

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

MANASOTA 88, INC., a Florida Not
for Profit Corporation; and
ANDRE MELE, and LARRY
GROSSMAN, and GERALDINE
SWORMSTEDT as individuals.

Plaintiffs,

v.

CASE NO.:

SARASOTA COUNTY, FLORIDA,
Defendant.

_____ /

COMPLAINT:
STATUTORY CAUSE OF ACTION - FLORIDA STATUTE §163.3215
ALLEGING INCONSISTENCY WITH COMPREHENSIVE PLAN

Plaintiff(s) file this Amended Complaint seeking statutory *de novo* strict scrutiny review under Florida Statutes Section 163.3215 of a development order that is alleged to be inconsistent with the duly adopted Comprehensive Plan.

1. This is a statutory action pursuant to Florida Statutes §163.3215 seeking *de novo* review of a development order that is not consistent with the duly-adopted Comprehensive Plan applying the *strict scrutiny* standard of review¹.

2. On January 26, 2016, the Commissioners approved Ordinance 2015-

¹ See, Pinecrest Lakes, Inc. v. Shidel, 795 So.2d 191 (Fla. 4th DCA, 2001) cert. denied 821 So.2d 300 (Fla. 2002) (inconsistent development shall be enjoined and demolished due to inconsistency with duly-adopted comprehensive plan under 163.3215 Florida Statutes).

091 (Rezoning Petition 15-14) approving a development in Sarasota County in a wetland.

3. Ordinance 2015-091 (Rezoning Petition 15-14) is inconsistent with Principle VII.A.2 of the Environment Chapter of the Comprehensive Plan, which states that wetlands shall be preserved except in cases where they are no longer capable of performing defined environmental functions and values, or where no other reasonable alternative exists.

4. Plaintiffs all utilize and have an interest in the wetland on the subject land that are protected by the Comprehensive Plan.

a. Plaintiff MANASOTA 88, INC. is an active, Florida Not for Profit Corporation operating in Sarasota County with good standing for more than twenty years. The mission and goal of MANASOTA 88 includes the protection of the nature and natural resources of Sarasota County Florida. A substantial number of Manasota 88, Inc.'s members enjoy observing flora and fauna in this wetland, which is easily visible from Honore Avenue near University Parkway, and these members will be adversely affected by destruction of this wetland in a manner that is inconsistent with the Comprehensive Plan. MANASOTA 88, Inc. appeared and submitted written objections which were included in the Sarasota County Board of

County Commissioners Agenda Packet on this Rezoning at the public hearings to the subject development order.

b. Plaintiff ANDRE MELE is a Sarasota resident who personally utilizes and will continue to utilize and personally enjoy observing flora and fauna in this particular wetland, which is easily visible from Honore Avenue near University Parkway, and his ability to enjoy observing flora and fauna in this particular wetland will be adversely affected by the 100% destruction of this wetland in a manner that is inconsistent with the Comprehensive Plan.

c. Plaintiff LARRY GROSSMAN personally enjoys observing flora and fauna in this particular wetland, which he utilizes and will continue to utilize for birdwatching and observation of flora in and from the nearby shopping areas and medical offices while attending family medical appointments, and his ability to enjoy observing flora and fauna in this particular wetland will be adversely affected by the 100% destruction of this wetland in a manner that is inconsistent with the Comprehensive Plan, and he appeared in person and objected at the January 26, 2016 public hearing on the subject development order.

d. Plaintiff GERALDINE SWORMSTEDT is a Sarasota resident who personally utilizes and will continue to utilize and personally enjoy observing flora and fauna in this wetland, which is easily visible from Honore Avenue near

University Parkway, and her ability to enjoy observing flora and fauna in this particular wetland will be adversely affected by destruction of this wetland in a manner that is inconsistent with the Comprehensive Plan, and appeared in person and objected at the January 26, 2016 public hearing on the subject development order.

4. Plaintiffs are “aggrieved or adversely affected” persons as defined in Section 163.3215, Florida Statutes who will each suffer an adverse effect to their personal interests in the existing wetland that protected or furthered by the Comprehensive Plan which exceeds in degree the general interest in community good shared by all persons because plaintiffs actually use the subject wetland for observation of flora and fauna and will be adversely affected by the approval of a development order that is not consistent with the Comprehensive Plan. Plaintiffs have statutory standing to bring this action under Florida Statutes Section 163.3215 because of their personal use and interest in this wetland, including wetland flora and fauna on this wetland, is protected by the duly adopted comprehensive plan. Plaintiffs will be adversely affected by approval of a development order that approves destruction of 100% of this wetland on this site in a manner that is not consistent with the Comprehensive Plan.

5. Chapter 163, Part II, Florida Statutes, the Local Comprehensive

Planning and Land Development Regulation Act (now called the "Community Planning Act"), required each local government in Florida to prepare and adopt a local comprehensive plan.

6. The subject Ordinance 2015-091 (Rezoning Petition 15-14) is a “development order” as defined by Fla. Stat. §163.3164 that must be “consistent” with the duly adopted local Comprehensive Plan under Fla. Stat. § 163.3215 (2012).²

7. The Community Planning Act §163.3194(3), Florida Statutes defines "**consistency**" as:

(a) A development or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspect of development permitted by such order or regulation are compatible with and further the objectives, **policies, land uses**, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(b) A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the **land uses**, densities or **intensities**, capacity or size, timing, or other aspects of the development are compatible with or further the **objectives, policies, land uses**, and densities or **intensities in the comprehensive plan** and if it meets **all other criteria enumerated by the local government**.

² Brevard County v. Snyder 627 So.2d 469 (Fla. 1993).

Once a local government has adopted its comprehensive plan, Section 163.3194(1)(a) of the Local Comprehensive Planning Act or Growth Management Act, requires that all actions taken by the local government in regard to development orders be **consistent** with each of the objectives and policies in the comprehensive plan, including the Recreation and Open Space Element.

8. The Community Planning Act places the burden for enforcement of the requirement of consistency of development orders with duly-adopted Comprehensive Plans on citizens through the “citizen enforcement” provision of Section 163.3215, Florida Statutes which provides that *"any aggrieved or adversely affected party"* may bring a civil action for injunctive or other relief against any local government to prevent the local government *"from taking any action on a development order which materially alters the use or density or intensity of use"* of a parcel of property in a manner that is not consistent with the adopted local comprehensive plan, including the Recreation and Open Space Element.

