

THE TOWN OF
Windermere



MAYOR AND COUNCIL OF THE TOWN OF WINDERMERE

Agenda

Mayor Jim O'Brien
Council Members
Robert McKinley
Andy Williams
Chris Sapp (Via Zoom)
Bill Martini
Liz Andert (Via Zoom)

Agenda

**December 8, 2020
6:00 PM
Town Hall
520 Main St.
Windermere, FL 34786**

Join Via Zoom Meeting

<https://zoom.us/j/91260830722?pwd=SC9yZkFDRWREczVJMTINNTThWHF3UT09>

Meeting ID: 912 6083 0722

Passcode: 831312

One tap mobile

+16465588656,,91260830722# US (New York)

+13017158592,,91260830722# US (Washington D.C)

Dial by your location

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
Meeting ID: 912 6083 0722

Find your local number: <https://zoom.us/j/ab4vVPgxx>

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.26: Person with disabilities needing assistance to participate in any such proceeding should contact the Office of the Town Clerk at least 48 hours beforehand at (407) 876-2563

Pursuant to Resolution No. 2005-12 adopted on December 13, 2005, the following Civility Code shall govern all proceedings before the Town of Windermere Town Council:

1. All electronic devices, including cell phones and pagers, shall be either turned off or otherwise silenced.
2. Prolonged conversations shall be conducted outside Council meeting hall.
3. Whistling, heckling, gesturing, loud conversations, or other disruptive behavior is prohibited.
4. Only those individuals who have signed the speaker list and/or who have been recognized by the Mayor (or Chair) may address comments to the Council.
5. Comments at public hearings shall be limited to the subject being considered by the Council.
6. Comments at Open Forums shall be directed to Town issues.
7. All public comments shall avoid personal attacks and abusive language
8. No person attending a Town Council meeting is to harass, annoy, or otherwise disturb any other person in the room.

Any member of the public whose behavior is disruptive and violates the Town of Windermere Civility Code is subject to removal from the Town Council meeting by an officer and such other actions as may be appropriate. **PLEASE NOTE:** IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the

AGENDA

- THE MEETING IS CALLED TO ORDER BY THE MAYOR
- FLAG SALUTE
- INVOCATION

1. OPEN FORUM/PUBLIC COMMENT (3 Minute Limit)

- a. Please email dburkhalter@town.windermere.fl.us prior to 5pm on December 7, 2020 to sign up

2. SPECIAL PRESENTATION/PROCLAMATIONS/AWARDS

3. TIMED ITEMS AND PUBLIC HEARING

4. CONSENT AGENDA

- a. Z21-01: 3229 Wauseon Dr. – Christopher & Amy Rucki – Variance to allow for the north side setback to be reduced from 13 feet to 11.32 feet. (Attachments-DRB Recommends Approval)

5. NEW BUSINESS

a. MINUTES

- i. Town Council Meeting Minutes November 10, 2020 (Attachments-Staff Recommends Approval)

b. RESOLUTIONS/ORDINANCES FOR APPROVAL/FIRST READING

RESOLUTION NO. 2020- 07: Purchase of Unit #45 PD Vehicle

A RESOLUTION OF THE TOWN OF WINDERMERE OF ORANGE COUNTY, FLORIDA, AUTHORIZING THE ISSUANCE OF A NOTE IN THE AMOUNT NOT TO EXCEED \$37,500 FOR THE PURPOSE OF PAYING THE COSTS OF PURCHASING A PUBLIC SAFETY VEHICLE AND COSTS OF ISSUANCE OF SUCH NOTE; DELEGATING TO THE TOWN MANAGER OF THE TOWN, SUBJECT TO COMPLIANCE WITH THE APPLICABLE PROVISIONS HEREOF, THE AUTHORITY TO AWARD THE SALE OF SUCH NOTE TO SYNOVUS BANK PURSUANT TO A TERM SHEET; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A BUSINESS LOAN AGREEMENT AND PROMISSORY NOTE; MAKING CERTAIN FINDINGS; AUTHORIZING CERTAIN OFFICIALS OF THE TOWN AND OTHERS TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SAID NOTE; AND PROVIDING AN EFFECTIVE DATE.

c. APPOINTMENTS

d. CONTRACTS & AGREEMENTS

- i. IPO 118: Butler Basin Design (Attachments-Staff Recommends Conditional Approval)
- ii. IPO 119: Bessie Basin Design (Attachments-Staff Recommends Conditional Approval)

e. FINANCIAL

i. Monetary Contribution for purchase of Central Park Statue: John Nabers (Attachments-Parks and Recreation Recommend Approval)

f. OTHER ITEMS FOR CONSIDERATION:

\ i. Town of Windermere Boathouse Leases (Attachments-Board Option)

6. MAYOR & COUNCIL LIAISON REPORTS

- a. MAYOR O'BRIEN
- b. COUNCILMAN MCKINLEY
- c. COUNCILMAN WILLIAMS
- d. COUNCILMAN SAPP
- e. COUNCILMAN MARTINI
- f. COUNCILMEMBER ANDERT

7. STAFF REPORTS

- a. TOWN MANAGER ROBERT SMITH
- b. TOWN ATTORNEY HEATHER RAMOS (Via Zoom)
- c. POLICE CHIEF DAVE OGDEN
- d. PUBLIC WORKS INTERIM DIRECTOR TRAVIS MATHIAS
- e. CLERK DOROTHY BURKHALTER

8. ADJOURN

-
- REPORTS:
 - FILED ITEMS

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor
JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

Development Review Board November 17, 2020

Town Council December 8, 2020

Case No.: Z21-01

Applicant/Representative: Christopher & Amy Rucki

Property Owner: Christopher & Amy Rucki

Requested Action: Variance to allow for the north side setback to be reduced from 13 feet to 11.32 feet.

Property Address: 3229 Wauseon Dr., Windermere, FL 34786

Legal Description: WAUSEON RIDGE X/49 LOT 3 BLK B & 1/24 INT IN BEG AT NW COR LOT 166 METCALF PARK REP Q/18 RUN W 51.59 FT S 15 DEG W 580 FT M/L TO S LINE OF N1/2 OF NE1/4 TH E 51.77 FT N 15 DEG E 574.66 FT TO POB

Future Land Use/Zoning: Residential/Residential

Existing Use: Residential (Single Family)

Surrounding Future Land Use/Zoning

North: Residential/Residential
East: Public Use/Public Use
South: Residential/Residential
West: Residential/Residential

CASE SUMMARY:

The subject property is an interior lot. The minimum yard setbacks in residential zoning districts for interior lots are: The front yard setback shall be 25 feet, the side yard setback shall be not less than 10 feet or 12.5% percent of the lot width, whichever is greater, with a maximum of 15 feet, and the rear yard setback shall be 35 feet. The width of the lot for determining the 12.5% percent shall be measured at the widest portion of the structure, to include wing or other walls. The subject property is 104 feet wide at the widest portion of the structure, which results in a minimum 13-foot side setback (i.e., 12.5% of 104 feet).

The applicant requests a variance to allow for the north side setback to be reduced from 13 feet (12.5% of the lot width) to 11.32 feet to enable the construction of an attached carport on the north side of the residence. The applicant is also proposing an addition on the south side of the residence; however, the south side addition as shown is compliant with the minimum 13-foot side setback and does not require a variance. See the following aerial photograph (Orange County Property Appraiser) of the subject property and its relationship to adjacent properties.



Division 10.02.00 of the LDC empowers the Development Review Board to review and make recommendations for approval, approval with conditions or denial to the Town Council on variance requests.

Division 10.02.00 of the LDC requires the Town Council to consider the recommendation of the Development Review Board and to take final action to either approve or deny the variance request.

CASE ANALYSIS:

Section 10.02.02 of the LDC provides the specific standards by which the Development Review Board and Town Council are to review to consider the approval or denial of a variance application. In addition, this Section requires a positive finding, based on substantial competent evidence, for each of the standards. These standards are summarized as follows:

1. The need for the variance arises out of the physical surroundings, shape, topographical condition or other physical or environmental conditions that are unique to the subject property. Variances should be granted for conditions peculiar to the property and not the result of actions of the property owner;
2. There are practical or economic difficulties in carrying out the strict letter of the regulation;
3. The variance request is not based exclusively upon a desire to reduce the cost of developing the site;
4. The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public;
5. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site;
6. The effect of the proposed variance is in harmony with the general intent of this Land Development Code and the specific intent of the relevant subject areas of this Land Development Code; and
7. The variance will not encourage further requests for changes where such a land use would not be deemed appropriate.

It is also important to note that this Section also provides specific standards that are not to be considered in the review of a variance application. These standards are:

1. That the implementation of these regulations would impose an economic hardship on the cost of the building or redevelopment project;
2. That these regulations impose a hardship by decreasing the maximum density of a property in terms of the number of units, square footage of buildings, etc.; and
3. That other adjacent lands, structures, or buildings not in conformance with these regulations provide a rationale for a lessening of their application in this specific case.

Section 10.02.02(c) of the LDC allows the imposition of conditions and restrictions as may be necessary to allow a positive finding to be made on any of the variance standards to minimize

the negative effect of the variance. The conditions and restrictions should further the interest of the LDC.

The applicant submitted a variance request letter, architectural plan, site plan, and topographical survey in support of the variance request. The following provides a summary of the information provided in the applicant's letter:

“... We are requesting a variance that would reduce the left side setback from the required 13' to 11' in order to accommodate a functional carport.

The standard width for a 1 car garage is 12' and we are maintaining that same structure width here. Given the position of the property on a pie-shaped lot, we have no other alternatives to build a carport that is functional, aesthetically pleasing and preserves the character of the existing 1965 built home.

Our plans are to overall preserve, secure, improve and correct several important aspects of the property ...”

See the applicant's letter for more detailed information provided by the applicant in support of the variance request.

PUBLIC NOTICE:

Public notices were mailed to property owners within 500 feet of the subject property on October 30, 2020 (29 notices sent). As of November 17, 2020, eight (8) responses were returned in support of the variance.

DEVELOPMENT REVIEW BOARD RECOMMENDATION:

On November 17, 2020, the Development Review Board (DRB) held a public hearing to consider the requested variance for 3229 Wauseon Drive. Based on the information in the staff report, presentation by the applicant/property owner to the DRB, and discussion by the DRB members, there was a motion and second to recommend approval of the variance. The DRB unanimously voted to recommend approval of the variance.

Chris & Amy Rucki
3229 Wauseon Dr.
Windermere, FL 34786
chris.rucki@gmail.com
407.982.0332

October 26, 2020

TOWN OF WINDERMERE

DOROTHY BURKHALTER, TOWN CLERK

TOWN OF WINDERMERE

WINDERMERE, FL 34786

Dear Mrs. Burkhalter,

As owners at 3229 Wauseon Dr., and residents of the Town of Windermere for 10 years, we are requesting a variance for an addition to our property. The variance pertains to the attached "carport" we are seeking to build, extending out the left side of the house.

We are requesting a variance that would reduce the left side setback from the required 13' to 11' in order to accommodate a functional carport.

The standard width for a 1 car garage is 12' and we are maintaining that same structure width here. Given the position of the property on a pie-shaped lot, we have no other alternatives to build a carport that is functional, aesthetically pleasing and preserves the character of the existing 1965 built home.

Our plans are to overall preserve, secure, improve and correct several important aspects of the property including:

- Incorporate a Storm Water Mitigation Plan with proper swales to properly retain our water run-off.
- Improve the safety and security of our family and vehicles:
 - Wauseon Dr. presents a heightened safety issue for pedestrians due to the amount of high speed cut through traffic, combined with a blind corner the curvature of the street presents.
 - Security is an issue for our property given the proximity of our vehicles to the street which have been vandalized previously (police report on file).

Subject Property: 3229 Wauseon Dr. Windermere, FL 34786

- Our driveway mirrors the driveway across the street, presenting a collision hazard.
- Preserve and protect tree canopy by eliminating portion of existing driveway closest to a 100+ year old oak.

The proposed renovations will impact the ISR and FAR as follows:

- Impervious Surface Ratio: 32%
- Floor Area Ratio: 27%

We are committed to the continued beautification and preservation of our way of life here in Windermere. This renovation will further help bring Wauseon Drive up to the town's current standard of overwhelmingly improved, secure and functional properties that adorn many areas. This will significantly enhance this area, increasing property values with it.

We hope you agree this variance request is reasonable and necessary and the planned renovations will greatly improve the Windermere community from a practical and aesthetic standpoint.

Your consideration is greatly appreciated.

Sincerely,

Chris & Amy Rucki

Attached:

Architectural Plan

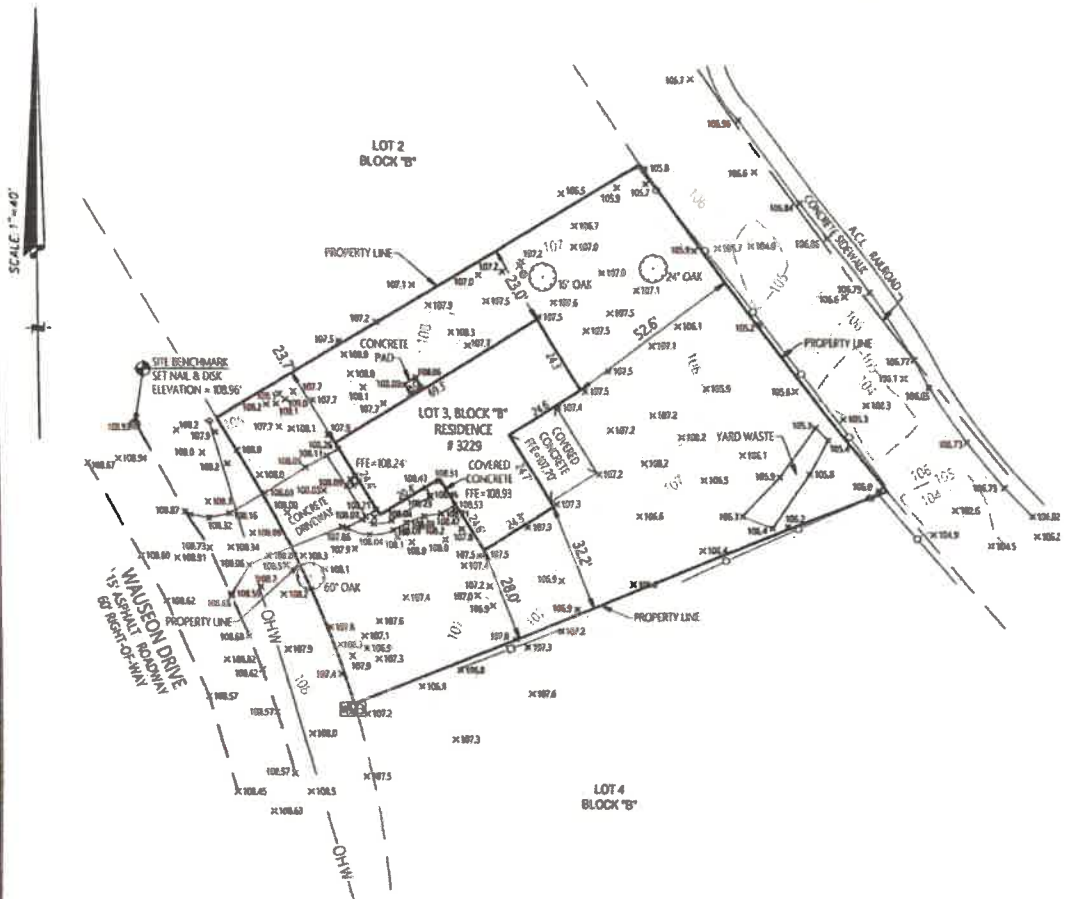
Site Plan with Site Data

Topographical Survey

" TOPOGRAPHIC SURVEY "

"REAL PROPERTY DESCRIPTION"

LOT 3, BLOCK B OF WAUSEON RIDGE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN
PLAT BOOK X, PAGE 49, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.



ABBREVIATION LEGEND:

- AIR CONDITIONER	- WATER METER
- CLEAN OUT	FFE - FINISHED FLOOR ELEVATION
- ELECTRIC BOX	- OVERHEAD WIRE

SURVEYOR'S NOTES:

1. THIS TOPOGRAPHIC SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. THE "REAL PROPERTY DESCRIPTION" SHOWN HEREON IS IN ACCORDANCE WITH THE DESCRIPTION PROVIDED BY THE CLIENT.
3. NO UNDERGROUND IMPROVEMENTS OR VISIBLE INSTALLATIONS HAVE BEEN LOCATED OTHER THAN SHOWN.
4. VERTICAL INFORMATION SHOWN IS BASED ON A CLOSED LOOP LEVEL RUN FROM THE NATIONAL GEODETIC SURVEY BENCHMARK STAMPED: N 827 2005 - A FLANGE-ENCASED ROD, ELEVATION = 104.88' (NAVD88)
5. PROPERTY LINES SHOWN HEREON ARE FROM A BOUNDARY SURVEY BY NEXTGEN SURVEYING, LLC., ORDER# 1000041877, DATED: 11/15/2018 AND WAS PROVIDED BY THE CLIENT.
6. HAVING CONSULTED THE NATIONAL FLOOD INSURANCE PROGRAM FIRM, I HAVE DETERMINED THAT THE SUBJECT PROPERTY LIES IN ZONE "X". NOT A SPECIAL FLOOD AREA PER FIRM PANEL # 12095C0220F, EFFECTIVE DATE 09/25/2009, ORANGE COUNTY, FLORIDA

CERTIFIED TO:
CHRISTOPHER RUCK/AMY RUCK


SURVEYOR'S CERTIFICATE:

THIS IS TO CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER SJ17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

SCOTT BECHIR, P.S.M.
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA REGISTRATION NUMBER 5807

COMMENTS	FIELD DATE	OFFICE DATE
TOPOGRAPHIC SURVEY	C.A.P. 08/27/2020	C.A.P. 09/14/2020

SCOTT'S SURVEYING SERVICES, INC.
LB # 7442
8 S. HWY. 17-92, SUITE 8-A
DEBARY, FLORIDA
PH. (386) 668-7332 FAX 668-7337



Project: _____

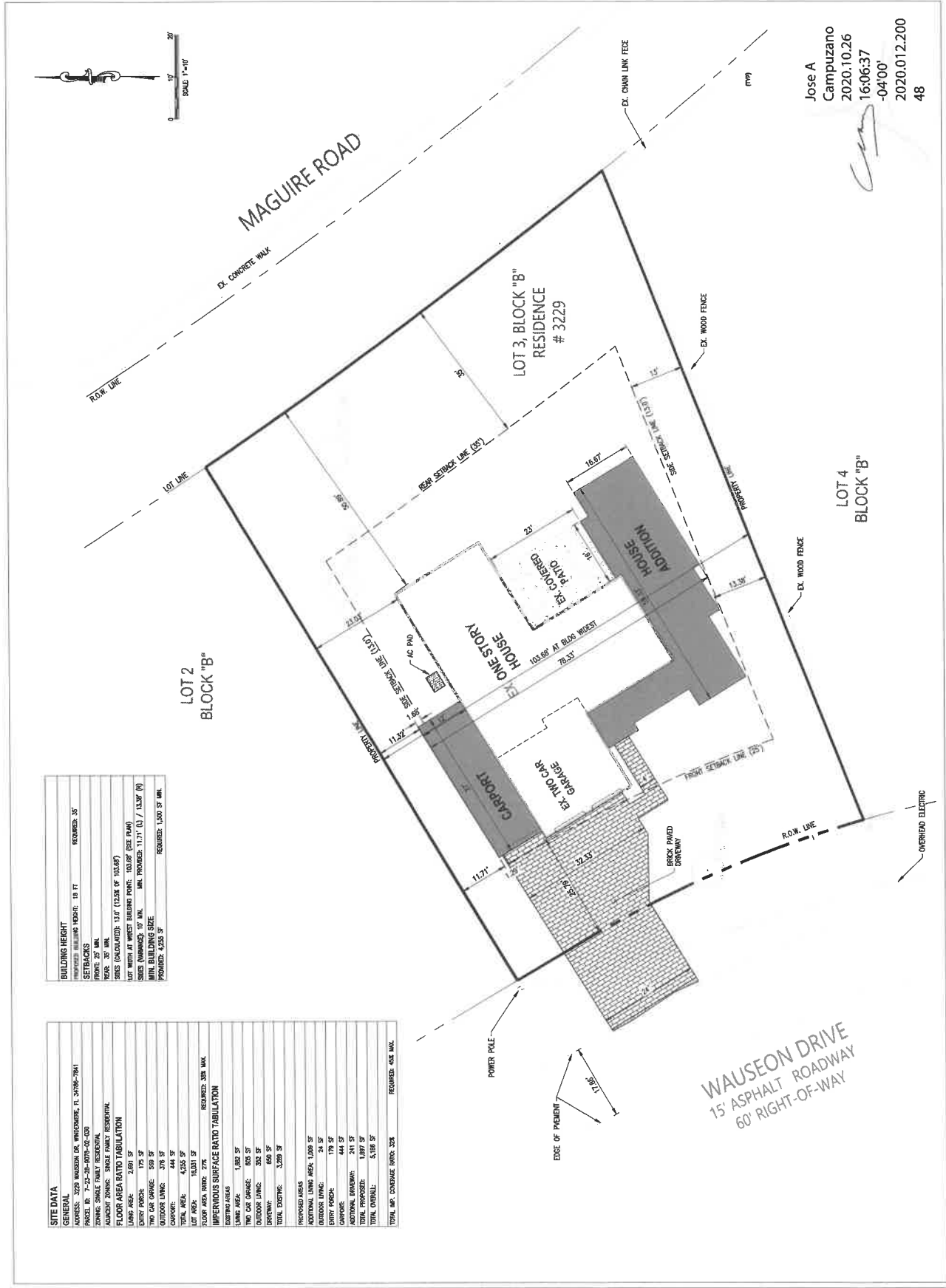
Revisions:

#	Date	Description



Project No: _____
Designer: _____
Checker: _____
Date: _____

Drawing Title: **SITE PLAN**
Sheet No: **C1**



BUILDING HEIGHT

IMPOSED BUILDING HEIGHT: 18 FT REQUIRED: 35'

SETBACKS

FRONT: 25' MIN.
REAR: 30' MIN.

SIDE (CALCULATED): 15.0' (125% OF 10.00')

LOT WIDTH AT WIDEST BUILDING POINT: 103.00' (SEE PLAN)

SIDE (MINIMUM): 10' MIN. MIN. PROVIDED: 11.71' (L) / 11.58' (R)

MIN. BUILDING SETBACK: 5.00' MIN.
PROVIDED: 5.00' REQUIRED: 1.50' 5' MIN.

SITE DATA

GENERAL

ADDRESS: 3229 WAUSEON DR, WINDERMERE, FL 34786-7841

PARCEL ID: 7-22-20-0070-02-000

ZONING: SINGLE FAMILY RESIDENTIAL

ADJACENT ZONING: SINGLE FAMILY RESIDENTIAL

FLOOR AREA RATIO TABULATION

FLOOR AREA: 2,891 SF

TWO CAR GARAGE: 539 SF

EX. ONE STORY HOUSE: 444 SF

EX. TWO CAR GARAGE: 444 SF

TOTAL AREA: 4,205 SF

FLOOR AREA RATIO: 27% REQUIRED: 30% MAX.

IMPERVIOUS SURFACE RATIO TABULATION

LIVING AREA: 1,082 SF

TWO CAR GARAGE: 600 SF

OUTDOOR LIVING: 300 SF

DRIVEWAY: 100 SF

TOTAL IMPERVIOUS: 2,082 SF

PROPOSED AREAS

ADDITIONAL LIVING AREA: 1,000 SF

OUTDOOR LIVING: 24 SF

ENTRY PORCH: 179 SF

CORNER: 444 SF

ADDITIONAL DECKING: 1,000 SF

TOTAL PROPOSED: 3,647 SF

TOTAL OVERALL: 5,100 SF

TOTAL IMP. COVERAGE RATIO: 30% REQUIRED: 30% MAX.

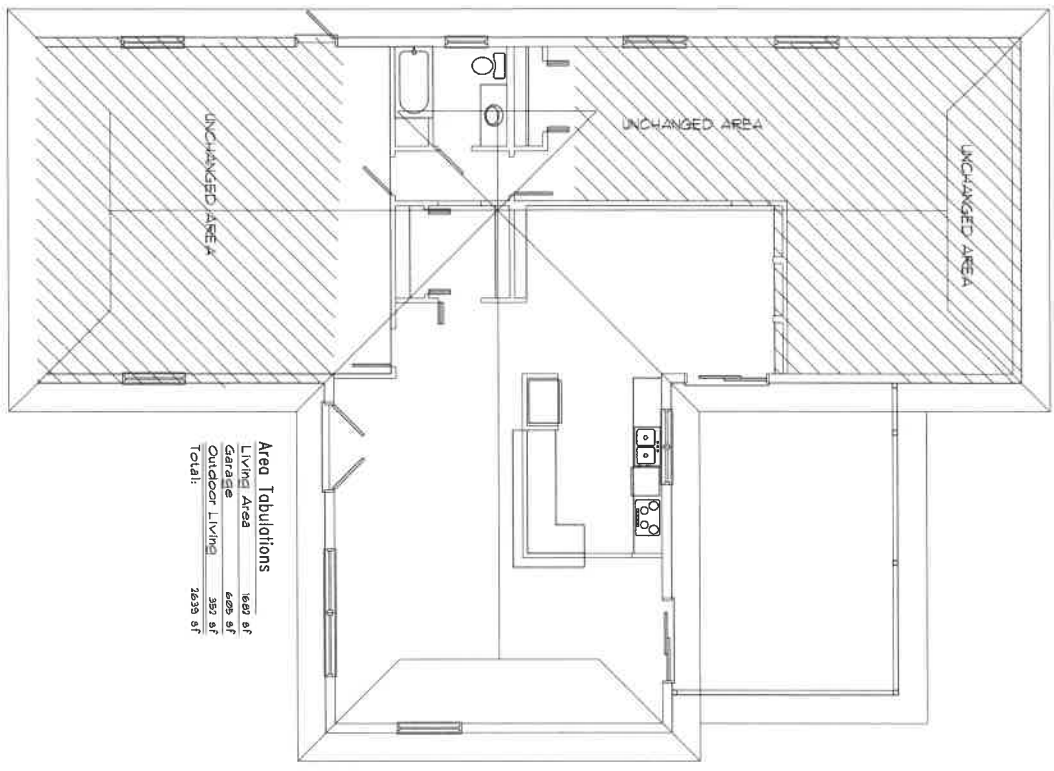
Jose A
Campuzano
2020.10.26
16:06:37
-04'00"
48

WAUSEON DRIVE
15' ASPHALT ROADWAY
60' RIGHT-OF-WAY

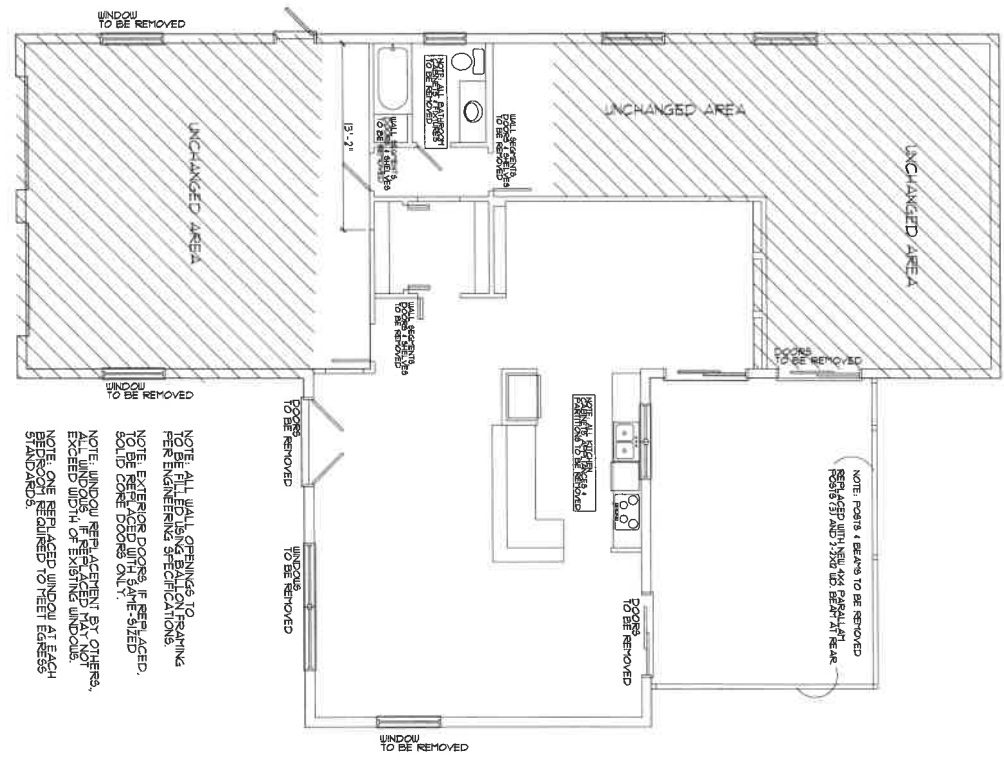
This drawing is the property of Abacus Engineering & Design, Inc. and shall remain the property of Abacus Engineering & Design, Inc. unless otherwise stated. The user of this drawing is responsible for obtaining all necessary permits and approvals from the appropriate authorities. The user of this drawing is also responsible for obtaining all necessary information from the appropriate authorities. The user of this drawing is also responsible for obtaining all necessary information from the appropriate authorities. The user of this drawing is also responsible for obtaining all necessary information from the appropriate authorities.

WRITTEN DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. Contractors shall verify and be responsible for dimensions and conditions of the job and the Builder must be notified in writing of any variation from the dimensions, conditions and specifications appearing on these plans.

AS-BUILT FLOOR & ROOF PLAN
1/4" = 1'-0"



DEMOLITION PLAN
1/4" = 1'-0"



The Designer hereby reserves all common law copyrights and other copyrights in these plans, ideas, and designs. These ideas, designs and plans are not to be copied or changed in any manner or form whatsoever, nor are they to be assigned to any third party without first obtaining the express written permission from the Designer.

<p style="margin: 0;">Drawing No.</p> <h1 style="margin: 0;">1</h1> <p style="margin: 0; font-size: 8px;">of sheets</p>	<p style="margin: 0;">AS BUILT/DEMO PLAN</p> <p style="margin: 0;">3229 WAUSEON DRIVE</p>	<p style="margin: 0;">CHRIS RUCKI</p> <p style="margin: 0;">WINDERMERE, FLORIDA</p>	<p style="margin: 0;">LOT#</p> <p style="margin: 0; font-size: 24px;">X</p>
<p>DATE: 08/27/24</p> <p>SCALE: 1/4" = 1'-0"</p> <p>LAST REVISION DATE:</p>	<p>ENGINEER:</p>		

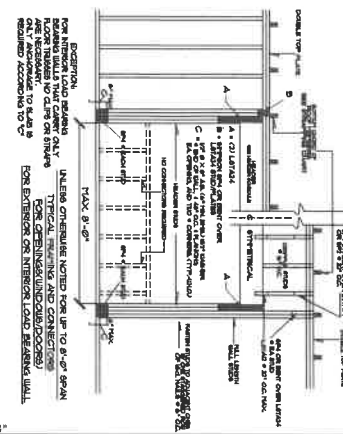
WRITTEN DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR DIMENSIONS AND CONDITIONS OF THE JOB AND THE BUILDER SHALL BE NOTIFIED IN WRITING OF ANY VARIATION FROM THE DIMENSIONS, CONDITIONS AND SPECIFICATIONS APPEARING ON THESE PLANS.

FLOOR PLAN WALL AND HEADER STUD REQUIREMENTS

USE AN CONNECTION REQUIREMENTS AT POINTS A, B, C AND D WITH AN CONNECTION REQUIREMENTS AT POINTS E, F, G AND H.

WALL TYPE	SECTION	WALL STUDS (MINIMUM)			
		1	2	3	4
WALL TYPE	SECTION	2	2	2	2
WALL TYPE	SECTION	2	2	2	2
WALL TYPE	SECTION	2	2	2	2
WALL TYPE	SECTION	2	2	2	2
WALL TYPE	SECTION	2	2	2	2
WALL TYPE	SECTION	2	2	2	2
WALL TYPE	SECTION	2	2	2	2

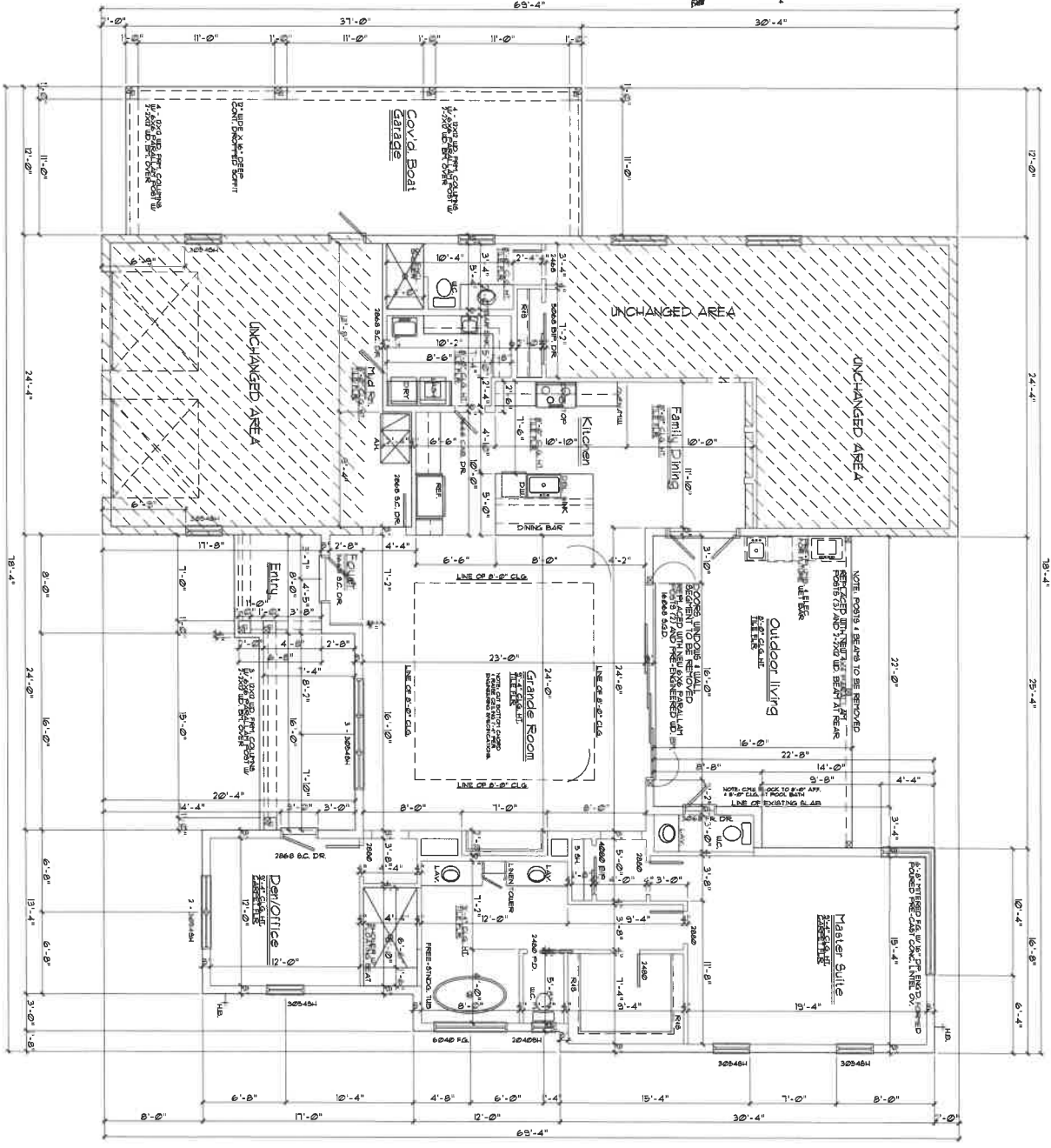
SEE WALL SECTION FOR CONNECTION REQUIREMENTS AT POINTS A, B, C, D, E, F, G AND H.



Area Tabulations

Living Area	7691 SF
Entry Porch	119 SF
Two-Car Garage	5699 SF
Outdoor Living	316 SF
Cov. Boat Gar.	444 SF
Total:	4299 SF

NOTE: SQUARE FOOTAGES MAY BE REEVALUATED TO ACCOMMODATE NEW ELEVATION STYLE WITH A SEPARATE PERMIT.



LOT#
X

CHRIS RUCKI
WINDERMERE, FLORIDA

FLOOR PLAN
3229 WAUSEON DRIVE

Engineer

Design No.	1000
Scale	AS SHOWN
Date	01/27/23
Drawn By	W. RUCKI
Check By	W. RUCKI
App. No.	1000

Drawing No.
2

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WRITTEN DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. Contractors shall verify and be responsible for dimensions and conditions of the job and the Builder must be notified in writing of any variation from the drawings, conditions and specifications appearing on these plans.

QUALITY PRECAST COMPANY
 TAMPA DISTRICT
 ORLANDO DISTRICT
 SPRINGHILL DISTRICT

LATITE CONCRETE PRODUCTS, INC. COMMERCIAL CONCRETE PRODUCTS, INC./ NORMAL CONCRETE PRODUCTS

TABLE 1.1 - 4
 5'-6" COMPRESSIVE STRENGTH

TYPE	THICKNESS	REINFORCING	JOINT TYPE	DESIGN
H-1	8"	#4	CONCRETE ON CONCRETE	SLAB
H-2	8"	#4	CONCRETE ON FOOTING	SLAB
H-3	8"	#4	CONCRETE ON GRAVEL	SLAB
H-4	8"	#4	CONCRETE ON GRAVEL	SLAB
H-5	8"	#4	CONCRETE ON GRAVEL	SLAB
H-6	8"	#4	CONCRETE ON GRAVEL	SLAB
H-7	8"	#4	CONCRETE ON GRAVEL	SLAB
H-8	8"	#4	CONCRETE ON GRAVEL	SLAB
H-9	8"	#4	CONCRETE ON GRAVEL	SLAB
H-10	8"	#4	CONCRETE ON GRAVEL	SLAB
H-11	8"	#4	CONCRETE ON GRAVEL	SLAB
H-12	8"	#4	CONCRETE ON GRAVEL	SLAB
H-13	8"	#4	CONCRETE ON GRAVEL	SLAB
H-14	8"	#4	CONCRETE ON GRAVEL	SLAB
H-15	8"	#4	CONCRETE ON GRAVEL	SLAB
H-16	8"	#4	CONCRETE ON GRAVEL	SLAB
H-17	8"	#4	CONCRETE ON GRAVEL	SLAB
H-18	8"	#4	CONCRETE ON GRAVEL	SLAB
H-19	8"	#4	CONCRETE ON GRAVEL	SLAB
H-20	8"	#4	CONCRETE ON GRAVEL	SLAB
H-21	8"	#4	CONCRETE ON GRAVEL	SLAB
H-22	8"	#4	CONCRETE ON GRAVEL	SLAB
H-23	8"	#4	CONCRETE ON GRAVEL	SLAB
H-24	8"	#4	CONCRETE ON GRAVEL	SLAB
H-25	8"	#4	CONCRETE ON GRAVEL	SLAB
H-26	8"	#4	CONCRETE ON GRAVEL	SLAB
H-27	8"	#4	CONCRETE ON GRAVEL	SLAB
H-28	8"	#4	CONCRETE ON GRAVEL	SLAB
H-29	8"	#4	CONCRETE ON GRAVEL	SLAB
H-30	8"	#4	CONCRETE ON GRAVEL	SLAB
H-31	8"	#4	CONCRETE ON GRAVEL	SLAB
H-32	8"	#4	CONCRETE ON GRAVEL	SLAB
H-33	8"	#4	CONCRETE ON GRAVEL	SLAB
H-34	8"	#4	CONCRETE ON GRAVEL	SLAB
H-35	8"	#4	CONCRETE ON GRAVEL	SLAB
H-36	8"	#4	CONCRETE ON GRAVEL	SLAB
H-37	8"	#4	CONCRETE ON GRAVEL	SLAB
H-38	8"	#4	CONCRETE ON GRAVEL	SLAB
H-39	8"	#4	CONCRETE ON GRAVEL	SLAB
H-40	8"	#4	CONCRETE ON GRAVEL	SLAB
H-41	8"	#4	CONCRETE ON GRAVEL	SLAB
H-42	8"	#4	CONCRETE ON GRAVEL	SLAB
H-43	8"	#4	CONCRETE ON GRAVEL	SLAB
H-44	8"	#4	CONCRETE ON GRAVEL	SLAB
H-45	8"	#4	CONCRETE ON GRAVEL	SLAB
H-46	8"	#4	CONCRETE ON GRAVEL	SLAB
H-47	8"	#4	CONCRETE ON GRAVEL	SLAB
H-48	8"	#4	CONCRETE ON GRAVEL	SLAB
H-49	8"	#4	CONCRETE ON GRAVEL	SLAB
H-50	8"	#4	CONCRETE ON GRAVEL	SLAB

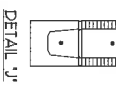
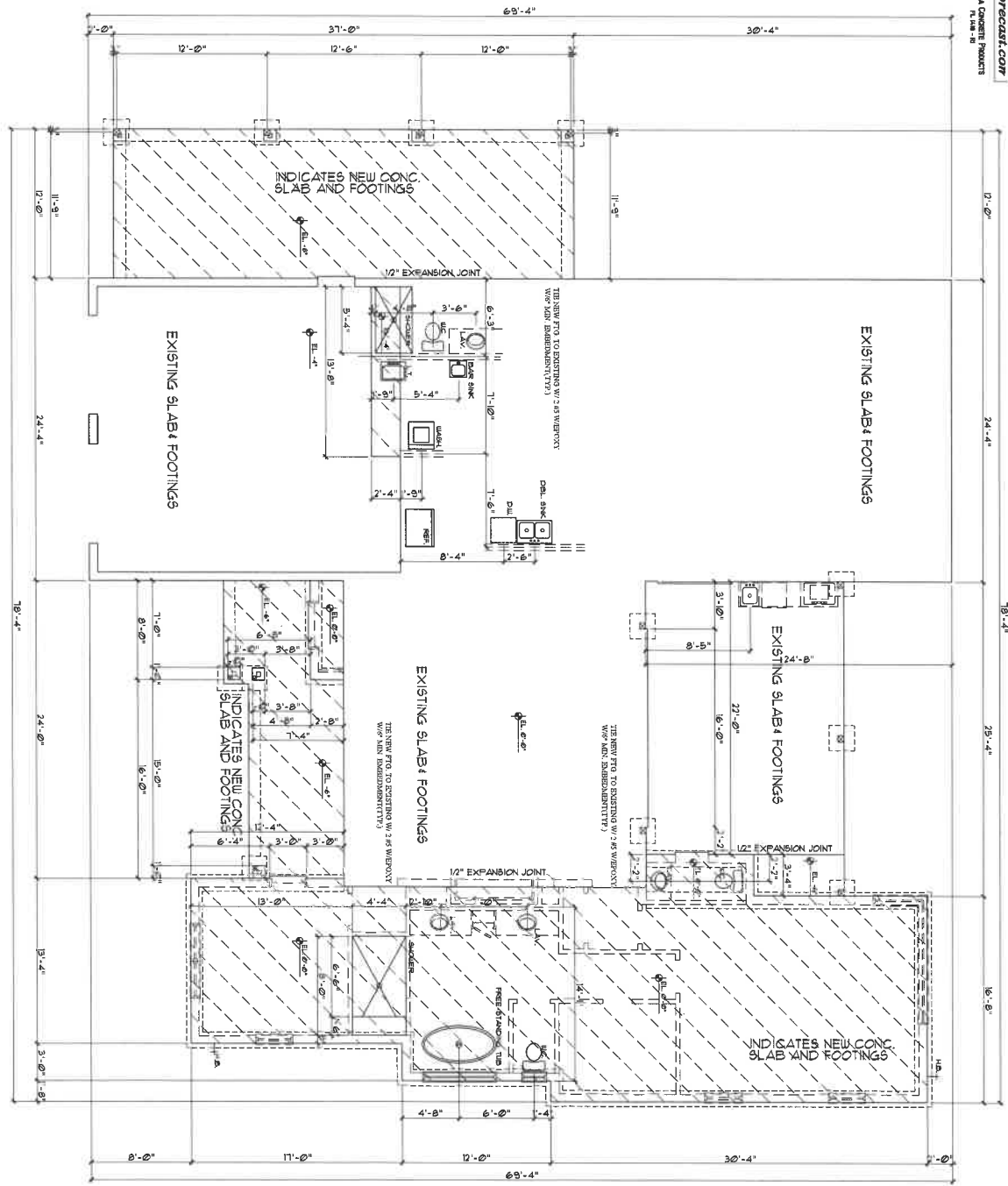
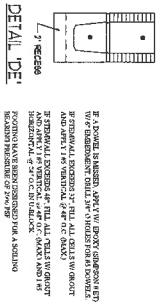


TABLE 1.1 - 3
 GRAVITY LIGHT RISE CONNECTION
 8" X 8" RECESS DOOR EDITION

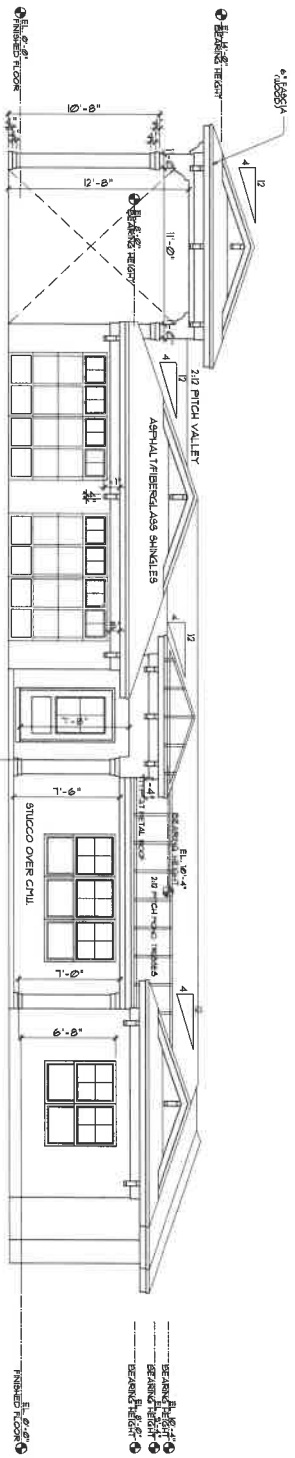
TYPE	THICKNESS	REINFORCING	JOINT TYPE	DESIGN
H-1	8"	#4	CONCRETE ON CONCRETE	SLAB
H-2	8"	#4	CONCRETE ON FOOTING	SLAB
H-3	8"	#4	CONCRETE ON GRAVEL	SLAB
H-4	8"	#4	CONCRETE ON GRAVEL	SLAB
H-5	8"	#4	CONCRETE ON GRAVEL	SLAB
H-6	8"	#4	CONCRETE ON GRAVEL	SLAB
H-7	8"	#4	CONCRETE ON GRAVEL	SLAB
H-8	8"	#4	CONCRETE ON GRAVEL	SLAB
H-9	8"	#4	CONCRETE ON GRAVEL	SLAB
H-10	8"	#4	CONCRETE ON GRAVEL	SLAB
H-11	8"	#4	CONCRETE ON GRAVEL	SLAB
H-12	8"	#4	CONCRETE ON GRAVEL	SLAB
H-13	8"	#4	CONCRETE ON GRAVEL	SLAB
H-14	8"	#4	CONCRETE ON GRAVEL	SLAB
H-15	8"	#4	CONCRETE ON GRAVEL	SLAB
H-16	8"	#4	CONCRETE ON GRAVEL	SLAB
H-17	8"	#4	CONCRETE ON GRAVEL	SLAB
H-18	8"	#4	CONCRETE ON GRAVEL	SLAB
H-19	8"	#4	CONCRETE ON GRAVEL	SLAB
H-20	8"	#4	CONCRETE ON GRAVEL	SLAB
H-21	8"	#4	CONCRETE ON GRAVEL	SLAB
H-22	8"	#4	CONCRETE ON GRAVEL	SLAB
H-23	8"	#4	CONCRETE ON GRAVEL	SLAB
H-24	8"	#4	CONCRETE ON GRAVEL	SLAB
H-25	8"	#4	CONCRETE ON GRAVEL	SLAB
H-26	8"	#4	CONCRETE ON GRAVEL	SLAB
H-27	8"	#4	CONCRETE ON GRAVEL	SLAB
H-28	8"	#4	CONCRETE ON GRAVEL	SLAB
H-29	8"	#4	CONCRETE ON GRAVEL	SLAB
H-30	8"	#4	CONCRETE ON GRAVEL	SLAB
H-31	8"	#4	CONCRETE ON GRAVEL	SLAB
H-32	8"	#4	CONCRETE ON GRAVEL	SLAB
H-33	8"	#4	CONCRETE ON GRAVEL	SLAB
H-34	8"	#4	CONCRETE ON GRAVEL	SLAB
H-35	8"	#4	CONCRETE ON GRAVEL	SLAB
H-36	8"	#4	CONCRETE ON GRAVEL	SLAB
H-37	8"	#4	CONCRETE ON GRAVEL	SLAB
H-38	8"	#4	CONCRETE ON GRAVEL	SLAB
H-39	8"	#4	CONCRETE ON GRAVEL	SLAB
H-40	8"	#4	CONCRETE ON GRAVEL	SLAB
H-41	8"	#4	CONCRETE ON GRAVEL	SLAB
H-42	8"	#4	CONCRETE ON GRAVEL	SLAB
H-43	8"	#4	CONCRETE ON GRAVEL	SLAB
H-44	8"	#4	CONCRETE ON GRAVEL	SLAB
H-45	8"	#4	CONCRETE ON GRAVEL	SLAB
H-46	8"	#4	CONCRETE ON GRAVEL	SLAB
H-47	8"	#4	CONCRETE ON GRAVEL	SLAB
H-48	8"	#4	CONCRETE ON GRAVEL	SLAB
H-49	8"	#4	CONCRETE ON GRAVEL	SLAB
H-50	8"	#4	CONCRETE ON GRAVEL	SLAB



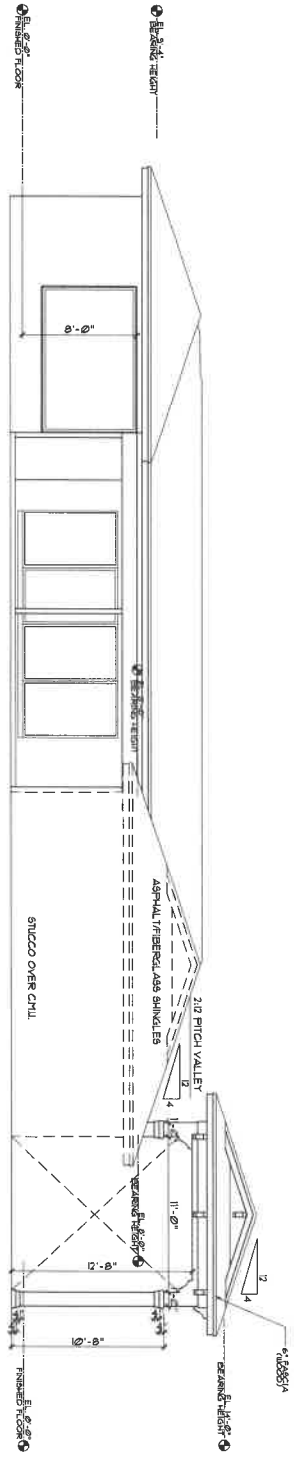
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Drawing No. 3 OF SEVEN	Designer CHRIS RUCKI	FOUNDATION PLAN CHRIS RUCKI	3229 WAUSEON DRIVE WINDERMERE, FLORIDA	LOT#
	Title FOUNDATION PLAN			
	Date 08/14/2014			

WRITTEN DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. Contractors shall verify and be responsible for dimensions and conditions of the job and the Designer may be notified in writing of any variation from the dimensions, conditions and nomenclature appearing on these plans.



