1. Roll Call.

2. Pledge to the Flag.

3. Approval of August 13, 2019, September 10, 2019, and October 8, 2019 regular meeting minutes.

Quasi-Judicial Process: The audience should refrain from clapping, booing or shouts of approval or disagreement. To avoid potential legal ramification and possible overturning of a decision by the Courts, a public hearing must be fair in three respects: form, substance and appearance.

Time limits will be observed:
- **Staff** – 10 minute presentation.
- **Applicant** – 15 minute presentation (unless time extended by consensus of Board).
- **Public Comment** – 3 minutes per speaker, 5 minutes if speaking on behalf of a group.
- **Applicant Rebuttal and Closing Staff Comments** – 10 minutes each.

4. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3190 – APPLICATION FOR AMENDMENT TO PUD (PLANNED UNIT DEVELOPMENT) TO THE SEASIDE LANDINGS PUD DEVELOPMENT AGREEMENT – request is for third amendment to the PUD Development Agreement for Seaside Landings PUD. Parcel Numbers: 38-12-31-5445-00000-00A0 through -00E0, and 38-12-31-5445-00000-0010 through -0990; 250+/- acres; Owner/Applicant: Bulow Shores Homeowners Association, Inc.
   Project #AR-000030-2019 (TRC, PDB, BCC)
5. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3204 – APPLICATION FOR A VARIANCE IN THE AC (AGRICULTURE) DISTRICT – request for a 13 foot side yard and 38 foot rear yard setback variance for a detached garage at 76 Kentucky Avenue; Parcel Number: 32-12-29-2600-00000-0760; 0.92 +/- acres. Owner/Applicant: Joshua T. Gaither. Project #VAR-000070-2019 (TRC, PDB)

6. Staff Comments.

7. Board Comments.

8. Public Comments – Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.

9. Adjournment

PLEASE TAKE NOTICE THAT INDIVIDUAL COMMISSIONERS OF THE BOARD OF COUNTY COMMISSIONERS MAY ATTEND THIS EVENT. THE COMMISSIONERS WHO ATTEND WILL NOT TAKE ANY ACTION OR TAKE ANY VOTE AT THIS MEETING. THIS IS NOT AN OFFICIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY. THIS NOTICE IS BEING PROVIDED TO MEET THE SPIRIT OF THE SUNSHINE LAW TO INFORM THE PUBLIC THAT COMMISSIONERS MAY BE PRESENT AT THESE DISCUSSIONS.

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES STATES THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY A BOARD AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE 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.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN THIS MEETING SHOULD CONTACT THE PLANNING & ZONING DEPARTMENT AT (386)313-4009 AT LEAST 48 HOURS PRIOR TO THE MEETING.
MEMBERS PRESENT: Chair Michael Boyd, Jack Corbett, Timothy Conner, Michael Goodman, Laureen Kornel, Mark Langello, and Anthony Lombardo.

STAFF PRESENT: Adam Mengel, Planning Director; and Gina Lemon, Development Review Planner III.

BOARD COUNSEL: Kate Stangle, with Nelson Mullins Broad and Cassel.

Chair Boyd called the meeting to order.

1. Roll Call.

Attendance was confirmed by Ms. Lemon and a quorum was present.

2. Pledge of Allegiance.

Chair Boyd led the Pledge of Allegiance to the Flag.

3. Approval of the July 9, 2019 regular meeting minutes

Motion to approve made by Mr. Langello, seconded by Ms. Kornel. Mr. Langello commended Ms. Hickey for doing a great job on the minutes. Motion carried unanimously.

4. Quasi-judicial requiring disclosure of ex parte communication:

Application #3179 - APPLICATION FOR A SPECIAL EXCEPTION IN THE AC (AGRICULTURE) DISTRICT - request for a borrow pit in the AC (Agriculture) district. Parcel Numbers: 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000; 14.79 +/- acres. Owner: Rayonier Atlantic Timber Company/Applicant: Matthews Design Group.

Chair Boyd asked for ex-parte disclosures; none were provided.

Mr. Mengel presented the staff report describing the property and the request for a Special Exception for Soil Extraction to create a borrow pit within the AC District. He explained the administrative amendment to the Future Land Use Classification of Conservation and advised that it is complete. He provided staff’s recommendation that the Planning and Development Board find that all the special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have been met and therefore approves the Special Exception for Soil Extraction (borrow pit) located on Parcels: # 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000, subject to the following conditions:
1. the Special Exception runs with the land;
2. owner or contractor to obtain all permits prior to commencement of work;
3. the use shall be limited to 7 a.m. to 6 p.m. Monday through Saturday;
4. the parcels shall remain under single ownership;
5. a minimum 50 foot wide perimeter buffer shall be maintained adjacent to the parcel boundary lines within which no activity shall take place;
6. applicant shall obtain an Administrative Future Land Use Amendment (to correct the Conservation Future Land Use designation) prior to commencement of any activity on the site;
7. applicant to provide necessary access improvements – consisting at a minimum of installation of a paved driveway connection to County Road 13 and paved shoulder apron edge opposite the driveway and along County Road 13, with other improvements as determined by the County Development Engineer at the time of right-of-way permit application for the driveway improvements – within the public right-of-way to ensure safe traffic movement on and off County Road 13, with no damage to pavement and/or drainage flow; and
8. any damage to County Road 13 directly resulting from and in close proximity to this use shall be the responsibility of the owner/operator.

Mr. Mengel also provided an alternative recommendation for the Planning and Development Board with a finding that all special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have not been met and therefore denies the request for a Special Exception for Soil Extraction (borrow pit) located on Parcels: # 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000.

Chair Boyd asked if the applicant would like to speak.

Ms. Shannon Acevedo, of Matthews Design Group was present for any questions on behalf of the applicant.

Mr. Langello questioned if the extraction would end within a year and a half; questioned of the dirt would be stock piled or sold as extracted.

Ms. Acevedo responded that the timeframe could be a minimum of 18 to 24 months and potentially be up to 3 years. Ms. Acevedo responded that the borrow pit is planned as a single phase and unsure of specific projects for the dirt, likely demand based.

Mr. Langello continued questioning staff relative to traffic exiting the subject property.

Mr. Goodman questioned what would be done with the pit after excavation.
Ms. Acevedo responded that the sides would be graded, sodded and it would become a pond.

Ms. Kornel asked if there was any way to avoid the land use amendment.

Mr. Mengel responded that staff’s initial comment was to avoid the Conservation area, the applicants responded with their documentation demonstrating that the Future Land Use Map was incorrect.

Chair Boyd opened the item for Public Hearing:

Edward Smith, 35 Falcon Fire Place expressed concerns of traffic, noise, mosquitos, effect on well water.

Chair Boyd closed the Public Hearing and asked for Board comments.

Mr. Langello continued to question staff and the representative for the applicant regarding entrance/exit for the subject site.

Ms. Acevedo was unable to commit to modifying the entrance/exit for the subject property without consulting with the applicant. She reported on her research locating closest home to the proposed borrow pit activity which would be no closer than 200’.

Ms. Kornel questioned procedure if board chose to ask the application to consider a different access location.

Mr. Mengel offered options for the Board to consider in their action.

Ms. Stangle advised that the Board would be looking at a continuance, or a conditional approval or denial. She offered that the continuance may be in the best interest of the applicant.

Motion by Mr. Langello to continue this Application #3179 to the September 10, 2019 regular meeting of the Planning and Development Board, seconded by Mr. Lombardo.

Motion carried unanimously.

5. Quasi-judicial requiring disclosure of ex parte communication:

Application #3189 - APPLICATION FOR VARIANCES IN THE C-2 (GENERAL COMMERCIAL AND SHOPPING CENTER) AND R-1 (RURAL RESIDENTIAL) DISTRICTS - request for: (1) an 18-foot height variance from 40 feet to 58 feet; and (2) a 15-
Chair Boyd called for any disclosures from Board members.

Mr. Mengel advised that staff was aware of emails to Board members from the applicant and those emails have been included in the Planning Board packet.

Mr. Langello advised that he received the email and advised the applicant that he would here the item at the meeting.

Ms. Kornel advised that she received the email and responded she would not be able to meet with the applicant, nor had she reviewed the attachments within the email.

Mr. Conner shared similar experience and responded similarly.

Mr. Lombardo responded as the other members described.

Mr. Mengel presented the staff report and described the before-the-fact Variance requests included in the application. He presented historical application processes approved by the Board of County Commission related to future land use and zoning. Mr. Mengel provided the following staff recommendations on the Variances; the Planning and Development Board finds that all variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have not been met and therefore denies the following variances for 5658 North Oceanshore Boulevard (Parcel #40-10-31-3150-00000-0420):
1. 18 foot variance from the 40 foot maximum building height; and
2. 15 foot variance from the minimum 50 foot rear setback.

Alternative recommendation: The Planning and Development Board finds that all the variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have been met and therefore approves the variances at 5658 North Oceanshore Boulevard (Parcel #40-10-31-3150-00000-0420).

Bob Million for Hammock Harbour presented a handout on the overhead. Mr. Million explained that the Variances were not required to put the intended uses on the property, they are to make a smaller footprint and less impact on the neighborhood and Scenic A1A. He displayed his graphic demonstrating the setback and height of the proposed building with and without the variances requested to demonstrate the associated impacts on the adjacent properties without the variances. Mr. Million explained that approximately 63,000 square feet of the subject property is lost to the...
buffer requirements. He added that the applicants have worked on a number of site plans and the
proposed, he believes to be the best.

Ms. Kornel asked if a rendering had been provided that shows the view shed of the adjacent
owners.

Mr. Million answered that he has not provided a rendering, however adjacent owners are present
at the meeting.

Mr. Mengel answered that the graphic showing the restaurant located more in the rear center of
the property would be preferred as it removes the buildings from the nearest residential units. The
site plan without the variance locates the restaurant to the north and significantly impacting the
view shed of the residents on the north.

Mr. Conner asked if there was anything stopping them from building the 40’ tall building on the
smaller footprint.

Mr. Million responded that would not make economic sense.

Mr. Conner asked how many boats would be stacked in 40’ height.

Mr. Million responded, three.

Mr. Conner acknowledged that they would be able to add a fourth layer.

Mr. Million confirmed.

Mr. Langello asked staff if this item would come back to the Planning and Development Board
for site plan approval.

Mr. Mengel responded site plan would go before the Technical Review Committee only.

Mr. Langello asked how he would address not using a metal building.

Mr. Million responded concrete.

Mr. Langello acknowledged the graphics presented by the applicant make sense however the
vehicle to get to the plan is the Variance. He asked the applicant to explain how the request is not
created by them.
Mr. Million answered that due to the need for septic, you are limited in development ability.

Mr. Lombardo asked how close the current building is to the road.

Mr. Million provided estimates of the setbacks for the existing buildings on site.

Chair Boyd opened the item for public hearing:

Dennis Bayer, 109 S. 6th Street, Flagler Beach representing the Hammock Civic Association concerning some issues they have for the Variance. Mr. Bayer briefly mentioned the intensity of the proposed use and offered opposition based on lack of request meeting the Variance criteria, nothing unique about the property and request is self-created.

Dennis Clark, 5784 N. Oceanshore Boulevard, displayed a graphic on the overhead projection and reading from a prepared statement requested tabling of the request until their appeal is heard on September 10th. Mr. Clark expressed objections based on intensity of the project and site plan review not yet completed.

Janet Sullivan, 35 Nantucket Drive read from prepared statement expressing opposition to the request based on noise, traffic, and intensity of use, Variances not a hardship and are self-imposed.

Dr. Lynn Bravo Rosewater, 200 Ocean Crest Dr, #815 spoke in opposition related to intensity of use, tree protection, and protection of intracoastal.

Kathy Viehe, 5676 N. Oceanshore Boulevard, the property north of the subject. Ms. Viehe spoke from a prepared statement in opposition due to intensity of use and lack of inclusive planning process.

Fran Bennett, of the Hammock, spoke in opposition to the request due to intensity of the project and the rear setback of 35’.

John Russell, 5652 N. Oceanshore Boulevard, the property south of the subject. Mr. Russell spoke in opposition to 10,000 gallon gasoline storage tank proposed adjacent to his property.

Joy Ellis, 85 Ocean Oaks Ln, spoke from a prepared statement in favor of dry boat storage and restaurant in the Hammock but spoke in opposition to the intensity of the proposed development on the subject property.

Jim Buckley, 2891 John Anderson Hwy, owner of the subject property explained that the intent of the proposal is to make the property as attractive as possible and to meet the intent of the Scenic
A1A Committee. The larger unattractive version would be able to be constructed without the Variance. He is attempting to retain the beauty of the byway and make the use economically feasible and provide a nice waterfront restaurant.

There being no other public to speak, Chair Boyd called for the applicant’s rebuttal.

Mr. Million explained that the graphic by Mr. Clark is not an accurate representation of the proposed improvement, the septic is not 5,000 sf it is 5,000 gallons per day. The approval of the Variance will not generate more profit, it is simply a better looking building.

Jodi Bollinger, lives two lots from the subject property, spoke with concern about the traffic, gasoline storage tank, potential noise and traffic.

Chair Boyd closed public comment.

Motion by Mr. Goodman to deny Application #3179, seconded by Laureen Kornel.

Discussion on the motion:

Mr. Langello asked if there are any regulations related to the gas storage tank that the County will see on the site plan.

Mr. Mengel acknowledged that there are regulatory requirements that will need to be met.

Mr. Langello continued that the applicant demonstrated that the existing situation could be enhanced with the Variance, but in the C-2 zoning there are a lot of things that could be put on the property without coming to the Planning and Development Board. There was a lot of discussion about use this evening that is not pertinent to the request of the evening being the setbacks and height. He continued that he has difficulty finding that all the Variance criteria have been met, and for that reason he agrees with the motion.

Mr. Corbett asked if the larger building/footprint would be allowed if it met setback requirements.

Mr. Mengel acknowledged that there had not been a formal review, but the quick look today indicates compliance with setbacks.

Mr. Conner acknowledged that he likes the concept and it is consistent with the uses provided for in the zoning. He echoes Mr. Langello on the purpose of the meeting not being about use. As he understands the Variance process is used to avoid a hardship not created by an applicant, and for that reason is unable to support the Variance.
Ms. Kornel acknowledge that this is an excellent opportunity for re-development, mixed use concept is great. She does not see the Variance process as a remedy due to lack of hardship, and for that reason unable to support the request.

Mr. Mengel clarified for the record that the basis for denial is that Criteria #2: such conditions were not created by the affirmative actions of the applicant and the applicant has acted at all times acted in good faith.

Motion maker confirmed that Criteria #2 had not been met.

Vote on the Motion 6 Aye and 1 Nay with Mr. Corbett dissenting.
Motion carried.