Comprehensive Plan

9. Ordinance 2015-091 (Rezoning Petition 15-14) is inconsistent with Principle VII including Principle VII A.2 of the Environment Element of the Comprehensive Plan, which states that wetlands shall be preserved except in cases

where they are no longer capable of performing defined environmental functions and values, or where no other reasonable alternative exists.

10. The applicant and staff agreed that the forested wetlands exhibit good functionality.

11. Swamps and heads (e.g., forested wetlands) are relatively rare in Sarasota County.

12. These wetlands have a high degree of environmental importance for water filtration, assimilation of nutrients, floodwater storage and as refuge and habitat for a wide variety of species that rely on this urban environment.

13. These isolated habitats within the urban environment are becoming increasingly more important to migratory species.

14. The habitat map submitted by the applicant depicts the location, type, and amount of native habitat to be impacted and is included in the rezone packet. The acreage of each native habitat type on the site for pre-construction and post-construction conditions is provided below:

Habitat Type	Pre-Construction	Post-Construction	Percent Impact
Wetland	4.49 acres	0 acres	100%
Pine Flatwoods	1.7 acres	0 acres	100%

15. The rezone proposes to impact 4.49 acres of forested wetlands and 1.7 acres of pine flatwoods. This represents impacts to 100% of the native habitats found on the subject property. The majority of the proposed native habitat impacts are located within the existing 3.3-acre native habitat preserve area designated under the site and development plan approved in 2004 for the University Parkway Business Park.

16. Based on the development history of the subject property and proposal to impact 100% of the native habitats on-site, the staff of Sarasota County's Environmental Protection Division made a finding that the current subject rezoning petition 15-14 was **inconsistent** with elements of Chapter 2, The Environment, of the Comprehensive Plan.

17. Sarasota County Staff did not support the rezoning change removing protection of the subject wetland because:

a. the Comprehensive Plan requires that wetland heads and swamps shall be restored in connection with new development where feasible, and it is feasible to restore these particular wetlands; and

b. the prior development approvals for the collective property have previously demonstrated reasonable use while preserving these on-site wetlands consistent with the Comprehensive Plan requirements.

Prior Development Approval of Subject Land

18. The subject rezone petition (comprising of four parcels; PID Nos. 0016010002, 0016012003, 0016012004, and 0016012005) pertains to the 8.24 acres located to the southwest of the intersection of University Parkway and Honore Avenue.

19. These parcels were previously rezoned under Ordinances 97-003 and 2006-014.

20. During each of these rezone petitions, the forested wetland was designated a preserve area in a manner consistent with Chapter 2 of the Comprehensive Plan and the “Principles for Evaluating Development Proposals in Native Habitats”.

21. Both prior rezoning ordinances included stipulations to preserve the on-site wetland and the associated upland buffer.

22. The Board denied a prior owner’s rezone petition filed in 1999 to amend the stipulations regarding wetland protection (among others) to allow for impacts to the entire wetland and to mitigate those impacts in Manatee County.

23. The Board’s denial decision was challenged in the Circuit Court (Case No. 2000-3316-CA-01) and the court ruling upheld the denial of the rezoning petition filed in 1999.

24. The past development approvals on the parcels provided reasonable use of the collective properties while protecting the values and functions of the forested wetland.

25. Under the Sarasota County Comprehensive Plan, Environmental Element, the protection of wetlands is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with wetlands.

26. This rezone petition, Rezone 15-14, is inconsistent with Principle VII including Principle VII.A.2 of the Environment Chapter of the Comprehensive Plan, which states that wetlands shall be preserved except in cases where they are no longer capable of performing defined environmental functions and values, or where no other reasonable alternative exists.

REMEDIES AND RELIEF REQUESTED

27. Plaintiffs seek the following statutory remedies and relief available under Florida Statutes Section 163.3215:

a. a full and fair *de novo* trial applying *strict scrutiny* on the merits of whether the Development Order violates the Comprehensive Plan under the statutory cause of action set forth in Florida Statutes Section 163.3215;

b. all appropriate judicial remedies including an order of the circuit court quashing, revoking, invalidating and vacating the approval of the Development Order;

c. if necessary, an order of this court requiring restoration, demolition or removal of any and all inconsistent development Pinecrest Lakes, Inc. v. Shidel, 795 So.2d 191 (Fla. 4th DCA, 2001) cert. denied 821 So.2d 300 (Fla. 2002).

Respectfully submitted,

/s/ Ralf Brookes
RALF BROOKES ATTORNEY
Attorney for Plaintiffs
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Cape Coral, Florida 33904
Telephone (239) 910-5464
Facsimile (866) 341-6086
Ralf@RalfBrookesAttorney.com
RalfBrookes@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via email this February 25, 2016 to: Sarasota County Attorney via e-portal service.

Sarasota County Attorney
1660 Ringling Blvd Fl 2
Sarasota, FL 34236-6870
Office: 941-861-7255
Fax: 941-861-7267
sdemarsh@scgov.net

/s/ Ralf Brookes
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ORDINANCE NO. 2015-091

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, AMENDING THE OFFICIAL ZONING ATLAS, AS PART OF SARASOTA COUNTY ORDINANCE NO. 2003-052, CODIFIED IN APPENDIX A TO THE SARASOTA COUNTY CODE, RELATING TO ZONING WITHIN THE UNINCORPORATED AREA OF SARASOTA COUNTY; PROVIDING FINDINGS; PROVIDING FOR AMENDMENT OF THE ZONING ATLAS; PROVIDING RESTRICTIONS, STIPULATIONS AND SAFEGUARDS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:

Section 1. Findings. The Board of County Commissioners, hereinafter referred to as the "Board," hereby makes the following findings:

1. The Board has received and considered the report of the Sarasota County Planning Commission concerning Rezoning Petition No. 15-14, requesting rezoning of the property described herein.
2. The Board has held a public hearing on the proposed rezoning of the property described herein in accordance with the requirements of Sarasota County Ordinance No. 2003-052, codified in Appendix A of the Sarasota County Code (hereinafter "the Zoning Ordinance"), and has considered the information received at said public hearing.
3. The rezoning herein granted is consistent with the Sarasota County Comprehensive Plan and meets the requirements of the Zoning Ordinance.
4. Pursuant to the provisions of Article VII of Chapter 94 of the Sarasota County Code, an evaluation has been completed of the impacts that the proposed rezoning of the property described herein will have on the levels of service for parks, drainage, solid waste, roads, mass transit and water and sewer systems. With the exception of the provisions of Section 3 of this Ordinance, adequate levels of service are anticipated to be available.