FRONT ELEVATION
SCALE: 1/4" = 1'-0"



REAR ELEVATION
SCALE: 1/4" = 1'-0"

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Drawing No.
4
of
Sheets

Checked By
SPECIAL
Last Revision Date
Date
6/17/20
Job No.
Date

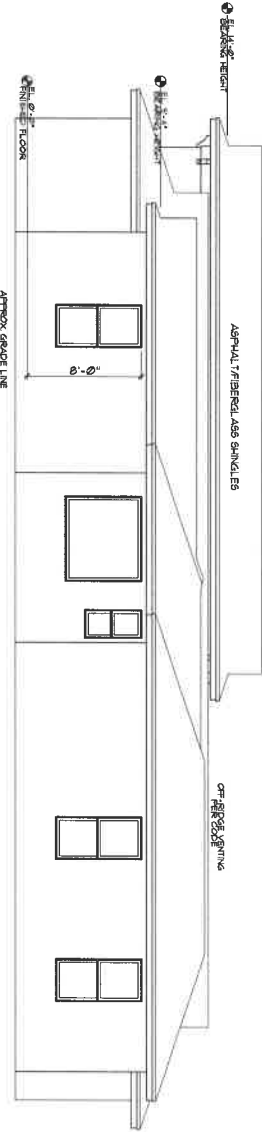
Engineer

ELEVATIONS
3229 WAUSEON DRIVE

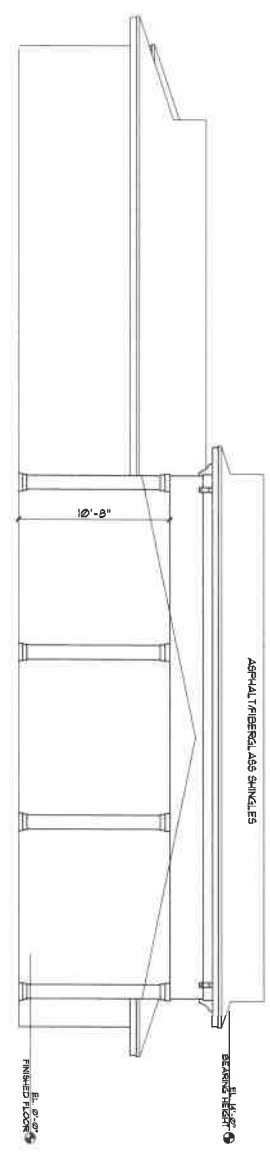
CHRIS RUCKI
WINDERMERE, FLORIDA

LOT#
X

WRITTEN DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONNECTIONS SHALL VARY AND BE RESPONSIBLE FOR DIMENSIONS AND CONDITIONS OF THE JOB AND THE BUILDER MUST BE NOTIFIED IN WRITING OF ANY VARIATION FROM THE DIMENSIONS, CONDITIONS AND SPECIFICATIONS APPEARING ON THESE PLANS.



RIGHT ELEVATION
SCALE: 1/4" = 1'-0"



LEFT ELEVATION
SCALE: 1/4" = 1'-0"

The Designer hereby reserves its common law copyrights and other copyrights in these plans, ideas, and designs. These ideas, designs and plans are not to be copied or changed in any manner or form whatsoever, nor are they to be assigned to any third party without first obtaining the express written permission from the Designer.

Drawing No. 5 of Sheets	Drawing No. Date 07/27/19 Job No. 19-11-19	ELEVATIONS 3229 WAUSEON DRIVE	CHRIS RUCKI WINDERMERE, FLORIDA	LOT# X
	Engineer			

UNLESS NOTED OTHERWISE:

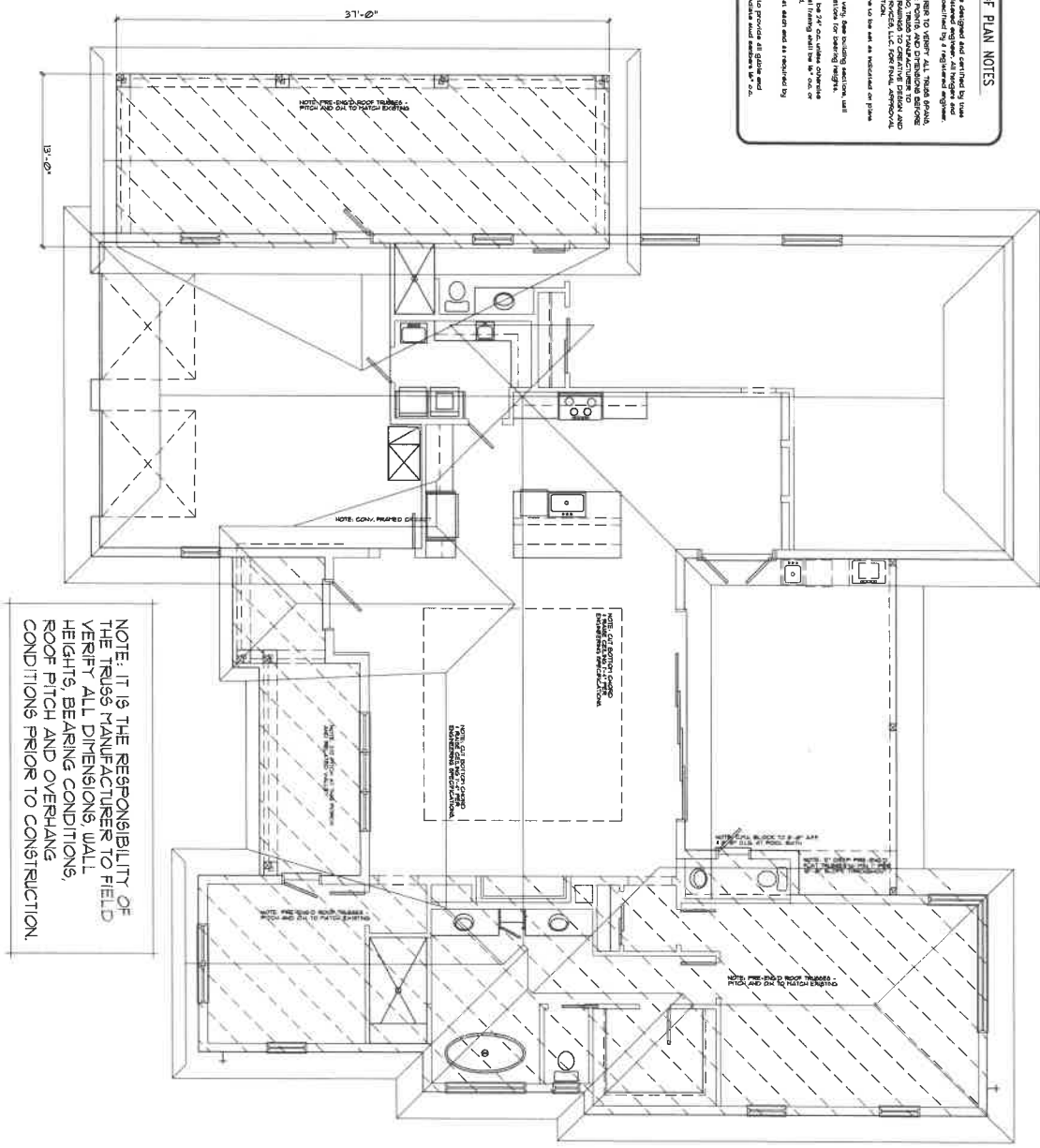
1. JOISTS AND BEAMS TO TRUSSES.
2. USE LSTA30 OR HTS20 FRAME TO JOISTS AND BEAMS.
3. USE MT312 FRAME TO TRUSSES.
4. USE HUS36 AS 1 PLY HANGER AND HUS34 AS 2 PLY HANGER.
5. UNDER GIRDERS & BEAMS, APPLY MINIMUM SAME NUMBER OF STUDS AS THE NUMBER OF PILES IN GIRDER OR BEAM.
6. TREATED AS BEARING WALLS. IF A LINTEL STRAP IS MISSED, APPLY (1) HTSM16 W/6" J 4" X 2 1/4" TAPCONS FOR 1,175 LBS UPLIFT AND (2) HTSM16 FOR 2,350 LBS UPLIFT.
7. HTS20 AND HTS30 MAY BE INTERCHANGED.
8. ALL GIRDERS OVER THREE STUDS TO BE INTERCHANGED.
9. ALL GIRDERS OVER TWO STUDS TO BE INTERCHANGED.
10. PROVIDE HIP ROOF DECK SUPPORT PER APA GUIDELINES.

* HTT4, HTT5, MGT W/ 2" x 8" @ A.B. W/6" EMBROIDMENT. ALL STRAPPING HARDWARE TO PT LOMBER TO BE GALVANIZED

- DESIGN REQUIREMENT:
1. LIVE LOADS FOR FLOOR, DECKS AND STAIRS IS 40 PSF
 2. LIVE LOAD FOR ROOF IS 20 PSF
 3. LIVE LOADS FOR BALCONIES IS 60 PSF

ROOF PLAN NOTES:

1. All trusses shall be designed and certified by a licensed professional engineer. All truss and beam members shall be specified by a registered engineer.
2. Truss manufacturers to verify all truss loads. Truss manufacturer's name and trussing details shall be provided to the contractor. Trussing details shall be provided to the contractor. Trussing details shall be provided to the contractor.
3. All roof framing shall be as indicated on plans and elevations.
4. Top plate noggins may, when building sections, wall to wall, and between roof framing members.
5. Trussing shall be provided as indicated on plans and elevations.
6. Trussing shall be provided as indicated on plans and elevations.
7. Trussing shall be provided as indicated on plans and elevations.
8. Trussing shall be provided as indicated on plans and elevations.
9. Trussing shall be provided as indicated on plans and elevations.
10. Trussing shall be provided as indicated on plans and elevations.



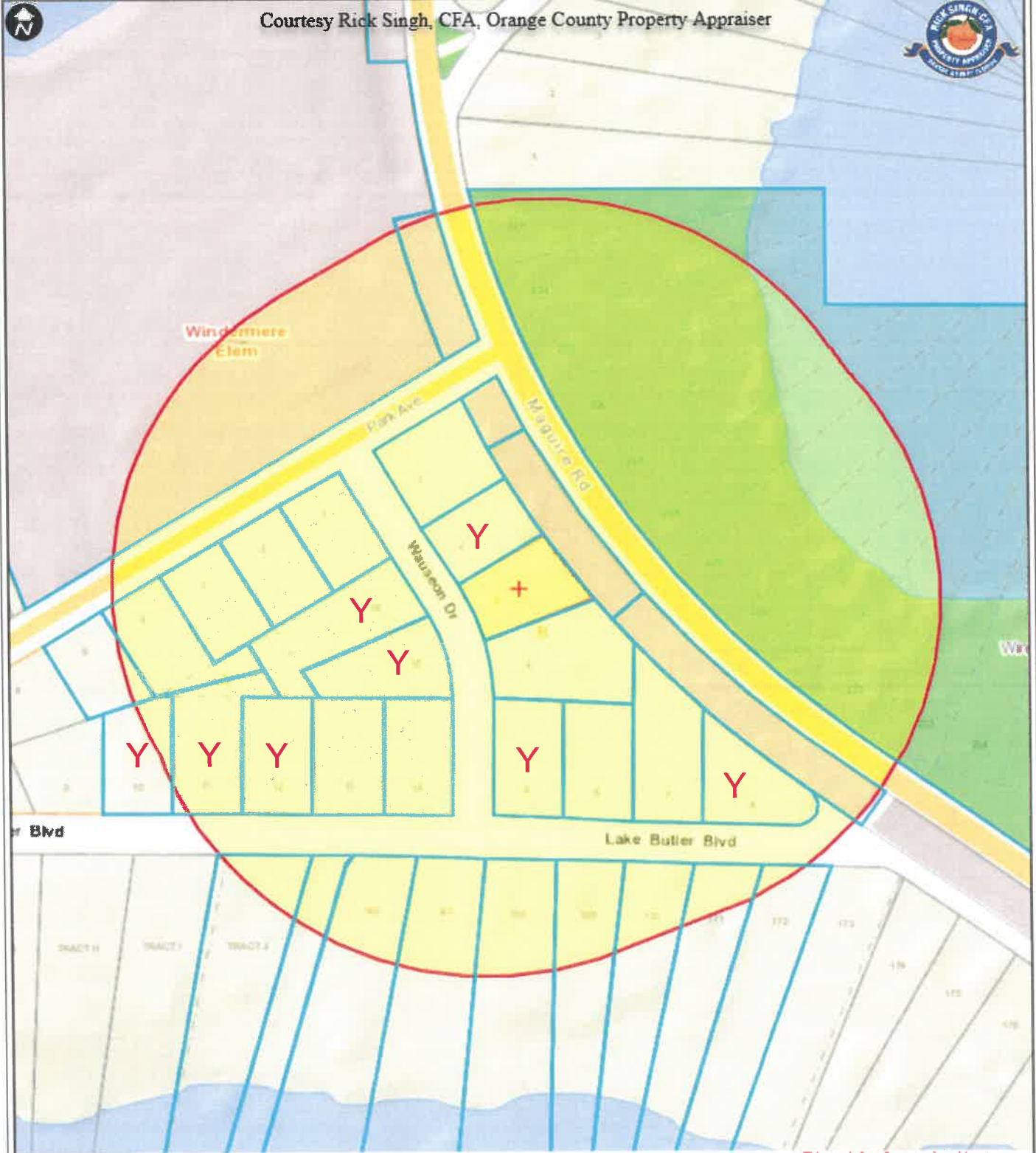
NOTE: IT IS THE RESPONSIBILITY OF THE TRUSS MANUFACTURER TO VERIFY ALL DIMENSIONS, WALL HEIGHTS, BEARING CONDITIONS, ROOF PITCH AND OVERHANG CONDITIONS PRIOR TO CONSTRUCTION.

The Designer hereby reserves its common law copyrights and other copyrights in these plans, ideas, and designs. These ideas, designs and plans are not to be copied or changed in any manner or form whatsoever, nor are they to be assigned to any third party without first obtaining the express written permission from the Designer.

Drawing No. 5 of 5 sheets	Date 07/17/20	Engineer 	FRAMING PLAN 3229 WAUSEON DRIVE	CHRIS RUCKI WINDERMERE, FLORIDA	LOT#
	Last Revision Date 07/17/20				

OCPA Web Map	Major Roads	Proposed Road	Block Line	Commercial/Institutional	Hydro	Golf Course
Florida Turnpike	Public Roads	Brick Road	Lot Line	Governmental/Institutional/Misc	Waste Land	Lakes and Rivers
Interstate 4	Gated Roads	Rail Road	Residential	Commercial/Industrial/Vacant Land	County Boundary	Building
Toll Road	Road Under Construction	Proposed Sunfall	Agriculture	Agricultural Curtilage	Parks	Hospital

Courtesy Rick Singh, CFA, Orange County Property Appraiser



Created: 11/13/2020 11:34

This map is for reference only and is not a survey

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103



Mayor
JIM O'BRIEN

Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

October 30, 2020

HARRISON VAUGHN R
3218 WAUSEON DR
WINDERMERE, FL 34786

RE: Public Notice of Variance Public Hearing for 3229 Wauseon Drive. Z21-01

Chris and Amy Rucki, owners of 3229 Wauseon Drive, submitted a request for approval of a variance, pursuant to Division 10.02.00 of the Town of Windermere Land Development Code. The purpose of the variance request is to allow for a new carport structure to be built on the north side of the existing home at a side setback from the north property line of 11.32' as opposed to the required side setback of 13' from the north property line. As a note, the proposed addition on the south side of the existing home is compliant with Town code and does not require a variance.

Enclosed is additional information regarding this request.

Pursuant to the Town of Windermere Code of Ordinances, you as a surrounding property owner are entitled to comment on this matter. If you wish to comment, this form must be received by the Town of Windermere use of the enclosed stamped envelope to Wade Trim, Inc. by **November 13, 2020**.

This matter will be presented to the Development Review Board on **Tuesday, November 17, 2020 at 6:30 p.m.** Their recommendation will be heard by the Town Council on **Tuesday, December 8, 2020 at 6:00 p.m.** At this time, it is anticipated that both meetings will be held in person at Town Hall located at 620 Main Street. However, the meetings may also be provided virtually on ZOOM. Please check the Town's website at <https://town.windermere.fl.us/> or call Town Administration at 407-876-2563 to verify meeting locations and ZOOM availability. All meetings are open to the public, and you are welcome to participate. Feel free to contact me if you have any questions.

Sincerely,
Brad Cornelius, AICP, Town Planner
Wade Trim, Inc.
813.882.4373
tow@wadetrim.com
Encl.

RECOMMEND – Z21-01 (3229 Wauseon Drive)

APPROVAL: **DISAPPROVAL**

COMMENTS: *The Rucki family are great neighbors*

SIGNATURE: *Brad Cornelius* **DATE:** *Nov. 4/20*

HARRISON VAUGHN R

RECOMMEND - Z21-01 (3229 Wauseon Drive)

APPROVAL: DISAPPROVAL

COMMENTS: _____

NONE

SIGNATURE:  DATE: 11-6-20

MOORE WILBUR J

RECOMMEND - Z21-01 (3229 Wauseon Drive)

APPROVAL: DISAPPROVAL

COMMENTS: SIDE SETBACKS SHOULD BE 10 FT & NOT
A % OF LOT WIDTH

SIGNATURE:  DATE: 11-5-2020

NUNNELLEY MICHELE A

RECOMMEND - Z21-01 (3229 Wauseon Drive)

APPROVAL: DISAPPROVAL

COMMENTS: _____

SIGNATURE:  DATE: 11/06/2020

OSBORNE JANET M

RECOMMEND - Z21-01 (3229 Wauseon Drive)

APPROVAL: DISAPPROVAL

COMMENTS: Best Wishes!

SIGNATURE: Dianne Simmons DATE: 11/6/20

SIMMONS DIANNE CARROLL

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103



Mayor
JIM O'BRIEN

Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

October 30, 2020

JONES LINDSEY S
11033 LAKE BUTLER BLVD
WINDERMERE, FL 34786

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Sincerely,
Brad Cornelius, AICP, Town Planner
Wade Trim, Inc.
813.882.4373
tow@wadetrim.com
Encl.

RECOMMEND - Z21-01 (3229 Wauseon Drive)

APPROVAL: DISAPPROVAL

COMMENTS: This will make their more
appealing to our street

SIGNATURE: Lindsey S Jones DATE: 11-9-2020

JONES LINDSEY S

Warner, Amanda

From: Rachel Weston <rachel.e.weston@gmail.com>
Sent: Wednesday, November 11, 2020 11:48 PM
To: tow
Subject: Variance notice for 3229 Wauseon Dr.

Hello,

I am writing in regards to the variance request submitted by my neighbors, Amy and Chris Rucki. The formal notice was unfortunately sent to my parents address in Port Orange, Florida, however I wish this email to serve as my formal response instead of the mailed in form.

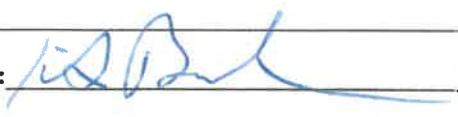
I am aware of the plans being submitted for 3229 Wauseon Drive, including the setback variance which is adjacent to my property (3217 Wauseon Drive). I take no exceptions with the request to permit approximately 1.7' encroachment for the carport, nor the remainder of their plans. Please ensure that notice is given at the Town Hall meeting on 11/17/20 that I support the construction effort.

Thank you!
Rachel

RECOMMEND - Z21-01 (3229 Wauseon Drive)

APPROVAL: **DISAPPROVAL**

COMMENTS: _____

SIGNATURE:  **DATE:** 11/12/2020

BRADACH KIRK S

TOWN OF WINDERMERE

**Town Council Meeting Minutes
(Hybrid Meeting)**

November 10, 2020

***** Please note. Due to technical issues, there is no recording from Town Hall, only Zoom. There were also several recording difficulties with the first hybrid live/zoom meeting*****

CALL TO ORDER:

Present were Mayor Jim O'Brien, Council Members Bill Martini, Bob McKinley, and Chris Sapp. Council Member Andy Williams and Liz Andert were present via Zoom. Town Manager Robert Smith and Police Chief Dave Ogden were also present. Attorney Heather Ramos, Public Works Director Scott Brown, and Town Clerk Dorothy Burkhalter were present via Zoom.

Mayor O'Brien called the meeting to order at 6:00pm and stated all Council members were present.

Member McKinley led everyone in the Pledge of Allegiance. Mayor O'Brien then gave the invocation.

1. OPEN FORUM/PUBLIC COMMENT (3 Minute Limit)

Mayor O'Brien stated he has received a list of individuals that would like to speak regarding agenda items. All deferred until specific items were being heard.

2. SPECIAL PRESENTATION/PROCLAMATIONS/AWARDS

3. TIMED ITEMS AND PUBLIC HEARING:

4. CONSENT AGENDA

5. NEW BUSINESS

a. MINUTES

i. Town Council Meeting Minutes October 13, 2020

ii. Town Council Workshop Meeting Minutes October 27, 2020

Member McKinley made a motion to approve the minutes as presented. Member Sapp seconded the motion. Roll call vote was as follows: Andert – aye, Sapp – aye, Williams – aye, McKinley – aye, and Martini – aye. Motion carried 5-0.

b. RESOLUTIONS/ORDINANCES FOR APPROVAL/FIRST READING

i. Resolution 2020-06 – 2019/2020 General Fund Budget Amendment

Mayor O'Brien presented Resolution 2020-06. Member McKinley made a motion to approve Resolution 2020-06. Member Martini seconded the motion. Roll call vote was as follows: Martini – aye, McKinley -aye, Williams – aye, Sapp - aye, and Andert – aye. Motion carried 5-0.

c. APPOINTMENTS

d. CONTRACTS & AGREEMENTS

i. IPO: Butler Basin Design

TOWN OF WINDERMERE

Town Council Meeting Minutes (Hybrid Meeting)

November 10, 2020

ii. IPO: Bessie Basin Design

Mayor O'Brien turned the floor over to Manager Smith. Manager Smith stated that due to receiving the proposed this afternoon, this item can be tabled until the next meeting. He then read for the record an email from him to the Mayor, Town Council, and Staff (attached). Manager Smith commented that both IPOs will be written the same, focus on stormwater only, consider maintaining existing roads, stormwater, and residents' concerns, funding, costs of projects, and first concepts then approved designs. He then emphasized that the Town Staff works at the direction from the Town Council. Mayor O'Brien commented on past grants and funding. He then stated that the Staff does work for the Town Council and the Town Council makes the decisions. Mayor O'Brien stated he would like to keep the maintenance plan discussion separate from the IPOs. Member Martini commented on the changes within the IPOs. Manager Smith commented that the Town Council needed to decide if the funding is wanted or not. Member Williams commented on the audio issues. Member Sapp commented on past stormwater projects and funding. Mr. Fitzgibbon commented on the past HMPG grants, past stormwater projects, and how the current IPOs will help with stormwater issues. Member McKinley questioned the type of standards that Mr. Fitzgibbon and Mr. Galura used in the past. Mr. Fitzgibbon explained that road work was not involved in the past projects, only stormwater. Member McKinley questioned if Kimley-Horn would sign-off on the newly proposed project? Mr. Fitzgibbon stated he could not answer for Kimley-Horn. There being no further comments from the Town Council, Mayor O'Brien open the floor to the public. First to speak was Mrs. Lesha Miller of 625 Butler Street. (inaudible) Mrs. Miller then commented that this project needs to slow down. There have been too many last-minute changes. Ms. Nora Brophy of 426 Magnolia Street introduced herself. She then commented that past discussions reflected that the Green Book Standards needed to be met, now they don't need to be met for roads and stormwater projects. Ms. Brophy also commented on the confusion and last minutes changes. Mayor O'Brien commented on the challenges of these projects. Manager Smith explained that there are many steps to be taken; ideas/designs, concept approvals, contracts, and standards. Ms. Brandi Haines of 835 Oakdale Street introduced herself. She commented on keeping up with changes, getting residents' support, swales, and utility easements. Ms. Haines then commented on stormwater issues in her area. Mr. Tom Stroup of 201 W 7th Avenue introduced himself. He commented on the proposed road widths, negative impacts, size of swales, designs, funding, and the drainage problems that needs to be fixed. Mr. Fitzgibbon stated that a standard right of way utilization plan is needed. Ms. Susan Carter of 106 Palm Street introduced herself. She then commented on protection of the trees and replanting. Mr. Fitzgibbon agreed with the potential landscaping. Mr. Kenneth Kunkle of 615 Bessie Street was the next to speak. He stated he was unaware of the 2:00pm changes, questioned the water quality of Lake Bessie, and stormwater design in writing to residents. Mr. Paul Gerding of 606 Butler Street stated that Mr. Fitzgibbon and Mr. Galura have more knowledge of the Town than Kimley-Horn. He then stated that the roads don't need to be fixed. Mr. Fitzgibbon stated it is not uncommon to have multiple engineers involved in a project during the design phase. He then commented on the knowledge and relationship Mr. Galura has with FEMA and the past projects he has handled. Member Martini stated that Kimley-Horn is the Engineer of Record for the Town. Some discussion followed. Member Martini then agreed with Mr. Gerding regarding too many engineers. Mr. Jim Currie (address not given) commented on the audio and recording of this meeting. He then stated that more time to review this project is needed. Mr. Currie stated that with the current Pandemic, the Town needs to spend less and save more. Mrs. Katie Jones 336 Magnolia Street introduced herself. She questioned the past and future road maintenance plans, cost of the next step in the process, and the communication process. Mr. David Jones commented on communication issues. Mayor O'Brien commented on communication platforms that the Town has and has done. Manager Smith commented on projects meetings, current roads and conditions, and communication. Discussion followed. Ms. Stephanie Boyd of 228 Magnolia Street introduced herself. She stated that she loves the Town how it currently is, and that she wants to keep the Town simple and not change dirt roads or the trees. Mr. Frank Chase of

TOWN OF WINDERMERE

Town Council Meeting Minutes (Hybrid Meeting)

November 10, 2020

935 Oakdale Street introduced himself. He commented that he had been notified by his neighbor and requested that this item be tabled until next week. Mr. Chase stated that he respects Kimley-Horn but they aren't experienced in dirt roads. He stated that the Town continue with Mr. Mike Galura. Member Sapp stated that other basins need to be considered in the area. Some discussion continued. Ms. Annamaye Clonts of 632 Butler Street introduced herself. She then commented on the water flow onto her property, the need for a global fix, and that something needs to be done. Ms. Clonts commented that the Town needed to take the public funds and fix the issues. Mrs. Tracy Mitchell of 104 W 2nd Avenue stated that she is confused due to all the changes. She then continued to comment on Kimley-Horn and their experience; there's a lot to consider, the Town should take a step back and be cautious with taking the grant money. Ms. Kristie Huffman of 511 Magnolia Street introduced herself. She then stated that the FEMA grant may not match what the residents want. Ms. Huffman stated that maintenance of what's in place is needed. She then commented on the swales and the project sizes, which are too big. A clear plan for the project is needed. She then commented that she feels the money is more than what the Town needs for the project. Mrs. Theresa Schretzmann-Myers of 2713 Tryon Place introduced herself. She stated that instead of obtaining Grey Infrastructure grants, the Town needs to be looking for Green Infrastructure grants. She then commented on the benefit of using the Green Infrastructure. Mr. Joe Tenczar of 327 E 8th Avenue introduced himself. He stated at the beginning of the meeting, it was stated that this item could be tabled. He suggested that is should be. Mr. Tenczar commented on the concern of homeowners taking care of their run-off. He stated he would rather keep the roads the way they currently are. Mayor O'Brien thanked everyone for their comments and concerns. He then stated that he would like to hear comments from the Town Council. Member Williams stated that regardless of the grant funds, there are stormwater issues that need to be fixed. He further stated that a plan has to be selected and the Town needs to move forward with something. Member Andert stated she is fine with having more engagement with residents. She then stated that Town Council and Town Staff have done an excellent job with communication. Member Andert commented that the problem does need to be addressed. She stated that there needs to be a plan, time to engage with the residents, and a maintenance plan with an annual check-up included. Some discussion followed. Mayor O'Brien recognized the public to speak. Ms. Jessica Lee of 528 W 2nd Avenue introduced herself. She commented on water quality, pump-out trucks dumping into the lakes, contacting of EPA, and distrust. Some discussion followed. Ms. Sarah Lopez of 110 Forest Street introduced herself. She stated that informed decisions needed to be made. Ms. Lopez questioned if John Fitzgibbon and Scott Brown had their PE license. She then stated that maintenance issues have been mentioned frequently. Ms. Lopez commented that the Town needs to work with an engineering firm that the Town has confidence in. (inaudible) Comments from Manager Smith. Mayor O'Brien opened the floor to the Town Council. Member Martini thanked the residents for participating. He then commented on; emails he has received, that finding a way to use the grant along with keeping the charm and character of the Town is a priority, more time is needed to review, reviewing a new IPO, and utilizing the funds best for the advantage, staying on top of maintenance, and Forest and Butler concerns. Member Sapp commented that all could agree that there are stormwater issues. He then commented on not piecemealing projects, moving towards design stage, the work needs to be done, keep the grant funds – if not where does funds come from, and design with utilities. Discussion followed. Member McKinley commented on the basins and the work needed., deadlines, trust/distrust, uniqueness of the Town including the dirt roads, maintenance issues, the need to step back and further review, funds already spent for projects, stopping the water flow into the lakes, over engineering, staff has done what they have been asked to do, additional cost of 25% from the Town, more time to review upcoming agenda packets, late changes to agenda items, and re-evaluate then move forward. Mayor O'Brien questioned Member McKinley as to direction of what needs to be done. Member McKinley stated that an extension is needed so that the proposed project could be reviewed further. Mayor O'Brien stated that a clear direction is needed to give staff. Member McKinley stated that the funds need to be returned and that the Town do its own work. Mayor O'Brien commented that engineering and design will also be required for the Town to do the work. He then stated that specific direction to staff is needed. Member Sapp commented that when he discussed approving design, he was

TOWN OF WINDERMERE

**Town Council Meeting Minutes
(Hybrid Meeting)**

November 10, 2020

referring to \$29,000.00 not \$210,000.00, which is for stormwater and potable water only. Discussion ensued. Member Sapp stated that in conversation with Kimley-Horn earlier in the day, since the project could be directed to stormwater, this will take the Green Book Standards “off the table.” He then stated that the Town would have the capabilities to decide which side of the road is for Stormwater and which is for swales/drainage, which could be options in the design phase. Mayor O’Brien stated that the flooding/stormwater issues needed to be addressed. Member Martini questioned if a new concept design could be obtained for the 7th Avenue and Butler Street which shows the new directives that were implemented earlier in the day, if there could be time to review, and then meet to discuss. Member Andert agreed. Mayor O’Brien commented that the work needs to be done properly in the beginning so the issue is not re-occurring. Mayor O’Brien questioned if a motion is needed. Manager Smith explained the process and timing. Mayor O’Brien stated it would be a week or two for the corrections and then time is needed for everyone to review. Discussion was made regarding a follow-up meeting, review of the corrections, review separately, and what the original problems are that caused the water problems. Mayor O’Brien stated that item d(i) and d(ii) will be tabled and staff will bring forward a revised design for the Butler Basin with adequate time for review.

iii. On Call Sign Design Contractor

Mayor O’Brien turned the floor over to Council member Sapp. Member Sapp stated that the Town has many upcoming projects that could/will need signage. He commented that the Long-Range Planning Committee was tasked with reviewing the possibility of having a third party handle the design work for signage throughout the Town. Member Sapp commented that the Town currently has two companies under contract; Wade Trim and Kimley-Horn. He stated that in speaking with the firms, Wade Trim elected to decline the invitations. Member Sapp further stated that the LRP Committee agreed with Kimley-Horn and the Town currently has a master agreement with Kimley-Horn. He then commented that when services are needed, Kimley-Horn will provide an IPO for approval. Member McKinley questioned why an engineering firm is needed to design signs. Member Sapp commented on the resume submitted by Kimley-Horn which is an in-house firm and save time with not having to advertise an RFQ. Member Sapp commented on the need for the firm and upcoming need for signage. After some discussion was made, Member McKinley made a motion to approve. Member Sapp seconded the motion. Roll call vote was as follows: Andert – yes, Sapp – yes, Williams – yes, McKinley – yes, and Martini – yes. Motion carried 5-0.

e. FINANCIAL

f. OTHER ITEMS FOR CONSIDERATION:

6. MAYOR & COUNCIL LIAISON REPORTS:

Mayor O’Brien opened the floor to the Town Council. Member McKinley commented on the past and upcoming Elder Luncheon, 5K and 10K Run, the Halloween Parade and the next Parks and Recreation meeting on November 12th. Member Martini reported that the Development Review Board item regarding the 6th Avenue and Main Street project has been rescheduled to the December meeting. He then commented website issues when using a smartphone and the PDCS website. Member Williams reported that the Historic Preservation Board met and only had discussions due to no quorum, The Windermere Active Youth Committee Zest Fest – citrus picking event, and the removal of sidewalk around the 1887 School House. Member Andert reported that the WAY Committee did not meet. She then reported that the Butler Chain of Lakes Advisory Committee will be hosting a meeting as well as the Tree Board.

7. STAFF REPORTS:

TOWN OF WINDERMERE

**Town Council Meeting Minutes
(Hybrid Meeting)**

November 10, 2020

- a. **TOWN MANAGER ROBERT SMITH** – No report.
- b. **TOWN ATTORNEY HEATHER RAMOS** – No report.
- c. **POLICE CHIEF DAVE OGDEN** – No report.
- d. **PUBLIC WORKS DIRECTOR SCOTT BROWN** – No report.
- e. **TOWN CLERK DOROTHY BURKHALTER** – No report.

8. ADJOURN:

Mayor O'Brien adjourned the meeting at 9:43pm.

Dorothy Burkhalter, MMC, FCRM
Town Clerk

Jim O'Brien, Mayor

DRAFT

Dorothy Burkhalter

From: Robert Smith
Sent: Tuesday, November 10, 2020 1:55 PM
To: Robert McKinley; Andy Williams; Bill Martini; Chris Sapp; Jim O'Brien; Liz Andert
Cc: Nora White; Diane Edwards; Dorothy Burkhalter; Dave Ogden; Debbie Wilson; John Fitzgibbon; 'hao.chau@kimley-horn.com'; Gallo, Victor; mchgalu@aol.com; Scott Brown; Lillian Colli
Subject: Butler & Bessie Stormwater Project IPO Compromise Amendments
Importance: High

Mayor & Council,

Over the past several months Staff has been working with residents (those directly and indirectly impacted), elected officials, grant administrators, legal counsel and others relative to the 3 HMGP grants awarded to the Town of Windermere. We have held numerous zoom meetings, onsite meetings and workshops. During that time, we as staff have researched, amended, reworked, renegotiated and listened to both the residents and our elected officials. What we have learned is the following:

- Maintain the width of the roadways
- Maintain the dirt roadways
- Maintain the stormwater systems both existing and in the future (create a plan)
- Construct Utilities based on the Water Master Plan
- Limit the impacts as much as possible while maintaining what is existing as to not diminish the look, feel and charm of the area
- Do not utilize Green Book Standards as they are not conducive to the standards that Windermere can achieve without drastic changes
- Seek out funding assistance that would adhere to the aforementioned points.

With that said, tonight I would recommend the following and will state as such tonight:

- Both IPO's will be written in the same manner. Staff had the two written differently based on comments made at the last workshop.
- **The IPO's will focus on stormwater only.** Should Council like to add potable water within the scope we will do so.
- **The existing roads will either maintain their existing width or be amended to a width as deemed appropriate by Town Council.** (15ft, 12ft, 10ft, etc.) If this standard is set, we will reduce those roadways which can relieve some of the impacts to what people perceive as their properties.
- I believe this should alleviate the concerns of those who have taken the time to relay their objections.
 - Roads stay the same (or what is established by TC)
 - Stormwater system will work and be maintained
 - Local impacts will be reduced
- The Danger that we face is that once FEMA reviews the design, **they may not fund either the design or construction** because it doesn't meet standards. Staff understands this fact and we have hired Mike Galura to provide peer review and to help negotiate with FEMA as he and I have done in the past in order to even have the opportunity of working with \$3 million in grant money. If they do not fund either, we would still have a design that we can incrementally self-fund when the monies become available. This does open the door to conversations about potential assessment increase and the longer projects wait the more we open ourselves to litigation.

The approval of the IPO's still means the designs come back to you for final approval. We will continue to present and discuss them with the residents prior to that presentation. Right now we are only at concept level.

In addition, we have heard a lot about the lack of maintenance of existing systems and coming up with an SOP to maintain what we have. We are working with KHA and others on creating that plan now. This will enable a better overall plan as well as create a stop gap until an ultimate fix can be funded. Once we have this plan we will present it to TC.

Please understand, Staff works under the direction of Town Council. We were tasked with an arduous objective of maintaining dirt roads, establishing stormwater systems, implementing potable water systems, finding ways to assist in funding all while maintaining the charm and have the least amount of impacts to the area as a whole. I believe we have accomplished this to the best of our abilities and have gone over and above what other jurisdictions would have. It would be difficult to find another Town where engineers, elected officials and staff make it a point to reach out either by phone, email, text, zoom and in person as Windermere has. I know this is a controversial subject when it comes to roads but I want to emphasize that the Staff works for and with the Town and never against it. I am available for calls or questions prior to tonight's meeting

Regards,

Robert Smith
Town Manager
Town of Windermere
614 Main St.
Windermere, FL 34786
rsmith@town.windermere.fl.us
Cell: (407) 797-5004
Main: (407) 876-2563 x5324
Fax: (407) 876-0103

Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. This means email messages, including your e-mail address and any attachments and information we receive online might be disclosed to any person or media making a public records request. E-mail sent on the Town system will be considered public and will only be withheld from disclosure if deemed confidential or exempt pursuant to State Law. If you are an individual whose information is exempt under 119.071, Florida Statutes, please so indicate in your email or other communication. If you have any questions about the Florida public records law refer to Chapter 119 Florida Statutes.

THE TOWN OF
Windermere



EXECUTIVE SUMMARY

SUBJECT: Resolution No 2020-07: Purchase of PD Vehicle #45

REQUESTED ACTION: Staff Recommends Approval

Work Session (Report Only)

DATE OF MEETING: 12/8/20

Regular Meeting

Special Meeting

CONTRACT: N/A

Vendor/Entity: _____

Effective Date: _____

Termination Date: _____

Managing Division / Dept: _____

BUDGET IMPACT: \$37,500

Annual

FUNDING SOURCE: _____

General Funds

Capital

EXPENDITURE ACCOUNT: _____

PD

N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

WPD is in need of a new vehicle to maintain their current fleet of full-time patrol and reserve police officers. There has been an increased need for additional vehicles over the past six years commensurate with the addition of approved full time and reserve patrol officers. The purchase of the additional vehicle was approved in the FY 20/21 budget. A resolution is needed for the loan purchase.

Staff Recommends Approval

RESOLUTION NO. 2020- 07

A RESOLUTION OF THE TOWN OF WINDERMERE OF ORANGE COUNTY, FLORIDA, AUTHORIZING THE ISSUANCE OF A NOTE IN THE AMOUNT NOT TO EXCEED \$37,500 FOR THE PURPOSE OF PAYING THE COSTS OF PURCHASING A PUBLIC SAFETY VEHICLE AND COSTS OF ISSUANCE OF SUCH NOTE; DELEGATING TO THE TOWN MANAGER OF THE TOWN, SUBJECT TO COMPLIANCE WITH THE APPLICABLE PROVISIONS HEREOF, THE AUTHORITY TO AWARD THE SALE OF SUCH NOTE TO SYNOVUS BANK PURSUANT TO A TERM SHEET; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A BUSINESS LOAN AGREEMENT AND PROMISSORY NOTE; MAKING CERTAIN FINDINGS; AUTHORIZING CERTAIN OFFICIALS OF THE TOWN AND OTHERS TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SAID NOTE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Windermere, Florida (the "Town") is authorized by Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Windermere, Florida, and other applicable provisions of law (the "Act"), to issue debt secured by a covenant to budget and appropriate non-ad valorem revenues for lawful purposes set forth in the Act; and

WHEREAS, the Town Council of the Town (the "Town Council") desires to authorize the issuance of and award the sale of its Promissory Note in a principal amount not exceeding \$37,500.00 (the "Note") to finance the costs of acquiring a public safety vehicle and the costs of issuance of the Note, to approve the Business Loan Agreement (hereinafter defined) and to provide for various other matters relating to the issuance of the Note; and

WHEREAS, the Town Council has received from Synovus Bank (the "Bank") a term sheet dated October 6, 2020 (the "Term Sheet") for the purchase of the Note, a copy of which Term Sheet is attached hereto as **Exhibit A**, and the Town Council has determined that the issuance of the Note and the sale thereof to the Bank pursuant to the Term Sheet is in the best interest of the Town for the reasons hereafter indicated; and

WHEREAS, in conjunction with the sale and issuance of the Note, it is necessary to approve the form of the Note and the Loan Agreement and to provide for various other matters with respect to the issuance of the Note;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WINDERMERE, FLORIDA, as follows:

SECTION 1. Definitions. All words and phrases used herein in capitalized form, unless otherwise defined herein, shall have the meaning ascribed to them in the Loan Agreement (hereinafter defined).

