

**Mayor**

Joe Coviello

**Council Members**

District 1: John Gunter

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout

District 4: Jennifer I. Nelson

District 5: Dave Stokes

District 6: Richard Williams

District 7: Jessica Cosden



1015 Cultural Park Blvd.  
Cape Coral, FL

**City Manager**

John Szerlag

**City Attorney**

Dolores Menendez

**City Auditor**

Andrea R. Butola

**City Clerk**

Kimberly Bruns

**AGENDA FOR THE REGULAR MEETING OF THE  
CAPE CORAL CITY COUNCIL**

August 12, 2019

4:30 PM

Council Chambers

**PLEDGE OF CIVILITY**

We will be respectful of each other even when we disagree.  
We will direct all comments to the issues. We will avoid personal attacks.

**VIDEO**

**1. MEETING CALLED TO ORDER**

A. MAYOR COVIELLO

**2. INVOCATION/MOMENT OF SILENCE**

A. COUNCILMEMBER NELSON

**3. PLEDGE OF ALLEGIANCE**

A. ALIZA BERNAL - SKYLINE ELEMENTARY SCHOOL

**4. ROLL CALL**

A. MAYOR COVIELLO, COUNCIL MEMBERS CARIOSCIA,  
COSDEN, GUNTER, NELSON, STOKES, STOUT, WILLIAMS

**5. CHANGES TO AGENDA/ADOPTION OF AGENDA**

**6. RECOGNITIONS/ACHIEVEMENTS**

A. Redesigned Website Launch - Recognition to City Staff by Mayor  
Coviello

**7. APPROVAL OF MINUTES**

A. NONE

**8. BUSINESS**

A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 60 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

B. CONSENT AGENDA

- (1) Resolution 271-19 Appropriation of Economic Development Reserve Funds in an amount of \$300,000 for wetland mitigation, maintenance and other related work at the city's property on the corner of Kismet Parkway and Del Prado Boulevard (otherwise known as Academic Village); Department: City Manager/EDO Division; (Economic Development Reserve Fund)
- (2) Resolution 275-19 Approval of the 2019-2020 Program-Funded State and Local Task Force Agreement (TFA) between the United States Department of Justice, Drug Enforcement Administration (DEA), and the City of Cape Coral o/b/o the Cape Coral Police Department and authorizing the Chief of Police to execute all necessary documents. Renewal; Department: Police; Dollar Value: Not to exceed \$18,649; (reimbursement by DEA).

C. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

D. PERSONNEL ACTIONS

- (1) NONE

E. PETITIONS TO COUNCIL

- (1) NONE

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

- (1) Construction Regulation Board - 1 Vacancy

**9. ORDINANCES/RESOLUTIONS**

A. Public Hearings

- (1) Ordinance 41-19 Public Hearing  
WHAT THE ORDINANCE ACCOMPLISHES:  
The ordinance authorizes and directs the City Manager to enter into a Health Care Facility Ground Lease with Medical Risk Solutions, LLC for the lease of property owned by the City of Cape Coral located at 1020 Cultural Park Blvd. S. for the operation of a health care facility for city employees, retirees



and dependents in the City's health insurance plan. (Applicant: Brought forward by City Management.)

- (2) Resolution 278-19 Public Input Approve Health Care Medical Services Agreement with Medical Risk Solutions, LLC d/b/a My Health Onsite

**WHAT THE RESOLUTION ACCOMPLISHES:**

The resolution approves an agreement between Medical Risk Solutions, LLC d/b/a My Health Onsite and the City of Cape Coral for the provision and operation of an onsite health center for eligible City employees, retirees and dependents. (Applicant: Brought forward by City Management.)

- (3) Ordinance 34-19 (ZA 19-0007\*) Second and Final Public Hearing

\*Quasi-Judicial, All Persons Testifying Must be Sworn In

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending the City of Cape Coral Official Zoning Map by rezoning property located at the intersection of Agualinda Boulevard and Beach Parkway from Marketplace Residential (MR) to Residential Multi-Family Low (RML) and Commercial (C) zones. (21.14 acres) (Applicant: City of Cape Coral)

NOTE: Maximum residential densities will not be increased as a result of this ordinance.

Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the application for rezoning contingent upon approval of the LUDR revisions by Council.

City Management Recommendation: City Management recommends approval.

**B. Introductions**

- (1) Ordinance 42-19 (ZA 19-0005\*) Set Public Hearing Date for August 26, 2019

\*Quasi-Judicial, All Persons Testifying Must be Sworn In

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending the City of Cape Coral Official Zoning District Map by rezoning property described as Lots 45-66, Block 5386, Unit 89, Cape Coral Subdivision, from Professional Office (P) to Commercial (C) Zone; property located at 1914-2014 SE 16th Place. (Applicants: Mehmet Ozer, Serife Ozer and Tuncay Ozer) (2.68 acres)

Hearing Examiner Recommendation: The Hearing Examiner recommends the City Council grant the requested rezoning.

City Management Recommendation: City Management recommends approval.

**10. UNFINISHED BUSINESS**

**A. Water Quality - Update**

B. Follow Up Items for Council

**11. NEW BUSINESS**

A. Proposed Strategic Plan and FY2020 Annual Audit Plan - Brought forward by City Auditor Butola

**12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

**13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

**14. TIME AND PLACE OF FUTURE MEETINGS**

A. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, August 19, 2019 at 4:30 p.m. in Council Chambers

**15. MOTION TO ADJOURN**

**GENERAL RULES AND PROCEDURES REGARDING  
THE CAPE CORAL CITY COUNCIL AGENDA**

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state or local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

**\*PUBLIC HEARINGS  
DEPARTMENT OF COMMUNITY DEVELOPMENT CASES**

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale

rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.
2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

<b>Item Number:</b>	<b>B.(1)</b>
<b>Meeting</b>	<b>8/12/2019</b>
<b>Date:</b>	
<b>Item Type:</b>	<b>CONSENT AGENDA</b>

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 271-19 Appropriation of Economic Development Reserve Funds in an amount of \$300,000 for wetland mitigation, maintenance and other related work at the city's property on the corner of Kismet Parkway and Del Prado Boulevard (otherwise known as Academic Village); Department: City Manager/EDO Division; (Economic Development Reserve Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? Yes
2. Is this a Strategic Decision? Yes

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

**ELEMENT A:** INCREASE ECONOMIC DEVELOPMENT AND REDEVELOPMENT IN THE CITY

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

The Economic Development Office has asked Public Works to work with Procurement to issue an Invitation to Bid for contract work at Academic Village.

A contract for the mitigation, maintenance and other related work in the conservation areas will be brought back to Council for consideration.

It is important to continue work on the project by mitigating the conservation areas and addressing other permit conditions. This allows further site clearing and avoids a major modification to the environmental work schedule. If we do not move forward, we risk permits expiring, which could delay this project again.

Economic Development staff is actively marketing the site. The completion of this work makes the site more attractive to developers. This site provides us with one of the best opportunities to attract corporate office and light industrial companies to Cape Coral. Without completing the required site preparedness improvements, this 125-acre site will not be ready to attract major employers to the city.

The Economic Development Incentive Reserve funds are set aside for economic development initiatives that provide growth in the tax base and the attraction of new and expanding business.

An additional \$300,000 in FY 2021 is needed to complete the project.

Fund Availability

Economic Development Incentive Reserve Fund to Government Services;  
Academic Village Project 3180010.631399, \$300,000 (FY 2019)

**LEGAL REVIEW:**

**EXHIBITS:**

Staff Memo Dated August 5, 2019  
Resolution 271-19  
Site Maps (3)  
Presentation

**PREPARED BY:**

Terri Hall	Division-	Economic Development	Department-	City Manager's Office
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**SOURCE OF ADDITIONAL INFORMATION:**

Economic Development Incentive Reserve Fund - \$200,000 (to be appropriated)




Economic Development Office Business Unit 115201;648103 - \$100,000

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Staff Memo Dated 8/05/2019	Backup Material
▣ Resolution 271-19	Resolution
▣ AV Wetland Map	Backup Material
▣ AV Wetland Impact Map	Backup Material
▣ AV Wetland Mitigation & Monitoring Plan	Backup Material
▣ Presentation	Backup Material

CITY MANAGER'S OFFICE  
MEMORANDUM

TO: Wanda Roop, Procurement Manager

FROM: Connie Barron, Assistant City Manager   
Ricardo Noguera, Economic Development Manager   
Terri Hall, Community Redevelopment Coordinator 

DATE: August 5, 2019

SUBJECT: Funding for Wetland Mitigation, Maintenance and other related work at the Academic Village site - City Council Agenda Item on August 12, 2019

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The Economic Development Office has asked Public Works to work with Procurement to issue an Invitation to Bid for contract work at Academic Village. The contract to include the mitigation, maintenance and other related work in the conservation areas will be brought back to Council for consideration. Funding for the project is on Council's agenda for approval on August 12<sup>th</sup>.

It is important to continue work on the project by mitigating the conservation areas and addressing other permit conditions. This allows further site clearing and avoids a major modification to the environmental work schedule. If we do not move forward, we risk permits expiring, which could delay this project again.

Fund Availability

The Economic Development Incentive Reserve funds are set aside for economic development initiatives that provide growth in the tax base and the attraction of new and expanding business. This site provides us with one of the best opportunities to attract corporate office and light industrial companies to Cape Coral. Without completing the required site preparedness improvements, this 125-acre site will not be ready to attract major employers to the city.

Proposed Use of Funds

Economic Development Incentive Reserve Fund to Government Services;  
Academic Village Project 3180010.631399, \$300,000 (FY 2019)

c: Paul Clinghan, Public Works Director



RESOLUTION 271 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE TRANSFER OF FUNDS FROM THE ECONOMIC DEVELOPMENT INCENTIVE RESERVE FUND TO THE GOVERNMENT SERVICES FUND FOR THE EXPENDITURE OF \$300,000 FOR WETLAND MITIGATION, MAINTENANCE AND OTHER RELATED WORK AT PROPERTY LOCATED AT THE CORNER OF KISMET PARKWAY AND DEL PRADO BOULEVARD, KNOWN AS THE ACADEMIC VILLAGE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 18, 2003, City Council purchased property known as the Academic Village located at the northwest corner of Kismet Parkway East and Del Prado Boulevard North, and has subsequently purchased adjoining sites along the north side of Kismet Parkway East; and

WHEREAS, the South Florida Water Management District (SFWMD) has issued Permit No. 36-08114-P to the City for development of the Academic Village property, with the condition that a portion of the property be designated for conservation of property in an enhanced, restored, or created condition; and

WHEREAS, the City desires to continue work for the mitigation, maintenance and other related work in the conservation area to the meet the conditions of the permit, thereby keeping the permits active for any development to occur outside the conservation area; and

WHEREAS, the City desires to encourage development of the Academic Village property by private developers; and

WHEREAS, the City Manager recommends that funds be transferred from the Economic Development Incentive Reserve fund to the Government Services, Academic Village Project fund to fund the continuing wetland mitigation, maintenance and other related work at the Academic Village property.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. The City Council hereby approves transferring \$300,000 from the Economic Development Incentive Reserve Fund to the Government Services, Academic Village Project fund for the expenditure of those funds for wetland mitigation, maintenance and other related work at the property located at the northwest corner of Kismet Parkway East and Del Prado Boulevard North, known as the Academic Village.

SECTION 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY

res/Expenditures for Wetlands - Academic Village

SECTION 30  
TOWNSHIP 43  
RANGE 24

0 150 300  
SCALE FEET

FLUGGS	Description	Acres
411	Pine Flatwoods	32.56 ac.
411E	Pine Flatwoods invaded by Exotics (5-8K)	27.62 ac.
411E1	Pine Flatwoods invaded by Exotics (10-25K)	8.50 ac.
411E2	Pine Flatwoods invaded by Exotics (26-50K)	6.33 ac.
411E3	Pine Flatwoods invaded by Exotics (51-75K)	8.31 ac.
411E4	Pine Flatwoods invaded by Exotics (76-90K)	12.25 ac.
419E1	Other Pines invaded by Exotics (10-25K)	1.68 ac.
422	Brazilian Pepper	1.61 ac.
5100	Ditches	0.51 ac.
618	Willow	1.40 ac.
618E1	Willow invaded by Exotics (10-25K)	1.59 ac.
619	Exotic Wetland Hardwoods	10.50 ac.
625E	Hydric Pine Flatwoods invaded by Exotics (5-8K)	4.30 ac.
625E1	Hydric Pine Flatwoods invaded by Exotics (10-25K)	7.28 ac.
625E2	Hydric Pine Flatwoods invaded by Exotics (26-50K)	14.43 ac.
625E3	Hydric Pine Flatwoods invaded by Exotics (51-75K)	3.03 ac.
641	Freshwater Marshes	0.49 ac.
641E1	Freshwater Marshes invaded by Exotics (51-75K)	3.51 ac.
641E4	Freshwater Marshes invaded by Exotics (76-90K)	0.07 ac.
643D	Wet Prairies - Disturbed	1.43 ac.
643E	Wet Prairies invaded by Exotics (5-8K)	7.85 ac.
643E1	Wet Prairies invaded by Exotics (10-25K)	0.40 ac.
643E2	Wet Prairies invaded by Exotics (26-50K)	4.22 ac.
740	Disturbed Land	14.56 ac.
740E1	Hydric Disturbed Land	0.33 ac.
742	Borrow Areas	8.13 ac.
832	Electrical Power Transmission Lines	1.18 ac.
	<b>Total</b>	<b>182.22 ac.</b>

Wetlands (60.89 ac.)  
Other Surface Waters (8.64 ac.)

--- SURVEYED LINE  
--- VEGETATION LINE

- Notes:
1. Property boundary and site plan provided by Arden Engineering, Inc.
  2. The jurisdictional wetland limits shown were survey located by Stouten Surveying, Inc.
  3. Mapping based on photointerpretation of 2008 aerial photography in January 2010.
  4. The extent of State of Florida jurisdictional wetland limits was verified in the field by Ms. Laura Montes de Oca (SP1860) on 4/15/02.

Exhibit III.B

PERMIT USE ONLY  
NOT FOR CONSTRUCTION

January 30, 2014 2:30:57 a.m.  
Drawing: CAPE110\_WET.DWG

SHEET

The Concourse  
at Cape Coral

WETLAND MAP

W. DEXTER BENDER  
& ASSOCIATES, INC.  
ENVIRONMENTAL & MARINE CONSULTING  
FORT MYERS 239/334-3680 FORT CHARLOTTE 841/255-1462

Exhibit 3.0

Application No. 041209-22

1 of 1



SECTION 30  
TOWNSHIP 43  
RANGE 24

0 150 300  
SCALE FEET

PLUGGS	Description
3100	Ditches
618	Willow
618E1	Willow invaded by Exotics (10-25%)
619	Exotic Wetland Hardwoods
625C	Hydric Pine Flatwoods invaded by Exotics (5-35%)
625E1	Hydric Pine Flatwoods invaded by Exotics (10-25%)
625E2	Hydric Pine Flatwoods invaded by Exotics (26-50%)
625E3	Hydric Pine Flatwoods invaded by Exotics (51-75%)
641	Freshwater Marshes
641E3	Freshwater Marshes invaded by Exotics (51-75%)
641E4	Freshwater Marshes invaded by Exotics (76-90%)
6430	Wet Prairies - Disturbed
643E	Wet Prairies invaded by Exotics (5-25%)
643E1	Wet Prairies invaded by Exotics (10-25%)
643E2	Wet Prairies invaded by Exotics (26-50%)
740H	Hydric Disturbed Land
742	Borrow Areas

	Wetlands Excavation (0.43 ac.)
	Wetlands Fill (26.41 ac.)
	Secondary Impacts (1.97 ac.)
	Boardwalk/Shedding Impacts (0.06 ac.)
	Other Surface Water Excavation (7.58 ac.)
	Other Surface Water Fill (1.06 ac.)

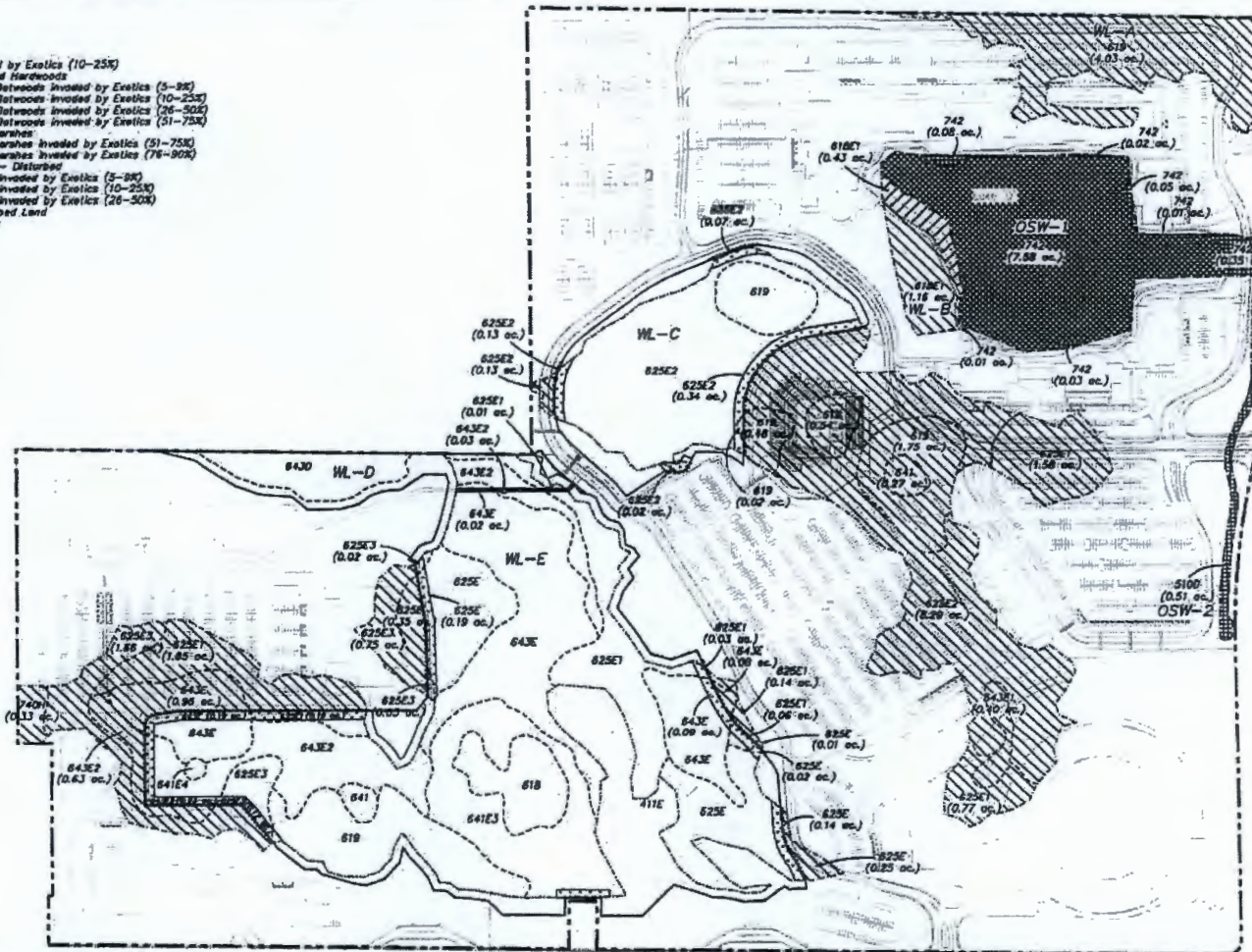
----- SURVEYED LINE  
----- VEGETATION LINE  
----- STRUCTURAL BUFFER  
----- CONSERVATION EASEMENT BOUNDARY

Notes:  
1. Property boundary and site plan provided by Avalon Engineering, Inc.  
2. The jurisdictional wetland limits shown were survey located by Stanten Surveying, Inc.  
3. Mapping based on photointerpretation of 2008 aerial photography in January 2010.  
4. The extent of State of Florida jurisdictional wetland limits was verified in the field by Ms. Laura Montes de Oca (SPWMD) on 4/15/13.

Exhibit III.C

PERMIT USE ONLY  
NOT FOR CONSTRUCTION

May 14, 2013 10:03:05 a.m.  
Drawing: CAPE CORAL WETLAND IMPACT MAP.DWG





SECTION 30  
TOWNSHIP 43  
RANGE 24

FLUGES Description  
411 Pine Flatwoods  
414 Pine - Marsh Oak  
625 Hydroic Pine Flatwoods  
641 Freshwater Marshes  
643 Wet Prairies - Disturbed

0 150 300  
SCALE FEET

- Level 1 Enhancement Area (24.72 ac.)
- Level 2 Enhancement Area, Forested Plantings (2.58 ac.)
- Level 2 Enhancement Area, Herbaceous Plantings (6.75 ac.)
- Upland Preservation (3.76 ac.)
- Upland Restoration (0.09 ac.)
- Upland Buffer (3.48 ac.)
- Printed Upland Buffer (0.21 ac.)

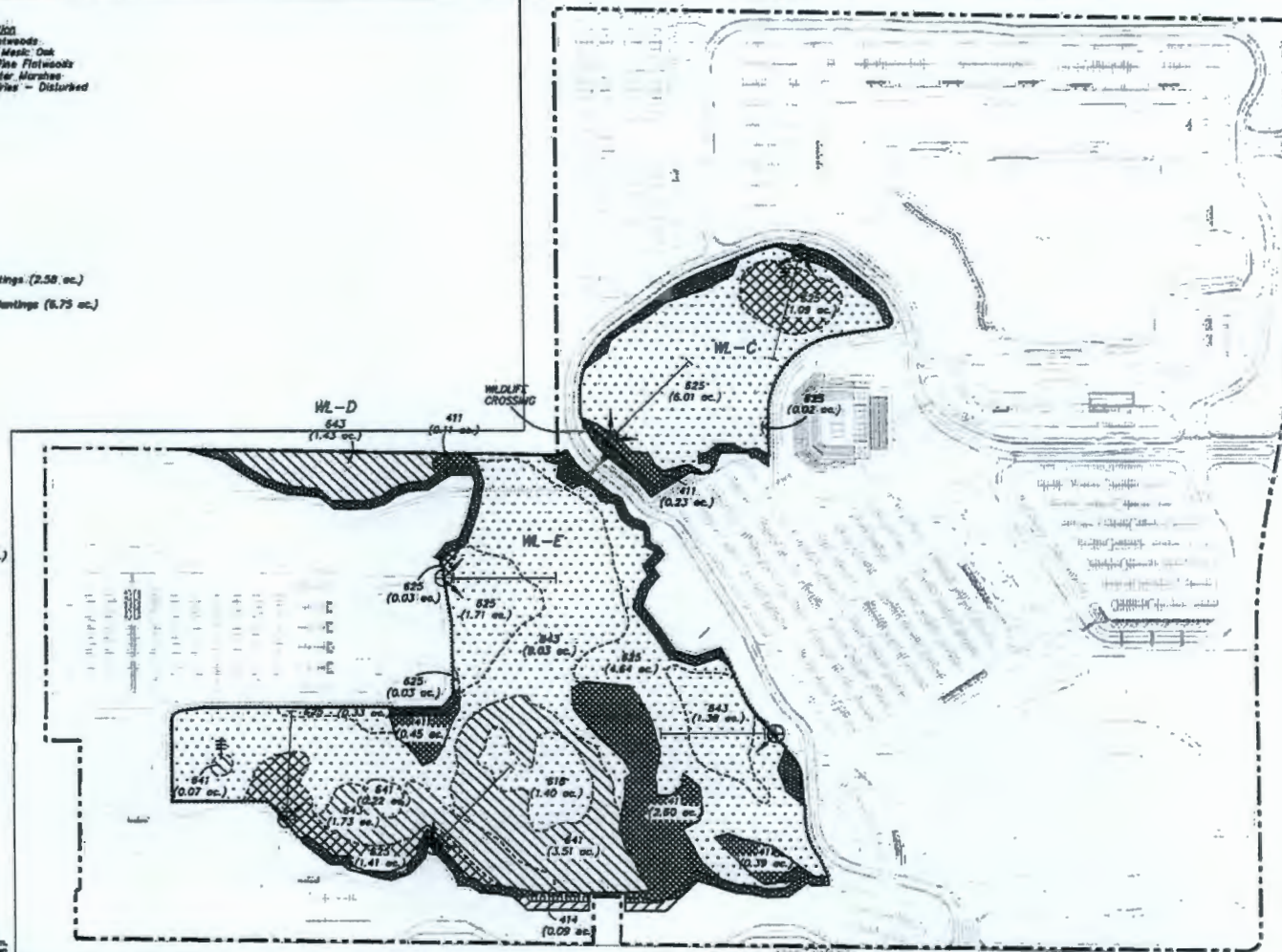
- SURVEYED LINE
- VEGETATION LINE
- STRUCTURAL BUFFER
- CONSERVATION EASEMENT BOUNDARY (41.59 ac.)



- Notes:
1. Property boundary and site plan provided by Avian Engineering, Inc.
  2. The jurisdictional wetland limits shown were survey located by Stouten Surveying, Inc.
  3. Mapping based on photointerpretation of 2008 aerial photography in January 2010.
  4. The extent of State of Florida jurisdictional wetland limits was verified in the field by Mr. Louis Montes de Oca (SPWMD) on 4/15/03.
  5. Enhancement areas include secondary and shading impacts areas.

PERMIT USE ONLY  
NOT FOR CONSTRUCTION

January 22, 2014 8:47:02 a.m.  
Drawing: CAPE119 WETLAND MITIGATION



SHEET

The Concourse  
at Cape Coral

Figure 1. Wetland Mitigation and  
Monitoring Plan

W. DEXTER BENDER  
& ASSOCIATES, INC.  
ENVIRONMENTAL & MARINE CONSULTING  
FORT MYERS 339/334-3680 PORT CHARLOTTE 341/255-1462










# ACADEMIC VILLAGE SITE (North Del Prado Commerce Park)

Mitigation, maintenance work in the conservation areas

SECTION: 30  
TOWNSHIP: 43  
RANGE: 24

FLUGGS	Description
411	Pine Flatwoods
414	Pine - Mesic Oak
625	Hydric Pine Flatwoods
641	Freshwater Marshes
643D	Wet Prairies - Disturbed

0 150 300  
SCALE FEET

-  Level 1 Enhancement Area (24.72 ac.)
-  Level 2 Enhancement Area, Forested Plantings (2.58 ac.)
-  Level 2 Enhancement Area, Herbaceous Plantings (6.75 ac.)
-  Upland Preservation (3.78 ac.)
-  Upland Restoration (0.09 ac.)
-  Upland Buffer (3.46 ac.)
-  Planted Upland Buffer (0.21 ac.)

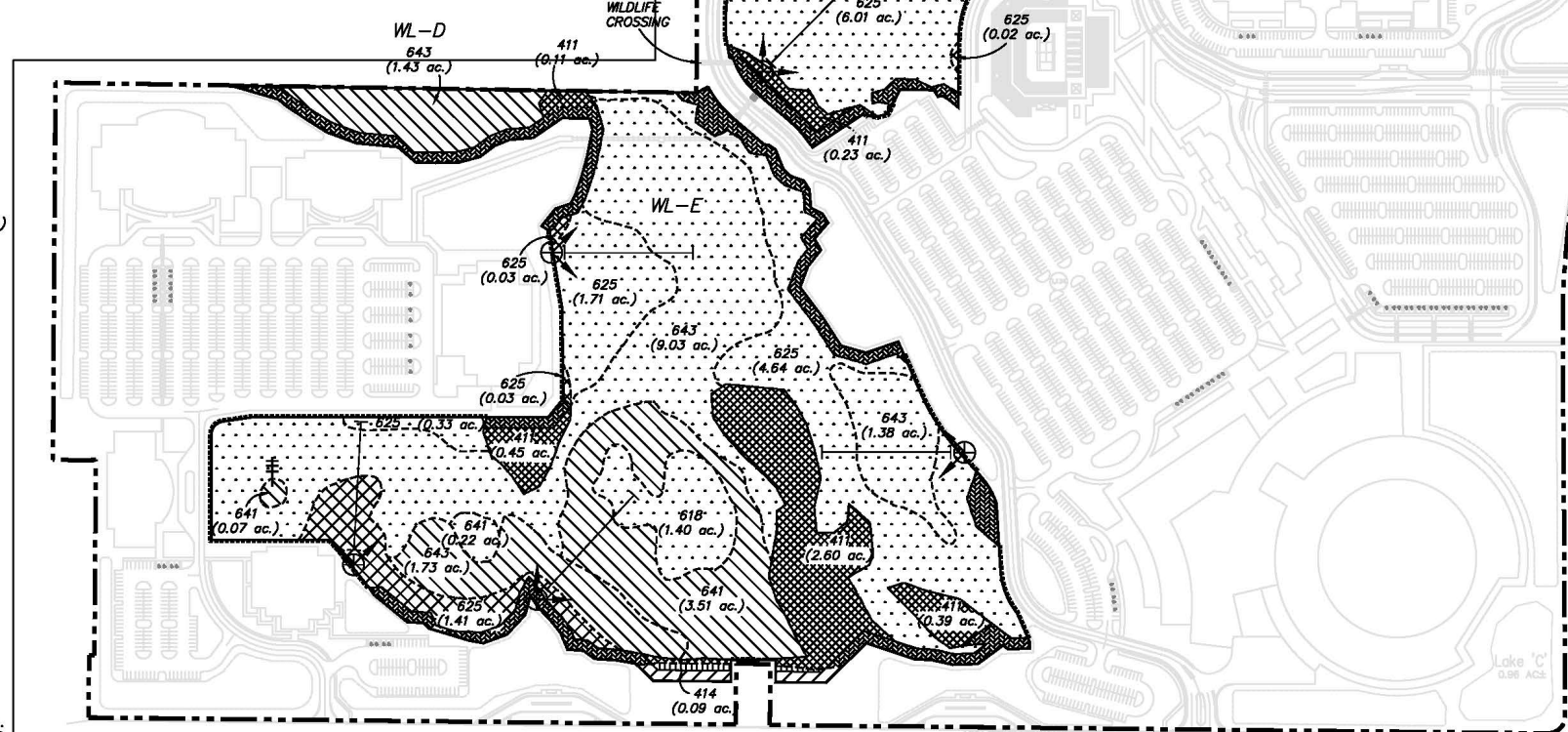
- SURVEYED LINE
- VEGETATION LINE
- STRUCTURAL BUFFER
- CONSERVATION EASEMENT BOUNDARY (41.59 ac.)



- Notes:
1. Property boundary and site plan provided by Avalon Engineering, Inc.
  2. The jurisdictional wetland limits shown were survey located by Stouten Surveying, Inc.
  3. Mapping based on photointerpretation of 2008 aerial photography in January 2010.
  4. The extent of State of Florida jurisdictional wetland limits was verified in the field by Ms. Laura Montes de Oca (SFWMD) on 4/15/03.
  5. Enhancement areas include secondary and shading impacts areas.

PERMIT USE ONLY  
NOT FOR CONSTRUCTION

January 22, 2014 9:47:02 a.m.  
Drawing: CAPE11B WETLAND MITMON.DWG



SHEET

The Concourse  
at Cape Coral

Figure 1. Wetland Mitigation and  
Monitoring Plan

W. DEXTER BENDER  
& ASSOCIATES, INC.  
ENVIRONMENTAL & MARINE CONSULTING  
FORT MYERS 239/334-3680 PORT CHARLOTTE 941/255-1462





# Appropriation Request - \$300K

- ▶ Permit requires mitigation of the conservation areas (clearing and maintenance)
- ▶ Risk of permits expiring if we don't move forward

# Economic Development Incentive Reserve Funds

- ▶ The Economic Development Incentive Reserve funds are set aside for economic development initiatives that provide growth in the tax base and the attraction of new and expanding business.
- ▶ EDO is attempting to move this city-owned property toward being “shovel ready” addressing required environmental and conservation improvements necessary prior to development. This will serve to incentivize private development in the near future; reducing developer risk.

# Economic Development Purpose

- ▶ Actively marketing site
- ▶ Completion of work makes the site more attractive to developers “shovel ready”
- ▶ Great opportunity to bring corporate office and light industrial

# INVESTMENT Year 2003 TO CURRENT

- ▶ Land Acquisition (not including out parcels) \$8.5M
- ▶ Environmental/Survey/Design \$1M



# Next Steps

- ▶ Staff will continue to aggressively market this property
- ▶ Up to \$500,000 funds will be necessary in FY 2021 is needed to clear the remainder of property

# Recommendation

- Recommend funds be transferred from the Economic Development Incentive Reserve Fund for the expenditure of those funds for the wetland mitigation, maintenance and other related work at the Academic Village.

**Item Number: B.(2)**

**Meeting**  
**Date:** 8/12/2019

**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 275-19 Approval of the 2019-2020 Program-Funded State and Local Task Force Agreement (TFA) between the United States Department of Justice, Drug Enforcement Administration (DEA), and the City of Cape Coral o/b/o the Cape Coral Police Department and authorizing the Chief of Police to execute all necessary documents. Renewal; Department: Police; Dollar Value: Not to exceed \$18,649; (reimbursement by DEA).

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
  2. Is this a Strategic Decision? Yes
- If Yes, Priority Goals Supported are listed below.
- If No, will it harm the intent or success of the Strategic Plan?

**ELEMENT E:** INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

1. This marks the 26<sup>th</sup> year this TFA will be renewed with DEA.
2. The continuation of this agreement facilitates the extension of a long-standing and successful local-state and federal partnership in Lee County. The merits of this TFA are seen in the numerous arrests and seizures during its existence.
3. With the current TFA expiring September 30, 2019, this renewal will extend that period to September 30, 2020.
4. Pursuant to the TFA, the Police Department will continue to assign one investigator, when available, to the Task Force whose overtime costs will be reimbursed to the City by DEA for an amount not to exceed \$18,649.00.

**LEGAL REVIEW:**

**EXHIBITS:**

1. Program-Funded State and Local Task Force Agreement (3 pages)

2. U.S. Department of Justice Compliance with Certifications Requirements form (3 pages)

**PREPARED BY:**

Martha  
LaForest      Division- Administration      Department- Police

**SOURCE OF ADDITIONAL INFORMATION:**

David Newlan, Chief of Police

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Resolution 275-19	Resolution

RESOLUTION 275 – 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING THE 2019-2020 PROGRAM-FUNDED STATE AND LOCAL TASK FORCE AGREEMENT BETWEEN THE CITY OF CAPE CORAL O/B/O THE CAPE CORAL POLICE DEPARTMENT AND THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION; AUTHORIZING THE MAYOR AND THE CHIEF OF POLICE TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, this marks the 26<sup>th</sup> year that the City has entered into the Program-Funded State and Local Task Force Agreement with the United States Department of Justice, Drug Enforcement Administration (DEA); and

WHEREAS, the continuation of this agreement facilitates the extension of a long-standing and successful local, state and federal partnership in Lee County, demonstrated by the numerous arrests and seizures during its existence; and

WHEREAS, pursuant to the Task Force Agreement, the Police Department will continue to assign one investigator to the Fort Myers Resident Office Task Force Group 1, and the DEA will reimburse the City for overtime costs for the Cape Coral Police Officers assigned to the Task Force in an amount not to exceed \$18,649; and

WHEREAS, the City Council desires to enter into the 2019-2020 Program-Funded State and Local Task Force Agreement with the DEA.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the 2019-2020 Program-Funded State and Local Task Force Agreement between the City of Cape Coral o/b/o the Cape Coral Police Department and the DEA, attached hereto as Exhibit A.

Section 2. The City Council hereby authorizes the Mayor and the Chief of Police to execute the Program-Funded State and Local Task Force Agreement and any other documents required to implement the agreement.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

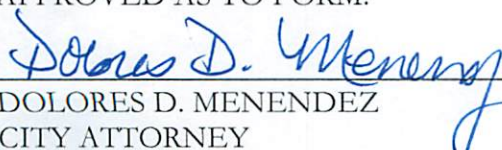
COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/DEA Task Force Agreement 2019-2020

## **PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT**

This agreement is made this 1st day of October 2019, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the City of Cape Coral o/b/o the Cape Coral Police Department (hereinafter "CCPD"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of Southwest Florida, the parties hereto agree to the following:

1. The Fort Myers Resident Office Task Force Group 1 (FMRO/TF1) will perform the activities and duties described below:

a. Disrupt the illicit drug traffic in the Southwest Florida area by immobilizing targeted violators and trafficking organizations;

b. Gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and

c. Conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Florida.

2. To accomplish the objectives of the FMRO/TF1, the CCPD agrees to detail one (1) experienced officer to the FMRO/TF1 for a period of not less than two years. During this period of assignment, the CCPD officer will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.

3. The CCPD officer assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.

4. The CCPD officer assigned to the Task Force shall be deputized as Task Force Officer of DEA pursuant to 21 U.S.C. Section 878.

5. To accomplish the objectives of the FMRO/TF1, DEA will assign four (4) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and CCPD officer assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.



6. During the period of assignment to the FMRO/TF1, the CCPD will remain responsible for establishing the salary and benefits, including overtime, of the officers assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the CCPD for overtime payments made by it to CCPD officer assigned to the FMRO/TF1 for overtime, up to a sum equivalent to 25 percent of the salary of a GS-12, step 1, (RUS) Federal employee (currently \$18,649.00), per officer. *Note: Task Force Officer's overtime "shall not include any costs for benefits, such as retirement, FICA, and other expenses."*

7. In no event will the CCPD charge any indirect cost rate to DEA for the administration or implementation of this agreement.

8. The CCPD shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.

9. The CCPD shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The CCPD shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of three (3) years after termination of this agreement, whichever is later.

10. The CCPD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.

11. The CCPD agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The CCPD acknowledges that this agreement will not take effect and no Federal funds will be awarded to the CCPD by DEA until the completed certification is received.

12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the CCPD shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.

13. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2020. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by CCPD during the term of this agreement.

For the Drug Enforcement Administration:

\_\_\_\_\_  
Adolphus P. Wright  
Special Agent in Charge  
Miami Field Division

Date: \_\_\_\_\_

For the Cape Coral Police Department:

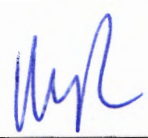
\_\_\_\_\_  
David Newlan  
Chief of Police

Date: \_\_\_\_\_

CITY OF CAPE CORAL

\_\_\_\_\_  
Joe Coviello, Mayor

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Dolores D. Menendez, City Attorney

Date: \_\_\_\_\_

  
ATTEST:

\_\_\_\_\_  
Kimberly Bruns, City Clerk

Date: \_\_\_\_\_





U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE COMPTROLLER

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, Disclosure of Lobbying Activities, in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

**2. DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS  
(DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DRUG-FREE WORKPLACE  
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drugs abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site (s) for the performance of work done in connection with the specific grant.

Place of Performance (Street address, city, country, state, zip code)

12730 New Brittany Boulevard  
Suite #501  
Fort Myers, Florida 33907

Check ☐ if there are workplace on file that are not identified here.

Section 67.630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check ☐ if the State has elected to complete OJP Form 4061/7.

#### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67, Sections 67.615 and 67.620-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in connection with any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

Cape Coral Police Department  
P.O. Box 1150027  
Cape Coral, Florida 33915-0027

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

DEA/MFD/Fort Myers Resident Office

4. Typed Name and Title of Authorized Representative

David Newlan

5. Signature

6. Date

Chief of Police

Continuation DOJ 4061

CITY OF CAPE CORAL

\_\_\_\_\_  
Joe Coviello, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Dolores D. Menendez, City Attorney

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kimberly Bruns, City Clerk

Date: \_\_\_\_\_

Item Number:	F.(1)
Meeting Date:	8/12/2019
Item Type:	APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

**AGENDA  
REQUEST  
FORM**  
CITY OF CAPE  
CORAL



**TITLE:**

Construction Regulation Board - 1 Vacancy

**REQUESTED ACTION:**

Appoint

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan? No

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

Vacancy: 1 Vacancy - Category: (i) Consumer Representative who is not a member or practitioner of a profession regulated by the board or member of any closely related profession.

Expiration: Due to expire - (i) 9/30/2019

Term Effective Date: 8/12/2019 - 8/12/2021

Three Applications: Joia Ford-Williams; James Litterello; Frank Moreno

Advertisement: The vacancy was advertised on 2/1/19, 3/1/19, 4/5/19, 6/7/19, 7/5/19, and 7/19/19 in the Breeze and was posted on the City's Website and Facebook page.