Section 2. Amendment of the Zoning Ordinance. The Official Zoning Atlas, adopted under Article 4 of the Zoning Ordinance, is hereby amended by changing the zoning district classification from CG (Commercial, General) with stipulations to CG with amended stipulations for the following described property located in Sarasota County, Florida:

5901 Honore Avenue, Sarasota, Florida, and being more particularly described as follows:

UNITS C, D, AND E OF HONORE BUSINESS PARK, A CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM RECORDED IN INSTRUMENT NUMBER 2008063647, AND ALL EXHIBITS AND AMENDMENTS THEREOF AND RECORDED IN CONDOMINIUM PLAT BOOK 41, PAGE 31, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA, LESS AND EXCEPT THAT PART CONVEYED TO SARASOTA COUNTY BY DEED RECORDED IN INSTRUMENT NUMBER 2009001091, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

TOGETHER WITH:

LOT 3, SARASOTA GARDENS, AS PER PLAT THEREOF IN PLAT BOOK 2, PAGE 107, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA, BEING A SUBDIVISION OF THE EAST 1/2 OF THE NE 1/4 AND THE WEST 1/2 OF THE SE 1/4, SECTION 2, TOWNSHIP 36 SOUTH, RANGE 18 EAST; LESS AND EXCEPT THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF FLORIDA FOR THE USE AND BENEFIT OF THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RECORDED IN OFFICIAL RECORDS BOOK 1311, PAGE 1377, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

AND

TOGETHER WITH THAT PORTION OF THE WEST 1/2 OF THE UNNAMED ROAD RIGHT OF WAY, ADJACENT TO SAID LOT 3 ON THE EAST, AS VACATED BY RESOLUTION RECORDED IN OFFICIAL RECORDS BOOK 1883, PAGE 1286, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

AND

TOGETHER WITH A PORTION OF THE EAST 1/2 OF THE UNNAMED ROAD RIGHT OF WAY, ADJACENT TO SAID LOT 3 ON THE WEST, SAID PORTION BEING RECITED IN AND VACATED BY RESOLUTION RECORDED IN OFFICIAL RECORDS INSTRUMENT #2006041801, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

Section 3. Restrictions, Stipulations and Safeguards. As used in the stipulations hereinafter set forth, the term "Owner" shall refer to the owner or owners of the property described in Section 2 and their successors and assigns. Upon recording in the public records of Sarasota County, these stipulations shall be covenants running with the land. The use of the property described in Section 2 of this Ordinance, in addition to the applicable restrictions imposed by the Zoning Ordinance, is hereby further limited by and subject to the following restrictions, stipulations and safeguards:

1. Development shall take place in substantial compliance with the Development Concept Plan date stamped August 3, 2015, and attached hereto as Exhibit "A." This does not imply or confer any variances from applicable zoning or land development regulations.
2. All development shall be in compliance with conditions for development approval found within the University Parkway Corridor Plan - East, No. 92-01-SP-East, Ord. No. 2001-027.

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3. There shall be no direct vehicular access to University Parkway unless the University Parkway Inter-Local Agreement is amended to allow it. If allowed access to University Parkway shall be permitted as shown on the binding Development Concept Plan date stamped August 3, 2015.
4. Prior to or concurrent with the development of the subject parcel, the Owner shall construct a signal at the intersection of Honore Avenue and Integracllick Driveway and coordinate the signal timing with that of Honore Avenue and Desoto Road. The signal system shall be compatible with the Sarasota County's Advanced Traffic Management System (ATMS) infrastructure.
5. A minimum 20 foot landscape buffer shall be provided along that portion of the western boundary of the subject parcel that is south of the "Cross Access Easement" connection shown on the Development Concept Plan date stamped August 3, 2015. This buffer shall be a minimum 0.7 opacity, and shall include an 8 foot wall connecting to and matching in height and construction the existing wall located along the western boundary of the lands to the south. In addition a row of southern red cedar trees shall be planted on the west side of the wall (the trees shall be a minimum of 8 feet tall at time of planting and planted 8 feet apart). The southern red cedars may be planted within the 50 foot unimproved, vacated right-of-way. No certificate of occupancy shall be issued for the subject parcel until the western boundary landscape buffer plantings and wall, in addition to the planted row of cedars west of the wall has been completed.

Section 4. Effective Date. This Ordinance shall take effect upon filing with the Department of State.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this ____ day of _____, 2016.