6. Staff Comments
None.

7. Board Comments
None.

8. Public Comments - Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.
None.

9. Adjournment
Meeting adjourned at 7:38 p.m.

Prepared by: Gina Lemon
Reviewed by: Adam Mengel
MEMBERS PRESENT: Chair Michael Boyd, Jack Corbett, Laureen Kornel, Mark Langello, and Anthony Lombardo.

MEMBERS EXCUSED: Timothy Conner and Michael Goodman.

STAFF PRESENT: Adam Mengel, Planning Director; Gina Lemon, Development Review Planner III; and Wendy Hickey, Planner

BOARD COUNSEL: Kate Stangle, with Nelson Mullins Broad and Cassel.

Chair Boyd called the meeting to order.

1. Roll Call.

Attendance was confirmed by Ms. Lemon and a quorum was present.

2. Pledge of Allegiance.

Chair Boyd led the Pledge of Allegiance to the Flag.

3. Quasi-judicial requiring disclosure of ex parte communication:

CONTINUED FROM THE AUGUST 13, 2019 REGULAR MEETING

Application #3179 - APPLICATION FOR A SPECIAL EXCEPTION IN THE AC (AGRICULTURE) DISTRICT - request for a borrow pit in the AC (Agriculture) district. Parcel Numbers: 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000; 14.79+/- acres. Owner: Rayonier Atlantic Timber Company/Applicant: Matthews Design Group.

Chair Boyd asked for ex-parte disclosures; none were provided.

Mr. Mengel presented the staff report describing the property and explaining that the item had been continued from the previous month and that additional maps were handed out to the Board as they were received from the applicant via email prior to this meeting (attached to these minutes as Attachment “A”). He continued with the staff report and gave the staff recommendation that the Planning and Development Board find that all the special exception criteria as listed in the guidelines at the Land Development Code Section 3.07.03.F have been met and therefore approves the Special Exception for Soil Extraction (borrow pit) located on Parcels: #31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000, subject to the following conditions:

1. the Special Exception runs with the land;
2. owner or contractor to obtain all permits prior to the commencement of work;
3. the use shall be limited to 7a.m. to 6 p.m. Monday through Saturday;
4. the parcels shall remain under single ownership;
5. a minimum 50 foot wide perimeter buffer shall be maintained adjacent to the parcel boundary lines within which no activity shall take place;
6. applicant shall obtain an Administrative Future Land Use Amendment (to correct the Conservation Future Land Use designation) prior to commencement of any activity on the site;
7. applicant to provide necessary access improvements –consisting at a minimum of installation of a paved driveway connection to County Road 13 and paved shoulder apron edge opposite the driveway and along County Road 13, with other improvements as determined by the County Development Engineer at the time of right-of-way permit application for the driveway improvements- within the public right-of-way to ensure safe traffic movement on and off County Road 13, with no damage to pavement and/or drainage flow; and
8. Any damage to County Road 13 directly resulting from and in close proximity to this use shall be the responsibility of the owner/operator.

He then went on to also offer the alternative of denial and advised the Board the applicant is available for questions.

Chair Boyd asked if the applicant would like to speak.

Shannon Acevedo, Matthews Design Group, 7 Waldo Street, St. Augustine, applicant discussed the project along with options for the relocation of the access points for the excavation site.

Mr. Langello asked how many cubic yards is to be extracted.

Ms. Acevedo, responded 365,000 cubic yards with an average of 50 truckloads per day.

Mr. Langello stated based on his experience that would mean 26,000 truckloads and that is why moving the entrance further south would be better for the community.

Kenneth Rester, Business Development Manager, Rayonier Inc., 1 Rayonier Way, Yulee, representing the owner, stated they will do whatever they have to understanding that a neighbor had concerns.

Mr. Langello, noted that there was one neighbor came with concerns

Mr. Rester, stated he has no problem moving the entrance farther south between the two wetlands.

Chair Boyd opened the Public Hearing, seeing no one he closed the Public Hearing and asked the Board for a motion.
Motion to approve with staff conditions made by Mr. Lombardo, seconded by Ms. Kornel.
Motion carried unanimously

4. Quasi-judicial requiring disclosure of ex parte communication:
Application #3185 - APPLICATION FOR A SPECIAL EXCEPTION IN THE R/C (RESIDENTIAL / LIMITED COMMERCIAL) DISTRICT - request for a veterinary office with no boarding in the R/C (Residential/Limited Commercial) district. Parcel Number: 40-10-31-3250-00140-0070; 0.21+/- acres. Owner/Applicant: Raic Cala Delarosa, LLC.

Chair Boyd asked for ex-parte disclosures; none were provided.

Mr. Mengel presented the staff report, giving a brief history of the property and details of the request. Noting that the applicant had gone to the Scenic A1A Committee and their recommendation letter is included within your packet. He proceeded to give the staff recommendation that the Planning and Development Board finds that all special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have been met and therefore approves the Special Exception for a veterinary office with no boarding to be located at 5927 North Oceanshore Boulevard, Parcel #40-10-31-3250-00140-0070, with the following conditions: (conditions added within the PowerPoint presentation). He then went on to also offer the alternative of denial and advised the Board the applicant is available for questions.

1. the Special Exception runs with the land;
2. owner or tenant to obtain all permits prior to issuance of a Business Tax Receipt (BTR); and
3. the use shall be limited to a veterinary office without boarding.

He then went on to also offer the alternative of denial and advised the Board the applicant is available for questions.

Chair Boyd asked if the applicant would like to speak.

Patricia Hoskins, 94 Emerald Lake Drive, representing the applicant, stated she was available if there were any questions.

Mr. Langello asked is happening with the residence.

Mr. Mengel stated nothing, it is currently occupied.

Chair Boyd opened the Public Hearing, asking if anyone would like to speak.
Draft

Eric Reagan, 821 1st Avenue, Welaka, owner of lot at 46 Seminole Avenue concerned about dogs barking.

Dennis Clark Chairman of Scenic A1A PRIDE Committee the committee supports responsible growth and we do support this project it is a needed service in the area. He also questioned if the driveway would support incoming and outgoing traffic to the parking lot

Mr. Mengel responded that is not A1A’s purview that is up to FDOT to make that determination.

Chair Boyd closed the Public Hearing and opened Board comments.

Mr. Langello asked the applicant if there would be dogs staying overnight?

Ms. Hoskins responded there will be one doctor and 4 cages. The building is 896 square feet and there may be an animal that stays because it is sick. This building is along A1A then there is the parking area and then there is the residential area with the mobile home before the any other residential area.

Mr. Lombardo asked if the cages were inside or outside the building

Ms. Hoskins responded inside the building

Motion to approve with staff conditions outlined in Power Point presentation made by Mr. Lombardo, seconded by Ms. Kornel. 
Motion carried unanimously

5. Quasi-judicial requiring disclosure of ex parte communication:

Application #3194 – APPEAL OF THE PLANNING DIRECTOR DECISION IN THE C-2 (GENERAL COMMERCIAL AND SHOPPING CENTER) DISTRICT – request for an appeal of the Planning Director’s decision that boat storage is a permitted use on a parcel previously approved by the Board of County Commissioners for boat manufacturing. Applicant: Hammock Civic Community Association

Mr. Mengel explained appeals don’t happen too often and explained the basis for this request is to appeal the Planning Directors decision that boat storage is a permitted use on a parcel previously approved by the Board of County Commissioner action to allow boat manufacturing. He presented the application stating the applicant’s basis and additional information for the appeal along with his analysis of the appeal. The recommendation to the Board is to receive the information related to the appeal request and take action as appropriate.
Chair Boyd asked if the applicant would like to speak.

Dennis Bayer Esq. 109 south 5th Street, Flagler Beach, for the applicant, provided a hand out to the Board attached to these minutes as Attachment “B”. He presented the applicants case for the appeal at times quoting excerpts of the Flagler County Land Development Code and referencing the handout he provided.

Mr. Mengel asked Mr. Bayer if boat manufacturing was a conforming or non-conforming use?

Mr. Bayer responded is was approved by the Board.

Mr. Mengel so that would make it conforming.

Ms. Kornel asked if there was a special exception approved for the use

Mr. Mengel stated no but the approval was originally for two lots the additional lot was for a buffer

Mr. Langello asked in what zoning district is boat storage allowed.

Mr. Mengel responded it is not specifically stated.

Mr. Langello so it is not allowed in industrial?

Mr. Mengel no

Mr. Bayer it can be in a PUD (Planned Unit Development) like Sea Ray

Mr. Langello so are we here to approve the use or the just the decision previously made

Mr. Mengel you are to determine if the Planning Director had the authority to make the determination.

Ms. Stangle advised the board there are two questions here does Mr. Mengel have the authority to make the determination what is a similar use. Second if you determine he does have the authority was he correct.

Mr. Langello quoted Sec. 1.09.02 of the Land Development Code as it relates to responsibility of interpretation of the Code and how that responsibly is that of the Planning Director.

Ms. Stangle stated that when looking at Statutes and regulations there is a concept that the more specific prevails over the general. In this case the C-2 district does say if it is not listed as permitted use other
uses may be considered and it goes onto say by the Planning Board. That is the argument before you did he have the authority or was that within your purview.

Mr. Langello asked if we determine that he didn’t have the authority do we now then make the determination tonight or is it that they have to reapply.

Ms. Stangle yes it would have to come back before you with the appropriate application. It would allow for a thorough discussion about what the appropriate use is.

Mr. Mengel stated the problem with that you are restricted to the C-2 uses. In this case you do not have that you have an exception by the Board, and determination by the Board that manufacturing is appropriate here. So when the application comes in you cannot do anything with it because you are making a determination of use based on what is similarly listed in the C-2 district and boat manufacturing is not listed in C-2 so you are going to be trapped you will not be able to do anything. The scenario becomes does this become a uniquely Board of County Commissioners decision. Because it was a Board of County Commissioners decision that allowed for boat manufacturing.

Chair Boyd asked then why wouldn’t it go straight to the Board of County Commissioners

Mr. Mengel because we do not have a mechanism for that.

Chair Boyd If we don’t have the authority and we are trapped as a Board I don’t see the reason.

Mr. Langello clarified with Ms. Stangel we are her to first determine if Mr. Mengel had the authority to make the decision and if he has the right we go to the next question. If he doesn’t have the right we do go to the next question which is if his decision is correct.

Ms. Stangle if you were to determine that the determination is within your purview and it doesn’t fall under the general provisions of the Sec. 1.09. that would be the end of this item by approving the appeal.

Mr. Mengel added that commercial warehousing which generates truck traffic and mini-warehouses were both prohibited uses within the scenic A1A corridor he then went to read into the record the a portion of Sec. 3.03.17 B Permitted principal uses and structure. In the C-2 shopping center district no premises shall be used except for the following uses and their customary accessory uses and structures. What comes into play here is the assumption of acreage the section we are laboring over is 3.03.17 B 22 “Other commercial uses of nature similar to those listed may be permitted upon determination by the planning board that such uses are appropriate in the C-2 district. The standard industrial classification manual will be used as a reference for these determinations.” Then 23 goes on to state “Other commercial areas” then the first listed is all uses permitted in the shopping center district. He continued pointing out the confusing nature of the listing in the code as it pertains to the C-2 general
commercial and shopping center district. He added that this is not something we cannot overcome, this is a problem here this is a spot zoning It is a C-2 I would get the preamble of the purpose and the intent section when this issue has come up before this does not meet the C-2 requirement.

Chair Boyd stated he thought General Commercial would be much different than a Shopping Center District.

Mr. Bayer stated a Veterinary Office in the A1A corridor would have to get a special exception but something as intense as this would only have to go to the TRC (Technical Review Committee). The previous contractor whom stored their equipment on the property had to come this Board for a special exception.

Mr. Mengel responded Veterinary Clinics are a permitted use in the A1A Corridor in the C-2 zoning district. The Veterinary Clinic was in the R/C (residential Limited Commercial) district. This is a C-2 zoning.

Ms. Kornel asked about a policy about compatibility with residential.

Mr. Bayer there is a 40 foot buffer that is zoned R-1 (Rural Residential) district that was a required part of part of this property for the C-2 zoning.

Ms. Kornel many codes refer to boat storage is frowned upon against residential. Noting that she has been a Certified Planner for 18 years she stated that she was not sure if she would have not thought that boat storage was not a similar use to boat manufacturing. But noting that she would have taken it to the Board for their decision because it is a kind of grey area. Then there is that provision that you can go to the Planning Board for their determination.

Char Boyd there are a couple of options we as a Board can determine if Mr. Mengel had the authority to make that determination or we can table this to do some research.

Mr. Langello stated that out of respect to the people that are here and the property owner to let them speak.

Chair Boyd responded this is a technical decision.

Mr. Langello I thought we should hear from the person most affected by it.

Chair Boyd opened Public Comments this is not a discussion on if you like this project specifically this is strictly for if the Planning Director has the authority to make the determination. We are not here to discuss the emotional aspects of neighbors we are here for the technical aspects of the appeal.
Ms. Stangle we are not here to talk about the substance of the pending site development plan or the attributes of the project.

Mr. Lombardo I believe Adam has the authority to make the decision but since it is such a gray area I think you got stuck with a really hard one.

Kathy Viehe 5676 N. Oceanshore Boulevard, wants a public process and would like to see it codified.

Stephen Hatcher 85 Ocean Oaks Lane, thinks there should have attorney opinion for their decision.

Jan Sullivan, 35 Nantucket Drive, questioned the statement the proposed use is less intense than the current allowable use.

Dennis Clark, 5784 N. Oceanshore Boulevard, feels the use is not the same.

Robert Million, representing the property owner Hammock Harbour LLC, 5658 N. Oceanshore Boulevard stated that the concern has been about the intensity. This property is zoned C-2 and you are allowed a certain amount of floor coverage and a certain number of uses for example a 300 seat restaurant is an approved use we would just build it. The most intense use on this parcel is the restaurant not the boat storage has very little traffic and very little noise. So we are talking about intensity something that would need 120 parking spaces they are allowed by code the size of the building its allowed by code. I not just talking about boat storage, so not being able to have a building and not being able to have a parking spaces is not correct. You should not consider the parking and the building size that is for the site plan.

Gary Roberge 27 Las Palmas Way, claims boat storage of this size is an intense use. If the building size stayed the same that would be different.

Jody Bollinger 5648 N. Oceanshore Boulevard, feels this is not consistent with the Flagler County Comprehensive Plan and that boat storage would reduce property values in the area.

Chair Boyd closed the public comments and opened Board comments.

Mr. Langello stated he has been here over 40 years and he believes that property existed prior to our zoning regulations and there wasn’t a lot out there at the time. There was always talk of something eventually happing out there was always a lot of talk. My question is why didn’t they just zone it industrial? Boat manufacturing is industrial with C-2 you can have a lot of traffic, I understands the concerns. He added that he did not hear in testimony that the boat manufacturing was only one boat. If you are not going to put it in a boat manufacturing facility where else are you going to put it.
Ms. Kornel stated there definitely should be a place for boat storage but doesn’t feel it should be abutting residential. She also added the Planning Director has the authority to make a decision but should have brought it before the Board.

