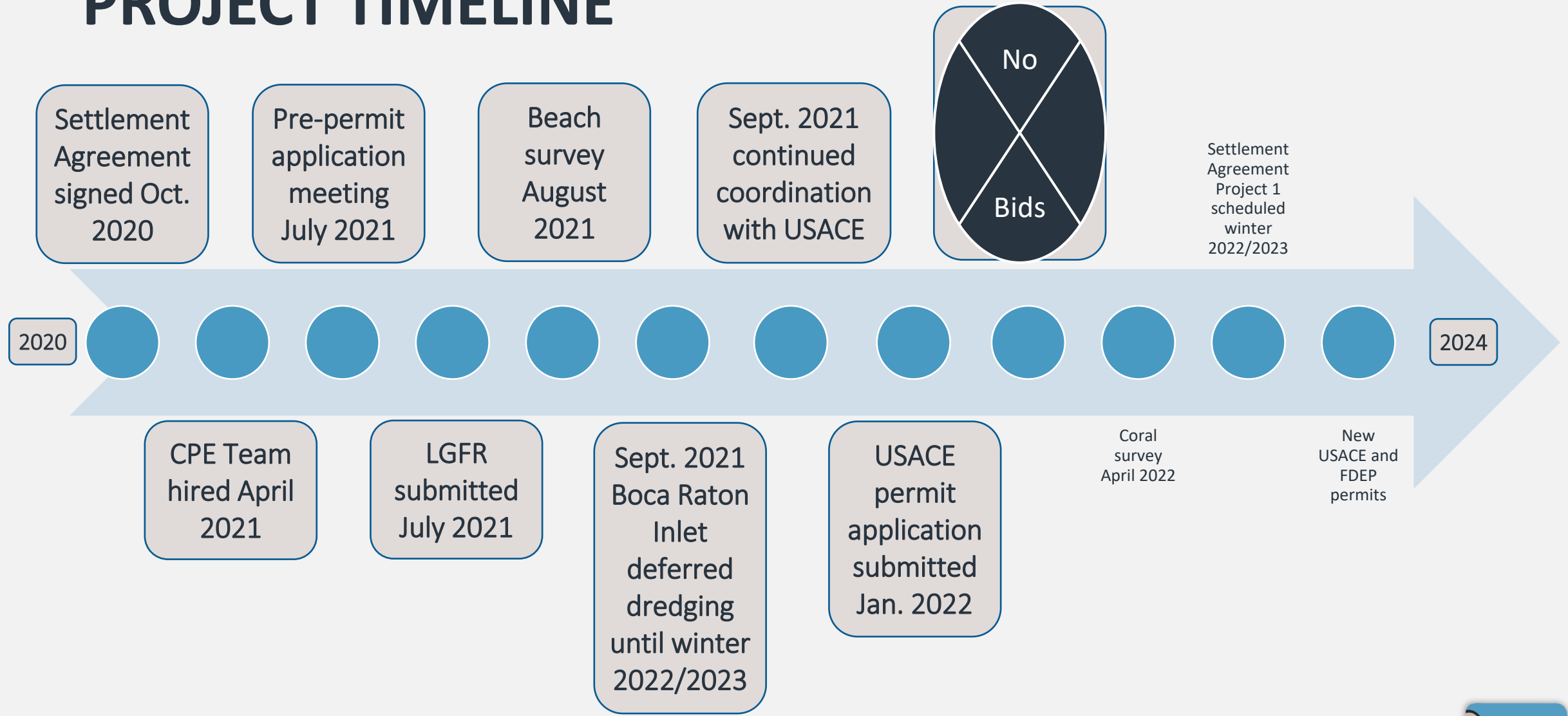
(Project No)	(Project Name)
SAJ-1997-02355	(Hillsboro Beach, Town of/ Beach Renourishment)

Patricia Clune has been assigned as the Project Manager. Patricia can be contacted at phone number **561-768-5944** or by electronic mail at patricia.r.clune@usace.army.mil. Please refer to the SAJ No and project name in all future correspondence on this project and direct to your assigned Project Manager.

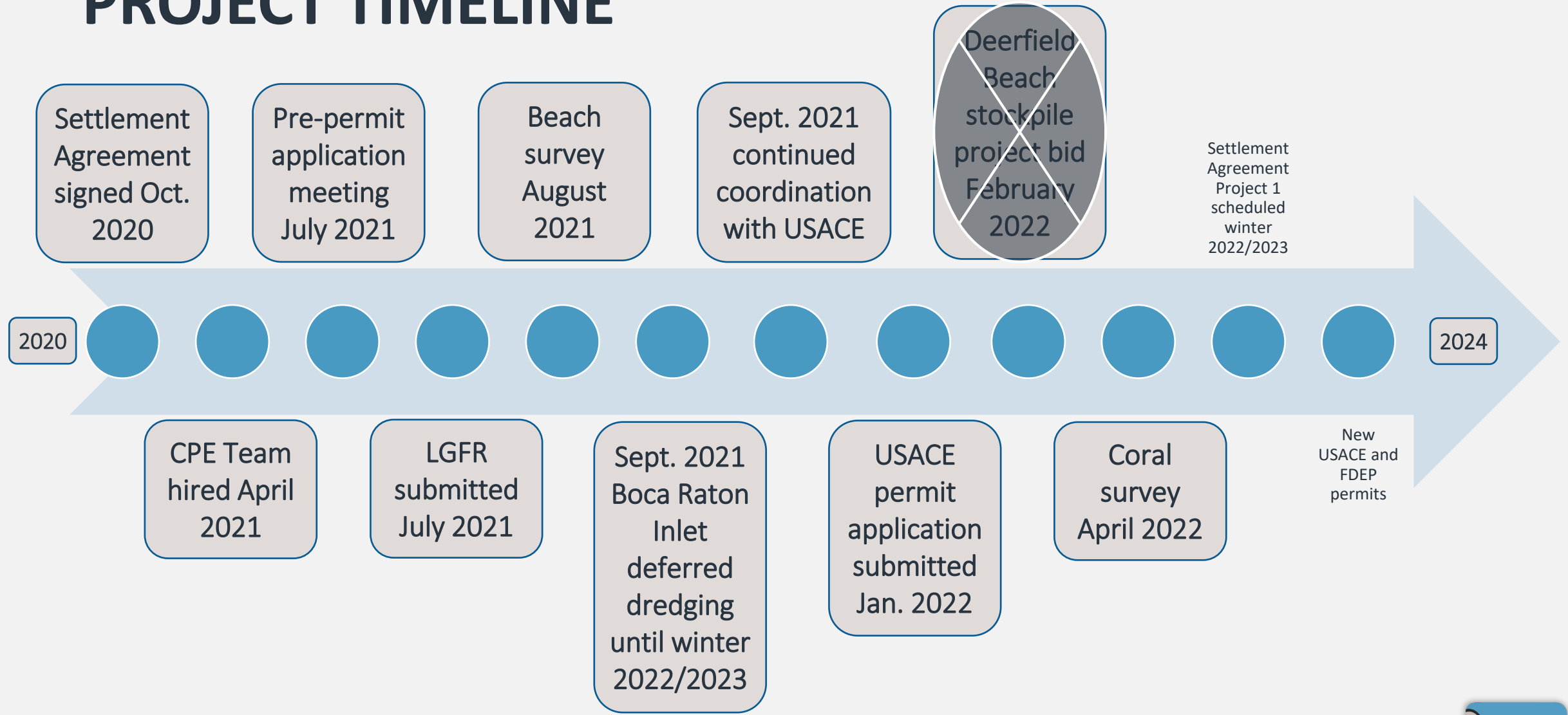
Due to manpower shortage, an increase in the number of applications, and the COVID19 climate, please allow 30 days for the assigned PM to review the projects before making initial contact with them. We appreciate your understanding.

BE ADVISED: You are cautioned that commencement of the proposed work in waters of the United States subject to Corps jurisdiction prior to Department of the Army (DA) authorization would constitute a violation of Federal laws and subject you to possible enforcement action. Receipt of a permit from the Florida Department of Environmental Protection or Florida Water Management Districts and/or other state and local agencies does not obviate the requirement for obtaining a DA permit prior to commencing the proposed work.

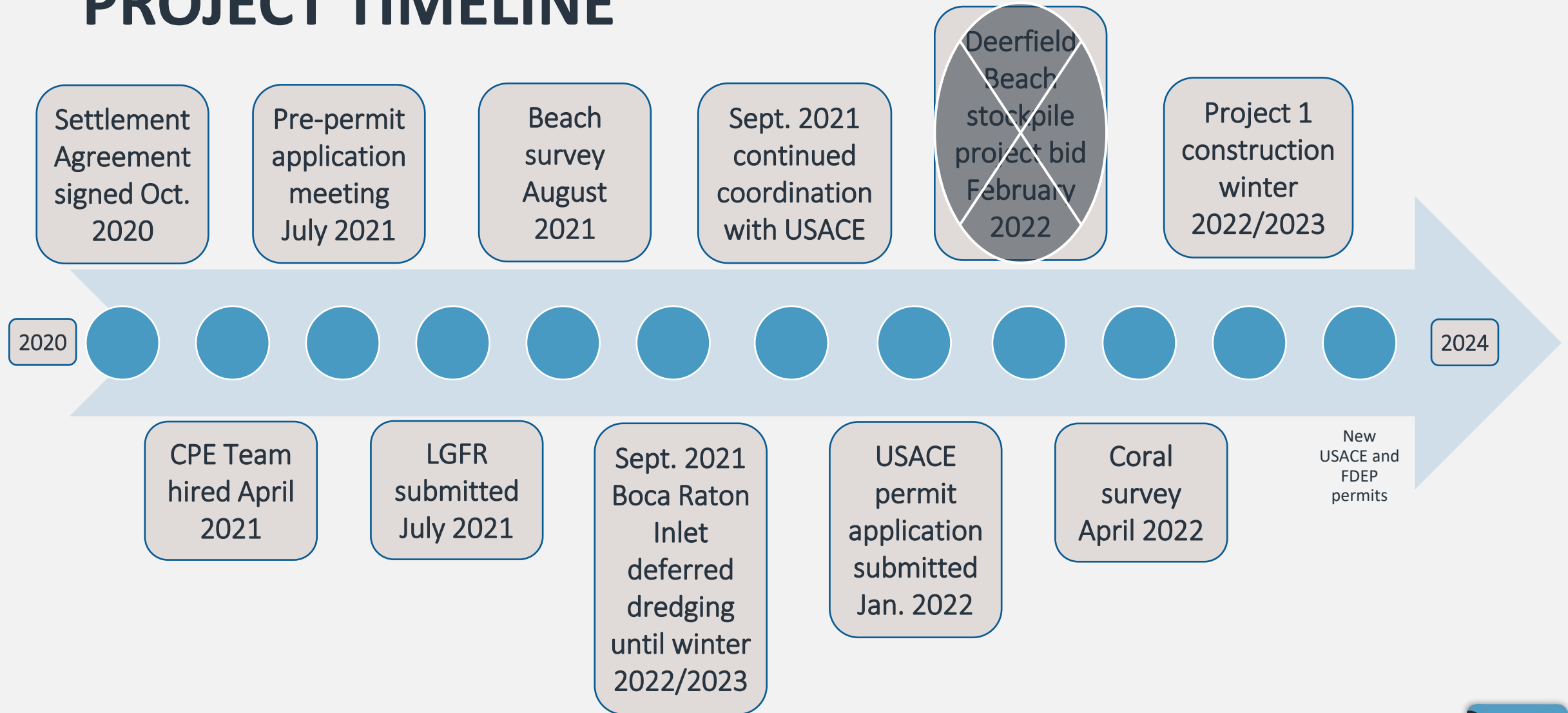
PROJECT TIMELINE



PROJECT TIMELINE



PROJECT TIMELINE



PROPOSED PROJECT 2022-2023

- Utilize existing FDEP permit and new USACE permit
- Sand placement within construction templates approved in 2011
- Estimate 200,000 to 300,000 cy depending on conditions at time of construction
- Multiple potential sand sources proposed:
 - Deerfield Beach stockpile
 - Previously permitted upland mines
 - Boca Raton Inlet (City of Boca Raton dependent)

PROJECT SCHEDULE

- Permitting: ongoing
- Coral Survey: March/April 2022 (ASAP)
- Beach Monitoring Surveys: Spring 2022
- Final Design, Plans and Specifications: Summer 2022
- Procurement: Fall 2022
- Pre-Construction Surveys: Fall 2022
- Target Construction Window: November 2022 – April 2023

BUDGET ESTIMATE

- Construction cost
- Engineering cost
- FEMA (Town) = 64,030 cy
- FEMA (City) = 5,162 cy
- State share = 50% (remainder)
- County cost share TBD

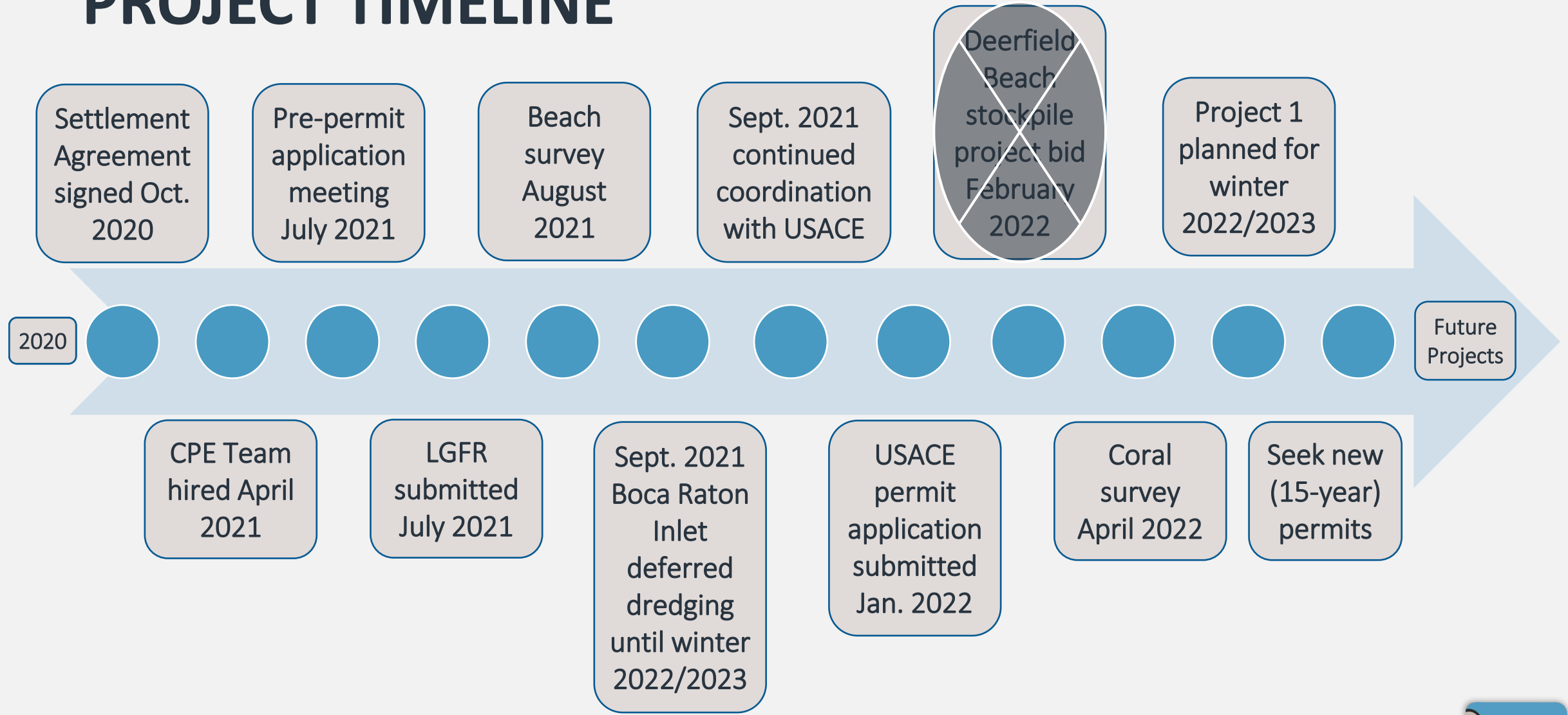
Updated Planning Estimates*

<u>Truck Haul from Upland Mine</u>	CY	Unit Price	
Construction Cost	220,000	\$61.58	\$13,547,600.00
Engineering, Administration, & Monitoring		5%	\$677,380.00
			\$14,224,980.00
FEMA (TOHB + DFB) -75% Share of	69,192	\$61.58	-\$3,195,632.52
			\$11,029,347.48
State Cost Sharing		-50%	-\$5,514,673.74
			\$5,514,673.74
Local Contribution (Cost Share TBD)			\$5,514,673.74
Broward County			
City of Deerfield Beach			
Town of Hillsboro Beach			

DRAFT

**Estimates shown hereon are considered DRAFT for project planning purposes only. Cost sharing projections are subject to further coordination, market fluctuations, condition assessments, FEMA prorates, State grants, and budget approvals.*

PROJECT TIMELINE



FUTURE PROJECTS

- Plan for 5-year interval for 30 years
- Perform regional beach assessment
- Redesign beach fill templates for future
- Apply for 15-year multiple use permits
- Address nearshore hardbottom concerns
- Extend ECL as needed within City of Deerfield
- Continue coordination with Boca Raton Inlet and Hillsboro Inlet for beneficial use of dredged material as future sand source
- Include existing/new sand sources to cover life of permits



HILLSBORO/DEERFIELD BEACH NOURISHMENT PROJECT

STATUS UPDATE MEETING



Coastal Protection Engineering LLC

Thomas Pierro, PE, D.CE, Principal Engineer

Thomas Campbell, PE, D.CE, Principal Advisor

Tara Brenner, PG, PE, Sr. Coastal Engineer

Stacy Buck, Sr. Marine Biologist

Dylan Nestler, PE, Coastal Engineer



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Beach Erosion
Hillsboro Windsor Condos, 1169 Hillsboro Mile
Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk
Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS:

1. Beach Erosion 1 - Hillsboro Windsor (2-18-2022)
2. Beach Erosion 2 - Hillsboro Windsor (2-18-2022)
3. Beach Erosion 3 - Hillsboro Windsor (2-18-2022)

1169 Hillsboro Mile, Hillsboro Beach, FL 33062





1169 Hillsboro Mile, Hillsboro Beach, FL 33062





TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Introduction of Police Officer James Engle (Marine Patrol)
Presented by Chief Szesnat

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS: 1. Bio

Hillsboro Beach Police Department



Officer Jim Engle comes to us as a veteran from the Broward Sheriffs Office. Jim will be assigned to our Marine Unit. Jim will also assist us with training. During his vast career, Jim has been involved in many law enforcement operations and training opportunities to include:

- Law Enforcement Basic Training
- US Custom Marine Law Enforcement Training
- US Coast Guard Ship Boarding
- US Custom Joint Training and Vessel Assault Operations
- ATV/Beach Vehicle Master Trainer and Operator
- General Instructor Teaching Techniques Certified
- Field Training Officer
- Special Weapons and Tactic Training
- SWAT Commander with over 500 missions.
- CJSTC Organized Crime and Criminal Investigation
- Dignitary Protections Leader (on multiple occasions)
- Counter Surveillance
- US Navy Seal Training

Jim recently retired from the Broward Sheriff's Office from the District 10 Division (Deerfield Beach) after a respected 38-year career. Jim is familiar with our town and worked in the Marine Unit for Deerfield Beach. Jim was heavily involved with the Broward Sheriffs Training Unit and SWAT. Jim brings knowledge and familiarity to our town and staff. We are so very excited to have Jim on our team.



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Water Plant Operations Excellence Award 2021
Town of Hillsboro Beach Public Water System

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS:

1. Email from Elliott Garay, Water Plant Supervisor
2. PlantExcellenceAward2021

Sherry D. Henderson

From: Elliott Garay <egaray@townofhillsborobeach.com> on behalf of Elliott Garay
Sent: Tuesday, February 8, 2022 1:26 PM
To: Mac Serda
Cc: Sherry D. Henderson; Robert Knapstein; Rashaan Bullard; Garth Charles (2); Juan Rivera
Subject: Plant Operations Excellent Award 2021 - Hillsboro Beach Public Water System
Attachments: PlantExcellenceAward2021.pdf

Mac,

Earlier today, Rashaan, Garth and I, had the privilege of receiving, on behalf of the Town's Water Department, the **2021 Plant Operations Excellence Award** from the Florida Department of Environmental Protection for the Small Community water systems category, serving < 3,300 persons at the FRWA 2022 Annual Focus on Change Event. The event was attended by over 200 participants including; water & wastewater utility professionals, Plant Operators, Utility Department Administrators, and Professional Engineers.

Each year, the Florida Department of Environmental Protection presents awards to drinking water and domestic wastewater facilities around the state that demonstrate excellence in operation, maintenance, innovative treatment, waste reduction and pollution prevention, recycling, or other special achievements. These awards recognize facilities that demonstrate a special commitment to excellence in management through dedicated professionalism.

At our next meeting, I will deliver the award to you to be presented to the Town's Commission and Residents, at your convenience and when you decide.

This award is truly a humbling experience for all the water department employees. To be presented this award to our Town's Water Department by a State Regulatory Agency is an important and significant accomplishment for all of our small yet AMAZING Town!!!

Sincerely,

--

Elliott L Garay,
Hillsboro Beach Water Dept.
925 E Sample Road
Pompano Beach, FL 33064
Phone: [954-941-8937](tel:954-941-8937)
Fax: [954-941-8904](tel:954-941-8904)
[Cell: 954-703-0623](tel:954-703-0623)
www.townofhillsborobeach.com



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



2021 PLANT OPERATIONS EXCELLENCE AWARD

In furtherance of the Florida Department of Environmental Protection's goal of ensuring safe drinking water for all people in Florida, this certificate is hereby awarded to

Hillsboro Beach Public Water System

In recognition of outstanding operation through dedicated professionalism.
Awarded at the 2022 Focus on Change seminar series event held in Pompano Beach, Florida.

Presented this 8th Day of February 2022

Mary Alice McElheney, Assistant Deputy Secretary, Regulatory Programs



February 22, 2022

Mr. Mac Serda, Town Manager
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

RE: 971 Hillsboro Mile (Site Plan Approval Request)

Dear Mr. Serda:

The purpose of this letter is to provide a report regarding the Site Plan Approval Request for 971 Hillsboro Mile submitted to the Town on June 8th, 2021. The owner of the property Sergey Sachenko has assigned James Barron as authorized agent. The applicant submitted for Site Plan Approval for a new single family residence East of A1A. No Improvements are proposed west of A1A.

Background

The applicant is requesting Site Plan approval for site plan improvements for a new story single-family residence on the east side of A1A. Existing residence on the property is to be removed.

Documents Submitted

Information submitted with the Site Plan Approval request included an application, boundary survey, Architectural Plans, Civil Plans and Landscape Plans. The aforementioned documents were reviewed, and the documents submitted responding to the last comments meet zoning regulations of Town of Hillsboro Beach, Florida Code of Ordinances.

General Description of the Development Proposal

Improvements include a 20,627 square foot 3-story residence with a pool, open porch, bar-b-q and pool deck at the rear. No Improvements are proposed on west side of A1A are indicated. The proposed improvements meet Town of Hillsboro Beach zoning regulations.

Site Plan Review and Comments

The Site Plan application was submitted on June 8th, 2021 along with plans submitted responding to the last comments are consistent with the Town's Land Development Regulations.

The following comments still need to be addressed:

1. Provide Florida Department of Environmental Protection approval for construction beyond Coastal Construction Line. Approval will be required as part of the Zoning approval for Building Permit Application.
2. Provide Broward County Environmental permit for any construction activity on the Dune or provide letter of non-jurisdiction.
3. Provide FDOT approval Trafficways + ROW dedication.
4. Compliance with section 3-9 Requirements for Marine Turtle Protection (for any site lighting).
5. Provide updated survey indicating top of wall elevations at adjacent properties at Building Permit submittal.
6. Broward County Tree removal permit.
7. Construction Site Management Plan per section 12-50

Staff Recommendation

Site Plan that was submitted addressing the last review comments, along with items 1 thru 7 (Comments still to be addressed) as conditions of approval comply with all applicable code regulations. Staff recommends Site Plan approval.

Sincerely,

Joe Arenal
Town Planner

**RECEIVED****JUN 8 2021**

TOWN OF HILLSBORO BEACH
 1210 HILLSBORO MILE, HILLSBORO BEACH, FL 33062
 PHONE (954) 427-4011 • FAX (954) 427-4834
www.townofhillsborobeach.com

DEVELOPMENT APPLICATIONSubmittal Date: JUNE 9, 2021

Zoning Board Meeting Date: _____

Property Control # _____

Town Commission Meeting Date: _____

PROPERTY OWNER(S)		AUTHORIZED AGENT	
NAME: <u>Sergey Sachenko</u>		NAME: <u>James M. Barron</u>	
ADDRESS: <u>2772 SE 13th Ct, Pompano Beach, FL 33062</u>		ADDRESS: <u>2890 Marina Mile Blvd Ste. 115, Ft Lauderdale, FL 33312</u>	
PHONE:	CELL: <u>954-937-5216</u>	PHONE: <u>954-749-7295</u>	CELL: <u>954-249-4250</u>
E-MAIL <u>futurepropertiesllc@gmail.com</u>	FAX:	E-MAIL <u>jim@barrondevelopment.com</u>	FAX: <u>954-749-0674</u>

APPLICANT'S CERTIFICATION

(I) Sergey Sachenko (owner), (architect) or (authorized agent) affirm and certify that I understand and will comply will all provisions and regulations of the Town of Hillsboro Beach Florida. I certify that all drawings and specifications for buildings or structures costing \$5,000 or over for commercial buildings or \$10,000 for residential building must be drawn or verified by a state registered architect or engineer and his seal of office imprinted thereon. Additionally, I certify that the drawings that the drawings and specifications show full compliance and do fully comply with the Zoning Code. I understand that if any drawings or specifications are not in full compliance, the application will be rejected. If approved by the Town, the aforementioned real property described herein will be considered, in every respect, to be a part of the Town of Hillsboro Beach and will be subjected to all applicable laws, regulations, taxes and police powers of the Town including the Comprehensive Plan and Zoning Code. I further certify that all statements and diagrams submitted herewith are true and accurate to the best of my knowledge and belief. Further, I understand that this Application and attachments become part of the Official Records of the Town of Hillsboro Beach, Florida, and are not returnable.

Signature

Sergey Sachenko

Print Name

STATE OF FLORIDA, COUNTY OF BROWARD

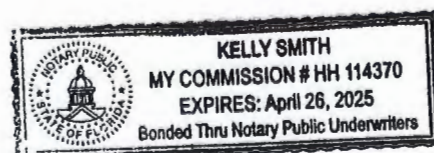
The foregoing instrument was acknowledged before me on this 9 day of June 20 21, by
Sergey Sachenko as Homeowner for 2772 SE 13th Ct.

Personally know ☒ or has produced identification _____. Type of Identification _____

Notary Signature

Kelly Smith

Print Notary Name



CHECK BELOW WHERE APPLICABLE

	FINAL PLAT - \$1,000.00		REZONING - \$3,500.00
	LAND USE PLAN AMENDMENT - \$3,500.00	X	SITE PLAN REVIEW - \$2,000.00
	PRELIMINARY PLAT - \$1,000.00		VARIANCE - \$1,050.00

Hillsboro Beach Town Code Sec. 12.1.3d provides for the collection of service charges or fees, consultant review fees, etc. for the administrative processing and review of applications for development permits submitted to the Town for review and approval. The owner, architect or other authorized agents are urged to attend the Zoning Board of Appeals and Town Commission meetings. Each applicant must familiarize himself with the criteria and procedures. **If all required information is not presented with this application by the submittal date, the project will not be placed on the agenda for review and consideration.** PLEASE NOTE: THE FEES LISTED ABOVE ARE **ADMINISTRATIVE FEES ONLY**. YOU WILL BE BILLED BY THE TOWN OF HILLSBORO BEACH FOR ANY AND ALL ADDITIONAL EXPENSES WHICH WILL BE INCURRED BY THE TOWN THROUGH THE SERVICES OF THE TOWN ENGINEER/PLANNER, LEGAL ADVERTISING, REBUTTALS, CONSULTATION AS WELL AS POSTAGE FOR MAILINGS AND COURIER SERVICES RELATED TO YOUR PROJECT.

Items Required for Submittal: Must be submitted **30 days prior** to the Town Commission Meeting date.

1. This application and all applicable fees
2. Narrative letter describing the request
3. Letters from each adjoining property owners (with approvals, if possible) – Variance Application only
4. Approval letter from the Association and minutes (when applicable)
5. Agent's authorization letter (when applicable)
6. 1 electronic copy and 2 signed and sealed – Plans are to be standard architectural size
7. 1 set of plans for the City of Deerfield Fire Inspector / Plans Examiner (when applicable)

Code References: (All sections are available for viewing and printing on the website)

- Chapter 12 – Division 1. General Provisions
- Chapter 12 – Division 2. Development Review Requirements
- Chapter 12 – Division 3. Platting and Subdivision Regulations
- Chapter 12 – Division 4. Site Plan Procedures & Requirements
- Chapter 12 – Division 5. Zoning

GENERAL DATA

Project Location: 971 Hillsboro Mile District: _____

Proposed Zoning: Residential

Existing Comprehensive Plan Designation: _____

Proposed Comprehensive Plan Designation: _____

Existing Land Use: Residential

Proposed Land Use: Residential

Total Site Area: 32,162 Sq. Ft. 0.74 Acres

Flood Zone Category: AE/X

Is site currently serviced by public water? Yes ☒ No ☐

Is site currently serviced by public sewer? Yes ☒ No ☐

Describe briefly the nature of any improvements presently located on the subject property. _____

Existing single family residence - deteriorated - ready for demolition

Describe the type of operation or business proposed; or the proposed construction. new single family residence

Estimated construction cost: N/A- TBD

Describe in detail the phasing of the proposed development. _____

Demolition of existing single family residence to make way for construction of a new single family

residence and pool and new dock and seawall

State the reasons or basis for the Approval request, and explain why this request is consistent with good planning and zoning practice, will not be contrary to the Town's Comprehensive Plan, and will not be detrimental to the promotion of public appearance, comfort, convenience, general welfare, good order, health, morals, prosperity, and safety of the Town. Additionally, all standards set forth in the Town Code of Ordinances must be addressed. (Attach a separate Justification Statement if insufficient space.)

To construction a new single family residence in place of the deteriorated existing

Has any previous Application been filed within the last year in connection with the subject property?

Yes ☐ No ☒ If yes, briefly describe the nature of the Application. _____

Has a site plan been previously approved by the Town Commission for this property?

Yes ☐ No ☒ If yes, please note date of previous approval. _____

(A) Every general contractor or other person being issued a building permit, shall deposit with the Town Clerk a bond in the amount of \$500 per each \$100,000 with a minimum of \$1,000 for any complete new building or an addition to existing building. The bond shall be in the form of a cashier's check.

(B) By the deposit of the funds the contractor authorizes the Town of Hillsboro Beach, through its proper officials, to expend all or any portion of the bond to effect cleanup, during and after construction, if not satisfactorily performed by the contractor or person. Subsequent to the satisfactory cleanup of the vicinity of the construction, unused funds in whole or in part will be refunded to the contractor or person.

(C) (1) It shall be the duty of the general contractor or other person receiving the permit to see that the premises and adjoining public areas shall be policed at all times during and after construction to prevent debris from being discarded on adjoining properties.

(2) The DRO or the DRO's designate shall certify in writing to the Town Commission his or her determination and recommendation. The building plans and specifications shall be approved by the Town Commission prior to the issuance of a building permit. (1976 Code, CH. 12, Div. 5, Art. XV § 9)

BROWARD COUNTY UNIFORM BUILDING PERMIT APPLICATION

Select One Trade: ☐ Building ☐ Electrical ☒ Plumbing ☐ Mechanical ☐ Other _____

Application Number: _____

Application Date: 5/25/2021

Job Address: 971 Hillsboro Mile	Unit: _____ City: Hillsboro Beach
Tax Folio No.: _____	Flood Zn: _____ BFE: _____ Floor Area: _____ Job Value: \$1200
Building Use: _____	Construction Type: _____ Occupancy Group: _____
1 Present Use: _____	Proposed Used: _____
Description of Work: sewer cap and temporary WATER.	
☒ New ☐ Addition ☐ Repair ☐ Alteration ☐ Demolition ☐ Revision ☐ Other: _____	
Legal Description: _____ ☐ Attachment	

2 Property Owner: SACHENKO, Sergey + GAlina	Phone: _____ Email: _____
Owner's Address: 971 Hillsboro Mile	City: Hillsboro Beach State: FL Zip: 33062

3 Contracting Co.: MARINI PLUMBING INC	Phone: 954-557-3040 Email: ROBERTMARINI@AOL.COM
Company Address: 5031 NE 26 TERRCAE	City: LIGHTHOUSE POINT State: FL Zip: 33064
Qualifier's Name: ROBERT MARINI	Owner-Builder: ☐ License Number: CFC1425818

4 Architect/Engineer's Name: _____	Phone: _____ Email: _____
Architect/Engineer's Address: _____	City: _____ State: _____ Zip: _____
Bonding Company: _____	
Bonding Company Address: _____	City: _____ State: _____ Zip: _____
Fee Simple Titleholder's name (if other than owner): _____	
Fee Simple Titleholder's Address (if other than owner): _____	City: _____ State: _____ Zip: _____
Mortgage Lender's Name: _____	
Mortgage Lender's Address: _____	City: _____ State: _____ Zip: _____

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

X _____
Signature of Property Owner or Agent

STATE OF FLORIDA
COUNTY OF BROWARD

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____ by _____

(Type / Print Property Owner or Agent Name)

NOTARY'S SIGNATURE as to Owner or Agent's Signature

Notary Name _____
(Print, Type or Stamp Notary's Name)

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

X _____
Signature of Qualifier

STATE OF FLORIDA
COUNTY OF BROWARD

Sworn to (or affirmed) and subscribed before me this 24 day of MAY 20 21 by _____

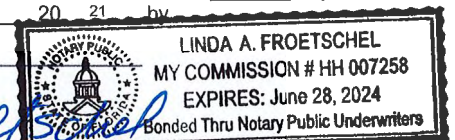
ROBERT MARINI
(Type / Print Qualifier's Name)

NOTARY'S SIGNATURE as to Qualifier's Signature

Notary Name Linda A Froetschel
(Print, Type or Stamp Notary's Name)

Personally Known X or Produced Identification _____

Type of Identification Produced _____



APPROVED BY: _____ Permit Officer Issue Date: _____ Code in Effect: _____

A jurisdiction may use a supplemental page requesting additional information and citing other conditions, please inquire.

Note: If any development work as described in FS 380.04 Sec. 2 a-g is to be performed, a development permit must be obtained prior to the issuance of a building permit.

