File #: 2019-142

Owner's Name: Ocean Reef Club, Inc., & Ocean Reef Community Association, Inc.

Applicant: Smith Hawks, PL

Agent: Barton W. Smith, Esq.

Type of Application: CP Text Amendment

Key: Ocean Reef

RE #: 

Additional Information added to File 2019-142
Amended and Restated Comprehensive Plan (CP) Text Amendment Application

An application must be deemed complete and in compliance with the Monroe County Comprehensive Plan and Code by the staff prior to the item being scheduled for review.

Application Fee: $6,470.00 (plus $850 for the BOCC adoption hearing)
The base fee includes two internal staff meetings with applicants; one Development Review Committee meeting, one Planning Commission public hearing; and one Board of County Commission public hearing. If this minimum number of meetings/hearings is exceeded, additional fees shall be charged pursuant to Fee Schedule Resolution and paid prior to the private application proceeding through public hearings.

In addition to the application fee, the following fees also apply:
Advertising Costs: $245.00
Surrounding Property Owner Notification (SPON): $3.00 for each property owner required to be noticed
Transportation Study Review: $5,000.00 Deposit (any unused funds will be returned upon approval)
Advertising and Noticing fees for a community meeting: $245.00 plus $3.00/SPON

Date of Request: 10/14/2021

Applicant / Agent Authorized to Act for Property Owner: (Agents must provide notarized authorization from all property owners.)

SMITH HAWKS, PL
BARTON W. SMITH, ESQ./JESS GOODALL, ESQ.

Applicant (Name of Person, Business or Organization) Name of Person Submitting this Application

138 SIMONTON STREET, KEY WEST, FLORIDA 33040

Mailing Address (Street, City, State and Zip Code)

(305) 296-7227

Work Phone Home Phone Cell Phone Email Address

Property Owner: (Business/Corp must include documents showing who has legal authority to sign.)

OCean Reef Club, Inc & Ocean Reef Community Association, Inc. c/o AGENT

(Name/Entity) Contact Person

c/o AGENT

Mailing Address (Street, City, State and Zip Code)

c/o AGENT

Work Phone Home Phone Cell Phone Email Address

Page 1 of 8 Sept 2021
Goal(s), Objective(s) and/or Policy(s) of the Comprehensive Plan Affected:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

Please describe the reason for the proposed text amendment (attach additional sheets if necessary):
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

Pursuant Chapters 163 and 380, Florida Statutes, an amendment to the Comprehensive Plan must be consistent with Florida Statute, with the Monroe County Comprehensive Plan, and with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute. Please describe how the proposed text amendment is consistent with each of the following (attach additional sheets if necessary):

1) The proposed amendment is consistent with Part II of Chapter 163, Florida Statute. *(At a minimum, please review and address Sections 163.3177, 163.3178, 163.3180, and 163.3184, F.S.)* Specifically the amendment furthers:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.
2) The proposed amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan: SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

3) The proposed amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute: SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

The Board of County Commissioners may consider an ordinance to transmit to the State Land Planning Agency an amendment if the change is based on one or more of the following factors. Please describe how one or more of the following factors shall be met (attach additional sheets if necessary):

1) Changed projections (e.g. regarding public service needs) from those on which the text was based
   SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

2) Changed assumptions (e.g. regarding demographic trends):
   SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.
3) Data errors, including errors in mapping, vegetative types and natural features:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

4) New issues:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

5) Recognition of a need for additional detail or comprehensiveness:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

6) Data updates:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

In no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located or to any area in accordance with a Livable CommuniKeys master plan. Please describe how the text amendment would not result in an adverse community change (attach additional sheets if necessary):
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.
Applicants submitting an application for an amendment to the text of the Comprehensive Plan shall participate in a concept meeting with the Planning and Environmental Resources Department, as indicated in Code Section 102-158(d)(3), to discuss the proposed amendment.

**Scheduling.** A concept meeting shall be scheduled by department staff once the application is determined to be complete.

As part of this concept meeting, department staff will identify whether or not the proposed text amendment will have a county-wide impact. If the proposal is determined to have a county-wide impact, a public meeting with the Board of County Commissioners ("Impact Meeting") prior to the application proceeding to the DRC for review is required. The applicant shall coordinate with the Planning Director regarding the date and time of the Impact Meeting; however, all Impact Meetings shall be held in Marathon.

**Notice of Meeting.** The Impact Meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation.

**Noticing and Advertising Costs.** The applicant shall pay the cost of the public notice and advertising for the Impact Meeting and provide proof of proper notice to the Planning Director.

The Impact Meeting is not to be a public hearing (the BOCC will not vote on the proposal), but a public meeting during which the BOCC may offer their initial opinions and the public may have input on the proposed amendment.

**PROOF OF PROPER NOTICING ON THE IMPACT MEETING WILL BE REQUIRED.**

Applicants requesting a Comprehensive Plan Text Amendment shall provide for public participation through a community meeting, as indicated in Code Section 102-159.

**Scheduling.** The applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings are to be held on a weekday evening at least three (3) months prior to any of the public hearings.

**Notice of Meeting.** The community meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation, mailing of notice to surrounding property owners, and posting of the subject property.

**Noticing and Advertising Costs.** The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

The community meeting shall be facilitated by a representative from the Monroe County Planning & Environmental Resources Department and the applicant shall be present at the meeting.

**PROOF OF PROPER NOTICING ON THE COMMUNITY MEETING WILL BE REQUIRED.**
All of the following must be submitted in order to have a complete application submittal:
(Please check as you attach each required item to the application)

- Completed application form (unaltered and unbound)
- Correct fee (check or money order payable to Monroe County Planning & Environmental Resources)
- Existing text of Comprehensive Plan Goal(s), Objective(s), and/or Policy(s) affected
- Proposed amendment(s) to text of Comprehensive Plan Goal(s), Objective(s), and/or Policy(s). Must be provided in strikethrough and underline format.

If a site specific amendment is proposed:
- Proof of ownership (i.e., Warranty Deed)
- Ownership Disclosure Form
- Notarized Agent Authorization Letter (note: authorization is needed from all owner(s) of the subject property)
- Copy of current Future Land Use Map (required if application affects specific and defined area)
- Current Property Record Card(s) from the Monroe County Property Appraiser
- Location map
- Photograph(s) of site(s) from adjacent roadway(s)
- Signed and Sealed Boundary Survey(s), prepared by a Florida registered surveyor – eight (8) sets (at a minimum, survey should include elevations; location and dimensions of all existing structures, paved areas and utility structures; all bodies of water on the site and adjacent to the site; total acreage by land use district; total acreage by habitat; and total upland area
- A list of names and addresses of all real property owners within a 600 foot radius of the property(ies) – (three sets). This list should be compiled from the current tax rolls of the Monroe County Property Appraiser. In the event that a condominium development is within the 600 foot radius, each unit owner must be included.

If applicable, the following must be submitted in order to have a complete application submittal:

- 600ft Radius report, prepared by the Monroe County Property Appraiser’s Office (required if application affects specific and defined area)
- Traffic Study, prepared by a licensed traffic engineer (required if application affects specific and defined area)
- Transportation fee of $5,000 to cover the cost of experts hired by the Department to review the traffic study – any unused funds deposited will be returned upon approval (required if application affects specific and defined area)

If deemed necessary to complete a full review of the application, within reason, the Planning & Environmental Resources Department reserves the right to request additional information.

Additional fees may apply pursuant to the approved fee schedule.
Has a previous application been submitted for this site(s) within the past two years?  □ Yes □ No

Is there a pending code enforcement proceeding involving all or a portion of the parcel(s) proposed for development?  □ Yes □ No  Code Case file # __________________________  Describe the enforcement proceedings and if this application is being submitted to correct the violation: __________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
The applicant/owner hereby acknowledges and agrees that any staff discussions or negotiations about conditions of approval are preliminary only, and are not final, nor are they the specific conditions or demands required to gain approval of the application, unless the conditions or demands are actually included in writing in the final development order or the final denial determination or order.

By signing this application, the owner of the subject property authorizes the Monroe County Planning & Environmental Resources staff to conduct all necessary site visits and inspections on the subject property.

I, the Applicant, certify that I am familiar with the information contained in this application, and that to the best of my knowledge such information is true, complete and accurate.

Signature of Applicant: ___________________________ Date: OCTOBER 14, 2021

STATE OF FLORIDA
COUNTY OF MONROE

Sworn to and subscribed before me this 14th day of October, 2021, by means of ☐ physical presence or ☐ online notarization, by JESS MILES GOODALL (PRINT NAME OF PERSON MAKING STATEMENT), who is personally known to me OR produced ___________________________ as identification. (TYPE OF ID PRODUCED)

Signature of Notary Public
BRANDI GREEN
Print, Type or Stamp Commissioned Name of Notary Public
My commission expires: 06/29/2024

Send complete application package to:
Monroe County Planning & Environmental Resources Department
Marathon Government Center
2798 Overseas Highway, Suite 400
Marathon, FL 33050
October 14, 2021

Emily Schemper, Senior Director of Planning
Monroe County Planning & Environmental Resources Department
2798 Overseas Highway, Suite 400
Marathon, Florida 33050
Email: Schemper-Emily@MonroeCounty-FL.Gov

RE: Amended and Restated Background Letter to support the Amended and Restated Application for Comprehensive Plan Text Amendment (File No.: 2019-142) Ocean Reef Club, Inc. and Ocean Reef Community Association, Inc.’s Proposed Comprehensive Plan Text Amendment to add Goal 112, Objective 112.1, and Policy 112.1.1

Dear Emily,

Please accept this correspondence as our clients’, Ocean Reef Club, Inc. (“Ocean Reef Club”) and Ocean Reef Community Association, Inc. (“Master Association”) (collectively “Ocean Reef” and “Applicant”) Amended and Restated Background Letter, providing information, and data and analysis to support the Amended and Restated Application for Comprehensive Plan Text Amendment (“Amendment”). Applicants are seeking to create a site-specific Goal, Objectives, and Policies within the Monroe County Year 2030 Comprehensive Plan (“Comp Plan”) that shall permit exemptions, reductions, and deviations from development standards and other provisions contained within the Comp Plan for the Ocean Reef site specific area, which consists of the properties identified for inclusion in the Ocean Reef Overlay district in the corresponding Land Use District (zoning) Map amendment (“LUD”) and corresponding Land Development Code amendment, See table of Monroe County Real Estate numbers, attached hereto as Exhibit A.

The enclosed Amended and Restated Application for Comprehensive Plan Text Amendment Application File No.: 2019-142 (“Application”), shall supersede all previous versions of the Application. Additionally, please find a full and complete copy of this amended and restated application package to be date-stamped and returned in the enclosed pre-paid, self-addressed FedEx envelope.
I. Text Amendment Background

a. Overview

The Amendment seeks to amend the text of the Comp Plan, as provided below by adding Goal 112; Objectives 112.1 and 112.2; and Policies 112.1.1, and 112.2.1, which shall permit exemptions, reductions, and deviations from development standards and other provisions contained within the Comp Plan for the properties included in the Ocean Reef Overlay District, which consists of the non-residential properties owned by Ocean Reef Club, Inc. ("Ocean Reef Club"), and the residential property owned by Golf Manor I Condominium Association ("Torchwood"). This will allow Ocean Reef Club and Torchwood to self-govern such exempted items.

An application amending the Monroe County land Development Code ("LDC") was submitted by Ocean Reef Club, Inc (File No. 2019-025), which provides language for LDC section 130-141 and creates the Ocean Reef Overlay District ("Ocean Reef Overlay District"). The purposes of the Ocean Reef Overlay District are to implement applicable goals, objectives, and policies of the Comprehensive Plan as established under Goal 112 and to allow development that primarily serves the needs of permanent residents of the Ocean Reef Community a gated 100+ acre master planned community. Additionally, a LUD amendment has been submitted to the County to identify the boundaries of the Ocean Reef Overlay District as the boundaries of the non-residential properties owned by Ocean Reef Club, and the residential properties at Torchwood. Any properties wishing to be included in the Ocean Reef Overlay District shall be required to submit a separate and distinct LUD amendment.

This Application will aid in preventing any inconsistencies between the Comp Plan and the LDC upon approval and passage of the Ocean Reef Overlay District.

b. Amendment Request

Ocean Reef is a gated 100+ acre community that is separate and distinct from the rest of Monroe County ("County"). The Amendment is based on the unique character and internal development standards within the Ocean Reef community and recognizes the distinct nature of the Ocean Reef planned development and shall provide exemptions and reductions to County development standards for the Ocean Reef master planned community in order to maintain the community character of Ocean Reef.
Additionally, this Amendment seeks to maintain consistency between the Comp Plan and the LDC through the addition of a new Goal, Objectives, and Policies specific to Ocean Reef. Additions are set forth below in Blue and deletions are set forth in Red.

c. The Proposed Amendments

GOAL 112

Ocean Reef is a gated 100+ acre master planned community where public access is restricted and the community is operated and maintained by the Ocean Reef Master Planned Community including the provision of comprehensive private utilities, transportation facilities and services, and an association or similar entity which regulates development standards and monitors development requests by its members. Monroe County recognizes the distinct nature of the Ocean Reef Planned development based on its distinct character, internal development standards and shall provide exemptions and reductions to County development standards for the Ocean Reef master planned community.

The standards, exemptions, reductions provided within Goal 112 and its objectives and policies, shall only be available to properties within the Ocean Reef Master Planned Community that obtain an Ocean Reef overlay district amendment (LDC Section 130-141) to the Official Land Use (Zoning) District Map.

Objective 112.1
Monroe County shall exempt or minimize its development standards for nonresidential structures and uses within the Ocean Reef Master Planned Community, which self-governs its internal land development in order to provide uniform development standards and architectural guidelines to protect the distinct community character within the Ocean Reef Master Planned Community.

Policy 112.1.1

The following provisions shall control and supersede existing provisions of the Monroe County Comprehensive plan relating to nonresidential structures and uses within the Ocean Reef Master Planned Community:
1. To maintain the distinct and existing character within the Ocean Reef Master Planned Community, lawfully established nonconforming nonresidential structures and uses may continue and may be permitted to be rebuilt, even if 100 percent destroyed, provided that they are rebuilt to preexisting use and that the nonconformity is not expanded or further violated. Accessory uses or structures associated with a lawfully established nonconforming nonresidential principal use may be permitted.

   a. Notwithstanding Objective 101.9, Policy 101.9.4, and Policy 105.1.4, lawfully established nonconforming nonresidential principal structures that are destroyed, substantially damaged or substantially improved may be repaired, restored and or replaced within the existing footprint of the lawfully established nonconforming nonresidential structure.

   b. Notwithstanding Objective 101.8.2, 101.8.3, 101.8.4, 101.9, Policy 101.9.4, and Policy 105.1.4, lawfully established nonconforming nonresidential accessory uses and structures within the Ocean Reef Master Planned Community that are destroyed, substantially damaged or substantially improved may repaired, restored and or replaced without expansion. The nonconforming nonresidential accessory use or structure may continue if its principal use or structure is discontinued or removed for redevelopment, provided that the owner is moving forward with continual development and with active concurrent permits for redevelopment of a principal use or structure.

   In the absence of an active concurrent permit for redevelopment of a principal use or structure on the site, the lawfully established nonconforming accessory structure and use may remain for up to five years from the date of a disaster event. The Board of County Commissioners may extend the five-year time limit within the Ocean Reef Master Planned Community by resolution, if needed.

2. Lawfully established nonresidential structures and uses may be repaired, restored and or replaced using the previously approved open space ratio, provided stormwater management is in compliance with the Policy 101.10.1 and LDC Section 114-2 (5):

   a. Lawfully existing nonresidential principal structures and uses, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the maximum shoreline setback is maintained.
b. Lawfully existing nonresidential accessory structures and uses, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the shoreline setback is consistent with subsection 6 of this Policy.

c. New nonresidential principal and accessory structures development shall have an open space requirement of five percent (5%), provided the clearing limits in Policy 101.5.27 are not exceeded and development is not proposed within a wetland area identified in Policies 102.1.1 or 204.2.2.

3. Nonresidential structures may receive variances for front, side, and rear yard non-shoreline setbacks; buffeyards; off-street parking; loading spaces; landscaping, as approved by the Ocean Reef master planned community. Variances for nonresidential structures on property owned by Ocean Reef Club, Inc., with the not-for-profit amenities identified in the master planned community association documents, shall be the only property exempt from front, side, and rear yard non-shoreline setbacks; buffeyards; off-street parking; loading spaces; landscaping, and will not be required to provide evidence it has been approved by the Ocean Reef master planned community, based on its exemption under the Ocean Reef gated master planned community's governing documents. The County shall recognize, variances for properties not owned by Ocean Reef Club, Inc., upon evidence submitted that a variance has been approved by the Ocean Reef master planned community or Ocean Reef Club based on criteria established for granting a variance by the Ocean Reef Master Planned Community.

4. The development and redevelopment of nonresidential structures and uses within Ocean Reef Master Planned Community are exempt from the below listed Goals, Objectives, and Policies related to concurrency, because the Ocean Reef Master Planned Community is responsible for providing, financing, operating, and regulating its facilities and services needed to serve development within the Ocean Reef community:

a. Policy 301.1.1 - County Road LOS
b. Objective 301.2 - Road LOS
c. Policy 701.1.1 - Potable Water LOS
d. Policy 801.1.1 - Solid waste LOS
e. Policy 1201.1.1 - Recreation LOS

5. The development and redevelopment standards for nonresidential structures and uses within Ocean Reef Master Planned Community are exempt from the below listed Goals, Objectives, and Policies because the Ocean Reef master planned community has developed its
own community development standards to maintain and implement its community character and vision:

a. Policy 101.16.1 - Parking, traffic flow, pedestrian ways, etc.
b. Goal 211 - Potable water conservation
c. Objective 211.1 - Water conservation strategies
d. Policy 301.3.2 - Bicycle or pedestrian facility requirements
e. Policy 301.6.1 - Scenic Highway Corridor landscaping and setbacks
f. Policy 301.9.1 - Parking, traffic flow, interconnectivity, etc.
g. Policy 401.1.1 - Mass transit requirements
h. Policy 701.5.1 - Landscape water conservation

6. Notwithstanding Policy 212.2.4, nonresidential accessory structures will be permitted in shoreline setbacks within the Ocean Reef Master Planned Community as follows:

a. Along lawfully altered shorelines adjacent to manmade canals, channels, and basins:
   i. The combined area of all accessory structures may occupy up to ninety percent (90%) of the upland area of the required 20-foot shoreline setback.
   ii. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of five (5) feet from the MHW line. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 20-foot shoreline setback if constructed to avoid any off-site discharge of stormwater from the subject parcel.

b. Along unaltered or unlawfully altered shorelines located along natural non-dredged waterways and open water:
   i. The combined area of all accessory structures may occupy up to seventy percent (70%) of the upland area of the required 50-foot shoreline setback.
   ii. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of ten (10) feet from the MHW line or the landward extent of the mangroves, whichever is farther landward, and shall be located in upland areas. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 50-foot shoreline setback if
constructed to avoid any off-site discharge of stormwater from the subject parcel.

c. All other shoreline setback provisions for principal and accessory structures within Policy 212.2.4 shall apply.

7. The development and redevelopment of **nonresidential structures and uses** within Ocean Reef master planned community shall adhere to:
   a. the upland native vegetation clearing limits established in Policy 101.5.27; and
   b. mitigation for the removal of upland native vegetation, requiring payment to the Monroe County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a 2:1 basis; and
   c. shall not impact wetland areas identified in Policies 102.1.1 or 204.2.2; and
   d. shall require “required” landscaping material to be native species to Monroe County free of disease, invasive pests, and invasive fungi; and require the removal of, and not include the planting of, invasive exotic plant species. The landscape material size and quantity, installation standards, irrigation and maintenance criteria shall be based on criteria established by the Ocean Reef Master Planned Community. Landscape plans submitted must indicate what is “required” landscaping by Ocean Reef master planned community.

8. The development and redevelopment of nonresidential structures shall be subject to the height limit and exceptions included within Policies 101.5.30 and 101.5.31.

**Objective 112.2**

Monroe County shall exempt or minimize its development standards for **lawfully established residential dwelling units** within the Ocean Reef master planned community, which self-governs its internal land development in order to provide uniform development standards and architectural guidelines to protect the distinct community character within the Ocean Reef Master Planned Community.

**Policy 112.2.1**

The following provisions shall control and supersede existing provisions of the Monroe County Year 2030 Comprehensive Plan for **lawfully established residential dwelling units’** properties within the Ocean Reef master planned community:
1. In recognition of residential dwelling units previously permitted prior to the adoption of any Monroe County Comprehensive Plan, notwithstanding Policy 101.5.25, parcels-designated Residential Low (RL) on the Future Land Use Map (FLUM) with a lawfully established residential dwelling unit, shall have a minimum land use open space requirement of fifty percent (50%).

II. Reason for Proposed Text Amendment

a. Data and Analysis

1. Overall Data and Analysis

GOAL 112

Ocean Reef is a gated 100+ acre master planned community where public access is restricted and the community is operated and maintained by the Ocean Reef Master Planned Community including the provision of comprehensive private utilities, transportation facilities and services, and an association or similar entity which regulates development standards and monitors development requests by its members. Monroe County recognizes the distinct nature of the Ocean Reef Planned development based on its distinct character, internal development standards and shall provide exemptions and reductions to County development standards for the Ocean Reef master planned community.

The standards, exemptions, reductions provided within Goal 112 and its objectives and policies, shall only be available to properties within the Ocean Reef Master Planned Community that obtain an Ocean Reef overlay district amendment (LDC Section 130-141) to the Official Land Use (Zoning) District Map.

Ocean Reef is a gated, master planned community developed prior to the adoption of Monroe County’s Code in 1986 and its Comp. Plan in 1992. Ocean Reef’s development as a separate and distinct master planned community is distinct to the Florida Keys as it is over 100 acres in size and is located approximately ten miles north of the Overseas Highway, just North of Card Sound Road. The aerial below shows the isolation of Ocean Reef to the rest of the Florida Keys as all development shown in the photo is within the community and there are no neighboring communities.
The Ocean Reef Community Association, Inc. was incorporated in 1959 under the name Ocean Reef Improvement Association, which name was subsequently amended to Ocean Reef Community Association, Inc. The Ocean Reef Community Association, Inc. has adopted uniform building restrictions and regulations, titled the “Ocean Reef Community Association Building Regulations and Restrictions” (“Building Regulations and Restrictions”) which include development standards and architectural guidelines to protect the community character and provide for the orderly development of Ocean Reef.

Monroe County and the State of Florida have already recognized Ocean Reef as distinct in its development and location and it is already excluded from multiple provisions of the County’s Comp. Plan and LDC, including but not limited to the County’s Rate of Growth Ordinance (ROGO) and conditional use approval.¹ The Amendments further recognize Ocean Reef’s ability to self-govern zoning to insure the welfare of its residents and that Ocean Reef’s covenants and restrictions address the development standards requested to be modified or exempted by Ocean Reef and in most, if not all, instances, Ocean Reef’s building standards are far more restrictive and protective of adjacent land owners, a basic tenant of zoning, which is the exercise of the police power of the government to ensure the welfare of the citizens through sound zoning to insure adjacent land uses are not adverse or obtrusive to adjoining and nearby property owners.

¹ See e.g., Comp. Plan Policy 101.5.27 and Code Sec. 118-9 (clearing restrictions), Code Sec. 130-74 (exemption from conditional use approval), Comp. Plan Policies 105.2.1 and 205.1.1 and Code Sec. 130-130 (exemption from Tier overlay), Comp. Plan Policy 101.3.1 and Code Sec. 138-22 (exemption from ROGO), Comp. Plan Policy 101.4.1 and Code Sec. 138-48 (exemption from NROGO)
Objective 112.1

Monroe County shall exempt or minimize its development standards for nonresidential structures and uses within the Ocean Reef Master Planned Community, which self-governs its internal land development in order to provide uniform development standards and architectural guidelines to protect the distinct community character within the Ocean Reef Master Planned Community.

Ocean Reef Club, along with many residential property owners, were developed prior to the current LDC and Comp. Plan. Substantial improvement or destruction would lead to the structures not being capable of being redeveloped due to setbacks, open space, impervious surface, non-residential floor area or height standards contained in the current Comp. Plan.

The preceding identified development standards that are not connected to FEMA flood protection requirements are presumably required to be complied with when substantially damaged or improved to obtain conformity and compliance with the County Code and Comp. Plan when destroyed or undertaking a major renovation. However, Ocean Reef’s improvements can easily exceed the fifty percent value in order to renovate and to continue to keep buildings in conformity with the community character and aesthetic appeal of Ocean Reef. If Ocean Reef were required to obtain conformity with the LDC and Comp. Plan it would cause the loss of Ocean Reef’s community character and aesthetic appeal, in derogation of the purpose of zoning regulations.

By way of example, Ocean Reef Club’s Ocean Room exceeds the intensity, setbacks and parking requirements of the Code, which the improvements contemplated post Hurricane Irma far exceed fifty percent of the building value. Because of this, its renovation would require the property to meet the current Code, which would be an impossibility unless the standards are relaxed or exempted as provided for in this Amendment.

Additionally, the Marlin Hotel, depicted below, is zoned Sparsely Settled (SS), and as such it violates open space, impervious surface, setbacks, parking and height. If it was substantially damaged or improved, it could not be redeveloped.
Zoning is intended to permit planners to bring about orderly growth and change while assuring property owners and residents that the characteristics of nearby areas will remain stable. *West's Encyclopedia of American Law, edition 2.* S.v. "Zoning." Retrieved December 16, 2018, from https://legal-dictionary.thefreedictionary.com/Zoning. Ocean Reef's characteristics would be altered if it is required to comply with the current Code and Comp. Plan when structures are substantially improved or destroyed. Ocean Reef would still be required to comply with FEMA’s flood requirements insuring Monroe County’s National Flood Insurance Rating.

**Policy 112.1.1**

The following provisions shall control and supersede existing provisions of the Monroe County Comprehensive plan relating to **nonresidential structures and uses** within the Ocean Reef Master Planned Community:

1. To maintain the distinct and existing character within the Ocean Reef Master Planned Community, lawfully established nonconforming **nonresidential structures and uses** may continue and may be permitted to be rebuilt, even if 100 percent destroyed, provided that they are rebuilt to preexisting use and that the nonconformity is not expanded or further...
Emily Schemper, Senior Director of Planning
Amended and Restated Application for Comprehensive Plan Text Amendment (File No. 2019-142)
October 14, 2021
Page 12 of 42

violated. Accessory uses or structures associated with a lawfully established nonconforming nonresidential principal use may be permitted.

a. Notwithstanding Objective 101.9, Policy 101.9.4, and Policy 105.1.4, lawfully established nonconforming nonresidential principal structures that are destroyed, substantially damaged or substantially improved may be repaired, restored and/or replaced within the existing footprint of the lawfully established nonconforming nonresidential structure.

Most, if not all, of the non-residential structures located within Ocean Reef are non-conforming, which means that substantial improvement or destruction would lead to the structures not being capable of being redeveloped or repaired due to setbacks, open space, impervious surface or non-residential floor area requirements under the Comp. Plan and LDC.

The preceding identified development standards that are not connected to FEMA flood protection requirements are presumably required to be complied with when substantially damaged or improved to obtain conformity and compliance with the County Code and Comp. Plan. However, any improvements or repairs on the non-residential properties can easily exceed the fifty percent (50%) value in order to renovate and to continue to keep buildings in conformity with the community character and aesthetic appeal of the Ocean Reef master planned community. If the non-residential structures were required to obtain conformity with the LDC and Comp. Plan for repair or construction, it would cause the loss of Ocean Reef’s community character and aesthetic appeal, in derogation of the purpose of zoning regulations.

By way of example, Ocean Reef Club’s Ocean Room exceeds the intensity, setbacks and parking requirements of the Code, which the improvements contemplated post Hurricane Irma far exceed fifty percent of the building value. Because of this, its renovation would require the property to meet the current Code, which would be an impossibility unless the standards are relaxed or exempted as provided for in this Amendment.

Additionally, the Marlin Hotel, depicted below, is zoned Sparsely Settled (SS), and as such it violates open space, impervious surface, setbacks and parking. If it was substantially damaged or improved, it could not be redeveloped. However, under the proposed language in the Amendment, the hotel would be able to be repaired or improved while maintaining the character of the community.
Zoning is intended to permit planners to bring about orderly growth and change while assuring property owners and residents that the characteristics of nearby areas will remain stable. West's Encyclopedia of American Law, edition 2. S.v. "Zoning." Retrieved December 16, 2018, from https://legal-dictionary.thefreedictionary.com/Zoning. The characteristics of the Ocean Reef Club Properties would be negatively altered if they are required to comply with the current Code and Comp. Plan when structures are substantially improved or destroyed. Additionally, if the Ocean Reef Club Properties lose the character and aesthetic appeal that is associated with Ocean Reef Club and Ocean Reef master planned community, these non-residential properties would negatively affect the community character and aesthetic appeal of Ocean Reef master planned community. All properties included in the Overlay district would still be required to comply with FEMA’s flood requirements insuring Monroe County’s National Flood Insurance Rating.

b. Notwithstanding Objective 101.8.2, 101.8.3, 101.8.4, 101.9, Policy 101.9.4, and Policy 105.1.4, lawfully established nonconforming nonresidential accessory uses and structures within the Ocean Reef Master Planned Community that are destroyed, substantially damaged or substantially improved may repaired, restored and/or replaced without expansion. The nonconforming nonresidential accessory use or structure may continue if its principal use or structure is discontinued or removed for redevelopment, provided that the owner is moving forward with continual development and with active concurrent permits for redevelopment of a principal use or structure.

In the absence of an active concurrent permit for redevelopment of a principal use or structure on the site, the lawfully established nonconforming accessory structure and use may remain for up to five years from the date of a disaster event. The Board of County Commissioners may extend the five-year time limit within the Ocean Reef Master Planned Community by resolution, if needed.

The current Comp. Plan and LDC require that nonconforming accessory structures and uses must be demolished or terminated when the principal structure is demolished or destroyed, either voluntary or involuntary within Ocean Reef. These standards would require non-residential properties to remove accessory structures or uses that have existed prior to the Code or Comp. Plan solely based on the redevelopment of the principal structure.

This Section has a broad range of negative effects for non-residential properties, including Ocean Reef Club. Accessory structures including pavers, fountains, or other architectural features
common throughout the Ocean Reef would be required to be removed upon redevelopment of the principal non-residential structure, essentially altering the community character of the Ocean Reef community.

Additionally, for almost all of the non-residential properties within Ocean Reef, redevelopment of almost every building on a parcel with a shoreline, would require a nonconforming structure to be removed. For example, the boat barn parcel is almost entirely paved, including within ten feet of the shoreline. In order to redevelop the boat barn, the pavement near the water would be required to be removed along with the requirement to have at least twenty percent open space for the entire property and forty percent open space within the twenty-foot shoreline setback, which would eliminate significant areas currently utilized for boat storage and logistical movement of the forklift around the parcel. See below:
2. **Lawfully established nonresidential structures and uses** may be repaired, restored and/or replaced using the previously approved open space ratio, provided stormwater management is in compliance with the Policy 101.10.1 and LDC Section 114-2 (5):
   a. **Lawfully existing nonresidential principal structures and uses**, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the maximum shoreline setback is maintained.
   b. **Lawfully existing nonresidential accessory structures and uses**, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the shoreline setback is consistent with subsection 6 of this Policy.
   c. **New nonresidential principal and accessory structures development shall have an open space requirement of five percent (5%)**, provided the clearing limits in Policy 101.5.27 are not exceeded and development is not proposed within a wetland area identified in Policies 102.1.1 or 204.2.2.

Ocean Reef’s development standards protect its property owners, guests and invitees. As a master association, Ocean Reef governs development specifically to protect the interests of its residents. As discussed above, the current LDC and Comp. Plan regulations means that a large number of non-residential properties are non-conforming as to open space requirements. Ocean Reef prides itself on the community character of the community as a whole and this includes large areas of open space and landscaping. However, many of the non-residential uses within the community are non-conforming as to open space in order to allow the continued non-residential uses on the property, See example above, Boat Barn.

Ocean Reef’s stringent internal development rules and regulations, see attached, control the development of residential and non-residential projects in order to maintain the community character of the master association and protect the interests of its residents. For almost all of the non-residential properties within Ocean Reef, redevelopment of almost every building would require a nonconforming structure to be removed. For example, the boat barn parcel is almost entirely paved. In order to redevelop or repair the boat barn, portions of the pavement would be required to be removed to satisfy the open space requirement of at least twenty percent open space for the entire property and forty percent open space within the twenty-foot shoreline setback, which would eliminate significant areas currently utilized for boat storage and logistical movement of the forklift around the parcel.
These non-residential structures and uses are an integral part of Ocean Reef and provide essential services to the residents of the community. By requiring these non-residential properties to conform to all open space requirements severely limits their ability to repair or restore damaged structures and maintain the service.

Ocean Reef has stringent landscaping regulations, as discussed above. The master community strives to maintain the community character for the enjoyment and safety of the residents of the community. Permitting non-residential properties an exemption from the open space requirements allows the master community to develop and operate non-residential services in the community, however, they master community will not permit these properties to build in a manner that would change the incredibly landscaped and open environment that Ocean Reef provides. Ocean Reef acts in the best interest of its residents, and it is not in their intent or the interest of the community to damage the community character by exceeding open space requirements in large amounts, however, if a non-residential use requires (see boat barn- maneuvering forklifts etc.) a reduced open space requirement in order to facilitate the service provided to residents, open space requirements should not preclude such development.

County Code requires each property to meet State of Florida regulations for stormwater discharges. Ocean Reef already requires single family homes, multi-family, and non-residential projects to comply with the South Florida Water Management District (“SFWMD”) standards, and this amendment specifically requires that non-residential projects comply with the 25-year, 72-hour South Florida Water Management District Standard. Ocean Reef is subject to obtaining a SFWMD permit for stormwater runoff unless exempted under Florida Statutes and Regulations. Additionally, Ocean Reef’s stormwater drainage standards sufficiently address surface water management as they are more stringent than the 25-year, 24-hour standard currently required by the County.

The LDC requires all properties to be connected to wastewater treatment facilities. Ocean Reef has a stake in enforcing proper operation and maintenance of controls to retain storm water runoff as Ocean Reef strives to maintain the natural environment of the Florida Keys, and ultimately their property values, by preventing stormwater runoff.

Within the Building Regulations and Restrictions of Ocean Reef the following provisions govern stormwater management and are required prior to an Ocean Reef landscape permit being issued:
6. Class I Landscape Plans shall either provide grading and drainage plan that is identical to the final grading and drainage plan submitted and approved by the ARC or submit a new plan providing all applicable information described in Section IX.

8. All Monroe County water retention areas, as well as water retention swale/s adjacent to all ORCA roadways. The center of the swale/s must be a minimum of six inches (6") lower than the crown of road. The swale must retain storm water runoff from the structures and all impervious areas on the property.

5. All Monroe County and ORCA storm water retention swales must be maintained by the property owner to retain the property's storm water run-off.

3. Linear trench drains must be installed, inside the property line/s, across the entire width of a paver brick, asphalt or concrete driveway which is above the grade of the adjacent paved road edge.

Further, Ocean Reef Building Regulations and Restrictions require the following:

3. Grading and Drainage Plan:

   Required for all Class I projects and all other landscape projects and/or construction projects which change the existing grade. Plan must include the following:

   a. Existing and proposed elevations (located at same location) for parcel corners, periodically along property lines, grade breaks, center of lot, corner of building and other structures and crown of road.

   b. Existing first floor FEMA height for adjacent properties.

   c. Proposed elevations and/or contours with intended water flow arrows to adequately show drainage patterns on and adjacent to parcel. All post construction drainage must be retained on-site and be equal to or less than pre-construction drainage.

   d. If fill is added on the parcel, property line grades on neighboring properties will be required to review impacts to these properties.

   e. A copy of the Monroe County Storm Water retention calculation/worksheet

   f. A metal trench drain shall be installed the entire width of all sloped driveways and/or walkways leading to the road, that are above the existing or finish grade. The drains shall discharge into a storm water retention area within the property. The drains shall be installed according to manufacturer's specifications.

   g. ORCA reserves the right to request an as-built final grading plan survey that provides all post construction grade elevations to support the approved grading and drainage plan.

3. Nonresidential structures may receive variances for front, side, and rear yard non-shoreline setbacks; buffeyards; off-street parking; loading spaces; landscaping, as approved by the Ocean Reef master planned community. Variances for nonresidential structures on property owned by Ocean Reef Club, Inc., with the not-for-profit amenities identified in the master planned community association documents, shall be the only property exempt from front, side, and rear yard non-shoreline setbacks; buffeyards; off-
street parking; loading spaces; landscaping, and will not be required to provide evidence it has been approved by the Ocean Reef master planned community, based on its exemption under the Ocean Reef gated master planned community's governing documents. The County shall recognize, variances for properties not owned by Ocean Reef Club, Inc., upon evidence submitted that a variance has been approved by the Ocean Reef master planned community or Ocean Reef Club based on criteria established for granting a variance by the Ocean Reef Master Planned Community.

Ocean Reef Building Regulations and Restrictions provide defined regulations for development standards of residential, single and multi-family, and non-residential structures. It also provides a variance procedure which is reviewed and approved or denied by the Architectural Review Committee (ARC). The County and Ocean Reef require a hardship be shown for certain variances, but Ocean Reef’s standard is solely based on hardship, whereas the County has exceptions to this requirement. *Compare* Building Rules and Restrictions I.(M.) “Variances for setbacks or other restrictions will normally be denied unless a hardship can be proven to exist.” *to Code Sec. 102-186(g)* (providing a variance to front yard setback not based on hardship). Both the County and Ocean Reef notify property owners adjacent to the property requesting the variance and provide due process prior to a variance being granted. *Compare* Building Rules and Restrictions XXV. Variances and Appeals *to Code Sec. 102-186(i) and (k) and Code. Sec. 102-187(c).

This Amendment eliminates the need for dual approval from both the Ocean Reef Community Association and the County. There is no functional or operational justification for requiring Ocean Reef to apply for a variance from the County where it can self-govern the granting of such variances. Further, permitting Ocean Reef the ability to internally govern any variances furthers Objective 101.19 (8) that “[e]ach Community Master Plan will include a community character element that will address the protection and enhancement of existing residential areas and the preservation of community character through site and building guidelines. Design guidelines for public spaces, landscaping, streetscaping, buildings, parking lots, and other areas will be developed through collaborative efforts of citizens, the Planning Department, and design professionals reinforcing the character of the local community context…”

The Amendment will not change the function of the Code in any way but will allow the Ocean Reef Community to meet Florida Building Code requirements more easily and economically for structures within the isolated community, while decreasing the burdensome process of requiring approval from both the County and the Ocean Reef Community.
4. The development and redevelopment of nonresidential structures and uses within Ocean Reef Master Planned Community are exempt from the below listed Goals, Objectives, and Policies related to concurrency, because the Ocean Reef Master planned community is responsible for providing, financing, operating, and regulating its facilities and services needed to serve development within the Ocean Reef community.

Ocean Reef being exempted from the below Goals, Objectives, and Policies of the Comp. would allow them to “...administer the collective controls over neighborhood quality now exercised through land use regulations at the municipal level.” Volume 7, Number 4, Robert H. Nelson, Privatizing the Neighborhood: A Proposal to Replace Zoning with Private Collective Property Rights to Existing Neighborhoods, page 829, 1999 (“Privatizing the Neighborhood”). A copy of Privatizing the Neighborhood is attached hereto and incorporated herein as Exhibit B. This would permit Ocean Reef to internally determine the controls that should be exercised to govern the quality of the neighborhood. “Neighborhood associations enforce covenants written by the developer to maintain original character of the neighborhood. Generally speaking, neighborhood covenants are much more detailed than zoning regulations, controlling not only types of land uses but also matters of aesthetics.” See Privatizing the Neighborhood, P. 831. Such is the case with Ocean Reef. As shown throughout this Application, Ocean Reef’s Building Regulations and Restrictions are much more stringent than the County’s zoning regulations and regulate uses, structures, and aesthetics while proudly protecting the community character through orderly development. Additionally, the Ocean Reef master planned community is responsible for providing, financing, operating, and regulating the facilities and services needed to serve development within the Ocean Reef community.

d. Policy 301.1.1 - County Road LOS
e. Objective 301.2 - Road LOS

Level of Service (LOS) for transportation and roadways are measured in terms of US1 (LOS C minimum) and County Roads (LOS D minimum). Ocean Reef is not serviced by US1 and is located approximately 15 miles from US1. Internally, there are no County Roads, thereby making this Policy and Objective inapplicable to Ocean Reef.

f. Policy 701.1.1 - Potable Water LOS

County Code requires coordination to conserve clean and safe potable water and to ensure sufficient potable water supply. Ocean Reef is connected to FKAA’s water utility. FKAA coordination is required for any applicant’s connection to its system for development thereby making Policy 701.1.1 unnecessary.
g. **Policy 801.1.1 - Solid waste LOS**

County Code requires each property owners to have solid waste disposal. Ocean Reef privately contracts for solid waste management and recycling pick up within its community thereby making this Policy 801.1.1 inapplicable.

h. **Policy 1201.1.1 - Recreation LOS**

County Code requires sufficient space for recreation and open space. Ocean Reef’s golf, tennis and other facilities far exceed any requirement for recreation and open space. Additionally, open space and recreation are an integral part of the Ocean Reef community character and the residents enjoyment of the community, in order to protect this community character and maintain residents standard of living, Ocean Reef has strict landscaping requirements, therefore making Policy 1201.1.1 inapplicable to Ocean Reef.

5. **The development and redevelopment standards for nonresidential structures and uses within Ocean Reef Master Planned Community are exempt from the below listed Goals, Objectives, and Policies because the Ocean Reef master planned community has developed its own community development standards to maintain and implement its community character and vision:**

In order to maintain the high standard of living and the exemplary community character of the Ocean Reef community, the Ocean Reef master planned community has developed its own community development standards and regulations. [A]dministration of zoning takes place at the municipal level, where political considerations often include many people who are not residents of the neighborhood. But in matters such as the control of fine details of neighborhood architecture, there is no need or justification for broader municipal involvement. Indeed, under zoning the substantial influence on such matters by outsiders leaves the neighborhood exposed to regulatory actions that it does not want.” See Privatizing the Neighborhood, P. 835. This excerpt could not be truer when describing the isolated Ocean Reef community, as requiring Ocean Reef to be regulated by the below Goals, Objectives, and Policies of the Comp. Plan as drafted by those that are not residents of the neighborhood leaves outsiders to determine details and character of a neighborhood of which they have no interest in.

a. **Policy 101.16.1 - Parking, traffic flow, pedestrian ways, etc.**

Ocean Reef’s multimodal road system is already developed with pedestrian walkways, bicycle lanes, and off-street parking. The road systems within Ocean Reef are not County Roads and are self-governed. The safety and well-being of the residents, and guests of Ocean Reef is of the
Emily Schemper, Senior Director of Planning  
Amended and Restated Application for Comprehensive Plan Text Amendment (File No. 2019-142)  
October 14, 2021  
Page 21 of 42

utmost importance to the Ocean Reef master planned community, and Ocean Reef has substantial systems in place to ensure safe and effective traffic flow, off-street parking, and adequate pedestrian access, making Policy 101.16.1 inapplicable.

b. **Goal 211 - Potable water conservation**

County Code requires coordination to conserve clean and safe potable water and to ensure sufficient potable water supply for its residents. In order to provide safe and clean potable water to its residents, Ocean Reef is connected to FKAA’s water utility. FKAA coordination is required for any applicant’s connection to its system for development thereby making Goal 211 unnecessary.

c. **Objective 211.1 - Water conservation strategies**

Ocean Reef’s Building Regulations and Restrictions encourage energy and water conservation through solar panels, efficient irrigation systems and native planting reducing water consumption. It is in the best interest of Ocean Reef to maintain water conservation wherever possible, and as such their regulations have various requirements in furtherance of water conservation:

4. Where automatic irrigation systems are installed, rain switches or other devices, such as soil moisture sensors, to prevent unnecessary irrigation, shall be incorporated.

4. List of native vegetation encouraged to be installed in landscape restorations:

- **Canopy or larger trees:**
  - a. Mahogany
  - b. Soapberry
  - c. Willow Bustin
  - d. Shortleaf Fig
  - e. Cu Pan Ia
  - f. Pigeon Plum
  - g. Jamaica Dogwood
  - h. Lancewood

- **Understory or smaller trees:**
  - a. Myrtle of the River
  - b. Spicewood
  - c. Red Stopper
  - d. Twinberry Stopper
  - e. Satin Leaf
  - f. Thatch Palm
  - g. Everglades Velvetseed
  - h. Jamaica Caper

4. **Policy 301.3.2 - Bicycle or pedestrian facility requirements**

The Policy requires that development occurring on or adjacent to a planned bicycle or pedestrian facility shall provide for the construction of that portion of the facility. Ocean Reef is not being developed on or adjacent to a planned bicycle or pedestrian facility and therefore this section is inapplicable to Ocean Reef.
e. **Policy 301.6.1 - Scenic Highway Corridor landscaping and setbacks**

County Code provides requirements for scenic corridors along US1 or SR 940. Scenic corridor and bufferyards are in place under the Code to prevent overdevelopment alongside major roadways and keep a natural appealing aesthetic as well as division between districts. This Policy is inapplicable to Ocean Reef as Ocean Reef does not front US1 or SR 940.

f. **Policy 301.9.1 – Parking, traffic flow, interconnectivity, etc.**

The LDC provides parking standards governing parking on private property. The purpose of the LDC is to avoid undue congestion on the roads; protect the capacity of the road system to move traffic; minimize unnecessary conflicts among vehicles, pedestrians, and bicyclists; facilitate the use of transportation management systems; and avoid noise, glare, lights, and visual impacts of parking and loading operations on adjacent properties. See LDC Sec. 114-66.

The parking requirements of a zoning code “...are typically drawn from generic parking generation rates, irrespective of site-specific and project-specific characteristics and other variables that would help to more accurately reflect market reality.” Robin Zimbler, *Driving Urban Environments: Smart Growth Parking Best Practices*, page 2, (“Driving Urban Environments”). A copy of Driving Urban Environments is attached hereto and incorporated herein as Exhibit C.

All roads in Ocean Reef are private roads and are built with the purpose of serving Ocean Reef. Because the roads, parking areas, and loading/unloading zones are private, Policy 301.9.1 is inapplicable to Ocean Reef. Exempting Ocean Reef does not adversely affect surrounding property owners, but rather allows the requirements of Policy 301.9.1 to be tailored to fit the location, demographic factors, and other qualifiers specific to Ocean Reef, who is responsible for operating and maintaining such items. Similar to other provisions of the Comp. Plan, Ocean Reef’s Building Regulations and Restrictions have minimum requirements for parking as the excerpt below evidences:

M. **Parking Space Requirements**

1. All condominium renovations and additions will be required to have 1.5 parking spaces for 1-bedroom unit and two (2) parking spaces for 2 and 3-bedroom units.