Mr. Corbett stated that Adam made the best decision in a very grey area.

Motion to deny the appeal made by Mr. Langello, seconded by Mr. Corbett.

Motion passed 4/1 with Ms. Kornel dissenting.

6. Staff Comments

None.

7. Board Comments

None.

8. Public Comments - Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.

Joyce Skaff 5648 N. Oceanshore Boulevard the serenity of area will be gone because of allowing this in a residential area.

Mr. Langello stated he lives in the area has for 40 years and is across the street from a C-2 zone property that has currently has a restaurant that has music, outdoor music into the night. I understand but it is not only the neighbors right but the property owner also has rights we have to consider. I made the motion because I believed it was the right thing to do. You have the right to go to the Board of County Commissioners which I think this is where this is going, they are the elected officials.

9. Adjournment

Meeting adjourned at 7:38 p.m.

Prepared by: Wendy Hickey
Reviewed by: Adam Mengel
MEMBERS PRESENT: Chair Michael Boyd, Timothy Conner, Michael Goodman, Laureen Kornel, Mark Langello, and Anthony Lombardo.

MEMBERS EXCUSED: Jack Corbett

STAFF PRESENT: Adam Mengel, Growth Management Director; Gina Lemon, Development Review Planner III; and Wendy Hickey, Planner

BOARD COUNSEL: Albert Hadeed, County Attorney.

Chair Boyd called the meeting to order.

1. Roll Call.

Attendance was confirmed by Ms. Lemon and a quorum was present.

2. Pledge of Allegiance.

Chair Boyd led the Pledge of Allegiance to the Flag.

3. Quasi-judicial requiring disclosure of ex parte communication:

Application #3195 — APPLICATION FOR SITE DEVELOPMENT PLAN IN A PUD (PLANNED UNIT DEVELOPMENT) — request for review of a Site Development Plan in a PUD for Plantation Bay Section 2-A-F Unit 13; Parcel Number: 03-13-31-0000-01010-0020; 69.19 acres. Owner: WL Residential Land, LLC/Applicant: Jerry K. Finley, P.E., Finley Engineering Solutions, Inc.

Chair Boyd asked for ex-parte disclosures; none were provided.

Mr. Mengel, Growth Management Director, presented the staff report describing the request, the specific location and a brief history of the Plantation Bay Development of Regional Impact. He noted that this request is specifically for section is known as Section 2 A-F Unit 13 of Westlake at Plantation Bay. He then proceeded to give staff’s recommendation that the Planning and Development Board recommend approval of the PUD Site Plan for Plantation Bay, Section 2 A-F Unit 13 and the amendment to the Specific Development Standards for Plantation Bay Section 2 A-F to include standards for Unit 13 as adopted through Ordinance.

Jerry K. Finley P.E., Finley Engineering Group, 3569 S. Nova Road, Port Orange, Applicant/Agent; stated he was available for questions.
Chair Boyd opened the public hearing

Christine Kucma, 625 South Lake Drive, asked for clarification of the location of Unit 13.

Elnora Wheeler, 22 Winchester Road, asked for clarification of the location of Unit 13.

David Haas, ICI Homes, 2379 Beville Road Daytona Beach, Applicant, discussed the proposed location of Unit 13 noting it was not near Eagle Rock Ranch.

Marlene Morton, 6650 US Highway 1 South, asked for clarification of the location of Unit 13 and asked about areas close to US Highway 1.

Mr. Mengel explained this request is only for Unit 13 and there are no other units under consideration at this time.

Chair Boyd closed public comments and opened up to the Board

Mr. Langello asked if there are any issues with and are we able to providing water and sewer to this development?

Mr. Mengel responded water improvements are in the planning and design stage no construction has begun and sewer improvements are underway now.

Mr. Langello asked about the developer’s contribution to the utility

Mr. Mengel stated the Plantation Bay Utility does have impact fees associated with connections. He also noted that at the time of the transfer of the plant there were some credits available but was not aware of their current status.

Mr. Haas stated that there is adequate capacity at the water and wastewater facilities. The issues with the water is the quality not the quantity and that monitoring is underway. He also reported that the impact fee credits that were part of the Utility sale have all been exhausted. The impact fee collected for each new connection is about $5,500.00, that fee goes directly to the utility.

Mr. Langello asked if the road to be connected to US Highway 1 was a contingency such as no CO’s (Certificate of Occupancy) issued until the road is complete. Or is it something you are planning to do and not tied into something else.
Mr. Haas stated that the road is actually a condition of the Development Agreement, the completion has to be in place by January 2021. Plans have already been provided to the county for review and we expect to begin construction by the end of this year.

Mr. Langello asked why the density had been cut in half since the original plan.

Mr. Finley stated that he has been a part of the project with the DRI (Development of Regional Impact) since 1983 and back then the wetlands were have the size we have today and we lost a lot of land and we will never achieve the original DRI density numbers.

Motion to approve with staff’s conditions made by Mr. Langello, seconded by Mr. Conner. 
Motion carried unanimously.

4. Quasi-judicial requiring disclosure of ex parte communication:
Application #3196 – APPLICATION FOR PRELIMINARY PLAT IN A PUD (PLANNEDUNIT DEVELOPMENT) – request for review of a Preliminary Plat in a PUD for Plantation Bay Section 2A-F Unit 13; Parcel Number: 03-13-31-0000-01010-020; 69.19 acres. Owner: WL Residential Land, LLC; Agent: Jerry K. Finley, P.E., Finley Engineering Group.

Chair Boyd asked for ex-parte disclosures; none were provided.

Mr. Mengel presented the staff report, describing the Preliminary Plat request, noting this is also for Plantation Bay Section 2AF Unit 13. He continued noting specific items about the Preliminary Plat and advising the Board there are scriveners errors that had been acknowledged by the applicant and will be resolved prior to the Board of County Commissioners Meeting on November 4. He then gave the recommendation for the Planning & Development Board recommend the Board of County Commissioners approve the preliminary plat and the construction plans for Plantation Bay Section 2A-F Unit 13 subdivision, subject to:
1. No construction to commence prior to issuance of a County land development permit;
2. No final plat approval to occur until extension of potable water and sanitary sewer is installed and approved by the County as the utility provider; and
3. Any subdivision improvements not completed by the developer be bonded or other surety provided consistent with the requirements of the Land Development Code.

Chair Boyd opened the public hearing.

Joseph Brown, 618 Elk River Drive, asked about Unit 14, and height limits on Unit 13.
Mr. Haas noted that the product the will be built in Unit 13 is the same product that has been built in Unit 7.

Chair Boyd closed public comments and opened up to the Board.

Motion to approve with staff’s conditions made by Mr. Conner, seconded by Mr. Goodman. Motion carried unanimously.

5. Staff Comments

Mr. Mengel advised that an appeal has been filed for the Planning and Development Board’s upholding of the Planning Director’s decision on the Hammock Harbor development. He also expects the applicant to appeal the denial of the variance which has not been received to date. Both of these appeals will go directly to the Board of County Commissioners.

6. Board Comments

Ms. Kornel asked if there was a map attached to the notice that was sent out.

Mr. Mengel responded no

Ms. Kornel added that it would be useful to add a map in the future. Further stating that even though the Land Development Code does not require a neighborhood meeting it would have reduced the confusion.

Mr. Langello concurred with Ms. Kornel’s statement that a neighborhood meeting is helpful for the community and the applicant.

7. Public Comments - Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.

None.

8. Adjournment

Meeting adjourned at 6:45 p.m.

Prepared by: Wendy Hickey
Reviewed by: Adam Mengel
SUBJECT: QUASI-JUDICIAL – Application #3190 – Amendment to the Development Agreement in a PUD for Seaside Landings. Parcel Numbers: 38-12-5445-00000-00A0 through -00E0, and 38-12-31-5445-00000-0010 through -0990; 250+/- acres; Owner/Applicant: Bulow Shores Homeowners Association, Inc. (Project #AR-000030-2019).

DATE OF MEETING: December 10, 2019

OVERVIEW/SUMMARY: This request is for an amendment to the Development Agreement in a PUD for Seaside Landings, formerly known as Bulow Preserve. The development consists of 99 single family residential lots located on approximately 250 acres on both sides of John Anderson Highway, South of State Road 100 and North of the Volusia County line. The applicant is seeking to amend the development agreement related to the calculation of lot coverage, tree protection and replanting requirements, and the construction of docks, among other things. These amendments are being requested by the Homeowners Association following the turnover of the development to the Association.

The subject parcel (Property Appraiser’s aerial photo):
This request amends language within the PUD development agreement text by:

- changing the PUD name to Seaside Landings at Flagler Beach PUD;
- specifying lot coverage as the total lot area covered with principal and accessory structures;
- limiting lot coverage to no more than 35% of the lot area;
- excluding docks and boathouses of 1,000 s.f. or less from the lot coverage calculation;
- requiring docks or boathouses exceeding 1,000 s.f. to be permitted by the St. Johns River Water management District;
- deleting the maximum floor area ratio requirement;
- prohibiting construction within easements; and
- allowing for up to 50% of the required replacement index tree inches to be placed on Homeowners’ Association common parcels, provided that the minimum caliper inch measurement of the replacement tree is at least 3.5 inches and subject to acceptance by the Association.

Specific technical requirements are addressed in the Technical Staff Report (Attachment #1).

This application was initially discussed by the Technical Review Committee (TRC) on August 21, 2019, and again on November 20, 2019. All staff comments have been addressed by the applicant in advance of the Planning and Development Board meeting.

Public notice has been provided for this application according to Section 125.66, Florida Statutes, and FCLDC Section 2.07.00.

This agenda item is:

- X quasi-judicial, requiring disclosure of ex-parte communication; or
- _____ legislative, not requiring formal disclosure of ex-parte communication.

**OPTIONS FOR THE BOARD:**

1. **Option 1 – Recommendation for Approval:** The Planning and Development Board recommends to the Board of County Commissioners approval of Application #3190, an amendment to the Development Agreement in a PUD for Seaside Landings at Flagler Beach, finding that the requested change is consistent with the Comprehensive Plan and the Land Development Code.

2. **Option 2 – Recommendation for Denial:** The Planning and Development Board recommends to the Board of County Commissioners denial of Application #3190, an amendment to the Development Agreement in a PUD for Seaside Landings at Flagler Beach, finding that the requested change is inconsistent with the Comprehensive Plan and the Land Development Code.

3. **Option 3 – Table:** The Planning and Development Board may table the request for additional information.
ATTACHMENTS:
1. Technical Staff Report
2. Redlined PUD Development Agreement
3. Ordinance and PUD Development Agreement
4. Application and supporting materials
5. Public notice
SEASIDE LANDINGS PUD
TECHNICAL STAFF REPORT

Project Name
Amendment to the Development Agreement for Seaside Landings at Flagler Beach PUD (formerly known as Bulow Preserve PUD)(Application #3190/Project #AR-000030-2019)

Owner/Applicant
Bulow Shores Homeowners Association, Inc.

Existing Zoning & Land Use(s)
Zoning: PUD (Planned Unit Development) District
Land Use: Agriculture & Timberlands (A&T) and Conservation (CN)

Future Land Use Map Classification / Zoning of Surrounding Land
North: A&T / PUD District (Flagler Beach Polo Club)
East: Intracoastal Waterway
South: A&T / Agriculture (AC) District
West: Bulow Creek, MUL / PUD District (Bulow Plantation DRI)

Previous Public Hearings
June 11, 2002 – Planning Board recommended approval of a rezoning for this parcel from AC (Agriculture) to NRC-PUD (New Residential Communities-Planned Unit Development), subject to: exclusion of three “islands” from development; no mining beyond that necessary to accomplish the development; connection to water and sewer, if available; and a limitation on the power of watercraft docking on Bulow Creek (Ordinance No. 2002-23).

January 14, 2003 – Planning Board recommended approval of a wetland variance (Application #2255), subject to the following conditions:

1. A successful mitigation plan for 1.5 acres in Wetland A.
2. Conservation easements on all remaining jurisdictional wetlands within the Phase I and II plat boundaries.
3. The Applicant shall obtain all required federal, state, and local permits.

January 14, 2003 – Planning Board recommended approval of a preliminary plat/site development plan in a PUD (Application #2256), subject to resolution of the issues identified by the Technical Review Committee follow-up letter to the applicant dated December 20, 2002.

February 17, 2003 – Board of County Commissioners denial of a wetland variance for 0.74 acres of wetlands for the purpose of roadway alignment and design and driveway access to development parcels (Application #2255).

February 7, 2005 – Board of County Commissioners approved the rezoning from AC (Agriculture) to Planned Unit Development (PUD) (Application #2668; Ordinance No. 2005-01).
November 14, 2006 – Planning Board recommended approval of an amendment to the Bulow Preserve PUD development criteria (Application #2642-A), subject to the following conditions:

1. Firewise requirements have more specificity regarding removing of limbs, etc.;
2. Correct minimum driveway width to say length; and
3. Change 24-foot to 22-foot on two-way roadways, and 18-foot to 15-foot on one-way roadways.

December 18, 2006 – Board of County Commissioners approved the First Amendment to the Bulow Preserve Development Agreement (Ordinance No. 2006-28).

May 12, 2015 – Planning and Development Board unanimously recommended approval of an amendment to the Site Development Plan and Development Agreement in a PUD for Seaside Landings (f/k/a Bulow Preserve).

July 20, 2015 – Board of County Commissioners approved the Second Amendment to the Bulow Preserve Development Agreement (Ordinance No. 2016-04).

Comprehensive Plan consistency
The project is designated as Agriculture and Timberlands with a maximum density of 1 unit per 5 acres. The original inclusion of the Von Bulow Islands and their acreage within the project provided for up to 120 units, which was subsequently reduced to a maximum of 99 units. The single-family development, as previously demonstrated through the original and amended PUD Development Agreement, remains consistent with the adopted Comprehensive Plan and the Agriculture and Timberlands designation.

FCLDC consistency
The changes sought by the Applicant are prompted by issues that have arisen through the permitting process for individual homes on the newly platted lots, particularly those on the East side of John Anderson Highway. Where Centex had originally proposed the 99 lots to be divided equally on both sides of John Anderson, Seaside Landings, LLC, opted to concentrate the development to the East – with 89 lots on the East side and 10 large-acreage lots on the West side of John Anderson – and take advantage of the Intracoastal Waterway access as an amenity for lot sales. The shifting of development to the East has also resulted in smaller lot sizes for the East lots than had originally been proposed by Centex. To offset the small lots, Seaside Landings, LLC, opted to include the canal area within each lot’s boundaries where possible to increase the lot sizes; however, the upland, usable portion of each lot remained unaffected by this scheme. The example of this is a 0.15 acre lot composed of 0.10 acre of uplands and 0.05 acre of canal: a lot owner benefits through the inclusion of the canal in the total lot area since the lot coverage is based on 35% of the total lot area, but the lot owner is also penalized through a requirement for the use of uplands, like the County’s index tree replacement requirement that requires replacement inches to be replanted on the upland portion of a lot as part of the development process. When Seaside Landings, LLC, proposed their development, they opted to retain much of what Centex had previously received approval for, unknowingly creating a future problem based on the
increased East side development and the inclusion of the canal wet area within each lot’s boundaries.