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

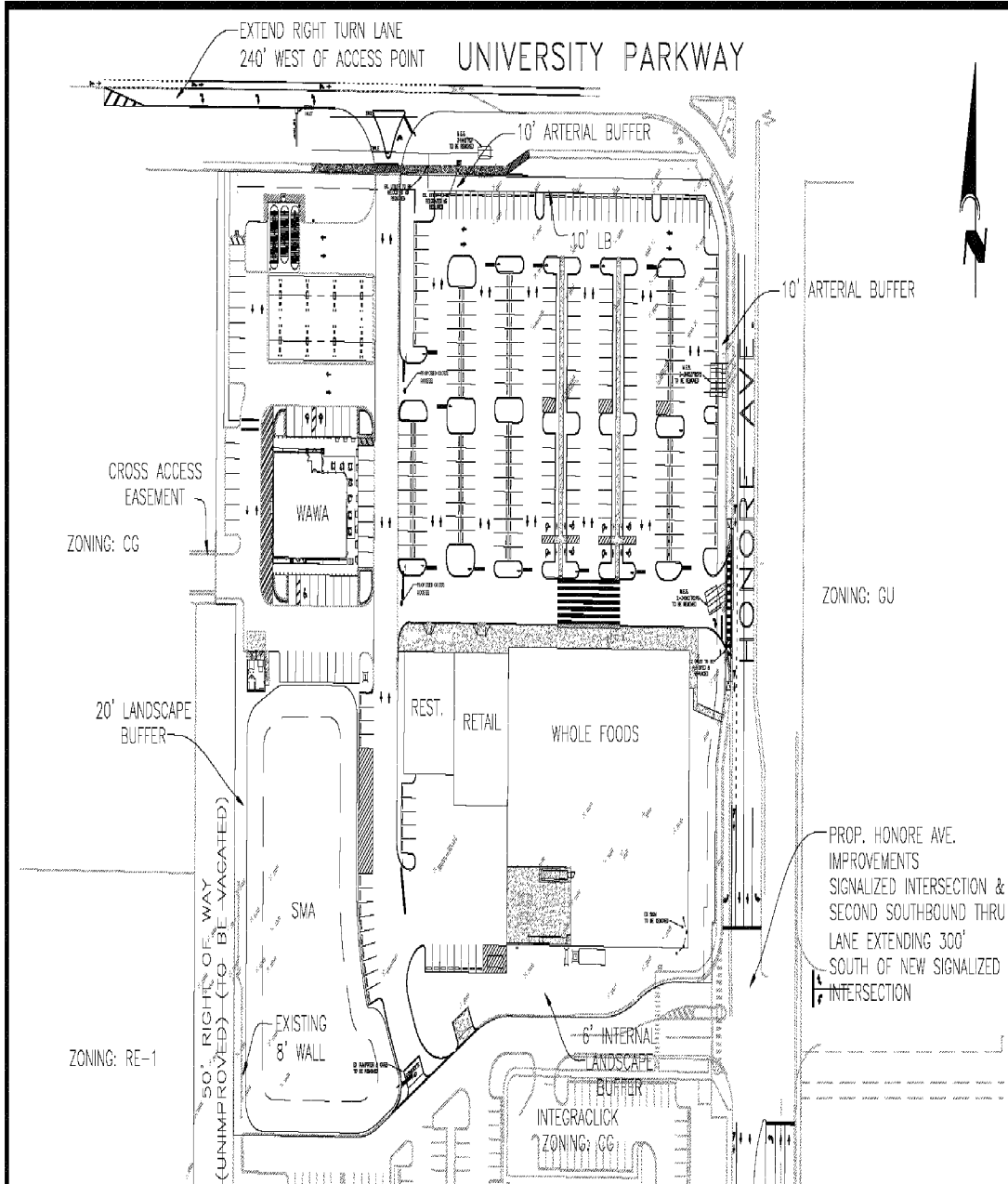
Chair

ATTEST:

KAREN E. RUSHING, Clerk of
the Circuit Court and Ex-
Officio Clerk of the Board of
County Commissioners of
Sarasota County, Florida.

By: _____
Deputy Clerk

EXHIBIT A - Received 8-3-15



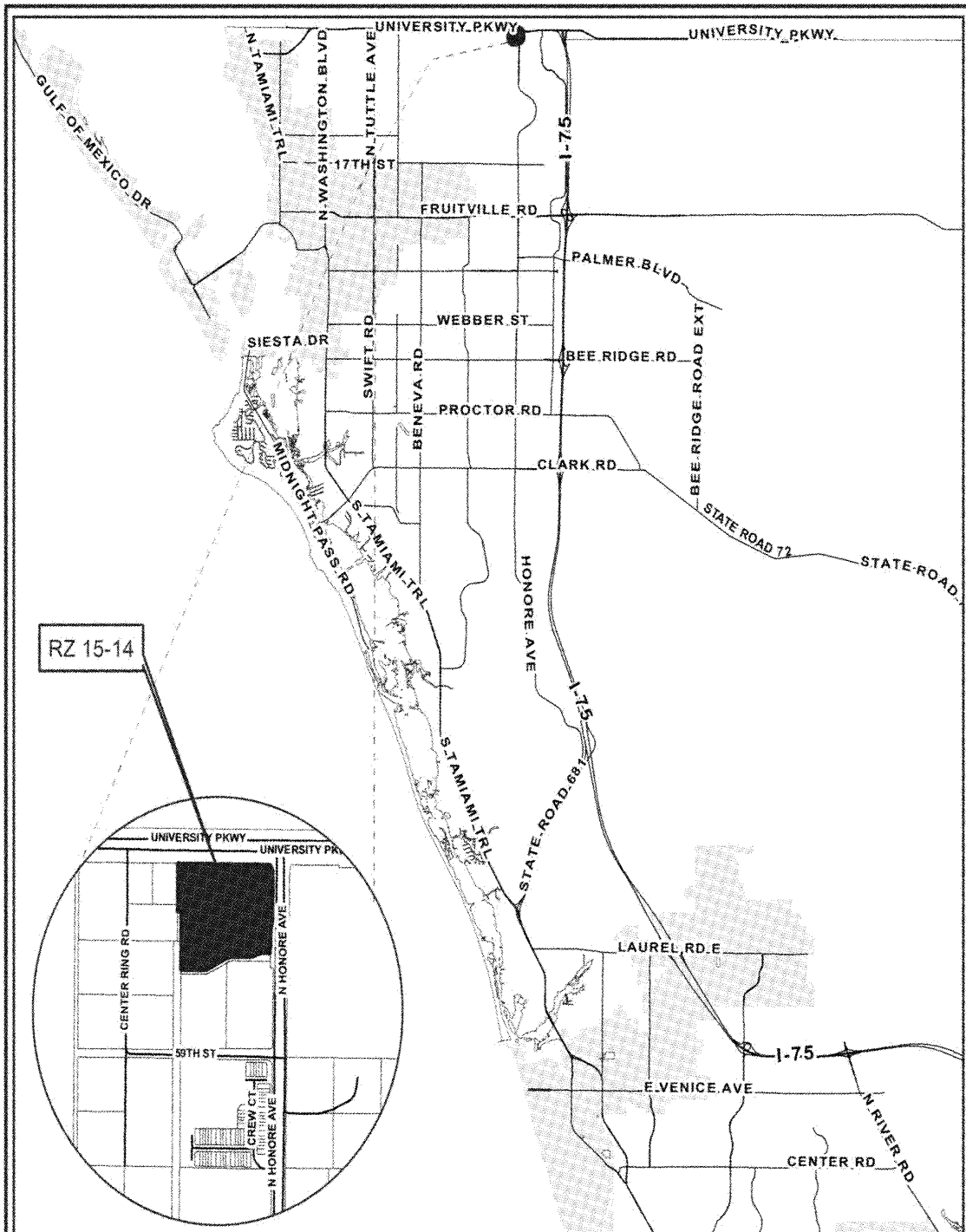
REVISED 2015-07-29 BKG

SMA - STORMWATER MANAGEMENT AREA
FLOODPLAIN COMPENSATION WILL BE CONSISTENT WITH THE COOPER CREEK WATERSHED MODEL TO DEMONSTRATE NO ADVERSE IMPACTS.