2. The parking spaces must be within the property boundaries.

3. Other structures, including golf cart rooms, etc., will also be restricted within the property boundaries.

4. A cart parking space may not be counted as a vehicle parking space.
Because Ocean Reef’s parking standards protect its property owners, guests and invitees, and due to its isolation located along Card Sound Road which provides that it does not have any neighboring properties, there is no potential effect on surrounding roadways, property owners or the public at large.

The LDC regulates the size and design of sidewalks and shared use paths. Ocean Reef has an interest in providing safe, long-lasting sidewalks and shared use paths for its residents that are wide enough to allow for proper use. Exempting Ocean Reef from this Policy shall not negatively impact, or have any effect, on other residents of the County.

   g. **Policy 401.1.1 - Mass transit requirements**

The Policy requires large scale development that generate significant trip generation to provide accommodations for mass transit. Ocean Reef provides internal bicycle and walking paths, bus shelters, carpool vehicles for employees amongst many other mass transit opportunities to access Ocean Reef from outside its premise and commute internally as well. As such there is no need for additional mass transit review by Monroe County. Making Policy 401.1.1 is inapplicable to Ocean Reef.

   h. **Policy 701.5.1 - Landscape water conservation**

Ocean Reef Club utilizes an internal water collection facility in North Key Largo for all landscaping irrigation needs. Ocean Reef Club therefore governs irrigation standards for its non-residential projects. Because Ocean Reef collects, stores, and utilizes the water required for its projects, it is in Ocean Reef Club’s best interest to require and police Landscape water conservation. Further examples of conservation methods being required by Ocean Reef’s regulations and restrictions include:

4. Where automatic irrigation systems are installed, rain switches or other devices, such as soil moisture sensors, to prevent unnecessary irrigation, shall be incorporated.

6. Notwithstanding Policy 212.2.4, **nonresidential accessory structures** will be permitted in shoreline setbacks within the Ocean Reef Master Planned Community as follows:
   a. Along lawfully altered shorelines adjacent to manmade canals, channels, and basins:
      i. The combined area of all accessory structures may occupy up to ninety percent (90%) of the upland area of the required 20-foot shoreline setback.
ii. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of five (5) feet from the MHW line. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 20-foot shoreline setback if constructed to avoid any off-site discharge of stormwater from the subject parcel.

b. Along unaltered or unlawfully altered shorelines located along natural non-dredged waterways and open water:
   i. The combined area of all accessory structures may occupy up to seventy percent (70%) of the upland area of the required 50-foot shoreline setback.
   ii. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of ten (10) feet from the MHW line or the landward extent of the mangroves, whichever is farther landward, and shall be located in upland areas. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 50-foot shoreline setback if constructed to avoid any off-site discharge of stormwater from the subject parcel.

c. All other shoreline setback provisions for principal and accessory structures within Policy 212.2.4 shall apply.

The Ocean Reef setbacks are more stringent than those of the County and allow the master planned community to enforce their own standards which allow accessory structures within the shoreline setback. County Code setbacks makes almost every Ocean Reef property legally non-conforming due to the updated land development code’s revised Section 118-12 that prohibits accessory structures within the first ten feet of a shoreline setback, except for narrowly defined water dependent structures. The Ocean Reef setbacks still meet building and fire codes, exceeding both state and federal minimums. Additionally, they take into account viewing points, ensuring that stories above the first floor cannot view into a neighbor’s property.

Additionally, the text provided follows the structure provided in the proposed ordinance adopting amendments to the LDC to amend chapter 118 to eliminate obsolete text, refine LDC language to better clarify regulatory intent for the benefit of the regulated community. See FILE 2019-184.
Emily Schemper, Senior Director of Planning  
Amended and Restated Application for Comprehensive Plan Text Amendment (File No. 2019-142)  
October 14, 2021  
Page 25 of 42

Further, permitting Ocean Reef to internally determine the required shoreline setback furthers the purpose of Section 118-12 of the Code, as this would allow Ocean Reef to “provide for an appearance consistent with community character, protect structures from the effects of long-term sea level rise, protect beaches and shore from erosion, protect over-water views, avoid adverse impacts on navigation, and protect marine and terrestrial natural resources.”

County Code restricts placement of accessory structures within the first ten feet along shorelines, but does allow for special approvals for single family, multi-family, and commercial developments for unique circumstances. Ocean Reef’s pre-code design and development is such a unique circumstance that should permit an exemption from the shoreline setback.

7. The development and redevelopment of **nonresidential structures and uses** within Ocean Reef master planned community shall adhere to:
   a. the upland native vegetation clearing limits established in Policy 101.5.27; and
   b. mitigation for the removal of upland native vegetation, requiring payment to the Monroe County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a 2:1 basis; and
   c. shall not impact wetland areas identified in Policies 102.1.1 or 204.2.2; and
   d. shall require “required” landscaping material to be native species to Monroe County free of disease, invasive pests, and invasive fungi, and require the removal of, and not include the planting of, invasive exotic plant species. The landscape material size and quantity, installation standards, irrigation and maintenance criteria shall be based on criteria established by the Ocean Reef Master Planned Community. Landscape plans submitted must indicate what is “required” landscaping by Ocean Reef master planned community.

Ocean Reef has substantial landscaping requirements for residential and non-residential development projects. County Code provides minimum landscape standards to buffer adjoining land use districts, buffer development from adjacent properties and provide aesthetically pleasing parking areas. The purpose of the Landscaping Goals, policies and objectives in the Comp. Plan is to protect the public health, safety, and welfare; provide minimum standards for landscaping; enhance the appearance of the County, improve water quality, conserve water, and screen unattractive view; as well as preserve, protect and enhance natural resources. The Ocean Reef Building Regulations and Restrictions seek to accomplish the same goals as the LDC and Comp. Plan but are specifically tailored to the community they govern. As the LDC states the purpose of landscaping is in part to “enhance the appearance of the County”, Ocean Reef should be permitted
to choose what standards it wishes to require its residents to abide by to enhance the appearance of their community. The exemption of Ocean Reef from this Article further promotes the County’s goals under this Article IV while allowing Ocean Reef to determine what best suites them so that they may minimize environmental impact while maximizing economic value. Additionally, this provision requires Ocean Reef to adhere to the clearing limits, adhere to wetland area requirements, and requires Ocean Reef to utilize native species in its landscaping.

Furthermore, Ocean Reef regulates landscaping more stringently than the LDC and Comp. Plan in that it requires very specific landscape plans to be prepared by a professional and presented prior to an Ocean Reef landscape permit being issued, has specific regulations for maintenance, use of fertilizers, pesticides, and fungicides, as well as trimming and removal. Additionally, the Amendment requires Ocean Reef to identify its “required” landscaping on any landscaping plans submitted for County review.

Ocean Reef’s Building Regulations and Restrictions regarding landscaping are stringent and are strictly enforced. The Building Regulations and Restrictions pertaining to landscaping in Ocean Reef are shown below:

IX. LANDSCAPE AND HARDSCAPE

The intent of these guidelines is to protect, preserve and enhance the natural environment and beauty of the Ocean Reef Community and to provide landscaped areas that contain trees and other plants that are arranged in a pleasing manner in relation to paved areas, structures and neighboring properties.

A. Permit Required

1. An ORCA landscape permit shall be required for the installation, removal or replacement of any landscaping in accordance with the provisions herein set forth.

B. Prior to the issuance of a landscape permit, a landscape plan shall be submitted to ORCA. The landscape plan shall include the following:

1. Name, address and telephone number of person who has prepared the landscape plan. Landscape plans must be signed and/or stamped by a registered Landscape Architect, Landscape Designer, Landscape Professional or Nurseryman.

2. A landscape plan drawn at a scale not less than one (1) inch equal to twenty (20) feet showing the location, size, description and specifications of materials, grade of plantings and mulch specifications.

3. Trees shown shall be spaced so as not to conflict with normal canopy development.

4. The landscape plan shall be designed so that the Landscaping shall not be adversely affected by factors such as salt exposure, prevailing winds, overhead obstructions, utility services, and existing landscaping on adjacent properties.

5. Landscape plans are required to meet the applicable grading and drainage plan requirements as described in Section XVIII.

6. Class I Landscape Plans shall either provide grading and drainage plan that is identical to the final grading and drainage plan submitted and approved by the ARC or submit a new plan providing all applicable information described in Section IX.
7. Building setback measurements to front, rear and side property lines.

8. All Monroe County water retention areas, as well as water retention swale/s adjacent to all ORCA roadways. The center of the swale/s must be a minimum of six inches (6") lower than the crown of road. The swale must retain storm water runoff from the structures and all impervious areas on the property.

9. Plantings, exclusive of grass, must be included in a minimum of approximately 20% of the open property area.

10. The landscape plan(s) must identify all plant material by name and list quantities and sizes when planted, as well as maintained heights in ORCA Zones A, B, C and D.

11. Any landscape plan, approved by the ARC, will be made a part of the Community Association's records.

12. Substantial modification to an approved landscape plan requires ARC approval.

C. Landscape Installation

1. Material shall be installed in accordance with sound landscaping practices and be graded at least a Florida Number One.

2. All landscaping shall be installed in accordance with the ORCA requirements within sixty (60) days of issuance of the Monroe County Occupancy Permit.

3. All landscape areas requiring water shall have 100% irrigation coverage by a regularly functioning, automatic irrigation system.

4. Decorative stone and or gravel may be utilized up to a maximum of ten (10) percent of the total landscaped area, where decorative stone or gravel is to be used for decorative purposes.

5. No structure, building, wall, planting, fence or tree, which obstructs the view of adjoining property owners, shall be placed beyond the rear setback line toward the waters of canals, coves, bays, ocean or Card Sound or golf courses. See additional landscape Zone descriptions, in section D below.

6. The landscaping materials are to be installed substantially in accordance with the approved plan on file at ORCA and then maintained by the owner to the level of the community standard.

7. Plantings that do not live are to be replaced by the owner in accordance with the approved plan on file with ORCA.

D. Waterfront Lots at Villa Cay, Channel Cay and Angelfish Cay and waterfront lots without existing native vegetation

The purpose of these specific guidelines is to install landscaping materials that enhance the visual appearance of each property without materially obstructing the views toward waters of the Ocean, Bays, Canals and Coves. See Landscape Exhibit 1, page 46 and Landscape Exhibit 2, page 47, for more information. All plants and materials within all Zones shall be maintained to the heights and widths contained in the Guidelines.
Zone “A” Description
The area is defined as, the rear of the residence between both side setback lines and bordered by the rear property line and the rear setback line.

Zone “A” Landscaping Guidelines
The height of the landscaping, walls, planters, steps and decorative walls in Zone “A” shall:

1. Not exceed three (3) feet above the lowest elevation of the FEMA first habitable floor slab of the two (2) adjacent residences that share the common side property line;

2. Not exceed six (6) feet above the established natural grade elevation of the rear yard, when placed in the rear yard;

3. Exception: Trees with trunks that are free of limbs, (example: Palms) from finished grade to more than eight (8) feet above the current FEMA first habitable floor elevation, are permitted.

Zone “B” Description
The area is defined as, the sides of the residence that is between the side property line and the side setback line. This excludes Zone “C” (See Landscape Exhibit 3, page 48).

Zone “B” Landscaping Guidelines
The height of the landscaping, walls, planters, steps and decorative walls in Zone “B” shall:

1. Not exceed three (3) feet above the top of the Crown of the Road in front of the property;

2. Exception: Trees with trunks that are free of limbs from finish grade to more than eighteen feet (18’) above the Crown of Road elevation in front of the property.

Zone “C” Landscaping Guidelines
The landscaping, walls, planters, steps and decorative walls shall be contained within a triangle form connecting the point where the side setback line meets the FEMA first habitable floor level, and at a point at grade that is the distance of five (5) feet perpendicular to the side setback line. Plantings may not encroach into Zone B. (See Landscape Exhibit 4, Page 49).

Zone “D” Landscaping Guidelines
The landscaping, walls, planters, steps and decorative walls shall be contained within a triangle formed by connecting the point where the rear setback line meets the FEMA first habitable floor level and a point at grade that is the distance of five (5) feet perpendicular to the rear setback line. Plantings may not encroach into Zone A. (See Landscape Exhibit 5, Page 50).

E. Landscape Maintenance

1. The Owner is responsible for the proper maintenance and protection of landscaping and irrigation systems existing thereafter installed. Maintenance shall include:
   a. Watering, weeding, mowing, fertilizing, treating, mulching, trimming and removal or replacement of diseased plants and removal of refuse or debris on a regular basis so as to continue a healthy growing condition and present a neat and well-kept appearance at all times.

2. Driveway Site Triangle: a site triangle shall be provided, and visibility maintained between two and one-half (2’ 6”) feet to eight (8) feet of elevation within a minimum of:
   a. Ten (10) feet from the intersection point of the edge of the driveway and street.
   b. Fifteen (15) feet from the intersection point of the extended property lines at a street.

3. Plant material which blocks roadway visibility shall be removed by the property owners and maintained so as to allow a clear visibility of oncoming traffic.

4. No real property owner shall cause, suffer, or permit a tree, trees or other vegetation, to grow, or otherwise extend, from his real property into or over a manmade water body in such a way or manner as to constitute a navigational hazard to, or to interfere with, vessels engaged in a journey or ride upon the manmade water body. It shall be presumed that vegetation extending from the shoreline of a manmade water body beyond the approximate mean low water mark by more than ten percent of the overall perpendicular width of the water body at the point of measurement constitutes a navigational hazard.
5. All Monroe County and ORCA storm water retention swales must be maintained by the property owner to retain the property's storm water run-off.

6. Property owners are required to maintain the landscaping within the right-of-way between the paved road and the individual private property line.

7. Plant materials installed in a “fence” or hedge like manner, meant to create a visual barrier, shall be maintained at a height no more thirty-six (36) inches above finish grade when installed within twelve (12) feet of the pavement edge.

8. Plant material installed and maintained, within six (6) feet of the pavement edge, shall be a maximum of twenty-four (24) inches tall.

9. ORCA, its agents or contractors, shall have the right, at reasonable times and upon reasonable notice to any member of ORCA, to enter onto the lot of any such member for the purpose of treating, maintaining, altering or repairing any fence, wall or planting, including, but not limited to, application of the lethal yellow spraying program.

F. MANAGEMENT PRACTICES FOR FERTILIZERS, PESTICIDES, FUNGICIDES


1. These rules shall be applicable to all ORCA residential, commercial and public common areas.

a. All proposed trimming shall be limited in scope subject to that which may be required to obtain a view of the golf course

b. Trimming shall be limited to a maximum of 50% of the width of the area from the house to the rear yard property line.

2. In accordance with State of Florida BMP, ORCA requires no fertilizer shall be applied within ten (10) feet of any wetland, lake, pond, stream, water body, water course or canal.

3. No vegetation debris, grass clippings, mulch or fertilizer shall be deposited, washed, swept, or blown off intentionally or inadvertently – onto any impervious surface, ORCA right-of-way or common area, storm water drain, ditch, conveyance or water body.

4. Where automatic irrigation systems are installed, rain switches or other devices, such as soil moisture sensors, to prevent unnecessary irrigation, shall be incorporated.

5. All reclaimed water piping, heads, valves and fixtures are required to be color-coded purple, and labeled “Do not drink this water”.

G. Hammock Course – Tree Trimming and/or Removal

This rule uses the concept of selective lateral trimming and small tree removal to achieve a view of the golf course from abutting homes within the Hammock Course section of Ocean Reef. The basic idea is not to clear cut an area, instead leaving the majority of the trees and trimming branches and small trees to create a limited thinned area. Small trees are to be selectively removed, and large trees are identified and protected, such as in the concept of 'specimen trees'.

The specific goal is to remove the minimum amount of small trees needed in order to be able to see the course but not destroy the forest. In order for a uniform look for each homeowner, the lot will be categorized by ORCA approved biologist into one of the following categories:

1. Heavily wooded: Heavily wooded means that no view exists and that the buffer area is composed of greater than 50% of the trees being less than 3 inches in D.B.H.

2. Moderately wooded: Moderately wooded means that a limited view exists and that the buffer area is composed of less than 50% of the trees being less than 3 inches in D.B.H.

3. Lots with existing views: These lots have previously existing views which resulted from either past cutting or have naturally occurring openings in the buffer area.

4. Any proposed thinning on any lot, to achieve a view, shall be reviewed by the ARC.
c. Additional landscape screening may be required in order to achieve appropriate screening when viewed from the golf course. It shall be at the discretion of the ARC to approve this additional screening.

5. No removal or trimming of any protected trees shall be allowed without an appropriate Monroe County and ORCA permit.

6. In the event that exotic invasive non-native pest plants are found within the rear buffer area, then these plants must be removed through a phase 1 exotic removal permit. If the phase 1 permit results in greater than 20% of the area being cleared, then a restoration plan shall be required.

7. No request for cutting of views shall be allowed until a home is constructed on the owner’s lot.

8. In heavily wooded lots thinning of no greater than 20% of trees less than 2 inches in D.B.H. and 5% of less than 4-inch trees will be allowed. In moderately wooded lots thinning of no greater than 10% of trees less than 2 inches in D.B.H. and 5% of less than 4-inch trees will be allowed. Lots with existing views may be allowed to trim individual trees. Some lateral trimming of branches of larger trees may be possible upon a case by case basis if approved by the ARC.

H. Hammock Course – Tree Trimming Permit Requirements

1. No permits will be issued by ORCA for trimming within the buffer area unless evidence of ownership of the buffer area is presented. In the event that the buffer area is not owned by the adjacent homeowner then The Ocean Reef Club, Inc., must agree, in writing, to the issuance of the permit by ORCA.

2. No permits will be issued by ORCA to trim trees unless a permit or exemption, in writing, is obtained from Monroe County or in the case of wetland trees, by the Florida Department of Environmental Protection.

3. List of exotic invasive non-native pest plants required by Monroe County to be removed:
   a. Brazilian Peppertree (AKA Florida Holly)
   b. Australian Pine
   c. Leadtree
   d. Pampas Grass
   e. Corktree
   f. African Ground Orchid
   g. Sanseveria
   h. Papaya

4. List of native vegetation encouraged to be installed in landscape restorations:
   a. Mahogany
   b. Soapberry
   c. Willow Bustic
   d. Shortleaf Fig
   e. Cu Pan la
   f. Pigeon Plum
   g. Jamaica Dogwood
   h. Lancewood
   i. Buttonwood
   j. Cinnamonbark
   k. Mastic
   l. Milk bark
   m. Gumbo Limbo
   n. Black Ironwood
   o. Guiana Plum
   p. Strongbark
   q. Wild Tamarind
   d. Twinberry Stopper
   e. Satin Leaf
   f. Thatch Palm
   g. Everglades Velvetseed
   h. Jamaica Caper

5. In order to preserve the uniqueness and character of the environment, any adjacent land abutting the Hammock Course golf course or any adjacent land abutting the golf course will maintain a minimum 10-foot-wide by 12-foot-tall native vegetative “buffer” (or buffer-yard) on private land and abutting golf course property.

6. If there are existing native tropical hardwood hammock plant species within the 10-foot required buffer yard, no clearing, trimming or alteration to the native plant species will be permitted.
7. If unpermitted clearing, trimming or alteration of the native vegetation buffer yard/s should occur, an immediate daily fine $100, up to $20,000, shall be imposed upon the property owner, until restoration is completed. ORCA shall require immediate restoration of the altered buffer yard at the property owner’s expense and the property owner shall be responsible for any costs incurred by ORCA to enforce this rule.

1. Vacant Lot Maintenance

1. All lots will be maintained in a neat and orderly fashion. The ORCA Board, after reasonable notice of five (5) working days to the owner, may contract with an appropriate service, at the owner’s expense, to clean debris covered lots, mow un-cared for yards, repair and operate irrigation systems, clear property and structures of all hazards, and perform such other tasks in the absence of appropriate action by the owners, to maintain the property in a condition in conformity with neighborhood standards, the property’s design, and in compliance with county regulations.

2. At a minimum, landscaping must be kept to the following standards: (a) grass must be kept green and alive and may not exceed 8” in height; (b) bushes, shrubs and trees must have all dead branches removed and kept trimmed in a neat and orderly fashion; (c) planted areas, rock areas and lawns must be kept free of weeds. Expenses incurred by ORCA will be billed to the owner of said lot(s).

3. All vacant lots that do not have roadway right-of-way landscaping and will not be built within 180 days, must be landscaped between the roadway right-of-way and the pavement edge from property line to property line.

   a. Roadway right-of-way is the area from the pavement edge to approximately 5-8 feet into the vacant lot.

   b. The ORCA Board after reasonable notice of five (5) working days to the owner may contract with an appropriate company, at the owner’s expense, to landscape the roadway right-of-way. Expenses incurred by ORCA will be billed to the owner of said lot(s).

   c. The 180 days allows the ORCA staff to work with lot owners on their landscape improvements.

4. No single family vacant lot will be used for construction storage or staging unless there is an active permit in the neighborhood and the owner of the lot, the neighboring lot owners and the ARC have approved the use.

8. The development and redevelopment of nonresidential structures shall be subject to the height limit and exceptions included within Policies 101.5,30 and 101.5,31.

Objective 112.2

Monroe County shall exempt or minimize its development standards for lawfully established residential dwelling units within the Ocean Reef master planned community, which self-governs its internal land development in order to provide uniform development standards and architectural
guidelines to protect the distinct community character within the Ocean Reef Master Planned Community.

Ocean Reef Building Regulations and Restrictions provide defined regulations for development standards of residential, single and multi-family, and non-residential structures. Based on current zoning regulations contained within the LDC and Comp. plan, many residential properties are non-conforming. Similar to the above non-residential non-conforming structures, this would prevent residential property owners from restoring, repairing, or renovating their residences in the case of substantial damage or substantial improvement.

**Policy 112.2.1**

The following provisions shall control and supersede existing provisions of the Monroe County Year 2030 Comprehensive Plan for lawfully established residential dwelling units’ properties within the Ocean Reef master planned community:

1. In recognition of residential dwelling units previously permitted prior to the adoption of any Monroe County Comprehensive Plan, notwithstanding Policy 101.5.25, parcels designated Residential Low (RL) on the Future Land Use Map (FLUM) with a lawfully established residential dwelling unit, shall have a minimum land use open space requirement of fifty percent (50%).

One of the Future Land Use Map designations in Ocean Reef is Residential Low (RL). Under the LDC and Comp. Plan, RL districts have a minimum open space requirement of 80% for properties located within the sparsely Settled (SS) zoning district:
Residential properties located within the RL FLUM and SS zoning district are almost always non-conforming as to open space, and therefore cannot be repaired, restored, renovated, or redeveloped if substantially damaged or improved. For residences located within this limited combination, they face unfairly restrictive open space requirements that prevent the owners from making improvements to the property. An example of such an area is the Golf Manor I Condominium Association. Almost all, if not all, of these residential structures are non-conforming as to the open space requirements under the LDC and Comp. Plan. Below are the ten (10) condominium units:
Many of the current zoning districts have open space requirements that either mean the residence is non-conforming or prevents any expansion to the residence. Additionally, these open space requirements prevent homeowners within Ocean Reef from developing any accessory structures on their own property. These requirements mean that homes owners are essentially prevented from repairing, restoring, or renovating structures if they are substantially damaged or substantially improved. Additionally, homeowners are prevented from adding value to their properties because they are restricted from expanding their properties or adding accessory structures to the properties. In order for these properties to improve their residences through minor expansion or development of accessory structures, they are required to apply for variances with the Ocean reef master community and County, a process which is time consuming and often expensive. Additionally, should the property owner renovate the structure above the substantial improvement threshold, they would be required to bring the structure into compliance with all current LDC and Comp. Plan regulations which would mean demolishing the structure and complying with the 80% open space requirement, which is irrational and unnecessary.

As discussed above, Ocean Reef has strict development regulations that govern all residential development within Ocean reef in order to maintain the community character of the Ocean Reef Community. These regulations govern accessory structures, setback requirements, and
landscaping (among others). Reducing the open space minimum requirement for residential properties within the RL FLUM designation will permit these residential properties to repair, restore, and renovate their respective properties, something that is not currently possible if the structure is non-conforming. Additionally, the reduction in open space will permit the resident to place accessory structures in furtherance of the community character of Ocean Reef. Additionally, the reduction would remove the need for property owners applying to Ocean Reef for variances to place accessory structures or expand the structures. There is no rational basis to have residences with such a large open space requirement within Ocean Reef, and give the internal regulations imposed by the Ocean Reef master association, there would be no detrimental change to neighbors or the community as a whole.

III. Consistency with Applicable Law

a. The Proposed Amendment is consistent with Florida Statutes

There are no provisions of the Florida Statutes inconsistent with this proposed Amendment.

Consistency with the Monroe County Year 2030 Comprehensive Plan, the Florida Statutes, and Principles for Guiding Development

i. The Proposed Amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan. Specifically, the amendment furthers:

GOAL 101

Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors, and protect valuable natural resources. [§163.3177(1), F.S.]

Objective 101.1

Monroe County shall ensure that all development and redevelopment taking place within its boundaries does not result in a reduction of the level-of-service requirements established and adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive plan amendments include an analysis of the availability of facilities and services or demonstrate that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180, F. S.]
Objective 101.8

Monroe County shall eliminate or reduce the frequency of uses which are inconsistent with the applicable provisions of the land development regulations, zoning districts, Future Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming uses are an important part of the community character and the County desires to maintain such character and protect these lawfully established, nonconforming uses and allow them to be repaired or replaced. [§163.3177 (6)a.2.e.]

Objective 101.9

Monroe County shall eliminate or reduce the frequency of structures which are inconsistent with the applicable provisions of the land development regulations, zoning districts, Future Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming structures are an important part of the community character and the County desires to maintain such character and protect these lawfully established, nonconforming structures and allow them to be repaired or replaced. [§163.3177(6)(a)2.e., F.S.]

Objective 101.16

Monroe County shall maintain guidelines and criteria consistent with nationally recognized standards and tailored to local conditions which provide for safe and convenient on-site traffic flow, adequate pedestrian ways and sidewalks, and sufficient on-site parking for both motorized and non-motorized vehicles.

Policy 101.16.1

Monroe County shall maintain land development regulations which provide for safe and convenient on-site traffic flow, adequate pedestrian ways and sidewalks, and sufficient on-site parking for both motorized and non-motorized vehicles.

GOAL 211

Monroe County shall conserve and protect potable water resources and cooperate with regional efforts to ensure the continued availability of high-quality potable water. [§163.3177(6)d.2.b.,F.S.; §163.3177(6)d.2.c., F.S.]
Objective 211.1

Monroe County shall encourage the use of water conservation strategies, including, but not limited to cisterns, on-site stormwater collection systems used for irrigation and bioswales, and work cooperatively with FKAA and Miami-Dade County to encourage water conservation efforts and assure that land use planning and development controls are maintained which protects the recharge area of the Florida City Wellfield from potential sources of groundwater contamination and saltwater intrusion. (See Potable Water Objective 701.3 and related policies). §§163.3177(6)d.2.b., F.S.; §163.3177(6)d.2.c., F.S.

Objective 212.2

Monroe County shall adopt minimum performance standards designed to reduce the stormwater runoff impacts, aesthetic impacts, and hydrologic impacts of shoreline development. §§163.3178(2)(g), F.S.

Policy 212.2.1

Within one (1) year after the adoption of the 2030 Comprehensive Plan, Monroe County shall evaluate the minimum shoreline setbacks currently in use in Monroe County in coordination with DEO, FDEP and FWC. Setbacks shall be identified which will accomplish the following:

1. protect natural shoreline vegetation;
2. protect marine turtle nesting beaches;
3. protect water quality
4. protect structures from the effects of long-term sea level rise;
5. protect beaches and shorelines from erosion; and
6. allow redevelopment of existing waterfront non-residential structures consistent with the existing community character and preserve overwater views.

Policy 212.2.5

Stormwater management criteria applicable to the shoreline setbacks shall encourage Best Management Practices (BMPs) which utilize natural berms and vegetation to control runoff from waterfront property. Berms shall not be installed where shoreline vegetation is present. Where berms are used along artificial waterways, they shall be raised so that there is a gradual slope away
from the canal edge. In any case, all stormwater management criteria shall conform to adopted level of service standards for water quality and quantity (See Drainage Element Objective 1001.1 and related policies).

GOAL 214

Monroe County shall provide the necessary services and infrastructure to support existing and new development proposed by the Future Land Use Element while limiting County public expenditures which result in the loss of or adverse impacts to environmental resources in the Coastal Zone. [§163.3178(2)(f), F.S.; §163.3178(2)(i)]

Objective 214.1

County public expenditures for infrastructure in the Coastal Zone shall be phased in accordance with a capital improvements schedule to maintain the adopted level of service (LOS) standards established in the Comprehensive Plan. [§163.3178(2)(f), F.S.; §163.3178(2)(i)]

Policy 214.1.1

Monroe County shall maintain level of service standards (LOS) for the following public facility types: roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and mass transit. The LOS standards are established in the following sections of the Comprehensive Plan:

1. The LOS for roads is established in Traffic Circulation Policy 301.1.1 and 301.1.2;
2. The LOS for potable water is established in Potable Water Policy 701.1.1;
3. The LOS for solid waste is established in Solid Waste Policy 801.1.1;
4. The LOS for sanitary sewer is established in Sanitary Sewer Policy 901.1.1;
5. The LOS for drainage is established in Drainage Policy 1001.1.1; and
6. The LOS for parks and recreation is established in Recreation and Open Space Policy 1201.1.1.

GOAL 301

To provide a safe, convenient, efficient, and environmentally compatible motorized and nonmotorized transportation system for the movement of people and goods in Monroe County. [§163.3177(6)(b), F.S.]
Objective 301.1

Monroe County shall establish level of service (LOS) standards for all paved roads in Monroe County for the purpose of determining existing and future roadway needs. [§163.3177(6)(b), F.S.]

GOAL 801

Monroe County shall provide for the adequate collection, disposal and resource recovery of solid waste in an environmentally sound and economically feasible manner to meet the needs of present and future County residents [§163.3180(1)(b), F.S.], [§163.3177(6)(c), F.S.]

Objective 801.1

Monroe County shall ensure that solid waste collection service and disposal capacity is available to serve development at the adopted level of service standards. [§163.3180(1)(b), F.S.], [§163.3180(2), F.S.]

GOAL 901

Monroe County shall provide for the adequate, economically sound collection, treatment, and disposal of sewage which meets the needs of present and future residents while ensuring the protection of public health, and the maintenance and protection of ground, nearshore, and offshore water quality. [§163.3177(6)(c), F.S., §163.3180(2), F.S.; §381.0065, F.S., §403.086, F.S.; Chapter 99-395, Laws of Florida]

Objective 901.3

Monroe County shall regulate land use and development to conserve potable water and protect the functions of natural drainage features and groundwater from the impacts of sewer systems. [§163.3177(6)(c)2., F.S.]

GOAL 1001

Monroe County shall provide a stormwater management system which protects real and personal properties, public health and safety, and which promotes and protects groundwater and nearshore water quality [§163.3177(6)(c), F.S.]
Objective 1001.1

Monroe County shall ensure that at the time a certificate of occupancy or its functional equivalent is issued, adequate stormwater management facilities are available to support the development at the adopted level of service standards. [§163.3177(6)(c), F.S.]

GOAL 1302

Monroe County shall increase the participation of the citizens of the County and government related entities that operate within the County in the comprehensive planning and growth management process.

b. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes. The Proposed Amendment specifically furthers the following Principles (Bolded):

For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole, and specific provisions may not be construed or applied in isolation from the other provisions.

a. Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

b. Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

c. Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

d. Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

e. Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.

f. Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
g. Protecting the historical heritage of the Florida Keys.

h. Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
   1. The Florida Keys Aqueduct and water supply facilities;
   2. Sewage collection, treatment, and disposal facilities;
   3. Solid waste treatment, collection, and disposal facilities;
   4. Key West Naval Air Station and other military facilities;
   5. Transportation facilities;
   6. Federal parks, wildlife refuges, and marine sanctuaries;
   7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
   8. City electric service and the Florida Keys Electric Co-op; and
   9. Other utilities, as appropriate.

i. Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; and other water quality and water supply projects, including direct and indirect potable reuse.

j. Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(I) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

k. Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.

l. Making available adequate affordable housing for all sectors of the population of the Florida Keys.

m. Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan.

n. Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is consistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.
IV. Factors for Basis of Amendment

This application shall adopt the data and analysis previously submitted with the LDC Amendment bearing Monroe County Planning Department File #2019-024.

IV. Conclusion

Based on the foregoing, Ocean Reef requests consideration and adoption of the Amendment. Thank you for your consideration and assistance, and please feel free to contact me with any questions.

Very truly yours,

Barton W. Smith

BWS/JG/bg
Enclosures
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**EXHIBIT A**
PRIVATIZING THE NEIGHBORHOOD: A PROPOSAL TO REPLACE ZONING WITH PRIVATE COLLECTIVE PROPERTY RIGHTS TO EXISTING NEIGHBORHOODS

Robert H. Nelson

INTRODUCTION

Two researchers recently announced a "quiet revolution in the structure of community organization, local government, land-use control, and neighbor relations" in the United States. They were referring to the spread of homeowners' associations, condominium ownership of property, and other forms of collective private ownership of residential property. In describing these forms of ownership, different commentators have used terms such as "residential community association," "common interest community," "residential private government," "gated community" and others. Whatever term is best—and I will refer to such ownerships as "neighborhood associations" in this Article, recognizing that some collective ownerships are smaller than the average neighborhood, and others are larger—the spread of collective private ownership of residential property is a development of fundamental importance in the history of property rights in the United States.

Indeed, it may yet prove to have as much social significance as the spread of the corporate form of collective ownership of private business property in the second half of the nineteenth century. At that time, a new ease of transportation, economies of scale in mass production, improved management techniques of business coordination, and other business innovations led American industry to operate at a new scale, and corporate ownership proved financially and otherwise advantageous. Thus, although there were few business corporations before the Civil War, by 1900 corporations produced almost two-thirds of U.S. manufacturing output, a figure that reached 95% in the 1960s. In 1932, Adolf Berle and Gardiner Means announced the transformation of the basic relationship between private

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1 Stephen E. Barton & Carol J. Silverman, Preface to COMMON INTEREST COMMUNITIES at xii (S. Barton & C. Silverman eds., 1994) [hereinafter Barton & Silverman].
2 See Economic Concentration, Part I—Overall and Conglomerate Services, Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 88th Cong. 12, 15 (1964) (statement of Gardiner C. Means).

EXHIBIT B
ownership of property in the United States and the managerial control over the means of production caused by the rise of corporate ownership.  

In the second half of the twentieth century, new economic forces wrought yet another transformation in private property ownership. These forces included: (1) higher densities of development, (2) the desire for precise control over neighborhood character, (3) more economical private provision of common neighborhood services, and (4) greater interest in common recreational and other facilities. They made private neighborhood associations the choice for millions of people for their residential property. If private neighborhoods continue to spread at the pace of recent years, the long-run result may be collective ownership of most private property (residential and business) in the United States. Such a result would be a remarkable transition from the general expectation of individual ownership of property that long prevailed in American political and economic thought.

To date, almost all neighborhood associations have arisen as part of the development of a new neighborhood. The developer assembles the raw land and builds the neighborhood from its initial stages, including the establishment of the neighborhood association. Purchasers of new housing units must accept membership in the association as part of the original terms of ownership. However, in neighborhoods previously developed with individual ownership of the land and structures, there is little prospect for the formation of a neighborhood association. Doing so would require the individual members of the neighborhood to surrender voluntarily part of their individual rights and accept collective control over the use of the exterior parts of their property by their neighbors. Obtaining such voluntary consent from several hundred or more property owners is extremely time consuming and almost certainly would involve major problems with holdouts and other high transactions costs. Few existing neighborhoods have even considered making such an effort.

In this Article, I propose enactment of legislation to facilitate the establishment of neighborhood associations in existing neighborhoods. The

5 See J.W. HARRIS, PROPERTY AND JUSTICE (1996). Of course, the spread of individual ownership was itself a development only a few centuries old. It was part of the evolution of property right institutions by which capitalism supplanted feudalism as the dominant social form.

EXHIBIT B
establishment of a new legal mechanism for this purpose would allow existing neighborhoods to take advantage of collective control over the neighborhood common environment and the private provision of common services, just as new neighborhoods are doing in such large numbers. Moreover, such an approach would facilitate the "deregulation" or "privatization" of zoning. Private neighborhood associations could administer the collective controls over neighborhood quality now exercised through land use regulations at the municipal level. Compared with a private property right regime, and as described below, the governmental exercise of zoning powers has several major disadvantages.  

I. THE RISE OF THE NEIGHBORHOOD ASSOCIATION

As of 1998, there were about 205,000 neighborhood associations in the United States in which almost 42 million people lived, or about 15% of Americans. In the fifty largest metropolitan areas, more than half of new housing is now built in neighborhood associations. In the Los Angeles and San Diego metropolitan areas, this figure exceeds 60%. California, along with Texas and Florida, have the greatest concentrations of neighborhood associations. Other places where neighborhood associations are common include New York, Illinois, and the suburbs of Washington, D.C. In the D.C. area, about one third of the residents in affluent Montgomery County live in neighborhood associations.

The average neighborhood association serves a population of about 200 people. In 1990, about 42% of the units in neighborhood associations consisted of townhouses. Single family homes represented 18% of the units. Most associations extended beyond individual buildings to include territorial responsibilities of some sort. The typical operating budget of a neighborhood association was $100,000 to $400,000 per year in 1990, but five percent of those associations belonging to the Community Association Institute had budgets in excess of $1.5 million per year.

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7 For reviews of this literature, see William A. Fischel, The Economics of Zoning Laws (1985) [hereinafter Fischel, ECONOMICS]; William A. Fischel, Regulatory Takings (1995) [hereinafter Fischel, REGULATORY TAKINGS].
9 See id. at 19.
10 See Barton & Silverman, supra note 1, at 12.
11 See id. at 11.
12 See McKenzie, supra note 4, at 120.
13 See COMMUNITY ASSOCIATIONS FACTBOOK 13 (Clifford J. Treese ed., 1993) [hereinafter FACTBOOK].
14 See id. at 17.
15 See id.
16 See id. at 22.
As recently as 1962, there were fewer than 500 neighborhood associations in the United States. By 1970, this number rose sharply to 10,000 associations, but they still accounted for only one percent of U.S. housing units. As of 1970, the terms of condominium ownership governed 12% of existing neighborhood associations. The subsequent rapid spread of condominium ownership, reaching 42% of all neighborhood associations by 1990, was a key factor in the growth of collective ownership of American housing.

A. Types of Ownership

Besides condominium ownership, the other main instrument for collectively owned residential property is the homeowners association in a planned unit development (PUD). In a homeowners association, each person owns his or her residential unit individually, typically including the yard. The homeowners association, which every new homeowner must join, is a separate legal entity that holds title to the streets, parks, neighborhood common buildings, and other “common areas.” The association also enforces the neighborhood covenants governing the allowable uses and modifications of individually owned units. In contrast, condominium owners have title to both their own personal units and, as a “tenant in common,” a percentage interest in the “common elements.” These common elements include things like dividing walls, stairways, hallways, roofs, yards, parks and other parts of the project outside the individually occupied units.

As of 1998, PUDs accounted for 64% of housing units in neighborhood associations and 31% of the units were in condominiums. The other five percent were housing units in cooperatives, in which the collective ownership extended to all the land and buildings, including the interiors. Cooperative ownership is most common for individual apartment buildings in New York and a few other large cities. Under cooperative ownership, individual occupants have tenancy agreements with the cooperative that entitle them to the use of their own personal units.

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17 See C. James Dowden, Community Associations and Local Governments: The Need for Recognition and Reassessment, in RESIDENTIAL COMMUNITY ASSOCIATIONS, supra note 4, at 27.
18 See supra note 13, at 13.
19 See id.
20 See id.
21 See id. at 9.
22 Id. at 1.
24 See supra note 8, at 3.
25 See id.
26 DAVID CLURMAN ET AL., CONDOMINIUMS AND COOPERATIVES (1964).
The typical neighborhood association provides a range of services to residents such as garbage collection, street maintenance, snow removal, lawn mowing, gardening, and maintenance of recreational facilities and the common areas of the neighborhood. To cover the costs of these activities, the neighborhood association levies an assessment on each member. A typical fee is approximately $100 to $150 per month. A member of the neighborhood association who fails to pay the assessment is subject to a lien on his property.

Often neighborhood associations enforce covenants written by the developer to maintain the original character of the neighborhood. Generally speaking, neighborhood covenants are much more detailed than zoning regulations, controlling not only types of land uses but also matters of aesthetics. Such matters can include the color of the house paint, the placement of trees and shrubbery, the size and location of fences, the construction of decks and other housing extensions, the parking of automobiles in streets and driveways, and the use and placement of television antennas, among others. In most neighborhood associations, the “conditions, covenants and restrictions” (CC&Rs) regulate these matters and an architectural review committee oversees enforcement. Neighborhood associations of senior citizens often require that at least one of the unit occupants be fifty-five years or older. Restrictions on possession of pets are another means by which associations often assert control over the neighborhood environment.

A board of directors elected by the full membership of the association governs the association. Usually, only property owners may vote. The exclusion of renters from the franchise has resulted in considerable criticism that private neighborhoods are “undemocratic.” Nevertheless, renters can still participate in the political life of the neighborhood by coming to board meetings and serving on committees. The assignment of voting shares in neighborhood associations can be done according to a number of formulas, commonly one vote per residential housing unit (thus potentially giving the same person multiple votes if he owns more than one unit). Voting rights also may be allocated in proportion to measures (such as unit square feet) of shares of property value.

27 See TIESE, supra note 8, at 13.
28 AMANDA G. HYATT, TRANSITION FROM DEVELOPER CONTROL 22-23 (1996).
29 For a description of one planned community, Celebration, Florida, created by the Disney Corporation in the vicinity of Disney World, see Michael Pollan, Town-Building is No Mickey Mouse Operation, N.Y. TIMES MAG., Dec. 14, 1997, at 56.
30 COMMUNITY ASSOCIATION LEADERSHIP: A GUIDE FOR VOLUNTEERS (A. Calmes ed., Community Associations Institute, 1997).
B. Private Governments

As Uriel Reichman described in an early article noting the rise of neighborhood associations, they "possess much of the power and trappings of local municipal government but arise out of private relationships." Indeed, Reichman chose to describe them as "residential private governments." From this perspective, the rise of neighborhood associations represents the most comprehensive privatization occurring in any sphere of government functioning in the United States today.

Initially the rise of private neighborhoods was not conceived in such broad terms. Collective ownership of neighborhood property emerged as a matter of real estate practice, designed to meet certain practical needs of land developers. Enforcement of covenants to protect the quality of existing neighborhoods often proved unreliable, because no one entity was responsible for bringing necessary legal actions. Collective private ownership provided the developer a way of overcoming the free rider problem.

Collective ownership also allowed developers to provide common recreational and other facilities that new housing owners increasingly demanded. With higher densities of development, such as townhouses, maintenance of yards and other common areas became critical. Finally, the fiscal crisis of many local governments in the 1970s and 1980s meant that these governments were unwilling to accept new responsibilities for building and maintaining streets, collecting garbage and providing other services. Providing these services privately, through a neighborhood association, often became a condition of municipal approval for a new neighborhood.

Although primarily economic forces drove the establishment of neighborhood associations, government took several critical steps to promote their use. In 1961, the Federal Housing Administration (FHA) approved the provision of mortgage insurance for condominiums and in 1963 for residential units included in PUDs with homeowners associations. Between 1961 and 1967, prompted in part by FHA actions, almost every

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33 Id.
35 See MCKENZIE, supra note 4, at 20-55; Marc A. Weiss & John W. Watts, Community Builders and Community Associations: The Role of Real Estate Developers in Private Residential Governance, in RESIDENTIAL COMMUNITY ASSOCIATIONS, supra note 4, at 95-103.
36 See generally Dowden, supra note 17.
37 See FACTBOOK, supra note 13, at 11; Steven E. Barton & Carol J. Silverman, History and Structure of the Common Interest Community, in BARTON & SILVERMAN, supra note 1, at 10.
state enacted a model condominium property act, thereby providing a firm legal foundation for condominium ownership. 38 Another key step was the approval in the mid-1970s by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) of purchases of condominiums and PUD unit loans in the secondary mortgage loan market. 39 With these steps, the ownership of housing units in neighborhood associations could offer the same forms of government support that had done so much to promote the spread of individual home ownership in the years following World War II.

II. A PROPOSAL: A FIVE-STEP PROCESS

The volume of new development in neighborhood associations demonstrates their great appeal. Yet the advantages of private neighborhoods remain unavailable for people living in existing neighborhoods with individual ownership of the units. Many of these neighborhoods were built before the emergence of neighborhood associations. Today, even if most residents wanted to form a neighborhood association, the transactions costs of assembling unanimous neighborhood consents voluntarily would be prohibitive. Hence, as a solution, I propose that state governments enact a new legal mechanism, making collective ownership of residential property available to existing neighborhoods.

To offer the advantages of neighborhood associations to existing neighborhoods, state governments should enact a new law to allow self-governance in these neighborhoods, through new collective private ownerships. For purposes of discussion, I propose the following five-step process, recognizing that many variations are possible.

1. A group of individual property owners in an existing neighborhood could petition the state government to form a neighborhood association. The petition should describe: (a) the boundaries of the proposed private neighborhood; (b) the instruments of collective governance intended for it; (c) the services the neighborhood association would perform; and (d) the estimated monthly assessment. The petition should come from owners cumulatively possessing more than 60% of the total value of neighborhood property.

2. The state government would then certify that the proposed neighborhood met certain standards of reasonableness, including: (a) having a contiguous area; (b) boundaries of a regular shape; (c) an appropriate relationship to major streets, streams, valleys and other geographic features; and (d) other considerations. The state would also certify that the proposed

38 See McKENZIE, supra note 4, at 95-96.
39 See FACTBOOK, supra note 13, at 12.
private governance instruments of the neighborhood association met state
standards.

3. If the application met state requirements, the state would authorize
a neighborhood committee to negotiate a service transfer agreement with
the appropriate municipal government. The agreement would specify the
possible transfer of ownership of municipal streets, parks, swimming pools,
tennis courts, and other existing public lands and facilities located within
the proposed newly private neighborhood (possibly including some com-
pensation to the city). It would also specify the degree to which the neigh-
borhood would assume responsibility for garbage collection, snow re-
moval, policing and fire protection. Finally, the transfer agreement would
specify future tax arrangements, including any property or other tax credits
that the members of the new neighborhood association might receive in
compensation for assuming existing municipal burdens. Other matters of
potential importance to the municipality and the neighborhood also would
be addressed. The state government would serve as an overseer and me-
diator in this negotiation process.