BROWARD COUNTY UNIFORM BUILDING PERMIT APPLICATION

Select One Trade: ☐ Building ☒ Electrical ☐ Plumbing ☐ Mechanical ☐ Other _____

Application Number: _____

Application Date: _____

Job Address: 971 Hillsboro Mile	Unit: _____	City: Hillsboro Beach
Tax Folio No.: 484320000200	Flood Zn: _____	BFE: _____
Building Use: SFR	Floor Area: _____	Job Value: _____
Construction Type: _____	Occupancy Group: _____	
Present Use: SFR	Proposed Used: _____	
Description of Work: <u>temporary fds construction</u>		
☒ New ☐ Addition ☐ Repair ☐ Alteration ☐ Demolition ☐ Revision ☐ Other: _____		
Legal Description: 20-48-43 PT Gov Lot 1 Lying E of Canal R/W, 100 in width lying bet par lines, S/L of tr being par with & 2759 N of s/l of sec ☐ Attachment		

Property Owner: Sergey and Galina Sachenko	Phone: 954-749-7295	Email: cindy@barrondevelopment.com
Owner's Address: 971 Hillsboro Mile	City: Hillsboro Beach	State: FL Zip: 33062

Contracting Co.: <u>Metro Electric Services & Consulting</u>	Phone: <u>561-366-2200</u>	Email: <u>permits@electric-pros.us</u>
Company Address: <u>1750 Osceola Drive, Suite 4</u>	City: <u>West Palm Beach</u>	State: <u>FL</u> Zip: <u>33409</u>
Qualifier's Name: <u>Fernando Santana</u>	Owner-Builder: ☐	License Number: <u>EC13008133</u>

Architect/Engineer's Name: _____	Phone: _____	Email: _____
Architect/Engineer's Address: _____	City: _____	State: _____ Zip: _____
Bonding Company: _____		
Bonding Company Address: _____	City: _____	State: _____ Zip: _____
Fee Simple Titleholder's name (if other than owner): _____		
Fee Simple Titleholder's Address (if other than owner): _____	City: _____	State: _____ Zip: _____
Mortgage Lender's Name: _____		
Mortgage Lender's Address: _____	City: _____	State: _____ Zip: _____

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

X _____ Signature of Property Owner or Agent

STATE OF
COUNTY OF

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____ by _____

(Type / Print Property Owner or Agent Name)

NOTARY'S SIGNATURE as to Owner or Agent's Signature

Notary Name _____

(Print, Type or Stamp Notary's Name)

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

X _____ Signature of Qualifier

STATE OF
COUNTY OF

Sworn to (or affirmed) and subscribed before me this 12 day of May, 2021 by Fernando Santana

(Type / Print Qualifier's Name)

NOTARY'S SIGNATURE as to Qualifier's Signature

Notary Name Gema Rodriguez

(Print, Type or Stamp Notary's Name)

Personally Known ☒ or Produced Identification _____

Type of Identification Produced _____



Gema Rodriguez
Commission # GG144256
Expires: October 22, 2021
Bonded thru Aaron Notary

APPROVED BY: _____ Permit Officer Issue Date: _____ Code in Effect: _____

A jurisdiction may use a supplemental page requesting additional information and citing other conditions, please inquire.

Note: If any development work as described in FS 380.04 Sec. 2 a-g is to be performed, a development permit must be obtained prior to the issuance of a building permit.

BROWARD COUNTY UNIFORM BUILDING PERMIT APPLICATION

Select One Trade: ☐ Building ☒ Electrical ☐ Plumbing ☐ Mechanical ☐ Other _____

Application Number: _____

Application Date: _____

Job Address: 971 Hillsboro Mile	Unit: _____	City: Hillsboro Beach
Tax Folio No.: 484320000200	Flood Zn: _____	BFE: _____
Building Use: SFR	Floor Area: _____	Job Value: _____
Construction Type: _____	Occupancy Group: _____	
Present Use: SFR	Proposed Used: _____	
Description of Work: <u>Demolition</u>		
☒ New ☐ Addition ☐ Repair ☐ Alteration ☒ Demolition ☐ Revision ☐ Other: _____		
Legal Description: 20-48-43 PT Gov Lot 1 Lying E of Canal R/W, 100 in width lying bet par lines, S/L of tr being par with & 2759 N of s/l of sec ☐ Attachment		

Property Owner: Sergey and Galina Sachenko	Phone: 954-749-7295	Email: cindy@barrondevelopment.com
Owner's Address: 971 Hillsboro Mile	City: Hillsboro Beach	State: FL Zip: 33062

Contracting Co.: <u>Heko Electric Services & Consulting</u>	Phone: <u>561-366-2200</u>	Email: <u>permits@electric-pls.us</u>
Company Address: <u>1750 Osceola Drive, Suite 4</u>	City: <u>West Palm Beach</u>	State: <u>FL</u> Zip: <u>33409</u>
Qualifier's Name: <u>Fernando Santana</u>	Owner-Builder: ☐	License Number: <u>EC13008133</u>

Architect/Engineer's Name: _____	Phone: _____	Email: _____
Architect/Engineer's Address: _____	City: _____	State: _____ Zip: _____
Bonding Company: _____		
Bonding Company Address: _____	City: _____	State: _____ Zip: _____
Fee Simple Titleholder's name (if other than owner): _____		
Fee Simple Titleholder's Address (If other than owner): _____	City: _____	State: _____ Zip: _____
Mortgage Lender's Name: _____		
Mortgage Lender's Address: _____	City: _____	State: _____ Zip: _____

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

X _____ Signature of Property Owner or Agent

STATE OF
COUNTY OF

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____ by _____

(Type / Print Property Owner or Agent Name)

NOTARY'S SIGNATURE as to Owner or Agent's Signature

Notary Name _____

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

X Signature of Qualifier

STATE OF
COUNTY OF

Sworn to (or affirmed) and subscribed before me this 12 day of May, 2021 by Fernando Santana

(Type / Print Qualifier's Name)

NOTARY'S SIGNATURE as to Qualifier's Signature

Notary Name Gema Rodriguez

Personally Known ☒ or Produced Identification _____

Type of Identification Produced _____



Gema Rodriguez
Commission # GG144256
Expires: October 22, 2021
Bonded thru Aaron Notary

APPROVED BY: _____ Permit Officer Issue Date: _____ Code in Effect: _____

A jurisdiction may use a supplemental page requesting additional information and citing other conditions, please inquire.

Note: If any development work as described in FS 380.04 Sec. 2 a-g is to be performed, a development permit must be obtained prior to the issuance of a building permit.

COPY

BARRON DEVELOPMENT CORPORATION
OPERATING ACCOUNT
 2890 Marina Mile Blvd, Suite # 115
 Fort Lauderdale Florida 33312
 (954) 749-7295

WELLS FARGO BANK, NA
 1100 West State Road 84
 Ft Lauderdale, FL 33315
 63-751/631

47449

COPY

6/9/21

PAY TO THE ORDER OF TOWN OF HILLSBORO BEACH \$ 2,000.00
TWO THOUSAND + 00/100 DOLLARS

COPY

COPY

COPY

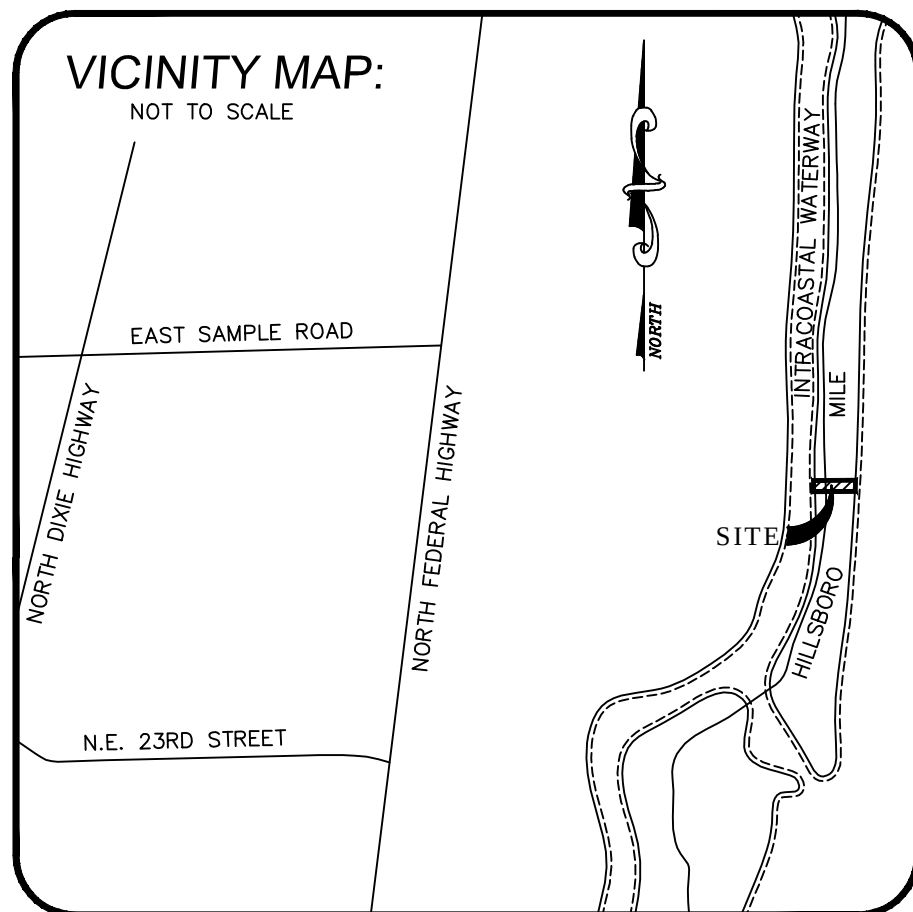
COPY

MEMO 971 HILLSBORO MILE - SITE PLAN APPROVAL

Cindy Correa

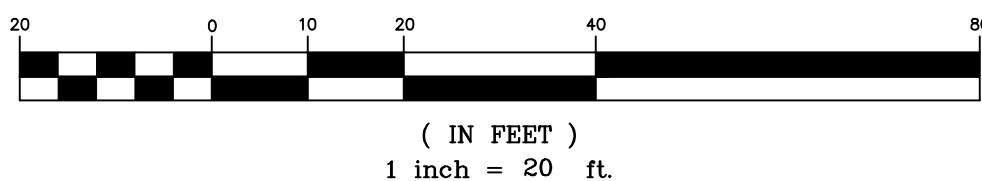


BOUNDARY & TIDAL WATER SURVEY

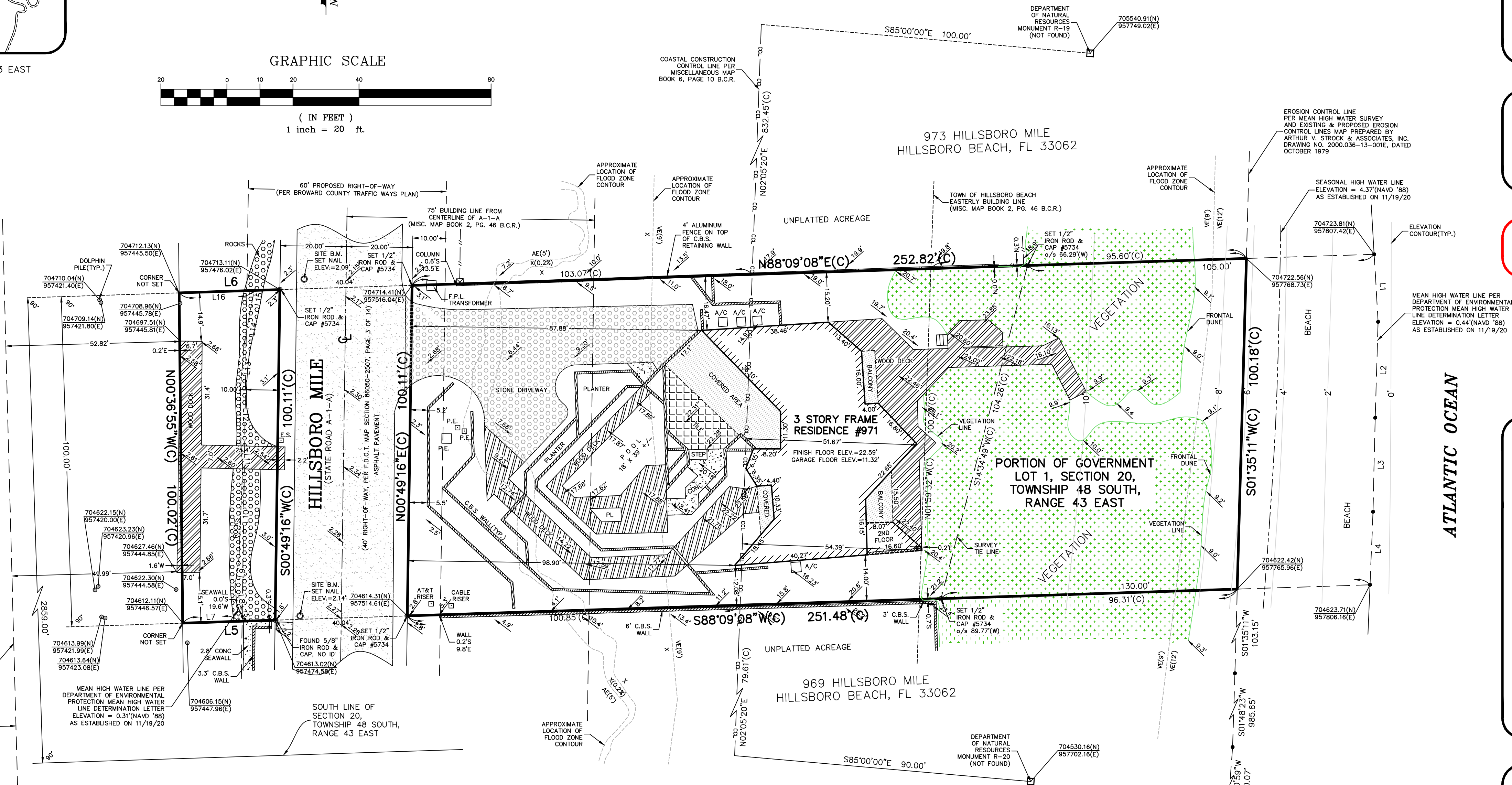
VICINITY MAP:
NOT TO SCALE

SECTION 20, TOWNSHIP 48 SOUTH, RANGE 43 EAST

GRAPHIC SCALE



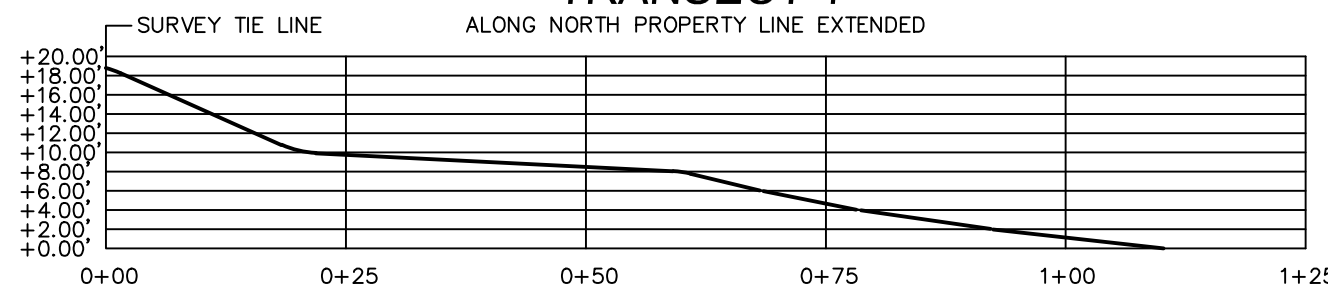
NORTH



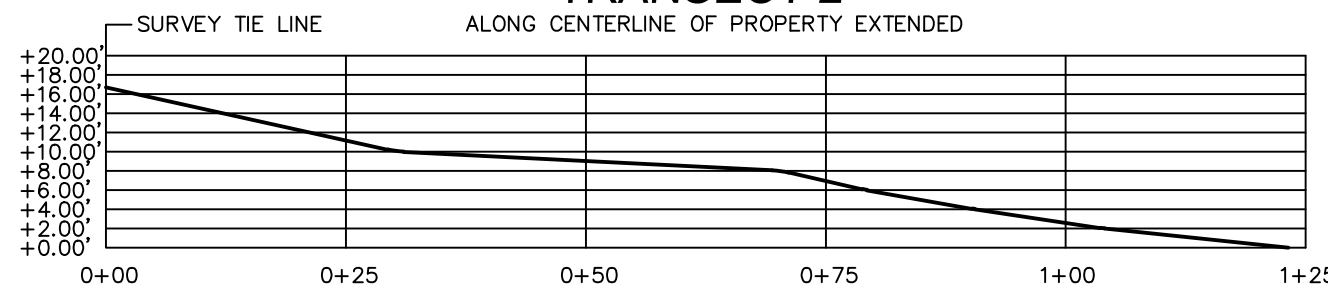
LEGEND:

ATT	= AT&T RISER	M	= MEASURED
B.F.	= BACKFLOW PREVENTER	MISC.	= MISCELLANEOUS
B.M.	= BENCHMARK	M.H.	= MANHOLE
B.C.R.	= BROWARD COUNTY RECORDS	NAVD	= NORTH AMERICAN VERTICAL DATUM
C	= CALCULATED MEASUREMENT	NGVD	= NATIONAL GEODETIC VERTICAL DATUM
CL	= CENTERLINE	Q.R.B.	= OFFICIAL RECORDS BOOK
C.B.	= CATCH BASIN	P	= PLAT MEASUREMENT
C.B.S.	= CONCRETE BLOCK STRUCTURE	P.B.	= PLAT BOOK
CTV	= CABLE TV RISER	P.E.	= POOL EQUIPMENT
C.O.	= CLEAN OUT	SMH	= SANITARY MANHOLE
CONC.	= CONCRETE	TYP.	= TYPICAL
C.P.P.	= CONCRETE POWER POLE	W.M.	= WATER METER
D	= DEED MEASUREMENT	P.P.	= POWER POLE
E.S.	= ELECTRIC SERVICE	A/C	= AIR CONDITIONING UNIT
E.M.	= ELECTRIC METER	T2	= TREE & TREE NUMBER
ELEV.	= ELEVATION	o/s	= OFFSET
F.P.L.	= FLORIDA POWER & LIGHT	R/W	= RIGHT-OF-WAY
I.V.	= IRRIGATION VALVE	F	= FIRE HYDRANT
L.P.	= LIGHT POLE	U	= UTILITY POLE
		SPOT	= SPOT ELEVATION

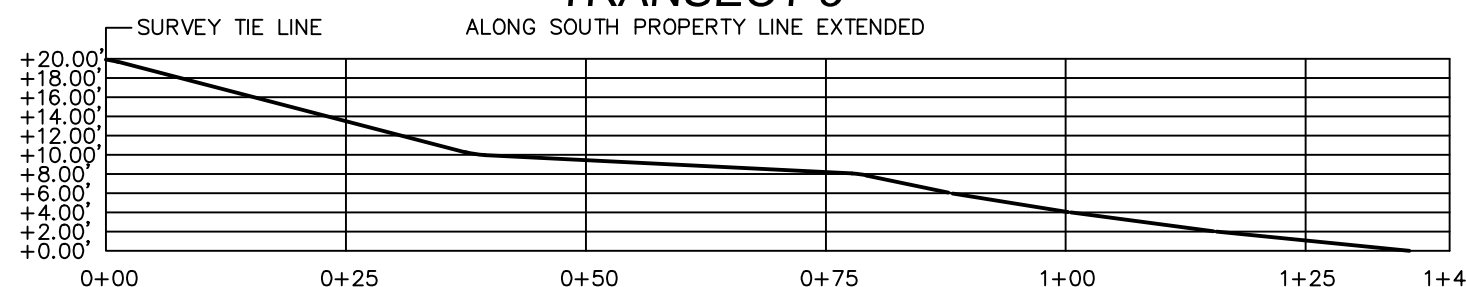
TRANSECT 1



TRANSECT 2

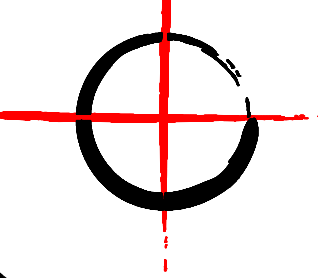


TRANSECT 3



LINE DATA:

L1:	S03°21'55"E(C)	20.48'(C)
L2:	S01°46'09"W(C)	29.06'(C)
L3:	S01°18'08"W(C)	28.46'(C)
L4:	S02°22'05"W(C)	22.17'(C)
L5:	S88°09'08"W(C)	28.02'(C)
L6:	N88°09'08"E(C)	30.53'(C)
L7:	N88°09'08"E(C)	16.91'(C)
L8:	N05°31'58"W(C)	10.92'(C)
L9:	N08°21'16"E(C)	8.05'(C)
L10:	N02°20'46"E(C)	27.96'(C)
L11:	N04°22'58"W(C)	6.94'(C)
L12:	N00°31'10"W(C)	16.59'(C)
L13:	N04°37'20"E(C)	13.67'(C)
L14:	N10°29'51"E(C)	11.50'(C)
L15:	N10°57'22"E(C)	5.08'(C)
L16:	S88°09'08"W(C)	22.73'(C)



PINNELL SURVEY, INC.

PROFESSIONAL SURVEYORS AND MAPPERS
5300 WEST HILLSBORO BOULEVARD, SUITE 215-A
COCONUT CREEK, FLORIDA 33073
PHONE: (954)418-4940 FAX: (954)418-4941
LICENSED BUSINESS #6857

PROJECT ADDRESS: 971 HILLSBORO MILE
HILLSBORO BEACH, FLORIDA 33062

CERTIFY TO:

- SERGEY SACHENKO AND GALINA SACHENKO, HUSBAND AND WIFE
- OLD FLORIDA TITLE COMPANY
- OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

LEGAL DESCRIPTION:

A PARCEL OF LAND IN GOVERNMENT LOT 1 OF SECTION 20, TOWNSHIP 48 SOUTH, RANGE 43 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
THAT PART OF THE NORTH 100 FEET OF THE SOUTH 2859 FEET OF SAID SECTION 20 (MEASURED AT RIGHT ANGLES TO THE SOUTH LINE THEREOF) LYING EAST OF THE EAST RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY AS NOW LOCATED AND CONSTRUCTED; SAID LANDS LYING IN BROWARD COUNTY, FLORIDA; EXCEPTING THEREFROM THE RIGHT-OF-WAY FOR STATE ROAD A-1-A AS PRESENTLY LAID OUT AND EXISTING.

ENCROACHMENT NOTES:

- 1) 4 FOOT ALUMINUM FENCE ON C.B.S. RETAINING WALL AND CONCRETE COLUMN CROSS OVER THE NORTHERLY PROPERTY LINE.

GENERAL NOTES:

- 1) TYPE OF SURVEY: BOUNDARY AND TIDAL WATER SURVEY
- 2) IF THIS SURVEY HAS BEEN REVISED AS INDICATED IN THE REVISION BOX SHOWN HEREON, THEN ANY AND ALL PREVIOUS VERSIONS OF THIS SURVEY PREPARED BY PINNELL SURVEY, INC. ARE NULL & VOID
- 3) THIS SURVEY IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, UNLESS ELECTRONICALLY SIGNED AND SEALED.
- 4) THE PROPERTY SHOWN HEREON WAS NOT ABSTRACTED FOR OWNERSHIP, RIGHTS-OF-WAY, EASEMENTS OR OTHER MATTERS OF RECORD BY PINNELL SURVEY, INC. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT DEPICTED ON THIS SURVEY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THE COUNTY, FOR WHICH THE SUBJECT PROPERTY IS LOCATED IN.
- 5) UNLESS OTHERWISE NOTED, FIELD MEASUREMENTS ARE IN AGREEMENT WITH RECORD MEASUREMENTS.
- 6) ELEVATIONS SHOWN HEREON (IF ANY) ARE BASED ON THE NAVD '88, UNLESS OTHERWISE NOTED.
- 7) UNDERGROUND IMPROVEMENTS AND UTILITIES ARE NOT LOCATED.
- 8) FENCE AND WALL OWNERSHIP IS NOT DETERMINED.
- 9) THIS DRAWING IS THE PROPERTY OF PINNELL SURVEY, INC. AND SHALL NOT BE USED OR REPRODUCED, WHOLE OR IN PART WITHOUT WRITTEN PERMISSION & AUTHORIZATION FROM PINNELL SURVEY, INC.
- 10) ALL EASEMENTS SHOWN ON THE ATTACHED DRAWING ARE PER THE RECORD PLAT (UNLESS OTHERWISE NOTED).
- 11) BEARINGS SHOWN HEREON ARE BASED ON A BEARING OF NORTH 00°49'16" EAST ALONG THE BASELINE OF SURVEY AS SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION 86050-2507, SHEET 3 OF 14.
- 12) THE COORDINATES SHOWN AS THUS 861973.928(E) ARE IN U.S. SURVEY FEET AND ARE RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM BASED ON THE TRANSVERSE MERCATOR PROJECTION, EAST ZONE, NORTH AMERICAN DATUM OF 1983/1990 (NAD 83/90).
- 13) GPS OBSERVATION UTILIZING SEPTENTRIO ALTUS NR3 GPS UNIT REFERENCED TO HORIZONTAL STATION "BOCA" WAS USED IN ESTABLISHING THE BEARINGS, COORDINATES AND THE VERTICAL DATUM (NAVD '88) AS SHOWN HEREON.
- 14) THE PROPERTY SHOWN HEREON IS LOCATED WITHIN MULTIPLE FLOOD ZONES AS SHOWN HEREON, AND PER F.I.R.M. MAP 120040-0189-H, BEARING A MAP EFFECTIVE DATE OF 08/18/14.
- 15) THIS MEAN HIGH WATER SURVEY LINE COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES*
- 16) AVERAGE TOP OF DUNE HEIGHT ELEVATION = 21.4' NAVD '88
- 17) DATE FIELDWORK PERFORMED: 11/19/20 (FIELD BOOK 623, PAGE 04)
- 18) DRAWN BY: J.H.P. & Q.D.I. CHECKED BY: J.H.P.

CERTIFICATION:

THIS IS TO CERTIFY THAT I HAVE RECENTLY SURVEYED THE PROPERTY DESCRIBED IN THE FOREGOING TITLE CAPTION AND HAVE SET OR FOUND MONUMENTS AS INDICATED ON THIS SKETCH AND THAT SAID ABOVE GROUND SURVEY AND SKETCH ARE ACCURATE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE UNDER RULE SJ-17, FLORIDA ADMINISTRATIVE CODE, ADOPTED BY THE FLORIDA STATE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS.

JASON H. PINNELL
PROFESSIONAL SURVEYOR & MAPPER
LICENSE NO. 5734 - STATE OF FLORIDA

REVISIONS:

REVISION	DATE	CHECKED BY
ADD EROSION CONTROL LINE	12/15/20	J.P.
ADD CENTLINE AND CHANNEL OF INTRACOASTAL WATERWAY	3/22/21	J.P.
ADDITIONAL ELEVATIONS, MEAN HIGH WATER LINE, DOLPHIN PILES (21-1346)	6/24/21	J.P.
ADD COORDINATES TO DOLPHIN PILES (21-2008)	9/20/21	J.P.

PROJECT NAME: SACHENKO

JOB NO.: 20-2241



Printed: 2/15/2022 12:14:00 PM

Page 1 of 3

Order ID: 7151601

* Agency Commission not included

GROSS PRICE * : **\$128.90**

PACKAGE NAME: SSC Other Legal Notices



Printed: 2/15/2022 12:14:00 PM

Page 2 of 3

Order ID: 7151601

* Agency Commission not included

GROSS PRICE * : **\$128.90**

PACKAGE NAME: SSC Other Legal Notices

Product(s): Sun Sentinel, Affidavit, Floridapublicnotices.com, Classified.ss.com_Legal

AdSize(s): 1 Column

Run Date(s): Friday, February 18, 2022

Zone: Full Run

Color Spec. B/W

Preview

Order ID: 7151601

* Agency Commission not included

GROSS PRICE * : \$128.90**PACKAGE NAME: SSC Other Legal Notices**

**TOWN OF HILLSBORO BEACH, FLORIDA
COMMISSION MEETING
TUESDAY, MARCH 1, 2022 AT OR
AROUND 9:00 AM
SITE PLAN REVIEW FOR 971 HILL-
SBORO MILE, HILLSBORO BEACH,
FLORIDA 33062**

NOTICE IS HEREBY GIVEN the Town of Hillsboro Beach, Florida Town Commission will meet Tuesday, March 1, 2022, for Site Plan Review for property located at 971 Hillsboro Mile, Hillsboro Beach, Florida 33062.

Information on the SITE PLAN REVIEW can be obtained at Town Hall, 10 days prior to the meeting. Public comments on the request will be received in-person at the meeting on March 1, 2022 as well as virtually via Zoom or can be provided in writing to the Town Clerk prior to the Public Hearing via email: TownClerk@TownofHillsboroBeach.com.

The public can attend in person or virtually via Zoom video conference and provide public comment. Zoom Meeting log-in details will be provided on Town Website.

If any person decides to Appeal any decision made with respect to any matter considered at the Public Hearing, he/she will need a record of the proceedings and for such purposes may need to ensure that a verbatim recording of the proceedings is made, which records include the testimony and evidence upon which the Appeal is to be based.

In accordance with the American with Disabilities Act and Florida Statute 286.26, persons with disabilities needing special accommodations to participate in these proceedings should contact the Town Clerk no later than two days prior to the Public Hearing at 954-427-4011 for assistance.

Sherry D. Henderson, CMC Town Clerk
TOWN OF HILLSBORO BEACH, FLORIDA
2/18/2022

2/18/20227151601



TOWN OF HILLSBORO BEACH, FLORIDA

1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

(P) 954-427-4011
(F) 954-427-4834

CERTIFICATION LETTER



Date: February 18, 2022

Applicant: James M. Barron

Legal Description: 20-48-43 PT GOV LOT 1 LYING E OF CANAL R/W, 100 FT
WIDTH LYING BET PARLINES, S/L OF TR BEING PAR WITH
& 2759 N OF S/L OF SEC

Address: 971 Hillsboro Mile, Hillsboro Beach, FL 33062

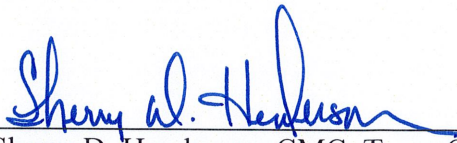
Type of Application: Site Plan Review

This letter certifies the enclosed list of property owners were mailed PUBLIC NOTICE of the scheduled March 1, 2022 Commission Meeting, concerning Site Plan Review for property located at 971 Hillsboro Mile, Hillsboro Beach, FL 33062. The list below includes all properties within 300 feet from property line of the subject site in compliance with the Town of Hillsboro Beach notification regulations.

This letter also certifies that the notices were mailed to property owners on February 14, 2022.

NOTICE MAILED TO:

- 973 Hillsboro Mile, Hillsboro Beach, FL 33062
- 971 Hillsboro Mile, Hillsboro Beach, FL 33062
- 975 Hillsboro Mile, Hillsboro Beach, FL 33062
- 969 Hillsboro Mile, Hillsboro Beach, FL 33062
- 977 Hillsboro Mile, Hillsboro Beach, FL 33062
- 967 Hillsboro Mile, Hillsboro Beach, FL 33062
- 965 Hillsboro Mile, Hillsboro Beach, FL 33062

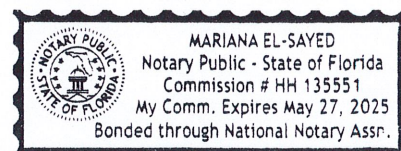

Sherry D. Henderson, CMC, Town Clerk
Town of Hillsboro Beach

NOTARY PUBLIC

Sworn to and subscribed before me this 18 day of Feb, 2022


Notary Signature

My Commission Expires on: 5/27/25



INTRACOASTAL WATERWAY



LOCATION MAP - N.T.S

LEGAL DESCRIPTION:

A PARCEL OF LAND IN THE GOVERNMENT LOT 1 OF SECTION 20, TOWN 48 SOUTH, RANGE 43 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS: THAT PART OF THE NORTH 100 FEET OF THE SOUTH 2859 FEET OF SAID SECTION 20 (MEASURED) AT RIGHT ANGLES TO THE SOUTH LINE THEREOF LYING EAST OF EAST THE RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY AS NOW LOCATED AND CONSTRUCTED; SAID LANDS LYING IN BROWARD COUNTY, FLORIDA; EXCEPTING THEREFROM THE RIGHT-OF-WAY FOR STATE ROAD A-1-A AS PRESENTLY LAID OUT AND EXISTING.

A02 SITE PLAN
1" = 10'-0"

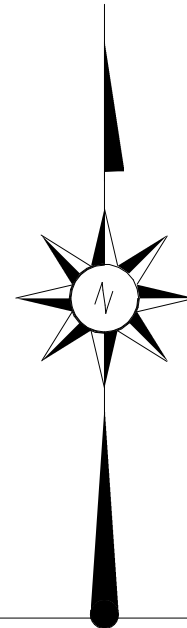
CODE PARAMETERS

GOVERNING CODE	2020 FLORIDA BUILDING CODE
MUNICIPALITY	TOWN OF HILLSBORO BEACH
ZONING CODE	R5-2
OCCUPANCY CLASS	RESIDENTIAL
CONSTRUCTION TYPE	TYPE III (B) UNPROTECTED
FEMA FLOOD ZONE	VE
BASE FLOOD ELEVATION (FEMA)	9'-0" NAVD
ALLOWABLE MAX. BUILDING HEIGHT	35'-0" FROM AVERAGE DUNE ELEVATION
FRONT SETBACK	85'-0"
REAR SETBACK	EASTERLY BUILDING LINE
SIDE SETBACK	15'-0" MIN - 17'-6" MAX.
POOL SETBACK	15'-0"

AREA CALCULATIONS SCHEDULE

DESCRIPTION	PROPOSED (SQF)
BASEMENT FLOOR AIR CONDITIONED AREA PARKING GARAGE	3,017 2,234
FIRST FLOOR AIR CONDITIONED AREA COVERED ENTRY VERANDA	3561 201 1,377
SECOND FLOOR AIR CONDITIONED AREA COVERED BALCONY	4333 750
THIRD FLOOR AIR CONDITIONED AREA BALCONIES OPEN DECK TRELLISED DECK	3472 312 1,034 336
TOTAL AIR CONDITIONED AREA TOTAL NON AIR CONDITIONED AREA	14,383 6,244
TOTAL GROSS AREA TOTAL LOT AREA	20,627 32,162

NOTE:
EXISTING RESIDENCE TO BE
DEMOLISHED UNDER
SEPARATE PERMIT.