Clerk's Office reached out to Bill Johnson, Jr. with the Cape Coral Construction Industry Association (CCCIA) inform members of the vacancy.

**LEGAL REVIEW:**

**EXHIBITS:**

Applicant: Joia Ford-Williams

Applicant: James Litterello

Applicant: Frank Moreno

Board Sheet

**PREPARED BY:**

Kimberly  
Bruns

Division- Managerial

Department- City Clerk's  
Department

**SOURCE OF ADDITIONAL INFORMATION:**

Kimberly Bruns  
City Clerk  
1-239-242-3243

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Applicant: Joia Ford-Williams	Backup Material
▣ Applicant: James Litterello	Backup Material
▣ Applicant: Frank Moreno	Backup Material
▣ Board Sheet	Backup Material















# EXEMPT

Per Section 119.071 of the  
State Statutes, certain  
information on this  
application must be  
redacted.

JUL 17 2019

CITY OF CAPE CORAL  
APPOINTMENT INFORMATION FORMInitials: [Signature]CITY OF CAPE CORAL  
CITY CLERK'S OFFICE

This Appointment Information Form, when completed, signed and filed with the City Clerk's Office, is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person.

YOU ARE RESPONSIBLE TO KEEP THE INFORMATION ON THIS FORM CURRENT. APPLICATIONS WILL BE RETAINED IN THE CLERK'S OFFICE IN ACCORDANCE WITH STATE RECORDS RETENTION LAWS.

Please Type, if possible (or print clearly)

Date: 7-17-2019Name: Letterello

(Last)

(First)

(Middle)

E-mail address: JamesLetterello@com

Address: (H) \_\_\_\_\_

Zi \_\_\_\_\_

(O) \_\_\_\_\_

Zi \_\_\_\_\_

Phone: (H) \_\_\_\_\_

Occupation: RetiredEmployer: City of Cape CoralPosition: Code EnforcementHow Long: 17yrs 10 months

Education: Highest education level achieved and institutions attended:

Name &amp; Location

Dates Attended

Degrees Earned

James Wilson Young H.S.1972DiplomaHave you ever held a professional or business license or certificate? Yes X No \_\_\_\_\_

If "Yes", please provide the title, issue date and issuing authority.

License/Certificate Title

Issue Date

Issuing Authority

Electrical Plans Examiner - 2001  
(Three years)State of Florida

Board(s) /Commission(s) for which you are applying:

Construction Regulation Board

1. Are you a U.S. Citizen?

Yes X

No \_\_\_\_\_

2. Are you a Cape Coral Resident?

Yes X

No \_\_\_\_\_

3. Are you currently serving on a City Board(s)?

Yes \_\_\_\_\_

No X

If yes, which Board(s) and since when?

4. Have you ever served on a City Board(s)?

Yes \_\_\_\_\_

No X

If yes, which Board(s) and when?

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?

Yes \_\_\_\_\_

No X

If yes, what Board, etc. and since when?

Work Experience: Cape Coral Bank - Teller  
Electrician - 20 yrs - Kirkwood, Electric  
City of Cape Coral Code Enforcement, Permitting, Plan Review  
Licence Contractor Investigator -

Community Involvement: None at this time  
None resided in Cape Coral since 1971

Interests/Activities: Camping - relaxing -

Why do you desire to serve on this/these Board(s)?  
Would like to keep active in the Building Industry  
and the community.

How did you learn about the vacancy? \_\_\_ Cape Coral Website \_\_\_ Newspaper \_\_\_ Facebook ☒ Word of Mouth

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No \_\_\_

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

The City of Cape Coral Code of Ordinances, Section 2-57 states that an applicant for membership on a board, committee, or commission or a sitting member of those bodies shall not have any delinquent accounts with the City of Cape Coral at the time of appointment.

I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).

James Litterer Jr  
Signature

7-17-2019  
Date

If you have any questions, please call the office of the City Clerk at (239) 574-0411. Return this form to:

City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Interviewed: Date: \_\_\_\_\_

Yes \_\_\_ No \_\_\_

Council Action: Date: \_\_\_\_\_

## Betty Castillo

---

**Subject:** FW: [EXTERNAL] - Re: Construction Regulation Board Application

**From:** Jim Litterello <jimmielitt@yahoo.com>

**Sent:** Sunday, July 21, 2019 8:11 PM

**To:** Betty Castillo <bcastillo@capecoral.net>

**Subject:** RE: [EXTERNAL] - Re: Construction Regulation Board Application

Mr. Mayor, Council,

My name is Jim Litterello, I reside in Cape Coral and have been a resident since December 1971. I am married to my wife Debbie. I have two married daughters as well as six grandchildren.

I moved to Cape Coral in 1971, my father was a Police Officer for the City of Cape Coral. Upon moving here, I worked for the Cape Coral Bank as a loan teller. There I met my wife, (Debbie Kirkwood). I then went to work for Kirkwood Electric, Inc., (Kirkwood's moved to Cape Coral in 1960). I was employed for twenty years as a service man, an estimator and a field supervisor. I resigned my position in February of 2001. I then took a month off from work. I interviewed for an opening with the City of Cape Coral as an electrical plans examiner. I started work with the City of Cape Coral as an electrical plans examiner on April 2, 2001. After three years I transferred to the Zoning Department, reviewing building plans for setbacks, height restrictions, signs, etc. I then interviewed for an opening as the Permitting Coordinator for the Building Department. That position reported to the Building Official in which I assisted homeowners prior to making an appointment with the Building Official with any building issues. At the same time, I was also the acting Permitting Supervisor for over a year and a half. As building declined, my position was eliminated. I then transferred to the Code Division as a Code Officer. A position became available for a License Contractor investigator, which I gratefully excepted. I worked with the City Licensing department, Workers Comp, State DBPR, also the Assistant State Attorney's office, as well as the Clerk of Courts and other local municipalities.

I believe I would be the best candidate for the Consumer Representative position due to my experience and knowledge with license requirements for any type of contractor, as well as City Ordinances the Cape Coral Regulation Board is required to adhere to.

I retired from my position on January 31, 2019.

I apologize for not making this Council meeting as my family and I are out of town.

Thank you for being considered for the open position as the Consumer Representative on the Cape Coral Licensing Regulations Board.

Jim Litterello

[Sent from Yahoo Mail on Android](#)





Work Experience:

7 years w/ City of Cape Coral 6 years in permits,  
10 month Fire Plans Review, 4 months License  
15 year w/ Black & White Blue print & Arch. Design.

Community Involvement:

St Andrews & St Catherine Orxel  
Volunteer

Interests/Activities:

Working on cars & racing autocross & Rowing

Why do you desire to serve on this/these Board(s)?

To help those who qualify & deserve to right  
to have lie & to stop those who should not.

How did you learn about the vacancy? ☐ Cape Coral Website ☐ Newspaper ☐ Facebook ☒ Word of Mouth

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No ☐

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

The City of Cape Coral Code of Ordinances, Section 2-57 states that an applicant for membership on a board, committee, or commission or a sitting member of those bodies shall not have any delinquent accounts with the City of Cape Coral at the time of appointment.

I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).

Signature

Date

5/3/19

If you have any questions, please call the office of the City Clerk at (239) 574-0411. Return this form to:

City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Interviewed:

Date:

Yes

No

Council Action:

Date:



# Division of State Fire Marshal

BUREAU OF FIRE STANDARDS AND TRAINING

Hereby Awards this

194935

**FIRE SAFETY INSPECTOR I**

## Certificate of Compliance

to

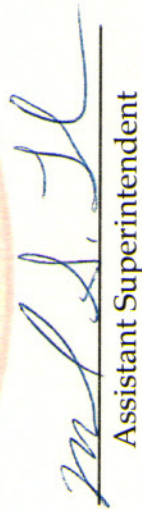
**FRANK NONE MORENO**

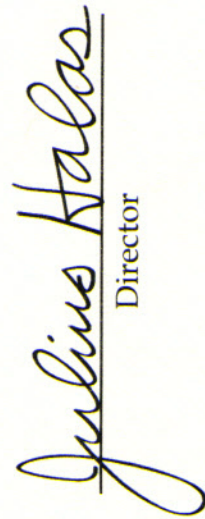
*Expires the 30th Day of June, 2020*

By virtue of having met the requirements of Florida Statutes and the Rules and Regulations of the Division of State Fire Marshal.



  
State Fire Marshal

  
Assistant Superintendent

  
Director



# National Board on Fire Service Professional Qualifications

*It is hereby confirmed that*

***Frank Moreno***

*having been examined by an accredited agency in the  
National Professional Qualifications System is certified as*

***Plan Examiner I***

***NFPA 1031-2014***

***6/4/2016***



***G. R. O'Neill***

Secretary to the Board

***M. H. Jim Estepp***

Chairman of the Board

**Certificate # 383429**

Certification issued by Florida Bureau of Fire Standards and Training

FLORIDA ASSOCIATION OF

CODE ENFORCEMENT, INC.



Member # 10082

Frank Moreno

Is recognized as a member and is entitled to all rights and privileges.

*Michael Hauserman*  
Membership Vice President

Expires: 09/30/2018



## CODE ENFORCEMENT

### Administrative Office

12443 Research Pkwy., Ste. 402, Orlando, FL 32826

Member #10082

Frank Moreno  
City of Cape Coral  
1015 Cultural Park Blvd  
Cape Coral, FL 33990

Thank you for your recent enrollment and support as a member of the Florida Association of Code Enforcement, Inc. Your membership indicates your support of the goals of our organization: the study and advancement of the science and practice of Code Enforcement through certification, training, and the exchange of ideas, information, and technology.

Enclosed are your membership card (valid through **September 30, 2018**) and your membership pin. Visit our web site, <http://face-online.org>. Our newsletter, *INTERFACE*, is available there, along with information on certification training, networking and employment opportunities, and much more.

Your e-mail address (your log in) and password gives you access to the "Member's Portal" on the web site, where you may update your contact information and view your certification records. If you have any questions, please contact Susan Pruchnicki at 407.882.3960.

Welcome to F.A.C.E.

Sincerely,

Michael Hauserman  
Third Vice President  
561-233-5521  
MHauserman@pbcbgov.org

10-05-12-2-9-10



## CITY OF CAPE CORAL - BOARDS AND COMMISSIONS

**CONSTRUCTION REGULATION BOARD**

BOARD INFO	MEMBERS	PHONE NUMBER	QUAL	INITIAL APPOINT	LAST REAPPT	TERM EXPIRES
<p>Established by Ordinances 19-87, 20-87, 39-87, 97-89, 2-92, 23-92, 50-98, 32-99, 33-00, 128-00, 37-01, 66-05, 70-13</p> <p>Resolution 88-87 established as Board of Adjustments &amp; Appeals Ordinance 70-13 changed name to Construction Regulation Board Citizen's Positions Established by Ordinance 50-98</p> <p>Twelve Members / Two Year Terms Seven Members for Quorum; Five to approve licenses. (Ord. 66-05) Presiding officers shall preside for 1 year. Meets: 4th Wed./Month in Council Chambers at 6 P.M.</p> <p>Review and approve or deny license applications along with hearing disciplinary actions and entering written decisions; also the Board serves as the Board of Adjustments &amp; Appeals.</p> <p>Qualifications: Resident of Cape Coral and Citizen of U.S. Membership shall consist, whenever possible, of the following: (a) Licensed Architect or Licensed Engineer (b) Licensed Contractor, B Certificate or higher (2) (c) Licensed Electrical Contractor (d) Licensed Plumbing Contractor (e) Class A Air-Conditioning Contractor (f) Licensed Pool Contractor (g) Roofing Contractor (h) One member of any of above categories (i) Three Consumer Representatives who are not a member or practitioner of a profession regulated by the board or a member of any closely related profession.</p> <p>Financial Disclosure Required: No</p>	<p><b>Vice Chair</b> Brian Rist 2812 SW 29th Ct Cape Coral, FL 33914</p>	565-7737 ( c ) 938-1006 ( w )	a*	3/21/2016	4/2/2018	4/2/2020
	Wayne A. Moomjian 1007 SE 12th Ct Cape Coral, FL 33990	574-3213 ( h ) 573-4439 ( w )	b	7/25/2005	12/4/2017	12/31/2019
	Isaac Burgos 1810 SW 25th Street Cape Coral, FL 33914	440-1179 ( cell ) 205-5976 ( o )	b	1/9/2017	12/4/2017	12/31/2019
	Gary Colley 4905 Nassau Court Cape Coral, FL 33904	945-0894 ( fax ) 945-2190 ( W ) 218-0081 ( c )	c	11/3/2003	12/4/2017	12/31/2019
	<b>Vacant</b>		d			7/31/2019
	Paul Prince 1318 SE 43rd Terrace Cape Coral, FL 33904	233-2168 ( h ) 443-8768 ( c )	e	9/18/2017		9/18/2019
	Dolores Classon 426 SE 18th St Cape Coral, FL 33990	910-8750 ( c ) 458-1908 ( h )	f	8/17/2009	9/28/2015 9/18/2017	9/30/2019
	Kevin M. Shedd 2801 Gleason Parkway Cape Coral, FL 33914	896-4305 ( h ) 242-3422 ( w )	g	1/7/2019		1/9/2021

## CITY OF CAPE CORAL - BOARDS AND COMMISSIONS

**CONSTRUCTION REGULATION BOARD**

BOARD INFO	MEMBERS	PHONE NUMBER	QUAL	INITIAL APPOINT	LAST REAPPT	TERM EXPIRES
Recording Secretary: Betty Castillo 239.574.0743 or Ext. 4743	<b>Chairman</b> Matthew Sinclair 221 SE 21st Ln Cape Coral, FL 33990	229-2530	h	3/24/14	3/21/16 4/2/2018	4/2/2020
	<b>Vacant</b>		i			9/30/2019
	Thomas Phillips 1917 SW 12th Terrace Cape Coral, FL 33991	248 396-9431 ( c ) 612 761-5570 (o)	i	11/28/2016	12/4/2017	12/31/2019
	William Joseph 5824 SW 1st Avenue Cape Coral, FL 33914	239 910-5312	i	12/4/2017		12/31/2019

<b>Item Number:</b>	<b>A.(1)</b>
<b>Meeting Date:</b>	<b>8/12/2019</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 41-19 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision? No  
     If Yes, Priority Goals Supported are listed below.  
     If No, will it harm the intent or success of the Strategic Plan? No

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

Memo from City Attorney  
 Ordinance 41-19 - Revised  
 Memo from City Attorney dated August 12, 2019

**PREPARED BY:**

Division-      Department- City  
    Attorney

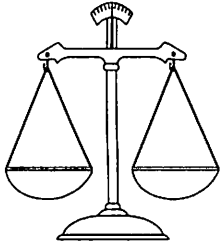
**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Memo from City Attorney	Backup Material
<input type="checkbox"/> Ordinance 41-19	Backup Material

▢ Memo from City Attorney dated August 12, 2019    Backup Material





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## CITY ATTORNEY'S OFFICE MEMORANDUM

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**TO:** Mayor and City Council

**FROM:** Dolores D. Menendez, City Attorney

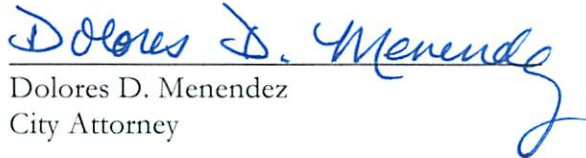
**DATE:** August 9, 2019

**SUBJECT:** City Council Regular Meeting August 12, 2019 Agenda Item 9.A (1) Ordinance 41-19  
Public Hearing – Health Care Ground Lease with Medical Risk Solutions, LLC

Please be advised the following changes have been made to the Health Care Ground Lease with Medical Risk Solutions, LLC.

- Paragraph 2. **Term.** The termination date was extended from September 30, 2024 to December 30, 2024.
- Paragraph 2. **Term.** The date by which the parties must enter into a Health Care Medical Services Agreement was extended from September 20, 2014 to December 30, 2014.
- Paragraph 6. **MRS Improvements.** The following language was either changed or deleted:  
*“MRS is responsible for ensuring the building complies with all City Code standards. MRS is responsible for obtaining all necessary building permits. MRS shall have full control over the design, layout and materials used in the construction of the MRS Improvements, subject to the aforementioned code standards. MRS will retain title to and rights of ownership of the MRS Improvements during the Term of this Lease”.*
- Paragraph 6. **MRS Improvements.** The following language was added to the last sentence - *“unless the parties agree otherwise”.*
- Paragraph 9. **Insurance and Indemnity.** Section (B). The following language in the last sentence was deleted: *“MRS’ use of the Premises, including but not limited to any such claims and liabilities from the allegedly dangerous condition of the Premises”.* The following language was added: *“MRS Improvements”.*

- Paragraph 10. Maintenance and Repairs. Section (C) CITY's Maintenance Obligations. The following language in the last sentence was deleted: "*The CITY shall have no obligation to maintain or repair MRS' Improvements*".

  
Dolores D. Menendez  
City Attorney

cc: Kimberly Bruns, Interim City Clerk

# EXHIBIT A

## HEALTH CARE FACILITY GROUND LEASE

This Health Care Facility Ground Lease made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF CAPE CORAL a Florida municipal corporation hereinafter referred to as "CITY" and MEDICAL RISK SOLUTIONS, LLC d/b/a MY HEALTH ONSITE a Florida Limited Liability Corporation, hereinafter referred to as "MRS".

WHEREAS, onsite Health Care Facilities provide employees a convenient low-cost option for high-quality health care, and quicker access to manage diagnosed conditions; and

WHEREAS, onsite Health Care Facilities provide employers lower long-term health insurance costs, a healthier work place, improved productivity, reduced absenteeism, and improved retention; and

WHEREAS, CITY finds leasing the premises described below for a Health Care Facility serves a valid public purpose; and

WHEREAS, the parties are contemplating entering into a Health Care Medical Services Agreement; and

WHEREAS, MRS is desirous of providing such a facility in exchange for a ground lease and other considerations; and

WHEREAS, CITY and MRS have mutually agreed on the terms and conditions set forth herein below, for MRS to lease from the CITY the premises to assemble a Health Care Facility.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the CITY hereby demises and leases to the MRS the following described Premises, which lease agreement shall become effective on the dates as set forth herein on the following terms and conditions:

1. **Premises.** The CITY hereby leases to MRS, and MRS hereby leases from the CITY, certain real property, as more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference, subject to the terms, covenants, agreements and conditions set forth below. The Premises is part of a larger parcel containing a parking area, and common facilities for the use and benefit of the CITY, MRS, and other users of the parcel. MRS hereby acknowledges and agrees that, pursuant to section 4.17 of the City of Cape Coral Charter, the conveyance or lease of any lands of the CITY shall be by ordinance adopted by the Cape Coral City Council.
2. **Term.** The term of this Lease shall commence on the effective date first written above and will terminate when the Health Care Medical Services Agreement terminates or December 30, 2024, whichever occurs first. If the parties do not enter into a Health Care Medical Services Agreement for any reason by December 30, 2019, this Lease shall be void. MRS shall have an

additional 30 days at the conclusion of the lease to remove MRS property from the premises. Notwithstanding the foregoing, CITY may terminate this Lease Agreement at any time after the expiration of the first year, upon ninety (90) day's prior written notice to MRS.

3. **Condition of Premises.** MRS has inspected and knows the condition of the Premises and accepts the same in its present condition for the purposes set out in this lease.
4. **Rent.** MRS covenants and agrees to pay to CITY as Rent for the Premises One Dollar (\$1.00) per year for the entire term of the lease.
5. **Use of premises.** MRS shall only occupy or use the Premises for the purpose of operating a Health Care Facility.
6. **MRS Improvements.** MRS shall assemble on the Premises during the first 120 days of the Lease term a minimum twenty-four hundred (2,400) square foot modular building suitable for providing health care services. MRS will be responsible for the MRS Improvements during the Term of this Lease unless the parties agree otherwise.
7. **Parking Area and Common Facilities.**
  - (A) Patrons and employees of MRS shall have the non-exclusive use of the parking lots.
  - (B) **Governing Regulations:** MRS will comply and cause its employees and agents to comply with all reasonable rules and regulations adopted by CITY in connection with the use of the parking area and common facilities, and with all supplements and amendments which CITY may hereafter adopt. It is understood and agreed that such rules and regulations shall pertain to the safety, care, use and cleanliness of the parking area and common facilities and the preservation of good order therein and thereon and shall be consistently applied to all parties using such facility. No rules or regulations now in effect or hereafter adopted shall be inconsistent with any provisions of the Lease or unreasonably interfere with the MRS's use and enjoyment of the Premises. All rules, regulations, supplements and amendments which CITY may adopt shall be in writing, and a copy shall be provided to MRS.
8. **Sublease and Use of Premises.** MRS may not assign or sublease this Lease without the prior written consent of CITY.
9. **Insurance and Indemnity.**
  - (A) MRS agrees to name CITY as an additional insured on (1) a policy covering premises liability up to One Million Dollars, and (2) a Fire and Extended Coverage Policy for the Premises sufficient to reconstruct MRS Improvements. MRS shall cause the company issuing such insurance to notify CITY at least thirty (30) days prior to any cancellation of the policy which shall be evidenced by a certificate of insurance providing for such notice. It is agreed and understood that MRS shall not change the

use of the Premises from that which is contemplated by the parties at the time this Agreement is signed. MRS shall also keep in full force and effect during the Term adequate liability insurance.

- (B) MRS agrees to defend, indemnify and hold harmless CITY, its officials, agents and employees from and against any and all claims of and liabilities (including attorney fees and costs of defense) actually imposed by law to any person, including officers, agents, employees, contractors, or invitees of MRS and any other third persons or parties, for death, bodily injury or property damage or any other loss whatsoever arising from or connected with MRS Improvements.

10. **Maintenance and Repairs.**

- (A) **MRS' Maintenance Obligations.** MRS shall always during the Term of this Lease maintain MRS Improvements in good condition and repair including without limitation the structure of the roof, all plumbing, lighting, heating, ventilation and air conditioning facilities, electrical wiring and equipment, walls, floors and ceilings, and including replacement of parts and equipment if necessary.
- (B) **Exterior and Grounds.** CITY shall be responsible for all mowing of grass and lawn care, and trash and garbage removal from the Premises.
- (C) **CITY's Maintenance Obligations.** CITY shall always during the Term of this Lease maintain and keep in good order, condition, and repair all landscaping, parking areas, sidewalks, and driveways.

11. **Damage to MRS' Improvements.** As soon as is reasonably possible after damage or destruction to any or all of MRS' Improvements on the Premises, but no later than 18 months after such damage or destruction, MRS shall, at MRS' sole cost and expense, commence to either repair and restore MRS' Improvements as completely as possible to their condition immediately prior to the damage, or, in the alternative, replace MRS' Improvements. If the Premises have become wholly untenable due to the damage or destruction of the MRS' Improvements, MRS may elect to not make the repairs or replacements and terminate this Lease thirty (30) days after serving CITY with written notice of MRS' intent to terminate the Lease. If MRS elects not to make repairs and to terminate this Lease, MRS shall remove all remaining improvements from the Premises and return the Premises to the CITY in its original condition at the time of entering this Lease. In no case shall the CITY be obligated to make the repairs or replacements or otherwise rebuild MRS' improvements, or to restore the Premises to its original condition, upon MRS terminating this Lease.

12. **Condemnation of Premises.** In the event of condemnation or taking aforesaid, whether whole or partial, the award paid for such condemnation shall be apportioned equitably between the CITY and MRS and the value of the MRS Improvements shall be awarded first to MRS.

13. **Environmental Matters.** CITY warrants and represents to MRS that to the best of CITY's knowledge as of the commencement of the Term of the Lease, the Premises do not have any underground storage tanks and are not subject to any environmental hazardous conditions.
14. **Liens.** CITY's interest in the Premises shall not be subject to any lien for any construction, alterations, installations, improvements, or work as provided in section 713.10, Florida Statutes. MRS shall notify all persons and entities constructing improvements or performing work on the Premises, or supplying materials, equipment rental, or other services for the improvements or work, that this Lease does not allow any liens to attach to CITY's property. Further, MRS acknowledges and shall advise all such persons and entities that the Premises is governmental property not subject to any lien or right to claim a lien. MRS shall cause its contractor(s) to provide a final waiver and release of all claims, in the form approved by the CITY, upon completion of the improvements and before making final payment to MRS' contractor(s). Such final release shall certify that full and final payment was made to all of the contractor(s) subcontractors. If, notwithstanding the foregoing, and mechanic's, materialman's, laborer's, or any other lien, or any order or judgment for payment of money, shall be recorded against the Premises or any part thereof or against CITY's leasehold interest or otherwise asserted against CITY's interest (whether or not legally effective), then MRS shall, at MRS' own cost and expense, cause the same to be satisfied, cancelled, and discharged of record and, further, shall indemnify and hold the CITY harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees and expert fees, through trial and appeal, resulting therefrom or by reason thereof.
15. **Default.** In the event of default by either party, each shall have such remedies as are available under the law. In case of default of any term herein, the party claiming default shall first send written notice to other party notifying them of the breach and providing ten (10) days to cure said breach.
16. **Entire Agreement.** This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto and signed by both parties.
17. **Notice.** All notices required or permitted hereunder and required to be in writing to the CITY may be given by first class mail addressed to the City Manager, P.O. Box 150027, Cape Coral, Florida 33915, and to MRS by first class mail addressed to Mr. Ray Tomlinson, Manager, 2710 Rew Circle, Suite 200, Ocoee, Florida 34761.
18. **Venue.** *This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Florida and venue for any lawsuit arising therefrom shall lie exclusively in Lee County, Florida.*
19. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, except that MRS may elect to declare the

lease void in the event a provision that affects the value of the MRS Improvements to MRS is held invalid, and seek reimbursement for the value of such Improvements from CITY.

20. **Compliance with Laws.** The parties hereby agree that they will comply with all applicable federal, state and local laws relating to the activities hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

MEDICAL RISK SOLUTIONS, LLC  
d/b/a MY HEALTH ONSITE

Print: \_\_\_\_\_

Jason A. Tomlinson

City

Print: \_\_\_\_\_

Christina Mayhew

By: \_\_\_\_\_

Ray Tomlinson  
RAY TOMLINSON, MANAGER

ATTESTED TO BY:

CITY OF CAPE CORAL, FLORIDA

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

By: \_\_\_\_\_  
JOHN SZERLAG, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
Agmt/Leases/Health Care Services

## **EXHIBIT "A"**

### **Parcel "A"**

#### **Medical Services Land Lease Parcel (CC-19-0029)**

Parcels of land lying in Sections 24, Township, 44 South, Range 23 East, Lee County, Florida; and being more particularly described as follows:

**Commence** at the Southwest corner of Lot 3, Block 1067, as shown on the Plat of Cape Coral Unit 24, recorded in Plat Book 14 at Pages 63-77 of the Public Records of Lee County, Florida; Thence run South 89°35'18" East, along the Southerly lines of Block 1067, S.E. 6<sup>th</sup> Court (Champlain Avenue – Plat) and Block 1052 of said Plat, for a distance of 570.05 feet; Thence run South 00°24'42" East for a distance of 39.50 feet to the **Point of Beginning**; Thence run the following four (4) courses:

- 1.) South 71°38'49" East, for a distance of 73.59 feet;
- 2.) South 09°14'19" West for a distance of 76.87 feet;
- 3.) North 70°11'34" West for a distance of 113.27 feet;
- 4.) North 38°58'01" East for a distance of 78.02 feet to the **Point of Beginning**.

Said Parcel contains 6,966 Square Feet +/-.

Basis of Bearing refer to the Plat of Cape Coral Unit 24, recorded in Plat Book 14 at Pages 63-77, of the Public Records of Lee County, Florida.

Subject to Easements, Reservations and Restrictions of record.



ORDINANCE 41 - 19

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A HEALTH CARE FACILITY GROUND LEASE WITH MEDICAL RISK SOLUTIONS, LLC FOR THE LEASE OF PROPERTY OWNED BY THE CITY OF CAPE CORAL LOCATED AT 1020 CULTURAL PARK BLVD. S. FOR THE OPERATION OF A HEALTH CARE FACILITY FOR CITY EMPLOYEES, RETIREES AND DEPENDENTS IN THE CITY'S HEALTH INSURANCE PLAN; A COPY OF THE HEALTH CARE FACILITY GROUND LEASE IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral owns the property located at 1020 Cultural Park Blvd. S.; and

WHEREAS, the City Council desires to enter into a Health Care Facility Ground Lease with Medical Risk Solutions, LLC d/b/a My Health Onsite for the operation of an employee health care facility for city employees, retirees, and their dependents who are subscribers of the City's health insurance plan as permitted within the zoning district under the terms and conditions as set forth in the attached agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a Health Care Facility Ground Lease between the City of Cape Coral and Medical Risk Solutions, LLC d/b/a My Health Onsite, a Florida Limited Liability Corporation for the lease of a portion of the property located at 1020 Cultural Park Blvd. S. for the operation of an employee health care facility for city employees, retirees, and their dependents who are subscribers of the City's health insurance plan under the terms and conditions as set forth in the agreement, attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

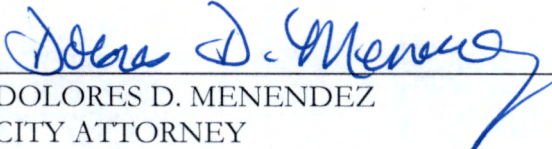
COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
DOLORES D. MENENDEZ  
CITY ATTORNEY

Ord/ Ground Lease-Medical Risk Solutions

# EXHIBIT A

## HEALTH CARE FACILITY GROUND LEASE

This Health Care Facility Ground Lease made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF CAPE CORAL a Florida municipal corporation hereinafter referred to as "CITY" and MEDICAL RISK SOLUTIONS, LLC d/b/a MY HEALTH ONSITE a Florida Limited Liability Corporation, hereinafter referred to as "MRS".

WHEREAS, onsite Health Care Facilities provide employees a convenient low-cost option for high-quality health care, and quicker access to manage diagnosed conditions; and

WHEREAS, onsite Health Care Facilities provide employers lower long-term health insurance costs, a healthier work place, improved productivity, reduced absenteeism, and improved retention; and

WHEREAS, CITY finds leasing the premises described below for a Health Care Facility serves a valid public purpose; and

WHEREAS, the parties are contemplating entering into a Health Care Medical Services Agreement; and

WHEREAS, MRS is desirous of providing such a facility in exchange for a ground lease and other considerations; and

WHEREAS, CITY and MRS have mutually agreed on the terms and conditions set forth herein below, for MRS to lease from the CITY the premises to assemble a Health Care Facility.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the CITY hereby demises and leases to the MRS the following described Premises, which lease agreement shall become effective on the dates as set forth herein on the following terms and conditions:

1. **Premises.** The CITY hereby leases to MRS, and MRS hereby leases from the CITY, certain real property, as more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference, subject to the terms, covenants, agreements and conditions set forth below. The Premises is part of a larger parcel containing a parking area, and common facilities for the use and benefit of the CITY, MRS, and other users of the parcel. MRS hereby acknowledges and agrees that, pursuant to section 4.17 of the City of Cape Coral Charter, the conveyance or lease of any lands of the CITY shall be by ordinance adopted by the Cape Coral City Council.
2. **Term.** The term of this Lease shall commence on the effective date first written above and will terminate when the Health Care Medical Services Agreement terminates or December 30, 2024, whichever occurs first. If the parties do not enter into a Health Care Medical Services Agreement for any reason by December 30, 2019, this Lease shall be void. MRS shall have an

additional 30 days at the conclusion of the lease to remove MRS property from the premises. Notwithstanding the foregoing, CITY may terminate this Lease Agreement at any time after the expiration of the first year, upon ninety (90) day's prior written notice to MRS.

3. **Condition of Premises.** MRS has inspected and knows the condition of the Premises and accepts the same in its present condition for the purposes set out in this lease.
4. **Rent.** MRS covenants and agrees to pay to CITY as Rent for the Premises One Dollar (\$1.00) per year for the entire term of the lease.
5. **Use of premises.** MRS shall only occupy or use the Premises for the purpose of operating a Health Care Facility.
6. **MRS Improvements.** MRS shall assemble on the Premises during the first 120 days of the Lease term a minimum twenty-four hundred (2,400) square foot modular building suitable for providing health care services. MRS will be responsible for the MRS Improvements during the Term of this Lease unless the parties agree otherwise.
7. **Parking Area and Common Facilities.**
  - (A) Patrons and employees of MRS shall have the non-exclusive use of the parking lots.
  - (B) Governing Regulations: MRS will comply and cause its employees and agents to comply with all reasonable rules and regulations adopted by CITY in connection with the use of the parking area and common facilities, and with all supplements and amendments which CITY may hereafter adopt. It is understood and agreed that such rules and regulations shall pertain to the safety, care, use and cleanliness of the parking area and common facilities and the preservation of good order therein and thereon and shall be consistently applied to all parties using such facility. No rules or regulations now in effect or hereafter adopted shall be inconsistent with any provisions of the Lease or unreasonably interfere with the MRS's use and enjoyment of the Premises. All rules, regulations, supplements and amendments which CITY may adopt shall be in writing, and a copy shall be provided to MRS.
8. **Sublease and Use of Premises.** MRS may not assign or sublease this Lease without the prior written consent of CITY.
9. **Insurance and Indemnity.**
  - (A) MRS agrees to name CITY as an additional insured on (1) a policy covering premises liability up to One Million Dollars, and (2) a Fire and Extended Coverage Policy for the Premises sufficient to reconstruct MRS Improvements. MRS shall cause the company issuing such insurance to notify CITY at least thirty (30) days prior to any cancellation of the policy which shall be evidenced by a certificate of insurance providing for such notice. It is agreed and understood that MRS shall not change the

use of the Premises from that which is contemplated by the parties at the time this Agreement is signed. MRS shall also keep in full force and effect during the Term adequate liability insurance.

- (B) MRS agrees to defend, indemnify and hold harmless CITY, its officials, agents and employees from and against any and all claims of and liabilities (including attorney fees and costs of defense) actually imposed by law to any person, including officers, agents, employees, contractors, or invitees of MRS and any other third persons or parties, for death, bodily injury or property damage or any other loss whatsoever arising from or connected with MRS Improvements.

10. **Maintenance and Repairs.**

- (A) **MRS' Maintenance Obligations.** MRS shall always during the Term of this Lease maintain MRS Improvements in good condition and repair including without limitation the structure of the roof, all plumbing, lighting, heating, ventilation and air conditioning facilities, electrical wiring and equipment, walls, floors and ceilings, and including replacement of parts and equipment if necessary.
- (B) **Exterior and Grounds.** CITY shall be responsible for all mowing of grass and lawn care, and trash and garbage removal from the Premises.
- (C) **CITY's Maintenance Obligations.** CITY shall always during the Term of this Lease maintain and keep in good order, condition, and repair all landscaping, parking areas, sidewalks, and driveways.

11. **Damage to MRS' Improvements.** As soon as is reasonably possible after damage or destruction to any or all of MRS' Improvements on the Premises, but no later than 18 months after such damage or destruction, MRS shall, at MRS' sole cost and expense, commence to either repair and restore MRS' Improvements as completely as possible to their condition immediately prior to the damage, or, in the alternative, replace MRS' Improvements. If the Premises have become wholly untenable due to the damage or destruction of the MRS' Improvements, MRS may elect to not make the repairs or replacements and terminate this Lease thirty (30) days after serving CITY with written notice of MRS' intent to terminate the Lease. If MRS elects not to make repairs and to terminate this Lease, MRS shall remove all remaining improvements from the Premises and return the Premises to the CITY in its original condition at the time of entering this Lease. In no case shall the CITY be obligated to make the repairs or replacements or otherwise rebuild MRS' improvements, or to restore the Premises to its original condition, upon MRS terminating this Lease.

12. **Condemnation of Premises.** In the event of condemnation or taking aforesaid, whether whole or partial, the award paid for such condemnation shall be apportioned equitably between the CITY and MRS and the value of the MRS Improvements shall be awarded first to MRS.

13. **Environmental Matters.** CITY warrants and represents to MRS that to the best of CITY's knowledge as of the commencement of the Term of the Lease, the Premises do not have any underground storage tanks and are not subject to any environmental hazardous conditions.
14. **Liens.** CITY's interest in the Premises shall not be subject to any lien for any construction, alterations, installations, improvements, or work as provided in section 713.10, Florida Statutes. MRS shall notify all persons and entities constructing improvements or performing work on the Premises, or supplying materials, equipment rental, or other services for the improvements or work; that this Lease does not allow any liens to attach to CITY's property. Further, MRS acknowledges and shall advise all such persons and entities that the Premises is governmental property not subject to any lien or right to claim a lien. MRS shall cause its contractor(s) to provide a final waiver and release of all claims, in the form approved by the CITY, upon completion of the improvements and before making final payment to MRS' contractor(s). Such final release shall certify that full and final payment was made to all of the contractor(s) subcontractors. If, notwithstanding the foregoing, and mechanic's, materialman's, laborer's, or any other lien, or any order or judgment for payment of money, shall be recorded against the Premises or any part thereof or against CITY's leasehold interest or otherwise asserted against CITY's interest (whether or not legally effective), then MRS shall, at MRS' own cost and expense, cause the same to be satisfied, cancelled, and discharged of record and, further, shall indemnify and hold the CITY harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees and expert fees, through trial and appeal, resulting therefrom or by reason thereof.
15. **Default.** In the event of default by either party, each shall have such remedies as are available under the law. In case of default of any term herein, the party claiming default shall first send written notice to other party notifying them of the breach and providing ten (10) days to cure said breach.
16. **Entire Agreement.** This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto and signed by both parties.
17. **Notice.** All notices required or permitted hereunder and required to be in writing to the CITY may be given by first class mail addressed to the City Manager, P.O. Box 150027, Cape Coral, Florida 33915, and to MRS by first class mail addressed to Mr. Ray Tomlinson, Manager, 2710 Rew Circle, Suite 200, Ocoee, Florida 34761.
18. **Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Florida and venue for any lawsuit arising therefrom shall lie exclusively in Lee County, Florida.
19. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, except that MRS may elect to declare the



lease void in the event a provision that affects the value of the MRS Improvements to MRS is held invalid, and seek reimbursement for the value of such Improvements from CITY.

20. **Compliance with Laws.** The parties hereby agree that they will comply with all applicable federal, state and local laws relating to the activities hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

MEDICAL RISK SOLUTIONS, LLC  
d/b/a MY HEALTH ONSITE

  
\_\_\_\_\_  
Print: Jason A. Tomlinson  
  
\_\_\_\_\_  
Print: Christina Mayhew

By:   
\_\_\_\_\_  
RAY TOMLINSON, MANAGER

ATTESTED TO BY:

CITY OF CAPE CORAL, FLORIDA

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

By: \_\_\_\_\_  
JOHN SZERLAG, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
Agmt/Leases/Health Care Services

## **EXHIBIT "A"**

### **Parcel "A"**

#### **Medical Services Land Lease Parcel (CC-19-0029)**

Parcels of land lying in Sections 24, Township, 44 South, Range 23 East, Lee County, Florida; and being more particularly described as follows:

**Commence** at the Southwest corner of Lot 3, Block 1067, as shown on the Plat of Cape Coral Unit 24, recorded in Plat Book 14 at Pages 63-77 of the Public Records of Lee County, Florida; Thence run South 89°35'18" East, along the Southerly lines of Block 1067, S.E. 6<sup>th</sup> Court (Champlain Avenue – Plat) and Block 1052 of said Plat, for a distance of 570.05 feet; Thence run South 00°24'42" East for a distance of 39.50 feet to the **Point of Beginning**; Thence run the following four (4) courses:

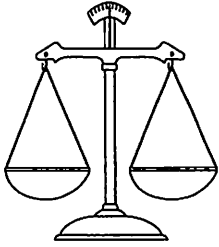
- 1.) South 71°38'49" East, for a distance of 73.59 feet;
- 2.) South 09°14'19" West for a distance of 76.87 feet;
- 3.) North 70°11'34" West for a distance of 113.27 feet;
- 4.) North 38°58'01" East for a distance of 78.02 feet to the **Point of Beginning**.

Said Parcel contains 6,966 Square Feet +/-.

Basis of Bearing refer to the Plat of Cape Coral Unit 24, recorded in Plat Book 14 at Pages 63-77, of the Public Records of Lee County, Florida.

Subject to Easements, Reservations and Restrictions of record.