PHONE: (941) 377-9178

PROJECT: UNIVERSITY STATION		
SCALE: N.T.S.	APPROVED BY: D. SHAWN LEINS, PE FLORIDA CERTIFICATE NO: 41078	DRAWN BY: BKG
DATE: 4/28/15	CLIENT: SJ COLLINS ENTERPRISES	CAD FILE: MARK01DCP
DESC: BINDING DEVELOPMENT CONCEPT PLAN	JOB NO: MARK0001	DRWG. NO: 1



SARASOTA COUNTY COMMISSION PUBLIC HEARING

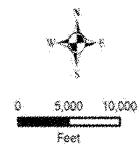


RZ 15-14

REZONE PETITION NO. 15-14

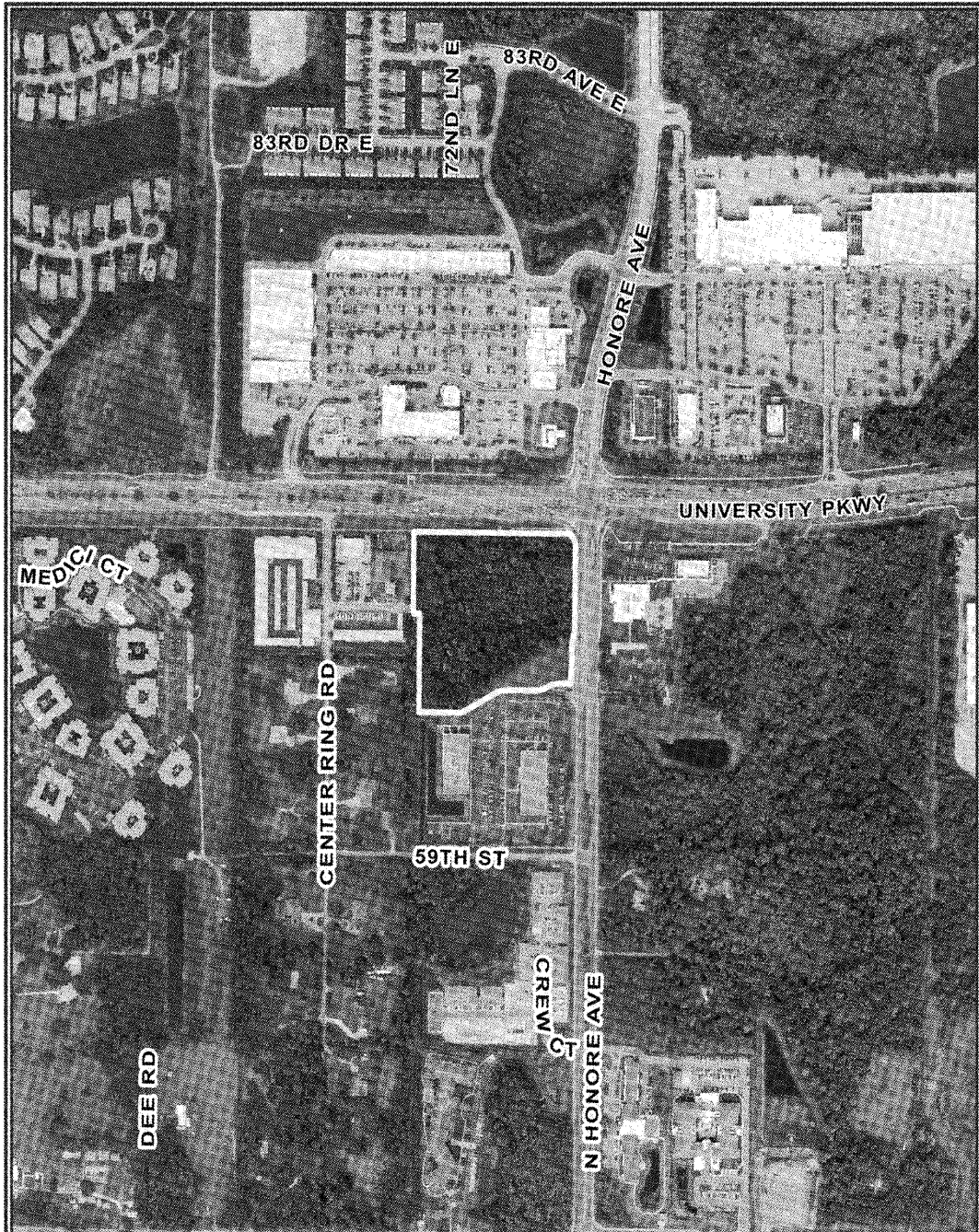
JANUARY 26, 2016

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Map published using ArcGIS 10x by cobrien on Monday, November 02, 2015.

Path: N:\Growth Management\Petitions\RZ_SF_PACKETS\REZONES\2015\15-14\15-14_BCC_LDC.mxd



RZ 15-14

2015 Aerial

REZONE PETITION NO. 15-14

Sarasota County
scgov.net | 941.881.5000

0 500 1,000
Feet

Aerial Imagery Provided by Pictometry International:
Sarasota County, FL
January 2015 4" Resolution
N.A.D. 1983 HARN State Plane Florida West PIPS 0602 (U.S. Survey Feet)

Map published using ArcGIS 10.x by cobendf on Thursday, July 16, 2015

Path: N:\Growth Management\Petitions\RZ_15 PACKET\REZONES\2015\15_14\15-14_Aerial.mxd

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Environmental Protection:

1. None

Stormwater:

2. None

Utilities Planning:

3. None

B. Environmental Background

The Environmental Services Team has conducted an evaluation of the subject property and identified the following environmental considerations:

Native Habitats

Consistency

The subject rezone petition (comprising of four parcels; PID Nos. 0016010002, 0016012003, 0016012004, and 0016012005) pertains to the 8.24 acres located to the southwest of the intersection of University Parkway and Honore Avenue. These parcels were previously rezoned under Ordinances 97-003 and 2006-014. During each of these rezone petitions, the forested wetland was designated a preserve area in a manner consistent with Chapter 2 of the Comprehensive Plan and the “Principles for Evaluating Development Proposals in Native Habitats”. Each rezone ordinance included stipulations to preserve the on-site wetland and the associated upland buffer. Prior rezone stipulation 3 (see strikethrough below) allowed for limited wetland impacts provided they were mitigated according to the Land Development Regulations. The Board denied a prior owner’s rezone petition filed in 1999 to amend the stipulations regarding wetland protection (among others) to allow for impacts to the entire wetland and to mitigate those impacts in Manatee County. The Board’s denial decision was challenged in the Circuit Court (Case No. 2000-3316-CA-01) and the court ruling upheld the County’s decision. The forested wetland was also preserved as a requirement of the development approvals granted through the Land Development Regulations.

Given the past development and legal history described above, it appears that past approvals provided reasonable use of the collective properties while protecting the values and functions of the forested wetland. Protection of wetlands is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with wetlands. Based on the development history of the subject property and proposal to impact 100% of the native habitats on-site, staff of Sarasota County’s Environmental Protection Division office finds the subject petition inconsistent with relevant elements of Chapter 2, The Environment, of the Comprehensive Plan, as further explained within this report.