4. Once the state certified the neighborhood’s proposed municipal
transfer agreement, the state would schedule a neighborhood election. The
election would occur at least one year after the submission of a complete
description of the neighborhood proposal, including the articles of neigh-
borhood incorporation, the municipal transfer agreement, estimates of as-
essment burdens, a comprehensive appraisal of individual neighborhood
properties, and other relevant information. During the one year waiting
period, the state would supervise a process to inform property owners and
residents of the neighborhood of the details of the proposal and to facilitate
public discussion and debate.

5. The state would supervise the neighborhood election. Approval of
the neighborhood association would require both of the following: (1) an
affirmative vote of property owners cumulatively representing 90% or
more of the total value of the proposed neighborhood; and (2) an affirm-
ative vote by 75% or more of the individual unit owners in the neigh-
borhood. If the election met these conditions, all property owners in the
neighborhood would be required to join the neighborhood association and
would be subject to the full terms and conditions of in the neighborhood
association charter. The neighborhood association would have the right to
collect assessments to fund its operation from each association member.

EXHIBIT B
III. ADVANTAGES OVER ZONING

Municipal zoning already serves many of the functions of neighborhood associations. Zoning protects the character of the neighborhood by excluding detrimental uses. Zoning regulates many of the details of housing design, such as the size of the lot, the amount of floor space, the setback from the street, and other such matters. Why, then, go to the trouble of devising a whole new property right institution for neighborhoods and a new legal regime?

While zoning and neighborhood association control over neighborhood environmental quality do overlap in a number of key respects, the private neighborhood has several major advantages. For example, except where an historic or other special district can be justified, zoning does not cover the fine details of neighborhood architecture, trees and shrubbery, yard maintenance, and other aesthetic matters that may have a major impact on the character of the neighborhood. Thus, neighborhood associations have a considerably greater degree of authority over actions potentially influencing the character of the neighborhood than zoning typically affords.

In addition, the administration of zoning takes place at the municipal level, where political considerations often include many people who are not residents of the neighborhood. But, in matters such as the control of fine details of neighborhood architecture, there is no need or justification for broader municipal involvement. Indeed, under zoning the substantial influence on such matters by outsiders leaves the neighborhood exposed to regulatory actions that it does not want. This lack of secure control over the details of the administration of neighborhood zoning leads to neighborhoods’ reluctance to accept more precise and comprehensive zoning controls over aesthetic matters.

Moreover, because zoning is a form of public regulation, the direct sale of zoning is not considered permissible (it would be “bribery”). However, if the exclusion of a use was an ordinary exercise of a private property right, neighborhoods could sell rights of entry (say for a new neighborhood convenience store) into the neighborhood, sell rights to make certain broader changes in land use within the neighborhood, or even sell all the neighborhood property in one package for comprehensive redevelopment. The private neighborhood’s ability to put rights of entry into the neighborhood in the market would introduce greater flexibility in metropolitan land markets, significantly improving the efficiency of their operation.

Furthermore, the ability to sell zoning allows the neighborhood to manage a transition to a different use of the neighborhood. Currently, because an entity outside the neighborhood controls changes in land uses under zoning, and because these changes often do not bring financial gains to the neighborhood collectively (and may involve losses for some individuals), the residents of existing neighborhoods typically resist almost all land use change.\footnote{See \textit{Steven J. Eagle, Regulatory Takings} 347 (1996).} Zoning serves many neighborhoods well as a protective instrument for maintaining the existing character of the neighborhood, but fails wherever the objective is the transition from one type of use to another. Similarly, as described below, the legal mechanism of private neighborhood ownership could usefully be extended to "neighborhoods" of farmers owning large tracts of vacant land in transitional developing areas on the fringes of metropolitan regions.

Lastly, the advantages of neighborhood associations extend beyond improvements on zoning. Neighborhood associations can serve as a vehicle to provide more efficient and effective garbage collection, recreation facility maintenance, and many other common services. Creating a neighborhood association can establish and sustain a strong spirit of community in the neighborhood, not usually found in neighborhoods without a formal institutional status. Private neighborhoods might also encourage residents' involvement in political affairs, both locally and at higher levels of government.

\section*{IV. FROM ZONING TO NEIGHBORHOOD ASSOCIATIONS}

The proposal to create a new legal regime for the establishment of neighborhood associations in existing neighborhoods is more radical in form than in substance. Indeed, it would, in effect, formalize and extend existing arrangements that evolved under zoning.\footnote{See Robert H. Nelson, \textit{The Privatization of Local Government: From Zoning to RCAs, in Residential Community Associations, supra note 4, at 45-51.}} In an existing neighborhood, the practical consequence of zoning is to provide a de facto collective private property right to the neighborhood environment.\footnote{See Robert Nelson, \textit{Zoning and Property Rights} 22-51 (1977); \textit{see also} Robert Nelson, \textit{A Property Right Theory of Zoning}, 11 Urb. Law. 713 (1979).}

\subsection*{A. Origins of Zoning}

A de facto property right was not the original intent of the founders of zoning. New York City adopted the first zoning ordinance in the United States in 1916.\footnote{See Seymour I. Toll, \textit{Zoned American} 172-87 (1969).} During the 1920s, zoning spread rapidly across the United

\footnotetext[41]{See \textit{Steven J. Eagle, Regulatory Takings} 347 (1996).}
\footnotetext[42]{See Robert H. Nelson, \textit{The Privatization of Local Government: From Zoning to RCAs, in Residential Community Associations, supra note 4, at 45-51.}}
\footnotetext[44]{See Seymour I. Toll, \textit{Zoned American} 172-87 (1969).}
States. In 1926, in a decision of great historic significance, the Supreme Court upheld the constitutionality of zoning, despite many doubters. The Court accepted the arguments of zoning defenders that it met two essential needs. First, zoning extended and improved on nuisance law, in that it provided advance notice that certain types of uses were incompatible with other uses in a particular district. Thus, zoning standardized the ad hoc procedures devised by individual judges ruling in individual nuisance cases. The nuisance justification was particularly important because zoning, like the enforcement of nuisance law, was considered an exercise of the local government's police power.

The second argument for zoning, which also significantly influenced the Supreme Court, was that zoning was a necessary municipal planning instrument. This argument reflected the general philosophy of the progressive movement, which believed that scientific management could be applied in all areas of American society, and improve the efficiency and effectiveness of American institutions. Applying scientific management methods to the municipal scene would allow comprehensive land use planning. Thus, instead of the disorderly and haphazard patterns of land development of the past, American cities in the future would be planned according to a rational design. They would work much better economically and be visually more attractive—at least this was the great hope of progressive municipal planners.

Specifically, as envisioned by proponents, a city planning staff would study housing, transportation, job market, and other economic and social trends to project future housing needs. Planners would then allocate housing among parts of the city. Zoning would provide the practical legal instrument to enforce this design. Zoning would require that new housing be located and built according to the city's comprehensive plan.

In practice, however, this grand land use planning and regulatory scheme proved utopian. Like the high hopes for socialist scientific planning in many fields, it presumed a predictability of economic events and

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45 See Edward M. Bassett, Zoning (1938).
50 See A. CITY PLANNING PRIMER (Advisory Committee on Zoning, U.S. Department of Commerce, 1928).
capacity for central scientific understanding and management of human affairs that real planners never realized. Moreover, although progressive theory prescribed that politicians should concede power to professionals in matters of scientific expertise, such as land use, the politicians had other ideas—especially when the scientific skills of the experts often seemed in doubt, as in city planning.53 Indeed, as Dennis Coyle commented recently, "beneath the arcane language and technicalities, disputes about property rights [to land] reveal fundamental clashes between opposing perspectives on the proper society," matters that could hardly be left to technicians to resolve.54

Instead, land development occurred opportunistically, as housing or other facilities were proposed for particular locations.55 The local municipality then decided whether it wanted that particular development at that particular time in that particular place. In making these decisions, municipalities often found that they could not rely on existing land use plans to guide them. They had to do a new assessment and make a decision based on some other grounds. Approval of new development was not achieved by verifying consistency with an existing comprehensive plan, as legal theory prescribed. Rather, the municipality typically amended the zoning ordinance, granting specific approval for individual development. The process resembled a business negotiation between the municipality and the developer. The parties made or did not make a deal regarding a particular proposed development project according to the specific benefits to each party.56

As a result of these complications, formal plans often gathered dust on shelves while development proceeded through a process of finding projects mutually beneficial to individual builders and individual municipalities. Yet zoning required a comprehensive plan; therefore a new profession of land use planners continued to turn out numerous costly planning documents. They acted out a fiction that had little bearing on land development but was required by the rituals of the law.57

The nuisance justification for zoning was equally a myth. In some cases, zoning did regulate true nuisances, for example, excluding a noisy factory from a development of single family homes. Yet, far more often, zoning excluded uses that were never in any real sense a nuisance. A typical zoning ordinance, for instance, might require that homes be built on

54 Coyle, supra note 40, at 18.
lots of one acre or more. Although the neighborhood prohibited half acre lots, this exclusion could not be justified by any reasonable understanding of traditional nuisance standards. Zoning was in fact being used to address aesthetic matters and neighborhood environmental attractiveness generally, areas normally outside the scope of nuisance control.

B. *A Property Right to the Neighborhood Environment*

Maintaining the character of existing neighborhoods was thus the actual purpose of zoning.59 A neighborhood of one acre lots excluded half acre lots because it was inconsistent with the “ambiance,” the “prestige,” and the “quality” of the neighborhood. Zoning ensured that only people of sufficient economic means, those able to afford at least a one acre lot, could enter the neighborhood. In such respects, zoning conferred a collective property right to neighborhoods. If the defining feature of a property right is the power to exclude others, zoning gave neighborhoods precisely this legal ability. Zoning created a collective property right because it gave the entire neighborhood, exercising its political influence over the municipal administrators of zoning, the collective power to exclude unwanted uses.

As with any ordinary property right, an important social consequence of zoning was the segregation of residential neighborhoods according to economic means.60 Although this kind of wide-ranging protective function for neighborhood quality was never part of the early official legal justifications for zoning,61 the actual purposes that zoning served were well understood by at least the 1960s. In 1968, the National Commission on Urban Problems observed that:

> Zoning . . . very effectively keeps the poor and those with low incomes out of suburban areas by stipulating lot sizes way beyond their economic reach. Many suburbs prohibit or severely limit the construction of apartments, townhouses, or planned unit developments which could accommodate more people in less space at potential savings.62

> [Zoning] regulations still do their best job when they deal with the type of situation for which many of them were first intended; when the objective is to protect established character and when that established character is uniformly residential. It is in the “nice” neighborhoods, where the regulatory job is easiest, that regulations do their best job.62

If the practical consequence of zoning was to provide a collective private property right, why not simply provide this property right directly

58 See Eagle, supra note 41, at 347.
59 See id. at 349-50.
60 Toll, supra note 44, at 266; see also Babcock, supra note 55, at 116.
62 Id. at 16.
through private means? As noted above, this is in fact what has happened since the 1960s, as the creation of neighborhood associations has become standard operating procedure for new development in many parts of the country. A neighborhood association provides privately the same legal authority afforded by zoning, namely, the establishment of detailed control over the use of property as it affects the character of the neighborhood. Because the neighborhood association is explicit about its exclusionary function, it can provide greater administrative discretion and flexibility for the neighborhood than public zoning controls.

Although neighborhood associations were just coming into prominence in the 1960s, the National Commission on Urban Problems recognized the similarity of function and the potential for substitution of private regulatory regimes for existing zoning. Indeed, for existing neighborhoods the Commission report in 1968 suggested that:

Another [reform] approach would be to create forms of land tenure which would recognize the interest of owners in what their neighbors do. Such tenure forms, which do not exist but which might resemble condominium tenure, might more effectively reconcile the conflicting interests of neighboring property owners than do conventional regulations. The objective of such tenure would be to leave the small scale relationships among neighbors for resolution entirely within the private sector, while public regulation would continue to apply to the neighborhood as a whole. In addition to giving neighborhood residents greater control over minor land-use changes within their neighborhood, such tenure could include provision for cooperative maintenance of properties where owners desire their services.\(^\text{53}\)

C. An Exercise in Coercion

The Commission did not follow up on this proposal with any specifics for implementation. Although new neighborhoods widely adopted the types of tenure proposed by the Commission, few existing neighborhoods followed this course. Older neighborhoods continue to rely on zoning, essentially because the transactions costs of assembling a new land tenure are prohibitive. Zoning never faced this problem because, as a form of government regulation, it could be imposed by fiat.

In existing neighborhoods where zoning was first imposed, government simply used its police power authority to redistribute coercively property rights in the neighborhood, canceling individual rights and imposing a collective property right regime. It was in a sense an exercise in eminent domain: The municipality took certain important rights from the neighborhood residents, but then provided compensation by giving the residents other new and valued collective rights. In most cases, the compensation was sufficient as the majority of neighborhood residents considered themselves as significantly better off in the end, and thus supported

\(^{53}\) Id. at 248.

**EXHIBIT B**
the new zoning for the existing neighborhood. Some objectors were inevitable. Under zoning, the preferences of holdouts were simply overridden by government action in accord with the wishes of the majority.

Nothing in American legal and policy traditions justified such a coercive government redistribution of residential private property rights within neighborhoods. The closest analogy might be the urban renewal programs of the 1950s and 1960s, although in that case the government paid cash to owners of condemned property, rather than compensation through an assignment of new rights in the overall project. Given the legal climate of the 1920s, had zoning been described accurately, the Supreme Court might have held it to be unconstitutional. At a minimum, the Court would have required local governments to enact legislation spelling out the true purposes of the rights assembly process provided by zoning, and the way in which new rights were created to compensate for the rights being taken. Instead, zoning operated under the various myths and fictions noted above, because it would have been politically difficult, if not impossible, to obtain acceptance for zoning if its real workings and purposes had been made explicit.

Thus, in retrospect, the nuisance law and planning justifications for zoning provided the necessary camouflage, as it were, to permit a fundamental land law innovation that was much more radical than the early advocates of zoning cared to admit. Zoning did nothing less than redistribute neighborhood property rights to create a new de facto private collective right to the neighborhood environment, decades before the collective rights that are more explicitly and formally created today, as neighborhood associations spread across the landscape.

Today, of course, zoning is entrenched in many thousands of American neighborhoods. Given this history, it would be a less radical step now to recognize formally the real workings of zoning by acting to privatize its functions in these neighborhoods. In short, the proposal to allow existing neighborhoods to establish neighborhood associations would in many ways formally recognize and improve upon a process that has existed in-

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64 Otherwise, politically, the zoning would not have happened.
65 See BARCOCK, supra note 55, at 140.
66 See id. at 115.
67 In other countries, there have been “land pooling” programs whereby the government condemns property in an area expected to be redeveloped in a new use, and then pays the original property owners by assigning them new rights in the overall collective land holding resulting from the pooling effort. See LAND REASSIGNMENT: A DIFFERENT APPROACH TO FINANCING URBANIZATION (William A. Doebele ed., 1982).
68 See BARCOCK, supra note 55, at 115-16.
69 The growing popularity of historic districts in recent years reflects the fact that they accomplish much the same purposes as a full fledged neighborhood association and, like zoning, can be created by government fiat over the wishes of neighborhood holdouts. See Carol M. Rose, Preservation and Community: New Directions in the Law of Historic Preservation, 33 STAN. L. REV. 473 (1981).

EXHIBIT B
formally for many years. It would be a logical extension of longstanding American zoning practice. 70

D. How Property Rights Evolve

Such an evolution of zoning from a de facto collective right to a formal collective property right recognized in the law, moreover, would be consistent with longstanding patterns of property right evolution. 71 Except in times of revolutionary turmoil, legislatures seldom create new property rights from whole cloth. 72 Rather, property rights emerge gradually from informal practice, often at odds with the accepted economic and property right theories of the day. As experience accumulates, however, the informal practice becomes better understood and the merits better appreciated. At a still later point, the informal practice may then gain full acceptance and perhaps codification. 73 The typical role of the legislature, in short, is not to create new rights but to ratify rights that evolve. This process can take decades or even centuries. 74

For example, early settlers of the American west engaged in widespread illegal occupancy of the land. 75 Although the federal government regarded squatters as law breakers, it was without the power to stop their actions on a distant frontier. Eventually, political pressures drove the federal government to confirm the original squatter occupancy as a legal property right. When the Homestead Act passed in 1862, it was not a new idea but a final recognition by the federal government that squatting was a fact of frontier life. Rather than futile and ultimately harmful efforts to prevent it, the better course was accepting and regulating squatting actions, as the Homestead Act did.

Describing the long history of British land law, Sir Frederick Pollock wrote that "[t]he history of our land laws, it cannot be too often repeated, is a history of legal fictions and evasions, with which the Legislature vainly endeavoured to keep pace until their results . . . were perforce acquiesced in as a settled part of the law itself." 76 Although the substantive workings changed dramatically, the outward form of English land tenure

70 NELSON, supra note 43, at 7-21.
74 The law of usury, for example, evolved in this manner. Usury was at first prohibited formally, but the charging of interest was widely practiced through a host of indirect devices that had the same practical effect. Eventually, although it took many centuries, the direct charging of interest became routine and legally permissible. See John T. Noonan, THE SCHOLASTIC ANALYSIS OF USURY (1957).
76 Frederick Pollock, The Land Laws 64-65 (Fred B. Rothman & Co. 3d ed. 1979) (1883).
varied little from the thirteenth to the nineteenth centuries. As Pollock described the manner of property right evolution in Britain up to the late nineteenth century,

[Over this period] the system underwent a series of grave modifications. Grave as these were, however, the main lines of the feudal theory were always ostensibly preserved. And to this day, though the really characteristic incidents of the feudal tenures have disappeared or left only the faintest of traces, the scheme of our land laws can, as to its form, be described only as a modified feudalism.77

In the twentieth century, we like to think that the world is more rational; governments should do what they say they are doing. Whole professions, including the field of American public administration, depend upon the assumption that the true goals of society can be stated directly, and realized by a process of rational selection among the alternatives. However, the history of zoning suggests otherwise. Zoning followed the traditional route of property right development; it was yet another process of land law making and evolution of rights under the guise of various legal myths and fictions that served to obscure its real purposes.

V. THE PROPERTY RIGHT SCHOOL OF ZONING

As the land law evolves, there usually have been some people who have foreseen and advocated the later property right outcome. As the evolving nature of the land laws is better understood, and the merits of new ways of doing things better appreciated, their views might even prevail. In the short run, the mainstream tended to dismiss their arguments as heretical and unacceptable because acceptance of these arguments would endanger the existing property right regime, an unacceptable outcome to the broader society.

In the 1960s, Richard Babcock, a leading American zoning lawyer took a dangerous step towards eroding the legitimacy of the system. Babcock provided an accurate depiction of zoning practice in the trenches, showing that there was little connection to the received legal theory.78 By avoiding radical cures and proposing that the solution to zoning problems instead lay in reviving the original planning principles of zoning, however, Babcock largely preserved his mainstream status.

Instead, it was the members of a new “property right” school of zoning who flirted with, if not fully entered into, the realm of zoning heresy.79 Although the members of this school differ on a number of points, they have in common outright dismissal of the traditional rationales for zoning

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77 Id. at 53.
78 BABCOCK, supra note 55.
and instead analyze zoning as a redistribution of property rights with certain social and economic consequences.

A. *Coasian Analysis*

Ronald Coase's path-breaking 1960 article, "The Problem of Social Cost," revived scholarly interest in the institutional role of property rights, first among economists and then extending to legal scholars through the law and economics movement. In the article, Coase highlighted that adequately defined property rights obviated the need for government intervention in many perceived social problems. Instead, private negotiation could often resolve these problems.

An "externality," for example, did not necessarily require government regulation, as most economists had long supposed. Rather, a party negatively affected by the external impacts of some action could also stop it by paying for its cessation or modification. Or, if this party already had the legal right to stop the activity, payments could compensate him for allowing continued activity. In either case, the most economically efficient outcome resulted. The social importance of well-defined property rights was that their clear specification up front might greatly reduce the transactions costs of such efficient bargaining.

Since zoning attempts to deal with the pervasive externalities in the urban land market, the institution of zoning was an obvious candidate for the application of Coasian principles. Among the first to recognize this possibility was Dan Tarlock, who argued in 1972 that

> contemporary zoning should be conceptualized as a system of joint ownership between the public entity and the regulated private owner. It is a form of joint ownership in which the owner of the fee [simple ownership] retains possession of the right to manage subject to a veto by a co-owner, the public entity.

Although Tarlock did not say so directly, such a form of joint ownership is also characteristic of a homeowners association, condominium or other collective private property ownership.

For existing neighborhoods with separately owned properties, Tarlock found that high transactions costs of private actions to protect neighborhood quality often posed an insurmountable obstacle to collective private efforts. Zoning was therefore a second-best choice; lacking a solution to the free rider problem, government had to "intervene through a zoning

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80 R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960). This article was the most important reason for Coase's receipt of the Nobel prize in economics in 1991.
81 Id. at 146.
83 Id. at 146.
ordinance to simulate the result that would have been accomplished had the initial landowners but for high transaction costs been able to impose a covenant scheme on surrounding landowners.\footnote{\textit{Id.}}\textit{Zoning} could thus be justified because by itself "private collective action fails to provide sufficient quantities of a desired public good, in this case [neighborhood] amenity levels."\footnote{\textit{Id. at 145.}}

However, Tarlock recognized a problem: Municipalities tended to rigidly administer their new zoning authority. Unlike an ordinary private property owner, the municipality could not profit monetarily (legally, that is) from the transfer of the zoning rights to someone else. To address this problem, and thereby improve the efficiency of land market operations, Tarlock suggested it would be helpful "if existing [neighborhood] users took some sort of collective action to bind themselves to a bargain such as a voting procedure or the creation of a board to act for them."\footnote{\textit{Id. at 146.}} With this collective organization they could bargain with potential entrants into the neighborhood. As Tarlock elaborated:

\begin{quote}
Under the existing zoning system subsequent users who wish to deviate from the surrounding land-use pattern must "buy" their way in through the political process. Majority approval from an appointed commission or elected local legislative body is required. The process, I have argued, is very costly and produces doubtful efficiency gains. Arguably the costs of administering a zoning system would be decreased and efficiency gains more certain if entrants had to bargain directly with surrounding landowners. The function of the government would be to impose an initial covenant scheme and then let the market or a close proxy determine subsequent reallocations of land.\footnote{\textit{Id. at 147.}}
\end{quote}

In other words, as Tarlock suggested, the neighborhood should possess the property rights to neighborhood entry, with the option to sell these rights. This approach would open the land market to greater and easier entry for new uses that might be socially desirable. Professor Robert Ellickson developed a related proposal, if in considerably more detail, for the application of Coasian principles to land use regulation.\footnote{Robert C. Ellickson, \textit{Alternatives to Zoning: Covenants, Nuisance Rules and Fines as Land Use Controls}, 40 U. Chi. L. Rev. 681 (1973) (hereinafter Ellickson, \textit{Alternatives to Zoning}); see also Robert C. Ellickson, \textit{Suburban Growth Controls: An Economic and Legal Analysis}, 86 YALE L.J. 385 (1977) (hereinafter Ellickson, \textit{Suburban Growth Controls}).} Nuisance law and zoning, Ellickson observed, ignored important options that might promote a more efficient use of the land.\footnote{Ellickson, \textit{Alternatives to Zoning}, supra note 88.} If the courts declared an activity a nuisance, under current law they would simply issue an injunction to halt it or use zoning to keep it out in the first place.
B. Compensation for Regulatory Changes

A more economically efficient result, however, might be for the objectionable activity to locate where it wished but to pay nearby property owners compensation for any damages. For example, if a high tech company had a strong incentive to move into a particular neighborhood (perhaps its most valued employees lived there), it might be better to allow the company to negotiate with the neighbors living nearby, rather than issuing an absolute prohibition on nuisance or zoning grounds. In effect, following a Coasian scheme, this approach emphasizes property right negotiation, rather than public regulation of a perceived unacceptable harm through nuisance or zoning law.

In 1977 Ellickson extended this analysis to broader aspects of land use law. He argued that there should be a "normal" standard of zoning restriction defined for undeveloped land in the specific circumstances of each suburban community. If the municipality wanted to impose tighter restrictions on a particular parcel, say to preserve open space, it would have to adequately compensate the landowner for the loss of land value. In effect, establishment of a "normal" standard of development created a legal criterion that allowed division of the development rights at any given site between the municipality and the land owner. The landowner would possess some "sticks" in the overall bundle of land rights outright, while the municipality shared the remaining development rights. Unlike a number of others in the property right school, for fairness and other reasons, Ellickson did not propose allowing the municipality to sell its zoning rights for general municipal revenues or other types of broad benefit. Thus, the municipality would not possess the full benefits of ownership of its portion of the development rights (and in this respect, partly depending on how well "normal" development was defined, there could remain a legal obstacle to the efficient use of the land).

The basic thrust of the Tarlock and Ellickson arguments is that, in essence, zoning constitutes a redistribution of property rights and that there are significant advantages to more formally recognizing and dealing with it as such. Another law professor, Bernard Siegan, also viewed zoning as a matter of a redistribution of property rights but came to a much different policy conclusion. The nuisance and planning justifications for zoning, he agreed, are patently false. Indeed, in Siegan's view there is no justification—either in legal thought or in social or economic theory for the coer-

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90 Id.
91 Id.
92 BERNARD H. SIEGAN, LAND USE WITHOUT ZONING (1972) (hereinafter SIEGAN, LAND USE WITHOUT ZONING); see also BERNARD H. SIEGAN, PROPERTY AND FREEDOM (1998); BERNARD H. SIEGAN, OTHER PEOPLE'S PROPERTY (1976).
cive redistribution of property rights between municipalities and landowners that zoning accomplished. The whole scheme is a fraud of sorts. Once municipalities took possession of their new zoning rights, municipal politicians found it impossible to resist the temptation to exercise the rights promiscuously. Zoning ultimately served the political interests of the most powerful elements of the municipality, rather than any public interest. This result was unnecessary. As Siegan contends, and sought to demonstrate by his study of Houston, covenants and other private solutions achieve valid zoning purposes just as well. The solution to all this, as Siegan argued, is straightforward: Zoning must be abolished.

In 1977, I made the redistribution of property rights accomplished by zoning in existing neighborhoods still more explicit. On the whole, while the legal profession did not get high marks for intellectual forthrightness or integrity, the scheme seemed to work in such neighborhoods. Creating new collective property rights for neighborhoods had the same beneficial incentive and other effects as any other system of property rights would have in other areas of economic activity. Property rights in neighborhood environmental quality created the necessary incentives to build and maintain high quality neighborhood environments. Similarly, the private rights to the profits of a business created the necessary incentives to form new businesses, or the private rights to the future use of one’s personal property created the incentive to purchase and then maintain this property.

In undeveloped areas, however, I argued that the policy considerations relating to zoning were fundamentally different from existing neighborhoods. On farm and other vacant land on metropolitan fringes, land facing the prospect of new housing development, zoning effectively redistributed the property rights from the original landowners to others in the municipality. Recent entrants, arriving at higher densities of housing development and with the voting strength to take political control in the municipality typically benefited from this redistribution. In existing neighborhoods zoning met a key test, as described by Richard Epstein, of an acceptable government regulation. Although the existing neighborhood residents lost some rights, they gained sufficient other rights in return that, in most cases, they were adequately compensated. In an undeveloped area, however, farmers or other original landowners lost the development rights but did not receive any significant rights or other compensation in return.

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93 SIEGAN, LAND USE WITHOUT ZONING, supra note 92, at 231.
94 See id. at 75-76.
95 Houston is the only major city in the United States without zoning.
96 SIEGAN, LAND USE WITHOUT ZONING supra note 92.
97 See NELSON, supra note 43.
98 See id. at 22-51.
In effect, zoning resulted in an outright confiscation of development rights by the municipal government.

C. Buying and Selling Zoning

One solution, following Siegan, would be to abolish zoning for undeveloped land, as an unconstitutional taking of private property. However, given the great political uproar that would follow any such step, and the inevitable hesitation of the courts to provoke such intense public anger, I suggested what might be a politically more promising possibility. Municipalities should be allowed to sell zoning directly. This approach recognizes the urgent social need to make more land development rights available in the market, and that the municipalities effectively possess these rights.

Sale of zoning might be ethically questionable because it would reward municipalities for an unjustified initial confiscation of property rights. Nevertheless, in many cases the courts’ failure to put any real limits on government zoning actions occurred decades ago; the resulting taking is an accomplished fact of life. There may be no way to compensate the original losers; subsequent purchasers of the land did not suffer any loss, because they had paid a lower price, reflecting the restricted development rights that went with the land. Indeed, giving later purchasers new development rights would bestow an unexpected windfall on this group.

Economics Professor William Fischel, in a series of writings beginning in 1978, focused his attention on the problem of zoning undeveloped land. Like others in the property right school, Fischel argued that zoning transferred key development rights from owners of vacant land to the municipality. In his view, the problem was that the justifications for zoning also made the municipal sale of zoning difficult or impossible. Governments are not supposed to sell relief from their regulations; that would be regarded as “bribery.”

In practice, municipalities routinely sold zoning. One commentator said in the mid-1960s that by the very nature of its workings, zoning posed an almost irresistible “invitation to bribery.” In 1966, observing the widespread corruption in zoning decisions, Marion Clawson proposed that

103 Richard F. Barco & Wendy U. Larsen, Special Districts 1-2 (1990); see also ALTMUS & GOMEZ-IBANEZ, supra note 56.
it would be simpler and better to dispense with the fictions and to have "open, competitive sale of zoning and zoning classifications." In essence, what Clawson was saying was, "Let's call it a property right and put it back into the marketplace like any other property right." In 1979, Fischel made a similar proposal, suggesting adoption of a new system in which "any existing zoning restriction may be sold by the community." The payments received "should be made to the general municipal treasury, to be dispersed as decided upon by community rules."107

D. Zoning under Attack

By the early 1980s, the critique of zoning as developed by the property right school achieved wider recognition. New influential articles portrayed zoning as a redistribution of property rights with perhaps some practical benefits but also many harmful consequences. A succession of law journal articles appeared with titles such as Abolish Zoning,108 California's Land Planning Requirements: The Case for Deregulation,109 De-regulating Land Use: An Alternative Free Enterprise Development System,110 Brandeis Brief for Decontrol of Land Use: A Plea for Constitutional Reform,111 and Local Land Use Controls: An Idea Whose Time Has Passed.112 By 1983, Douglas Porter asked, "Who likes zoning? Hardly anyone, if you listen to recent criticisms of zoning standards, zoning procedures, and the whole zoning concept. Bemoaning zoning seems to be a major sport these days."113

The critics' common theme was that the hopes for expert management of urban land use through comprehensive land planning had failed. Critics argued that a narrow group captured zoning benefits: zoning restrictions kept valuable suburban land bottled up in less productive uses; and that, in general, the broader public interest in a fair and efficient land

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106 Fischel, Equity and Efficiency, supra note 101, at 222.
107 Id.
market suffered as a result. The biggest beneficiaries were the groups already well off in American society, while the losers were those whose income level precluded them from finding good land at acceptable prices for homes. Lower and moderate income groups remained clustered in older housing in existing cities, the only places that they could afford.

The Report of the President's Commission on Housing in 1982 carried these arguments from the law journals to the public policy arena. The Commission found that "excessive restrictions on housing production have driven up the price of housing generally," creating concern for "the plight of millions of Americans of average and lesser income who cannot now afford homes or apartments." To redress this unacceptable outcome, the Commission offered recommendations for a detailed "program of land use deregulation."

E. 1980s Trends

The old zoning warrior and practitioner, Richard Babcock, regarded these attacks on zoning as the lamentations of yet another group of academics removed from the real world. Babcock declared that, whatever the legal and economic scholars were saying, "people love zoning" and therefore it is "alive and well... in every urban and suburban neighborhood" and would remain for a long time to come. Zoning was going its merry way, independent of all the scholarly fussing and fuming. Rather than theorizing about an end to zoning, Babcock characteristically thought it more important to see what was really happening on the ground. Here, he discerned two basic trends in the 1980s in zoning practice. One was an increasing insistence by municipalities that they be compensated for zoning changes. As Babcock wrote:

Governments simply are not playing the game unless they demand exactions. In one of the last cases in which I was involved, a city asked the developer of a particular project to build a $750,000 swimming pool—on the other side of town from the project. What did the developer do? After figuring out the cost of litigation, the time it would take, and the interest on the construction loan he was paying the bank, he agreed to build the swimming pool—even though it had nothing to do with his development.

116 Id.
119 See Richard Babcock, The City as Entrepreneur: Fiscal Wisdom or Regulatory Folly, in CITY DEAL MAKING, supra note 56.
120 Babcock, supra note 117, at 34.
In Washington, D.C., the Department of Housing and Community Development wanted its compensation in cash, rather than an in-kind payment like a swimming pool. For example, in 1987 The Washington Post reported that the Hadid Development Company proposed building a large office building near the D.C. Convention Center. In exchange for development permission, Hadid offered to donate $1.4 million to a general purpose low income housing fund but the D.C. government wanted $4.6 million. The Post reported that “the zoning commission sent the entire Hadid case to the housing agency to determine if the cash offer was appropriate.”

The second important trend Babcock noted was the rise of “special districts” by municipalities. Cities exercised tighter control over new development in these districts. They also often imposed detailed requirements for development permission. For instance, New York City effectively required that new office towers and hotel buildings provide a Broadway theatre on the lower floors in the Times Square special district.

As usual, Babcock was an accurate and insightful reporter on recent zoning practices. Unfortunately, his analysis in some ways missed the forest for the trees. The key fact that Babcock failed to note was that these trends are consistent with the predictions and recommendations of the property right school of zoning. By 1990, Babcock observed that the “bargaining for zoning—the let’s make a deal mentality—became the common denominator of zoning in the 1980s. . . . Cynical observers suggested that the system of bargains and exactions was little more than ‘zoning for sale.’”

In other words, the earlier recommendations of Tarlock, Fischel and others that municipalities sell zoning were in a real sense being followed; cities and suburban municipalities alike routinely marketed zoning and other regulatory permissions. Marketable zoning also had the predicted salutory effect of opening up space for socially desirable new uses of land. Ironically perhaps this marketing reduced the pressures for more direct zoning reforms. But true to the history of land law evolution, this shift took place in indirect and informal ways, often at odds with the received theory of zoning. Babcock, for example, rather than welcoming it as a necessary corrective to fundamental problems in the basic workings of zoning, expressed his dismay and disgust with the widespread, thinly disguised

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122 BABCOCK & LAARSEN, supra note 103, at 32.
123 Id. at 1-2.
sale of zoning. His criticisms notwithstanding, Babcock offered no practical proposal of his own to open up more land for development.\textsuperscript{124}

A similar observation applies to special zoning districts.\textsuperscript{125} Special districts were most common in larger cities. One effect of the special district was to shift the focus of zoning administration from the municipal to the neighborhood level. Rather than city-wide administration of zoning, each neighborhood had its own special zoning arrangements. Indeed, special districts often had much more detailed rules than in an ordinary zoning district, covering matters of architectural style and other aesthetic concerns. When combined with a "business improvement district," special districts can assess property owners within the district for security, street cleanup, and other district services.\textsuperscript{126} In short, the new special district was virtually a private neighborhood association, except that it was created in an existing city neighborhood, rather than by the developer of a brand new neighborhood in the suburbs. Special districts also often actively entered into the ongoing bargaining processes for zoning sales as districts granted development permission in return for other general benefits provided by the developer.

\section*{VI. THE ORIGINS OF PRIVATE NEIGHBORHOODS}

On the whole, the members of the property right school tended to focus on the need to recognize zoning as a basic new property right institution, and on the importance of allowing the freedom to buy and sell newly created rights in the market. There has been much less attention among the members of this school to the need to develop intermediate institutions such as the neighborhood association as a means of facilitating such market transactions.\textsuperscript{127} Zoning theorists also pay less attention to the

\begin{footnotesize}
\textsuperscript{124} For a more ambitious set of proposals, see ANTHONY DOWNS, NEW VISIONS FOR METROPOLITAN AMERICA (1994).

\textsuperscript{125} See BABCOCK \& LARSEN, supra note 103.


\textsuperscript{127} One partial exception is Robert Nelson, Private Neighborhoods: A New Direction for the Neighborhood Movement, in LAND REFORM, AMERICAN STYLE (Charles C. Geisler & Frank J. Popper eds., 1984). The concept developed in this paper is briefly sketched in an earlier article as follows:

\begin{quote}
Current trends toward greater collective possession of important neighborhood property rights could be significantly stimulated by the creation of a new, more satisfactory neighborhood tenure. Protection of neighborhood quality ought to be provided under private tenures. A new private tenure instrument—the neighborhood association—is proposed here for that purpose. The legal status of the neighborhood association would resemble in certain respects each of the already existing forms of collective property ownership. . . .
\end{quote}

Under zoning, the local government effectively holds the rights to control new uses and major changes in property in a neighborhood. Under the tenure proposed, the zoning rights would instead be held directly by the neighborhood association. Hence, where a neighbor-

\end{footnotesize}
non-zoning benefits of private neighborhoods, such as the provision of neighborhood services or the encouragement of a stronger sense of neighborhood identity and community spirit.\footnote{128}

Yet there is a rich history here. While the explosion of neighborhood associations occurred after the 1960s, neighborhood associations have been around in the United States since the nineteenth century, although used on only a limited scale.

A. Early Neighborhood Associations

The first neighborhood association in the United States was formed in 1831 to supervise the use of Gramercy Park in New York City.\footnote{129} A land developer, Samuel Ruggles, set aside and fenced in a common area for the mutual enjoyment of 66 surrounding residential lot owners. Ruggles then deeded over ownership of the central area to trustees with the lot owners collectively as the beneficiaries. The first homeowners association was established to provide for the upkeep of Louisberg Square in Boston. Built in 1826, the development included a central common area, but there was no special provision for its maintenance. In 1844, the twenty-eight nearby lot owners signed a mutual agreement establishing the Committee of the Proprietors of Louisberg Square, binding themselves and their successors to care for the park. This agreement was a rare instance in which a neighborhood association formed after the fact of development in individual home ownership.

Beginning in the 1890s, housing developers in the United States began building an increasing number of large planned private communities. To protect the character of the community environment, developers included extensive private covenants in the deeds binding both initial purchasers and subsequent owners. Enforcement in many cases depended on some individual pursuing the necessary legal actions. Since enforcement was uncertain, dependent on a volunteer willing to shoulder the costs, developers conceived the idea of a mandatory association to enforce the covenants and provide certain other common services. In 1914, a leading American community builder, James Nichols, established the first such association at the Mission Hills development near Kansas City, Missouri.\footnote{130}

\footnote{128} Other writers have, however, addressed these potential benefits of neighborhood revitalization. See HARRY C. BOYCE, THE BACKYARD REVOLUTION (1980); PEGGY WREEMAN, URBAN NEIGHBORHOODS, NETWORKS, AND FAMILIES (1984); DAVID J. MORRIS & KARL HESS, NEIGHBORHOOD POWER (1975); NAT'L COMM’N ON NEIGHBORHOODS, PEOPLE BUILDING NEIGHBORHOODS (1979).

\footnote{129} This history draws heavily on McKENZIE, supra note 4, at 29-78.

\footnote{130} See id. at 40; see also MARC A. WEISS, THE RISE OF THE COMMUNITY BUILDERS (1987).
By the 1920s, similar land development projects spread across the United States. The famous Radburn new town in New Jersey, designed in the 1920s by progressive reformers seeking to demonstrate the advantages of comprehensive social and physical planning, included an association that enforced an extensive set of covenants. The growing use of covenants and homeowner associations was, interestingly enough, almost coincident with the rapid spread of zoning. Both new property right institutions met similar needs; but, as noted above, in most cases only zoning was feasible in existing neighborhoods of individually owned homes. Where collective property rights could be established before-the-fact, it was possible to maintain a much tighter degree of control over neighborhood quality, as well as to employ the neighborhood association for various other common purposes. Another factor motivating the use of covenants was that the Supreme Court declared racial zoning unconstitutional in 1917, whereas it did not declare racially exclusive private covenants unconstitutional until 1948. A formal policy of racial segregation was an unfortunate feature of many large housing developments in both the north and south in the period between the wars.

Following World War II, individual home ownership soared in the United States. The Urban Land Institute (formed in 1936) and other builder organizations promoted the mandatory homeowner association to take care of parks, tennis courts and other common property in large developments. Many developers employed this device although, as noted above, it is estimated that fewer than 500 neighborhood associations existed in the United States in 1962. By 1973, the creation in that year of the Community Associations Institute reflected the fact that neighborhood associations were now a routine part of the American land development process.

VII. THEORIZING ABOUT PRIVATE NEIGHBORHOODS

Neighborhood associations were largely the response of land developers to practical real estate needs. However, although their work received little public attention, and had little impact on real world events, a few theorists wrote about private neighborhoods as early as the 1930s. In a recent book, Fred Foldvary provides a useful survey of this early literature, introducing some of this insightful body of writings to a wider audience.
A. Privatization of Local Governance

In 1936, Spencer Heath proposed substituting private neighborhoods for local governments.138 Heath’s concept was that “the proprietary department eventually will take on and exercise its full administrative functions over all the public services.”139 Private proprietors would provide services to neighborhood residents (including enforcement of land use restrictions), charge land rent for the services, and keep any residual as the profit for their entrepreneurial role. Heath used the hotel as a model. The hotel represented “an organized community with such services in common as policing, water, drainage, heat, light and power, communications and transportation, even education facilities such as libraries, musical and literary entertainment, swimming pools, garden and golf courses, with courteous service by the community officers and employees.”140 In the future, whole neighborhoods of many homes and other types of properties, Heath suggested, should be organized and managed on the model of the private hotel.

Heath’s grandson, Spencer Heath MacCallum, took up the cause. MacCallum observed in a 1965 article that a new species of private property emerged in the United States after World War II.141 The private shopping center, for example, built and operated by private entrepreneurs, was supplanting the strip highway development of the past. Other new forms of land development included industrial parks, professional and research centers, marinas, mobile home parks, medical centers, and many types of multifunctional building complexes. In these new forms of property, one found “all of the functional requirements of municipalities.”142 Indeed, MacCallum argued that “there are no longer any political functions being performed at the municipal level and upward in our society that differ substantially from those that we can observe being performed on a smaller scale entirely within the context of normal property relations.”143

In 1970, MacCallum observed further that in private ownerships “the manner of the relationship of each toward the others is specified in the terms of the individual contracts, the sum of which at any time is the social charter or constitution of the community.”144 Hence, constitutions were not

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138 Spencer Heath, Politics Versus Proprietorship (1936) (unpublished manuscript, on file with author).
140 SPENCER HEATH, CITADEL, MARKET AND ALTAR 82 (1957).
142 MacCallum, Social Nature, supra note 141, at 58.
143 Id.
limited to nations, states, or other sovereign entities. A private organization, like a neighborhood association, could have a constitution of sorts as well, setting well-defined and difficult-to-change rules governing future relations among those who lived within its boundaries. 145

Municipal governments also had charters or other founding documents that represented yet another constitutional form. However, private territorial associations had an advantage in that their private status offered flexibility in constitutional design typically denied to public bodies. For example, as required by the Supreme Court, the rule of one-person, one-vote applied necessarily to a public entity, but private associations could experiment freely in this regard. 146 Private associations could engage in various profit-making activities generally considered inappropriate for a municipal agency. They might, for example, operate a drug store, bank or insurance office. As mentioned above, they might also decide to enter the business of selling entry into a neighborhood, while a municipality could not similarly sell the zoning (or at least could not do so legally, in a manner that could be formally authorized by its constitution).

Another advantage of the private neighborhood association is its greater insulation from unilateral governmental alteration of the initial constitutional terms. For example, if the government attempted to regulate a private association such regulation might be declared a taking of private property, requiring that the state either desist or pay compensation for its impositions on the neighborhood. Certainly, new judicial decisions and legislation can override the provisions of a neighborhood association's founding documents, such as a new law banning age or handicapped discrimination in any private actions, including those of a neighborhood association. However, municipal governments are the creatures of state governments and the full terms of their municipal founding documents are potentially subject to state revision. The security of municipal constitutional forms, thus, may be less than private associations.

The private developers of new neighborhoods, MacCallum observed, seek "to optimize the total environment of each site within a system of sites to maximize the combined rents they will command." 147 MacCallum notes that in shopping centers and other large business properties, the ownership is typically retained by the developer, who then rents out space to the business tenants. In residential private neighborhoods, however, ownership typically transfers directly to the residents themselves through collective ownership vehicles such as a condominium or a homeowners


147 MACCALLUM, supra note 144, at 50.
association. MacCallum, who strongly favors the shopping center model of a single private owner renting to individual tenants, attributes the prevalence of individual resident ownership of one's own unit to the greater federal tax advantages afforded to owning a residence, as compared with renting. Foldvary suggests that the scarcity of rental arrangements may be due as well to the "economic and cultural values of living in a democratically run community." There may also be significant psychological benefits to owning property.

Another possible explanation is that the "principal-agent" problem may take a different form in business and residential common properties. Many tenants of shopping centers typically have time horizons of five years or less, while purchasers of homes and other residential units commonly plan to stay for twenty years or more. It may be easier to move out of a shopping center that proves to have incompetent management, as compared with leaving a residential community. The determinants of neighborhood quality may involve greater elements of subjective judgment in the case of residential property, thus making it more difficult to specify in a contract the standards of quality to be maintained over a long period of time. As a result, residents of neighborhoods may prefer to take collective ownership of their own neighborhood, while control of business "neighborhoods," like shopping centers, is left more easily in the hands of the developer under a rental agreement with the tenants.

Drawing on the writings of Heath, MacCallum and others, Foldvary proposes that the advantages of private neighborhoods are so great that the place of municipal governments in American life should be greatly circumscribed. As Foldvary explains:

To sum up, the theory of contractual community thus has these elements. The private ownership of space permits the collection of the rents generated by the civic services which induce the rents. Communities such as hotels, shopping centers, industrial parks and estates, and ships are examples of the [private] proprietary provision of civic goods. Residential community associations are another form of contractual governance, many of which implement Ebenezer Howard's conception of city services financed by site leases. Their constitutions are typically provided for by the developers, enhancing the value of the property with constraints against future exploitation by the association governance. Civic entrepreneurs also foster community spirit, sympathy with the community, which enables non-excludable civic goods to be produced in addition to funding by rental assessments. Finally, a theory of public goods needs to recognize that society is always in community, and that the realistic choice in the provision of civic goods is not market versus governance, but whether the governance that provides the goods is imposed or voluntary.