SITE PLAN NOTES:

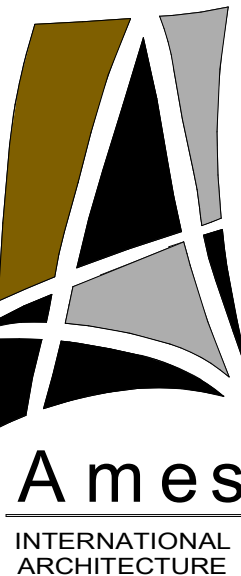
- LOWEST SLAB AT 10.083' NAVD.
- LOT DRAINAGE SHALL BE AS ALL LOCAL CODES, REGULATIONS AND RESTRICTIONS HAVING JURISDICTION.
- LANDSCAPING, IRRIGATION, BERMING, ETC., SHALL BE AS ALL LOCAL CODES, REGULATIONS, RESTRICTIONS HAVING JURISDICTION, AND FURTHER, AS SELECTED AND DIRECTED BY BUILDER. (NOT A PART OF THE AMES INTERNATIONAL ARCHITECTURE CONTRACT).
- DRIVEWAYS, WALKWAYS, SLAB ON GRADE, POOL DECKS, SWIMMING POOL ARE BY OTHERS AND PERMITTED SEPARATELY. (NOT A PART OF THE AMES INTERNATIONAL ARCHITECTURE CONTRACT. SEE OWNER).
- SWIMMING POOL, DECK, SPA, ETC., BY OTHERS, SEE POOL SUBCONTRACTORS ENGINEERED SHOP DRAWINGS. PERMITTED SEPARATELY AND NOT A PART OF THE AMES INTERNATIONAL ARCHITECTURE CONTRACT. SEE OWNER.
- LAND SURVEYOR SHALL VERIFY LOCATION OF HOUSE ON SITE AND ANY OCCURRING SETBACK ENCROACHMENTS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT PRIOR TO ANY WORK BEING DONE.
- SITE PLAN AS DRAWN REFLECTS ARCHITECT'S CONCEPTION OF OVERALL SITE LAYOUT AND FEATURES, AND MAY NOT NECESSARILY BE AN ACCURATE REPRESENTATION OF THE BUILDERS STANDARD INCLUDED FEATURES OR LAYOUT AND DESIGN.

PRELIMINARY SET

MR. SERGEY SACHENKO
971 HILLSBORO MILE

REVISIONS

#	DESCRIPTION	DATE	BY
1	Revision 1	9/15/21	AG
2	Site Plan Review Comment	11/4/20	AG
3	Site Plan Review Comment	12/16/20	AG
4	Site Plan Review Comment	1/5/2022	AG
5	Site Plan Review Comments	1/25/2022	AG
6	Site Plan Review	2/7/2022	AG



DRAWN A.G.
CHECKED S.A.
DATE Issue Date
SCALE As indicated
JOB NO. 20_4937
SHEET

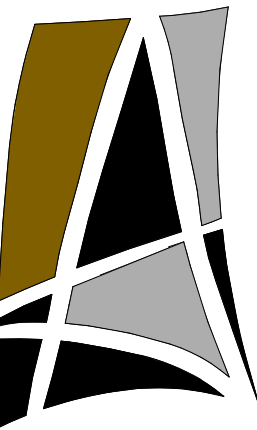
A-02

OF # SHEETS

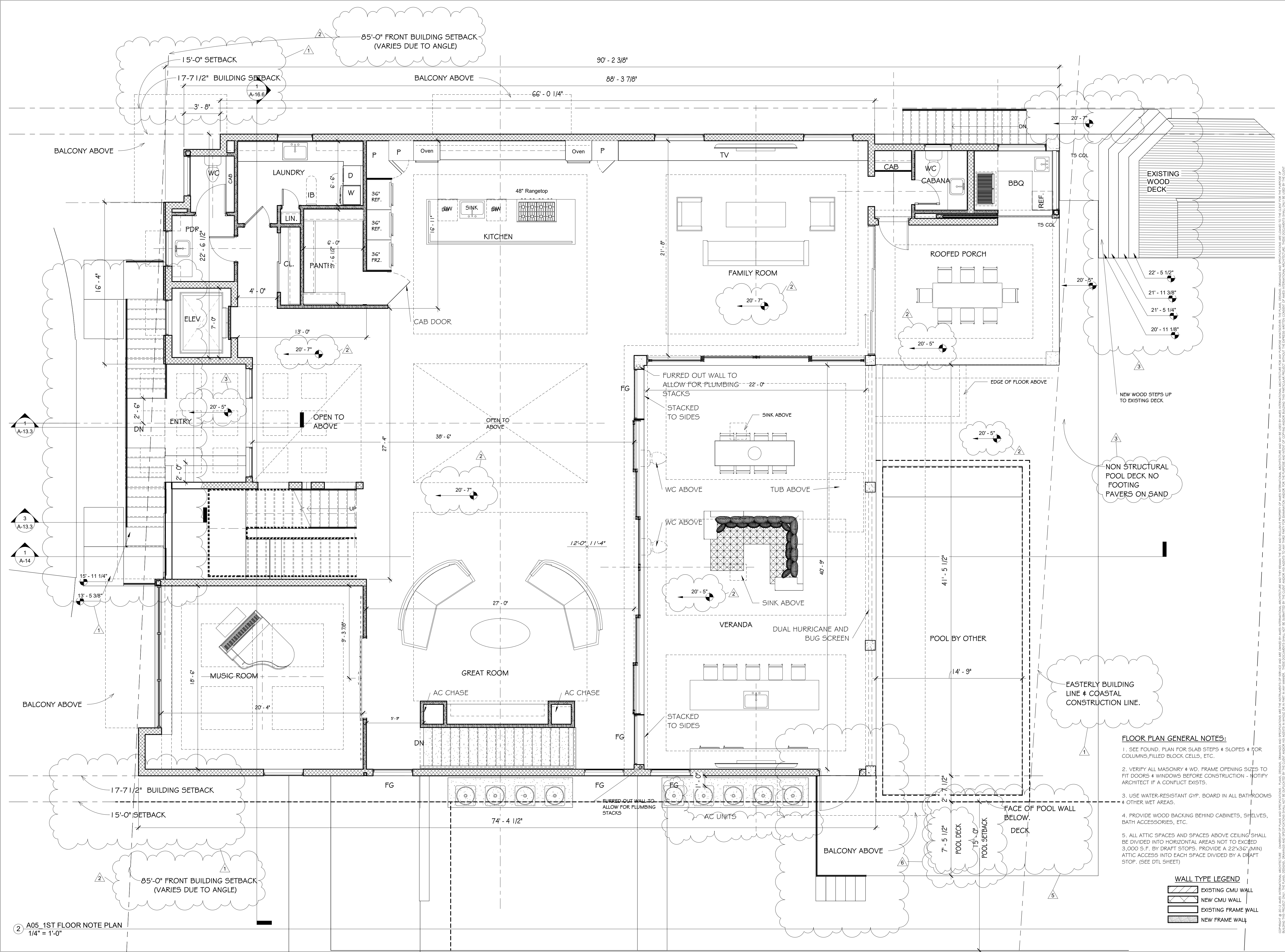


MR. SERGEY SACHENKO
971 HILLSBORO MILE

Shane Ames - Architect



IC# : A40002307 ARCH# : AR0012001 ADDRESS - HISTORIC



2 A05 1ST FLOOR NOTE PLAN
1/4" = 1'-0"

PRELIMINARY SET

MR. SERGEY SACHENKO

971 HILLSBORO MILE

#	REVISIONS	DATE	BY
1	Revision 1	9/15/21	AG
2	Site Plan Review	11/4/20	AG
3	Site Plan Review	12/16/20	AG
5	Site Plan Review	1/25/20	AG
6	Site Plan Review	2/7/202	AG

Shane Ames - Architect

Ames
INTERNATIONAL
ARCHITECTURE

DRAWN	AUTHOR
Author	S.A.

CHECKED	DATE
S.A.	Issue Date

SCALE	JOB NO.
1/4" = 1'-0"	20_4937

SHEET
A-05

OF # SHEETS

1ST FLOOR NOTE PLAN

OF # SHEETS

1ST FLOOR NOTE PLAN

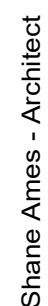
OF # SHEETS

Page 450 of 567

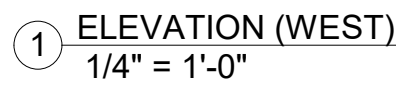


MR. SERGEY SACHENKO
971 HILLSBORO MILE

Shane Ames - Architect



A-09



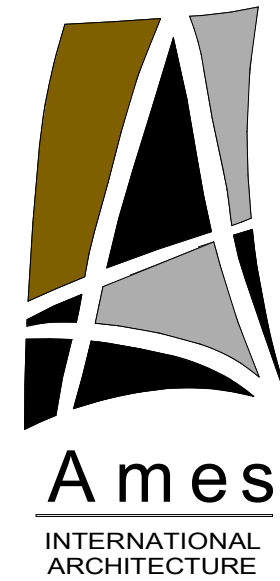
BUILDING ELEVATIONS

WITHOUT THE EXPRESS WRITTEN CONSENT OF AXES INTERNATIONAL ARCHITECTURE, THESE DOCUMENTS SHALL ONLY BE USED FOR PRELIMINARY SET

MR. SERGEY SACHENKO
971 HILLSBORO MILE

[illegible]

Shane Ames - Architect

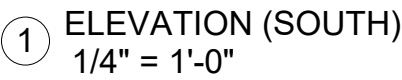


Lic#: AA0002307 ARCH.R.#: AR0012001

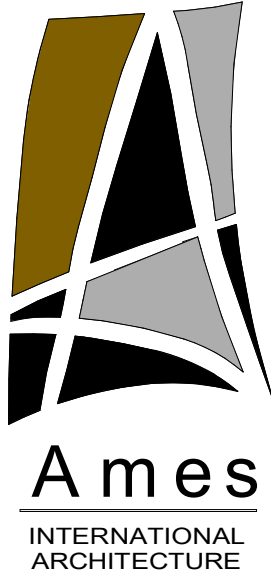
DRAWN
Author
CHECKED
S.A.
DATE
Issue Date
SCALE
4" = 1'-0"
JOB NO.
O 4937
SHEET

A-12

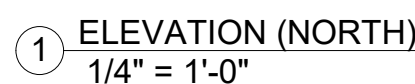
OF # SHEETS



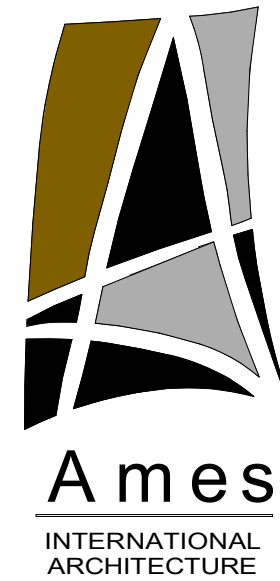
DRAWN		
Author		
CHECKED		
S.A.		
DATE		
Issue Date		
SCALE		
$1/4" = 1'-0"$		
JOB NO.		
20 4937		
SHEET		
A-13		
OF	#	SHEETS

Shane Ames - Architect

MR. SERGEY SACHENKO
971 HILLSBORO MILE



DRAWN
Author
CHECKED
Checker
DATE
Issue Date
SCALE
1/4" = 1'-0"
JOB NO.
20 4937
SHEET
A-13.1
OF # SHEETS

Shane Ames - Architect

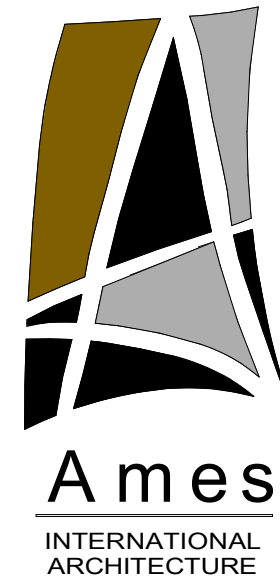
MR. SERGEY SACHENKO
971 HILLSBORO MILE



MR. SERGEY SACHENKO
971 HILLSBORO MILE

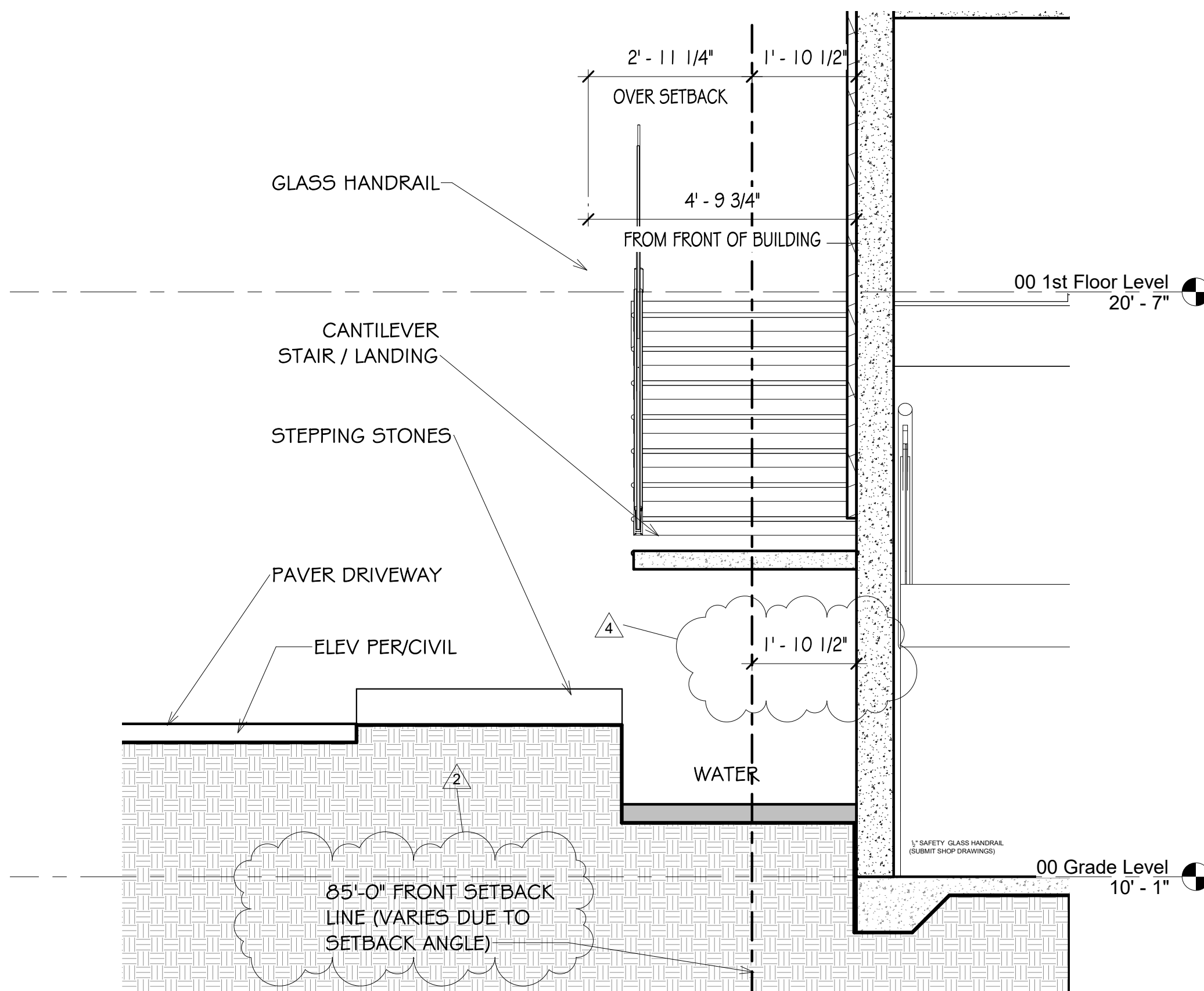
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Shane Ames - Architect



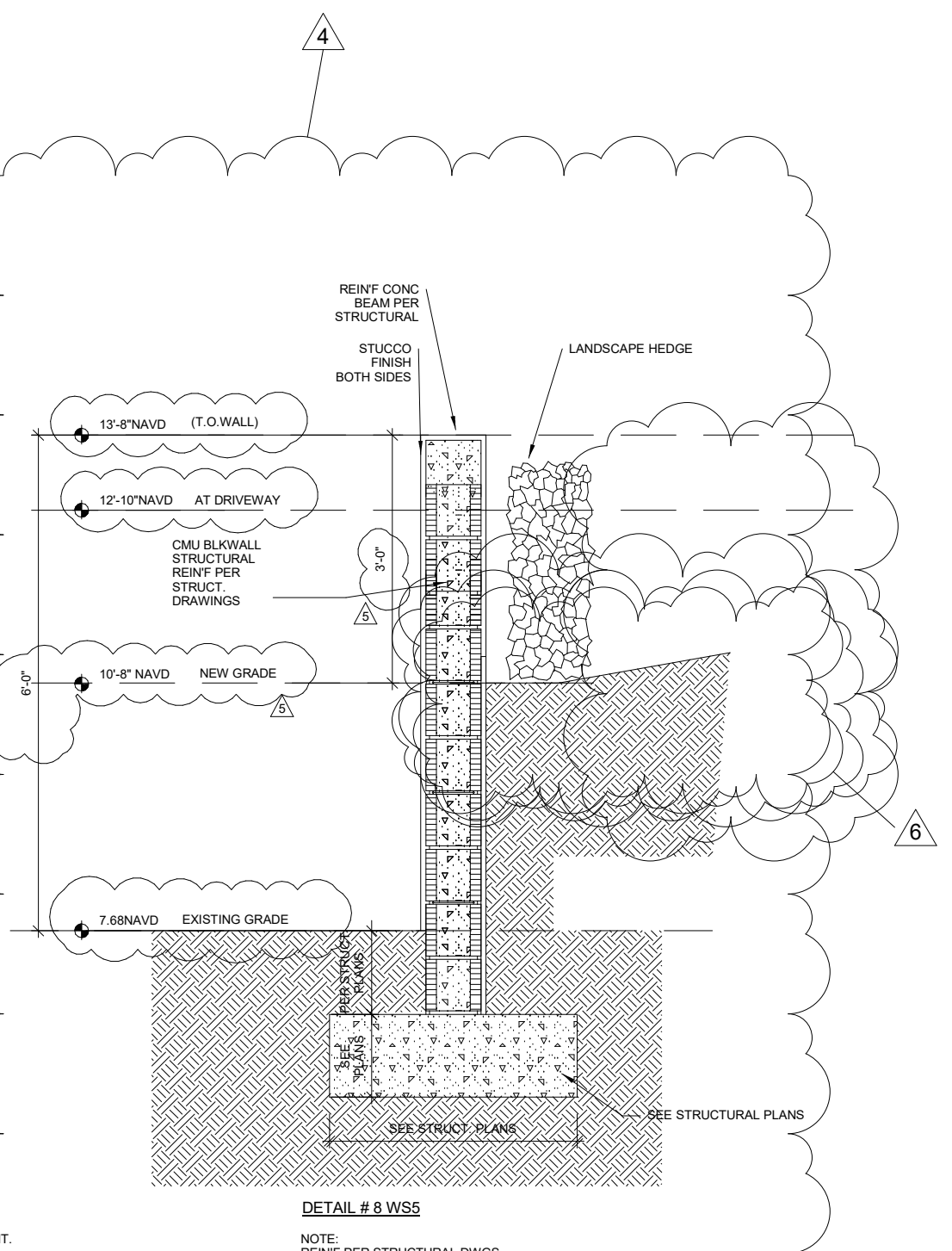
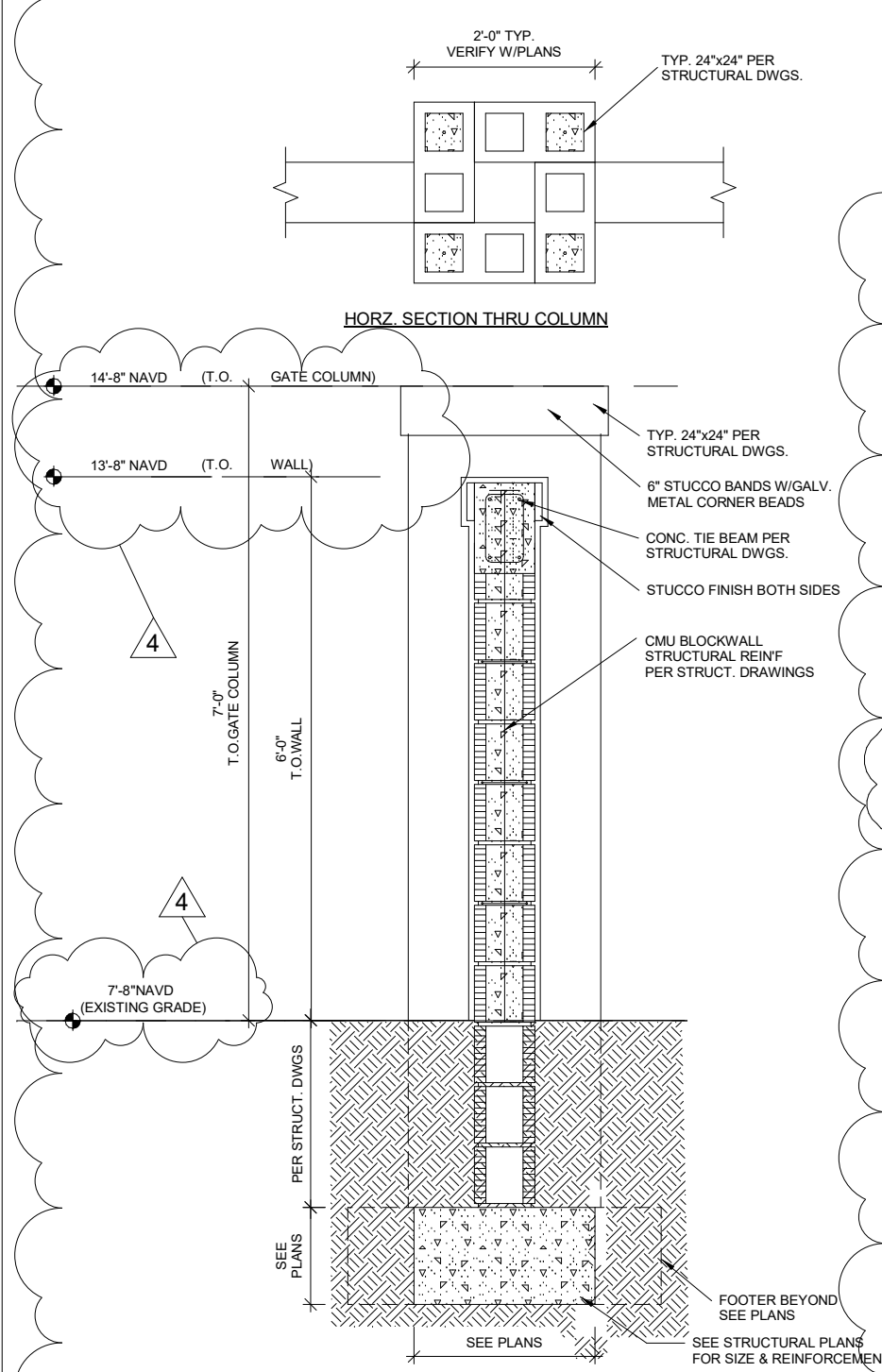
BUILDING ELEVATIONS

DRAWN	Author
CHECKED	Checker
DATE	Issue Date
SCALE	$1/4" = 1'-0"$
JOB NO.	20 4937
SHEET	
A-13.2	
OF	#
SHEETS	

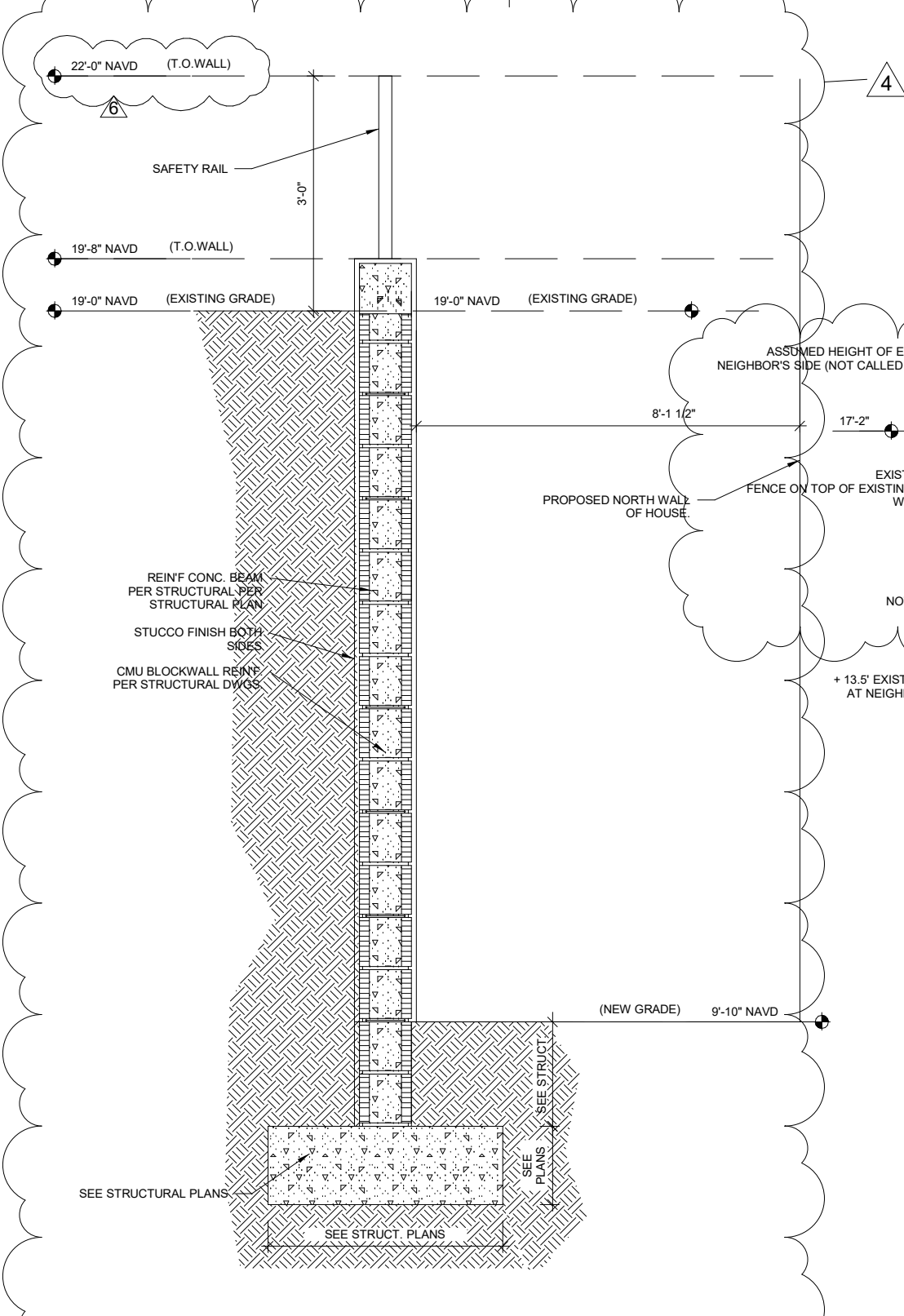


SECTION THROUGH ENTRY STAIRCASE

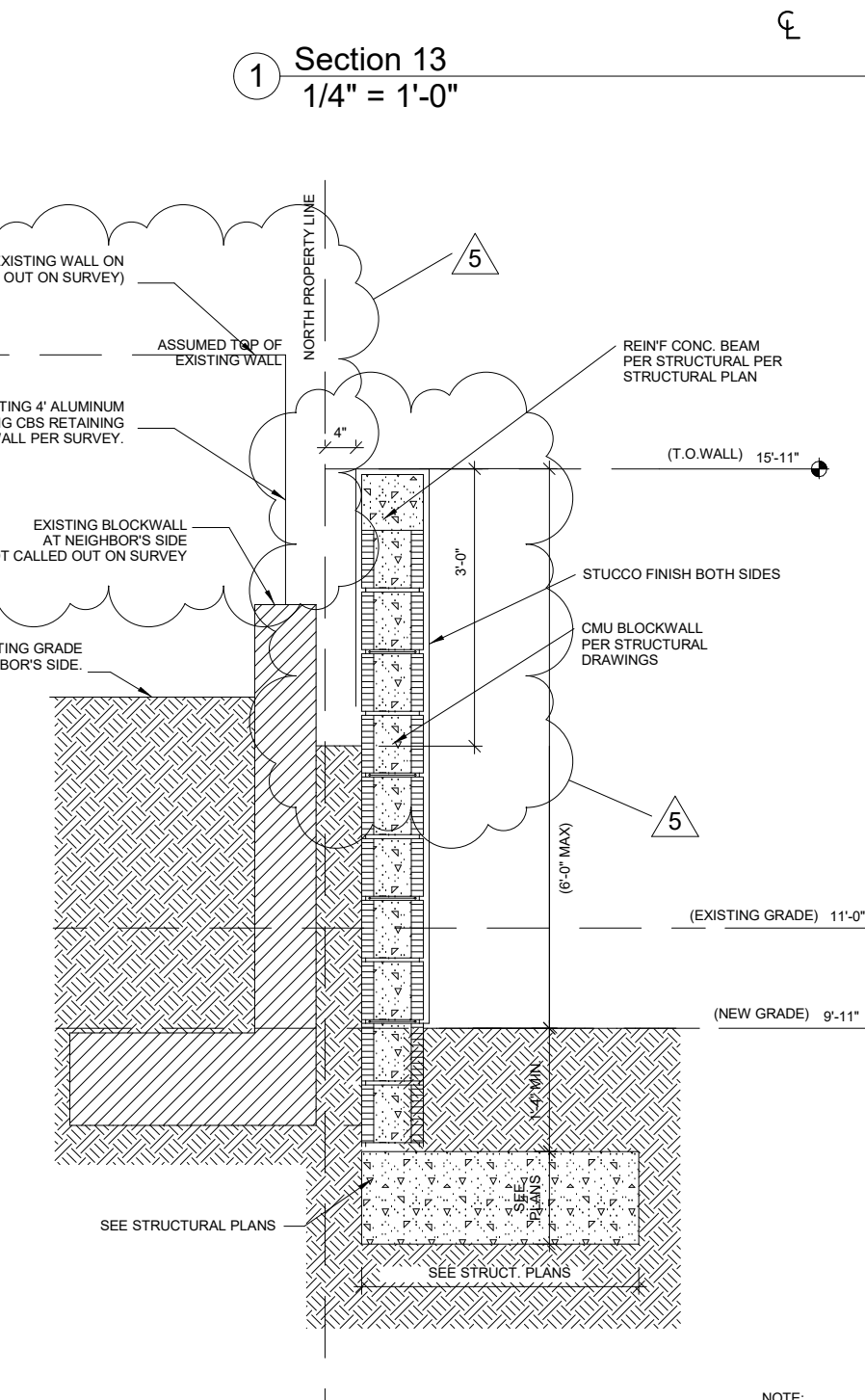
3 Section 16
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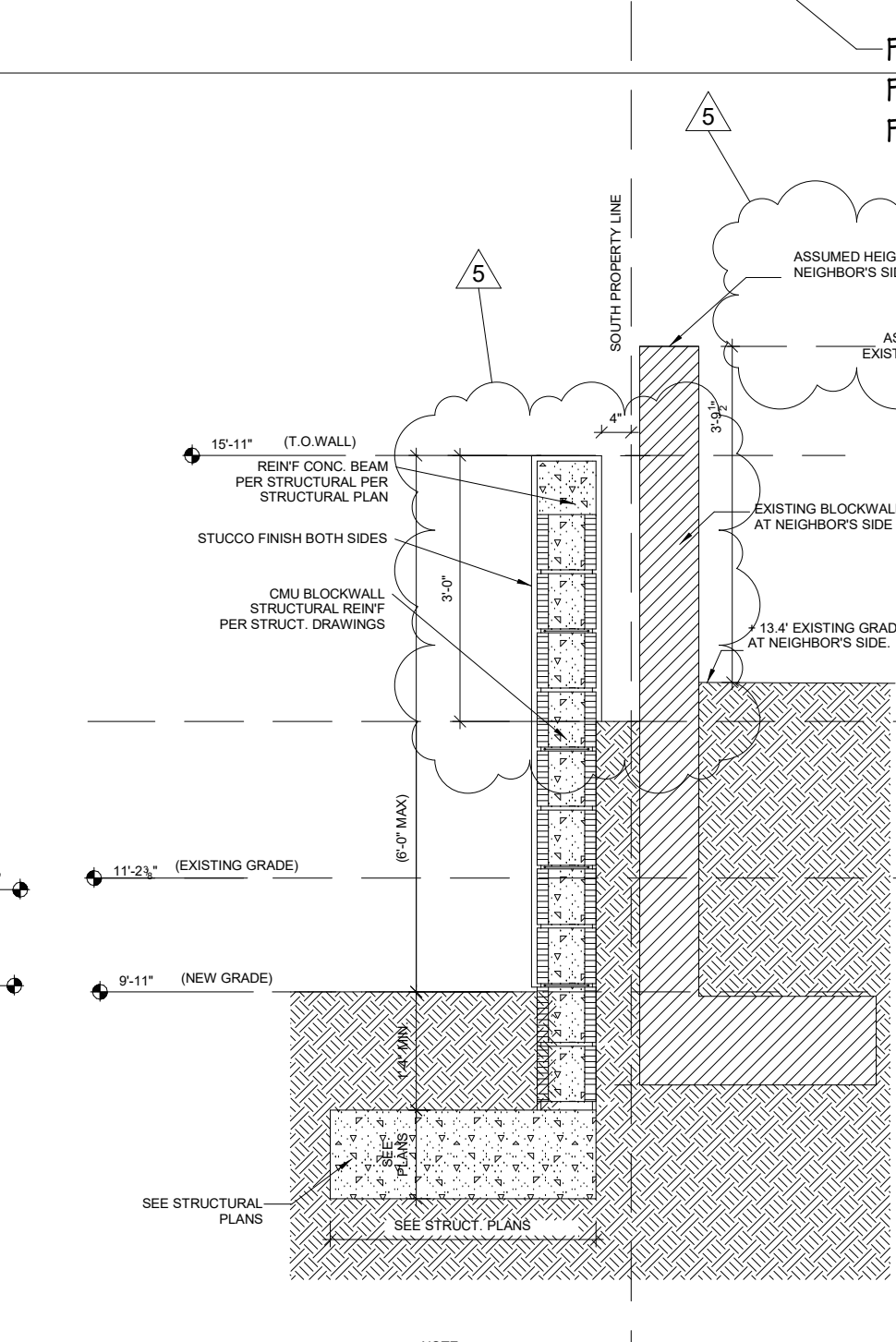
8 WS5
1/2" = 1'-0"