The applicants have recommended removal of the existing rezone stipulation that provided protection to the on-site wetlands, as follows in strikethrough/underline format:

~~3. The onsite wetland and associated required buffer shall be preserved and marked as a preserved area on all development plans. Limited wetland impacts for an access road to the~~

~~upland area located in the northeast corner section of the parcel shall be allowed and mitigated according to the County's Land Development Regulations.~~

Staff does not support this change, as the development approvals for the collective property have previously demonstrated reasonable use while preserving the on-site wetlands consistent with the Comprehensive Plan requirements. Further, the Comprehensive Plan requires that former heads and swamps shall be restored in connection with new development where feasible. However, should the Board determine, after reviewing the testimony and evidence from all parties, that the project is consistent with the Comprehensive Plan due to new circumstances or additional information, there would be no need to incorporate a new mitigation stipulation, since any mitigation requirements would be assessed and addressed during the Site and Development Review in accordance with the Land Development Regulations (Chapter 74 of the Sarasota County Code of Ordinances). The applicants have indicated that mitigation for the proposed wetland impacts will occur in Manatee County. The Comprehensive Plan and Land Development Regulations include language requiring an interlocal agreement (or other legal mechanism acceptable to the County) for any off-site mitigation outside of Sarasota County.

Report
Native Habitat Protection

The habitat map submitted by the applicant depicts the location, type, and amount of native habitat to be impacted and is included in the rezone packet. The acreage of each native habitat type on the site for pre-construction and post-construction conditions is provided below:

Habitat Type	Pre-Construction	Post-Construction	Percent Impact
Wetland	4.49 acres	0 acres	100%
Pine Flatwoods	1.7 acres	0 acres	100%

The rezone proposes to impact 4.49 acres of forested wetlands and 1.7 acres of pine flatwoods. This represents impacts to 100% of the native habitats found on the subject property. The majority of the proposed native habitat impacts are located within the existing 3.3-acre native habitat preserve area designated under the site and development plan approved in 2004 for the University Parkway Business Park.

This rezone petition is inconsistent with Principle VII.A.2 of the Environment Chapter of the Comprehensive Plan, which states that wetlands shall be preserved except in cases where they are no longer capable of performing defined environmental functions and values, or where no other reasonable alternative exists. The applicant and staff agree that the forested wetlands exhibit good functionality. Swamps and heads (e.g., forested wetlands) are relatively rare in Sarasota County. These wetlands have a high degree of environmental importance for water filtration, assimilation of nutrients, floodwater storage and as refuge and habitat for a wide variety of species that rely on this urban environment. Such isolated habitats within the urban environment are becoming increasingly more important to migratory species.

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The applicant has indicated that justification for the proposed impacts is to allow for a more appropriate commercial development contemplated by the Village 1 Future Land Use designation. The applicant has asserted that “*there is no reasonable alternative that would avoid or sustainably preserve any portion of the on-site wetlands while accommodating a much needed grocery anchor for this Village 1 site.*” For informational purposes, there are currently three grocery stores within 1.5 miles of the subject property (Fresh Market opposite side of University Drive; Target at North Cattlemen/University intersection, and Publix east of I-75 interchange) and two others to the west on University Drive within 2.5 to 3 miles of the site (Detwiler’s Market at University/Lockwood Ridge intersection; Publix at University/Tuttle intersection). There are at least five gas stations within three miles of the subject property.

Comprehensive Plan language has changed since the approval of the previous rezone petitions on this property. The applicant has suggested that the changed language allows for impacts to forested wetlands (e.g., swamps and heads). Staff disagrees with this assertion. The prior *Management Guidelines* language for Freshwater Wetlands clearly stated that “swamps and heads shall be preserved”. Current language within the *Management Guidelines* for Freshwater Wetlands continues to recognize the importance of swamps and heads, and Management Guideline VII.A.2.a. states that “wetlands shall be preserved except as described in f. of this section”. However, the Comprehensive Plan still recognizes that swamps and heads exhibit a particularly high degree of environmental importance and are relatively rare in Sarasota County and are preserved as any other wetland. Further, the Comprehensive Plan requires that former heads and swamps shall be restored in connection with new development where feasible.

To be consistent with Principle VII.A.2.f. of the Environment Chapter of the Comprehensive Plan, the applicant must demonstrate that the wetland is no longer capable of performing environmental functions and values, or in cases where no other reasonable alternative exists other than disrupting a wetland, as determined by the County, some alterations may be allowed with appropriate mitigation. Staff and the applicant’s environmental consultants agree that the forested wetlands continue to provide important environmental functions and values. Given the development history of the site, the collective property currently has obtained reasonable use.

As the applicant has proposed further development of the site that will result in 100% impacts to native habitats, on-site mitigation is not feasible and therefore off-site mitigation has been proposed. The off-site mitigation is located within Manatee County and consists of the purchase of approximately 34.5 acres of land adjacent to the Manatee River. These lands consist of riverine wetlands and mesic hammock surrounded on all sides by Manatee County’s Rye Preserve. The intended mitigation site is over six miles northeast of the subject site. According to the Comprehensive Plan, mitigation is generally best accomplished when located on-site or in close proximity to the area being impacted. While the mitigation location is within the Manatee River watershed, it does not provide any substantial connectivity with protected native habitats or wildlife corridors within Sarasota County. It is the applicant’s intent to immediately transfer ownership of this purchased mitigation land to Manatee County for future land management. In order to allow for out-of-county off-site mitigation, the Comprehensive Plan and the Land Development Regulations require an interlocal agreement ensuring the County can maintain compliance with County standards within the other jurisdiction prior to approval of any site and development review.

The applicant has also proffered the following statement: “*Should Sarasota County wish to avail themselves to any excess mitigation (beyond those needed to meet federal and state permitting requirements), the petitioner agrees to make every reasonable effort to facilitate the County’s use of the surplus mitigation to the benefit of the public*”. Staff has consulted with Capital Projects and has confirmed that there is no need for such additional mitigation credits for ongoing or proposed County projects. Such excess mitigation credits do not represent mitigation for impacts to habitats on the subject property, and should not be considered a benefit to the County in considering this rezone petition.

Any future development of this property would also require consistency with state and federal permitting requirements.

Grand Trees and Other Trees

During a staff inspection of the property, no Grand Trees were identified.