**Docks**

While all lots have access to the Intracoastal through either individual docks or indirectly through common docks, the Seaside Landings plan varied from the Centex plan by including the submerged canal lands in each of the excavated canals as lot area, with each of these canal lots owning their respective portion of the canal to its centerline instead of Centex’s intended common area tract for each of the canals. While the FCLDC did not prohibit the Seaside Landings, LLC, approach, it was discouraged by staff because by shifting the ownership (and maintenance) of the canal to each lot owner, permitting of the use of the canal and maintenance is problematic. There are Covenants and Restrictions in place to assure that canal maintenance will be handled collectively, but issuance of building permits has remained difficult.

Structures with roofs are considered as impervious (and docks without a roof are semi-impervious), and count towards lot coverage calculations where lot coverage is the area of both principal and accessory structures on a lot. For other developments, the County has not considered dock area in a lot’s impervious or lot coverage calculations since the docks are within common area tracts or waters of the State or as regulated by the Federal government through the U.S. Army Corps of Engineers. Here, the development agreement text was silent on any exclusion of docks from these calculations, so lots seeking permits to date have been limited in their development area by the combined calculation of respective impervious and lot coverage areas within each lot’s boundaries, whether dry upland or wet canal areas.

The proposed amendment text eliminates docks and boathouses from the lot coverage calculations and is limited to a maximum size of 1,000 square feet consistent with St. Johns River Water Management District permit limits. To exceed the 1,000 square foot area, an individual lot owner would have to separately permit their dock through the District, subject to more extensive District permitting requirements.

**Trees**

While not unique to Seaside Landings, the issue of index tree replacement on small lots is one of winners and losers: lots with sparse or few index trees have reduced requirements, while heavily-treed lots lose, especially where tree preservation is impossible due to lot fill requirements as is the case in Seaside Landings. The County requires that 40% of the pre-development index tree inches are either preserved or replaced in the post-development condition. The intent of the index tree regulation was to preserve mature tree canopy, but the effect has been seen by many to penalize lot owners. With no tree mitigation bank in place, the County’s index tree requirements are required to be met on an individual parcel basis.

The solution sought by the Association is to allow up to half of the 40% of the pre-development index tree inches may be replaced on common areas within Seaside Landings, to be handled on a first come, first served basis. Instead of the FCLDC’s minimum 2.5 inch caliper measure, the Association has proposed a 3.5 inch caliper measure, with the additional inch not credited against the 40% calculation. The intended result is the planting of trees with additional canopy and height.
SECOND THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDINGS AT FLAGLER BEACH
PUD DEVELOPMENT AGREEMENT

THIS SECOND THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDINGS AT FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the ("Development Agreement") is made and entered into as of the ___ day of _____, 2016 2020 by and between SEASIDE LANDINGS, LLC ASSOCIATION, INC., a Foreign Limited Liability Corporation BULOW SHORES HOMEOWNERS ASSOCIATION, INC., a Florida Not-For-Profit Corporation, whose address is 183 Water Street, Williamstown, Massachusetts 01267 1410 Palm Coast Pkwy NW, Palm Coast, Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, the Applicant Seaside Landings LLC ("previous applicant") was the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit “A” and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit “B” hereto. The PUD Site Development Plans describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property");

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01 and Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The
associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and

WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Applicant desires to amend the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the Applicant has applied to amend the existing approved Planned Unit Development (the "PUD") as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the "Land Development Code"); and the previous applicant has transferred control of the homeowners’ association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.
NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals:

The above recitals are true and correct and incorporated herein by this reference.

2. Findings:

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. Development Agreement:

(a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

(b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. Platting:

(a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

(b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.
(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.

5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

(1) Total number of single family detached residential lots: Maximum of 99.

(2) Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

Front yard: 20 feet

Rear yard: 20 feet

Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

Side yard interior lot: 10 feet

Abutting any street: 20 feet
Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

(3) Buffer Requirements:

a. **John Anderson Highway**: There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site**: During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenssen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek**: The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson**: There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6)
parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. North project buffer, east of John Anderson: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund, Case No. 04-482CA, Circuit Court for Flagler County the (“Settlement Agreement”).

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed thirty-five percent (35%) (this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, any permitted docks or boathouses (roofed or not roofed) up to 1,000 square feet located over a body of water shall be excluded from the Maximum Lot Coverage calculation. Any docks and boathouses exceeding 1,000 square feet shall require approval of the St. Johns River Water Management District.

(8) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch towers constructed as an integral part of the main residence
structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.

(9) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(10) Minimum separation between buildings on a lot: 10 feet.

(11) Maximum Floor Area Ratio: .3 (excluding docks and boathouses less than 500 square feet).

(12) Minimum lot size: 6,000 square feet.

(13) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(14) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.

(15) Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. Land Uses:

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together
with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. **Environmental Considerations:**

   (a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Substantially all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

   (b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

   1. Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

   2. Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

   3. Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

   4. Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. **Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.**

   5. A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.
a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.

b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

c. Section 6.01.03, et seq., of the Land Development Code prescribes landscape development standards and index tree protection and replacement requirements. To satisfy the requirements of Sections 6.01.03, et seq., of the Land Development Code, owners of lots within the development, except owners of Lots #1 – 10, may, upon approval of the homeowners’ association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners’ association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development located eastward of John Anderson Highway. The permitted locations of proposed replacement trees are identified on Exhibit C. However, to further promote the goal of index tree preservation, as a condition for the lot owner’s exercise of the option (upon association approval) to transfer the location of replacement trees to association or common property, all replacement trees proposed to be relocated to association or common property shall have a minimum caliper of 3½ inches measured six (6) inches above grade after planting. The additional, per tree caliper inch associated with trees to be relocated to association or common property shall be in addition to, and not be subtracted from, the forty (40) percent of the total pre-development caliper inch requirement. The transfer of the caliper inches of tree replacement to the homeowners’ association shall be evidenced by a written instrument signed by the lot owner and an authorized representative of the homeowners’ association. After acceptance by the Association, the Association shall ensure the tree planting and maintenance procedures described in Section 6.01.03(1)(D) are satisfied. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners’ association unless accepted by the Association in writing.
8. **Potable Water and Sewage:**

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.

(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. **Stormwater Drainage:**

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. **Private Roadways:**

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners' association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. **Covenants and Restrictions:**
A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.

12. **Tri-party Settlement Agreement:**

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. **Notice:**

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. **Covenant Running with the Land:**
The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. **Recording:**

The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant's expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.

16. **Applicable Law:**

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. **Amendment:**

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.

18. **Counterparts:**

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. **Captions:**

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. **Severability:**

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and
independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. Construction:

In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ____ day of __________________, 20195.

"APPLICANT"

BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLCASSOCIATION, INC.
a Foreign Limited Liability CorporationFlorida Not-For-Profit Corporation

_________________________________________  By:____________________________________
Print Name:_________________________  Name:_________________________
Title:__________________________________

_________________________________________
Print Name:_________________________

STATE OF ________________
COUNTY OF ________________

The foregoing instrument was acknowledged before me this ____ day of __________________, 20195, by Michael S. Patten________________________, as Managing Member of Patten Special Assets, LLC, the Authorized Person for Seaside Landings, LLC, President of a Foreign Limited Liability CorporationBulow Shores Homeowners Association, Inc., on behalf of the corporation. He [ ] is personally known to me, or has produced ________________________________ as identification.

_________________________________________
NOTARY PUBLIC
Print Name:_________________________

[Signatures continued on next page]
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" East, Easterly along said West line of the Florida East Coast Canal, 1491.61 feet; thence South 35°46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler county, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51'32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
EXHIBIT “B”
PUD Site Development Plan
ORDINANCE NO. 2020 – ___

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA; AMENDING AND RESTATING THE DEVELOPMENT AGREEMENT FOR THE SEASIDE LANDINGS PLANNED UNIT DEVELOPMENT, HEREAFTER REFERRED TO AS SEASIDE LANDINGS AT FLAGLER BEACH PUD; AMENDING FLAGLER COUNTY ORDINANCE NO. 2006-28 AND NO. 2016-04; PROVIDING FOR FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bulow Shores Homeowners Association, Inc., as the successor to Seaside Landings LLC, submitted Application #3190 for an amendment to the Development Agreement for the Seaside Landings Planned Unit Development (PUD) on an 250+/- acre parcel described herein (“subject property”); and

WHEREAS, the subject property is presently part of the Bulow Preserve PUD, as adopted through Ordinance No. 2005-01, and amended by Ordinance No. 2006-28 and Ordinance no. 2016-04; and

WHEREAS, the Applicant desires to amend the development criteria set forth in the Seaside Landings PUD, together with renaming the PUD as Seaside Landings at Flagler Beach PUD; and

WHEREAS, amending the Seaside Landings PUD is consistent with the Agriculture & Timberlands Future Land Use designation and the resulting parcel size is consistent with the one (1) dwelling unit per five (5) acres density within the Agriculture & Timberlands Future Land Use; and

WHEREAS, on December 10, 2019, the Planning and Development Board conducted a public hearing on this request and voted to recommend approval of this third amendment to the Seaside Landings PUD (formerly known as the Bulow Preserve PUD); and

WHEREAS, on January 13, 2020, the Board of County Commissioners conducted a public hearing on this request and voted to adopt the ordinance providing for this third amendment to the Seaside Landings PUD; and

WHEREAS, public notice of this action has been provided in accordance with Section 125.66, Florida Statutes, and Section 2.07.00, Flagler County Land Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. FINDINGS
A. The Board of County Commissioners, pursuant Section 3.04.02 of the Flagler County Land Development Code, finds as follows:
1. The proposed amended PUD Development Agreement does not adversely affect the orderly development of Flagler County and complies with applicable Comprehensive Plan goals, objectives and policies; and,

2. The proposed amended PUD Development Agreement will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

Section 2. ADOPTION OF DEVELOPMENT AGREEMENT
A. The Board of County Commissioners hereby adopts the amended and restated PUD Development Agreement for the Seaside Landings PUD, hereafter referenced as the Seaside Landings at Flagler Beach PUD, attached at Exhibit 1 to this Ordinance.

B. Development within the boundaries of the PUD District as approved shall take place in accord with the Flagler County Land Development Code as may be modified or amended and the PUD Site Development Plan prepared by Miller Legg and Associates, and included at Exhibit “B” to the Development Agreement attached hereto as Exhibit 1 and made a part hereof.

C. In the event of any conflict between the Development Agreement and the PUD Site Development Plan, the Development Agreement shall control and take precedence.

D. The applicant shall signify its acceptance of this Development Agreement by filing for recording into the Public Records of Flagler County, Florida, the attached Agreement with the Clerk of the Circuit Court within thirty (30) days.

Section 3. EFFECTIVE DATE
This Ordinance shall take effect upon Official Acknowledgement by the Secretary of State that the Ordinance has been filed.
PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 13TH DAY OF JANUARY, 2020.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____________________________
    David Sullivan, Chair

ATTEST:

By: _____________________________
    Tom Bexley, Clerk of the
    Circuit Court and Comptroller

Approved as to Form:

By: _____________________________
    Albert J. Hadeed, County Attorney
THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDINGS AT FLAGLER BEACH
PUD DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDINGS AT
FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the
(“Development Agreement”) is made and entered into as of the ___ day of _____,
2020 by and between BULOW SHORES HOMEOWNERS ASSOCIATION, INC., a Florida
Not-For-Profit Corporation, whose address is 1410 Palm Coast Pkwy NW, Palm Coast,
Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State
of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell,
Florida 32110 ("County").

WITNESSETH:

WHEREAS, Seaside Landings LLC (“previous applicant”) was the owner of a 250±
acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated
in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal
Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and
is more particularly described in Exhibit “A” and depicted in the plan dated May 18,
2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site
Development Plan"), attached in Exhibit “B” hereto. The PUD Site Development Plan
describing the parcel of land shall be filed and retained for public inspection in the office
of the Flagler County Planning and Zoning Department, and the description of the parcel
of land contained in the PUD Site Development Plan is incorporated herein by reference
(the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for
this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-
0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined
with sufficient lands from the Applicant and contiguous to their parcel to the south so as
to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district,
totaling 7.68± acres, which will be rezoned through a subsequent application which has
been filed with the County, resulting in an eventual area of the Property of 242± acres
following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01,
Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD
Development Agreement as amended. Flagler County Ordinance 2005-01 amended the
zoning of the subject property to PUD (Planned Unit Development) District. The
associated amended Development Agreement set forth development criteria for the
Bulow Preserve PUD; and
WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 183, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the previous applicant has transferred control of the homeowners’ association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals:**
The above recitals are true and correct and incorporated herein by this reference.

2. **Findings:**

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. **Development Agreement:**

(a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

(b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. **Platting:**

(a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

(b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.

(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.
5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

1. Total number of single family detached residential lots: Maximum of 99.

2. Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

   Front yard: 20 feet

   Rear yard: 20 feet

   Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

   Side yard interior lot: 10 feet

   Abutting any street: 20 feet

   Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

3. Buffer Requirements:
a. **John Anderson Highway**: There will be a 100-foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site**: During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenssen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek**: The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson**: There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6) parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. **North project buffer, east of John Anderson**: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway
running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in *The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund*, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed thirty-five percent (35%)(this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, any permitted docks or boathouses (roofed or not roofed) up to 1,000 square feet located over a body of water shall be excluded from the Maximum Lot Coverage calculation. Any docks and boathouses exceeding 1,000 square feet shall require approval of the St. Johns River Water Management District.

(8) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.

(9) Minimum driveway depth: 22 feet from edge of private street to garage door entry.
(10) Minimum separation between buildings on a lot: 10 feet.

(11) Minimum lot size: 6,000 square feet.

(12) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(13) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.

(14) Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. **Land Uses:**

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. **Environmental Considerations:**

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Substantially all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved
by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

1. Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

2. Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

3. Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

4. Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.

5. A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.

a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.
b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

(c) Section 6.01.03, et seq., of the Land Development Code prescribes landscape development standards and index tree protection and replacement requirements. To satisfy the requirements of Sections 6.01.03, et seq., of the Land Development Code, owners of lots within the development, except owners of Lots #1 – 10, may, upon approval of the homeowners’ association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners’ association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development located eastward of John Anderson Highway. The permitted locations of proposed replacement trees are identified on Exhibit C. However, to further promote the goal of index tree preservation, as a condition for the lot owner’s exercise of the option (upon association approval) to transfer the location of replacement trees to association or common property, all replacement trees proposed to be relocated to association or common property shall have a minimum caliper of 3½ inches measured six (6) inches above grade after planting. The additional, per tree caliper inch associated with trees to be relocated to association or common property shall be in addition to, and not be subtracted from, the forty (40) percent of the total pre-development caliper inch requirement. The transfer of the caliper inches of tree replacement to the homeowners’ association shall be evidenced by a written instrument signed by the lot owner and an authorized representative of the homeowners’ association. After acceptance by the Association, the Association shall ensure the tree planting and maintenance procedures described in Section 6.01.03(1)(D) are satisfied. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners’ association unless accepted by the Association in writing.