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## CITY ATTORNEY'S OFFICE MEMORANDUM

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**TO:** Mayor and City Council

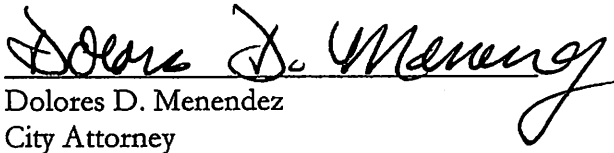
**FROM:** Dolores D. Menendez, City Attorney

**DATE:** August 12, 2019

**SUBJECT:** City Council Regular Meeting August 12, 2019 Agenda Item 9.A (1) Ordinance 41-19  
Public Hearing – Health Care Ground Lease with Medical Risk Solutions, LLC

Please be advised that the memo sent to you on Friday contained a scrivener's error. The second bullet point referred to the date by which the parties must enter into a Health Care Medical Services Agreement and showed it as the year 2014. The correct information is that the date was extended from September 20, 2019 to December 30, 2019.

I am happy to answer any questions at tonight's Council meeting.

  
Dolores D. Menendez  
City Attorney

✓cc: Kimberly Bruns, Interim City Clerk

Item Number:	A.(2)
Meeting Date:	8/12/2019
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA  
REQUEST FORM**  
CITY OF CAPE  
CORAL



**TITLE:**

Resolution 278-19 Public Input Approve Health Care Medical Services Agreement with Medical Risk Solutions, LLC d/b/a My Health Onsite

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan?

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

The agreement gives the City the ability to provide a health care clinic for employees, retirees and dependents who are covered by the City's insurance plan. My Health Onsite provides employee health, occupational health and wellness programs and service to the employees, retirees and dependents.

It is expected that significant savings in the provision of health care and insurance to employees, retirees and dependents will be realized as a result of implementing the health care clinic.

**LEGAL REVIEW:**

**EXHIBITS:**

Memo  
Resolution 278-19 - with contract

**PREPARED BY:**

Division- Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

City Manager

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Memo	Backup Material
▣ Resolution 278-19 - with contract	Backup Material

**MEMORANDUM**  
**CITY OF CAPE CORAL**  
**CITY MANAGER'S OFFICE**

**TO:** John Szerlag, City Manager

**FROM:** Connie Barron, Assistant City Manager  
Victoria Bateman, Financial Services Director  
Lisa Sonogo, Human Resources Director  
B. A. (Jay) Murphy, Business Manager

**DATE:** August 9, 2019

**SUBJECT:** Employee Health Care Services Contract "My Health Onsite"

Earlier this year, City staff and Gehring Group, the City's Healthcare Consultant, presented the concept of an Employee Health Care Center to City Council. The Center would expand on the services provided through the current employee health clinic while reducing overall healthcare costs. With Council approval, the Gehring Group was tasked to identify qualified providers for the Employee Health Care Center. After reviewing proposals and interviewing three providers, City staff selected MRS Inc. dba My Health Onsite.

In July, City staff and Gehring provided City Council with a project update. Based on their review of MRS's initial proposal, Gehring estimated the City's health care cost savings would be almost \$4 million dollars in the first three years of operation and almost \$10 million in the first five years (Table 1).

	Status Quo	Original Estimate	Actuals
	No Clinic	Clinic Implementation	My Health
2018 Claims Experience	\$16,706,048	\$16,706,048	\$16,706,048
2019 Projected Claims Experience (8% increase)	\$18,042,532	\$18,042,532	\$18,042,532
2020 Projection			
Status-Quo Claims	\$19,485,934	\$19,485,934	\$19,485,934
Estimated Clinic Spend	N/A	\$1,042,334	\$1,481,464
Claims Saving	N/A	(\$1,563,500)	(\$1,618,924)
Total 2020 Claims + Clinic Cost	\$19,485,934	\$18,964,767	\$19,348,474
2021 Projection			
Status-Quo Claims	\$21,044,809	\$21,044,809	\$21,044,809
Estimated Clinic Spend	N/A	\$1,216,056	\$1,494,720
Claims Saving	N/A	(\$2,432,112)	(\$3,089,517)
Total 2021 Claims + Clinic Cost	\$21,044,809	\$19,828,753	\$19,450,012
2022 Projection			
Status-Quo Claims	\$22,728,394	\$22,728,394	\$22,728,394
Estimated Clinic Spend	N/A	\$1,737,223	\$1,545,389
Claims Saving	N/A	(\$4,343,057)	(\$3,790,213)
Total 2022 Claims + Clinic Cost	\$22,728,394	\$20,122,559	\$20,483,570
2020-2022 (3-Year Start-Up)			
Status-Quo Claims	\$63,259,137	\$63,259,137	\$63,259,137
Estimated Clinic Spend	N/A	\$3,995,613	\$4,521,573
Claims Saving	N/A	(\$8,338,669)	(\$8,498,654)
3-Year Total Claims + Clinic Cost	\$63,259,137	\$58,916,079	\$59,323,242
Projected 3-Year Savings:	N/A	\$4,343,058	\$3,977,081
Projected 5-Year Savings:	N/A	-	\$9,837,184

Table 1

The projected savings in Table 1 does not include about \$100,000 in additional savings associated with occupational healthcare (i.e. pre-employment physicals, ongoing physicals and workers comp initial evaluations).

For the first year, actual health center costs may be less due to lower pass-through costs associated with reduced patient workload in the start-up months. However, as pass-through costs increase, there is a direct correlation to reduced costs on the self-insurance fund due to the structuring of fees and other services.

#### *Costs to the City*

Please know that Table 1 reflects the annual cost of the Employee Health Center based on MRS's initial proposal. Through negotiations with MRS, City staff was successful in eliminating certain previously anticipated costs. The City will not be responsible for renting a facility. Rather, MRS will provide a modular facility across from City Hall via a land lease agreement with the City for \$1 per year. The City will be responsible for costs associated with permitting and site preparation (landscaping, signage) plus the provision of Internet, phone, garbage and utilities services.

MRS will begin billing the City when the center opens in January 2020. It is recommended the City maintain six months of operating reserves for the Center (about \$750,000).

All costs associated with the Employee Health Care Center will be funded within the City's Self-Insured Health Plan Fund. The Fund's current reserves exceed the required minimum two months operating costs (\$3 million) and can support the ongoing and initial start-up costs for the Employee Health Center. Staff confirmed with Gehring and their legal counsel the use of the Self-Insured Fund to pay costs associated with an Employee Health Care Center is appropriate and common practice for cities that are self-funded. The City Attorney's Office participated in the discussion with Gehring.

Staff recommends the Services Agreement and Land Lease, as prepared by the City Attorney and MRS, be presented to City Council with a recommendation to approve both documents.

We remain available to discuss this matter in further detail if necessary or to provide any additional information that you require.

**REVISED**  
**8-9-19**

Item Number: A.(2)  
Meeting Date: 8/12/2019  
Item Type: ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 278-19 Public Input Approve Health Care Medical Services Agreement with Medical Risk Solutions, LLC d/b/a My Health Onsite

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan?

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

The agreement gives the City the ability to provide a health care clinic for employees, retirees and dependents who are covered by the City's insurance plan. My Health Onsite provides employee health, occupational health and wellness programs and service to the employees, retirees and dependents.

It is expected that significant savings in the provision of health care and insurance to employees, retirees and dependents will be realized as a result of implementing the health care clinic.

**LEGAL REVIEW:**

**EXHIBITS:**

Resolution 278-19

**PREPARED BY:**

Division-      Department- City  
   Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

City Manager

**REVIEWERS:**

Department	Reviewer	Action	Date
City Attorney	Moriarty, Mark	Approved	8/6/2019 - 10:53 AM
City Attorney	Fowler, Lisa	Approved	8/6/2019 - 10:55 AM
City Clerk	City, Clerk - Administrator	Approved	8/6/2019 - 5:18 PM

**ATTACHMENTS:**

Description	Type
□ Resolution 278-19	Resolution



RESOLUTION 278 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING AN AGREEMENT BETWEEN MEDICAL RISK SOLUTIONS, LLC DBA MY HEALTH ONSITE AND THE CITY OF CAPE CORAL FOR THE PROVISION AND OPERATION OF AN ONSITE HEALTH CENTER FOR ELIGIBLE CITY OF CAPE CORAL EMPLOYEES, RETIREES AND DEPENDENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Medical Risk Solutions, LLC d/b/a My Health Onsite provides employee health, occupational health and wellness programs and service to employers for eligible employees, retirees and dependents at health centers located at a location provided by the City; and

WHEREAS, the City desires to offer its eligible employees, retirees and dependents the benefits of a health clinic on or near City Hall; and

WHEREAS, the City Manager recommends entering in the contract with Medical Risk Solutions, LLC d/b/a My Health Onsite with the expectation of realizing savings in the cost of insurance and other health care related expenses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the Health Care Medical Services Agreement between Medical Risk Solutions, LLC d/b/a My Health Onsite and the City of Cape Coral for the provision and operation of an onsite health center for eligible City of Cape Coral employees, retirees and dependents. A copy of the agreement is attached hereto as Exhibit 1.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:


COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Medical Services Agmt-My Health Onsite



# EXHIBIT A

## **Health Care Medical Services Agreement**

This Health Care Medical Services Agreement (this "Agreement") is made and entered into to be effective as of this \_\_\_\_ day of \_\_\_\_\_ 2019, by and between **City of Cape Coral** ("Client"), with principal offices at 1015 Cultural Park Boulevard, Cape Coral, FL, 33990, and **Medical Risk Solutions, LLC dba My Health Onsite** ("MRS"), a Florida limited liability corporation with principal offices at 2710 Rew Circle, Suite 200, Ocoee, FL 34761. Client and MRS are jointly referred to herein as the "Parties."

### **Recitals:**

- A. MRS and its affiliates provide comprehensive employee health, occupational health and wellness programs and services to employers for eligible employees, retirees and dependents through health centers located at facilities provided by its client employers;
- B. The Client desires to offer to its authorized, eligible employees and retirees, and their respective dependents, the benefits of a dedicated on or near-site health facility while enjoying anticipated savings in the cost of insurance and other Client expenses for the benefit of taxpayers within the City of Cape Coral, Florida; and
- C. The Client desires to contract with MRS and MRS desire to contract with the Client, as described in this Agreement, for MRS to furnish medical professionals and medical assistants as agreed-upon medical staff and equipment to provide certain onsite medical services to the authorized, eligible employees and retirees of the Client, and their respective dependents, on the terms and subject to the conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE I DEFINITIONS**

1.01 "Medical Professional" means a person duly trained, licensed and authorized in the state of Florida as a Physician, Advanced Registered Nurse Practitioner ("ARNP"), Licensed Physician's Assistant ("PA"), Licensed Registered Nurse ("RN"), Licensed Practical Nurse ("LPN"), Licensed Radiologic Technologist ("Rad Tech") or other professionally licensed medical staff.

1.02 "Medical Assistant" means a person who is a medical assistant (MA), phlebotomist or other technician who is trained and authorized in the state of Florida to perform medical activities within the Health Facility.

1.03 "Health Care Services" means the health care/medical-related services that MRS has agreed to provide to the Client as described in Exhibit "A," which is attached hereto and incorporated herein by this reference. The Client and MRS may, at any time and from time to time, amend or supplement Exhibit "A" by written agreement, signed by both parties.

1.04 "Health Facility" means the site(s) selected which may or may not be provided by the Client and approved by MRS for the delivery of the Health Care Services pursuant to this Agreement.

1.05 "Subscriber" means Client employees, retirees, and COBRAs (except in special terminated cases), who are contracts within the Client's health insurance plan and others identified by the Client to be eligible by Client. Other employees or designated persons of Client may receive other Health Care and/or Occupational Health Services at an additional cost to be paid by Client, if Client and MRS agree in writing.

1.06 "Onsite Medical, Wellness and Occupational Health Services" means the programs and services provided under this Agreement are not designed nor intended to be provided through or under any Client employee benefit plan or insurance program. Accordingly, MRS, nor any of the third-party contractors it may engage, is a fiduciary, trustee, or sponsor with respect to these programs or services.

## **ARTICLE II DUTIES OF MRS**

2.01 Provision of Medical Professional(s). MRS shall furnish adequate staffing of Medical Professionals, together with Medical Assistants, as appropriate, to provide the Medical, Wellness and Occupational Health Services at the Health Facility to the Participants of the Client. Physicians shall be employed physicians of MRS to provide Medical Services through MRS and MRS shall be solely responsible for the operation of the Health Facility and the Health Care services. In the event MRS is unable to furnish particular persons as the Medical Professionals and/or Medical Assistants, MRS may at any time and from time to time out of operational necessity, change any given Medical Professional and/or Medical Assistant provided to Client under this Agreement. Client shall have the opportunity to meet with recommended final Physician candidates, except in situations where temporary staff are utilized to meet an immediate PRN need (i.e. emergency, illness, vacations, etc.), identified by MRS. Client may request MRS to consider the replacement of a Medical Professional physician upon written notice for agreed-upon reasonable cause, subject to the contractual obligations between said Medical Professional providers and MRS. In any event, MRS shall at all times be solely responsible for the selection of the Medical Professionals and Medical Assistants.

2.02 Standards of Medical Professional Performance. MRS shall contract with each Medical Professional so that the Medical Professional is obligated to perform or deliver the following services, supported by other Medical Professionals and Medical Assistants working under the Physician's medical review and oversight.

(a) The Medical Professional(s) shall provide the Health Care/Medical Services in accordance with this Agreement to the extent such services are required to be provided by licensed Physicians, Pharmacists, Nurse Practitioners, Physician's Assistants, Registered or Licensed Practical Nurses or other licensed medical support professionals.

(b) The Medical Professional(s) shall comply with all applicable laws and regulations with respect to the licensing and the regulation of Medical Professionals and shall at all times oversee the Medical Staff in a manner consistent with applicable medical practice and standards.

(c) The Medical Professional(s) shall provide the Health Care/Medical Services in a manner consistent with all applicable laws and regulations and in a professional manner that meets or exceeds prevailing standards for Health Care/Medical Services provided in the community in which the Health Facility is located.

(d) The Medical Professionals shall maintain, during the term of this Agreement, appropriate and applicable credentials including without limitation:

- (1) A duly issued and active license to practice medicine and prescribe medications as a provider in the State of Florida;
- (2) A good standing with his or her profession and state licensing authority;
- (3) The absence of any license restriction, revocation, or suspension;
- (4) The absence of any involuntary restriction placed on his or her federal DEA registration; and
- (5) The absence of any conviction of a felony.

(e) In the event that any Medical Professional (1) has his or her license to practice medicine or prescribe medication restricted, revoked or suspended, (2) has an involuntary restriction placed on his or her federal DEA registration, (3) is convicted of a felony, or (4) is no longer in good standing with his or her professional or state licensing authority, MRS shall promptly remove that Medical Professional from service at the Health Center and replace such Medical Professional with another Medical Professional that meets the requirements of Section 2.02 (d).

(f) MRS shall require that any Medical Professional or Medical Assistant complies with Section 2.02 with respect to performance, licensing, certification and good standing, as applicable, except as otherwise provided in Section 2.08 with respect to medical students, interns and/or residents. MRS shall require the Medical Professional(s) to notify MRS immediately in the event the Medical Professional(s) learns of the possibility that any of the events specified in Section 2.02(e) may occur with respect to the Medical Professional(s) or Medical Assistant and MRS shall immediately notify the Client of such notification. MRS will remove any Medical Professional or Medical Assistant who is not in good standing with professional standards or licensing authority.

**2.03 Scheduling of Services.** MRS shall be solely responsible for the scheduling of the Medical Professional(s) and Medical Assistant(s) to provide the Health Care Services at the Health Facility after agreed-upon (mutually with Client and MRS) and stated operating hours.

**2.04 Noncompliance by the Medical Professional.** In the event that Client becomes aware of any failure by the Medical Professional to comply with the obligations of the Medical Professional(s) which are contemplated by this Agreement, Client shall provide written or electronic notice to MRS of such failure, which written notice shall describe the failure in reasonable detail, and MRS shall use its best efforts to promptly address such issue. In the alternative, MRS may arrange for the substitution of another person as the Medical Professional Provider. As provided in Section 2.01, Client may suggest that MRS consider the prompt and reasonable removal of the Medical Professional. MRS will have the sole authority to take such action to remove if justified following the investigation by MRS

**2.05 Ongoing Operational Equipment and Supplies.** Following the opening of the Health Facility, should there be a mutual, agreed need to add or augment furnishings, equipment, supplies, maintenance or repairs to the facility, necessary to support the operation of the Health Facility, Client agrees to pay MRS for additional equipment and supplies on a pass-through basis and MRS agrees to purchase equipment and supplies using reasonable efforts to secure favorable or competitive pricing. MRS will invoice Client, without pre-approval by the Client (except for single items costing more than \$5000.00) and shall be reimbursed to MRS by the Client. Should Client wish to provide the equipment and supplies required by MRS, MRS will not invoice for those items of equipment or supplies provided by Client, approved by MRS. Subsequent orders of furniture, fixtures, equipment and supplies as are reasonably necessary for the restocking of the Health Facility may be performed by MRS. For equipment with constant and daily usage (i.e., computers, printers, faxes, telephonic, etc.), MRS will evaluate the equipment as to whether replacement is necessary after three (3) years. If MRS finds it a necessity for replacement Client will be notified that MRS will purchase the equipment on Client's behalf and invoice the client as usual, unless Client agrees to make such purchase. Should the equipment not need replacement after three (3) years, MRS will keep Client informed as to its condition and the necessity of replacement. Upon the expiration or termination of Agreement, all remaining furniture, fixtures, equipment and supplies purchased or reimbursed by the Client for use at the Health Facility shall become the property of the Client. In the unusual event MRS deems it necessary to purchase items (requiring sales tax collection) due to Client not being able to purchase such items in a timely and/or more cost-effective manner, Client agrees to reimburse full amount of MRS's invoice for purchase including passed-through sales tax. Client agrees to be responsible for collecting any credit due from appropriate taxing authority.

**2.06 General and Professional Liability Insurance.** MRS shall ensure that all Medical Professionals (other than employed or Independent Contracted providers, see Section 6.09 (a), (i), (ii)) assigned under this Agreement and throughout the Term of this Agreement will be insured by general and professional liability insurance covering liability, acts and omissions of the Medical Professionals, in the minimum annual coverage amounts of \$1,000,000/\$3,000,000 under MRS's General and Professional Liability Program. MRS shall provide Client with proof of such liability insurance coverages maintained on behalf of the Medical Professionals. MRS shall list the County as an additional insured.

**2.07 Responsibilities of Parties/Indemnity.** MRS and each of the third-party contractors delivering services hereunder, is an independent contractor with respect to the services provided under this Agreement and is not the agent or employee of Client. Notwithstanding any authority granted to Client herein, MRS and/or any Medical Professional or Medical Assistant shall retain the authority to direct or control his/her health care/medical decisions, acts or judgments. MRS agrees to indemnify and hold harmless Client from and against any cost, damage, expense, loss, liability or obligation of any kind, including, without limitation, reasonable attorney's fees, which Client may incur in connection with MRS's furnishing of Medical Professionals and Medical Assistants, or with the Health Care/Medical Services provided by them under this Agreement. Notwithstanding the foregoing, this section and all other provisions of this Agreement relating to indemnity and insurance are not intended to, and shall not be construed to waive the Client's or MRS's applicable, sovereign immunity under the provisions of Section 768.28, FL Statutes, or consent to be sued by third parties. Without limiting the foregoing, the provisions of this Agreement are solely for the benefit of the named Parties to this Agreement and this Agreement shall not be construed as to give rise to any rights, claims or benefits of any person or firm not expressly made a Party to this Agreement.

**2.08 Other Licensed Professionals.** MRS is hereby authorized to assign, from time to time, one or more alternate Medical Professionals to supplement or substitute for the Medical Professional(s) selected for health care service at the Health Facility. All terms of this Agreement shall be applicable to any replacement Medical Professional. MRS shall also ensure that all replacement Medical Professionals who provide services hereunder have insurance coverage consistent with the requirements of Section 2.06. From time to time the Medical Professional Providers, upon consent of Client and MRS, may have medical students, interns or residents associated with a recognized and approved College of Medicine observe and assist the Medical Professional Providers (patient permission must be granted) for educational and teaching purposes under the Medical Professional Provider's direct supervision. The same level of professional standards as set forth in Section 2.02 shall apply as well to replacement Medical Professional Providers, other than medical students, interns or residents working under the direct supervision of the Medical Professional Provider.

**2.09 Billing by Medical Professionals.** MRS shall prohibit any Medical Professional assigned to the Health Facility from billing or otherwise soliciting payment from Client or any Participants for any Health Care Services provided by the Medical Professional(s). All billings for the Health Services provided pursuant to this Agreement shall be solely from MRS to Client.

**2.10 Medical Records.** MRS shall require the Medical Professionals to maintain medical records with respect to all patients, all of which medical records shall be maintained in a professional manner consistent with the accepted practice of the community in which the Medical Professional Providers provide the Health Care/Medical Services in connection with this Agreement. MRS shall also require the Medical Professional(s) to comply with HIPAA and state privacy requirements. All patient records maintained by the Medical Professional Providers in connection with this Agreement shall be the sole property of MRS with MRS Medical Director serving as Custodian. In the event medical records require transfer of ownership (e.g., termination, transfer, assignment of Agreement), MRS shall represent the designated records owner.

All medical records and other protected health information maintained by the Medical Professional Providers will be held by the Medical Professional Providers and MRS in strict confidence and in accordance with state and federal law. Client will not be entitled to have access to said medical records (HIPAA protected) in the absence of an appropriate written authorization from the patient (except those occupational/workers' compensation records that are exempted from HIPAA/Privacy requirements, which Client may access upon written request to MRS). To ensure compliance with the above, MRS shall develop and implement policies, standards and procedures to protect the confidentiality and security of the medical records, and ensure that medical professionals and medical assistants (and any other employees or contractors of MRS) are trained in these policies, standards, and procedures.

**2.11 Reporting Services Included In Fixed Fees.** MRS shall provide utilization activity reports on medical and, if/when applicable occupational services, client activity reports and annual reports on health center activity, population health status and return on investment or financial status report. Reports requiring health plan data care-gap analysis are contingent upon receiving necessary health plan claims information, etc. See Exhibit A2 for details.

## **ARTICLE III DUTIES OF CLIENT**

3.01 Provision of Location. Client shall provide at no charge to MRS an adequate and an agreed-upon location for the provision of the Health Care/Medical Services as outlined in this Agreement, at a site selected or shared by the Client, subject to the satisfaction of MRS's specification. Included but not limited are all necessary building permits, telephone services, utilities and unrestricted internet connections. For any permit requiring the owner of the building to sign, MRS will cooperate and obtain the proper signatures. MRS typically outsources the cleaning services of the facility and will pass-through those costs monthly. Should the location prove to be unsuitable when growth cannot be sustained with initial facilities, Client and MRS will collaborate on expansion and/or additional facility in regard to location, adequate facilities and timing.

3.02 Internet Connections. Client will provide dedicated, unrestricted, business class DSL, business class cable services or higher. Ethernet handoff to be implemented into an MRS owned and operated firewall/router. Client is responsible for premise wiring to facilitate connectivity from the MRS firewall to desktops/laptops at health center. Two jacks are required for each medical staff workstation and the location of jacks is dependent upon build-out of facilities. Minimum requirement includes bandwidth not less than 50 mbps connection (up/down) and MRS required minimum number of publicly addressable IP addresses.

3.03 Publicity and Promotion. Client will publicize and provide descriptive information including those standard marketing materials provided by MRS as described within this Agreement. This information will be delivered to all of Client's participants who are authorized to seek services at location(s) agreed upon by Parties. Client will provide MRS with copies of other documents and materials prepared independently by Client describing, publicizing or affecting the services provided by MRS prior to the distribution of such materials. MRS shall review and comment on such materials within a reasonable time after receipt. Client will use reasonable efforts to seek MRS's input and agreement prior to publicizing and distributing such information to its Participants.

3.04 Eligibility Files. Client will provide to MRS on a monthly basis a Participant eligibility file (with name, status as employee, dependent or retiree; age; assigned department; emergency contact; date of employment; home address; home or mobile phone number; email address), which is necessary to enable MRS to provide the services outlined and agreed-upon in this Agreement. The Participant eligibility file will contain the updated and entire population of Participants and comply with MRS's file specifications to be provided to Client.

3.05 Claims Data. To assist in the identification and treatment regimens for Participants with chronic conditions such as diabetes, asthma, heart disease, pulmonary disease, hypertension or other chronic-related conditions, Client agrees to deliver to MRS timely and with full access to medical claims data through its carrier, third party administrator or other third-party vendor for claims data mining and/or claims analysis, for the 24 months prior to the initiation of onsite services, and minimally at monthly intervals thereafter through the term of this Agreement. Prior to implementation, MRS and Client agree to execute applicable Business Associate Agreement and Non-Disclosure Agreement to ensure compliance with HIPAA and other privacy and/or health plan requirements. Should Workers' Compensation services be requested, Client agrees to provide complete claims data, loss ratio,

experience modification factors and closed/open claims information for the previous three years and current claims minimally at six-month intervals thereafter through the term of this Agreement.

**3.06 Availability of Resources.** Client agrees to allow MRS to utilize any internal resources of Client and to assist MRS in such utilization, including but not limited to training, marketing tools and resources and technical support necessary to maintain the requirements outlined in Article III, as mutually agreed upon by Parties in order to enhance the effectiveness and utilization of the MRS onsite health services. Client will identify a single primary point of contact (management-level employee) for implementation project management and ongoing account management.

## **ARTICLE IV COMPENSATION**

**4.01 Operational Costs and Fee.** The items listed in Exhibit "B" are those items or services anticipated by MRS to be initially required by MRS to accomplish the Medical Services for the Health Center operations for the first year. The cost to procure the items listed on Exhibit "C" is estimated by MRS and included in first year costs on Exhibit B.

Following the opening of the Health Facility ongoing operational costs for inventory including equipment, supplies, medications or other optional items/services that are required for the health center operation, to include facility maintenance and or repairs will be passed through to Client. Should additional costs be incurred for Occupational/Workers Compensation services, if such additional occupational and/or workers' compensation services are requested by Client, these costs will be paid by Client.

**4.02 Monthly Administrative Fixed-Fee.** Following the opening of the Health Facility Client shall pay to MRS the amount equal to \$23 for each authorized, eligible Subscriber (employees/retirees/COBRA) per month (pepm) for furnishing the management and oversight of the Medical Professional(s) and the other included services provided pursuant to this Agreement during the invoiced period. This monthly fee will remain constant (@\$23 PEPM) for first full term of Agreement.

**4.03 Ongoing Operational Expenses.** On or about the 10<sup>th</sup> of each month, MRS shall submit an invoice for the budgeted amount for staff costs (budgeted at an estimated \$48,190.00 monthly for the first year) and any adjustments, if necessary from prior months' actual expenditures for expenses as pass-through costs required to operate and maintain the health center in order to provide the Health Care/Medical Services under this Agreement. The total expenses may include, but are not limited to, estimated Medical Professional and/or Medical Assistant staff payroll costs (payroll to include cost of benefits for FICA, Health Insurance, WC, PTO, etc.), Medical Professional and Medical Assistant training expenses, DOT certification, approved medical staff travel expenses, required taxes (federal, state, local, or other), technology fees, wellness staff costs, data analytics services, medical supplies, medications, laboratory expenses, office supplies and equipment. Should other items be necessary by MRS to provide the Health Care/Medical Services under this Agreement, MRS will request Client approval before ordering or purchasing other items not listed in this section. Please see Exhibit B for payment schedule information. On an annual basis, MRS has established a budget of not to exceed 5% annual payroll increases to be enacted for Medical Staff and invoiced to Client as payroll cost. Client



shall be responsible to pay MRS such amount invoiced no later than the 15<sup>th</sup> day of the calendar month immediately following the receipt of the MRS invoice.

## **ARTICLE V TERM AND TERMINATION**

5.00 Term. This Agreement shall commence on the effective date written above and shall remain in effect as otherwise provided for a term of five (5) years. After the initial five-year Term, renewals will be on an annual, one-year basis.

5.01 Opening Date. MRS will make all reasonable efforts to assemble and open a fully functioning Health Care Facility on the selected location no later than January 20, 2020.

5.02 Termination With or Without Cause. This Agreement may be terminated by either Client or MRS at any time after the first full year of operation by providing the other party a minimum of 120 days' prior written notice.

5.03 Effect of Expiration or Termination.

(a) The expiration or the termination of this Agreement shall not affect the obligation of Client to pay compensation to MRS or pay for any outstanding invoice for the period prior to such expiration or termination and shall not affect the obligation of any Party to provide monthly reports for the periods prior to the effective date of such expiration or such termination.

(b) MRS is supplying and furnishing a modular building suitable for providing health care services. MRS will insure the facility and its contents during the initial 5-year term of this agreement. If Client terminates the agreement prior to the end of the five-year term, Client will reimburse MRS the pro-rated (monthly) amortized cost based upon a 5-year amortization schedule the remaining balance for the facility calculated from the date of termination until to the end of the initial 5-year term (for example, if the agreement is terminated after 2 years, the Client would reimburse MRS 60% of the total cost of the facility). After reimbursement title and ownership of the modular building and its contents will be transferred to the Client.

(c) At the end of the initial 5-year term, ownership of the modular building and its contents will be transferred to the Client for \$1.00.

5.04 Non-Compete. In the event of termination or expiration of this Agreement and for a period of one (1) year from the date Agreement ends, Client shall not employ, contract with or utilize the professional health care services of any MRS medical or management staff providing or overseeing medical services.

## **ARTICLE VI MISCELLANEOUS**

6.01 Notice. All notices and other communications permitted or required pursuant to this Agreement shall be in writing or electronic, addressed to the party at the address set forth at the end of this Agreement or to such other address as the party may designate from time to time in accordance with

this Section 6.01. All notices and other communications shall be (a) mailed by certified or registered mail, return receipt requested, postage pre-paid, (b) personally delivered or (c) sent by electronic means with a receipt confirmation. Notices mailed pursuant to this Section 6.01 shall be deemed given as of three days after the date of mailing and notices personally delivered or sent by electronic shall be deemed given at time of opening.

6.02 Transferability. Except as provided in Section 6.07, neither Client nor MRS may assign or otherwise transfer this Agreement or their respective obligations arising pursuant to this Agreement to any third party without the prior written consent of the other party, which consent may be given or withheld by the other party in its sole discretion.

6.03 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between Client and MRS with respect to the subject matter hereof and supersedes all prior oral representations or discussions and agreements. This Agreement shall not be amended or waived, in whole or in part, except in writing signed by Client and MRS.

6.04 Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Florida, without giving effect to its conflict of law provisions, and venue for any action under this Agreement shall lie only in Lee County, Florida.

6.05 Non-Disclosure. Client and MRS shall take all reasonable steps to ensure that information with respect to the terms of this Agreement or with respect to the business of Client or MRS acquired by virtue of the position of the other party under this Agreement shall not be disclosed or used outside of the business of either party; provided, however, the foregoing restriction shall not apply to information (a) provided to government authorities as required by applicable law or applicable regulation or consented to by the patient; (b) furnished to healthcare providers involved in a particular patient's case; (c) which is or becomes public knowledge through no fault of either party; or (d) which is otherwise required to be disclosed by applicable law or applicable regulation or pursuant to a court order.

6.06 Mutual Access to Books and Records. Client and MRS will maintain accounting records in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Subject to patient confidentiality obligations, including without limitation, HIPAA restrictions, Client and MRS shall ensure that such records are available for examination by each other Party during their respective normal business hours. Client and MRS shall maintain all such records for a period of not less than five (5) years after the date of the service or invoice. Further, subject to patient confidentiality obligations, including without limitation, HIPAA restrictions, Client or MRS, and any duly authorized agents or representatives of Client or MRS shall have the right to audit, inspect and copy all of each Party's and any subcontractors' records and documentation as often as reasonably necessary and each Party shall cooperate in any audit, inspection or copying of the records.

This Section, including without limitation all access, inspection, copying, auditing, reimbursement and repayment rights, shall survive the termination of this Agreement.

6.07 Successors. This Agreement is binding upon the current parties, their successors and assigns with their consent. Sixty (60) days' notice of any change in control of any Party shall be given to all other Parties by the party experiencing the change. In such event, this Agreement shall be assumed by the successor entity only upon the written consent of the remaining Parties.

**6.08 Severability.** If any provision of this Agreement is determined to be void, illegal, unenforceable or invalid, the enforceability of any other provision is unaffected.

**6.09 Insurance:**

(a) MRS shall maintain throughout this Agreement the following insurance coverages for its employees and those Independent Contractors providing services to it under this Agreement:

(i) Professional Liability Insurance in the minimum amount of Two Million Dollars per occurrence/Six Million Dollars aggregate (\$2,000,000/\$6,000,000);

(ii) Comprehensive General Liability, including Contractor's Protective Liability; Hired/Non-Owned Auto Liability and Product – Completed Operations – Coverage and Contractual Liability - in the amount of One Million Dollars (\$1,000,000/\$3,000,000); and

(iii) Workers' Compensation Insurance for all employees of MRS and the professionals at the Health Facility location(s) as applicable and Employer Liability at \$1,000,000 limit;

(b) "City of Cape Coral, Florida and its members, officers and employees" shall be an additional named insured on those coverages/policies listed above except for Professional Liability Insurance and Workers' Compensation Insurance.

(c) The insurance coverages required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of MRS and the professionals at the Health Facility. MRS shall ensure that all insurance policies required by this section are issued by companies with either of the following qualifications:

(i) The company must be (1) authorized by existing certificates of authority by the Department of Insurance of the State of Florida or (2) an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have a Best's Rating of "B+" or better according to the latest edition of Best's Key Rating Guide, published by A.M. Best Company; or

(ii) With respect only to the Workers' Compensation Insurance, the company must be (1) authorized as a group self-insurer pursuant to Florida Statutes or (2) authorized as a commercial self-insurance fund pursuant to Florida Statutes, or with a commercial insurance company approved to operate in Florida.

(d) Neither approval nor failure to disapprove the insurance furnished by MRS to Client shall relieve MRS of the full responsibility to provide insurance as required under this Agreement.

(e) MRS shall be responsible for assuring that the insurance remains in force throughout the Term of this Agreement, including any and all option years that may be granted to MRS. The certificate of insurance shall contain the provision that Client be given no less than

thirty (30) days written notice of cancellation. If the insurance is scheduled to expire during the contractual period, MRS shall be responsible for submitting new or renewed certificates of insurance to Client at a minimum of fifteen (15) calendar days in advance of such expiration.

- (f) Unless otherwise notified, the certificate of insurance shall be delivered to:

City Manager  
With a copy to the Risk Manager  
1015 Cultural Park Boulevard  
Cape Coral, FL 33990

- (g) The name and address of the Certificate Holder on the certificate of insurance must be:

The City of Cape Coral  
1015 Cultural Park Boulevard  
Cape Coral, FL 33990

- (h) In the event that MRS fails to maintain insurance as described above, such failure will constitute a material breach of this Agreement and will be cause for immediate termination of this Agreement. If such a breach occurs then MRS agrees that Client may take any action necessary at law or in equity to preserve and protect Client's rights.

## **ARTICLE VII SOVEREIGN IMMUNITY**

The Client expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability per Florida Legislation will apply for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the Parties which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

Jennifer Edwards

Print: Jennifer Edwards

Jason Sauberg

Print: JASON SAUBERG

**MEDICAL RISK SOLUTIONS, LLC  
d/b/a MY HEALTH ONSITE**

By: Ray Tomlinson  
**RAY TOMLINSON, MANAGER**

**ATTESTED TO BY:**

KIMBERLY BRUNS, CMC  
**CITY CLERK**

**CITY OF CAPE CORAL, FLORIDA**

By: JOHN SZERLAG  
**JOHN SZERLAG, CITY MANAGER**

**APPROVED AS TO FORM:**

DOLORES D. MENENDEZ  
**CITY ATTORNEY**

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## **EXHIBIT A**

### **DESCRIPTION OF SERVICES**

**Ongoing Services:** As of the Commencement Date, MRS shall operate an onsite health center(s) in City of Cape Coral, FL for eligible employees, retirees and dependents of Client.

**Implementation Services:** During the period beginning on the Effective Date and continuing through the start of the Ongoing Services on the Commencement Date (the "Implementation Period"), MRS shall provide the Implementation Services detailed in Exhibit A1.

#### **Estimate of Individuals eligible to participate as of the Commencement Date:**

Employees and Retirees. (Subscriber contracts) .....	1744
Spouses and Other .....	<u>1181</u>
Total members .....	2925

#### **Location and time of services:**

- a. The services provided under this Agreement will be provided at a site or sites to be in Cape Coral, FL.
- b. Hours of operation will be projected to begin with an estimated 80 provider hours (e.g. Doctor, Physician Assistant, Advanced Registered Nurse Practitioner) per week scheduled with mutual agreement of Client and MRS determined during Implementation process.
- c. Notwithstanding the hours of operation described above, the health center shall be closed for up to 8 holidays and up to 4 professional development days per year. The number of holidays is to be determined with mutual agreement of Client and MRS during Implementation process.
- d. In the event of an unexpected clinician absence due to illness, the health center shall remain open for services to be continued, to the extent possible, by the other regular health center staff members. Up to 5 days of such absences that result in no direct care services being provided shall be allowed per year.

### **PROGRAM SERVICES**

#### **Primary Care:**

- Initial Health Center Staffing Recommendation:  
Staffing projected as indicated on Exhibit B
- Acute Conditions - evaluation, treatment and management
  - Sore throats/ears/headache
  - Cough, Sinus-related
  - Strains/sprains/musculoskeletal problems
  - Urinary complaints
- Ordinary and routine primary care of the nature of a visit to a primary care physician's office – evaluation, treatment and management
- Lab draws onsite
- Immunizations of Participants 18 years of age and above (unless otherwise changed)
- Allergies

- Well-women's health
- Laboratory testing
- Personal hygiene related conditions - evaluation, treatment and management

#### **Workers' Compensation/Occupational Health Services:**

- Workers' Compensation-related injuries on a First Report of Injury/Triage-level only, with typically up to two follow-up appointments.
- Minor surgical procedures, such as sutures for laceration treatment
- Orthopedic injury treatment – sprains, strains
- Urine Drug screening
- Pre-employment, routine and annual physicals
- Pre-employment drug testing, reasonable suspicion and random, breath-alcohol (BAT, if equipment supplied at Client cost)
- CDL and DOT services
- MRO services outsourced with reports

#### **Pre-Packaged Pharmaceutical Dispensing Program**

- Dispensing Module
- Inventory Management Module

#### **Health Maintenance & Prevention:**

- Biometric Screening to include Vital Health Profile ()
- Physician/Nurse "Reach Out" Program to touch the people with the highest health risks
- Chronic Disease Management programs targeted for the greatest impact of population
- Referral Service: Providers recommend and assist employees in voluntary or management in mandatory referrals as appropriate and coordinated with Client's request
- Self-Care Education Tools and Manual online and in print form
- Comprehensive Health Education Training
- Physician Health Seminars
- Population Promotions

#### **Disease Management:**

- Chronic diseases - evaluation, treatment and management
  - Diabetes
  - High Cholesterol
  - Hypertension
  - COPD
  - Other as applicable

#### **Integrated Health Engagement Technology Platform:**

- Personal Health Record with risk information, interactive nutrition and activity trackers, and medical content
- Online scheduling system and secure messaging
- Electronic Health Record Program



**Account Management, Advisory and Support Services:**

- Implementation and Orientation programs for start-up of Health Center
- Toll-free 24/7 Customer Support and Nurse Line Program
- Health Facility Best Practices Sharing
- Health Facility Inventory Management (supplies, medications, etc.)
- Medical Staff Recruiting
- Medical Staff Management and Oversight

**Participant Communications & Promotions:**

Schedule A3

**Management Reporting & Analysis:**

Analysis, Trends, Reporting & Survey Results

**OPTIONAL SERVICES NOT INCLUDED IN FIXED FEES OR INITIAL PASS-THROUGH INITIAL PROJECTIONS**

The following services are an example of services that can be provided at a pass-through cost over and above the “Primary Health Care Services” described above. Client agrees that MRS will quote these services separately from “Primary Health Care Services” and will be provided at additional costs at such time Client gives written notice of interest for expanded/additional services listed below. Should Client desire for MRS to provide other services not specified in this Agreement, Client and MRS will mutually agree in writing or amendment to this Agreement, as to such services desired, the timing and cost of such additional services to be paid to MRS.

**Treatment of Workers’ Compensation injuries beyond First Report of Injury/Triage level**

If services are required, they may include but not be limited to treatment of acute and chronic work-related injuries. If outside physician is selected, the Medical Professional(s) shall coordinate and monitor process.