SECTION 2. Authorization. There is hereby authorized to be issued a Note in a principal amount not exceeding \$37,500.00. The Town Manager is hereby authorized and directed to execute and deliver such Note on behalf of and in the name of the Town, and the Town Clerk or any Deputy Town Clerk are hereby authorized to attest such execution, with such additions and deletions therein as may be made and approved by the Town Manager, such execution to be conclusive evidence of such approval. The proceeds of the Note shall be used for the purpose of paying the cost of purchasing a public safety vehicle and the costs of issuance of the Note.

SECTION 3. Approval of Loan Agreement. The Business Loan Agreement, to be dated the date of the Note, by and between the Town and the Bank (the "Loan Agreement") is hereby approved in substantially the form attached hereto as **Exhibit B** hereto (including the form of Note and any other exhibits thereto). The Town Manager is hereby authorized and directed to execute and deliver such Loan Agreement on behalf of and in the name of the Town, and the Town Clerk or any Deputy Town Clerk are hereby authorized to attest such execution, with such additions and deletions therein as may be made and approved by the Town Manager, such execution to be conclusive evidence of such approval.

SECTION 4. Negotiated Sale. The Town Council hereby determines that a negotiated private sale of the Note to the Bank pursuant to the Term Sheet and in accordance with the Loan Agreement is in the best interest of the Town because of the nature of the Note, the amount of the Note and the prevailing market conditions, and because delays caused by soliciting competitive bids could adversely affect the Town's ability to issue and deliver the Note at presently favorable interest rates.

SECTION 5. Award; Form of Note. The Town Council hereby approves the Term Sheet and the sale of the Note to the Bank upon the terms and conditions set forth therein. In the event of any conflict between the terms of the Term Sheet and the Loan Agreement, the terms of the Loan Agreement shall control. The Note shall be in substantially the form as set forth in the Loan Agreement, with such additions, deletions and other changes thereto as the officials of the Town executing the Note shall approve, such approval to be conclusively evidenced by the execution of the Note (by manual or facsimile signature) by such officials. As a condition precedent to the issuance of the Note, the Town shall receive a Certificate of the Bank substantially in the form attached hereto as **Exhibit C** and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes.

SECTION 6. Application of Note Proceeds. Proceeds of the Note shall be applied as provided in the Loan Agreement.

SECTION 7. Designation of Note as a "Qualified Tax Exempt Obligation pursuant to Section 265(b)(3) of the Code. The Town hereby designates the Note as a "qualified tax-exempt obligation" under and as defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

SECTION 8. Open Meetings. It is hereby found and determined that all official acts of this Town Council concerning and relating to the issuance, sale and delivery of the Note, including but not limited to adoption of this Resolution and the approval of the Term Sheet, were taken in open meetings of the members of the Town Council, and all deliberations of the members of the

Town council that resulted in such official acts were in meetings open to the public in compliance with all legal requirements including, but not limited to, the requirement of Florida Statutes, Section 286.011.

SECTION 9. Other Actions. The Mayor, the Town Manager, the Town Clerk, any Deputy Town Clerk, the Town Attorney and any authorized designee thereof (collectively, the "Town Officers"), and any other consultant or experts retained by the Town, are hereby authorized and directed to take all actions necessary or desirable in connection with the issuance and delivery of the Note and the consummation of all transactions in connection therewith. The Town Officers are hereby authorized and directed to execute all necessary or desirable certificates, documents, papers, and agreements necessary to the undertaking and fulfillment of all transactions referred to in or contemplated by the Loan Agreement, this Resolution and the Term Sheet. Any reference in this Resolution to the "Town Manager" shall mean the Town Manager of the Town or, in his absence, such other persons authorized to act on his behalf.

SECTION 10. Severability. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

SECTION 11. Effective Date. This Resolution shall become effective immediately upon its adoption.

ADOPTED this 8th day of December, 2020.

TOWN OF WINDERMERE, FLORIDA

Jim O'Brien, Mayor

Attest:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

EXHIBIT A

TERM SHEET

EXHIBIT B

FORM OF LOAN AGREEMENT

EXHIBIT C

FORM OF BANK CERTIFICATE

This is to certify that Synovus Bank (the "Bank"), has not required the Town of Windermere, Florida (the "Town") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Town in connection with the issuance by the Town of its \$ _____ Promissory Note (the "Note"). Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in that Business Loan Agreement dated as of December 10, 2020, by and between the Town and the Bank (the "Loan Agreement").

We are aware that investment in the Note involves various risks, that the Note is not a general obligation of the Town or payable from ad valorem tax revenues, and that the payment of the Note is secured solely from Legally Available Non-Ad Valorem Revenues as described in the Loan Agreement. We have made such independent investigation of the Town as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Note and can bear the economic risk of our investment in the Note.

We acknowledge and understand that the Resolution is not required to be qualified under the Trust Indenture Act of 1939, as amended, and that the Note is not required to be registered in reliance upon an exemption from registration pursuant to the Securities Act of 1933, as amended, Section 517.051(1), Florida Statutes, and Section 517.061(7), Florida Statutes, and that neither the Town nor the Town Attorney shall have any obligation to effect any such registration or qualification.

The Note has been purchased for the account of the Bank for investment purposes only and not with a present view to the distribution, transfer or resale thereof. The Bank intends to hold and book the Note as a loan in its loan portfolio. The Bank currently intends to hold such Note for its own account and for an indefinite period of time and does not currently intend to dispose of all or any portion of such Note. The Bank hereby covenants that if the Bank subsequently decides to distribute or resell the Note, it shall comply in all respects with all laws then applicable with respect to any such distribution or resale. We understand that the Note may not be transferred in a denomination less than the par amount outstanding at the time of transfer.

We are a national banking association, and as such we are a qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an "accredited investor" within the meaning of the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this 10th day of December, 2020.

SYNOVUS BANK

By: _____

Name: _____

Title: _____

LOAN ADDENDUM AND ALLONGE TO NOTE

This Addendum, dated as of the 10th day of December, 2020, is entered into with respect to the Business Loan Agreement (the "Agreement"), by and between the Town of Windermere, Florida (the "Borrower") and Synovus Bank (the "Lender"), and that Promissory Note from Borrower to Lender (the "Note"), each dated as of the date hereof. This Addendum amends and supplements the terms of the Note and the Agreement and, in the event of a conflict between the provisions of the Note or the Agreement and this Addendum, the provisions of this Addendum shall control. The parties hereby agree that, notwithstanding any language in the Note or the Agreement to the contrary:

1. The term "Loan" or "Loans" refers solely to that loan dated December 10, 2020 from the Lender to the Borrower in the principal amount of \$_____, which is evidenced by the Note, and shall not include any other loan, extension of credit or other financial accommodation whatsoever.

2. Notwithstanding any references in the Note or the Agreement to subsequent Advances, the proceeds of the Loan shall be paid to the Borrower in a single Advance made on the date hereof.

3. The Loan shall be secured solely by the Borrower's covenant to budget and appropriate Non-Ad Valorem Revenues. "Non-Ad Valorem Revenues" shall mean all revenues of the Borrower other than revenues derived from ad valorem taxes imposed on real or personal property, but only to the extent that such revenues are legally available to be budgeted and appropriated by the Borrower to pay the principal of and interest on the Loan. The Borrower hereby covenants and agrees, to the extent permitted by and in accordance with applicable law and budgetary processes, to prepare, approve and appropriate in its amend budget for each fiscal year, by amendment if necessary, legally available Non-Ad Valorem Revenues in an amount which, together with other legally available revenues budgeted and appropriated for such purposes, is equal to the debt service requirement with respect to the Loan for the applicable fiscal year. Such covenant and agreement on the part of the Borrower to budget and appropriate sufficient amounts of legally available Non-Ad Valorem Revenues shall be cumulative, and shall continue until such legally available Non-Ad Valorem Revenues in amounts, together with any other legally available revenues budgeted and appropriated for such purpose, sufficient to make all required payments under the Note and Agreement as and when due, including any delinquent payments, shall have been budgeted, appropriated and actually paid to the Lender; provided, however, that such covenant shall not constitute a lien, either legal or equitable, on any of the Borrower's legally available Non-Ad Valorem Revenues or other revenues, nor shall it preclude the Borrower from pledging in the future any of its legally available Non-Ad Valorem Revenues or other revenues to other obligations, nor shall it give the Lender a prior claim on the legally available Non-Ad Valorem Revenues. The Borrower may not expend moneys not appropriated or in excess of its budgeted revenues. The obligation of the Borrower to budget, appropriate and make payments hereunder from its legally available Non-Ad Valorem Revenues is subject to the availability of legally available Non-Ad Valorem Revenues of the Borrower after satisfying funding requirements for obligations having an express lien on or pledge of such revenues and after satisfying funding requirements for essential government services of the Borrower related to the health, welfare and safety of the inhabitants of the Borrower.

Nothing herein, in the Note, or in the Agreement shall be deemed to create a pledge of or lien on the legally available Non-Ad Valorem Revenues, the ad valorem tax revenues, or any other revenues of the Borrower, or permit or constitute a mortgage or lien upon any assets owned by the Borrower. It is expressly agreed by the Lender that the Lender shall never have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the Borrower or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of the principal of and interest on the Loan or for the payment of any other amounts provided for in the Agreement or to maintain or continue any of the activities of the Borrower which generate user service charges, regulatory fees or any other legally available Non-Ad Valorem Revenues, nor shall the Loan constitute a charge, lien or encumbrance, either legal or equitable, on any property, assets or funds of the Borrower.

4. As a result of and in exchange for the Borrower's covenant to budget and appropriate Non-Ad Valorem Revenues as set forth herein, the Lender agrees as follows:

a. The provisions contained in the Agreement and Note under "NEGATIVE COVENANTS" and "RIGHT OF SETOFF" .

b. All references in the Note and the Agreement to "Collateral" shall be deemed to refer solely to funds actually budgeted and appropriated to the payment of the Loan as provided herein.

5. The provisions contained in the Note and the Agreement under "DEFAULT" are hereby deleted and replaced with the following:

a. payment of the principal of or interest on the Loan shall not be made when the same shall become due and payable, either at maturity or otherwise; or

b. the Borrower shall default in the due and punctual performance of any other covenants, conditions, agreements and provisions of the Loan on the part of the Borrower to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Borrower by the Lender; provided, however, that if the Borrower shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the Borrower to diligently complete such curative action not to exceed an additional ninety (90) days; or

c. any material representation or warranty of the Borrower contained in the Note, the Agreement or in any certificate or other closing document executed and delivered by the Borrower in connection with the closing of the Loan shall prove to have been untrue in any material respect when executed and delivered; or

d. there shall occur the dissolution or liquidation of the Borrower, or the filing by the Borrower of a voluntary petition in bankruptcy, or the commission by the Borrower of any act of bankruptcy, or adjudication of the Borrower as a bankrupt, or assignment by the Borrower for the benefit of its creditors, or appointment of a receiver for the Borrower, or the entry by the Borrower into an agreement of composition with its creditors, or the approval by a court of

competent jurisdiction of a petition applicable to the Borrower in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter amended.

IN WITNESS WHEREOF, the Town has caused this Loan Addendum and Allonge to Note to be executed on its behalf by its Mayor, and its official seal to be impressed hereon and attested on its behalf by its Town Clerk, and the Lender has caused this Loan Addendum and Allonge to Note to be executed on its behalf by its authorized officer, all as of the date set forth above.

TOWN OF WINDERMERE, FLORIDA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

SYNOVUS BANK

By: _____
Jim Mitchell, Senior Vice President



EXECUTIVE SUMMARY

SUBJECT: IPO 118 & 119: Butler and Bessie Stormwater Basins
REQUESTED ACTION: Staff Recommends Conditional Approval

Work Session (Report Only) **DATE OF MEETING:** 12/8/20
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: _____

BUDGET IMPACT: Not Exceed: Butler: \$67,990-\$163,647 Bessie: \$84,880-\$216,264
 Annual **FUNDING SOURCE:** TBD: 25/75 Stormwater/Grant
 Capital **EXPENDITURE ACCOUNT:** Stormwater
 N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

Over the past several months Staff has been working with residents (those directly and indirectly impacted), elected officials, grant administrators, legal counsel and others relative to the 3 HMGP grants awarded to the Town of Windermere. We have held numerous zoom meetings, onsite meetings and workshops. During that time, we as staff have researched, amended, reworked, renegotiated and listened to both the residents and our elected officials. What we have learned is the following:

- Maintain the width of the roadways
- Maintain the dirt roadways
- Maintain the stormwater systems both existing and in the future (create a plan)
- Construct Utilities based on the Water Master Plan
- Limit the impacts as much as possible while maintaining what is existing as to not diminish the look, feel and charm of the area
- Do not utilize Green Book Standards as they are not conducive to the standards that Windermere can achieve without drastic changes
- Seek out funding assistance that would adhere to the aforementioned points.

With that said, tonight Staff recommends the attached IPOs which accomplish the following:

- Both IPO's will be written in the same manner.
 - ***The IPO's will focus on stormwater only.*** Should Council like to add potable water within the scope we will do so.
 - The ***existing roads will maintain their existing width.***
 - The approval of the IPO's still means the designs come back to you for final approval. Right now, we are only at
-

concept level. Town Residents and Council will be presented with designs at the 45% and 100% stage. Prior to approval of these two deliverables, Staff and our engineers will hold public outreach sessions as well as workshops to ensure all areas are covered and all are informed. We will not proceed to additional tasks until such time that funding allows (grants or otherwise).

The only Danger that we face is that once FEMA reviews the design, they may not fund either the design or construction because it doesn't meet standards. Staff understands this fact and we have hired Mike Galura to provide peer review and to help negotiate with FEMA as he and I have done in the past in order to even have the opportunity of working with \$3 million in grant money. If they do not fund either, we would still have a design that we can incrementally self-fund when the monies become available.

In addition, we have heard a lot about the lack of maintenance of existing systems and coming up with an SOP to maintain what we have. We are working with KHA and others on creating that plan now. This will enable a better overall plan as well as create a stop gap until an ultimate fix can be funded. Once we have this plan, we will present it to TC.

Staff Recommends Conditional Approval: Condition: Not to exceed amounts presented

Background:

KHA was selected 18 months ago which complied with the CCNA process. However, the resulting contract did not include specific language as such. The RFQ was done after Irma and after the applications were submitted to LMS and HMGP grants were awarded to the Town of Windermere. The risk factor is the basis for the condition based on the months long back and forth between the grant administrators, FEMA Legal, engineers and so on. I am confident we meet these standards but always defer on the side of caution and agree with legal to move forward as stated below. When we are looking at \$3million in projects it is better to resolve a might to a will.

Legal Basis:

Based on the fact that there is risk for the Town to use Kimley-Horn under the continuing contract, the recommendation is the that if the Town elects to proceed with one or more of the stormwater projects, that the Town should issue an RFQ for the projects. Town Legal looked through the procurement process used by the Town to select Kimley-Horn. Town Legal can make a strong argument that the CCNA process complies with the federal requirements, but the resulting contract does not contain the necessary federal requirements. Even if the Town amends the Kimley-Horn contract now, this falls short of what the Deputy General Counsel says in his recent e-mail – that the procurement process must fully comply with the federal requirements from the outset. As stated in the e-mail from the Deputy General Counsel for FDEM – if the RFQ process used by the Town complies with the federal procurement process then it might be okay, but could be flagged for disallowance by a DHS OIG audit. Legal does not recommend that the Town use the continuing contract for something that “might” be okay.

Staff and Legal understands we are concerned about the timing for doing a new procurement process. It can be done quickly - there are no time constraints in Sec. 287.055, Fla. Stat. Gray Robinson's construction law expert that is working on the Town facilities has set up the process for other public entity clients when there were looming deadlines and the process needed to be done according to statute. Gray Robinson can work with and guide the Town on how to quickly procure these projects. Once the Town Council decides which projects to select, the Town can put together a specific RFQ package for the projects using the required federal contracting clauses and addendums to the RFQ, and Kimley-Horn can submit its qualification package along with any other firms that are interested. If the Town elects to proceed in this manner, then there will be no risk that federal funding will be disallowed.



INDIVIDUAL PROJECT ORDER NUMBER 118
November 13, 2020

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The Town of Windermere (the Client or the Town) in accordance with the terms of the Master Agreement for Continuing Engineering Services dated May 15, 2019, which is incorporated herein by reference.

Identification of Project:

Project: Butler Street and 7th Avenue Stormwater Maintenance Improvements

Client: Town of Windermere

Project Understanding:

This Individual Purchase Order (IPO) identifies the scope, schedule, and fee for engineering services for the 45% Design Plans for review by Town Council and Final Design Plans associated for the Drainage Improvements along existing dirt roads including portions of Butler Street, West 7th Avenue and Fernwood Park (Project).

The Project will consist of open and closed drainage conveyance systems while maintaining the existing width of the dirt roadways along Butler Street from West 6th Avenue to West 7th Avenue (approximately 550'), West 7th Avenue from Butler Street to Main Street (approximately 850') and Fernwood Park. The total project length is approximately 1,500 ft including side street returns. The improvements will include proposed drainage swales, inlets, pipes and stormwater management facilities needed to accommodate the water quantity and quality requirements prior to the discharge into Lake Butler through Fernwood Park.

All design work shall comply with the direction of Town Council provided at the 45% design review and prior to proceeding to the Final Design Phase. Kimley-Horn will coordinate with Town Staff early during the design for direction to limit impacts to existing features along the corridor as to not diminish the look, feel and charm of the area. Kimley-Horn will present the 45% Design Plans to the Town Council at up to two (2) meetings. Final Design work shall comply with the requirements of the appropriate regulatory agencies.

This IPO also include:

- Engineering services for the design of stormwater management improvements at Fernwood Park
- Engineering services for design and permitting of an 8" water main along Butler Street from West 6th Avenue to West 7th Avenue and along West 7th Avenue from Butler Street to dirt Main Street.

Specific Scope of Basic Services:

Task 1 – 45% Design Plans Submittal

A. Construction Plans

Based on the preferred alternative established in the Butler Street Drainage Study, which includes minimal impacts to the dirt road footprint, Kimley-Horn will prepare the 45% design package and construction plans for the drainage improvements in accordance with Town Staff direction, FDOT Drainage Manual, and requirements by regulatory agencies. Coordination with a certified arborist retained by the Town will be conducted early during this process. Kimley-Horn will present the 45% Design Plans to the Town Council at up to two (2) meetings.

The drainage plan and profile sheets will be prepared on 11"x17" half size sheets at a horizontal scale of

1" = 40'. The plans will be prepared on topographic information provided by a field survey completed during the Butler Street Drainage Study. The plan and profile sheets will show the horizontal and vertical information for the project. Various roadway elements such as dirt road widths, drainage swales, inlets, pipes, stormwater management facilities, intersecting roadways, driveways and right-of-way lines will be shown and dimensioned. The plans will include grading details for the drainage improvements along Butler Street and West 7th Avenue. Kimley-Horn will evaluate the use of the Town property at the northeast corner of West 7th Avenue and Forest Street for stormwater retention.

Existing underground utilities will be shown based on information provided by the utility companies or as identified during surveying efforts from the Butler Street Drainage Study. Roadway soil profiles from auger borings will be shown.

B. Drainage Design

Drainage Map(s) will be prepared for the project at a scale of 1" = 200'. The drainage maps will show roadway drainage basins, pond locations, existing drainage features, offsite basins and flow patterns/arrows. Design information relative to the proposed storm sewer pipes, drainage structures and swales will be shown on the drainage plan and profile sheets. Proposed drainage structure cross sections are not included in this Task.

Kimley-Horn will design roadside swales and stormwater management as needed to accommodate the Project. Drainage calculations will be prepared and documented in a Drainage Report.

Kimley-Horn will design swales, inlets and pipes and expand the existing stormwater management pond at Fernwood Park as needed to accommodate the Project. The drainage design will incorporate water quality analysis results completed as a part of the Butler Street Drainage Study including design of a rain garden in place of the proposed dry detention pond within Fernwood Park. Drainage calculations will be prepared and documented in a Drainage Report.

Task 2 – Final Design Plans Submittal

A. Construction Plans

Based on the coordination with Town Staff and Council established after the 45% Design Plans submittal, Kimley-Horn will prepare the Final Design and construction plans for the drainage improvements.

It is anticipated that Traffic Control Plans (TCP) will be prepared by the Contractor and is not included this Task.

Kimley-Horn will design the signing for the dirt roads in accordance with the current version of the Manual on Uniform Traffic Control Devices (MUTCD). The design will be shown on the drainage plan and profile sheets.

B. Permitting

It is anticipated that the drainage and water quality improvements will require a South Florida Water Management District (SFWMD) Environmental Resource Permit (ERP).

Kimley-Horn will provide water quality calculations in support of SFWMD ERP application.

Kimley-Horn will prepare and submit a permit application package to the SFWMD. Kimley-Horn will respond to up to two (2) Requests for Additional Information (RAI) from the SFWMD. The Town will be responsible for signing all necessary application forms and all application fees associated with the permit application.

Task 3 – Fernwood Park Stormwater Improvements

Kimley-Horn will also evaluate the use of drainage swales and berms to address the stormwater runoff flowing through Fernwood Park and into Lake Butler. The drainage plan and profile sheets will be prepared on 11"x17" half size sheets at a horizontal scale of 1" = 40'. The plans will be prepared on topographic information provided by a field survey. The plan and profile sheets will show the horizontal and vertical drainage information for the project. Various elements such as swales, inlets, pipes, existing dirt road width, and right-of-way lines will be shown and dimensioned. The rain garden landscape plans (Task 4) will be included in the construction plans.

Task 4 – Rain Garden Landscape Plans

Kimley-Horn will prepare Landscape Planting Plans and Details for one (1) rain garden located within the proposed project improvement area. The rain garden will be coordinated and designed in collaboration with the proposed dirt road and drainage improvements. The rain garden is anticipated to be located at Fernwood Park.

The proposed rain garden planting plan will include the following:

- One (1) plan view planting plan of the Rain Garden (at an appropriate scale) with plant locations and plant ID callouts
- One (1) plant schedule listing the proposed plantings within the rain garden
- Two (2) typical cross section details for the proposed planted rain garden
- Typical planting details and notes

Kimley-Horn will prepare the above documents for submittal to the Town and the SFWMD. Kimley-Horn will revise the documents per the Town and SFWMD comments up to two (2) times.

Final Deliverables for this task include one (11"x17") signed and sealed set of reproducible landscape plan drawings for the proposed rain garden location listed in the description above.

Task 5 – Subsurface Utility Verification

Kimley-Horn will retain the services of Southeastern Surveying and Mapping Corp. (Southeastern) to perform utility test holes. Refer to attached subconsultant proposal for additional information.

Task 6 – Bid Assistance Services

Kimley-Horn will prepare one (1) opinion of probable construction cost and one (1) contractor bid tabulation form for the Project for use by the Town during the bidding process. Kimley-Horn will attend one (1) pre-bid meeting and provide input as directed by the Client. Kimley-Horn will prepare responses to questions submitted by the contractors to the Town during the bidding period.

Task 7 – Construction Phase Services

Kimley-Horn will review concrete mix design and drainage structure shop drawings submitted by the Contractor in accordance with standard FDOT procedures. The Town will be responsible for the receipt, distribution, and disposition of all contractor submittals, including project logs. The term "shop drawings" include all drawings, diagrams, illustrations, transportation procedures, manuals, and design calculations submitted by the Contractor to define some portion of the project.

Kimley-Horn will provide written responses to the Town for up to five (5) Contractor Requests for Information (RFI).

Kimley-Horn will attend up to five (5) progress meetings during construction as requested by the Town. This task does not include engineering inspection services.

Task 8 – Water Main Construction Plans

Dirt road and drainage improvements are being designed along 7th Avenue and Butler Street. The Town's Water Master Plan identifies a future 8-inch water main that would service the area. In an effort to minimize future construction to install the water main, the Town has asked Kimley-Horn to include the work in this IPO. Kimley-Horn understands that the Town currently has two (2) 8-inch water mains at the intersections of 6th Avenue and Butler St and 7th Avenue and Old Main Street (dirt road). The proposed water main will be approximately 1,300 linear feet and designed in the right-of-way.

Kimley-Horn will prepare 60%, 90%, and 100% utility construction plans for the 8-inch water main along 7th Avenue and Butler St. Kimley-Horn understands that the Town currently has existing 8-inch water mains which will provide connection points for the proposed 8-inch water main at the intersections of 6th Avenue and Butler St and 7th Avenue and Old Main Street. The water main will include water service connections and hydrants. Kimley-Horn understands that the residents will be responsible for the connection to the back of the meter and these plans will not be part of this design. The water main will be designed in accordance with the Orange County Utilities (OCU) standards.

The construction plan and profile sheets will be prepared on 11"x17" half size sheets at a horizontal scale of 1" = 40'. The plans will be prepared on topographic information provided by a field survey. The plan and profile sheets will show the horizontal and vertical information for the project as previously described.

Kimley-Horn will submit plans to OCU for review and comments at the 90% complete level. After receiving comments from OCU, Kimley-Horn will revise the drawings and submit the final 100% drawings to OCU for review and comments.

Kimley-Horn will prepare bid documentation and will assist the Town in bidding services. Bidding services include attending a pre-bid meeting, responding to addenda, and final construction documentation.

Task 9 – Water Main Permitting

Kimley-Horn will prepare and submit a Florida Department of Environmental Protection (FDEP) permit application for the water main extension. The final plans will be coordinated with OCU staff for their signatures on the permit applications.

Task 10 – Water Main Construction Phase Services

Kimley-Horn will attend the pre-construction meeting, review shop drawing submittals by the contractor, provide responses for up to five (5) RFI's, and attend up to three (3) progress meetings.

Kimley-Horn will prepare and submit the FDEP Clearance Form to the FDEP for approval.

The contractor will be responsible for providing as-built information and the required survey information for OCU's project closeout. Kimley-Horn will review the information provided by the contractor and prepare record drawings for the project.

Task 11 – Water Main Utility Investigation Services

Kimley-Horn will retain the services of ECHO UES, Inc. (ECHO) to perform identification and marking of existing utilities and up to four (4) utility verification test holes. Refer to attached subconsultant proposal for additional information.

Task 12 – Water Main Survey Services

Kimley-Horn will retain the services of PEC Survey and Mapping, LLC to perform survey services for the existing utilities identification and test holes described in Task 11.

Task 13 – Unpaved Road Project Maintenance Plan

A. Research / Site Assessment

A site assessment will be completed to understand the potential issues that will occur with unpaved the roadway. The topography, soils, and land cover play a part in the alignment and stability of the road.

- A review of the topography survey completed for this Project will be included to understand the slopes and grades that will contribute to the velocity of runoff in the area.
- A soil type assessment will be completed to understand the stability and permeability of the soils adjacent to the existing unpaved roadways.
- A vegetation / land cover assessment will be competed to understand the existing land cover and how it can help preserve erosion on slopes.

B. Inventory

An unpaved roadway and drainage structure inventory will be completed to identify locations that contribute to the Project basin that will need maintenance. Contributing basins will be identified to determine the amount of runoff that is coming to each drainage structure. This will help categorize areas of concern and determine which areas will need increased maintenance.

C. Maintenance Schedule, Checklist, and Monitoring Plan

Routine inspection and maintenance should be performed by Town staff to maintain the unpaved roadway and adjacent drainage systems. A maintenance plan will be developed and will consist of upkeep strategies for four (4) main areas of concern: roadway surface, side slopes, drainage system, and buffers. A maintenance schedule and checklist will be developed ensure proper care of the unpaved roadways and surrounding drainage systems.

Project Deliverables:

- 45% Construction Plans
- Final Construction Plans
- Drainage Report
- SFWMD application package
- Rain Garden Landscape Plans
- Utility test hole data sheets
- Opinion of probable construction cost
- Contractor bid tabulation form
- Water Main Construction Plans
- Water Main application package
- Maintenance Plan

Additional Services if required:

The following services are not included in this IPO, but may be performed if authorized by the Town. Payment for these additional services will be agreed upon prior to their performance.

- Sidewalk Design
- Traffic Control Plans
- Drainage structure cross sections
- Engineering inspection services
- Attendance at meetings in addition to those noted in the scope of services
- Concept development of additional alternatives
- Certified Arborist evaluation for tree preservation
- Lighting Plans

Information Provided By Client:

The Town will provide the following information, upon which Kimley-Horn can rely:

- Available right of way data
- Available record or as-built plans
- Available permits
- Data regarding the existing road conditions

Schedule:

Tasks 1-5, 8-9, and 11-13 are anticipated to be completed within 180 calendar days. Tasks 6, 7 and 10 will be dependent on the Town's bidding process and the construction duration.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Method of Compensation:

It is understood this IPO is for a maximum amount of \$168,647.

Kimley-Horn will perform the **Drainage Improvement Design Services** in Tasks 1-7 for a lump sum fee of \$100,317 inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 1: 45% Design Plans Submittal	\$27,850
Task 2: Final Design Plans Submittal	\$32,460
Task 3: Fernwood Park Stormwater Improvements	\$7,680
Task 4: Rain Garden Landscape Plans	\$10,500
Task 5: Subsurface Utility Verification	\$2,947
Task 6: Bid Assistance Services	\$8,815
Task 7: Construction Phase Services	\$10,065

Kimley-Horn will perform the **Water Main Design Services** in Tasks 8-12 for a lump sum fee of \$54,230 inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 8: Water Main Construction Plans	\$33,160
Task 9: Water Main Permitting	\$2,730
Task 10: Water Main Construction Phase Services	\$15,590
Task 11 – Water Main Utility Investigation Services	\$2,500
Task 12 – Water Main Survey Services	\$250

Kimley-Horn will perform the **Maintenance Plan Services** in Tasks 13 for a lump sum fee of \$14,100 inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 13 – Unpaved Road Project Maintenance Plan	\$14,100

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.

ACCEPTED:

THE TOWN OF WINDERMERE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____
Hao T. Chau, PE

TITLE: _____

TITLE: Assistant Secretary/Project Manager

DATE: _____

DATE: 11/13/2020



November 13, 2020

KIMLEY-HORN AND ASSOCIATES, INC.

Project: IPO 118 - Butler Street and 7th Avenue

Stormwater Maintenance Improvements

Client: Town of Windermere

Summary of Fees and Charges

PROJECT LABOR	Hours	Lump Sum
Project: IPO 118 - Butler Street and 7th Avenue	1,044.0	\$ 162,950.00
1. 45% Design Plans Submittal	180.0	\$ 27,850.00
2. Final Design Plans Submittal	210.0	\$ 32,460.00
3. Fernwood Park Stormwater Improvements	48.0	\$ 7,680.00
4. Rain Garden Landscape Plans	65.0	\$ 10,500.00
6. Bid Assistance Services	57.0	\$ 8,815.00
7. Construction Phase Services	59.0	\$ 10,065.00
8. Water Main Construction Plans	220.0	\$ 33,160.00
9. Water Main Permitting	18.0	\$ 2,730.00
10. Water Main Construction Phase Services	97.0	\$ 15,590.00
13. Unpaved Road Project Maintenance Plan	90.0	\$ 14,100.00
SUBTOTAL KIMLEY-HORN LABOR FEES:	1,044.0	\$ 162,950.00
Subconsultant: 5. Subsurface Utility Verification (Southeastern)		\$ 2,947.00
Subconsultant: 11. Water Main Utility Investigation Services (ECHO)		\$ 2,500.00
Subconsultant: 12. Water Main Survey Services (PEC)		\$ 250.00
Total Subconsultant		\$ 5,697.00
GRAND TOTAL FEES AND CHARGES:		\$ 168,647.00



Consultant Name: Kimley-Horn and Associates, Inc.

Work Effort and Fee Estimate Table

Project: **IP0 118 - Butler Street and 7th Avenue**

task	Principal hrs.	rate	hrs.	rate	Proj Manager hrs.	rate	Sr Engineer hrs.	rate	Project Engineer hrs.	rate	Analyst/Designer hrs.	rate	Clerical hrs.	rate	task totals hrs.	rate
1. 45% Design Plans Submittal	2	\$ 480.00	20	\$ 4,000.00	20	\$ 4,000.00	20	\$ 4,000.00	54	\$ 9,450.00	80	\$ 9,600.00	4	\$ 320.00	180	\$ 27,850.00
2. Final Design Plans Submittal	2	\$ 480.00	20	\$ 4,000.00	20	\$ 4,000.00	24	\$ 4,800.00	68	\$ 11,900.00	90	\$ 10,800.00	6	\$ 480.00	210	\$ 32,460.00
3. Fernwood Park Stormwater Improvements	1	\$ 240.00	6	\$ 1,200.00	6	\$ 1,200.00	6	\$ 1,200.00	16	\$ 2,800.00	18	\$ 2,160.00	1	\$ 80.00	48	\$ 7,680.00
4. Rain Garden Landscape Plans	2	\$ 480.00	9	\$ 1,800.00	9	\$ 1,800.00	9	\$ 1,800.00	20	\$ 3,500.00	23	\$ 2,760.00	2	\$ 160.00	65	\$ 10,500.00
6. Bid Assistance Services	1	\$ 240.00	6	\$ 1,200.00	6	\$ 1,200.00	6	\$ 1,200.00	17	\$ 2,975.00	26	\$ 3,120.00	1	\$ 80.00	57	\$ 8,815.00
7. Construction Phase Services	1	\$ 240.00	13	\$ 2,600.00	13	\$ 2,600.00	13	\$ 2,600.00	15	\$ 2,625.00	16	\$ 1,920.00	1	\$ 80.00	59	\$ 10,065.00
8. Water Main Construction Plans	5	\$ 1,200.00	15	\$ 3,000.00	15	\$ 3,000.00	15	\$ 3,000.00	72	\$ 12,600.00	108	\$ 12,960.00	5	\$ 400.00	220	\$ 33,160.00
9. Water Main Permitting	1	\$ 240.00	1	\$ 200.00	1	\$ 200.00	1	\$ 200.00	6	\$ 1,050.00	8	\$ 960.00	1	\$ 80.00	18	\$ 2,730.00
10. Water Main Construction Phase Services	1	\$ 240.00	10	\$ 2,000.00	10	\$ 2,000.00	10	\$ 2,000.00	42	\$ 7,350.00	32	\$ 3,840.00	2	\$ 160.00	97	\$ 15,590.00
13. Unpaved Road Project Maintenance Plan	2	\$ 480.00	10	\$ 2,000.00	10	\$ 2,000.00	10	\$ 2,000.00	28	\$ 4,900.00	38	\$ 4,560.00	2	\$ 160.00	90	\$ 14,100.00
Total Billable Labor															1044	\$ 162,950.00

Principal	Proj Manager	Sr Engineer	Project Engineer	Analyst/Designer	Clerical
18 \$ 4,320.00 1.7%	110 \$ 22,000.00 10.5%	114 \$ 22,800.00 10.9%	338 \$ 59,150.00 32.4%	439 \$ 52,680.00 42.0%	25 \$ 2,000.00 2.4%

Notes:

Steven L. Anderson, Jr., PSM, PLS
 Charles M. Arnett, PSM
 Michael D. Brown, PSM
 Michael L. Dougherty, PSM
 James M. Dunn, II, PSM
 Thomas F. Ferguson, PSM
 Tate B. Flowers, PSM, PLS
 Robert W. Gardner, PSM
 Brian R. Garvey, PE, GISP
 Joseph R. Gore, PLS
 Daniel J. Henry, PSM, PLS
 Ryan E. Johnson, PSM
 Gary B. Krick, PSM (Retired)
 Brad J. Lashley, PSM, PLS
 Myron F. Lucas, PSM
 James E. Mazurak, PSM



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Thomas K. Mead, PSM, PLS
 Timothy O. Mosby, PSM
 Andrew A. Perry, PSM
 James L. Petersen, PSM
 William C. Rowe, PSM
 Tony G. Syfrett, PSM, PLS
 Thomas P. Young, Jr., PSM, GISP
 Kirk R. Hall, EI, GISP
 Brad A. Stoppel, EI, GISP
 Brian E. Latchaw, GISP
 Patrick J. Phillips, GISP
 Donna L. Hendrix, CST IV
 Mark W. Klaers, CST IV
 David M. Rentfrow, CST IV
 Steve D. Smith, CST IV

Land Surveying & Mapping Services • Sub-Surface Utility Designation & Location Services • Geographic Information Systems • GPS Asset Inventories

June 12, 2019

Via E-Mail: hao.chau@kimley-horn.com

Mr. Hao T. Chau, P.E.
 Kimley-Horn
 189 S. Orange Avenue, Suite 1000
 Orlando, FL 32801

**RE: Town of Windermere – Butler Street Roadway Improvements
 Section 08, Township 23 South, Range 28 East, Orange County, Florida**

Dear Mr. Chau,

We are pleased to submit our proposal for Subsurface Utility Verification on the above referenced project.

SCOPE OF WORK:

1. Coordinate Sunshine 811 and utility locates to include supplemental calls to each locator to expedite the field marking of each subsurface utility as required by law.
2. Expose the subject utilities by using non-destructive vacuum excavation methods at **seven (7)** specific locations as indicated on plan sheet(s) provided or marked by client in the field
3. Confirm/determine the vertical and horizontal position of the subject utilities and record the information, using the locate marks provided by the utility owners and/or their representatives unless otherwise specifically requested by client.
4. Any asphalt/concrete removed will be repaired using like materials.
5. Tie each test hole location to a minimum of three visible physical features to enable this data to be added to your base map and also enable future recovery.

The final product will be test hole reports/sketches of the project area reflecting all pertinent data for your use.

6500 All American Blvd Orlando, FL 32810 407.292.8580 407.292.0141 Fax	1130 Highway 90 Chipley, FL 32428 850.638.0790 850.638.8069 Fax	Lakeside Executive Center 8641 Baypine Road Suite 5 Jacksonville, FL 32256 904.737.5990 904.737.5995 Fax	119 West Main Street Tavares, FL 32778 352.343.4880 352.343.4914 Fax	10 East Lake Street Kissimmee, FL 34744 407.944.4880 407.944.0424 Fax	University Corporate Park 10770 North 46th Street Suite C-300 Tampa, FL 33617 813.898.2711 813.898.2712 Fax	410 Honeysuckle Road Dothan, AL 36305 334.648.0288
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*Licenses: PSM: Florida Professional Surveyor & Mapper • PLS: Alabama Professional Land Surveyor • PE: Professional Engineer
 Certifications: EI: Engineering Intern • GISP: Geographic Information Systems Professional • CST: Certified Survey Technician*

Terms and Conditions

It is understood that the construction contractor is responsible to abide by Sunshine 811, Florida State Statutes Chapter 556.106 and all applicable laws, and regulations that pertain to the services provided.

Kimley-Horn will make available all plans and utility records that have been obtained for this site. However, the information provided by Kimley-Horn is also dependent upon a Sunshine 811 request for utility owners and/or their representatives to mark their buried underground plant at the project site as required by law. Southeastern Surveying and Mapping Corporation (SSMC) has a right to rely on the accuracy of such plans and utility records and will notify Kimley-Horn if there are any patently or reasonably identifiable defects in the documents.

Kimley-Horn is aware that due to the inherent uncertain nature of subsurface utilities, including but not limited to deficient or misrepresentation of prints, SSMC cannot guarantee that all subsurface utility lines will be accounted for. SSMC will ensure that all reasonable efforts are made to identify the location of said underground utilities and provide the best available information within the project area with the use of Ground Penetrating Radar, Electronic Line Locating Equipment and Vacuum Excavation methods, as needed. Additional research will only be conducted by SSMC if requested in writing by Kimley-Horn.

In accordance with the Underground Facility Damage Prevention and Safety Act, the Design Engineer shall perform sufficient Utility Coordination with the Utility providers in this location to affirm the information from SSMC's efforts and confirm that no other subsurface utility is possibly undetected by these efforts.

SSMC shall not be held liable for any latent or unreasonably discoverable utilities in the project area. Furthermore in the event of a claim regarding the services provided in the proposal, SSMC shall have liability for reasonable and necessary defense costs to the extent caused by SSMC's negligence.

M.O.T. will be used only if absolutely necessary and these invoice charges will be an addition to the total per day rate and reflected on our invoice to you.

Note: If permitting is required for said work, these charges will also be additional and reflected on our invoice to you.

Note: Test Holes that require a depth of greater than ten (10) feet, or require a substantial amount of increased effort (sleeving, shoring, de-watering, etc.), then said Test Holes may need to be negotiated separately on a case by case basis if normal vacuum excavation practices do not allow said utilities to be exposed.

Note: All utility sizes given are outside diameter unless otherwise specified and are approximate only due to uncontrollable field conditions that may be encountered during excavation.

Note: Any additional overlaying or restoration of pavement, other than the replacement of materials removed and cold patched, will be the responsibility of Kimley-Horn.

Our fee for this project will be as follows:

Test Holes/Day Rate:

\$421.00 Dirt/Each (anticipate 7)	\$2,947.00
\$480.00 Asphalt/Concrete/Each (anticipate 0)	

M.O.T.: (SSMC) (Roadway Digs Only)

\$731.00 per Lane Closure/Day Rate	
\$931.00 per Lane Closure/Night Rate	

Permitting: (If Required)

\$103.00 per hour + cost of permit

The fee estimate for the proposed scope of services is valid for six (6) months from the date of proposal.

We anticipate completion of the above described work within **three (3) weeks** after receipt of approved permit and written notice to proceed.

Payment is expected within thirty (30) days from date of invoice.

Notice to Owner:

- For all construction related projects a Notice to Owner will be filed.

We look forward to the opportunity to work with you on this project.

Sincerely,



M. Scott Sowards
Utility Project Manager

MSS:gac

November 4, 2020

Hao Chau, PE
Kimley-Horn
189 S. Orange Ave. Ste. 1000
Orlando, FL 32801

PROPOSAL FOR UTILITY INVESTIGATIVE SERVICES

Project: Town of Windermere

IPO #118 – Butler and 7th Dirt Road and Drainage Improvements Final Design – Water Main

Dear Mr. Chau:

At ECHO UES, Inc. (ECHO) we value your consideration and appreciate the opportunity to provide a technical proposal for the provision of professional services. This technical proposal, inclusive of economical offer and schedule, details the approach we consider as the most suitable for this project.

Project Synopsis: Based on the information made available to ECHO, we understand the project consisting of engineering design services for utility improvements. ECHO's professional services were requested to provide utility investigation services to address existing utilities in the project plans. Utility information as produced by ECHO will be surveyed by the Team's Survey Firm (PEC).

Project Limits: ECHO's proposed services will be performed within well-defined limits (i.e. Project Limits) as shown on the provided exhibits.

Subsurface Utility Engineering (SUE) Services: Using a combination of field investigative techniques and technology, including surface geophysical instruments, and vacuum excavation if needed, ECHO will perform the following services.

1. **Identification and marking of existing utilities.** Utilities potentially in conflict with the project and located within the project limits will be investigated in the attempt to identify their position. The results will be marked on the ground surface using the most appropriate method (i.e. pin flags, paint etc.) and showing the approximate position of the identified utilities.

ECHO will attempt to identify and mark exclusively utilities requested by the EOR, at specific locations, and in support of the requested utility verification test holes.

2. **Verification of utility location and characteristics.** At specific locations ECHO will attempt to expose utilities via minimally intrusive methods (e.g. use of vacuum excavation) to confirm their characteristics (e.g. type, size, material, direction, configuration) and provide an accurate location. At completion of each excavation (test hole) ECHO will record all verifiable utility information, mark the utility location with the most appropriate method (e.g. wooden lathes, "X" mark on concrete, disc and nail on asphalt) and restore the field to as close as possible to its original conditions.

Up to 4 utility verification test holes will be performed at locations identified by the EOR.

Deliverables:

- Field deliverables will consist of field marks (e.g. pin flags, paint marks, wooden lathes, nails/discs etc.) showing the position of the designated and located utilities.
- Office deliverables will consist of utility sketch (not to scale) based on aerial publicly available and test hole data report.

Proposed Schedule: To be discussed and agreed upon with the Client following acceptance of this proposal. The proposed schedules shall be valid barring any unforeseen conditions.

Notes and Limitations:

1. Client shall facilitate access to the site and provide any relevant project information.
2. Site must be clear from obstacles impeding access to any portion of the project limits.
3. Standard work hours are from 7:00am to 4:00pm, Monday through Friday; additional charges may occur (following discussion with the Client) in case of weekend or nighttime work.
4. ECHO will not work on any site that is known to be contaminated with any hazardous or harmful substance.
5. Any permit or fee requested to perform the work complying with any stakeholder's requirement will be submitted to the Client with a 5% administrative markup.
6. FDOT Design Standards (Index 600 Series) will be utilized for the Maintenance of Traffic (MOT). Should the site require modification to the Index 600 for non-standard MOT arrangements, ECHO will seek the Client's concurrence to obtain signed and sealed project's specific MOT plans (to be provided by others).
7. Any cost associated with signed and sealed MOT plans will be submitted to the Client with a 5% administrative markup.
8. Unless otherwise stated within this proposal, test holes have usual depth of up to eight (8) ft. from the ground surface, and diameter of up to 1 ft. Should there be a need for deeper or wider excavations, additional charges may apply.
9. The original ground surface at each test hole location will be restored to as close as possible to its original conditions, using concrete mix or asphalt cold patch as applicable. Any deviation from this standard (e.g. use of hot asphalt, flowable fill etc.) may require additional charges and the use of specialty subcontractors.
10. Regardless of the type of estimate proposed (e.g. lump sum, time and materials, etc.) such estimate should be considered indicative and based on preliminary information. Should any situation out of ECHO's control heavily impact ECHO's field work performance (e.g. adverse site conditions), ECHO reserves the right to seek additional funds to complete the work.
11. The exact location of any underground utility is not guaranteed unless clearly exposed and visually verified at a specific location. Utility characteristics, methods of installation, soil conditions and the surrounding environment all

may impact adversely the results of any utility investigation with surface geophysical instruments and technology. No guarantee is made that all utilities will be found and identified.

12. Independently from ECHO's scope of work and performance, the Client shall comply with the relative chapter from the Florida (or any other applicable) Statutes: "Underground Facility Damage Prevention and Safety Act" and call 811 prior to any excavation taking place.
13. Subsurface Utility Engineering, Designating and Locating terms all refer to the American Society of Civil Engineers / Construction Institute Standard for the Collection and Depiction of Subsurface Utility Data (ASCE/CI 38-02). Should ECHO adopt this standard for the performance of the scope of work and preparation of deliverables, clear mention to the Standard shall be made throughout the deliverable.