During the site and development plan process, the applicant will be required to meet the requirements of the Tree Protection Ordinance. As part of this review, the applicant will be required to implement the principles of avoidance and minimization in addressing impacts to trees. In addition, if tree removal is proposed, the applicant must demonstrate that the Tree Removal criteria have been met. The applicant will also be required to implement Best Management Practices (e.g. tree barricades) to minimize impacts to trees during development.

Wildlife Protection

During the above mentioned site inspection, Environmental Protection Division staff did not document any evidence of listed species. While no listed species were observed, it is important to note that isolated habitats within the urban environment are becoming increasingly more important to migratory species.

Policy 4.4.4. of the Environment Chapter of the Comprehensive Plan requires that development order applicants consult with appropriate agencies and use recognized sampling techniques to identify endangered, threatened, and species of special concern. A professional wildlife survey will be required during the site and development plan or preliminary plan approval process to identify any listed wildlife species occupying the subject property.

Stormwater and Drainage

The Project site is located in the Cooper Creek Drainage Basin (Braden River Watershed) in northern Sarasota County. Based on the Cooper Creek Basin of the Braden River Watershed Master Plan and the Southwest Florida Water Management District (SWFWMD) topographic aerials, runoff from the site generally sheet flows in an easterly direction across the site and into an existing wetland. This wetland discharges to the east as overland flow, continuing easterly through several stormwater culverts and drainage conveyance systems, eventually discharging into Cooper Creek flowing north towards the Braden River in Manatee County.

Soils

The soil information is based on data obtained from the United States Department of Agriculture (USDA) Soil Conservation Service. It should be noted that this information pertains to ‘natural’

Paula Clintsman

From: Tate Taylor
Sent: Monday, December 28, 2015 8:21 AM
To: Paula Clintsman
Subject: FW: Rezone Petition No. 15-14

For the record

From: ManaSota-88 <manasota88@comcast.net>
Sent: Saturday, December 26, 2015 10:13 AM
To: Carolyn Mason; Paul Caragiulo; Christine Robinson; Alan Maio; Charles D. Hines
Cc: Jack Wilhelm
Subject: Rezone Petition No. 15-14

Sarasota Board of County Commissioners

1660 Ringling Blvd.
Sarasota, FL 34236

Re: Small Area Comprehensive Plan Amendment / Rezone Petition No. 15-14, University Station

Sent via email and U.S. Postal Service

Dear Commissioners :

ManaSota-88, Inc. objects to Rezone Petition No. 15-14, University Station and recommends that the Sarasota Board of County Commissioners find the proposed change not consistent with the intent, goals, objectives, policies, guiding principles and programs of the Comprehensive Plan

ManaSota-88, Inc. (hereinafter, "ManaSota-88") is a public interest conservation and environmental protection organization which is a Florida not-for-profit corporation and a citizen of the State of Florida whose address is: ManaSota-88, P.O. Box 1728, Nokomis, Florida 34274. The corporate purposes of ManaSota-88 include the protection and preservation of water quality and wildlife habitat in Manatee and Sarasota Counties. ManaSota-88 is a citizen of the State of Florida pursuant to section 403.412(5), Florida Statutes.

ManaSota-88 and its members will be substantially and adversely affected by the conditions and activity, which will result if this comprehensive plan amendment / rezone is allowed.

ManaSota-88 objects to Rezone Petition No. 15-14 for the following reasons:

1. The rezone proposes to impact 4.49 acres of forested wetlands and 1.7 acres of pine flatwoods. The proposed development will impact 100 percent of the wetlands area and native habitats on the site. Sarasota County's Environmental Protection Division office states the petition is inconsistent with Chapter 2, The Environment, of the Comprehensive Plan, including the guidelines for protecting Freshwater Wetlands found within the "Principles for Evaluating Development Proposals in Native Habitats".
2. The forested wetland has been designated as a "preserve area" during previous rezone petitions and development approvals.

According to the Staff report: *the subject rezone petition (comprising of four parcels; PID Nos. 0016010002, 0016012003, 0016012004, and 0016012005) pertains to the 8.24 acres located to the southwest of the intersection of University Parkway and Honore Avenue. These parcels were previously rezoned under Ordinances 97-003 and 2006-014. During each of these rezone petitions, the forested wetland was designated a preserve area in a manner consistent with Chapter 2 of the Comprehensive Plan and the "Principles for Evaluating Development Proposals in Native Habitats". Each rezone ordinance included stipulations to preserve the on-site wetland and the associated upland buffer.*

Sarasota County Staff recommends maintaining the existing rezone stipulation providing for the continued protection of the forested wetland.

3. The proposed mitigation to purchase approximately 34.5 acres ± of land adjacent to the Manatee River is unacceptable. The proposed mitigation site is not likely to ever be developed, therefore, there is a net loss of wetland function and acreage due to the destruction of the on-site wetland.

Item 41.

As stated in the Staff report: *As the Applicant has proposed further development of the site that will result in 100% impacts to native habitats, on-site mitigation is not feasible and therefore off-site mitigation has been proposed. The off-site mitigation is located within Manatee County and consists of the purchase of approximately 34.5 acres of land adjacent to the Manatee River. These lands consist of riverine wetlands and mesic hammock surrounded on all sides by Manatee County's Rye Preserve. The intended mitigation site is over six miles northeast of the subject site. According to the Comprehensive Plan, mitigation is generally best accomplished when located on-site or in close proximity to the area being impacted. While the mitigation location is within the Manatee River watershed, it does not provide any substantial connectivity with protected native habitats or wildlife corridors within Sarasota County. It is the Applicant's intent to immediately transfer ownership of this purchased mitigation land to Manatee County for future land management. In order to allow for out-of-county off-site mitigation, the Comprehensive Plan and the Land Development Regulations require an interlocal agreement ensuring the County can maintain compliance with County standards within the other jurisdiction prior to approval of any site and development review.*"

4. Stormwater runoff from the site will eventually discharging into Cooper Creek flowing north towards the Braden River in Manatee County. The Braden River is the source of water supply for Bradenton, Florida.

5. A similar rezone petition was previously denied by the Sarasota Board of County Commission and the Boards decision was upheld in Circuit Court.