149 FOLDVARY, supra note 136, at 97.
150 See Mark Finzi, Privatizing the City, POLY REV. 91 (Spring 1980).
151 FOLDVARY, supra note 136, at 111.
B. Liebmann Concept

Another recent advocate of private neighborhoods is George Liebmann, who, in a 1993 article, called for substantial “devolution of power to [private] community and block associations.”152 Private associations, he argued, could assume a much greater role in functions such as day care, traffic regulation, zoning adjustments, schooling, and law enforcement. Liebmann proposed that state governments enact enabling legislation to allow existing neighborhoods to form a neighborhood association. In order to establish a new association, he suggested a requirement that two-thirds of the neighborhood residents approve it.153

Neighborhood associations would have the authority to provide services in the neighborhood and would have much greater flexibility than existing zoning in administering controls over the entry of new uses into the neighborhood. Specific responsibilities suggested by Liebmann for neighborhood associations included, among others:

1. Operating or permitting the operation of family day care centers;
2. Operating or permitting the operation of convenience stores, of not more than 1,000 square feet in area, whose signage is not visible from a public road;
3. Permitting the creation of accessory apartments where a principal residence continues to be owner occupied;
4. Cooperatively acquiring building materials and services for the benefit of its members;
5. Partially closing roads and streets, imposing right of way regulations, and enhancing safety barriers, except where local government finds that the closure, regulation, or obstruction interferes with a street necessary to through traffic;
6. Petitioning local government for imposition of a juvenile curfew on association property;
7. Contracting with local government to assume responsibility for street paving, trash collection, street lighting, snow removal, and other services;
8. Acquiring from local government contiguous or nearby public lands;
9. Petitioning local government for realignment of election precinct and voting district boundaries to conform to association boundaries;

153 See Liebmann, Devolution of Power, supra note 152, at 382-83.
10. Maintaining an unarmed security force and appropriate communications facilities;
11. Issuing newsletters, which may contain paid advertising; and
12. Operating a credit union, to the extent otherwise permissible under state or federal law.\textsuperscript{154}

The flexibility of the neighborhood association, as seen by Liebmann, would thus promote a happier blend of functions traditionally divided artificially into public and private domains.

C. Cities as Private Businesses

If municipal governments are today constitutionally restricted, in comparison to private neighborhood associations, an alternative reform would be to loosen the restrictions on the municipality. Indeed, in a 1980 article, Professor Gerald Frug demonstrated that the constricted range of current municipal functions is an historical artifact of the past 150 years.\textsuperscript{155} As Frug observed, “before the nineteenth century, there was no distinction in England or America between public and private corporations, between businesses and cities.”\textsuperscript{156}

By the late nineteenth century, however, leading economic and legal theorists came to see the neighborhood and the city as parochial entities that presented an obstacle to the political and economic rationalization of society.\textsuperscript{157} As a result, there was a concerted “attack on city power” that was “but an example of the more general liberal hostility towards all entities intermediate between the state and the individual, and thus all forms of decentralized power.”\textsuperscript{158} Instead, as the new professional classes in the social sciences and other expert fields saw matters, power should be concentrated in the marketplace, on the one hand, and in government at the national level, on the other hand. The market worked to advance national (and even international) economic efficiency; if automobiles could be manufactured more cheaply in Detroit than in other places, then the workings of markets meant that Detroit would supply the automotive needs of the whole nation. Similarly, as Frug wrote, at the national level “a rational, bureaucratic government of experts” would be entrusted with “wielding power in the public interest” for the benefit of the entire United States.\textsuperscript{159}

\textsuperscript{154} See id. at 381-82.
\textsuperscript{155} Gerald Frug, The City as a Legal Concept, 93 Harv. L. Rev. 1059 (1980).
\textsuperscript{156} Id. at 1082.
\textsuperscript{158} Frug, supra note 155, at 1080.
\textsuperscript{159} Id. at 1082.
Frug believes that the progressive-era claims of scientific rationality and management that justified the subsequent centralization of governing authority are no longer credible. Governing is about choices of values at least as much as about expert decisions, and these choices can only be made through the political process, preferably at the local level.\textsuperscript{160} The current need, therefore, is for "a genuine transfer of power to the decentralized units" of American society.\textsuperscript{161} In this category, Frug mentions regions, cities and neighborhoods. Yet, such a transfer will be no small task because "real decentralization requires rethinking and, ultimately, restructuring American society itself," including an end to "the current powerlessness" of American neighborhoods and cities.\textsuperscript{162} The objective should be to create a new "ability of a group of people, working together, to control actively the basic social decisions that affect their lives."\textsuperscript{163}

Frug says that this shift would require, as one element, "recognizing the rights of the city [and neighborhood] as an exercise of freedom of association."\textsuperscript{164} It would involve a turn back to an earlier era when cities acted as corporations and "there was no difference between a corporation's property rights and its rights of group self-government."\textsuperscript{165} Under the old model, Frug comments, the city (or neighborhood) could be "an association promoted by a powerful sense of community and an identification with the defense of property."\textsuperscript{166} Regrettably, neighborhoods and cities today have "lost the elements of association and economic strength that formerly enabled them to have an important part to play in the development of Western society."\textsuperscript{167}

Business corporations and cities represent alternative forms of decentralized association of people. Corporations are based on people coming together for the purposes of economic production; cities are based on a territorial kind of association. Frug suggests that the present private status of business gives it a large and unfair advantage in meeting the needs for communal association of Americans. To help equalize the competition, he proposes authorizing cities to operate their own private banks, credit unions, insurance companies and retail food outlets, among other business possibilities. The city must have powers more like those of a private business corporation because territorial association presents a fertile ground for reinserting into American life the elements of community lost in the headlong rush to modernization and economic rationalization:

\textsuperscript{160} See id. at 1070.
\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{163} Id. at 1122.
\textsuperscript{164} Id. at 1106.
\textsuperscript{165} Id. at 1107.
\textsuperscript{166} Id. at 1119.
\textsuperscript{167} Id. at 1119-20.
A territorial association... can readily include every individual in the geographic area, thereby presenting the greatest opportunity for widespread participation in its decisions. Because of this inclusiveness, it can further a broad range of possibilities for human association. It can also further stable expectations, since once formed, it cannot simply pack up its economic assets and leave town. On the other hand, a territorial association seems to present a visible threat to its participating members. Once a decision is made, members must choose to accept the decision, leave the association, or face the consequences of being dissenters. Being tied to a geographic area is in this sense a restriction of freedom. 168

D. Privatization by Neighborhood Association

It is remarkable that, writing in 1980, Frug did not comment on the obvious parallels between his proposal for enhanced power for neighborhoods and cities and the rise of private collective ownership of property. It was Professor Robert Ellickson, responding in part to Frug's article, who made the connection. In 1982, Ellickson commented that "the private homeowner association... not the business corporation, is the obvious private alternative to the [public] city." 169

Ellickson observed that the judiciary tended to treat municipalities and homeowner associations differently, sometimes to the advantage of the former and sometimes the latter. This different treatment reflected a view in the public mind that a definite distinction could be made between "public" and "private," a distinction that Frug rejected. Also finding this distinction tenuous, Ellickson suggested that perhaps the absence or presence of "involuntary members" could serve as an adequate basis of distinction. Ellickson suggested that membership in a homeowner's association is entirely voluntary, therefore making this a private activity, and justifying a freedom from many constitutional restrictions normally applied to governmental activities. However, cities contain at least some residents whose presence is involuntary, thus making them public entities. 170

On reflection, however, this distinction may be difficult to sustain. The initial move into a small municipality seems just as voluntary as the initial move into a homeowners association. Thus, at some point, everyone (or at least their parents or some other ancestor) voluntarily chose to live in the municipality. It is true that among the members of a neighborhood association, most are likely to have entered more recently, thus making their grant of consent to its founding documents seem more clear. However, this greater element of voluntariness is a product of the relative youthfulness of the average neighborhood association, and does not provide a long run basis for making any fundamental distinctions between the two forms of territorial association.

168 Id. at 1145.
170 See id. at 1523.
Rather, as suggested above, perhaps the best explanation for the difference between "public" and "private" is that these terms today create different legal and cultural expectations with respect to the permissible elements of a local constitution and the allowable procedures for a constitutional amendment.171 Indeed, as Ellickson pointed out, the original governing documents of a private neighborhood association "are a true social contract" amounting to "a private 'constitution.'"172 Ellickson also observed that private governments have a range of constitutional options open to them in structuring democratic rules for decision-making, while cities are bound by the one-person, one-vote rulings of the Supreme Court. In a surprising twist, agreeing with Frug’s basic viewpoint that cities are unduly restricted, Ellickson proposed that the constitutional possibilities for cities might be expanded by means of a new Supreme Court decision that would "overrule Avery (and related decisions) to eliminate the current federal constitutional requirement that local elections be conducted on a one-resident/one-vote basis."173 Municipalities might then be free to adopt, for example, "some system that weighted votes by acreage or property value,"174 as was the case in local elections in the early history of the United States.175

The exchange between Frug and Ellickson showed that the current concepts of the private neighborhood association and the small local municipality are the product of one time and place in American history and culture. At least for the purposes of discussion, there is room for exploring many new constitutional options for both types of institutions. Frug himself advocates steps to "privatize" local government, not by turning to private neighborhoods, as suggested in this Article, but by rethinking the basic concept of the municipality to make it comparable in property status to the private business corporation.176 Although they did it in different ways, what is most important and interesting in the exchange between Frug and Ellickson is that both, representing two very different outlooks on the law,177 came to a similar conclusion: That local government in the United States, presumably including its land use regulatory functions, should have more "private" activity status.178

171 See CAROL ROSE, PROPERTY AND PERSUASION (1994).
172 Ellickson, supra note 169, at 1527.
173 Id. at 1558.
174 Id. at 1560-61.
176 See Frug, supra note 155.
177 Frug wrote as a member of the critical legal studies movement, Ellickson as a member of the law and economics movement.

EXHIBIT B
VIII. A MONSTER LET LOOSE?

By some estimates, neighborhood associations will house more than 50 million Americans, or about 20% of the population by the year 2000. This remaking of the face of property ownership in suburban America occurred in a few decades without much critical scrutiny. Academic researchers and theorists recognized this trend only slowly; in the beginning, they had almost no role in initiating these property right developments.

Eventually, however, this was bound to change. A key event was a conference in 1988 sponsored by the Advisory Commission on Intergovernmental Relations (ACIR) on Residential Community Associations: Private Governments in the Intergovernmental System? The subsequent ACIR report stated that "traditionally the intergovernmental system has been thought to include the national government, state governments, and local governments of all kinds." Such thinking now had to be modified to recognize that "the concept of intergovernmental relations should be adapted to contemporary developments so as to take account of territorial community associations that display many, if not all, of the characteristics of traditional local government." Given the explosive growth of such associations, by which "private organizations substitute for local government service provision," it would be important to devote much greater critical attention to this new social phenomenon.

Perhaps encouraged by the ACIR, and the ever-increasing number of Americans living in neighborhood associations, the literature on private neighborhoods is now growing rapidly. On the whole, the more recent writings tend to have a less sympathetic outlook than earlier commentators. Indeed, some of the newer commentators are harsh critics, going so far as to suggest the unleashing of a new private monster in the land. Although they recognize the great political obstacles at this point, rather than expand the realm of private neighborhoods further, some critics even suggest that it might be desirable to curtail sharply, or possibly eliminate, the role of the private neighborhood association from the land use scene.

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179 See DELGER, supra note 4, at 145.
180 See RESIDENTIAL COMMUNITY ASSOCIATIONS, supra note 4, at ii.
181 Id.
182 Id. at ii-iii.
184 See GARRETT, supra note 31, at 183-93.
185 Gregory Alexander, Dilemmas of Group Autonomy: Residential Associations and Community, 75 CORNELL L. REV. (1989); see also Gregory Alexander, Conditions of "Voice": Passivity, Disappointment, and Democracy in Homeowner Associations, in BARTON & SILVERMAN, supra note 1.
Evan McKenzie, for one, rues the “astonishing nationwide growth” in neighborhood associations. One consequence of the growth is that those who are wealthy enough to afford a private neighborhood and government will become “increasingly segregated from the rest of society.” Even the people who live in these private neighborhoods may become disenchanted. For Americans used to democratic procedures, private associations are “illiberal and undemocratic.” For example, they disenfranchise renters, putting all the political power in the hands of the property owners. McKenzie argues that the proponents of private neighborhoods, are the captives of a “utopian faith.” Like the advocates of other utopian communal movements, they believe that “the route to community is through joint ownership of private property by an exclusive group living according to its own rules.” McKenzie quotes approvingly the characterization of Robert Reich, former Secretary of Labor, that neighborhood associations represent the “secession of the successful” from society. Reich contends that “condominiums and the omnipresent residential communities dun their members to undertake work that financially strapped local governments can no longer afford to do well—maintaining roads, mending sidewalks, pruning trees, repairing street lights, cleaning swimming pools, paying for lifeguards, and, notably, hiring security guards to protect life and property. (The number of private security guards in the United States now exceeds the number of public police officers.)”

Among a certain circle of American intellectuals, the private neighborhood association represents the epitome of a long lamented, indeed disastrous, trend—the balkanization of American life attendant to the suburbanization of the nation. One critic wrote that “the suburb is the last word in privatization, perhaps even its lethal consummation, and it spells the end of authentic civic life.” More moderately, as political commentator William Schneider observed, “To move to the suburbs is to express a preference for the private over the public. . . . Suburbanites’ preference for the private applies to government as well.”

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186 McKenzie, supra note 4, at 11.
187 Id. at 22.
188 For complaints about oppressive local controls in historic districts and other contexts, see Clint Bolick, Leviathan in the Suburbs, Wkly. Standard, Dec. 18, 1995; see also CLINT BOLICK, GRASSROOTS TYRANNY (1993).
189 Id. at 21.
190 Id. at 24.
192 Id. at 42.
195 Schneider, supra note 194, at 37.
For many critics, the ultimate symbol of the private neighborhood is the gated community. According to some estimates there are now 30,000 gated communities in the United States with nearly four million residents.\textsuperscript{196} As many as one million Californians are believed to be living in what Edward Blakely and Mary Snyder characterize as “walled security compounds.”\textsuperscript{197} In a report for the Lincoln Institute of Land Policy, Blakely and Snyder see all this in the direst of terms:

The fortifying phenomenon also has enormous policy consequences. By allowing some citizens to internalize and to exclude others from sharing in their economic privilege, it aims directly at the conceptual base of community and citizenship in America. The old notions of community mobility are torn apart by these changes in community patterns. What is the measure of nationhood when the divisions between neighborhoods require armed patrols and electric fencing to keep out other citizens? When public services and even local government are privatized, when the community of responsibility stops at the subdivision gates, what happens to the function and the very idea of democracy? In short, can this nation fulfill its social contract in the absence of social contact?\textsuperscript{198}

It was inevitable, given the rapidly increasing social importance of private neighborhoods, that a public debate would arise concerning their social consequences. Thus far, however, it has been a more heated than insightful discussion. The critics often make points that apply to any system of private property rights.\textsuperscript{199} As long ago as Plato, private property was condemned as socially divisive and an encouragement to base motives of self interest. It is no great contribution to public discussion to repackaging these utopian themes for a new form of contemporary private property.

\section*{IX. Neighbohood Associations in Inner City Areas}

The criticisms of private neighborhoods, although now heard with growing frequency, may have matters almost exactly backwards. The real inequality may not be the social divisions resulting from economically and socially segregated patterns of living in the suburbs. The fact that so many people, including people with many options, chose this style of private living is strong evidence that it has much to offer. Rather, the greatest inequality may be the denial of a similar private opportunity to people in the inner city. Many inner city residents would like to exclude criminals, hoodlums, drug dealers, truants, and others who often undermine the possibilities for a peaceful and vital neighborhood existence there.\textsuperscript{200}

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\textsuperscript{196} See Edward Blakely & Mary Snyder, Fortress America 7 (1997).
\textsuperscript{197} Id. at 1.
\textsuperscript{198} Id. at 2.
\textsuperscript{199} See id. at 81.
\end{flushright}
Politically, rather than join the suburbs, civil rights groups and other organized supporters of inner city residents often seek to undermine suburban powers of exclusion. A wiser approach, could they overcome their ideological straightjackets, might be to bring suburban powers of exclusion—the rights of private property, if not in a collective form—into the inner city. This strategic redirection requires strong inner city neighborhoods, free from the meddling of city hall, and able to choose who will live in and who will be excluded from the neighborhood. Inner city private neighborhoods could then exercise authority over their own police, garbage, street cleaning, snow removal, recreational facilities, and other services. They could have the ability to enforce aesthetic controls on the uses and alterations in neighborhood properties, thus ensuring the maintenance of an attractive exterior environmental appearance. In short, what inner city neighborhoods really need is some form of private neighborhood association.

The single greatest problem for many neighborhoods in the inner city is the general lack of personal security for residents. Few things would do more to improve the overall quality of inner city life than a significant reduction in crime. Urban scholar John Dilulio recently argued that declining crime rates in the United States in part reflect the spread of private neighborhoods in the suburbs. As he put it, “potential victims are making it more difficult for criminals to prey on them,” partly by moving into a “common interest development.” Private neighborhoods “virtually guarantee . . . greater safety from crime: No criminals need apply, strangers are stopped before entering, and troublemakers are easily evicted.”

There is no physical or other practical reason why an inner city neighborhood could not become a gated neighborhood. The potential benefits to the residents in reduced crime and general control over the character of the neighborhood environment are significant. That there are almost no such neighborhoods in inner cities shows that ideas do matter; many people are appalled at the idea of dividing the city into a web of walled neighborhoods. Yet, it is the poor who pay a great price in the name of preserving an abstract ideal of an America undivided by racial, class, or other lines. The rich in the suburbs, given wider choices, refuse to make a similar sacrifice.

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201 See CHARLES MONROE HAAR, SUBURBS UNDER SIEGE (1996); see also MICHAEL N. DANIELSON, THE POLITICS OF EXCLUSION (1976).

202 For a study of the important role of neighborhoods in the city of Baltimore, suggesting an even greater potential with the proper institutional supports, see MATTHEW A. CRONSON, NEIGHBORHOOD POLITICS (1983).


204 There are, however, ideological obstacles.

Hence, the proposed procedures described above for the creation of neighborhood associations should be available in inner cities as well. Indeed, this may be their most important application. Inner city neighborhoods should have the right to establish land use and other controls, including building neighborhood walls, if necessary, to maintain neighborhood quality. Just as businesses have been creating “business improvement districts” (BIDs) to improve the surrounding environment in cities across the United States, the residents of cities should be able to create what might be called “residential improvement districts” (RIDs). 206

One American city has such a policy on a limited scale. Since the nineteenth century, St. Louis has allowed the privatization of municipal residential streets, an authority that remains in force. 207 In recent decades, a number of St. Louis neighborhoods have used this authority to take over ownership of their streets, including closing off streets to traffic and creating a neighborhood association to manage the street area. According to community planner Oscar Newman, the “residents claim that the physical closure of streets and their legal association together act to create social cohesion, stability and security.” 208 Newman summarizes the findings from his study of this St. Louis experiment as follows:

For many students of the dilemma of American cities, the decline of St. Louis, Missouri, has come to epitomize the impotence of federal, state, and local resources in coping with the consequences of large-scale population change. Yet buried within those very areas of St. Louis which have been experiencing the most rapid turnover of population are a series of streets where residents have adopted a program to stabilize their communities, to deter crime, and to guarantee the necessities of a middle-class lifestyle. These residents have been able to create and maintain for themselves what their city was no longer able to provide: low crime rates, stable property values, and a sense of community. Even though the areas surrounding them are experiencing significant socio-economic change, high crime rates, physical deterioration, and abandonment, these streets are still characterized by middle-class ownership—both black and white. The distinguishing characteristic of these streets is that they have been deeded back from the city to the residents and are now legally owned and maintained by the residents themselves. 209

New institutions that facilitate the much wider privatization of inner city neighborhoods could offer similar benefits in cities across the United States. After decades of urban renewal, public housing, and other government efforts to improve the quality of life in inner city neighborhoods, the

208 OSCAR NEWMAN, COMMUNITY OF INTEREST 126 (1980).
209 Id. at 124.

EXHIBIT B
time has come to try a private property approach, empowering local residents to help themselves and rely on market incentives.

X. LANDOWNER ASSOCIATIONS IN NEWLY DEVELOPING AREAS

Under the original zoning concept, municipalities determined in advance what housing would be located in which neighborhoods, and then established zoning districts accordingly. The net effect of the zoning was the imposition of a kind of rationing scheme on the supply of undeveloped land in the municipality. So many acres were available for townhouses, so many for certain types of homes on one-acre lots, so many for homes on three-acre lots, and so forth. With similar actions occurring throughout a metropolitan area, the cumulative rationing scheme among all municipalities controlled the total supply of each kind of undeveloped land throughout the region.

Yet, among other problems, metropolitan land use planners had no economic or other models to project future housing needs with sufficient accuracy to meet the information requirements of this land allocation system. Moreover, in practice, zoning actions by one municipality were seldom closely coordinated with zoning actions of other municipalities. If the zoning districts remained fixed in place, as early zoning advocates urged, the overall effect inevitably would be to create systematic mismatches between available land supplies and the demands for different types of housing.

In practice, municipalities typically resolve this problem in part by refusing to zone in advance for a final lot size and type of housing. Instead, they zone undeveloped land for a highly restrictive category that prohibits virtually all new housing development. In order to develop, a rezoning is necessary—effectively transferring the development rights from the municipality to the developer. Then, as discussed above, municipalities negotiate the terms of rezonings with developers, typically exacting some kind of compensation for the transfer of rights. In the more extreme cases, municipal practices verge on the outright sale of the zoning changes.

While such municipal flexibility in zoning administration introduced a necessary element of realism into the system, averting some of the worst potential problems, it still falls well short of resolving the problem of an adequate supply of undeveloped land for many kinds of new housing. California courts have been particularly tolerant of municipal restrictions, essentially giving municipalities the latitude to do almost anything they want with their zoning (or other types of growth controls). According to one study, the California Supreme Court has been "more hostile to devel-

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EXHIBIT B
opment than any other high court in the nation. Combined with the strong preference for open spaces and environmental amenities of many California residents, the result has been a severe restriction on the amount of land available for new housing in most metropolitan regions.

The net effect of this restriction is significant, it drives up the price of developable land in California and thus raises the price of housing. One study found housing in communities with growth controls selling at prices 17 to 38% higher than in communities without such controls. In 1970, even before the growth control enthusiasm spread to municipalities throughout the state, the price of California housing on average was 35% higher than the rest of the nation. By 1980, the cost of California housing was 79% higher than the national average, and by 1990 it was 147% higher. Adjusted for quality, one estimate in 1978 showed that the cost of California housing was 57% higher than in other parts of the United States.

Not all Californians wanted strict limits on new development. Many owners of undeveloped land would have preferred fewer restrictions and higher land prices. To understand why planners ignored the preferences of such land owners, it is necessary to examine the typical political dynamics of municipalities that lie in the path of metropolitan development.

A. Suburbanites versus Farmers

Consider a hypothetical municipality consisting initially almost entirely of farmers. Due to growth of the metropolitan area, development approaches this municipality and the price of land rises. However, to preserve farming, and control the pace of development, the municipality imposes a ten-acre requirement for homes, effectively excluding almost all development. At some point, however, the rising land prices will cause some farmers to sell. Their fellow farmers have no incentive to block such sales, partly because they may expect to follow suit at some point in the future. Hence, the municipality will probably change the zoning to allow development, perhaps granting approval for homes on lots one or two acres in size. Such rezonings are likely to occur piecemeal, as developers

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211 Joseph F. DiMento et al., Land Development and Environmental Control in the California Supreme Court: The Deferential, the Preservationist, and the Preservationist-Eratic Era, 27 UCLA L. REV. 859, 872 (1980).
212 See Fischel, Regulatory Takings, supra note 7, at 223.
213 See id.
214 See id.
215 Rosen describes an “affordability crisis” for California housing in which many current home buyers could not afford to buy the house they currently live in. See Kenneth T. Rosen, California Housing Markets in the 1980s 45 (1984).
propose new subdivisions and the municipality responds to some of the proposals favorably.

At some point, as development of the municipality proceeds, the incoming newer residents will begin to outnumber the farmers. At some further point, they will very likely obtain the political power to determine future municipal zoning decisions. Now, a new set of incentives comes into play. Unlike the remaining farmers, who stand to make a large profit from sale of their land, the incentive for the new residents is to limit further housing development as much as possible, to preserve open space and environmental amenities for their own enjoyment. If the courts allow them to exclude most prospective development, as has been the case in California and a number of other states, and if the new residents are indifferent to the fate of the farmers, the politically dominant majority of newer residents will simply refuse any further rezonings. The overall effect across many municipalities in similar circumstances will be to remove a large area of undeveloped metropolitan land from the market.216

While this example is hypothetical, and the typical circumstance in the real world involves a larger number of players and a more complex set of motivations, this basic scenario has repeated itself many thousands of times over the years in metropolitan areas across the United States.217 Over the past few decades the “doorslammer” or “last-to-get-in” phenomenon has been a common practice. Large areas of metropolitan land in the United States have been held out of development, at large cost to the society as a whole but providing substantial environmental benefits to the locally dominant political groups of homeowners. As Fischel has explained:

[Through zoning] communities can have a substantial impact on the overall density of population. The major reason is that courts of law are willing to sustain zoning laws (or, more frequently, amendments to zoning laws) that substantially reduce the value of undeveloped land. This allows the community to reap the benefits of restrictive zoning (to current homeowners and other voters) without having to confront the cost that these regulations impose on developers and prospective residents. . . . Communities do not have to do anything approximating benefit-cost analysis before imposing land use regulation. This leads to overregulation and residential densities that are too low.218

Much of the policy literature of zoning seeks a solution to this problem. A common, though politically naïve, policy proposal is that municipalities should take full account of broader metropolitan needs in their

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216 See NO LAND IS AN ISLAND: INDIVIDUAL RIGHTS AND GOVERNMENT CONTROL OF LAND USE (1975); see also DOWNS, supra note 124, at 9-11.

217 See PRESIDENT’S COMMITTEE ON URBAN HOUSING, A DECENT HOME (1968); see also ADVISORY COMMITTEE ON REGULATORY BARRIERS TO AFFORDABLE HOUSING, NOT IN MY BACKYARD (1990); EAGLE, supra note 41, at 346-351.

218 FISCHEL, ECONOMICS OF ZONING LAWS, supra note 7, at 65.
planning, and then actually follow their plans.219 Others propose that state governments exercise greater oversight over municipal land use regulatory actions, ensuring the protection of statewide interests.220 Still other observers suggest that the courts should more aggressively overturn unduly restrictive zoning practices.221 The Supreme Court of New Jersey has prominently pursued this course.222

As discussed above, a much different policy alternative would allow the sale of zoning, giving municipalities a significant financial incentive to relax zoning. Through “impact fees” and other exactions, commitments to build recreational facilities for the benefit of all the municipal residents, and in other ways, developers possess a number of indirect ways of paying municipalities for valuable rezonings. Yet, while this strategy can work in practice, it requires the courts to look the other way in terms of ignoring the large departure from received legal theory.

The courts are not always willing to do this. Indeed, the Supreme Court in Nollan v. California Coastal Commission,223 and in Dolan v. City of Tigard224 posed significant new obstacles that potentially impede the ability of municipalities to go much further in selling zoning. In each case, the Court said that municipalities could establish conditions for rezonings that are closely related to the actual impacts of the specific project.225 Such well intentioned interventions by the Court are economically harmful, and in that respect misguided. If carried to their logical conclusion, judicial interventions would upset much of the existing practices by which developers are now able to pay off municipalities to obtain socially desirable rezonings. The Court’s insistence that future rezonings be in full accord with received zoning theory could bring the whole land development process to a virtual standstill.

219 See ROBERT M. ANDERSON, AMERICAN LAW OF ZONING (1968); NORMAN WILLIAMS, AMERICAN PLANNING LAW (1974).
222 Southern Burlington County NAACP v. Township of Mt. Laurel, 336 A.2d 713 (N.J. 1975); Southern Burlington County NAACP v. Township of Mt. Laurel, 456 A.2d 390 (N.J. 1983); see also HAAR, supra note 201.
225 See EAGLE, supra note 41, at 255-57, 75.
B. A Proposed Solution

The proposed procedures described above for the creation of new neighborhood associations offer an effective and practical solution to the problem of insufficient land supplies for new development in suburban areas. Finding a solution starts with a recognition that the voting rules for private neighborhoods and municipalities serve to protect land owners from later confiscations of their development rights.

Consider the same example described above. Assume that everything is unchanged, except that instead of a municipality, the farmers formed a neighborhood association to hold their rights in collective ownership and assume control over land development in their area. Also assume that the municipality, now redundant, abolished its zoning restrictions over the area covered by the neighborhood association. Politically, this would be possible because the farmers would still have firm political control over the municipality.

In almost every large private development project over the past three decades, it has been understood from the start that there will be many potential conflicts of interest between the developer and the early residents of the project. It is well established and accepted among all the parties that the developer must have firm legal protection from the early residents of the project taking premature political control over later land development decisions.226 Developers will not commit large amounts of capital if they face the risk that their development plans will later be overturned. Without such protection, the incoming residents of a project might, for example, block the developer from completing a key portion of the overall private project plan, or revise the plan significantly, and thereby deny the developer much of the total profit he expected. The incoming residents would benefit, however, from more greenspace than the original plan contained.

Protection for the developer from such outcomes is found in the voting rules generally adopted by neighborhood associations. In most new associations, the developer retains the majority of the votes until the late stages of project development, when he is no longer exposed to the risk of subsequently imposed restrictions. In the interim, the developer may transfer control over certain day-to-day aspects of project management to the residents, but retain control over the implementation of the overall development design for the project. In a typical arrangement, the developer retains three votes for every one assigned to new resident owners, until the overall development project is at least 75% complete.

Accordingly, if the farmers in the example above formed a neighborhood association, such a set of private voting rules would apply. The farm-

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ers would then retain political control over new uses of land, denying the incoming residents full voting power until the entire plan for sale of their farmland and its development neared completion. Unlike current political arrangements under zoning, the new residents in a private regime would not be able to change the planned future land uses or to impose other unreasonable restrictions on the sale of developable land in the area.

In concept, a municipal government could adopt the same voting procedure disenfranchising recent residents in land development matters. In fact, Ellickson hinted at such a solution in his proposal noted above—that the Supreme Court should abandon its one-person, one-vote rulings, and instead allow municipal voting rules based on considerations such as ownership of land and property.\(^{227}\) However, short of a surprising reversal of the Court’s earlier constitutional interpretations in this area, this approach is not available. Under the Court’s current jurisprudence, and the cultural attitudes toward “public” and “private” that prevail in the United States today, it is simply a fact of life that private neighborhood associations will have considerably greater constitutional flexibility than municipalities in designing their internal voting rules.\(^{228}\)

Hence, I propose that in a municipality containing mostly farmers and other owners of undeveloped land, the owners should have the legal option of following the five-step process laid out in Part II of this Article to create a new neighborhood association with collective ownership of the local development rights. If approved in an election along the lines proposed in Part II, the resulting private “neighborhood” of farmers, by law, would retain the right to regulate land use, until the entire municipality reached an advanced stage of land development. Until then, the incoming owners of residential property in the area encompassed by the farmer “neighborhood association” would have only a minority vote in basic land use matters. Upon completion of development (a process that could last as long as ten or twenty years), the majority of municipal residents would then be free to regulate land development however they wished, whether by continuation of the private association or through newly established municipal zoning powers.

In current political jurisdictions, with a mixture of some existing densely-developed residential areas along with substantial vacant farm land, the state government might have to mandate a similar process to establish one or more farmer land development associations. States should limit the zoning powers of such municipalities to the land areas already developed and occupied by recent (suburban residential) arrivals at higher densities.

\(^{227}\) See supra text accompanying notes 171-173.

\(^{228}\) See Ellickson, supra note 206, for a discussion of innovative voting rules based on property.
XI. SECESSION, VOTING RULES, AND PROVISION OF PUBLIC SERVICES

Critics of neighborhood associations sometimes argue that they represent a form of secession from the municipality. As McKenzie comments, “some feel this division is reaching the point at which many CID [common interest development] residents may develop an attenuated sense of loyalty and commitment to the public communities in which their CIDs are located, even to the point of virtual or actual secession.”

Indeed, a few proponents of neighborhood associations would like to see their independence from existing municipal authority extended to the point of a true secession. Foldvary suggests that in an ideal world “any person or organization having a title to land [could] withdraw the site from any government jurisdiction and create its own governance.” In such a regime of “legalized geographic exit,” it would be possible for people collectively to “withdraw from a dysfunctional process as an alternative to [attempting] an infeasible reform of the system.” Neighborhood groups choosing to withdraw from an existing municipality could do so at their option, like a no-fault divorce from a marriage, and thus would not be required to provide “any substantive grounds to justify the secession.”

Despite some suggestions to the contrary, neighborhood associations do not represent true secessions from the municipality. First, the members of neighborhood associations commonly continue to pay their full share of municipal taxes. Second, the municipality continues to provide some services, such as schools. And, third, members of neighborhood associations have full voting rights in municipal elections.

In some cases, however, there have been steps toward secession. In Montgomery County, Maryland, and some other jurisdictions, the local government gives a property tax rebate to compensate for the costs of public service burdens that the neighborhood associations assumed. If this approach were carried to its ultimate logical conclusion, the neighborhood association could provide all the services, and get a complete tax rebate. In that case, one might also argue that members should not vote in municipal elections, since the most important municipal decisions involve matters of public services. It would all amount to, as a practical matter, a true secession of the neighborhood from the municipality.

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229 McKenzie, supra note 4, at 186.
230 Foldvary, supra note 136, at 206.
231 Id.
232 Id.
233 In recent years, some local areas have actively attempted to secede from their existing jurisdictions. Two such efforts with high national visibility have been the attempts of Staten Island to secede from the City of New York and, most recently, the San Fernando Valley area from the City of Los Angeles.
234 Residential Community Associations, supra note 4, at 20.

EXHIBIT B
Whether it would be a good thing to provide a full secession option for appropriate groupings of neighborhood residents of a municipality raises a number of complex issues. Secession from an existing local government to incorporate as a new municipality is possible under existing laws of municipal incorporation for appropriate geographic groupings. Thus, the significance of a neighborhood association is not that it creates a secession option where none existed before. Rather, creating a private neighborhood allows a new form of secession as compared with incorporating a new public entity under current law. This potentially greater ease of exit is yet another example of how private neighborhoods provide greater constitutional flexibility. This flexibility creates institutional alternatives that would not otherwise be available.

Albert Hirschman provided a general analysis for all kinds of social issues of the secession option versus staying put and improving the existing system. If a municipality is in the business of providing certain services, secession simply means taking your business elsewhere, just as someone might decide to buy a Chevrolet after driving a Ford for ten years. As the current debate over school vouchers and charter schools illustrates, there are many advantages to expanding the field of choices and the resulting enhancement of competition within the public sector.

The provision by a neighborhood association of some important public services, but reliance on the municipality for others can create significant complications for municipal governance. First, the members of the neighborhood association then have an interest in minimizing municipal spending for the services they obtain through their own private association, and potentially the voting power to express this preference effectively in municipal elections. On the other hand, other residents of the municipality (those not living in a neighborhood association) have an interest in providing a higher level of the same municipal services. They factor into their calculations the fact that the members of the neighborhood association will contribute significant taxes but not get any service benefits in return, thus significantly reducing the average cost per resident of those who continue to be publicly served.

There are possible ways of resolving these problems, although they are likely to be cumbersome to implement and may not work well in practice, depending on the specific local circumstances. Let us say a municipality provides a public service such as a school. Let us also say that the neighborhood association then decides to build and operate its own private elementary school to educate the children living in the private neighbor-

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hood. Although seldom the case today in education, one can imagine that in the future, municipalities might even pressure developers to build and operate neighborhood schools, because provision of new schools is potentially costly to the municipality.

Then, a possible method of resolving the problems noted above would be as follows. For each student at the neighborhood school, the municipality would rebate the neighborhood the average public cost per elementary school student (amounting to an indirect voucher scheme). In turn, in any municipal election on new taxes for public schools, the residents of the neighborhood association would be ineligible to vote. If school matters came before the municipal council for a vote, the representatives from the district(s) with private neighborhoods would withdraw from the vote (as they might if they had any other type of conflict of interest). For this scheme to work, city council districts would have to match closely the boundaries of neighborhood associations.

Admittedly, a perfect system of municipal taxing, service provision and voting rules will never be possible. The difficulties posed in these regards by private neighborhoods are not fundamentally different from similar problems that already exist today, especially in larger local jurisdictions with a wide mixture of residents from different backgrounds and with different public service preferences.\(^{237}\) For example, residents who currently send their children to private schools have an incentive to vote to minimize public school funding. In some municipalities where many children attend Catholic schools, this issue has long been divisive.\(^{238}\) Some people will always be heavier users than others of particular municipal services, creating diverse incentives within the municipality.

XII. DISMANTLING A PROGRESSIVE LEGACY

De Tocqueville found the prominent role of associations to be one of the distinguishing features of American life.\(^{239}\) As he commented, "nothing, in my view, deserves more attention than the intellectual and moral associations in America."\(^{240}\) Americans were devoted to achieving "equality of conditions" but it was equally important that "the art of association must develop and improve among them at the same speed."\(^{241}\) In his travels, he found that this requirement was being met amply:

\(^{237}\) See FISCHER, REGULATORY TAKINGS, supra note 7, at 253-88.
\(^{238}\) For a discussion of the effects of various fiscal incentives, see HELEN F. LADD & JOHN YINGER, AMERICA'S AILING CITIES (1989).
\(^{239}\) ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 517 (Jacob Peter Mayer ed., 1969) (1835).
\(^{240}\) Id.
\(^{241}\) Id.
Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute. Americans combine to give lectures, found seminaries, build churches, distribute books, and send missionaries to the antipodes. Hospitals, prisons, and schools take shape in that way. Finally, if they want to proclaim a truth or propagate some feeling by the encouragement of a great example, they form an association.242

However, the nineteenth century American tradition of forming associations has, in significant part, been lost in the twentieth century. Frequently, government assumes the social roles formerly played by private associations. Where churches and other private charitable organizations provided support for the poor in the nineteenth century, in the twentieth century government welfare programs provide poverty relief. This movement away from associations was part of the shift to "scientific management" of American society, the guiding political ideal since the progressive era early this century.243

Scientific management was by its nature a centralizing undertaking.244 The national government had the resources to find and attract the best scientists and to distribute the findings throughout the nation. The national government had the necessary scope of authority to implement comprehensive plans and coordinate economic activities throughout the United States. The assumption was that government decisions made on a scientific basis would provide the best answer in most circumstances. Because government was best equipped to discover this answer, the federal government could reasonably claim the authority and legitimacy to make the ultimate social decisions for every part of the nation.245

In the last decades of this century, there is a growing body of criticism that the progressive design did not serve the nation well.246 In many cases, central scientific management means bureaucratic management. The methods of science, as applied in social and administrative realms, have been much less powerful than the earlier high progressive hopes. Government has been driven by interest-group bargaining, rather than expert determinations. Political meddling has not been separated from the day-to-

242  Id. at 513.
243  See ROBERT NELSON, REACHING FOR HEAVEN ON EARTH ch. 5 (1991); see also WALDO, supra note 99.
244  See Lee, supra note 49, at 544.
246  This literature is voluminous. For a few examples, see EPSTEIN, supra note 99; MILTON FREIDMAN, CAPITALISM AND FREEDOM (1962); R.H. COASE, THE FIRM, THE MARKET, AND THE LAW (1988); WILLIAM A. NISKANEN, POLICY ANALYSIS AND PUBLIC CHOICE (1998).
day management of the government; and the transfer of major governing responsibilities to the national level all too often yielded partisan conflict and gridlock.

Indeed, an emerging conviction is that a revival of American democracy and of American civic life may require a turn away from traditional progressive precepts.\textsuperscript{247} This could involve a rediscovery of the habits of small scale association of the nineteenth century. Robert Wiebe reports that in the nineteenth century there was a "vision of an all-inclusive People" that helped to hold American democracy together.\textsuperscript{248} This vision found powerful symbolic expression in the rituals of a national presidential election, a time when the feeling of being part of a broad community of all Americans reached its height. The greater sense of community was one reason voter participation rates in national (and local) elections were much higher in the nineteenth century than they are today. If American democracy in that era was a rough and tumble affair, it also possessed a degree of vitality and energy now missing.

As Wiebe finds, beneath the "universalistic covering" of nineteenth century American democracy "lay a multitude of particularistic groupings whose values set boundaries and whose behavior policed them. The meaning of democracy flowed as much from these everyday urges toward exclusiveness as it did from an overarching spirit of inclusiveness, and the results, scarcely a celebration of universalism, showed it."\textsuperscript{249} Government in the United States was characterized by "a persisting decentralization, even after the Civil War, [that] ensured an uneveness, an uncertainty to decisions about inclusion and exclusion."\textsuperscript{250} Some groups were able to hold their own within "lodge democracies roughly egalitarian competition," while others were excluded from active participation.\textsuperscript{251} Yet, even here, the struggles between "insiders and outsiders," involving a "procession of claimants" to full political inclusion, stimulated political activity and the sense of being part of a common national process of representative democracy.\textsuperscript{252} The "tension between these assertions [of the various groupings] and the resistance to them became in its own right a defining component of democratic life" in the United States.\textsuperscript{253}

\textsuperscript{247} An early prominent example of this body of writings is Peter Berger & Richard Neumaier, To Empower People (1977). More recently, Rivlin has called for a reversal of centralizing trends in American government. See Alice Rivlin, Reviving the American Dream (1992).
\textsuperscript{248} Wiebe, supra note 157, at 110.
\textsuperscript{249} Id.
\textsuperscript{250} Id. at 86.
\textsuperscript{251} Id.
\textsuperscript{252} Id.
\textsuperscript{253} Id.
Like many others, Wiebe also faults the progressive era as the point at which a basic loss of civic energy occurred in American life.\textsuperscript{234} It was perhaps an inevitable result of a governing vision that saw the political process as dominated by the discovery of expert solutions to well defined technical problems of management, hardly a vision designed to inspire the involvement of the citizenry. A turn away from the progressive vision could include a revival of the role of neighborhoods in American life. However, if neighborhoods are to become more important, new legal mechanisms are necessary to provide the requisite institutional support and foundation.

Neighborhood associations in new neighborhoods have already significantly displaced the role of one of the most important regulatory innovations of the progressive era, zoning control over the use of private land. The creation by state governments of a new and practical legal mechanism by which existing neighborhoods can also form their own private neighborhood associations, thereby rendering municipal zoning superfluous in these neighborhoods as well, would represent a large step towards the full dismantling of the failed zoning legacy of the progressive era.

CONCLUSION

As proposed in this Article, state governments should enact legislation enabling the creation of new private neighborhood associations to own and manage the common elements in existing neighborhoods. Citizens in an existing neighborhood could petition the state government, triggering procedures that could lead to the formation of this new instrument of private neighborhood ownership and governance. The full details of each collective ownership arrangement for each neighborhood, a kind of private constitution that could be tailored to the needs of each individual neighborhood, would have to be negotiated and presented to all the residents of the neighborhood. In order to create a new private neighborhood, a positive vote of (some kind of) super-majority of the neighborhood would have to occur.

New legal procedures for the creation of private neighborhoods would go far towards solving two urgent social problems. In inner city areas, creation of new private neighborhood associations would help greatly to improve the quality—including reducing the rate of crime—in these often deteriorated environments. In rural areas that will soon face development, new collective ownership instruments for groups of farmers (farmer "neighborhoods"), including voting rules to protect the original farmer developers, could open large areas of land for lower and moderate income housing. Generally, the establishment of private neighborhoods throughout

\textsuperscript{234} Id. at 113.
urban and suburban areas would offer major social and economic advantages over the existing zoning and public service delivery system. In the twenty first century, the general adoption of collective private ownership of residential property could offer social benefits as great as those experienced in the twentieth century as a result of widespread private corporate ownership of business property. There seems to be an inexorable process of collectivism in the ownership of private property—first business and now residential property—taking place in response to the institutional imperatives of modern life. State governments should facilitate this evolution, rather than obstruct it.
Amended and Restated Comprehensive Plan (CP) Text Amendment Application

An application must be deemed complete and in compliance with the Monroe County Comprehensive Plan and Code by the staff prior to the item being scheduled for review.

Application Fee: $6,470.00 (plus $850 for the BOCC adoption hearing)
The base fee includes two internal staff meetings with applicants; one Development Review Committee meeting, one Planning Commission public hearing; and one Board of County Commission public hearing. If this minimum number of meetings/hearings is exceeded, additional fees shall be charged pursuant to Fee Schedule Resolution and paid prior to the private application proceeding through public hearings.

In addition to the application fee, the following fees also apply:
Advertising Costs: $245.00
Surrounding Property Owner Notification (SPON): $3.00 for each property owner required to be noticed
Transportation Study Review: $5,000.00 Deposit (any unused funds will be returned upon approval)
Advertising and Noticing fees for a community meeting: $245.00 plus $3.00/SPON

Date of Request: 10/14/2021
Month Day Year

Applicant / Agent Authorized to Act for Property Owner: (Agents must provide notarized authorization from all property owners.)

SMITH HAWKS, PL
Applicant (Name of Person, Business or Organization)

BARTON W. SMITH, ESQ./JESS GOODALL, ESQ.
Name of Person Submitting this Application

138 SIMONTON STREET, KEY WEST, FLORIDA 33040
Mailing Address (Street, City, State and Zip Code)

(305) 296-7227
Work Phone

BART@SMITHHAWKS.COM
Email Address
BRANDI@SMITHHAWKS.COM

Property Owner: (Business/Corp must include documents showing who has legal authority to sign.)

OCEAN REEF CLUB, INC & OCEAN REEF COMMUNITY ASSOCIATION, INC. c/o AGENT
(Name/Entity) Contact Person

c/o AGENT
Mailing Address (Street, City, State and Zip Code)

(c/o AGENT)
Work Phone Home Phone Cell Phone Email Address

Page 1 of 8 Sept 2021
Goal(s), Objective(s) and/or Policy(s) of the Comprehensive Plan Affected:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

Please describe the reason for the proposed text amendment (attach additional sheets if necessary):
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

Pursuant Chapters 163 and 380, Florida Statutes, an amendment to the Comprehensive Plan must be consistent with Florida Statute, with the Monroe County Comprehensive Plan, and with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute. Please describe how the proposed text amendment is consistent with each of the following (attach additional sheets if necessary):

1) The proposed amendment is consistent with Part II of Chapter 163, Florida Statute. (At a minimum, please review and address Sections 163.3177, 163.3178, 163.3180, and 163.3184, F.S.) Specifically the amendment furthers:
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.
2) The proposed amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan: SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

3) The proposed amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute: SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

The Board of County Commissioners may consider an ordinance to transmit to the State Land Planning Agency an amendment if the change is based on one or more of the following factors. Please describe how one or more of the following factors shall be met (attach additional sheets if necessary):

1) Changed projections (e.g. regarding public service needs) from those on which the text was based
   SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

2) Changed assumptions (e.g. regarding demographic trends):
   SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.
3) Data errors, including errors in mapping, vegetative types and natural features: 
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

4) New issues: 
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

5) Recognition of a need for additional detail or comprehensiveness: 
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

6) Data updates: 
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

In no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located or to any area in accordance with a Livable CommuniKeys master plan. Please describe how the text amendment would not result in an adverse community change (attach additional sheets if necessary): 
SEE ATTACHED AMENDED AND RESTATED BACKGROUND LETTER.