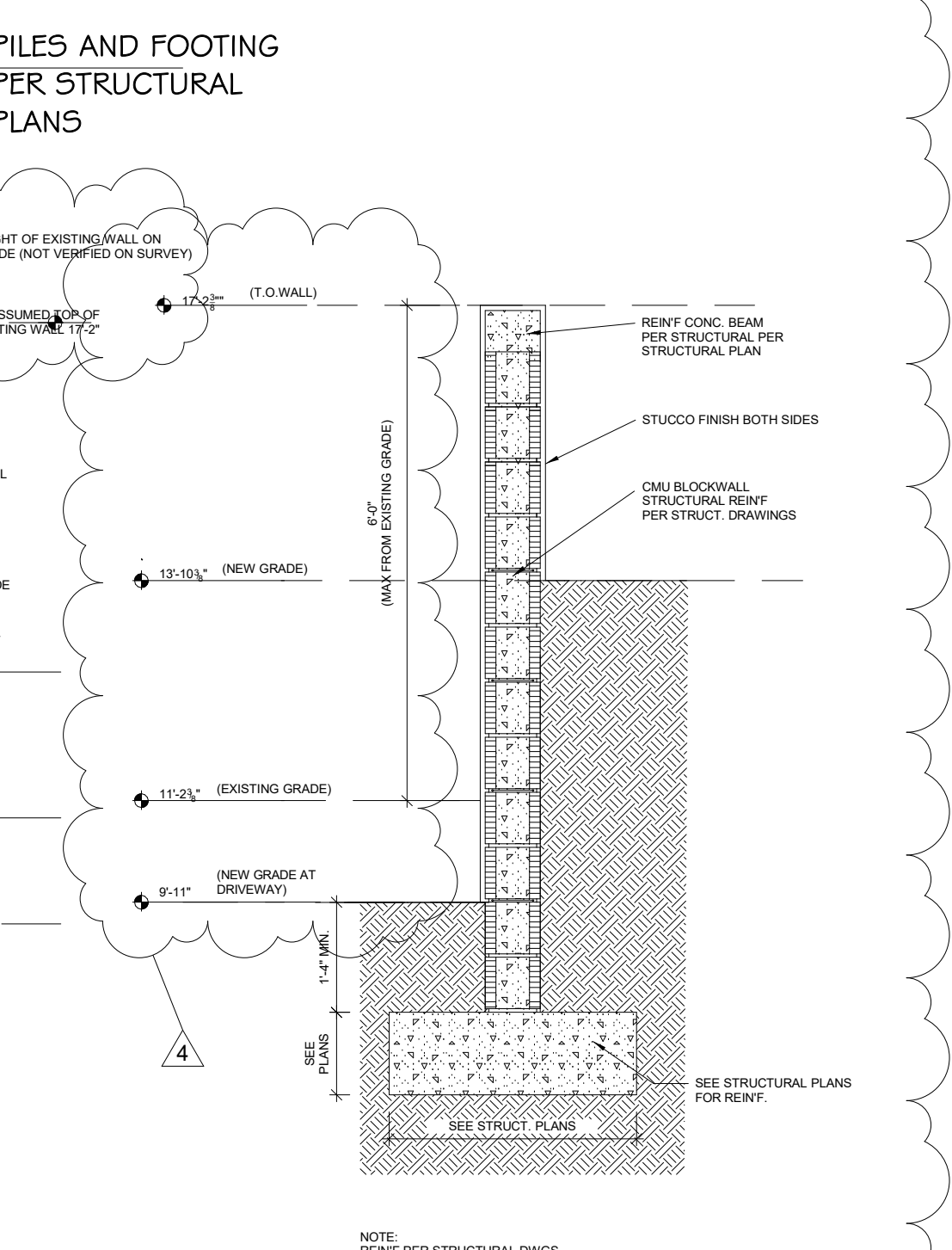
7 WS4
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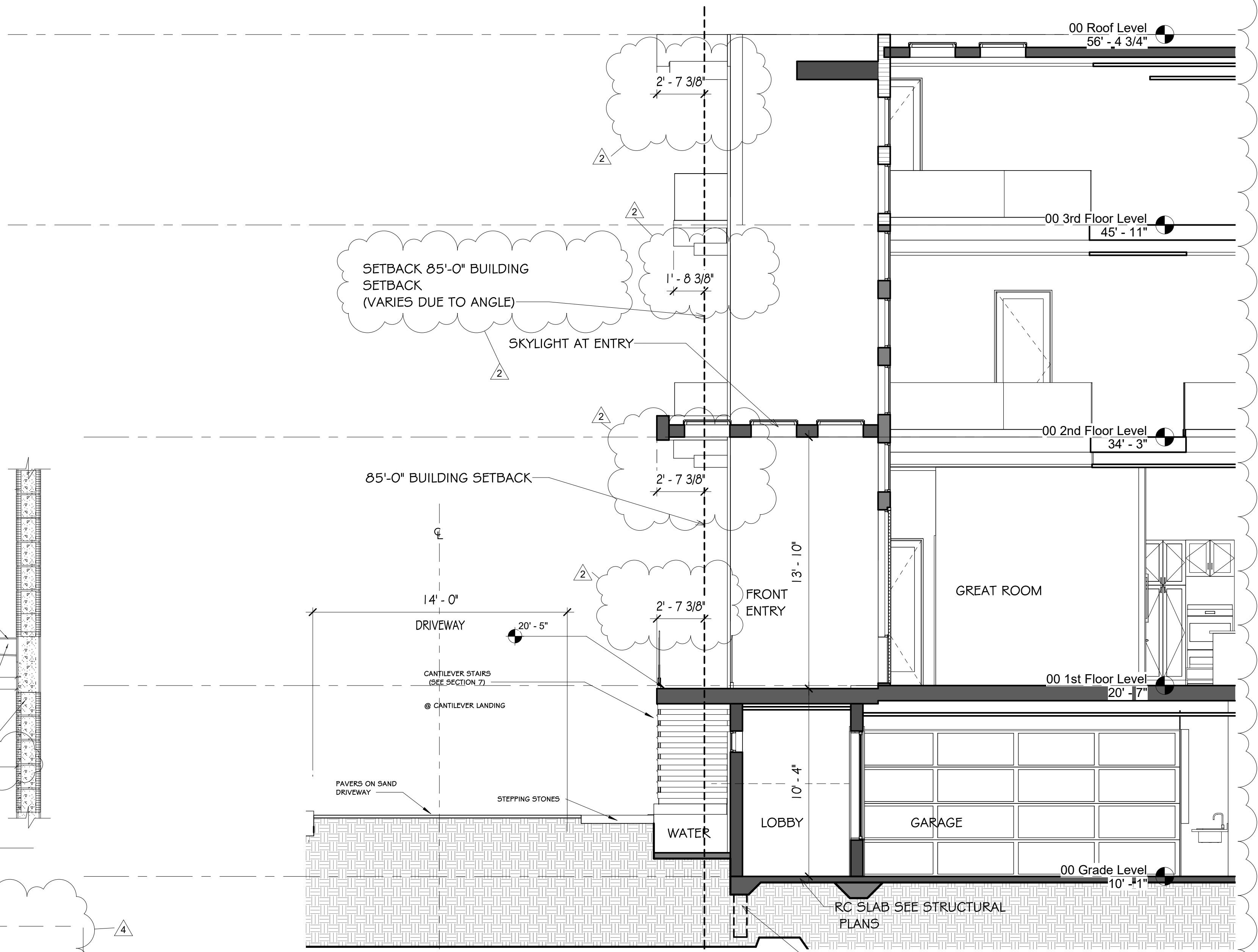
6 WS3
1/2" = 1'-0"



5 WS2
1/2" = 1'-0"



4 WS1
1/2" = 1'-0"



1 Section 13
1/4" = 1'-0"

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PRELIMINARY SET

MR. SERGEY SACHENKO
971 HILLSBORO MILE

REVISIONS			
#	DESCRIPTION	DATE	BY
1	Revision 1	9/15/21	AG
2	Site Plan Review	11/4/20	AG
3	Site Plan Review	21	AG
4	Site Plan Review	1/5/2022	AG
5	Site Plan Review	2/25/2022	AG
6	Site Plan Review	2/7/2022	AG

Shane Ames - Architect

Ames
INTERNATIONAL
ARCHITECTURE

DRAWN
Author
CHECKED
Checker
DATE
Issue Date
SCALE
As indicated
JOB NO.
20 4937
SHEET
A-13.3
OF # SHEETS

BUILDING SECTIONS

MR. SERGEY SACHENKO
971 HILLSBORO MILE

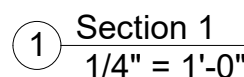
Shane Ames - Architect

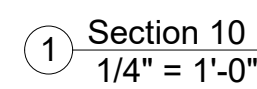


A-14

[illegible]

BUILDING SECTIONS

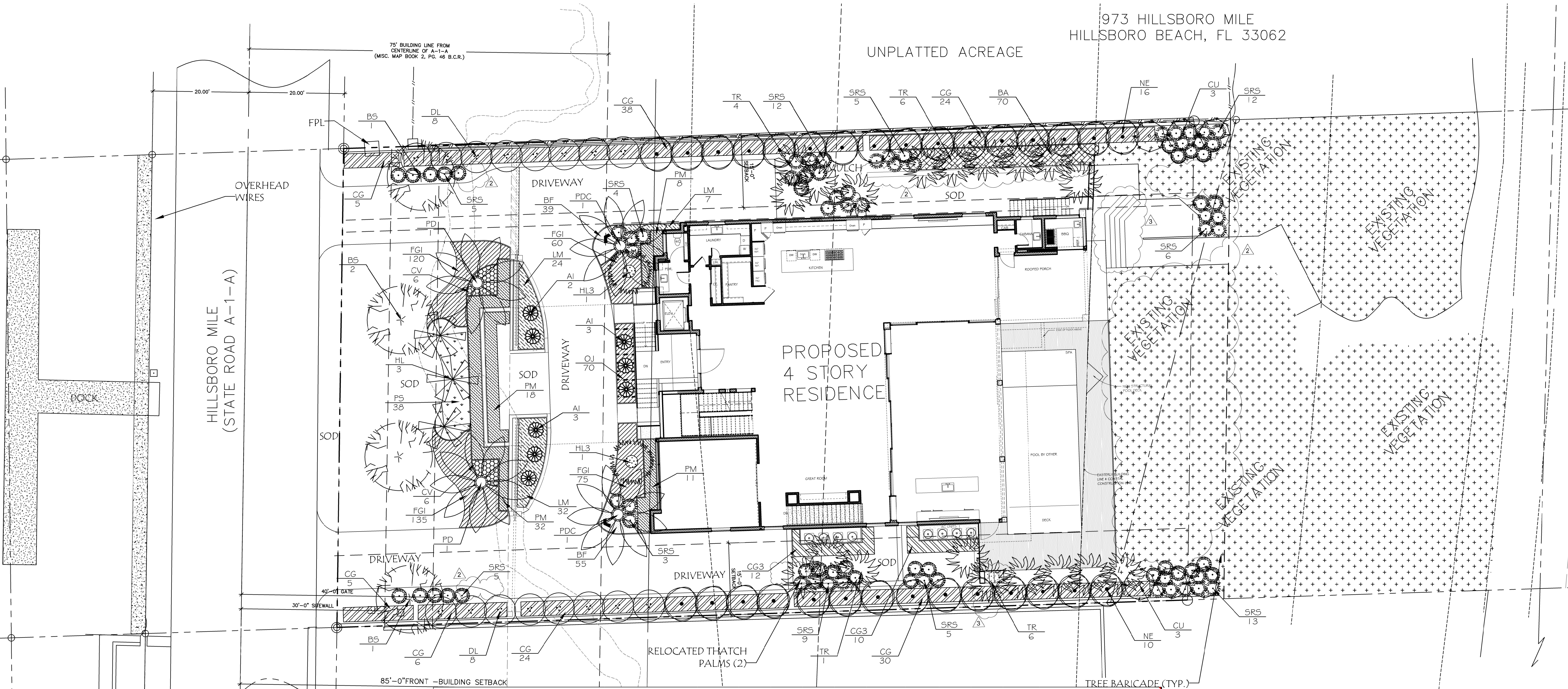




MR. SERGEY SACHENKO
971 HILLSBORO MILE

Shane Ames - Architect

OF	#	SHEETS
----	---	--------



48 HOURS BEFORE DIGGING

CALL 811

TOLL FREE

SUNSHINE STATE UTILITIES LOCATION

ONE CALL CENTER OF FLORIDA

CAUTION: PLEASE NOTE

Contractor shall secure all permits required for the work from any state or local departments, utility companies or jurisdiction affected by the work. The Contractor shall have permits "in hand" prior to starting work. The Landscape Architect and/or Owner shall bear no responsibility for work performed without permitted drawings. The Contractor shall be responsible for all changes to Work, at no additional cost to Owner, as a result of unauthorized work prior to receipt of permit.

969 HILLSBORO MILE

HILLSBORO BEACH, FL 33062

ALL PROPOSED TREE REMOVAL AND RELOCATIONS REQUIRE AN APPROVAL FROM BROWARD COUNTY. REVIEW PERMIT FOR ANY SPECIAL CONDITIONS AND MITIGATION. AN INSPECTION IS REQUIRED WITH BROWARD COUNTY BEFORE ANY TREE IMPACTS. IN ADDITION ALL TREES TO REMAIN SHALL HAVE A TREE BARRICADE ERECTED PER THE DETAIL PROVIDED. A TREE BARRICADE INSPECTION IS ALSO REQUIRED FROM BROWARD COUNTY.

LANDSCAPE PLANS ARE IN COMPLIANCE WITH CODE OF ORDINANCES OF TOWN OF HILLSBORO BEACH, FLORIDA AND BROWARD COUNTY

PLANTING PLAN

FOR PERMIT

JANUARY 13, 2022

02040

10

SCALE: 1" = 10'-0"

NORTH

PLANT LIST													
SYMBOL	BOTANICAL NAME	COMMON NAME	DBH/CONT.*	HEIGHT	SPREAD	SPACING	NATIVE	DROUGHT TOLERANCE	CATEGORY	CANOPY CREDIT (SQ. FT.)	TOTAL CANOPY CREDIT	QUANTITY	NOTES
TREES													
BS	Bursera simaruba	Gumbo Limbo	2.5" DBH	12'	4'	as shown	YES	HIGH	1	300	1,200	4	
CU	Coccoloba uvifera	Sea Grape	2.5" DBH	12'	5'	as shown	YES	HIGH	1	300	1,800	6	
NE	Noronhia emarginata	Madagascar Olive	2.5" DBH	12'	4'	as shown	NO	HIGH	2	150	3,900	26	Standard Form, 6' c.t.
PALMS													
DL	Dypsis lutescans	Areca Palm	Multi	16'	8'	as shown	NO	HIGH	4	50	800	16	
HL	Hyophorbe lagenicaulis	Bottle Palm		8'		as shown	NO	HIGH	4	50	150	3	Curved trunk
HL3	Hyophorbe lagenicaulis	Triple Bottle Palm		8'		as shown	NO	HIGH	4	50	100	2	Triple trunk
PD	Phoenix dactylifera 'Medjool'	Medjool Date Palm		14' c.t.	20'+	as shown	NO	HIGH	3	100	200	2	Florida Fancy, Heavy Caliper, 24" Min, straight trk. Min ht. 12' to "nut".
PDC	Phoenix dactylifera 'Medjool'	Medjool Date Palm - CURVED		14' c.t.	20'+	as shown	NO	HIGH	3	100	200	2	Florida Fancy, Heavy Caliper, 24" Min, straight trk. Min ht. 12' to "nut". Matching, Curved trunk -direction as
SRS	Serenoa repens Silver Form	Silver Saw Palmetto		4'	4'	as shown	YES	HIGH	N/A			79	Min size.
TR	Thrinax radiata	Florida Thatch Palm		8'	10'	as shown	YES	HIGH	4	50	850	17	Single trunk
Total Canopy Credit											9,200 S.F.		
SHRUBS AND GROUNDCOVER													
AI	Alcantarea imperialis	Imperial Bromeliad	25 gallon	18"	24"	as shown	NO	not listed				8	Full, unmarked foliage
BA	Borrichia frutescens	Sea Oxeye Daisy	3 gallon	24"	15"	18" O.C.	YES	HIGH				70	
BF	Bulbine frutescens	Desert Candles	1 gallon	9"	9"	12" O.C.	NO	not listed				94	Yellow Flower
CG3	Clusia guttifera	Small Leaf Clusia		24"	24"	24" O.C.	YES	HIGH				22	Full to Base
CG	Clusia guttifera	Small Leaf Clusia		6'	3'	36" O.C.	YES	HIGH				132	Full to Base
CV	Codiaeum variegatum 'Petra'	Petra Croton	3 gallon	24"	24"	as shown	NO	HIGH				12	
FGI	Ficus microcarpa 'Green Island'	Green Island Ficus	3 gallon	12"	12"	12" O.C.	NO	HIGH				393	Full, compact
LM	Liriope muscari 'Superblue'	Super Blue Liriope	3 gallon	15"	10"	18" O.C.	NO	HIGH				63	
OJ	Ophiopogon japonicus	Mondo Grass	1 gallon	6"	6"	6" O.C.	NO	MEDIUM				70	
PM	Podocarpus 'Maki'	Japanese Yew		4'	18"	18" O.C.	NO	MEDIUM				69	Full, no voids, Full to base
PS	Pennisetum setaceum 'Alba'	White Fountain Grass	3 gallon	18"	18"	24" O.C.	NO	HIGH				38	
SOD	Stenotaphrum secundatum	St. Augustine 'Floratum'						LOW					
*CONTAINER SIZE IS FOR REFERENCE ONLY. HEIGHT AND SPREAD LISTED ARE MINIMUM REQUIREMENTS FOR ALL PLANT MATERIAL.													
ALL PLANT MATERIAL SHALL BE FLORIDA GRADE #1 AND MEET ALL GOVERNMENTAL CODES AND ORDINANCES													

48 HOURS BEFORE DIGGING
CALL 811
TOLL FREE
SUNSHINE STATE UTILITIES LOCATION
ONE CALL CENTER OF FLORIDA

CAUTION: PLEASE NOTE
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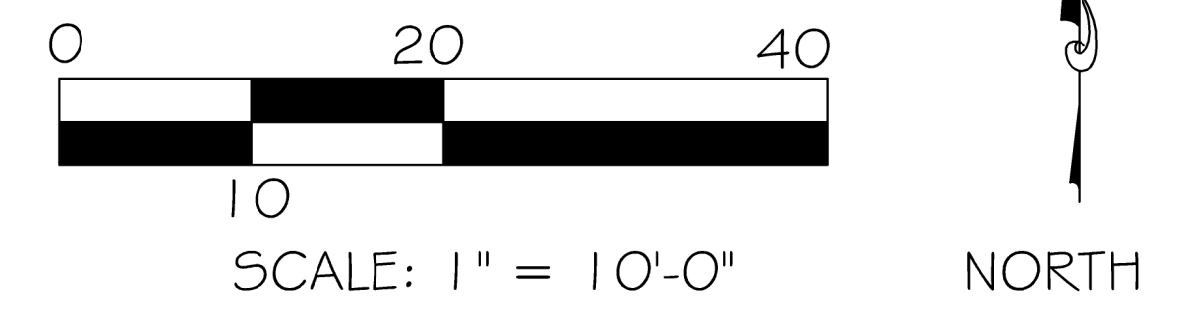
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969 HILLSBORO MILE
HILLSBORO BEACH, FL 33062

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LANDSCAPE PLANS ARE IN COMPLIANCE WITH CODE OF ORDINANCES OF TOWN OF HILLSBORO BEACH, FLORIDA AND BROWARD COUNTY.

PLANTING PLAN
FOR PERMIT
JANUARY 13, 2022



PROJECT DATA:
DATE: 3/11/21
JOB NUMBER: SD
DESIGNED BY: SD
DRAWN BY: SD
CAD NAME: SD

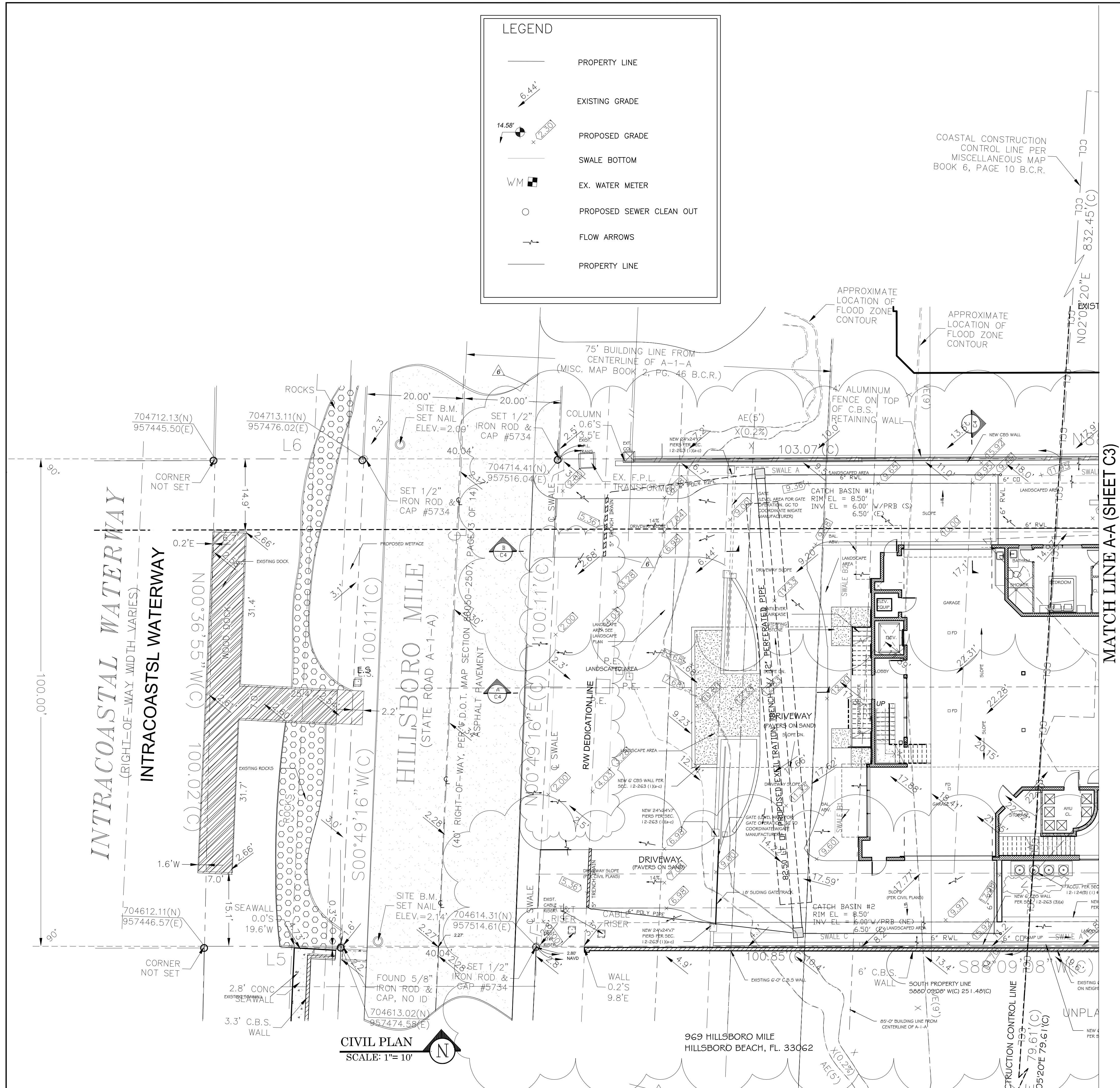
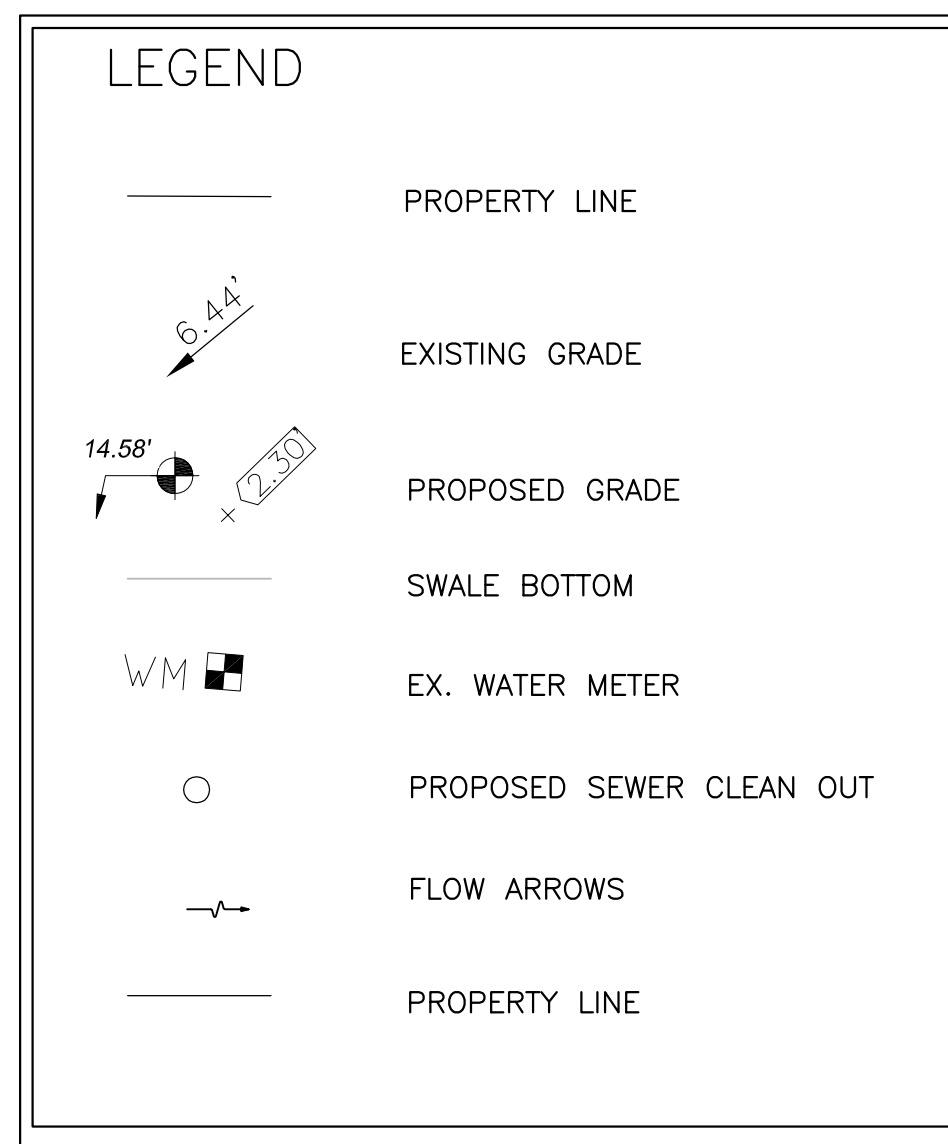
DAVIDSON DESIGN STUDIO, INC.
LANDSCAPE ARCHITECTURE & SITE PLANNING
1350 East Sunrise Blvd., Suite 122
Ft. Lauderdale, Florida 33304
(954) 649-6688

PROJECT: PRIVATE RESIDENCE
971 HILLSBORO MILE
HILLSBORO BEACH, FL 33062
FOR: BROWARD DEVELOPMENT
2800 HILLSBORO MILE, SUITE 115
FT. LAUDERDALE, FL 33312

SEAL:
CHRISTOPHER SCOTT
DAVIDSON
LA 0001419
DATE: 3/11/21

SHEET:
L-1

BY: DATE
CHK'D



LEGAL DESCRIPTION:

A PARCEL OF LAND IN GOVERNMENT LOT 1 OF SECTION 20, TOWNSHIP 48 SOUTH, RANGE 43 EAST,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTH 100 FEET OF THE SOUTH 2859 FEET OF SAID SECTION 20 (MEASURED AT RIGHT ANGLES TO THE SOUTH LINE THEREOF) LYING EAST OF THE EAST RIGHT-OF-WAY OF THE INTRACASTAL WATERWAY AS NOW LOCATED AND CONSTRUCTED; SAID LANDS LYING IN BROWARD COUNTY, FLORIDA; EXCEPTING THEREFROM THE RIGHT-OF-WAY FOR STATE ROAD A-1-A AS PRESENTLY LAID OUT AND EXISTING.

GENERAL NOTES:

1. BASE LAYOUT WAS OBTAINED FROM A SURVEY PREPARED BY PINNELL SURVEY, INC.
2. ALL ELEVATIONS SHOWN REFER TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D.).
3. HORIZONTAL AND VERTICAL CONTROL SHALL BE PROVIDED BY THE CONTRACTOR'S SURVEYOR. LAYOUT IS THE RESPONSIBILITY OF THE CONTRACTOR.
4. IT IS THE INTENT OF THESE DRAWINGS TO BE IN ACCORDANCE WITH APPLICABLE CODES AND AUTHORITIES HAVING JURISDICTION. ANY DISCREPANCIES BETWEEN THESE DRAWINGS AND APPLICABLE CODES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ENGINEER AND OWNER REPRESENTATIVE.
5. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND UTILITIES VERIFIED AND LOCATED PRIOR TO THE START OF CONSTRUCTION. ALL TRENCH EXCAVATION SHALL PROCEED WITH EXTREME CAUTION. IN THE EVENT THAT EXISTING UTILITIES ARE DAMAGED, IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO REPAIR OR REPLACE SUCH DAMAGES.
6. THE LOCATION OF THE WATER AND SEWER MAINS AND SEWER LATERAL PROVIDED ON THESE PLANS WERE OBTAINED FROM AVAILABLE AS-BUILT DRAWINGS OBTAINED FROM THE CITY'S RECORDS.

SPECIFIC NOTES:

1. PROVIDE FILTER FABRIC OR OTHER METHOD OF SEDIMENT PROTECTION FOR ANY EXISTING CATCH BASIN/INLET WITHIN 100 FEET OF THE PROPERTY. ANY SEDIMENT THAT IS TRACKED ONTO ROADS MUST BE SWEEPED UP IMMEDIATELY. SEDIMENT SHALL NOT BE REMOVED BY WASHING/FLUSHING WITH WATER AT THE RIGHT OF WAY. PRIOR TO THE START OF CONSTRUCTION, AN ENGINEERING ROUGH INSPECTION MUST BE SCHEDULED TO VERIFY EROSION AND SEDIMENTATION CONTROL IS SETUP PROPERLY.
2. AT ALL TIMES DURING CONSTRUCTION, ALL STORMWATER MUST REMAIN ONSITE. NO DISCHARGE INTO THE PUBLIC RIGHT OF WAY IS ALLOWED.
3. ALL POTABLE WATER SERVICE CONNECTIONS REQUIRE BACKFLOW PREVENTERS.
4. THE DRAINAGE SYSTEM SHALL BE CONSTRUCTED AS PROPOSED ON THESE PLANS AND IN THE DETAIL ON C4.
5. CONTRACTOR SHALL VERIFY THE LOCATION OF THE EXISTING SEWER CLEAN-OUT PROPOSED FOR USE.
6. NO ROAD CUTS ARE PROPOSED HOWEVER IF APPLICABLE, FOR SEWER/WATER SERVICES (PIPE SIZE UPGRADE, GALVANIZED PIPE REPLACEMENT, RELOCATION OR NEW INSTALLATION) AND THE PROPOSED UTILITY WORK IS PERFORMED BY AN OPEN CUT LOCATED IN THE CITY'S ASPHALT ROADWAY, THE DISTURBED ASPHALT AREA OF THE PROPOSED CONSTRUCTION SHALL BE RESTORED. THE CITY ENGINEER SHALL DETERMINE IF THE ASPHALT REPAIR OF AN OPEN CUT IS SUFFICIENT DEPENDING ON THE CONDITION OF THE ROADWAY. PER HIS DETERMINATION, IF THE ROADWAY IS IN BETTER THAN AVERAGE CONDITION THE AFFECTED AREA WILL BE MILLED AND RESURFACED 50' IN BOTH DIRECTIONS FOR THE FULL WIDTH OF THE ROADWAY.