**Medical Surveillance**

- **Hearing** - Administration and performance of audiometric exam, STS review, work relationship determination and report/documentation, including employee notification letters.
- **Respiratory** - Administer all medical elements of respiratory protection program including spirometry testing/PFT for employees required to wear a respirator.
- **Mobile Equipment Exams** - Conduct medical history review, vision testing, and medical exam for employees required to operate mobile equipment; fork truck physicals
- **Drug Screen/Alcohol** - Collect pre-employment hair testing samples; administer post rehabilitation random testing. Provide MRO and reporting services for these expanded services.

## **Exams**

- **Extensive Pre-Employment** - Coordinating/conducting functional capacity testing, medical history, audiometric testing, biometrics, etc.
- **Ergos** - Assist with fitness evaluations using on-site evaluation equipment if available
- **Fitness for Duty** - Conduct fitness for duty exams for both work-related cases and for employees returning from personal medical leave.
- **Functional Capacity Exam (FCE)** - Contract with physical therapy vendor to conduct FCE's as requested by a treating physician.

## **NOT INCLUDED IN ONGOING SERVICES**

- Non-CLIA waived tests, CLIA waived tests not included above, external lab processing for physicals, annual exams and screenings
- Travel costs for health center staff and health screeners to visit participants at offsite locations
- Internet connectivity and telephone service for MRS onsite health staff
- Additional Account Management and Advisory Services, Communications Services or Reporting Services not included in the projected costs, per Exhibit A2, A3, A4.
- Additional Data Services, such as custom interfaces for integration, uploads or exchange of prior provider data, or more than 3 ongoing activity reports.

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## EXHIBIT A1 IMPLEMENTATION SERVICES

MRS shall provide the following standard Implementation Services, which are included in the fixed fees. Additional services provided beyond the scope of the deliverables such as additional site visit days will be billed as Additional Services:

Standard Implementation Package	Deliverables (exact media to be determined)
Pre-Kick Off Implementation Meeting	Transition Meeting: Client, MRS Project Team meet onsite to initiate steps in the Implementation process.
Kick Off Implementation Meeting	Initial Implementation Team meeting to start the implementation process. This conference call will include all members of the implementation team (from both MRS and Client) to provide the foundation and expectations for the implementation process.
Functional Workgroup Implementation Meeting	Within 3 to 6 weeks, MRS will provide members of the implementation team to be onsite at the Client location for a workgroup session/meeting. If necessary, additional members of the MRS Implementation Team will join by conference call.
Clinical Coverage Plan	MRS to establish and provide coverage plan for clinical staff absences.
Clinical Training	MRS will provide initial implementation training for all health center staff during onboarding and onsite at the health center during the go-live week. This includes travel, lodging, meals and materials (does not include salary/hourly pay) for shadowing at other MRS Health Centers, orientation week and go-live week.
Communication Services	MRS will provide the Pre-Launch Communication Program included in Schedule A3
Project Management	
-Project Manager Client Site Visits	MRS will provide onsite visits by the Project Team during the implementation process.
-Weekly Implementation Calls	MRS will provide weekly implementation calls with the implementation team/client project manager during implementation process.
Health Center Set Up	
-Décor	MRS will assist with placing site posters and accent décor throughout health center.

**EXHIBIT A2**  
**ACCOUNT MANAGEMENT & ADVISORY SERVICES**

**ACCOUNT MANAGEMENT & ADVISORY SERVICES INCLUDED IN FIXED FEE**

<b>Account Management &amp; Advisory Services</b>	<b>Deliverables</b>
MRS Representative introduction During Implementation	The Representative will be integrated as part of the team early on in the process, allowing him/her to assimilate with the senior management team on the Client side.
One Point of Contact	The Representative provides single-point of contact for triaging issues that may be handled by our team of analysts, clinicians, communications resources and others to ensure issues are identified and addressed promptly.
Operational Reviews	In order to ensure Client has the resources and information to present to senior management of progress and financial analysis (ROI or financial analysis) after 1 <sup>st</sup> full year of operation of the health center, the representative will provide reports described in Exhibit A4 to be reviewed on a scheduled meeting or call.
Annual Review	The MRS representative will provide an onsite annual review of the health enter business, incorporating the Client-specific key performance metrics with projections for the next year.
Ongoing Health Promotions	The Representative will work together with Client to ensure ongoing communications are managed proactively in order to provide timely and appropriate communications and health promotions and in collaboration with the Client's wellness initiatives, take advantage of other educational opportunities to provide a seamless, synergistic approach to messaging. The promotional outreach may occur in the form of lunch and learns, mailings, posters, etc. as appropriate for the specific initiative.
Strategic Planning	Working with each Client's unique business needs, the Representative will work together with Client's senior management team to ensure that the goals of the health center, and the annual cycles (whether it be surveys, annual report-outs, etc.) are aligned with the client's strategic goals and objectives. The Representative will also work collaboratively with the Client regarding

	medical service providers (EAP, DM, etc.) to ensure existing resources are being leveraged.
Clinical Coverage Plan	MRS will establish and provide a coverage plan for clinical staff absences due to illness, vacation or continuing medical education (CME); Payroll costs to be passed-through
Clinical Training Program	MRS will conduct on-going training for all health center staff. This includes continuing education on motivational interviewing and mindfulness, CME, training on new features within the electronic medical record, updates from the MRS clinical advisory team and guidelines for disease management from sources such as the CDC.

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**EXHIBIT A3  
COMMUNICATION SERVICES**

**COMMUNICATION SERVICES INCLUDED IN FIXED FEES**

**Implementation Communication Program (Pre-Launch Deliverables customized)**

- During the Implementation period, MRS shall provide the following standard implementation package:
  - Design and production of material will be done in collaboration with Client.
  - Printing costs, if applicable, will be passed-through

**Ongoing Communication Program (Customized for Client by MRS)**

- After the Commencement date, MRS shall provide an Ongoing Communication Program as part of the MRS Services:
  - Health Promotions Catalog: Health promotion programs, both group and individual, including program materials (presentations, educational handouts, email promotions) as well as communication materials such as posters, postcards and website awareness.
  - Health Fair Coordination and Communication Assistance

The standard communication package includes all development, design and layout work.

**ADDITIONAL COMMUNICATION SERVICES BILLED AT ADDITIONAL COST**

MRS will create and design additional communications at Client's request. Production and printing costs, if applicable will be passed-through after mutual agreement of specific designs and costs.

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## **EXHIBIT A4 REPORTING SERVICES**

### **REPORTING SERVICES INCLUDED IN FIXED FEES**

MRS shall provide Client's management team with activity reports on medical and, if/when applicable occupational services, client activity reports and annual reports on health center activity, population health status and return on investment projections (assumes all medical claims data provided as requested for data mining):

- Client activity and trends reports include visit volume (visits for acute care, occupational health to include workers' compensation, risk reduction and disease management, group work and telephonic consults), high risk patients engaged, high risk patients making progress, encounters and diagnoses by coding, prescriptions dispensed/written within health center
- Annual reports include:
  - Population stratification report identifying percent of the population screened, size and nature of high-risk population and size and nature of population with chronic conditions identified through data mining and/or screening
  - Year-end report identifying results of health center operations including health center volumes, patient engagement, overall improvement in population health status, customer satisfaction, cost-reductions strategies via health center operations and return on investment analysis, results of at-risk pay-for-performance metrics, and plan for continuous quality improvement.
  - Custom reporting per year if selected by Client

### **ADDITIONAL REPORTING SERVICES NOT INCLUDED IN FIXED FEES**

- Custom Analytic reporting beyond the scope above that requires special programming will be billed as Pass-Through Costs

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## **EXHIBIT B**

### **ESTIMATED HEALTH CENTER BUDGET, YEAR ONE**

#### **Budget and Cost Projections, 1<sup>st</sup> year**

**\$1,481,464**

#### **Medical Risk Solutions Operational Costs**

Initial Set-up Costs (Medical Equipment, Supplies, Rx inventory, etc.)

Medical Staff:

1 FTE Physician

1 FTE ARNP or Physician's Assistant

1 FTE Licensed or Registered Nurse

1 FTE Medical Assistant/Radiology Tech

Medical Supplies

Laboratory Services

Office Supplies and Miscellaneous Expenses (ex: Technology Licensing, x-ray over reads, etc.)

Prescriptions

Administrative Program includes wellness services, Chief Medical Officer,

Senior Management staff and oversight services, Human Resource services,

Accounting services, Quality Management and Audit services

Initial Set-Up

#### **Total Projected Budget Cost, 1<sup>st</sup> year**

**\$1,481,464**

MRS will invoice Client for the cost of all service-related pass-through expenses on a monthly basis. In addition, MRS may submit interim invoices for purchases, with prior approval from Client, of equipment or supplies exceeding \$5,000 in cost.

Client will pay fees described in this Exhibit in accordance with the Florida Prompt Payment Act (within 45 days of receipt). If Client disagrees with any MRS invoice, Client shall pay all undisputed invoiced amounts, notify MRS of the disputed amount and the reasons for which it is disputed, and MRS will segregate such disputed amounts from undisputed amounts until the matter is resolved. Items will be billed only if appropriate and necessary.

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## **EXHIBIT C**

### **EXAMPLE FACILITY SET UP**

#### **MEDICAL SUPPLIES, EQUIPMENT AND INITIAL RX INVENTORY**

Below is a list that illustrates items that may be required by the Medical Professional to deliver Medical Services in accordance with the Agreement. This list is not intended to be all-inclusive or exhaustive.

Exam tables/stools	Disinfectants
Small refrigerator	Waste cans
Lockable cabinet	Waste can liners
Gooseneck light	Gloves
Diag Set 3.5V Halogen/disposable covers	Suture supplies
Sundry jars	Glucose test supplies
Pillow/pillow covers (cloth and disposable)	Urinalysis supplies
Table paper	Strep testing supplies
Thermometer/disposable covers	Mono testing supplies
4 X 4's	Disposable gowns
Tongue depressors	Disposable drapes
Cotton balls	Thermometer (freezer)
Alcohol	3" Elastic bandage
Alcohol dispenser	Cold pack
Blood pressure cuffs	Emesis basins
Stethoscope	Medications/Injectables (by physician order)
Surgical tape	Lab supplies Tubes, requisitions, tourniquets)
Biohazard bags and Removal Service	Wall Posters, Charts
Biohazard stickers	Small desk and chair (if not provided by Employer)
"Allergic To" stickers	Needles
Sharps containers	Syringes

Computers, Fast Internet Connection, "4 in 1" Printer/Fax/Copier/Scanner	Trash removal, Clean-up, and General Maintenance
Fire Extinguisher	Initial Stock of medications and Key Pad entry for Pharmacy door

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## **EXHIBIT D**

### **BUSINESS ASSOCIATE AGREEMENT**

**THIS CONTRACTOR BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between **MEDICAL RISK SOLUTIONS, LLC dba MY HEALTH ONSITE** ("Contractor"), and **CITY OF CAPE CORAL** ("Business Associate"). Business Associate and Contractor are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

### **R E C I T A L S**

A. Business Associate furnishes services for Covered Entities involving the use or disclosure of protected health information ("PHI") of the Covered Entity and has entered into a business associate agreement or business associate addendum (each, as amended from time to time, an "Upstream BAA") with such Covered Entity.

B. Contractor has entered into an agreement for one or more Covered Entities serviced by Business Associate pursuant to which Contractor furnishes, or will furnish, certain services described therein involving the creation, receipt, maintenance or transmission of certain Health Information, some of which may constitute PHI of one or more of the Covered Entities.

C. Business Associate and Contractor intend to protect the privacy and provide for the security of Covered Entity PHI in compliance with the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 and 164 (the "HIPAA Rules"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and applicable state laws and regulations to the extent that they are not preempted ("State Laws").

D. The purpose of this Agreement is to satisfy certain standards and requirements of the HIPAA Rules relating to business associate agreements.

E. This Agreement is intended to supersede, as of the Effective Date, any prior business associate agreement between Business Associate and Contractor related to the Underlying Agreement or to any other agreement to furnish the Services to Business Associate.

**NOW THEREFORE**, in consideration of the premises and of the covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meanings (if any) given such terms in the applicable HIPAA Rules. A change to a HIPAA Rule which modifies any defined HIPAA Rule term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement. Terms defined above shall have the meanings set forth above, except as otherwise provided in this Agreement.

(a) **"Business Day"** shall mean a day other than a Saturday, Sunday or legal holiday under federal law.

(b) **“Covered Entity PHI”** shall mean (i) PHI created, received, maintained or transmitted by or on behalf of a Covered Entity, and (ii) PHI created, received, maintained or transmitted by Business Associate or Contractor (or any of their agents or Downstream Contractors) from or on behalf of a Covered Entity.

(c) **“Damages”** shall mean claims, losses, liabilities, costs, fines, penalties and other expenses (including, without limitation, reasonable attorneys’ fees).

(d) **“Data Aggregation”** shall have the meaning given such term in 45 CFR §164.501.

(e) **“Designated Record Set”** shall have the meaning given such term in 45 CFR §164.501.

(f) **“Discover”** and **“Discovery”** shall have the meanings given such terms in 45 CFR §164.410.

(g) **“Downstream Contractor”** shall mean a “Contractor” (as such term is defined in 45 CFR §160.103) that creates, receives, maintains or transmits Covered Entity PHI on behalf of Contractor.

(h) **“ePHI”** shall have the meaning given to the term “electronic protected health information” in 45 CFR §160.103.

(i) **“Health Information”** shall have the meaning given to such term in 45 CFR §160.103.

(j) **“Individual”** shall have the meaning given to such term in 45 CFR §160.103, and shall include, without limitation, a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(k) **“Notification Event”** shall have the meaning set forth in Section 2(k).

(l) **“Privacy Law”** shall mean any applicable law or regulation relating to the privacy, security or confidentiality of PHI, including, without limitation, the HIPAA Rules, HIPAA, the HITECH Act, and State Laws relating to the privacy, security or confidentiality of PHI or to breach notification.

(m) **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

(n) **“Protected Health Information”** or **“PHI”** shall have the meaning given to such term in 45 CFR §160.103.

(o) **“Required By Law”** shall have the meaning given to such term in 45 CFR §164.103 and shall be subject to any additional requirements created under the HIPAA Rules.

(p) **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his or her designee.



(q) **"Security Breach"** shall mean a "breach" as defined in 45 CFR §164.402 with respect to Unsecured PHI.

(r) **"Security Incident"** shall have the meaning given such term in 45 CFR §164.304.

(s) **"Security Rule"** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(t) **"Unsecured PHI"** shall have the meaning given such term in 45 CFR §164.402.

2. **Obligations and Activities of Contractor.**

(a) Contractor shall not use or disclose Covered Entity PHI other than as permitted or required by this Agreement or as Required By Law.

(b) Contractor shall use appropriate safeguards, and comply with the Security Rule with respect to ePHI, to prevent use or disclosure of Covered Entity PHI other than as provided for by this Agreement.

(c) Contractor shall comply with all laws, rules and regulations (including, without limitation, all Privacy Laws) relating to the use or disclosure of Covered Entity PHI.

(d) Contractor agrees to comply with and be subject to the same restrictions, conditions and requirements that apply to Business Associate with respect to Covered Entity PHI.

(e) In accordance with 45 CFR §164.308(b)(2) and 45 CFR §164.502(e)(1)(ii), contractor shall ensure that any Downstream Contractors agree to the same restrictions, conditions and requirements that apply to

(f) Contractor with respect to Covered Entity PHI. Such agreements shall be documented in writing in accordance with the HIPAA Rules.

(g) Contractor shall make available Covered Entity PHI maintained by Contractor in a Designated Record Set to the applicable Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.524. Such information and access shall be provided by Contractor within five (5) Business Days of receiving a request from Business Associate. If Contractor receives from an Individual a request for access to PHI, Contractor shall notify Business Associate, in writing, of such request as soon as practicable, and in no event more than two (2) Business Days after receiving the request.

(h) Contractor shall make available Covered Entity PHI for agreement and incorporate any amendments to Covered Entity PHI in accordance with 45 CFR §164.526. If Contractor receives from an Individual a request to amend PHI, Contractor shall notify Business Associate, in writing, of such request as soon as practicable, and in no event more than two (2) Business Days after receiving such request.

(i) Contractor shall maintain and make available to Business Associate such information required in order to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528. Such information shall be provided by Contractor within five (5) Business Days of receiving a request from Business Associate. If

Contractor receives from an Individual a request for an accounting of disclosures, Contractor shall notify Business Associate, in writing, of such request as soon as practicable, and in no event more than two (2) Business Days after receiving such request.

(j) To the extent, if any, that Contractor is to carry out one or more of a Covered Entity's or Business Associate's obligations under the Privacy Rule, Contractor shall comply with the requirements of the HIPAA Rules that apply to such Covered Entity and/or Business Associate, as applicable, in the performance of such obligations.

(k) Contractor shall make Contractor's internal practices, books and records available to the Secretary for purposes of determining compliance with the HIPAA Rules. From time to time upon reasonable notice and during business hours, Business Associate may inspect the relevant facilities, systems, books and records of Contractor to monitor compliance with this Agreement.

(l) Contractor agrees to implement effective systems for Discovery and prompt reporting to Business Associate of any Security Breach. Contractor shall notify Business Associate without unreasonable delay, and in no case later than five (5) Business Days after becoming aware of or otherwise Discovering, any of the following events ("Notification Events"): (i) any Security Incident relating to Covered Entity PHI, (ii) any use or disclosure of Covered Entity PHI that is not provided for by this Agreement, the Underlying Agreement or Required By Law, (iii) any Security Breach relating to Unsecured PHI, or (iv) any access, use or disclosure of Covered Entity PHI in violation of this Agreement, the Underlying Agreement or the Privacy Rule. Such notification shall include, at a minimum, the following, to the extent possible:

- The date and time of each Notification Event;
- The date each Notification Event was Discovered;
- Identification of the PHI accessed, used or disclosed;
- Identification of each Individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used or disclosed
- Description of the Notification Event;
- Description of the mitigation steps taken to contain the Notification Event and an assessment of the level of compromise to PHI;
- Description of the plan to correct the compromises and to prevent reoccurrences of the Notification Event in the future;
- Such information as required in order to satisfy breach reporting obligations of Covered Entity, Business Associate or Contractor; and
- Such other information as Business Associate may reasonably request.

Contractor shall cooperate with Business Associate and Covered Entity to investigate the applicable Notification Event, mitigate or take corrective action to cure any Notification Events, and inform affected Individuals in compliance with applicable law, including, without limitation, Privacy Laws. Contractor shall be responsible for any and all costs associated with responding to and mitigating Notification Events that arise out of the acts or omissions of Contractor or any Downstream Contractor or of their officers, directors, employees, agents or contractors, or out of a breach of this Agreement by Contractor.

(m) If Contractor receives a subpoena, court or administrative order or other discovery request or mandate for release of Covered Entity PHI, Contractor shall immediately notify Business Associate, in writing, of the request, so that Business Associate and/or the applicable Covered Entity, as applicable, may seek a protective order or other appropriate remedy, and Contractor shall reasonably cooperate with Business Associate and/or the applicable Covered Entity, as applicable, should Business Associate and/or the applicable Covered Entity, as applicable, seek such protective order or other remedy. Contractor shall, to the extent possible, consult with Business Associate and the applicable Covered Entity prior to responding and shall advise Business Associate of how it intends to respond as soon as such determination is made.

3. **Permitted Uses and Disclosures by Contractor.**

(a) Contractor may use or disclose Covered Entity PHI only (i) as necessary to perform the Services of Subcontractor in accordance with this underlying Agreement, (ii) as Required By Law, provided that Contractor promptly provides advance written notice to Business Associate of its intent to disclose PHI so that Business Associate and/or the applicable Covered Entity, as applicable, may seek a protective order or other appropriate remedy, and that Contractor shall cooperate fully with Business Associate and/or the applicable Covered Entity, as applicable, should Business Associate and/or the applicable Covered Entity, as applicable, seek such protective order or other remedy, (iii) to a Downstream Contractor in accordance with and subject to 45 CFR §164.308(b)(2), 45 CFR §164.502(e), or the terms of this underlying Agreement.

(b) Contractor may, to the extent (if any) reasonably necessary in order for Contractor to perform its Services pursuant to this Agreement, use PHI of Covered Entity to de-identify the information in accordance with 45 CFR §164.514(a)-(c), so that the Health Information (i) does not identify an Individual, and (ii) with respect to which there is no reasonable basis to believe the information can be used to identify an Individual.

(c) When using, disclosing or requesting Covered Entity PHI, Contractor shall make reasonable efforts to limit the use, disclosure or request of the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request, and shall comply with the minimum necessary policies and procedures of the applicable Covered Entity. Contractor shall also comply with guidance as issued from time to time by the Secretary on minimum necessary standards under the Privacy Rule and with applicable minimum necessary requirements under the HIPAA Rules.

(d) Contractor may, to the extent (if any) reasonably necessary in order for Contractor to perform its Services pursuant to the Underlying Agreement, use Covered Entity PHI to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(e) Contractor shall not use or disclose Covered Entity PHI in any manner that would violate the Privacy Rule or an Upstream BAA if done by Business Associate, except for the specific uses and disclosures set forth in subsection (a) of this Section.

(f) **Obligations of Business Associate to Provide Information.** Business Associate shall use reasonable efforts to notify Contractor of:

(g) any terms of Upstream BAAs, to the extent that such terms may affect Contractor's use or disclosure of Covered Entity PHI pursuant to this Addendum;

(h) any limitation(s) in the notice of privacy practices of any Covered Entity under 45 CFR §164.520, to the extent that such limitation is known to Business Associate and may affect Contractor's use or disclosure of Covered Entity PHI pursuant to this Agreement;

(i) any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes are known to Business Associate and may affect

(j) Contractor's use or disclosure of Covered Entity PHI pursuant to this Agreement; and

(k) any restriction on the use or disclosure of PHI that a Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction is known to Business Associate and may affect Contractor's use or disclosure of Covered Entity PHI.

#### **4. Term and Termination.**

(a) The term of this Agreement shall be effective as of the Effective Date, and shall terminate on the earlier of: (i) termination of the Underlying Agreement, unless upon termination of the Agreement Contractor needs to access Covered Entity PHI in order to perform the Services pursuant to this Agreement, in which case termination of this Addendum pursuant to this subsection (a)(i) shall occur when Contractor no longer has any need to access Covered Entity PHI in order to perform the Services pursuant to this Agreement, (ii) termination as authorized in this Section 5 or in Section 7, or (iii) written notice by Business Associate to Contractor of the termination of the BAA.

(b) A breach or violation by Contractor of any material term of this Agreement shall constitute a breach and shall provide grounds for immediate termination of the Underlying Agreement by Business Associate, notwithstanding any terms of the Underlying Agreement or any other agreement to the contrary. If Business Associate determines that

(c) Contractor has violated or breached a material term of this Agreement, Business Associate may:

(1) Provide an opportunity for Contractor to cure the breach or end the violation within such time deemed appropriate by Business Associate in its sole discretion, and terminate this Agreement upon written notice to Contractor if Contractor does not cure the breach or end the violation within the time specified by Business Associate in its sole discretion; or

(2) Terminate this Agreement upon written notice to Contractor.

(d) Upon termination of this Agreement for any reason, Contractor shall, with respect to Covered Entity PHI:

(1) Return to Business Associate (or, if agreed to by Business Associate, destroy) all Covered Entity PHI that Contractor still maintains in any form, provided that if Contractor determines in good faith that returning or

destroying Covered Entity PHI is infeasible, Contractor shall immediately provide to Business Associate notification of the conditions that make return or destruction infeasible, and shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible;

- (2) Continue to use appropriate safeguards and comply with the Security Rule with respect to ePHI to prevent use or disclosure of the ePHI, other than as provided for in this Section 5, for as long as Contractor retains the ePHI; and
- (3) Not use or disclose any Covered Entity PHI that is retained by Contractor, other than for the purposes for which such PHI was retained and subject to the terms of this Agreement.
- (4) Upon termination of this Agreement with respect to Covered Entity PHI of a particular Covered Entity, the terms of subsection (c) of this Section shall apply with respect to the Covered Entity PHI of such Covered Entity, notwithstanding that this Agreement may continue in effect with respect to Covered Entity PHI of other Covered Entities.

5. **Indemnification; Remedies.**

(a) Contractor shall indemnify, hold harmless and defend Business Associate and its officers, directors, managers, members, employees, and agents, from and against any and all Damages incurred as a result of, or arising directly or indirectly out of or in connection with: (i) any breach of this Agreement by Contractor, (ii) any negligent, willful or improper use or disclosure of Covered Entity PHI by Contractor or any Downstream Contractor, (iii) any violation of any Privacy Law by Contractor or any Downstream Contractor, or (iv) Notification Events that arise out of the acts or omissions of Contractor or any Downstream Contractor.

(b) Contractor acknowledges and stipulates that its unauthorized use or disclosure of Covered Entity PHI would cause irreparable harm to Covered Entity and Business Associate, and in such event, Business Associate shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain Damages and injunctive relief, together with the right to recover from Contractor costs, including reasonable attorneys' fees, for any such breach of the terms and conditions of this Agreement or any such unauthorized use or disclosure.

(c) To the extent, if any, that Business Associate is obligated to indemnify, defend or hold harmless Contractor or any Downstream Contractor in the Underlying Agreement or in any other agreement to which Contractor and Business Associate are parties or are hereafter parties, such obligations shall not apply to any matter arising out of (i) Contractor's or any Downstream Contractor's breach of this Agreement or violation of any Privacy Law, or (ii) the use or disclosure of Covered Entity PHI by Contractor or any Downstream Contractor where such use or disclosure involved a breach of this Agreement or violation of any Privacy Law by Contractor or any Downstream Contractor.

(d) To the extent, if any, that Contractor has limited its liability, whether with a maximum recovery for damages or a disclaimer against any consequential, indirect or punitive damages, or other limitations (including, without limitation, caps on legal fees or other Damages) in the Underlying Agreement or in any other agreement to which Contractor and Business Associate are parties or are hereafter parties, such limitations shall exclude all Damages to Business Associate arising out of (i) Contractor's or any Downstream Contractor's breach of this Agreement or violation of any Privacy Law or (ii) the use or disclosure of Covered Entity PHI by Contractor or any Downstream Contractor.

6. **Agreement to Comply with Law.** The Parties hereby acknowledge that Privacy Laws relating to electronic data security and privacy are rapidly evolving and that amendment of the Underlying Agreement may be required to provide for different or additional procedures to ensure compliance with such developments. The Parties agree to cooperate in amending this Agreement from time to time as necessary for compliance with the requirements of the HIPAA Rules and any other Privacy Laws. Business Associate may terminate the Underlying Agreement upon written notice in the event Contractor fails or refuses to amend this Agreement as reasonably requested by Business Associate in order to comply with Privacy Laws.

7. **Effect on Agreement.** Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the Agreement shall remain in full force and effect. This Addendum shall control to the extent of any inconsistency between this Addendum and the Agreement.

8. **Independent Contractors.** Contractor is retained by Business Associate as an independent contractor, and not as an agent. The provisions of this Agreement are intended to create any partnership, joint venture, agency or employment relationship between Business Associate and Contractor or between any Party and the employees, agents or independent contractors of the other Party. Business Associate shall neither have nor exercise any direction or control over the manner or methods by which Contractor performs the services under this Agreement.

9. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules and other Privacy Laws. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules.

10. **Regulatory References.** A reference in this Agreement to any section or subsection of any Privacy Law shall mean the section or subsection as in effect or as amended.

11. **Notification.** All notifications by Contractor required under this Agreement shall be in writing addressed to Business Associate at the address for notices to Business Associate as set forth in this Agreement (or, in the absence of any such address, at its principal place of business), and shall be in addition to (and not in lieu of) any notifications pursuant to the Agreement. All notifications by Business Associate required under this Agreement shall be in writing addressed to Subcontractor at the address for notices to Contractor as set forth in the Agreement (or, in the absence of any such address, at its principal place of business), and shall be in addition to (and not in lieu of) any notifications pursuant to this Agreement.


12. **Survival.** The obligations of Contractor and the rights of Business Associate under Sections 2, 3, 5(c) and (d), 6, 7 and 12 of this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

**BUSINESS ASSOCIATE:**  
**CITY OF CAPE CORAL**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONTRACTOR:**  
**MEDICAL RISK SOLUTIONS, LLC dba**  
**MY HEALTH ONSITE**

By:   
Print Name: Ray Tomlinson  
Title: Member

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## EXHIBIT D

### BUSINESS ASSOCIATE AGREEMENT

**THIS CONTRACTOR BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between **CITY OF CAPE CORAL** ("Contractor"), and **MEDICAL RISK SOLUTIONS, LLC dba MY HEALTH ONSITE** ("Business Associate"). Business Associate and Contractor are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

### RECITALS

A. Business Associate furnishes services for Covered Entities involving the use or disclosure of protected health information ("PHI") of the Covered Entity and has entered into a business associate agreement or business associate addendum (each, as amended from time to time, an "Upstream BAA") with such Covered Entity.

B. Contractor has entered into an agreement for one or more Covered Entities serviced by Business Associate pursuant to which Contractor furnishes, or will furnish, certain services described therein involving the creation, receipt, maintenance or transmission of certain Health Information, some of which may constitute PHI of one or more of the Covered Entities.

C. Business Associate and Contractor intend to protect the privacy and provide for the security of Covered Entity PHI in compliance with the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 and 164 (the "HIPAA Rules"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and applicable state laws and regulations to the extent that they are not preempted ("State Laws").

D. The purpose of this Agreement is to satisfy certain standards and requirements of the HIPAA Rules relating to business associate agreements.

E. This Agreement is intended to supersede, as of the Effective Date, any prior business associate agreement between Business Associate and Contractor related to the Underlying Agreement or to any other agreement to furnish the Services to Business Associate.

**NOW THEREFORE**, in consideration of the premises and of the covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

13. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meanings (if any) given such terms in the applicable HIPAA Rules. A change to a HIPAA Rule which modifies any defined HIPAA Rule term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement. Terms defined above shall have the meanings set forth above, except as otherwise provided in this Agreement.

(a) **"Business Day"** shall mean a day other than a Saturday, Sunday or legal holiday under federal law.

(b) **“Covered Entity PHI”** shall mean (i) PHI created, received, maintained or transmitted by or on behalf of a Covered Entity, and (ii) PHI created, received, maintained or transmitted by Business Associate or Contractor (or any of their agents or Downstream Contractors) from or on behalf of a Covered Entity.

(c) **“Damages”** shall mean claims, losses, liabilities, costs, fines, penalties and other expenses (including, without limitation, reasonable attorneys’ fees).

(d) **“Data Aggregation”** shall have the meaning given such term in 45 CFR §164.501.

(e) **“Designated Record Set”** shall have the meaning given such term in 45 CFR §164.501.

(f) **“Discover”** and **“Discovery”** shall have the meanings given such terms in 45 CFR §164.410.

(g) **“Downstream Contractor”** shall mean a “Contractor” (as such term is defined in 45 CFR §160.103) that creates, receives, maintains or transmits Covered Entity PHI on behalf of Contractor.

(h) **“ePHI”** shall have the meaning given to the term “electronic protected health information” in 45 CFR §160.103.

(i) **“Health Information”** shall have the meaning given to such term in 45 CFR §160.103.

(j) **“Individual”** shall have the meaning given to such term in 45 CFR §160.103, and shall include, without limitation, a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(k) **“Notification Event”** shall have the meaning set forth in Section 2(k).

(l) **“Privacy Law”** shall mean any applicable law or regulation relating to the privacy, security or confidentiality of PHI, including, without limitation, the HIPAA Rules, HIPAA, the HITECH Act, and State Laws relating to the privacy, security or confidentiality of PHI or to breach notification.

(m) **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

(n) **“Protected Health Information”** or **“PHI”** shall have the meaning given to such term in 45 CFR §160.103.

(o) **“Required By Law”** shall have the meaning given to such term in 45 CFR §164.103 and shall be subject to any additional requirements created under the HIPAA Rules.

(p) **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(q) **“Security Breach”** shall mean a “breach” as defined in 45 CFR §164.402 with respect to Unsecured PHI.

(r) **“Security Incident”** shall have the meaning given such term in 45 CFR §164.304.

(s) **“Security Rule”** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(t) **“Unsecured PHI”** shall have the meaning given such term in 45 CFR §164.402.

14. **Obligations and Activities of Contractor.**

(a) Contractor shall not use or disclose Covered Entity PHI other than as permitted or required by this Agreement or as Required by Law.

(b) Contractor shall use appropriate safeguards, and comply with the Security Rule with respect to ePHI, to prevent use or disclosure of Covered Entity PHI other than as provided for by this Agreement.

(c) Contractor shall comply with all laws, rules and regulations (including, without limitation, all Privacy Laws) relating to the use or disclosure of Covered Entity PHI.

(d) Contractor agrees to comply with and be subject to the same restrictions, conditions and requirements that apply to Business Associate with respect to Covered Entity PHI.

(e) In accordance with 45 CFR §164.308(b)(2) and 45 CFR §164.502(e)(1)(ii), contractor shall ensure that any Downstream Contractors agree to the same restrictions, conditions and requirements that apply to

(f) Contractor with respect to Covered Entity PHI. Such agreements shall be documented in writing in accordance with the HIPAA Rules.

(g) Contractor shall make available Covered Entity PHI maintained by Contractor in a Designated Record Set to the applicable Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR §164.524. Such information and access shall be provided by Contractor within five (5) Business Days of receiving a request from Business Associate. If Contractor receives from an Individual a request for access to PHI, Contractor shall notify Business Associate, in writing, of such request as soon as practicable, and in no event more than two (2) Business Days after receiving the request.

(h) Contractor shall make available Covered Entity PHI for agreement and incorporate any amendments to Covered Entity PHI in accordance with 45 CFR §164.526. If Contractor receives from an Individual a request to amend PHI, Contractor shall notify Business Associate, in writing, of such request as soon as practicable, and in no event more than two (2) Business Days after receiving such request.

(i) Contractor shall maintain and make available to Business Associate such information required in order to provide an accounting of disclosures as necessary to satisfy Covered Entity’s obligations under 45 CFR §164.528. Such information shall be provided by Contractor within five (5) Business Days of receiving a request from Business Associate. If

Contractor receives from an Individual a request for an accounting of disclosures, Contractor shall notify Business Associate, in writing, of such request as soon as practicable, and in no event more than two (2) Business Days after receiving such request.

(j) To the extent, if any, that Contractor is to carry out one or more of a Covered Entity's or Business Associate's obligations under the Privacy Rule, Contractor shall comply with the requirements of the HIPAA Rules that apply to such Covered Entity and/or Business Associate, as applicable, in the performance of such obligations.

(k) Contractor shall make Contractor's internal practices, books and records available to the Secretary for purposes of determining compliance with the HIPAA Rules. From time to time upon reasonable notice and during business hours, Business Associate may inspect the relevant facilities, systems, books and records of Contractor to monitor compliance with this Agreement.

(l) Contractor agrees to implement effective systems for Discovery and prompt reporting to Business Associate of any Security Breach. Contractor shall notify Business Associate without unreasonable delay, and in no case later than five (5) Business Days after becoming aware of or otherwise Discovering, any of the following events ("Notification Events"): (i) any Security Incident relating to Covered Entity PHI, (ii) any use or disclosure of Covered Entity PHI that is not provided for by this Agreement, the Underlying Agreement or Required By Law, (iii) any Security Breach relating to Unsecured PHI, or (iv) any access, use or disclosure of Covered Entity PHI in violation of this Agreement, the Underlying Agreement or the Privacy Rule. Such notification shall include, at a minimum, the following, to the extent possible:

- The date and time of each Notification Event;
- The date each Notification Event was Discovered;
- Identification of the PHI accessed, used or disclosed;
- Identification of each Individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used or disclosed
- Description of the Notification Event;
- Description of the mitigation steps taken to contain the Notification Event and an assessment of the level of compromise to PHI;
- Description of the plan to correct the compromises and to prevent reoccurrences of the Notification Event in the future;
- Such information as required in order to satisfy breach reporting obligations of Covered Entity, Business Associate or Contractor; and
- Such other information as Business Associate may reasonably request.

Contractor shall cooperate with Business Associate and Covered Entity to investigate the applicable Notification Event, mitigate or take corrective action to cure any Notification Events, and inform affected Individuals in compliance with applicable law, including, without limitation, Privacy Laws. Contractor shall be responsible for any and all costs associated with responding to and mitigating Notification Events that arise out of the acts or omissions of Contractor or any Downstream Contractor or of their officers, directors, employees, agents or contractors, or out of a breach of this Agreement by Contractor.

(m) If Contractor receives a subpoena, court or administrative order or other discovery request or mandate for release of Covered Entity PHI, Contractor shall immediately notify Business Associate, in writing, of the request, so that Business Associate and/or the applicable Covered Entity, as applicable, may seek a protective order or other appropriate remedy, and Contractor shall reasonably cooperate with Business Associate and/or the applicable Covered Entity, as applicable, should Business Associate and/or the applicable Covered Entity, as applicable, seek such protective order or other remedy. Contractor shall, to the extent possible, consult with Business Associate and the applicable Covered Entity prior to responding and shall advise Business Associate of how it intends to respond as soon as such determination is made.

**15. Permitted Uses and Disclosures by Contractor.**

(a) Contractor may use or disclose Covered Entity PHI only (i) as necessary to perform the Services of Subcontractor in accordance with this underlying Agreement, (ii) as Required By Law, provided that Contractor promptly provides advance written notice to Business Associate of its intent to disclose PHI so that Business Associate and/or the applicable Covered Entity, as applicable, may seek a protective order or other appropriate remedy, and that Contractor shall cooperate fully with Business Associate and/or the applicable Covered Entity, as applicable, should Business Associate and/or the applicable Covered Entity, as applicable, seek such protective order or other remedy, (iii) to a Downstream Contractor in accordance with and subject to 45 CFR §164.308(b)(2), 45 CFR §164.502(e), or the terms of this underlying Agreement.

(b) Contractor may, to the extent (if any) reasonably necessary in order for Contractor to perform its Services pursuant to this Agreement, use PHI of Covered Entity to de-identify the information in accordance with 45 CFR §164.514(a)-(c), so that the Health Information (i) does not identify an Individual, and (ii) with respect to which there is no reasonable basis to believe the information can be used to identify an Individual.

(c) When using, disclosing or requesting Covered Entity PHI, Contractor shall make reasonable efforts to limit the use, disclosure or request of the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request, and shall comply with the minimum necessary policies and procedures of the applicable Covered Entity. Contractor shall also comply with guidance as issued from time to time by the Secretary on minimum necessary standards under the Privacy Rule and with applicable minimum necessary requirements under the HIPAA Rules.

(d) Contractor may, to the extent (if any) reasonably necessary in order for Contractor to perform its Services pursuant to the Underlying Agreement, use Covered Entity PHI to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(e) Contractor shall not use or disclose Covered Entity PHI in any manner that would violate the Privacy Rule or an Upstream BAA if done by Business Associate, except for the specific uses and disclosures set forth in subsection (a) of this Section.

(f) **Obligations of Business Associate to Provide Information.** Business Associate shall use reasonable efforts to notify Contractor of:

(g) any terms of Upstream BAAs, to the extent that such terms may affect Contractor's use or disclosure of Covered Entity PHI pursuant to this Addendum;

(h) any limitation(s) in the notice of privacy practices of any Covered Entity under 45 CFR §164.520, to the extent that such limitation is known to Business Associate and may affect Contractor's use or disclosure of Covered Entity PHI pursuant to this Agreement;

(i) any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes are known to Business Associate and may affect

(j) Contractor's use or disclosure of Covered Entity PHI pursuant to this Agreement; and

(k) any restriction on the use or disclosure of PHI that a Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction is known to Business Associate and may affect Contractor's use or disclosure of Covered Entity PHI.

**16. Term and Termination.**

(a) The term of this Agreement shall be effective as of the Effective Date, and shall terminate on the earlier of: (i) termination of the Underlying Agreement, unless upon termination of the Agreement Contractor needs to access Covered Entity PHI in order to perform the Services pursuant to this Agreement, in which case termination of this Addendum pursuant to this subsection (a)(i) shall occur when Contractor no longer has any need to access Covered Entity PHI in order to perform the Services pursuant to this Agreement, (ii) termination as authorized in this Section 5 or in Section 7, or (iii) written notice by Business Associate to Contractor of the termination of the BAA.