As stated in the Staff report: *"The Board denied a prior owner's rezone petition filed in 1999 to amend the stipulations regarding wetland protection (among others) to allow for impacts to the entire wetland and to mitigate those impacts in Manatee County. The Board's denial decision was challenged in the Circuit Court (Case No. 2000-3316-CA-01) and the court ruling upheld the County's decision. The forested wetland was also preserved as a requirement of the development approvals granted through the Land Development Regulations. Given the past development and legal history described above, it appears that past approvals provided reasonable use of the collective properties while protecting the values and functions of the forested wetland. Protection of wetlands is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with wetlands. Based on the development history of the subject property and proposal to impact 100% of the native habitats on-site, staff of Sarasota County's Environmental Protection Division office finds the subject petition inconsistent with relevant elements of Chapter 2, The Environment, of the Comprehensive Plan."*

6. The rezone petition is inconsistent with Principle VII.A.2 of the Environment Chapter of the Comprehensive Plan, which states that wetlands shall be preserved except in cases where they are no longer capable of performing defined environmental functions and values, or where no other reasonable alternative exists.

The Applicant has not demonstrated that the wetland is no longer capable of performing environmental functions and values.

As stated in the Staff report: *"The Applicant and staff agree that the forested wetlands exhibit good functionality. The compositions of the vegetated communities are characterized within the Applicant's Environmental Assessment Report attached in Appendix C. Uplands include Pine Flatwoods surrounding a wetland swamp and head. Swamps and heads (e.g., forested wetlands) are relatively rare in Sarasota County. These wetlands have a high degree of environmental importance for water filtration, assimilation of nutrients, floodwater storage and as refuge and habitat for a wide variety of species that rely on this urban environment. Such isolated habitats within the urban environment are becoming increasingly more important to both local and migratory species."*

To be consistent with Principle VII.A.2.f. of the Environment Chapter of the Comprehensive Plan, the Applicant must demonstrate that the wetland is no longer capable of performing environmental functions and values, or in cases where no other reasonable alternative exists other than disrupting a wetland, as determined by the County, some alterations may be allowed with appropriate mitigation. Staff and the Applicant's environmental consultants agree that the forested wetlands continue to provide important environmental functions and values. Given the development history of the site, the collective property currently has obtained reasonable use."

7. The environmental report prepared by Environmental Consulting & Technology, Inc. (ECT) to address consistency with Sarasota County's Comprehensive Plan is flawed in several ways:

a. The report assumes that the wetlands on the west side of the site will be verified by SWFWMD. Since an ERP application to SWFWMD has not been filed, it cannot be assumed SWFWMD will be in agreement with Applicants wetland destruction proposal. Sarasota County Staff is currently in disagreement with the Applicant about the proposed wetland destruction and mitigation.

b. The report contends that because the wetland has become fragmented over time, it is not worthy of protection and therefore can be eliminated, despite the fact that the report recognizes the wetland currently provides habitat value and functions.

Low UMAM scoring wetlands, even if not providing great biologic function, still provide high hydrologic and chemical functions, thus a low UMAM score could have very good water environment function. A UMAM score is the average of 3 functional metrics: Water Environment, Community Structure, and Location and Landscape Support. Thus a low UMAM score could have really good Water Environment function. It would not make sense to completely destroy the wetland even if you assume UMAM is a perfect assessment methodology, because you could still potentially lose the "Water Environment" function, which is in good shape.

Several studies demonstrate the importance of protecting isolated wetlands.

- Kimberly J. Babbitt, George W. Tanner. Use of temporary wetlands by anurans in a hydrologically modified landscape. Wetlands. Volume 20, Issue 2, pp 313-322.

Seasonal, isolated wetlands of all sizes subject to hydrologic impacts provide valuable breeding areas for Anurans. This is because these types of wetlands typically exclude predatory fish (juvenile Anurans, tadpoles, don't get eaten by fish.)

- Daniel L. McLaughlin and Matthew J. Cohen. 2013. Realizing ecosystem services: Wetland hydrologic function along a gradient of ecosystem condition. Ecological Society of America. Preprint.

UMAM mainly quantifies biologic and habitat functions / value. Wetlands that have a low biologic value will still provide valuable hydrologic and chemical functions including floodwater retention, microclimate regulation, biogeochemical cycling, and pollutant removal. No correlation between UMAM and hydrologic functions has been shown. These types of functions are especially important in urbanized landscapes where people can directly benefit from these services.

c. The report states that the proposed development will not result in a net loss of wading bird habitat. This is incorrect.

The area around the proposed development is mainly urbanized and wading birds are not likely to utilize any nearby herbaceous wetlands and surface waters. The importance of the wetland proposed for destruction is its location, providing habitat where little wetland habitat is available.

The Applicant has not demonstrated that the proposed mitigation six miles away in Manatee County will replace the values and functions of the four-acre wetland being destroyed. A net loss of wading bird habitat and wetland functions and values will occur.

d. The report states that state and federal mitigation requirements will be followed if wading bird habitat is destroyed. State and federal mitigation requirements are not being proposed for this project. No regulatory agency has agreed to permit the destruction and mitigation of wading bird habitat for this project. The Applicant cannot assume permits will be issued by federal and state agencies for the destruction of wading bird habitat.

e. The report attempts to justify the destruction of the wetland by citing the exemptions allowed in the Comprehensive Plan Management Guidelines for freshwater wetlands. However, the report incorrectly concludes that the wetland can be destroyed because of the intensity of the surrounding development and future growth anticipated with the expanding University Town Center and I-75 improvements.

ManaSota-88 completely disagrees; the Comprehensive Plan Management Guidelines for the protection of freshwater wetlands are based upon the underlying principals of avoidance of the destruction of existing wetlands and enhancement of wetlands that have been previously altered.

Destruction of freshwater-forested wetlands in exchange for purchasing land in Manatee County are not exemptions found in the Comprehensive Plan Management Guidelines for freshwater wetlands.

f. The report incorrectly states there is no alternative that allows for reasonable development of the site without causing significant wetland impacts. The alternative is to build the project around the wetland. This allows for a reasonable use of the property and establishes a balance of a variety of social, economic and environmental elements to achieve a sustainable and appropriate outcome.

g. The report states that mitigation will strictly adhere to the criteria in Sarasota County's Comprehensive Plan.

The mitigation being proposed is outside of Sarasota County and therefore does not adhere to the criteria in the Sarasota County Comprehensive Plan.

h. The report states that mitigation for negative environmental impacts will be quantified by UMAM. There is no correlation between UMAM and wetland hydrologic functions; therefore the project is inconsistent with the Management Guidelines outlined in Chapter 2 of the Sarasota Comprehensive Plan (Principles of Evaluating Development Proposals in Native habitats, Section VII.A.2.f).

i. The proposed offsite wetland mitigation stipulation is dependant on an interlocal agreement between Manatee County and Sarasota County. No interlocal agreement currently exists for this project. Such an interlocal agreement should be agreed upon prior to any consideration of this rezone.

Glenn Compton - Chairman
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