SITE CALCULATIONS:

	EXISTING	PROPOSED
BUILDING FOOTPRINT	3,450.76 SQ FT	5,278.46 SQ FT
DRIVEWAY WALKWAYS, WALLS & PADS	4,487.01 SQ FT	4,308.54 SQ FT
PATIO & POOL AREA	1,652.76 SQ FT	644.14 SQ FT
GREEN AREA	15,624.69 SQ FT	14,984.08 SQ FT
TOTAL AREA	25,215.22 SQ FT	25,215.22 SQ FT
TOTAL PERVIOUS AREA	15,624.69 SQ FT	14,984.08 SQ FT
TOTAL IMPERVIOUS AREA	9,536.82 SQ FT	10,231.14 SQ FT



**GATOR ENGINEERING
ASSOCIATES, INC.**
11390 TEMPLE STREET
COOPER CITY, FL 33330
TEL: (954) 434-5905 FAX: (954) 434-5904
CERTIFICATE OF AUTHORIZATION NUMBER 30230

971 HILLSBORO MILE
HILLSBORO BEACH, FL 33062

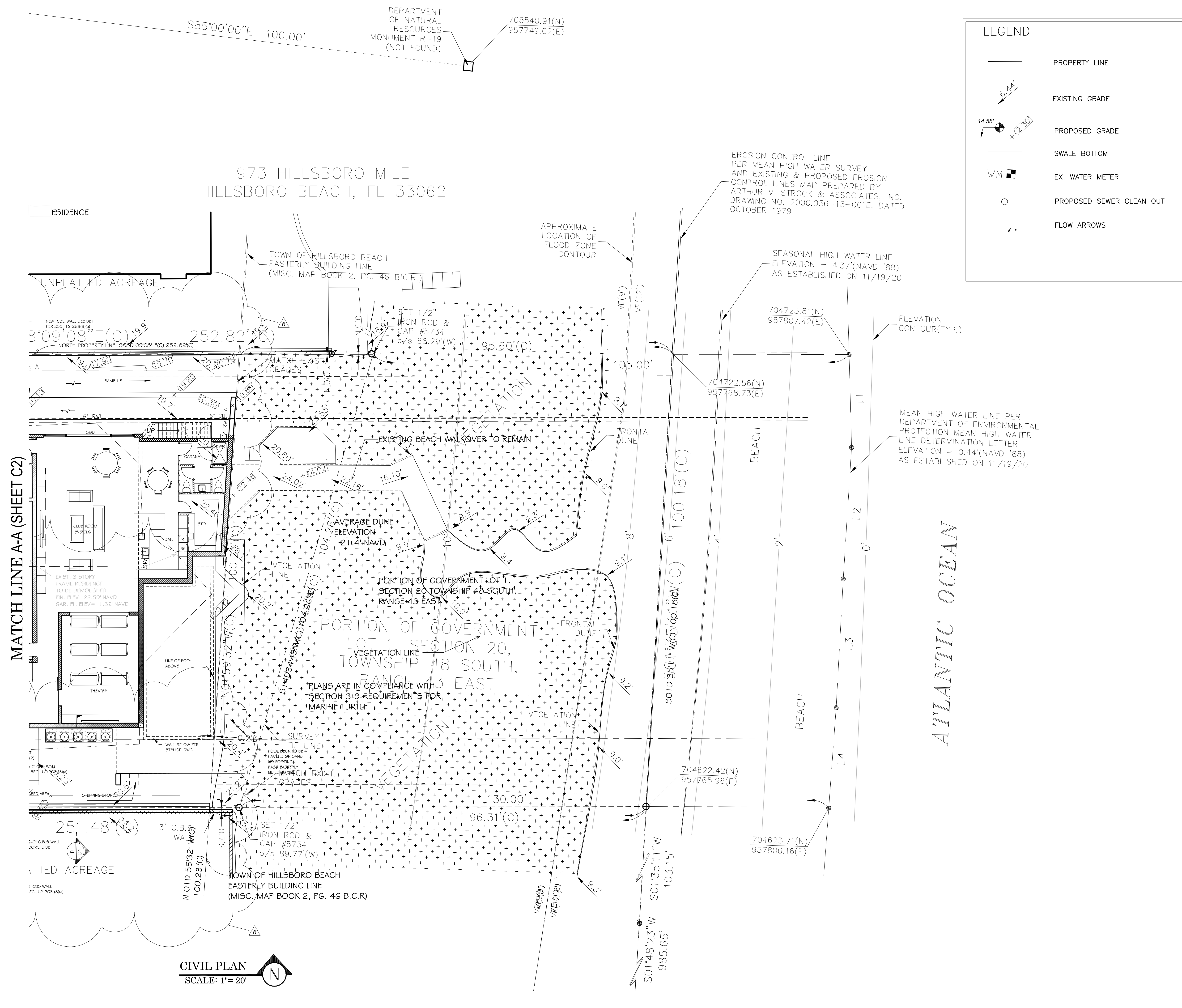
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GEA PROJECT NO.: 21016
DATE: 03-16-2021
SCALE: AS SHOWN
DESIGNED BY: R.B.J.
DRAWN BY: L.B.
CHECKED BY: R.B.J
APPROVED BY: R.B.J

SHEET TITLE

CIVIL PLAN

C2 OF 5



SEAL

DATE: BOBO—JACKSON, P.E.
REGINA
FL P.E. NO.: 38550

971 HILLSBORO MILE
HILLSBORO BEACH, FL 33062

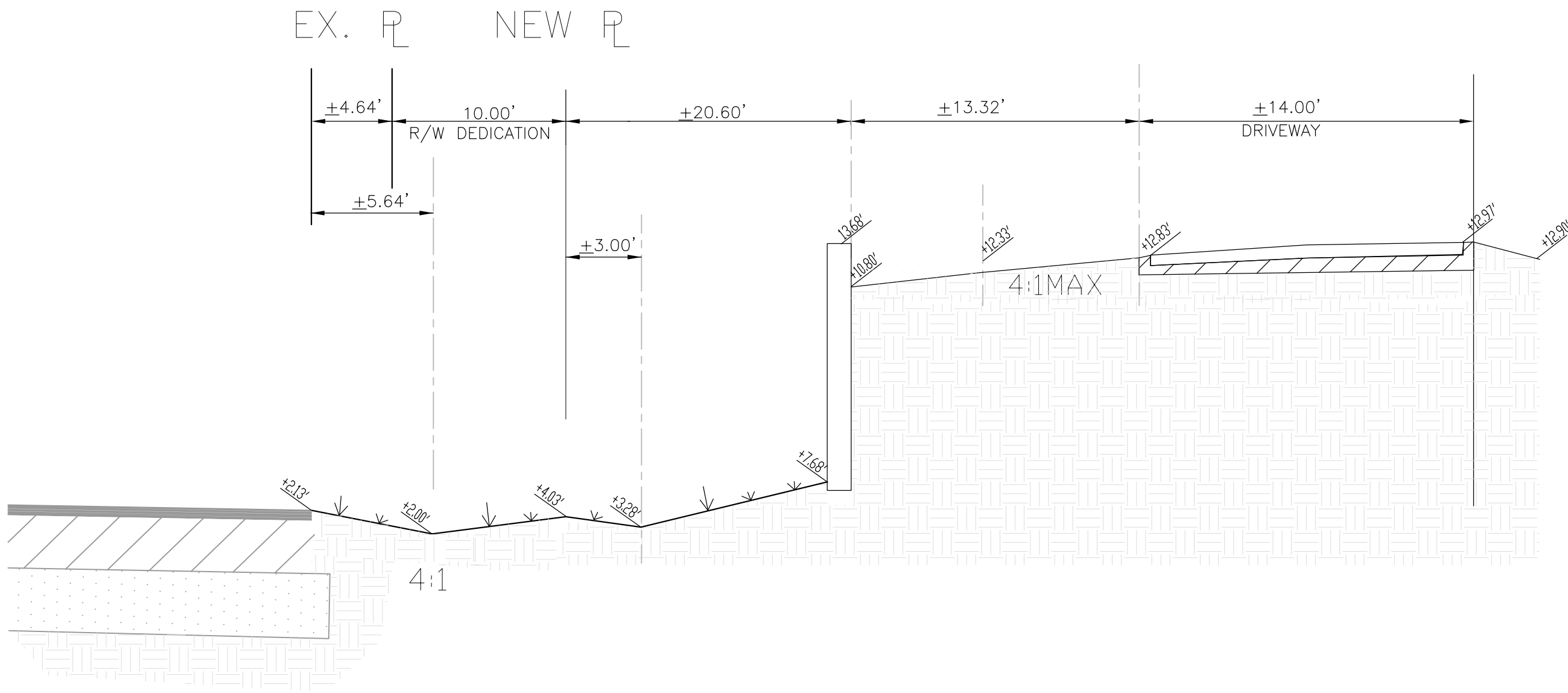
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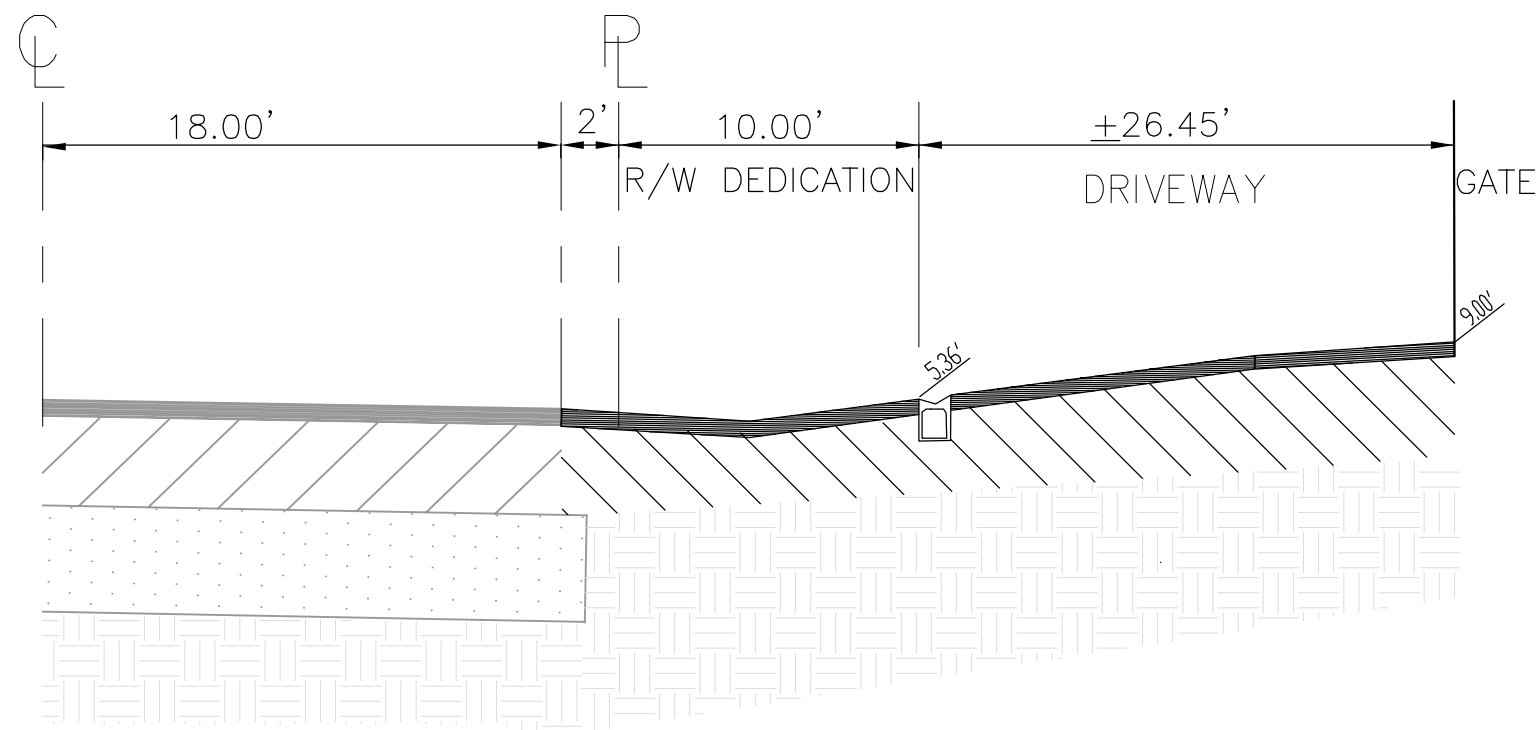
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CIVIL PLAN

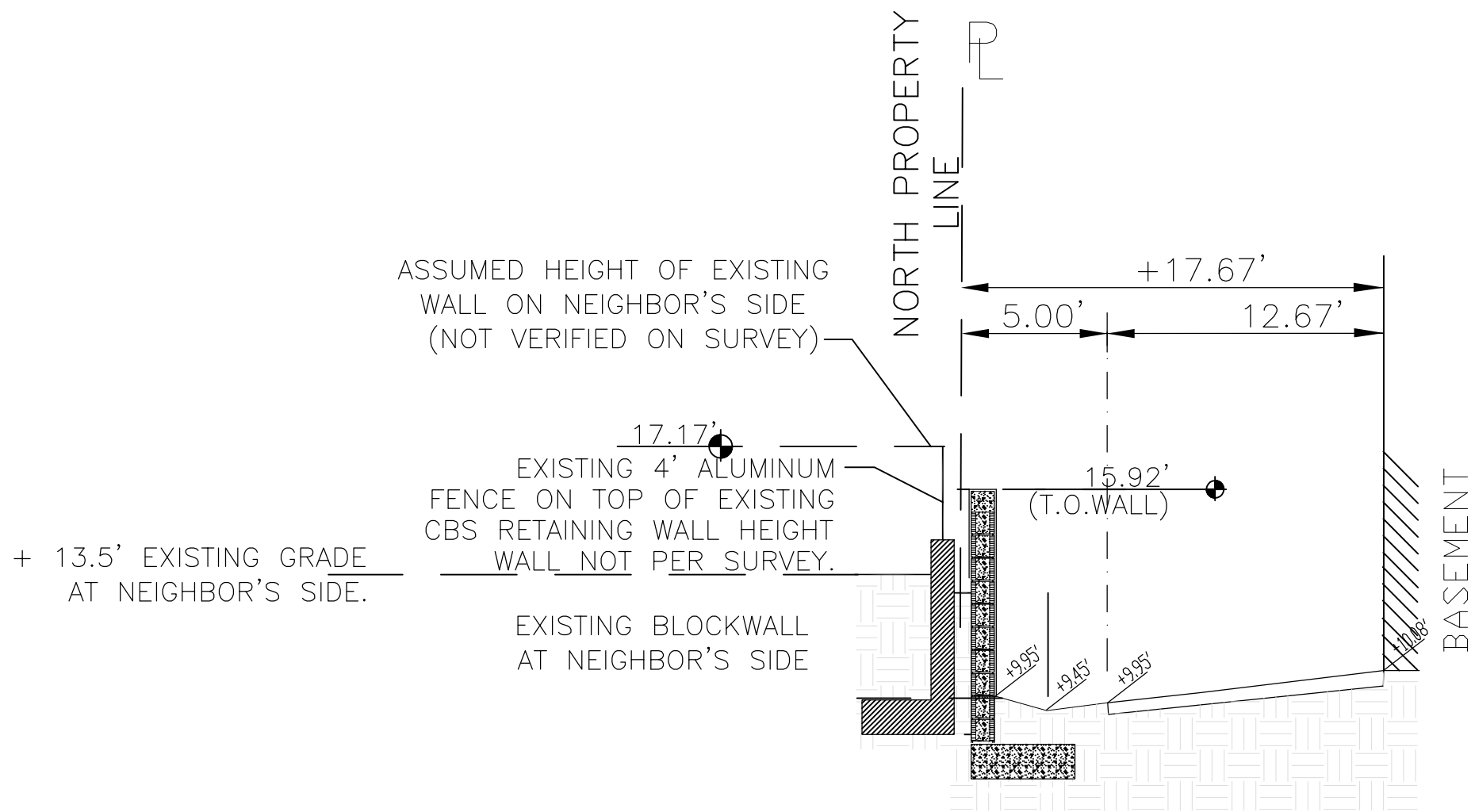
C3 OF 5



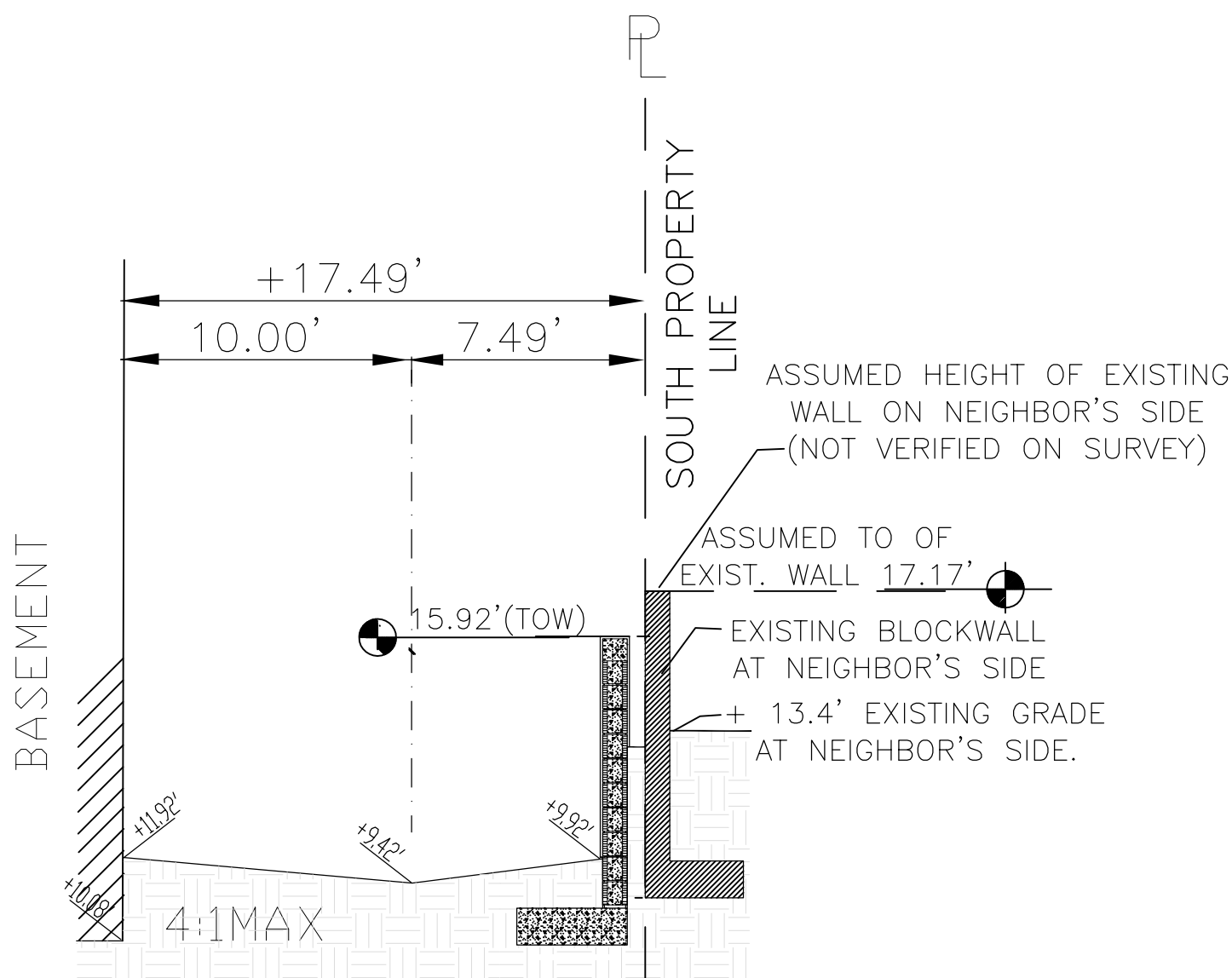
SECTION A-A
NTS



SECTION B-B
NTS



SECTION C-C
NTS



SECTION D-D
NTS

DRAINAGE CALCULATIONS:

SITE SHALL RETAIN 1" RUNOFF OVER ENTIRE SITE OR 2 1/2" OVER IMPERVIOUS AREAS (WHICHEVER IS GREATER).

25,215.22 SQ.FT. X 0.0833 FT = 2,100.43 CU. FT.
10,231.14 SQ.FT. X 0.2083 FT = 2,131.15 CU. FT. (REQUIRED)

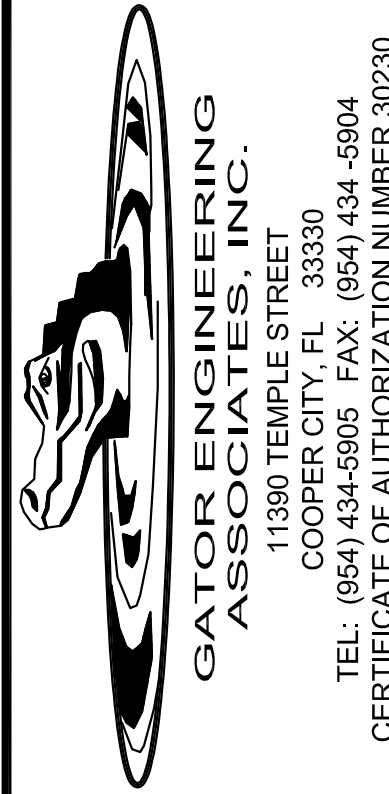
EXFILTRATION TRENCH:
BALANCE OF VOLUME REQUIRED: 2,131.15 CU.FT./<43,560 AC/FT X 12 IN/FT>
= 0.59 AC-IN
COMPUTATION OF TRENCH VOLUME WHEN DU>DS

L = V/(K<H2W + 2H2Du - Du2 + 2H2Ds) + (1.39 X 10-4)<WDu>
L = LENGTH OF TRENCH REQUIRED <FEET>
V = VOLUME TO BE EXFILTRATED <AC-IN>
W = TRENCH WIDTH <FEET>
K = HYDRAULIC CONDUCTIVITY <CFS/FT2- FT. HEAD>
H2 = DEPTH TO WATER TABLE <FEET>
Du = NON-SATURATED TRENCH DEPTH <FEET>
Ds = SATURATED TRENCH DEPTH <FEET>
V = 0.59 AC-IN
W = 4.20 FT
K = 1.00 X 10-4 <ASSUMED>
H2 = 5.50 FT
DU = 4.50 FT
DS = 0.00 FT

L = 0.59/(1.00 X 10-4 <(5.50)<4.20>+2<5.50><4.50> - <4.50><4.50> + 2<5.50><0.00>>) + 1.39X10-4<4.20><4.50> =

L = 75.04 LF; 82.50 LF USED <2,150.05 CF>

TOTAL VOLUME PROVIDED = 2,150.05 CF > 2,131.15 CF <REQUIRED>



GATOR ENGINEERING
ASSOCIATES, INC.
11380 TEMPLE STREET
COOPER CITY, FL 33330
TEL: (954) 434-5905 FAX: (954) 434-5904
CERTIFICATE OF AUTHORIZATION NUMBER 30230

SEAL

DATE:
REGINA BOBO-JACKSON, P.E.
FL P.E. NO.: 38550

971 HILLSBORO MILE
HILLSBORO BEACH, FL 33062

REVISIONS
NO. DATE DESCRIPTION

GEA PROJECT NO.: 21016
DATE: 03-16-2021
SCALE: AS SHOWN
DESIGNED BY: R.B.J.
DRAWN BY: L.B.
CHECKED BY: R.B.J.
APPROVED BY: R.B.J.

SHEET TITLE

DETAILS

C4 OF 5

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2021-004

TO: Mayor and Members of the Town Commission

CC: William Serda, Town Manager
Sherry D. Henderson, CMC, Town Clerk

FROM: Donald J. Doody, Town Attorney *DJD*

DATE: June 29, 2021

RE: Town of Hillsboro Beach ("Town") / Excavation Ordinance

Attached is a proposed ordinance drafted for the purpose of providing a process by which any development or redevelopment activities undertaken within the Town would be required to utilize excavated sand for purposes of beach renourishment or dune restoration.

Background

Section 4.6 of the Code of Ordinances currently provides that it is unlawful for any person or firm to remove, or permit to be removed from the Town any sand, earth, soil, dirt, or other similar material, excavated during any phase of construction.

Analysis

In light of the current requirement that no sand or fill excavated during construction activities be removed from the Town, the proposed ordinance has been drafted with the intent of creating a process by which beach compatible sand, as determined by a geotechnical report, be utilized for beach renourishment purposes or dune restoration.

Section 12-49 of the Code of Ordinances outlines requirements for site plans submitted to the Town for development or redevelopment purposes. The proposed ordinance would require that an application for site plan approval be supported by a geotechnical report. The geotechnical report shall include an evaluation and determination as to whether the sand on the parcel subject to the development activities meets the requirements of beach compatible sand as defined by the Florida Administrative Code. Should the excavated sand be determined to be beach compatible, it shall be maintained within the municipal boundaries of the Town and be used for: 1) onsite fill burial; or 2) subject to permitting, placed seaward of the Coastal Construction Control Line; or 3) provided to the Town to be used for future beach renourishment projects.

Recommendation

It is recommended that the Town Commission consider the ordinance as a means to facilitate maintaining the integrity of the Town's beach and dune system.

DJD:mea
Enclosures

ORDINANCE NO. 2022-04

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 12-49, ENTITLED "SITE PLAN REQUIREMENTS"; BY SPECIFICALLY CREATING SECTION 12-49 (C), ENTITLED "EXCAVATION", TO PROVIDE FOR THE USE OF BEACH COMPATIBLE SAND; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Hillsboro Beach recognizes and affirms the importance of maintaining and preserving the Town's beach and coastal dune system; and,

WHEREAS, the Data & Analysis for the 2018 EAR Based Amendments, of the Town's Comprehensive Plan, published in October 2018, provides that the Town has experienced severe erosion in recent years and it is expected that increased storm activity and development within the Town will result in an acceleration of shoreline erosion; and,

WHEREAS, the Florida Department of Environmental Protection (DEP), Strategic Beach Management Plan: Southeast Atlantic Coast Region published in April 2020, provides that the Town's coastline is considered "critically eroded"; and,

WHEREAS, historically beach restoration efforts within the Town have been costly with sand supplied either by offshore dredging or truck hauls from upland sand mines; and,

WHEREAS, the Town's Comprehensive Plan, Goal 6.0, currently requires that all development and redevelopment within the Town be implemented in a manner that will minimize potential natural and financial impacts to developed upland properties while preserving beach and shoreline while enhancing resilience to sea level rise impacts;

WHEREAS, the Town's Comprehensive Plan, Objective 6.8, further requires that the Town shall ensure that building, development and redevelopment activities within the Town shall minimize damage to life and property from tropical storms, hurricanes, and future sea level rise; and,

WHEREAS, the Town Commission hereby finds it is in the best interest of the Town to amend the Town Code of Ordinances, to require that beach compatible sand excavated during development and redevelopment of any parcel within the Town be utilized on site or on the beach; and,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF HILLSBORO BEACH, FLORIDA THAT:

1 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being
2 true and correct and are hereby made a part of this Ordinance.

3
4 **Section 2.** Town Code of Ordinances Chapter 12-49, entitled "SITE PLAN
5 REQUIREMENTS", is amended to create Section 12-49 (c) entitled "EXCAVATION" :

6
7 Sec. 12-49 (C). - EXCAVATION

8 (a) Definitions.

9 Applicant: an individual or other authorized legal entity engaged in the development or
10 redevelopment of any parcel within the Town of Hillsboro Beach which involves
11 excavation and whom is responsible for filing a site plan application pursuant to Town
12 Code of Ordinances §12-48.

13 Beach: is defined as the zone of unconsolidated material that extends landward from the
14 mean low-water line to the place where there is marked change in material or
15 physiographic form, or to the line of permanent vegetation, usually the effective limit of
16 storm waves.

17 Beach compatible sand: sand that is determined to be similar to the sand already existing
18 on the beach located in Hillsboro Beach in coloration, grain size, and composition, as more
19 particularly described in Rule 62B-33.005(7), F.A.C.

20 Beach nourishment: the maintenance of a restored beach by the placement of sand to
21 mitigate erosion.

22 Beach or dune restoration: the placement of sand on the beach or dune system for the
23 purposes of restoring the beach and providing storm protection for upland properties.

24 Coastal Construction Control Line: (CCCL) a line established by the Florida Department of
25 Environmental Protection that defines that portion of the beach-dune system which is
26 subject to severe fluctuations based on a 100-year storm surge, storm waves, or other
27 predictable weather conditions, as established pursuant to the provisions of §161.053,
28 Florida Statutes.

29 Construction Debris: The material resulting from the demolition of a structure.
30 Construction debris shall not include such material which has been sorted, cleaned and
31 otherwise processed such that it meets the suitability criteria for armoring materials set
32 forth under FDEP rules.

33 Dune: a mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland
34 of the beach and deposited by any natural or artificial mechanism, which may be bare or
35 covered with vegetation and is subject to fluctuations in configuration and location.

1 Excavation: refers to the mechanical or manual removal or alteration of consolidated or
2 unconsolidated soil, rock material or sand from the ground, in accordance with the
3 definition of “excavation” as defined in §556.102, Florida Statutes.

4 Florida Department of Environmental Protection: (DEP).

5 Geotechnical investigation or geotechnical report: performed on behalf of an Applicant,
6 prepared and signed by a registered professional engineer (PE) or geologist (PG) and to
7 be submitted with a site plan application and shall include an evaluation and
8 determination as to whether the sand on the parcel subject to the site plan application
9 meets the requirements of beach compatible sand per Rule 62B-33.005(7), F.A.C.

10 Placement Plan: a plan or report prepared by a registered professional recommending
11 the proposed use of beach compatible sand in compliance with this section and applicable
12 laws.

13 Registered Professional: means a professional registered or licensed by the State of Florida
14 and practicing under Chapter 471 (Coastal Engineerengineering), 472 (surveying and
15 mapping), 481 (architecture and landscape architecture), or 492 (geology), Florida
16 Statutes.

17 Sand: material that maintains the general character and functionality of the material
18 occurring on the beach and adjacent dune and coastal system.

19 Town: the Town of Hillsboro Beach.

20 (b) Purpose. It is hereby declared and determined that preserving and enhancing the Town’s
21 beach and the mitigation of coastal erosion is essential to serve and benefit the Town. The
22 Town recognizes that climate change and development within the Town will accelerate
23 shoreline erosion; therefore the need for beach nourishment and dune restoration will
24 continue to increase. The Town hereby intends to require that all development and
25 redevelopment on any parcel within the Town, involving the excavation of sand, to
26 comply with the requirements of this section.

27
28 (c) Required beach compatible sand analysis. All development and redevelopment on any
29 parcel within the Town, involving the excavation of sand at the time a site plan application
30 is submitted to the Town, shall be required to engage in a geotechnical investigation and
31 provide the Town with a signed and sealed geotechnical report by a registered PE or PG
32 along with any application for site plan approval. The geotechnical report supporting the
33 development or redevelopment of a parcel within the Town involving excavation shall
34 include an evaluation and determination as to whether the sand on the parcel meets the
35 requirements of beach compatible sand per Rule 62B-33.005(7), F.A.C.

1. The sediment from the development site shall be similar in Munsell color and grain size distribution to the material in the existing coastal system at the beach placement site. Sand shall be free of construction debris and toxic material.
 - a. Moist Munsell value of seven (7) or lighter (chroma = 1).
 - b. Mean grain size between 0.30 mm and 0.55 mm.
 2. The applicant shall purpose a sampling plan that provides adequate documentation to demonstrate that the location and quantity of samples is a fair and reasonable representation of the project site. At minimum, one core boring shall be analyzed for every 3,000 cubic yards of sand to be excavated.
 3. Cores must be analyzed at a Construction Materials Engineering Council, Inc's (CMEC) accredited geotechnical laboratory.
 4. Cores shall be analyzed and described using distinct stratigraphic layers within the sample in accordance with American Society for Testing of Materials (ASTM) standard procedure D2488-09a.
 5. Sediment samples will be extracted from the core borings. The sediment samples will be analyzed to determine color, grain size distribution, and carbonate content. Grain size will be determined through sieve analysis in accordance with ASTM Standard Materials Designation D6913-17 for particle size analysis of soils. Sediment finer than the No. 230 sieve (4.0 phi) will be analyzed following ASTM Standard Test Method, Designation D1140-17.
 6. Composite data will be used to represent the average physical characteristics of the material to be placed.
- (d) Required environmental analysis. Applicant shall provide the Town a copy of a Phase 1 Environmental Assessment on applicant's property. This must be completed within one year prior to planned excavation and must be in compliance with applicable American Society of Testing and Materials standards. Based upon findings in the Phase 1 Environmental Assessment, Applicant may also be required to conduct a Phase 2 Environmental Assessment.
1. Applicant must conduct a lead and asbestos survey with follow up testing as applicable through a firm or an individual that is certified for lead and asbestos inspection and/or abatement in the State of Florida. Any testing must be in compliance with applicable American Society of Testing and Materials standards.
- ~~(e)~~(e) Required use of beach compatible sand. Sand excavated during the development or redevelopment of any parcel in the Town that is determined to be beach compatible sand pursuant to a geotechnical and environmental report by a registered professional shall be maintained within the municipal boundaries of the Town, and must be utilized:

1 1. On site as fill material;

2 2. On site seaward of the Coastal Construction Control Line, pursuant to a permitted
3 beach nourishment or dune restoration, in compliance with applicable local, state, and
4 federal laws and regulations.

5 3. May be provided by the applicant, on a voluntary basis, to the Town for future
6 permitted beach nourishment or dune restoration in compliance with applicable local,
7 state, and federal laws and regulations.

8 (f) Any costs incurred by the Town in reviewing the geotechnical report and placement plan
9 shall be born by the Applicant.

10 (g) Mechanical screening of material will be required prior to donation of beach compatible
11 material for locations listed in (d)(2) and (d)(3) above. All unacceptable material
12 resulting from screening operations must be hauled away and properly disposed of at the
13 cost of the Applicant.

14 (h) Non-compliant material. In the event that sand provided to the Town does not meet the
15 Town and DEP's standards as described herein, then the applicant will be required to
16 remediate, remove, and relocate the non-compliant material in an approved, upland
17 disposal site per DEP guidelines.

18
19 **Section 3.** If any section, subsection, sentence, clause or provision of this Ordinance is
20 held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

21
22 **Section 4.** That all ordinances or parts of ordinances and all resolutions or parts of
23 resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

24
25 **Section 5.** It is the intention of the Town Commission of the Town of Hillsboro Beach,
26 that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of
27 Town of Hillsboro Beach, Florida, and the Sections of this ordinance may be renumbered, re-lettered
28 and the word "Ordinance" may be changed to "Section," "Article," or such other word or phrase in
29 order to accomplish such intention.

30
31 **Section 6.** This Ordinance shall be effective fifteen (15) days after its passage and
32 adoption by the Town Commission of the Town of Hillsboro Beach.

1 PASSED AND ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH,
2 FLORIDA, ON FIRST READING, THIS ____ DAY OF ____, 2022.

PASSED ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA,
ON SECOND AND FINAL READING, THIS ____DAY OF____, 2022.

3
4 By: _____
5 Deborah L. Tarrant, Mayor

6 ATTEST:

7
8 By: _____
9 Sherry D. Henderson, CMC
10 Town Clerk

11
12
13 APPROVED AS TO FORM:

14 _____
15 Donald J. Doody, Town Attorney



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Discussion on Printing Quarterly Newsletter

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS: 1. Custom Plastic Card Company - Order Confirmation

ORDER CONFIRMATION

1801 Green Road
Pompano Beach, FL
33064 - 1052 - USA
Phone: 800 334 6488
Fax: 954 427 8601

Conf. Nbr: 134125 Date: 02/14/2022 Page: 1/1	Cust. Acct #: 38280 Cust. P.O.: Terms: Due Upon Receipt	Job Name: DEB MAILING PIECE Job Nbr: 38280-3 Sales Rep: SUSAN RODRIGUEZ	Ship date:
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From: TOWN OF HILLSBORO BEACH 1210 HILLSBORO MILE HILLSBORO MILE, FL 33062 ATTN: MAC SERDA	Ship To: TOWN OF HILLSBORO BEACH 1210 HILLSBORO MILE ATTN: MAC SERDA HILLSBORO MILE FL 33062
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Qty Ordered	Description	Unit Price	Price
1	FEBRUARY 2022 LETTER PRINTED FULL COLOR AND FULL COLOR BACK, ADDRESSED LETTER, CUSTOM FOLD & GLUE, FIRST CLASS 2053 RECORDS. DOMESTIC POSTAGE- \$1026.50 167 INTERNATIONAL RECORDS FOREIGN POSTAGE- \$217.10	600.0000	600.00

Notes:
 THANK YOU FOR YOUR ORDER!

 FOR EXACT RE-ORDER REFER TO 38280-3

SUB TOTAL	600.00
TAX	33.25
SHIPPING & HANDLING	1243.60
TOTAL	1876.85
DATE	
CHECK #	0
BALANCE DUE	1876.85

Quantity delivered and billed will be plus or minus 10%
 Freight will be billed additionally. Shipments are automatically insured for \$100.
 If additional insurance is needed please specify the dollar value required. \$_____

Balance due by credit terms stated above. We reserve the right to charge a 1.5% Finance Charge on all accounts not paid by their due date. We do report Past Due Accounts to a Business Credit Bureau. See additional terms conditions on #6 of reverse side (or page 2 if electronic) of this document.

Accepted by:

Name: _____

Signature: _____ Date: ____/____/____

Terms And Conditions

1. **Limited Warranty.** The goods provided hereunder are warranted to conform to the specifications of the approved proof, we will not accept any liability for errors found after the cards have been printed. Any shortages, errors, or damage must be reported in writing within thirty (30) days. CPCC's sole obligation and customer's sole remedy on account of breach of the foregoing warranty extends only to the reprint of the product as approved on the proof, or correction of defective goods at CPCC's expense, or, at CPCC's option, the refund of the purchase price thereof, not replacement of customer supplied stock, and only upon return of the misprinted product. Customer must notify the company and obtain authorization before returning any order. CPCC further warrants good title to the goods. CPCC DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. CPCC retains the right to inspect any goods alleged to be defective.

2. **Limitation on Liability.** IN NO EVENT SHALL CPCC BE LIABLE FOR AN INJURY, LOSS OR DAMAGE, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF THE USE, OR THE INABILITY TO USE, GOODS PROVIDED HEREUNDER WHETHER SUCH DAMAGE RESULTS FROM BREACH OF WARRANTY, NEGLIGENCE OR ANY OTHER CAUSE AND WHETHER OR NOT CPCC KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH INJURY, LOSS OR DAMAGE.

3. **Title: Risk of Loss.** CPCC shall retain title to the goods until they are paid for in full or used by the customer in the ordinary course of business. The customer shall provide any documentation reasonably requested by CPCC to record CPCC's interest in such goods. Risk of loss of the goods shall pass to the customer upon delivery and customer shall adequately insure the goods until they are paid in full.

4. **Taxes.** Any taxes imposed on the sale of the goods hereunder shall be billed to and promptly paid (or reimbursed) by customer.

5. **Force Majeure.** CPCC shall not be liable for delay or failure in the performance of the obligations contained in this order arising from any causes beyond the control of CPCC, and in such case of the time for performance shall be extended by the period of such force majeure. HOWEVER, IN NO EVENT SHALL CPCC BE LIABLE FOR DAMAGES CAUSED by force majeure. HOWEVER, IN NO EVENT SHALL CPCC BE LIABLE FOR DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN DELIVERY.