(b) A breach or violation by Contractor of any material term of this Agreement shall constitute a breach and shall provide grounds for immediate termination of the Underlying Agreement by Business Associate, notwithstanding any terms of the Underlying Agreement or any other agreement to the contrary. If Business Associate determines that

(c) Contractor has violated or breached a material term of this Agreement, Business Associate may:

(1) Provide an opportunity for Contractor to cure the breach or end the violation within such time deemed appropriate by Business Associate in its sole discretion, and terminate this Agreement upon written notice to Contractor if Contractor does not cure the breach or end the violation within the time specified by Business Associate in its sole discretion; or

(2) Terminate this Agreement upon written notice to Contractor.

(d) Upon termination of this Agreement for any reason, Contractor shall, with respect to Covered Entity PHI:

(1) Return to Business Associate (or, if agreed to by Business Associate, destroy) all Covered Entity PHI that Contractor still maintains in any form, provided that if Contractor determines in good faith that returning or

destroying Covered Entity PHI is infeasible, Contractor shall immediately provide to Business Associate notification of the conditions that make return or destruction infeasible, and shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible;

- (2) Continue to use appropriate safeguards and comply with the Security Rule with respect to ePHI to prevent use or disclosure of the ePHI, other than as provided for in this Section 5, for as long as Contractor retains the ePHI; and
- (3) Not use or disclose any Covered Entity PHI that is retained by Contractor, other than for the purposes for which such PHI was retained and subject to the terms of this Agreement.
- (4) Upon termination of this Agreement with respect to Covered Entity PHI of a particular Covered Entity, the terms of subsection (c) of this Section shall apply with respect to the Covered Entity PHI of such Covered Entity, notwithstanding that this Agreement may continue in effect with respect to Covered Entity PHI of other Covered Entities.

**17. Indemnification; Remedies.**

(a) Contractor shall indemnify, hold harmless and defend Business Associate and its officers, directors, managers, members, employees, and agents, from and against any and all Damages incurred as a result of, or arising directly or indirectly out of or in connection with: (i) any breach of this Agreement by Contractor, (ii) any negligent, willful or improper use or disclosure of Covered Entity PHI by Contractor or any Downstream Contractor, (iii) any violation of any Privacy Law by Contractor or any Downstream Contractor, or (iv) Notification Events that arise out of the acts or omissions of Contractor or any Downstream Contractor.

(b) Contractor acknowledges and stipulates that its unauthorized use or disclosure of Covered Entity PHI would cause irreparable harm to Covered Entity and Business Associate, and in such event, Business Associate shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain Damages and injunctive relief, together with the right to recover from Contractor costs, including reasonable attorneys' fees, for any such breach of the terms and conditions of this Agreement or any such unauthorized use or disclosure.

(c) To the extent, if any, that Business Associate is obligated to indemnify, defend or hold harmless Contractor or any Downstream Contractor in the Underlying Agreement or in any other agreement to which Contractor and Business Associate are parties or are hereafter parties, such obligations shall not apply to any matter arising out of (i) Contractor's or any Downstream Contractor's breach of this Agreement or violation of any Privacy Law, or (ii) the use or disclosure of Covered Entity PHI by Contractor or any Downstream Contractor where such use or disclosure involved a breach of this Agreement or violation of any Privacy Law by Contractor or any Downstream Contractor.



(d) To the extent, if any, that Contractor has limited its liability, whether with a maximum recovery for damages or a disclaimer against any consequential, indirect or punitive damages, or other limitations (including, without limitation, caps on legal fees or other Damages) in the Underlying Agreement or in any other agreement to which Contractor and Business Associate are parties or are hereafter parties, such limitations shall exclude all Damages to Business Associate arising out of (i) Contractor's or any Downstream Contractor's breach of this Agreement or violation of any Privacy Law or (ii) the use or disclosure of Covered Entity PHI by Contractor or any Downstream Contractor.

18. **Agreement to Comply with Law.** The Parties hereby acknowledge that Privacy Laws relating to electronic data security and privacy are rapidly evolving and that amendment of the Underlying Agreement may be required to provide for different or additional procedures to ensure compliance with such developments. The Parties agree to cooperate in amending this Agreement from time to time as necessary for compliance with the requirements of the HIPAA Rules and any other Privacy Laws. Business Associate may terminate the Underlying Agreement upon written notice in the event Contractor fails or refuses to amend this Agreement as reasonably requested by Business Associate in order to comply with Privacy Laws.

19. **Effect on Agreement.** Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the Agreement shall remain in full force and effect. This Addendum shall control to the extent of any inconsistency between this Addendum and the Agreement.

20. **Independent Contractors.** Contractor is retained by Business Associate as an independent contractor, and not as an agent. The provisions of this Agreement are intended to create any partnership, joint venture, agency or employment relationship between Business Associate and Contractor or between any Party and the employees, agents or independent contractors of the other Party. Business Associate shall neither have nor exercise any direction or control over the manner or methods by which Contractor performs the services under this Agreement.

21. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules and other Privacy Laws. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules.

22. **Regulatory References.** A reference in this Agreement to any section or subsection of any Privacy Law shall mean the section or subsection as in effect or as amended.

23. **Notification.** All notifications by Contractor required under this Agreement shall be in writing addressed to Business Associate at the address for notices to Business Associate as set forth in this Agreement (or, in the absence of any such address, at its principal place of business), and shall be in addition to (and not in lieu of) any notifications pursuant to the Agreement. All notifications by Business Associate required under this Agreement shall be in writing addressed to Subcontractor at the address for notices to Contractor as set forth in the Agreement (or, in the absence of any such address, at its principal place of business), and shall be in addition to (and not in lieu of) any notifications pursuant to this Agreement.

24. **Survival.** The obligations of Contractor and the rights of Business Associate under Sections 2, 3, 5(c) and (d), 6, 7 and 12 of this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

**BUSINESS ASSOCIATE:**  
**MEDICAL RISK SOLUTIONS, LLC dba**  
**MY HEALTH ONSITE**

**CONTRACTOR:**  
**CITY OF CAPE CORAL**

By:   
Print Name: Ray Tomlinson  
Title: Member

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT E**

### **Nondisclosure and Confidentiality Agreement**

This Nondisclosure Confidentiality Agreement (the "Agreement") is entered into by and between **City of Cape Coral**, with its principal offices at **1015 Cultural Park Boulevard, Cape Coral, FL 33990** ("Disclosing Party") and **Medical Risk Solutions, LLC, dba My Health Onsite** located at **2710 Rew Circle, Suite 200, Ocoee, FL 34761** ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. **Definition of Confidential Information.** For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.
2. **Exclusions from Confidential Information.** Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; (d) is disclosed by Receiving Party with Disclosing Party's prior written approval; or (e) which is otherwise required to be disclosed by applicable law or applicable regulation or pursuant to a court order.
3. **Obligations of Receiving Party.** Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the management an Employee Health Center for the City of Cape Coral and its employees, retirees and dependents by the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately upon termination of this Agreement if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

**Disclosing Party – City of Cape Coral**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Typed or Printed Name)

Date: \_\_\_\_\_

**Receiving Party – Medical Risk Solutions, LLC dba My Health Onsite**

\_\_\_\_\_ (Signature)

Ray Tomlinson (Typed or Printed Name)

Date: 08-08-2019

## **EXHIBIT E**

### **Nondisclosure and Confidentiality Agreement**

This Nondisclosure Confidentiality Agreement (the "Agreement") is entered into by and between **Medical Risk Solutions, LLC, dba My Health Onsite** located at **2710 Rew Circle, Suite 200, Ocoee, FL 34761** ("Disclosing Party") and **City of Cape Coral**, with its principal offices at **1015 Cultural Park Boulevard, Cape Coral, FL 33990** ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. **Definition of Confidential Information.** For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.
2. **Exclusions from Confidential Information.** Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; (d) is disclosed by Receiving Party with Disclosing Party's prior written approval; or (e) which is otherwise required to be disclosed by applicable law or applicable regulation or pursuant to a court order..
3. **Obligations of Receiving Party.** Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the management an Employee Health Center for the City of Cape Coral and its employees, retirees and dependents by the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately upon termination of this Agreement if Disclosing Party requests it in writing.

4. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

**Disclosing Party - - Medical Risk Solutions, LLC dba My Health Onsite**

Ray Tomlinson (Signature)

Ray Tomlinson (Typed or Printed Name)

Date: 08-08-2019

**Receiving Party -- City of Cape Coral**

\_\_\_\_ (Signature)

\_\_\_\_ (Typed or Printed Name)

Date: \_\_\_\_\_



<b>Item Number:</b>	<b>A.(3)</b>
<b>Meeting Date:</b>	<b>8/12/2019</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 34-19 (ZA 19-0007\*) Second and Final Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
  - If Yes, Priority Goals Supported are listed below.
  - If No, will it harm the intent or success of the Strategic Plan?

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**Hearing Examiner Recommendation:** The Hearing Examiner recommends approval of the application for rezoning contingent upon approval of the LUDR revisions by Council.

**Staff Recommendation:** Staff recommends approval.

**SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance amending the City of Cape Coral Official Zoning Map by rezoning property located at the intersection of Agualinda Boulevard and Beach Parkway from Marketplace Residential (MR) to Residential Multi-Family Low (RML) and Commercial (C) zones.

**LEGAL REVIEW:**

Brian R. Bartos, Assistant City Attorney

**EXHIBITS:**

Ordinance 34-19  
Back up materials from the HEX Hearing  
Hearing Examiner Recommendation Order  
Staff Presentation  
Chart displayed at the 7/29 meeting

**PREPARED BY:**

Division-      Department-      City  
   Attorney



**SOURCE OF ADDITIONAL INFORMATION:**

Wyatt Daltry, Planning Team Coordinator

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Ordinance 34-19 ZA19-0007	Ordinance
▣ Hearing Examiner Recommendation Order	Backup Material
▣ Back up material from HEX Hearing	Backup Material
▣ Staff Presentation	Backup Material
▣ Chart displayed at the 7/29 meeting	Backup Material

ORDINANCE 34 – 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL OFFICIAL ZONING DISTRICT MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL BY REZONING PROPERTY DESCRIBED AS BLOCKS 4759A, 4760A, AND 4761A, UNIT 70, CAPE CORAL SUBDIVISION, FROM MARKETPLACE RESIDENTIAL (MR) TO RESIDENTIAL MULTI-FAMILY LOW (RML) ZONE; BY REZONING PROPERTY DESCRIBED AS BLOCK 4762A, UNIT 70, CAPE CORAL SUBDIVISION, FROM MARKETPLACE RESIDENTIAL (MR) TO COMMERCIAL (C) ZONE; PROPERTY IS LOCATED AT 4128, 4129, 4232, AND 4233 AGUALINDA BOULEVARD; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council has considered testimony, evidence, documentation and the application submitted by the CITY OF CAPE CORAL for rezoning the below-described property from MARKETPLACE RESIDENTIAL (MR) TO RESIDENTIAL MULTI-FAMILY LOW (RML) AND COMMERCIAL (C) ZONE, and considered the recommendations of the Hearing Examiner and City Staff, and has considered the City of Cape Coral Comprehensive Plan with this zoning request.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

Section 1. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described as follows:

MARKETPLACE RESIDENTIAL (MR) TO MULTI-FAMILY RESIDENTIAL LOW (RML) ZONE

BLOCKS 4759A, 4760A, AND 4761A, UNIT 70, CAPE CORAL SUBDIVISION, PLAT BOOK 22, PAGES 68 AND 72 OF THE PUBLIC RECORDS OF LEE COUNTY.

MARKETPLACE RESIDENTIAL (MR) TO COMMERCIAL (C) ZONE

BLOCK 4762A, UNIT 70, CAPE CORAL SUBDIVISION, PLAT BOOK 22, PAGES 68 AND 72 OF THE PUBLIC RECORDS OF LEE COUNTY.

and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

That the amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

Section 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

Section 3. Effective Date. This ordinance shall become effective on the date that Ordinance 17-19 becomes effective.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO  
GUNTER  
CARIOSCIA  
STOUT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NELSON  
STOKES  
WILLIAMS  
COSDEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:



\_\_\_\_\_  
BRIAN R. BARTOS  
ASSISTANT CITY ATTORNEY  
ord\ZA19-0007

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL

HEARING EXAMINER RECOMMENDATION

ZA HEX Recommendation 5-2019

Rendered June 10, 2019

DCD Case # ZA 19-0007

**APPLICATION FOR:** Rezoning of four (4) properties from Marketplace Residential Zoning District (MR) to the Residential Multi-Family Low (RML) zoning district for 16.60 acres and from MR to Commercial (C) district for 4.54 acres.

**NAME OF OWNER:** 4 Corners CC, LLC, Representative Russ Whitney<sup>1</sup>

**NAME OF APPLICANT:** City of Cape Coral

**APPLICANT'S REPRESENTATIVE:** Wyatt Daltry, AICP, Planning Team Coordinator

**PROPERTY LOCATIONS:** 4128, 4129, 4232, & 4233 Aqualinda Boulevard, Cape Coral  
All of Blocks 4759A, 4760A, 4761A, 4762A  
Unit 70, Cape Coral Subdivision  
The individual tracts range in size from 4.5 to 6.0 acres.

**STRAP NUMBERS:** 09-45-23-C1-04759.A000 (SE corner, 5.14 acres)  
09-45-23-C1-04760.A000 (NE corner, 6.09 acres)  
09-45-23-C1-04761.A000 (NW corner, 4.37 acres)  
09-45-23-C1-04762.A000 (SW corner, 4.54 acres)

**URBAN SERVICE AREA:** Transition

**WATER AND SEWER:** City service

**STREET ACCESS:** Aqualinda Boulevard (collector roadway) & Beach Parkway  
(collector roadway)

**CURRENT ZONING:** Marketplace Residential (MR): all properties

**PROPOSED ZONING (PENDING)<sup>2</sup>:** Commercial (C) for SW Corner (Block 4762A;  
Residential Multi-Family Low (RML) for NW, NE, SE corners  
(Blocks 4759A, 4760A, 4761A)

**FUTURE LAND USE DESIGNATION:** Multi-Family Residential (MF) for NW, NE, SE  
Corners (Blocks 4759A, 4760A, 4761 A);  
Commercial/Professional (CP) for SW Corner  
(Block 4762A)

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<sup>1</sup> Mr. Whitney represented that he is a minority owner in the LLC as well as a consultant to the LLC on this matter.

<sup>2</sup> This Zoning Classification has not been approved by City Council. Accordingly, if the proposed Zoning Classification is not approved by City Council, this Recommendation is null and void and of no effect as to the proposed rezoning to RML.

**HEARING DATE:** June 4, 2019

**I. SUMMARY OF REQUEST**

The Applicant requests a recommendation of approval for a City-initiated rezone four properties from the Marketplace Residential zoning district (MR) to the Residential Multi-Family Low (RML) district for 16.60 acres and from MR to Commercial (C) district for 4.54 acres (collectively, "the Four Corners Property").

The Owner's Representative testified that he supports this rezoning Application.

**II. SUMMARY OF HEARING EXAMINER RECOMMENDATION**

The Hearing Examiner recommends **approval** of the application for rezoning, **contingent upon approval of the LUDR revisions by Council**. As of the date of the HEX hearing, these revisions were scheduled to be considered at hearing by City Council on July 22 and August 5, 2019.

**III. NOTICE OF HEARING**

Based on the testimony of City Staff Wyatt Daltry at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article VIII, Section 8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

**IV. PARTICIPANTS IN HEARING**

**CITY STAFF/APPLICANT'S REPRESENTATIVES:** Wyatt Daltry, AICP<sup>3</sup>, Planning Team Coordinator; Brian Bartos, Esquire, City Attorney's Office; and Robert Pederson, Planning Manager

**OWNER'S REPRESENTATIVE AND CONSULTANT:** Russ Whitney

**CITY CLERK'S OFFICE:** Patricia Sorrels

**MEMBERS OF PUBLIC TESTIFYING AT HEARING:** Yolanda Olsen; John McDevitt; Randy Landers; John Evans (see discussion below)

**STAFF MEETINGS/CORRESPONDENCE FROM PUBLIC:** Mr. Daltry testified that he has had various meetings with members of the Southwest Cape Coral Association and others prior to the Hearing; also, Rich Moutinho sent in an email of opposition to the proposed rezoning.

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<sup>3</sup> Based upon his prior testimony at zoning hearings and the prior recitation of his qualifications, certifications and education contained in his C.V. which is on file with the City Clerk's Office, the Hearing Examiner qualified Mr. Daltry as an expert witness for land planning issues relevant to this Hearing.

APPLICANT'S/CITY STAFF'S EXHIBITS: previously submitted

**V. REVIEW OF STATUTORY AND LUDR REQUIREMENTS**

Authority. Section 163.3194, F.S. and LUDR §9.3.b.9 require the Hearing Examiner to review and make a recommendation to City Council about consistency of a rezoning application to the City's adopted Comprehensive Plan and whether the requested rezoning should be granted.

Standard of Review of Evidence; Hearsay Evidence. The Hearing Examiner's decision is based on whether the Application meets all applicable requirements of the Comprehensive Plan, City Code of Ordinances, and the LUDRs, upon review of the entirety of the record.

In rendering this Recommendation, the Hearing Examiner must consider all of competent substantial evidence in the record, as defined by LUDR § 8.3.1.C.3.b. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient by itself to support a finding unless it would be admissible over objection in court.

Rezoning Standards. In reviewing the rezoning application for consistency with the Comprehensive Plan of the City of Cape Coral, the Hearing Examiner must apply the general standards set forth in LUDR § 8.7.3.

Site Visit. The Hearing Examiner performed a Site Visit in accordance with LUDR provisions.

**VI. TESTIMONY AT HEARING**

Applicant's Incorporation of Staff Report and Staff Testimony

The Applicant's Representative incorporated his Case Report ("Staff Input") into his presentation and requested the Hearing Examiner to recommend that the City Council find Staff Input as findings of fact.

Hearing Examiner's Recommended Findings of Fact.

All documentary and oral testimony referenced below is accepted by the Hearing Examiner as recommended findings of fact, except as specifically noted otherwise. The Hearing Examiner recommends that the City Council accept such testimony as findings of fact to substantiate its decision hereunder.

**VII. DISCUSSION**

Summary of Application

Staff testified that City Council directed him in February, 2019, to proceed with a rezone of the Four Corners Property pursuant to the requirements of Ordinance 2-19 which was adopted on April 1, 2019, approximately two (2) months prior to

June 10, 2019

this HEX Hearing. *Inter alia*, Ordinance 2-19 amended the Future Land Use Map and thereby altered the Future Land Use Designations for the Four Corners Property as set forth above.

Staff further testified that City Council direction was to retain the density which is at this time allowed on the properties through the MR zoning classification, i.e., 16 dwelling units per acre, in the rezone. Staff testified that these proposed zoning classifications comply therewith.

#### Owner's Representative

Russ Whitney testified that, as currently zoned, the Owner could build commercial uses which would exceed the size of the Edison Mall, which he said would be absurd for the neighborhood.

He further testified that, although traffic could increase by 300 cars in the proposed RML rezoning, the cars would be leaving at various times so it would not be a significant increase. He further testified that the Owner's intention is to bring in a Mom-and-Pop restaurant or a Starbucks rather than a big franchise restaurant or a gas station on the proposed commercially zoned property.<sup>4</sup> He further testified that he has lived in Cape Coral for 37 years and has done significant work in raising money for community purposes.

#### Public Input

Yolanda Olsen testified that she was requesting that a condition be placed on the approval of the proposed rezoning that the existing bike lanes at Four Corners be left in place. She extensively quoted the City Comprehensive Plan and other City regulations and presented various hand-outs which were from the City website. Following closure of public input, Mr. Brian Bartos of the City Attorney's Office testified that the City cannot place conditions on rezonings.

John McDevitt testified that, if a City referendum were held on whether 1500 multi-family units are needed, the residents would not agree. Secondly, he testified that the zoning hearing signs were not large enough. Thirdly, he testified that, although he was not opposed to rezoning one of the tracts to commercial, commercial could have relocated onto that site since the 60s and did not do so.

Randy Landers presented four slides, which are available for viewing in the HEX video. He questioned the need for additional commercial space when there are vacant commercial spaces, and testified that he did not believe that Beach Parkway and Agualinda qualify as major thoroughfares.<sup>5</sup> He also requested that the height of the proposed development be limited.

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<sup>4</sup> A rezoning does not bind the Applicant or Owner to any specific development rules so long as it complies with the requirements of the property's zoning district. Accordingly, the testimony by Mr. Whitney regarding future development possibilities after a rezoning was not considered as part of the Hearing Examiner's Recommendation herein.

<sup>5</sup> Staff testified that, as collector roads, these two roads comply with the City regulations for the proposed rezonings.



John Evans testified that he is concerned about others using the intersection as a cut-through street, expressed concerns about traffic (especially with school traffic), noise pollution, parking, garbage disposal, water run-off and similar issues with the proposed rezoning.

VIII. **CONSIDERATION OF GENERAL STANDARDS SET FORTH IN LUDR SECTION 8.7.3**

1. *The extent to which the value of the property is diminished by the proposed land use restriction or zoning of the property.*

Staff testified that, since the Four Corners Property has incompatible land use and zoning, it cannot be developed at this time. Accordingly, the proposed rezoning from MR to RML and C would increase the value of the property.

Based on staff's testimony, the Hearing Examiner recommends that City Council find that the value of the properties **will not be diminished** by the rezoning.

2. *The extent to which the removal of a proposed land use restriction or change in zoning depreciates the value of other property in the area.*

Staff testified that the prior zoning on this property allowed for non-residential uses and multi-family residential uses (in a mixed-use scenario) for a significant period of time. In addition, Policy 8.3 of the City's Comprehensive Plan (discussed in more detail below) requires various protections to be incorporated into commercial developments which are adjacent to residential uses.

For the reason set forth above, the Hearing Examiner recommends a finding by the City Council that the proposed rezoning is **not anticipated** to depreciate the value of other properties in the area.

3. *The suitability of the property for the zoning purpose or land use restriction imposed on the property as zoned.*

Staff testified that the proposed zoning district would be consistent with the future land use map classifications of Commercial/Professional and Multi-Family Residential. The relatively small size of each of the Four Corners tracts would reduce the possible extent of development, which would in turn lessen the impact of potential development on surrounding residential uses.

Finally, staff pointed out that, as the site is an intersection of collector roadways, not local roads, the potential for potential development to intrude onto the surrounding single-family residential neighborhoods is lessened, as all access points to each corner would be likely be located off of the collector roads.

Based on such testimony, the Hearing Examiner recommends that City Council find that the properties **are not suitable** for the current zoning but are **well suited** for the proposed rezoning.

4. *The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning.*

As set forth by staff and testified to by the speakers at public input, single family residential uses are present in in all directions. Staff testified that small-scale multi-family residential uses and small scale commercial uses can be compatible with single-family residential uses.

For the reasons set forth above, the Hearing Examiner recommends that City Council find the proposed rezoning is **compatible** with the character of the neighborhoods, existing uses, and zoning of nearby and surrounding properties.

5. *The relative gain to the community as compared to the hardship, if any imposed, by the proposed land use restrictions or from rezoning said property.*

Staff testified that the effect of this rezoning is to slightly increase the City's commercial and multi-family residential stock in an area which lacks both. While several speakers at Public Input presented testimony regarding concerns about the proposed rezoning, the Hearing Examiner opines that these concerns can be addressed at the development stage, either with staff or (depending on the type of development) through the Hearing process.

After considering all of the testimony herein, the Hearing Examiner recommends that City Council find the proposed rezoning would **create more gains than hardships** to the community.

6. *Community need for the use proposed by the zoning or land use restriction.*

Staff testified that the act of providing consistency between the current future land use and the proposed zoning is valuable to the community, as it would allow for development. In addition, staff testified that the City has a long-standing commercial and multi-family square-footage shortfall; while small, the proposed rezone would help to reduce this deficiency.

Based on the foregoing testimony, the Hearing Examiner recommends that City Council find the **community needs** the uses proposed by the Applicant.

June 10, 2019

7. Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property.

Staff testified that the property has always been vacant.

8. The extent to which the proposed land use restriction or zoning promotes the health, safety, morals, or general welfare of this community.

Staff testified that approval of this rezone should have a negligible effect upon the health, general welfare, safety, or morals of the community; had there been development under the currently existing classification<sup>6</sup> and the prior Future Land Use Designation, the community would have been impacted in a highly significant manner.<sup>7</sup>

Based upon the foregoing testimony, the Hearing Examiner recommends that City Council find that this rezoning **will promote** the health, safety and general welfare of the community.

9. The extent to which the proposed land use, land use restriction, or zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan

Staff testified that the impact on infrastructure for development on this site are anticipated to be negligible, since as facility capacity exists for the transportation and utility infrastructure network.

The Hearing Examiner recommends that City Council find the proposed rezoning will have **no negative impact** on level of service standards for public facilities hereunder.

10. Whether the proposed land use restriction, removal of a restriction, or zoning is consistent with the City of Cape Coral Comprehensive Land Use Plan.

#### **Future Land Use Element**

Staff testified that the proposed rezoning is consistent with Objective 2 of the Future Land Use Element, as set forth below:

**OBJECTIVE 2:** *Location of New Commercial Development: New commercial development shall be so located to provide minimal*

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<sup>6</sup> which is not possible at this time due to its incompatibility with the current Future Land Use Designation

<sup>7</sup> Staff testified that the previous FLU for the site, CAC, could have permitted a maximum of 283 dwelling units and 1.84 million square feet of non-residential development (a minimum of 460,000 square feet). The proposed rezone could permit a maximum of 265 dwelling units and 197,000 square feet of non-residential development.

*vehicle trip lengths, at or near transportation nodes, and compatible with neighboring residential uses.*

Staff testified that, if developed, the Four Corners Property would be near to an established professional employment center which is anchored by government uses, while providing commercial development adjacent to existing commercial development.

*Policy 1.7:* *The City has identified a shortfall of multi-family residential housing stock in the community. To provide better guidance in identifying properties which are appropriate for multi-family residential development, to reduce this shortfall, locational guidelines have been developed. The following locational guidelines are as follows:*

*1.) Proximity to major roadways.*

*To prevent the establishment of multi-family residential development far in the middle of predominantly single-family neighborhoods, an appropriate location for multi-family residential development is adjacent to or within ¼ mile of major roadways such as arterial and collector roadways, as identified by Figure 7 City Roadway Classifications.*

As set forth above, Beach Parkway and Agualinda Boulevard are both collector roadways.

*2.) Proximity to non-residential land uses.*

*An important consideration for siting multi-family residential development is the need for multi-family residential uses to be in proximity to major employment centers. Providing housing near commercial uses can result in shorter trips, lessened traffic generation by workers, and providing multiple transportation mode options (walking, bicycling, automobile, bus) for employees.*

*An appropriate location for multi-family residential development is adjacent to or within ¼ mile of non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.*

Staff testified that the proposed low-density multi-family rezoning is across the street from an area with a Commercial/ Professional Future Land Use Map Designation.

June 10, 2019

Staff further testified that any development arising from this rezoning would need to be accomplished in accordance with Policy 8.3, Future Land Use Element, as follows:

***Policy 8.3:** Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.*

As set forth in Public Input during the Hearing and as testified to by staff, rezoning in close proximity to existing single-family residential development understandably causes concern among nearby residents. Staff testified that, in response, the City has developed Policy 8.3 to address this concern. This policy is implemented in the LUDRs (as may be amended in the future).

For all of the above reasons, the Hearing Examiner recommends that the City Council find the proposed rezoning to be **compatible** with the future land use classification that currently exists for the subject properties and the proposed rezoning to be **consistent** with the goals and objectives of the Comprehensive Plan.

#### **IX. CONDITIONAL RECOMMENDATION OF APPROVAL**

The proposed rezoning hereunder to the RML Zoning District Classification is contingent upon approval of this Zoning District by City Council. Staff has represented to the HEX that it is anticipated that the final hearing for the creation of such District is anticipated to occur in August, 2019. Accordingly, if the proposed Zoning Classification is not approved by City Council, that portion of this Recommendation is null and void and of no effect and it would be the Recommendation of the Hearing Examiner that that the City Council not approve the rezoning requested by staff herein.

June 10, 2019

Since the Commercial Zoning District is in effect at this time, the Hearing Examiner is not giving a conditional recommendation of approval for the proposed rezoning of the one indicated tract of Four Corner.

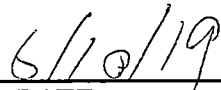
Based upon the testimony and documentary exhibits presented during the Hearing, and with the above caveat, the Hearing Examiner recommends that:

1. the City Council find the requested rezoning **is consistent** with the requirements of the Comprehensive Plan of the City of Cape Coral; and
2. the City Council **approve** the requested rezoning.

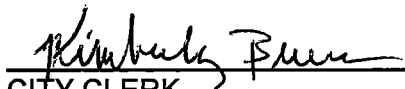
This Recommendation is effective on the date specified below.

**HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA**

  
\_\_\_\_\_  
ANNE DALTON, ESQUIRE

  
\_\_\_\_\_  
DATE

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

CITY OF CAPE CORAL  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
MEMORANDUM

TO: A. John Szerlag, City Manager

FROM: Wyatt Daltry, Planning Team Coordinator

DATE: May 17, 2019

SUBJECT: City-initiated Rezoning Request, ZA 19-0007

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Executive Summary

The City initiated this rezone at Council's direction to provide consistency between the Future Land Use Map classification and zoning designations of 21.14 acres in Cape Coral.

Background

This rezone is in response to a request by the Cape Coral City Council at the February 4<sup>th</sup> Council meeting to rezone three of the four corners with the Residential Multi-Family Low zoning district (maximum density, 16 units/acre) and to rezone the fourth corner as Commercial.

On April 1<sup>st</sup>, the Cape Coral City Council adopted Ordinance 2-19, which amended the future land use of the Four Corners site. The NW, NE, and SE corners were amended to Multi-Family Residential, while the SW corner was amended to Commercial/Professional. The proposed rezone request would provide zoning districts that are consistent with the future land use.

Thank you for your consideration of this rezone, and feel free to contact me at (239) 573-3160 if you have any questions.

WAD/wad(ZA19-0007memoofintent)  
Attachment



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0553

Case # 2A19-0007

REQUEST TO PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY AND COUNCIL  
FOR A REZONING

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

OWNER OF PROPERTY

Owner: Four Corners CC LLC; City of Cape Coral is applicant

Address: PO BOX 101526

City Cape Coral State: FL Zip 33910

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE

Wyatt Daltry, Planning Team Coordinator

Address: 1015 Cultural Park Boulevard

City Cape Coral State: FL Zip 33915-0027

Phone: (239) 574-0776

Email: \_\_\_\_\_

Unit 70 Block 4759A-4762A Lot(s) \_\_\_\_\_ Subdivision Cape Coral

Address of Property 4128, 4129, 4232, and 4233 Agualinda Boulevard

Current Zoning MR Plat Book 22 , Page 68, 72

Proposed Zoning C and RML Strap Number multiple

**THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS**

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

John Sterlag  
NAME (PLEASE TYPE OR PRINT)

[Signature]  
APPLICANT'S SIGNATURE

(SIGNATURE MUST BE NOTARIZED)





DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0553

Case # 2A19-0007

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT

Wyatt Daltry

(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL  
PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR  
Rezoning Request

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT	BLOCK	LOT(S)	SUBDIVISION
OR LEGAL DESCRIPTION	<u>Unit 70, Blocks 4759A, 4760A, 4761A, 4762A, Cape Coral Subdivision</u> <u>Plat Book 22, Pages 68 and 72</u>		

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

John Sterlag  
PROPERTY OWNER (Please Print)

Wyatt Daltry  
PROPERTY OWNER (Please Print)

PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 24 day of May, 2019 by  
\_\_\_\_\_ who is personally known or produced  
as identification.



Exp. Date: 7/6/20 Commission Number: 66-009419

Signature of Notary Public:

Printed name of Notary Public:

Rachel Murphy  
Rachel Murphy

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

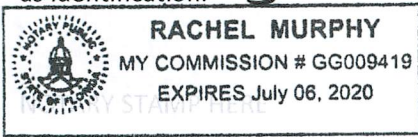


DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0553

Case # 2A 19-0007

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 24 day of May, 2019 by  
John Sterlag who is personally known or produced  
as identification.



Exp. Date: 7/6/20 Commission Number: 66009419  
Signature of Notary Public: Rachel Murphy  
Printed name of Notary Public: Rachel Murphy



DEPARTMENT OF COMMUNITY DEVELOPMENT

REQUEST FOR REZONING APPLICATION

Questions: 239-574-0553

Case # 2A19-0007

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

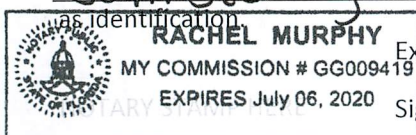
I hereby acknowledge that I have read and understood the above affidavit on the 24 day of May, 20 19

John Szerlag  
NAME (PLEASE TYPE OR PRINT)

[Signature]  
APPLICANT'S SIGNATURE

STATE OF FL COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 24 day May, 20 19 by John Szerlag who is personally known or



Exp. Date: 7/6/20 Commission Number: 66609419

Signature of Notary Public: [Signature]

Printed name of Notary Public: Rachel Murphy

**STAFF REPORT**

ZA19-0007

DOCKET/CASE/APPLICATION NUMBER

Wyatt Daltry, AICP, Planning Team  
Coordinator (239) 573-3160,  
wdaltry@capecoral.net

STAFF PLANNER

City of Cape Coral

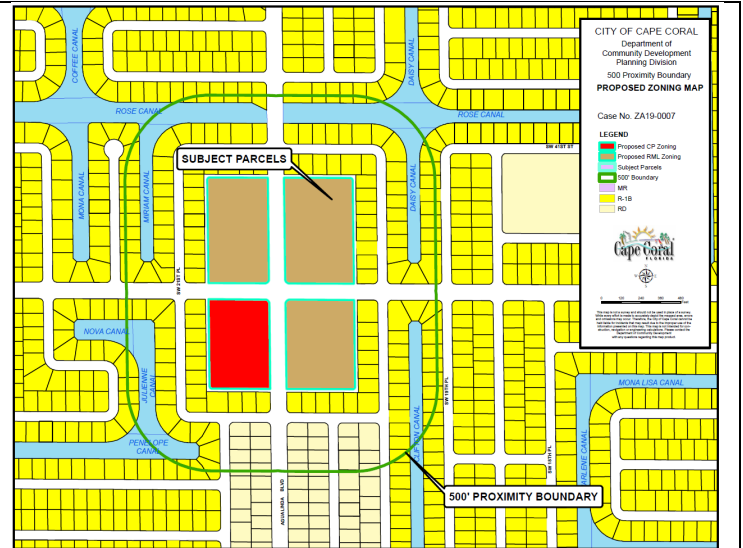
APPLICANT

1015 Cultural Park Boulevard  
Cape Coral, FL 33915-0027

PROPERTY ADDRESS OF APPLICANT

**SUMMARY OF REQUEST**

City-initiated rezone for four properties from the Marketplace Residential zoning district (MR) to the Residential Multi-Family Low (RML) district for 16.60 acres and from MR to Commercial (C) district for 4.54 acres.

**STAFF RECOMMENDATION:****APPROVAL****Positive Aspects of Application:**

- Request conforms with future land use map amendments that were recently approved on 4/1/19
- Properties are at intersection of collector roadways, Agualinda Boulevard and Beach Parkway
- Centralized utilities are present in area
- Area has had non-residential or mixed-use future land use and zoning designations since at least 1989; current future land use and zoning proposal is likely the least intensive non-single-family alternative for site

**Negative Aspects of Application:**

- Surrounding area is well-developed with single-family residences

**Mitigating Factors:**

- Area has had non-residential or mixed-use future land use and zoning designations since at least 1989; current future land use and zoning proposal is likely the least intensive non-single-family alternative for site
- Maximum density of 16 unit/acre for the NW, NE, and SE corners is identical to the density of the current MR district



Additional Site Information

**Street Addresses:** 4128, 4129, 4232, and 4233 Agualinda Boulevard

**Urban Service Area:** Transition

**City Water and Sewer:** The area is serviced by City water and sewer.

**Street Access:** The site is accessible from Agualinda Blvd and Beach Parkway, which are collector roadways

**STRAP Numbers:** 09-45-23-C1-04759.A000 (SE corner, 5.14 acres)  
09-45-23-C1-04760.A000 (NE corner, 6.09 acres)  
09-45-23-C1-04761.A000 (NW corner, 4.37 acres)  
09-45-23-C1-04762.A000 (SW corner, 4.54 acres)

**Block/Lot(s):** All of Blocks 4759A, 4760A, 4761A, 4762A

**Subdivision:** Unit 70, Cape Coral Subdivision

Zoning and Land Use Information:

<b>Subject Property:</b>	<b>Future Land Use</b>	<b>Zoning</b>
<i>Current:</i>	Commercial/Professional (CP) for SW Corner (Block 4762A)  Multi-Family Residential (MF) for NW, NE, SE Corners (Blocks 4759A, 4760A, 4761A)	Marketplace Residential (MR) (All Blocks)
<i>Proposed:</i>	Not applicable – not a FLU change	Commercial (C) for SW Corner (Block 4762A)  Residential Multi-Family Low (RML) – NW, NE, SE Corners (Blocks 4759A, 4760A, 4761A)
<b>Surrounding Areas</b>	<b>Future Land Use</b>	<b>Zoning</b>
<i>North:</i>	Single-Family Residential (SF)	Single-family Residential (R-1B)
<i>South:</i>	SF	R-1B and Residential Development (RD)
<i>East:</i>	SF	R-1B
<i>West:</i>	SF	R-1B

## Background

The intersection of Beach Parkway and Agualinda Boulevard is colloquially known as the Four Corners. Four tracts ranging between 4.5 and 6 acres are located at each corner of the intersection.

The area surrounding the site consists of single-family residential uses. The subject properties are vacant and have been designated as Commercial/Professional (CP) (1989-2005) or Commercial Activity Center (CAC) (2005-2019) since the adoption of the Cape Coral Comprehensive Plan. This site recently was included in the Future Land Use Map Amendments (FLUMA) as part of Ordinance 2-19, that was adopted April 1, 2019.

One of the purposes of the FLUMA in this area was a need to provide additional multi-family residential uses in Cape Coral. A deficiency of such uses exists throughout Cape Coral – in 2015, a Multi-Family Apartment study identified a need for 1,500 apartments per year to address the deficiency. Since this report, the total number of multi-family residential units constructed is approximately 600 units, which is well below 1,500 units, let alone the identified need of 1,500 units per year. Furthermore, the former-CAC future land use classification could have permitted a large amount of commercial development that would have severely impacted the nearby transportation network.

At the City Council February 4<sup>th</sup> transmittal hearing, Council directed staff to amend the NW, NE, and SE corners of the intersection to Multi-Family Residential, and the SW corner was amended from CAC to CP. The meeting was very well-attended by residents of SW Cape Coral, who objected to high-density residential development. As a result of the testimony provided by residents, Council also directed staff to move forward with a rezone of the site, to provide a multi-family residential zoning district with a density not to exceed 16 units/acre – retaining the density previously permitted by the CAC future land use – and to rezone the final corner to Commercial. This rezone effort is consistent with the Council direction from that meeting.

The zoning districts proposed for the site are consistent with the new City Land Development Code. The code is scheduled to be brought forward to Council for adoption on July 22 and August 5, 2019; this rezone will not be adopted until the code has been adopted by Council.

Prior to the April 2019 Future Land Use Map Amendment, stand-alone residential uses were not been permitted at the site.

## Comprehensive Plan Analysis

Staff analyzed the Comprehensive Plan to determine what policies apply to the proposed rezone.

The proposed zoning districts are consistent with their respective future land use map classifications of CAC and MF. The rezone is consistent with Objective 2 of the Future Land Use Element.

**OBJECTIVE 2:** Location of New Commercial Development: New commercial development shall be so located to provide minimal vehicle trip lengths, at or near transportation nodes, and compatible with neighboring residential uses.

*If developed, this site would be in close proximity to an established professional employment center which is anchored by government uses, while providing commercial development adjacent to existing commercial development. This proposed rezone is consistent with this Objective of the Comprehensive Plan.*

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Other policies support this rezone. For instance, the rezone is consistent with guidelines 1 and 2 of Policy 1.7 of the Future Land Use Element.

Policy 1.7: The City has identified a shortfall of multi-family residential housing stock in the community. To provide better guidance in identifying properties which are appropriate for multi-family residential development, to reduce this shortfall, locational guidelines have been developed. The following locational guidelines are as follows:

1.) Proximity to major roadways.