Fee: ECHO's competitive offer, which is inclusive of all field, office, materials, supplies, and equipment costs is detailed below.

- **Utility Investigation Services, Fixed Fee: \$2,500.00**

Inclusive of up to 4 utility verification test holes

Acceptance: We will honor this proposal for 90 days. If accepted, please return to our attention together with a professional services agreement / task work order authorization and official Notice to Proceed.

At ECHO UES, Inc. we believe in collaboration and communication with our clients and are driven to understand their needs and provide time efficient and cost-effective solutions. ECHO strives to provide quality utility and survey reliable data to design better, build faster, and safely enhance Engineering, Design, Construction and Maintenance of infrastructure.

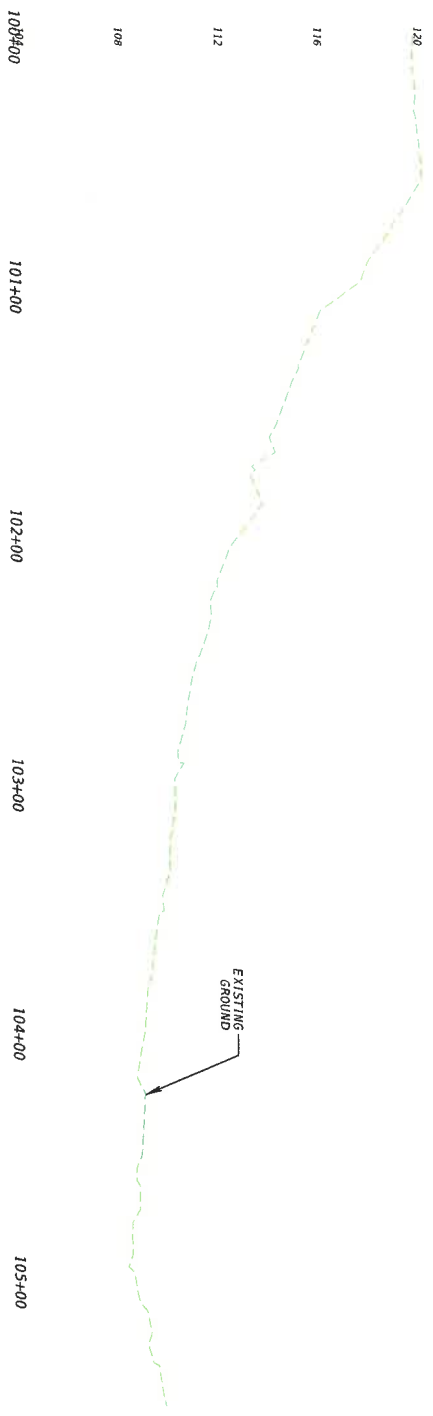
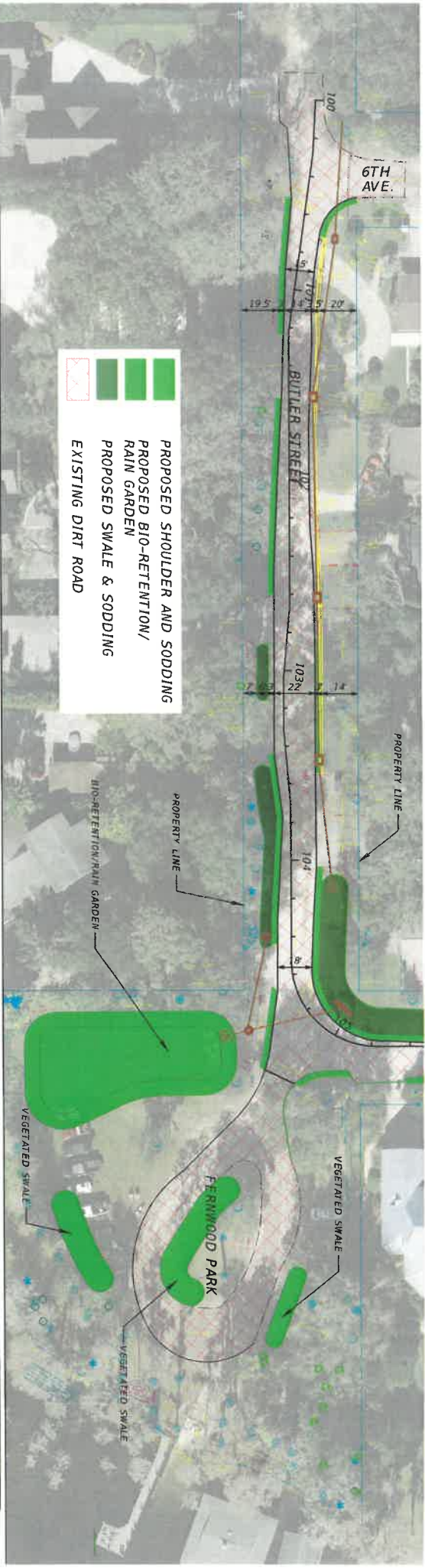
Thank you for considering ECHO for this important project and please do not hesitate to contact me directly should you have any questions or concern.

Sincerely,

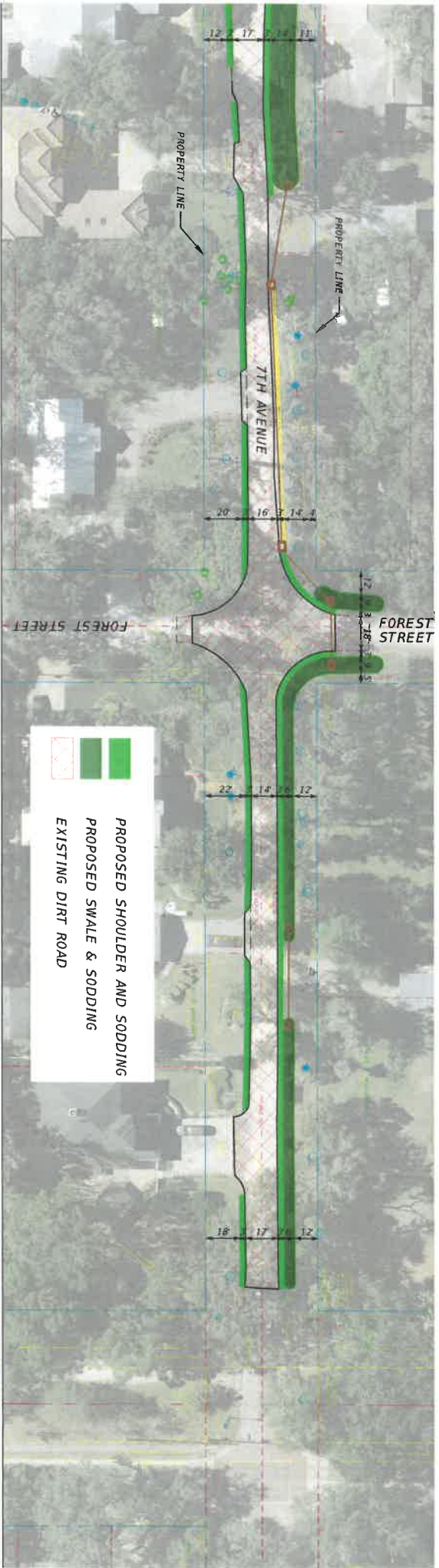


Carlo Pilia
Vice President
ECHO UES, Inc.

Project Limits: Attached



VEGETATED SWALE EXAMPLE



106+00 107+00 108+00 109+00 110+00 111+00 112+00 113+00 108

EXISTING GROUND

128
124
120
116
112



INDIVIDUAL PROJECT ORDER NUMBER 119
November 13, 2020

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The Town of Windermere (the Client or the Town) in accordance with the terms of the Master Agreement for Continuing Engineering Services dated May 15, 2019, which is incorporated herein by reference.

Identification of Project:

Project: Bessie Street and 9th Avenue Stormwater Maintenance Improvements

Client: Town of Windermere

Project Understanding:

This Individual Purchase Order (IPO) identifies the scope, schedule, and fee for engineering services for the 45% Design Plans for review by Town Council and Final Design Plans associated for the Drainage Improvements along the existing dirt roads including portions of East 9th Avenue, East Blvd, East 8th Avenue and Bessie Street (Project). Drainage improvements will also include Oakdale Street from one block north to one block south of East 9th Avenue; and the intersection of East 8th Avenue and Magnolia Street.

The Project will consist of open and closed drainage conveyance systems while maintaining the existing width of the dirt roadways along East 9th Avenue from Main Street to East Blvd. (approximately 800'), East Blvd from East 9th Avenue to East 8th Avenue (approximately 500'), East 8th Avenue from East Blvd to Bessie Street (approximately 300'); Bessie Street from East 8th Avenue to East 7th Avenue (approximately 500'); Oakdale Street from one block north to one block south of East 9th Avenue (approximately 700'); and the intersection of East 8th Avenue and Magnolia Street (approximately 200'). The total project length is approximately 3,000 ft including side street returns. The improvements will include proposed drainage inlets, swales and stormwater management facilities needed to accommodate the water quantity and quality requirements prior to the discharge into Lake Bessie.

All design work shall comply with the direction of Town Council provided at the 45% design review and prior to proceeding to the Final Design Phase. Kimley-Horn will coordinate with Town Staff early during the design for direction to limit impacts to existing features along the corridor as to not diminish the look, feel and charm of the area. Kimley-Horn will present the 45% Design Plans to the Town Council at up to two (2) meetings. Final Design work shall comply with the requirements of the appropriate regulatory agencies.

This IPO also includes:

- Engineering services for the design of modifications at the intersection East 9th Avenue and East Blvd to a T-Intersection
- Engineering services for design and permitting of an 8" water main along East 9th Avenue (from Main Street), East Blvd, East 8th Avenue and Bessie Street (to East 6th Avenue)

Specific Scope of Basic Services:

Task 1 – 45% Design Plans Submittal

A. Construction Plans

Based on the preferred alternative established in the Bessie Street Drainage Study, which includes

minimal impacts to the dirt road footprint, Kimley-Horn will prepare the 45% design package and construction plans for the drainage improvements in accordance with Town Staff direction, FDOT Drainage Manual, and requirements by regulatory agencies. Coordination with a certified arborist retained by the Town will be conducted early during this process. Kimley-Horn will present the 45% Design Plans to the Town Council at up to two (2) meetings.

The drainage plan and profile sheets will be prepared on 11"x17" half size sheets at a horizontal scale of 1" = 40'. The plans will be prepared on topographic information provided by a field survey from the Bessie Street Drainage Study and additional field survey as described below. The plan and profile sheets will show the drainage horizontal and vertical information for the project. Various elements such as swales, inlets, pipes, existing dirt road width, intersecting roadways, driveways and right-of-way lines will be shown and dimensioned. The plans will include grading details for the drainage improvements and existing dirt roads to accommodate these improvements along East 9th Avenue, East Blvd, East 8th Avenue and Bessie Street. Drainage grading details will also include Oakdale Street one block north and one block south of East 9th Avenue; and the intersection of East 8th Avenue and Magnolia Street.

Existing underground utilities will be shown based on information provided by the utility companies or as identified during surveying efforts. Roadway soil profiles from auger borings will be shown.

B. Drainage Design

Drainage Map(s) will be prepared for the project at a scale of 1" = 200'. The drainage maps will show roadway drainage basins, pond locations, existing drainage features, offsite basins and flow patterns/arrows. Design information relative to the proposed storm sewer pipes, drainage structures and swales will be shown on the drainage plan and profile sheets. Proposed drainage structure cross sections are not included in this Task.

Kimley-Horn will design roadside swales and stormwater management as needed to accommodate the Project. Drainage calculations will be prepared and documented in a Drainage Report.

The drainage design will incorporate water quality analysis results completed as part of the Bessie Street Drainage Study including design of two rain gardens in place of the two detention ponds proposed in the Bessie Street Study phase of this project.

Task 2 – Final Design Plans Submittal

A. Construction Plans

Based on the coordination with Town Staff and Council established after the 45% Design Plans submittal, Kimley-Horn will prepare the Final Design and construction plans for the drainage improvements.

It is anticipated that Traffic Control Plans (TCP) will be prepared by the Contractor and is not included this Task.

Kimley-Horn will design the signing for the dirt roads in accordance with the current version of the Manual on Uniform Traffic Control Devices (MUTCD). The design will be shown on the drainage plan and profile sheets.

B. Permitting

It is anticipated that the drainage and water quality improvements will require a South Florida Water Management District (SFWMD) Environmental Resource Permit (ERP).

Kimley-Horn will provide water quality calculations in support of SFWMD ERP application.

Kimley-Horn will prepare and submit a permit application package to the SFWMD. Kimley-Horn will respond to up to two (2) Requests for Additional Information (RAI) from the SFWMD. The Town will be responsible for signing all necessary application forms and all application fees associated with the permit application.

Task 3 – T-Intersection Design for the East 9th Avenue and East Blvd Intersection

Kimley-Horn will develop conceptual plan and typical section for the T-Intersection design of East 9th Avenue and East Blvd. Upon approval of the concept plans, the intersection design will be coordinated and designed in collaboration with the proposed drainage improvements (Task 1).

The proposed intersection concept plan will include the following:

- One (1) plan view including signing
- One (1) typical section

Kimley-Horn will prepare the above documents for submittal to the Town. Kimley-Horn will revise the documents per the Town comments up to two (2) times.

Task 4 – Rain Garden Landscape Plans

Kimley-Horn will prepare Landscape Planting Plans and Details for two (2) rain gardens located within the proposed project improvement area. The rain gardens will be coordinated and designed in collaboration with the proposed drainage improvements. The rain gardens are anticipated to be located at the intersection of 8th Ave. / East Blvd. and the intersection of 9th Ave. / East Blvd.

The proposed rain garden planting plan will include the following:

- One (1) plan view planting plan for each Rain Garden (at an appropriate scale) with plant locations and plant ID callouts
- One (1) plant schedule listing the proposed plantings within each rain garden
- Two (2) typical cross section details for each of the proposed planted rain gardens
- Typical planting details and notes

Kimley-Horn will prepare the above documents for submittal to the Town and the SFWMD. Kimley-Horn will revise the documents per the Town and SFWMD comments up to two (2) times.

Final Deliverables for this task include one (11"x17") signed and sealed set of reproducible landscape plan drawings for the proposed rain garden locations listed in the description above.

Task 5 – Survey Services

Kimley-Horn will retain the services of PEC Surveying and Mapping, LLC (PEC) to perform the additional design survey for Oakdale Street one block north and one block south of East 9th Avenue (approximately 700'); and the intersection of East 8th Avenue and Magnolia Street (approximately 200'). Refer to attached subconsultant proposal for additional information.

Task 6 – Geotechnical Services

Kimley-Horn will retain the services of Geotechnical and Environmental Consultants, Inc. (GEC) to perform additional auger borings and field permeability tests for the intersection of East 8th Avenue and Magnolia Street (approximately 200') and associated stormwater pond area. Refer to attached subconsultant proposal for additional information.

Task 7 – Subsurface Utility Verification

Kimley-Horn will retain the services of Southeastern Surveying and Mapping Corp. (Southeastern) to perform utility test holes. Refer to attached subconsultant proposal for additional information.

Task 8 – Bid Assistance Services

Kimley-Horn will prepare one (1) opinion of probable construction cost and one (1) contractor bid tabulation form for the Project for use by the Town during the bidding process. Kimley-Horn will attend one (1) pre-bid meeting and provide input as directed by the Client. Kimley-Horn will prepare responses to questions submitted by the contractors to the Town during the bidding period.

Task 9 – Construction Phase Services

Kimley-Horn will review drainage structure shop drawings submitted by the Contractor in accordance with standard FDOT procedures. The Town will be responsible for the receipt, distribution, and disposition of all contractor submittals, including project logs. The term "shop drawings" include all drawings, diagrams, illustrations, transportation procedures, manuals, and design calculations submitted by the Contractor to define some portion of the project.

Kimley-Horn will provide written responses to the Town for up to five (5) Contractor Requests for Information (RFI).

Kimley-Horn will attend up to five (5) progress meetings during construction as requested by the Town. This task does not include engineering inspection services.

Task 10 – Water Main Construction Plans

Drainage improvements are being designed along Bessie Street and 9th Avenue. The Town's Water Master Plan identified a future 8-inch water main that would service the area. In an effort to minimize future construction to install the water main, the Town has elected to include the work in this scope. Kimley-Horn understands that the Town currently has one (1) 12-inch water main at the intersection of Bessie and 6th Avenue and one (1) 8-inch water main at the intersection of 9th Avenue and Main Street (dirt road). The proposed 8-inch water main will be approximately 2,500 linear feet.

Kimley-Horn will prepare utility plans for 60%, 90%, and 100% plans for the 8-inch water main along Bessie Street and 9th Avenue. Kimley-Horn understands that the Town currently has an existing 12-inch and 8-inch water main which will provide connection points for the proposed 8-inch water main at the intersections of Bessie Street and 6th Avenue and 9th Avenue and Main Street (dirt road). The water main will include water service connections and hydrants. Kimley-Horn understands that the residents will be responsible for the connection to the back of the meter and this effort will not be part of this design. The water main will be designed in accordance with the OCU standards.

The construction plan and profile sheets will be prepared on 11"x17" half size sheets at a horizontal scale of 1" = 40'. The plans will be prepared on topographic information provided by a field survey. The plan and profile sheets will show the horizontal and vertical information for the project as previously described.

The Engineer will submit plans to OCU for review and comments at the 90% complete level. After receiving comments from OCU, Kimley-Horn will revise the drawings and submit the final 100% drawings to OCU for review and comments.

Kimley-Horn will prepare bid documentation and will assist the Town in bidding services. Bidding services include attending a pre-bid meeting, responding to addenda, and final construction documentation.

Task 11 – Water Main Permitting

Kimley-Horn will prepare and submit a Florida Department of Environmental Protection (FDEP) permit application for the water main extension. The final plans will be coordinated with OCU staff for their signatures on the permit applications.

Task 12 – Water Main Construction Phase Services

Kimley-Horn will attend the pre-construction meeting, review shop drawing submittals by the contractor, provide responses for up to five (5) RFI's, and attend up to three (3) progress meetings.

Kimley-Horn will prepare and submit the FDEP Clearance Form to the FDEP for approval.

The contractor will be responsible for providing as-built information and the required survey information for OCU's project closeout. Kimley-Horn will review the information provided by the contractor and prepare record drawings for the project.

Task 13 – Water Main Utility Investigation Services

Kimley-Horn will retain the services of ECHO UES, Inc. (ECHO) to perform identification and marking of existing utilities and up to six (6) utility verification test holes. Refer to attached subconsultant proposal for additional information.

Task 14 – Water Main Utility Survey Services

Kimley-Horn will retain the services of PEC Surveying and Mapping, LLC (PEC) to perform the additional design survey for identification and test holes described in Task 13.

Task 15 – Unpaved Road Project Maintenance Plan

Research / Site Assessment - A site assessment will be completed to understand the potential issues that will occur with unpaved the roadway. The topography, soils, and land cover play a part in the alignment and stability of the road.

- A review of the topography survey completed for this Project will be included to understand the slopes and grades that will contribute to the velocity of runoff in the area.
- A soil type assessment will be completed to understand the stability and permeability of the soils adjacent to the existing unpaved roadways.
- A vegetation / land cover assessment will be completed to understand the existing land cover and how it can help preserve erosion on slopes.

Inventory - An unpaved roadway and drainage structure inventory will be completed to identify locations that contribute to the Project basin that will need maintenance. Contributing basins will be identified to determine the amount of runoff that is coming to each drainage structure. This will help categorize areas of concern and determine which areas will need increased maintenance.

Maintenance Schedule, Checklist, and Monitoring Plan - Routine inspection and maintenance should be performed by Town staff to maintain the unpaved roadway and adjacent drainage systems. A maintenance plan, based on the plan developed for IPO #118 Butler Street and 7th Avenue Stormwater Maintenance Improvements, will be developed and will consist of upkeep strategies for four (4) main areas of concern: roadway surface, side slopes, drainage system, and buffers. A maintenance schedule and checklist will be developed ensure proper care of the unpaved roadways and surrounding drainage systems.

Project Deliverables:

- 45% Construction Plans
- Final Construction Plans
- Drainage Report
- SFWMD application package
- Rain Garden Landscape Plans
- Geotechnical engineering report
- Utility test hole data sheets
- Opinion of probable construction cost

- Contractor bid tabulation form
- Water Main Construction Plans
- Water Main application package
- Maintenance Plan

Additional Services if required:

The following services are not included in this IPO, but may be performed if authorized by the Town. Payment for these additional services will be agreed upon prior to their performance.

- Sidewalk Design
- Traffic Control Plans
- Drainage structure cross sections
- Engineering inspection services
- Attendance at meetings in addition to those noted in the scope of services
- Concept development of additional alternatives
- Cost estimates of additional alternatives
- Certified Arborist evaluation for tree preservation
- Lighting Plans

Information Provided By Client:

The Town will provide the following information, upon which Kimley-Horn can rely:

- Available right of way data
- Available record or as-built plans
- Available permits
- Data regarding the existing road conditions

Schedule:

Tasks 1-7, 10-11, and 13-15 are anticipated to be completed within 180 calendar days. Tasks 8, 9 and 12 will be dependent on the Town's bidding process and the construction duration.

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Method of Compensation:

It is understood this IPO is for a maximum amount of **\$216,264**.

Kimley-Horn will perform the **Drainage Improvement Design Services** in Tasks 1-9 for a lump sum fee of **\$137,319** inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 1: 45% Design Plans Submittal	\$41,400
Task 2: Final Design Plans Submittal	\$43,480
Task 3: T-Intersection Design	\$5,770
Task 4: Rain Garden Landscape Plans	\$15,020
Task 5: Survey Services	\$4,000
Task 6: Geotechnical Services	\$3,885
Task 7: Subsurface Utility Verification	\$1,684
Task 8: Bid Assistance Services	\$8,670
Task 9: Construction Phase Services	\$13,410

Kimley-Horn will perform the **Water Main Design Services** in Tasks 10-14 for a lump sum fee of **\$72,070** inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 10: Water Main Construction Plans	\$44,560.00
Task 11: Water Main Permitting	\$3,450.00
Task 12: Water Main Construction Phase Services	\$17,310.00
Task 13: Water Main Utility Investigation Services	\$3,000.00
Task 14: Water Main Utility Survey Services	\$3,750.00

Kimley-Horn will perform the **Maintenance Plan Services** in Tasks 15 for a lump sum fee of **\$6,875** inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 15: Unpaved Road Project Maintenance Plan	\$6,875

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.


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ACCEPTED:

THE TOWN OF WINDERMERE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____


BY: _____
Hao T. Chau, PE


TITLE: _____

TITLE: Assistant Secretary/Project Manager

DATE: _____

DATE: 11/13/2020

KIMLEY-HORN AND ASSOCIATES, INC.


BY: _____
Victor H. Gallo, PE

TITLE: Drainage Engineer

DATE: 11/13/2020



November 13, 2020

KIMLEY-HORN AND ASSOCIATES, INC.

Project: IPO 119 Bessie and 9th Stormwater Maintenance Improvements

Client: Town of Windermere

Summary of Fees and Charges

PROJECT LABOR	Hours	Lump Sum
Project: IPO 119 Bessie and 9th Stormwater Maintenance Improvements	1,299.0	\$ 199,945.00
1. 45% Design Plans Submittal	272.0	\$ 41,400.00
2. Final Design Plans Submittal	284.0	\$ 43,480.00
3. T-Intersection Design	38.0	\$ 5,770.00
4. Rain Garden Planting Plans	108.0	\$ 15,020.00
8. Bid Assistance Services	57.0	\$ 8,670.00
9. Construction Phase Services	79.0	\$ 13,410.00
10. Water Main Construction Plans	296.0	\$ 44,560.00
11. Water Main Permitting	20.0	\$ 3,450.00
12. Water Main Construction Phase Services	100.0	\$ 17,310.00
15. Unpaved Road Project Maintenance Plan	45.0	\$ 6,875.00
SUBTOTAL KIMLEY-HORN LABOR FEES:	1,299.0	\$ 199,945.00
Subconsultant: 5. Survey Services (PEC)		\$ 4,000.00
Subconsultant: 6. Geotechnical Services (GEC)		\$ 3,885.00
Subconsultant: 7. Subsurface Utility Verification (Southeastern)		\$ 1,684.00
Subconsultant: 13. Water Main Utility Investigation Services (ECH)		\$ 3,000.00
Subconsultant: 14. Water Main Utility Survey Services (PEC)		\$ 3,750.00
Total Subconsultant		\$ 16,319.00
GRAND TOTAL FEES AND CHARGES:		\$ 216,264.00



Consultant Name: Kimley-Horn and Associates, Inc.

Work Effort and Fee Estimate Table

Project: IPO 119 Bessie and 9th Stormwater Maintenance Improvements

task	Principal		Proj Manager		Sr Engineer		Project Engineer		Analyst/Designer		Clerical		task totals	
	hrs.	rate	hrs.	rate	hrs.	rate	hrs.	rate	hrs.	rate	hrs.	rate	hrs.	rate
1. 45% Design Plans Submittal	8	\$ 1,920.00	38	\$ 7,600.00	36	\$ 7,200.00	40	\$ 7,000.00	142	\$ 17,040.00	8	\$ 640.00	272	\$ 41,400.00
2. Final Design Plans Submittal	8	\$ 1,920.00	34	\$ 6,800.00	38	\$ 7,600.00	56	\$ 9,800.00	138	\$ 16,560.00	10	\$ 800.00	284	\$ 43,480.00
3. T-Intersection Design	1	\$ 240.00	4	\$ 800.00	6	\$ 1,200.00	6	\$ 1,050.00	20	\$ 2,400.00	1	\$ 80.00	38	\$ 5,770.00
4. Rain Garden Planting Plans	1	\$ 240.00	9	\$ 1,800.00	10	\$ 2,000.00	12	\$ 2,100.00	70	\$ 8,400.00	6	\$ 480.00	108	\$ 15,020.00
8. Bid Assistance Services	1	\$ 240.00	7	\$ 1,400.00	8	\$ 1,600.00	10	\$ 1,750.00	30	\$ 3,600.00	1	\$ 80.00	57	\$ 8,670.00
9. Construction Phase Services	2	\$ 480.00	16	\$ 3,200.00	16	\$ 3,200.00	22	\$ 3,850.00	21	\$ 2,520.00	2	\$ 160.00	79	\$ 13,410.00
10. Water Main Construction Plans	8	\$ 1,920.00	50	\$ 10,000.00	0	\$ -	80	\$ 14,000.00	150	\$ 18,000.00	8	\$ 640.00	296	\$ 44,560.00
11. Water Main Permitting	1	\$ 240.00	3	\$ 600.00	0	\$ -	14	\$ 2,450.00		\$ -	2	\$ 160.00	20	\$ 3,450.00
12. Water Main Construction Phase Services	4	\$ 960.00	26	\$ 5,200.00	0	\$ -	50	\$ 8,750.00	20	\$ 2,400.00		\$ -	100	\$ 17,310.00
15. Unpaved Road Project Maintenance Plan	1	\$ 240.00	4	\$ 800.00	5	\$ 1,000.00	13	\$ 2,275.00	20	\$ 2,400.00	2	\$ 160.00	45	\$ 6,875.00
Total Billable Labor													1299	\$ 199,945.00

Principal	Proj Manager	Sr Engineer	Project Engineer	Analyst/Designer	Clerical
35 \$ 8,400.00	191 \$ 38,200.00	119 \$ 23,800.00	303 \$ 53,025.00	611 \$ 73,320.00	40 \$ 3,200.00
2.7%	14.7%	9.2%	23.3%	47.0%	3.1%

Notes:

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Surveying and Mapping, LLC

November 4, 2020

Kimley Horn and Associates, Inc.
Mr. Hao T. Chau, P.E.
189 S. Orange Avenue, Suite 1000
Orlando, Florida 32801

PS16746-KHA

**Re: E 8th Ave and Bessie and E 9th Avenue– Surveying and Mapping Services
Windermere, Florida**

Dear Mr. Chau:

PEC-Surveying and Mapping (PEC) is pleased to submit our proposal for surveying and mapping services in connection with the above-referenced project.

Additional Survey: We propose to append our Surveys of East 9th Street and Bessie Street Surveys with the extensions along Oakdale Street, East 8th Avenue, and Magnolia Street as shown on the attached furnished Exhibit. The Project Limits represent approximately 750 feet of roadway. The survey will include full right-of-ways of the Project Area streets. A project base line will also be established and referenced in the field for use in the Study phase. The survey will locate the right of way boundaries and the approximate adjacent lot lines.

Elevations will be relative to mean sea level datum NGVD of 1929 relative to two harmonious Orange County benchmarks to be consistent with the Towns Survey Database.

Evidence of all above ground utilities will be located. Invert elevations will be obtained of all drainage structures.

A new Surface of both projects will be performed incorporating the additional Survey information.

Tree Locations: All trees 4 inches in diameter, as measured at breast height, within the Project Limits will be located with the size and type noted. Areas of landscaping shrubbery, hedges and landscape areas will be denoted.

Deliverables: Deliverables will consist of an AutoDesk CAD file to be used as the engineering base map at a scale consistent with the previous Surveys.

Schedule: We are prepared to commence within four (4) working days from Notice to Proceed and can complete the assignment within ten (10) working days from commencement.

Fees: We propose to perform the work for \$ 4,000.00 (Four Thousand Hundred Dollars).

Kimley Horn and Associates, Inc.
Mr. Hao T. Chau, P.E.
PS16746-KHA
November 4, 2019
Page Two

Thank you for the opportunity of submitting this proposal to you. Should this result in a contractual agreement please have the entity responsible for payment execute below and return to serve as our Notice to Proceed. This proposal is valid for 30 days.

Should you have any questions or comments please do not hesitate to contact us.

Sincerely

PEC Surveying and Mapping

A handwritten signature in black ink, appearing to read "David A. White". The signature is fluid and cursive, with a prominent initial "D" and a long horizontal flourish extending to the right.

David A. White P.S.M.
President

THIS PROPOSAL IS HEREBY ACCEPTED AND AUTHORIZATION TO PROCEED IS HEREBY GIVEN.

Authorized Signature:

Title:

Date:



Geotechnical
and
Environmental
Consultants, Inc.

At the very foundation of our community

November 3, 2020

Kimley-Horn
189 S. Orange Avenue, Suite 1000
Orlando, FL 32801

Attention: Mr. Hao T. Chau, P.E.

Subject: Proposal for Additional Geotechnical Engineering Services
BESSIE STREET AND 9TH AVENUE
STORMWATER MAINTENANCE IMPROVEMENTS
IPO #119
Windermere, Florida
GEC Proposal No. P9833G1

Dear Mr. Chau:

Geotechnical and Environmental Consultants, Inc. (GEC) is pleased to provide this proposal for the above-referenced project. Our proposed scope of services is based on the project information you provided to us in our correspondence on November 3, 2020. The purpose of this additional investigation is to explore soil and groundwater conditions at the site and to use the information obtained to provide geotechnical engineering recommendations for the added scope elements for this drainage study. This proposal presents our understanding of the project, our recommended scope of services, and a cost and schedule for providing those services.

Site Location and Project Description

The site is located on the northwest side of Lake Bessie in Windermere, Florida as shown on Attachment 1. The site includes portions of Bessie Street, East 8th Avenue, East Blvd and East 9th Avenue. The general vicinity of the site is characterized by single-family residential. The site includes approximately 2,300 linear feet of unpaved roads.

We understand that the added scope elements include modifications to the existing pond at the intersection with Magnolia Street.

Scope of Services

As requested, the following is our additional scope of services:

- Stake boring locations at the site.
- Clear utilities at the boring locations.
- Mobilize truck drilling equipment and personnel.
- Perform 1 auger boring to a depth of 15 feet and 1 Double Ring Infiltration (DRI) test.
- Perform routine laboratory soil classification tests to enhance visual soil classification of samples obtained.
- Issue a geotechnical engineering report that will address the following topics:
 - Subsurface conditions at the boring locations
 - Measured and estimated seasonal high groundwater depths
 - Site preparation
 - Fill selection, placement and compaction
 - Suitability of soil excavated from pond for use as engineered fill
 - Unconfined aquifer parameters for drainage study

The geotechnical report will be signed and sealed by a Geotechnical Engineer licensed in Florida.

Cost and Schedule

The cost to provide the scope of services is a LIMITING AMOUNT fee of \$3,885.00. Attachment 1 documents our detailed scope of services and fees. *Our fees will be billed based on the actual units of work performed and the unit rates shown on Attachment 1; however, we will not exceed the limiting amount without your authorization.* This fee includes an electronic copy of our report emailed to you.

Our schedule to complete the work will be about 4 weeks from your written notice to proceed. If requested, verbal recommendations can be provided after the field work is completed.

Limitations

This proposal is subject to the following limitations: 1) The site will be accessible to the drilling equipment assumed above. If other types of drilling equipment become necessary due to site and/or weather conditions, appropriate adjustments to the actual fees will be necessary; 2) undisturbed samples and consolidation tests are not included, unless stated above; and 3) we

assume no responsibility for damage to underground utilities and/or structures that are not located by the owner or Sunshine State One-Call.

Closure


GEC appreciates the opportunity to submit this proposal. If you have any questions regarding this proposal, or if we can be of further assistance, please contact the undersigned.

Very truly yours,

GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS, INC.



Ryan J. Petersen
Project Engineer



Christopher P. Meyer, P.E.
Principal Engineer

Attachment 1
 Geotechnical Scope of Services and Cost
Bessie Street and 9th Avenue Stormwater Maintenance Improvements
 Windermere, Florida
 GEC Proposal No. 9833G1

	Quantity	Units	Unit Rate	Cost
Field Services				
Mobilization of Truck-Mounted Rig Engineering Technician	1	ls	\$600.00	\$600.00
(Site Recon, Boring Layout, and Utility Clearance)	3	hr	\$60.00	\$180.00
Auger Borings (1 @ 15 ft)	15	ft	\$12.00	\$180.00
Field Permeability Test (0-10')	0	ea	\$420.00	\$0.00
Double Ring Infiltration (DRI) Test	1	ea	\$600.00	\$600.00
Drill Rig and Crew - Truck (2 person)	1	hr	\$220.00	\$220.00
Two-Person Soil Survey Crew	0	hr	\$160.00	\$0.00
GPS Unit for Boring Locations	1	day	\$100.00	\$100.00
Portable Safety Signs for MOT	1	day	\$50.00	\$50.00
			Field Subtotal	\$1,930.00
Laboratory Testing				
Engineering Technician (Soil Classification)	1	hr	\$60.00	\$60.00
Percent Fines	2	ea	\$45.00	\$90.00
Organic Content	0	ea	\$50.00	\$0.00
Atterberg Limits	1	ea	\$110.00	\$110.00
Natural Moisture Content	1	ea	\$15.00	\$15.00
Corrosion Series	1	ea	\$200.00	\$200.00
Laboratory Permeability	0	ea	\$300.00	\$0.00
			Laboratory Subtotal	\$475.00
Engineering Analysis & Report				
Principal Engineer	0	hr	\$250.00	\$0.00
Senior Engineer	2	hr	\$160.00	\$320.00
Project Engineer	7	hr	\$120.00	\$840.00
Engineer	0	hr	\$100.00	\$0.00
CADD Draftsman/GIS Specialist	2	hr	\$100.00	\$200.00
Secretary	2	hr	\$60.00	\$120.00
			Engineering Subtotal	\$1,480.00
TOTAL LIMITING AMOUNT FEE				\$3,885.00

Steven L. Anderson, Jr., PSM, PLS
Charles M. Arnett, PSM
Michael D. Brown, PSM
Michael L. Dougherty, PSM
James M. Dunn, II, PSM
Thomas F. Ferguson, PSM
Tate B. Flowers, PSM, PLS
Robert W. Gardner, PSM
Brian R. Garvey, PE, GISP
Joseph R. Gore, PLS
Daniel J. Henry, PSM, PLS
Ryan E. Johnson, PSM
Gary B. Krick, PSM (Retired)
Brad J. Lashley, PSM, PLS
Myron F. Lucas, PSM
James E. Mazurak, PSM



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Thomas K. Mead, PSM, PLS
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Andrew A. Perry, PSM
James L. Petersen, PSM
William C. Rowe, PSM
Tony G. Syfrett, PSM, PLS
Thomas P. Young, Jr., PSM, GISP
Kirk R. Hall, EI, GISP
Brad A. Stoppel, EI, GISP
Brian E. Latchaw, GISP
Patrick J. Phillips, GISP
Donna L. Hendrix, CST IV
Mark W. Klaers, CST IV
David M. Rentfrow, CST IV
Steve D. Smith, CST IV

Land Surveying & Mapping Services • Sub-Surface Utility Designation & Location Services • Geographic Information Systems • GPS Asset Inventories

June 12, 2019

Via E-Mail: hao.chau@kimley-horn.com

Mr. Hao T. Chau, P.E.
Kimley-Horn
189 S. Orange Avenue, Suite 1000
Orlando, FL 32801

**RE: Town of Windermere – Bessie Street Roadway Improvements
Section 08, Township 23 South, Range 28 East, Orange County, Florida**

Dear Mr. Chau,

We are pleased to submit our proposal for Subsurface Utility Verification on the above referenced project.

SCOPE OF WORK:

1. Coordinate Sunshine 811 and utility locates to include supplemental calls to each locator to expedite the field marking of each subsurface utility as required by law.
2. Expose the subject utilities by using non-destructive vacuum excavation methods at **four (4)** specific locations as indicated on plan sheet(s) provided or marked by client in the field
3. Confirm/determine the vertical and horizontal position of the subject utilities and record the information, using the locate marks provided by the utility owners and/or their representatives unless otherwise specifically requested by client.
4. Any asphalt/concrete removed will be repaired using like materials.
5. Tie each test hole location to a minimum of three visible physical features to enable this data to be added to your base map and also enable future recovery.

The final product will be test hole reports/sketches of the project area reflecting all pertinent data for your use.

6500 All American Blvd
Orlando, FL 32810
407.292.8580
407.292.0141 Fax

1130 Highway 90
Chipley, FL 32428
850.638.0790
850.638.8069 Fax

Lakeside Executive Center
8641 Baypine Road
Suite 5
Jacksonville, FL 32256
904.737.5990
904.737.5995 Fax

119 West Main Street
Tavares, FL 32778
352.343.4880
352.343.4914 Fax

10 East Lake Street
Kissimmee, FL 34744
407.944.4880
407.944.0424 Fax

University Corporate Park
10770 North 46th Street
Suite C-300
Tampa, FL 33617
813.898.2711
813.898.2712 Fax

410 Honeysuckle Road
Dothan, AL 36305
334.648.0288

Licenses: PSM: Florida Professional Surveyor & Mapper • PLS: Alabama Professional Land Surveyor • PE: Professional Engineer
Certifications: EI: Engineering Intern • GISP: Geographic Information Systems Professional • CST: Certified Survey Technician

Terms and Conditions

It is understood that the construction contractor is responsible to abide by Sunshine 811, Florida State Statutes Chapter 556.106 and all applicable laws, and regulations that pertain to the services provided.

Kimley-Horn will make available all plans and utility records that have been obtained for this site. However, the information provided by Kimley-Horn is also dependent upon a Sunshine 811 request for utility owners and/or their representatives to mark their buried underground plant at the project site as required by law. Southeastern Surveying and Mapping Corporation (SSMC) has a right to rely on the accuracy of such plans and utility records and will notify Kimley-Horn if there are any patently or reasonably identifiable defects in the documents.

Kimley-Horn is aware that due to the inherent uncertain nature of subsurface utilities, including but not limited to deficient or misrepresentation of prints, SSMC cannot guarantee that all subsurface utility lines will be accounted for. SSMC will ensure that all reasonable efforts are made to identify the location of said underground utilities and provide the best available information within the project area with the use of Ground Penetrating Radar, Electronic Line Locating Equipment and Vacuum Excavation methods, as needed. Additional research will only be conducted by SSMC if requested in writing by Kimley-Horn.

In accordance with the Underground Facility Damage Prevention and Safety Act, the Design Engineer shall perform sufficient Utility Coordination with the Utility providers in this location to affirm the information from SSMC's efforts and confirm that no other subsurface utility is possibly undetected by these efforts.

SSMC shall not be held liable for any latent or unreasonably discoverable utilities in the project area. Furthermore in the event of a claim regarding the services provided in the proposal, SSMC shall have liability for reasonable and necessary defense costs to the extent caused by SSMC's negligence.

M.O.T. will be used only if absolutely necessary and these invoice charges will be an addition to the total per day rate and reflected on our invoice to you.

Note: If permitting is required for said work, these charges will also be additional and reflected on our invoice to you.

Note: Test Holes that require a depth of greater than ten (10) feet, or require a substantial amount of increased effort (sleeving, shoring, de-watering, etc.), then said Test Holes may need to be negotiated separately on a case by case basis if normal vacuum excavation practices do not allow said utilities to be exposed.

Note: All utility sizes given are outside diameter unless otherwise specified and are approximate only due to uncontrollable field conditions that may be encountered during excavation.

Note: Any additional overlaying or restoration of pavement, other than the replacement of materials removed and cold patched, will be the responsibility of Kimley-Horn.

Page 3

Mr. Hao T. Chau, P.E.

Town of Windermere – Bessie Street Roadway Improvements

June 12, 2019

Our fee for this project will be as follows:

Test Holes/Day Rate:

\$421.00 Dirt/Each (anticipate 4) \$1,684.00

\$480.00 Asphalt/Concrete/Each (anticipate 0)

M.O.T.: (SSMC) (Roadway Digs Only)

\$731.00 per Lane Closure/Day Rate

\$931.00 per Lane Closure/Night Rate

Permitting: (If Required)

\$103.00 per hour + cost of permit

The fee estimate for the proposed scope of services is valid for six (6) months from the date of proposal.

We anticipate completion of the above described work within **three (3)** weeks after receipt of approved permit and written notice to proceed.

Payment is expected within thirty (30) days from date of invoice.

Notice to Owner:

- For all construction related projects a Notice to Owner will be filed.

We look forward to the opportunity to work with you on this project.

Sincerely,



M. Scott Sowards
Utility Project Manager

MSS:gac

Page 4
Mr. Hao T. Chau, P.E.
Town of Windermere – Bessie Street Roadway Improvements
June 12, 2019

If the above scope, period of service and method of compensation meets with your approval, please execute below and email to SSMC as notice to proceed along with the notice of commencement.

If your firm prefers using your own standard PROFESSIONAL SERVICES AGREEMENT in lieu of this proposal letter, this document MUST BE furnished to SSMC, negotiated, and executed prior to the commencement of any service.

Send all Agreements to:

Orlando Corporate Office
6500 All American Boulevard
Orlando, FL 32810.
Fax: 407-292-0141
Email: info@southeasternsurveying.com

Your firm agrees that by (1) signing and returning this Proposal, or (2) partial or complete performance under this Proposal and SSMC has not received, negotiated and/or executed a PROFESSIONAL SERVICES AGREEMENT, then it is agreed that THE TERMS AND CONDITIONS IN THIS PROPOSAL SHALL GOVERN THE SERVICES RENDERED.

Furthermore, if requested, your firm acknowledges that by accepting this Proposal, SSMC will provide your firm with an insurance certificate that (1) contains the project name and (2) lists your firm as the certificate holder.

The person executing this document **must indicate that he/she is a Principal and/or Corporate Officer.**

If the signatory is not a Principal and/or Corporate Officer, a Letter of Authorization on company letterhead signed by a Principal and/or Corporate Officer, MUST be provided that specifically states that signatory has the authority to bind the parties by entering into this agreement.

ACCEPTED BY:

/

Principal / or Corporate Officer	TITLE	Printed Name	Date
---	--------------	---------------------	-------------



November 4, 2020

Hao Chau, PE
Kimley-Horn
189 S. Orange Ave. Ste. 1000
Orlando, FL 32801

PROPOSAL FOR UTILITY INVESTIGATIVE SERVICES

Project: Town of Windermere

IPO #119 – Bessie and 9th Stormwater Maintenance Improvements – Water Main

Dear Mr. Chau:

At ECHO UES, Inc. (ECHO) we value your consideration and appreciate the opportunity to provide a technical proposal for the provision of professional services. This technical proposal, inclusive of economical offer and schedule, details the approach we consider as the most suitable for this project.

Project Synopsis: Based on the information made available to ECHO, we understand the project consisting of engineering design services for utility improvements. ECHO's professional services were requested to provide utility investigation services to address existing utilities in the project plans. Utility information as produced by ECHO will be surveyed by the Team's Survey Firm (PEC).

Project Limits: ECHO's proposed services will be performed within well-defined limits (i.e. Project Limits) as shown on the provided exhibits.

Subsurface Utility Engineering (SUE) Services: Using a combination of field investigative techniques and technology, including surface geophysical instruments, and vacuum excavation if needed, ECHO will perform the following services.

1. **Identification and marking of existing utilities.** Utilities potentially in conflict with the project and located within the project limits will be investigated in the attempt to identify their position. The results will be marked on the ground surface using the most appropriate method (i.e. pin flags, paint etc.) and showing the approximate position of the identified utilities.

ECHO will attempt to identify and mark exclusively utilities requested by the EOR, at specific locations, and in support of the requested utility verification test holes.

2. **Verification of utility location and characteristics.** At specific locations ECHO will attempt to expose utilities via minimally intrusive methods (e.g. use of vacuum excavation) to confirm their characteristics (e.g. type, size, material, direction, configuration) and provide an accurate location. At completion of each excavation (test hole) ECHO will record all verifiable utility information, mark the utility location with the most appropriate method (e.g. wooden lathes, "X" mark on concrete, disc and nail on asphalt) and restore the field to as close as possible to its original conditions.

Up to 6 utility verification test holes will be performed at locations identified by the EOR.

Deliverables:

- Field deliverables will consist of field marks (e.g. pin flags, paint marks, wooden lathes, nails/discs etc.) showing the position of the designated and located utilities.
- Office deliverables will consist of utility sketch (not to scale) based on aerial publicly available and test hole data report.

Proposed Schedule: To be discussed and agreed upon with the Client following acceptance of this proposal. The proposed schedules shall be valid barring any unforeseen conditions.