6. **Late Payment.** CPCC reserves the right to charge one and one half percent (1.5%) interest per month from the date payment is due until paid in full (or the maximum annual legal rate for sales of commercial goods, whichever is less) on overdue balances. The customer shall also reimburse CPCC for any costs and expenses, including attorney fees, incident to the collection of any delinquent account.

7. **Customer Forms.** No terms and conditions of any customer purchase (or similar) order in conflict with or in addition to these terms and conditions shall be binding upon CPCC unless expressly accepted by CPCC in writing, notwithstanding what the purchase (or similar) order provides.

8. **Applicable Law.** This Order confirmation and the sale of goods described shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to choice of law provisions). The UN Convention on the International Sale of Goods shall not apply to this contract.



1210 Hillsboro Mile
Hillsboro Beach, FL 33062

TOWN OF HILLSBORO BEACH

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Continued Professional Services

Submitting Dept: Town Manager

Agenda Date: February 22, 2022

1. BACKGROUND / HISTORY

From time to time the Town needs the expertise of engineers, architects and surveyors for various projects within the Town's general operations or as part of its utility's operations. Florida State Statute 287.055 governs the procurement process of local governments, and among other requirements, the statute mandates the use of a selection process that is based on qualifications and not price. To facilitate the hiring and utilization of firm's with the needed expertise, the Town followed the state law and procured for continued professional services under a continuing contract.

A "continuing contract" is a contract for professional services allowing a firm to provide consulting services for construction projects where the estimated cost does not exceed \$4million, or \$500,000 for any study activity. Firms approved under continuing contracts cannot be required to bid against each other.

The following areas of expertise were procured:

- Civil Engineering
- Subservice Utility Engineering
- Traffic Engineering
- Coastal and Marine Engineering
- Land Surveying
- Water Treatment Engineering
- Environmental Engineering
- Architectural
- Structural Engineering
- Landscape Architecture
- Planning and Zoning
- Electrical Engineering
- Mechanical Engineering

2. CURRENT ACTIVITY

The Town received responses from 15 firms and an Evaluation and Selection Committee of two employees of the waterplant was organized. The Committee reviewed the proposals and references, ranked interpedently each firm by submitted discipline. The Committee met on two separate occasions during an advertised and publicly accessible meeting to discuss and rank the firms. The results of the firms are attached. Four firms were considered “unqualified” by the Committee, mostly due to missing forms or having a small number of engineers. However, as a smaller municipality, it is my recommendation to include them, but as lower- ranked firm, for small projects the Town may have occasionally.

Due to the quantity of proposals, all proposals are available on the Town’s website.

3. FINANCIAL IMPACT

There is no direct financial impact to this request.

4. RECOMMENDATION

Approval of the ranking and recommendation of the Evaluation and Selection Committee is recommended.

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RESOLUTION NO. 2022-06

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, APPROVING THE RANKING AS GENERALLY RECOMMENDED BY THE EVALUATION AND SELECTION COMMITTEE AND AUTHORIZING THE PROPER TOWN OFFICIALS TO EXECUTE CONTINUING CONTRACTS WITH THE SELECTED FIRMS IN RESPONSE TO THE TOWN'S REQUEST FOR QUALIFICATIONS RFQ #2021-01 FOR CONTINUING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR VARIOUS PROJECTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission deems it to be in the best interests of the Town to approve the ranking as generally recommended by the Evaluation and Selection Committee and authorizing the proper Town Officials to execute Continuing Contracts with the selected firms in response to the Town's Request for Qualifications RFQ #2021-01 for Continuing Professional Architectural and Engineering Services for Various Projects.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA THAT:

SECTION 1. The foregoing "WHEREAS" clause is true and correct and hereby ratified and confirmed by the Town Commission.

SECTION 2. The Town Commission of the Town of Hillsboro Beach, Florida hereby approves the ranking as generally recommended by the Evaluation and Selection Committee and authorizing the proper Town Officials to execute Continuing Contracts with the selected firms in response to the Town's Request for Qualifications RFQ #2021-01 for Continuing Professional Architectural and Engineering Services for Various Projects.

SECTION 3. The appropriate Town officials are authorized and directed to execute the necessary documents to comply with this Resolution.

SECTION 4. All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

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SECTION 5. If any clause, section or other part of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered eliminated and will in no way affect the validity of the other provisions of this Resolution.

SECTION 6. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED by the Town Commission of the Town of Hillsboro Beach, Florida this ____day of _____ 2022.

TOWN OF HILLSBORO BEACH, FLORIDA

Deborah L. Tarrant, Mayor

ATTEST:

Sherry D. Henderson, CMC, Town Clerk



**Hillsboro
Beach**
FLORIDA

RFQ NO. 2021-02

Continuing Professional Architectural & Engineering Services

Town of Hillsboro Beach, Florida

Bids due 12/2/2021 at 2:30 PM Eastern

BID	COMPANY NAME	ADDRESS	CITY, STATE	DATE	TIME
1	BEA Architects, Inc.	3075 NW South River Drive	Miami, FL 33142	11/29/2021	11:00 AM
2	Slattery and Associates	2060 NW Boca Raton Blvd Suite 2	Boca Raton, FL 33431	12/1/2021	12:40 PM
3	Moffatt & Nichol	100 W. Cypress Creek Rd, Ste 960	Ft. Lauderdale, FL 33309	12/1/2011	12:40 PM
4	TJKM Transportation Consultant	4305 Hacienda Dr. Ste 550	Pleasanton, CA 94588	12/1/2021	12:40 PM
5	McMahon Associates, Inc.	2090 Palm Beach Lakes Blvd	West Palm Beach, FL 33409	12/1/2021	2:10 PM
6	TRC Worldwide Engineering, Inc.	1230 N. University Drive	Plantation, FL 33322	12/2/2021	9:24 AM
7	Calvin, Giordano & Associates, Inc.	1800 Eller Drive, Suite 600	Ft. Lauderdale, FL 33316	12/2/2021	9:33 AM
8	Engenuity Group, Inc.	300 Lock Road, Ste 302	Deerfield Beach, FL 33442	12/2/2021	10:19 AM
9	Stantec Consulting Services, Inc.	800 Fairway Dr. Suite 195	Deerfield Beach, FL 33441	12/2/2021	11:00 AM
10	Netta Architects	1084 Route 22 West	Mountainside, NJ 07092	12/2/2021	12:58 PM
11	Master Consulting Engineers, Inc.	5523 W. Cypress Street, Suite 200	Tampa, FL 33607	12/2/2021	12:58 PM
12	Lakdas/Yohlem Engineering, Inc.	2211 N.E. 54th Street	Ft. Lauderdale, FL 33308	12/2/2021	12:58 PM
13	Crain Atlantis, Inc.	3100 NW Boca Raton Blvd #114	Boca Raton, FL 33431	12/2/2021	12:58 PM
14	The Beta Jones Group	801 Brickell Ave. Suite 800	Miami, FL 33131	12/2/2021	1:04 PM
15	West Construction, Inc.	820 N.4th Street	Lantana, FL 33462	12/2/2021	2:28 PM

Sherry L. Henderson
Town Clerk
12/2/2021



RFQ NO.2021-01 Continuing Professional Architectural & Engineering Services for Various Projects Tow of Hillsboro Beach, FL															
BID	COMPANY NAME	General Civil Engineering	Subservice Utility Engineering	Traffic Engineering	Costal and Marine Engineering	Land Surveying	Water Treatment and Well Field Engineering	Enviromental Engineering	Architctural	Structural Engineering	Landscape Architectural	Planning / Zoning	Electrical Engineering	Mechanical Engineering	Other
1	BEA Company								1						
2	Slattery & Associates	5		5*		3		1	3	4	4	2	2	1b	
3	Mofftt & Nichol				2										
4	TJKM Transpoprtation Consultant			5*											
5	McMahon Associates Inc			3											
6	TRC Worldwide Engineering Inc									5*					
7	Calvin, Giordano & Associates Inc	3		2		2	2	2			3	1	1a		
8	Engenuity Group Inc	1	1			1									
9	Stantec Consulting Service Inc	2a		1	1		1	3		2	1	3	3		
10	Netta Architects								2a						
11	Master Consulting Engineers Inc									5*					
12	Lakdas/Yohlem Engineering Inc									1					
13	CrainAtlantis Inc	2b							4	3	2		1b	1a	
14	The Beta Jones Group	4													
15	West Architecture								2b						

5* denotes Selection and Evlauation Committee recommedned designting proposal as "unqualified", but Town Manager recommended including.



1210 Hillsboro Mile
Hillsboro Beach, FL 33062

TOWN OF HILLSBORO BEACH

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Approval of MOU for the Burglary Task Force

Submitting Dept: Police Chief

Agenda Date: March 1st, 2022

1. BACKGROUND / HISTORY

Historically we have not been a part of this Task Force.

2. CURRENT ACTIVITY

This County Burglary Task Force will provide us with additional resources to combat property crimes. These resources will assist us in detecting, apprehending and potentially preventing these types of crimes in Hillsboro Beach. Knowledge and networking are some of the strongest tactics to prevent crime and this task force provides that.

3. FINANCIAL IMPACT

When needed, with approval from me, we would assist the task force by providing a person. This would only be with local cases, with my approval.

4. RECOMMENDATION

Approval is recommended for the signing of this Memorandum of Understanding.

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1 **ADOPTED** by the Town Commission of the Town of Hillsboro Beach, Florida this
2 ____day of _____ 2022.

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TOWN OF HILLSBORO BEACH, FLORIDA

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Deborah L. Tarrant, Mayor

9

10 **ATTEST:**

11

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13 _____
Sherry D. Henderson, CMC, Town Clerk

**LAW ENFORCEMENT MUTUAL AID AGREEMENT
FOR
BURGLARY/PROPERTY CRIME APPREHENSION TASK FORCE**

The undersigned Governmental Entities in Broward County, Florida, together establish this mutual aid agreement pursuant to Section 23.1225 (1), (2), Florida Statutes, known as the Florida Mutual Aid Act. In accordance with the authority granted therein, the jurisdictions agree to the following agreement covering burglary offenses auto thefts, and other property crime related enforcement activities across jurisdictional boundaries ("Task Force Operations") in certain defined circumstances for the purpose of protecting the public peace and safety and preserving the lives and property of the citizens of each Governmental Entity. This Agreement shall be separate and apart from the current Countywide Mutual Aid Agreement for Voluntary Cooperation and Operational Assistance.

The undersigned Governmental Entities agree to Task Force Operations and related offense enforcement and assistance, one to the other, across their respective jurisdictional lines in the described situations and under the terms and procedures outlined below.

SECTION I. PROVISIONS FOR VOLUNTARY COOPERATION.

- 1). The undersigned governmental entities recognize the dangers of property crimes, including, but not limited to, burglary, theft and other property related criminal activity and that there is a need for a continuing countywide effort to reduce the amount of criminal activity resulting from such offenses. In rendering law enforcement assistance, the Subscribing Law Enforcement Agencies will assign law enforcement officers as needed to the task force, in a joint effort to address the above-referenced criminal activity. As such, officers assigned to the Task Force are authorized to take any law enforcement action at any location within Broward County, to enforce the laws of the State of Florida, and may issue traffic citations, notices to appear, or make physical arrests as the circumstances warrant in furtherance of Task Force Operations. The municipal officers shall have the authority to collect and preserve evidence, take custody of any contraband article as defined in Chapter 932.701-706, Florida Statutes, conduct investigations, and/or take action that is necessary and appropriate to protect the safety of the public as may be appropriate under the circumstances. Nothing in this Agreement is intended to broaden the pursuit policies of the agencies involved. Officers assigned to the task force shall follow their own agency's pursuit policies. Such officer shall notify the jurisdiction in which the violation occurred of the incident and the action taken at the time it is taken, or as soon thereafter as practicable.
- 2). Municipal law enforcement officers enforcing laws pursuant to this Agreement shall be under the direction, authority and control of the commanding officers of their employing agency. All task force members shall abide by their agencies' policies, including to but not limited to pursuit, use of force, and body worn cameras. If there

is a conflict between a task force members' agency policy and a specific task force operation, the task force supervisor shall resolve the conflict through the task force member agency's chain of command, when practical to do so.

- 3). The day-to-day operation and administrative control of the Task Force will be the responsibility of the Task Force Supervisor, appointed by the Broward County Sheriff's Office. Participating agencies can and are encouraged to provide case information from their jurisdictions to the Task Force Supervisor. Such cases will become Task Force Operations that will be assigned a priority by the Task Force Supervisor.
- 4.) This Agreement shall constitute an ongoing request for assistance between the parties and no other formal request for assistance shall be necessary prior to taking any action contemplated herein.

SECTION II. TERMS AND PROCEDURES:

- 1) The Chief of Police of the agency, or designee, shall have the sole authority to determine whether personnel from that agency provide enforcement assistance across jurisdictional boundaries.
- 2) Whenever the employees of one party to this agreement are taking action pursuant to the authority provided for in this Agreement, when actually engaging in mutual cooperation and assistance outside of the jurisdictional limits of the employee's jurisdictional limits, but in such areas as stated in this Agreement, they shall, pursuant to the provisions of Section 23.127(1), Florida Statutes, have the same powers, duties, rights, privileges and immunities as if the employee was performing duties inside the employee's political subdivision in which he/she is employed.
- 3) Should a subject/arrestee's vehicle need to be towed, it will be towed by the appropriate vendor providing service to the municipality in which the action was taken and the request will be coordinated with the agency having original jurisdiction over the location.
- 4) All wage and disability payments, pensions, worker's compensation claims and medical expenses shall be paid by the employing agency.
- 5) Each Subscribing Law Enforcement Agency agrees to furnish necessary personnel, equipment, resources and facilities and to render services to each other party to the Agreement as set forth above, provided however, that no party shall be required to deplete unreasonably its own personnel, equipment, resources, facilities, and services in furnishing such mutual aid.

- 6) Each agency shall be responsible for bearing its own costs associated with the loss or damage to any equipment or property of that agency during a voluntary cooperation situation. Notwithstanding anything contained herein to the contrary, under no circumstances shall the liability of any agency, exceed the limits of liability set forth in section 768.28 Florida Statutes, or waive any immunities or its sovereign immunity.
- 7) Each agency shall bear all costs associated with any negligent act taken by an employee of their own agency. Notwithstanding anything contained herein to the contrary, under no circumstances shall the liability of any agency, exceed the limits of liability set forth in section 768.28 Florida Statutes, or waive any immunities or its sovereign immunity to which it is entitled.
- 8) Each agency engaging in any mutual cooperation and assistance, pursuant to this Agreement, agrees to assume responsibility for the acts, omissions, or conduct of such agency's own employees while engaged in rendering such aid pursuant to this Agreement, subject to the provisions of Section 768.28, Florida Statutes, where applicable. Each agency further agrees to indemnify and hold harmless the other subscribing agency, its agents, appointees, employees, designees and representatives from any and all claims, demands, judgments, suits and verdicts, cause and causes of action relating to the actions of its own officers in the performance of this Agreement, subject to the provisions of Section 768.28, Florida Statutes.

SECTION III: FORFEITURE

- 3.1 Unless otherwise agreed to by the Broward Sheriff's Office and an assisting agency, the Broward Sheriff's Office will maintain any seized property and determine whether there is a good-faith basis to initiate forfeiture proceedings related to property seized by in the course of the task force investigations relating to this Agreement.
- 3.2 If forfeiture proceedings are initiated on the seized property and a forfeiture judgment is entered, the Broward Sheriff's Office will receive, after deduction of filing expenses, a share, and then shall allocate a proportional share) of the currency forfeited or of the proceeds of the forfeiture to each agency that participated in the specific task force operation resulting in the seizure. Each participating agency may request that the other agencies provide information regarding the seized assets which are subject to sharing under this Agreement and information regarding the forfeiture proceedings. Should there be any funds seized pursuant to federal guidelines, each agency will be responsible for submitting their own DAG forms.

SECTION IV: INSURANCE

Each party shall provide satisfactory proof of liability insurance by one or more of the means specified in Section 768.28(16), Florida Statutes, in an amount which is, in the judgment of the governing body of that party, at least adequate to cover the risk to which that party may be exposed. Should the insurance coverage, however provided, of any party be canceled or undergo material change, that party shall notify all parties to this Agreement of such change within ten (10) days of receipt of notice or actual knowledge of such change. In the event that a municipality/agency is self-insured, they shall provide a statement from their risk management indicating that the entity is self-insured, in accordance with Section 768.28, Florida Statutes.

SECTION V: HANDLING OF COMPLAINTS

- 5.1 Whenever there is a cause to believe that a complaint has arisen as a result of a cooperative effort as it may pertain to this Agreement, the complaint shall be forwarded to the Task Force Supervisor or his/her designee who shall be responsible for the documentation of said complaint to ascertain at a minimum:
- a. The identity of the Complainant
 - b. The Complainant's phone number, if available
 - c. An address where the complaining party can be contacted
 - d. The specific allegation
 - e. The identity of the task force member accused without regard as to agency affiliation
- 5.2 If it is determined that the accused is an employee of an Assisting Agency, the above information, with all pertinent documentation gathered during the receipt and processing of the complaint, shall be forwarded without delay to the agency head or his/her designee of the Assisting Agency for review and any action that such agency deems appropriate.

SECTION VI. SEVERANCE/TERMINATION. Any of the undersigned governmental entities shall have the unconditional right to withdraw from this agreement upon giving a thirty (30) day written notice to the Sheriff of Broward County and to the Chief of Police of the remaining member entities.

SECTION VII. DURATION OF AGREEMENT. This Agreement shall be in effect from March 1, 2021 through April 30, 2026, among those governmental entities executing this agreement. It may be renewed, extended or modified only by written agreement executed by each governmental entity. Any member agency's withdrawal from this agreement shall not affect the duration of this agreement.

SECTION IX.ADDING ADDITIONAL AGENCIES: Agencies that elect to enter into this Agreement at a later date may do so by executing the Agreement and providing copies to the other agencies to the Agreement.

SECTION X: EFFECTIVE DATE

This Agreement shall take effect upon execution and approval by the hereinafter named officials and shall continue in full force and effect for a five year period unless terminated prior thereto by any or all of the parties herein. Any individual agency may cancel their participation in this task force and terminate this agreement as to their agency upon thirty (30) days written notice to the other participating agencies.

LAW ENFORCEMENT MUTUAL AID AGREEMENT FOR BURGLARY APPREHENSION TASK FORCE

IN WITNESS WHEREOF, the agencies hereto cause these presents to be signed on the date specified.

INDIVIDUAL GOVERNMENTAL ENTITY SIGNATURE SHEET

TOWN OF HILLSBORO BEACH POLICE DEPARTMENT

BY: _____
JAY SZESNAT
Police Chief

DATE: _____

APPROVED AS TO FORM:

DONALD J. DOODY
Town Attorney

**LAW ENFORCEMENT MUTUAL AID AGREEMENT
FOR BURGLARY APPREHENSION TASK FORCE**

GREGORY TONY, SHERIFF OF BROWARD COUNTY

GREGORY TONY
Sheriff

Date: _____

Approved as to form and legal
sufficiency subject to execution
by the parties:

By: _____
Terrence O. Lynch, General Counsel



1210 Hillsboro Mile
Hillsboro Beach, FL 33062

TOWN OF HILLSBORO BEACH

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Authorization to Conduct an ESA-Listed Coral Survey by Coastal Protection Engineering (CPE)

Submitting Dept: Town Manager

Agenda Date: March 1, 2022

1. BACKGROUND / HISTORY

The Town of Hillsboro Beach and the City of Deerfield Beach contracted with Coastal Protection Engineering (CPE) in 2021 to design and permit the next nourishment event for the Hillsboro-Deerfield Beach Nourishment project. During preliminary coordination with regulatory agency staff at the U.S. Army Corps of Engineers (USACE), guidance was provided regarding updated requirements of the National Marine Fisheries Service (NMFS) 2020 South Atlantic Regional Biological Opinion (SARBO). The SARBO is a programmatic biological opinion that is meant to expedite ESA Section 7 Consultation with NMFS Protected Resources Division (NMFS-PRD). The proposed project area is within the range of ESA-listed coral species and includes *Acropora* critical habitat. Therefore, a coral survey as per the NMFS recommended protocol for ESA-listed coral colony and *Acropora* critical habitat of the nearshore hardbottom habitat is required to meet the criteria of the SARBO prior to obtaining a federal permit for the beach renourishment project.

2. CURRENT ACTIVITY

In January 2022, the Town of Hillsboro Beach and the City of Deerfield Beach submitted a permit application to USACE to authorize the Hillsboro-Deerfield Beach Nourishment project, with anticipated construction in winter 2022/2023. The permit application stated that an ESA-coral listed survey would be conducted this winter and the results provided to the Corps once complete. Conducting this survey will facilitate the application of the SARBO to the project and potentially eliminate the need for the Corps to consult with NMFS-PRD on the beach fill activities.

3. FINANCIAL IMPACT

The fees for this effort are estimated as a Lump Sum \$17,308.10 for the Town of Hillsboro as these costs are being split with the City of Deerfield Beach in accordance with the Settlement Agreement.

The proposed fees are anticipated to be 50% reimbursable by the State through the Beaches Funding Program, pending legislature approval of our joint (with the City of Deerfield Beach) Local Government Funding Request submitted in summer of 2021.

4. RECOMMENDATION

Recommend approval of a Notice to Proceed to CPE to conduct an ESA-Listed Coral Survey.

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WHEREAS, the Town Commission deems it to be in the best interests of the Town to approve and authorize a Notice to Proceed to Contract with Coastal Protection Engineering to conduct an Endangered Species Act listed coral survey for the Town of Hillsboro Beach and the City of Deerfield Beach under the Contract approved in 2021 pursuant to RFQ #21-15-JW.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA THAT:

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ADOPTED by the Town Commission of the Town of Hillsboro Beach, Florida this
__ day of _____ 2022.

TOWN OF HILLSBORO BEACH, FLORIDA

Deborah L. Tarrant, Mayor

ATTEST:

Sherry D. Henderson, CMC
Town Clerk



COASTAL PROTECTION ENGINEERING

5301 N. FEDERAL HWY, SUITE 335
BOCA RATON, FL 33487
561-565-5100

February 18, 2022

Sent Via Email

Patrick Bardes
Coastal & Waterway Coordinator
City of Deerfield Beach
401 SW 4th Street
Deerfield Beach, FL 33441

Mac Serda
Town Manager
Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Re: RFQ # 21-15-JW - Proposal to Conduct Endangered Species Act (ESA) Listed Coral Survey

Dear Mr. Bardes and Mr. Serda:

This proposal is being provided in response to your request for Coastal Protection Engineering LLC (CPE) to conduct an ESA-listed coral survey for the City of Deerfield Beach (City) and Town of Hillsboro Beach (Town) under the Contract approved pursuant to RFQ # 21-15-JW. The survey will be conducted as per the National Marine Fisheries Service (NMFS) recommended protocol for ESA-listed coral colony and *Acropora* critical habitat along the nearshore hardbottom habitat adjacent to the project shoreline, which is detailed in the attached Scope of Work (Exhibit A). An ESA-listed coral survey report will be prepared and provided to the USACE to support ESA Section 7 Consultation, completion of which is required prior to issuance of the federal permit.

The total cost for these services is to be provided for a Lump Sum fee of \$34,616.20 as detailed in the attached Fee Proposal (Exhibit B) to be invoiced monthly based on percent complete. CPE will perform these services in accordance with the Rate Schedule and Terms and Conditions of the governing Contract dated April 6, 2021. We respectfully request that each municipality provide a written Notice to Proceed or corresponding Purchase Order for CPE to commence work in their respective amounts of \$17,308.10 to reflect the equal share of Soft Costs per the Settlement Agreement. Likewise, we will arrange our invoices to each municipality accordingly.

Thank you for the opportunity to serve the City and the Town. If you have any questions, please feel free to contact me directly at 561-756-2535.

Sincerely,

Thomas P. Pierro, P.E., D.CE
Principal Engineer
Coastal Protection Engineering LLC
Mobile: 561-756-2535
tpierro@coastalprotectioneng.com



Att.: Exhibit A – Scope of Services
Exhibit B – Fee Proposal

cc: Chad Grecsek, City of Deerfield Beach
Tara Brenner, P.G., P.E., CPE
Stacy Buck, CPE

Exhibit A – Scope of Services

Endangered Species Act Listed Coral Colony Survey

This task includes the services to conduct a coral survey as per the National Marine Fisheries Service (NMFS) recommended protocol for ESA-listed coral colony and *Acropora* critical habitat along the project area shoreline. The survey area will extend 500 feet north and south of the project limits (R-5 to R-12+400) and will include the nearshore hardbottom located within 500 feet of the equilibrium toe of fill (ETOF). Field support for this effort will be provided by our subconsultant CSA Ocean Sciences Inc. (CSA).

Based on historic hardbottom within the investigation area, identified from multiple years of aerial imagery, it is anticipated that 32 sampling sites will be assessed in the survey area. Each sampling site measures 1-hectare and will be surveyed by two marine biologists using a 2-tiered approach.

Tier 1: The hardbottom within each site will be assessed in a grid pattern. If five (5) or fewer colonies of any ESA-listed species are encountered, the required data will be collected on those colonies and no further surveying is required. If more than five (5) colonies are encountered, the survey will proceed to Tier 2.

Tier 2: Three (3) non-overlapping belt transects will be placed over as much hardbottom as possible within the 1-hectare sampling site and the required data will be recorded for all colonies within the three (3) transects. Transitions between hardbottom and sand will also be recorded.

Raw data will be submitted in the form of scanned datasheets, excel spreadsheets with coral data, and photographs. An ESA-listed coral survey report will be prepared and provided to the USACE to support ESA Section 7 consultation. The report will include a map of the project area and adjacent hardbottom resources with the survey results overlaid onto recent, clear aerial photographs. The results will be discussed with the City and Town prior to finalizing the report and a draft version can be made available for review and comment, if requested.

**Exhibit B - Fee Proposal**

The Scope of Services presented in Exhibit A will be performed for a Lump Sum fixed price as shown in the fee estimate below (Exhibit B) and based on the subconsultant proposal attached hereto. The work will be invoiced monthly on a percent-complete basis shared equally (50/50) between the City of Deerfield Beach (City) and Town of Hillsboro Beach (Town) as "Soft Costs" defined by the Settlement Agreement. The services will be conducted in accordance with the terms and conditions of the Contract between Coastal Protection Engineering LLC (CPE) and the City and Town dated April 6, 2021.

Please issue the Purchase Order and/or Notice to Proceed in the name of our license contracting entity, Coastal Planning and Engineering LLC, and reference the contract under which we are performing these services. The approved rates, classifications, and fee estimate build up are presented below. Should the project require additional services not included in this proposal, CPE will coordinate with the City and Town to amend the scope of services with a mutually agreeable revision. Additional services can be provided under a future phase proposal upon request.

City of Deerfield Beach and Town of Hillsboro Beach**RFQ #21-15-JW: ESA-Listed Coral Survey****Fee Proposal – February 18, 2022**

Task Description	Labor		Equipment	Sub-Consultant
	Senior Marine Biologist (Hours)	CAD/GIS Operator Hours	Diver Equipment & Insurance diver/day	CSA Ocean Sciences Cost
ESA-Listed Coral Survey	96	8	6	\$17,222.00
TOTAL =	96	8	6	\$17,222.00
RATE =	\$152.00	\$90.00	\$60.00	1.1
COST =	\$14,592.00	\$720.00	\$360.00	\$18,944.20
Labor Cost = \$	15,312.00			
Equipment Cost = \$	360.00			
Sub-Consultant Cost = \$	18,944.20			
TOTAL	\$ 34,616.20			



Rate Schedule for RFQ 21-15-JW
Coastal Protection Engineering LLC
March 2021

I. Labor Rates

Labor Classification

Principal Engineer	\$256.00
Principal Coastal Scientist	\$256.00
Program Manager	\$180.00
Project Manager	\$166.00
Senior Coastal Engineer	\$166.00
Senior Marine Geologist	\$166.00
Senior Coastal Scientist	\$163.00
Senior Marine Biologist	\$152.00
Coastal Engineer	\$125.00
Coastal Modeler	\$110.00
Junior Coastal Engineer	\$100.00
Junior Coastal Scientist	\$95.00
CAD / GIS Operator	\$90.00
Engineering Intern / Technician	\$72.00

II. Reimbursable Costs*

Cost Classification

Mileage	\$0.575 / mile
SCUBA Diving	\$60 / diver / day
Equipment	Per Purchase Order
Direct Costs	Per Purchase Order
Sub-Consultants	10% of Cost

**Subject to terms and conditions of Contract and applicable Work Authorization and the following specific exclusions:*

- 1. Travel costs within Broward County to project sites and client offices.*
- 2. Incidental costs for set-up and hosting of conference call or virtual meetings.*
- 3. Miscellaneous contract administration costs such as task order development and negotiations.*



COMMERCIAL PROPOSAL

Endangered Species Act Coral Survey for Deerfield Beach and Town of Hillsboro Beach Nourishment Project

Submitted to:



Coastal Protection Engineering
5301 N. Federal Hwy, Suite 335
Boca Raton, FL 33487
Office: 561-609-9144

Submitted By:



CSA Ocean Sciences Inc.
8502 SW Kansas Avenue
Stuart, Florida 34997
Office: 772-219-3000



The content of this document is the exclusive property of CSA Ocean Sciences Inc. It has been provided for the purpose for which it is supplied and is not for general release or disclosure. The recipient of this document should take all measures to ensure that the contents are only disclosed to those persons having a legitimate right to know. The recipient should also note that this document is provided on the express terms that it is not to be copied whole or in part or disclosed in any manner to third parties without the express authority in writing from CSA Ocean Sciences Inc.

Prepared For:	Prepared By:
Coastal Protection Engineering Stacy Buck Senior Marine Biologist Cell: 561-632-1210 sbuck@coastalprotectioneng.com	CSA Ocean Sciences Inc. Deborah Kilbane Ports & Coastal Sciences Inc. Tel: 772-219-3012 Cell: 561-523-1313 dkilbane@conshelf.com CSA Ref: 81863

The following version(s) of this proposal have been issued:

Ver.	Date	Description	Approved	
01	16 November 2021	ESA Coral Survey – Deerfield Beach and Town of Hillsboro Beach	KS	FA

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1.0 SCOPE OF WORK

CSA Ocean Sciences Inc. (CSA) is pleased to submit this commercial proposal to Coastal Protection Engineering (CPE) to provide environmental survey support for an Endangered Species Act listed coral species survey (ESA listed Coral Survey) to support the Deerfield Beach and Town of Hillsboro beach nourishment permit application. A diver-based survey is required to locate and quantitatively estimate the population of ESA listed corals within a hardbottom habitat encompassing ~30 hectares from R-5 to R-12+400. All survey activities will follow the National Marine Fisheries Service (NMFS) Recommended Survey Protocol for *Acropora* species in Support of Section 7 Consultation (**Attachment A**).

TASK 1: PROJECT MANAGEMENT, MOBILIZATION, AND DEMOBILIZATION

All project management, survey planning and coordination, Health, Safety, Security, and Environment (HSSE) duties and requirements, kickoff meeting, navigation packet set-up, and vessel and equipment mobilization and demobilization are covered under this task.

TASK 2: FIELD SURVEY

CSA will provide a vessel, survey equipment, vessel operator/navigator, and one American Academy of Underwater Sciences (AAUS) certified biologist experienced in monitoring coral reef communities and conducting ESA listed coral surveys, and familiarity in identifying stony coral tissue loss disease (SCTLD). This task includes labor, vessel, equipment, and per diem (lunch only) for 3 days.

CPE will provide the project area and survey site shape files, electronic data sheet, and two AAUS certified biologists.

TASK 3: DATA DELIVERABLES AND REPORT REVIEW

All data quality assurance/quality control (QA/QC), data entry, and report preparation will be conducted by CPE. CSA will provide all field data sheets to CPE at the end of each field day and will post-process all navigation data for electronic delivery at the end of the field effort. CSA will review the draft report and will provide the following electronic deliverables:

- Post-processed navigation data; and
- All raw photographs.

2.0 PROJECT SCHEDULE

We anticipate this survey to be conducted in early December 2021.

3.0 RESOURCES

Table 1. Resource Table.

Personnel	Quantity	Notes
Project Manager	1	
Vessel Operator/Navigator	1	
AAUS Biologist; ESA coral specialist	1	
Dive Safety Officer	1	
Equipment	Quantity	Notes
Truck & 25' Parker	1	
Navigation Package	1	Computer, Hypack, DGPS
Diver Digital Still Camera	1	Canon G12 with underwater housing and lights
GoPro Underwater Video System	1	Hero8 or newer
Scuba Equipment Set	1	CSA staff personal dive gear
Scuba Tank 80 ft ³	12	Per field day
Telemetry GPS Buoy	1	

4.0 RATES AND PAYMENT SCHEDULE

Task #	Project Task Name	Terms	Unit Rate	Qty	Total	Payment Schedule
Task 1	Project Management, Mobilization, Demobilization	Lump Sum	\$ 3,067	1	\$ 3,067	At completion
Task 2	Field Day	Day Rate	\$ 4,182	3	\$ 12,545	At completion
Task 3	Data & Report Review	Lump Sum	\$ 1,609	1	\$ 1,609	At completion
TOTAL					\$ 17,221	

5.0 PROPOSAL TERMS

CSA's commercial proposal price calculations are based on "General Terms" and "Project-specific Terms," listed below. If Coastal Protection Engineering (Client) has issues with any of these items, CSA reserves the right to modify its original proposal price in order to meet any cost increase arising from any modifications requested by the Client.

This proposal contains privileged, confidential, and/or proprietary information intended for a specific individual and purpose. Any distribution or use of this communication by anyone other than the intended recipient is strictly prohibited and may be unlawful.

CSA is certified by TRACE International Inc. and conducts business ethically and in compliance with the U.S. Foreign Corrupt Practices Act, U.K. Bribery Act, and other anti-bribery legislation. CSA has implemented and strictly adheres to anti-bribery, anti-corruption, and third-party risk management corporate policies and procedures (<https://www.traceinternational.org/>). CSA holds these standards in high regard and expects the same from its clients and subcontractors.

- Consequences due to coronavirus HSSE have not been included but may result in contingency, including government-imposed quarantine, testing, and other unforeseen impacts.
- All staff will conform to CSA's coronavirus mitigation protocol. Any other required protocol(s) will be reconciled via a bridging document reflecting the more conservative approach among plans.
- The services described in this proposal are consistent with the Client or Regulatory Document, as well as CSA's experience providing the proposed services under both typical and atypical situations.
- CSA will endeavor to perform the services and accomplish the objectives within the estimated price and schedule, but in no event shall CSA's estimate be interpreted as a not-to-exceed or fixed priced unless expressly stated otherwise.
- Quoted rates are valid for 90 days after the date of the proposal.
- Prices are quoted and payable in U.S. Dollars.
- Prices are exclusive of VAT, withholding taxes, any local or national taxes, fees, and/or licenses.
- Any additional costs incurred for express services will be charged at cost +15%.
- Any unspecified costs for third-party services will be billed at cost +15%.
- Payment is due within 30 days of invoice unless otherwise stated in contract.
- Services are subject to availability of personnel and equipment at time of the award.
- If CSA is required to exceed its original estimate for any reason, the Client may redefine the scope of services by submitting a change order to accomplish their budgetary objectives.
- A mutually agreed upon contract must be executed by both parties before any commencement of work, unless CSA receives a formal "Notice to Proceed." A "Notice to Proceed" template is available upon request.