* * * * * * * * *
Applicants submitting an application for an amendment to the text of the Comprehensive Plan shall participate in a concept meeting with the Planning and Environmental Resources Department, as indicated in Code Section 102-158(d)(3), to discuss the proposed amendment.

Scheduling. A concept meeting shall be scheduled by department staff once the application is determined to be complete.

As part of this concept meeting, department staff will identify whether or not the proposed text amendment will have a county-wide impact. If the proposal is determined to have a county-wide impact, a public meeting with the Board of County Commissioners ("Impact Meeting") prior to the application proceeding to the DRC for review is required. The applicant shall coordinate with the Planning Director regarding the date and time of the Impact Meeting; however, all Impact Meetings shall be held in Marathon.

Notice of Meeting. The Impact Meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation.

Noticing and Advertising Costs. The applicant shall pay the cost of the public notice and advertising for the Impact Meeting and provide proof of proper notice to the Planning Director.

The Impact Meeting is not to be a public hearing (the BOCC will not vote on the proposal), but a public meeting during which the BOCC may offer their initial opinions and the public may have input on the proposed amendment.

PROOF OF PROPER NOTICING ON THE IMPACT MEETING WILL BE REQUIRED.

Applicants requesting a Comprehensive Plan Text Amendment shall provide for public participation through a community meeting, as indicated in Code Section 102-159.

Scheduling. The applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings are to be held on a weekday evening at least three (3) months prior to any of the public hearings.

Notice of Meeting. The community meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation, mailing of notice to surrounding property owners, and posting of the subject property.

Noticing and Advertising Costs. The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

The community meeting shall be facilitated by a representative from the Monroe County Planning & Environmental Resources Department and the applicant shall be present at the meeting.

PROOF OF PROPER NOTICING ON THE COMMUNITY MEETING WILL BE REQUIRED.

* * * * * * * *
All of the following must be submitted in order to have a complete application submittal:
(Please check as you attach each required item to the application)

- Completed application form (unaltered and unbound)
- Correct fee (check or money order payable to Monroe County Planning & Environmental Resources)*
- Existing text of Comprehensive Plan Goal(s), Objective(s), and/or Policy(s) affected **
- Proposed amendment(s) to text of Comprehensive Plan Goal(s), Objective(s), and/or Policy(s). ** Must be provided in strikethrough and underline format.
- If a site specific amendment is proposed:
  - Proof of ownership (i.e., Warranty Deed)*
  - Ownership Disclosure Form *
  - Notarized Agent Authorization Letter (note: authorization is needed from all owner(s) of the subject property)*
  - Copy of current Future Land Use Map (required if application affects specific and defined area)**
  - Current Property Record Card(s) from the Monroe County Property Appraiser *
  - Location map *
  - Photograph(s) of site(s) from adjacent roadway(s) *
  - Signed and Sealed Boundary Survey(s), prepared by a Florida registered surveyor – eight (8) sets (at a minimum, survey should include elevations; location and dimensions of all existing structures, paved areas and utility structures; all bodies of water on the site and adjacent to the site; total acreage by land use district; total acreage by habitat; and total upland area*)
  - A list of names and addresses of all real property owners within a 600 foot radius of the property(ies) – (three sets). This list should be compiled from the current tax rolls of the Monroe County Property Appraiser. In the event that a condominium development is within the 600 foot radius, each unit owner must be included *

If applicable, the following must be submitted in order to have a complete application submittal:

- 600ft Radius report, prepared by the Monroe County Property Appraiser’s Office (required if application affects specific and defined area)*
- Traffic Study, prepared by a licensed traffic engineer (required if application affects specific and defined area)*
- Transportation fee of $5,000 to cover the cost of experts hired by the Department to review the traffic study – any unused funds deposited will be returned upon approval (required if application affects specific and defined area)*

If deemed necessary to complete a full review of the application, within reason, the Planning & Environmental Resources Department reserves the right to request additional information.

Additional fees may apply pursuant to the approved fee schedule.
Has a previous application been submitted for this site(s) within the past two years?  □ Yes  □ No

Is there a pending code enforcement proceeding involving all or a portion of the parcel(s) proposed for development?  □ Yes  □ No  Code Case file #__________________________  Describe the enforcement proceedings and if this application is being submitted to correct the violation: __________________________

________________________
________________________
________________________
________________________
The applicant/owner hereby acknowledges and agrees that any staff discussions or negotiations about conditions of approval are preliminary only, and are not final, nor are they the specific conditions or demands required to gain approval of the application, unless the conditions or demands are actually included in writing in the final development order or the final denial determination or order.

By signing this application, the owner of the subject property authorizes the Monroe County Planning & Environmental Resources staff to conduct all necessary site visits and inspections on the subject property.

I, the Applicant, certify that I am familiar with the information contained in this application, and that to the best of my knowledge such information is true, complete and accurate.

Signature of Applicant: ___________________________ Date: OCTOBER 14, 2021

STATE OF FLORIDA
COUNTY OF MONROE

Sworn to and subscribed before me this 14th day of October, 2021, by means of □ physical presence or □ online notarization,

by JESS MILES GOODALL
(PRINT NAME OF PERSON MAKING STATEMENT)

produced ___________________________ as identification.
(TYPE OF ID PRODUCED)

Signature of Notary Public

BRANDI GREEN
(Print, Type or Stamp Commissioned Name of Notary Public
My commission expires: 06/29/2024)

Send complete application package to:

Monroe County Planning & Environmental Resources Department
Marathon Government Center
2798 Overseas Highway, Suite 400
Marathon, FL 33050
Driving Urban Environments: Smart Growth Parking Best Practices

A publication of the Governor's Office of Smart Growth
Robert L. Ehrlich, Jr., Governor ✧ Michael S. Steele, Lieutenant Governor
Prepared by: Robin Zimblcr

EXHIBIT C
# Table of Contents

1. **Introduction** ........................................................................................................... 1

2. **Parking Management** .............................................................................................. 2
   
   2.1. Limiting Parking Supply ...................................................................................... 2
       2.1.1. Reduced Minimum Parking Requirements
       2.1.2. Parking Maximums and Areawide Parking Caps
       2.1.3. Shared Parking
       2.1.4. Parking Management Districts
       2.1.5. Challenges to Limiting Parking Supply

   2.2. Controlling Parking Demand .................................................................................. 9
       2.2.1. Transit Investments
       2.2.2. Transit-Oriented Development and Traditional Neighborhood Design
       2.2.3. Transportation Demand Management Associations and Transportation Management Associations
       2.2.4. Unbundled Parking
       2.2.5. Pricing Strategies
       2.2.6. Challenges to Controlling Parking Demand

   2.3. Possible Strategies .................................................................................................. 16

3. **Parking Design** ....................................................................................................... 19
   
   3.1. Objective: Design sites such that vehicles are not the dominant feature .......... 19
       3.1.1. Location
       3.1.2. Screening and Landscaping
       3.1.3. Architectural Treatments

   3.2. Objective: Provide necessary parking without large expanses of pavement ....... 20
       3.2.1. Provision of On-Street Parking
       3.2.2. Construction of Structures Rather than Lots
       3.2.3. Automated Parking Structures
       3.2.4. Reduced Stall Dimensions and Compact Car Spaces
       3.2.5. Tandem/Stacked or Valet Parking
       3.2.6. Alternative Pavers
       3.2.7. Multiple Lots

   3.3. Objective: Minimize runoff from parking facilities utilizing techniques to return surface water to the ground ................................................................. 23
       3.3.1. Low Impact Development Techniques
       3.3.2. Green Roofs

   3.4. Objective: Encourage vibrant street level activity ............................................... 24
       3.4.1. Provision of On-Street Parking
       3.4.2. Location
       3.4.3. Retail and Commercial Uses

   3.5. Objective: Create a safe and comfortable environment for pedestrians and bicyclists as well as vehicles ................................................................. 24
       3.5.1. Provision of On-Street Parking
       3.5.2. Limit Curb Cuts
       3.5.3. Pedestrian Corridors
       3.5.4. Pedestrian and Bicycle Entrances
       3.5.5. Bicycle Parking
       3.5.6. Signage
       3.5.7. Lighting

---

**EXHIBIT C**
3.6. Challenges to Smart Parking Design ................................................................. 26
3.7. Possible Strategies ................................................................................................. 26

4. Parking Financing ...................................................................................................... 29

4.1. Privately-Owned Parking Structures ................................................................. 29
    4.1.1. Bundled Parking
    4.1.2. Parking Fees
    4.1.3. Lease and/or Sell Space
    4.1.4. Reduced Minimum Parking Requirements
    4.1.5. Density Bonuses
    4.1.6. Payment in Lieu of Taxes Agreements
    4.1.7. Private Activity Bonds

4.2. Publicly-Owned Parking Structures ................................................................. 31
    4.2.1. Revenue Bonds
    4.2.2. General Obligation Bonds
    4.2.3. Special Assessment Bonds
    4.2.4. Double-Barreled Bonds
    4.2.5. Tax Increment Finance Bonds
    4.2.6. Public-Private Partnerships
    4.2.7. Lease Purchase Financing

4.3. Challenges to Parking Financing ........................................................................... 36
4.4. Possible Strategies ................................................................................................. 36

5. Conclusion ................................................................................................................ 38

6. References .................................................................................................................. 39

7. Useful Web-sites ........................................................................................................ 41

8. Index ........................................................................................................................... 42

---

EXHIBIT C
INTRODUCTION

Over the last 50 years, new patterns of development have reflected both the mobility and convenience provided by the car and the segregation of land uses decreed by zoning codes that put residences in one area, offices in another, and retail in yet another spot. Increasingly far-flung destinations and more complex daily activities rely on the ability to get from one place to another as fast and predictably as possible. We have to drive to get from work to home to shopping, and at each place, we need to park. We expect safe, plentiful, easily accessed parking at work, at home, and at the store. Parking has become part of our culture: an office perk, a selling point for retailers, a display case for a household’s cars and a requirement for financing development projects.

Our communities have become increasingly worried, however, about the downside of an auto-based landscape that is no longer holding the promise of progress and growth, but rather fosters congestion that steals precious time from our lives. In contrast to auto-oriented sprawl, smart growth recognizes that the future and vitality of our communities is dependent upon our ability to foster a better planned, more environmentally protective, more sustainable pattern of development.

This work, however, does not come without its challenges, and no aspect of development illustrates this better than parking. Indeed, one of the biggest challenges facing smart growth is identifying new ways to address the need for parking while minimizing its negative impacts and encouraging better and different design. Parking is consuming a huge amount of land that could otherwise be developed. Surface and structured parking lots present sterile, unattractive environments that deaden city and suburban streets alike, further isolate uses and preclude lively pedestrian-friendly streets. Moreover, the adverse environmental impacts of parking lots, particularly on water quality, are increasingly recognized.

As developers attempt to meet the parking requirements of their projects, they find themselves beset with obstacles related to zoning, financing, and design, just to name a few. Parking requirements now drive many site designs, and are often the make or break issue for financing new developments. Too many quality smart growth projects remain on the drawing board because they simply cannot solve the parking dilemma. We need parking, but we need to re-think parking design, parking financing, and parking supply and demand to better meet the needs of communities, developers, and users.

This study presents an overview of parking strategies that meet the challenges faced by projects in the context of smart growth. Recognizing the importance of parking in development, it looks for new ways to manage parking supply and demand, to design parking facilities, and to provide financing, offering more, not fewer, options to communities, households and developers. These creative approaches are intended to promote better project design, reduce construction and operational costs, and add value to development projects.

The main sections of this study specifically address these three areas—parking management, parking design, and parking financing. The first section identifies parking management strategies that control the supply and demand for parking. The following section proposes innovative design strategies that reduce the aesthetic and environmental impacts of parking facilities, including on-street parking, surface parking lots, and parking structures. The final section outlines various financing mechanisms and incentives for the construction of both public and private parking structures.

It is hoped that this study will inform and engage local governments, developers, financial institutions, and citizens in a dialogue that will lead to broader implementation of "win-win" parking solutions, enhancing the attractiveness, convenience, and quality of life in communities across Maryland and beyond.
PARKING MANAGEMENT

As dependency on the automobile has grown, local policies have reinforced the car culture, accommodating increased parking demand through local zoning ordinances. The primary tool local governments have used to accommodate parking is parking ratio ordinances, which establish the minimum number of spaces a development project must provide for a given land use and project size. Table 1 outlines some of these general standards for minimum parking requirements based on land use. These ratios are typically drawn from generic parking generation rates, irrespective of site-specific and project-specific characteristics and other variables that would help to more accurately reflect market reality. The overstatement of parking ratios has in many cases led to an oversupply of parking.

There are many problems associated with current parking ratios and the subsequent oversupply of parking. These traditional approaches to regulating parking lead to vast expanses of parking which in turn separate land uses, reduce densities, impair walkability, and create obstacles to providing transit and pedestrian friendly communities. From a developer’s perspective, inflated parking ratios reduce the development potential of a site, requiring more land to be used for parking as opposed to a higher and better use, and adding significant costs to development projects. In fact, some development projects may not be financially feasible under current local parking policies.

Addressing these concerns requires local jurisdictions and developers to work together to revise parking policies to more appropriately manage parking. Revised parking policies should accommodate necessary parking, while at the same time encouraging attractive, pedestrian and transit friendly urban design, promoting alternative modes of transportation, preserving open space, and improving air and water quality.

This section of the paper details parking management best practices that aim to achieve the above mentioned objectives. Such “practices” or strategies include reduced parking minimums, area-wide parking caps, shared parking, and parking districts. These strategies could be required through local zoning ordinances or be voluntary, on a project-by-project basis, implemented through developers’ agreements. Given that efforts to control the supply of parking will only be feasible and effective when there are concurrent efforts to reduce the demand for parking, this section also proposes various best practices to reduce the demand for parking including transit investments, transit-oriented development and traditional neighborhood design policies, transportation demand management programs, unbundled parking, and parking pricing strategies.

Limiting Parking Supply

Local planners have traditionally regulated the supply of parking through zoning codes that prescribe minimum parking requirements for development projects based on land use and size. These minimum
requirements are typically drawn from parking generation rates and standards that are published by the Institute of Transportation Engineers. In one such commonly used publication, Parking Generation, the parking generation rates are derived from a small number of studies that measure peak parking demand at suburban locations, where parking is free and there is no public transit (Shoup, Roughly Right or Precisely Wrong). The maximum parking demand from these studies oftentimes becomes the minimum parking requirement established in zoning codes. Recognizing the limitations of these parking generation rates, planners will sometimes look to zoning codes in comparable cities to further inform their own minimum parking requirements. However, this comparison is also quite limited in that it cannot account for all of the geographic and demographic factors specific to a particular jurisdiction or development site. As a result of applying published generic parking standards or borrowing parking standards from seemingly comparable cities, minimum parking requirements tend to be excessive and inflexible, leading to more parking than is necessary.

One of the primary ways local planners can more appropriately control the supply of parking is by revising local zoning ordinances to more accurately reflect local parking demand and circumstances. This portion of this section proposes potential revisions to local zoning ordinances including reduced parking requirements given a project’s proximity to transit, surrounding land uses, demographics of prospective users, implementation of transportation demand management programs, or payment of fees in lieu of parking. Other strategies that might be considered for incorporation in local ordinances include parking maximums, area-wide parking caps, and shared parking. The roles parking management districts can play in controlling the supply of parking are also discussed in this section.

Reduced Minimum Parking Requirements

Local zoning ordinances have historically controlled the amount of parking at a site by imposing minimum parking requirements, calculated as a ratio of the number of parking spaces required per square foot, per dwelling unit, or other measure of intensity. This ratio varies by the type of land use. Rather than imposing inflexible requirements, local zoning ordinances could incorporate mechanisms to tailor parking requirements to specific development projects. The following list of factors are among those that should be considered.

- **Locational Factors.** The location of the proposed project will impact parking demand. For example, if a project is well served by mass transit, the project might generate a lower parking demand than what would otherwise be anticipated, relying on generic parking generation formulas. Moreover, if the proposed project is located amidst high-density development with a mix of land uses, there might be existing parking facilities nearby, thus reducing the demand for parking on-site. Users may also access the project and other nearby uses on foot, further reducing parking demand.

- **Demographic Factors.** The demographics of the anticipated users of a project, including employees, customers, and residents, will impact parking demand. For example, due to

Reduced Minimum Requirements for Locational and Demographic Factors - San Diego, California

The San Diego Municipal Code permits reduced minimum parking requirements for residential, office, retail, institutional, and industrial uses in designated transit areas and for residential uses in designated very low income areas. With respect to residential uses, the minimum parking requirements can be reduced in multiple dwelling unit developments, depending on the multiple dwelling unit type (number of bedrooms). For example, in a multiple dwelling unit development with 2 bedroom units, the basic minimum parking requirement is 2 spaces per dwelling unit; however, in both transit areas and very low income areas this requirement is reduced to 1.75 spaces per dwelling unit. With respect to nonresidential uses, the reduction in minimum parking requirements for developments in transit varies based on use. However, in general the minimum parking requirement for nonresidential uses in transit areas is about 85% percent of the minimum requirement for development outside transit areas.
the high cost of car ownership, low-income residents generally have lower levels of car ownership than that of the general public. If the anticipated users of a proposed project have low levels of car ownership, the project might generate a lower parking demand than what would otherwise be anticipated. The age distribution of anticipated users will also be indicative of parking demand. For example, if the anticipated users of a proposed project are seniors, the project will necessitate less parking than what would otherwise be anticipated.

In addition to tailoring parking requirements to project-specific conditions such as locational and demographic factors, local zoning ordinances might also prescribe reductions to minimum parking requirements on a project-by-project basis in exchange for a developer’s commitment to a transportation demand management program or payment of fees in lieu of providing the required parking.

- **Transportation Demand Management Programs.** Transportation Demand Management (TDM) programs are typically employer-led programs intended to reduce the parking demand of employees by supporting carpooling, offering subsidies for transit, furnishing bicycle facilities, and providing shuttle service from off-site parking facilities. These features of TDM programs are discussed in greater detail in the following section on controlling parking demand. An example of a jurisdiction that reduces minimum parking requirements in exchange for an employer’s creation and implementation of a TDM program is Hartford, Connecticut, where parking requirements can be reduced up to 30 percent in exchange for discounted carpool parking, rideshare promotions, subsidized transit passes and shuttle service from off-site parking.

- **Fees-in-lieu.** Fees-in-lieu are established by jurisdictions as an alternative to requiring on-site parking facilities. More specifically, some local jurisdictions allow reductions to minimum parking requirements in exchange for developer payment into a municipal parking or traffic mitigation fund. The accrued money from the municipal parking fund helps finance city-owned, centrally located, off-site parking facilities. The in-lieu fees may be mandatory or voluntary and are set either by calculating a flat rate for each parking space not provided or by carefully determining appropriate development-specific fees on a case-by-case basis. By paying fees-in-lieu, developers have the ability to circumvent constructing on-site parking facilities, and are subsequently able to improve site design and preserve unique and historic resources that might otherwise be demolished to accommodate on-site parking. Fees-in-lieu tend to be very effective when rapid development is occurring in a defined area. However, absent a critical mass of concurrent development projects in a defined area, the municipal parking fund may only increase in increments insufficient to develop municipal parking structures in a timely manner (Urban Land Institute 2000). As a result, developers might only opt to pay in-lieu fees when a parking facility will be available on a definite schedule and within an acceptable proximity to the development project. An example of a jurisdiction that allows developers to pay fees-in-lieu of the required parking is the Town of Westport, Connecticut. The Town’s Zoning Regulations allow for developers to pay fees-in-lieu of providing all or a portion of the off-street parking spaces required for projects located in a designated Historic Design District. In this example, the fee-in-lieu of parking is set at $2,000 per

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**Reduced Minimum Requirements for Transportation Demand Management Programs – Seattle, Washington**

The Seattle Municipal Code stipulates that for office or manufacturing uses that require 40 or more parking spaces, the minimum parking requirements may be reduced up to 40% by substituting transportation demand management programs. These provisions include:

- for every certified carpool space, the total parking requirement may be reduced by 1-9/10 spaces up to a maximum of 40% of the total parking requirement;
- for every certified vanpool purchased or leased by the applicant for employee use, the total parking requirement may be reduced by 6 spaces up to a maximum of 20% of the total parking requirement;
- if transit passes are provided to all employees and transit service is within 800 feet of the development, the total parking requirement may be reduced up to 10%; and
- for every 4 covered bicycle parking spaces provided, the total parking requirement may be reduced by 1 space up to a maximum of 5% of the total parking requirement.
deficit parking space and must be paid in full by the applicant prior to the issuance of a zoning permit.

Local zoning ordinances should be clear about the terms and conditions for reductions to minimum parking requirements "by-right", specifying the percent of required spaces that can be reduced for such conditions as proximity to transit, surrounding land use mix and density, demographics and behaviors of prospective users, implementation of TDM programs, and payment of fees-in-lieu. By setting clearly defined terms and conditions for reductions in minimum parking requirements, local jurisdictions can limit the number of projects that have to go through the lengthy and uncertain process of receiving a zoning variance.

Although reduced minimum parking requirements might benefit developers by reducing the costs associated with the construction, operation, and maintenance of parking facilities, developers may not opt for the reduced parking requirement because of impacts insufficient parking might have on the marketability of the project to lending institutions and prospective users. As a result, developers might still oversupply parking in order to meet inflated financing standards set by lending institutions. However, in many cases, lending institutions do refer to local zoning, and local jurisdictions have been revising local zoning ordinances to incorporate parking maximums or area-wide parking caps to ensure there is not an oversupply of parking; these strategies are discussed in the next part of this section.

**Parking Maximums and Areawide Parking Caps**

As discussed in the previous section on reduced minimum parking requirements, local zoning ordinances usually establish the amount of parking developers must provide. However, in contrast to minimum parking requirements, it is becoming more and more common for local jurisdictions to revise zoning ordinances to incorporate parking maximums or area-wide parking caps, both intended to ensure that there is not an excess supply of parking.

- **Parking Maximums.** Parking maximums restrict the total number of parking spaces that can be constructed at a particular development site. For example, the City of Seattle allows a maximum of one parking space per 1,000 square feet of downtown office space, and is considering extending this maximum to areas outside of the downtown. The City of San Francisco limits parking to 7% of a downtown building's floor area (Millard-Ball 2002). Maximums can complement minimum parking requirements, thus ensuring a threshold level of parking supply, or can stand alone, leaving individual developers to determine the appropriate amount of parking necessary. While reduced minimum parking requirements allow developers the choice of providing more parking than the required amount, parking maximums are absolute limits on the amount of parking that can be provided. As such, parking maximums leave little room for making mistakes in projecting parking demand. If a jurisdiction underestimates parking demand and sets maximums too low, developers cannot "second-guess" that decision and provide more parking, as they can with reduced minimum parking requirements.

- **Areawide Parking Caps.** Areawide parking caps limit the total number of parking spaces that can be constructed in a defined area. Similar to parking maximums, areawide parking caps set

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**Parking Maximums – Portland, Oregon**

The Portland City Code has implemented parking maximums to complement parking minimums in areas outside the Central City district. The zoning ordinance specifies that the purpose of such provisions is to promote the efficient use of land, enhance urban form, encourage use of alternative modes of transportation, provide for better pedestrian movement, and protect air and water quality. The maximums vary with the use the parking is serving and the location of the use. That is, areas that are zoned for more intense development and are easily reached by alternative modes of transportation have lower maximums than areas of less intense development or less frequent or no transit service. For example, the minimum parking requirement for general office use is 1 space per 500 square feet of floor area, and the maximum parking requirement is 1 space per 294 square feet of floor area. However, if the development is located more than \( \frac{1}{4} \) mile from a transit stop with 20-minute peak-hour bus service and more than \( \frac{1}{4} \) mile from a transit stop or station with 20-minute peak-hour light rail or streetcar service, the maximum number of parking spaces is actually increased to 125% of what otherwise would be the maximum requirement.
an absolute limit on the amount of parking that can be provided, in so doing, leaving little room for mistakes in projecting parking demand. Areawide parking caps require considerable administrative and planning effort to determine the appropriate number of parking spaces for a defined area, and to accurately apportion the allotted spaces to specific development projects.

Both parking maximums and areawide parking caps encourage better utilization of existing parking facilities and force businesses to encourage their employees and customers to use alternative modes of transportation. In fact, many jurisdictions that have instituted parking maximums or areawide parking caps have done so in response to non-attainment of environmental standards, particularly, air quality standards. For either parking maximums or areawide parking caps to be successful, it is imperative to have accessible and frequent public transportation, and the jurisdiction must have a strong real estate market, where the locational advantages considerably outweigh the perceived drawback of a lack of parking.

Shared Parking

Shared parking can be defined as parking utilized jointly among different buildings and facilities in an area to take advantage of different peak parking characteristics that vary by time of day, day of week, and/or season of year. For example, many businesses or government offices experience their peak business during normal daytime business hours on weekdays, while restaurants and bars peak in the evening hours and on weekends. This presents an opportunity for shared parking arrangements. Historically, local zoning ordinances have not permitted shared parking—stating that if two or more uses are located on the same lot or in the same structure, the total number of parking spaces required equals the sum of spaces required for each individual use. Since most parking spaces are only used part time, this policy leads to the underutilization of many parking facilities, with a significant portion of spaces unused. On the other hand, by allowing for and encouraging shared parking, local jurisdictions can decrease the total number of spaces required relative to the total number of spaces needed for each land use separately. As a result, allowing for shared parking arrangements significantly reduces the amount of land devoted to parking and, in so doing, creates more opportunities for creative site planning and landscaping.

Some local jurisdictions do incorporate language in local ordinances to permit and even encourage shared parking. These jurisdictions allow shared parking to meet minimum parking requirements for uses located within the same lot or building and also permit off-site shared parking arrangements to meet on-site parking requirements for complementary uses within a defined area. One way in which local ordinances help enable shared parking is to allow for off-street parking facilities to be located off-site of the lot on which the structure or use being served is located. Such ordinances usually specify a maximum distance from the structure or use within which the off-site parking facility must be located. These location requirements are typically based on acceptable walking distances. For example, the San Diego (CA) Municipal Code states that shared parking facilities must be located within 600 feet of the uses served. The Eugene (OR) Municipal Code allows for a longer distance stating that required off-street parking facilities must be within 1320 feet of the development site that the parking is required to serve. In addition to revisions to local zoning codes to enable shared parking, shared parking arrangements can be implemented through shared parking agreements between individual developers or the construction of public parking facilities.

There are several barriers to implementing shared parking arrangements. In particular, there is a considerable amount of planning needed to determine the appropriate number of parking spaces under shared parking arrangements. Some local jurisdictions calculate this number through the following method: 1) determine the minimum amount of parking required for each land use as though it were a separate use, by time period; 2) calculate the total parking required across uses for each time period; and 3) set the requirement at the maximum total across time periods. Other jurisdictions allow for the parties involved to determine the appropriate number of spaces. In these cases, the applicants must submit an analysis that shows that peak parking times occur at different times and that the parking area will be large enough to accommodate the anticipated demand. Since changes in ownership, operations, or use, might alter parking demand in the future, many ordinances that allow for shared parking require contingency plans to accommodate additional parking that may be necessary in the future.
Shared Parking – Montgomery County, Maryland

The Montgomery County Zoning Ordinance allows for shared parking when any land or building is under the same ownership or under a joint use agreement and is used for 2 or more purposes. The uses being served by the shared parking arrangement must be within a 500 feet walking distance of the shared parking facility. The number of parking spaces required under a shared parking arrangement in Montgomery County is calculated by the previous mentioned method.

The following is a generalized example of calculating the shared parking requirement for a mixed use development, given the regulations in the Montgomery County Zoning Ordinance. The calculations are based on a development project with general retail and office uses. The retail use has a gross floor area of 100,000 square feet and the office use has a gross floor area of 100,000 square feet. The development is located in the designated Southern Area of Montgomery County and is located 1,000 feet from a Metro station. Given this location, the minimum amount of parking normally required for a retail use is 5 spaces per 1,000 square feet gross floor area and the minimum requirement for an office use is 2.1 spaces per 1,000 square feet gross floor area. The following table summarizes the calculations. The “percentage of parking requirement column” is based on the parking credit schedule in the Montgomery County Zoning Ordinance.

<table>
<thead>
<tr>
<th>Parking Requirement</th>
<th>Office Use Percentage of Parking Requirement</th>
<th>Adjusted Parking Requirement</th>
<th>Retail Use Percentage of Parking Requirement</th>
<th>Adjusted Parking Requirement</th>
<th>Parking Requirement by Time Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekday Daytime</td>
<td>210</td>
<td>210</td>
<td>500</td>
<td>60%</td>
<td>300</td>
</tr>
<tr>
<td>Weekday Evening</td>
<td>210</td>
<td>21</td>
<td>500</td>
<td>90%</td>
<td>450</td>
</tr>
<tr>
<td>Weekend Daytime</td>
<td>210</td>
<td>21</td>
<td>500</td>
<td>100%</td>
<td>500</td>
</tr>
<tr>
<td>Weekend Evening</td>
<td>210</td>
<td>10.5</td>
<td>500</td>
<td>70%</td>
<td>350</td>
</tr>
<tr>
<td>Nighttime</td>
<td>210</td>
<td>10.5</td>
<td>500</td>
<td>5%</td>
<td>25</td>
</tr>
</tbody>
</table>

For this example, the minimum parking requirement for the shared parking arrangement is **521 spaces** since that is the maximum number of spaces across the five time periods. This is significantly less than what would otherwise be required, 710 spaces, if shared parking were not permitted—a 26% reduction in the minimum parking requirement.

Parking Management Districts

Parking management districts are areas designated by local jurisdictions in which parking supply and rates are regulated to meet the parking needs of the area, at the same time as promoting transit use, ridesharing, and other alternative modes of transportation to the single occupancy vehicle. The two key components of parking management districts—supply management strategies and pricing policies—are designed to work together to enhance economic development and encourage a balanced transportation system in the parking management district. District-based supply management strategies are established to encourage mixed use development projects and areas to ensure the maximum utilization of land, requiring less land area for parking and, in so doing, making more land available for tax-generating purposes. To complement these supply management strategies, district-based pricing policies are established to influence individual travel behavior and encourage alternative modes of transportation. These pricing policies are discussed in greater detail in the section of this paper on controlling parking demand.

With respect to district-based supply management strategies, the parking supply in parking management districts can be managed on a project-by-project basis or through the development of centralized, shared parking facilities. That is, some local jurisdictions manage parking supply in parking management districts by requiring parking ordinances for development projects located in the district. In applying for a parking
ordinance, developers must justify the parking levels that will be built as a part of the development project. For example, in Baltimore, Maryland, no land may be used as a parking lot nor may any building be razed so as to permit the use of the land as a parking lot unless authorized by an ordinance of the Mayor and City Council. This requirement is to permit the Mayor and City Council to consider and evaluate the need for the parking lot, the proposed appearance of the parking lot, and possible aesthetic damage to the area surrounding the parking lot, with particular respect to the proposed removal of historic or aesthetically valuable properties. By requiring a parking ordinance for development projects located in a parking district, jurisdictions can control the overall parking supply regulating on-site parking on a project-by-project basis.

Local jurisdictions can also manage parking supply in parking management districts by developing, operating, and maintaining publicly-owned, centralized parking facilities financed through fees in lieu and other methods described later in this paper in the section on parking financing. These facilities alleviate the need for individual development projects to provide parking on-site. For example, Montgomery County, Maryland, has established four parking management districts in Bethesda, Montgomery Hills, Silver Spring, and Wheaton. The purpose of each district is to support the comprehensive development of the central business district by providing, operating and maintaining economically self-sufficient parking facilities which keep pace with the needs generated by growth in each district. Moreover, the number of parking spaces provided in each district is carefully calculated given the desired modal split between private cars and transit. There are four major funding sources of the parking management districts including fees in lieu, parking receipts, enforcement revenues, and income from investments. By developing, operating, and maintaining centralized parking facilities, jurisdictions can control the overall parking supply, encouraging the shared use of off-site parking facilities by a variety of development projects.

Challenges to Limiting Parking Supply

There are several challenges to limiting parking supply through the above-mentioned strategies. Supply management strategies presuppose that the projected variations in parking demand are accurate, which is not always the case. Furthermore, changes in ownership or operations of existing uses, or future changes in land use, might alter parking demand. In case the projected parking demand proves inaccurate or changes over time and, as a result, projects generate a greater parking demand than originally anticipated, some local jurisdictions will only approve reduced minimum parking requirements or shared parking arrangements if the developer has an agreed upon plan to accommodate the additional spaces (Urban Land Institute 2000). Such plans might include land banks or landscaped reserves. For example, the Iowa City Zoning Ordinance allows for land banked areas to be used in place of up to 30% of the required parking. If at some point in the future, the additional parking spaces are needed, the property owner will be required to construct parking on the land banked area. Similar to Iowa City, Palo Alto, California, allows for land banked areas to be used in place of 50% of the required parking. However, in the case of Palo Alto, the land banked area is actually more appropriately called a landscaped reserve since the land must be landscaped or serve a recreational function such as a play area. Jurisdictions might also require developers’ agreements and/or land covenants to ensure the continued implementation of agreed upon programs, irrespective of future ownership, operations, or change in use.

As discussed previously, parking maximums and areawide parking caps leave little room for mistakes in projecting parking demand. As a result, these policies must be somewhat flexible and regularly revised to ensure that an adequate level of parking is supplied. While some jurisdictions are revising local codes to incorporate maximums or areawide caps to complement minimum parking requirements, it is becoming more popular to replace minimums and maximums with more flexible parking medians. Under median parking requirements, a certain percentage of the median requirement is allowed above or below the median by right. Above or below this by right increase or decrease the developer must provide documentation to justify the levels of parking.

Overall, limiting parking supply might have unintended impacts should the actual parking demand exceed the anticipated level. If the parking supply is unable to accommodate demand, there might be spillover parking into adjacent uses and residential communities. In fact, many neighborhood residents will vehemently oppose any parking supply management strategy in fear that their neighborhood will become flooded by spillover parking with more cars bringing traffic and congestion. A potential solution to spillover parking is the creation and implementation of residential parking permit districts. Residential parking permit districts are designated areas in which the residents work with local jurisdictions to establish a program allowing them to park on the neighborhood streets, but restricts others from parking in these areas during certain hours. These districts are designed to reduce the impacts caused by students, customers, and
employees who do not park in the spaces provided in the nearby schools or businesses. In residential parking permit districts, permits could be made available to residents for a nominal fee—the revenues from these fees could in turn be used to fund neighborhood enhancements.

Finally, limiting parking supply will only be effective if there are concurrent efforts to control parking demand. Strategies to control parking demand, including transit investments, transit-oriented development and traditional neighborhood design policies, transportation demand management programs, unbundled parking, and pricing strategies, are discussed in this next portion of this section.

**Controlling Parking Demand**

One of the most effective ways of limiting parking supply is to reduce the needed supply through measures to control parking demand. In addition to the above mentioned supply management strategies, it is possible to reduce supply by influencing demand through investments in alternative modes of transportation, direct financial incentives for non-single occupancy vehicle use, pricing strategies, and policies supportive of transit-oriented development and traditional neighborhood design. This portion of this section outlines ways in which both the public and private sectors can influence parking demand, thus reducing the need for and subsequent provision of parking.

**Transit Investments**

One of the most effective ways of reducing the demand for parking is by providing people with a viable alternative to the personal automobile. Therefore, in seeking to control the demand for transportation facilities tailored to the automobile, the public sector must make a commitment to expand and otherwise improve transit systems and services. There are various ways in which transit systems could be improved to better meet the needs of existing users and potentially attract new users, including expanding already existing routes for existing modes, adding new routes for existing modes, and creating new modes such as express bus service. Capital investments could also be made to improve maintenance of facilities, such as buses and trains, and to revitalize transit stations, bus stops, and their surrounding neighborhoods. In addition to these capital investments in routes, modes, and facilities, operational improvements such as scheduling changes can be instituted to offer more frequent and convenient service. There are several challenges to these investments in transit. Capital projects may be extremely costly and demand a substantial upfront investment of government resources. Moreover, extensive planning and coordination is important to ensure appropriate location of routes and stations—this planning process adds additional time to what is already a time consuming process. As a result, it may take a long period of time before capital projects are fully operational. Finally, capital investments should be complemented by inducements such as marketing campaigns to help people realize the value of substituting mass transit for single occupancy vehicle use, improvements to fare structures, and enhanced passenger amenities.

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**MetroLink – St. Louis, Missouri**

In July of 1993, MetroLink, a regional light rail system, began operating in St. Louis, Missouri. MetroLink's alignment stretches 34.3 miles from Lambert International Airport in St. Louis to Southwestern Illinois College in Belleville, Illinois. The system was built and is operated by Bi-State Development Agency as part of a fully integrated regional transportation system that also includes MetroBuses. The capital costs of the existing alignments was close to $800 million, of which the Federal Transit Administration paid about $600 million and the County governments paid the remaining portion. The federal contribution comes from its one-cent gasoline tax revenue base and covered all costs for design and engineering, construction, procurement, testing, start-up and project administration. The local match came from the asset value of the donated rights-of-way, structures, and facilities, and from a ½ cent sales tax. MetroLink operations are subsidized by sales taxes and passenger fares. The base fare is $1.25—service is free during lunch hours in the downtown district. In its first year of operation MetroLink carried nearly 9 million customers, almost double the projected ridership. In Fiscal Year 2001, 14.2 million customers rode MetroLink. It is estimated that 21% of MetroLink customers are former bus riders and the other 79% are new to transit. MetroLink has reduced vehicle miles traveled in the St. Louis region by as much as 139,100 miles per day, has saved 7,130 gallons of fuel each day, and in its first year of operation, reduced carbon emissions by between 4,500 and 9,600 metric tons (EPA TRAQ).
Transit-Oriented Development and Traditional Neighborhood Design Policies

To help foster pedestrian and transit friendly communities in which people do not need to rely exclusively on the personal automobile, local jurisdictions can develop policies that encourage transit-oriented development and traditional neighborhood design. Transit-oriented developments (TOD) are location-efficient, compact, walkable development projects with a balanced mix of residential, business, and institutional uses clustered around transit stations. Traditional neighborhood design (TND) developments are compact, mixed use, pedestrian-oriented communities that connect people to places and people to people. Both TODs and TND developments encourage the development of denser, mixed-use, pedestrian oriented areas where frequently visited services, jobs, housing, and, in the case of TOD, transit, are all easily accessible, reducing the reliance on the personal automobile and the subsequent need for parking facilities.

Although the benefits of TOD and TND have been well documented, there are still many challenges to both types of projects including community fears that increased densities will increase traffic congestion and lower property values, and developer and lender fears that TOD and TND projects have higher costs and risks than conventional development projects. Moreover, in many jurisdictions, existing codes and ordinances do not allow for the construction of mixed-use, pedestrian-oriented developments as alternatives to conventional use-segregated developments or require a prohibitive number of zoning variances.

Local jurisdictions can help enable TOD and TND by revising local zoning ordinances to include TOD and TND zones that allow for a mixing of uses and increased densities, can include affordable housing and reduced parking requirements, and prescribe design guidelines such as site development design criteria, street and streetscape design criteria, landscape design criteria, environmental standards, and scale requirements. Local jurisdictions can also help encourage TOD and TND projects by creating small area TOD and TND plans, making the necessary capital investments to support TOD and TND projects, and providing land assembly assistance and/or expedited permitting to developers wishing to undertake such projects.

Transit-Oriented Development Zoning – Concord, North Carolina

The Unified Development Ordinance of the City of Concord, North Carolina, designates transit-oriented development (TOD) districts to encourage a mixture of residential, commercial, and employment opportunities within a specified radius of identified light rail station or other public transit stations. The TOD zone allows for more intense and efficient use of land for the mutual reinforcement of public investments and private development in transit areas. The TOD zones are divided into two distinct subdistricts—TOD core and TOD periphery. All areas within 1/4 mile of a transit station are classified as TOD core areas and all areas between 1/4 and 1/2 mile of a transit station are classified as TOD periphery areas. The Unified Development Ordinance outlines different requirements for each of the subdistricts. The Ordinance allows for a mixing of residential and non-residential in both the TOD core and periphery areas, but does not prescribe the amount of land that needs to be allocated to each use. The Ordinance does regulate the density and floor area ratios in the TOD subdistricts. The following table illustrates this:

<table>
<thead>
<tr>
<th>Density</th>
<th>Floor Area Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOD core</td>
<td>Non-residential units</td>
</tr>
<tr>
<td>Minimum</td>
<td>Maximum</td>
</tr>
<tr>
<td>Parcels, 2 acres or more</td>
<td>16</td>
</tr>
<tr>
<td>Parcels, less than 2 acres</td>
<td>12</td>
</tr>
<tr>
<td>TOD periphery</td>
<td></td>
</tr>
<tr>
<td>Parcels, 2 acres or more</td>
<td>12</td>
</tr>
<tr>
<td>Parcels, less than 2 acres</td>
<td>8</td>
</tr>
</tbody>
</table>

The Concord Ordinance also details parking regulations specific to the TOD zones. More specifically, the Ordinance reduces minimum parking requirements in portions of TOD zones, stating that if a site is within 500 feet of a light rail alignment, the minimum required parking spaces is 50% of what otherwise would be required by the Ordinance. In addition, the Ordinance prohibits all surface parking facilities in the TOD core areas and allows for surface parking for only commercial uses in TOD periphery areas.
Traditional Neighborhood Design Zoning – Austin, Texas

The City of Austin's City Code allows for traditional neighborhood design by-right by designating traditional neighborhood zoning districts to encourage mixed use, compact, pedestrian-friendly development that diversifies and integrates land uses within close proximity to each other, and provides for the daily recreational and shopping needs of residents. As stipulated in the Austin Code, a traditional neighborhood district (TND) may consist of an area no less than 40 contiguous acres and not more than 250 contiguous acres. The City Code outlines five different types of areas in a TND—Neighborhood Center Area, Mixed Residential Area, Neighborhood Edge Area, Workshop Area, and Employment Center Area. The Code outlines different land use, site development, and design regulations for each type of area. A TND must have one Neighborhood Center Area and at least one Mixed Residential Area.

- A Neighborhood Center Area serves as the focal point of a TND, containing retail shops, offices, banks, a post office, places of worship, a community center, attached residential dwellings, and other uses that meet the daily needs of the residents. Townhouse, condominium, and multifamily uses shall be allocated not less than 20% of the land area, commercial uses shall be allocated not less than 20% of the land area, and civic uses shall be allocated not less than 5% of the land area in a Neighborhood Center Area. In addition, a Neighborhood Center Area is pedestrian-oriented, encouraging movement between the neighborhood center and Mixed Residential Area, and must include a public square.

- A Mixed Residential Area includes a variety of residential land uses including single-family homes, duplexes, townhouses, and apartments. Residential retail, commercial, and civic uses may also be located in a Mixed Residential Area. A Mixed Residential Area must include formal and informal open spaces and promote pedestrian activity. Single family residential use shall be allocated not less than 50% and not more than 80% of the land area, duplex use shall be allocated not more than 10% of the land area, townhouse, condominium, and multi-family uses shall be allocated not less than 10% of the land area, commercial uses shall be allocated not less than one percent and not more than two percent of the land area, and civic uses shall be allocated not less than two percent of the land area in a Mixed Residential Area.

In addition to a Neighborhood Center Area and at least one Mixed Residential Area, a TND may also have a Neighborhood Edge Area, a Workshop Area, or an Employment Center Area. A Neighborhood Edge Area is the least dense portion of a TND, with larger lots and greater setbacks than the rest of the area. A Workshop Area provides space for commercial and light industrial uses that are not appropriate for the Neighborhood Center Area, while an Employment Center Area provides space for large office and low-impact manufacturing uses.

Under the Austin City Code, formal and informal open spaces and an interconnected network of streets and alleys are all required components of a TND. More specifically, the Austin City Code requires that not less than 20% of the gross land area of the TND be open space and that overall impervious cover for a TND be limited to 65% of the net site area or the amount permitted in the watershed, whichever is less. The Code details impervious cover limits for each of the five types of areas as well.

Finally, the Austin City Code sets forth parking regulations specific to TND zones. Some of the more innovative TND parking regulations in the Code include the following: 1) A parking lot shall be located at the rear or side of a building (if at the side, appropriate screening must be provided); 2) A commercial use parking lot or garage must provide one bicycle parking space for every 10 motor vehicle parking spaces; 3) For parking in a Neighborhood Center Area, the required parking for a use may be located anywhere in the Neighborhood Center Area (community parking facilities are encouraged); 4) For parking in a Neighborhood Center Area, not more than 125% of the required parking for a use may be provided on-site; and 5) For parking in a Neighborhood Center Area, a commercial or a multi-family use may apply adjacent on-street parking toward the minimum parking requirements.
Transportation Demand Management Programs and Transportation Management Associations

According to Census 2000, it is estimated that 76% of workers sixteen years and over commute to work alone, 11% carpool, 5% take public transportation, and the remaining portion take another means or work from home. There are various reasons for this journey-to-work behavior—people may not live (or work) in an area that is within close proximity to transit service, people may want to have their personal automobile at work to perform errands or in case of emergency, or they may have off-site meeting during the day and need their personal automobile to get between the work place and the meeting site. In addition to these various and valid reasons, the provision of free parking at the workplace has clearly played a large role in influencing journey-to-work behavior. Most people want parking at work to be easily accessible and convenient so getting to and from the car does not add additional time to the workday. In response to these needs, free on-site parking has become a fringe benefit and a factor in the ability to recruit and retain employees.

Absent financial incentives for alternative travel modes to the single-occupancy vehicle and programs that alleviate the need for a personal automobile at work, solo driving will remain the overwhelmingly preferred mode of travel to work. Many employers and local jurisdictions have begun to implement transportation demand management (TDM) programs to influence travel behavior and induce people to take alternative modes to the personal automobile. TDM is a general term for programs that encourage a decrease in the demand for parking and other transportation tailored to the single-occupancy vehicle. TDM programs can either be employer-led programs designed to reduce the parking demand generated by employees, or publicly initiated programs to reduce the overall parking demand for all trips, not just journey to work trips. These programs might be direct financial incentives to use alternative travel modes or inducements such as preferential parking for carpoolers and vanpools, bicycle amenities, shuttles from peripheral parking locations and transit stations, and car sharing programs. Many of these programs are described in greater detail below.