Notes and Limitations:

1. Client shall facilitate access to the site and provide any relevant project information.
2. Site must be clear from obstacles impeding access to any portion of the project limits.
3. Standard work hours are from 7:00am to 4:00pm, Monday through Friday; additional charges may occur (following discussion with the Client) in case of weekend or nighttime work.
4. ECHO will not work on any site that is known to be contaminated with any hazardous or harmful substance.
5. Any permit or fee requested to perform the work complying with any stakeholder's requirement will be submitted to the Client with a 5% administrative markup.
6. FDOT Design Standards (Index 600 Series) will be utilized for the Maintenance of Traffic (MOT). Should the site require modification to the Index 600 for non-standard MOT arrangements, ECHO will seek the Client's concurrence to obtain signed and sealed project's specific MOT plans (to be provided by others).
7. Any cost associated with signed and sealed MOT plans will be submitted to the Client with a 5% administrative markup.
8. Unless otherwise stated within this proposal, test holes have usual depth of up to eight (8) ft. from the ground surface, and diameter of up to 1 ft. Should there be a need for deeper or wider excavations, additional charges may apply.
9. The original ground surface at each test hole location will be restored to as close as possible to its original conditions, using concrete mix or asphalt cold patch as applicable. Any deviation from this standard (e.g. use of hot asphalt, flowable fill etc.) may require additional charges and the use of specialty subcontractors.
10. Regardless of the type of estimate proposed (e.g. lump sum, time and materials, etc.) such estimate should be considered indicative and based on preliminary information. Should any situation out of ECHO's control heavily impact ECHO's field work performance (e.g. adverse site conditions), ECHO reserves the right to seek additional funds to complete the work.
11. The exact location of any underground utility is not guaranteed unless clearly exposed and visually verified at a specific location. Utility characteristics, methods of installation, soil conditions and the surrounding environment all

may impact adversely the results of any utility investigation with surface geophysical instruments and technology. No guarantee is made that all utilities will be found and identified.

12. Independently from ECHO's scope of work and performance, the Client shall comply with the relative chapter from the Florida (or any other applicable) Statutes: "Underground Facility Damage Prevention and Safety Act" and call 811 prior to any excavation taking place.
13. Subsurface Utility Engineering, Designating and Locating terms all refer to the American Society of Civil Engineers / Construction Institute Standard for the Collection and Depiction of Subsurface Utility Data (ASCE/CI 38-02). Should ECHO adopt this standard for the performance of the scope of work and preparation of deliverables, clear mention to the Standard shall be made throughout the deliverable.

Fee: ECHO's competitive offer, which is inclusive of all field, office, materials, supplies, and equipment costs is detailed below.

- **Utility Investigation Services, Fixed Fee: \$3,000.00**

Inclusive of up to 6 utility verification test holes

Acceptance: We will honor this proposal for 90 days. If accepted, please return to our attention together with a professional services agreement / task work order authorization and official Notice to Proceed.

At ECHO UES, Inc. we believe in collaboration and communication with our clients and are driven to understand their needs and provide time efficient and cost-effective solutions. ECHO strives to provide quality utility and survey reliable data to design better, build faster, and safely enhance Engineering, Design, Construction and Maintenance of infrastructure.

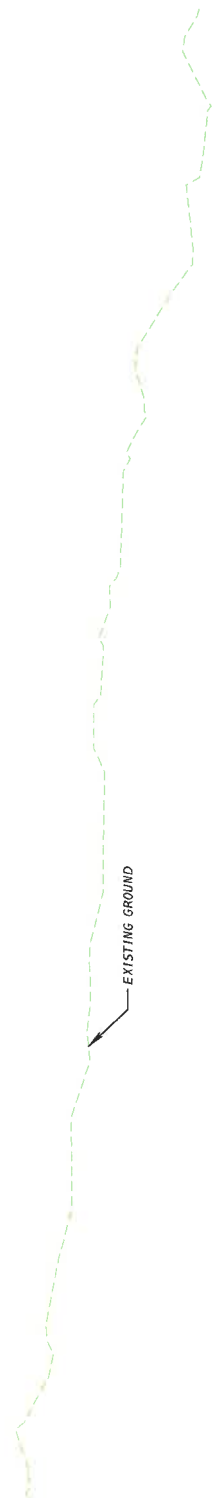
Thank you for considering ECHO for this important project and please do not hesitate to contact me directly should you have any questions or concern.

Sincerely,

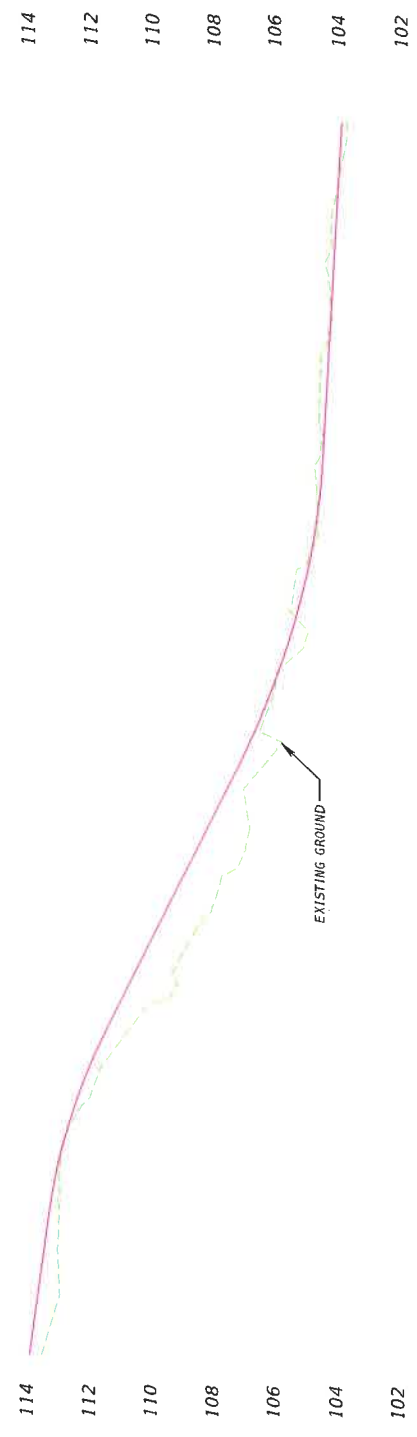


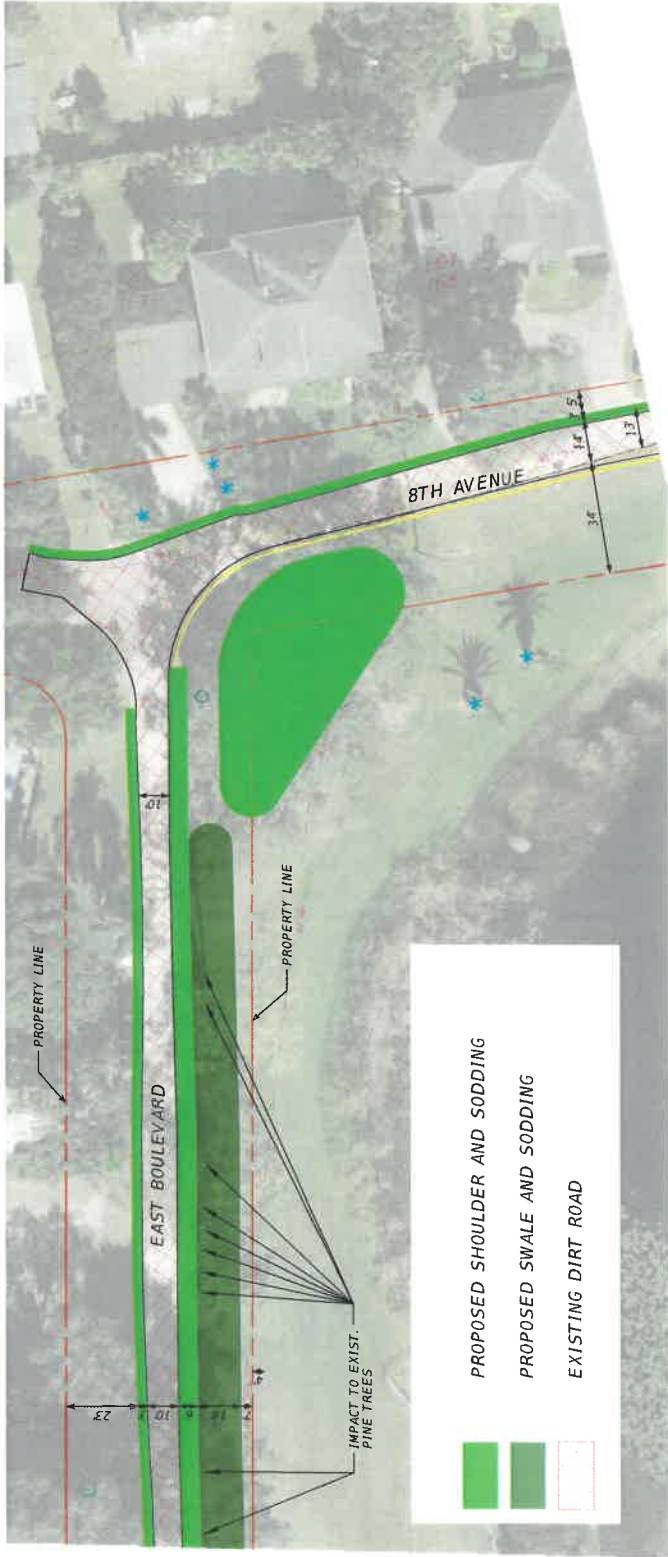
Carlo Pilia
Vice President
ECHO UES, Inc.

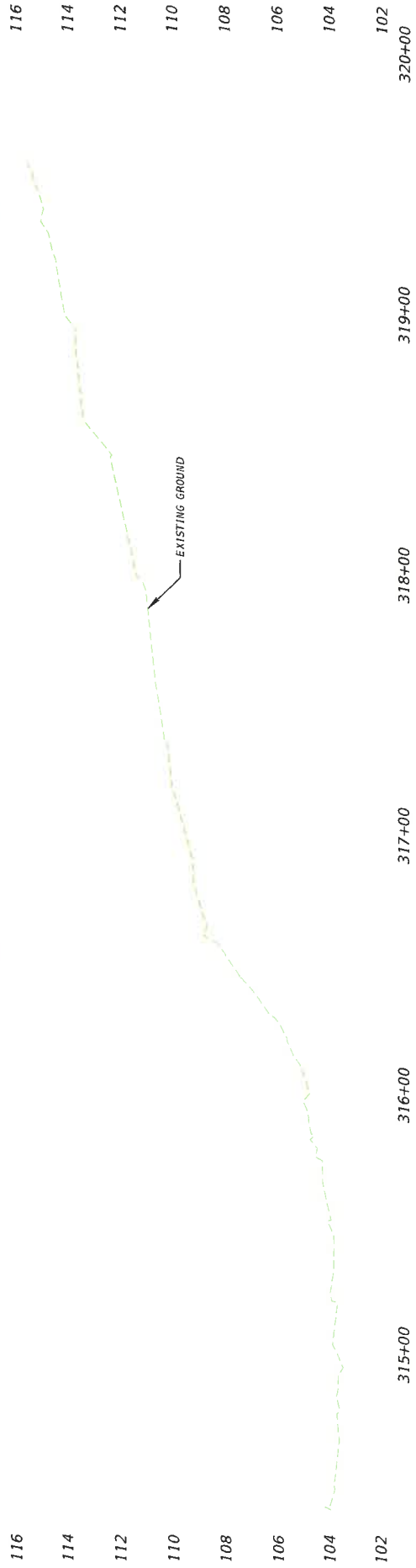
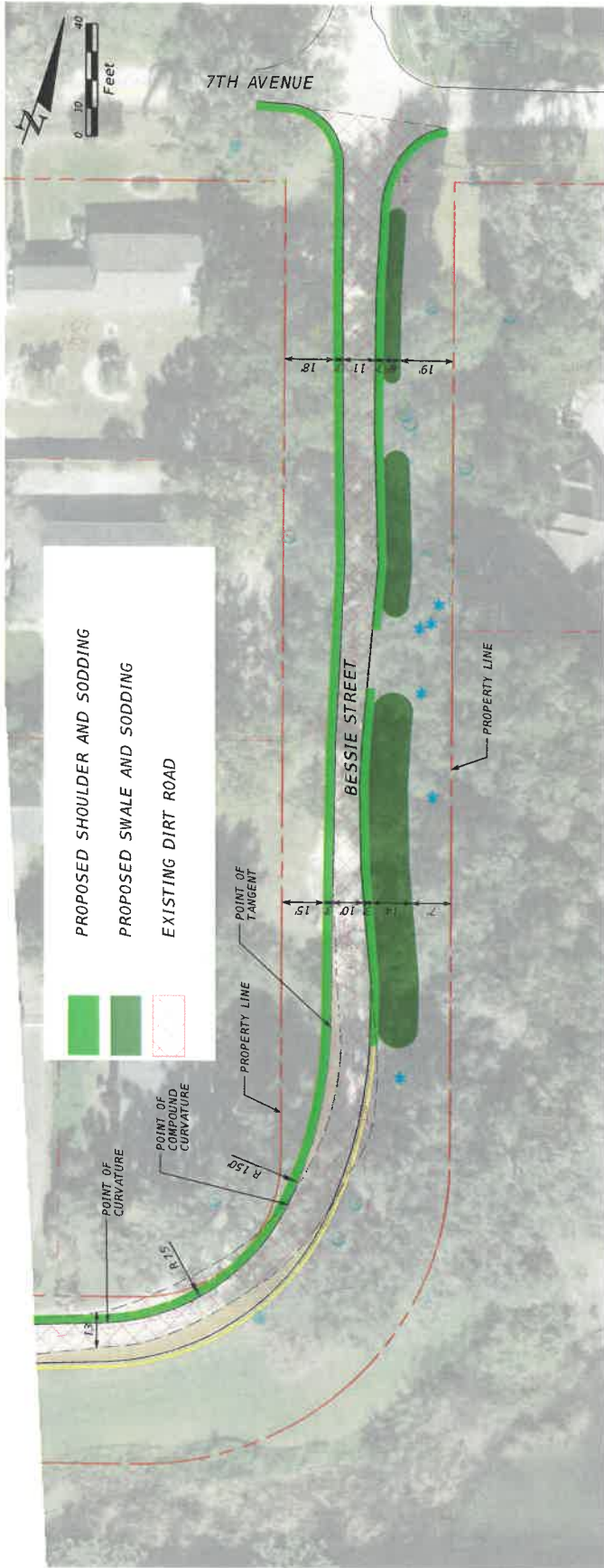
Project Limits: Attached



301+00 302+00 303+00 304+00 305+00







**SAY NO TO THE
GRANTS AND PROTECT
OUR ROADS Q&A**

WE HAVE LISTENED!

Dirt Roads will be maintained in Windermere!

Town Residents, Town Council and Staff understand how important the dirt roads are in making the Town of Windermere unique and charming. It is for this reason that Town Council has directed staff to maintain the dirt roadways in the Town of Windermere

Dirt Road Widths will be maintained in the Town of Windermere!

Town Residents have reached out and both elected officials and staff have listened. The residents want their roads to maintain the existing widths and not be widened. The proposal for consideration by Town Council on December 8th is to do just that. No roads widths will be widened.

The Balance

When the decision was made to maintain the dirt roads the direction was to also maintain the stormwater runoff from these roads, add utilities, protect the lakes and reduce the amount of impacts as much as possible as to not take away from the charm and character of the Town.

How do we achieve the Balance?

This is the arduous task that Town Staff has been directed to achieve. But as you will see, we have a plan.

- Establish a Maintenance Plan on what we have
 - Re-establish swale systems we have
 - Train Public Works Staff on means and methods of maintaining not only dirt roads but also stormwater systems.
- Establish a Capital Improvement Plan based on Town Council Direction which includes only those guidelines that are established by the Town and their elected officials.
- Seek out Funding that falls in line with the guidance of residents and Council or revise the assessment to not only maintain what we have but plan for projects in the future.

Why so many changes? Last minute or otherwise?

The difference between working in the Private Sector and Public Sector is significant.

- In the Private Sector, changes can be made on a daily or hourly basis. Items can be discussed with decision makers on a moments notice.
- In the Public Sector, plans, reports and action items need to be advertised and posted days if not weeks ahead of time for review by the public and elected officials. If any changes arise during that time, they can only be brought up at the meetings themselves or be tabled to a future meeting.

So what happened with these projects?

- Initially Town Council directed Town Staff to come up with concepts to correct the stormwater issues in these areas. Not only a concept to help with stormwater but one that may be able to be implemented throughout Town. The initial concept included paving and dirt road options. Town Council then made the decision to move forward with maintaining the dirt road system.
- Second Round of concepts submitted and discussed by Town Council was the amount of right of way to utilize for the maintenance of dirt roads. The concept demonstrated the use of most of if not all of the Town's right of way. Town Council then made the decision to revise the concept to make sure that staff was utilizing the concept with the least amount of impacts to the areas impacted.

So what happened with these projects?

The Third Round of Concepts included the minimal Green Book Standards for roadways as well as General Engineering Guidelines. The minimal standards are as follows:

- Grass Shoulder: 3ft
- Dirt Roadway: 9' travel lanes for total 18'
- Grass Shoulder/Utility Corridor: 6ft for access to utilities
- Grass Swale System: Maximum of 14'

So why was it important to maintain minimal standard in this concept?

- Based on the HMGF grants, the Town signed contracts that stated that the Town would design these projects to meet Federal and State Guidelines. This would ensure grant funding for both design and construction.
 - Butler Basin HMGF Funding: \$82,000 for Design \$700,000 for Construction
 - Bessie Basin HMGF: \$90,000 for Design \$1,100,000 for Construction

Note that these are 25% Local share and 75% Federal share

So what happened with these projects?

The latest IPO (Individual Project Order) that will be up for consideration by Town Council does not adhere to those standards within the contracts as it relates to roadways and leaves all design aspects up to the Town Council relative to stormwater on existing dirt roads with existing widths.

So why this last minute change? Again, in the public sector we cannot just make changes like in the private sector. The basis for the most recent and last change is as follows:

- Based on the amount of feedback from residents and Town Council, the designs will be stormwater only. Keep existing dirt roads and widths.
- Peer Review by Engineer Mike Galura who worked with Staff in obtaining these grants and has been the face of the Town as it relates to not only existing HMGF grants but those awarded and funded by FEMA in the past.
- The IPO is broken out to ensure that the Town can stop after design should FEMA not approve funding. Also ensures design goes thru two approvals (45% and 100%)
- Intent is that design is required for these basins whether or not a grant is involved so if FEMA denies a design based on guidelines established by the Tow, the design and money spent on creating it can be used by the Town to phase and self fund.

General Questions as it relates to Concepts

These are concepts and not designs. Once we get to Design there are opportunities for variations.

- Ex: Road width on Butler expands past 18', this may be reduced to reduce impacts to East and West.
- Ex: 14' swales are shown. This is a max and can be reduced with design. Also with considerations being made to piping.

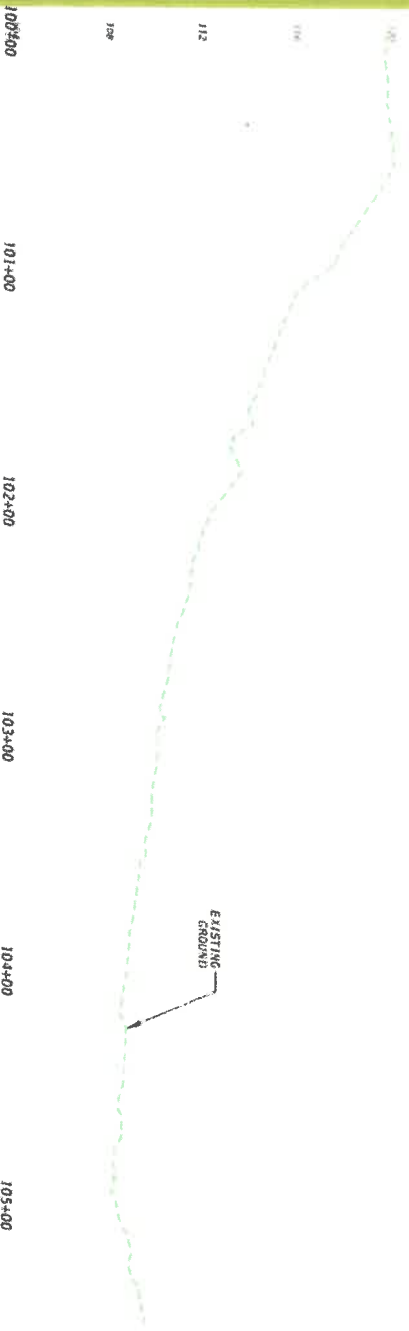
Residents and Town Council will have opportunities to comment at various stages of design development (45% and 100%)

What will be decided on December 8th?

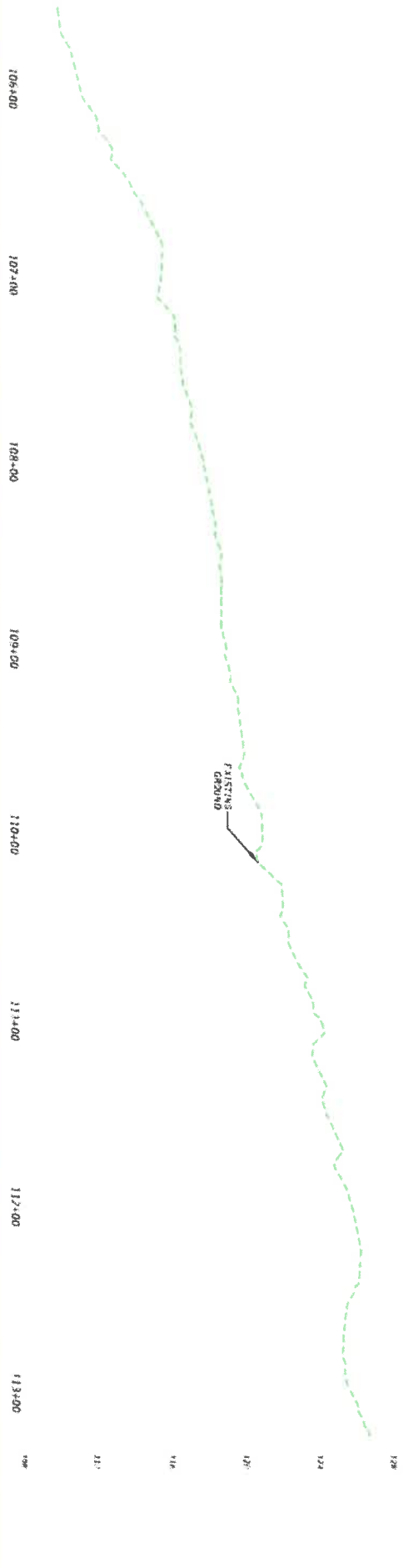
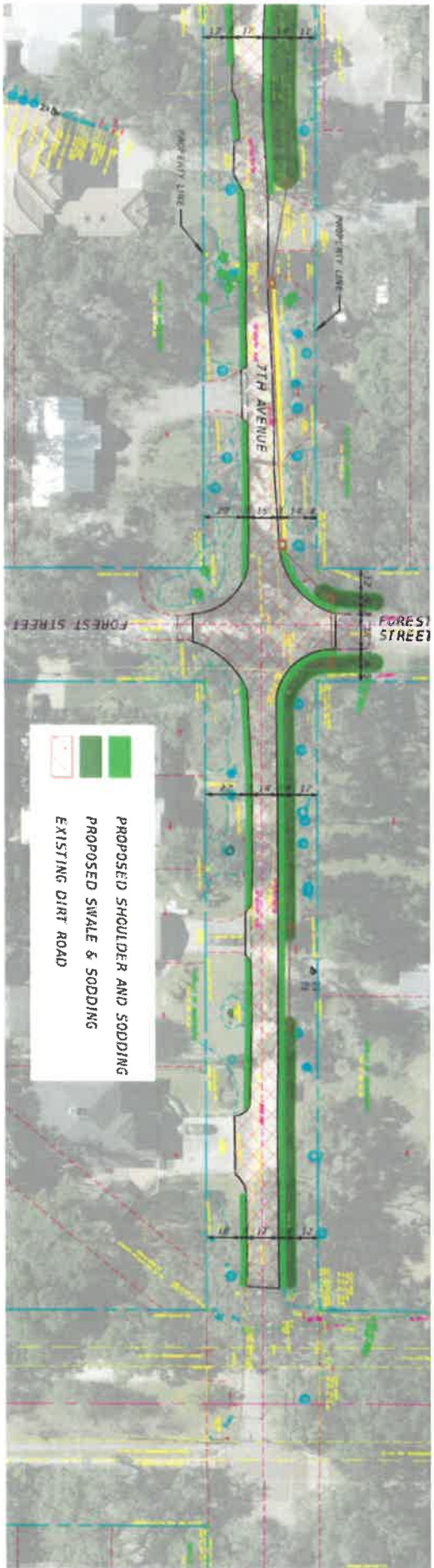
- Town Council will review the IPO's for both the Butler and Bessie Basins. Each item is not connected to the other. Town Council can accept both, deny both or accept one and deny the other
- Each IPO is split by task items and the Town Council can choose which tasks to approve and which ones to postpone based on the response of FEMA or availability of funds.
- If approved, the designs will come back to Town Council at 45% design and 100% design to include additional input from the residents and Town Council. Designs will not proceed unless there is an approval of Town Council. Additional meetings will be held as this one with the residents.
- If approved, Town Staff will submit to FEMA for design approval. FEMA (through FDEM) will review project upon completion of Design Plans. Their approval relies on the flood mitigation as intended and stated in the scope of work. The hydrologic & hydraulic analysis (H&H) that is to be provided as part of the project deliverables to DEM under the contract Project Conditions and Requirements. The H&H study shall contain at least 3 scenarios, where losses are identified under pre- and post mitigation conditions. The design shall also demonstrate mitigation effectiveness showing the physical locations and elevations of infrastructure/structures that are being damaged. If denied, Town Council has the option to proceed without grant funding and self fund
- If approved, and FEMA denies design, Staff will establish a capital improvement program based on the designs and priorities. Then the Town will explore ways to self fund the various projects and phases.
- If FEMA approves design, then the project(s) will be bid out for construction based on the design agreed upon by Town Council and the residents.

BUTLER BASIN

CONCEPT



RAIN GARDEN EXAMPLE



BESSIE BASIN

CONCEPT



- PROPOSED SHOULDER AND SODDING
- PROPOSED SWALE AND SODDING
- EXISTING DIRT ROAD

301+00

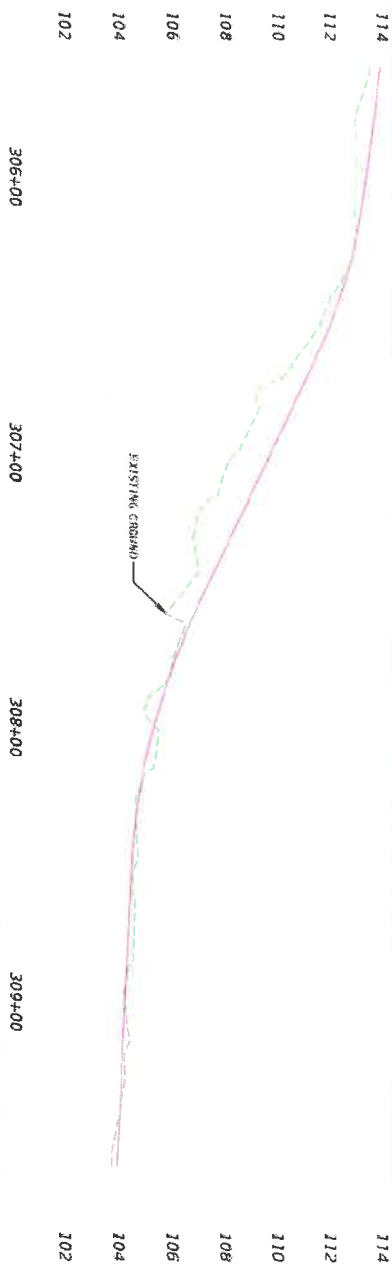
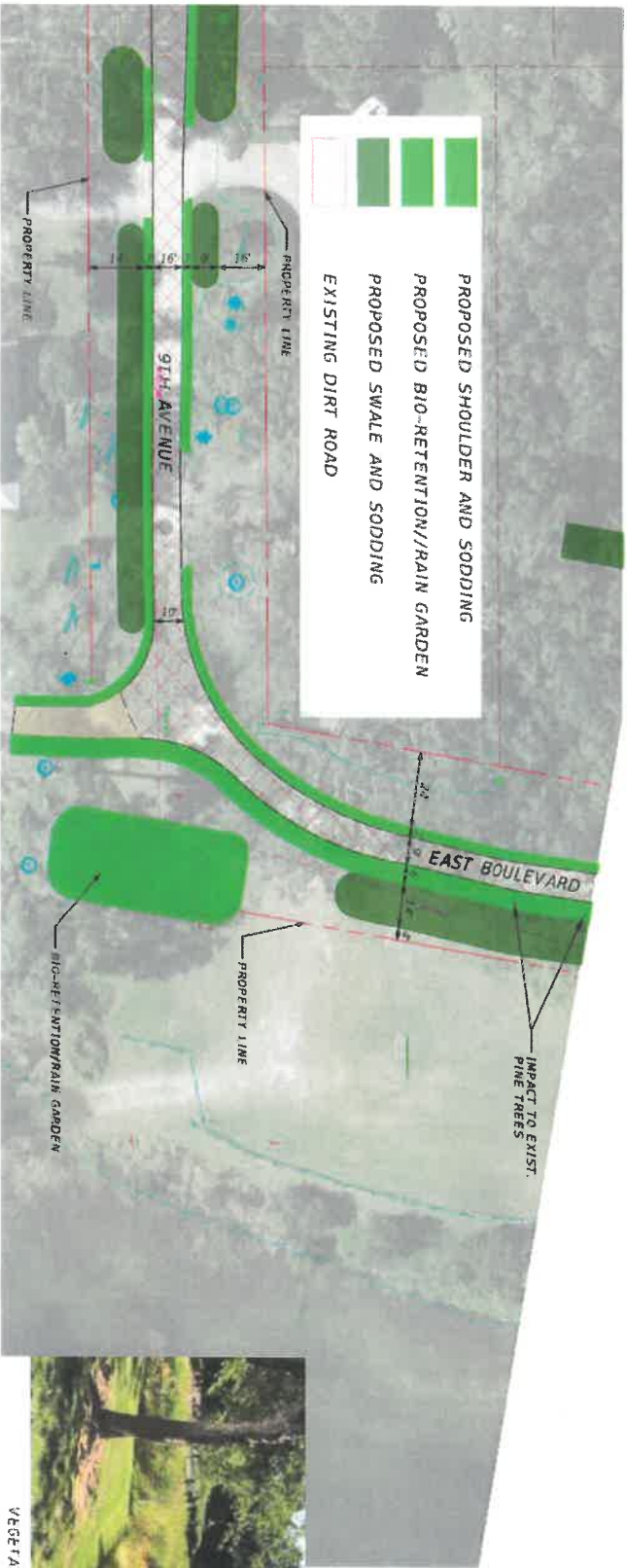
302+00

303+00

304+00

305+00





VEGETATED SWALE



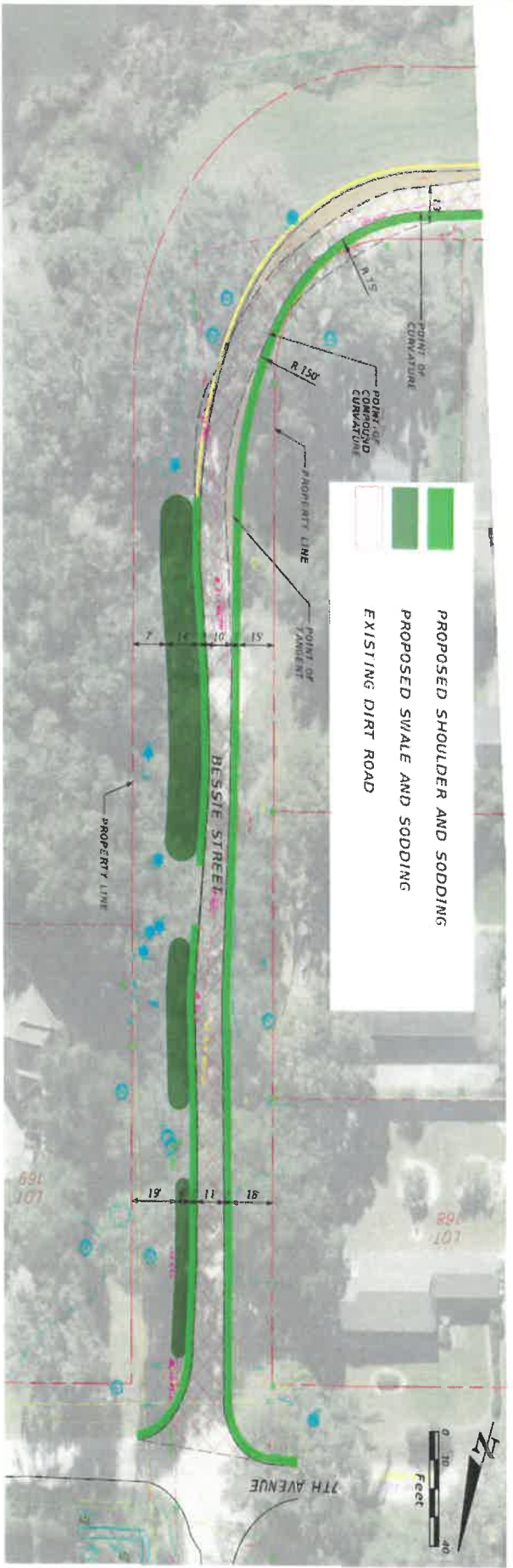
RAIN GARDEN EXAMPLE



310+00 311+00 312+00 313+00 314+00

EXISTING GROUND

- 110
- 108
- 106
- 104
- 102
- 100



PROPOSED SHOULDER AND SODDING
 PROPOSED SWALE AND SODDING
 EXISTING DIRT ROAD



315+00
 316+00
 317+00
 318+00
 319+00
 320+00

EXISTING GRABBING

116
 114
 112
 110
 108
 106
 104
 102

THE TOWN OF
Windermere



EXECUTIVE SUMMARY

SUBJECT: Monetary Contribution for Purchase of Statue

REQUESTED ACTION: P&R Recommends Approval

Work Session (Report Only)

Regular Meeting

DATE OF MEETING: 12/8/20

Special Meeting

CONTRACT: N/A

Effective Date: _____

Managing Division / Dept: _____

Vendor/Entity: _____

Termination Date: _____

BUDGET IMPACT: +\$10,000

Annual

Capital

N/A

FUNDING SOURCE: _____

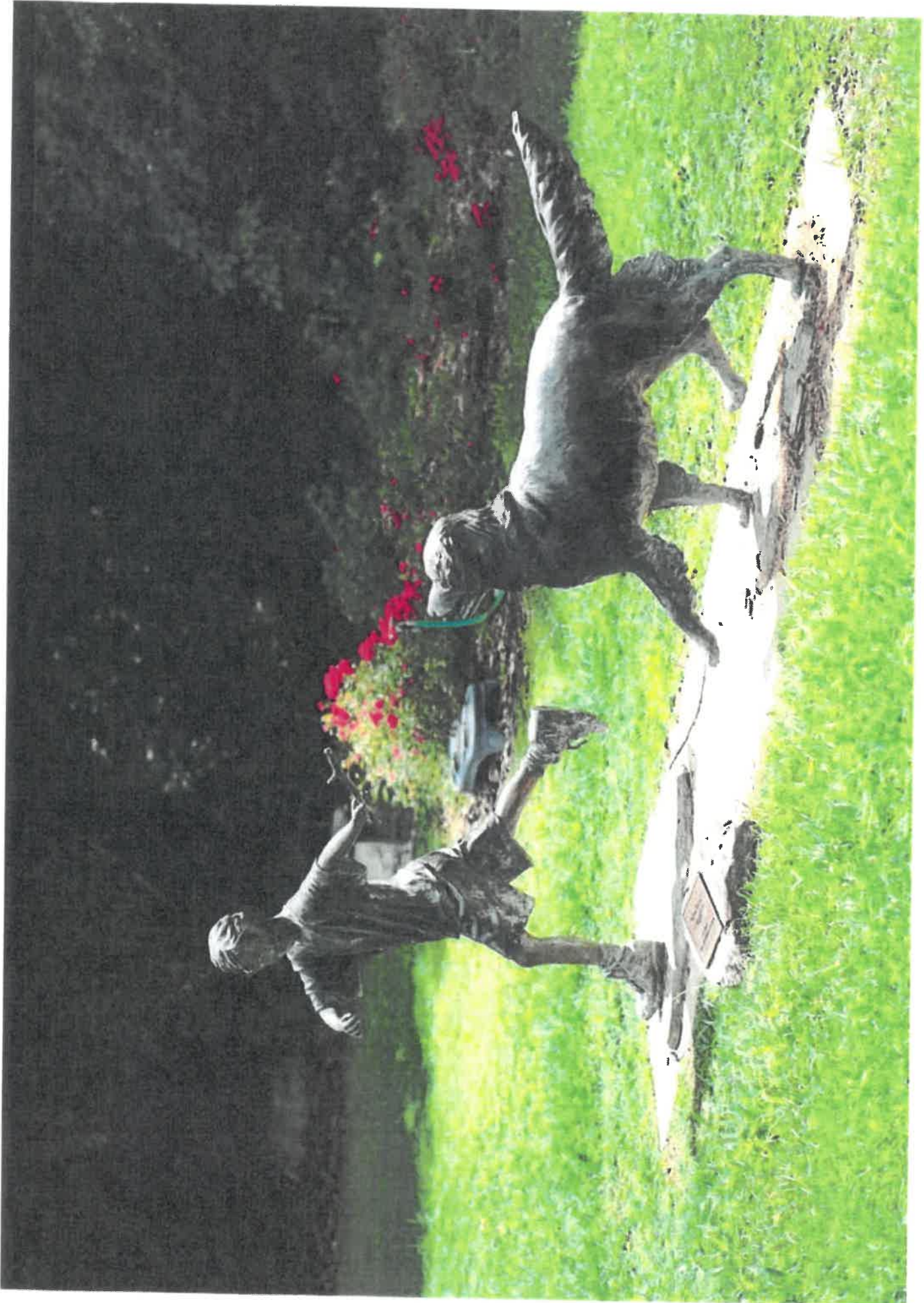
EXPENDITURE ACCOUNT: _____

HISTORY/FACTS/ISSUES:

Mayor & Council,

John Nabers has graciously offered to purchase the attached sculpture to be placed at Central Park. He will donate the funds on the condition that the monies go directly towards the purchase of the statue.

P&R Recommends Approval





EXECUTIVE SUMMARY

SUBJECT: Town of Windermere Boathouse Leases

REQUESTED ACTION: Board Option

Work Session (Report Only)
 Regular Meeting

DATE OF MEETING: 12/8/20
 Special Meeting

CONTRACT: N/A

Effective Date: _____

Managing Division / Dept: _____

Vendor/Entity: _____

Termination Date: _____

BUDGET IMPACT:

Annual
 Capital
 N/A

FUNDING SOURCE: _____

EXPENDITURE ACCOUNT: _____

HISTORY/FACTS/ISSUES:

Mayor & Council,

The current leases for the boathouses will expire in February 2021 (Each exercised their 10yr. extension prior to the 2011 expiration). The Town is not required to notify the lease holders based on the terms of the lease which clearly state that the lease expires on the aforementioned date. With that said, the current tenants have requested an opportunity to renegotiate the leases. However, there has also been a lot of interest expressed by other residents and Town Boards and Committees on their interest in the boathouses.

Please note the Town does not own the boathouses themselves just the access. However, should the tenants not exercise their right to remove the items from the boathouses as of March 2021, then the Town gains the rights to those items left.

Attached you will find the following:

- Town legal memorandum on the leases
 - Request by current tenants to renegotiate
 - Lease example
 - Brief history of the boathouses
-

The Town Council has several options to consider and can discuss at length during a workshop if necessary:

- Renegotiate with current tenants
- Restore boathouses to represent what they looked like in the past and keep as historic relics
- Allow for a system to open the leases to other residents to lease and restore the boathouses. (revenues can go to certain committees or the Town)
- Parks and Recreation would like access to one or two boathouses to rent out space for canoes and kayaks.
- Demo boathouses

Staff awaits direction.

MEMORANDUM

TO: Mayor and Council of the Town of Windermere
FROM: GrayRobinson, P.A.
DATE: November 4, 2020
SUBJECT: Windermere Boathouses

This memorandum addresses questions concerning the five boathouses located on Lake Butler. It is meant to be supplemental to the August 10, 2012, GrayRobinson memorandum.

What is the status of the five boathouse Lease Agreements? The boathouse agreements will automatically expire on February 28, 2021, without action by the Town or the lessees.¹ There are no renewal terms remaining under the Lease Agreements.²

What happens when the Lease Agreements expire? Each lessee has the right to remove all “lumber building materials, boat hoists and fixtures within thirty (30) days of termination should it chose to do so, provided said removal is not prohibited by law.”³ If a lessee does not remove such materials and fixtures on or before March 30, 2021, then the Town may relet or remove a boathouse, or proceed in any other manner at the Town’s discretion. Unless the Town Council decides to extend the Lease Agreements, we would suggest that the Town provide written notice to the lessees regarding the lessees’ ability to remove the materials and items on or before March 30, 2021.

What if the Town Council elects for the boathouses to remain after the expiration of the Lease Agreements? The Town would need to negotiate this point with the lessees since the lessees have the right in the Lease Agreements to remove the lumber building materials, boat hoists and fixtures.

Who are the owners of the boathouses? We addressed this issue in 2012, and our position has not changed. From the historical documentation, there is a strong argument that the Town is the owner of the boathouses since the Town is the owner of the underlying property. A title search in 2012 confirmed the Town’s ownership of the underlying property. The company performing

¹ Section Seventeen of the Lease Agreements.

² Section Twelve of the Lease Agreements provides in part that the lessees had the ability to renew the Lease Agreements for “an additional term of ten (10) years. . . .” Black’s Law Dictionary defines the word “an” as “The English indefinite article, equivalent to “one” or “any”; seldom used to denote plurality.”

³ Section Twelve of the Lease Agreements.

Mayor and Council, Town of Windermere
November 4, 2020
Page 2

the search was unable to provide a clear chain of title for the boathouses. Additionally, other than quitclaim deeds, the boathouse users have been unable to provide documentation to the Town which demonstrates ownership of the boathouses.

What is a quitclaim deed? With a quitclaim deed, the interest being transferred to the buyer (or grantee) is whatever interest the seller (or grantor) has in the subject property. If a seller does not possess a valid interest in property, the seller cannot transfer an interest in that property by using a quitclaim deed.⁴

What is the effect of the Lease Agreements stating that the lessees own the boathouses? A lease agreement is a contract – it is a negotiated document. In this instance, even if the lessees are deemed the owners of the boathouse structures, the parties negotiated an end date for the Lease Agreements – February 28, 2021. The parties also negotiated the ability of the lessees to remove all “lumber building materials, boat hoists and fixtures within thirty (30) days of termination should it chose to do so, provided said removal is not prohibited by law.” If the expiration of the Lease Agreements is challenged on the premise that the lessees are the owners of the boathouses, there are likely no remedies available to the lessees as long as the Town complies with the terms and conditions of the Lease Agreements.

What if action taken by the Town Council regarding the boathouses is challenged? There is likely little legal recourse for a boathouse lessee, especially since the Lease Agreements are negotiated contracts and the language and requirements in the Lease Agreements are clear. We expect that if a lawsuit were filed against the Town it would be dismissed quickly.

⁴ *June Sand Co. v. Devon Corp.*, 23 So. 2d 621 (Fla. 1945).

24 October, 2020

Mayor and Town Council of Windermere

We the undersigned owners of the boathouses located in the un-named lagoon along Pine Street hereby request to enter good faith negotiations with the Windermere Town Council on a solution to continue using the boathouses and to ensure their continued existence.

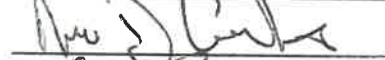
#1 Curt Fraser (415 W 3rd Ave)



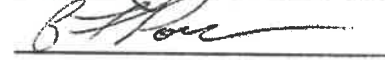
#2 Dan & Anne Fanelli (400 W 2nd Ave)



#3 Russell Gentry (409 W 2nd Ave)



#4 George Poelker (415 W 3rd Ave)



#4 Joyce Rose (124 Palm St)



#5 Jerry Fay (28 Pine St)



LEASE AGREEMENT

THIS AGREEMENT is made on March 1, 2002, between the TOWN OF WINDERMERE, FLORIDA, a municipal corporation of the State of Florida, Lessor, and Gerald W. Fay, whose address is 28 Pine Street, Windermere, FL 34786 PO Box 302, Lessee.

IN CONSIDERATION of the mutual covenants herein set out, the parties agree as follows:

SECTION ONE DESCRIPTION OF LEASED PROPERTY

Lessor owns certain property above the mean high water mark and the riparian rights to the property below such mark contiguous to and within an unnamed lagoon off the North side of Lake Butler in the Town of Windermere, Florida in Township 23, Range 28, Section 7, Orange County Florida. Lessee owns a boat house which is located on property below the mean high water mark of the described property and which is subject to the riparian rights of the Lessor, said boat house being designated as Number 5 on the sketch attached hereto depicting a cluster of five (5) such boathouses. Lessor hereby leases to Lessee the right of ingress and egress to the boathouse and the right to use and occupy the boathouse on the lake bottom on which it is situated.

SECTION TWO TERM

The commencement date of this Lease is retroactive to March 1, 2001(Effective Date) and shall extend for a period of ten (10) years and terminate on February 28, 2011 unless extended by other provisions of this Lease.

SECTION THREE RENT

Lessee agrees to pay an initial annual rent for the first year in the amount of Ten Dollars (\$10.00) payable upon execution of this Lease. Annual rent for each year thereafter shall be paid in an amount no less than \$400.00 and shall be calculated as follows:

Commencing March 1, 2003, and March 1 of each year thereafter, annual rent shall be a figure computed by multiplying the rent for the preceding twelve month period by a fraction, the numerator of which shall be the Consumer Price Index, the United States Department of Labor for January of each year prior to the respective anniversary date (March 1 of each year) and the denominator of which shall be said Consumer Price Index (CPI) for January

of the previous year. The formula for such adjustment shall be as follows:

March 1, 2003 and March 1 each succeeding year:

1.
$$\frac{\text{January current year CPI}}{\text{January previous year CPI}} = \text{Fraction}$$
2.
$$\frac{\text{Fraction X preceding twelve month}}{\text{Rental amount}} = \text{Monthly Rental}$$

If the Consumer Price Index should not be available, then the parties shall agree upon a conversion factor or a new Index, said Index being generally accepted and approved as an Index reflecting the contemplated fluctuation and the purchasing power of the United States Dollar.