Project-specific Terms

General Terms

- CSA will not be held responsible for any costs or delays incurred due to Government actions, decisions, or rulings when all necessary measures to address all transparent Government concerns have been taken.
- Once CSA receives a formal "Notice to Proceed" or a fully executed contract, a mobilization time of **2 weeks** will be required before beginning any on-site work.
- Price as submitted is based on using the specified subcontractors; should they not be available at time of award rates may need to be renegotiated.
- It is understood and agreed that CSA and client may choose one of its affiliates to be the contracting party in order to perform these services, as described more fully in this proposal. In that event, the two companies agree that each party has the sole option to enter into a service order or contract as if the affiliate were respectively the contractor and/or client.
- The number of field days is estimated. Invoiced amount will be based on the actual number of field days incurred by CSA personnel and/or equipment based on day rates listed in the proposal Rate Schedule.
- Approvals and authorizations requiring longer than the time estimated that may delay field efforts could result in additional costs to the Client.
- Mobilization/demobilization includes: project management, kickoff meeting, equipment setup, testing, vessel mobilization/demobilization, Dive Plan.
- Field day includes: labor, equipment, fuel, per diem.
- Price assumes 10 hours per day operations.
- Any presentations and meetings will be provided at additional expense.

- Technical assistance, should any be required, will be provided by CSA at an additional cost to Client.

Vessel and Client Vessel

- If Client employees need to board a CSA-owned vessel, the contractual terms must contain a mutual indemnification clause and the Client must provide a Certificate of Insurance evidencing a Maritime Employers Liability policy which shall include Waiver of Subrogation in favor of CSA Ocean Sciences Inc. or provide signed Hold Harmless Agreements.

Equipment

- If any proposed equipment becomes unavailable, CSA reserves the right to substitute or replace the equipment with suitable alternatives. If substituting the equipment results in a price increase, then CSA will be required to obtain Client written approval prior to placing said equipment in service.

Positioning and Geophysical

- CSA will utilize WGS 84 UTM geodesy and Esri data formats in all geospatial products unless otherwise specified at project outset by the Client; subsequent conversions to other formats and geodesy are provided at an additional cost to the Client.
- Vertical and horizontal resolution of all geospatial data are provided without reference of vertical data to a tidal datum and at the resolution afforded by equipment, local, and space weather conditions at the time of collection. CSA's default system is differential GPS; tidal datum integration, where possible, is provided at additional cost to the Client and may require the installation of tide stations or additional water level measurement methods and/or advanced GPS technology (e.g., RTK).
- CSA's geospatial products are not Signed and Sealed by a Professional Land Surveyor unless specified at project outset by the Client; this certification is provided at an additional cost to the Client.

Contingency

- Weather contingency is not included in the proposed prices.

Client Responsibilities

- Project technical details, pertinent information necessary to conduct the project will be provided to CSA in sufficient time to allow assessment and effective integration into project planning and execution. Delays in providing information that results in changes to project planning and execution may result in additional costs to the Client.

Reporting

- CSA is not responsible for report preparation.
- All deliverables will be provided electronically, pricing for preparation of hard copies is not included.

ATTACHMENT – SURVEY PROTOCOL

A-1

Privileged, confidential, and/or proprietary information intended for a specific individual and purpose. Any distribution or use of this communication by anyone other than the intended recipient is strictly prohibited and may be unlawful.



ESA-Listed Coral Colony and Acropora Critical Habitat Survey Protocol Updated July 2019

Objective

To outline recommended survey methods for determining the distribution and abundance of coral species listed under the Endangered Species Act (ESA) and the amount of Acropora critical habitat at sites under ESA Section 7 consultation. The methods should be applicable to a broad range of project scales. ESA-listed coral species include *Acropora cervicornis* (staghorn coral), *Acropora palmata* (elkhorn coral), *Orbicella annularis* (lobed star coral), *Orbicella faveolata* (mountainous star coral), *Orbicella franksi* (boulder star coral), *Dendrogyra cylindrus* (pillar coral), and *Mycetophyllia ferox* (rough cactus coral).

Problem

Two aspects make quantitative sampling for coral species difficult:

Patchy and clumped distribution, with colonies as small as 0.01 m², which may be clumped together within a sub-area of the project area; and

1. Stratified distribution, with occurrence perhaps limited to a particular depth gradient or substrate type within a project area.
2. Additionally, hard bottom habitat can be interspersed with sand patches, making it difficult to accurately determine the amount of Acropora critical habitat present in a project area.

Recommended Methods for Critical Habitat Delineation

Surveying to identify the presence of coral hard bottom is important both for delineating the Acropora critical habitat essential feature and as a simplified way to identify areas where ESA-listed coral species may occur. The staghorn and elkhorn coral critical habitat essential feature is substrate of suitable quality and availability (i.e., consolidated hard bottom or dead coral skeletons free from fleshy macroalgae or turf algae and sediment cover); such substrate supports successful larval settlement, recruitment, and reattachment and recruitment of asexual fragments. If available, recent benthic habitat maps (as approved by NMFS) can be used to identify hard bottom areas and to estimate the amount of critical habitat present in the project area. If recent habitat maps are not available, high-resolution geophysical surveys will likely be necessary. Diver conducted surveys can be used to help ground-truth the presence and distribution of hard bottom habitat. Diver surveys can be conducted in conjunction with the surveys for species distribution as described below.

Recommended Methods for Species Distribution:

The most appropriate approach depends on scale, and the amount of expected error depends on the approach. Unless a complete survey of the entire area is done, the estimated distribution and

abundance of these species may be significantly in error. With the exception of very small project areas, efficient field sampling may require sampling in two stages. A preliminary visual reconnaissance of the site should be conducted to locate any visible occurrences of ESA-listed coral species regardless of size. Following the preliminary reconnaissance, a more comprehensive sampling should be initiated. All surveys should be completed by divers (or snorkelers if water depths are shallow and visibility is adequate) working in teams of two. Divers should swim at a speed slow enough to detect small corals and maintain a depth of approximately 1m from the bottom.

When using the following survey methods, survey personnel should record the following:

1. Species name;
2. Single largest linear dimension of the colony or length, height, and width (units = mm);
3. Rank of percentage live tissue and recent partial mortality (i.e., 1-25%, 26-50%, 51-75%, 76-100%);
4. GPS coordinates of each colony (if possible) or GPS location of each survey site (unit = decimal degrees and state datum) along with a description of where each colony occurs (measurement along a transect or location within a quadrant); and
5. Site map with locations of each colony.

Small Project Area (< ~0.1 hectare or 0.25 acre)

Conduct a visual reconnaissance of the entire project area. Reconnaissance can be limited to areas of hard bottom. Record the required information (items 1-5 above) for all ESA-listed coral colonies encountered. The total amount of hard bottom surveyed must also be provided so that a density of corals can be calculated.

Intermediate to Large Project Area (> ~0.1 hectare or ~0.25 acre)

Data should be collected at 1 sampling site per every 10,000 m² within the project area. Sampling can be limited to the portion of the project site that contains hard bottom (i.e., where the species may occur). The portion that contains unconsolidated sediment can be omitted from the sampling area. At each sampling site, a 2-tiered survey will be conducted.

1. Divide the area to be surveyed into plots of 10,000 m² (100 m X 100 m). Swim the whole plot using a grid pattern, noting any ESA-listed coral colonies. Placing two intersecting 100 m long transects to divide the plot into 4 quadrants may be helpful for orientation within the plot. If 5 or fewer colonies of any ESA-listed species are encountered, collect the required data (items 1-5 above) on those colonies. Density will be calculated by number of colonies (by species) divided by the amount of hard bottom per 10,000 m² (estimated using recent habitat maps or geophysical survey as defined above). No further surveying is required at the sampling plot, so proceed to the next sampling plot. If more than 5 colonies of any ESA-listed coral species are encountered, proceed to 2nd tier (item #2 below).
2. Conduct 3 non-overlapping belt transects at 3 locations within each 100 m by 100 m plot. Each belt transect should measure 4 m X 50 m and be placed over as much hard bottom as possible. Record the required data (items 1-5 above) for all colonies encountered along the transects. Also record the habitat transitions from hard bottom to sand along the transects and calculate

the proportion of the surveyed transect that is hard bottom. This calculation is necessary to determine the density of corals. Density of corals reported as number of colonies by species per site (calculated as number of coral colonies per area of actual hard bottom surveyed in water).

Staff Qualifications

All field work and Quality Assurance/Quality Control (QA/QC) of the surveys and data collected will be completed by qualified biologists who meet at least the following minimum requirements (1) Bachelor of Science in Marine Biology, Biology with a concentration in marine sciences, Environmental Science with a minor in Biology, or similar degree; (2) At least 3 years documented experience monitoring coral hardbottom / coral reef communities in South Florida; (3) Knowledge of marine benthic ecosystems and organisms, including but not limited to identification of Caribbean coral species.

QA/QC

Prior to initiating fieldwork, the entire dive survey team (boat operators, divers, data transcribers, and QA/QC reviewers) will hold a training session to discuss the proper completion of survey protocols, field data sheets, and proper species identification. An appropriate QA/QC protocol should include the following:

1. Test dive of a complete transect. If more than 1 dive team is employed then the test dive should be replicated by each diver pair. If a single dive team is employed then the test dive should be repeated with the divers swapping duties.
2. Results of repeated test transects should not vary by more than 10%.
3. Training should be documented and all divers should sign the training record.
4. All field data sheets should be signed by the divers and a separate QA/QC reviewer.

The QA/QC reviewer should be a separate qualified biologist who is responsible for verifying survey results and ensuring proper implementation of the survey protocols.

Date _____
Site Longitude _____

Site Longitude_____

Surveyor signature_____

Start Longitude _____

End Longitude_____

[illegible]

Habitat Transition Line - Note habitat type and changes

0m

50m



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Resolution No. 2022-09
A Resolution of the Mayor and Town Commission of the Town of Hillsboro Beach, Florida
Strongly Opposing House Bill 403 in the 2022 State Florida Legislature Which Seek to Enable
Businesses to Sue Governments and Halt Enforcement of Local Ordinances.

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS:

1. 09 - Oppose HB 403
2. Memo 2022-03 Analysis of House Bill 403
3. HB403analysis (00497015xC4B6A)

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SECTION 5. All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

SECTION 6. If any clause, section or other part of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered eliminated and will in no way affect the validity of the other provisions of this Resolution.

SECTION 7. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Town Commission of the Town of Hillsboro Beach, Florida, this ____ day of _____ 2022.

TOWN OF HILLSBORO BEACH, FLORIDA

ATTEST:

Mayor Deborah L. Tarrant

Sherry D. Henderson, CMC, Town Clerk

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2022-03

TO: Mayor and Members of the Town Commission

CC: Mac Serda, Town Manager
Sherry D. Henderson, CMC, Town Clerk

FROM: Donald J. Doody, Town Attorney *DJD*

DATE: February 17, 2022

RE: Town of Hillsboro Beach ("Town") / Analysis of House Bill 403

Attached please find House of Representatives Staff Analysis relative to House Bill 403. In summary, a bill enabling businesses to sue governments and halt enforcement of local ordinances is heading to its final committee review. The measure (HB 403) would freeze any ordinance for 90 days if a filed lawsuit claims its rules are "arbitrary or unreasonable." The bill would also require governments to draw up a "business impact estimate" for every ordinance. Upon being sued, governments that choose not to roll back the ordinance in question and lose the lawsuit would have to cover up to \$50,000 of a plaintiff's legal fees, costs and related damages. The bill provides an effective date of October 1, 2022.

Our office will provide an update once more information becomes available. Please feel free to contact me if you have any questions.

DJD:mea
Encls.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 403 Local Ordinances
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	11 Y, 4 N	Darden	Miller
2) Civil Justice & Property Rights Subcommittee	12 Y, 6 N, As CS	Mawn	Jones
3) State Affairs Committee			

SUMMARY ANALYSIS

Local governments have broad authority to legislate on any matter not inconsistent with federal or state law. If the Legislature preempts an area of regulation to the state, local governments are prohibited from exercising authority in that area. If a local government enacts an ordinance on a matter preempted to the state, a person may file a lawsuit asking the court to declare the ordinance void. A person may also challenge a local ordinance on the grounds that it is unreasonable; in such a challenge, the court will uphold the ordinance if a rational relationship exists between the regulation and a legitimate governmental purpose.

Florida law authorizes the award of attorney fees and costs to a prevailing party challenging an ordinance adopted or enforced by a local government that is expressly preempted by the Florida Constitution or state law. However, attorney fees and costs may not be awarded against a local government if it:

- Receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws the proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.

Further, this provision does not apply to ordinances relating to growth management, The Florida Building Code, or the Florida Fire Prevention Code.

CS/HB 403:

- Provides that a court may award attorney fees, costs, and damages to a complainant who successfully challenges a local ordinance on the grounds that the ordinance is arbitrary or unreasonable, unless an exception applies or the local government cures the issue.
- Caps at \$50,000 the amount of attorney fees, costs, and damages awardable to a prevailing plaintiff challenging a local ordinance on the grounds that it is arbitrary or unreasonable and prohibits double recovery.
- Requires local governments to prepare a "business impact estimate" before adopting certain local ordinances.
- Requires that a challenged local ordinance's enforcement be suspended in certain situations.
- Provides for expedited court review of a challenged ordinance suspended under the bill.
- Provides signature requirements and related sanctions for documents filed in a local ordinance challenge under the bill.
- States that the legislature finds that the act fulfills an important state interest.

The bill does not appear to have a fiscal impact on state government, but may have an indeterminate negative fiscal impact on local governments.

The bill provides an effective date of October 1, 2022.



Calvin, Giordano & Associates, Inc.
EXCEPTIONAL SOLUTIONS™
1800 Eller Drive, Suite 600, Fort Lauderdale, Florida 33316
Phone: 954.921.7781 · Fax: 954.921.8807

TOWN OF HILLSBORO BEACH
1210 HILLSBORO MILE
HILLSBORO BEACH, FL 33062

Invoice number 99939
Date 01/31/2022

Project **179902 HILLSBORO BEACH BUILDING
CODE**

Billing period through January 31, 2022

CGA PM: Peter Deveaugh

emailto: Mac Serda (mserda@townofhillsborobeach.com)

cc: Stephen.Bloom@inframark.com
terri.lusk@inframark.com
ranathan@townofhillsborobeach.com
Sherry D. Henderson (shenderson@townofhillsborobeach.com)
Billing 85% of Permit Fees Collected

Invoice Summary

Description	Contract Amount	Percent Complete	Total Billed	Prior Billed	Remaining	Current Billed
BUILDING CODE SERVICES	0.00	0.00	1,516,289.37	1,309,064.80	-1,516,289.37	207,224.57
FLOOD PLAIN MANAGEMENT	0.00	0.00	562.50	562.50	-562.50	0.00
REIMBURSABLES	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.00	0.00	1,516,851.87	1,309,627.30	-1,516,851.87	207,224.57

Permit Fees - \$ 243,175.96
Town Revenue- \$ 36,476.39
CGA Revenue - \$ 206,699.57
CGA Admin Fee- \$ 525.00
CGA Total- \$ 207,224.57

Description	Contract Amount	Percent Complete	Total Billed	Prior Billed	Remaining	Current Billed
BUILDING CODE SERVICES	0.00	0.00	1,516,289.37	1,309,064.80	-1,516,289.37	207,224.57
Total	0.00	0.00	1,516,289.37	1,309,064.80	-1,516,289.37	207,224.57

Invoice total 207,224.57



**Town of Hillsboro Beach
Building Department
Finance Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

	Permit Fees	Town Revenue	Fire Fees	Zoning Fees	Admin Fees	CGA Revenue	BORA	DBPR	DCA
MTD	\$243,175.96	\$36,476.39	\$450.00	\$2,700.00	\$525.00	\$206,699.57	\$5,612.52	\$4,309.69	\$2,887.90
YTD	\$426,531.49	\$63,979.72	\$1,800.00	\$4,800.00	\$1,100.00	362,551.77	\$8,799.52	\$6,766.43	\$4,598.68



Invoice Date: 12/31/2021

Date Invoice Submitted: 1/4/2022

Invoice #: 21-1231-26

Account: 32-TOWNH

TO: TOWN OF HILLSBORO BEACH
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

inframark@avidbill.com

INVOICE

Transportation Services Provided
For the month of
Dec-21

SHUTTLE BUS	3 days a week 9:00am to 5:50pm (8.83/day)		
	123.62 Service Hrs. @ \$53.00/Hr.	\$	6,551.86
Mon - Wed - Fri	14 Svc Days @ 8.83 Svc Hrs/Day = 123.62 Svc Hrs. (see details)		

Total Amount due this Invoice	\$	6,551.86
-------------------------------	----	----------

For Billing Inquiries Please Call Thomas Rankine (954) 463-0845

Remittance Instructions:

Limousines of South Florida, Inc.
2000 N SR 7
Lauderdale Lakes, FL 33313

Thank you for the Opportunity to Service your Transportation Needs

Town of Hillsboro Ridership Summary

December-21

Daily Passengers:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		23		51	
42		48		46	
46		50		45	
46		46		42	
49		42		23	

0

Total Monthly Passengers:

599

Daily Revenue Miles:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		103.00		106.00	
106.00		106.00		100.00	
105.00		106.00		105.00	
106.00		106.00		106.00	
106.00		106.00		106.00	

0.0

Total Monthly Revenue Miles:

1473.0

Total Scheduled Revenue Miles

1523.7

Total Vehicle Hours

135.4

Total Revenue Hours

123.6

Service Days

14

Missed Service in Minutes

0

Passengers per revenue hour

4.8

Total Monthly Vehicle Miles: **

1,802.0

AM - 1st day this month

PM - Last day this month

Veh 2017

14,545

16,371

Alt Veh #



Invoice Date: 1/31/2022
Date Invoice Submitted: 2/2/2022
Invoice #: 22-0131-26
Account: 32-TOWNH

TO: TOWN OF HILLSBORO BEACH
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

inframark@avidbill.com

INVOICE

Transportation Services Provided
For the month of
Jan-22

SHUTTLE BUS	3 days a week 9:00am to 5:50pm (8.83/day)		
	114.79 Service Hrs. @ \$53.00/Hr.	\$	6,083.87
Mon - Wed - Fri	13 Svc Days @ 8.83 Svc Hrs/Day = 114.79 Svc Hrs. (see details)		

Total Amount due this Invoice	\$	6,083.87
-------------------------------	----	----------

For Billing Inquiries Please Call Thomas Rankine (954) 463-0845

Remittance Instructions:

Limousines of South Florida, Inc.
2000 N SR 7
Lauderdale Lakes, FL 33313

Thank you for the Opportunity to Service your Transportation Needs

Town of Hillsboro Ridership Summary

January-22

Daily Passengers:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
44		45		42	
46		46		42	
	47	46		45	
43		43		42	
39					

0

Total Monthly Passengers:

570

Daily Revenue Miles:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
106.00		106.00		106.00	
105.00		106.00		105.00	
	106.00	102.00		106.00	
106.00		105.00		106.00	
104.00					

0.0

Total Monthly Revenue Miles:

1369.0

Total Scheduled Revenue Miles

1414.9

Total Vehicle Hours

125.7

Total Revenue Hours

114.8

Service Days

13

Missed Service in Minutes

0

Passengers per revenue hour

5.0

Total Monthly Vehicle Miles: **

1,674.5

AM - 1st day this month

PM - Last day this month

Veh 2017

16,371

18,199

Alt Veh #



INVOICE

2002 West Grand Parkway North
Suite 100
Katy, TX 77449

INVOICE#

#72201

DATE

1/19/2022

CUSTOMER ID

C1312

NET TERMS

Net 30

PO#**DUE DATE**

2/18/2022

BILL TO

Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach FL 33062
United States

Services provided for the Month of: January 2022

DESCRIPTION	QTY	UOM	RATE	MARKUP	AMOUNT
Accounting Services for the Month of: January 2022					
Financial Accounting Service 001-532004-51308-5000	1	Ea	7,314.84		7,314.84
Postage 001-541010-51307-5000	1	Ea	74.68		74.68
Storage 001-544025-51307-5000	1	Ea	11.10		11.10
Subtotal					7,400.62

Subtotal

\$7,400.62

Tax

\$0.00

Total Due

\$7,400.62

Remit To :

Inframark LLC, PO BOX 733778, Dallas, Texas, 75373-3778

Please include CUSTOMER ID and the Invoice number on the check stub of your payment.



INVOICE

2002 West Grand Parkway North
Suite 100
Katy, TX 77449

INVOICE#

#74078

DATE

2/23/2022

CUSTOMER ID

C1312

NET TERMS

Net 30

PO#**DUE DATE**

3/25/2022

BILL TO

Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach FL 33062
United States

Services provided for the Month of: February 2022

DESCRIPTION	QTY	UOM	RATE	MARKUP	AMOUNT
Accounting Services for the Month of: February 2022					
Financial Accounting Service 001-532004-51308-5000	1	Ea	7,607.43		7,607.43
Postage 001-541010-51307-5000	1	Ea	85.86		85.86
Storage 001-544025-51307-5000	1	Ea	11.10		11.10
Financial Accounting Service - BACK BILL FROM OCT. 2021-JAN. 2022 001-532004-51308-5000	1	Ea	1,170.36		1,170.36
Subtotal					8,874.75

Subtotal

\$8,874.75

Tax

\$0.00

Total Due

\$8,874.75

Remit To :

Inframark LLC, PO BOX 733778, Dallas, Texas, 75373-3778

Please include CUSTOMER ID and the Invoice number on the check stub of your payment.

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

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02/23/2022

TOWN OF HILLSBORO BEACH
1210 Hillsboro Mile
Hillsboro Beach FL 33062

ACCOUNT NO: 1182-0606490
STATEMENT NO: 39933

Attn: Mac Serda, Town Manager

General Matters

			HOURS
01/25/2022	DJD	Review suggested revisions to Excavation Ordinance submitted by Nicole Sharp.	0.80
01/26/2022	DJD	Review revised ordinances.	0.80
01/27/2022	DJD	Address agenda item; Telephone conference with Town Manager, Mac Serda; Prepare resolutions.	1.40
01/31/2022	DJD	Prepare for Town Commission meeting; Telephone conference with Town Manager, Mac Serda; Review emails.	1.80
02/01/2022	DJD	Prepare for and attendance at the Town Commission meeting; Telephone conference with Mac Serda.	4.80
02/02/2022	DJD	Post Commission follow up; Amend ordinances and prepare Development Orders.	1.70
02/03/2022	DJD	Finalize amendments to ordinances; Address Development Orders	1.30
02/07/2022	SMS	Research on electronic unicycles.	0.50
	DJD	Telephone conference with Commission member; review Florida Statutes relative to Electronic Unicycles.	0.70
02/08/2022	DJD	Address operation Stone Garden Memorandum; review memorandum for Burglary Task Force	0.70
02/09/2022	DJD	Review Just FOIA documentation; exchange of emails	0.60
02/10/2022	DJD	Examination of issues identified with proposed excavation ordinance.	0.70
02/11/2022	DJD	Telephone conference with Town Manager, Mac Serda; Review Surfside excavation ordinance	0.80
02/14/2022	DJD	Review of Urban Leap Proposal; Review agenda items	1.30
02/16/2022	SMS	Review of UrbanLeap Proposal and draft memorandum on possible issues; Research on charging fees to sole Successful Bidder.	1.30
02/17/2022	SMS	Revise Memorandum on possible issues.	0.80
02/18/2022	SMS	Research on Placement of Political Advertisements.	1.30

General Matters

			HOURS	
	DJD	Telephone conference with Town Manager, Mac Serda; address state law on political signs	0.70	
02/21/2022	DJD	Revise excavation ordinance	0.40	
02/22/2022	DJD	Review code re: signs; Review the Florida Statue; Telephone conference with Town Manager, Mac Serda; Telephone conference with Nicole Sharp re: excavation ordinance; Address agenda items	1.80	
		FOR CURRENT SERVICES RENDERED	24.20	5,445.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D.J. DOODY	20.30	\$225.00	\$4,567.50
SEAN M. SWARTZ	3.90	225.00	877.50

Photocopies	374.85
TOTAL EXPENSES	374.85
TOTAL CURRENT WORK	5,819.85
BALANCE DUE	<u>\$5,819.85</u>

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE



GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

Page: 1

02/23/2022

TOWN OF HILLSBORO BEACH
1210 Hillsboro Mile
Hillsboro Beach FL 33062

ACCOUNT NO: 1182-1200993
STATEMENT NO: 39934

Attn: Mac Serda, Town Manager

Development

			HOURS	
01/25/2022	DJD	Telephone conference with Pedro Gassant re: easement; Telephone conference with Jim Hickey.	0.80	
01/26/2022	DJD	Address issue of voluntary contribution	1.20	
01/27/2022	DJD	Prepare for site plan review by Town Commission.	1.30	
01/28/2022	DJD	Address site plan issues.	1.30	
01/31/2022	DJD	Review site plan application; Prepare for Town Commission meeting.	1.40	
02/01/2022	DJD	Review staff report prior to Commission meeting; Address nature of easement.	1.30	
02/02/2022	DJD	Telephone conference with Debbie Orshefsky, Esq.	0.40	
		FOR CURRENT SERVICES RENDERED	7.70	1,732.50

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D.J. DOODY	7.70	\$225.00	\$1,732.50

Photocopies 0.70

TOTAL EXPENSES 0.70

TOTAL CURRENT WORK 1,733.20

BALANCE DUE \$1,733.20

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE



GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

TOWN OF HILLSBORO BEACH
1210 Hillsboro Mile
Hillsboro Beach FL 33062

Page: 1
02/23/2022
ACCOUNT NO: 1182-1200994
STATEMENT NO: 39935

Writ of Garnishment

02/16/2022	SMS	Correspondence with attorney for the plaintiff on amount due.	HOURS	
			0.30	
		FOR CURRENT SERVICES RENDERED	0.30	67.50
		RECAPITULATION		
	<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
	SEAN M. SWARTZ	0.30	\$225.00	\$67.50
	TOTAL CURRENT WORK			67.50
	BALANCE DUE			<u>\$67.50</u>

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE



GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

TOWN OF HILLSBORO BEACH
1210 Hillsboro Mile
Hillsboro Beach FL 33062

Attn: Sherry Henderson

Page: 1
02/23/2022
ACCOUNT NO: 1182-1200995
STATEMENT NO: 39936

adv. Richard Crusco, Charles Doherty, et al

			HOURS	
01/31/2022	DJD	Initial review of petition for Writ of Certiorari; Telephone conference with Debbie Orshefsky	1.70	
02/01/2022	DJD	Continued review of petition for Write of Certiorari.	1.20	
02/14/2022	DJD	Review pleading; Prepare memorandum for Commission	0.30	
		FOR CURRENT SERVICES RENDERED	3.20	720.00

	RECAPITULATION		
<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D.J. DOODY	3.20	\$225.00	\$720.00

TOTAL CURRENT WORK 720.00

BALANCE DUE \$720.00

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: PROCLAMATION FOR APPROVAL
Problem Gambling Awareness Month (PGAM) March 2022

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS:

1. March 2022 Problem Gambling Awareness Month
2. Rqst for Proclamation

Proclamation of the Town of Hillsboro Beach, Florida

PROBLEM GAMBLING AWARENESS MONTH MARCH, 2022

Whereas, the Town of Hillsboro has recognized **March 2022** as **Problem Gambling Awareness Month** to demonstrate its support in addressing problem gambling and the initiative of the Florida Council on Compulsive gambling in bringing awareness to the issues surrounding problem gambling in our community; and

Whereas, problem gambling is a serious public health issue which impacts family, friends, and businesses with significant societal and economic costs, affecting more than one million Floridians of all ages, races, and ethnic backgrounds in all communities; and

Whereas, it is estimated that over 200,000 Florida adults of diverse age, race, ethnicity, and socio-economic status suffer from past-year gambling problems, and 700,000 more are at risk of developing such difficulties, constituting 4.7% of the adult population ages 18 and older; and

Whereas, it is further important to note that these statistics do not account for youth, who are now actively engaged in diverse forms of gambling and are at an increased risk for developing gambling-related problems; and

Whereas, it is also essential to recognize problem gambling as a societal issue, with 8-10 additional people adversely impacted by every problem gambler, increasing the affected population by an estimated additional 1.5 million individuals, with conservative projected social costs amounting to more than \$9 billion nationally each year; and

Whereas, the Florida Council on Compulsive Gambling's public awareness campaign provides an opportunity to educate the public, policy makers, educators, businesses, mental health and criminal justice professionals and others, about the potential adverse effects of gambling, as well as social, legal, financial, and emotional impacts and available supports; and

Whereas, any individual, professional, or organization, dedicated to assisting those in need, can participate in raising awareness of problem gambling and available resource by promoting the statewide 24-hour confidential, multilingual HelpLine, 888-ADMIT-IT; and

Whereas, the Town of Hillsboro Beach can participate in this nationally recognized awareness month through declaration of proclamation of the month of March 2022 as Problem Gambling Awareness Month in the Town of Hillsboro Beach.

Now, Therefore, I, Mayor Deborah L. Tarrant, do hereby proclaim the month of **March 2022** as **Problem Gambling Awareness Month** in the Town of Hillsboro Beach

In Witness Whereof, I have hereunto set my hand on this 1st day of March 2022 and cause the official seal of the Town of Hillsboro Beach, Florida to be affixed.

By:

(seal)

Honorable Deborah L. Tarrant
Mayor

Attested By:

Sherry D. Henderson, CMC
Town Clerk





► RECEIVED ◀

FEB 10 2022

February 7, 2022

The Honorable Deb Tarrant
Office of the Mayor, Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Dear Mayor Tarrant:

The Florida Council on Compulsive Gambling (FCCG) respectfully requests a proclamation declaring **Problem Gambling Awareness Month (PGAM)** in your municipality. The National Council on Problem Gambling has been recognizing March as National Problem Gambling Awareness Month for 18 years, and the FCCG is the state Affiliate that furnishes services and supports to Floridians statewide on issues related to problem gambling. The proclamation will help raise awareness about gambling disorder, classified by the American Psychiatric Association as a behavioral addiction that impacts millions of Floridians who struggle directly with gambling related difficulties or are adversely affected by a loved one's gambling problem.

For most, gambling is recreational and does not present negative consequences. But, for hundreds of thousands of Floridians, gambling progresses from a leisure-time activity to a compulsion. Here's the good news: gambling addiction is treatable for those who seek help. As you are keenly aware, many Florida residents, like many Americans, are struggling given the unforeseen consequences resulting from the COVID-19 pandemic, which is also changing the game when it comes to the issue of problem gambling. For disordered gamblers and their families, the effects of the virus can exacerbate already serious financial, psychological, legal, and other problems caused by gambling. Our theme for PGAM this year reflects upon these impacts and the opportunities to raise awareness: **"Shine the Light on Problem Gambling: When Gambling is No Longer a Game...888-ADMIT-IT is the Game Plan!"**

Disordered gambling affects more than 200,000 Floridians daily, which does not include the 8-10 others who are adversely affected by the gambler's activities. In addition, over 700,000 residents are at-risk of developing a gambling addiction. At this time, nearly 90% of Florida adults, ages 18 and older, have participated in some form of gambling and among minors, ages 13-17, nearly 70% admit to betting, despite the legal gambling age of 18. For most, gambling is an occasional pastime and does not create hardships. However, for some it is every bit as devastating as other addictions, such as drugs or alcohol. As new gambling opportunities continue to emerge in non-traditional mediums, such as in video games and through mobile apps, prevention measures for problem gambling have become more and more important. Children and young adults may not recognize gambling activity in these non-traditional forms, so education is key. A proclamation by you will help raise awareness about problem gambling, which is treatable for those who seek help and will educate the public about the 888-ADMIT-IT HelpLine.

Enclosed please find the 2022 Proclamation Template to personalize and return to our office to confirm your support. You can email the completed proclamation back to us at pgam@gamblinghelp.org, mail it to our office at the address listed below, or fax it to 407-865-6103. In addition, we ask that you allow us to list your municipality on our webpage, www.problemgamblingawarenessmonth.org, as a PGAM partner and supporter.

We appreciate your support in bringing attention to this public health issue and are enclosing some information that provides additional background on the prevalence of problem gambling in Florida and associated impacts. The FCCG would also be delighted to participate in any joint endeavors by providing speakers and/or other resources.

Sincerely,

Jennifer Kruse
Executive Director



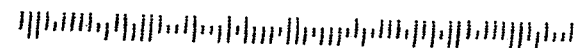
PO Box 2309 • Sanford, Florida 32772

The Honorable Deb Tarrant
1210 Hillsboro Mile
Hillsboro Beach, FL, 33062

ORLANDO FL 328
8 FEB 2022 PM 2 L



33062-142099





TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: January 2022 Activity & Fuel Report

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS:

1. Jan 2022 Monthly Activity Report
2. Jan 2022 Vehicle Mileage



Hillsboro Beach Police Monthly Report

To: Town Manager, Mac Serda
From: Police Chief, Jay Szesnat
Subject: January 2022 Monthly Report

Patrol Snapshot:

Activity	Current Month	December 2021	January 2021
Contacts			
Motor Vehicle	93	63	79
Crosswalk	40	44	31
Marine Unit	74	135	121
Beach Unit	8	0	15
Cyclists	116	92	83
Arrests	5	0	0
Service			
Alarms	7	10	6
Assist Other Agency	5	14	4
Dogs on Beach/Animal	5	5	8
Vessel	13	8	30
Noise	3	4	10
Open Doors	2	4	7
Police Assists	128	120	44
Domestic/Disturbances	1	0	3
Sick/Injured	12	18	8
Crash	4	7	3
Trespassing	4	4	79
Security Checks	4926	5944	6640
Total Calls	264	305	233

Investigations Snapshot:

January 2022 (new)	Actively Working	Inactivated/Cleared
Stolen Conveyance (#220204)	Fraud (#200811)	Burglary Conveyance (#212318)
	Death Investigation (#211267)	Stolen Conveyance (#220204)
	Stolen Vehicle (#202724)	
	Grand Theft (#212286)	

Personnel: News

Processing for the full-time position completed, on January 10th we welcomed Officer Russell Gonglewski to our team. We are currently processing one applicant for the remaining part-time Officer position. That pre-employment background investigative process is proceeding accordingly.