- **Cash-Out Programs.** Many employers provide their employees with free on-site parking. Although employees do not see the costs of parking directly, these costs usually are passed on to all employees in the form of lower wages. Therefore, regardless of car ownership or journey to work mode, most employees end up paying for the costs of on-site parking facilities. In other words, employees who use alternative modes to the single occupancy vehicle in the end cross-subsidize those who drive to work alone. Many employers are now establishing and implementing cash-out programs to provide subsidized employees with a choice of receiving free parking or foregoing free parking for a cash payment equaling the cash equivalent of free parking, to use transit or other alternatives to the single-occupancy vehicle. As more and more employees opt for cash out, employers will likely require less and less parking. In fact, a Canadian study conducted by the Victoria Transport Policy Institute showed that cash out reduces parking demand by 15-25%. However, the effectiveness of cash out typically depends on the availability of transit and other alternative modes to solo driving and the availability, or lack thereof, of free and unregulated parking supplies, especially where employees could still park after taking the cash out rather than taking an alternative to the single occupancy vehicle. Moreover, cash out is not as effective in reducing solo driving as

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**Commuter Choice Maryland**

Commuter Choice Maryland is a State-sponsored initiative to encourage employers to implement transportation demand management programs that reduce the use of single-occupancy vehicles. Commuter Choice Maryland programs can help employers save on taxes, reduce parking demand and costs, and recruit and retain valuable employees. Employers participating in Commuter Choice Maryland can develop a transportation demand management program tailored to their own individual needs—components of a Commuter Choice Maryland program might include employer-provided transit passes or vouchers, a vanpool program, a parking cash-out program, or a guaranteed ride home program. Employers implementing one of these programs through Commuter Choice Maryland can receive a Maryland state tax credit up to 50% for every dollar spent on commuter benefits programs. A maximum of $30 per participating employee per month applies to the state tax credit. In addition to the state tax credit, federal legislation passed as a part of the Transportation Equity Act of the 21st Century allows participating employers to offer federal tax-free commuter benefits to employees. As of January 1, 2002, tax-free benefits for transit and vanpool expenses can be offered in any amount up to $100 per month.
charging employees for parking with no other compensation. More specifically, according to a model developed by Donald Shoup at the University of California-Los Angeles, cash out is about two thirds as effective as charging for parking. Some local jurisdictions may enact ordinances to require employers who offer subsidized parking to offer eligible employees the option of taking the cash equivalent of free parking, while other jurisdictions leave it up to the employer as to whether or not they will implement a cash-out program. Finally, it is important to note that cash-out is different from transit subsidies, which are direct payments to employees for use of public transportation and usually equal the cost of a monthly pass or a portion thereof.

- **Peripheral Parking with Shuttles.** Local jurisdictions and employers may wish to provide peripheral parking locations outside the main activity center and offer shuttle service from those locations to the main core and employment sites. Local jurisdictions and employers might also wish to provide shuttle service from transit stations to employment sites that are located in areas that are not well-served by mass transit. Providing shuttle service from peripheral parking locations may not be effective in reducing single-occupancy vehicle use or overall parking demand, it might just shift where the necessary parking spaces are actually located from the main activity center to a more peripheral location. However, providing shuttle service from transit stations to employment sites can help reduce single-occupancy use and parking demand since people living in close proximity to a transit station will now have a viable alternative to driving to work. Shuttle service could also provide guaranteed ride home on an as needed basis.

- ** Preferential Parking for Carpools and Vanpools.** In privately owned parking facilities developers or employers might provide incentives for alternative modes of travel to the single occupancy vehicle by reserving close-in, secure, covered, or otherwise preferable parking spaces for high-occupancy vehicles. Local jurisdictions can do the same in publicly owned facilities and might consider enacting legislation to require operators of privately owned facilities to do so. For example, the Portland Municipal Code requires for office, industrial, and institutional uses where more than 20 parking spaces are required that 5 spaces or 5% of the spaces, whichever is less, must be reserved for carpools. Moreover, the carpool spaces must be the closest spaces to the building entrance.

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**Downtown Area Shuttle – Baltimore, Maryland**

In March of 2002, Downtown Partnership of Baltimore began operating an employee shuttle program—the Downtown Area Shuttle (DASH). DASH service provides Downtown employees with access to over 1,200 parking spaces near Ravens Stadium and a convenient, reliable commuter bus connection to various employment sites and the core of Downtown Baltimore. The monthly fee for the use of the parking facilities at Ravens Stadium and the shuttle service is $50. Employees that carpool are charged a monthly rate of $20. Currently, this monthly program is only available to employees whose employers have contracted with Downtown Partnership. Other Downtown employees, residents, and visitors can ride the shuttle throughout Downtown for a 50-cent fare, but will not be able to park in the Ravens Stadium parking lots.

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**Triangle Transit Authority Rideshare Program – Greater Triangle Region, North Carolina**

The Triangle Transit Authority (TTA), a regional public transportation authority serving Durham, Orange and Wake Counties in North Carolina, offers a rideshare program to provide vanpool and carpool services. In particular, as a part of the vanpool program, TTA provides a 15-passenger van to no fewer than seven commuters who live and work near each other and who share approximately the same work schedule. In addition to the vehicle, TTA pays for gas, and arranges and pays for maintenance. Vanpool riders pay a monthly fare based on monthly mileage. For example, a vanpool with a total monthly mileage of 520 miles pays in total $500.45 (or $35.75 per person based on a vanpool of 14). A vanpool with a total monthly mileage of 3145 miles pays in total $1,299.68. TTA offers a seat subsidy program to encourage the formation of vanpools. The rideshare program, among other TTA services and programs, is funded by a vehicle registration tax of up to $5 per registration, authorized by the North Carolina General Assembly in 1991, in addition to program revenues.
or elevator, but not closer than parking for the disabled. Local jurisdictions and employers could also promote carpooling or vanpooling by subsidizing vehicles or fuel costs.

- **Bicycle Facilities and Amenities.** Employers can encourage bicycling by providing bicycle parking or storage, showers, and lockers on-site. Local jurisdictions should consider requiring bicycle parking in zoning ordinances and reducing minimum parking requirements given the provision of bicycle parking over the required amount. For example, the Portland Municipal Code requires a minimum number of short term and long term bicycle spaces for residential and non-residential uses. These requirements are intended to help meet the City’s goal that 10% of all trips be made by bicycle. Moreover, bicycle parking may substitute for up to 25% of the required automobile parking—for every 5 non-required bicycle parking spaces, the automobile requirement is reduced by one space.

- **Car Sharing.** Both the public and private sector in the United States are beginning to follow Europe’s lead in instituting car sharing programs to grant residents or employees access to a car when they need it without incurring the fixed costs associated with owning and operating a personal automobile. According to Zipcar, a privately owned car sharing company, each car sharing vehicle replaces four to eight privately owned cars, thus reducing parking demand. Moreover, car sharing reduces vehicle miles traveled, thereby, helping to alleviate traffic congestion and improve air quality. According to the Victoria Transport Policy Institute, car sharing is most effective in high-density, mixed-use areas where there is a variety of travel choices, flexible parking requirements, and transportation management associations that encourage employers and employees to use alternative travel modes to the single-occupancy vehicle. In car sharing arrangements, vehicle fleets are located in various areas throughout the jurisdiction, usually at transit nodes or in commercial districts. Residents can pay an annual membership fee and reserve a car by phone or on-line typically up to a year in advance. Members are then charged based on usage. This rate typically covers gas, maintenance, insurance, and parking. Some local jurisdictions are beginning to promote car sharing by reducing minimum parking requirements when developers or employers institute or participate in car sharing programs. For example, the Seattle Municipal Code allows for up to 5% of the total number of parking spaces provided in a project to be used to provide parking for vehicles operated by a City-recognized car sharing program. The number of required spaces may be reduced by one space for every parking space leased by a City-recognized car sharing program.

### Car Sharing Programs in Washington D.C.

In December of 2001, the Washington Metropolitan Area Transit Authority (WMATA) launched a new car sharing program in the Washington D.C. area. WMATA is partnering with Flexcar, a privately owned, national car sharing company, to make cars available for hourly rental at or near selected Metro stations 24-hours-a-day, seven-days-a-week. Flexcar charges a one-time $25 member initiation fee and offers different payments plans, including hourly and mileage rates, based on user needs and usage. One option charges members a monthly fee of $35 for 5 hours, while another option charges a $525 monthly fee for 100 hours of use. Flexcar currently has 36 cars at 21 locations in the Washington region and has over 500 approved members. The program has plans to expand to 200 cars by 2003 to keep pace with the increasing demand. Local jurisdictions in the Washington region are helping to ensure the success of car sharing programs. In Arlington County, Virginia, the County’s Commuter Assistance Program is offering a $500 subsidy for businesses to join Flexcar or Zipcar, another for-profit car sharing company operating in the Washington region. The City of Alexandria, Virginia, will reimburse up to $105 of membership and application fees for residents and up to $50 for business membership fees and half of each employee’s application fee up to $20 for membership to Flexcar or Zipcar.

As stated previously, TDM programs can be employer-led or publicly-initiated programs. However, it is becoming more common for TDM programs to be administrated by transportation management associations. In fact, transportation management associations play an integral role in garnering support for and implementing demand management programs and district-based parking management strategies.
Transportation management associations are independent, non-profit, member-controlled organizations that bring together employees, retailers, business owners, public sector representatives and others to address transportation issues and provide transportation services in a particular area. The main objectives of transportation management associations are to improve air quality, circulation, and the attractiveness of the urban environment through the promotion of alternative modes to the single-occupancy vehicle. To achieve these objectives, transportation management associations might provide discounted transit passes, shuttle bus services from off-site parking facilities, guaranteed ride home programs, bicycle facilities, car sharing programs, and information kiosks.

Unbundled Parking

The costs of parking are often bundled into the rent or purchase price for residential and commercial units and buildings. This practice assumes that all tenants and owners have the same parking demand; therefore, regardless of car ownership all tenants and owners bear the costs of parking through increased rents or inflated purchase prices. Including costs of parking in rents and purchase prices encourages automobile ownership and is a disincentive for using alternative transportation modes. On the other hand, separating the payment of parking from the rent payment or purchase price, also known as “unbundling”, can provide a more equitable allocation of costs by allowing tenants and owners to pay only for the parking they use and can reduce parking demand by making households pay the full cost of parking. Given that unbundling can reduce parking demand, development projects that unbundle parking or provide rebates to households who own fewer or no vehicles and will not use their allotted parking space or spaces could provide less parking than what otherwise might be required.

Pricing Strategies

One of the simplest ways to reduce parking demand is to charge users directly for the cost of parking. That is, parking prices for on-street meters and off-street parking facilities can be set to alter the cost of driving solo relative to travel alternatives, thereby influencing travel choice and reducing parking demand. In fact, according to the Victoria Transport Policy Institute, parking pricing typically reduces parking demand by 10-30% compared to unpriced parking. There are various ways in which operators of publicly owned and privately owned parking facilities can price parking to differentiate prices among different users to achieve economic, strategic, and policy objectives. Such pricing strategies include time-based pricing, vehicle occupancy pricing, and vehicle size pricing.

- **Time-Based Pricing.** Time-based pricing can be implemented in on-street parking and off-street parking facilities to discourage long-term commuter parking and encourage turnover, which is usually necessary for parking facilities to cover costs and earn a reasonable return. More specifically, meter rates and parking prices in lots and structures can be set to increase over time to variable rates that become more expensive for each additional hour.

- **Vehicle Occupancy Pricing.** Vehicle occupancy pricing can be established in off-street parking facilities to encourage the use of high occupancy vehicles. More specifically, rates can be set at or above market rates for solo drivers, while carpool or vanpool rates are discounted or free.

- **Vehicle Size Parking.** Vehicle size parking can be established in off-street parking facilities to encourage the use of compact cars, which demand a smaller land area for parking. More specifically, rates can be set at or above market rates for sport utility vehicles and other vehicles that might take up more than one space and can be set below market rate for compact vehicles.

To complement these parking pricing strategies, local jurisdictions could levy parking taxes on operators of off-street parking facilities. These taxes are typically passed on to users in the form of higher parking rates. For example, in Baltimore, Maryland, the Baltimore City Parking Authority collects a parking tax equal to
11% of a parking facility’s gross transactions and $14 per month per monthly user. Moreover, local jurisdictions could implement and enforce time limits on meter parking to encourage turnover in commercial districts and discourage long-term commuter parking.

There are several challenges to implementing parking pricing, parking taxes, and time limits. First of all, it is generally difficult to impose parking pricing where parking is currently free. Moreover, if there are uncontrolled parking supplies nearby, users can circumvent paying for parking and park in those available spaces. Finally, as discussed previously in this paper, pricing strategies should only be implemented in areas where there is a viable alternative to the personal automobile and where the market is sufficiently strong so that pricing will not lead to economic dislocation.

Challenges to Controlling Parking Demand

The biggest challenge to controlling parking demand is that despite investments in transit infrastructure, parking pricing policies, and other demand management strategies, many people will still choose the single occupancy vehicle as their primary travel mode. Since the middle of the last century the American public indeed has had a love affair with the personal automobile—it is entrenched in the American way of life. Getting people to change their behavior has proven rather difficult. Demand management strategies must be complemented with aggressive marketing campaigns and education and outreach efforts to make people realize the value of substituting alternative modes to the personal automobile. Moreover, in developing and revising parking policies and programs, both the public and private sectors need to engage all of the stakeholders in the process so that the general public has a sense of collective responsibility over the success of such policies and programs. The following section is a summary of some of the supply and demand management strategies proposed in this section that the public and private sectors might wish to include in parking policies and programs.

Possible Strategies

Local Jurisdictions

- Conduct a comprehensive review of parking requirements.
- Reduce parking requirements for specific locational and demographic factors.
- Reduce parking requirements when TDM programs are implemented.
- Reduce parking requirements in exchange for fees in lieu.
- Adopt maximums to complement minimum parking requirements or establish parking medians.
- Allow for shared parking at mixed-use development projects and in mixed-use areas.
- Designate parking management districts and develop area parking management plans for those districts. Parking management plans might include areawide parking caps, regulation of on-site parking facilities through parking ordinances, shared parking arrangements, construction of centralized publicly owned parking facilities, and pricing strategies.
- Allow landscaped reserves to meet parking requirements.
- Establish residential parking permit programs.
- Revise local zoning ordinances to create transit oriented development and traditional neighborhood design zones that allow a mixing of uses, increased densities, affordable housing, reduced parking requirements, and pedestrian oriented and environmentally friendly design.
- Enact ordinances to require employers who offer subsidized parking to offer eligible employees the option of taking the cash equivalent of free parking.
Form public-private partnerships to provide shuttle service from peripheral parking locations and transit stations to employment site and the central business district.

- Require a certain percentage of spaces to be designated for carpools or vanpools.
- Form public-private partnerships to provide vanpool services or car sharing programs.
- Require development projects to include bicycle parking and reduce minimum parking requirements given the provision of bicycle parking over the required amount.
- Encourage unbundling of housing and parking costs.
- Set parking prices in municipal structures to benefit priority users such as high occupancy vehicles and compact cars.
- Implement time-based pricing to set prices higher during peak periods and increase over time.
- Provide signs, maps, and brochures to provide accurate information to users on parking facilities and availability.
- Elicit public involvement and include all stakeholders from the start in planning parking policies and programs.

Developers

- Provide an appropriate amount of parking given carefully estimated parking demand, as opposed to oversupplying parking.
- Seek opportunities to share parking between uses within a development project or with complementary uses in close proximity.
- Pursue transit-oriented development and traditional neighborhood design projects to create compact, mixed-use, pedestrian-friendly, walkable communities with viable alternatives to the personal automobile.
- Reserve close in, secure, covered, or otherwise preferable parking spaces for carpools and vanpools.
- Provide bicycle parking facilities including racks and lockers.
- Unbundle the cost of parking from the rent or purchase price of residential and commercial units or buildings.
- Charge users for the cost of parking and set parking rates to benefit priority users such as high occupancy vehicles and compact cars.

Employers

- Offer employees eligible for subsidized parking the option of taking the cash equivalent of free parking.
- Provide transit subsidies or discounted transit passes.
- Work with the public sector and/or other area employers to provide shuttle service from peripheral parking locations and/or transit stations.
- Work with the public sector and/or other area employers to develop and implement vanpool or car sharing programs.
- Reserve close in, secure, covered, or otherwise preferable parking spaces for carpools and vanpools.

EXHIBIT C
- Provide bicycle parking facilities including racks and lockers and provide bicycle amenities such as showers and clothes lockers on-site.

- Implement a guaranteed ride home program.

- Provide information kiosks or bulletin boards to inform employees of ridesharing opportunities and programs.

- Charge users for the cost of parking and set parking rates to benefit priority users such as high occupancy vehicles and compact cars.
Parking Design

Since the advent of the personal automobile, the American landscape has become predominantly a habitat for cars, with streets, parking facilities, and other auto-oriented uses dominating the built environment. Parking facilities in particular have become an omnipresent feature of the American landscape, consuming land and resources, inhibiting the functioning of natural systems, creating dead gaps in what otherwise might be vibrant commercial areas, and creating conflicts between vehicles and pedestrians and bicyclists. This adverse impact on the walkability of communities is a particular challenge to creating lively, mixed-use places with a unique sense of identity—attractive places where people want to linger, to gather, and to return over and over. It is precisely these kinds of walkable places that are essential to the success of smart growth development strategies.

This section of this paper proposes best practices to reverse the negative impacts parking facilities have traditionally had on the environment and the character of urban places. The best practices outlined in this section are organized by the objective each strategy or "practice" aims to achieve. The five main overarching objectives are:

- Design sites such that vehicles are not the dominant feature;
- Provide necessary parking without large expanses of pavement;
- Minimize runoff from parking lots utilizing techniques to return surface water to the ground;
- Encourage vibrant street level activity; and
- Create a safe and comfortable environment for pedestrians and bicyclists as well as vehicles.

The three types of parking facilities—on-street parking, surface parking lots, and parking structures—are each appropriate in different settings and under different circumstances, and all play integral roles in shaping the character of the built environment. For each proposed best practice, the type of parking the strategy applies to is listed. The final portion of this section briefly discusses some of the challenges to implementing smart parking design best practices.

Objective: Design sites such that vehicles are not the dominant feature.

No one wants acres of pavement or blank walls dominating the streetscape, yet parking needs to be convenient, safe, and accessible. Given the adverse impacts of the visual prominence of parking facilities, local jurisdictions and developers alike should seek innovative design strategies to ensure that parking facilities do not become the dominant feature of the streetscape. The following are some best practices that might be considered.

- **Location.** The location of parking facilities behind buildings is vital in creating more welcoming and pedestrian-friendly streetscapes that will attract users over and over again. The desire for safe, convenient, and accessible parking has typically led to the placement of parking areas in front of buildings. For example, in retail projects, shoppers typically want to enter and exit the parking facility with ease and want to avoid the frustration and stress associated with having to drive around and look for parking. In response to these needs, developers have typically provided parking areas in front of retail uses where it is highly visible and readily available. However, the placement of parking facilities in front of buildings has an effect on people as they walk or even drive by. Parking facilities in front of buildings create physical and psychological barriers to the building, as opposed to buildings placed close to the street, framing the public space and inviting people in. Indeed, from an urban design perspective, parking considerations should be secondary to the design and placement of buildings on the site. Parking facilities can be located in the interior of blocks and concealed by "liner" buildings with retail, offices, and housing. Parking is then
found behind the building, accessible yet out of view. Signage could be used to direct users to the parking facility. And since for safety reasons developers typically want a single entrance, wayfinding will have to be incorporated to get people from the parking area to the entrance, which may be in the front of the building. Moreover, on-street parking could be provided in the front of the building to provide visible and convenient auto access.

Applyability: Parking lots and structures

- **Screening and Landscaping.** As discussed previously, if at all possible, parking facilities should be placed behind buildings in the interior of blocks. For facilities placed to the front or side of buildings, there are various ways to screen parked cars from street level activity, thereby providing the necessary parking without overly compromising urban design. Parking facilities, including lots and structures, could be located where the site topography can help conceal them. Integrating parking facilities into site topography might also limit the impact a project may have on the functioning of natural systems. With respect to parking lots, when a parking lot abuts a public street the parked cars should be screened from public street frontage to obscure a majority of the parked cars. Screening can be continuous landscaping, attractive fencing or stone walls, among other materials. Overall, the buffer between the parking lot and the street should be no less than 15 feet wide—this liberal width should help to encourage the placement of parking lots behind buildings versus along the street. Finally, landscaping on the periphery of a parking facility and within parking areas can be used to soften the appearance of a parking facility from the street. More specifically, expanses of parking should be broken up with landscaped islands and planted strips, which include shade trees and shrubs. Such landscaping provides a canopy cover and reduces the urban heat island effect in the summer. Landscaping not only provides shade on hot days, absorbs carbon dioxide, and reduces pollutants emitted by vehicles as they sit in the sun, but also breaks up the visual impact, making the parking lot feel smaller and less overwhelming.

Applyability: Parking lots and structures

These two figures from the Henderson (Nevada) Development Code illustrate two parking lot landscaping techniques—terminal islands and divider medians. According to the interior parking lot landscaping standards in the Code, terminal islands must be provided at the end of each parking row, and divider medians between abutting rows of parking spaces are encouraged. Moreover, the Code stipulates the following: 1) for parking lots with 5-100 spaces, 1 tree must be planted for every 10 spaces; 2) each parking space must be located within 40 feet of a tree; and 3) at least 10 percent of the interior area of a parking lot must be devoted to landscape planting areas.

- **Architectural Treatments.** With respect to parking structures, there are various ways to help integrate parking structures with their surroundings, particularly through scale, materials, colors, and style. Architectural treatments can be used to screen cars and relate to the design of adjacent buildings. The architectural treatments should be divided into 30’ increments to better integrate the parking structure with the scale and character of adjacent buildings and to provide the visual breaks to hold the interest of walkers passing by. Façade elements around the entry to the structure should be emphasized to reduce the visual prominence of the structure entry.

Applyability: Parking structures

**Objective:** Provide necessary parking without large expanses of pavement.

According to the Center for Watershed Protection, as much as 65% of the total impervious surface cover in the American landscape are surfaces designed for cars including, but not limited to, streets, parking lots, and
driveways. The paving over of the American landscape is clearly unsustainable, consuming land and resources and creating huge volumes of stormwater runoff that tax the capacity of sewer systems and degrade water quality in streams and other waterways. Local jurisdictions and developers alike should determine ways in which they can provide the necessary parking, while minimizing the amount of acreage that is converted to parking. The following are some best practices that might minimize the amount of pavement required for a parking facility while allowing the most cars to park on the site.

- **Provision of On-Street Parking.** On-street parking provides convenient access to adjacent uses and provides the best possible option to visitors since it offers the shortest possible time between stopping and shopping. Moreover, the provision of on-street parking can lessen the need for parking lots and structures, which convert a significant amount of acreage to parking. There are three different types of on-street parking—head-in, angle, and parallel. Each type of on-street parking has its pros and cons. Both head-in and angle parking can provide for more cars than a parallel parking configuration, but both require a considerable amount of right-of-way and, therefore, necessitate wider streets. Moreover, both head-in parking and angled parking create the potential for a greater number of traffic accidents, as drivers must back out of spots into the flow of traffic. Therefore, both of these types of parking are best designed on streets with slow moving traffic. On the other hand, parallel parking decreases the potential for accidents and requires a narrower right-of-way; however, parallel parking accommodates fewer cars than the other types of on-street parking. While on-street parking—head-in, angled, or parallel—may not fully accommodate the amount of parking necessary, it does provide visible and convenient auto access and can satisfy short-term parking needs. To complement on-street parking, development projects can incorporate other parking facilities, namely surface lots and structures, to accommodate longer-term parking needs.

**Applicability:** On-street parking

- **Construction of Structures Rather Than Lots.** Building vertically reduces the acreage of land converted to parking, thereby, reducing impervious surfaces. However, the type of parking facility—lot or structure—in a development site is usually determined by balancing the cost of land against the cost of constructing parking. In urban areas where land costs are at a premium, it is more cost-effective to build a parking structure than to build a surface parking lot. In suburban areas, the availability and low cost of land make surface parking lots more cost effective than parking structures. In these suburban areas, absent significant incentives to defray the costs of structured parking, it is unlikely that structured parking will become the norm. The following section of this paper on parking financing outlines some incentives and financing programs for structured parking.

**Applicability:** Parking structures

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**EXHIBIT C**
Automated Parking Structures. Automated parking structures have the potential to change the dynamics of land use, significantly reducing the demand for land devoted to parking and making more land available for revenue generating purposes. Automated parking can squeeze up to two times the number of cars in the same space as a conventional garage or, in other words, accommodate the same number of cars in half the space, and can be built on a site as small as 60 feet by 60 feet, in structures up to 20 stories high, above or below ground. These facilities are able to be so space-efficient because they operate using a computerized network of rails and pallets that lift and carry cars from the entrance bay to available slots with no human intervention. In addition to reducing the amount of land devoted to parking, there are many other benefits to automated parking. Automated parking makes parking safer and more convenient, eliminating the risk of car damage, theft, or personal injury, and reducing the water and air pollution attributed to exhaust fumes and impervious surfaces. Moreover, automated parking structures have complete flexibility in the design of the façade; therefore, they can be easily incorporated into existing urban design. In terms of costs, automated parking is now becoming a price-competitive and viable alternative to traditional ramp garages, as land costs in urban areas are at a premium. Automated structures have lower land acquisition costs since they require less land, construction costs are typically about the same as conventional above ground structures, and operating costs are somewhat lower since many automated structure are completely computerized and only require one person on-site. One potential drawback to automated parking is that it might make parking too efficient, leading to an increased driving demand.

Applicability: Parking structures

Reduced Stall Dimensions and Compact Car Spaces. Reducing the size of parking stall dimensions overall and dedicating a certain percentage of stalls to compact cars can reduce impervious surface cover. While the trend toward larger sport utility vehicles is often cited as a barrier to implementing stall minimization, stall width requirements in most local ordinances are much larger than the widest sport utility vehicles (Center for Watershed Protection). Reducing stall dimensions and dedicating compact car spaces will only be effective in reducing the footprint of parking structures if the number of parking spaces per floor is limited and additional spaces are accommodated by building additional floors.

Applicability: On-street parking and parking lots and structures

Tandem/Stacked or Valet Parking. Providing the required parking spaces in tandem or stacked parking arrangements or offering valet parking service reduces the amount of land devoted to parking. The City of Portland, Oregon, allows stacked parking or valet parking if an attendant is present to move vehicles. If stacked parking is used for required parking spaces, some form of guarantee must be filed with the City of Portland to ensure that an attendant will be present when the parking facility is in operation.

Applicability: Parking lots and structures

Alternative Pavers. Utilizing alternative pavers that permit water to penetrate reduces the overall impervious surface coverage and creates less stormwater runoff. Alternatives to concrete and asphaltic concrete include gravel, cobble, wood mulch, brick, grass pavers, turf blocks, natural stone, pervious concrete, and porous asphalt. Alternative pavers may not be ideal depending on site-specific characteristics such as climate, soil type, and traffic volume. However, they are recommended for overflow areas and can be used in cross walks and stalls to create a break in the paved area, thereby, facilitating groundwater recharge.

Applicability: Parking lots

Multiple Lots. Breaking up large parking lots into two or more areas can reduce the total amount of impervious surface and disconnect paved surfaces, thereby reducing stormwater runoff and facilitating

EXHIBIT C
groundwater recharge. This practice also breaks up the perceived visual mass of parking facilities and can help to integrate "big box" uses, such as grocery stores, into neighborhood shopping districts.

**Applicability:** Parking Lots

**OBJECTIVE:** Minimize runoff from parking facilities utilizing techniques to return surface water to the ground.

Parking facilities have serious impacts on the functioning of natural systems, depleting the water supply and degrading water quality. Traditional stormwater management systems carry and discharge runoff from parking facilities directly into streams and rivers, thereby preventing ground water recharge and dumping pollutant loads into our waterways. Local jurisdictions and developers should seek innovative ways to manage stormwater runoff that support the functioning of natural systems. The following are some best practices that might be considered. Some of these practices may be more expensive upfront than traditional approaches; however, the costs may be offset by the reduced need for stormwater facilities and reduced maintenance costs.

- **Low Impact Development Techniques.** Local jurisdictions and developers are increasingly turning to Low Impact Development (LID) techniques to manage stormwater on-site. In particular, LID techniques can be critical in controlling the quality and quantity of stormwater runoff generated from the impervious surface of parking facilities. LID uses a wide array of methods to retain, detain, filter, recharge, and pass runoff through decentralized, distributed, small-scale controls to reestablish the predevelopment volume of runoff, recharge, storage, and evaporation on a development site. Ultimately, LID seeks to protect and restore important ecological and hydrological functions. Major components of LID include: 1) conservation of forests, natural vegetation, streams, wetlands, and open space, to the greatest extend practicable; 2) minimization measures including reduced clearing and grading, saving infiltratable soils, reducing or disconnecting impervious surfaces, reforestation, and reducing the use of pipes, curbs, and gutters; 3) concentration of runoff in open drainage systems and vegetative swales to slow down runoff, reduce discharges, and encourage more infiltration and evaporation; 4) integration of retention, detention, filtration, storage, and capture of runoff systems into the site; and 5) promotion of pollution prevention measures. With respect to parking facilities, common LID techniques used to control stormwater runoff include open sections, swales, and bioretention areas. Open sections encourage sheet flow to open channels where pollutants are removed through infiltration and vegetation/soil filtering prior to discharge, as opposed to the traditional curb and gutter methods that convey stormwater runoff and associated pollutant loads into streams. Vegetative swales direct stormwater into shallow bioretention areas that temporarily detain the water, facilitating infiltration into the subsurface and slowing and cleaning the remaining stormwater before it is discharged into waterways. Proper plant material selection is critical to the success of these measures. The effective use of LID techniques can significantly reduce the cost of providing stormwater management by eliminating the use of costly stormwater management infrastructure including ponds, pipes, curbs, gutters and roadway paving, among others. In fact, LID can reduce stormwater and site development design construction and maintenance costs by 25-30% compared to conventional approaches (Prince George's County Department of Environmental Resources).

**Applicability:** Parking lots

- **Green Roofs.** Some developers of parking structures are beginning to incorporate green roofs on parking structures to retain and naturally filter stormwater runoff, thereby improving water quality. According to Roofscapes, Inc., green roofs can retain 50-60% of the total annual runoff volume of a roof, reducing the need for costly stormwater management systems. Underground parking structures often have lawns and parks planted on top. Above ground parking structures could also incorporate roof systems of vegetation, soil, drainage, and waterproof membranes to alleviate environmental problems including storm water runoff and the urban heat island effect. Additional benefits of greenroofs include improved livability of the urban environment by buffering noise, reducing glare, and offering an aesthetic alternative to asphalt roofing. Green roofs are more costly than traditional roof systems; however, the associated costs could be offset by the reduced need for stormwater facilities.

**Applicability:** Parking structures
OBJECTIVE: Encourage vibrant street level activity.

Local jurisdictions and developers often view parking facilities as generators of economic development, as adequate parking can enhance the marketability of development projects to tenants and customers. However, the inappropriate location and unattractive design of parking facilities can actually constrain economic development, creating dead gaps of inactivity in what otherwise might be vibrant commercial environments. Local jurisdictions and developers should seek ways in which the necessary parking can be accommodated, at the same time as the street activity is enlivened. The following are some best practices that might be considered.

- ** Provision of On-Street Parking.** On-street parking can play a vital part of a streetscape, fostering a more vibrant pedestrian commercial environment. More specifically, on-street parking provides a mental and physical buffer between pedestrians on a sidewalk and cars on a busy street. The public safety aspects of on-street parking are discussed in greater detail under the following objective on creating a safe and comfortable environment for pedestrians and bicyclists as well as vehicles.
  
  **Applicability:** On-street parking

- **Location.** Parking lots and structures should be located behind buildings rather than in front of them so they do not dominate street frontage, thereby creating a more welcoming pedestrian-friendly streetscape. The location of parking facilities was discussed in greater detail under the objective on designing sites such that vehicles are not the dominant feature.
  
  **Applicability:** Parking lots and structures

- **Retail and Commercial Uses.** Parking structures with frontage along streets should provide retail and commercial uses along the street in order to enhance the pedestrian experience and create street level activity. Newsstands and coffee shops typically are successful, in addition to government offices, particularly public safety and police sub-stations, which act as crime deterrents. Incorporating retail and commercial uses in parking structures has the added benefit of generating additional sources of revenue through the lease or sale of space. This is discussed in greater detail in the section on parking financing.
  
  **Applicability:** Parking structures

OBJECTIVE: Create a safe and comfortable environment for pedestrians and bicyclists as well as vehicles.

Cars are typically at odds with pedestrians and bicyclists on the roadway—and this is no different in parking facilities. Local jurisdictions and developers should seek design strategies to ensure pedestrian and bicycle safety, without compromising the safe and expeditious movement of cars. The following are some best practices that might be considered.

- ** Provision of On-Street Parking.** On-street parking is typically used in tandem with other street design elements to ensure the safe co-existence of vehicles, pedestrians, and bicyclists.
Such street design elements are commonly referred to as traffic calming measures. Traffic calming is a method of reducing traffic speeds and volumes and/or cut through traffic by instituting both physical measures such as traffic circles, speed humps, chicanes, and chokers, and operational measures such as increased police enforcement, speed displays, and community speed watch programs. Ultimately, these traffic calming measures are intended to reduce the negative effects of motor vehicle use and improve conditions for non-motorized street users such as pedestrians and bicyclists. On-street parking is one type of traffic calming measure and can be used in tandem with other measures to slow vehicle traffic and provide a buffer between moving cars and pedestrians and bicyclists.

**Applicability:** On-street parking

- **Limit Curb Cuts.** Curb cuts tend to increase pedestrian exposure to moving vehicles, limit opportunities for landscaping, eliminate on-street parking spaces, and aggravate traffic control. Limiting the number of curb cuts can help ensure pedestrian and bicycle safety, while allowing for safe and expeditious movement to and from the street system.
  
  **Applicability:** Parking lots and structures

- **Pedestrian Corridors.** Pedestrians should not have to walk through parking facilities where they must be on constant guard for moving vehicles. Parking facilities should incorporate a clearly defined pedestrian pathway from the public sidewalk, bus stops and on-street parking, through parking lots, to building entrances. The pedestrian pathway should be landscaped and or delineated by non-asphaltic material in a different color or texture from the parking area to enhance pedestrian safety and improve the appearance of the parking lot. Pedestrian pathways through parking areas to stairwells and elevators should also be incorporated in parking structures.
  
  **Applicability:** Parking lots and structures

- **Pedestrian and Bicycle Entrances.** Enhancing the pedestrian and bicycle entry to parking lots and structures helps buffer pedestrians and bicyclists from cars and reduce the relative importance of the vehicle entry.
  
  **Applicability:** Parking lots and structures

- **Bicycle Parking.** Providing for bicycle parking in prominent, convenient, and secure locations, might encourage people to bike between places as opposed to driving their personal automobiles.
  
  **Applicability:** On-street parking and parking lots and structures

- **Signage.** Parking guidance systems can help alleviate congestion and enhance pedestrian safety. A parking guidance system that shows drivers where they can find available parking spaces in a given area or parking structure can help drivers pay more attention to pedestrian and bicyclists instead of focusing on looking for an available parking space. Parking guidance systems also help people avoid the stress and frustration involved with driving around looking for parking.
  
  **Applicability:** Parking lots and structures

**Surface parking lots at King Farm in Rockville, Maryland, incorporate brick pavers to distinguish pedestrian walkways from the parking area.**

**Absent adequate bicycle parking facilities, bicyclists may park their bicycles in improper locations.**
- **Lighting**: The way parking lot lighting is designed can make the difference between an attractive and safe place or a neighborhood eyesore. Parking lots should utilize low-angle, cut-off fixtures to better direct light to those areas where it is needed. Parking lot lighting often involves balancing the need to provide adequate lighting to ensure personal safety with the concerns of neighboring property owners about glare and spillover lighting. Low-angle, cut-off fixtures minimize glare, spillover effects, and light pollution, at the same time as ensuring there is adequate lighting. Adequate lighting creates a safe environment for pedestrians and vehicles, particularly at night, and can add an aesthetic quality to a project.

*Applicability:* On-street parking and parking lots

**Challenges to Smart Parking Design**

As a major urban land use, the design and layout of parking facilities should be of primary importance to local planners. However, local jurisdictions have actually inhibited innovative parking design through a bewildering mix of shortsighted and outdated regulations that govern the development process. These regulations, codified in various documents, including zoning ordinances, parking and street standards, and stormwater management guidelines, are difficult to decipher and sometimes contradictory. As a result, regulations can discourage developers from incorporating innovative parking design in development projects, as they are concerned about the time and money it might cost to navigate through the approval process. Developers recognize that the construction, operation, and maintenance of parking facilities are costly components of development projects, and that innovative design solutions can translate into reduced development and maintenance costs and allow projects to operate at a greater floor area ratio, thereby increasing the profitability of the project. Local planners need to take a closer look at the regulations that govern parking design to enable and encourage innovation. Developers can pressure local governments to do so and continue to seek innovative design solutions that may cost more money upfront but could translate into higher densities and more successful projects.

**Possible Strategies**

This section has provided recommendations to developers and local governments on the integration of parking facilities into the urban fabric to minimize environmental and aesthetic impacts. Although these recommendations have been structured under the specific objectives they aim to achieve, many of these recommended design strategies actually support multiple objectives. The chart on Page 28 summarizes the recommended strategies and illustrates the respective objectives and types of parking facilities to which each recommendation applies.

The following is a list of recommendations for local governments to consider that support the recommended innovative parking design strategies discussed in this section:

- Adopt minimum setbacks from street to parking lot to encourage placement behind buildings
- Reduce minimum parking requirements for structures and lots placed behind buildings
- Revise parking design guidelines to require screening for parking lots and architectural treatments for parking structures
- Revise design guidelines to require landscaping (ratio of trees to parking spaces or certain % canopy cover at maturity)
- Revise street standards to require on-street parking where applicable
- Reduce minimum parking requirements if on-street parking accessible
- Reduce minimum parking requirements for structures
- Revise stall dimensions
- Require a certain percent of spaces designated for compact cars
• Allow tandem/stacked parking and valet parking to meet minimum parking requirements

• Revise stormwater management guidelines to enable and encourage innovative stormwater management systems

• Reduce minimum parking requirements for implementation of innovative stormwater management systems (alternative pavers, swales, bioretention areas, open sections, green roofs)

• Reduce minimum parking requirements for incorporation of retail and commercial uses in parking structures

• Require bicycle parking

• Reduce minimum parking requirements for bicycle facilities

• Revise design guidelines to require pedestrian pathway landscaped or delineated by non-asphaltic material

• Revise design guidelines to require low-angle, cut-off lighting fixtures
## Smart Growth Parking Best Practices

### Parking Design

<table>
<thead>
<tr>
<th>Design sites such that vehicles are not the dominant feature</th>
<th>Provide parking without large expanses of pavement</th>
<th>Minimize runoff from parking facilities</th>
<th>Encourage vibrant street level activity</th>
<th>Create a safe and comfortable environment</th>
<th>Type of Parking Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Locate facility behind building</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>On-Street Parking</td>
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<tr>
<td>Integrate facility into site topography</td>
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<td>X</td>
<td>X</td>
<td>X</td>
<td>Parking Lot</td>
</tr>
<tr>
<td>Screen facility through landscaping or architectural treatments</td>
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<td>X</td>
<td>X</td>
<td>Parking Structure</td>
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<td>Landscape interior parking areas</td>
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<td>Provide on-street parking</td>
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<td>Construct parking structures</td>
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<tr>
<td>Build automated parking structures</td>
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<tr>
<td>Reduce stall dimensions</td>
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<tr>
<td>Provide compact car spaces</td>
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<tr>
<td>Incorporate tandem/stacked or valet parking</td>
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<tr>
<td>Use alternative pavers</td>
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<td>Break up large parking lots</td>
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<td>Utilize open sections</td>
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<td>Incorporate vegetative swales and bioretention areas on-site</td>
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<td>Construct a green roof</td>
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<td>Incorporate retail and commercial uses</td>
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<td>Limit curb cuts</td>
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<td>Provide clearly defined pedestrian corridors</td>
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<td>Enhance bicycle and pedestrian entrances</td>
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<td>Provide bicycle parking facilities</td>
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<tr>
<td>Implement a parking guidance system</td>
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<td>Utilize low-angle, cut-off lighting</td>
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</tbody>
</table>

### EXHIBIT C
PARKING FINANCING

The cost of constructing, operating, and maintaining parking facilities has an enormous impact on development patterns and on the feasibility of smart growth projects. The type of parking facility constructed in a development project is usually determined by balancing the cost of land versus the cost of constructing parking. Parking structures can cost more than five times as much per space as parking lots. Therefore, in suburban and rural areas, the relatively low cost of land makes surface parking more cost-effective than building a garage. On the other hand, in urban areas, parking garages are more economical since land costs are at a premium. More specifically, according to the Victoria (Canada) Transport Policy Institute, structured parking typically becomes cost effective when land prices exceed about $1 million per acre. Even though parking garages are more economical in urban locations than in suburban locations, projects aimed at infill and redevelopment of urban areas might still be cost-prohibitive given minimum parking requirements and the high cost of constructing parking structures.

Absent creative financing mechanisms, suburban locations will continue to enjoy a significant competitive advantage over urban locations and vast expanses of parking will continue to dominate the American landscape. Surface parking is clearly not the most efficient and best use of land, having detrimental impacts on both neighborhood character and the environment. Structured parking can significantly reduce impervious cover by reducing acreage converted to parking and has less of a visual impact than surface parking. However, it is unlikely that structured parking will become the norm, outside of urban environments where land costs are high, absent significant incentives to defray the cost of constructing structured parking. This section discusses both traditional and creative financing mechanisms and incentives for the construction of both privately- and publicly-owned and operated parking structures.

Privately-Owned Parking Structures

The development of privately-owned and operated parking structures is typically financed through conventional construction financing through private banking institutions. There are various ways in which developers recoup these expenses including bundling the costs of parking into the rents and purchase prices of the uses the parking is serving, assessing parking fees on users, and leasing or selling space incorporated in the parking structure itself.

- **Bundled Parking.** Developers typically bundle the costs of parking into the rent or purchase price for residential and commercial units and buildings. Through this practice, visitors to the development project can typically park for free, while the tenants and owners bear the costs of parking through increased rents or purchase prices. Tenants and owners can in turn pass the costs on through higher priced goods for retail uses or lower employee salaries for office uses. While bundled parking has been a common practice and serves as a way to help cover costs related to the construction of parking facilities, bundling parking costs with rents and purchase prices is not a recommended strategy since it encourages automobile ownership and is a disincentive for using alternative transportation modes, as discussed in the section on parking management.

- **Parking Fees.** Another way in which developers can cover the costs of constructing, operating, and maintaining parking structures is by levying parking fees directly on the users of the parking facility. Parking rates can be set to defray the cost of constructing and operating a parking facility, or could be set to cover only the operating costs. The parking rates should be carefully structured to achieve a balance between the costs to be covered and the impact the fee may have on the demand for the facility.

- **Leases and/or Sell Space.** Structured parking facilities provide numerous opportunities to capture ancillary sources of revenue. Developers can incorporate retail or office space into lower levels of parking facilities and lease or sell this space to help pay for the costs of constructing, maintaining, and operating the parking facility. Developers could also sell development rights, including air rights over the parking facility, if the parking facility does not take full advantage of the permissible development rights.

In addition to these parking-related revenues, private sector developers can sometimes receive incentives from the public sector to help cover the costs of constructing structured parking facilities. These incentives include reduced development fees, land acquisition and assemblage assistance, reduced parking

EXHIBIT C
requirements, density bonuses, and real estate tax abatements. Reduced minimum parking requirements, density bonuses, and real estate tax abatements are discussed in greater detail below:

- **Reduced Minimum Parking Requirements.** Local jurisdictions can help incentivize structured parking facilities by reducing minimum parking requirements for development projects that incorporate structured parking as opposed to surface parking. Reduced parking requirements allow development projects to operate at a higher floor area ratio, thereby increasing the profitability of the development project.

- **Density Bonuses.** Density bonuses are a tool used by local jurisdictions to allow a development project to have a floor area bonus to help offset the costs of constructing structured parking. For example, both the City of Suffolk, Virginia, and the City of San Antonio, Texas, offer density bonuses as incentives for converting surface parking to structured parking—in both cities, for each 100 spaces of surface parking converted to structured parking on an area not exceeding 20% of the site area, an additional 20,000 feet of non-residential space may be constructed. The City of Sioux Falls, Iowa, allows for density bonuses that vary according to the percent of required parking that is within a structured parking facility. For example, if 100% of the required parking is within a parking structure, the project receives a 10% density bonus; if 50% of the spaces are within a structure, the project receives a 5% density bonus. As with reduced minimum parking requirements, density bonuses allow the project to operate at a greater floor area ratio, thus increasing the profitability of the project.

- **Payment in Lieu of Taxes Agreements.** A payment in lieu of taxes (PILOT) agreement is essentially a real estate tax abatement that allows a developer of a specific type of real estate project, as typically defined in state and local statutes, to substitute for an established period of time the annual real estate taxes due on a property with a negotiated payment. With respect to parking facilities, PILOTs typically enable the development of parking facilities that otherwise might not be built since the private returns on parking facilities might be inadequate to assume the risk associated with constructing such facilities. Although PILOT agreements have been successful in getting parking facilities constructed, these agreements are not without their drawbacks. PILOTs can become very costly subsidies since the public sector may end up foregoing millions of dollars in property taxes during the term of a PILOT agreement.

**Payment in Lieu of Taxes in Baltimore City**

Expanding Baltimore City’s payment in lieu of taxes (PILOT) program to include off-street parking facilities is one approach the City is using to help alleviate the downtown parking shortage, which was commonly viewed as one of the contributing factors in companies’ decisions to relocate to the suburbs where there is plentiful and free parking.

In 1999, the State of Maryland expanded the PILOT authority in Baltimore City to enable the City to offer PILOTs for economic development projects that achieve a clear and well-documented public purpose, including the construction of downtown parking facilities (Tax Property Article, Section 7, Subtitle 5). To qualify as an economic development project, the parking facility must be located in a downtown urban renewal area, as defined by city ordinances, and contain at least 250 parking spaces. In addition, the developer or owner of the facility must invest at least $2.5 million in private capital and must pay property taxes on the original value of the land and a minimum of 5% of the incremental property taxes that would otherwise be due absent the PILOT agreement.