To prevent the establishment of multi-family residential development far in the middle of predominantly single-family neighborhoods, an appropriate location for multi-family residential development is adjacent to or within ¼ mile of major roadways such as arterial and collector roadways, as identified by *Figure 7 City Roadway Classifications*.

*Staff Note: Beach Parkway and Agualinda Boulevard are collector roadways.*

2.) Proximity to non-residential land uses.

An important consideration for siting multi-family residential development is the need for multi-family residential uses to be in proximity to major employment centers. Providing housing near commercial uses can result in shorter trips, lessened traffic generation by workers, and providing multiple transportation mode options (walking, bicycling, automobile, bus) for employees.

An appropriate location for multi-family residential development is adjacent to or within ¼ mile of non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

*Staff Note: The proposed multi-family rezone is across the street from an area with a Commercial/Professional future land use map classification.*

Any development arising from this rezone will need to be made in accordance with Policy 8.3, Future Land Use Element, which states:

Policy 8.3: Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.

*Staff Note: A rezone in close proximity to existing single-family residential development understandably causes concern among residents that may live nearby, and the City had developed Policy 8.3 approximately 20 years ago to address this concern. In addition, multiple protections in the Land Use and Development Regulations and the*

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*upcoming Land Development Code exist to ensure that commercial development would not affect the surrounding neighborhood.*

#### **Land Use and Development Regulations -- Section 8.7 Amendments:**

Staff reviewed this request in accordance with Section 8.7 Amendments, .3 Consistency with Comprehensive Plan and General Standards, B. 1.-10. of the Land Use and Development Regulations and provides the following analysis. This section is used for future land use map amendments, comprehensive plan amendments, and for rezone requests.

1. The extent to which the value of the property is diminished by the proposed land use restriction or zoning of the property.

A rezone from MR to RML and C **would not** diminish the land value of the site because this property has incompatible land use and zoning. The proposed zoning districts permit the re-development of the site, which would increase its value.

2. The extent to which the removal of a proposed land use restriction or change depreciates the value of other properties in the area.

The proposal is **not anticipated** to depreciate the value of other properties in the area. Non-residential zoning districts have been identified for these properties since 1990; development permitting non-residential uses and multi-family residential uses (in a mixed-use scenario) have been anticipated for this area for the last three decades.

As discussed above, Policy 8.3 of the Future Land Use Element requires that commercial developments be designed to minimize impacts on the surrounding area. Elements of such design may include screening (walls) and buffering (landscaped). Conditions on time of operation may be levied on a use (depending on type of use). Non-residential design standards ensure that the development would not have an “industrial” look, which is more suited for commercial corridors and industrial parks.

3. The suitability of the property for the zoning purpose or land use restriction imposed on the property as zoned.

The proposed zoning district will be consistent with the future land use map classifications of Commercial/Professional and Multi-Family Residential. Each of the four corners is small, between 4.5 and 6 acres, which reduces the extent of development, and thus the impact of the development on surrounding uses. The largest corner, the NE corner, would permit at most 97 dwelling units.

Lastly, the site is an intersection of collector roadways, not local roads, which reduces the potential for this development to intrude onto the surrounding single-family residential neighborhoods. Access points to each corner would be likely be located off of the collector roads. Therefore, the request is **suitable**.

4. The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning.

The surrounding area has a residential character in all directions. Multi-family residential uses, particularly when located on major roadways that do not intrude into the center of neighborhoods, are often compatible with single-

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family residential uses, particularly given the small-scale size of the multi-family blocks.

In addition, commercial development located at an intersection of major roadways also can be compatible with a single-family neighborhood. Such developments may provide a service for short, convenient trips (e.g. a corner retail store). The proposed rezone is **compatible** with the surrounding area.

5. The relative gain to the community as compared to the hardship, if any imposed, by the proposed land use restrictions or from rezoning said property.

The effect of this rezoning is to slightly increase the City's commercial and multi-family residential stock in an area which lacks both. Given the city-wide deficits of such uses, this proposed rezone is **likely positive** to the community.

6. The community need for the use proposed by the zoning or land use restriction.

Providing consistency between the future land use and the zoning is valuable to the community. The City has a long-standing commercial square-footage shortfall; while small, the proposed rezone would help to reduce this deficiency.

As mentioned in the background section of the case report, the City has also identified a major multi-family residential shortfall, which this rezone would also help to redress. The proposed rezone has a **positive** effect for the needs of the community.

7. Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property.

The property is vacant. No development has occurred for the site.

8. The extent to which the proposed land use restriction or zoning promotes the health, safety, morals, or general welfare of this community.

Approval of this rezone should have a **negligible effect** upon the health, general welfare, safety, or morals of the community due in part to the lessened effect on the community compared to the existing zoning district, and due to development requirements for commercial developments which are proximate to single-family residences.

The previous FLU for the site, CAC, could have permitted a maximum of 283 dwelling units and 1.84 million square feet of non-residential development (a minimum of 460,000 square feet). The proposed rezone could permit a maximum of 265 dwelling units and 197,000 square feet of non-residential development.

Providing a zoning designation that is consistent with the future land use map classification should have a **positive effect** on the general welfare for the community.

9. The extent to which the proposed land use, land use restriction, or zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan.
-

Impacts on infrastructure for development on this site will be **negligible** as facility capacity exists for the transportation and utility infrastructure network.

10. Whether the proposed land use restriction, removal of a restriction, or zoning is consistent with the City of Cape Coral Comprehensive Land Use Plan.

The proposed RML and C zoning designations are **consistent** with the MF and CP future land use classifications.

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## **Public Notification**

This case will be publicly noticed as required by LUDR, Section 8.3.2.A as further described below.

Publication: A legal ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to rezone the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner. Following the public hearing before the Hearing Examiner, the ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council.

Written notice: Property owners located within 500 feet from the property line of the land which the petitioners request to rezone will receive written notification of the scheduled public hearings. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

Posting of a Sign: A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the rezoning request.

## **Recommendation:**

Planning staff has reviewed this request in accordance with Section 8.7 Amendments, .3 Consistency with the Comprehensive Plan and General Standards A., B. 1.-10 of the Land Use and Development Regulations and the City's Comprehensive Plan. Planning Division recommends **approval** of the rezone request.

## **Staff Contact Information:**

Wyatt Daltry, AICP  
Planning Team Coordinator  
Department of Community Development  
Planning Division  
(239) 573-3160  
email: [wdaltry@capecoral.net](mailto:wdaltry@capecoral.net)

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CITY OF CAPE CORAL  
Department of  
Community Development  
Planning Division  
500 Proximity Boundary  
**PROPOSED ZONING MAP**

Case No. ZA19-0007

**LEGEND**

- Proposed C Zoning
- Proposed RML Zoning
- Subject Parcels
- 500' Boundary
- MR
- R-1B
- RD

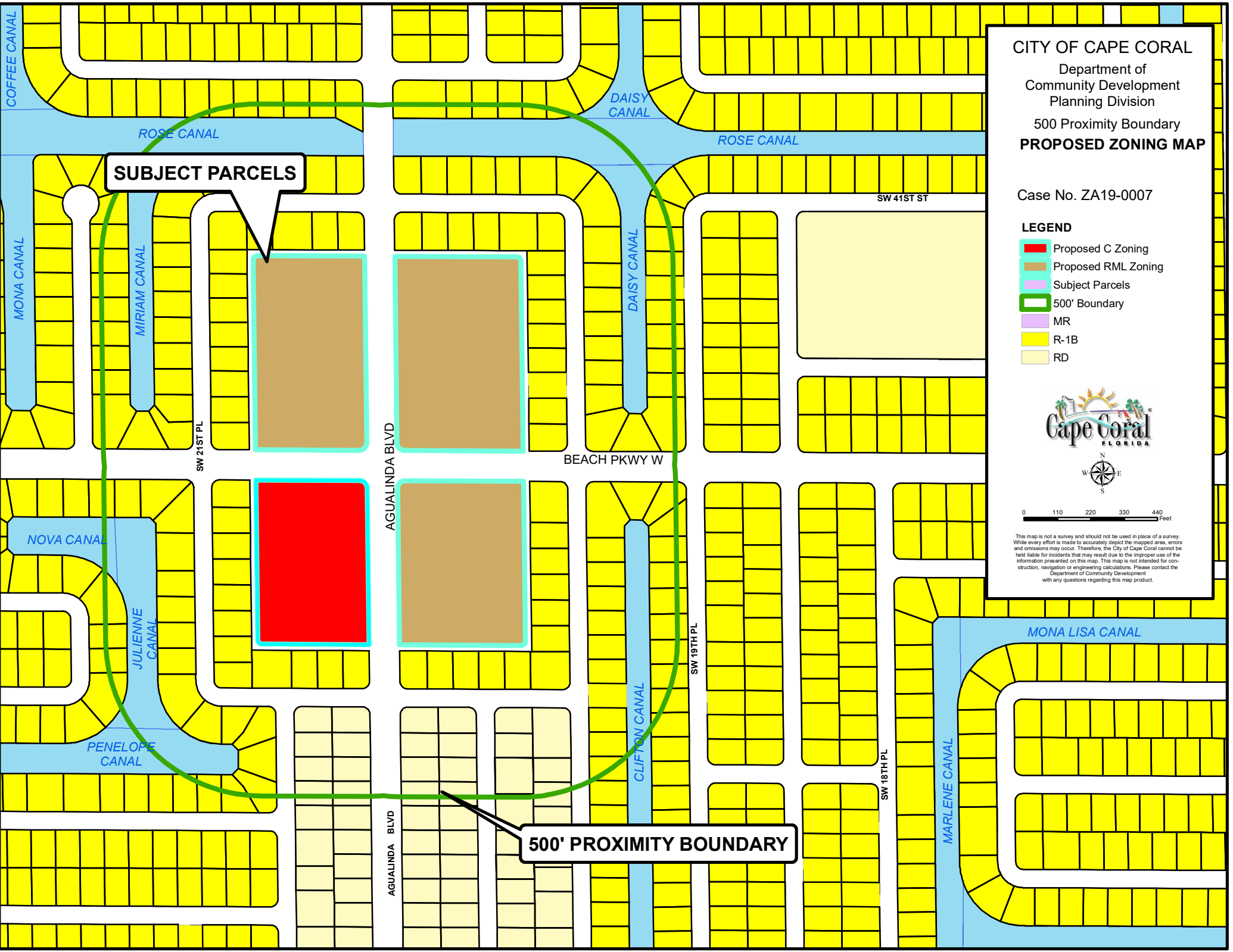


0 110 220 330 440 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

**SUBJECT PARCELS**

**500' PROXIMITY BOUNDARY**



# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

500 Proximity Boundary

## CURRENT ZONING MAP

Case No. ZA19-0007


### LEGEND

 Subject Parcels

 500' Boundary

 MR

 R-1B

 RD

ccedit.GIS.MAJOR\_STREETS



0 110 220 330 440 Feet

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SUBJECT PARCELS

500' PROXIMITY BOUNDARY

# CITY OF CAPE CORAL






Department of  
Community Development  
Planning Division

500 Proximity Boundary

## CURRENT FUTURE LAND USE MAP

Case No. ZA19-0007

### LEGEND

-  Subject Parcels
-  500' Boundary
-  SF
-  CAC
-  PK



0 110 220 330 440 Feet

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SUBJECT PARCELS

500' PROXIMITY BOUNDARY



# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## AERIAL MAP

Case No. ZA19-0007

### LEGEND

 Subject Parcels



0 75 150 225 300 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

SUBJECT PARCELS

SW 21ST PL

SW 19TH PL

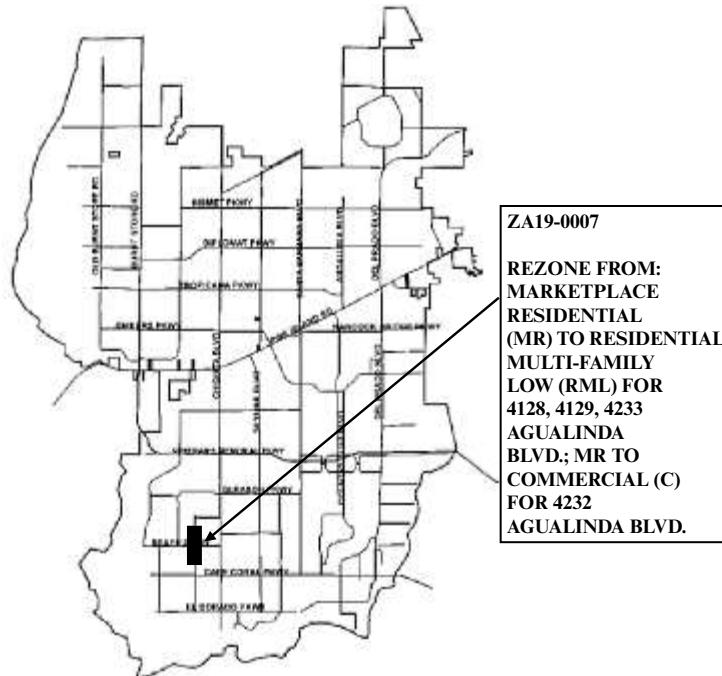


# NOTICE OF CHANGE OF REZONING

A public hearing on the ordinance will be held Tuesday, June 4, 2019 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Cape Coral Hearing Examiner will consider the City's rezoning request and make a recommendation to the City Council. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person 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 based. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.

Kimberly Bruns, CMC  
Interim City Clerk

**Case Number ZA19-0007**



NP-0000971361

☐ PROOF O.K. BY: \_\_\_\_\_ ☐ O.K. WITH CORRECTIONS BY: \_\_\_\_\_

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

ADVERTISER: CITY OF CAPE CORAL\_DEPT  
SALES PERSON: William McCabe  
PUBLICATION: NP-DAILY  
SIZE: 3 col X 9.25 in

PROOF CREATED AT: 5/22/2019 11:48 AM  
PROOF DUE: -  
NEXT RUN DATE: 05/25/19

NP-0000971361.INDD

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Four Corners CC, LLC

APPLICATION NO: ZA19-0007

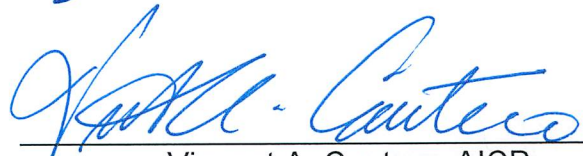
STATE OF FLORIDA       )  
                                      ) §  
COUNTY OF LEE        )

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 29<sup>th</sup> day of May, 2019.

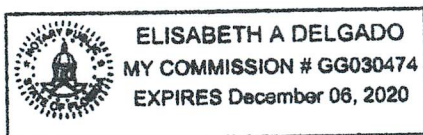


Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/10/20 Commission # 66030474



  
Signature of Notary Public

Elisabeth A. Delgado  
Print Name of Notary Public



**Cape Coral City Council**

**July 29, 2019**

**August 12, 2019**

**ORDINANCE 34-19**

**ZA19-0007**

# Background

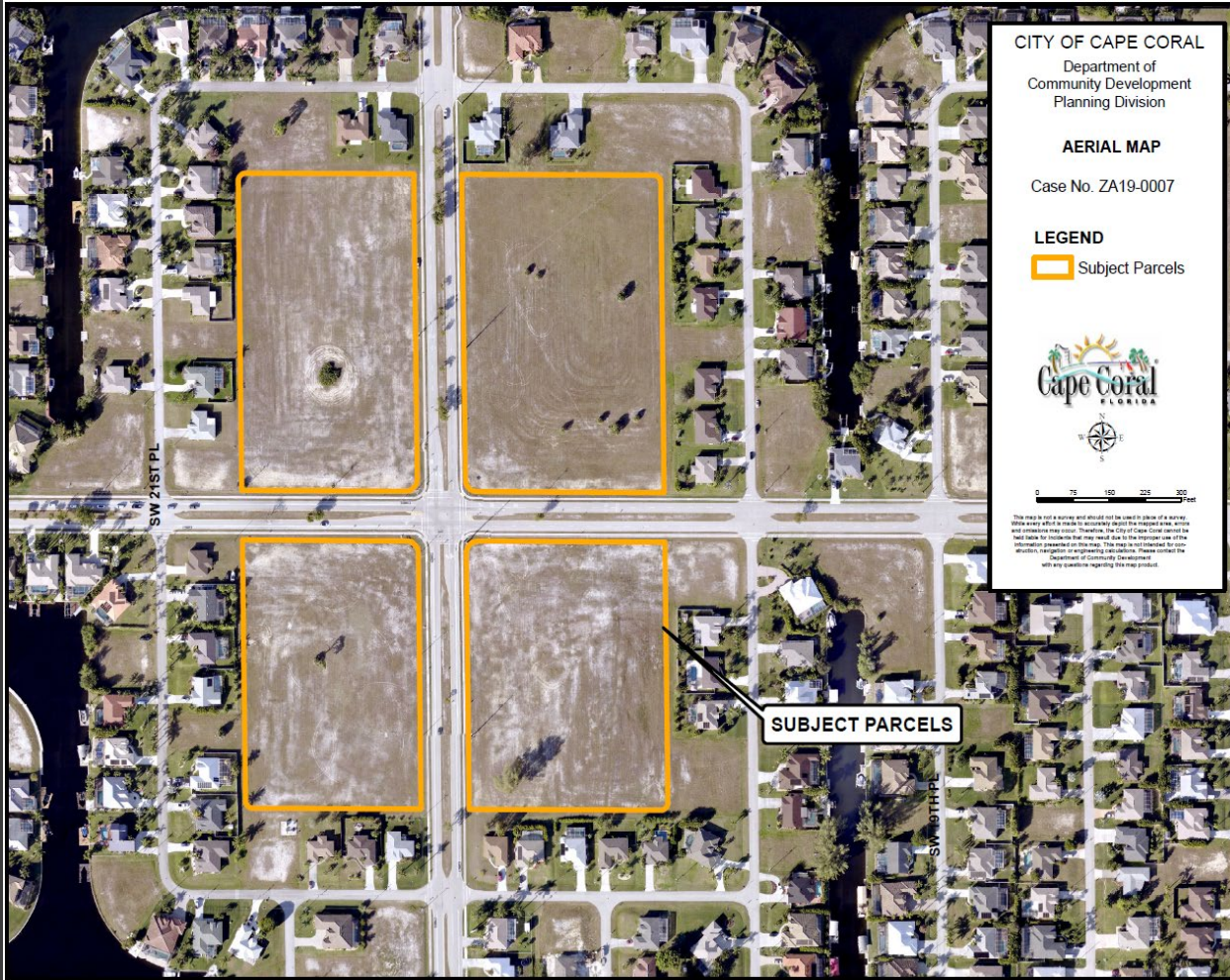
- **A City-initiated rezone involving 21.14 acres**
- **Owner: Four Corners CC, LLC**
- **Request is to rezone the subject property from the Marketplace Residential District (MR) to the Residential Multi-Family Low District (RML) for 16.60 acres, and from the Marketplace Residential District (MR) to the Commercial District (C) for 4.54 acres**
- **Staff requests that the findings of the staff report be incorporated as part of this presentation**

## Site

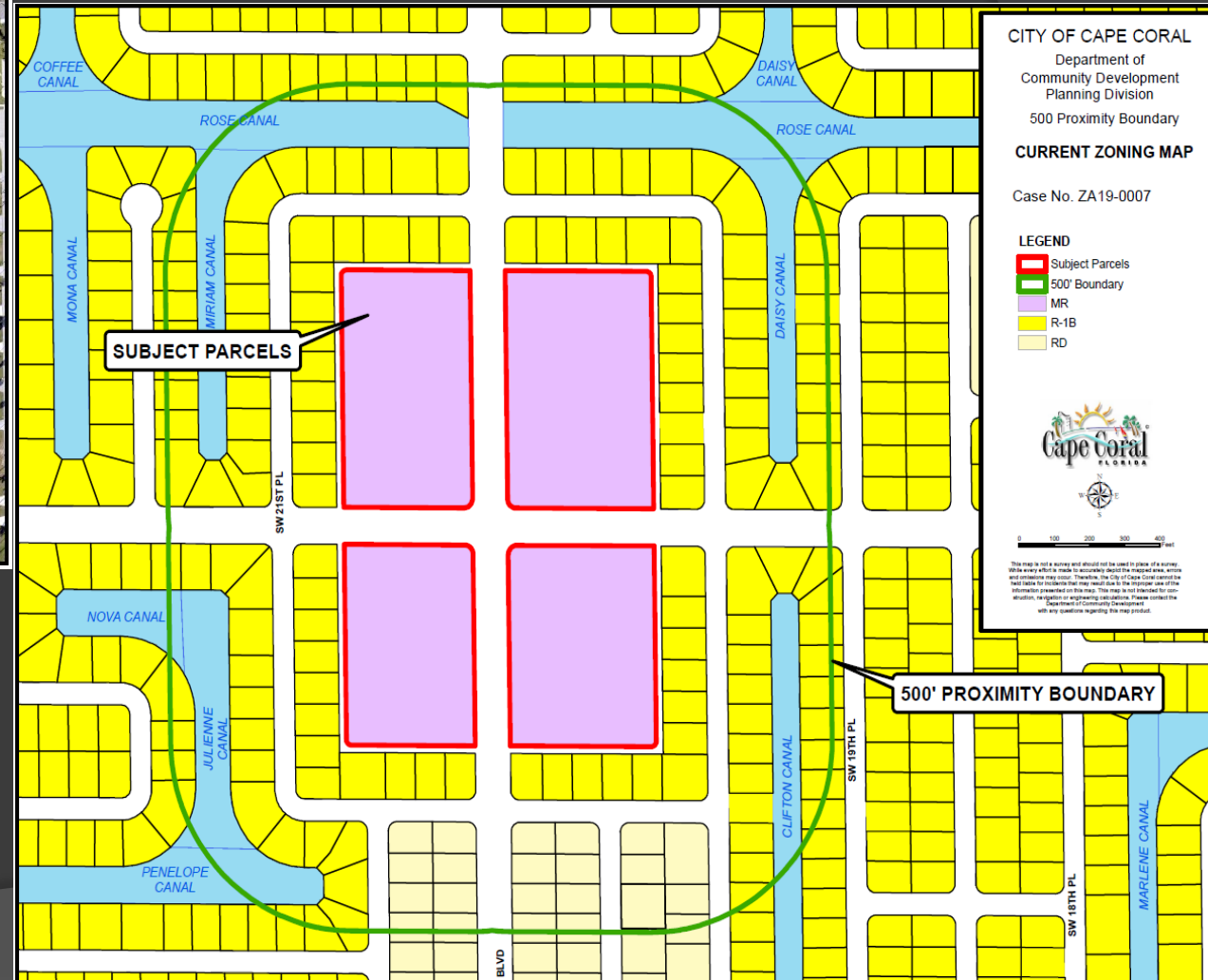


**4128, 4129,  
4232, and 4233  
Agualinda  
Boulevard**

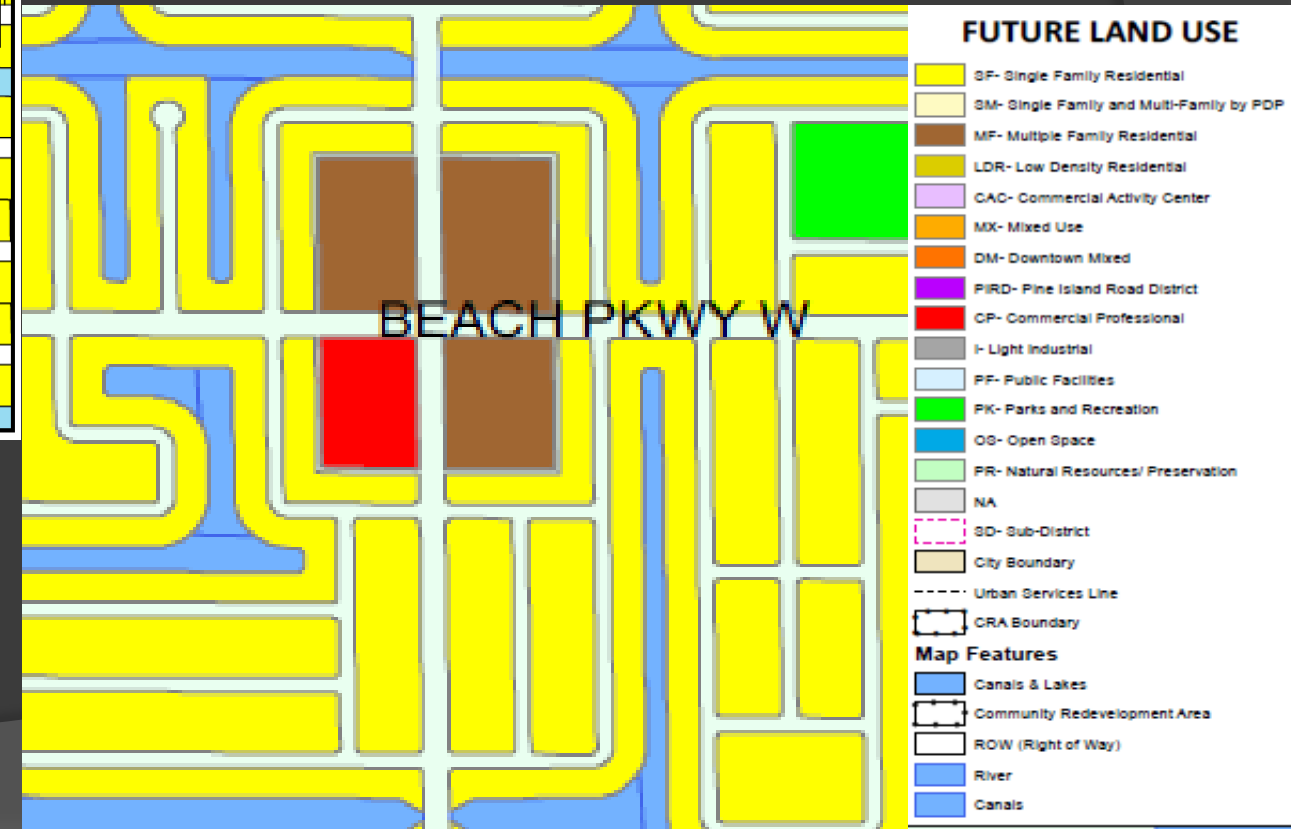
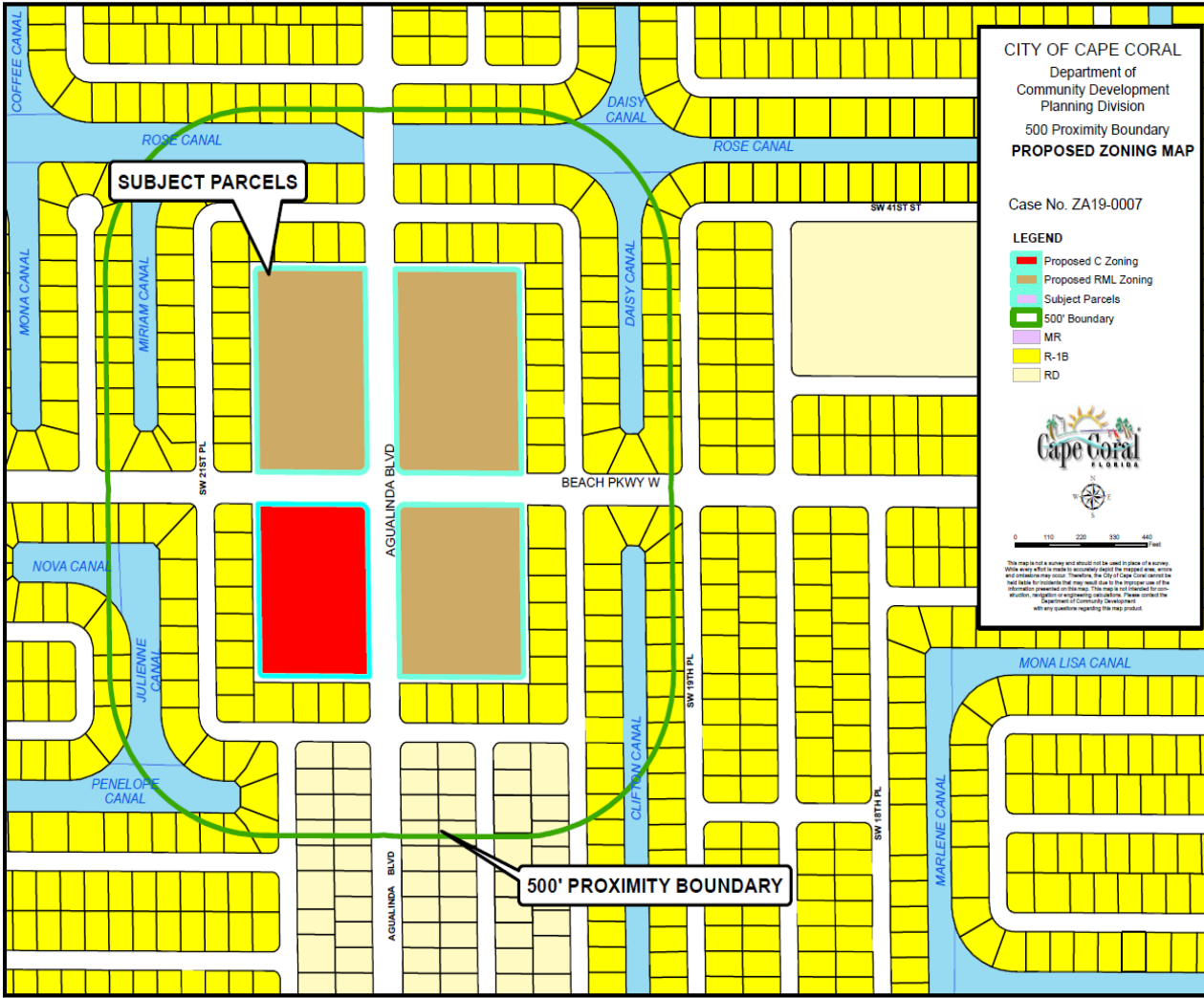




# Aerial and Current Zoning



# Proposed Zoning and Future Land Use



# Background

- **Property has Multi-Family Residential and Commercial/Professional future land use; this was recently adopted by the City Council on April 1, 2019**
- **Property is the site of the former “Four Corners” site, a mixed-use development proposed in 2005 at the intersection of two collector roadways**
- **The proposed development never occurred; site is currently vacant**

# Background

- **Staff was directed by City Council in February to move forward with a rezone of the Four Corners site in accordance with Ordinance 2-19**
- **In that Ordinance, three corners were amended to Multi-Family while the fourth corner (SW) was amended to Commercial/Professional**
- **Part of staff's direction was to retain the density currently permitted at the site – 16 dwelling units/acre**

# Background

- **Cape Coral has a well-known deficiency in multi-family residential housing; 1500 units/year are needed annually for the next 5 years**
- **Prior to the adoption of Ordinance 2-19, the site has been designated with non-residential (until 2005) or mixed-use future land use and zoning designations**
- **Stand-alone residential uses have not been permitted since the adoption of the Comprehensive Plan in 1989**



# Background

- **The zoning districts proposed for the site are consistent with the new City Land Development Code (LDC)**
- **The LDC is scheduled to be brought forward to Council for adoption on July 22 and August 5, 2019; this rezone will not be adopted until the LDC has been adopted**

# Comprehensive Plan/LUDR Analysis

- **Staff analyzed the Comprehensive Plan to determine what policies support or undermine the proposed rezone.**
- **The proposed zoning is consistent with Objective 2 of the Future Land Use Element which discusses siting of commercial property, and meets guidelines 1 and 2 of Policy 1.7**
- **Staff reviewed Section 8.7.3.B.1-10 of the Land Use and Development Regulations and found the rezone to be consistent**

# Conclusion

- **In conclusion, staff recommends Approval of the proposed rezone request.**
- **Received one letter of correspondence, in opposition**
- **This was presented to the Hearing Examiner on June 4, 2019, with a recommendation of approval**



Four Corners Sites		LUDR & CAC FLUC				LDC w/ MF and CP FLUC			
Parcel	Size (acres)		Res Only Max # units in current MR	Non - Res Only Min/Max Sq. Ft. in current MR zoning	Mixed Use in MR zoning	Proposed FLUC	Res Only Max # units in RML zoning	Res Only Max # units in C zoning	Non-Res Only Max Sq. Ft. in C zoning
NW	5.373		85	117,024 Sq. Ft. 468,096 Sq. Ft. with DIP	53 Res Units 117,024 Sq. Ft. 468,096 Sq. Ft. with DIP	MF	85	N/A	N/A
NE	6.088		97	132,597 Sq. Ft. 530,386 Sq. Ft. with DIP	60 Res Units 132,597 Sq. Ft. 530,386 Sq. Ft. with DIP	MF	97	N/A	N/A
SE	5.141		82	111,971 Sq. Ft. 447,884 Sq. Ft. with DIP	51 Res Units 111,971 Sq. Ft. 447,884 Sq. Ft. with DIP	MF	82	N/A	N/A
SW	4.539		Free standing Residential not allowed	98,859 Sq. Ft. 395,437 Sq. Ft. with DIP	19 Res Units 98,859 Sq. Ft. 395,437 Sq. Ft. with DIP	CP	N/A	0	197,719 Sq. Ft.
Totals	21.14		264	Min. 460,451 sq.ft 1,841,803 sq. ft (DIP)	183 Res Units and min. 460,451 sq. ft. 1,841,803 sq. ft. (DIP)		264	0	197,719 sq. ft.
							RML	C	

<b>Yellow = current proposal. MF future land use &amp; RML zoning. CP future land use &amp; C zoning</b>	<b>264 Res Units</b>	<b>0 Res Units</b>	<b>197,719 Sq. Ft.</b>
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#### **Current LUDR and MR zoning**

Maximum 283 Multi-family units allowed  
Single-family and duplexes not allowed  
MR zoning allows 59 non-residential  
(commercial, public, and institutional)  
Minimum 460,429 sq. ft. non-res uses req'd.  
Maximum 1.84 million sq. ft. non-res allowed

#### **Proposed LDC and RML/C zoning**

##### **RML Zoning**

Maximum 264 multi-family units allowed  
Single-family and duplexes not allowed

##### **C Zoning**

C zoning does not allow any residential  
C zoning allows 34 non-res (commercial, institutional, and public) uses  
C - allows 100% commercial development

<b>Item Number:</b>	<b>B.(1)</b>
<b>Meeting Date:</b>	<b>8/12/2019</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Introductions</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 42-19 (ZA 19-0005\*) Set Public Hearing Date for August 26, 2019

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
- If Yes, Priority Goals Supported are listed below.
- If No, will it harm the intent or success of the Strategic Plan? No

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**Hearing Examiner Recommendation:** The Hearing Examiner recommends the City Council grant the requested rezoning.

**Staff Recommendation:** Staff recommends approval.

**SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance amending the City of Cape Coral Official Zoning District Map by rezoning property described as Lots 45-66, Block 5386, Unit 89, Cape Coral Subdivision, from Professional Office (P) to Commercial (C) zone; property located at 1914-2014 SE 16th Place.

**LEGAL REVIEW:**

John E. Naclerio III, Assistant City Attorney

**EXHIBITS:**

Ordinance 42-19  
Hearing Examiner Recommendation  
Back up materials from HEX Hearing  
Staff Presentation

**PREPARED BY:**

Division- Department- City Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

Chad Boyko, Principal Planner

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Ordinance 42-19 (ZA 19-0005)	Backup Material
▣ Hearing Examiner Recommendation	Backup Material
▣ Back up material from HEX Hearing	Backup Material
▣ Staff Presentation	Backup Material



ORDINANCE 42 – 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL OFFICIAL ZONING DISTRICT MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL BY REZONING PROPERTY DESCRIBED AS LOTS 45-66, BLOCK 5386, UNIT 89 CAPE CORAL SUBDIVISION, FROM PROFESSIONAL OFFICE (P) TO COMMERCIAL (C) ZONE; PROPERTY IS LOCATED AT 1914-2014 SE 16<sup>TH</sup> PLACE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council has considered testimony, evidence, documentation and the application submitted by MEHMET OZER, SERIFE OZER AND TUNCAY OZER for rezoning the below-described property from PROFESSIONAL OFFICE (P) TO COMMERCIAL (C) ZONE, and considered the recommendations of the Hearing Examiner and City Staff, and has considered the City of Cape Coral Comprehensive Plan with this zoning request.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

Section 1. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described as follows:

PROFESSIONAL OFFICE (P) TO COMMERCIAL (C) ZONE

LOTS 45 THROUGH 66, BLOCK 5386, UNIT 89, CAPE CORAL SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGES 149 THROUGH 11, INCLUSIVE, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY LOCATED AT: 1914-2014 SE 16<sup>TH</sup> PLACE

and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

That the amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

Section 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

Section 3. Effective Date. This ordinance shall become effective immediately upon passage by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:



\_\_\_\_\_  
JOHN E. NACLERIO III  
ASSISTANT CITY ATTORNEY  
ord\ZA19-0005  
8/06/19

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL  
HEARING EXAMINER RECOMMENDATION

ZA HEX Recommendation 7-2019

Rendered July 2, 2019

DCD Case # ZA 19-0005

**APPLICATION FOR:** Privately initiated rezoning from Professional Office (P-1) to  
to Pedestrian Commercial District (C-1 for 8 parcels totaling 116,844 sq. ft. (2.68 acres.)

**NAME OF OWNERS:** Tuncay Ozer/Serife Ozer (Husband & Wife); Mehmet Ozer (Son)

**NAME OF APPLICANTS:** Mehmet Ozer and Tuncay Ozer

**APPLICANTS'/OWNERS' REPRESENTATIVE:** Mehmet Ozer

**PROPERTY ADDRESSES:** Unit 44. Block 5386. Lots 44 through 64.

Eastern half of block at intersection of Del Prado Boulevard  
and Four Mile Cove Parkway

**STRAP #s:**

1914 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0440

1918 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0460

1926 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0480

1934 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0540

1938 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0560

2002 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0580

2008 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0610

2014 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0640

116,844 sq. ft. (2.68 acres.)

**FUTURE LAND USE CATEGORY:** Commercial/Professional

**URBAN SERVICE AREA:** Infill

**WATER AND SEWER:** City Water and Sewer are available

**STREET ACCESS:** 105 feet of frontage on Four Mile Cove Parkway (a collector street);  
915 feet of frontage on SE 16<sup>th</sup> Place (a local street)

**CURRENT ZONING:** Professional Office (P-1)

**APPLICANT'S PROPOSED ZONING:** Pedestrian Commercial (C-1)

**HEARING EXAMINER'S RECOMMENDED ZONING:** Pedestrian Commercial (C-1)

**HEARING DATE:** July 2, 2019

**I. SUMMARY OF REQUEST**

The Application requests a privately initiated rezoning from the Professional Office (P-1) Zoning District to Pedestrian Commercial (C-1) Zoning District, for eight (8) parcels which total 2.68 acres in size.

**II. SUMMARY OF HEARING EXAMINER RECOMMENDATION**

The Hearing Examiner recommends the City Council grant the requested rezoning.

**III. NOTICE OF HEARING**

Based on the testimony of City Staff Chad Boyko at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article VIII, Section 8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

**IV. PARTICIPANTS IN HEARING**

CITY STAFF: Chad Boyko, AICP<sup>1</sup>

CITY CLERK'S OFFICE: Patricia Sorrels

OWNER'S REPRESENTATIVE: Mehmet Ozer

TESTIMONY BY PUBLIC: None

APPLICANT'S/CITY STAFF'S EXHIBITS: previously submitted

**V. REVIEW OF STATUTORY AND LUDR REQUIREMENTS**

Authority. Section 163.3194, F.S. and LUDR §9.2.3b.9 require the Hearing Examiner to review and make a recommendation to City Council about consistency of a rezoning application to the City's adopted Comprehensive Plan and whether the requested rezoning should be granted.

Standard of Review of Evidence; Hearsay Evidence. The Hearing Examiner's recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record.

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<sup>1</sup> Mr. Boyko was accepted as an expert in land planning issues for purposes of this hearing, based upon his credentials on file with the Clerk's Office and his prior appearances on similar matters in similar rezoning hearings before the Hearing Examiner.

July 2, 2019

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. In rendering this recommendation, the Hearing Examiner must consider all competent substantial evidence in the record, as defined in LUDR § 8.3.1.C.3.b.<sup>2</sup> LUDR § 8.3.1.C.6.b provides that the Hearing Examiner may exclude evidence or testimony that is not relevant or material.<sup>3</sup>

Rezoning Standards. In reviewing the rezoning application for consistency with the Comprehensive Plan of the City of Cape Coral, the Hearing Examiner must make recommendations in accordance with the general standards set forth in LUDR §8.7.3B.1-10.