SECTION FOUR QUIET ENJOYMENT

Lessor covenants that on performing the covenants herein contained, Lessee shall peacefully and quietly have, hold and enjoy the premises for the agreed term.

SECTION FIVE USE OF PREMISES

The premises shall be used and occupied by Lessee exclusively for storage of Lessee's water craft, and no part thereof shall be used at any time during the term of this Lease by Lessee for the purpose of carrying on any business, profession or trade of any kind, or for any purpose other than as specified herein. Under no circumstances shall any sign be placed on or about the premises by Lessee except a no trespassing sign.

SECTION SIX ACCEPTANCE BY LESSEE

Lessee has inspected and knows the condition of the premises and accepts the same in their present condition .

SECTION SEVEN MAINTENANCE AND REPAIR BY LESSEE

Lessee hereby agrees to maintain the premises in good repair and in a clean, safe and sanitary condition. The Lessee agrees, either individually or together with the other Lessees, to take the necessary steps to clean the lagoon and boat basin area surrounding the boat

houses. The clean-up shall be performed as set forth in the Biosphere proposal dated December 14, 2001, a copy of which is attached hereto as Exhibit A. Maintenance of the lagoon and basin, landscaping and maintenance of the surrounding area shall be the responsibility of the Lessor.

Lessee shall maintain the boat house structure in a safe condition and to paint the surfaces of the boat house in a clean, fresh and attractive condition.

Lessor agrees to cooperate with the Lessee in connection with Lessee's efforts to maintain, improve or alter the waterway adjacent to the boat house, provided all such efforts fully comply with all federal, state and county regulations, both environmental and otherwise.

SECTION EIGHT INSURANCE AND INDEMNITY

Lessee shall secure comprehensive liability insurance for personal injury or property damage to any person or corporation with a company acceptable to Lessor in limits not less than \$500,000.00/\$1,000,000.00. Lessor shall be named as additional insured and loss payee. The policy shall contain a provision that Lessor is entitled to at least fifteen (15) days' notice from the insurance company before cancellation of the policy. If Lessee fails to obtain the insurance, Lessor may do so and Lessee shall reimburse Lessor for the cost of it on written demand. Lessee shall furnish Lessor with Certificate of Insurance before taking possession of the property showing the coverage afforded, expiration date and payment of premium. Lessor may reasonably require evidence at reasonable times during the term of this lease or any extension of it that the insurance remains in force.

SECTION NINE UTILITIES AND TAXES

Lessee shall be responsible for arranging and paying for any and all utility services on the premises.

Lessee shall pay all real property taxes assessed against the leased property by any authorized governmental entity. Payment shall be made directly to Lessor with ten(10) days of written notice from Lessor setting forth the amount of taxes due.

SECTION TEN DAMAGE BY CASUALTY

In case the leased premises shall be destroyed or shall be so damaged by fire or other casualty, as to become untenable, then in such event, at the option of Lessee, this Lease

shall terminate from the date of such damage or destruction and Lessee shall immediately surrender such premises and all interest therein to Lessor, and Lessee shall pay rent only to the time of such surrender. Lessee shall exercise such option to terminate this Lease by notice in writing delivered to Lessor within thirty (30) days after such damage or destruction. In case Lessee shall not elect to terminate this Lease in such event, this Lease shall continue in full force and effect and Lessee shall repair the leased premises with all reasonable promptness, placing the same in as good a condition as they were at the time of the damage or destruction and for that purpose may enter such premises. In either event, Lessee shall remove all rubbish, debris, merchandise, furniture, equipment and other personal property, within thirty (30) days after the request of Lessor. If the leased premises shall be only slightly injured by fire or the elements, so as not to render the same untenable and unfit for occupancy, then Lessee shall repair the same with all reasonable promptness. No compensation or claim shall be made by or allowed to Lessee from Lessor by reason of any inconvenience or annoyance arising from the necessity of repairing any portion of the building or the leased premises, however the necessity may occur.

SECTION ELEVEN DANGEROUS MATERIAL

Lessee shall not keep on the premises any items of dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company. Notwithstanding the foregoing, any storage of gasoline in or about the premises must be in government approved containers, not to exceed at any one time ten (10) gallons in quantity.

SECTION TWELVE SURRENDER OF PREMISES

At the expiration of the lease term, Lessee shall surrender the ownership and possession of the premises in as good state and condition as they were at the commencement of this Lease, reasonable use, wear and tear and damages by the elements excepted; provided however Lessee will have the right to remove all lumber building materials, boat hoists and fixtures within thirty (30) days of termination should it chose to do so, provided said removal is not prohibited by law.

SECTION THIRTEEN ABANDONMENT

If at any time during the term of this Lease Lessee abandons the premises or any part thereof, Lessor may, at its option, obtain possession of the premises in the manner provided by law, and without becoming liable to Lessee for damages or for any payment of any kind whatever. If lessor's right of reentry is exercised following abandonment of the premises

by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

SECTION FOURTEEN DEFAULT

If Lessee fails to comply with any of the material provisions of this Lease, within thirty (30) days after delivery of written notice by Lessor specifying the noncompliance and indicating the intention of Lessor to terminate the Lease by reason thereof, Lessor may terminate the Lease.

SECTION FIFTEEN ASSIGNMENT AND SUBLETTING

Subject to compliance with the terms of this Lease, Lessee may assign this Lease or sublet or grant any license to use the premises or any part thereof only to bonafide residents of the Town of Windermere or record title owners of real property located in the Town of Windermere. Lessee shall give to Lessee, in writing, at the time of such assignment or subletting, the name, address and telephone number of the person to whom the assignment or sublease was made.

SECTION SIXTEEN ALTERATIONS AND IMPROVEMENTS

Lessee shall be considered the owner of the boat house structure. Lessee shall be permitted to make any alterations and improvements to the existing building or to replace the existing building with a new building provided that any alteration or improvement complies with applicable building codes and otherwise complies with this Lease.

SECTION SEVENTEEN RENEWAL OF LEASE

Lessee may renew this Lease upon the same terms and conditions as set forth herein for an additional term of ten(10) years upon giving Lessor at least ninety (90) days written notice of intent to renew prior to the termination date of this Lease.

SECTION EIGHTEEN ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties, and no modification of this Lease shall be binding upon the parties unless evidenced by an agreement in writing

signed by Lessor and Lessee after the date hereof.

SECTION NINETEEN
ATTORNEYS' FEES

The Lessor shall be entitled to reasonable attorneys' fees in event legal action is commenced in a court of competent jurisdiction to enforce the covenants, terms and conditions of this Lease.

SECTION TWENTY
BINDING EFFECT

The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives and assigns of the parties hereto, and all covenants are to be construed as conditions of this Lease.

SECTION TWENTY-ONE
APPROVAL BY TOWN COUNCIL

This Lease is not effective until it is approved by the Town Council, Town of Windermere, Florida.

IN WITNESS WHEREOF , the parties have executed this Lease at Windermere, Florida, the day and year first above written.

LESSOR:


TOWN OF WINDERMERE

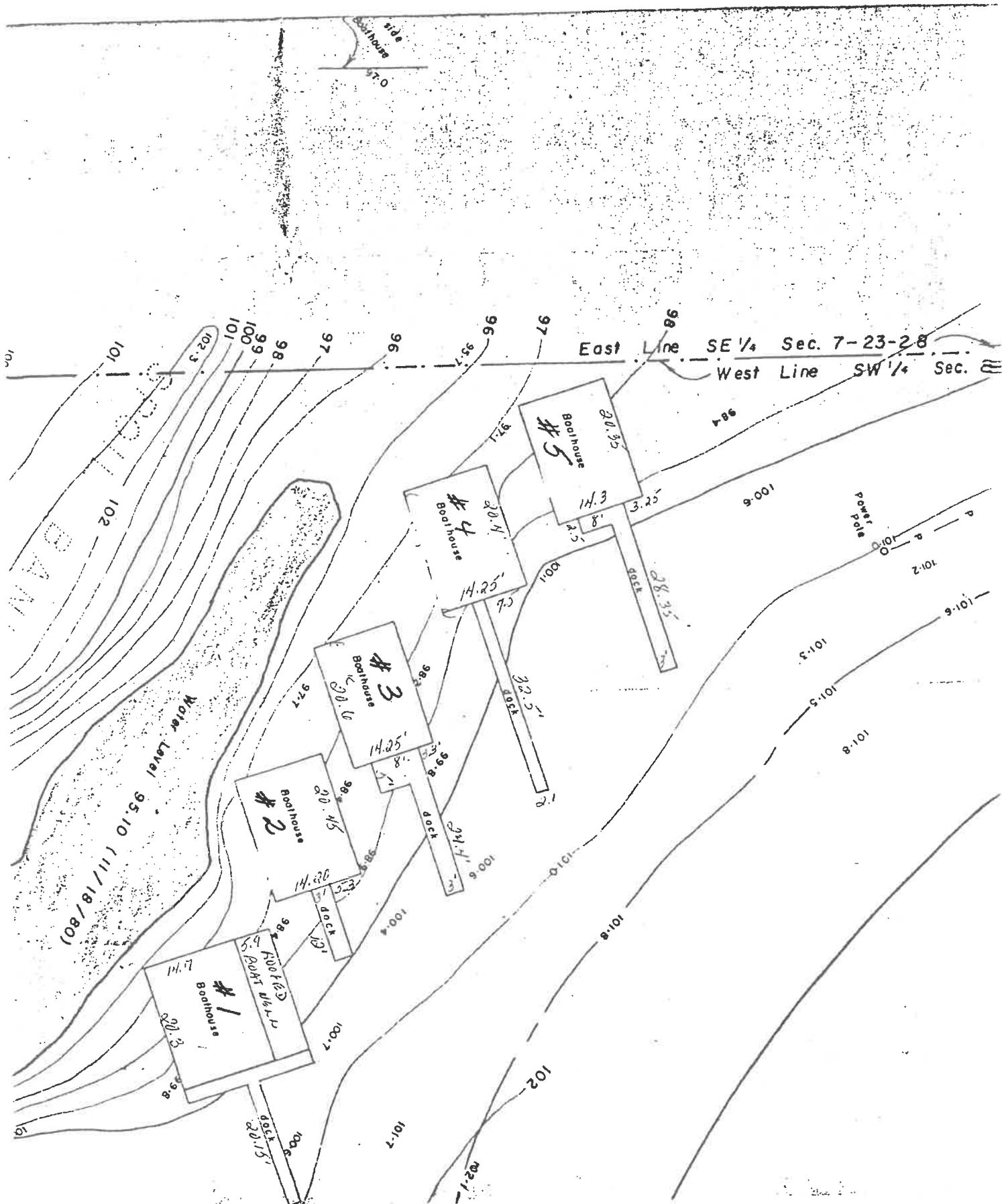
ATTEST:

By 
Town Clerk

By: 
MAYOR

LESSEE:





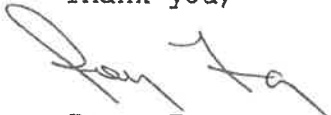
April 1, 2002

Ms. Dorothy Burkhalter
c/o Town of Windermere

Dorothy,

Please consider this letter as notification of my
intent to renew my lease on Boathouse No. 5, as per
Section 17 of the lease.

Thank you,



Jerry Fay

RECEIVED

APR 01 2002

TOWN OF WINDERMERE

Town Council, Mayor and Town Manager

I have put together this notebook to set straight the historical record, as much as I can, on the boathouses on Pine Street. The paper version is divided into tabs, but the electronic version is just one file.

Before Tab 1 I have inserted a photograph and a cropped closeup of that photo. The sticky note shows what was written on the back of the original. The date can be verified by the clothes the individuals are wearing. Notice in the cropped closeup, you can count at least four (4) boathouses. The common wisdom is that the first boathouse was built around 1913 and the rest in the 1940's or 50's. This picture shows the common wisdom is incorrect and the boathouses were there years before the town was incorporated.

Tab 1. Plats

Some historical plats of Windermere showing the area as originally platted, and the boathouses in relation to the 100' high water line. Notice there is no land shown where the boathouses are located.

Tab 2. Quit Claim Deeds

Limited examples showing that this method was used as far back as 1960 to transfer ownership. In the past the boathouses have been owned by some of our finest and long time residents.

Tab 3. Town Council Meetings

Agendas, minutes and some notes from TC meetings in 2001 when the last lease was negotiated. Please take note of the minutes from the October 9, 2001 meeting which show (on page 5) that the boathouses were placed on the local historic register and therefore have special rules surrounding them.

Tab 4. Lease Agreements

The lease agreements from 1986 and 2001, both of which state unequivocally the ownership of the boathouses.

Tab 5. Town Attorney Opinions

Opinions from two eras of attorneys. They give a good synopsis of the history of the boathouses if nothing else.

Tab 6. Windermere Muni Code

The town code concerning how locally registered buildings must be handled.

Some town residents are concerned about the appearance and condition of the boathouses. Let me make a few remarks about each.

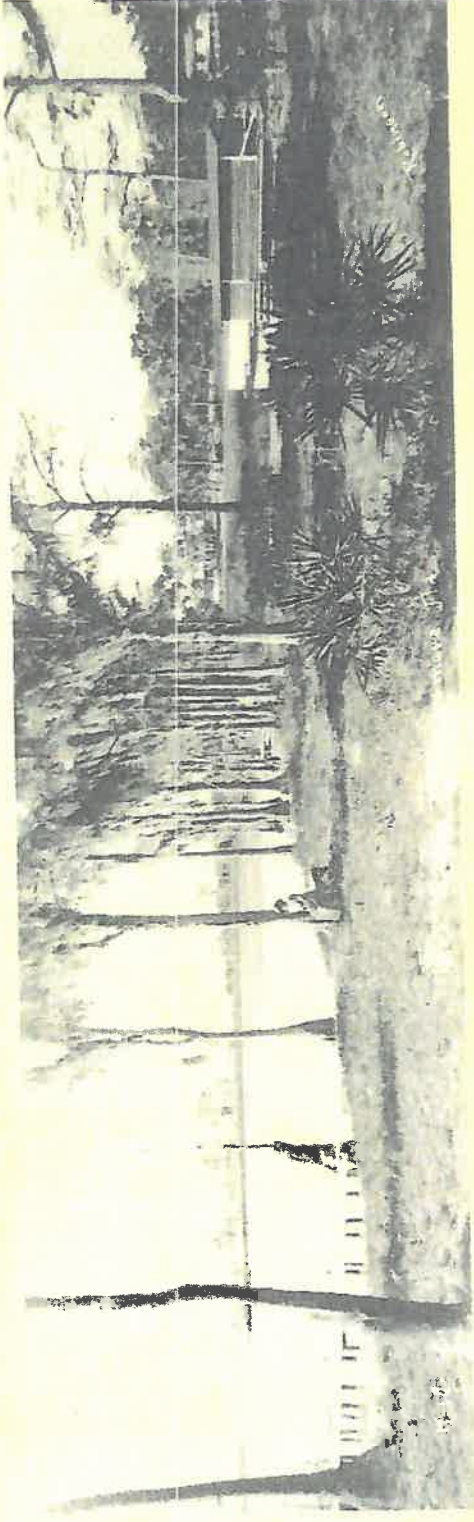
It has always been thought that the boathouses were on the local historic register. As such BH owners were loath to alter the appearance of them for fear of running afoul of the historic designation. Over the years I have had discussions with other owners about painting them in bright colors or expanding them, but that was never accomplished due to their historical nature. Beauty is in the eye of the beholder. If we start destroying things just because someone thinks it's ugly, we are apt to lose quite a few houses around town.

As far as the condition of the structures, most of them are structurally sound. I personally know that at least 4 out of 5 have had boats in them within the last year. Mine (#4), which I co-own with Joyce Rose, has two 15' fiberglass boats hanging from lifts inside. Not a decrepit structure. We have quietly maintained the structure and kept them in use. I personally have used my boat at least 75 times this year alone. Fishing in the morning is a great way to start the day!

I hope the information in this file helps you to understand the history and legacy, as well as the controversies surrounding the boathouses. Obviously, I also hope that you come to the conclusion that they are worth preserving well into the future and that the simplest way to accomplish that is to negotiate with the current owners who already have an emotional and financial interest in them.

Thank you

George Poelker

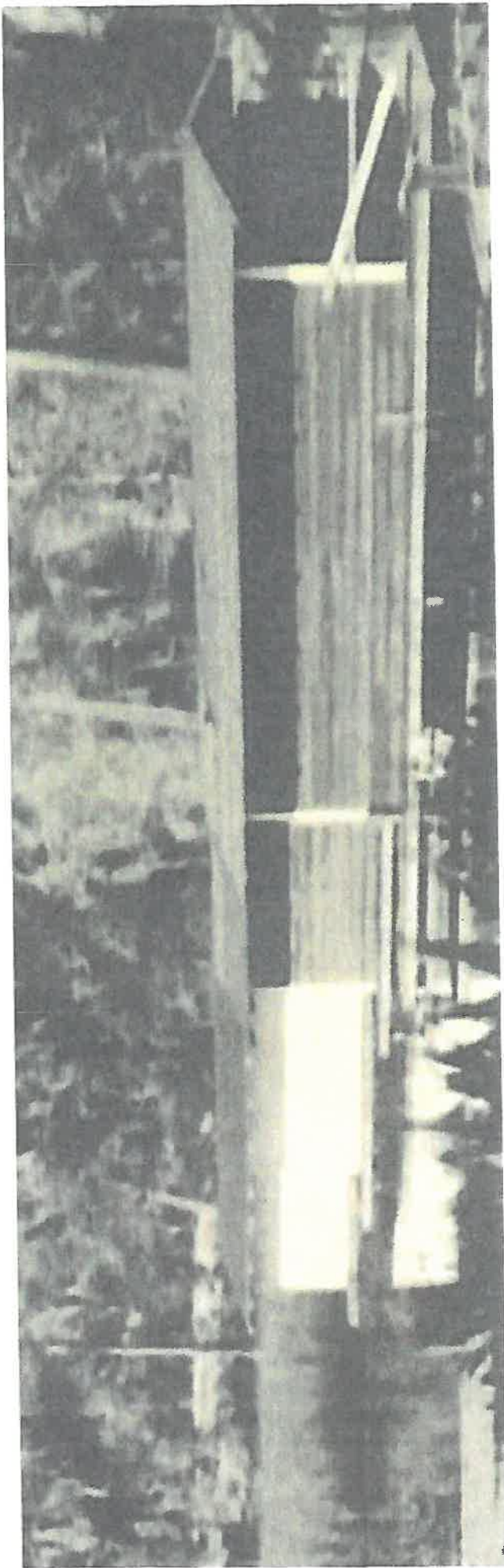


1910

J C Palmer front
Yard

Kate Palmer sitting
Letha Palmer standing

Boat Houses
+ Cypress Tree



FOR THE MAKER SUB
 Date 8/2/1923 P B H Page 57-36
 Republishing 462 71 TO 714
 FOR LAKE BUTLER PARK
 2/28/1927 5 1 17 55
 402 S 455 457
 WINDERMERE REPEAT
 1/29/1935 2 3 9 59
 including LOTS 27 TO 33, 61 TO 65, 147 TO 194

Ordinance locating Town of Lake
 Quincy 1/11/1910
 Town Council - May 22 - 1940 Reformed
 July 20 - 1940 in Book 1000 - 552 mm
 Page 278 - C. W. King - Clerk
 by R. R. Spaulding B.L.

PLAT OF WINDERMERE

Description of Lands Platted
 South-west quarter of 22nd Street, quarter of Section Seven (7) and South half of Section Eight (8) in the north half of Township Twenty-three (23) South, Range Twenty-Eight (28) East.

We the undersigned owners, do hereby certify that all of the lands included in this subdivision and shown on this plat belongs to us Except certain parcels in the above described lands, which are reserved to the original owners of said parcels and are being found by reference to the Public Records of Orange County, Florida, certain additional parcels of land being found by reference to more corrected in Plat Book C on Pages 44 and 45 of record of Orange County, Florida.

THE WINDERMERE IMPROVEMENT COMPANY, A CORPORATION
 BY J. H. JOHNSON PRESIDENT

THE WINDERMERE CLUB COMPANY, A CORPORATION
 BY S. S. HILL PRESIDENT

(Corporate Seal)

(Corporate Seal)

- | | | | | | | | |
|--------------------|---------|-----------------|----------------|------------------|-------------------|----------------------------|------------------|
| Elizabeth Marsh | Trustee | John L. Riles | O. C. Blandish | L. M. Chamberlin | John Seth Jr | W. S. Menshaw | Alma F. Thompson |
| Inez M. Lyon | | Grace B. Carron | Albert A. Dora | Robert L. White | Julia T. Lawrence | Mildred Bronson Julia Read | |
| M. T. Brigham | | W. B. Kenney | C. F. Stotzer | Louise Campbell | L. A. Gray | Edith M. Bittinger | |
| Alvonia Dudley | | C. M. Miles | F. K. Stotzer | | | | |
| G. C. R. Dudley | | Allen M. Miles | | | | | |
| Joseph W. Eslinger | | | | | | | |
| Henry Keller | | | | | | | |

The foregoing certificate attested and sworn to before me this the 17 day of Jan. 22, 1924. W. S. Geier, Notary Public State of Florida at Largo
 (Notarial Seal)

State of Ohio
 County of Cuyahoga
 I, Harry C. Luff, Surveyor and Civil Engineer, do hereby certify that this map was made by me from a survey made by me upon the ground and that the said survey and this map are correct
 Harry C. Luff
 Engineers Certificate

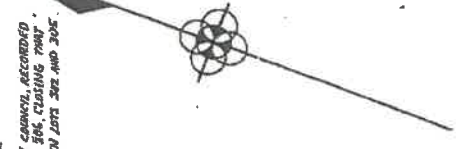
The foregoing certificate was made and signed in my presence and is attested by me this the 30th day of September, 1920
 My Commission Expires Nov 8th, 1921
 (Notarial Seal)
 M. R. Thomas
 Notary Public

Filed in office and recorded this 18th day of January 1924
 R. M. Johnson
 W. S. Geier

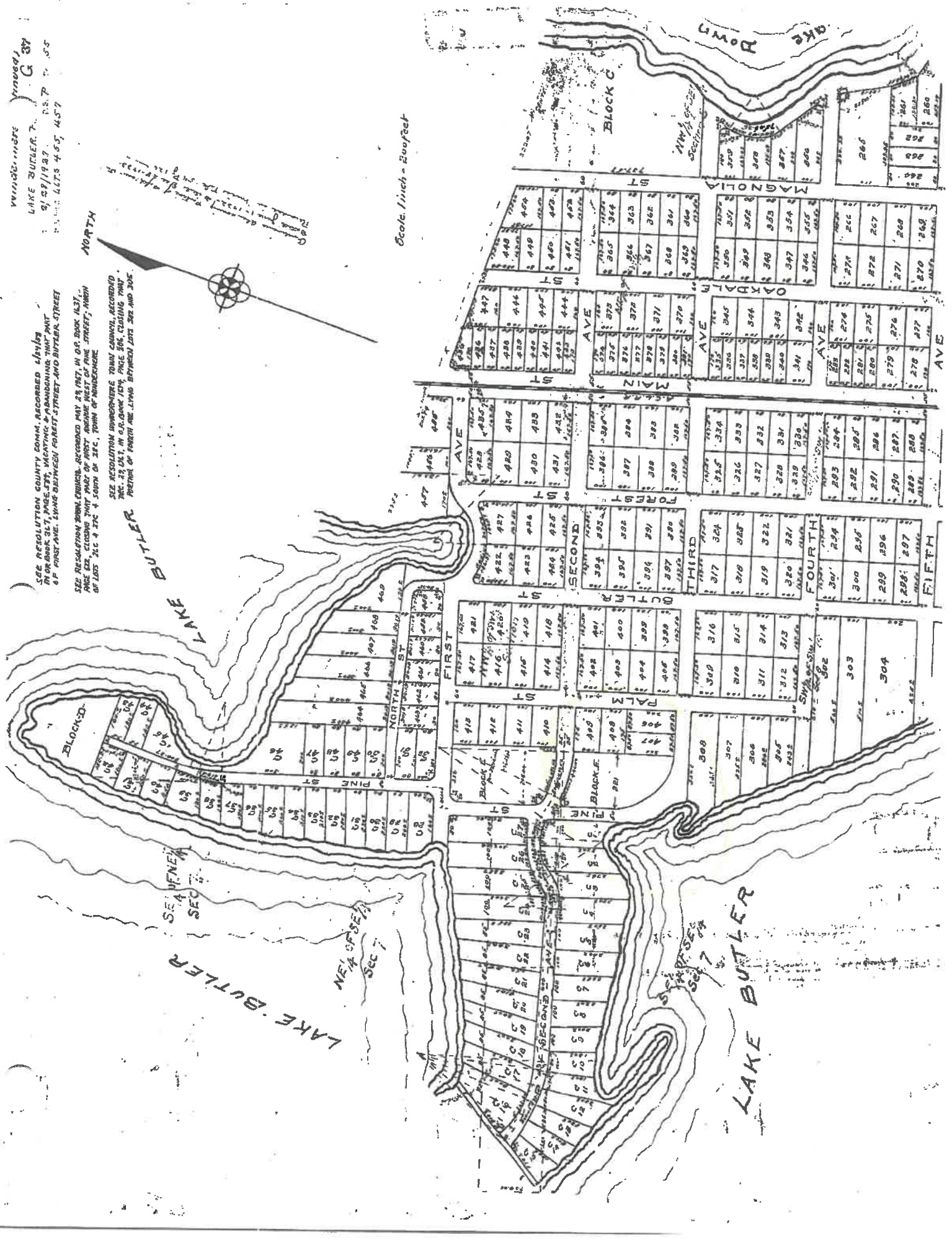
vinde. m. m. s. r. (revised)
 LAKE BUTLER 7. G 37
 9/29/1937 U.S.P. 155
 155 457 457 457

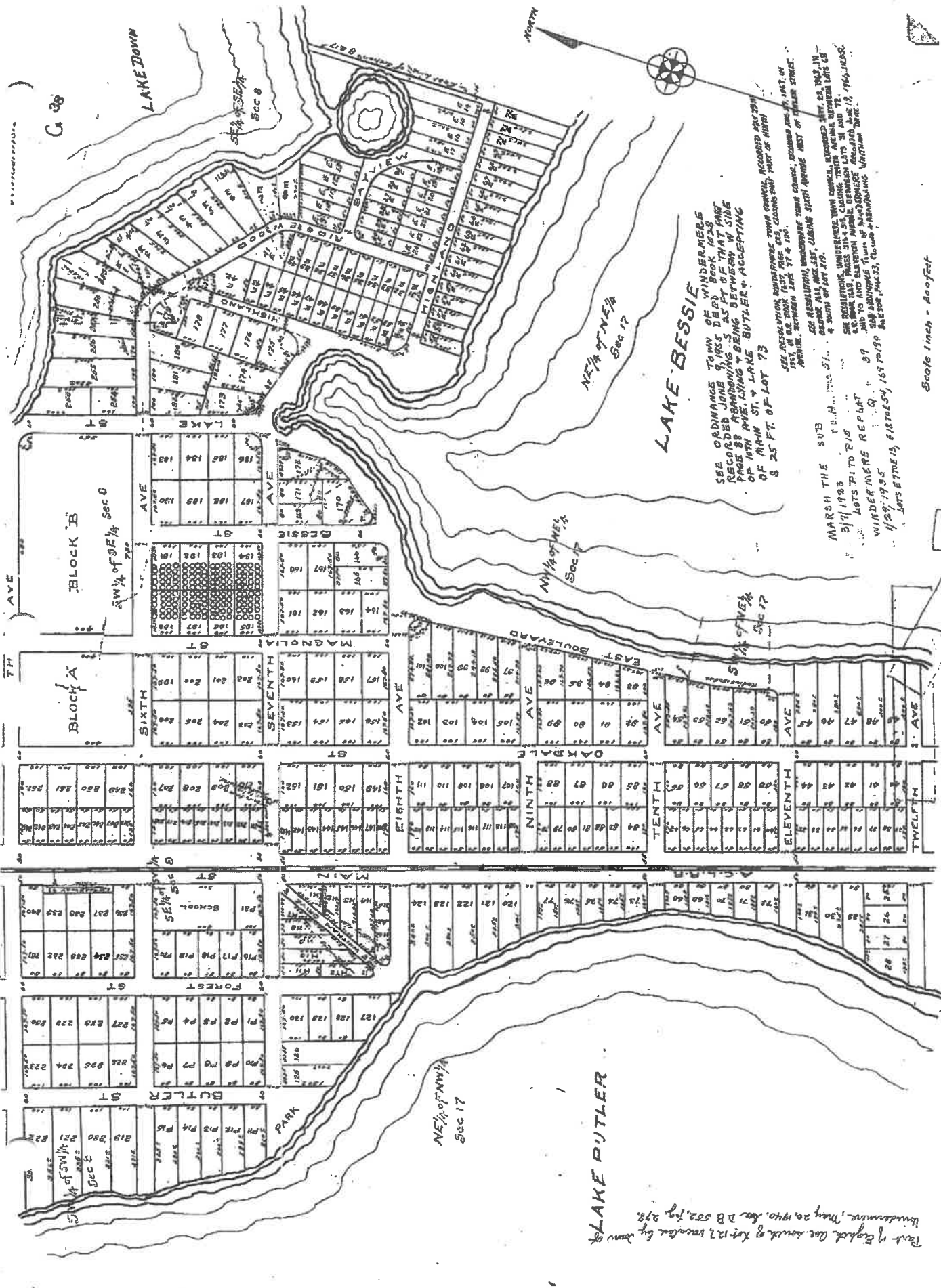
SEE RESOLUTION COUNTY COMM. RECORDED 4/14/37
 IN OR BOOK 317, PAGE 373, VACATING & ABANDONING THAT PART
 OF FIRST AVE. LYING BETWEEN FOREST STREET AND BUTLER STREET
 SEE RESOLUTION TOWN COUNCIL RECORDED MAY 28 1937 IN O.R. BOOK 1437,
 PAGE 322, CLOSING THAT PART OF FIRST AVENUE WEST OF FINE STREET, NORTH
 OF LOT 212 & 213 & SOUTH OF 214, TOWN OF MANCHESTER
 SEE RESOLUTION MANCHESTER TOWN COUNCIL RECORDED
 DEC. 23 1937 IN O.R. BOOK 1504, PAGE 364, CLOSING THAT
 PORTION OF FOREST AVE. LYING BETWEEN 212 & 206.

NORTH



Scale: 1 inch = 200 feet





C 38

LAKE DOWN

LAKE BESSIE

LAKE BESSIE

LAKE BUTLER

NORTH

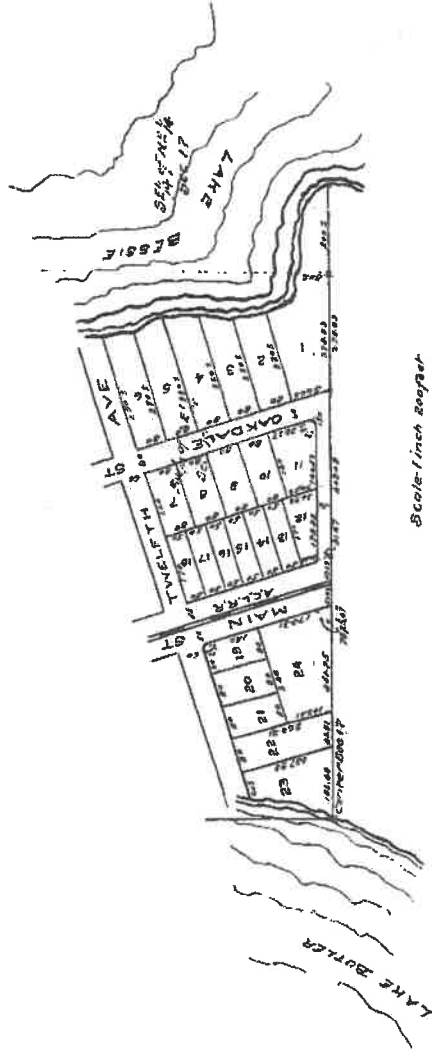
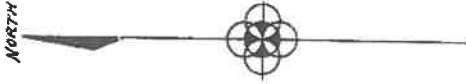
Part of English Ave south of X 112 recorded by Town of Waukegan, May 20, 1940, Sec 28 522, pg 278.

SEE ORDINANCE TOWN OF WAUKESHA
RECORDED JUNE 9, 1935 DIST. BOOK 1228
PAGE 83 ABANDONING PART OF THAT AND
OP 10TH AVE. LYING BETWEEN W. SIDE
OF 10TH ST. & LAKE BUTLER & ACCEPTING
OF 10TH ST. & LAKE BUTLER & ACCEPTING
OF 25 FT. OF LOT 73

SEE RESOLUTION WAUKESHA TOWN COUNCIL, PASSED MAY 23, 1937, IN
ALDERS ALL AGED ST. CLARK ST. & SOUTH OF ST. 110
ABANDONING THE TOWN COUNCIL, RECORDS PAGE 79, 1917, IN
DIST. BOOK 1228, PAGE 83

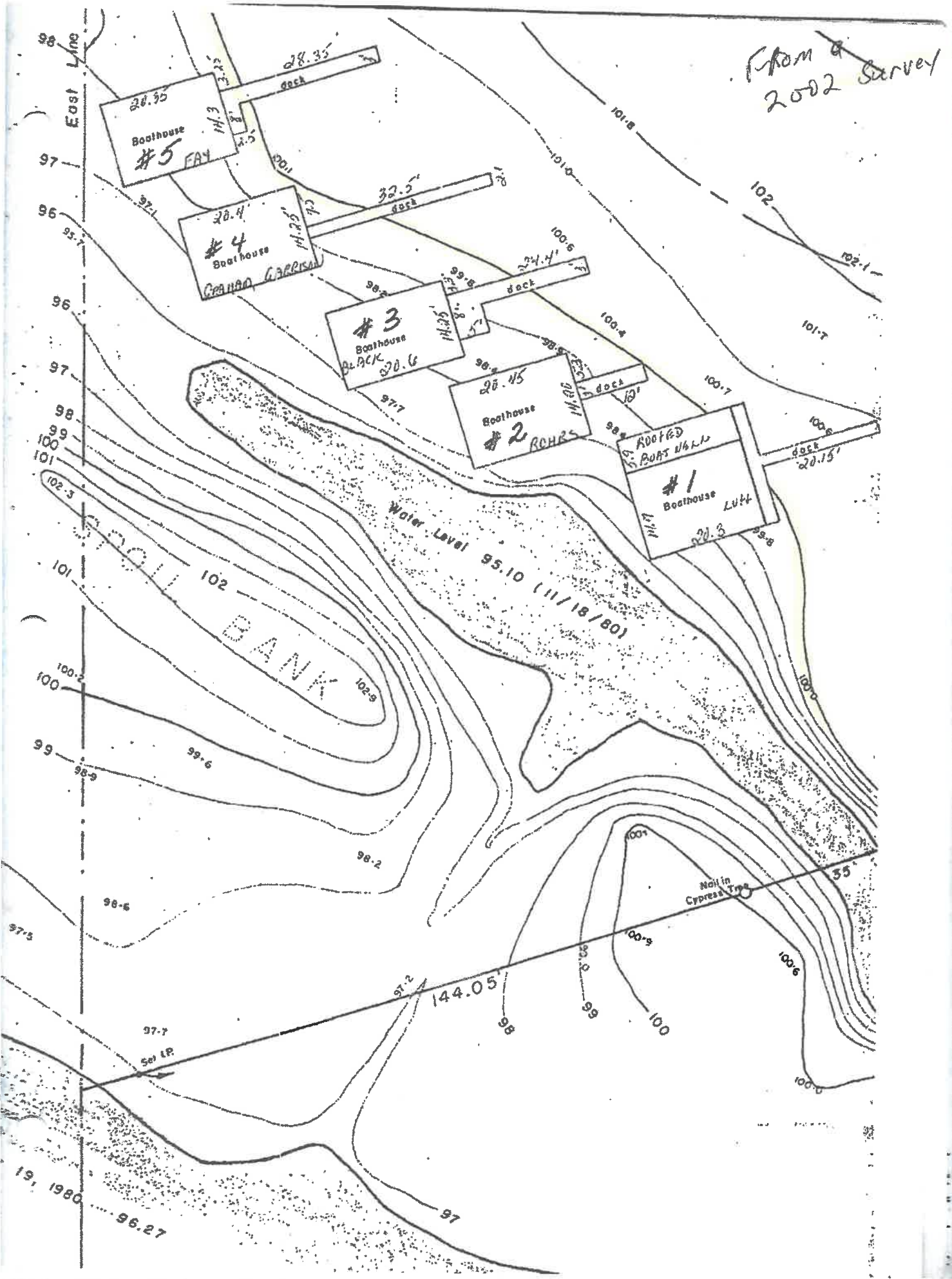
MARSH THE SUB
5/17/1933
LOTS P1 TO P15
WINDER MERE REPORT
1/29, 1935

Scale 1 inch = 200 feet



Scale: 1 inch = 200 feet

From a 2002 Survey



19, 1980

your file 5747 LL:2

200
f

722009 RECORDED OCT 10 4 16 PM 1960 O.R. 800 PAGE 101
QUIT-CLAIM DEED

THIS QUIT-CLAIM DEED, Executed this 20 day of September, A.D. 1960, by ANNIE S. WEBB, a widow, first party, to CHARLES M. BARLEY and KATHRYN S. BARLEY, his wife, whose post-office address is Post Office Box 428, Winter Garden, Florida, second party:

W I T N E S S E T H:

That the said first party, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable considerations, in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described property, situate, lying and being located in the County of Orange, State of Florida, to-wit:

A Boathouse, said Boathouse being located on piling driven into the bottom of Lake Butler, West of shore line, fronting Block "F", as shown on Plat of Windermere, recorded in Plat Book "G", at Pages 36, 37, 38 and 39, of the Public Records of Orange County, Florida, between a southerly boundary line parallel to southerly street line of Third Avenue and 101 feet northerly therefrom measured at 90° angle thereto; and a northerly boundary line parallel to said southerly street line of Third Avenue and 120 feet northerly therefrom measured at 90° angle thereto.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

RETURN TO:
Gimney, McDonald & Hannum,
P. O. Box 312
Orange, Florida

1

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

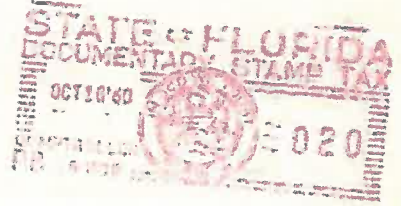
Robert M. Welch

Anne S. Welch (SEAL)

Virginia S. Welch

(SEAL)

ORANGE COUNTY



STATE OF OHIO)
COUNTY OF CUYAHOGA) ss.

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared ANNE S. WEH, a widow, to me known to be the person described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 20 day of September, A. D. 1960.

Dorothea E. Felger
Notary Public
(Dorothea E. Felger)

My Commission expires: Sept. 18, 1963



RECORDED & RECORD VERIFIED
Arthur W. Kennedy Clerk of
Circuit Court, Orange Co., Fla.

This Quit-Claim Deed, Executed this 16th day of January A.D. 1987, by

Eric A. Graham and Jeanne F. Graham, his wife

first party, to John R. McManus and H. Elaine McManus, his wife

whose postoffice address is P.O. Box 1127
Windermere, FL 32786

second party:

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the said first party, for and in consideration of the sum of \$ 10.00 in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of Orange State of Florida, to-wit:

The South one-half of the boathouse number four (4) located in the Lagoon at the foot of Pine Street and Third Avenue in Windermere, Florida



INSTR 20030315556
OR BK 06944 PG 2507
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
06/06/2003 01:55:30 PM
DEED DOC TAX 0.70
REC FEE 6.00
LAST PAGE

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

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

Signed, sealed and delivered in presence of:

Christina Drobner
CHRISTINA DROBNER
Rachael Johnson
RACHAEL JOHNSON
STATE OF FLORIDA,
COUNTY OF

Eric A. Graham
ERIC A. GRAHAM
Jeanne F. Graham
JEANNE F. GRAHAM

Prepared By :
GEORGE F. POELKER
1209 MAIN STREET
WINDERMERE, FL 34786
01
Grantee(s) SS Number:



INSTR 20030315557
OR BK 06944 PG 2508
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
06/06/2003 01:55:30 PM
DEED DOC TAX 35.00
REC FEE 6.00
LAST PAGE

**QUIT CLAIM DEED
(INDIVIDUAL)**

This QUIT CLAIM DEED, dated **MAY 20, 2003** by:
JOHN R. MCMANUS AND H. ELAINE MCMANUS, HIS WIFE
whose post office address is:
P. O. BOX 1127, WINDERMERE, FL 34786
hereinafter called the GRANTOR, to:
GEORGE F. POELKER
whose post office address is:
1209 MAIN STREET, WINDERMERE, FL 34786

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 GRANTOR, for and in consideration of the sum of \$10.00 and other valuable considerations in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto GRANTEE forever, all the right, title, interest, claim and demand which GRANTOR has in and to the following described lot, piece or parcel of land, situate, lying and being in ~~MARTIN~~ ^{ORANGE} County, Florida, viz:

THE SOUTH ONE HALF OF THE BOATHOUSE NUMBER FOUR (4) LOCATED IN THE LAGOON AT THE FOOT OF PINE STREET AND THIRD AVENUE IN WINDERMERE, FLORIDA

TO HAVE AND TO HOLD, the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said GRANTOR, either in law or equity, to the only proper use, benefit and behoof of the said GRANTEE forever.

IN WITNESS WHEREOF, GRANTOR has signed and sealed these presents the date set forth above.

SIGNED IN THE PRESENCE OF
THE FOLLOWING WITNESSES:

Signature: ~~Keith Kropp~~
Print Name: KEITH KROPP

Signature: ~~Keith Kropp~~
Print Name: Keith Kropp

John R. McManus

JOHN R. MC MANUS
H. Elaine McManus

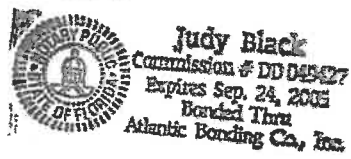
H. ELAINE MC MANUS

State of Florida
County of ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me on MAY 20, 2003 by:
JOHN R. MCMANUS AND H. ELAINE MCMANUS, HIS WIFE
He/She is personally known to me or who has produced DRIVER'S LICENSE as identification.

Notary Seal

Signature: *Judy Black*
Print Name: .



This Quit-Claim Deed, Executed this 16th day of January A. D. 1987, by

Eric A. Graham and Jeanne F. Graham, his wife

first party, to John R. McManus and H. Elaine McManus, his wife

whose postoffice address is P.O. Box 1127
Windermere, FL 32786

second party:

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the said first party, for and in consideration of the sum of \$ 10.00 in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of Orange State of Florida, to-wit:

The South one-half of the
boathouse number four (4)
located in the Lagoon at
the foot of Pine Street
and Third Avenue in
Windermere, Florida



INSTR 20030315556

OR BK 06944 PG 2507

MARTHA O. HAYNIE, COMPTROLLER

ORANGE COUNTY, FL

06/06/2003 01:55:30 PM

DEED DOC TAX 0.70

REC FEE 6.00

LAST PAGE

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

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

Signed, sealed and delivered in presence of:

Christian Broderser
CHRISTIAN BRODERSER

Eric A. Graham L.S.
ERIC A. GRAHAM

Rachael Johnson
RACHAEL JOHNSON

Jeanne F. Graham L.S.
JEANNE F. GRAHAM

STATE OF FLORIDA,
COUNTY OF

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

Eric A. Graham and Jeanne F. Graham

to me known to be the person described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this
January A. D. 1987.

Sandra F. Saglme

Sandra F. Saglme, Notary Public
My Commission Expires 6/5/88

This Instrument prepared by:
Address

Eric A. Graham
P.O. Box 421
Windermere, FL 32786

MEMO TO: Mayor and Town Council
DATE: June 12, 2001
FROM: Cecilia Bernier
RE: Boathouse Leases - Pine Street

The original leases for the five boathouses off Pine Street were signed in March 1986 and became effective January 1986.

The original lease time was for 15 years at a rent of \$10.00/year.

There was an amendment done in November 1998 giving a renewal option to the Lessee. All present lessees except for Jerry Fay, have indicated that they wish to continue the lease.

The Council needs to establish a term length and a rental fee. Attorney John Rodgers has made some recommendations to update the lease. Deletions and words to be changed have been struck through and additions are underlined.

All of the present lessees have been notified that this is an agenda item for this meeting and have been asked to be present.

List of Boathouse lessees:	Boathouse #1	-	John Luff
	Boathouse #2	-	Vic Thompson
	Boathouse #3	-	Fred Pryor
	Boathouse #4	-	Bill Rose
			Jack McManus
	Boathouse #5	-	Jerry Fay

5. Boathouse Leases - Cecilia Bernier

6-12-2001 T.C. MINUTES

Mrs. Bernier stated that the original leases were written in 1986, effective for 15 years, and \$10.00 per year. She also stated that an amendment to the lease was done in 1998. Mr. Rodgers, Town Attorney, stated that a new term and amount, if any needs to be decided by the Council. He also suggested some changes within the lease. Changes made were in first paragraph and in 1,2,7,8,10,12, and 13 paragraphs. Ms. Thellie Roper, Ms. Diane Venetta, Mr. Richard Danielson, and Mr. Byron Sutton voiced their opposition of renewing the leases. Mrs. Agnes Foote, past council member, stated at that time in 1986 ownership could not be determined and instead of having the boathouses removed, the Council gave a 15 year lease to the supposed owners Mr. Fred Pryor, Mr. Jerry Fay, Mr. Johnny Luff, and Mr. Palmer Luff all encouraged the Council to keep the boathouses that they own. Council Member Osborne suggest that this item be tabled until all information is gathered and reviewed which might not be by the next meeting. After some discussion Council Member Osborne made the motion to table this item until all the information is gathered and reviewed by the Council. Council Member Trovillion seconded the motion. Roll call vote was as follows: Brabec - yes, Coleman - yes, Osborne - yes, Trovillion - yes, and Greer - yes. Motion carried 5-0.

TOWN OF WINDERMERE

Workshop 7:30 P.M.

Meeting 8:00 P.M.