Developers or owners of proposed parking facilities that meet the above criteria may negotiate a PILOT agreement with the Baltimore Development Corporation (BDC), the quasipublic agency charged with overseeing the economic development of the city. In negotiating the agreement, BDC conducts an economic analysis of the project that includes identification of funding sources, projected returns to the developer, and the projected benefits of the project, including number of jobs created and other tax revenues generated by the project. The PILOT agreement must be approved by the City Council and the Board of Estimates. Construction must commence within eighteen months of the PILOT, otherwise the agreement will no longer be valid. The term of the PILOT agreement must not exceed 25 years, and all property taxes must be paid each year after the expiration of the agreement.

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**EXHIBIT C**
Although private developers typically rely on conventional financing, they are increasingly looking to local jurisdictions and state governments to help gain access to long-term capital markets through bond financing, rather than relying on construction financing through private banking institutions. Through state and local governments, private developers can gain access to private activity bonds for the financing of parking structures.

- **Private Activity Bonds.** Private activity bonds are bonds issued by a government entity to provide financing for projects used by a private or non-governmental entity. Private activity bonds are generally backed by project-related revenues. With respect to bonds issued for the construction of parking facilities, the interest on the bonds is usually taxable since privately-owned parking facilities typically do not meet the requirements for tax-exempt status established by the Internal Revenue Code—that is, they do not keep private use and private payment below the specified 10% threshold. In some cases, such private activity bonds may be tax-exempt, namely when government entities issue the bonds to provide financial assistance for projects that advance specific public policies such as urban redevelopment. For example, many local jurisdictions provide Enterprise Zone Facility Bonds to businesses located in designated enterprise communities or empowerment zones, low-income areas in which special tax credit programs and incentives are targeted to stimulate economic development. Enterprise Zone Facility Bonds provide tax-exempt financing to enterprise zone businesses to finance, refinance, and reimburse costs of a wide variety of capital projects. Eligible Enterprise Zone Facility Bond projects include the construction of parking facilities for customers and employees. The State of Maryland offers several different tax exempt and taxable private activity bond financing programs. With respect to parking facilities, the Maryland Transportation Authority provides bond financing for the development of parking structures in priority funding areas.

**Publicly-Owned Parking Structures**

Publicly-owned parking structures are typically financed through the issuance of municipal bonds that are in turn repaid through a variety of sources including parking related revenues and tax revenues. The interest earned on these bonds is usually exempt from federal taxes, and may be exempt from state and local taxes as well. As a result of this tax exemption, municipal bonds carry relatively low interest rates. Therefore, the issuing entity benefits by paying lower interest rates and the investors benefit from tax-free interest income. With respect to the bonds issued for the financing of publicly-owned parking facilities, under the Tax Reform Act of 1986, 90% of the available parking spaces must be made available to the general public to be exempt from federal taxes. Bonds used to finance publicly-owned parking facilities that provide less than 90% of the spaces to the general public are subject to federal taxation.

Municipal bonds issued for the construction of parking facilities can be backed by either parking related revenues, including user fees and fines, lease or sale of development rights, parking taxes and development impact and in-lieu fees, or tax revenues, including ad valorem property taxes, special assessments, and tax increment financing. The public sector can rely on a variety of bonds, depending on which of these

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**Maryland Transportation Authority Smart Growth Parking Program**

In 2001, the Maryland General Assembly enacted legislation that authorizes the Maryland Transportation Authority to finance, construct, operate, maintain, and repair vehicle parking facilities in Priority Funding Areas. This legislation enables the Authority to issue revenue bonds to finance parking facilities. The bonds may be backed by a variety of sources including private and government grants and parking revenues. These revenues must be used to pay all operating and maintenance costs and debt service until the Authority bonds are retired. Authority participation is limited to the amount that can be covered by the revenue stream. Minimum debt coverage ratio to be attained is 1.25 times the debt service after operating costs. The Authority bonds are "stand-alone issues" whose cost is dependent on the financial feasibility of the project. The Authority cannot make a financial investment into the project. Project costs over the amount the Authority can finance through bonds must be covered by project partners. The Authority will retain an ownership interest in the facility for the term of the bonds, which may not exceed 30 years. The Authority's ownership interest will revert to the project partners with the retirement of the Authority bonds. This legislation requires the Authority to give priority to projects located within a transit-oriented development area.

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**EXHIBIT C**
repayment sources are used to back the bond—including general obligation bonds, special assessment bonds, revenue bonds, double-barreled obligations, and tax increment finance bonds. This section discusses the various types of municipal bond financing and the repayment methods.

- **Revenue Bonds.** Revenue bonds are one of the most commonly used forms of financing for parking facilities. Revenue bonds are bonds issued to finance revenue-generating uses, such as toll roads, bridges, airports, water and sewage treatment facilities, and hospitals. The principal and interest of revenue bonds are paid exclusively by project revenues such as tolls, charges, or rents paid by users of the facility. Therefore, revenue bonds are generally not backed by the credit or taxing power of the issuing entity. With respect to revenue bonds issued for parking facilities, the principal and interest is typically repaid from parking fees and other parking-related revenues such as parking taxes and leases, among others. Revenue bonds, particularly for parking facilities, are not risk-free—that is, a parking facility financed with a revenue bond might not generate the projected revenue. In light of revenue shortfalls, revenue bonds typically have a reserve fund from which to draw. The following is a description of some of the repayment sources for revenue bonds issued for the construction of parking facilities.

  - **Parking Fees and Fines.** As in privately-owned and operated parking facilities, parking fees are common means of generating revenue for public parking development and maintenance. Parking rates can be set to defray the cost of constructing and operating a parking facility, or could be set to cover only the operating costs. The parking rates should be carefully structured to achieve a balance between the costs to be covered and the impact the fee may have on the demand for the facility. Moreover, the public sector can generate revenue through enforcement and the issuance of parking citations—these fees are generally used for parking-related maintenance and improvements.

  - **Leases and/or Sell Space.** As in privately-owned and operated parking facilities, the public sector can help cover the costs of constructing public parking facilities by capturing ancillary sources of revenue such as the lease or sale of retail or office space incorporated into the parking structure or the sale of development rights, including air rights over the parking facility.

  - **Parking Taxes.** The public sector can generate revenue by levying parking taxes on privately-operated parking structures to help fund the construction of public parking facilities. Parking taxes are taxes levied on operators of off-street parking facilities. For example, as was cited earlier, in the City of Baltimore, the Parking Authority collects a parking tax equal to 11% of a parking facility’s gross transactions and a flat rate of $14 per month per monthly user.

  - **Development Impact and In-Lieu Fees.** The public sector can help finance centrally located, public parking facilities that offer shared parking opportunities through development impact fees or parking in-lieu fees. Development impact fees are fees paid by a developer as a condition of issuance of a building or zoning permit by a unit of government to fund public facilities, including parking structures, necessary to serve the new development. In-lieu fees are fees paid by a developer in exchange for reductions in minimum parking requirements. Parking impact fees, a specific type of development impact fee, are typically based on a flat fee per square foot of floor area and vary by land use. Therefore, parking impact fees are assessed regardless of how much parking is provided on site. On the other hand, parking in-lieu fees are based on the parking deficit generated for a specific development project. For example, the Town of Westport (Connecticut) Zoning Regulations allow for developers to pay fees-in-lieu of providing all or a portion of the off-street parking spaces required for projects located in a designated Historic Design District. In this example, the fee-in-lieu of parking is set at $2,000 per deficit parking space and must be paid in full by the applicant prior to the issuance of a zoning permit.

- **General Obligation Bonds.** Prior to the increasing popularity of revenue bonds, general obligation bonds were the primary way in which local jurisdictions financed public parking facilities. General obligation bonds are bonds secured by the full faith and credit of the issuing entity and backed by the issuer's taxing power. The principal and interest of general obligation bonds are typically repaid through an ad valorem property tax, a property tax levied across an entire jurisdiction to help fund
public improvements. General obligation bonds typically have the lowest possible interest rate or cost of borrowing since they have less risk than other type of bonds, particularly revenue bonds, as the debt-service is tied to the tax base rather than a revenue stream.

- **Special Assessment Bonds.** Like general obligations bonds, special assessment bonds are backed by a jurisdiction’s taxing authority; however, special assessment bonds are backed by proceeds derived from a special tax levied on specific taxpayers that directly benefit from the public improvement, as opposed to an ad valorem tax levied across the jurisdiction. Special assessments are commonly used for such public works projects as street paving, drainage, water and sewer systems, and parking facilities. Special assessment bonds place a major share of the burden of financing on those individuals receiving the greatest benefit from the improvement. Depending on the cost, a particular special assessment bond, the bond might be secured by the full faith and credit of the issuing entity.

### Special Taxing Districts in the State of Maryland

The Annotated Code of Maryland authorizes ten counties—Anne Arundel, Calvert, Charles, Frederick, Garrett, Howard, Montgomery, Prince George’s, Washington, and Wicomico—and all municipalities to create special taxing districts, issue tax-exempt bonds to finance infrastructure improvements in these designated districts, and levy ad valorem or special taxes to repay the issued bonds. The purpose of this authority is to provide financing, refinancing, or reimbursement for the cost of infrastructure improvements, including parking facilities. In order to implement this authority, a petition must be filed with the local jurisdiction by at least two-thirds of the property owners located within the district by number and by assessed valuation. Upon receipt of this petition and before issuing bonds, the governing body of the jurisdiction must designate by resolution an area or areas as a special taxing district, create by resolution a special fund into which the special taxes are to be deposited, and provide for the levy of an ad valorem or special tax on all real and personal property within the designated district at a rate designed to provide adequate tax revenues to pay the principal, interest, and redemption premium on the bonds and to replenish any reserve funds.

One example of the use of special taxing districts in Maryland is Montgomery County. In 1994, Montgomery County enacted the Development District Act, Chapter 14 of the Montgomery County Code, which authorized the County to provide financing, refinancing, or reimbursement for the cost of infrastructure improvements necessary for the development of land in areas of the County of high priority for new development or redevelopment by creating development districts in which special assessments, special taxes, or both may be levied. The Act also authorized the issuance of tax-exempt bonds or other obligations of the County payable from special assessments or special taxes collected, or tax increments created, in a development district, and specified the procedures to be followed in creating a development district, issuing bonds, and assessing and enforcing the collection of special assessments or special taxes in such a district. In accordance with Chapter 14 of the County Code, the County Council created two development districts in 1998—the Kingsview Village Center Development District and the West Germantown Development District. With respect to the West Germantown Development District, the District was created in an unincorporated area of Montgomery County, encompassing approximately 672 acres. Various transportation, public park, and sewer infrastructure improvements are intended to be constructed by developers and acquired by the County at completion. On April 11, 2002, Montgomery County issued approximately $16 million in special revenue bonds to fund the improvements. On May 23, 2002, the County Council approved a special tax of $0.224 per $100 of assessed value on all real property located in the District and a special benefit assessment on undeveloped residential property located in the District of $744.96 per equivalent dwelling unit. These rates were set at rates sufficient to pay the principal of, interest on, and any redemption premium on any special obligation bonds issued with respect to the District, and to replenish any related debt service reserve fund.
**Double-Barreled Bonds.** Government entities sometimes issue a hybrid of general obligation bonds, special assessment bonds, and revenue bonds to finance capital projects—such bonds are called double-barreled bonds, as they are backed by two or more repayment sources. Double-barreled bonds used to finance parking facilities are backed by both parking related revenues and tax revenues. Typically, the parking related revenues are the first repayment source; should these not be sufficient, tax revenues can be utilized. Double-barreled bonds are typically used when the projected revenue stream is uncertain.

**Tax Increment Finance Bonds.** Tax increment finance bonds are bonds backed by recapturing, for a time, all or a portion of the increase in property tax revenues generated by new development (both public and private) in a specified area. That is, the rationale behind tax increment financing is that an initial public investment in a defined area will increase property values in that area, which in turn will generate additional tax revenue that can then be used to pay off the loans issued to pay for the initial public investment. Tax increment financing is used by cities and redevelopment authorities to finance certain public redevelopment costs including acquiring properties, rehabilitating publicly-owned structures, demolishing buildings, relocating occupants, cleaning up contamination, constructing public improvements, and administrative costs. The construction of public parking facilities is typically an authorized use for tax increment financing since the construction of parking facilities is commonly viewed as an economic development generator that will spark commercial development and increase area property values. Tax increment financing enables municipalities to revitalize blighted communities without raising local property taxes or depleting general revenues.

With budgetary constraints and limited bonding authority, local jurisdictions are turning to alternative financing arrangements for projects traditionally funded through municipal bonds. Two such methods that are becoming increasingly popular are public-private partnerships and lease purchase financing.

**Public-Private Partnerships.** Government entities are increasingly looking to the private sector to assist in developing capital projects, including parking facilities. Public-private partnerships can leverage scarce funding resources by allowing private firms to own or operate a facility or service developed with public funds. More specifically, through public-private partnerships, a public entity and a private organization come together to plan, finance, and construct capital projects, in so doing, sharing responsibility for raising capital and project risks, and also sharing project rewards. By sharing these responsibilities, the public entity is able to reduce the direct costs of the project to the government, leverage private investment, and increase project viability. In public-private partnerships, public sector involvement is vital since it typically guarantees the tax-exempt status of bonds used to finance the project, thereby making what might otherwise be an infeasible project viable. An example of such a public-private partnership is the Hollywood and Highland project in Hollywood, California. This project is part of a redevelopment plan for a larger area and consists of a mixed-use redevelopment combining retail and entertainment uses, public spaces, and a hotel. The feasibility of this $300 million project hinged on the need for $80 million in public funds to finance a multi-story subterranean parking garage with 3,000 spaces to service the project and the surrounding area. In response, the City issued tax-exempt parking revenue bonds to generate the...

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**Tax Increment Financing in the State of Maryland**

The Tax Increment Financing Act of 1980 authorizes all counties and municipalities in the State of Maryland, except for Baltimore City, to establish tax increment finance districts and pledge property taxes on the increased assessed values in those districts toward payment of bonds used to finance development in the districts. According to the Act, tax increment financing may be used to finance certain public redevelopment costs including acquiring properties, rehabilitating publicly-owned structure, demolishing buildings, relocating occupants, and constructing public improvements including parking facilities. In 1994, State legislation provided Baltimore City with similar authority to utilize tax increment financing, but did not allow the City to use tax increment financing for parking facilities. In 2001, this legislation was amended to authorize the City to use tax increment financing for parking facilities that are either publicly or privately owned but serve a public purpose. The State legislation is enabling only, and counties and municipalities must implement the provisions of the Tax Increment Financing Act by local ordinance or resolution.
$80 million. The tax-exempt public financing of the structure made what would have been an otherwise infeasible parking structure, which would have stalled the overall redevelopment project, feasible. The bonds are to be repaid by parking revenues collected from parking lots and meters citywide.

Public-Private Partnerships: Joint Development

Joint development is a specific type of public-private partnership in which government entities market publicly-owned, transit-oriented properties to private sector developers with the objective of developing commercial, residential, or mixed-use development projects that ultimately have a direct impact on increasing transit ridership. Joint development allows public entities to sell excess land around transit stations and use the proceeds to defray the capital costs of transit projects. This excess land, in many cases, is underutilized surface parking lots that serve the transit station. Therefore, one of the key features of joint development projects is a parking structure that replaces the parking that was previously accommodated in the surface lots. Finding innovative ways to finance these parking structures is critical in making joint development projects feasible. One such funding source is federal grants such as Congestion Mitigation and Air Quality (CMAQ) funds. That is, through joint development, the involvement of the public entity enables the use of CMAQ funds, which would not be otherwise available to private developers. CMAQ funds are funds provided by the federal government to State DOTs and local governments to invest in projects that reduce transportation related emissions in nonattainment and maintenance areas for ozone, carbon monoxide, and small particulate matter. Joint development is typically an eligible activity for CMAQ funds since it aims to create transit-oriented, high-density, mixed-use development that results in increased transit ridership. Moreover, the 1998 reauthorization of the CMAQ program provides greater flexibility for public-private partnerships, specifically joint development projects, by allowing States to allocate CMAQ funds to private and non-governmental agencies. Federal transit capital funds are also eligible for use in TOD projects when the project is physically proximate to the transit facility and the project will contribute to transit ridership.

The Washington D.C. Metropolitan Area Transit Authority (WMATA) operates the second largest commuter rail system in North America. The Metrorail system extends 103 miles and includes 83 stations on five separate lines. The $10 billion system carries over a half a million people each weekday and is clearly a tremendous asset to the Washington Metropolitan region. WMATA has a very active joint development program to seek public and private sector partners to develop WMATA-owned real property at and around transit stations. The four main goals of the joint development program are: 1) to promote transit-oriented development; 2) to attract new riders to the transit system; 3) to create a source of revenue for the Authority to operate and maintain the transit system; and 4) to assist local jurisdictions to recapture a portion of their past contributions. WMATA’s participation in joint development projects typically includes either the sale or lease of excess WMATA-owned or controlled real property interests, including air rights, or the provision of direct physical connections, including pedestrian, vehicular, and visual connections, to WMATA facilities from adjoining private development. To date, WMATA has completed over 20 joint development projects.

- **Lease Purchase Financing.** A relatively new method of financing municipal parking structures is lease purchase financing. In a typical lease purchase agreement, a non-governmental party will construct or purchase a facility, as opposed to the local jurisdiction, and the local jurisdiction will make lease payments to the party. Lease purchase financing is typically structured as a series of one-year renewable obligations spread out over the life of an asset. Jurisdictions are turning to lease purchase financing as an alternative to the issuance of bonds, as it enables jurisdictions to finance capital projects, including public parking facilities, without incurring long-term debt obligations. The most commonly used form of lease purchase financing is Certificates of Participation (COP). Under COP arrangements, the private entity raises funds for the construction or purchase of the facility through the sale of COPs to multiple investors, who buy shares of the anticipated lease revenues rather than purchasing a bond secured by those revenues. The jurisdiction pays yearly lease
payments consisting of principal and interest to the certificate holders until the debt is repaid. The private entity also receives a portion of each lease payment as tax-exempt interest. A trustee, such as a bank or trust, typically prepares and executes the certificates, holds title to the leased asset, and receives the jurisdiction’s payments and remits them to the certificate holders. Once repayment is complete, the ownership of the asset is transferred to the jurisdiction. If the jurisdiction should default on the lease payments, the trustee is responsible for selling the assets and using the proceeds to reimburse the certificate holders. Although COPs can bear a higher interest rate than general obligation bonds and revenue bonds, lease purchase financing and COPs have become increasingly popular as they allow for financing without incurring long-term debt or depleting general revenues and do not require a public referendum.

**Challenges to Parking Financing**

As stated in the beginning part of this section, parking structures are costly to construct—in fact, in some cases smart growth projects are infeasible given the exorbitant costs of providing structured parking. Developers have typically financed parking structures through traditional construction financing and passed the costs of constructing parking onto tenants and buyers. However, to offset the high costs of constructing parking structures, developers are increasingly relying on the public sector to gain access to bond financing. At the same time, the public sector is also relying on bond financing to finance public parking structures. Given today’s budgetary constraints and limited bonding authority, there is therefore a large demand on what is increasingly becoming a scarce resource. Indeed, the public sector is finding it more and more difficult to finance parking structures through traditional general obligation bonds and, therefore, is seeking new ways to help finance parking structures. This section has provided an overview of traditional bond financing, such as general obligation bonds, and some of the more innovative bond financing mechanisms including special taxing districts and tax increment finance districts. In addition, this section has detailed other sources of revenue and incentives for the construction of parking structures. Through a combination of innovative bond financing, revenue sources, and incentives, parking structures that might otherwise be infeasible can be made viable and even preferable to surface parking lots. The final part of this section summarizes some of the actions both the public sector and developers can take to help make parking structures more cost-effective and viable.

**Possible Strategies**

**Public Sector**

- Reduce parking requirements for development projects that incorporate parking structures rather than parking lots
- Offer density bonuses to development projects that incorporate parking structures rather than parking lots
- Grant developers of parking structures access to long-term capital financing through tax-exempt, where applicable, and taxable bond financing
- Levy parking taxes on privately-owned parking facilities to help finance municipal parking structures
- Establish a development impact and/or in-lieu fee system to help finance municipal parking structures
- Assess parking fees on users of municipal parking facilities and differentiate those fees to benefit high priority users such as high occupancy vehicles and compact cars
- Enforce time limits on parking meters
- Incorporate retail and commercial uses into lower levels of municipal parking structures and sell or lease this space to raise revenue for the construction, operation, and maintenance of the parking facility
- Consider designating special taxing districts or tax increment finance districts to help finance parking structures
- Seek private sector partners to help develop municipal parking structures
- Explore the possibility of using lease purchase finance arrangements to finance municipal parking structures

**Developers**

- Assess parking fees on users of privately-owned parking facilities and differentiate those fees to benefit high priority users such as high occupancy vehicles and compact cars
- Incorporate retail and commercial uses into lower levels of privately-owned parking structures and sell or lease this space to raise revenue for the construction, operation, and maintenance of the parking facility
- Seek access to tax-exempt and taxable bond financing through local and state governments
- Seek public sector partner to help develop parking structures
CONCLUSION

Present development patterns all but necessitate the need for personal automobiles to move between places. The need for cars naturally generates the need for parking, yet accommodating parking needs can be one of the most challenging aspects of the development process. It is critical to provide enough parking without providing too much and integrating parking facilities into existing communities is often difficult. Vast expanses of surface parking have negative impacts on water quality, walkability, and the general aesthetic quality of the built environment. Multi-level parking garages in addition to being cost-prohibitive, often leave entire city blocks with little street level interest and activity. No one wants acres of pavement or dead gaps in the urban fabric, yet from the user's perspective parking needs to be convenient, safe, and accessible, and from the developer's perspective parking needs to be cost-effective.

This best practices study has detailed innovative approaches to parking—its management, design, and financing. The possible strategies listed at the end of each section give both the public and private sectors a range of options to consider when rethinking traditional ways of approaching parking. All of the answers are not found in these pages. Instead, this study should act as a springboard for conversations that will eventually lead to "win-win" parking scenarios for governments, for developers, and for communities.

EXHIBIT C
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EXHIBIT C


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## INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternative Pavers</td>
<td>22</td>
</tr>
<tr>
<td>Architectural Treatments</td>
<td>20</td>
</tr>
<tr>
<td>Areawide Parking Caps</td>
<td>5</td>
</tr>
<tr>
<td>Automated Parking Structures</td>
<td>22</td>
</tr>
<tr>
<td>Bicycle Facilities and Amenities</td>
<td>14, 25</td>
</tr>
<tr>
<td>Bundled Parking</td>
<td>29</td>
</tr>
<tr>
<td>Car Sharing</td>
<td>14</td>
</tr>
<tr>
<td>Cash Out</td>
<td>12</td>
</tr>
<tr>
<td>Curb Cuts</td>
<td>25</td>
</tr>
<tr>
<td>Density Bonus</td>
<td>30</td>
</tr>
<tr>
<td>Development Impact Fees</td>
<td>32</td>
</tr>
<tr>
<td>Double-Barreled Bonds</td>
<td>34</td>
</tr>
<tr>
<td>Fees-in-lieu</td>
<td>4, 32</td>
</tr>
<tr>
<td>General Obligation Bonds</td>
<td>32</td>
</tr>
<tr>
<td>Green Roofs</td>
<td>23</td>
</tr>
<tr>
<td>Joint Development</td>
<td>35</td>
</tr>
<tr>
<td>Landscaping</td>
<td>20</td>
</tr>
<tr>
<td>Lease Purchase Financing</td>
<td>35</td>
</tr>
<tr>
<td>Lighting</td>
<td>26</td>
</tr>
<tr>
<td>Low Impact Development</td>
<td>23</td>
</tr>
<tr>
<td>On-street Parking</td>
<td>21, 24</td>
</tr>
<tr>
<td><strong>Parking Design</strong></td>
<td>19</td>
</tr>
<tr>
<td>Parking Fees</td>
<td>29</td>
</tr>
<tr>
<td><strong>Parking Financing</strong></td>
<td>29</td>
</tr>
<tr>
<td>Parking Fines</td>
<td>32</td>
</tr>
<tr>
<td><strong>Parking Management</strong></td>
<td>2</td>
</tr>
<tr>
<td>Parking Management Districts</td>
<td>7</td>
</tr>
<tr>
<td>Parking Maximums</td>
<td>5</td>
</tr>
<tr>
<td>Parking Taxes</td>
<td>32</td>
</tr>
<tr>
<td>Payment in Lieu of Taxes</td>
<td>30</td>
</tr>
<tr>
<td>Pedestrian Corridors</td>
<td>25</td>
</tr>
<tr>
<td>Peripheral Parking</td>
<td>13</td>
</tr>
<tr>
<td>Preferential Parking</td>
<td>12</td>
</tr>
<tr>
<td>Pricing Strategies</td>
<td>15</td>
</tr>
<tr>
<td>Private Activity Bonds</td>
<td>31</td>
</tr>
<tr>
<td>Public-Private Partnerships</td>
<td>34</td>
</tr>
<tr>
<td>Reduced Minimum Parking Requirements</td>
<td>3</td>
</tr>
<tr>
<td>Reduced Stall Dimensions</td>
<td>21</td>
</tr>
<tr>
<td>Revenue Bonds</td>
<td>32</td>
</tr>
<tr>
<td>Screening</td>
<td>20</td>
</tr>
<tr>
<td>Shared Parking</td>
<td>6</td>
</tr>
<tr>
<td>Signage</td>
<td>25</td>
</tr>
<tr>
<td>Special Assessment Bonds</td>
<td>33</td>
</tr>
<tr>
<td>Stacked Parking</td>
<td>22</td>
</tr>
<tr>
<td>Standard Minimum Parking Requirements</td>
<td>2</td>
</tr>
<tr>
<td>Tandem Parking</td>
<td>22</td>
</tr>
<tr>
<td>Tax Increment Finance Bonds</td>
<td>34</td>
</tr>
</tbody>
</table>

**EXHIBIT C**
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional Neighborhood Design</td>
<td>Page 10</td>
</tr>
<tr>
<td>Transit Investments</td>
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<td>Transit Oriented Development</td>
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<td>Transportation Management Association</td>
<td>Page 12</td>
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<td>Unbundled Parking</td>
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<td>Valet Parking</td>
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AGENT AUTHORIZATION FORM

Date of Authorization: 1/30/19

I hereby authorize BARTON W. SMITH, ESQ. / SMITH HAWKS, PL be listed as authorized agent
representing OCEAN REEF CLUB, INC. for the application submission
of Comprehensive Plan Text Amendment Application & LDC Text Amendment Application
(List the Name and Type of applications for the authorization)

for the Property described as: (if in meters and bounds, attach legal description on separate sheet)

SEE ATTACHED

Lot Block Subdivision Key (Island)

SEE ATTACHED

Real Estate (RE) Number Alternate Key Number
201 OCEAN REEF DRIVE, KEY LARGO, FLORIDA 33037 106
Street Address (Street, City, State & Zip Code)

Approximate Mile Marker

Authorized Agent Contact Information:
138 SIMONTON STREET, KEY WEST, FLORIDA 33040
Mailing Address (Street, City, State and Zip Code)
(305) 296-7227 BART@SMITHHAWKS.COM

Work Phone Home Phone Cell Phone Email Address

This authorization becomes effective on the date this affidavit is notarized and shall remain in effect until terminated by the undersigned. This authorization acts as a durable power of attorney only for the purposes stated. The undersigned understands the risks and liabilities involved in the granting of this agency and accepts full responsibility for any and all of the actions of the agent named herein related to the processing of the services requested, application(s) and/or the acquisition of approvals/permits for the aforementioned applicant. The applicant(s) hereby indemnifies and holds harmless Monroe County, its officers, agents and employees for any damage to applicant caused by its agent or arising from this agency authorization.

Note: Agents must provide a notarized authorization from ALL current property owners.

Signature of Property Owner: [signature]

Printed Name of Property Owner: Vaughn Roberts

STATE OF Florida COUNTY OF Monroe

Sworn to and subscribed before me this 30 day of January, 2019,

by Vaughn Roberts (Print Name of Person Making Statement)

who is personally known to me OR produced

as identification.

LuAnn V. Lowen
Signature of Notary Public

Print, Type or Stamp Commissioned Name of Notary Public

My commission expires:

Notary Public State of Florida
LuAnn V Lowen
My Commission FF 997636
Expires 06/23/2020

Last Revised October 2016
AGENT AUTHORIZATION FORM

Date of Authorization: 3 / 19 / 2019

I hereby authorize BARTON W. SMITH, ESQ. / SMITH HAWKS, PL to be listed as authorized agent representing OCEAN REEF COMMUNITY ASSOCIATION, INC. for the application submission of Comprehensive Plan Text Amendment Application & LDC Text Amendment Application for the Property described as: (if in metes and bounds, attach legal description on separate sheet)

SEE ATTACHED

Lot Block Subdivision Key (Island)

SEE ATTACHED

Real Estate (RE) Number Alternate Key Number
201 OCEAN REEF DRIVE, KEY LARGO, FLORIDA 33037 106
Street Address (Street, City, State & Zip Code) Approximate Mile Marker

Authorized Agent Contact Information:
138 SIMONTON STREET, KEY WEST, FLORIDA 33040
Mailing Address (Street, City, State and Zip Code)
(305) 296-7227 BART@SMITHHAWKS.COM

Work Phone Home Phone Cell Phone Email Address

This authorization becomes effective on the date this affidavit is notarized and shall remain in effect until terminated by the undersigned. This authorization acts as a durable power of attorney only for the purposes stated. The undersigned understands the risks and liabilities involved in the granting of this agency and accepts full responsibility for any and all of the actions of the agent named herein related to the processing of the services requested, application(s) and/or the acquisition of approvals/permits for the aforementioned applicant. The applicant(s) hereby indemnifies and holds harmless Monroe County, its officers, agents and employees for any damage to applicant caused by its agent or arising from this agency authorization.

Note: Agents must provide a notarized authorization from ALL current property owners.

Signature of Property Owner: ________________________________

Printed Name of Property Owner: GREGORY TINDE, VICE PRESIDENT

STATE OF FLORIDA COUNTY OF MONROE

Sworn to and subscribed before me this 19th day of AUGUST, 2019.

by GREGORY TINDE
(Print Name of Person Making Statement)

(Type of ID Produced)

Signature of Notary Public

Print, Type or Stamp Commissioned Name of Notary Public

My commission expires:

Last Revised October 2016
# Detail by Entity Name

**Florida Not For Profit Corporation**

**OCEAN REEF COMMUNITY ASSOCIATION, INC.**

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<tr>
<td>35 OCEAN REEF DR, SUITE 220</td>
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<tr>
<td>KEY LARGO, FL 33037</td>
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Changed: 04/21/2003

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<tr>
<td>EISINGER BROWN LEWIS FRANKEL &amp; CHAET PA</td>
</tr>
<tr>
<td>ATTN: DENNIS J. EISINGER, ESQUIRE</td>
</tr>
<tr>
<td>4000 HOLLYWOOD BLVD., SUITE 265-S</td>
</tr>
<tr>
<td>HOLLYWOOD, FL 33021</td>
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Name Changed: 10/15/2012

Address Changed: 10/15/2012

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<tr>
<td><strong>Title VP</strong></td>
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**TINDLE, GREGORY**

24 DOCKSIDE LANE PMB#505

KEY LARGO, FL 33037

Title VP
OELTJEN, JEFF
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title TREASURER

CONNOLLY, KATARZYNA
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title S

JACKSON, KATHERINE
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title Director

Elenbaas, Nanette
24 Dockside Lane PMB #505
Key Largo, FL 33037
Title Director

Kent, Harlan
24 Dockside Lane PMB #505
Key Largo, FL 33037
Title Director

Stout, Henry
24 Dockside Lane, PMB 505
Key Largo, FL 33037
Title Director

Wilson, William, III
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

Lovett, Anne
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

List, Gary
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

WEISLEDER, BROOKE

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**Document Images**

- 04/30/2019 -- AMENDED ANNUAL REPORT [View image in PDF format]
- 02/15/2019 -- ANNUAL REPORT [View image in PDF format]
- 06/07/2018 -- AMENDED ANNUAL REPORT [View image in PDF format]
- 02/22/2018 -- AMENDED ANNUAL REPORT [View image in PDF format]
- 02/06/2018 -- ANNUAL REPORT [View image in PDF format]
- 01/24/2017 -- ANNUAL REPORT [View image in PDF format]
- 02/01/2016 -- ANNUAL REPORT [View image in PDF format]
- 02/19/2015 -- ANNUAL REPORT [View image in PDF format]
- 02/28/2014 -- ANNUAL REPORT [View image in PDF format]
- 03/21/2013 -- ANNUAL REPORT [View image in PDF format]
- 10/15/2012 -- REINSTATEMENT [View image in PDF format]
- 02/22/2011 -- ANNUAL REPORT [View image in PDF format]
- 02/24/2010 -- ANNUAL REPORT [View image in PDF format]
- 04/22/2009 -- ANNUAL REPORT [View image in PDF format]
- 04/28/2008 -- ANNUAL REPORT [View image in PDF format]
- 04/19/2007 -- ANNUAL REPORT [View image in PDF format]
- 04/20/2006 -- ANNUAL REPORT [View image in PDF format]
- 04/25/2005 -- ANNUAL REPORT [View image in PDF format]
- 04/28/2004 -- ANNUAL REPORT [View image in PDF format]
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- 03/15/2001 -- ANNUAL REPORT [View image in PDF format]
- 02/14/2000 -- ANNUAL REPORT [View image in PDF format]
- 03/12/1999 -- ANNUAL REPORT [View image in PDF format]
- 03/03/1998 -- ANNUAL REPORT [View image in PDF format]
- 04/07/1997 -- AMENDMENT [View image in PDF format]
- 03/25/1997 -- ANNUAL REPORT [View image in PDF format]
- 02/02/1996 -- ANNUAL REPORT [View image in PDF format]
End of Additional File 2019-142
MONROE COUNTY, FLORIDA
PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT

Comprehensive Plan (CP) Text Amendment Application

An application must be deemed complete and in compliance with the Monroe County Comprehensive Plan and Code by the staff prior to the item being scheduled for review.

Application Fee: $6,470.00 (plus $850 for the BOCC adoption hearing)
The base fee includes two internal staff meetings with applicants; one Development Review Committee meeting, one Planning Commission public hearing; and one Board of County Commission public hearing. If this minimum number of meetings/hearings is exceeded, additional fees shall be charged pursuant to Fee Schedule Resolution and paid prior to the private application proceeding through public hearings.

In addition to the application fee, the following fees also apply:
Advertising Costs: $245.00
Surrounding Property Owner Notification (SPON): $3.00 for each property owner required to be noticed
Transportation Study Review: $5,000.00 Deposit (any unused funds will be returned upon approval)
Advertising and Noticing fees for a community meeting: $245.00 plus $3.00/SPON

Date of Request: 7/23/2019

Applicant / Agent Authorized to Act for Property Owner: (Agents must provide notarized authorization from all property owners.)

Smith Hawks, PL
Applicant (Name of Person, Business or Organization)
138 Simonton Street, Key West, FL 33040
Mailing Address (Street, City, State and Zip Code)
(305) 296-7227
Work Phone
Home Phone
Cell Phone
Email Address

Barton W. Smith, Esq.
Name of Person Submitting this Application
Bart@SmithHawks.com & Chelsea@SmithHawks.com

Property Owner: (Business/Corp must include documents showing who has legal authority to sign.)

Ocean Reef Club, Inc. and Ocean Reef Community Association, Inc.
(Name/Entity)
201 Ocean Reef Drive, Key Largo, FL 33037
Mailing Address (Street, City, State and Zip Code)
Agent
Work Phone
Home Phone
Cell Phone
Email Address

Page 1 of 8
Goal(s), Objective(s) and/or Policy(s) of the Comprehensive Plan Affected:
See attached letter explaining the proposed amendment's consistency with the Comprehensive Plan.

Please describe the reason for the proposed text amendment (attach additional sheets if necessary):
See attached letter explaining the proposed amendment.

Pursuant Chapters 163 and 380, Florida Statutes, an amendment to the Comprehensive Plan must be consistent with Florida Statute, with the Monroe County Comprehensive Plan, and with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute. Please describe how the proposed text amendment is consistent with each of the following (attach additional sheets if necessary):

1) The proposed amendment is consistent with Part II of Chapter 163, Florida Statute. *(At a minimum, please review and address Sections 163.3177, 163.3178, 163.3180, and 163.3184, F.S.)* Specifically the amendment furthers:
See attached letter explaining the proposed amendment's consistency with Part II of Chapter 163, Florida Statute.
2) The proposed amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan:
   See attached letter explaining the proposed amendment's basis of how the proposed amendment implements and is consistent with the Goals, Objectives, and Policies of the Monroe County 2030 Comprehensive Plan.

3) The proposed amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute:
   See attached letter explaining the proposed amendment's consistency with the principles for guiding development for the Florida Keys Area, Section 380.0552(7), Florida Statute.

The Board of County Commissioners may consider an ordinance to transmit to the State Land Planning Agency an amendment if the change is based on one or more of the following factors. Please describe how one or more of the following factors shall be met (attach additional sheets if necessary):

1) Changed projections (e.g. regarding public service needs) from those on which the text was based
   See attached letter

2) Changed assumptions (e.g. regarding demographic trends):
   See attached letter
3) Data errors, including errors in mapping, vegetative types and natural features:
   See attached letter

4) New issues:
   See attached letter

5) Recognition of a need for additional detail or comprehensiveness:
   See attached letter

6) Data updates:
   See attached letter

In no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located or to any area in accordance with a Livable CommuniKeys master plan. Please describe how the text amendment would not result in an adverse community change (attach additional sheets if necessary):
   See attached letter

*   *   *   *   *   *   *   *   *
Applicants submitting an application for an amendment to the text of the Comprehensive Plan shall participate in a concept meeting with the Planning and Environmental Resources Department, as indicated in Section 102-158(d)(3), to discuss the proposed amendment.

**Scheduling.** A concept meeting shall be scheduled by department staff once the application is determined to be complete.

As part of this concept meeting, department staff will identify whether or not the proposed text amendment will have a county-wide impact. If the proposal is determined to have a county-wide impact, a public meeting with the Board of County Commissioners ("Impact Meeting") prior to the application proceeding to the DRC for review is required. The applicant shall coordinate with the Planning Director regarding the date and time of the Impact Meeting; however, all Impact Meetings shall be held in Marathon.

**Notice of Meeting.** The Impact Meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation.

**Noticing and Advertising Costs.** The applicant shall pay the cost of the public notice and advertising for the Impact Meeting and provide proof of proper notice to the Planning Director.

The Impact Meeting is not to be a public hearing (the BOCC will not vote on the proposal), but a public meeting during which the BOCC may offer their initial opinions and the public may have input on the proposed amendment.

**PROOF OF PROPER NOTICING ON THE IMPACT MEETING WILL BE REQUIRED.**

Applicants requesting a Comprehensive Plan Text Amendment shall provide for public participation through a community meeting.

**Scheduling.** The applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings are to be held on a weekday evening at least three (3) months prior to any of the public hearings.

**Notice of Meeting.** The community meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation, mailing of notice to surrounding property owners, and posting of the subject property.

**Noticing and Advertising Costs.** The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

The community meeting shall be facilitated by a representative from the Monroe County Planning & Environmental Resources Department and the applicant shall be present at the meeting.

**PROOF OF PROPER NOTICING ON THE COMMUNITY MEETING WILL BE REQUIRED.**

* * * * * * * *
All of the following must be submitted in order to have a complete application submittal:

(Please check as you attach each required item to the application)

☑ Completed application form (unaltered and unbound)
☑ Correct fee (check or money order payable to Monroe County Planning & Environmental Resources)
☑ Existing text of Comprehensive Plan Goal(s), Objective(s), and/or Policy(s) affected
☑ Proposed amendment(s) to text of Comprehensive Plan Goal(s), Objective(s), and/or Policy(s). Must be provided in strikethrough and underline format.
☐ If a site specific amendment is proposed:
  ☐ Proof of ownership (i.e., Warranty Deed)
  ☐ Ownership Disclosure Form
  ☐ Current Property Record Card(s) from the Monroe County Property Appraiser
  ☐ Location map
  ☐ Photograph(s) of site(s) from adjacent roadway(s)
  ☐ Signed and Sealed Boundary Survey(s), prepared by a Florida registered surveyor – eight (8) sets (at a minimum, survey should include elevations; location and dimensions of all existing structures, paved areas and utility structures; all bodies of water on the site and adjacent to the site; total acreage by land use district; total acreage by habitat; and total upland area
  ☐ Typed name and address mailing labels of all property owners within a 600 foot radius of the property(s) – (three sets). This list should be compiled from the current tax rolls of the Monroe County Property Appraiser. In the event that a condominium development is within the 600 foot radius, each unit owner must be included

If applicable, the following must be submitted in order to have a complete application submittal:

☐ Notarized Agent Authorization Letter (note: authorization is needed from all owner(s) of the subject property)
☐ Proof of Ownership & Ownership Disclosure Form (required if application affects specific and defined area)
☐ Sealed Boundary Survey, prepared by a Florida registered surveyor – eight (8) sets (required if application affects specific and defined area)
☐ Location map (required if application affects specific and defined area)
☐ Copy of current Future Land Use Map (required if application affects specific and defined area)
☐ Typed name and address mailing labels of all property owners within a 600 foot radius of the property(s) – (three sets). This list should be compiled from the current tax rolls of the Monroe County Property Appraiser. In the event that a condominium development is within the 600 foot radius, each unit owner must be included (required if application affects specific and defined area)
☐ 600ft Radius report, prepared by the Monroe County Property Appraiser’s Office (required if application affects specific and defined area)

☐ Traffic Study, prepared by a licensed traffic engineer (required if application affects specific and defined area)

☐ Transportation fee of $5,000 to cover the cost of experts hired by the Department to review the traffic study – any unused funds deposited will be returned upon approval (required if application affects specific and defined area)

If deemed necessary to complete a full review of the application, within reason, the Planning & Environmental Resources Department reserves the right to request additional information.

Additional fees may apply pursuant to the approved fee schedule.

* * * * * * * *

Has a previous application been submitted for this site(s) within the past two years? ☑ Yes ☐ No

Is there a pending code enforcement proceeding involving all or a portion of the parcel(s) proposed for development? ☐ Yes ☑ No Code Case file # __________________________ Describe the enforcement proceedings and if this application is being submitted to correct the violation: __________________________

________________________________________

________________________________________

________________________________________

________________________________________
The applicant/owner hereby acknowledges and agrees that any staff discussions or negotiations about conditions of approval are preliminary only, and are not final, nor are they the specific conditions or demands required to gain approval of the application, unless the conditions or demands are actually included in writing in the final development order or the final denial determination or order.

By signing this application, the owner of the subject property authorizes the Monroe County Planning & Environmental Resources staff to conduct all necessary site visits and inspections on the subject property.

I, the Applicant, certify that I am familiar with the information contained in this application, and that to the best of my knowledge such information is true, complete and accurate.

Signature of Applicant: ______________________  Date: ______________________

STATE OF Florida

COUNTY OF Monroe

Sworn to and subscribed before me this 22 day of July, 2019,
by Barton W. Smith __________________________________________, who is personally known to me OR
produced
(PRINT NAME OF PERSON MAKING STATEMENT)

______________________ as identification.

Signature of Notary Public ______________________

Print, Type or Stamp Commissioned Name of Notary Public
Chelsea Vanadia

Send complete application package to:

Monroe County Planning & Environmental Resources Department
Marathon Government Center
2798 Overseas Highway, Suite 400
Marathon, FL 33050
VIA FED EXPRESS
(Airbill Tracking No. 7758 0224 0148)

July 23, 2019

Ms. Cheryl Cioffari, Comprehensive Planning Manager
Monroe County Planning & Environmental Resources Department
2798 Overseas Highway, Suite 400
Marathon, Florida 33050

Re: Ocean Reef Club, Inc. and Ocean Reef Community Association, Inc.’s Proposed Comprehensive Plan Text Amendment to add Goal 112, Objective 112.1, and Policy 112.1.1

Dear Cheryl,

Please find enclosed the Ocean Reef Club, Inc. (“Ocean Reef Club”) and Ocean Reef Community Association, Inc. (“Master Association”) (collectively “Ocean Reef” and “Applicant”) Application for a proposed Comprehensive Plan Text Amendment (the “Amendment”) dated July 23, 2019 (“Application”), seeking to create a site-specific Goal, Objective, and Policy within the Monroe County Year 2030 Comprehensive Plan (the “Comp Plan”) that shall permit exemptions, reductions, and deviations from development standards and other provisions contained within the Comp Plan for the Ocean Reef site specific area, which consists of the entirety of the Ocean Reef master planned community.

I have also enclosed a copy package of the Application and this letter and request that you please date stamp both and return the copy package in the enclosed self-addressed FedEx envelope.

I. Text Amendment Background

a. Overview

The proposed Amendment seeks to amend the text of the Comp Plan, as provided in the below Section c. “The Proposed Amendments”, to add a Goal, Objective, and Policy for
the entirety of the Ocean Reef master planned community1. The Amendment language shall allow exemptions, reductions, and deviations from development standards and other provisions contained within the Comp Plan. This will allow Ocean Reef to self-govern such exempted items.

After discussions and comments to a Text Amendment to the Monroe County Land Development Code (LDC) submitted by Applicant ("LDC Amendment")2, it was suggested by Monroe County Planning Department staff that this Application be submitted, providing the exemptions requested in the LDC Amendment along with any additional exemptions that could not be granted under the land development regulations. This Application will aid in preventing any inconsistencies between the Comp Plan and the LDC upon approval and passage of the LDC Amendment.

b. Amendment Request

Ocean Reef is a gated community that is separate and distinct from the rest of Monroe County ("County"). The proposed Amendment seeks to encourage consistency between the County Comp Plan and the LDC through the addition of a new Goal, Objective, and Policy specific to Ocean Reef.

Additions are set forth below in Blue and deletions are set forth in Red.

c. The Proposed Amendments

GOAL 112

Monroe County shall recognize the unique nature of the Ocean Reef master planned community and provide exemptions and reductions in development standards for the Ocean Reef master planned community.

Objective 112.1

Monroe County shall exempt or minimize its development standards contained within its land development regulations that apply to the Ocean Reef master planned community which self-governs its internal land development in order to provide uniform development standards and architectural guidelines to protect the community character within Ocean Reef.

1 Applicant has previously submitted a Comp Plan Text Amendment Application File #2019-023 to amend Policy 101.5.31 so that Applicant may internally govern and exceed height restrictions.