8. **Potable Water and Sewage:**

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that
lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.

(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners' association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.
12. **Tri-party Settlement Agreement:**

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. **Notice:**

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. **Covenant Running with the Land:**

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. **Recording:**

The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant's expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.

16. **Applicable Law:**
This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.

18. Counterparts:

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. Captions:

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. Severability:

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. Construction:

In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ____ day of ________________, 2019.

"APPLICANT"

BULOW SHORES HOMEOWNERS ASSOCIATION, INC.
a Florida Not-For-Profit Corporation

______________________________  By:______________________________
Print Name:____________________  Name:____________________________

Title:____________________________

______________________________
Print Name:____________________

STATE OF ________________

COUNTY OF ________________

The foregoing instrument was acknowledged before me this ____ day of ________________, 2019, by ___________________________, as President of Bulow Shores Homeowners Association, Inc., on behalf of the corporation. He [__] is personally known to me, or has produced ______________________________ as identification.

______________________________
NOTARY PUBLIC

Print Name:____________________

[Signatures continued on next page]
BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA

___________________________________
Donald O’Brien, Jr.
Chairman

ATTEST:

_______________________
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

_______________________
Al Hadeed, County Attorney
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" East, Easterly along said West line of the Florida East Coast Canal, 1491.61 feet; thence South 35° 46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler county, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51' 32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
EXHIBIT “B”
PUD Site Development Plan
EXHIBIT C
Tree Relocation Areas
APPLICATION FOR REVIEW

FLAGLER COUNTY, FLORIDA
1789 E. Moody Boulevard, Suite 105
Bunnell, FL 32110
Telephone: (386) 313-4009 Fax: (386) 313-4109
Application/Project #: 3190 / AR-000030-2019

PROPERTY OWNERS:
Name(s): Bulow Shores Homeowners Association, Inc. and its Members
Mailing Address: 1410 Palm Coast Pkwy NW
City: Palm Coast State: Florida Zip: 32137
Telephone Number 904-371-2098 Fax Number 904-396-0088

APPLICANT(S):
Name(s): Bulow Shores Homeowners Association, Inc.
Mailing Address: 1410 Palm Coast Pkwy NW
City: Palm Coast State: Florida Zip: 32137
Telephone Number 904-371-2098 Fax Number 904-396-0088
E-Mail Address: jroche@fficallegal.com

SITE LOCATION (street address): 111 Seaside Landings Dr N., Flagler Beach, Florida, 32136
LEGAL DESCRIPTION: Portions of Sections 19, 37, and 38, Townships 12 South, Ranges 32 East and 31 East, Flagler County, Florida, as described on the Plat for Seaside Landings at Plat Book 38, Pages 40.
Parcel # (tax ID #): 38-12-31-5445-00000-0080 and many others (approximately 100 other parcel ids have been assigned for the platted Lots and parcels)
Parcel Size: Approximately 253.117 acres
Current Zoning Classification: NRC-PUD
Current Future Land Use Designation: Agriculture and Timberlands
Subject to A1A Scenic Corridor? ☑ NO

PURPOSE OF SUBMISSION / PROJECT DATA:
To request a text amendment to the Bulow Preserve PUD Development Agreement

Signature of Owner(s) or Applicant/Agent if Owner Authorization form attached

**OFFICIAL USE ONLY**

PLANNING BOARD RECOMMENDATION/ACTION: APPROVED
Signature of Chairman: ____________________________
Date: ________________ *approved with conditions, see attached.

**OFFICIAL USE ONLY**

BOARD OF COUNTY COMMISSIONERS ACTION: APPROVED
Signature of Chairman: ____________________________
Date: ________________ *approved with conditions, see attached.
July 17, 2019

Via U.S. Mail
Jack Kurdock
VP Bulow Shores Homeowners Association, Inc.
1070 Hampstead Lane
Ormond Beach, FL 32174

Re: Development Order Amendment Application
Bulow Shores Homeowners Association, Inc.

Dear Mr. Kurdock:

Please find the proposed application to amend the development order for Bulow Shores/Seaside Landing at Flagler Beach enclosed with this correspondence. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,
McCabe & Ronsman

[Signature]

James J. Roche, Esq.
SECOND-THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDING AT FLAGLER BEACH
PUD DEVELOPMENT AGREEMENT

THIS SECOND-THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDING AT FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the "Development Agreement") is made and entered into as of the ___ day of _______, 2015 by and between BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC., a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation, whose address is 182 Water Street, Williamstown, Massachusetts 01267-1410 Palm Coast Pkwy NW, Palm Coast, Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, the Applicant, Seaside Landings LLC ("previous applicant") - was the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit "A" and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit "B" hereto. The PUD Site Development Plans describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01, and Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The
associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and

WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Applicant desires to amend the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the Applicant has applied to amend the existing approved Planned Unit Development (the "PUD") as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the "Land Development Code"); and the previous applicant has transferred control of the homeowners' association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the "Land Development Code"); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.
NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals.

The above recitals are true and correct and incorporated herein by this reference.

2. Findings:

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. Development Agreement:

   (a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

   (b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. Platting:

   (a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

   (b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.
(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.

5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

(1) Total number of single family detached residential lots: Maximum of 99.

(2) Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

Front yard: 20 feet

Rear yard: 20 feet

Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

Side yard interior lot: 10 feet

Abutting any street: 20 feet
Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

(3) Buffer Requirements:

a. **John Anderson Highway**: There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site**: During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenksen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek**: The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson**: There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6)
parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. North project buffer, east of John Anderson: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed fifty-five (55%) percent (this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, the percentage shall be applied to the total area of the entire lot indicated on the plat, including submerged portions.

(8) Minimum Pervious Area: Each lot shall have a minimum pervious area of at least thirty (30) percent. For the purposes of calculating the pervious area, any submerged portions of lots shall be considered pervious. Further, parts of any permitted docks or boathouses (roofed or not roofed) located over a body of water shall be considered pervious; provided, however, that any part of
a roofed boathouse located over an unsubmerged part of a lot shall be considered impervious.

(89) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.

(910) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(4011) Minimum separation between buildings on a lot: 10 feet.

(11) Maximum Floor Area Ratio: 0.3 (excluding docks and boathouses less than 500 square feet).

(12) Minimum lot size: 6,000 square feet.

(13) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(14) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.
Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. Land Uses:

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. Environmental Considerations:

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Substantially all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

(1) Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

(2) Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

(3) Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

(4) Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John’s River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. Docks and boathouses shall be limited to a maximum of 1,000 square feet unless approved by the St. Johns River Water Management District or other agency having...
jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.

(5) A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.

a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.

b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

e. (c) Sections 5.01.04(3) and 6.01.03 of the Land Development Code prescribe landscape development standards and tree protection and replacement requirements. To satisfy the requirements of either Section of the Land Development Code, or any other provision of the Land Development Code which may require the preservation or replanting of trees, owners of lots within the development may, upon approval of the homeowners' association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners' association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above referenced provisions of the Land Development Code to the homeowners' association.

8. Potable Water and Sewage:

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with
Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.

(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners’ association. Membership in the homeowners’ association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land
Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.

12. *Tri-party Settlement Agreement:*

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. *Notice:*

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. *Covenant Running with the Land:*

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. *Recording:*


11
The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant's expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.

16. Applicable Law:

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.

18. Counterparts:

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. Captions:

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. Severability:

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. Construction:
In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ___ day of
__________ __________, 2019.

"APPLICANT"

BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC.
a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation

_______________________________                              By:_______________________________
Print Name:______________________                                   Name:_____________________________

_______________________________
Title:_________________________

_______________________________
Print Name:______________________

STATE OF ______________________
COUNTY OF _____________________

The foregoing instrument was acknowledged before me this ___ day of
__________ __________, 2019, by Michael S. Patten ________________________, as Managing
Member of Patten Special Assets, LLC, the Authorized Person for Seaside Landings, LLC,
President of a Foreign Limited Liability Corporation BULOW SHORES HOMEOWNERS
ASSOCIATION, INC., on behalf of the corporation. He [ ] is personally known to me, or has
produced __________________________ as identification.

_______________________________
NOTARY PUBLIC

Print Name:______________________

[Signatures continued on next page]
BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA

Frank J. Meeker
Donald O'Brien, Jr.
Chairman

ATTEST:

Gail Wadsworth
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" East, Easterly along said West line of the Florida East Coast Canal, 1491.61 feet; thence South 35° 46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51' 32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
EXHIBIT "B"
PUD Site Development Plan
Appendix B1: Technical Review Committee Comments

MEETING DATE: AUGUST 21, 2019

AMENDMENT TO PUD DEVELOPMENT AGREEMENT
SEASIDE LANDINGS PUD

APPLICANT / OWNER: BULOW SHORES HOMEOWNERS ASSOCIATION, INC.

Distribution date: Friday, August 16, 2019

Project #: AR-000030-2019

Application #: 3190

Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department 386-313-4002
Flagler County Planning Department 386-313-4009
Flagler County Development Engineering 386-313-4082
Flagler County General Services (Utilities) 386-313-4184
County Attorney 386-313-4005
Flagler County Fire Services 386-313-4258
E-911 GIS Specialist 386-313-4274
Environmental Health Department 386-437-7358
Flagler County School Board 386-586-2386
REVIEWING DEPARTMENT:  FIRE INSPECTOR
1. No comments received.

REVIEWING DEPARTMENT:  BUILDING DEPARTMENT
1. No comments at this time.

REVIEWING DEPARTMENT:  ENVIRONMENTAL HEALTH DEPT
1. No comments or objections.

REVIEWING DEPARTMENT:  COUNTY ATTORNEY
1. No comments received.

REVIEWING DEPARTMENT:  DEVELOPMENT ENGINEERING
1. The name should remain consistent with the PUD Document and the Plat.

2. Provide documentation that the increase in the impervious is consistent with the SJRWMD permit.

3. Should a builder decide to transfer the tree requirement to the HOA, how will this be verified during the building permit process?

4. The PUD document will need to be updated and approved to match the revision included in the document.

Further comments may be provided upon additional submittals.

REVIEWING DEPARTMENT:  PLANNING DEPARTMENT
1. Please confirm that the SJRWMD stormwater permit for the subdivision is not affected by the increase in maximum lot coverage to 55% or setting the minimum pervious area at 30%, with the submerged portion of any lot counted towards the minimum pervious area.

2. The text at 7.(b)(4) for the docks exceeding 1,000 s.f. should be changed to read as: “In addition to the above requirements, docks and boathouses exceeding 1,000 square feet shall be subject to permitting by the St. Johns River Water Management District.”

3. The proposed text at 7.(c) is consistent with discussions between staff and the HOA; however, what happens when the HOA runs out of common areas or association property within the development to place trees from lot owners? How will this function: will the lot owner purchase the trees and turn them over to the HOA or will the lot owner contribute to a tree fund for future planting by the HOA? What will be the accounting method, and how will the lot owner and HOA verify to the County that the shade tree and index tree requirements have been met prior to issuance of a County Certificate of Occupancy?
Good morning,

Please see the attached, proposed amendment to the PUD along with a letter from the St. Johns River Water Management District regarding treatment of structures located over water. As you will likely see from reviewing the application, we’ve deleted some of the previously proposed language in an effort to take a more narrow approach to resolve the issue we’re attempting to resolve through the amendment.

If we anticipate that the TRC will have concerns regarding the application, we’d like to meet with you again to discuss the application and any changes that the County may desire before the TRC generates its report and recommendation. In other words, as discussed, the Association is really looking to resolve two issues (construction of docks on smaller lots and allocation of trees) and is flexible, and desires to work amicably with the County, on the method to accomplish the goals.

Thank you for all your assistance to date and I look forward to hearing from you regarding the application and the next steps in the process. Please do not hesitate to contact me with any questions or concerns.

Thank you,

James J. Roche, Esq.
McCabe | Ronsman
110 Solana Road, Suite 102
Ponte Vedra Beach, Florida 32082
Phone: 904-396-0090
Email: jroche@flclegal.com

*Please note our new mailing address.
Good afternoon Mr. Roche,

As defined in subsection 2.0(a)52, ERP Applicant’s Volume 1, “Impervious” for purposes of applying permitting thresholds and exemption criteria, means surfaces that do not allow, or minimally allow, the penetration of water, including semi-impervious areas, but excluding wetlands or other surface waters. For other purposes, “impervious” means all artificial surfaces that that are not pervious. Included as examples are building roofs and normal concrete and asphalt pavements.

As discussed with you by phone, the District does not typically require the impervious surfaces associated with the docks and associated structures that are constructed over the canals and open water to be included in the impervious areas considered in the water quality and quantity calculations for the stormwater management system design. The reason for this is that the stormwater runoff from the over water structures typically drains directly into the surface water, and, for calculation purposes, both impervious surfaces and water have equivalent runoff potential. As such, the impervious surfaces constructed over and draining directly into the water body would not cause an increase in runoff volume. However, if impervious surfaces constructed over the canal or open water are designed and constructed to drain back onto land, where the associated runoff would contribute to the permitted stormwater management facilities, then those areas would contribute toward the maximum impervious surface area allowed for each lot.

I apologize for the delay in responding. I do appreciate you following up, as I needed the reminder. Please let me know if you need any further clarification or additional information.

Sincerely,
Melissa

Melissa Bryan Parsons, P.E.
Senior Professional Engineer
Division of Regulatory Services
St. Johns River Water Management District
P.O. Box 1429 ● Palatka, FL 32178-1429
4049 Reid Street/Highway 100 West ● Palatka, FL 32177
Office: (386) 329-4830 ● Fax: (386) 329-4490
Email: mparsons@sjrwmd.com
Website: www.sjrwm.com
Connect with us: Newsletter, Facebook, Twitter, Instagram, YouTube, Pinterest

www.sjrwm.com/permitting
SECOND-THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDINGS
PUD DEVELOPMENT AGREEMENT

THIS SECOND-THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDINGS AT FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the ("Development Agreement") is made and entered into as of the ___ day of ______, 2015 by and between BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC., a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation, whose address is 183 Water Street, Williamstown, Massachusetts 01267-1410 Palm Coast Pkwy NW, Palm Coast, Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, the Applicant Seaside Landings LLC ("previous applicant") was is the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit "A" and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit "B" hereto. The PUD Site Development Plans describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01, and Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The
associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and

WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Applicant desires to amend the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners’ association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the Applicant has applied to amend the existing approved Planned Unit Development (the “PUD”) as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and the previous applicant has transferred control of the homeowners’ association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.
NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals:**

   The above recitals are true and correct and incorporated herein by this reference.