July 10, 2001

TOWN COUNCIL MEETING AGENDA

A. CALL TO ORDER

B. MINUTES APPROVAL: June 12, 2001

C. CONSENT AGENDA: Attached

**D. RESOLUTION:
RESOLUTION 01-04**

E. FIRST READING::

ORDINANCE 2001-09

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA, AMENDING CHAPTER 6, ARTICLE II, SECTION 6-37(a) TO INCREASE COST OF ANNUAL PASS FOR BOAT LAUNCHING; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

F. SECOND READING/PUBLIC HEARING:

ORDINANCE 2001-06

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA AMENDING CHAPTER 5-2, (b), CODE OF ORDINANCES OF THE TOWN OF WINDERMERE, FLORIDA TO SET SPEED LIMITS ON DESIGNATED ROADS, TO PROVIDE FOR SEVERABILITY AND TO PROVIDE AN EFFECTIVE DATE.

ORDINANCE 2001-07

A ORDINANCE OF THE TOWN OF WINDERMERE FLORIDA, RELATING TO REQUIRING AND COLLECTING PERMIT FEES FROM PROVIDERS OF COMMUNICATIONS SERVICES AND INCREASING THE LOCAL COMMUNICATIONS SERVICES TAX; PROVIDING FOR INTENT; PROVIDING FOR ELECTION NOT TO REQUIRE AND COLLECT PERMIT FEES; PROVIDING FOR ELECTION TO INCREASE LOCAL COMMUNICATIONS SERVICES TAX; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

July 10, 2001

ORDINANCE 2001-08

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA AMENDING CHAPTER 6, ARTICLE II, SECTION 6-38 TO PROHIBIT PARKING OF BOAT TRAILERS ON PUBLIC PROPERTY AND ROAD RIGHT OF WAYS WITHIN THE TOWN LIMITS AND TO SET FORTH FINES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

G. COUNCIL LIAISON REPORTS - Mayor Ruenheck

OTHER BUSINESS:

- 1. Traffic Committee - Cindy Fitzgibbon**
 - a. Speed limit on residential roads**
 - b. 3-way STOP sign - 6th Avenue and Butler Street**
 - c. 4-way STOP sign - Third Avenue and Magnolia Street**
- 2. Eagle Scout Project - T. J. Oakes**
- 3. Town Boat House Lease Renewals - Cecilia Bernier**
 - a. Proposal - Boathouse Leases - Fred Pryor**
 - b. Historical Designation - Johnny Luff**
- 4. Pancake Breakfast Report - Cecilia Bernier**

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the testimony and evidence upon which the appeal is to be based.

ALSO, IN ACCORDANCE WITH F.S. 286.26; Persons with disabilities needing assistance to participate in any such proceeding should contact the Office of the Town Clerk at least 48 hours beforehand at (407) 876-2563.

BOATHOUSE OWNERS' PROPOSAL to the WINDERMERE TOWN COUNCIL
10 JULY 2001

The owners of the five boathouses adjacent to Palmer Park make the following points and proposal to the Windermere Town Council :

- 1) As to ownership of the property the boathouses are constructed on, the State of Florida Department of Natural Resources has ruled that the property belongs to the State of Florida.
- 2) As to the ownership of the boathouses, we believe the boathouses are owned by the individuals listed at the bottom of this page.
- 3) The Luff family was the original owner of the land now known as Palmer Park. J.C. Luff, Johnny's grandfather, and others built the original boathouses. The Luff family donated the land now known as Palmer Park to the Town of Windermere for use as a park with a handshake agreement that the boathouses could remain.
- 4) With regard to the boathouse leases, the Town Council minutes from 8 Jan 1986 stated "after 15 years, new arrangements can be made with the boathouses owners".
- 5) With regard to the boathouse leases, the Town Council, on 8 September 1998, passed a motion approving a second addendum to the Boathouse Lease. This addendum made the "lease term" renewable and limited the owner's right of transfer to Windermere residents only.

In light of the above points, the boathouse owners listed below respectfully submit the following proposal to the Windermere Town Council:

- a) The boathouse owners will make necessary and appropriate physical improvement to the boathouses.
- b) The boathouse owners will provide an appropriate landscaping buffer in front of the five boathouses, provided the town extends irrigation water to maintain the landscaping.
- c) The boathouse owners will continue to pay the annual assessed property taxes.
- d) The boathouse owners will pay a reasonable increase in the annual lease fee.
- e) The Town of Windermere, in accordance with the Town Council action of 8 September 1998, will renew the boathouse leases for 15 years.

Respectfully submitted on 10 July 2001 by the following owners of the boathouses:

Boathouse #1-Johnny Luff

John P Luff

Boathouse #2-Victor Thompson

Victor Thompson

Boathouse #3-Fred H. Pryor Jr.

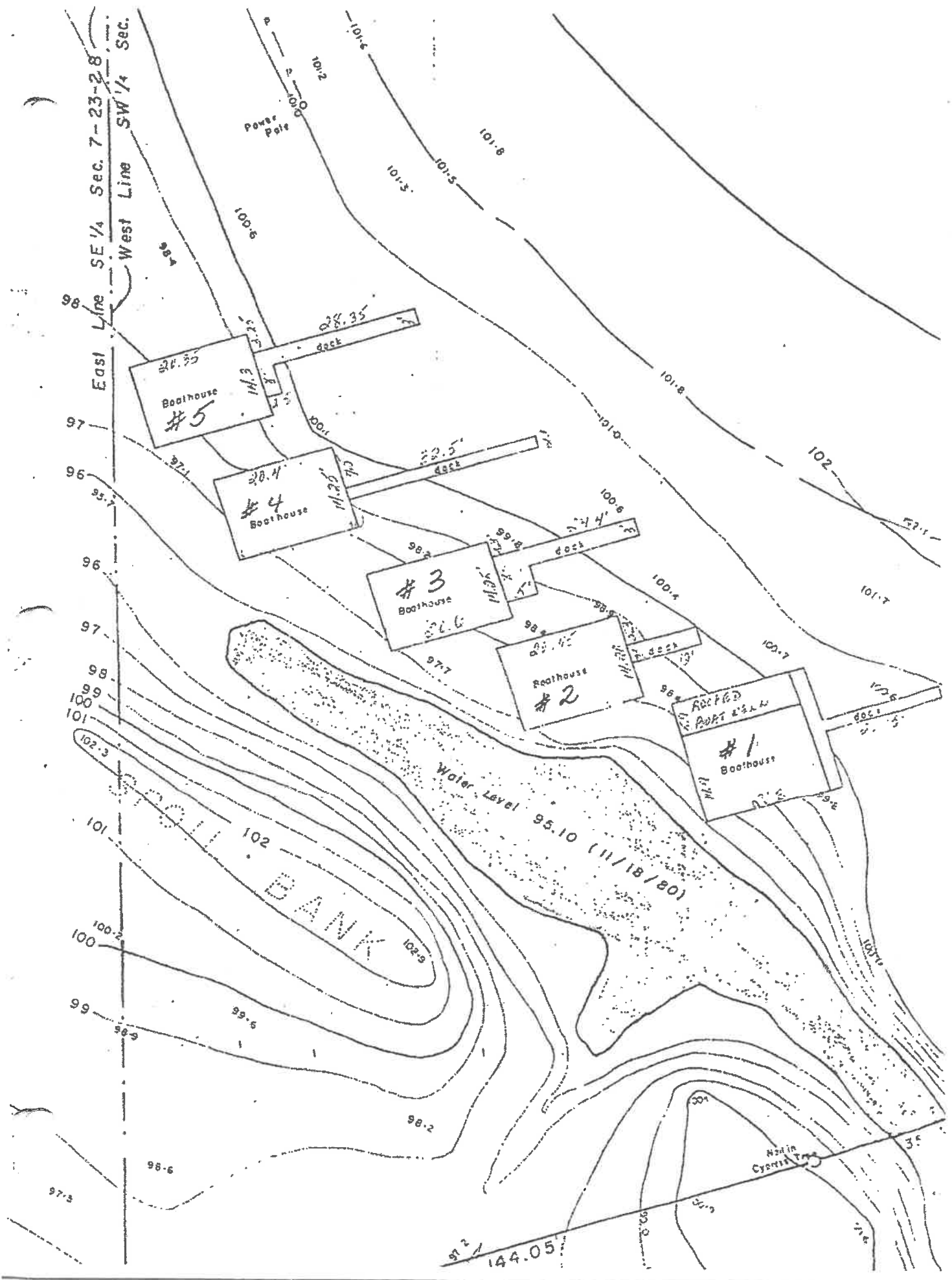
Fred H. Pryor Jr.

Boathouse #4-Bill Rose and Jack McManns

Bill Rose

Boathouse #5-Jerry Fay

Jerry Fay



BOAT HOUSE LEASE AGREEMENT

By this Agreement made _____, _____, between the TOWN OF WINDERMERE, FLORIDA (herein referred to as "Lessor") and _____ (herein referred to as "Lessee"), Lessor leases to Lessee that certain boat house designated as Number _____ on the sketch attached hereto which shows a cluster of five (5) such boat houses together with the land or lake bottom on which it is situated and the right of ingress and egress, all situated in or on an unnamed lagoon off the north side of Lake Butler in the Town of Windermere, Florida and in Township 23, Range 28, Section 7, Orange County Florida. ~~Lessee shall be the owner of the boat house structure.~~

1. Rent and Term. Lessee agrees to pay to Lessor as rent for the premises ~~Ten Dollars (\$10.00)~~ _____ per year for a period of ~~fifteen (15) years~~ _____ beginning January ~~2, 1986~~ _____. The full rent for the entire term in the amount of ~~One Hundred Fifty Dollars (\$150.00)~~ _____ shall be payable upon execution of this Lease Agreement by the parties hereto.

2. Insurance. Lessee hereby agrees to maintain in effect a policy of causality and liability insurance in favor of the Lessor in the amount of ~~\$100,000/\$200,000~~ \$1,000,000/\$2,000,000 and with a company approved by the Lessor naming Lessor as loss payee or additional insured, and further agrees to indemnify the Lessor for any and all loss or liability in excess of any policy limits arising from the Lessor's ownership of the premises during the term of this Lease Agreement.

3. Maintenance. Lessee hereby agrees to maintain the premises in good repair and in a clean, safe and sanitary condition. The Lessees agree, either individually or together with the other Lessees, to take the necessary steps to clear out the lagoon area surrounding the boat houses. The Lessee's responsibility to maintain the premises includes the boat house structure itself and the grounds adjacent to it. Lessee expressly accepts the responsibility for maintaining the painted surfaces of the boat house in a clean, fresh and attractive condition. Lessor agrees to cooperate with the Lessee in connection with Lessee's efforts to maintain, improve or alter the waterway adjacent to the boat house, provided all such efforts fully comply with all federal, state and county regulations, both environmental and otherwise.

4. Quiet Enjoyment. Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold and enjoy the premises for the agreed term.

5. Use of Premises. The premises shall be used and occupied by Lessee exclusively for storage of Lessee's watercraft, and no part thereof shall be used at any time during the term of this Lease by Lessee for the purpose of carrying on any business, profession or trade of any kind, or for any purpose other than as specified herein. Under no circumstances shall any sign be placed on or about the premises by Lessee except a "no trespassing" sign.

6. Condition of Premises. Lessee stipulates that he has examined the premises, including the grounds and improvements, and accepts them in their present condition. Such condition, whether superior, equal or inferior to the condition in which the Lessee is required by the terms of this Agreement to maintain the premises, shall in no way modify, reduce or enlarge the maintenance obligations of the Lessee as contained herein.
7. Assignment and Subletting. Subject to compliance with the terms of this Lease and written consent of the Lessor, which consent shall not be unreasonably withheld, Lessee may assign this Lease or Sublet or grant any License to use the premises of any part thereof only to bonafide resident of the Town of Windermere or record title owners of real property located in the Town of Windermere.
8. Alterations and Improvements. ~~Lessee shall be considered the owner of the boat house structure.~~ Lessee shall be permitted to make any alterations and improvements to the existing building or to replace the existing building with a new building provided that any alteration or improvement complies with this Lease and applicable building codes.
9. Utilities. Lessee shall be responsible for arranging and paying for any and all utility services on the premises.
10. Damage to Premises. If the premises, or any part thereof, shall be damaged by fire or other casualty for whatever reason, however caused, and to whatever extent, Lessee shall have the option of rebuilding or repairing. In the event of fire or windstorm or other casualty damage, the Lessee will be obligated to remove the remaining portions of the structure in the event Lessee decides not to rebuild or repair. Lessor shall have no obligation to repair or rebuild the premises in event of any casualty loss or damage.
11. Dangerous Materials. Lessee shall not keep on the premises any item of dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company. Notwithstanding the foregoing, any storage of gasoline in or about the premises must be in government approved containers, not to exceed at any one time ten (10) gallons in quantity.
12. Surrender of Premises. At the expiration of the lease term, Lessee shall surrender the premises in as good state and condition as they were at the commencement of this Lease, reasonable use, wear and tear and ~~damages by the elements~~ excepted. ~~Lessee will have the right to remove all lumber building materials, boat hoists and fixtures within thirty (30) days of termination should it chose to do so.~~
13. Default. If Lessee fails to comply with any of the material provisions of this Lease, within ~~sixty (60) days~~ thirty (30) days after delivery of written notice by Lessor specifying the noncompliance and indicating the intention of Lessor to terminate the Lease by reason thereof, Lessor may terminate the lease.

14. Abandonment. If at any time during the term of this Lease Lessee abandons the premises or any part thereof, Lessor may, at its option, obtain possession of the premises in the manner provided by law, and without becoming liable to Lessee for damages or for any payment of any kind whatever. If Lessor's right of reentry is exercised following abandonment of the premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

15. Binding Effect. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives and assigns of the parties hereto, and all covenants are to be construed as conditions of this Lease.

16. Attorneys' Fees. The Lessor shall be entitled to reasonable attorneys' fees at trial or on appeal should it be necessary to enforce the terms of this Lease.

17. Real Property Taxes. Lessee shall pay all real property taxes assessed against the leased property by any authorized governmental entity. Payment shall be made directly to Lessor within ten (10) days of written notice from Lessor setting forth the amount of taxes due.

18. Renewal of Lease. Lessee may renew this Lease upon terms and conditions mutually agreeable to the parties. Lessee shall give Lessor ninety (90) days written notice of the intent to renew.

Executed at Windermere, Florida, the day and year first above written.

WITNESS:

WITNESS:

TOWN OF WINDERMERE

By: _____

Dated: _____

LESSEE:

By: _____

Dated: _____

Town of Windermere



ORDINANCE #2001-09

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA, AMENDING CHAPTER 6, ARTICLE II, SECTION 6-37(a) TO INCREASE COST OF ANNUAL PASS FOR BOAT LAUNCHING; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Windermere has determined that it is in the best interest, safety and general welfare of the residents of the Town of Windermere to increase the charge for an annual pass for boat-launching in town.

NOW, THEREFORE, be it ordained by the Town Council of the Town of Windermere, Florida that the following section of the Town Code of the Town of Windermere be changed:

SECTION ONE

Chapter 6, Article II Section 6-37(a) Boat-launching locations, is amended to read:

- (a) Residents and property owners of the town may launch and recover boats or watercraft within the town from town property providing they have obtained a trailer sticker and/or auto pass, which must be renewed annually. This sticker would be displayed on the left front area of the trailer near or on the trailer winch brace. The auto pass must be displayed on the dash board of a vehicle that is left in the park. The annual pass and/or sticker may be obtained for a cost of five twenty-five dollars (~~\$5.00~~) (\$25.00) prior to June 30th at the town clerk's office.

SECTION TWO

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the provisions or application of the Ordinance that can be given effect without the invalid provision or application and to the end the provisions of this Ordinance are declared severable.

Member Osborne seconded the amendment. Roll call vote was as follows: Brabec - yes, Coleman - yes, Osborne - yes, and Greer - yes. Motion carried 4-0.

b. 3-way STOP sign - 6th Avenue and Butler Street

Mrs. Fitzgibbon stated that after receiving complaints from residents, the Board discussed the idea of a three way stop at the corners of 6th Avenue and Butler Street. Mrs. Potthast of Butler Street recommended a two-way stop at Butler Street. After much discussion, Council Member Greer made the motion to approve the 3-way stop sign. Council Member Osborne seconded the motion. Roll call vote was as follows: Brabec - yes, Coleman - yes, Osborne - yes, and Greer - yes. Motion carried 4-0.

c. 4-way STOP sign - Third Avenue and Magnolia Street

Mrs. Fitzgibbon stated that after a request was received from a resident and research by the committee was done, they would like to put a 4-way stop at the intersection of Third Avenue and Magnolia Street. Council Member Greer made the motion to approve the stop sign request. Council Member Brabec seconded the motion. Roll call vote was as follows: Greer - yes, Osborne - yes, Coleman - yes, and Brabec - yes. Motion carried 4-0.

2. Eagle Scout Project - T. J. Oakes

T. J. Oakes, 33 Oakdale Street, stated that he would like to refurbish the dock at Fernwood Park for his Eagle Scout Project. He would like to re-plank parts of the deck, add a rope or hand rail, add a ladder, add a rub-rail for docking boats, and stain the wood. Council Member Greer made the motion to approve the eagle scout project. Council Member Osborne seconded the motion. Roll call vote was as follows: Brabec - yes, Coleman - yes, Osborne - yes, and Greer - yes. Motion carried 4-0.

3. Town Boathouse Leases - Cecilia Bernier

Mrs. Bernier stated that all information on the Boathouses was in their books for review. Ms. Diane Vennetta stated she would like a copy of all the paperwork. Council Member Greer gave Ms. Vennetta his paperwork. Council Member Osborne made the motion to postpone this item until next months' meeting so the Attorney can give the Town a legal opinion on this issue. Council Member Greer seconded the motion. Ms. Diane Vennetta, Ms. Thellie Roper, and Mrs. Terry Pleus spoke in opposition of re-newing the leases. After some discussion, roll call vote was as follows: Greer - yes, Osborne - yes, Coleman - yes, and Brabec - yes. Motion carried 4-0.

a. Proposal Boathouse Leases - Fred Pryor

Mr. Pryor stated that due to the item being postponed, he would like to defer the proposals until next month.

b. Historical Designation - Johnny Luff

Mr. Johnny Luff requested that his Boathouse be granted a Historic Status Designation. The boathouse was built by his grandfather in 1923. Mayor Ruenheck stated that the next step for this item would be the Historical Board Committee.

**TOWN OF WINDERMERE
COUNCIL AGENDA ITEM**

For Meeting of: October 9, 2001

From: Carl Patterson

SUBJECT:

Historic Preservation Board

SUMMARY:

A Public Hearing (none of public appeared) was held and considered Local Historic designation of the 1916 School/Town Office, J. C. Palmer house (John Luff owner) and the five boathouses. (Minutes attached)

RECOMMENDED ACTION:

Approval of the designation as Local Historic Buildings for the seven structures.

1916 school-Town Office - Carl Patterson - alumni school

NOTE: All agenda items for the regular Town Council Meeting must be in the Town Clerk's Office by noon the preceding Wednesday.

DISTRIBUTION:

Carl Patterson house John Luff grandeur

E:\wpdata\council\fa.1

5 Boathouses date from about 1915 - Boathouse

and Carl # 3 in 1915 - were known as

2000 - 1915 - 1915 to 1915 - 1915 to 1915

which was Ripples - We have no info that the current other boathouse was Ripples the water plant

~~Local Historic Buildings~~

TOWN OF WINDERMERE

Workshop 7:30 P.M.
Meeting 8:00 P.M.

October 9, 2001

TOWN COUNCIL MEETING AGENDA-REVISED

- A. CALL TO ORDER
- B. MINUTES APPROVAL: September 10, 2001 - Tentative Budget Meeting
September 11, 2001 - Town Council Meeting
September 24, 2001 - Final Budget Meeting
- C. CONSENT AGENDA: ATTACHED
- D. PROCLAMATION: PROCLAMATION DECLARING NOVEMBER, 2001 AS NATIONAL EPILEPSY AWARENESS MONTH
- E. FIRST READING: NONE
- F. SECOND READING/PUBLIC HEARING: NONE
- G. COUNCIL LIAISON REPORTS - Mayor Ruenheck

OTHER BUSINESS:

- 1. Development Review Board - Charlie True
 - a. Bob Washbish - 635 Butler Street - Home Occupaitonal License
- 2. Annexations - Carl Patterson
- 3. Popluation - Carl Patterson
- 4. Historic Preservation Board - Carl Patterson
- 5. Boathouses
 - a. John Rodgers
 - b. Ted Estes/Thellie Roper
 - c. Fred Pryor

*In our discussion we
view of opinion that our
(Hist Bd) would now after
John Rodgers et al in that it
was old business + ours new*

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the testimony and evidence upon which the appeal is to be based.
ALSO, IN ACCORDANCE WITH F.S. 286.26; Persons with disabilities needing assistance to participate in any such proceeding should contact the Office of the Town Clerk at least 48 hours beforehand at (407) 876-2563.

TOWN OF WINDERMERE

Town Council Meeting Minutes

October 09, 2001

A. CALL TO ORDER:

Meeting called to order at 8:00 P.M.

Present were Mayor Karen Ruenheck, Council Members, Dennis Brabec, Pat Coleman, Bill Osborne, Doug Trovillion and Don Greer. Attorney John Rodgers was also present. Town Manager Cecilia Bernier, Finance Clerk Linda Brewer, and Zoning Clerk Sherry Music were also present.

B. MINUTES APPROVAL:

Council Member Osborne made the motion to approve the minutes of the Tentative Budget Meeting September 10, 2001, the Town Council Meeting September 11, 2001 and the Final Budget Meeting September 24, 2001. Council Member Brabec seconded the motion. Roll call vote was as follows: Greer- yes, Trovillion - yes, Osborne - yes, Coleman- yes, and Brabec - yes. Motion carried 5-0.

C. CONSENT AGENDA:

Council Member Brabec made the motion to accept the Consent Agenda as presented. Council Member Coleman seconded the motion. Roll call vote was as follows: Brabec - yes, Coleman - yes, Osborne - yes, Trovillion - yes and Greer - yes. Motion carried 5-0.

D. PROCLAMATION/RESOLUTION

PROCLAMATION DECLARING NOVEMBER, 2001 AS NATIONAL EPILEPSY AWARENESS MONTH.

Mayor Ruenheck proclaimed November National Epilepsy awareness month.

E. FIRST READING: NONE

F. SECOND READING/PUBLIC HEARING: NONE

G. COUNCIL LIAISON REPORTS - MAYOR RUENHECK

Mayor Ruenheck: Mayor Ruenheck recognized Julie Schwamm and Meg Miller for organizing and holding a barbeque at the Windermere Town Hall on September 27, 2001 to benefit the New York Disaster. Appreciation letters were presented to Julie Schwamm and Meg Miller on behalf of the town. Ms. Schwamm reported that it was a huge success and that \$6200.00 was raised in three hours. Ms Schwamm thanked the council for donating the town hall, the town staff, volunteers, and all those that donated food and the items for the auction.

Council Member Greer: Mr. Greer reported that the maintenance staff worked hard repairing the storm damage in September and also doing preventive work. The boat ramp on Lake Bessie has been rebuilt and is usable. The traffic group is busy learning about what justifies actions to be taken by the town

Town Council Meeting Minutes

October 09, 2001

with emphasis on ways to do street closures to stop some of the drive thru traffic. The next meeting is Thursday, October 18, 2001.

Council Member Trovillion: Mr. Trovillion introduced Mike Irwin who will be doing an Eagle Scout Project by remodeling a handicap access ramp for the town hall. Mike Irwin of Varsity Unit 225 addressed council requesting approval to commence work in November on the ramp on the back of town hall that was done in the 1980's and is now rotting. The Mayor asked Mike to look at the advisability of the ramp facing the handicap parking spaces on the library side as suggested by the Elder Committee. Mr. Greer suggested that Mike speak to Don Strube, Jr, a town resident and owner of Colorwheel, about a new paint available for pressure treated wood.

Mr. Trovillion also reported on the new elementary school to be built in Gotha and the overcrowding at the high schools because of the rapid growth in this area. Mr. Trovillion recommended that Carol Ardaman come in to talk with the council in a workshop. The Mayor asked Ms. Bernier to arrange this for the November 13 meeting or if that is not possible for the January meeting.

Council Member Osborne: Mr. Osborne reported that the Long Range Planning Committee met in September and all the other committee chairman were brought in to find out what they were doing to avoid duplication of efforts. Chairman Fred Pryor invited John Rinehart, a professional planner, to sit in and observe the Long Range Planning meeting last month and for the next few meetings. Next month an Orange County representative, Chris Testerman, will talk about the county's vision for this area and how Windermere fits in. The Committee also is discussing an outline for the next 20 years of what their priorities are with traffic being the biggest problem because of all the development around Windermere. Mr. Osborne reported that the Committee has concluded that a professional traffic study is needed. The committee estimates that this study will be about \$25,000. They have requested Ms. Bernier to check into some ideas on how to fund the study. The next meeting is scheduled for the last Thursday of the month, October 25th.

Council Member Coleman: Ms. Coleman stated that the Elder Affairs Committee has begun the state mandated program to discuss needs for the elderly residents. The first coffee was held with 15 present. Some of the biggest concerns were developing some type of transportation to their doctors and the grocery store and adding activities during the day, like lunches along the lines of the pot luck supper. Ms. Coleman also reported that Joan Laughner was appointed as new Chairperson to the Parks and Recreation Committee. The two grants were submitted to the State for Palmer Park and Lake Down Park and we should hear about them after July when the Legislature meets. The dock has been rebuilt at Fernwood Park by two eagle projects. Two other scouts have contacted the Parks and Recreation Committee about doing more projects in that park. The April 13th 5K run fundraiser, chaired by Bill Peterson, is now being organized. The Halloween Party is scheduled for October 19th at Town Hall headed up by Becky Mealey. The Blood Drive is scheduled for October 30th at town hall. The Parks and Recreation Committee will have a booth set up for information and input.

Council Member Brabec: Mr. Brabec stated that the Historical Committee and the Tree Board met. Mr. Brabec reported that the Tree Board may be under funded on the Johnson Park project and funds may need to be moved from the perimeter park project. Janet Maland gave a report on this request for money to be moved and spent on sod to help with the drainage problem. Ms. Maland stated that this needs to be accomplished prior to April so that they can be reimbursed by the Lake Management Society. Ms. Bernier stated that council should approve moving \$5,000.00 to the Johnson Park project. The action needed for this item was added to the Business items at the end of this meeting.

OTHER BUSINESS:

Mayor Ruenheck changed the order of the business items. Item 4 was presented first.

4. **Historical Preservation Board-Carl Patterson.** Carl Patterson stated that the Historical Preservation Board held a public hearing on September 18th and are recommending that the 1916 School House, the Cal Palmer House built in 1912, and the 5 boathouses dated back to 1915 be designated as local historic structures. Mr. Patterson stated that this is a local designation, not a protection. Mayor Ruenheck recommended that the three items be voted on separately. Council Member Osborne left the room at 8:32 p.m. and returned at 8:35 p.m. Carl Patterson stated the Historic Preservation board has a picture of the boathouse showing John Luff's boathouse dating back to 1916. Mr. Patterson showed a portrait of the 5 boathouses dating back to about 1960.

Council Member Osborne made the motion to approve the 1912 school to be a local historical structure as recommended by the Historical Preservation Board. Council Member Brabec seconded the motion. Roll Call vote was as follows: Brabec-yes, Coleman-yes, Osborne-yes, Trovillion-no, Greer-no. Motion carried 3-2.

Council Member Osborne made a motion to approve the Cal Palmer House to be a local historical structure as recommended by the Historical Preservation Board. Council Member Coleman seconded the motion. Roll Call vote was as follows: Greer-yes, Trovillion-yes, Osborne-yes, Coleman-yes, Brabec-yes. Motion carried 5-0.

The council delayed the third item on the boathouses until after the discussion of item 5 regarding the boathouses.

5. **Boathouses**

Mayor Ruenheck asked that each speaker limit their discussion to three minutes. Council Members Trovillion and Brabec stated that they had a conflict of interest and would not be voting on this issue. Council Member Osborne requested that Attorney John Rodgers speak first.

a. **John Rodgers**

Attorney Rodgers addressed the council regarding the history of the Town's actions on the boathouses. Mr. Rodgers stated that the Town has the right to regulate the use and possession of the boathouses which are located on property subject to the Town's riparian rights. The Lease Agreement was entered into on March 4, 1986. It was noted that the Council minutes of January 8, 1986 stated that after 15 years new arrangement can be made by the town and the boathouse owners. Mr. Rodgers added that in 1998 the town entered into a written addendum to the existing Lease Agreement permitting renewal of the Leases upon terms and conditions mutually agreeable to both parties. Attorney Rodgers stated that the town has riparian rights and can determine whether the boathouse leases can continue in existence. It was his opinion that the lease does not state that the lease is non-renewable, it was silent. Attorney Rodgers recommended to the council that some panel or committee be appointed by the council to negotiate in good faith with the owners of the boathouses to determine if any terms could be agreed upon.

b. **Ted Estes**

Attorney Estes reiterated the points that were made in the workshop previous to the Town Council meeting. Attorney Estes requested that the notebook presented to the council be included as part of the record of the minutes of this meeting. Attorney Estes stated there is no obligation on the part of the town to renew these leases. Mr. Estes presented to the council that the issue is what is in the best interest of the town. If the leases are renewed it would limit the use of the property to five families, maintain an eyesore in the neighborhood, maintain an attractive nuisance, maintain an encroachment on a neighbors property and he stated the tenants have not lived up to the original

agreement to maintain the boathouses and the lagoon. Mr. Estes stated that it was his opinion that the addendum was unenforceable, not specific, and no consideration was given to it. The owners did not give 90 days notice to renew the leases.

Ms. Thellie Roper addressed the council stating that the council has an obligation to represent the town, not just five people. Ms. Roper stated that 276 cards were received back from residents and many had notes.

Ms. Dianne Venetta addressed the council stating that she is the property owner on the corner where one of the boathouses encroaches on her property. She urged the council to make the decision on what is the best public use of the property.

c. Fred Pryor

Mr. Pryor addressed council stating that he felt that there was a financial interest on the other parties side and he did not believe that the 276 cards sent out by Ms. Roper represented the 1400 residents of the town. Mr. Pryor stated that the boathouse owners believe that they have some rights, they have an agreement with the town, they believe they own property that adds substantial value to their homes. He stated that the owners would like to negotiate this out and work out a renewed lease with the town.

Ms. Donna Mezger also addressed council regarding the mailout of the cards to the residents. She did not feel that the mailout was handled fairly as the history on the boathouses was not given.

Janet Maland requested that the boathouses not be torn down, but the council consider other uses for town residents.

Genevieve Potthast addressed the council recommending that the council lease the boathouses for one year at a time and let other residents use the boathouses.

Discussion and questions followed by the council. Mayor Ruenheck asked Town Manager Cecilia Bernier and John Rodgers if they had any further input. There were no further comments.

Council Member Osborne made a motion to adopt the recommendation of John Rodgers and set up a committee consisting of Don Greer, John Rodgers, and Cecilia Bernier to negotiate a new lease term with the five boathouse owners. The recommendation is attached as a permanent record to these minutes. Council Member Pat Coleman seconded the motion. Roll Call vote was as follows: Don Greer-yes, Council Member Osborne-yes, Council Member Pat Coleman-yes. Motion carried 3-0. Council Members Brabec and Trovillion did not vote because of conflict of interest.

1. Development Review Board-Charlie True

a. Bob Washbish - 635 Butler Street - Home Occupational License

Town Manager Cecelia Bernier stated that the Development Review Board met on September 18, 2001 and had one item to bring to council that they reviewed. Mr. Washbish is requesting an occupational license for a mobile handyman's business from his home. Mr. Washbish needs a physical location in order to apply for an Orange County license as well as the Town License. The Development Review Board has recommended approval.

Council Member Trovillion made a motion to approve the request. Council Member Coleman seconded the motion. Roll call vote was as follows: Brabec-yes, Coleman-yes, Osborne-yes.

Trovillion-yes, Greer-yes. Motion carried 5-0.

2. Annexation - Carl Patterson

Mr. Patterson presented an annexation report by the Orange County Staff that was presented to the Orange County Commission. Mr. Patterson stated that the towns and cities disagree with the report. The Mayors and Planners have met and have prepared a report. This report will go to Orange County on the 6th of November. An information report was included in the council member packets.

3. Population - Carl Patterson

Carl Patterson stated that the population is listed at 2,256 as of the 1st of April. The new annexation of 85 houses was not listed but that has been corrected with the University of Florida.

4. Historic Preservation Board, continued - Boathouses

Council Member Osborne made a motion to approve the boathouses as local historical structures as recommended by the Historical Preservation Committee. Council Member Brabec seconded the motion. Council Member Greer - no, Trovillion - no, Osborne - yes, Coleman - yes, Brabec - yes. Motion carried 3 - 2.

6. Tree Board Monies

Cecilia Bernier stated that \$5,000 is the amount that was designated for the perimeter trees and this amount needs to be moved over to the Johnson Park Project.

Council Member Osborne made a motion to move the \$5,000.00 as requested. Council Member Brabec seconded the motion. Roll call vote as follows: Brabec - yes, Coleman - yes, Osborne - yes, Trovillion - yes, Greer - yes. Motion carried: 5-0.

Mayor Ruenheck reported that Health Central applied for a grant for defibrators to be used in Windermere's three police cars and it was funded. The hospital will be donating them to our police department and training the officers to use them.

No further business.

Council Member Brabec made a motion to adjourn. Council Member Trovillion seconded the motion. All in favor.

The meeting adjourned at 9:25 p.m.

Linda Brewer, Finance Clerk

Approved

TOWN OF WINDERMERE

Workshop 7:30 P.M.
Meeting 8:00 P.M.

February 12, 2002

TOWN COUNCIL MEETING AGENDA

- A. CALL TO ORDER
- B. MINUTES APPROVAL: January 8, 2002
- C. CONSENT AGENDA: See Attached
- D. PROCLAMATION:
March 12, 2002 Election
American Red Cross Month
- E. RESOLUTION:
Resolution 2002-01
Retirement Benefit Program
- F. FIRST READING: NONE
- G. PUBLIC HEARING: NONE
- H. COUNCIL LIAISON REPORTS: Mayor Ruenheck

OTHER BUSINESS:

- 1. Development Review Board - Charlie True
 - a. Mr. Michael Maloney - 2033 Maguire Road - Home Occupational License
 - b. Mr. and Mrs. Jim Passilla - 202 E. First Avenue - Variance Request
 - c. Mr. and Mrs. Doug Trovillion - #4 First Court - Variance Request
- 2. Charter Amendment response from FLC - John Rodgers
- 3. Boathouse Leases - John Rodgers
- 4. Traffic Committee - Cindy Fitzgibbon
- 5. Local Mitigation Strategy - Carl Patterson
- 6. Tree Board Landscape Plan - Mason Friar
- 7. FEMA Updates - Carl Patterson
- 8. Town Hall Rentals - Doug Trovillion
- 9. Lobbyist - Mayor Ruenheck

Van Derhey 21 5/7 26
Karn
Prigo
Trovillion
Zubin
Apr 26 - Not working
5/13 May 13

11 was before recap class

Church location on 01

Arch contract cost

demonstration procedure

*unless plans for replacement
bldg are approved by FLC*

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the testimony and evidence upon which the appeal is to be based.
ALSO, IN ACCORDANCE WITH F.S. 286.26: Persons with disabilities needing assistance to participate in any such proceeding should contact the Office of the Town Clerk at least 48 hours beforehand at (407) 576-2563.

Runner Suzi Kamm sold her apt - one story to a franchise

approval for this request. Council Member Greer made the motion to approve this request. Council Member Trovillion seconded the motion. Roll Call vote was as follows: Brabec - yes, Coleman - yes, Trovillion - yes, and Greer - yes. Motion carried 4-0.

Council Member Trovillion suggested adding the words "Recommend Approval", and "Recommend Disapproval" as well as keeping "Comments" be added to the letters mailed to residents. Council Member Trovillion made the motion to look into having the words "Recommend Disapproval" and "Recommend Approval" added to the letters mailed to residents for variance request and home occupational license. Council Member Coleman seconded the motion. Roll call vote was as follows: Brabec - yes, Coleman - yes, Trovillion - yes and Greer - yes. Motion carried 4-0.

2. Charter Amendment response from Florida League of Cities - John Rodgers

Town Attorney John Rodgers stated that under the direction of the Town Council from the meeting on January 8, 2002, he contacted the Florida League of Cities Legal Department to request a second opinion regarding the legality of the referendum to change the Charter to provide a different method of annexation and what other municipalities in their Charter's provide for all annexations on a referendum. The opinion returned to Mr. Rodgers stated that it is not the League's function to research a legal opinion of the attorney to the client and the League will not comment on the conclusion. Council Member Brabec stated that the second opinion should not have been on the opinion of what the Town Attorney has given but on the question of amending the Charter to have all annexations on a referendum. Mr. Rodgers stated that he has given his opinion and the League has given their opinion if further opinion is requested an independent attorney would have to be hired.

3. Boathouse Leases - John Rodgers

Mr. Rodgers stated that he had met with Town Manager Cecilia Bernier, Council Member Don Greer, and Boathouse Lessee representative Fred Pryor regarding the new lease. A proposed lease has been completed with changes of a 10 year lease retro active to March 1, 2001, renewable after ten years with the same terms and conditions, rent amount \$400.00 per year with the Consumer Price Index being used for annual rent increases, liability insurance limit to be \$1,000,000.00, and end of lease ownership reverts back to the Town. The lagoon area is to be cleaned-up by Biosphere at the expense of the Lessee's which is approximately \$3,000.00 and the Town will be responsible for landscaping, mowing and maintaining the Lagoon area. Fred Pryor stated that the insurance policies state the Town of Windermere as additional insured. He then asked if the lease could begin at March 1, 2002. Council Member Trovillion made the motion to approve the lease, state that the Town is to be listed as additional insured on the Certificate of Insurance supplied to the Town, and lease to be effective as of March 1, 2002. Council Member Coleman seconded the motion. Council Member Greer stated that the term should begin at March 1, 2001 so there is no lapse in time on the lease. John Rodgers also suggested that the term start March 1, 2001. Council Member Trovillion amended the motion to stated the lease begin at March 1, 2001 and the payment of the one year be at the last year's rate of \$10.00. Council Member Coleman seconded the amendment. Roll call vote was as follows: Brabec - yes, Coleman - yes, Trovillion - yes, and Greer - no. Motion carried 3-1.

4. Traffic Committee - Cindy Fitzgibbon

Cindy Fitzgibbon, Chairperson of the Traffic Committee, asked that the survey packet from the workshop be included into the minutes. She also stated that the committee would like to request closure of Wauseon Drive and Park Avenue for an hour each morning (8:15 a.m. - 9:15 a.m.) and afternoon (2:45 p.m. - 3:45 p.m.) Wednesday would be 2:00 p.m. - 3:00 p.m. She stated this is needed for the safety of the children. Council Member Greer made the motion to approve the request and include closure on school days only. Council Member Trovillion seconded the motion. Council

LEASE AGREEMENT

*One signed
for each
Boathouse*

By this Agreement made March 4, 1986, between the TOWN OF WINDERMERE, FLORIDA (herein referred to as "Lessor") and JOHN P LUFF (herein referred to as "Lessee"), Lessor leases to Lessee that certain boat house designated as Number 41 on the sketch attached hereto which shows a cluster of five (5) such boat houses together with the land or lake bottom on which it is situated and the right of ingress and egress, all situated in or on an unnamed lagoon off the north side of Lake Butler in the Town of Windermere, Florida and in Township 23, Range 28, Section 7, Orange County, Florida. Lessee shall be the owner of the boat house structure.

1. Rent and Term. Lessee agrees to pay to Lessor as rent for the premises Ten Dollars (\$10.00) per year for a period of fifteen (15) years beginning ~~April 1, 1986~~ ^{January 2, 1986} *off*. The full rent for the entire term in the amount of One Hundred Fifty Dollars (\$150.00) shall be payable upon execution of this Lease Agreement by the parties hereto.

2. Insurance. Lessee hereby agrees to maintain in effect a policy of casualty and liability insurance in favor of the Lessor in the amount of \$100,000/\$200,000 and with a company approved by the Lessor, and further agrees to indemnify the Lessor for any and all loss or liability in excess of any policy limits arising from the Lessor's ownership of the premises during the term of this Lease Agreement.

3. Maintenance. Lessee hereby agrees to maintain the premises in good repair and in a clean, safe and sanitary condition. The Lessees agree, either individually or together with the other Lessees, to take the necessary steps to clear out the lagoon area surrounding the boat houses. The Lessee's responsibility to maintain the premises includes the boat house structure itself and the grounds adjacent to it. Lessee expressly accepts the responsibility for maintaining the painted surfaces of the boat house in a clean, fresh and attractive

condition. Lessor agrees to cooperate with the Lessee in connection with Lessee's efforts to maintain, improve or alter the waterway adjacent to the boat house, provided all such efforts fully comply with all federal, state and county regulations, both environmental and otherwise.

4. Quiet Enjoyment. Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold and enjoy the premises for the agreed term.

5. Use of Premises. The premises shall be used and occupied by Lessee exclusively for storage of Lessee's watercraft, and no part thereof shall be used at any time during the term of this Lease by Lessee for the purpose of carrying on any business, profession or trade of any kind, or for any purpose other than as specified herein. Under no circumstances shall any sign be placed on or about the premises by Lessee except a no trespassing sign.

6. Condition of Premises. Lessee stipulates that he has examined the premises, including the grounds and improvements, and accepts them in their present condition. Such condition, whether superior, equal or inferior to the condition in which the Lessee is required by the terms of this Agreement to maintain the premises, shall in no way modify, reduce or enlarge the maintenance obligations of the Lessee as contained herein.

7. Assignment and Subletting. Subject to compliance with the terms of this Lease, Lessee may assign this Lease or sublet or grant any license to use the premiss or any part thereof.

8. Alterations and Improvements. Lessee shall be considered the owner of the boat house structure. Lessee shall be permitted to make any alterations and improvements to the existing building or to replace the existing building with a new building provided that any alteration or improvement complies with applicable building codes and otherwise complies with this Lease.

9. Utilities. Lessee shall be responsible for arranging and paying for any and all utility services on the premises.

10. Damage to Premises. If the premises, or any part thereof, shall be damaged by fire or other casualty for whatever reason, however caused, and to whatever extent, ^{Lessee} ~~Lessor~~ shall have the option of ~~not~~ rebuilding or repairing. In the event of fire or windstorm damage, the Lessee will be obligated to remove the remaining portions of the structure in the event Lessee decides not to rebuild or repair.

11. Dangerous Materials. Lessee shall not keep on the premises any item of dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company. Notwithstanding the foregoing, any storage of gasoline in or about the premises must be in government approved containers, not to exceed at any one time ten (10) gallons in quantity.

12. Surrender of Premises. At the expiration of the lease term, Lessee shall surrender the premises in as good state and condition as they were at the commencement of this Lease, reasonable use, wear and tear and damages by the elements excepted. Lessee will have the right to remove all lumber building materials, boat hoists and fixtures within thirty (30) days of termination should it chose to do so.

13. Default. If Lessee ^{if Lessee} fails to ^{initiate compliance} ~~comply~~ with any of the material provisions of this Lease, within ^{sixty} ~~thirty~~ (30) days after delivery of written notice by Lessor specifying the noncompliance and indicating the intention of Lessor to terminate the Lease by reason thereof, Lessor may terminate the lease.

14. Abandonment. If at any time during the term of this Lease Lessee abandons the premises or any part thereof, Lessor may, at its option, obtain possession of the premises in the manner provided by law, and without becoming liable to Lessee for damages or for any payment of any kind whatever. If Lessor's right of reentry is exercised following abandonment of the premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises to also have been abandoned, in which case Lessor may dispose of all such

personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

15. Binding Effect. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives and assigns of the parties hereto, and all covenants are to be construed as conditions of this Lease.

16. Attorneys' Fees. The Lessor shall be entitled to reasonable attorneys' fees at trial or on appeal should it be necessary to enforce the terms of this Lease.

Executed at Windermere, Florida, the day and year first above written.

LESSOR:

TOWN OF WINDERMERE

John B. Luff
Facilia Racner

By: C. P. [Signature]

LESSEE:

Patti D. Wags
Facilia Racner

John B. Luff

Consent Agenda 9/8/98

3. Home Occupation Licenses: Attached is a list of current Home Occupation Licenses. Under the town code, the Council must approve these every year. I have not received any complaints on any of the businesses except for one. Total Lawn Maintenance, 118 Main St., continues to operate outside of the guidelines of the Home Occupation License Ordinance. I continue to receive complaints from the surrounding neighbors of excessive noise, business vehicles and equipment at that address even after they have been notified by certified mail of the complaints. I recommend that the Council rescind the license for Total Lawn Maintenance, 118 Main St. If Mr. DeNoyelles continues to operate, he will have to appear before the Code Enforcement Board.

Recommended action: 1) Council rescind the Home Occupation License for Total Lawn Maintenance, 118 Main St.
2) Council approve all other (23) listed Home Occupation Licenses for the year 10/1/98 - 09/30/1999. ✓

4. Rules and Regulations for Town Hall: After renting the hall for functions for the past year, there have been a few recurring incidents. In an effort to eliminate these problems and inconsistencies, we recommend three changes to the rules and regulations previously approved by the Council. A revised set of rules is attached and the changes are in italics. ✓

Recommended action: Council approve the additions to the Town Hall Rules and Regulations.

5. Ordinance Corrections: Two ordinances contained scrivener's errors. Attorney John Rodgers recommended that an affidavit be done for each correcting the error. Then these affidavits be approved by the Council.

Recommended action: Council approve the affidavits to correct ordinances.

6. Amendments to the Boathouse Leases: Sandy Blackstone has requested that two amendments be made to the present boathouse leases (5) located across from Palmer Park: 1) is to make the lease term renewable, and 2) to limit the owners' right of transfer to only Windermere residents or Windermere property owners. These boathouse leases are up in 2001. Since I would recommend at that time that the lessee's be given first right to renew and in the past have only rented to Windermere residents or property owners I support her request. ✓

Recommended action: Approval to have Attorney John Rodgers make these two amendments to the present leases.

LEASE AGREEMENT

THIS AGREEMENT is made on March 1, 2002, between the TOWN OF WINDERMERE, FLORIDA, a municipal corporation of the State of Florida, Lessor, and Jack McManus & Bill Rose, whose address is P. O. Box 1127, Windermere, FL 34786, Lessee.

IN CONSIDERATION of the mutual covenants herein set out, the parties agree as follows:

SECTION ONE DESCRIPTION OF LEASED PROPERTY

Lessor owns certain property above the mean high water mark and the riparian rights to the property below such mark contiguous to and within an unnamed lagoon off the North side of Lake Butler in the Town of Windermere, Florida in Township 23, Range 28, Section 7, Orange County Florida. Lessee owns a boat house which is located on property below the mean high water mark of the described property and which is subject to the riparian rights of the Lessor, said boat house being designated as Number 4 on the sketch attached hereto depicting a cluster of five (5) such boathouses. Lessor hereby leases to Lessee the right of ingress and egress to the boathouse and the right to use and occupy the boathouse on the lake bottom on which it is situated.