January Notable Events:

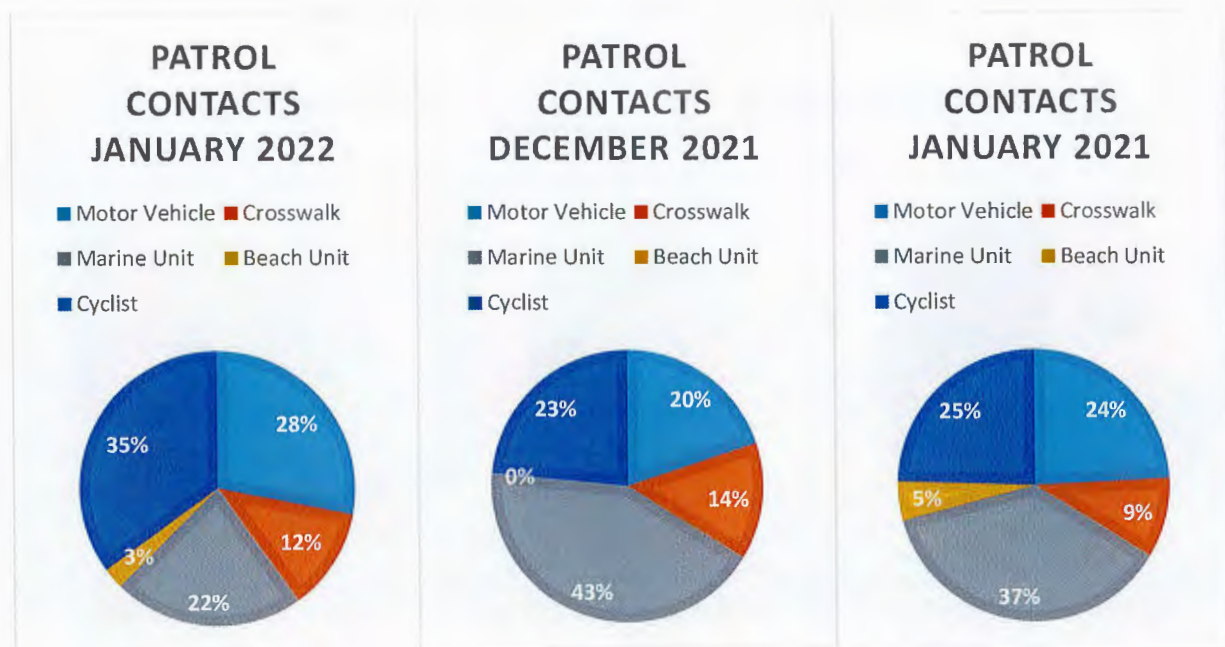
On January 15th our HBPD Officers responded to a (maritime) vessel crash at the Hillsboro Inlet. The vessel involved had three souls aboard, all were accounted for and there were no injuries reported. BSO Fire Rescue, FWC, and Sea Tow all responded to render assistance.

On January 22nd we received an assistance call from an out-of-state law enforcement agency regarding a death notification. Our HBPD Officers responded to the address that was provided and made contact with the resident. The unpleasant task was handled in a sensitive and professional manner.

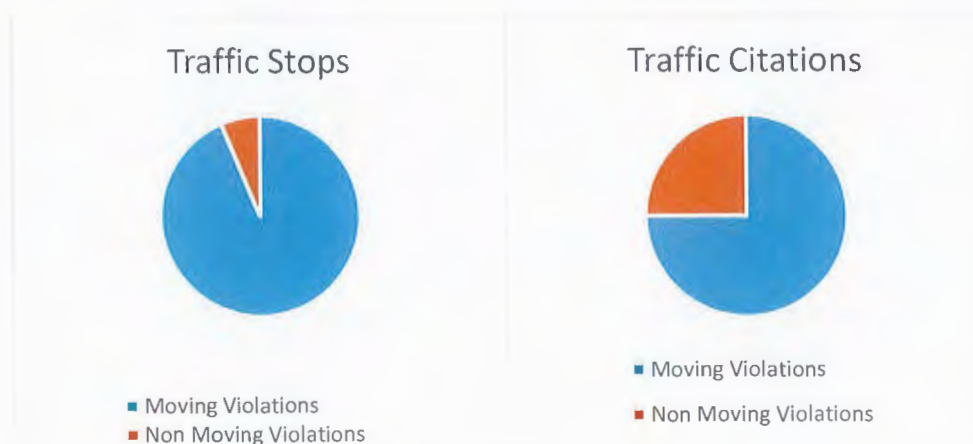
On January 24th our HBPD Officers responded to a reported stolen vehicle in the 900 block of Hillsboro Mile. Officers initiated their investigation, entering the vehicle tag and descriptive information into the Law Enforcement computer system. The vehicle was located in a neighboring community and it was determined not to have been stolen only a misunderstanding.

Patrol Services:

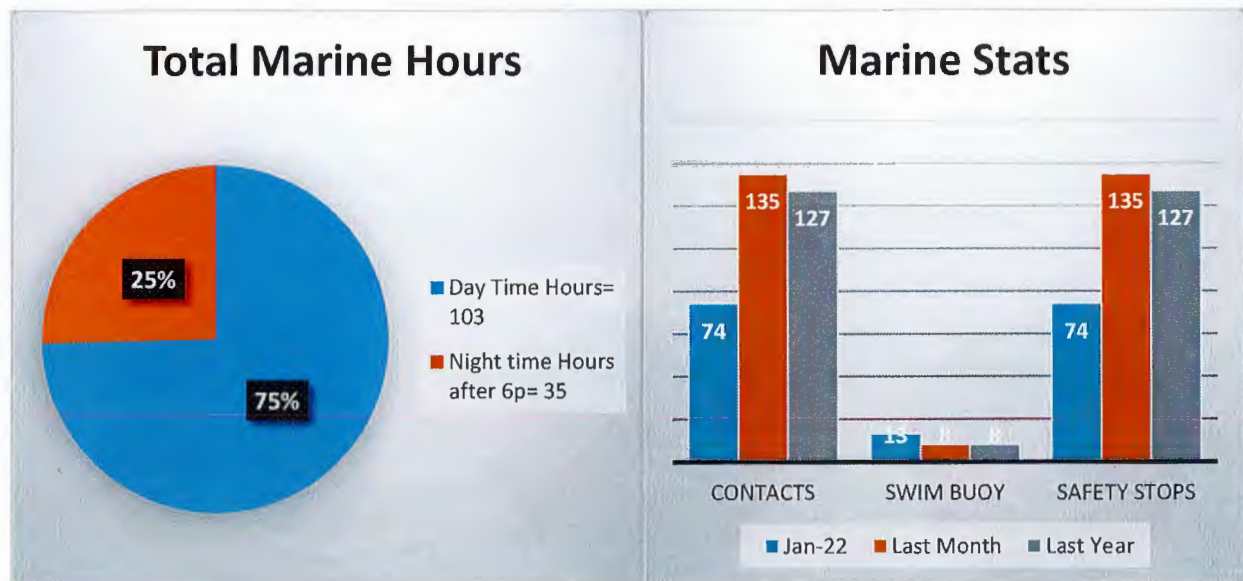
Contacts:



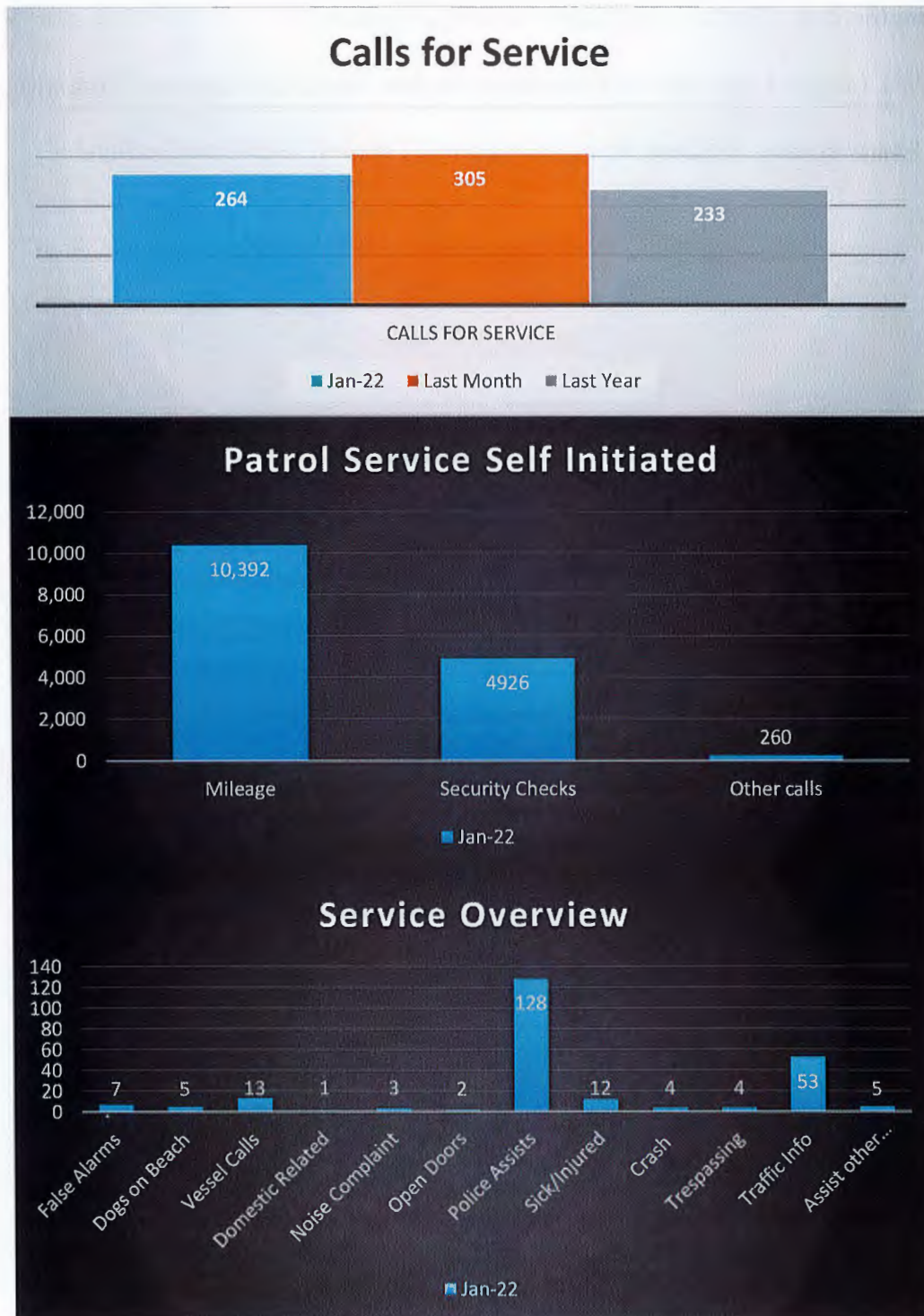
Traffic:



Marine/Beach Patrol:



Overall Calls for Service:



Training:

Police Law Institute (Online): Domestic Violence Training

Power DMS Topics: Less-Lethal, Defensive Tactics, and De-Escalation Training

Broward State College (Davie): Annual Firearms Training and Qualification

2022 Vehicle Mileage PD

Unit	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TM
160	3,432												3,432
161	1,625												1,625
162	0												0
2163	5,335												5,335
164	673												673
166	972												972
TOTAL	12,037												12,037
GALLONS	890												890

Specialty Vehicles PD

Marine 1	112												112
ATV	7.6												7.6

Water Department

170	128												128
172	350												350
173	63												63
174	480												480
TOTAL	1,021												1,021
GALLONS	88.3												88

2021 Gas Usage Police Department

Employee	Department	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total Gallons
1-Szesnat	Police	49.3												49.3
2-O'Neill	Police	0.0												0.0
3-Pugliese	Police	48.7												48.7
4-Mastandrea	Police	0.0												0.0
5-Clark	Police	143.1												143.1
6-Gianino	Police	69.7												69.7
7-Kirchoff	Police	3.2												3.2
8-McGrath	Police	119.1												119.1
9-Kelly	Police	0.0												0.0
10-Steel	Police	0.0												0.0
11-Nolan	Police	24.7												24.7
12-Pope	Police	71.4												71.4
13-Stengel	Police	26.8												26.8
14-Torres	Police	0.0												0.0
16-MacLellan	Police	110.0												110.0
18-Beauparlant	Police	139.0												139.0
15-Grant	Police	84.6												84.6
26-Joseph	Maintenance	0.0												0.0
17- Fondo	Police	0.0												0.0
Police Totals	TOTALS	889.6												889.6

Gas Usage Water Department

19-Garray	Water Dept	0												0
20-Bullard	Water Dept	28.6												28.6
21-Charles	Water Dept	36.1												36.1
22-Knapstein	Water Dept	0												0
23-Rivera	Water Dept	23.6												23.6
Water Totals	TOTALS													88.3

Gas Tank 39.5" = 2605 GALLONS

Vehicle/Mileage Recap JANUARY 2022

Unit	Type	Primary Use	EOM	BOM	CMM	PMM	INC/DEC
160	SUV	Road Patrol	77,725	74,293	3,432	4,680	-1,248
161	SUV	Road Patrol	69,988	68,363	1,625	1,113	512
162	Crown Vic.	Training/Decoy	125,144	125,144	0	0	0
2163	SUV	Road Patrol	34,579	29,244	5,335	4,323	1,012
164	Charger	Chief	87,757	87,084	673	805	-132
166	Charger	Admin	194,189	193,217	972	1,153	-181
		Police		TOTALS	12,037	12,875	-37
170	Pickup Truck	Maintenance	96,018	95,890	128	83	45
172	Pickup Truck	Water Dept	59,867	59,517	350	343	7
173	Pickup Truck	Water Dept	6,426	6,363	63	204	-141
174	Pickup Truck	Water Dept	12,116	11,636	480	378	102
		Water Dept		Totals	1,021	1,008	13
		EOMH		BOMH	CMH	PMH	INC/DEC
M1	Boat (new engine)	Patrol	1423.07	1311.09	112	141	-29
165	ATV	Patrol	358.3	350.7	7.6	0.7	6.9

Key

EOM= End of Month
 BOM= Beginning of Month
 CMM= Current Month Mileage
 PMM= Previous Month Mileage
 INC/DEC= Increase/Decrease
 EOMH= End of Month Hours
 BOMH= Beginning of Month Hours
 CMH= Current Month Hours
 PMH= Previous Month Hours

South Boundry of Zone 1 / Zone 2
Intracoastal Waterway/Hillsboro Inlet

January

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TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Update on Lighting "Hot Zones" along the Beach - Sea Turtle Nesting Season

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

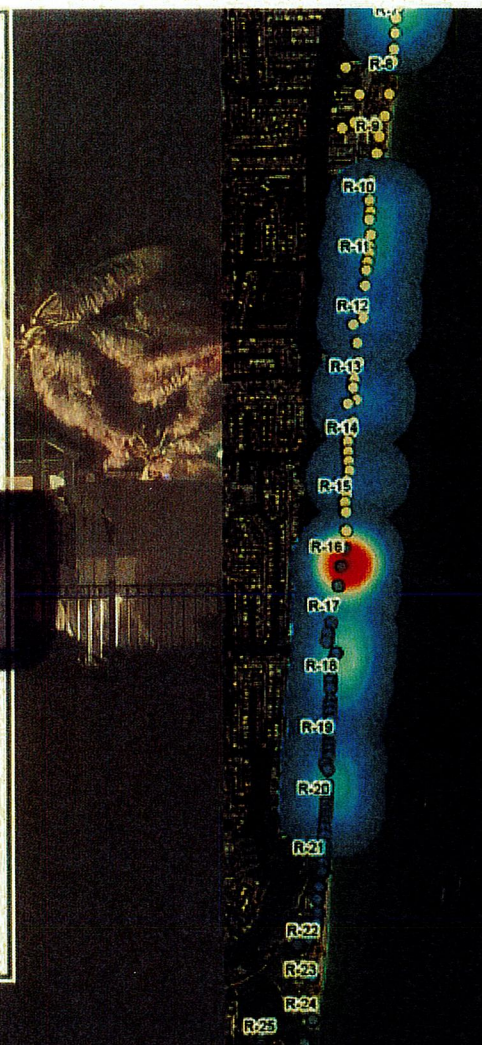
3. RECOMMENDATION

ATTACHMENTS: 1. Lighting Hot Zones (2-15-2022)

FEB 15 2022

Hillsboro

- R7-R24
- 94 properties
 - 96% residential (mostly SFH)
- Lights per property: 0-48
- Average # lights per property = 4.34



SK

Stephani...zuf (host)

↑

🎧

Legend

- Darkest
- Darker
- Dark
- Some Light
- Bright
- Brighter
- Brightest
- ⚠ R-monuments

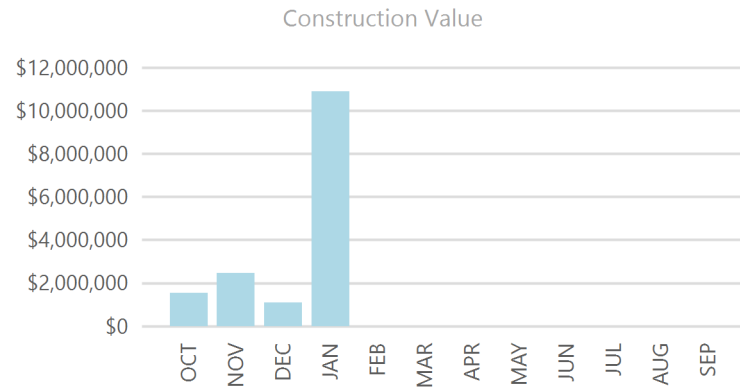
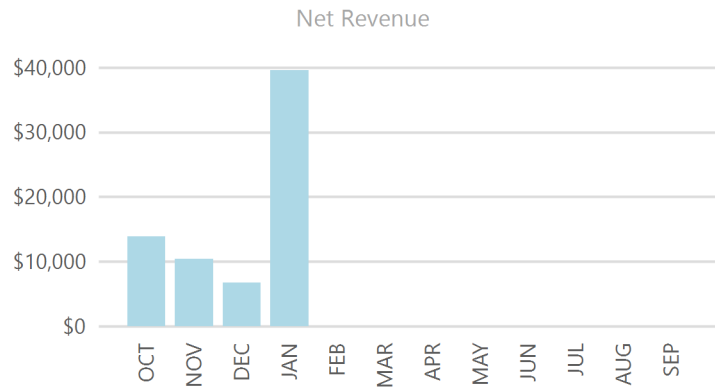
Hillsboro Inlet



**Town of Hillsboro Beach
Building Department
Summary Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Construction Value	\$1,555,179	\$2,455,199	\$1,099,823	\$10,888,675	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Building Permit Fees	\$83,459	\$62,111	\$37,785	\$243,176	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fire & Zoning Fees	\$1,350	\$1,050	\$1,050	\$3,150	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue	\$84,809	\$63,161	\$38,835	\$246,326	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CGA Expense	\$70,940	\$52,795	\$32,117	\$206,700	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Town Revenue	\$13,869	\$10,367	\$6,718	\$39,626	\$0	\$0	\$0	\$0	\$0	\$0	\$0



Sep	YTD
\$0	\$15,998,875
\$0	\$426,531
\$0	\$6,600
\$0	\$433,131
\$0	\$362,552
\$0	\$70,580



**Town of Hillsboro Beach
Building Department
Finance Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

	Permit Fees	Town Revenue	Fire Fees	Zoning Fees	Admin Fees	CGA Revenue	BORA	DBPR	DCA
MTD	\$243,175.96	\$36,476.39	\$450.00	\$2,700.00	\$525.00	\$206,699.57	\$5,612.52	\$4,309.69	\$2,887.90
YTD	\$426,531.49	\$63,979.72	\$1,800.00	\$4,800.00	\$1,100.00	362,551.77	\$8,799.52	\$6,766.43	\$4,598.68



**Town of Hillsboro Beach
Building Department
Permit Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

Permit Type	# Issued	Building Permit Fees
COMMERCIAL ALTERATION	2	1,387.00
COMMERCIAL CONCRETE RESTORATION	2	1,462.00
COMMERCIAL LOW VOLTAGE	1	190.00
RESIDENTIAL A/C CHANGE OUT	10	1,617.10
RESIDENTIAL ADDITION	1	95.00
RESIDENTIAL ALTERATION	7	3,860.46
RESIDENTIAL ELECTRICAL MISCELLANEOUS	2	165.00
RESIDENTIAL FIREPLACE	2	1,274.00
RESIDENTIAL GAS LINE	1	95.00
RESIDENTIAL GAS TANK	1	265.00
RESIDENTIAL IRRIGATION SYSTEM/SPRINKLERS	2	720.00
RESIDENTIAL NEW ROOF	2	5,838.73
RESIDENTIAL PLUMBING MISCELLANEOUS	1	755.25
RESIDENTIAL SEAWALL	1	190.00
RESIDENTIAL WINDOWS/DOORS/SHUTTERS	13	3,148.17
SINGLE FAMILY RESIDENCE	3	222,112.25
TEST PERMIT - DO NOT USE	1	1.00
	52	\$243,175.96



**Town of Hillsboro Beach
Building Department
Activity Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

Discipline	Total # of Inspections	Plan Review	Permits Applied
Building	53	34	21
Electrical	22	26	8
Plumbing	23	16	8
Mechanical	28	18	8
Fire	6	3	1
Zoning	0	5	0
Totals	132	103	46



**Town of Hillsboro Beach
Building Department
Issued Permits Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

	Folio #	Permit #	Date Issued	Job Address	Job Sub Division	Construction Value
RESIDENTIAL ALTERATION	484308AP1010	22341590-0	1/6/2022	1198 HILLSBORO MILE (UNIT 312)	HILLSBORO IMPERIAL APTS CONDO	\$24,550.00
	484308NN0210	22341591-0	1/6/2022	1221 HILLSBORO MILE (UNIT 16B)	THE SEA CLUB OF HILLSBORO BEACH CORP	\$63,650.00
	484308NN0680	22341872-0	1/19/2022	1221 HILLSBORO MILE (UNIT 38B)		\$24,450.00
	Grand Total					\$112,650.00
SINGLE FAMILY RESIDENCE	484320000140	22341551-0	1/5/2022	985 HILLSBORO MILE- NEW MAIN HOUSE		\$3,983,725.00
	484320000290	22341714-0	1/11/2022	957 HILLSBORO MILE- NEW SFR		\$5,320,092.00
	484320000400	22341787-0	1/13/2022	925 HILLSBORO MILE (GUEST HOUSE)	NA	\$879,225.00
	Grand Total					\$10,183,042.00



**Town of Hillsboro Beach
Building Department
Plan Review Times Report**

**Start Date: 1/1/2022
End Date: 1/31/2022**

	Number of Reviews	Average Days In Review	Most Days In Review
Completed Reviews	101	5.44	17.03



1210 Hillsboro Mile
Hillsboro Beach, FL 33062

TOWN OF HILLSBORO BEACH

Phone: (954) 427-4011
Fax: (954) 427-4834

TO: Mayor Deb Tarrant and Commission

FROM: Steve Mitchell, Building Official

DATE: February 22, 2022

SUBJECT: January 2022 Building Department Report

Permit applications and inspection requests are returning to normal levels. The work is primarily focused on condominium renovations, but we are also beginning to see more activity on the single-family product as well. Most of the recently permitted demolitions have been completed and piling/foundation work is progressing at a couple sites.

Opal Towers West has a new Board of Directors, and Town Manager Serda and I had an opportunity to meet with the new president and several board members a few days after they took office. The group indicated a strong commitment to quickly resolving the issues related to the fire repairs, as well as addressing the ongoing problems with unpermitted work by residents in the building. Corrected plans have been submitted and we anticipate meeting with the architect soon.

I am happy to announce we are increasing our staffing in the Hillsboro Beach office. We are adding an additional full-time permit tech beginning March 7th, to allow Mariana time to focus on larger jobs and some process improvements. Our new team member will also serve as Mariana's temporary replacement during her upcoming parental leave. Additionally, we are adding additional inspectors/plans examiners as needed, to supplement our usual crew.

Respectfully Submitted,

Steven Mitchell

Building Official | Chief Electrical Inspector
Building Code Services | Town of Hillsboro Beach

Calvin, Giordano & Associates, Inc.



1210 Hillsboro Mile | Hillsboro Beach FL 33062
Office: 954.427.4011 | Fax: 954.427.4834 | Cell: 954.592.5057
Fort Lauderdale | Miami-Dade | West Palm Beach | Clearwater/Tampa | Estero | Port St. Lucie



Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Code Compliance Summary Report

From 1/1/2022 To 1/31/2022 Corridor (All Corridors)

Case Totals for Period

Cases Open at Start of Period	65
Cases Opened During Period	2
Cases Opened as result of Complaint	2
Cases Closed During Period	1
Cases Closed due to compliance	1
Cases Open at End of Period	66
Inspections	3
Reinspections	47
Total	50
Special Magistrate Cases During Period	0

Case Summary by Officer

Officer	Open at Start	Opened During Period	Opened as result of Complaint	Closed During Period	Closed due to compliance	Open at End of Period
B. Pita/N/A	63	2	2	1	1	64
M. Sotolongo/N/A	2	0	0	0	0	2
Total	65	2	2	1	1	66



Town of Hillsboro Beach
1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Code Compliance Summary Report

From 1/1/2022

To 1/31/2022

Corridor (All Corridors)

Inspections by Officer

Officer	Inspections	Reinspections	Total
B. Pita/N/A	3	47	50
Total	3	47	50

Summary of Cases Opened by Incident Type

Incident Type	Number
Building Permit Required	2
Total	2

Revenue Summary

	Period Start	During Period	Period End
Total Fines Assessed	\$236,750.00	\$46,500.00	\$283,250.00
Total Payments	\$0.00	\$0.00	\$0.00
Balance	\$236,750.00		\$283,250.00



Case Action Report*

From 1/1/2022

To 1/31/2022

Corridor (All Corridors)

Date Issue	Incident Type	Site Address	Status	Documents Issued		
12/29/2021	Building Permit Required	1150 HILLSBORO MILE, HILLSBORO BEACH, FL 33062 1012	Open	<u>Date Issue</u>	<u>Type</u>	<u>Officer Assigned</u>
				1/3/2022	Complaint	B. Pita
				1/4/2022	Courtesy Notice	B. Pita
				1/7/2022	Affidavit of Non-Compliance	
				1/7/2022	Notice of Violation	B. Pita
				1/11/2022	Notice of Hearing	S. Lowe
1/4/2022	Building Permit Required	1150 HILLSBORO MILE, HILLSBORO BEACH, FL 33062 302	Open	<u>Date Issue</u>	<u>Type</u>	<u>Officer Assigned</u>
				1/3/2022	Complaint	B. Pita
				1/4/2022	Courtesy Notice	B. Pita
				1/7/2022	Affidavit of Non-Compliance	
				1/7/2022	Notice of Violation	B. Pita
				1/11/2022	Notice of Hearing	S. Lowe
1/12/2022	Building Permit Required	1057 HILLSBORO MILE, HILLSBORO BEACH, FL 33062 713	Open	<u>Date Issue</u>	<u>Type</u>	<u>Officer Assigned</u>
				1/12/2022	Courtesy Notice	B. Pita
				1/12/2022	Complaint	B. Pita
				2/8/2022	Affidavit of Non-Compliance	
				2/8/2022	Notice of Violation	B. Pita
				2/9/2022	Notice of Hearing	S. Lowe

*Cases included in this report are those where the owner was first cited within the date range and corridor specified



TOWN OF HILLSBORO BEACH

1210 Hillsboro Mile
Hillsboro Beach, FL 33062

Phone: (954) 427-4011
www.townofhillsborobeach.com

Agenda Item Cover Memo

Agenda Item: Municipal Election - Tuesday, March 8, 2022 (7am-7pm) Community Room at Town Hall
Early voting in Broward County: Saturday Feb. 26, 2022 through Sunday, March 6, 2022 (select locations)

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

- ATTACHMENTS:**
1. Early Voting for the March 8, 2022 Election
 2. 3-8-2022 SAMPLE BALLOT
 3. Early Voting Locations Flyer for March 8, 2022 Municipal Elections
 4. Drop-Box-Schedule-for-Mar-8-2022-Elections

For Immediate Release

Early Voting in Broward County Begins this Saturday February 26, 2022 Through Sunday, March 6, 2022

Broward County, FL (February 22, 2022)— Voters who were registered to vote by February 7, 2022 will be able to vote early in the March 8, 2022 Special General & Municipal Elections. The following are helpful reminders on how to be prepared for Early Voting:

- Four (4) Early Voting Locations are available from Saturday, February 26th through Sunday, March 6th:
 - [African American Research Library](#)
 - [E. Pat Larkins Community Center](#)
 - [Lauderhill Mall](#)
 - [Tamarac Branch Library](#)
- Early Voting hours are from **10:00 a.m. to 7:00 p.m.**
- Eligible Broward County voters may go to any of the Early Voting Sites to cast a vote
- Voters with disabilities will be able to vote using a touchscreen machine located at each Early Voting site
- Voters should take note that Florida law required voters to present picture ID with signature. Acceptable forms of ID are listed in our website browardvotes.gov

Results for the March 8th Elections including Vote-by-Mail Ballots, Early Voting and Election Day votes begin streaming on our website at 7:00 p.m. on election night. Results will be updated frequently on our website <http://www.browardvotes.gov> until all precincts are reported.

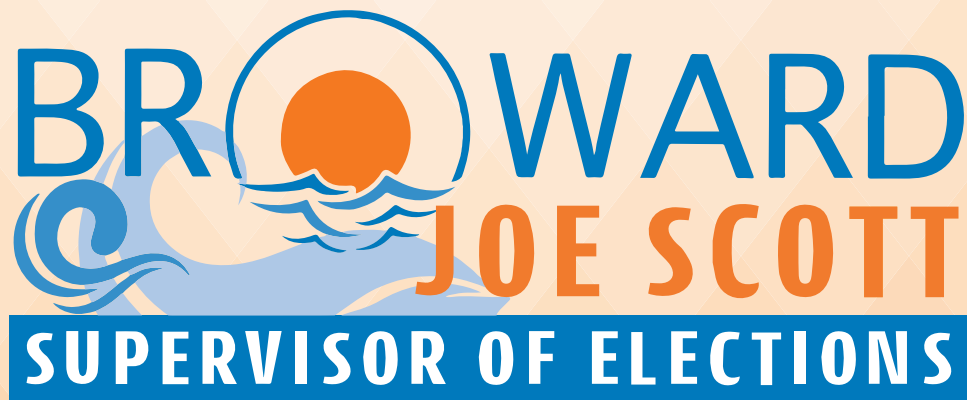
For further Information, please contact:

Ivan Castro, 954-712-1963

Dadly Filius, 954-654-2407

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Ballot Style 3		Seq:0003	003G
Official Municipal Election Ballot March 8, 2022 Broward County, Florida	Boleta Oficial de la Elección Municipal 8 de marzo de 2022 Condado de Broward, Florida	Biltenvòt Ofisyèl Eleksyon Minisipal 8 mass 2022 Konte Broward, Florida	
• Ballot Instructions: To vote, fill in the oval ☐ completely next to your choice. Use only the marking device provided or a black pen. If you make a mistake, ask for a new ballot. Do not cross out or your vote may not count. • Instrucciones Para la Boleta: Para votar, llene completamente el ovalo ☐ junto a su selección. Use sólo una pluma de tinta negra para marcar la boleta. Si se equivoca, pida una nueva boleta. Si borra algo o hace marcas, es posible que su voto no se cuente. • Enfòmasyon Sou Biltenvòt: Pou vote, byen kolore tout andan oval ☐ ki akote respons ou chwazi a. Sèlman sèvi ak yon plim nwa pou ekri sou biltenvòt la. Si w fè yon erè, mande yo ba w yon nouvo biltenvòt. Si w efase oubyen fè nouvo mak, lap posib pou vòt ou pa valab ankò.			
Town of Hillsboro Beach			
Commissioner At Large (Vote for up to Two) Comisionado General (Vote por no más de Dos) Komisyone Jeneral (Vote Pou Jiska 2)			
☐ Irene Kirdahy ☐ Manny Peñate ☐ Jane Reiser			
SAMPLE BALLOT		SAMPLE BALLOT	
SAMPLE		SAMPLE	
SAMPLE		SAMPLE	



EARLY VOTING SCHEDULE

**SATURDAY, FEBRUARY 26, 2022 through
SUNDAY, MARCH 6, 2022 • 10am-7pm**

EARLY VOTING LOCATIONS

African-American Research Library

2650 Sistrunk Boulevard (NW 6th St.) • Fort Lauderdale, FL 33311

SOE at E. Pat Larkins Community Center

520 Martin Luther King Boulevard • Pompano Beach, FL 33060

SOE at Lauderhill Mall

1519 NW 40th Avenue • Lauderhill, FL 33313

Tamarac Branch Library

8701 W. Commercial Boulevard • Tamarac, FL 33321



@browardvotes

WWW.BROWARDVOTES.GOV

DROP BOX SCHEDULE

MARCH 8, 2022 SPECIAL & MUNICIPAL ELECTIONS

DATES	LOCATIONS/HOURS
2/3/2022 - 2/25/2022	Drop Boxes available at: - Broward County Governmental Center <i>Monday through Friday from 8:30 a.m. to 5:00 p.m.</i> - SOE Office at the Lauderhill Mall <i>Monday through Sunday from 8:30 a.m. to 5:00 p.m.</i> - Branches: E. Pat Larkins Center in Pompano Beach and Tamarac Library <i>During scheduled days and hours of operation</i> (visit www.browardvotes.gov).
2/26/2022 - 3/6/2022	- Broward County Governmental Center <i>Monday through Friday from 8:30 a.m. to 5:00 p.m.</i> - SOE Office at the Lauderhill Mall <i>Monday through Sunday from 8:30 a.m. to 5:00 p.m.</i> - Branches: E. Pat Larkins Center in Pompano Beach and Tamarac Library <i>During scheduled days and hours of operation</i> (visit www.browardvotes.gov).
2/26/2022 - 3/6/2022	Early Voting Sites <i>10:00 a.m. to 7:00 p.m. (Daily)</i>
3/7/2022 and 3/8/2022	- Broward County Governmental Center <i>7:00 a.m. to 7:00 p.m.</i> - SOE Office at the Lauderhill Mall <i>7:00 a.m. to 7:00 p.m.</i> - Branches: E. Pat Larkins Center in Pompano Beach and Tamarac Library <i>7:00 a.m. to 7:00 p.m.</i>

*The Supervisor of Elections Office will be closed on Presidents' Day Holiday,
Monday February 21, 2022.*



TOWN OF HILLSBORO BEACH

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Agenda Item Cover Memo

Agenda Item: Community Event - Saturday, April 30, 2022 (9am-12pm)
Household Hazardous Waste Drop-off , Prescription Drug Take Back, Electronic Recycling,
FREE Shredding & Blood Drive

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS: 1. Recycling Drug Take Back 4-30-2022

Free Recycling & Shredding Event



Town Hall
Saturday, April 30, 2022
9:00 AM - 12:00 PM



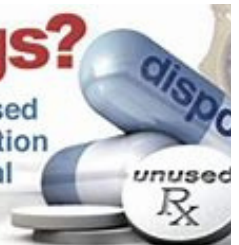
Electronics Recycling

- Computer & accessories
- Mobile devices
- TVs & Office equipments
- Most small home appliances

Prescription Drug Drop off

Got Drugs?

Turn in your unused
or expired medication
for safe disposal
here



DOCUMENT SHREDDING EVENT



Household Hazardous Waste



- Rechargeable batteries
- Oil-based paints
- Latex paint
- Cleaners & acids
- Pesticides & oils
- Fluorescent bulbs
- Mercury thermostats & thermometers
- Stains & thinners

KEEP HILLSBORO BEACH
BEAUTIFUL

Town of Hillsboro Beach residents only

For questions: www.townofhillsborobeach.com

954-427-4011



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Agenda Item Cover Memo

Agenda Item: Town Hall Facade Update

Submitting Dept: Town Clerk, Sherry Henderson, Town Clerk

Agenda Date: March 1, 2022

1. BACKGROUND/HISTORY

2. CURRENT ACTIVITY

2. FINANCIAL IMPACT

3. RECOMMENDATION

ATTACHMENTS: None