2. **Findings:**

   The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. **Development Agreement:**

   (a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

   (b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. **Platting:**

   (a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

   (b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.
(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.

5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

1. Total number of single family detached residential lots: Maximum of 99.

2. Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

   Front yard: 20 feet

   Rear yard: 20 feet

   Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

   Side yard interior lot: 10 feet

   Abutting any street: 20 feet
Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

(3) Buffer Requirements:

a. **John Anderson Highway**: There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site**: During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lensen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek**: The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson**: There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6)
parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. North project buffer, east of John Anderson: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed thirty-five percent (35%) (this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, and corresponding maximum impervious surface, any portions of lots submerged by water shall be considered impervious. Further, parts of any permitted docks or boathouses (roofed or not roofed) located over a body of water shall be considered impervious; provided, however, that any part of a roofed boathouse located over an unsubmerged part of a lot shall be considered impervious.

(8) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch
towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.

(9) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(10) Minimum separation between buildings on a lot: 10 feet.

(11) Maximum Floor Area Ratio: .3 (excluding docks and boathouses less than 500 square feet).

(121) Minimum lot size: 6,000 square feet.

(132) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(143) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.

(14) Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. Land Uses:

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together
with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. Environmental Considerations:

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Subsequently all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

(1) Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

(2) Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

(3) Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

(4) Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.

(5) A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.
a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.

b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners’ association and recorded within the Public Records of Flagler County, Florida.

(c) Section 5.01.04(3) of the Land Development Code prescribe landscape development standards and tree protection and replacement requirements. To satisfy the requirements of Section 5.01.04(3) of the Land Development Code, owners of lots within the development may, upon approval of the homeowners’ association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners’ association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development. The transfer of the caliper inches of tree replacement to the homeowners’ association shall be evidenced by a written instrument signed by the lot owner and an authorized representative of the homeowners’ association. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners’ association.

8. Potable Water and Sewage:

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A
fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.

(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners’ association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.
12. **Tri-party Settlement Agreement:**

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. **Notice:**

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. **Covenant Running with the Land:**

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. **Recording:**

The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant’s expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.
16. Applicable Law:

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.

18. Counterparts:

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. Captions:

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. Severability:

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. Construction:

In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ____ day of ________________, 2019.

"APPLICANT"

BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC.

a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation

______________________________
By: ______________________________

Print Name: ______________________
Name: ____________________________

Title: _____________________________

Print Name: ______________________

STATE OF ____________________________
COUNTY OF __________________________

The foregoing instrument was acknowledged before me this ____ day of ________________, 2019, by Michael S. Patten ________________________, as Managing Member of Patten Special Assets, LLC, the Authorized Person for Seaside Landings, LLC, President of a Foreign Limited Liability Corporation Bulow Shores Homeowners Association, Inc., on behalf of the corporation. He [ ] is personally known to me, or has produced ______________________________ as identification.

______________________________
NOTARY PUBLIC

Print Name: ______________________

[Signatures continued on next page]
BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA

________________________
Donald O'Brien, Jr.
Chairman

ATTEST:

________________________
Gail Wadsworth
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

________________________
Al Hadeed, County Attorney
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" East, Easterly along said West line of the Florida East Coast Canal, 1491.61 feet; thence South 35°46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler county, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51'32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
EXHIBIT “B”
PUD Site Development Plan
FLAGLER COUNTY

TECHNICAL REVIEW COMMITTEE COMMENTS

MEETING DATE: NOVEMBER 20, 2019

AMENDMENT TO PUD DEVELOPMENT AGREEMENT
SEASIDE LANDINGS PUD
1st Resubmittal

APPLICANT / OWNER: BULOw SHORES HOMEOWNERS ASSOCIATION, INC.

Distribution date: Friday, November 15, 2019

Project #: AR-000030-2019

Application #: 3190

Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department 386-313-4002
Flagler County Planning Department 386-313-4009
Flagler County Development Engineering 386-313-4082
Flagler County General Services (Utilities) 386-313-4184
County Attorney 386-313-4005
Flagler County Fire Services 386-313-4258
E-911 GIS Specialist 386-313-4274
Environmental Health Department 386-437-7358
Flagler County School Board 386-586-2386
REVIEWING DEPARTMENT: FIRE INSPECTOR
1. No comments.

REVIEWING DEPARTMENT: BUILDING DEPARTMENT
1. No comments.

REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT
1. No comments or objections.

REVIEWING DEPARTMENT: COUNTY ATTORNEY
County Attorney's Office review comments from the August submission still apply.
1. There needs to be an absolute limit on the percentage of a lot’s dry ground that can be covered by impervious surfaces regardless with how much or how little of the platted lot boundaries encompass submerged land. This number should take into account normal planning considerations especially drainage.

County Attorney's Office Review Comments 20190820:
General
1. When presenting this item to the Planning Board and County Commission, the applicant should explain the potential impact of the proposed changes. The applicant also should explain why the established development parameters previously agreed to should be undone. The existing PUD is the result of multiple re-submittals of development plans by the developer to County staff. Establishing drainage capacity within the development was particularly complex given the undersized lots with narrow setbacks in a flood zone. To create such small, low-lying lots in the plat, the developer created slope easements, the first time the County used such a technique in a proposed Flagler subdivision. The applicant and the County utilized slope easements to minimize the environmental and aesthetic damage of excessive fill on the lots. This system controlled the volume and timing of fill to preserve the feel of natural space within the Bulow Creek watershed. The proposed changes allow more intensification of the development area, a major shift in the project objectives in this sensitive area.

Impervious/pervious ratio and definition change
2. LDC §5.00.00 states, “All development shall be designed to avoid unnecessary impervious surface cover.” The proposed amendment would increase the allowable impervious area of the development by an order of magnitude. The proposal would change the maximum coverage of each lot (by principal and accessory structures) from 35% of the lot area to 55%. Not factored into this equation is the amount of driveways and patios that are impervious. Thus a property going to the revised max of 55% will have more impervious surface to be able to add.

3. In addition, the amendment would allow submerged portions of lots to count toward the total lot area. This has the effect of intensifying the development footprint on an ad hoc basis in the neighborhood as individuals build. Some neighbors may face or border more intensely developed lots than their own. Moreover, while the amendment would require each lot to retain 30% pervious area, it would allow submerged portions of lots to count toward the pervious area. The net result is that some lot owners would achieve the necessary pervious area by virtue of being adjacent to a natural water body and would allow them to cover every square inch of the unsubmerged portion of their lots with impervious surfaces. This contributes to the randomness of the development pattern -- more intense lots among those...
where the lot owner selected more conservation.

Trees
4. The proposed amendment cites to LDC § 5.01.04(3), regarding landscape development standards, which requires three trees in a quarter acre lot. The proposed amendment seeks to modify the default provisions of the LDC in order to allow lot owners to transfer the location of half of the required index trees from the lot owner’s parcel to a common area parcel. LDC § 6.01.00(2)A.2 states, “A tree relocation or replacement plan meeting the requirements of this section is a condition precedent to land clearing.” The land has already been cleared. The intent of the development agreement and the expectation of those who purchased relying on it, is that the development of housing would have trees. The proposed amendment would curtail this intent. Some lot owners would end up bearing the burden and cost of providing tree scape to an adjacent lot owner who chose to keep his or her lot bare. It is uncertain how this would change the development pattern. Would more lot owners choose to keep their properties bare and develop intensely to match the dollar values of other more intensely developed lots?

5. The applicant should explain how the proposed change in the PUD would achieve the purposes of the LDC’s resource protection standards after the land is already cleared.

REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING
1. No further comments at this time.

REVIEWING DEPARTMENT: PLANNING DEPARTMENT
1. No further comments at this time.
November 14, 2019

Via Email in pdf.
Adam Mengel, AICP, LEED AP BD+C amengel@flaglercounty.org
Gina Lemon glemon@flaglercounty.org
Al Hadeed ahadeed@flaglercounty.org
Sean S. Moylan smoylan@flaglercounty.org

Re: Response to TRC Comments
Project #: AR-000030-2019
Application #: 3190
Amendment to Seaside Landings PUD
Applicant: Bulow Shores Homeowners Association, Inc.

Dear TRC:

Our firm represents the above-referenced Applicant as legal counsel. We are writing in conjunction with our submission of a proposed, revised (Third) Amendment to the Seaside Landings PUD submitted October 14, 2019 to address the Committee’s comments in response to the draft of the proposed Third Amendment to the Seaside Landings PUD previously submitted in July of this year. We look forward to addressing any questions or concerns at the next TRC meeting at which the Application is proposed to be considered.

Comments by County Attorney

1. General. The Applicant understands the concerns expressed and believe that the Application, as revised, will not affect the previous slope easement arrangement or otherwise increase the development intensity by any significant degree. The Applicant is not a property developer; it is an organization of lot owners within the subdivision which is seeking to address two issues: (1) To permit the construction of docks and boathouses of a limited size over adjacent waterways within the subdivision so they may use and enjoy a primary feature of the development (the waterways); and (2) To allow owners of lots within the subdivision, some of whom have a limited area of buildable space on their lots, to transfer up to half of the trees contemplated by Section 5.01.04(3) of the Land Development Code (non-index trees) to the Association so that they may be planted or installed on Association property, if properly documented and accepted by the Association. We believe that the transfer of half of the tree obligations of Section 5.01.04(3) of the LDC will preserve the purpose and intent of that section (tree preservation) while allowing lot owners within the subdivision more flexibility in constructing improvements on their lots considering the small buildable areas of some lots.

2. Impervious Area/Maximum Lot Coverage Ratio. The Applicant no longer proposes to add a provision to the PUD regarding a minimum pervious area or otherwise modify the maximum lot coverage percentage included in the existing PUD. Instead, the existing
maximum lot coverage is proposed to remain at 35%, but a revision clarifying the calculation of the percentage has been proposed. One part of the proposed revision would provide that permitted docks and boathouses, or parts of them, which are constructed over a part of the lot consisting of the waterway will be considered pervious; however, any parts of the structures located over the parts of the lot comprised of land (i.e., cantilevered or not submerged) will be considered impervious. This is the main goal of the proposed PUD amendment which would provide the clarification necessary for the Building Department to feel comfortable permitting docks and boathouses over the adjacent waterway. Further, we have communicated with the St. Johns River Water Management District, which stated that the District does not consider structures located over waterways to be impervious because any rainfall would still reach the body of water as it otherwise would irrespective of the presence of permitted structures located over the waterway.

3. Impervious Area/Maximum Lot Coverage Ratio. This point is addressed in the preceding paragraph; however, we would add that it is not the proposed amendment that would allow submerged portions of the lot to count toward the total lot area for determining the maximum lot coverage; the total lot coverage is already based on the total area included in a lot and there is no exclusion from the definition of “Lot” for submerged portions (i.e., that is the status quo under the existing PUD and LDC). Please see Section 3.08.00 defining “Lot” as “[a] parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law.” Similarly, when used in the LDC, “maximum lot coverage” refers to the “total lot area” without excluding submerged portions of the lot. Additionally, please see Section 3.08.02 of the LDC, which defines “Pervious area” as “[t]he total lot area left in a condition that permits full percolation of the stormwater including surface water bodies, wetlands and retention areas.” (emphasis added). Considering water bodies as pervious is also consistent with the statement offered by the St. Johns River Water Management District.

4. Trees. The proposed Application as revised has removed any reference to the ability to transfer any obligations with respect to index trees contemplated by LDC § 6.01.03. With respect to the trees contemplated by LDC § 5.01.04(3), we believe the purpose and intent of that section (tree preservation) is preserved in the proposed Application, as revised, especially where the trees required by that section would be located within a relatively close proximity (within the same development) as the trees would have otherwise been located. Further, we believe the PUD zoning category was developed to address unique situations like those experienced by lot owners in the subdivision, which is to allow for a derogation from the strict requirements of the LDC where the purposes of the provisions would otherwise be satisfied and if they would otherwise be compatible with the Comprehensive Plan. In other words, given the relatively unique nature of the development in which some lots have small portions which are not submerged and buildable, we believe a process for allowing some of the trees in some cases to be transferred to the Association and planted on Association property would allow certain lot owners with smaller buildable lots to have more flexibility in planning the lot improvements while satisfying the purpose and intent of the LDC by requiring the same number of trees to be planted within the same geographic region. Moreover, Section 5.01.04(3) does not expressly state that the trees required by that Section must be planted on the single-family lot; it states in passive voice that such trees “must be preserved or planted” without specifying a location in which they must be planted. Accordingly, the proposed Application does not appear to derogate from the requirements of Section 5.01.04(3) but only serves to clarify where up to half of the trees may be planted. Furthermore, other owners in the
development would not bear the costs associated with one lot owner transferring up to half of his or her tree requirements to the Association because the Association would condition acceptance of the transfer on payment of the associated costs by the transferring lot owner (which would be a part of the required written agreement).

5. **Resource Protection Standards.** The proposed Application, as revised, would appear to have no impact on the LDC’s resource protection standards because it will not change the total number of trees otherwise required by the LDC and all such trees will be planted within the same geographic region.

**Development Engineering Comments**

1. **Name of Development.** The original application proposed to change the name of the PUD Development Agreement from “Seaside Landings” (previously “Bulow Preserve”) to “Seaside Landing at Flagler Beach.” The Applicant still desires to change the name by which the Development is identified to “Seaside Landing at Flagler Beach,” but this is not a material part or goal of the Application. It is our understanding that another entity may have claimed certain rights with respect to the name “Seaside Landings,” which the Applicant would dispute, but notwithstanding the Applicant would prefer to avoid any potential dispute by changing the name by which the development is referred if feasible.

2. **Consistency with SJRWMD Permit.** We have communicated with the SRJWMD and the SJRWMD has provided correspondence dated September 26, 2019 regarding treatment of docks and associated structures located over water. The SJRWMD has indicated that it would not consider such structures to be impervious if located over a waterway if the system was not designed to have water from the waterway drained back onto land (which does not apply in this case). Accordingly, we believe the Application, as amended, is consistent with the existing stormwater management permit (ERP).

3. **Verification of Tree Transfer.** All transfers of caliper inches of tree replacement to the Association must be evidenced by a written instrument signed by the lot owner and the Applicant-Association. Accordingly, the Building Department could request a copy of the required written agreement and compliance with each party’s respective obligation can be demonstrated through evidence (e.g., photos, affidavits, etc.) provided by each respective party.

**Planning Department Comments**

1. **Stormwater Management Permit.** The proposed Application, as revised, removed any proposed changes to the maximum lot coverage percentage or any reference to a minimum pervious surface requirement. The current ERP provides for a maximum impervious surface requirement of 35%, which is consistent with the maximum lot coverage requirement of the PUD. Also, we have contacted the SJRWMD to discuss the treatment of structures located over waterways, and based on the response offered, we do not believe the proposed Application, as revised, would permit something which would be violative of the existing ERP.