SECTION TWO TERM

The commencement date of this Lease is retroactive to March 1, 2001 (Effective Date) and shall extend for a period of ten (10) years and terminate on February 28, 2011 unless extended by other provisions of this Lease.

SECTION THREE RENT

Lessee agrees to pay an initial annual rent for the first year in the amount of Ten Dollars (\$10.00) payable upon execution of this Lease. Annual rent for each year thereafter shall be paid in an amount no less than \$400.00 and shall be calculated as follows:

Commencing March 1, 2003, and March 1 of each year thereafter, annual rent shall be a figure computed by multiplying the rent for the preceding twelve month period by a fraction, the numerator of which shall be the Consumer Price Index, the United States Department of Labor for January of each year prior to the respective anniversary date (March 1 of each year) and the denominator of which shall be said Consumer Price Index (CPI) for January

of the previous year. The formula for such adjustment shall be as follows:

March 1, 2003 and March 1 each succeeding year:

1.
$$\frac{\text{January current year CPI}}{\text{January previous year CPI}} = \text{Fraction}$$
2.
$$\frac{\text{Fraction X preceding twelve month}}{\text{Rental amount}} = \text{Monthly Rental}$$

If the Consumer Price Index should not be available, then the parties shall agree upon a conversion factor or a new Index, said Index being generally accepted and approved as an Index reflecting the contemplated fluctuation and the purchasing power of the United States Dollar.

SECTION FOUR QUIET ENJOYMENT

Lessor covenants that on performing the covenants herein contained, Lessee shall peacefully and quietly have, hold and enjoy the premises for the agreed term.

SECTION FIVE USE OF PREMISES

The premises shall be used and occupied by Lessee exclusively for storage of Lessee's water craft, and no part thereof shall be used at any time during the term of this Lease by Lessee for the purpose of carrying on any business, profession or trade of any kind, or for any purpose other than as specified herein. Under no circumstances shall any sign be placed on or about the premises by Lessee except a no trespassing sign.

SECTION SIX ACCEPTANCE BY LESSEE

Lessee has inspected and knows the condition of the premises and accepts the same in their present condition .

SECTION SEVEN MAINTENANCE AND REPAIR BY LESSEE

Lessee hereby agrees to maintain the premises in good repair and in a clean, safe and sanitary condition. The Lessee agrees, either individually or together with the other Lessees, to take the necessary steps to clean the lagoon and boat basin area surrounding the boat

need
houses. The clean-up shall be performed as set forth in the Biosphere proposal dated December 14, 2001, a copy of which is attached hereto as Exhibit A. Maintenance of the lagoon and basin, landscaping and maintenance of the surrounding area shall be the responsibility of the Lessor.

Lessee shall maintain the boat house structure in a safe condition and to paint the surfaces of the boat house in a clean, fresh and attractive condition.

Lessor agrees to cooperate with the Lessee in connection with Lessee's efforts to maintain, improve or alter the waterway adjacent to the boat house, provided all such efforts fully comply with all federal, state and county regulations, both environmental and otherwise.

SECTION EIGHT
INSURANCE AND INDEMNITY

?
Lessee shall secure comprehensive liability insurance for personal injury or property damage to any person or corporation with a company acceptable to Lessor in limits not less than \$500,000.00/\$1,000,000.00. Lessor shall be named as additional insured and loss payee. The policy shall contain a provision that Lessor is entitled to at least fifteen (15) days' notice from the insurance company before cancellation of the policy. If Lessee fails to obtain the insurance, Lessor may do so and Lessee shall reimburse Lessor for the cost of it on written demand. Lessee shall furnish Lessor with Certificate of Insurance before taking possession of the property showing the coverage afforded, expiration date and payment of premium. Lessor may reasonably require evidence at reasonable times during the term of this lease or any extension of it that the insurance remains in force.

SECTION NINE
UTILITIES AND TAXES

Lessee shall be responsible for arranging and paying for any and all utility services on the premises.

ADY?
Lessee shall pay all real property taxes assessed against the leased property by any authorized governmental entity. Payment shall be made directly to Lessor with ten(10) days of written notice from Lessor setting forth the amount of taxes due.

SECTION TEN
DAMAGE BY CASUALTY

In case the leased premises shall be destroyed or shall be so damaged by fire or other casualty, as to become untenable, then in such event, at the option of Lessee, this Lease

shall terminate from the date of such damage or destruction and Lessee shall immediately surrender such premises and all interest therein to Lessor, and Lessee shall pay rent only to the time of such surrender. Lessee shall exercise such option to terminate this Lease by notice in writing delivered to Lessor within thirty (30) days after such damage or destruction. In case Lessee shall not elect to terminate this Lease in such event, this Lease shall continue in full force and effect and Lessee shall repair the leased premises with all reasonable promptness, placing the same in as good a condition as they were at the time of the damage or destruction and for that purpose may enter such premises. In either event, Lessee shall remove all rubbish, debris, merchandise, furniture, equipment and other personal property, within thirty (30) days after the request of Lessor. If the leased premises shall be only slightly injured by fire or the elements, so as not to render the same untenable and unfit for occupancy, then Lessee shall repair the same with all reasonable promptness. No compensation or claim shall be made by or allowed to Lessee from Lessor by reason of any inconvenience or annoyance arising from the necessity of repairing any portion of the building or the leased premises, however the necessity may occur.

SECTION ELEVEN DANGEROUS MATERIAL

Lessee shall not keep on the premises any items of dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company. Notwithstanding the foregoing, any storage of gasoline in or about the premises must be in government approved containers, not to exceed at any one time ten (10) gallons in quantity.

SECTION TWELVE SURRENDER OF PREMISES

At the expiration of the lease term, Lessee shall surrender the ownership and possession of the premises in as good state and condition as they were at the commencement of this Lease, reasonable use, wear and tear and damages by the elements excepted; provided however Lessee will have the right to remove all lumber building materials, boat hoists and fixtures within thirty (30) days of termination should it chose to do so, provided said removal is not prohibited by law.

SECTION THIRTEEN ABANDONMENT

If at any time during the term of this Lease Lessee abandons the premises or any part thereof, Lessor may, at its option, obtain possession of the premises in the manner provided by law, and without becoming liable to Lessee for damages or for any payment of any kind whatever. If lessor's right of reentry is exercised following abandonment of the premises

by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

SECTION FOURTEEN DEFAULT

If Lessee fails to comply with any of the material provisions of this Lease, within thirty (30) days after delivery of written notice by Lessor specifying the noncompliance and indicating the intention of Lessor to terminate the Lease by reason thereof, Lessor may terminate the Lease.

SECTION FIFTEEN ASSIGNMENT AND SUBLETTING

Subject to compliance with the terms of this Lease, Lessee may assign this Lease or sublet or grant any license to use the premises or any part thereof only to bonafide residents of the Town of Windermere or record title owners of real property located in the Town of Windermere. Lessee shall give to Lessee, in writing, at the time of such assignment or subletting, the name, address and telephone number of the person to whom the assignment or sublease was made.

SECTION SIXTEEN ALTERATIONS AND IMPROVEMENTS

Lessee shall be considered the owner of the boat house structure. Lessee shall be permitted to make any alterations and improvements to the existing building or to replace the existing building with a new building provided that any alteration or improvement complies with applicable building codes and otherwise complies with this Lease.

SECTION SEVENTEEN RENEWAL OF LEASE

Lessee may renew this Lease upon the same terms and conditions as set forth herein for an additional term of ten(10) years upon giving Lessor at least ninety (90) days written notice of intent to renew prior to the termination date of this Lease.

SECTION EIGHTEEN ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties, and no modification of this Lease shall be binding upon the parties unless evidenced by an agreement in writing

signed by Lessor and Lessee after the date hereof.

SECTION NINETEEN
ATTORNEYS' FEES

The Lessor shall be entitled to reasonable attorneys' fees in event legal action is commenced in a court of competent jurisdiction to enforce the covenants, terms and conditions of this Lease.

SECTION TWENTY
BINDING EFFECT

The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives and assigns of the parties hereto, and all covenants are to be construed as conditions of this Lease.

SECTION TWENTY-ONE
APPROVAL BY TOWN COUNCIL

This Lease is not effective until it is approved by the Town Council, Town of Windermere, Florida.

IN WITNESS WHEREOF, the parties have executed this Lease at Windermere, Florida, the day and year first above written.

LESSOR:

TOWN OF WINDERMERE

ATTEST:

By

Dorothy Baulhatts
Town Clerk

By

Karen Joanne Quisenberry
MAYOR

LESSEE:

John R. M. Marcus
William Lee

MEMORANDUM

To : Mayor, Town Council Members and Town Manager
From : John W. Rodgers, Town Attorney
Re : Boathouse Leases in lagoon at Palmer Park
Date : October 3, 2001

In preparation of this Memorandum, I have reviewed Minutes of the Town Council from 1964 to the present and other public records which are relevant to the issues covered in this document. Documents reviewed, in addition to Council Minutes, include correspondence between the Town of Windermere and Florida Department of Natural Resources and pleadings filed in the legal proceeding in Circuit Court, Orange County, Florida, styled TOWN OF WINDERMERE, FLORIDA, Plaintiff vs. JOHN P. LUFF, et al, Defendants, Case No. 85-7435. Copies of these records have been previously furnished to all persons requesting the same including Council members. A review of these records, reveal the following facts:

There exist five boathouses in the lagoon located in the Palmer Park area at Pine Street and Third Avenue. Some or all of these boathouses may have been in existence since the 1920's. The boathouses have typically been used by certain residents of the Town of Windermere. As early as 1928 a fee was charged by the Town for use of the boathouses by Town residents. In 1964 the Town Council directed that no more boathouses be constructed on Town Property and that the existing boathouses were for use of town residents only. There is no record in the Town Minutes of any discussion of the boathouses from 1964 until January 1982. Commencing in January 1982 and continuing through March 1986, there was considerable discussion and action taken by the Council addressing the issue of what to do with the boathouses including attempts to negotiate leases with the persons who claimed ownership of the boathouses, filing suit against those persons claiming ownership when attempts to negotiate Leases failed, and after litigation was commenced but before a final judgment was entered, negotiating a lease for 15 years with the persons who had possession of the boathouses. The original Lease was entered into in March 1986. In the latter part of 1995, the Leases were amended to require the Lessees to pay real property taxes on the boathouses which were imposed upon the Town of Windermere as a result of its ownership of the boathouses. In the latter part of 1998, the Leases were amended a second time to permit assignment or subletting of the leases to bona fide residents of the Town of Windermere or record title owners of real property located in the Town of Windermere and to allow Lessees to renew the Leases upon terms and conditions mutually agreeable to the

parties and to provide that Lessees give 90 days written notice of intent to renew. Lessees have given written notice of "intent to renew" to the Town. One or more of the current boathouse owners claim to have purchased their interest in the boathouses relying upon the amendment to the Lease permitting renewal. The Council is now considering the question of whether or not it is required to renew the leases and if so what terms are mutually agreeable to the parties.

Several issues have been raised over the years and up to the present time.

1. Ownership of the boathouses and right to control use and possession. The State of Florida claims ownership of the lands below the ordinary high water line. The boathouses are assumed to be located below the ordinary high water line of Lake Butler. The Town of Windermere claims title to the uplands above the ordinary high water line and riparian ownership of the lands below the ordinary high water line of Lake Butler and therefore claims the right to control the use and possession of of the boathouses including the right to lease the property upon which the boathouses sit. Pursuant to the terms of the Lease Agreement dated March 4, 1986, the parties agreed that the Lessees shall be the owners of the boathouses (Introductory paragraph of Lease Agreement). It is implied in the Lease Agreement that the Town, consistent with its riparian rights and land ownership, had the right to control the use and possession of the boathouses. The lessees were permitted to remove the boathouses (lumber building materials, boat hoists, and fixtures) within 30 days of termination of the Lease (paragraph 12).

2. Right to Renew. The Second Addendum to the Lease permits renewal of the Lease upon terms mutually agreeable to the parties. All boathouse owners have given notice of their intent to renew their respective leases. The lease required that a 90 day notice of intent to renew be given but does not state when the notice must be given (90 days before the end of the lease period or 90 days after the expiration of the lease period or commencing at some other time). Since there is this ambiguity in the Lease Addendum, the fact that the notice was not given at a time when some argue that it should have been given and based upon the prior history of negotiations with the owners being drawn out over extended periods of time, the notice time requirement appears not to be significant. It is further noted in the Minutes of the Council Meeting of January 8, 1986, when the current Lease was approved, that "...After 15 years new arrangements can be made by the Town and boathouse owners...."

3. Equitable Estoppel. The suggestion has been made that the Town is equitably estopped from terminating the Leases due to the conduct of the of Town in amending the Leases to permit renewal and for other possible reasons. The common law doctrine of equitable estoppel is defined as a property owner's good faith reliance on some act or omission of the government and a substantial change in position or the incurring of excessive obligations and expenses so that it would be highly inequitable and unjust to destroy the right

he acquired.

ANALYSIS AND RECOMMENDATION

The Town has the right to regulate the use and possession of the boathouses which are located on property subject to the Town's riparian rights. The Town and the boathouse owners recognized this right when entering into the Lease Agreement dated March 4, 1986. The Town thereafter in 1998, entered into a written Addendum to the existing Lease Agreement permitting renewal of the Leases upon terms and conditions mutually agreeable to the parties. The Council on January 8, 1986, according to the minutes of that meeting, recognized its authority to review or renegotiate the Lease after 15 years. This contractual agreement and the possible equitable estoppel doctrine requires the Town to at least enter into good faith negotiations with the boathouse owners to attempt to arrive at mutually agreeable lease terms. The terms must be reasonable. I recommend that a panel be appointed to attempt in good faith, to negotiate renewal terms for the Leases and report its findings to the Council for its consideration.

407-244-5670

HEATHER.RAMOS@GRAY-ROBINSON.COM

MEMORANDUM

TO: Robert Smith, Town Manager, Town of Windermere
FROM: Heather M. Ramos
DATE: August 10, 2012
SUBJECT: Boathouses

Background: This memorandum addresses the five boathouses located on Lake Butler. In preparing this memorandum, we have reviewed relevant Florida Statutes, researched Florida case law, reviewed the town's file pertaining to the boathouses, and reviewed a title search prepared for the underlying parcel and the boathouses constructed on the parcel.

Property Information:

- Underlying property: Parcel ID# 17-23-28-9336-00-006; Owner – Town of Windermere
- Boathouse #1: Parcel ID# 17-23-28-9336-10-011; Lessee – Fay
- Boathouse #2: Parcel ID# 17-23-28-9336-10-010; Lessee – Poelker and Rose
- Boathouse #3: Parcel ID# 17-23-28-9336-10-009; Lessee – Black and/or Pryor
- Boathouse #4: Parcel ID# 17-23-28-9336-10-008; Lessee – Thompson
- Boathouse #5: Parcel ID# 17-23-28-9336-10-007; Lessee – Yoder and Luff

Questions and Brief Answers:

1. *Who owns the boathouses?* A strong argument can be made that the Town is the owner of the boathouses.
2. *If the town owns the boathouses, what is the term of the lease the occupants have and what does the town need to do to terminate the leases?* There is no remaining lease term. The town should, via written notices sent by certified mail and posted on the boathouses, request the boathouse users to remove their items from the boathouses and surrender the premises within 15 days of the date of the notice. If the boathouse users do not comply, the next step is to remove the boathouse users from the premises by filing a complaints as outlined by the statutory process in sections 83.21-83.251 of the Florida Statutes.

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August 10, 2012
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3. *What, if any, rights do the lessees have as far as an interest in the property, and what legal rights do they have if they intend to sue upon termination of the leases?* The boathouse users likely have no rights in the property, however, it is possible that they could file a lawsuit against the town for quiet title, adverse possession, prescriptive easement, equitable estoppel, unlawful eviction, and/or declaratory judgment. Based on the history and the documents, we expect the likelihood of success for any of these claims to be slim.
4. *Can the town council elect to demolish the boathouses?* Yes, once the boathouse users have voluntarily surrendered the premises or have been evicted from the premises.

History: A review and outline of the important points in history concerning the boathouses is useful for the analysis.

It appears that at least one of the boathouses was built between the years 1912-1923 by Cal Palmer, John Luff's grandfather.¹ It appears from town council meeting that the rest of the boathouses may have been built before 1950.²

An excerpt from the minutes from the December 14, 1982 town council meeting provides:

Boathouses: A letter was received from the "owners" claiming ownership. Mayor Patterson did a study of minutes since the incorporation of the Town and could find nothing to substantiate their claim and Council requested his report be made as part of the minutes of this meeting. The report is as follows:

Letter 12/7/82 – Boathouse owners refuse to comply, claim clear title to them, town has no rights, they have always maintained, some need work, they will sue you if you take adverse action. Our attorney studied the legal aspects 12-8-81, I did a study 1-13-82 and queried Abele, Luff, Johnson and read all minutes of the Town from inception 1912-1964, few mentions are made:

- 7-19-15 – talks of a public dock at 3rd/Butler,
- 5-21-17 – mentions of navigation bill by State for lakes,
- 7-5-28 – a fee schedule on public property – 2.50 a stall for boats – boathouses must be maintained, failure to pay or maintain is a cause for,
- 5-4-49 – Council directed Clark & Danner boat houses be torn down and others put in repair,
- 5-3-50 – Cooper got ok to build between Maddock & Grice,
- 9-12-50 – Change Ordinance to read \$1.00 per year per stall/house
- 3-6-63 – Mrs. Lyon ok boatshelter – remove at Council pleasure
- 9-4-63 – Regnall made inquiry – Council no decision

¹ June 20, 2001 letter from John Luff to the mayor, Town Council, and historical preservation board.

² December 14, 1982.

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- 10-2-63 – Bennett had used & maintained for years. Council states built by people who live on Town property, stall reserved for Town people. Early settlers built & sold with their property. Boathouse not to be sold to out of towners – attorney said town should supervise and people understand they can use but not own,
- 12-2-64 – Council said No more Boathouses – sent word to all owners – Boathouses were there w/o Council OK & for use of only town residents.

I have seen NO valid warranty deeds for boathouses – have looked. No owner has shown us a valid deed, abstract, title policy. I feel state owns under the boathouse, but we probably own to a point. The safest and cheapest is to write DNR for opinion, they will give me one – they would also have done at permit time – We should write letter to owners, approved by the attorney, rejecting their claims based on information herein.”

An opinion from the Department of Natural Resources was requested, and the town received a letter on August 1, 1984 from Elton Gissendanner, Executive Director of the Department of Natural Resources. A memorandum dated July 26, 1984 analyzing the issue accompanied the letter. The memorandum was from Kirby Green, Chief Bureau of Survey and Mapping to James MacFarland, Director of the Division of State Lands. It states in part:

The ownership of the boathouses is not dependent upon the ownership of the submerged lands, but upon the riparian ownership to which the boathouses attach. If the riparian owner has not given up their littoral rights by granting them to another party, the riparian owner would be the owner of the boathouses. In fact, under our Submerged Land Rules, Chapter 16Q-21, F.A.C., only the riparian owner may apply for a grandfathered structure or a submerged land lease.

* * *

If the City has not conveyed its littoral rights, which they indicate they have not in an attachment to their June 29, 1984 letter, they are, in our opinion, the riparian owner of the area in question.

The minutes from 1984 show that there were discussions concerning the possibility of fixing up and repairing the boathouses, and renting the boathouses to town residents, or tearing them down. The council directed the town manager to have a lease prepared, and at the July 13, 1984 town council meeting, town manager John Luff reported that attorney Pleus finished the lease for the boathouses, and that it would be presented at the next council meeting.

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On February 5, 1985, a letter from town manager John Luff was mailed to the users of the boathouses enclosing the town's proposed five-year lease agreement. The letter stated in part: "At the end of the five years the boathouses would belong to the Town and leases would have to be renegotiated or the Town Council, at that time, could determine what their position would be concerning boathouses."

The leases were not signed by the boathouse users. Minutes from the March 12, 1985 council meeting state that the council set a 30-day deadline for the users of the boathouses to sign the leases.

The users of the boathouses sent a letter dated April 24, 1985 to Mayor Carl Patterson submitting a different lease agreement that the "boat house owners" agreed to sign. Mayor Patterson responded on April 29, 1985 to the users of the boathouses that the 30-day deadline had not been met and that "the Town Attorney has been directed to commence litigation."

The town filed a complaint, Case No: CI 85-7435, suing John P. Luff, Vincent Rhors, Marc H. Black, Eric Graham, Thomas E. Garrison and Penelope P. Garrison, Douglas N. Fay, and Jerry Fay. The complaint provided in part that the town is the "fee simple owner and the riparian owner of the land located adjacent to and under five boathouses . . . Plaintiff's ownership derives from the dedication of roads within the plat of Windermere to the Town of Windermere, and Plaintiff's littoral rights incident thereto." The complaint contained two counts -- ejection and declaratory judgment.

On August 5, 1985 the defendants filed an answer to the complaint. The defendants denied that construction of the boathouses was unauthorized. An affirmative defense included in the answer was "The Defendants hold fee simple title and riparian ownership to the land in question as the result of holding said property continuously, adversely, open and notoriously, and to the exclusion of all others for a period of seven (7) years."

On that same day, August 5, 1985, the defendants filed a counterclaim -- "Counter-Plaintiffs are the fee simple owners and the riparian owners of the land located adjacent to and under five boathouses located in a small unnamed lagoon. . . ." "The Counter-Plaintiffs claim ownership to said land by virtue of several quitclaim deeds to each of the Counter-Plaintiffs. At the present time, the Counter-Plaintiffs do not have in their possession a copy of each of the said deeds, therefore, no copies are attached to this Complaint. Copies of said deeds shall be provided to the Town upon reasonable notice to do so." The counts were declaratory relief, quiet title, adverse possession, and prescriptive easement.

On September 3, 1985 the judge in the case issued an order dismissing all counts of the counterclaim except the request for declaratory relief. The judge also granted the town's motion to strike affirmative defenses.

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The trial was set for January 19, 1986. The December 10, 1985 minutes of town council meeting provide that the town attorney was given a lease proposal from the users of the boathouses to try to settle the suit out of court. The January 8, 1986 minutes of the Town Council meeting state that a 15-year lease agreement between the Town and the boathouse users was approved.

In March of 1986 the leases were signed with a 15-year term. Language in the introductory paragraph states that "Lessee shall be the owner of the boat house structure." Paragraph 8 of the lease provided: "Lessee shall be considered the owner of the boat house structure." The lease term was not renewable.

The minutes from the September 19, 1995 town council meeting provide that the Orange County Property Appraiser told the town that it must pay property taxes on the properties because the boathouses were not being used for municipal or public purposes. The council moved to amend the leases to make the lessees responsible for all taxes.

On September 8, 1998, the town council approved an amendment to the leases which allowed the lease term to be renewed.

In 2001, several requests were sent to the town's historical preservation board to have the boathouses listed on the town's local register for historic sites. Carl Patterson, historical board chairman, sent a memorandum dated August 23, 2001 to the historical board regarding the September 18, 2001 historical board meeting about the boathouses being listed on the historic local register. The meeting was held by the historical preservation board, and the following motion and vote occurred:

Chair Patterson explained the history of the boathouses beginning in the earlier 1920's. Charlie True made the motion to forward the request of having Johnny Luff's boathouse placed on the Historic Register to the Town Council. Fred Pryor seconded the motion. Fred Pryor left the table. After much discussion Charlie True amended the motion to include all 5 Boathouses to be placed on the Historic Register. Mike Reed seconded the motion. All were in favor.

No evidence has been found in the Town's records that the boathouses were placed on the town's historic local register. Subsection 3.01.02.C.5 of Article III of the town's Land Development Code contemplates a public hearing by the town council regarding the listing of a structure on the historic local register. While not expressly stated in the minutes, it appears that the town council may not have moved forward with designating the boathouses as historic structures, but rather decided to enter into yet another boathouse lease. The minutes from the October 9, 2001, town council meeting provide:

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Council Member Osborne made a motion to adopt the recommendation of John Rodgers and set up a committee consisting of Don Greer, John Rodgers, and Cecilia Bernier to negotiate a new lease term with the five boathouse owners. The recommendation is attached as a permanent record to these minutes. Council Member Pat Coleman seconded the motion. Roll Call vote was as follows: Don Greer-yes, Council Member Osborne-yes, Council Member Pat Coleman-yes. Motion carried 3-0. Council Members Brabec and Trovillion did not vote because of conflict of interest.

On March 1, 2002, the town entered into new lease agreement with the lessees.

Discussion and Analysis:

1. Who owns the boathouses? A strong argument can be made that the town is the owner of the boathouses. The title search provides that the Town of Windermere is the owner of the underlying property, a portion of Block F. Block F was sold and transferred from The Windermere Improvement Company to the Town of Windermere on October 16, 1925. Additionally, in 1985, the Department of Natural Resources provided in writing an opinion to the town that the town is the riparian owner of the property.

As explained in several of the historical documents, the users of the boathouses have not presented to the town documentation which demonstrates that they are the owners of the boathouses. They have not presented documentation to the town to show that the town has given permission to construct the boathouses on town property.

The title company was unable to provide a clear chain of title for the boathouses. The boathouses have been conveyed throughout the years; however, all of the conveyances have been accomplished by quit claim deeds. There is no documentation showing a deed from the underlying property owner, the Town of Windermere, to any of the individual users of the boathouse or their predecessors.

2. If the town owns the boathouses, what is the term of the lease the occupants have and what does the town need to do to terminate the leases? The termination date of the leases was February 28, 2011, however, the town invoiced the boathouse users on May 4, 2011³ for the yearly boathouse rent from the period March 1, 2011 through February 29, 2012. The boathouse users paid the rent. As explained below, there is no remaining lease term, the leases have terminated. To begin the process to ask the boathouse users to vacate, the town should send a notice to the boathouse users asking them to remove their items from the boathouses and to

³ Since the lease requires the yearly rent adjustment to be based on the Consumer Price Index, the town sent out the yearly invoices to the boathouse users in May.

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surrender the premises within 15 days⁴ of the date of the notice. The notice should be (i) sent via certified mail, return receipt requested, and (ii) posted on each boathouse.

If the boathouse users do not comply, the town should proceed with removing the boathouse users from the premises by filing a complaint as outlined by the statutory process in sections 83.21-83.251 of the Florida Statutes. A copy of Part I of Chapter 83 of the Florida Statutes entitled "Nonresidential Tenancies" is included with this memorandum. As discussed below, it is possible that the town may be able to recover attorney's fees and costs incurred.

Notice of intent to renew required: The termination date for the written leases was February 28, 2011. Section seventeen of the lease provides that the "Lessee may renew this Lease upon the same terms and conditions as set forth herein for an additional term of ten (10) years upon giving Lessor at least ninety (90) days written notice of intent to renew prior to the termination date of this Lease." The boathouse users did not give the town ninety days written notice of intent prior to February 28, 2011 of their intent to renew the lease, nor have they given the town ninety days written notice of intent prior to the February 29, 2012 extended term. Florida courts hold that if there is a notice to renew requirement in a lease, then the giving of timely notice in accordance with such provision is viewed as a condition precedent to the effective exercise of the option to renew or extend the lease. *See Thrifty Dutchman, Inc. v. Florida Supermarkets, Inc.*, 541 So. 2d 634 (Fla. 3d DCA 1989).

Florida courts have recognized special circumstances which warrant relief from the consequence of a lessee's failure to give timely notice in the manner prescribed in the lease. In Florida, a court of equity may relieve a tenant from the enforcement of a stipulation in the lease that notice must be given within a specified time where the failure to give notice resulted from accident, fraud, surprise or mistake, and there are other special circumstances warranting equitable relief. *See id.* at 636. We are not aware of any such equitable issues that could be raised by the boathouse users and found by a court to warrant relief in this instance.

Payment made to the town after lease termination date: After the leases expired, the town invoiced the boathouse users on May 4, 2011 for the rental payment for an extended period ending February 29, 2012. The rental payments were made by the boathouse users to the town. According to Florida law, even though the boathouse users were invoiced and paid for the use of the boathouses for a year after the expiration date of the Lease term, section 83.04 of the Florida Statutes provides that the acceptance of the rent was not a renewal of the 10-year lease term:

Holding over after term, tenancy at sufferance, etc.—When any tenancy created by an instrument in writing, the term of which is limited, has expired and

⁴ It is unclear from section 83.20 of the Florida Statutes what, if any, time period is applicable to a notice to vacate to a tenant at sufferance. Fifteen days' notice meets other statutory requirements and is suggested in an abundance of caution.

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the tenant holds over in the possession of said premises without renewing the lease by some further instrument in writing then such holding over *shall be construed to be a tenancy at sufferance*. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law. [Emphasis added.]

The boathouse users have not renewed the lease, and they have not received written consent from the town that they could continue to use the boathouses. Accordingly they are considered by section 83.04 of the Florida Statutes "tenants at sufferance".

Action to be taken at lease expiration: According to section twelve of the Lease, "At the expiration of the lease term, Lessee shall surrender the ownership and possession of the premises. . ." Since the extended term has expired, the town should, by written notice to the boathouses users (i) state that the lease has expired, (ii) explain that the boathouse users do not have the permission of the town to continue to use and occupy the boathouses, and (iii) request the boathouse users to remove their items and to surrender the premises within 15 days of the date of the notice. The notice should be (i) sent via certified mail, return receipt requested, and (ii) posted on each boathouse. If the boathouse users do not comply, subsection 83.20(1) of the Florida Statutes provides that the town can remove a "tenant at sufferance" in the manner provided in part I of chapter 83 of the Florida Statutes where a tenant continues in the possession of the demised premises after the expiration of the time, without the permission of the landlord. The town can file a complaint in accordance with the processes outlined in sections 83.21-83.215 of the Florida Statutes.

Attorney's fees: The town can seek attorney's fees in accordance with section nineteen of the Lease which provides that the town "shall be entitled to reasonable attorneys' fees in the event legal action is commenced in a court of competent jurisdiction to enforce the covenants, terms and conditions of the Lease." Further, section 83.251 of the Florida Statutes provides that the town shall have a judgment for the costs for the removal of tenants.

3. What, if any, rights do the lessees have as far as an interest in the property, and what legal rights do they have if they intend to sue upon termination of the leases? At this point, the boathouse users have not demonstrated a clear legal right or property interest in the boathouses. Regardless, the boathouse users can and may file one or more lawsuits in an attempt to exert or establish their alleged rights. We would expect that such a lawsuit(s) may contain one or more counts for the following: quiet title, adverse possession, prescriptive easement, equitable estoppel, unlawful eviction, and/or declaratory judgment. Because of the fact that the boathouse users have failed to comply with the plain language of the Lease to renew the Lease, we expect that the likelihood of the boathouse users prevailing on one or any of these claims would be slim.

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4. *Can the town council elect to demolish the boathouses?* Once the boathouse users have voluntarily surrendered possession of the premises or have been evicted from the premises, the town council may elect to demolish the boathouses. We advise that the town should follow all applicable notice and procedural requirements in the Florida Building Code and any other applicable code provisions regarding the demolition.

Even though no conclusive evidence was found in the town's records that the boathouses were placed on the town's historic local register, in an abundance of caution the town may want to apply for and request that a certificate of appropriateness be issued by the historical preservation board in accordance with the process in Article III of the town's Land Development Code.

Sec. 3.00.00. - Purpose.

The purpose of this article is to impose special development restrictions on identified areas. The location is established by the town based on the need for special protective measures in that area. The underlying uses in the area, as determined in article II of this Land Development Code, remain undisturbed. This merely imposed additional or different development standards than those that would otherwise apply.

(Ord. No. 91-6, § 3(3.00.00), 2-11-1992)

Sec. 3.01.00. - Historic districts and landmarks.

3.01.01 Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Building means a structure created to shelter any form of human activity. This may refer to a house, barn, garage, church, hotel or similar structure. The term "building" may refer to a historically or architecturally related complex, such as a courthouse and jail, or a house and barn. Parking lots and garages are hereby deemed to be buildings.

Cultural resource means a site, object, structure, building or district listed on the town's survey of cultural resources or in the historic preservation portion of the town comprehensive plan or on the local register of historic and archaeological places.

Demolition means the tearing down or razing of 25 percent or more of a structure's external walls.

District means a geographically definable area, possessing a significant concentration, linkage or continuity of sites, buildings, structures, objects or areas, which are united historically, archaeologically aesthetically by plan or physical development. A district may be comprised of individual resources which are separated geographically but are linked by association or history.

Landmark means any site (including significant trees or other plant life located thereon), building or structure of particular historic or aesthetic significance to the town, the state or the nation. Landmarks include sites, building or structures where cultural, political, spiritual, economic, social or artistic history of the community, state or nation is reflected or exemplified or which are identified with historic personages or which important events in local, state or national history, or which embody the distinguishing characteristics of an architectural specimen, inherently valuable for a representation of a period, style or method of construction, or a notable work of construction, or a notable work by a master designer or architect.

Ordinary maintenance means work which does not require a construction permit and that is done to repair damage or to prevent deterioration or decay of a building or structure, or part thereof as nearly as practicable to its condition prior to the damage, deterioration or decay.

Original appearance means that appearance (except for color) which, to the satisfaction of the town manager, closely resembles the appearance of either:

- (1) The feature on the building as it was originally built or was likely to have been built; or
- (2) The feature on the building as it presently exists so long as the present appearance is appropriate, in the opinion of the manager, to the style and materials of the building.

Site means the location of a significant event, activity, building, structure or archeological resource where the significance of the location and any archeological remains outweighs the significance of any existing structures.

3.01.02 *Local register of historic places.*

- (1) *Created.* A local register of historic places is hereby created as a means of identifying and classifying various sites, buildings, structures, objects, and districts as historic, archeological and/or architecturally significant. The local register will be kept by the town manager.
- (2) *Initiation of placement on the local register.* Placement of sites, buildings, structures, objects or districts on the local register may be initiated by the town council or the historic preservation board. In addition, placement may be initiated by the owner of the site, building, structure, object or area; or, in the case of a district, by the owner of a site, building, structure, object or area within the proposed district.
- (3) *Placement on the local register.* The following procedure shall be followed for placement of sites, buildings, structures, objects, areas and districts on the local register:
 - a. A nomination form, available from the town clerk, shall be completed by the applicant and returned to the town manager.
 - b. Upon receipt of a completed nomination form, including necessary documentation, the town manager shall place the nomination on the agenda of the next regularly scheduled meeting of the historic preservation board. If the next regularly scheduled meeting of the board is too close at hand to allow for the required notice to be given, the nomination shall be placed on the agenda of the succeeding regularly scheduled meeting.
 - c. Adequate notice of the historic preservation board's consideration of the nomination shall be provided to the public at large, and to the owners of the nominated property, at least 15 days in advance of the meeting at which the nomination will be considered by the board.
 - d. The board shall, within 90 days from the date of the meeting at which the nomination is first on the board's agenda, review the nomination and write a recommendation thereon. The recommendation shall include specific findings and conclusions as to why the nomination does or does not meet the appropriate criteria for listing on the local register. The recommendation shall also include any owner's objection to the listing. If the nomination is of a district, the recommendation shall also clearly specify, through the use

of maps, lists or other means, those buildings, objects or structures which are classified as contributing to the historical significance of the district. If the 90-day period runs and the board has not prepared and sent a recommendation, and the period has not been extended by mutual consent of the applicant and the board, the nomination may be submitted by the applicant directly to the town council.

- e. The nomination form and the board's recommendation shall be sent to the town council. The nomination shall then be handled as any other rezoning/amendment to land use element.

(4) *Criteria for listing on the local register.*

- a. A site, building or district must meet the following criteria before it may be listed on the local register:
 1. The site, building or district possesses integrity of location, design setting, materials, workmanship, archeological significance, feeling and association; and
 2. The site, building or district is associated with events that are significant to local, state or national history; or the district site, building, structure or object embodies the distinctive characteristics of a type, period or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction.
- b. A site or building located in a local register of historic places district shall be designated as contributing to that district if it meets the following criteria:
 1. The property is one which, by its location, design, archeological significance, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.
 2. A property should not be considered contributing if the property's integrity of location, design, setting materials, workmanship, feeling and association have been so altered that the overall integrity of the property has been irretrievably lost.
 3. Structures that have been built within the past 50 years shall not be considered to contribute to the significance of a district, unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(5) *Effect of listing on local register.*

- a. The town may issue an official certificate of historic significance to the owner of properties listed individually on the local register or judged as contributing to the character of a district listed on the local register. The town manager is authorized to issue and place official signs denoting the geographic boundaries of each district listed on the local register.
- b. Structures and buildings listed individually on the local register or judged as contributing

to the character of a district listed on the local register shall be deemed historic and entitled to modified enforcement of the Florida Building Code.

- c. No demolition, alteration, relocation or construction activities may take place except as provided in this subsection 3.01.03 of this section.

3.01.03 *Certificates of appropriateness.*

(1) *When required.*

- a. A certificate of appropriateness must be obtained before making certain alterations, described in subsections 3.01.03(1)b and c of this section as regulated work items, to contributing structures and structures listed individually on the local register.
- b. For each of the regulated work items listed in subsection 3.01.03(1)c of this section, the following applies:
 1. *Ordinary maintenance.* If the work constitutes "ordinary maintenance," as that term is defined in this Land Development Code, the work may be done without a certificate of appropriateness.
 2. *Staff approval.* If the work is not ordinary maintenance, but will result in the "original appearance," as that term is defined in this Land Development Code, the certificate of appropriateness may be issued by the town manager.
 3. *Board approval.* If the work is not ordinary maintenance and will not result in the original appearance, a certificate of appropriateness must be obtained from the historic preservation board before the work may be done.
- c. The following are regulated work items:
 1. Installation or removal of metal awnings or metal canopies.
 2. Installation of all decks above the first-floor level and/or on the front of the structure.
 3. Installation of an exterior door or door frame, or the infill of an existing exterior door opening.
 4. Installation or removal of any exterior wall, including the enclosure of any porch or other outdoor area with any material other than insect screening.
 5. The installation or relocation of wood, chainlink, masonry (garden walls) or wrought iron fencing, or the removal of masonry (garden walls) or wrought iron fencing.
 6. The installation or removal of all fire escapes, exterior stairs or ramps for the handicapped.
 7. Painting unpainted masonry, including stone, brick, terra-cotta and concrete.
 8. Installation or removal of railings or other wood, wrought iron or masonry detailing.
 9. Abrasive cleaning of exterior walls.
 10. Installation of new roofing materials, or removal of existing roofing materials.
 11. Installation or removal of security grilles, except that in no case shall permission to

install such grilles be completely denied.

12. Installation of new exterior siding materials, or removal of existing exterior siding materials.
 13. Installation or removal of exterior skylights.
 14. Installation of exterior screen windows or exterior screen doors.
 15. Installation of an exterior window or window frame or the infill of an existing exterior window opening.
 16. Any change in an archeological site.
- d. A certificate of appropriateness must be obtained from the historic preservation board to erect a new building or parking lot within a district listed on the local register.
 - e. A certificate of appropriateness must be obtained from the historic preservation board to demolish a building, structure or object listed individually on the local register, or designated as contributing to a district listed on the local register.
 - f. A certificate of appropriateness must be obtained from the historic preservation board to relocate a building, structure or object listed individually on the local register, or designated as contributing to a district listed on the local register.

(2) *Criteria for issuing.*

- a. The decision on all certificates of appropriateness, except those for demolition, shall be guided by the Secretary of the Interior's Standards For Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the following visual compatibility standards:
 1. *Height.* Height shall be visually compatible with adjacent buildings.
 2. *Proportion of building, structure or object's front facade.* The width of the building, structure or object to the height of the front elevation shall be visually compatible to buildings and places to which it is visually related.
 3. *Proportion of openings within the facility.* The relationship of the width of the windows in a building, structure or object shall be visually compatible with buildings and places to which the building, structure or object is visually related.
 4. *Rhythm of solids to voids in front facades.* The relationship of solids to voids in the front facade of a building, structure or object shall be visually compatible with building and places to which it is visually related.
 5. *Rhythm of buildings, structures or objects on streets.* The relationship to the buildings, structures or objects to open space between it and adjoining buildings, and places shall be visually compatible to the buildings and places to which it is visually related.
 6. *Rhythm of entrance and/or porch projection.* The relationship of entrances and projections to sidewalks of a building, structure or object shall be visually compatible

to the buildings and places to which it is visually related.

7. *Relationship of materials, texture and color.* The relationship of materials, texture and color of the facade of a building, structure or object shall be visually compatible with the predominant materials used in the building to which it is visually related.
 8. *Roof shapes.* The roof shape of the building, structure or object shall be visually compatible with the building to which it is visually related.
 9. *Walls of continuity.* Appurtenances of a building, structure or object, such as walls, fences, landscape masses, shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility of the building, structure, or object to the building and places to which it is visually related.
 10. *Scale of a building.* The size of the building, structure or object, the building mass of the building, structure or object in relation to open space, the windows, door openings, porches and balconies, shall be visually compatible with the buildings and places to which it is visually related.
 11. *Directional expression of front elevation.* A building, structure or object shall be visually compatible with the buildings and places to which it is visually related in its directional character.
- b. In addition to the guidelines provided in subsection 3.01.03(1)a of this section, issuance of certificates of appropriateness for relocations shall be guided by the following factors:
1. The historic character and aesthetic interest the building, structure or object contributes to its present setting;
 2. Whether there are definite plans for the area to be vacated and the effect of those plans on the character of the surrounding area;
 3. Whether the building, structure or object can be moved without significant damage to its physical integrity; and
 4. Whether the proposed relocation area is compatible with the historical and architectural character of the building, structure or object.
- c. Issuance of certificate of appropriateness for demolitions shall be guided by the following factors:
1. The historic or architectural significance of the building, structure or object;
 2. The importance of the building, structure, or object to the ambience of a district;
 3. The difficulty or the impossibility of reproducing such a building, structure or object because of its design, texture, material, detail or unique location;
 4. Whether the building, structure or object is one of the last remaining examples of its kind in the neighborhood, the county or the region;
 5. Whether there are definite plans for reuse of the property if the proposed demolition

- is carried out, and the effect of those plans on the character of the surrounding;
6. Whether reasonable measures can be taken to save the building, structure or object from collapse; and
 7. Whether the building, structure or object is capable of earning reasonable economic return on its value.

(3) *Procedure.*

- a. A person wishing to undertake any of the actions specified in subsection 3.01.03(1) of this section shall file an application for a certificate of appropriateness, and supporting documents, with the town manager.
- b. The prospective applicant shall confer with the manager concerning the nature of the proposed action and requirements related to it. The manager shall advise the applicant of the nature and detail of the plans, designs, photographs, reports or other exhibits required to be submitted with the application. Such advise shall not preclude the historic preservation board from requiring additional material prior to making its determination in the case. Following the conference with the manager, a preapplication conference shall be held with the historic preservation board if requested by the applicant.
- c. Upon receipt of a completed application and all required submittals and fees, the manager shall place the application on the next regularly scheduled meeting of the historic preservation board allowing for notices as required herein. Applications for certificates of appropriateness may be heard at specially called meetings of the historic preservation board provided all notice requirements are met. Upon mutual agreement between the applicant and the manager, the application may be set for hearing at a meeting later than the next regularly scheduled meeting.
- d. At least 15 days, but not more than 30 days, prior to the meeting at which the application is to be heard, the town manager shall give the following notice:
 1. Written notice of the time and place of the meeting shall be sent to the applicant and all persons or organizations filing written requests with the town manager.
 2. One advertised notice in a newspaper of general circulation.
- e. The hearing shall be held at the time and place indicated in the notice. The decision of the historic preservation board shall be made at the hearing.
- f. The historic preservation board shall use the criteria set forth in subsection 3.01.03(2) of this section to review the completed application and accompanying submittals. After completing the review of the application and fulfilling the public notice and hearing requirements set forth above, the board shall take one of the following actions:
 1. Grant the certificate of appropriateness with an immediate effective date;
 2. Grant the certificate of appropriateness with special modifications and conditions;

3. Deny the certificate of appropriateness.

- g. The historic preservation board shall make written findings and conclusions that specifically relate the criteria for granting certificates of appropriateness. All parties shall be given the opportunity to present evidence through documents, exhibits, testimony or other means. All parties shall be given the opportunity to rebut evidence through cross examination or other means.
- h. The town clerk shall record and keep records of all meetings. The records shall include the vote, absence or abstention of each member upon each question, all official actions of the historic preservation board, and the findings and conclusions of the board. All records shall be filed in the town.
- i. Any person aggrieved by the decision reached by the historic preservation board may appeal the decision to the town council.
- j. No work for which a certificate of appropriateness is required may be undertaken unless a certificate of appropriateness authorizing the work is conspicuously posted on the property where the work is to be performed.

3.01.04 *Certified local government added requirements.* The following requirements are added so as to comply with state and national certified local government requirements:

- (1) The board may grant a certificate of appropriateness for demolition which may provide for a delayed effective date up to six months from the date of the board's action. The effective date of the certificate will be determined by the board based on the relative significance of the structure and the probable time required to arrange a possible alternative to demolition. In general, the board may delay the demolition of designated historic sites and contributing buildings within historic districts for up to six months, while demolition of noncontributing buildings within historic districts may be delayed for up to three months. During the demolition delay period, the board may take such steps as it deems necessary to preserve the structure concerned. Such steps may include, but not be limited to, consultation with community groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving one or more structures or other features.
- (2) The board may consider any request for National Register status after approval of local register status. The applicant or owner of record of any non-town property shall be given a minimum of 30 days and not more than 75 days prior to a board meeting in which to comment and/or object to the listing of their property in the National Register of Historic Places.
- (3) Site file data and other appropriate material will be provided by the state historic preservation office.
- (4) Provide the state preservation officer at least 30 days notice prior to any board meeting, and

submit the minutes of each meeting within 30 days of the meeting which provides a record of attendance of the board members as well as public attendance figures.

- (5) Notify the state of any changes in board membership within 30 days of a change.
- (6) Notify the state of any new historic designations or of any alterations to existing designated properties.
- (7) Submit the required annual report by November 1 of each year covering through September 30.
- (8) Board meetings will be announced to the public as required by state law.

(Ord. No. 91-6, § 3(3.01.00), 2-11-1992; Ord. No. 94-1, 1-5-1994; Ord. No. 94-2, § 1(d), 2-8-1994; Ord. No. 2009-03, § 4(3.01.02E2), 6-9-2009)