Site Visit. The Hearing Examiner conducted a site visit of the subject property prior to the Hearing.

## VI. TESTIMONY AT HEARING AND APPLICATION

### Applicant's Representative's Incorporation of Staff Report and Staff Testimony

The Applicant's Representative incorporated the Staff Report and Staff Testimony ("Staff Input") into his presentation and requested the Hearing Examiner to recommend that the City Council find Staff Input as findings of fact.

### Staff's Incorporation of Staff Report

Staff incorporated his Staff Report into his presentation.

### Hearing Examiner's Recommended Findings of Fact.

All documentary and oral testimony referenced below is accepted by the Hearing Examiner as recommended findings of fact, except as specifically noted otherwise. The Hearing Examiner recommends that the City Council accept such testimony as findings of fact to substantiate its decision hereunder.

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<sup>2</sup> "Competent Substantial Evidence shall mean testimony, documentary, or other evidence based on personal observation and which will establish a substantial basis from which a fact at issue can reasonably be inferred. It includes fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issue to be decided. Competent Substantial Evidence is evidence a reasonable mind could accept as having probative weight and adequate to support a legal conclusion." LUDR § 8.3.1.C.3.b

<sup>3</sup> "Material Evidence shall mean evidence that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application." LUDR § 8.3.1.C.3.e

VII. **DISCUSSION**

**Site and Surrounding Area.**

Staff testified that the subject site comprises approximately 25% of Block 5386 and that surrounding development consists of commercial development<sup>4</sup> to the north, south, and west (across Del Prado Boulevard) and single-family homes to the east. Block 5386 has frontage on Del Prado Boulevard (a principal arterial). Staff further testified that the subject Block has had the Commercial/Professional (CP) future land use designation since 1989 and has been zoned Professional Office (P-1) since 1990.

**Purpose of the Rezoning Request**

The Letter of Intent from Applicants, dated April 5, 2019, stated that they wish to develop commercial buildings on-site. In testimony during the Hearing, the Applicant's Representative confirmed via his testimony that Applicants seek the rezone to allow commercial development.

Applicants own two adjacent commercial buildings<sup>5</sup> on the western half of the block. These two buildings in addition to the site provide the opportunity to develop a compact, full block commercial site if Applicants decide to do so. However, in a rezoning, the City does not have the ability to determine the future use or uses of the property within the rezoned classification.

Staff testified that a proposed rezone would give the Applicants the flexibility to engage in, *inter alia*, new commercial development, expansion of the existing commercial development or redevelopment of the applicant's other sites by utilizing the rezone sites as parking, landscaping, or surface water retention.

**Consideration of General Standards Set Forth in LUDR § 8.7.3B.1-10**

1. *The extent to which the value of the property is diminished by the proposed land use restriction or zoning of the property.*

Staff testified that the proposed rezoning from P-1 to C-1 should not diminish the land value because the C-1 zoning district allows 73 uses as of right and 19 additional uses by special exception, contrasting with the 21 uses as of right and 18 special exception uses with the P-1 zoning district.

Based upon the testimony set forth above, the Hearing Examiner recommends that City Council find that the value of the subject property **would not be diminished** by the rezoning.

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<sup>4</sup> Bowling alley, office, retail, and service businesses.

<sup>5</sup> At 1929 and 1939 Del Prado Boulevard.

This standard is **met**.

2. *The extent to which the removal of a proposed land use restriction or change in zoning depreciates the value of other property in the area.*

Staff testified (and the Hearing Examiner observed on her site visit) that the nearby development to the west, north and south consists of C-1 zoning and commercial uses. Accordingly, the proposed rezoning would not depreciate the value of such property.

However, single-family homes are to the east of the site, across a two-lane road. The Hearing Examiner observed that, although all properties within 500 feet were properly noticed of this Hearing and all other notice provisions were complied with by staff, no members of the public (including but not limited to homeowners) attended the HEX Hearing. No members of the public provided correspondence, emails, telephone calls, or otherwise provided input to staff or the Hearing Examiner regarding this matter. While this is not definitive in evaluating whether the proposed rezoning would depreciate the value of other property in the area, the Hearing Examiner had no testimony other than staff's and the Applicant's.

Staff testified that the Cape Coral regulations provide for protection of residential uses which are in proximity to commercial uses, via landscaping buffers, walls, or other means.

For the above reason, the Hearing Examiner recommends that the proposed rezoning **would not depreciate** the value of the other properties in the area.

Accordingly, the Hearing Examiner recommends a finding that Applicant **has met** this standard.

3. *The suitability of the property for the zoning purpose or land use restriction imposed on the property as zoned.*

Staff testified that the site is well suited for rezoning to the proposed C-1 zoning district, due to its location in a block with frontage along a principal arterial. Del Prado Boulevard is a principal arterial and most parcels along this road are zoned P-1 or C-1. In addition, it appears from staff's map that the majority of Block 5386 is already zoned C-1.

Staff further testified that, although the property lacks ideal depth for the C-1 zoning district, regulations particular to the C-1 zoning district could adequately address the site's lack of depth.

Based on the above staff testimony, the Hearing Examiner recommends that City Council find that the property **is better suitable** for the proposed zoning district and therefore this standard is **met**.

July 2, 2019

4. *The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning.*

As set forth above, the surrounding area to the north, south, and west is developed with commercial uses such as office, retail, and service industries and the area to the east is developed with single-family homes.

Staff testified that the proposed rezoning may result in further commercial development along Del Prado Boulevard in that it is likely to be an expansion of existing uses or office uses<sup>6</sup>.

Planning staff notes that some additional traffic and noise could be generated from the site as the C-1 district would allow a wider range of commercial uses compared to the P-1 district. Uses such as restaurants, retail, and some service industries are more intense than most office uses and would likely cause an increase in traffic and noise. However, the buffers addressed elsewhere herein should address compatibility issues.

The Hearing Examiner recommends a conclusion that the **proposed rezoning to C-1 is compatible** with the character of the neighborhood, existing uses, and zoning of nearby and surrounding.

Accordingly, the Hearing Examiner recommends a finding that Applicant **has met** this standard as to the C-1 rezone.

5. *The relative gain to the community as compared to the hardship, if any imposed, by the proposed land use restrictions or from rezoning said property.*

Staff testified that the effect of this rezoning would be to slightly increase the City's commercial stock in an area consisting mostly of non-residential uses and thereby have a positive effect on the community.

The Hearing Examiner recommends a conclusion that the **proposed rezoning would have greater gain than hardship to the community.**

Accordingly, the Hearing Examiner recommends a finding that Applicant **has met** this standard.

6. *Community need for the use proposed by the zoning or land use restriction.*

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<sup>6</sup> Staff testified that, since the site lacks frontage along Del Prado Blvd, it is unlikely that retail would develop without such arterial frontage.



July 2, 2019

Staff testified that the City has a long-standing commercial square-footage shortfall and that the proposed rezoning would help to reduce this deficiency. Accordingly, staff recommended a finding that this proposed rezone would have a **positive** effect on the needs of the community.

Accordingly, the Hearing Examiner recommends a finding that Applicant **has met** this standard.

7. *Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property.*

Staff testified that the property has had P-1 zoning since 1990 and has had the Commercial/Professional (CP) future land use designation since 1989.

8. *The extent to which the proposed land use restriction or zoning promotes the health, safety, morals, or general welfare of this community.*

Staff testified that the rezoning would have a negligible effect upon the health, general welfare, safety, or morals of the community since other properties with commercial zoning are already in the general proximity of the subject property.

For the above reasons, the Hearing Examiner recommends that City Council find that the Applicant **has met its burden of proof** hereunder as to rezoning to the C-1 zoning district.

Accordingly, the Hearing Examiner recommends a finding that Applicant **has met** this standard.

9. *The extent to which the proposed land use, land use restriction, or zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan*

Staff testified that there would be no negative impacts on infrastructure for rezoning of this site, as the property has current centralized availability of water, sewer and irrigation, roads and other services. As set forth above, it is in the City Urban Service Infill Area.

The Hearing Examiner recommends that City Council find the proposed rezoning would have **no discernible impact** on level of service standards for public facilities hereunder.

The Hearing Examiner recommends a finding that this standard **is met**.

10. Whether the proposed land use restriction, removal of a restriction, or zoning is consistent with the City of Cape Coral Comprehensive Land Use Plan.

The Staff Report set forth the following criteria for review of the Comprehensive Plan requirements (and staff testified at the Hearing):

*the City's Comprehensive Plan has undergone text changes that were adopted by City Council on February 15, 2019. A portion of these text changes amended the Commercial/Professional (CP) land use classification in conjunction with a planned repeal of the LUDR and an adoption of a Land Development Code (LDC). After adoption of the amendment, the Comprehensive Plan changes went to the state's Department of Economic Opportunity (DOE) for a 30-day review period. After the conclusion of the state's review period, the Comprehensive Plan changes underwent a 30-day appeal cycle. The Comprehensive Plan amendment was not fully adopted upon the applicant's application for the rezone on April 5<sup>th</sup>, 2019, therefore, the rezone was analyzed for Comprehensive Plan Consistency under the previous iteration of Chapter 4, Future Land Use Element.*

Chapter 4 Future Land Use Element, Policy 1.15.C, Commercial/Professional (CP):

*"Intensities of use in the Commercial/Professional land use classification shall not exceed a lot floor area ratio (FAR) of 1.0..."*

Staff testified that all development on-site will be limited to a FAR of 1.0.

*"The Pedestrian Commercial (C-1) District is designed to facilitate a broad variety of large or small commercial uses. Uses allowed in the C-1 district range from a variety of small or neighborhood-based commercial uses to larger retail or service uses, which may serve a relatively large trade area and, which may be developed as major shopping facilities. As many commercial uses have the potential to generate relatively high levels of vehicular trips from customers and sometimes delivery vehicles, preferred location for the C-1 district have direct access onto arterial or collector and adequate depth (a minimum of 250 feet) for larger-scale development..."*

Staff testified that, although the subject site lacks the preferred adequate depth, this is mitigated by the site's

location adjacent to two parcels under common ownership, which have frontage on Del Prado Boulevard.

*"In certain locations, fragmented ownership of relatively small properties, or other factors, may preclude the creation of larger properties with access onto a collector or arterial roadway. Under such circumstances, it may be appropriate for the C-1 Zoning District to place additional limits on the intensities of commercial development on these properties. It may also be appropriate, under certain circumstances to place restriction on some commercial uses, such as those with high trip generation rates, adverse aesthetic attributes, and generation of disturbing noises or odors. Factors to consider when establishing such limits on intensities or uses include the following: the depth of the property, whether the property is adjacent to a waterway, whether the property is adjacent to or proximate to future land use classifications or zoning districts that allow residential uses, and/or the functional classification of street(s) available for street access. The placement of limitations upon the types and intensities of uses allowed within the C-1 zoning district, in accordance with the factors described above, is intended to reduce the conflicts between the C-1 District and adjacent or nearby residential zoning districts..."*

As set forth above, the site is located within the Urban Services Infill Area with municipal utilities currently available to the site. As set forth above, although the site is undeveloped, future development will be limited to the maximum FAR of 1.0 or 116,844 sq. ft. Staff testified that the proposed rezoning to C-1 would be consistent with the CP future land use designation.

The Hearing Examiner recommends that the City Council adopt staff's analysis regarding this standard.

For the above reasons, the Hearing Examiner recommends that City Council find that the Applicants **have met their burden of proof** hereunder as to rezoning to the C-1 zoning.

Accordingly, the Hearing Examiner recommends a finding that Applicant **has met** this standard.

VIII. **RECOMMENDATION**

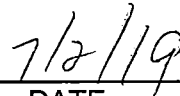
Based upon the testimony and documentary exhibits presented during the Hearing, the Hearing Examiner recommends that:

1. The City Council find that the requested rezoning to C-1 is **consistent** with the requirements of the Comprehensive Plan and the Land Use Development Regulations of the City of Cape Coral, the Code of Ordinances, other applicable laws of the State of Florida, and
2. The City Council therefore **approve** the requested rezoning to C-1.

This Recommendation is effective on the date specified below.

**HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA**

  
\_\_\_\_\_  
ANNE DALTON, ESQUIRE

  
\_\_\_\_\_  
DATE

ATTEST:

  
\_\_\_\_\_  
CITY CLERK  
*acting*



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # 2A19-0005

APR 5 19 PM 2:93

REQUEST FOR A REZONING

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

OWNER OF PROPERTY

Tuncay Ozer

Address: 5019 SW 5TH PL

City Cape Coral State: FL Zip 33914

Phone: 239-4642688

Email: tuncay@comcast.net

AUTHORIZED REPRESENTATIVE

Address: 1934-1938-2002-2008-2014 SE 16TH PL

City Cape Coral State: FL Zip 33990

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Unit 89 Block 5386 Lot(s) 54 to 64 Subdivision \_\_\_\_\_

Address of Property \_\_\_\_\_

Current Zoning P1 Plat Book \_\_\_\_\_, Page \_\_\_\_\_

Proposed Zoning CP Strap Number 5386.0540, 5386.560, 5386.580, 5386.610, 5386.640

**THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS**

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # \_\_\_\_\_

(SIGNATURE MUST BE NOTARIZED)

Tuncay Ozer  
NAME (PLEASE TYPE OR PRINT)

[Signature]  
APPLICANT'S SIGNATURE

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 14<sup>th</sup> day of December, 2018, by  
\_\_\_\_\_ who is personally known or produced  
as identification.

Exp. Date: 2-21-21 Commission Number: 6675656

NOTARY STAMP HERE

Signature of Notary Public: \_\_\_\_\_

Printed name of Notary Public: \_\_\_\_\_

*SIGNATURE MUST BE NOTARIZED)*







DEPARTMENT OF COMMUNITY DEVELOPMENT

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ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Tuncay Ozer  
NAME (PLEASE TYPE OR PRINT)

[Signature]  
APPLICANT'S SIGNATURE

STATE OF FL COUNTY OF \_\_\_\_\_

Lee

Subscribed and sworn to (or affirmed) before me this 14th day of December, 2018, by

who is personally known or \_\_\_\_\_

as identification.



Exp. Date: 2-21-21

Commission Number: 6675656

Signature of Notary Public: [Signature]

Printed name of Notary Public: Jessica L. Gonzalez





DEPARTMENT OF COMMUNITY DEVELOPMENT

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**DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)**

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

Tuncay Ozer  
OWNER/APPLICANT (PLEASE TYPE OR PRINT)

[Signature]  
OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

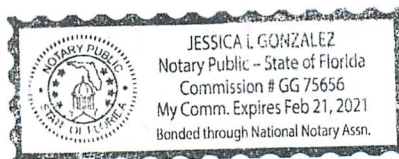
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by \_\_\_\_\_, who is personally known or who has produced \_\_\_\_\_ as identification.

Exp. Date 2-21-21  
Commission # 6675656

[Signature]  
Signature of Notary Public

Jessica L Gonzalez  
Print Name of Notary Public





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OWNER OF PROPERTY

MEHMET OZER

Address: 5019 SW 5TH PL

City Cape Coral State: FL Zip 33914

Phone: 305-934 44 69

Email: m.ozergtuncmatik.com

AUTHORIZED REPRESENTATIVE

Address: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ Zip \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Unit 89 Block 5386 Lot(s) 44 to 53 Subdivision \_\_\_\_\_

Address of Property 1914-1918-1926 SE 16TH PL CAPE CORAL 33990

Current Zoning P1 Plat Book \_\_\_\_\_, Page \_\_\_\_\_

Proposed Zoning C1 Strap Number 5386.0480, 5386.0440, 5386.0460

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(SIGNATURE MUST BE NOTARIZED)

MEHMET ÖZER  
NAME (PLEASE TYPE OR PRINT)

[Signature]  
APPLICANT'S SIGNATURE

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 11<sup>th</sup> day of Dec, 2018, by  
Mehmet Özer who is personally known or produced Passport  
as identification.

Exp. Date: 2-21-21 Commission Number: 6675656

NOTARY STAMP HERE

Signature of Notary Public:

Printed name of Notary Public:

[Signature]  
Jessica L Gonzalez  
SIGNATURE MUST BE NOTARIZED)







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I hereby acknowledge that I have read and understood the above affidavit on the 11<sup>th</sup> day of Dec, 20 18

Mehmet Ozer

NAME (PLEASE TYPE OR PRINT)

APPLICANT'S SIGNATURE

STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 11<sup>th</sup> day of Dec, 20 18, by

Mehmet Ozer

who is personally known or

Passport

as identification.

Exp. Date: 2-21-21

Commission Number:

6675656

Signature of Notary Public:

Printed name of Notary Public:

[Signature]

Jessica L. Gonzalez





DEPARTMENT OF COMMUNITY DEVELOPMENT  
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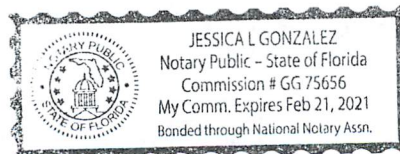
MEHMET ÖZER [Signature]  
OWNER/APPLICANT (PLEASE TYPE OR PRINT) OWNER/APPLICANT SIGNATURE  
(SIGNATURE MUST BE NOTARIZED)

STATE OF FL COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me on this 1<sup>st</sup> day of Dec, 2018  
by Mehmet Özer, who is personally known or who has produced Passport as identification.

Exp. Date 2-21-21  
Commission # 6675656

[Signature]  
Signature of Notary Public  
Jessica L. Gonzalez  
Print Name of Notary Public



4/5/2019

CITY OF CAPE CORAL

Department of Community Development,

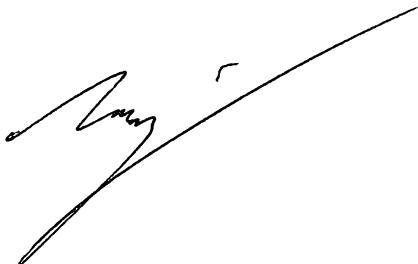
## LETTER OF INTENT

We are the owners of following land in Cape Coral and we are willing to develop commercial buildings on our property which is already CP zoning on the future land use map of Cape Coral. For this reason, we are willing to change the zoning from P1 to CP.

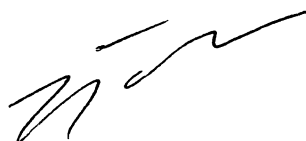
<u>Strap #</u>	<u>Block</u>	<u>Lot</u>
294424C1053860440	5386	44
460	"	46
480	"	48
540	"	54
560	"	56
580	"	58
610	"	61
640	"	64

B. Regards,

Mehmet Özer



Tuncay Özer



Strap	Owner Strap	Block	Lot	Street Number	Site Address
294424C1053860440	294424C1053860440	5386	44	1914	1914 SE 16TH PL
294424C1053860460	294424C1053860460	5386	46	1918	1918 SE 16TH PL
294424C1053860480	294424C1053860480	5386	48	1926	1926 SE 16TH PL
294424C1053860540	294424C1053860540	5386	54	1934	1934 SE 16TH PL
294424C4053860560	294424C4053860560	5386	56	1938	1938 SE 16TH PL
294424C4053860580	294424C4053860580	5386	58	2002	2002 SE 16TH PL
294424C4053860610	294424C4053860610	5386	61	2008	2008 SE 16TH PL
294424C4053860640	294424C4053860640	5386	64	2014	2014 SE 16TH PL



**PLANNING DIVISION STAFF REPORT**  
**ZA19-0005**

**Staff Report prepared by Chad Boyko, AICP, Principal Planner**

<b>SITE ADDRESSES</b> Multiple Addresses	<b>APPLICANT/PROPERTY OWNER</b> Mehmet Ozer, Serife Ozer and Tuncay Ozer
<b>AUTHORIZED REPRESENTATIVE</b> Mehmet Ozer (owner)	

<p><b>SUMMARY OF REQUEST</b></p> <p>The applicant requests a rezone from Professional Office (P-1) to Pedestrian Commercial (C-1) for eight parcels totaling 116,844 sq. ft. (2.68 acres.)</p>	 <p>MAP SOURCE</p>
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**STAFF RECOMMENDATION:** **Approval**

<b>Positive Aspects of Application:</b>	Rezone will allow for expanded commercial uses in a commercially developed block. Expanded uses will allow for new development, redevelopment, or expansion of existing uses.
<b>Negative Aspects of Application:</b>	The site lacks frontage along an arterial or collector roadway.
<b>Mitigating Factors:</b>	The site has similar ownership to two adjacent parcels that are have frontage along Del Prado Boulevard.

**SITE INFORMATION****Location/**

**STRAP Numbers:** Unit 44. Block 5386. Lots 44 through 64.  
 Eastern half of block at intersection of Del Prado Boulevard and Four Mile Cove Parkway

1914 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0440  
 1918 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0460  
 1926 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0480  
 1934 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0540  
 1938 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0560  
 2002 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0580  
 2008 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0610  
 2014 SE 16<sup>th</sup> Place – 29-44-24-C1-05386.0640

**Site Area:** 116,844 sq. ft. (2.68 acres.)

<b>Site:</b>	<b>Future Land Use</b>	<b>Zoning</b>
<b>Current:</b>	<b>Commercial/Professional (CP)</b>	<b>Professional Office (P-1)</b>
<b>Proposed:</b>	<b>N/A</b>	<b>Pedestrian Commercial (C-1)</b>
	<b>Surrounding Future Land Use</b>	<b>Surrounding Zoning</b>
<b>North:</b>	<b>CP</b>	<b>C-1</b>
<b>South:</b>	<b>CP</b>	<b>P-1</b>
<b>East:</b>	<b>Single-Family Residential (SF)</b>	<b>Single-Family Residential (R-1B)</b>
<b>West:</b>	<b>CP</b>	<b>C-1</b>

**Urban Service**

**Area:** Infill

**City Water/Sewer:** Yes

**FINDINGS OF FACT**

The 2.68 acre site is comprised of eight platted parcels in Block 5386 in southeastern Cape Coral. The site has 105 feet of frontage on Four Mile Cove Parkway (a collector street) and 915 feet of frontage on SE 16<sup>th</sup> Place (a local street). The site comprises approximately 25% of Block 5386. Surrounding development consists of commercial development<sup>1</sup> to the north, south, and west (across Del Prado Boulevard) and single-family homes to the east. Block 5386 has frontage on Del Prado Boulevard (a principal arterial). The block has retained the Commercial/Professional (CP) future land use designation since 1989. The block has been zoned Professional Office (P-1) since 1990.

The applicant is seeking the rezone to allow commercial development. The applicant owns two adjacent commercial buildings<sup>2</sup> on the western half of the block. These two buildings in addition to the site provide the opportunity to develop a compact, full block commercial site. The rezone could allow new commercial development, expansion of the existing

<sup>1</sup> Bowling alley, office, retail, and service businesses.

<sup>2</sup> At 1929 and 1939 Del Prado Boulevard.

commercial development or redevelopment of the applicant's other sites by utilizing the rezone sites as parking, landscaping, or surface water retention.

## **ANALYSIS**

### Comprehensive Plan

*The City's Comprehensive Plan underwent several text changes that were adopted by City Council on February 15, 2019. A portion of these text changes amended the Commercial/Professional (CP) land use classification in conjunction with a planned repeal of the LUDR and an adoption of a Land Development Code (LDC). After adoption of the amendment, the Comprehensive Plan changes went to the state's Department of Economic Opportunity (DOE) for a 30-day review period. After the conclusion of the state's review period, the Comprehensive Plan changes underwent a 30-day appeal cycle. The Comprehensive Plan amendment was not fully adopted upon the applicant's application for the rezone on April 5<sup>th</sup>, 2019, therefore, the rezone was analyzed for Comprehensive Plan Consistency under the previous iteration of Chapter 4, Future Land Use Element.*

The following Comprehensive Plan policy is applicable to ZA19-0005:

### Chapter 4 Future Land Use Element, Policy 1.15.C, Commercial/Professional (CP):

"Intensities of use in the Commercial/Professional land use classification shall not exceed a lot floor area ratio (FAR) of 1.0..."

**Response: The site is not currently developed. When the site is developed, all development will be limited to a FAR of 1.0.**

"Permitted uses will ultimately depend upon the zoning district of the subject parcel. Generally, three zoning districts are found in the Commercial/Professional future land use classification..."

**Response: The applicant is requesting a rezone to Pedestrian Commercial (C-1).**

"The Pedestrian Commercial (C-1) District is designed to facilitate a broad variety of large or small commercial uses. Uses allowed in the C-1 district range from a variety of small or neighborhood-based commercial uses to larger retail or service uses, which may serve a relatively large trade area and, which may be developed as major shopping facilities. As many commercial uses have the potential to generate relatively high levels of vehicular trips from customers and sometimes delivery vehicles, preferred location for the C-1 district have direct access onto arterial or collector and adequate depth (a minimum of 250 feet) for larger-scale development..."

**Response: The applicant is requesting a rezone to Pedestrian Commercial (C-1). The site lacks the preferred adequate depth, however, the site is adjacent to two parcels with frontage on Del Prado Boulevard that are under common ownership.**

"In certain locations, fragmented ownership of relatively small properties, or other factors, may preclude the creation of larger properties with access onto a collector or arterial roadway. Under such circumstances, it may be appropriate for the C-1 Zoning District to place additional limits on the intensities of commercial development on these properties. It may also be appropriate, under certain circumstances to place restriction on some commercial uses, such as those with high trip generation rates, adverse aesthetic attributes, and generation of disturbing noises or odors. Factors to consider

when establishing such limits on intensities or uses include the following: the depth of the property, whether the property is adjacent to a waterway, whether the property is adjacent to or proximate to future land use classifications or zoning districts that allow residential uses, and/or the functional classification of street(s) available for street access. The placement of limitations upon the types and intensities of uses allowed within the C-1 zoning district, in accordance with the factors described above, is intended to reduce the conflicts between the C-1 District and adjacent or nearby residential zoning districts...”

**Response: The site is within the Urban Services Infill Area and municipal utilities to are available to the site. The site is undeveloped, however, future development will be limited to the maximum FAR of 1.0 or 116,844 sq. ft. The rezone to C-1 will be consistent with the CP future land use designation.**

#### Land Use and Development Regulations

The Planning Division reviewed this request based on the ten General Standards in LUDR, Section 8.7.3.B and offers the following analysis for consideration:

1. The extent to which the property is diminished by the proposed zoning of the property:

**Response: The requested C-1 zoning should increase the value of the property. The C-1 district allows 73 permitted uses and 19 special exception uses, while the P-1 district allows 21 permitted uses and 18 special exception uses. The greater number of uses allows a wider range of development options for current or future owners of the site. Additionally, many commercial uses are allowed in the C-1 whereas most uses allowed in the P-1 district are office or public service uses.**

2. The extent to which the removal of a proposed change in zoning depreciates the value of other property in the area:

**Response: All the nearby development to the north, south, or west consists of C-1 zoning and commercial uses. The rezone would not have a negative on these developments because the site will develop with similar uses. Single-family homes are to the east of the site across a two-lane street. The homes are approximately 120 feet away from the site. The homes are in close proximity, however, the impact of commercial development will be reduced by landscape buffers that are required by LUDR, Section 5.3. Buffers may include substantial landscaping or a wall along the east side of new development.**

3. The suitability of the property for the zoning purpose:

**Response: Planning staff finds that the site is well-suited for the C-1 zoning district due to its location in a block with frontage along a principal arterial. Del Prado Boulevard is a principal arterial and most parcels along this road are zoned P-1 or C-1. The majority of Block 5386 is already zoned C-1. Additionally, the property to the north of the site is zoned C-1. Planning staff finds that the property does not have ideal depth for the C-1 zoning district, however, the district has regulations that offset the site's lack of depth. If the site is redeveloped or the if the development on the site expands, the C-1 district requires a PDP or an enhanced buffer from the residential property to the east.**

4. The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed zoning:

**Response:** The surrounding area to the north, south, and west is developed with commercial uses such as office, retail, and service industries. The area to the east is developed with single-family homes. The rezone is likely to result in commercial development that occurs along Del Prado Blvd. Planning staff finds that any new commercial development is likely to be an expansion of existing uses or office uses<sup>3</sup>. Planning staff notes that some additional traffic and noise could be generated from the site as the C-1 district allows a wider range of commercial uses compared to the P-1 district. Uses such as restaurants, retail, and some service industries are more intense than most office uses. If the sites are developed individually as these uses, there will likely be an increase in traffic and noise.

5. The relative gain to the community as compared to the hardship, if any imposed, from rezoning said property:

**Response:** Planning staff finds that the C-1 zoning district will allow for a greater variety of commercial uses along a commercial corridor. The rezone will also allow for expansion or redevelopment of the existing commercial development which will provide additional retail, office, and service uses to the community, which is a positive gain.

6. The community need for the use proposed by the zoning:

**Response:** As noted in the Future Land Use Element of the City of Cape Coral Comprehensive Plan, the City has identified a need for increasing commercial uses within Cape Coral. The rezone will allow a wider range of commercial development in an existing commercial area.

7. Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property:

**Response:** Block 5386 has retained the Commercial/Professional (CP) future land use designation since 1989. The block has been zoned Professional Office (P-1) since 1990.

8. The extent to which the proposed zoning promotes the health, safety, morals, or general welfare of this community:

**Response:** The proposed zoning is consistent with the City Comprehensive Land Use Plan, therefore, the change will assist with the long-term vision of adding or expanding commercial land at an appropriate location. The proposed rezone will not negatively affect the health, safety, or welfare of the community because other properties with commercial zoning are already in the general proximity of the site.

9. The extent to which the proposed zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan.

**Response:** The site is in the City Urban Service Infill Area. The site has access to the City water, sewer, and irrigation network where sufficient capacity exists.

10. Whether the proposed zoning is consistent with the City of Cape Coral's Comprehensive Land Use Plan.

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<sup>3</sup> Site does not have frontage along Del Prado Blvd. Retail not likely to develop without arterial frontage.

**Response:** The proposed rezone is consistent with the City Comprehensive Plan Policy 1.15 as the Future Land Use classification is CP. Properties with the CP future land use are compatible with the C-1, Professional Office (P-1) and the Professional Business (P-2) zoning districts. Staff finds that the requested C-1 zoning is appropriate for the site<sup>4</sup>.

#### ECONOMIC DEVELOPMENT MASTER PLAN ANALYSIS

**The rezone is supported by the City Economic Development Master Plan. The site is not within an Economic Opportunity Area, however, the rezone will ensure that commercial development is built in the future.**

#### PUBLIC NOTIFICATION

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

Publication: A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to amend the land use of the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Cape Coral Hearing Examiner. Following the public hearing before the Commission, the display ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council. The display ads will not be published in the legal section of the *News-Press*.

Written notice: Property owners located within 500 feet from the property line of the land which the petitioners request to vacate will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

Posting of a Sign: A sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the land use amendment request.

#### RECOMMENDATION

Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed rezone to Pedestrian Commercial (C-1) zoning is consistent with the Comprehensive Plan, the Land Use and Development Regulations, and is compatible with the surrounding area, therefore, Planning Division staff recommends **approval** of the rezone request.

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<sup>4</sup> If the rezone to C-1 is approved, and if the proposed Land Development Code is adopted, the zoning would be changed to Commercial (C).

**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0003639651

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$371.00

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 06/22/19

**Text of Ad:**

**NOTICE OF PUBLIC HEARING  
ADVERTISEMENT**

**CASE NUMBER:** ZA19-0005

**REQUEST:** The applicant requests a rezone from Professional Office (P-1) to Pedestrian Commercial (C-1) for eight parcels totaling 116,844 sq. ft. (2.68 acres.)

**LOCATION:** 1914 – 2014 SE 16th PL

**CAPE CORAL STAFF CONTACT:** Chad Boyko, AICP, Principal Planner, 239-574-3162, cboyko@capecoral.net

**PROPERTY OWNER(S):** Mehmet Ozer, Serife Ozer and Tuncay Ozer

**UPCOMING PUBLIC HEARING:** Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00AM on July 2, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

**DETAILED INFORMATION:** The case report and colored maps for this application are available at the City of Cape Coral website, [www.capecoral.net/publichearing](http://www.capecoral.net/publichearing) (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM.

**HOW TO CONTACT:** Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

**ADA PROVISIONS:** In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources



Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of  
Kimberly Bruns, CMC  
City Clerk  
REF # ZA19-0005  
AD#3639651 JUNE 22, 2019

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Mehmet Ozer and Tuncay Ozer

APPLICATION NO: ZA19-0005

STATE OF FLORIDA       )  
                                      ) §  
COUNTY OF LEE        )

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 24<sup>th</sup> day of June, 2019.

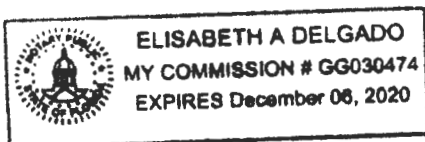


Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/16/20 Commission # GG030474



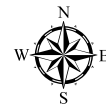
Elisabeth A. Delgado  
Signature of Notary Public

Elisabeth A. Delgado  
Print Name of Notary Public



Department of  
Community Development  
Planning Division

## LEGEND



A horizontal graphic scale bar with tick marks at 0, 110, 220, 330, and 440 feet. The bar is divided into four equal segments, each representing 110 feet.

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

**FOUR MILE COUNTRY**



# CITY OF CAPE CORAL








Department of  
Community Development  
Planning Division

## CURRENT ZONING MAP

500 Proximity Boundary

Case No. ZA19-0005

### LEGEND

-  Subject Parcels
-  500' Boundary
-  C-1
-  P-1
-  R-1B
-  R-3
-  RD

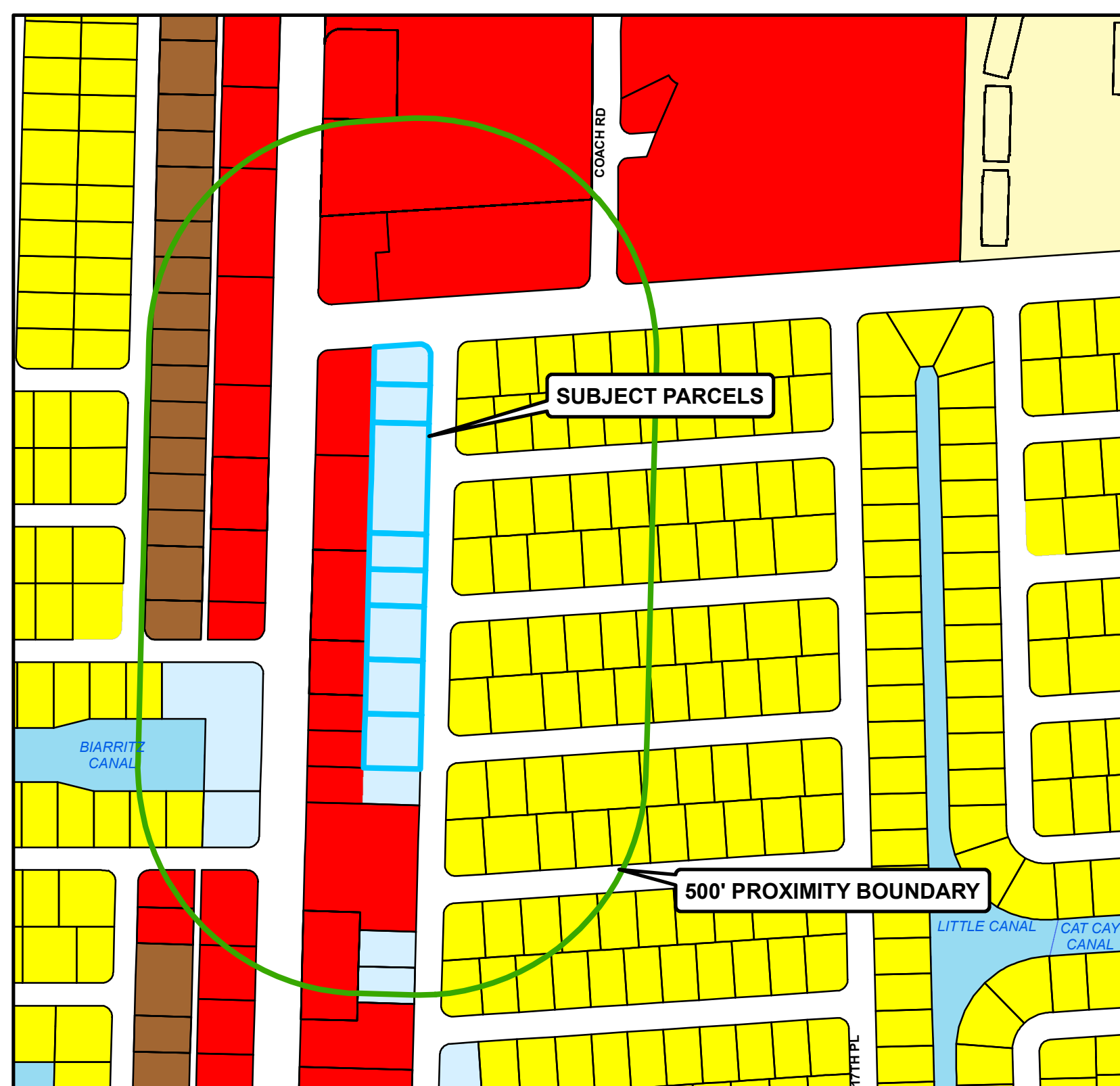


MAY 6, 2019

0 110 220 330 440 Feet

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KRKA










# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## PROPOSED ZONING MAP 500 Proximity Boundary

Case No. ZA19-0005

### LEGEND

-  Subject Parcels
-  500' Boundary
-  C-1
-  P-1
-  R-1B
-  R-3
-  RD

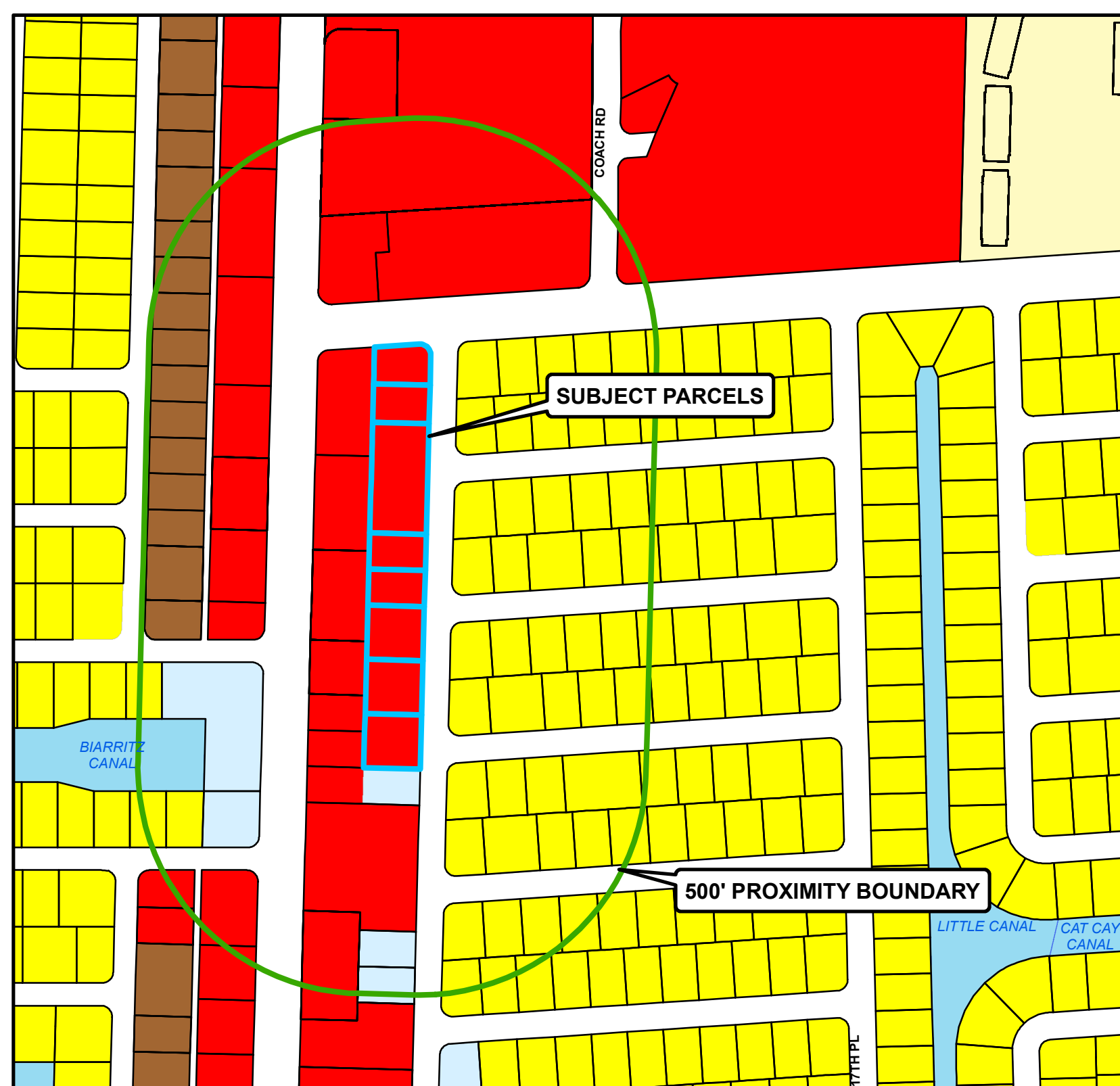


MAY 6, 2019

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KRKA








# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## FUTURE LAND USE MAP 500 Proximity Boundary