2. **Text Change – 7(b)(4).** The Applicant will gladly add the requested language.
3. **Tree Requirements.** We believe this issue was addressed by the proposed, revised Application. A written agreement will be required to transfer any tree obligations and proof of compliance with the obligation may be demonstrated through any means desirable by the County (e.g., affidavits or photos). If there is no longer available space on Association property to accept the transfer of tree obligations, then the lot owner would need to comply with the applicable provisions of the LDC, which would presumably require the owner to preserve or plant trees on his or her lot.

We look forward to addressing any questions or concerns at the upcoming TRC meeting. If you have any questions or concerns in the meantime, please do not hesitate to contact me.

Sincerely,

McCabe & Ronsman

[Signature]

James J. Roche, Esq.
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I hereby affirm mailed notice to each owner on November 21, 2019 for the Planning & Development Board Meeting on December 10, 2019 at 6:00 p.m. and the Board of County Commissioners Meeting on January 13, 2020 at 9 a.m.

Hasler
11/21/2019
$000.00
ZIP 32110
011E11679462
November 21, 2019

«Owner_»
«Address»
«CityState_Zip»

Re: Application #3190 – Amendment to a PUD (Planned Unit Development).

As an owner of property within 300’ of the property referenced herein, Flagler County hereby in accordance with Section 2.07.00 of the Flagler County Land Development Code advises you that two public hearings will be held to consider approval of a request by the Bulow Shores Homeowners Association, Inc., to amend and restate the Seaside Landings PUD Development Agreement on approximately 250+/- acres.

The public hearings for the application will be held in the Board Chambers of the Flagler County Government Services Building located at 1769 East Moody Boulevard, Building 2, Bunnell, Florida, and the hearings are scheduled as follows:

Planning and Development Board public hearing on Tuesday, December 10, 2019 beginning at 6:00 p.m.

Board of County Commissioners public hearing on Monday, January 13, 2020 beginning at 9:00 a.m.

You are welcome to attend and express your opinion.

Sincerely,

Wendy Hickey
Planner

NOTE: PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY OR COMMISSION 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 WILL 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.
NOTICE OF ADOPTION OF AMENDMENT
TO PLANNED UNIT DEVELOPMENT
AGREEMENT

Pursuant to Chapter 125, Florida Statutes, the Flagler County Board of County Commissioners hereby provide notice of consideration of Application #3190 submitted by the Bulow Shores Homeowners Association, Inc., and possible adoption of an Ordinance titled similar to:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA: AMENDING AND RESTATING THE DEVELOPMENT AGREEMENT FOR THE SEASIDE LANDINGS PLANNED UNIT DEVELOPMENT, HEREAFTER REFERRED TO AS SEASIDE LANDINGS AT FLAGLER BEACH PUD; AMENDING FLAGLER COUNTY ORDINANCE NO. 2006-28 AND NO. 2016-04; PROVIDING FOR FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

Public hearing on the above-captioned matter will be held as follows:

PLANNING AND DEVELOPMENT BOARD - December 10, 2019 at 6:00 p.m. or as soon thereafter as possible in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Blvd., Building 2, Bunnell, Florida.

BOARD OF COUNTY COMMISSIONERS - January 13, 2020 at 9:00 a.m. or as soon thereafter as possible in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Blvd., Building 2, Bunnell, Florida.

All interested persons are urged to attend the public hearing and be heard.

Anyone wishing to express their opinion may attend, telephone 386-313-4009 or write to Flagler County Planning Department, 1769 E. Moody Blvd., Building 2, Bunnell, FL 32110 or email to planningdept@flaglercounty.org. Copies of the proposal, supporting data and analysis, staff reports and other pertinent information are available for review at the Flagler County Planning & Zoning Dept., 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO ANY MATTER CONSIDERED AT THE MEETING, A RECORD OF THE PROCEEDINGS MAY BE NEEDED AND, FOR SUCH PURPOSES, THE PERSON WILL NEED TO ENSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH APPEAL IS TO BE BASED. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE PLANNING DEPARTMENT AT LEAST 48 HOURS PRIOR TO THE MEETING.

NT2345989. Nov. 20, 2019
SUBJECT: QUASI-JUDICIAL – Application #3204 – Request for a 13 foot Side Yard Setback and a 38 foot Rear Yard Setback Variance for a Detached Garage in the AC (Agriculture) District at 76 Kentucky Avenue. Parcel #32-12-29-2600-00000-0760; 0.92+/- acres. Owner/Applicant: Joshua T. Gaither (Project #VAR-000070-2019).

DATE OF MEETING: December 10, 2019

OVERVIEW/SUMMARY: This request is quasi-judicial in nature and requires disclosure of ex parte communication. The request is for approval of a side and rear yard setback variance in the AC (Agriculture) District for relief from the 25 foot and 50 foot minimum setbacks respectively. This parcel is 0.92+/- acres in size, identified as parcel # 32-12-29-2600-00000-0760 and is located on the West side of Kentucky Avenue, approximately 300 feet South of its intersection with County Road 2006 West:
On October 22, 2019, Mr. Gaither submitted an application for a side and rear yard setback variance, requesting a 13 foot variance from the minimum 25 foot side yard setback (resulting in a 12 foot side yard setback) as well as a 38 foot variance from the minimum 50 foot rear yard setback (resulting in a 12 foot rear yard setback) for a detached garage storage building. These variances are being sought on the right side (North) and rear (West) of the parcel. This is a before-the-fact variance request.

This application was discussed by the Technical Review Committee (TRC) on November 20, 2019. All staff comments have not been addressed by the applicant in advance of the Planning and Development Board meeting; however, the applicant responded at the TRC meeting that staff comments would be addressed and staff provided public notice for the next Planning and Development Board regular meeting based on the applicant’s response. At the TRC meeting, staff advised the applicant that the failure to respond to staff comments in their entirety could result in a recommendation for denial in that the variance criteria have not been satisfied through the submittal.

Public notice has been provided for this application according to FCLDC Section 2.07.00. At the applicant’s request, two of the three adjoining parcel owners – Jankowski to the rear (West) and Rivers to the left side (South) – have provided letters of support.

This agenda item is:

___ X ___ quasi-judicial, requiring disclosure of ex-parte communication; or

_____ legislative, not requiring formal disclosure of ex-parte communication.

OPTIONS FOR THE BOARD:

1. Option 1 – Denial: The Planning and Development Board finds that all the variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have not been met and therefore denies the 13 foot side yard setback variance from the minimum 25 foot side yard setback and the 38 foot rear yard setback variance from the minimum 50 foot rear yard setback for a detached garage at 76 Kentucky Avenue (Parcel #32-12-29-2600-00000-0760).

Specifically, the Board finds that variance criteria 1 is not met: that there are no extraordinary or exceptional conditions pertaining to the particular piece of property in question because of its size, shape, topography, or other unique features that, when considered in whole or in part, creates an unnecessary hardship. The Board also finds that variance criteria 2 is not met: that while the applicant has acted at all times in good faith, such conditions necessitating the need for the variance were created by the affirmative actions of the applicant. Additionally, the applicant has not demonstrated that the requested variance is the minimum variance necessary to alleviate the hardship.

2. Option 2 – Approval: The Planning and Development Board finds that all the variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have been met and therefore approves the 13 foot side yard setback variance from the minimum 25 foot side yard setback and the 38 foot rear yard setback variance from the minimum 50 foot rear yard setback for a detached garage at 76 Kentucky Avenue (Parcel #32-12-29-2600-00000-0760).
3. **Option 3 – Approval in part (rear), denial in part (side):** The Planning and Development Board finds that all the variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have been met and therefore approves the 38 foot rear yard setback variance from the minimum 50 foot rear yard setback – but finds that the guidelines have not been met and therefore denies the 13 foot side yard setback variance from the minimum 25 foot side yard setback – for a detached garage at 76 Kentucky Avenue (Parcel #32-12-29-2600-00000-0760).

Specifically as to the side yard setback variance request, the Board finds that variance criteria 1 is not met: that there are no extraordinary or exceptional conditions pertaining to the particular piece of property in question because of its size, shape, topography, or other unique features that, when considered in whole or in part, creates an unnecessary hardship. The Board also finds that variance criteria 2 is not met: that while the applicant has acted at all times in good faith, such conditions necessitating the need for the side yard setback variance were created by the affirmative actions of the applicant. Additionally, the applicant has not demonstrated that the requested side yard setback variance is the minimum variance necessary to alleviate the hardship.

4. **Option 4 – Table:** The Planning and Development Board tables the variance requests on the basis that additional information is needed from staff or the applicant. Based on the presentation and the public hearing, the Board does not have sufficient information to be able to render a decision on the variance requests. Tabling the variance requests to a time and date certain will preserve public notice and provide an opportunity for staff or the applicant to provide additional information.

**ATTACHMENTS:**
1. Technical Staff Report
2. Application and supporting documents
3. Public notice
APPLICATION #3204
SIDE AND REAR YARD SETBACK VARIANCE IN THE AC DISTRICT
76 KENTUCKY AVENUE
TECHNICAL STAFF REPORT

Application/Project #: 3204/VAR-00070-2019

Address: 76 Kentucky Avenue

Owner/Applicant: Joshua T. Gaither

Parcel #: 32-12-29-2600-00000-0760

Parcel Size: 40,000+/- sq. ft. (0.92+/- acres)

Legal Description:
Lots 75 and 76, Map of Flagler Truck Farms, Map Book 5, Page 43, Public Records of Flagler County, Florida.

Existing Zoning and Land Use Classification:
Zoning: AC (Agriculture) District
Land Use: A&T (Agriculture & Timberlands)

Future Land Use Map Classification/Zoning of Surrounding Land:
North: A&T (Agriculture & Timberlands)/AC (Agriculture) District
East: A&T (Agriculture & Timberlands)/AC (Agriculture) District
South: A&T (Agriculture & Timberlands)/AC (Agriculture) District
West: A&T (Agriculture & Timberlands)/AC (Agriculture) District

Land Development Code Sections Affected: Land Development Code (LDC) Section 3.07.03, Procedure for variances and special exceptions, and Section 3.07.03.E, Variance guidelines.

Summary of Request: Mr. Gaither purchased the subject parcel on September 17, 2019, with the Warranty Deed recorded on September 30, 2019 at Official Records Book 2387, Page 575, Public Records of Flagler County, Florida. Mr. Gaither is requesting approval of a 13 foot side yard setback variance and a 38 foot rear yard setback variance from the minimum 25 foot side yard setback and the minimum 50 foot rear yard setback respectively for a detached garage in the AC zoning district. The applicant’s rationale for the proposed location of the 40 foot by 60 foot detached garage is to allow sufficient maneuvering space for a trailered boat (or RV trailer) to be maneuvered off of Kentucky Avenue and backed into the detached garage. According to the applicant, Kentucky Avenue and the North driveway for Lot 75 are not wide enough for a vehicle and trailer to safely back up into the driveway from Kentucky Avenue. The subject parcel consists of two lots within the Flagler Truck Farms plat, Lots 75 and 76, with parcel dimensions of 200 feet by 200 feet, and each lot having a width of 100 feet (measured along Kentucky Avenue) and a depth of 200 feet. The applicant’s existing single family dwelling is located entirely on the southernmost lot, Lot 76. The proposed detached garage would be located on Lot 75. Both lots have been bound together for assessment and permitting purposes.
A portion of the plat of Flagler Truck Farms is copied below:

The applicant's intent is to provide a sufficient area for turnaround within the parcel so as to pull off of Kentucky Avenue then turn and back-in to the proposed garage. The orientation of the garage – with its long-side at 60 feet parallel to the front lot line and the short-side at 40 feet parallel to the side lot lines – provided to take advantage of the limited maneuvering area. The applicant contends that with the mature tree line along the parcel frontage along Kentucky Avenue, the 200 foot lot depth does not provide sufficient safe
maneuvering area for the turnaround to occur if the minimum 50 foot rear setback for the garage is required. Available lot depth for maneuvering would be 110 feet (200 feet of lot depth minus 90 feet for the 40 foot building depth and the 50 foot setback) with the 50 foot rear setback, or 148 feet (200 feet of lot depth minus 52 feet for the 40 foot building depth and the 12 foot setback) with the 12 foot rear setback following the granting of the 38 foot rear yard setback variance as requested. As for lot width, the 100 feet of Lot 75 would have a 15 foot left side (South) setback along the common lot line between Lots 75 and 76 with the 25 foot minimum right side (North) setback (100 feet of lot width minus 85 feet for the 60 foot building width and the 25 foot setback) or a 28 foot left side (South) setback along the common lot line with the 12 foot right side (North) setback (100 feet of lot width minus 72 feet for the 60 foot building width and the 12 foot setback) variance as requested.

While the rear setback reduction as requested would provide greater maneuvering room – an additional 38 feet – the need for the side setback variance is unclear. Staff requested – as part of the review of the Technical Review Committee (TRC) comments – that the applicant provide additional justification for the requested variances by further demonstrating the need and the hardship through the narrative responses to each of the four criteria and the minimum relief statement, and by including additional graphic information as photographs and maps depicting the unique conditions of the subject parcel. In response, the applicant provided a Google map aerial photograph, bearing a November 26, 2019 received date stamp and attached as part of the Application and supporting documents.

Variance Guideline Analysis
LDC Section 3.07.03.E, Variance guidelines, states that a variance may be granted only upon a finding by the Planning and Development Board that all of the criteria listed in the guidelines have been found in favor of the applicant and that a literal enforcement of the provisions of this article will result in an unnecessary hardship. These criteria are listed below followed by the applicant’s statements (included below and attached in their entirety) and staff’s analysis:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, topography, or other unique features that, when considered in whole or in part, creates an unnecessary hardship; and

Applicant's response: The proposed building cannot feasibly be constructed elsewhere on the property due to the size of the proposed building, location of the existing single family home, location of the septic tank and size of the property.

Staff analysis: The subject parcel, though undersized for the zoning district, is rectangular in shape and contains two Flagler Truck Farm lots. Both Lots 75 and 76 have been combined into a single parcel through the Declaration of Unity of Title dated October 7, 2019 and recorded at Official Records Book 2389, Page 653, Public Records of Flagler County, Florida. The existing home and supporting septic system
are located entirely on one of the original lots (Lot 76), leaving the entire 100 feet by 200 feet of Lot 75 (North of Lot 76) available for the siting of the proposed building. Based on the size, shape and topography of this property, the placement of a 40-foot by 60-foot storage building conforming to the minimum setbacks does not create an unnecessary hardship for the applicant.

2. *Such conditions were not created by the affirmative actions of the applicant and the applicant has acted at all times in good faith; and*

*Applicant’s response:* All other possible locations within the setback requirements without a variance have been exhausted.

*Staff analysis:* The applicant, while acting in good faith, could locate the storage building in an area on the parcel that conforms to the setbacks and eliminates the need for the variance. There appears to be other options available for the location of the proposed storage building.