Case No. ZA19-0005

### LEGEND

-  Subject Parcels
-  500' Boundary
-  SF
-  MX
-  CP

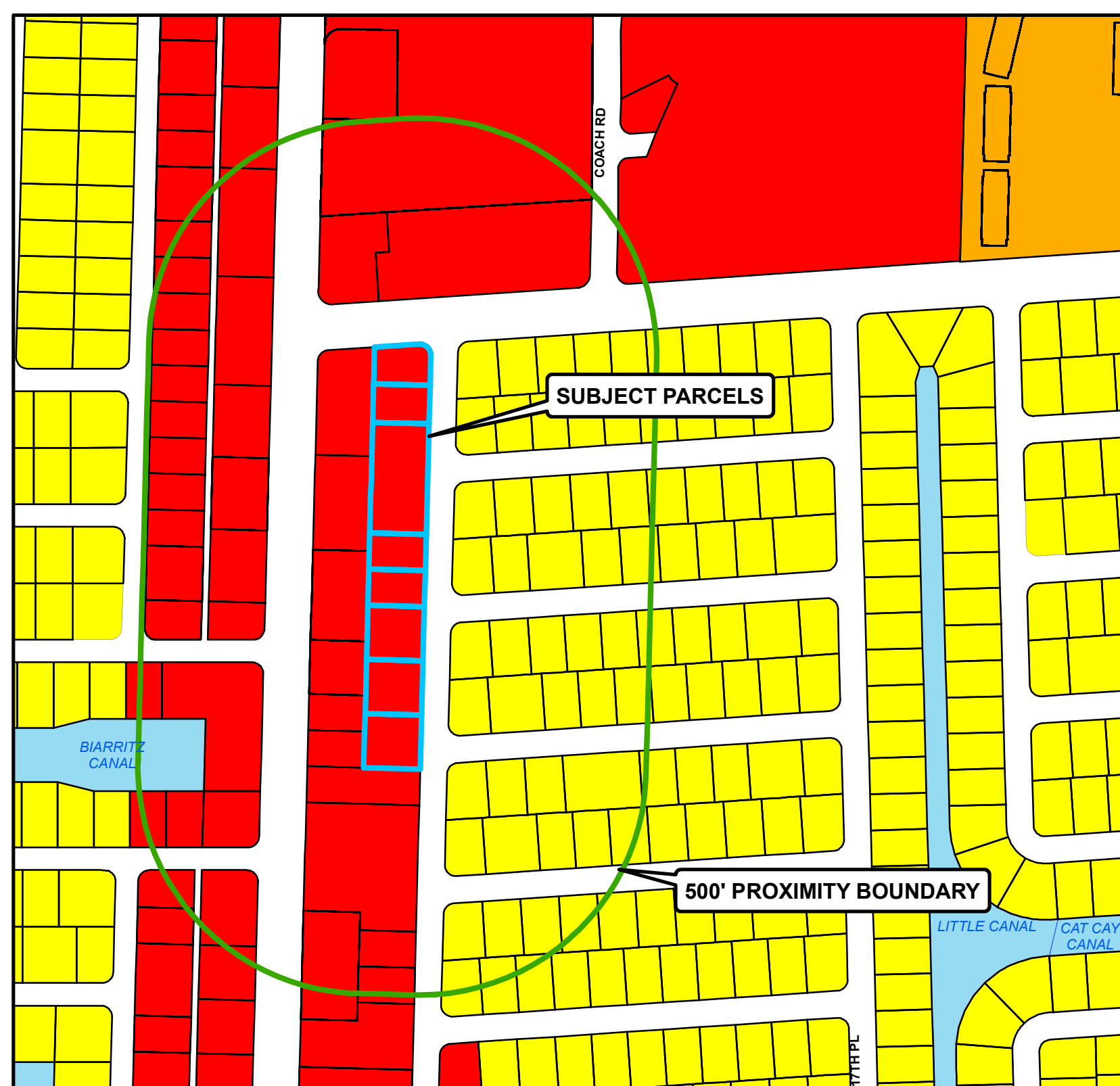


MAY 6, 2019

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KRKA



# **ZA19-0005**

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**CAPE CORAL HEARING EXAMINER**

**JULY 2, 2019**



# **ZA19-0005**

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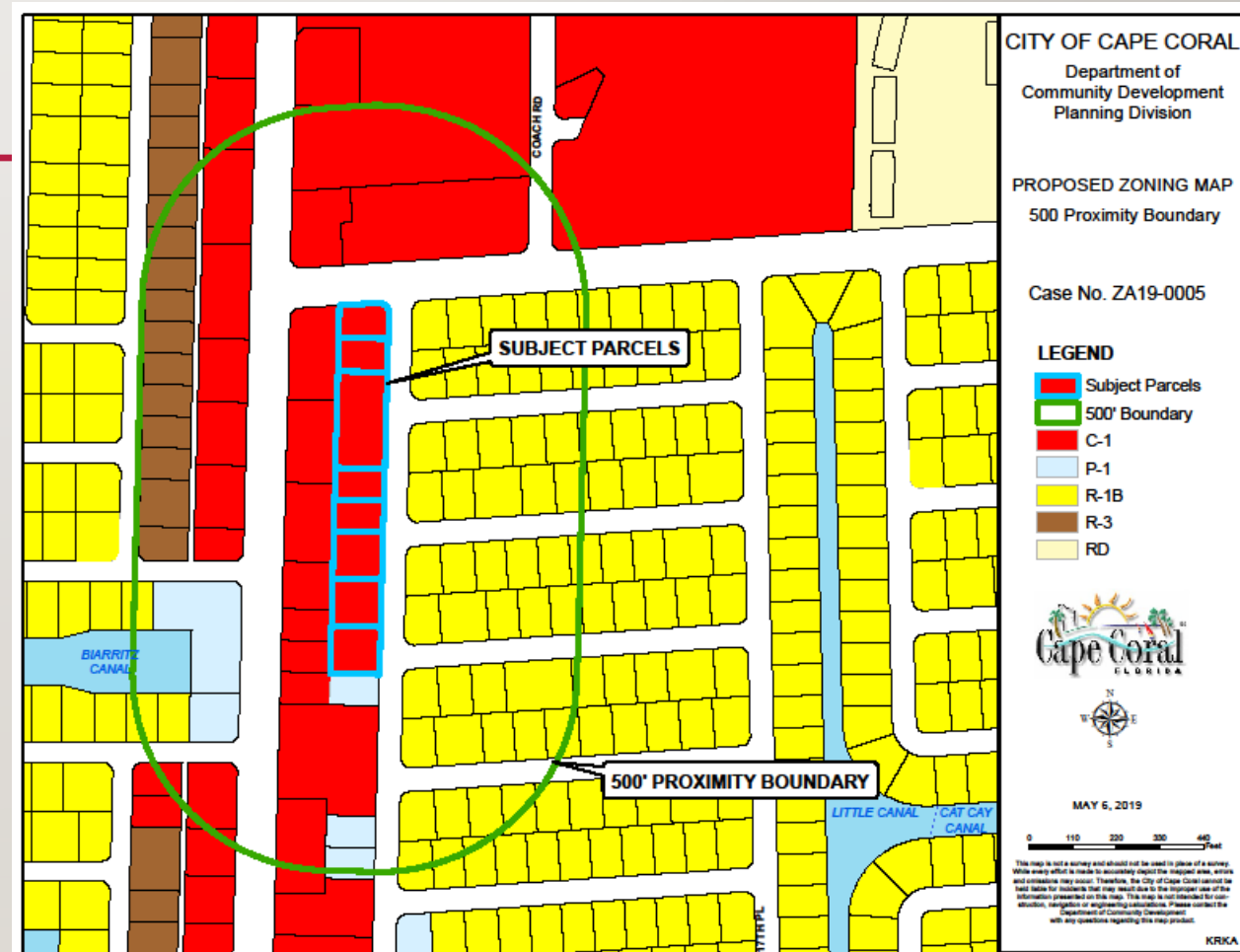
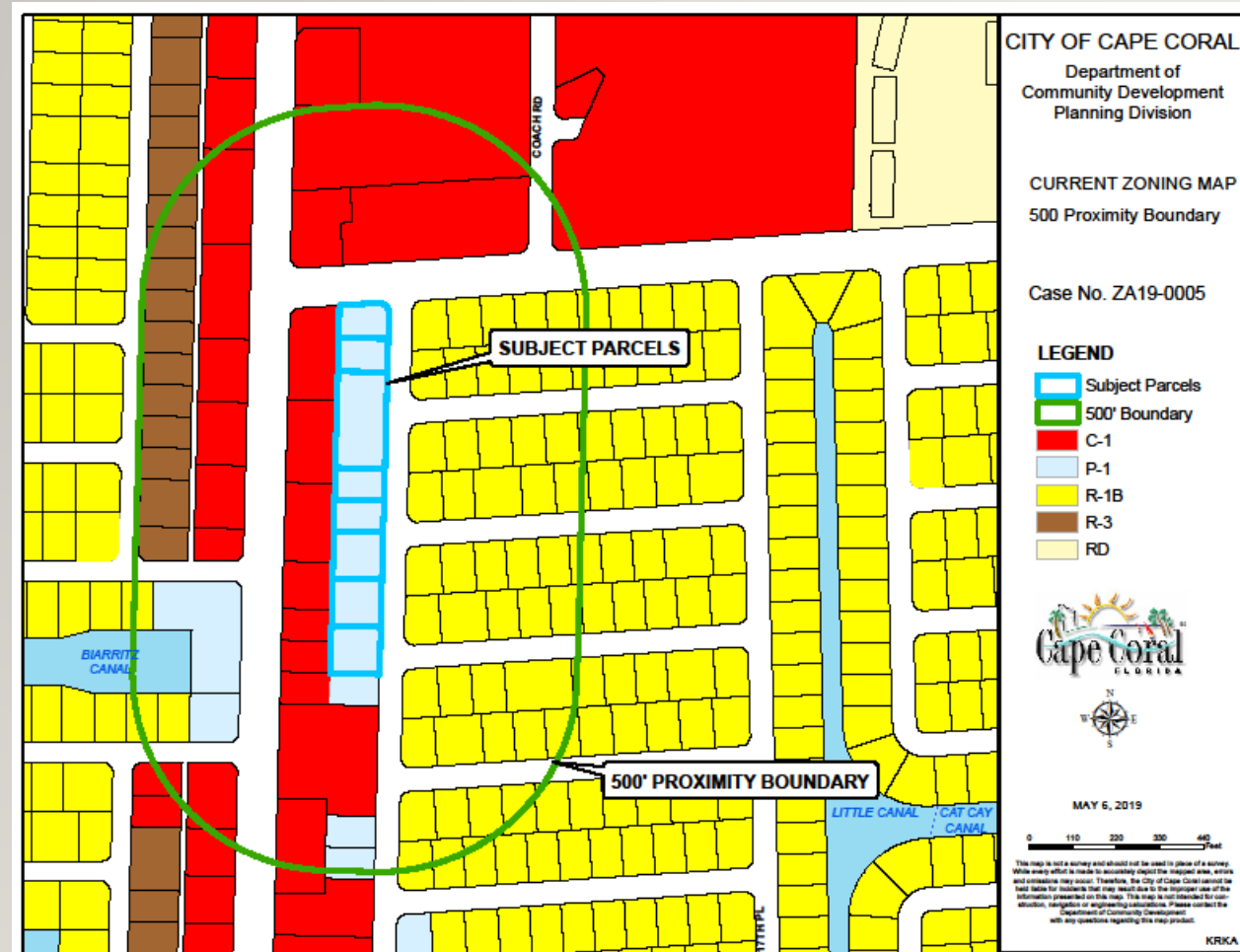
- **Applicant(s): Mehmet Ozer, Serife Ozer, and Tuncay Ozer**
- **Location: 1914 – 2014 SE 16<sup>th</sup> Place**
- **Size: 2.68 acres**
- **Urban Service Area: Infill**
- **Request: A rezone from Professional Office (P-1) to Pedestrian Commercial (C-1).**



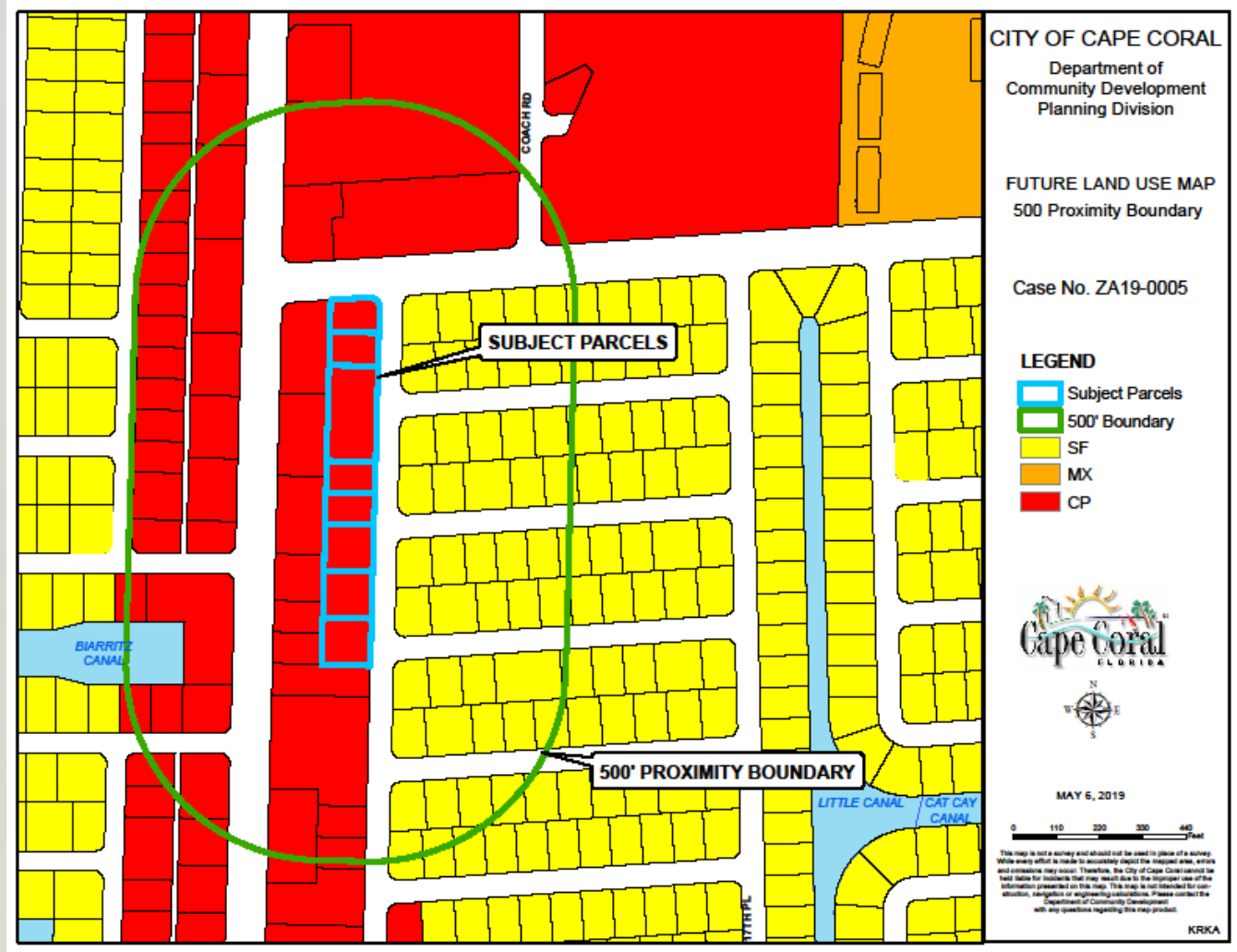


# CURRENT ZONING

# PROPOSED ZONING



# FUTURE LAND USE



# FINDINGS OF FACT

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- **Site is 2.68 acres and comprises 8 platted parcels.**
- **105 feet of frontage along Four Mile Cove Parkway (collector) and 915 feet of frontage along SE 16<sup>th</sup> Place (local street).**
- **Applicant seeks rezone to allow broader range of commercial uses. Applicant owns two commercial buildings that are adjacent to the west.**
- **The site could develop with its own uses / develop as parking / be redeveloped along with applicants other properties.**

# ANALYSIS – COMPREHENSIVE PLAN

**\* Planning Division reviewed the rezone request under the previously adopted Comprehensive Plan, Future Land Use Element as the new amendments had not been fully adopted at time of rezone application\***

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- **The rezone is consistent with Policy I.15.C, Commercial/Professional (CP):**
  - **The site will be limited to an FAR of 1.0.**
  - **The requested C-I zoning district is consistent with CP future land use.**
  - **The site lacks preferred depth - the applicant owns 2 properties that could be assembled to reach the preferred depth.**
  - **Development would be required to provide a buffer along local street.**
  - **Traditional development patterns would likely result in lower intensity uses such as office or service uses.**



# ANALYSIS – LUDR, SECTION 8.7.3.B

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- The extent to which the property is diminished by the proposed zoning of the property:
  - Response: C-I zoning should increase sites value. C-I allows more uses and provide wider range of development options.
- The extent to which the removal of a proposed change in zoning depreciates the value of other property in the area:
  - Response: North, south, and west are commercial uses and rezone will likely not have an effect. East is single-family homes and the change could have some impact on these uses. Site is approx. 120 west of the homes and buffers will be required. C-I zoning is common for entire blocks with frontage along Del Prado Blvd.



# ANALYSIS – LUDR, SECTION 8.7.3.B

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- The suitability of the property for the zoning purpose:
  - Response: The site is well suited. Most of block is already C-I. Rezone will allow applicant to expand or redevelop nearby adjacent development.
- The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed zoning:
  - Response: Commercial to the north, south, and west. Homes may be impacted depending on future development. Certain uses in C-I could bring more trips or noise.

# ANALYSIS – LUDR, SECTION 8.7.3.B

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- The relative gain to the community as compared to the hardship, if any imposed, from rezoning said property:
  - Response: The rezone will allow for greater variety of uses which may provide additional retail, office, and service uses for community.
- The community need for the use proposed by the zoning:
  - Response: Comp Plan has identified a need for additional commercial land. The site is already zoned for non-residential development – the rezone will allow for additional uses in a commercial block.

# ANALYSIS – LUDR, SECTION 8.7.3.B

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- Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property:
  - Response: The block has retained the CP land use since 1989 and P-I zoning since 1990.
- The extent to which the proposed zoning promotes the health, safety, morals, or general welfare of this community:
  - Response: The rezone is consistent with Comp Plan / will add commercial land at appropriate location and is in a block with existing C-I zoning and development.

## ANALYSIS – LUDR, SECTION 8.7.3.B

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- The extent to which the proposed zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan:
  - Response: The site is in the Urban Services Infill area and all utilities are available.



# RECOMMENDATION

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- Planning Division staff recommends **approval** of the rezone request.
- The Hearing Examiner heard this case in July and recommends **approval**.

<b>Item Number:</b>	<b>10.A.</b>
<b>Meeting Date:</b>	<b>8/12/2019</b>
<b>Item Type:</b>	<b>UNFINISHED BUSINESS</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Water Quality - Update

**REQUESTED ACTION:**

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

Water Quality Memo

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
<input type="checkbox"/> Water Quality Memo	Backup Material

**MEMORANDUM**

CITY OF CAPE CORAL  
PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Paul Clinghan, Public Works Director *PRC*  
Michael Ilczyszyn, Senior Public Works Manager *MI*  
Maya Robert, Environmental Resources Manager *MR*

DATE: August 9, 2019

SUBJECT: Lake Okeechobee Level and Release Information

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As of Friday, August 9, 2019, the overall salinity conditions in the Caloosahatchee estuary promote a healthy ecosystem. This past dry season the US Army Corps of Engineers lowered the Lake level, which enable them to release minimal amounts of water from Lake Okeechobee at the Moore Haven Lock (S-77) this summer. At the same time last year; during the blue green algae event; the elevation of Lake Okeechobee was over 14 ft (vs. 12.11 ft today) and the US Army Corps of Engineers were releasing over 1,000 cfs (vs. 0 cfs today) out of S-77.

On August 1, 2019, U.S. Sugar filed a lawsuit against the US Army Corps of Engineers for lowering the level of Lake Okeechobee during this past dry season.

Blue Green Algae is still present in Lake Okeechobee and expanding. However, no toxins are present in recent water samples from either Lake Okeechobee or the Caloosahatchee River.

The Fertilizer Black-out Period per City Code began on June 1<sup>st</sup> and will continue until September 30<sup>th</sup>. Fertilizer containing nitrogen and phosphorus may not be applied during this time city-wide.

Several of our freshwater lakes and canals have had fragmented tape grass floating at the surface. This natural phenomenon is being addressed by the Lee County Hyacinth Control District in collaboration with City staff.

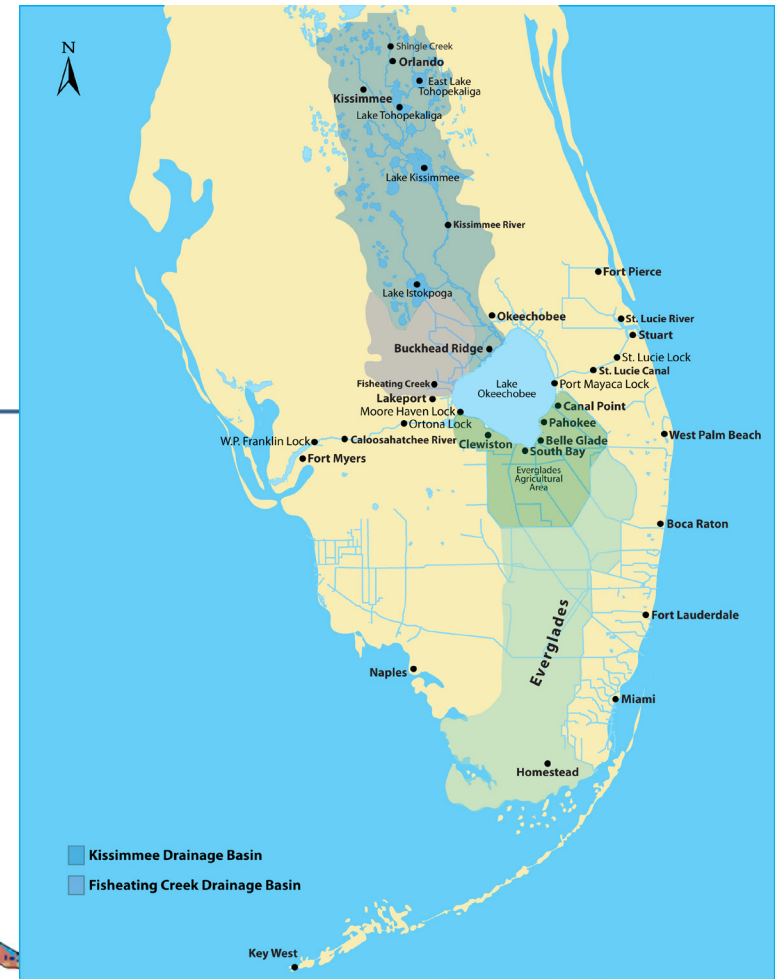
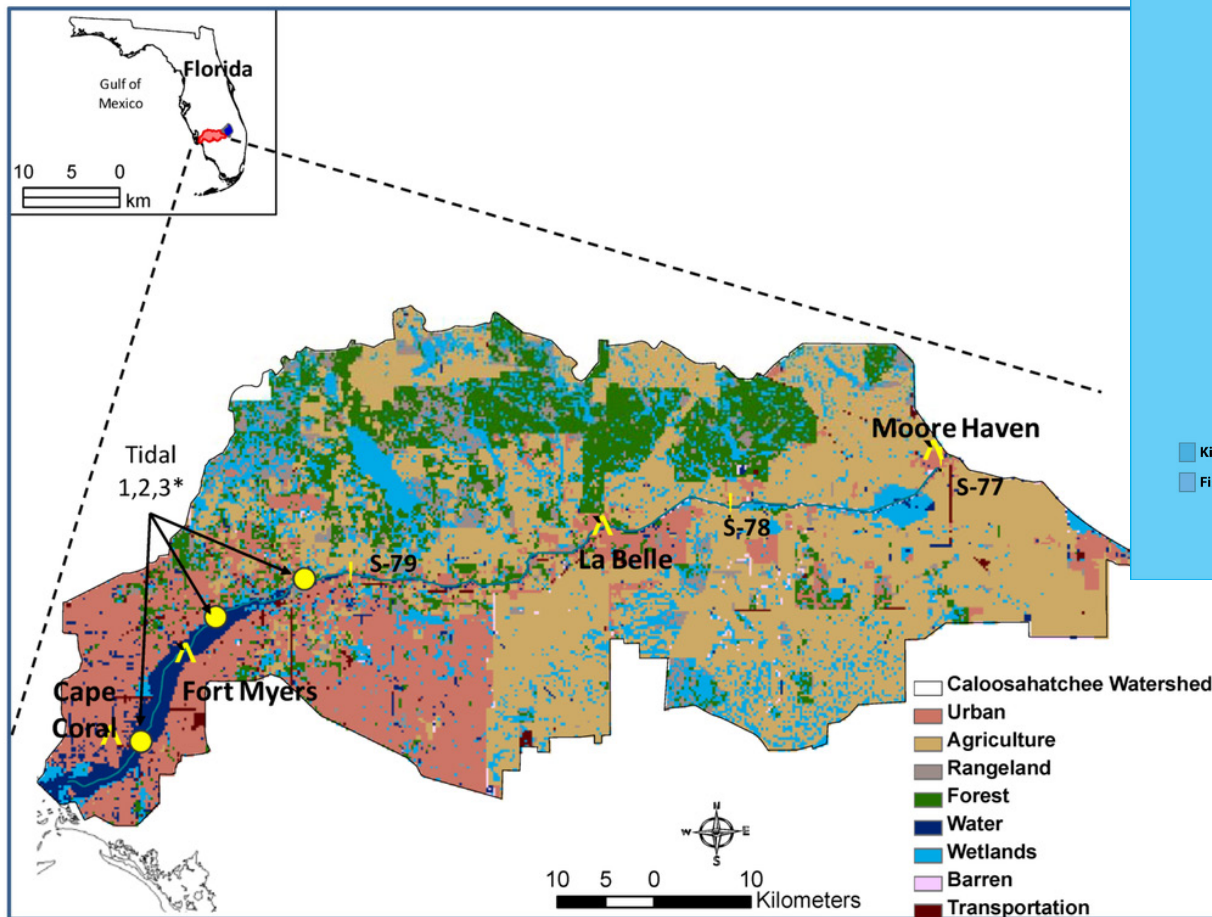
Red Tide was detected at background concentration in one offshore sample in Lee County this week.

Attached is a map showing drainage basins of the Lake Okeechobee and the current Lake's inflows and outflows from the USACOE.

PC/MI:mr (Weekly Lake Okeechobee Level and Release Information)

Attachments; Lake Okeechobee drainage basins, USACOE inflows and outflows report





## Daily averages for 09 August 2019

Daily averages for 09 August 2019

Lake Okeechobee stage: 12.11 ft

Previous day: 12.07 ft

One week ago: 11.72 ft

(1965-2007 avg for today): 13.87 ft

Total Structure/Creek Inflows: 6081 cfs

Total Structure Outflow: 0 cfs

A map of the Kissimmee River area in Florida. The Kissimmee River is shown flowing from the top left towards the bottom right. Three locations are highlighted with colored boxes and labels: Kissimmee (green box), Lake O and WCA-3 (red box), and South Dade (green box). The map shows the river's path and the surrounding land area.

[Water Management Main Page](#)

[Status Update Archives](#)

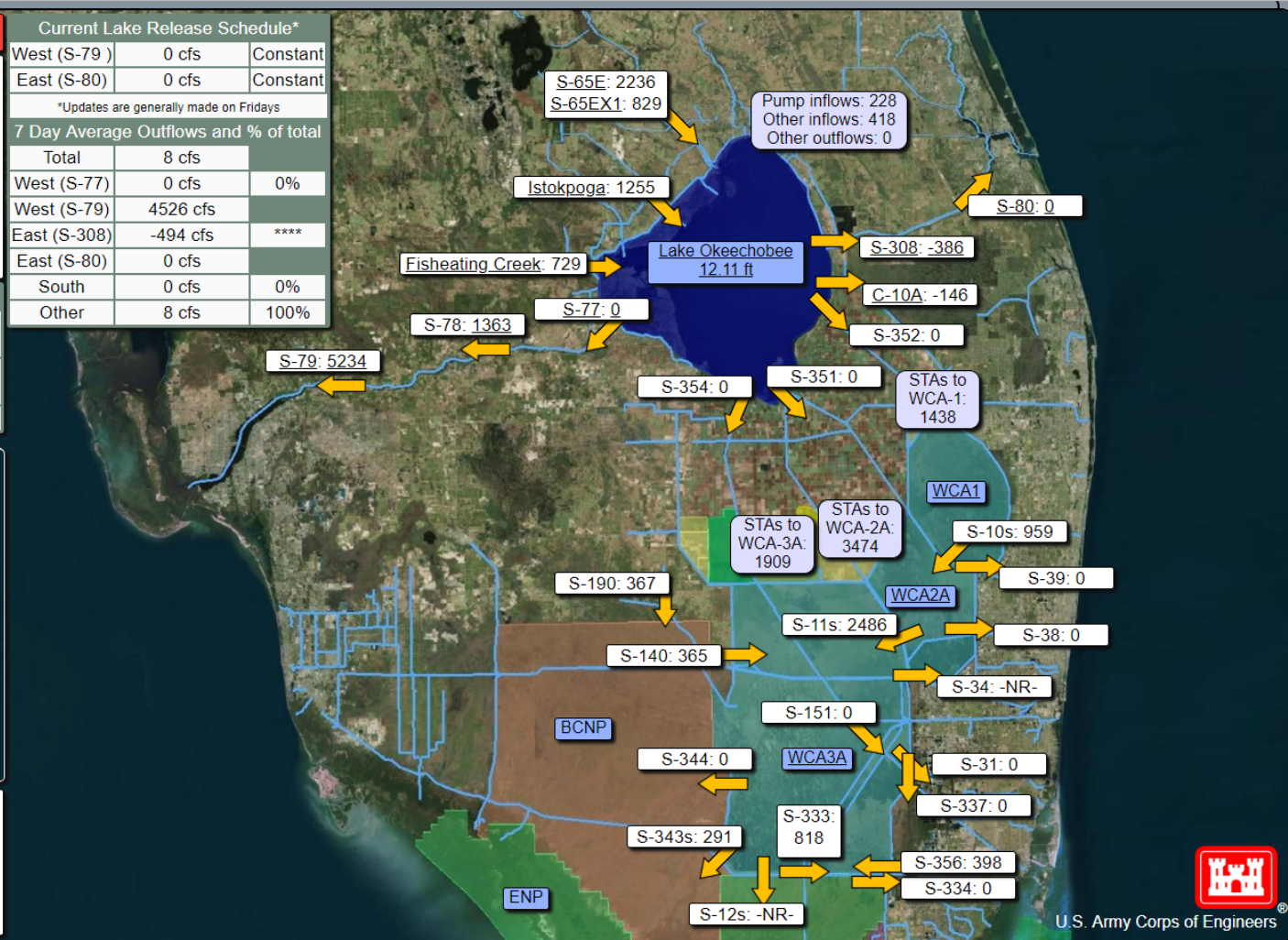
Elevations are ft-NGVD.

Flows are average daily CFS.

Data is provisional and subject to revision.

Report generated: 09 AUG 2019 @ 10:15

Current Lake Release Schedule*		
West (S-79)	0 cfs	Constant
East (S-80)	0 cfs	Constant
*Updates are generally made on Fridays		
7 Day Average Outflows and % of total		
Total	8 cfs	
West (S-77)	0 cfs	0%
West (S-79)	4526 cfs	
East (S-308)	-494 cfs	*****
East (S-80)	0 cfs	
South	0 cfs	0%
Other	8 cfs	100%



**Item Number: 11.A.**  
**Meeting Date: 8/12/2019**  
**Item Type: NEW BUSINESS**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Proposed Strategic Plan and FY2020 Annual Audit Plan - Brought forward by City Auditor Butola

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan? No

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

As per Ordinance 79-10 and Resolution 46-10, "The City Auditor shall submit an Annual Audit Plan to the City Council each year for approval". The attached plan was transmitted with a memo to City Council on July 11, 2019. In addition, Resolution 46-10 requires the City Auditor to "develop and submit to the City Council for approval a strategic plan, which shall cover a three-year period". The proposed FY2020 Annual Audit Plan reflects the concepts stated in the Strategic Plan.

**LEGAL REVIEW:**

**EXHIBITS:**

Proposed Strategic Plan and FY2020 Annual Audit Plan with Transmittal Memo

**PREPARED BY:**

Andrea R. Butola, City Auditor      Division-      Department- City Auditor's Office

**SOURCE OF ADDITIONAL INFORMATION:**

Andrea R. Butola  
City Auditor's Office  
239-242-3380

ATTACHMENTS:


Description	Type
▣ Proposed Strategic Plan and FY2020 Annual Audit Plan with Transmittal Memo	Backup Material



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CITY AUDITOR'S OFFICE

TO: Mayor and Council Members

FROM: Andrea R. Butola, City Auditor 

DATE: July 11, 2019

SUBJECT: Strategic Plan and FY2020 Annual Audit Plan

Ordinance 79-10 and Resolution 46-10 require the submission of an Annual Audit Plan and Strategic Plan to City Council for their acceptance by October 1 of each year. In accordance with these requirements, we have attached the Strategic Plan and FY2020 Annual Audit Plan along with tentative plans for FY2020-2021. The Strategic Plan includes our vision and mission along with goals and objectives.

We develop a risk based audit plan by means of a risk assessment. The office performed a three-year Citywide Risk Assessment for FY2019, 2020, and 2021 which was issued on July 17, 2018 to City Council. Our purpose in performing this risk assessment is to assist in creating a meaningful audit universe utilizing risk scores to develop the risk based audit plan.

At the July 10, 2019 Audit Committee meeting, the committee reviewed and approved the proposed City Auditor's Office Strategic Plan and FY2020 Annual Audit Plan. They voted to recommend that Council accept the plan as presented.

***Committee Member Austin moved, seconded by Vice Chair Stevens, to recommend to Council to accept the Strategic and FY2020 Audit Plan. Voice Poll: All "ayes." Motion carried.***

**Recommended Action for Council at August 12, 2019 meeting: Motion to accept the City Auditor's Office Strategic Plan and FY2020 Annual Audit Plan.**

Attachment

C: John Szerlag, City Manager  
Connie Barron, Assistant City Manager  
Dolores Menendez, City Attorney  
Kimberly Bruns, City Clerk  
Audit Committee





CITY AUDITOR'S OFFICE  
Strategic Plan and Annual Audit Plan – Fiscal Year 2020

**Vision:**

It is our vision to work in partnership with the City Council, City Management, and the Community without compromising independence, objectivity, or integrity in order to become the City's trusted advisor.

**Mission:**

Our mission is to enhance and protect organizational value by providing independent, risk-based objective assurance, advice, and insight to the City.

**Values:**

- Independent
- Fact-based
- Due professional care
- Objective
- Integrity

City Auditor's Office FY 2020 - Goals and Objectives:	
Goals / Objectives	Action plan
1. Of the Auditor Staff available man-hours, at least 75% total are spent on direct audit related projects. Administrative hours are to be limited to no more than 25% total.	<ul style="list-style-type: none"><li>• Monitor audit budget hours in comparison to actual time charged to audit.</li><li>• Monitor audit plan in comparison to available audit resources</li></ul>
2. Complete a minimum of 75% of the audits on the Approved Audit Plan.	<ul style="list-style-type: none"><li>• Monitor Audit Plan throughout the year.</li><li>• Monitor additional audits and other projects completed that were not included on the Approved Audit Plan.</li></ul>
3. Monitor additional audits and other projects completed that were not included on approved audit plan	<ul style="list-style-type: none"><li>• Monitor the number of additional audits, and special projects to ensure appropriate resource allocation</li><li>• Keep Audit Committee informed of changes</li><li>• Periodically re-assess schedule and audit plan to ensure effective use of staff and availability</li></ul>
4. Obtain relevant continuing education credits as required by GAGAS and certification/ license standards	<ul style="list-style-type: none"><li>• Monitor training courses to ensure relevant topics in compliance with certification and license requirements.</li></ul>
5. Hire and retain qualified competent staff with professional certifications and/or advanced degrees	<ul style="list-style-type: none"><li>• Allocate adequate resources to support staff and office growth</li></ul>
6. Provide timely review and closure of audit recommendations	<ul style="list-style-type: none"><li>• Work with audit clients to develop reasonable, achievable completion dates.</li><li>• Review implemented recommendations to ensure implementation according to management action plans in a timely manner.</li></ul>
7. Develop a balanced multi-year budget.	<ul style="list-style-type: none"><li>• Monitor budget and report budget to City Council throughout the year.</li></ul>



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CITY AUDITOR'S OFFICE  
Strategic Plan and Annual Audit Plan – Fiscal Year 2020

Available Audit Hours:	Percentage of time available for audit work	Available Audit Hours
City Auditor	70%	1,275
2 Assistant City Auditors	80%	1,458 + 1,458 = 2,916
1 Internal Auditor	80%	1,458
Administrative Support Staff	5%	90
Total hours		5,739

Available audit hours are calculated based on the standard 2080 annual total available hours per auditor, less time off and less hours spent on administrative responsibilities such as staff management, Audit Plan development, budget development and management, training and professional development, Audit Committee meetings, and review of Audit Hotline. For purposes of total available hours for the audit plan, we used 5,700 hours.





CITY AUDITOR'S OFFICE  
Strategic Plan and Annual Audit Plan – Fiscal Year 2020

**Proposed Annual Audit Plan - FY 2020**

Area / Focus of Audit	Projected Hours	Audit Resource
Public Works – Utilities Expansion Program Management	700	Internal
Parks and Recreation – GO Bonds	700	Internal
Financial Services – Procurement Process Review	700	Internal
Citywide – Travel	700	Internal
Parks and Recreation – Sun Splash	700	Internal
Citywide Facilities Maintenance	700	Internal
Fire – Emergency Management Operations Program	700	Internal
Peer Review	80	Internal
Special Projects	440	Internal
<b>Financial Audits</b>		
External Audit Facilitation	30	External
<b>Carry over from FY 2019</b>		
PAR- previously issued audits	250	Internal
Total hours	5700	

**Proposed Annual Audit Plan FY 2021**

Area / Focus of Audit	Projected Hours	Audit Resource
DCD – Building Division – Permits	700	Internal
Public Works – Road, Bridge, and Canal Maintenance	700	Internal
Citywide Add Pay and Certifications	700	Internal
Charter School	700	Internal
City Manager – Economic Development Office	700	Internal
Fire Logistics Division	700	Internal
Parks & Recreation – Special Events	700	Internal
Special projects	420	Internal
<b>Financial Audits</b>		
External Audit Facilitation	30	External
New Contract External Audit Facilitation	100	Internal
<b>Carry over from FY 2020</b>		
PAR – previously issued audits	250	Internal
Total hours	5,700	



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CITY AUDITOR'S OFFICE  
Strategic Plan and Annual Audit Plan – Fiscal Year 2020

**Proposed Annual Audit Plan FY 2022**

\*No audits included for FY2022 because a risk assessment will be performed for FY 2022, 2023, and 2024.

Proposed Plan for Council Approval