3. *The variance, if granted, would not cause substantial detriment to the public health, welfare, safety, and morals of the community or impair the purpose and intent of this article; and*

*Applicant’s response:* Will not create a negative impact for the immediately adjacent neighbor. Would also not adversely affect the general public in any way.

*Staff analysis:* The encroachment into the side and rear setbacks would not create substantial detriment to the public health, welfare, safety and morals of the community. In addition, letters of no objection from the adjacent neighbors to the West and South have been provided by the applicant and are attached to this report.

4. *No variance may be granted for a use of land or building that is not permitted by this article.*

*Applicant’s response:* The proposed building shall be utilized for storage of personal items such as a boat, which is an accessory to the single family dwelling.

*Staff analysis:* The property is zoned AC (Agriculture) and is developed with a single family dwelling. The single family dwelling and the proposed storage building are permitted structures and uses within the AC district. This is a before-the-fact variance request.

*A variance, if granted, shall be the minimum variance necessary to alleviate the hardship. For purposes of this section, an unnecessary hardship shall mean that without the granting of the variances the owner will be deprived of all reasonable use of the property as allowed in the zoning district.*

*Applicant’s response:* [No response provided.]
Staff analysis: It has not been established by the applicant that the relief sought is the minimum relief necessary to place the proposed storage building on the subject parcel. Staff believes that the hardship is self-created due to the other areas available on the subject parcel where the storage building could be placed without the need for a variance.
**APPLICATION FOR VARIANCE**

**FLAGLER COUNTY, FLORIDA**
1769 E. Moody Blvd, Suite 105
Bunnell, FL 32110
Telephone: (386) 313-4009  Fax: (386) 313-4109

**Application/Project #: 3204/VAR-000070 - 2019**

**PROPERTY OWNER(S):**

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<th>Name(s):</th>
<th>Joshua T Caither</th>
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<td>740 Kentucky Ave</td>
</tr>
<tr>
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<td>386 882 2738</td>
</tr>
<tr>
<td>Fax Number:</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**RECEIVED**

**APPLICANT/AGENT:**

<table>
<thead>
<tr>
<th>Name(s):</th>
<th>Same as property owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address:</td>
<td></td>
</tr>
<tr>
<td>City:</td>
<td></td>
</tr>
<tr>
<td>State:</td>
<td></td>
</tr>
<tr>
<td>Zip:</td>
<td></td>
</tr>
<tr>
<td>Telephone Number:</td>
<td></td>
</tr>
<tr>
<td>Fax Number:</td>
<td></td>
</tr>
<tr>
<td>E-Mail Address:</td>
<td><a href="mailto:josrgather88@yahoo.com">josrgather88@yahoo.com</a></td>
</tr>
</tbody>
</table>

**SITE LOCATION (street address):**

| 740 Kentucky Ave, Bunnell FL 32110 |

**LEGAL DESCRIPTION:**

(briefly describe, do not use "see attached")

Flagler Truck Farms Lot 7

**Parcel # (tax ID #):**

32-12-29-2400-0000-0700

**Parcel Size:**

1.00 AC

**Current Zoning Classification:**

Homestead, primary residence

**Current Future Land Use Designation**

**Subject to A1A Scenic Corridor IDO?**

| YES | NO |

**Relief Requested:**

set back requirement variance for proposed building

**Signature of Owner(s) or Applicant/Agent if Owner Authorization form attached**

**[Signature]**

**Date:**

10-21-19

**OFFICIAL USE ONLY**

**PLANNING BOARD RECOMMENDATION/ACTION:**

*APPROVED WITH CONDITIONS*

**Signature of Chairman:**

**Date:**

*approved with conditions, see attached.

**NOTE:**

The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application.

Rev. 09/16
E. **Variance guidelines.** A variance may be granted, upon application, from the terms and provisions of this article as will not be contrary to the public health, safety, welfare and morals where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship. Such variances may be granted by the planning board in such individual case of unnecessary hardship upon a written finding that:

1. There are extraordinary and exceptional conditions pertaining to particular piece of property in question because of its size, shape, topography, or other unique features that, when considered in whole or part, creates an unnecessary hardship; and

   - the proposed building cannot feasibly be constructed elsewhere on the property due to the size of the proposed building, location of the existing single family home, location of the existing septic tank and size of the property.

2. Such conditions were not created by the affirmative actions of the applicant and the applicant has acted at all times in good faith; and

   - all other possible locations within the setback requirements without a variance have been exhausted.

3. The variance, if granted, would not cause substantial detriment to the public health, welfare, safety, and morals of the community or impair the purpose and intent of this article; and

   - will not create a negative impact for the immediately adjacent neighbor.

   - would also not adversely affect the general public in any way.

4. No variance may be granted for a use of land or building that is not permitted by this article.

   The proposed building shall be utilized for storage of personal items such as a boat, which is an accessory to the single family dwelling.

A variance, if granted, shall be the minimum variance necessary to alleviate the hardship. For purposes of this section, an unnecessary hardship shall mean that without the granting of the variance the owner will be deprived of all reasonable use of the property as allowed in the zoning district.

**NOTE:** The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application. **Rev. 09/16**
THIS WARRANTY DEED made the 18th day of September, 2019 by
Ronald Dean Lewis, Jr., a single man and Hailey Nichole Lewis N/K/A Hailey Nichole Davis
whose street address is 76 Kentucky Ave, Bunnell, FL 32110
hereinafter called the grantor*, to
Joshua T. Gaither
76 Kentucky Ave
whose street address is 500 County Road 955, Bunnell, FL 32110
hereinafter called the grantee*:
(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH, that the grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other valuable considerations to said grantor be and paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, remitted, released, conveyed and confirmed unto the grantee and grantee's heirs forever the following described land situate in County of Flagler, State of Florida, to wit:

Lot 75 and 76, Map of Flagler Truck Farms, a subdivision according to the plat or map thereof described in Map Book 5, Page 43, of the Public Records of Flagler County, Florida.

GRANTOR WARRANTS THAT THIS IS NOT THE HOMESTEAD PROPERTY OF Hailey NICOLE LEWIS N/K/A HAILEY NICOLE DAVIS

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in otherwise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with the grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whosoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31st, 2018. FURTHER SUBJECT TO Restrictions, Reservations, Covenants, Dedication, Resolutions, Conditions and Easements of record, if any, however this reference shall not operate to reissue same.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]

Printed or Typed Name

Witness 1 Signature

Witness 2 Signature

Printed or Typed Name

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this 18th day of September, 2019, by Hailey Nichole Lewis N/K/A Hailey Nichole Davis who is personally known to me or who produced [Identification and who did/did not take an oath.

Notary Public
My Commission Expires: 07/17/2026

[Notary's Seal and Signature]
DECLARATION OF UNITY OF TITLE

Whereas, Joshua T. Gaither (hereinafter the "Owner") owns two adjacent parcels of real property location within Flagler County, Florida, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (hereinafter together referred to as "the Property"); and

Whereas, the Property was acquired by the Owner pursuant to that Warranty Deed from Ronald Dead Lewis, Jr., a single man and Hailey Nichole Lewis N/K/A Hailey Nichole Davis, dated September 18, 2019 and recorded September 30, 2019 in Official Records Book 2387, at Page 575, of the Public Records of Flagler County, Florida; and

Whereas, the Owner has made application for issuance of a development order on a project that is designed in a manner that necessitates the Property being held in unified ownership as a single integrated parcel; and

Whereas, in order to assure that the Property will be used and developed and remain as a single integrated parcel and that the development of the Property complies with all land development regulations of the County of Flagler, including any variances heretofore granted with respect thereto, and in consideration of the County's issuance of development order, the Owner has agreed to execute this Declaration of Unity of Title and to record same in the Public Records of Flagler County, Florida.

Now therefore, the Owners declare that the Property shall hereafter be owned, used and developed and shall remain as a single integrated parcel and that no portion of the Property shall be sold, assigned, transferred, conveyed or devised separately. The Owner further declares and agrees that this condition, restriction, and limitation shall be deemed to be a covenant running with the land, and shall remain in full force and effect, and be binding upon the Owners, their successors, heirs, and assigns until such time as the same may be released in writing by the Flagler County Board of County Commissioners.

SIGNATURES ON FOLLOWING PAGE
IN WITNESS WHEREOF, the owner has caused this instrument to be duly executed as of this 7th day of October, 2019.

Signed, Sealed and Delivered
In the Presence of:

[Signature]
Witness

[Signature]
Witness

STATE OF FLORIDA
COUNTY OF Flagler

The foregoing instrument was acknowledged before me this 7th day of October, 2019, by Joshua T. Gaither who is personally known to me or has produced as identification.

[Signature]
Notary Public and Expiration Date: March 21, 2021

Seal

[Seal Image]
To Whom it May Concern,

Joshua Gaither has reviewed the impairments that the Set Backs on his property at 76 Kentucky Avenue, Bunnell Florida provide to his daily life, with myself, Dennis Jankowski (Owner/Operator of Jankowski Farms). After discussion, it is obvious that his need to reduce the Set Backs to 12 Feet off of both the property lines that we share, has no effect on my livelihood.

Joshua Gaither has promised that this variation will continue to have no effect on mine or my family’s day to day lives, nor will it impede on our income as Local Farmers. Mr. Gaither’s need for this revision is apparent and I am in accordance with him.

With that being said, I, Dennis Jankowski (Owner/Operator of Jankowski Farms) have no objection to Mr. Joshua Gaither’s revision of Set Backs.

Sincerely,

Dennis Jankowski

11-19-19
To Whom it May Concern,

Joshua Gaither has reviewed the impairments that the Set Backs on his property at 76 Kentucky Avenue, Bunnell Florida provide to his daily life, with myself, Dusty Rivers (Neighbor). After discussion, it is obvious that his need to reduce the Set Backs to 12 Feet off of both the property lines that we share, has no effect on my livelihood.

Joshua Gaither has promised that this variation will continue to have no effect on mine or my family’s day to day lives. Mr. Gaither’s need for this revision is apparent and I am in accordance with him.

With that being said, I Dusty Rivers (Neighbor) have no objection to Mr. Joshua Gaither’s revision of Set Backs.

Sincerely,

Dusty Rivers

11/19/19
Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department 386-313-4002
Flagler County Planning Department 386-313-4009
Flagler County Development Engineering 386-313-4082
Flagler County General Services (Utilities) 386-313-4184
County Attorney 386-313-4005
Flagler County Fire Services 386-313-4258
E-911 GIS Specialist 386-313-4274
Environmental Health Department 386-437-7358
Flagler County School Board 386-586-2386
REVIEWING DEPARTMENT: BUILDING DEPARTMENT

No comments at this time.

REVIEWING DEPARTMENT: COUNTY ATTORNEY

As presented, this application does not meet the minimum criteria for a variance. The applicant needs to present evidence to support the conclusory statements in the application.

REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING

No comments at this time.

REVIEWING DEPARTMENT: E-911 STAFF

No comments for this project.

REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT

No objections or comments to the proposed building, as the building is at the other end of the property from the existing septic system and does not adversely impact the system or required unobstructed area.

REVIEWING DEPARTMENT: FIRE INSPECTOR

No comments at this time

REVIEWING DEPARTMENT: PLANNING DEPARTMENT

Application submitted does not meet the minimum requirements for a variance. Evidence must be submitted meeting criteria for the request. If application to proceed to Planning Board as currently submitted a recommendation of denial will be provided to the Board.
Untitled Map
Write a description for your map.
<table>
<thead>
<tr>
<th>ParcelId</th>
<th>Owner</th>
<th>Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>32-12-29-2600-00000-0490</td>
<td>AMANDA L &amp; NICHOLAS J STEPHENS</td>
<td>1725 CR 2006 WEST</td>
<td>BUNNELL, FL 32110</td>
</tr>
<tr>
<td>32-12-29-2600-00000-0730</td>
<td>JANKOWSKI THERESA D &amp; DENNIS JANKOWSKI</td>
<td>421 CR 115 SOUTH</td>
<td>BUNNELL, FL 32110</td>
</tr>
<tr>
<td>32-12-29-2600-00000-0790</td>
<td>RAYMOND W PETERSEN JR &amp; WILLIAM D KIRKLAND</td>
<td>PO BOX 351303</td>
<td>PALM COAST, FL 32135-1303</td>
</tr>
<tr>
<td>32-12-29-2600-00000-0770</td>
<td>DUSTY LEE RIVERS</td>
<td>100 KENTUCKY AVE</td>
<td>BUNNELL, FL 32110</td>
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<tr>
<td>32-12-29-2600-00000-0731</td>
<td>JENNIFER PORTER</td>
<td>1118 INDIgo RD</td>
<td>ORMOND BEACH, FL 32174</td>
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<tr>
<td>32-12-29-2600-00000-0780</td>
<td>RAYMOND W PETERSEN JR &amp; RAYMOND W PETERSEN III JTW</td>
<td>78 KENTUCKY AVE</td>
<td>BUNNELL, FL 32110</td>
</tr>
<tr>
<td>32-12-29-2600-00000-0760</td>
<td>JOSHUA T GAITHER</td>
<td>76 KENTUCKY AVENUE</td>
<td>BUNNELL, FL 32110-5554</td>
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<tr>
<td>32-12-29-2600-00000-0740</td>
<td>JENNIFER PORTER</td>
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<td>ORMOND BEACH, FL 32174</td>
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<tr>
<td>32-12-29-2600-00000-001A</td>
<td>RAWL FAMILY LIMITED PARTNERSHIP</td>
<td>824 FAIRVIEW RD</td>
<td>PELION, SC 29123</td>
</tr>
</tbody>
</table>

I hereby affirm mailed notice to each owner on November 22, 2019 for the Planning & Development Board Meeting on December 10, 2019 at 6:00 pm.
November 22, 2019

RAWL FAMILY LIMITED PARTNERSHIP
824 FAIRVIEW RD
PELION, SC 29123

RE: Application #3204 - Variance Request in the AC (Agriculture) District.

Dear Property Owner:

As an owner of property within 300' of the property referenced herein, the Flagler County Planning Department, in accordance with Section 2.07.00 of the Flagler County Land Development Code, advises you that:

A request has been made by Property Owner Joshua T. Gaither for a 38 foot rear yard setback and a 13 foot side yard setback variance from the minimum 50 and 25 respectively setback requirements for an accessory structure on 0.92 +/- acre parcel located at 76 Kentucky Avenue, Identified as Parcel # 32-12-29-2600-00000-0760.

You are hereby notified that a public hearing before the Flagler County Planning and Development Board, required by law, will be held in the Flagler County Government Services Building, Board Chambers, at 1769 E. Moody Boulevard, Building 2, Bunnell, Florida, on December 10, 2019, beginning at 6:00 p.m., or as soon thereafter as possible.

You are welcome to attend and express your opinion.

Sincerely,

Wendy Hickey
Planner

NOTE: PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY OR COMMISSION 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 WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS ADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.