2 Land Development Code Text Amendment Application File #2019-024.
Policy 112.1.1

Notwithstanding anything contained with the Monroe County Year 2030 Comprehensive Plan or Land Development Code, the following exemptions and deviations in the Monroe County Code are provided for Ocean Reef:

1. Notwithstanding anything contained in the Monroe County Year 2030 Comprehensive Plan, including but not limited to, Objective 101.9, Policy 101.9.1, Policy 101.9.4, Policy 105.1.4 or Land Development Code Section 102-57, nonconforming structures located within the Ocean Reef master planned community that are destroyed, substantially damaged or substantially improved may remain so long as the non-conforming structures comply with Federal Emergency Management Agency’s flood requirements and any other applicable federal or state standards.

2. Notwithstanding anything contained in the Monroe County Year 2030 Comprehensive Plan, including but not limited to, Objective 101.9, Policy 101.9.4, Policy 101.8.9, Policy 105.1.4, Ocean Reef is exempt from Section 102-58 of the Land Development Code titled Nonconforming Accessory Uses and Accessory Structures.

3. Notwithstanding anything contained in the Monroe County Year 2030 Comprehensive Plan, including but not limited to, Policy 1001.1.5 the Ocean Reef master planned community Ocean Reef is exempt from Section 102-186 and Chapter 131 of the Land Development Code. Variances for property within Ocean Reef, including but not limited to open space, shall be granted upon evidence submitted by the master association that a variance has been approved by the master association based on criteria established for granting a variance by the master association.

4. Notwithstanding anything contained in the Monroe County Year 2030 Comprehensive Plan, including but not limited to, Policy 1001.1.1, Objective 101.10, Policy 1001.1.2 and Policy 1001.1.5, the Ocean Reef master planned community is exempt from Section 102-187 and Chapter 131 of the Land Development Code. Variances for property within Ocean Reef, including but not limited to open space, shall be granted upon evidence submitted by the master association that a variance has been approved by the master association based on criteria established for granting a variance by the master association.

5. Notwithstanding anything contained in the Monroe County Year 2030 Comprehensive Plan, including but not limited to the below listed provisions, Ocean Reef is exempt from the Development Standards of Chapter 114 of the Land Development Code:
a. **Policy 1001.1.1**  
b. **Policy 301.1.1**  
c. **Policy 701.1.1**  
d. **Policy 801.1.1**  
e. **Policy 901.1.1**  
f. **Policy 1201.1.1**  
g. **Policy 101.10.3**  
h. **Policy 101.16.1**  
i. **Policy 202.3.1**  
j. **Policy 205.2.10**  
k. **Goal 211**  
l. **Objective 211.1**  
m. **Policy 212.2.4**  
n. **Policy 301.1.1**  
o. **Objective 301.2**  
p. **Policy 301.3.2**  
q. **Policy 301.6.1**  
r. **Policy 301.9.1**  
s. **Policy 401.1.1**  
t. **Policy 701.5.1**  
u. **Policy 1001.1.2**  
v. **Policy 1001.1.5**  
w. **Policy 301.1.2**  
x. **Objective 101.10**  
y. **Policy 1001.10.1**

6. **Notwithstanding anything contained in the Monroe County Year 2030 Comprehensive Plan, including but not limited to, Policy 212.2.4 or the Shoreline Setback of Section 118-12 of the Land Development Code, shoreline setbacks within the Ocean Reef master planned community shall comply with setbacks established by the Florida Department of Environmental Protection, South Florida Water Management District or Federal permits.**

II. **Reason for Proposed Text Amendment**

a. **Data and Analysis**

This Application shall adopt the data and analysis previously submitted with the LDC Amendment bearing Monroe County Planning Department File #2019-024.
III. Consistency with Applicable Law

a. The Proposed Amendment is consistent with Florida Statutes

There are no provisions of the Florida Statutes inconsistent with this proposed Amendment.

b. Consistency with the Monroe County Year 2030 Comprehensive Plan, the Florida Statutes, and Principles for Guiding Development

i. The Proposed Amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan. Specifically, the amendment furthers:

GOAL 101

Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors, and protect valuable natural resources. [%163.3177(1), F.S.]

Objective 101.1

Monroe County shall ensure that all development and redevelopment taking place within its boundaries does not result in a reduction of the level-of-service requirements established and adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive plan amendments include an analysis of the availability of facilities and services or demonstrate that the adopted levels of service can be reasonably met. [%163.3177 & 163.3180, F. S.]

Objective 101.8

Monroe County shall eliminate or reduce the frequency of uses which are inconsistent with the applicable provisions of the land development regulations, zoning districts, Future Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming uses are an important part of the community character and the County desires to maintain such character and protect these lawfully established, nonconforming uses and allow them to be repaired or replaced. [%163.3177 (6)a.2.e.]

Objective 101.9

Monroe County shall eliminate or reduce the frequency of structures which are inconsistent with the applicable provisions of the land development regulations, zoning districts, Future Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming structures are an important part of the community character and the County
desires to maintain such character and protect these lawfully established, nonconforming structures and allow them to be repaired or replaced. [§163.3177(6)(a)2.c., F.S.]

**Objective 101.16**

Monroe County shall maintain guidelines and criteria consistent with nationally recognized standards and tailored to local conditions which provide for safe and convenient on-site traffic flow, adequate pedestrian ways and sidewalks, and sufficient on-site parking for both motorized and non-motorized vehicles.

**Policy 101.16.1**

Monroe County shall maintain land development regulations which provide for safe and convenient on-site traffic flow, adequate pedestrian ways and sidewalks, and sufficient on-site parking for both motorized and non-motorized vehicles.

**GOAL 211**

Monroe County shall conserve and protect potable water resources and cooperate with regional efforts to ensure the continued availability of high quality potable water. [§163.3177(6)d.2.b., F.S.; §163.3177(6)d.2.c., F.S.]

**Objective 211.1**

Monroe County shall encourage the use of water conservation strategies, including, but not limited to cisterns, on-site stormwater collection systems used for irrigation and bioswales, and work cooperatively with FKAA and Miami-Dade County to encourage water conservation efforts and assure that land use planning and development controls are maintained which protects the recharge area of the Florida City Wellfield from potential sources of groundwater contamination and saltwater intrusion. (See Potable Water Objective 701.3 and related policies). [§163.3177(6)d.2.b., F.S.; §163.3177(6)d.2.c., F.S.]

**Objective 212.2**

Monroe County shall adopt minimum performance standards designed to reduce the stormwater runoff impacts, aesthetic impacts, and hydrologic impacts of shoreline development. [§163.3178(2)(g), F.S.]

**Policy 212.2.1**

Within one (1) year after the adoption of the 2030 Comprehensive Plan, Monroe County shall evaluate the minimum shoreline setbacks currently in use in Monroe County in coordination with DEO, FDEP and FWC. Setbacks shall be identified which will accomplish the following:

1. protect natural shoreline vegetation;
2. protect marine turtle nesting beaches;
3. protect water quality
4. protect structures from the effects of long-term sea level rise;
5. protect beaches and shorelines from erosion; and
6. allow redevelopment of existing waterfront commercial structures consistent with the existing community character and preserve overwater views.

Policy 212.2.4

Permitted uses and performance standards within the shoreline setback shall be as follows:

Except as provided herein, principal structures shall be set back as follows:

1. Along lawfully altered shorelines including manmade canals, channels, and basins, principal structures shall be set back at least twenty (20) feet as measured from the mean high water (MHW) line;

2. Along lawfully altered shorelines including manmade canals, channels, and basins, for parcels less than 4,000 square feet that are developed with a lawfully established principal use, the required setback may be reduced to a minimum of ten (10) feet provided that the structure is sited so as to protect community character and minimize environmental impacts by maintaining open space and protecting shoreline vegetation.

3. Along open water shorelines not adjacent to manmade canals, channels, or basins, and which have been altered by the legal placement of fill:

   a. Where a mangrove fringe of at least ten (10) feet in width occurs across the entire shoreline of the property, principal structures shall be set back at least thirty (30) feet as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further inland.
   b. Where no mangrove fringe exists, principal structures shall be set back at least thirty (30) feet from the mean high water (MHW) line, provided that native vegetation exists or is planted and maintained in a ten (10) foot width across the entire shoreline as approved by the County Biologist, and is placed under conservation easement; otherwise the setback shall be fifty (50) feet as measured from the mean high water (MHW) line.
   c. On infill lots surrounded by significant development where principal structures are set back less than fifty (50) feet from mean high water (MHW) or the landward extent of mangroves, the Director of Planning and Environmental Resources may evaluate the community character, the presence or absence of environmental features, and the setbacks on adjacent developed properties within two parcels on either side of proposed development, and may allow principal structures to be set back as far as practicable or in line with adjacent principal structures. In no event shall the setback be less than twenty (20) feet.
On shorelines where the existing pattern of setback is greater than thirty (30) feet, the greater setback shall apply.

4. Along unaltered and unlawfully altered shorelines, principal structures shall be set back fifty (50) feet as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further landward;

Accessory structures within the shoreline setback shall be designed to meet the following criteria:

1. Along altered shorelines, including manmade canals, channels, and basins:
   a. In no event shall the total, combined area of all structures occupy more than sixty (60) percent of the upland area of the shoreline setback;
   b. Accessory structures, including, pools and spas shall be set back a minimum of ten (10) feet, as measured from the mean high water (MHW) line;

2. Along open water shorelines which have been altered by the legal placement of fill, and where a mangrove fringe of at least ten (10) feet in width occurs across the entire shoreline of the property:
   a. In no event shall the total, combined area of all structures occupy more than thirty (30) percent of the upland area of the shoreline setback;
   b. Accessory structures other than docks and erosion control structures shall be set back a minimum of fifteen (15) feet, as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further landward;

3. Along unaltered shorelines:
   a. In no event shall the total, combined area of all structures occupy more than thirty (30) percent of the upland area of the shoreline setback;
   b. Accessory structures other than docks and erosion control structures shall be set back a minimum of twenty-five (25) feet, as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further landward;

4. Any proposed development within the shoreline setback shall include a site suitable stormwater management plan for the entire developed parcel which meets the requirements of the land development regulations;

5. All structures within the shoreline setback shall be located such that the open space ratios for the entire parcel and all scenic corridors and buffeyards are maintained;

6. Structures shall be located in existing cleared areas before encroaching into native vegetation. The remaining upland area of the shoreline setback shall be
maintained as native vegetation or landscaped areas that allow infiltration of stormwater runoff;

7. Side yard setbacks must be maintained for all structures in the shoreline setback except for docks, sea walls, fences, retaining walls, and boat shelters over existing boat ramps;

8. No enclosed structures, other than a dock box of five (5) feet in height or less, a screened gazebo, and a screen enclosure over a pool or spa, shall be allowed within the shoreline setback. Gazebos must be detached from any principal structure on the parcel. No decks or habitable spaces may be constructed on the roof of any gazebo in the shoreline setback;

9. Pools, spas, fish cleaning tables, and similar pollutant sources may not discharge directly into surface waters. Where no runoff control structures are present, berms and vegetation shall be used to control runoff. Native vegetation shall not be removed to install berms or runoff control structures;

10. All boat ramps shall be confined to existing scarified shoreline areas of manmade canals, channels, and basins with little or no native vegetation, and shall be located and designed so as not to create a nonconformity for other structures set back from the new mean high water (MHW) line created by the boat ramp; and

11. The roof and supporting members of a boat shelter constructed in compliance with Section 118-10 of the Land Development Code, as amended (hereby incorporated by reference), may extend two (2) feet into the shoreline setback around the perimeter of a boat basin or ramp. This area shall be subtracted from the total area allowed for all structures within the shoreline setback.

12. Shoreline structures shall be designed to protect tidal flushing and circulation patterns. Any project that may produce changes in circulation patterns shall be approved only after sufficient hydrographic information is available to allow an accurate evaluation of the possible impacts of the project. Previously existing manmade alterations shall be evaluated so as to determine whether more hydrological benefits will accrue through their removal as part of the project.

13. No development other than pile supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within fifty (50) feet of any portion of any beach berm complex which is known to serve as a nesting area for marine turtles:
a. The fifty (50) foot setback shall be measured from either the landward toe of the most landward beach berm or from fifty (50) feet landward of MHW, whichever is less. The maximum total setback will be one hundred (100) feet from MHW.
b. Structures designed to minimize adverse impacts on marine turtles shall have a minimum horizontal distance of four (4) feet between pilings or other upright members and a minimum clearance of two (2) feet above grade. The entire structure must be designed to allow crawling turtles to pass underneath it moving only in a forward direction. Stairs or ramps with less than the minimum two (2) feet clearance above grade are discouraged. If built, these portions of the structure shall be enclosed with vertical or horizontal barriers no more than two (2) inches apart, to prevent the entrapment of crawling turtles.
c. Beaches known to serve as nesting areas for marine turtles are those areas documented as such on the County's threatened and endangered species maps and any areas for which nesting or nesting attempts ("crawls") have been otherwise documented. Within mapped nesting areas, the Director of Planning and Environmental Resources may, in cooperation with FDEP, determine that specific segments of shoreline have been previously, lawfully altered to such a degree that suitable nesting habitat for marine turtles is no longer present. In such cases, the Director may recommend reasonable measures to restore the nesting habitat. If such measures are not feasible, the Director will waive the setback requirements of this paragraph. Restoration of suitable nesting habitat may be required for unlawfully altered beaches.

14. Special Approvals:

a. For structures serving commercial uses, public uses, or more than three dwelling units, the Planning Commission may approve deviations from the above standards as a major or minor conditional use. Such approval may include additional structures or uses provided that such approval is consistent with any permitted uses, densities, and intensities of the land use district, furthers the purposes of this section, is consistent with the general standards applicable to all uses, and the proposed structures are located in a disturbed area of an altered shoreline. Such additional uses are limited to waterfront dining areas, pedestrian walkways, public monuments or statues, informational kiosks, fuel or septic facilities, and water-dependent marina uses. Any such development shall make adequate provision for a water quality monitoring program for a period of five (5) years after the completion of the development.
b. For structures serving three or fewer dwelling units, the Director of Planning and Environmental Resources may approve designs that address unique circumstances such as odd shaped lots, even if such designs are
inconsistent with the above standards. Such approval may be granted only upon the Director's written concurrence with the applicant's written finding that the proposed design furthers the purpose of this section and the goals of the Monroe County Comprehensive Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances. No such special approval will be available for after- fact permits submitted to remedy a Code Enforcement violation.  
c. All structures lawfully existing within the shoreline setback along manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, may be rebuilt in the same footprint provided that there will be no adverse impacts on stormwater runoff or navigation. 
d. Docks or docking facilities lawfully existing along the shoreline of manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, may be expanded or extended beyond the size limitations contained in this section in order to reach the water depths specified for docking facilities in Policy 212.4.2. Any dock or docking facility so enlarged must comply with each and every other requirement of this Policy and Section 118-12 of the Land Development Code, as amended (hereby incorporated by reference). [§163.3178(2)(g), F.S.]

Policy 212.2.5

Stormwater management criteria applicable to the shoreline setbacks shall encourage Best Management Practices (BMPs) which utilize natural berms and vegetation to control runoff from waterfront property. Berms shall not be installed where shoreline vegetation is present. Where berms are used along artificial waterways, they shall be raised so that there is a gradual slope away from the canal edge. In any case, all stormwater management criteria shall conform to adopted level of service standards for water quality and quantity (See Drainage Element Objective 1001.1 and related policies).

GOAL 214

Monroe County shall provide the necessary services and infrastructure to support existing and new development proposed by the Future Land Use Element while limiting County public expenditures which result in the loss of or adverse impacts to environmental resources in the Coastal Zone. [§163.3178(2)(f), F.S.; §163.3178(2)(i)]

Objective 214.1

County public expenditures for infrastructure in the Coastal Zone shall be phased in accordance with a capital improvements schedule to maintain the adopted level of service (LOS) standards established in the Comprehensive Plan. [§163.3178(2)(f),F.S.; §163.3178(2)(i)]

Policy 214.1.1
Monroe County shall maintain level of service standards (LOS) for the following public facility types: roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and mass transit. The LOS standards are established in the following sections of the Comprehensive Plan:

1. The LOS for roads is established in Traffic Circulation Policy 301.1.1 and 301.1.2;
2. The LOS for potable water is established in Potable Water Policy 701.1.1;
3. The LOS for solid waste is established in Solid Waste Policy 801.1.1;
4. The LOS for sanitary sewer is established in Sanitary Sewer Policy 901.1.1;
5. The LOS for drainage is established in Drainage Policy 1001.1.1; and
6. The LOS for parks and recreation is established in Recreation and Open Space Policy 1201.1.1.

GOAL 301

To provide a safe, convenient, efficient, and environmentally-compatible motorized and nonmotorized transportation system for the movement of people and goods in Monroe County. [§163.3177(6)(b), F.S.]

Objective 301.1

Monroe County shall establish level of service (LOS) standards for all paved roads in Monroe County for the purpose of determining existing and future roadway needs. [§163.3177(6)(b), F.S.]

GOAL 801

Monroe County shall provide for the adequate collection, disposal and resource recovery of solid waste in an environmentally sound and economically feasible manner to meet the needs of present and future County residents [§163.3180(1)(b), F.S.], [§163.3177(6)(c), F.S.]

Objective 801.1

Monroe County shall ensure that solid waste collection service and disposal capacity is available to serve development at the adopted level of service standards. [§163.3180(1)(b), F.S.], [§163.3180(2), F.S.]

GOAL 901

Monroe County shall provide for the adequate, economically sound collection, treatment, and disposal of sewage which meets the needs of present and future residents while ensuring the protection of public health, and the maintenance and protection of ground, nearshore, and offshore water quality. [§163.3177(6)(c), F.S., §163.3180(2), F.S.; §381.0065, F.S.; §403.086, F.S.; Chapter 99-395, Laws of Florida]
Objective 901.3

Monroe County shall regulate land use and development to conserve potable water, and protect the functions of natural drainage features and groundwater from the impacts of sewer systems. [§163.3177(6)(c)2., F.S.]

GOAL 1001

Monroe County shall provide a stormwater management system which protects real and personal properties, public health and safety, and which promotes and protects groundwater and nearshore water quality [§163.3177(6)(c), F.S.]

Objective 1001.1

Monroe County shall ensure that at the time a certificate of occupancy or its functional equivalent is issued, adequate stormwater management facilities are available to support the development at the adopted level of service standards. [§163.3177(6)(c), F.S.]

GOAL 1302

Monroe County shall increase the participation of the citizens of the County and government related entities that operate within the County in the comprehensive planning and growth management process.

c. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes. The Proposed Amendment specifically furthers the following Principles (Bolded):

For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions.

a. Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

b. Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

c. Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

d. Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
e. Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.

f. Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.

g. Protecting the historical heritage of the Florida Keys.

h. Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;
2. Sewage collection, treatment, and disposal facilities;
3. Solid waste treatment, collection, and disposal facilities;
4. Key West Naval Air Station and other military facilities;
5. Transportation facilities;
6. Federal parks, wildlife refuges, and marine sanctuaries;
7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
8. City electric service and the Florida Keys Electric Co-op; and
9. Other utilities, as appropriate.

i. Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; and other water quality and water supply projects, including direct and indirect potable reuse.

j. Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(I) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

k. Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.

l. Making available adequate affordable housing for all sectors of the population of the Florida Keys.
m. Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.

n. Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is consistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

IV. Factors for Basis of Amendment

This application shall adopt the data and analysis previously submitted with the LDC Amendment bearing Monroe County Planning Department File #2019-024.

IV. Conclusion

Based on the foregoing, Ocean Reef requests consideration and adoption of the Amendment.

Thank you for your consideration and assistance, and please feel free to contact me with any questions.

Very truly yours,

Barton W. Smith

BWS/CCV
Enclosures
AGENT AUTHORIZATION FORM

Date of Authorization: 1/30/19

I hereby authorize BARTON W. SMITH, ESQ. / SMITH HAWKS, PL to be listed as authorized agent representing OCEAN REEF CLUB, INC. for the application submission of Comprehensive Plan Text Amendment Application & LDC Text Amendment Application for the Property described as: (If in notes and bonds, attach legal description on separate sheet)

SEE ATTACHED

Lot Block Subdivision Key (Island)

SEE ATTACHED

Real Estate (RE) Number

201 OCEAN REEF DRIVE, KEY LARGO, FLORIDA 33037

Alternate Key Number

106

Approximate Mile Marker

Authorized Agent Contact Information:

138 SIMONTON STREET, KEY WEST, FLORIDA 33040

Mailing Address (Street, City, State and Zip Code)

(305) 296-7227 BART@SMITHHAWKS.COM

Work Phone Home Phone Cell Phone Email Address

This authorization becomes effective on the date this affidavit is notarized and shall remain in effect until terminated by the undersigned. This authorization acts as a durable power of attorney only for the purposes stated. The undersigned understands the risks and liabilities involved in the granting of this agency and accepts full responsibility for any and all of the actions of the agent named herein related to the processing of the services requested, application(s) and/or the acquisition of approvals/permits for the aforementioned applicant. The applicant(s) hereby indemnifies and holds harmless Monroe County, its officers, agents and employees for any damage to applicant caused by its agent or arising from this agency authorization.

Note: Agents must provide a notarized authorization from ALL current property owners.

Signature of Property Owner:

Printed Name of Property Owner: Vaughn Roberts

STATE OF Florida COUNTY OF Monroe

Sworn to and subscribed before me this 30 day of January, 2019.
**Detail by Entity Name**

Florida Not For Profit Corporation  
OCEAN REEF CLUB, INC.

**Filing Information**

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**Principal Address**

35 OCEAN REEF DRIVE  
SUITE 200  
KEY LARGO, FL 33037

Changed: 01/10/2003

**Mailing Address**

35 OCEAN REEF DRIVE  
SUITE 200  
KEY LARGO, FL 33037

Changed: 07/15/2010

**Registered Agent Name & Address**

Boodle, Robert A
HOLMES, TERESA A
35 OCEAN REEF DRIVE
SUITE 200
KEY LARGO, FL 33037
Title: P

LEEMHUIS, MICHAEL G
35 OCEAN REEF DR STE 200 EO
KEY LARGO, FL 33037
Title: VP, Asst. Treasurer

FRANKLIN, RUFORD DII
35 OCEAN REEF DRIVE
SUITE 200
KEY LARGO, FL 33037
Title: SVP

Roberts, Vaughn
35 OCEAN REEF DRIVE, STE EO 200
KEY LARGO, FL 33037
Title: VP

Lyberger, John
35 OCEAN REEF DRIVE
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KEY LARGO, FL 33037
Title: SVP

Mells, Giovanni
35 OCEAN REEF DRIVE
SUITE 200
KEY LARGO, FL 33037
Title: SVP

[Signature]
Manzo, Robert  
35 Ocean Reef Drive  
Suite 200  
Key Largo, FL 33037

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January 24, 2006

Florida Department of State
Division of Corporations
Attn: Amendment Section
2661 Executive Center Circle
Clyton Building
Tallahassee, FL 32301

Dear Sirs:

Enclosed for filing please find the originally executed Second Amended and Restated Articles of Incorporation of Ocean Reef Club, Inc. and our check in the amount of $35.00.

Sincerely,

[Signature]

Kenneth A. Lubin
Vice President and General Counsel
SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF OCEAN REEF CLUB, INC. (FORMERLY KNOWN AS OCEAN REEF ACQUISITION CORP.)

(A Florida not-for-profit Corporation)

The undersigned, being the President of Ocean Reef Club, Inc. (the "Club"), does hereby certify that this Second Amended and Restated Articles of Incorporation of the Club was duly adopted by the Board of Directors of the Club at a meeting of the Board of Directors of the Club duly called and held on January 19, 2006, at which a quorum was present and acting throughout, and that the members of the Club are not entitled to vote on an amendment to the Articles of Incorporation of the Club. These Second Amended and Restated Articles of Incorporation of the Club supersede the original Articles of Incorporation of the Club and all amendments thereto and reinstatements thereof.

The Articles of Incorporation of the Club are hereby amended and restated to read in their entirety as follows:

ARTICLE I

Name

The name of the corporation shall be "Ocean Reef Club, Inc.", a Florida not-for-profit corporation (hereinafter referred to as the "Club"). Its principal office shall be at 35 Ocean Reef Drive, Suite 200, Key Largo, Florida 33037, or at such other place as may be designated, from time to time, by the Board of Directors.

ARTICLE II

Duration
and recreation of its members, their families and their guests. The Club is organized exclusively for social, pleasure, recreation and other nonprofitable purposes, provided that the Club shall be permitted to engage in such for-profit activities as may be permitted by law and by the Board of Directors from time to time including, but not limited to, the operation of inn and conference facilities. The Club shall be empowered to acquire, rent, lease, let, hold, own, buy, convey, mortgage, bond, sell or assign property, real, personal or mixed, and to borrow money, whether secured or unsecured, and to do and perform all such other acts and things as are allowed by the laws of the State of Florida with respect to not-for-profit corporations, as those laws now exist or as they may hereafter provide.

ARTICLE IV

Prohibition Against Distribution of Income

A dividend may not be paid, and any part of the income or profit of the Club may not be distributed, to its members, directors or officers. The Club may purchase the equity membership interest of any member, and the payment for such interest is not a distribution for purposes of this Article. The Club may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and, upon dissolution or final or partial liquidation, may make distributions to its members as permitted by the laws of the State of Florida, the By-laws and this Article. Any such payment, benefit, or distribution does not constitute a dividend or a distribution of income or profit for purposes of this Article.

Subject to the foregoing, the Club may issue certificates in any form evidencing membership in the Club.

ARTICLE V

Capital Stock

The Club shall have no capital stock and shall be composed of members rather than shareholders.
ARTICLE VII

Voting Rights

Members of the Club will have such voting rights as are provided in the By-laws of the Club.

ARTICLE VIII

Liability for Debts

Neither the members nor the members of the Board of Directors or officers of the Club shall be liable for the debts of the Club.

ARTICLE IX

Board of Directors

The Board of Directors shall consist of not less than three (3) and not more than fifteen (15) persons who shall be elected and appointed in accordance with the terms of the By-laws.

ARTICLE X

Incorporator

The name and address of the incorporator is as follows:

Ronald E. D'Anna, Esquire
Mattlin & McClosky
3355 Town Center Road, Suite 901
Boca Raton, Florida 33436
agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, to the fullest extent permitted by the laws of the State of Florida, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Club and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The Club shall indemnify and hold harmless any person who was or is a party to any proceeding by or in the right of the Club to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, committee member, employee or agent of the Club or is or was serving at the request of the Club as a director, officer, committee member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof, to the fullest extent permitted by the laws of the State of Florida. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Club except that no indemnification shall be made hereunder in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

To the extent that a director, officer, committee member, employee or agent of the Club has been successful on the merits or otherwise in defense of any proceeding referred to in either of the first two paragraphs of this Article XI, he or she shall be indemnified by the Club against expenses actually and reasonably incurred by him or her in connection therewith.

Any indemnification under the first two paragraphs of this Article XI, unless pursuant to a determination by a court, shall be made by the Club only as authorized in the specific case upon a determination that indemnification of the director, officer, committee member, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said first two paragraphs. Such determination shall be made:
1. selected by the Board of Directors prescribed in paragraph (a) or the committee
prescribed in paragraph (b); or

2. if a quorum of the directors cannot be obtained for paragraph (a) and the
committee cannot be designated under paragraph (b), selected by majority vote
of the full Board of Directors (in which directors who are parties may
participate); or

(d) by the equity members of the Club by a majority vote of a quorum consisting of equity
members who were not parties to such proceeding or, if no such quorum is obtainable,
by a majority vote of equity members who were not parties to such proceeding.

Expenses (including, but not limited to, attorneys' fees, court costs, and retention of
independent counsel, if reasonable) incurred by a director, officer, committee member,
employee or agent in defending a civil or criminal proceedings (including, but not limited to,
expenses incurred in connection with the investigation, defense, settlement or appeal or any
pending or threatened proceeding) shall, to the extent permitted by the laws of the State of
Florida, be paid by the Club in advance of the final disposition of such proceeding upon receipt
of an undertaking by or on behalf of such person to repay such amount if he or she is
ultimately found not to be entitled to indemnification by the Club pursuant to the laws of the
State of Florida. Repayment of such advances to the Club shall be made by the recipients of
such advances within ten days following recipient's receipt of the copy of the Order of a court
official determination that the recipient was not entitled to be indemnified by the Club.

The indemnification and advancement of expenses provided hereinabove are not
exclusive, and the Club may make any other or further indemnification or advancement of
expenses of any of its directors, officers, committee members, employees or agents under any
By-laws, agreement, vote of members or disinterested directors or otherwise, both as to action
in his or her official capacity and as to action in another capacity while holding such office, to
the fullest extent permitted by the laws of the State of Florida.

All payments to be made by the Club to any person pursuant to this Article XI shall be
made by the Club within ten days following delivery to the Club of a written request therefor
from such person.
is or was serving at the request of the Club as a director, officer, committee member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by him or her in such capacity or arising out of his or her status as such, whether or not the Club would have the power to indemnify such person against such liability under the laws of the State of Florida.

ARTICLE XII

Dissolution

In the event of dissolution or final liquidation of the Club, all of the property and assets of the Club, after payment of its debts, shall be distributed among its memberships as provided in the By-laws of the Club.

ARTICLE XIII

Transfer of Membership

A membership may be transferred only to the Club in accordance with the procedure set forth in the By-Laws. A member who has been expelled from the Club shall surrender his or her membership certificate to the Club in accordance with the procedure set forth in the By-laws.

ARTICLE XIV

Registered Office and Agent

The registered office of the Club and the registered agent of the Club at that address are the following:

Kenneth A. Lueban
35 Ocean Reef Drive, Suite 200
Key Largo, Florida 33037
(b) a majority of the votes cast by the equity members present in person or by proxy at any duly called and constituted annual or special meeting of the equity members of the Club at which a quorum of the equity members is present either in person or by proxy, provided that any amendment which alters the basic rights or privileges of any category of equity members shall also require a majority vote of all of the equity members in that category of equity membership, voting separately by category. The proposed amendments must be set forth in the notice of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of January, 2006.

[Signature]

Paul M. G. Asbury, President
AGENT AUTHORIZATION FORM

Date of Authorization: __/__/____

I hereby authorize BARTON W. SMITH, ESQ. / SMITH HAWKS, PL be listed as authorized agent

representing OCEAN REEF COMMUNITY ASSOCIATION, INC. for the application submission

of Comprehensive Plan Text Amendment Application & LDC Text Amendment Application

(List the Name and Type of applications for the authorization)

for the Property described as: (if in notes and bounds, attach legal description on separate sheet)

SEE ATTACHED

Lot # Block Subdivision Key (Island)

SEE ATTACHED

Real Estate (RE) Number

201 OCEAN REEF DRIVE, KEY LARGO, FLORIDA 33037

Alternate Key Number

106

Street Address (Street, City, State & Zip Code)

Mailing Address (Street, City, State and Zip Code)

(305) 296-7227 BART@SMITHHAWKS.COM

Authorized Agent Contact Information:

138 SIMONTON STREET, KEY WEST, FLORIDA 33040

Work Phone Home Phone Cell Phone Email Address

Alternate Phone

This authorization becomes effective on the date this affidavit is notarized and shall remain in effect until terminated by the undersigned. This authorization acts as a durable power of attorney only for the purposes stated. The undersigned understands the risks and liabilities involved in the granting of this agency and accepts full responsibility for any and all of the actions of the agent named herein related to the processing of the services requested, application(s) and/or the acquisition of approvals/permits for the aforementioned applicant. The applicant(s) hereby indemnifies and holds harmless Monroe County, its officers, agents and employees for any damage to applicant caused by its agent or arising from this agency authorization.

Note: Agents must provide a notarized authorization from ALL current property owners.

Signature of Property Owner: ____________________________

Printed Name of Property Owner: ________________________

STATE OF Florida COUNTY OF Monroe

Sworn to and subscribed before me this 31st day of January, 2018.
Detail by Entity Name
Florida Not For Profit Corporation
OCEAN REEF COMMUNITY ASSOCIATION, INC.

Filing Information
Document Number 713075
FEI/EIN Number 58-1747816
Date Filed 07/18/1967
State FL
Status ACTIVE
Last Event REINSTATEMENT
Event Date Filed 10/15/2012

Principle Address
35 OCEAN REEF DR, SUITE 220
KEY LARGO, FL 33037

Changed: 04/21/2003
Mailline Address
24 DOCKSIDE LANE
PMB 606
KEY LARGO, FL 33037

Changed: 02/14/2000
Registered Agent Name & Address
EISINGER BROWN LEWIS FRANKEL & CHAIET PA
ATTN: DENNIS J. EISINGER, ESQUIRE
4000 HOLLYWOOD BLVD., SUITE 265-S
HOLLYWOOD, FL 33021
OELTJEN, JEFF
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title VP

CONNOLLY, KATARZYNA
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title TREASURER

RITZ, DAVID C
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title P

JACKSON, KATHERINE
24 DOCKSIDE LANE PMB #505
KEY LARGO, FL 33037
Title S

Elnbeas, Nanette
24 Dockside Lane PMB #505
Key Largo, FL 33037
Title Director

Leenhuis, Michael
35 Ocean Reef Drive
Suite 200
Key Largo, FL 33037
Title Director
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

Wilson, William, III
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

Foster, Michael
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

List, Gary
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title Director

WEISLEDER, BROOKE
24 Dockside Lane PMB 505
Key Largo, FL 33037
Title VP

JAMES, TIM
24 DOCKSIDE LANE
PMB 505
KEY LARGO, FL 33037

Annual Reports
Report Year  Filed Date
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2018   02/22/2018
2018   06/07/2018
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Boating, Marine, Dock Rules
Building Regulations and Restrictions
Community Rules
By-Laws
Articles of Incorporation

September 28, 2017
by the ORCA Board on
Adopted and Approved

Boating, Marine, Dock Rules
Building Regulations and Restrictions
Community Rules
By-Laws
Articles of Incorporation

Association, Inc.
Ocean Reef Community

ORCA
Member Handbook - Revised January 2018

MEMBERSHIP

ARTICLE I

The Ocean Reef Complex, Inc. (the "Association") shall be organized and operated exclusively for the mutual benefit of its members as defined by the Ocean Reef Community Association, Inc. (the "Community") and their respective associates, and for no other purpose. The purposes of the Association shall be as follows:

1. To provide all declared covenants, rules, and restrictions of the Ocean Reef Community Association, Inc., as a Florida not-for-profit corporation.

ARTICLE II

PURPOSES OF ASSOCIATION

ARTICLE III

MEMBERSHIP

ARTICLE IV

GENERAL

Chapter 717, Florida Statutes

Ocean Reef Community Association, Inc.

Amended and Restated

Tenth Amended and Restated

This document was prepared to support the Ocean Reef Community Association, Inc. and the members appointed by the Board of Directors of the Ocean Reef Community Association, Inc. on December 20, 2017. The purpose of the Association is to provide all declared covenants, rules, and restrictions of the Ocean Reef Community Association, Inc., as a Florida not-for-profit corporation.
3.2. Any person or corporation may be required to register with the board of directors of the association in accordance with the procedures and requirements established by the association, provided that such registration is in accordance with the provisions of Article 7 of the Constitution and By-Laws of the association.

3.3. The board of directors of the association may require any person or corporation to cease any activity or conduct that is inconsistent with the purposes and objectives of the association.

3.4. The association may require any person or corporation to provide information or documentation related to the activities or operations of the association.

3.5. The association reserves the right to seek legal remedies, including but not limited to injunctions, to enforce the provisions of the Constitution and By-Laws of the association.

3.6. The association may require any person or corporation to comply with any reasonable request or directive issued by the board of directors of the association.

3.7. The association may require any person or corporation to cease any activity or conduct that is detrimental to the interests of the association.

3.8. The association may require any person or corporation to provide any information or documentation that the association deems necessary for the proper conduct of its affairs.

3.9. The association may require any person or corporation to comply with any reasonable request or directive issued by the board of directors of the association.

3.10. The association may require any person or corporation to cease any activity or conduct that is inconsistent with the purposes and objectives of the association.
37. Transfer of the Class A Membership. The transfer of the Class A Membership, all of whose properties are located within the Oceana Resort Community, shall be subject to the provisions of this Article L, Section 3.5.

3.5 Transfer of the Class A Membership. Any transfer of the Class A Membership shall be subject to the provisions of this Article L, Section 3.5.

The association reserves the right to approve or disapprove any transfer to the Class A Membership. No transfer of the Class A Membership shall be made without the written consent of the association, and the association shall have the right to approve or disapprove any transfer of the Class A Membership.

In the event the association does not receive the transfer of the Class A Membership within 30 days of the date of the last payment, the association reserves the right to terminate the membership and all rights and privileges thereof.

All transfers of the Class A Membership shall be subject to the approval of the association, and the association reserves the right to require evidence of qualifications and compliance with all association rules and regulations.

In the event of a transfer of the Class A Membership, the association shall have the right to require a full transfer of all rights and privileges thereof, and the association reserves the right to require evidence of qualifications and compliance with all association rules and regulations.

All transfers of the Class A Membership shall be subject to the approval of the association, and the association reserves the right to require evidence of qualifications and compliance with all association rules and regulations.

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All transfers of the Class A Membership shall be subject to the approval of the association, and the association reserves the right to require evidence of qualifications and compliance with all association rules and regulations.
OFFICERS AND DIRECTORS

The officers shall have perpetual existence.

ARTICLE VI

ARTICLE VII

suppression applies to any club or group operating in the domain of the lot.

The lot or any club or group operating in the domain of the lot.

VOTING

The Board of Directors shall have the power to vote on any matter presented for a vote of the association.
1. The Agreement Committee the entire agreement of the parties with

2. December 1, 2017, and October 30,

3. $370.00 of Club membership, $300.00 for 1 year, $600.00 for 2 years, and $900.00 for 3 years, is due on

4. December 1, 2017, and October 30,

5. The Club shall pay for the social member of the Club in accordance with the Club's policies and procedures.

6. Ocean Real Community Association
Ocean Real Community Association

The purpose of the Ocean Real Community Association is to provide a framework for the regulation of property and community activities. The Association shall be governed by a Board of Directors, which shall consist of at least four members, elected by the members of the Association. The Board of Directors shall have the power to make and enforce rules and regulations for the protection of the property and the improvement of the community.

In accordance with the Constitution, the Board of Directors shall have the power to adopt By-Laws, which shall be approved by a majority vote of the members present at any regular meeting of the Association.

The By-Laws shall be submitted to the members for approval at the annual meeting of the Association. All amendments to the By-Laws shall be approved by a two-thirds vote of the members present at any regular meeting of the Association.

The Board of Directors shall have the power to hire and fire officers, to execute all necessary agreements and contracts, and to employ such agents and trustees as may be necessary for the proper management of the property and the Association.

The Board of Directors shall also have the power to levy and collect assessments for the maintenance of the property and the Association, and to establish a reserve fund for the replacement of capital improvements.

The Board of Directors shall meet at least four times a year, at such times and places as they may designate. Special meetings may be called by the President or by a majority of the members of the Board. Notice of all meetings shall be given to all members at least ten days prior to the meeting.

The Association shall be governed by a Board of Directors, which shall consist of at least four members, elected by the members of the Association. The Board of Directors shall have the power to make and enforce rules and regulations for the protection of the property and the improvement of the community.
**Violation**

- **Possession of explosives/illegal firearms**
- **Absolute/violent behavior**
- **Barred Access**
- **Denied Access**
- **Failure to secure gate(s) at night**
- **Possession of drug paraphernalia**
- **Failure to post ORCA-approved plans**
- **Failure to provide foundation as-built within 2 weeks of completion**
- **Use of unapproved Rinker model**
- **Failure to post new address sign within 7 days of move in date**
- **Parking in handicapped space**
- **Dumper violation - no dumper**
- **Failure to maintain site clean and orderly**
- **Dumper violation - operating a dumper**
- **Failure to provide foundation as-built within 2 weeks of completion**
- **Dumper violation - approved dumper**
- **Failure to provide foundation as-built within 2 weeks of completion**
- **Failure to maintain site clean and orderly**
- **Failure to have lot landscaped and seeded after house is moved in**
- **Dumper violation - no dumper**
- **Failure to provide foundation as-built within 2 weeks of completion**
- **Dumper violation - approved dumper**
- **Failure to provide foundation as-built within 2 weeks of completion**
- **Dumper violation - operating a dumper**

**Penalties**

- **$50**
- **$75**
- **$100**
- **$150**
- **$200**
- **$250**
- **$300**
- **$500**
- **$750**
- **$1,000**
- **$1,500**
- **$2,000**
- **$3,000**
- **$5,000**
- **$10,000**

**Notification**

- **10 days notice**
- **20 days notice**
- **30 days notice**
- **60 days notice**

**Due Process**

- **Initial hearing**
- **Administrative hearing**
- **Court hearing**

**Enforcement**

- **Security guard**
- **Idaho Peace Officer**
- **Florida Peace Officer**
- **Public Safety Officer**
- **Mexico Peace Officer**

**Documents**

- **Notice of violation**
- **Notice of hearing**
- **Notice of appeal**
- **Notice of judgment**
- **Notice of lien**
- **Notice of foreclosure**
ARTICLE IX

ARTICLE X

ARTICLE XI

ARTICLE XII

ARTICLE XIII

ARTICLE XIV

ARTICLE XV

ARTICLE XVI

ARTICLE XVII

ARTICLE XVIII

ARTICLE XIX

ARTICLE XX

ARTICLE XXI

ARTICLE XXII

ARTICLE XXIII

ARTICLE XXIV

ARTICLE XXV

ARTICLE XXVI

ARTICLE XXVII

ARTICLE XXVIII

ARTICLE XXIX

ARTICLE XXX

ARTICLE XXXI

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ARTICLE XXXIII

ARTICLE XXXIV

ARTICLE XXXV

ARTICLE XXXVI

ARTICLE XXXVII

ARTICLE XXXVIII

ARTICLE XXXIX

ARTICLE XL

ARTICLE XLI

ARTICLE XLII

ARTICLE XLIII

ARTICLE XLIV

ARTICLE XLV

ARTICLE XLVI

ARTICLE XLVII

ARTICLE XLVIII

ARTICLE XLIX

ARTICLE L

ARTICLE LI

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ARTICLE LXIX

ARTICLE LXX

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ARTICLE LXXVI

ARTICLE LXXVII

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ARTICLE LXXIX

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ARTICLE LXXXI

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ARTICLE CIV

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ARTICLE CCCL

ARTICLE CCCLI

ARTICLE CCCLII

ARTICLE CCCLIII

ARTICLE CCCLIV

ARTICLE CCCLV
Member Handbook - Revised January 2018

Ocean Reef Community Association

The following paragraphs of the Ocean Reef Code of Ordinances are not included in this document:

1. A里的文章
2. 大海的美丽
3. 海洋生态系统
4. 海洋保护

此外，这些条款已被删除，以确保海洋保护协会的隐私和安全。
ARTICLE II

MEMBERSHIP

21. Members shall be two classes of Members in the Association and shall also be entitled to two Class A vote of each Class B vote of the Association of which a Member may be a Member of the Association. A Member shall hold only one vote in each Class of the Association at any time.

22. The Board of Directors may adopt such rules and regulations as it deems necessary to carry out the purposes of the Association.

23. The Board of Directors shall have the power to make, amend, and repeal such rules and regulations as it deems necessary to carry out the purposes of the Association.

24. The Board of Directors may delegate any of its powers to any Committee, or any other body, and may delegate any of its powers to any Committee, or any other body, as it shall deem necessary for the proper conduct of the affairs of the Association.

25. The Board of Directors may, at any time, fix the number of members of the Association, and the number of votes to be cast by each member, and the proportion of the votes to be cast by any class of members, and may make rules for the conduct of its meetings and for the conduct of its business and affairs.

26. The Board of Directors may, at any time, amend or repeal any rule or regulation of the Association, and may adopt any other rule or regulation as it may deem necessary for the proper conduct of the affairs of the Association.

27. The Board of Directors may, at any time, fix the number of members of any class of the Association, and the number of votes to be cast by each member of such class, by a majority vote of the members of the Association, or by any other body, and may make rules for the conduct of its meetings and for the conduct of its business and affairs.

28. The Board of Directors may, at any time, fix the number of members of any class of the Association, and the number of votes to be cast by each member of such class, by a majority vote of the members of the Association, or by any other body, and may make rules for the conduct of its meetings and for the conduct of its business and affairs.

29. The Board of Directors may, at any time, fix the number of members of any class of the Association, and the number of votes to be cast by each member of such class, by a majority vote of the members of the Association, or by any other body, and may make rules for the conduct of its meetings and for the conduct of its business and affairs.

30. The Board of Directors may, at any time, fix the number of members of any class of the Association, and the number of votes to be cast by each member of such class, by a majority vote of the members of the Association, or by any other body, and may make rules for the conduct of its meetings and for the conduct of its business and affairs.
Ocean Pearl Community Association

The Board of Directors, in accordance with the Articles of Incorporation and Bylaws of the Community Association, may declare by a two-thirds vote of the total number of Directors present and voting, whether or not a meeting is required to be held.

2.3 Transmission of Meetings. The Board of Directors may designate any person or persons to act as its agents for the transmission of meetings, and the Secretary shall transmit such meetings to the members and to the Board by mail, or by any other method that is reasonably practicable for the purpose.

2.4 Annual Meeting. The Annual Meeting of the Members shall be held on the first day of June each year, unless the Board determines, by a two-thirds vote of the total membership, that the Annual Meeting shall be held on a different date.

2.5 Quorum. A quorum for the transaction of business at any meeting of the Members or the Board shall consist of the presence of not less than a majority of the total membership, or the presence of not less than a majority of the total membership, whichever is the greater number.

2.6 Notice. Notice of any meeting of the Members or the Board shall be given in accordance with the provisions of the Bylaws of the Community Association.

2.7 Action Without Meeting. Any action required or permitted to be taken by the Members or the Board may be taken without a meeting, if the action is approved in writing by all Members or Directors, as the case may be.

2.8 Amendments. The Bylaws of the Community Association may be amended by a two-thirds vote of the total membership, or a two-thirds vote of the total membership, whichever is the greater number, of Members or Directors, as the case may be, present and voting at a meeting called for the purpose of amending these Bylaws.

2.9 Financial Reporting. The Board of Directors shall prepare an annual report for the Members, which shall include a statement of the financial condition of the Community Association as of the end of the fiscal year, and a report of the operations of the Community Association for the fiscal year.

2.10 Approval of Budget. The Board of Directors shall approve the budget of the Community Association, and the budget shall be submitted to the Members for ratification.

2.11 Application of Funds. The funds of the Community Association shall be applied solely for the purposes of the Community Association.

2.12Compliance with Law. The Community Association shall comply with all laws, rules, and regulations applicable to the Community Association.

2.13 Corporate Records. The Community Association shall keep proper books and records that will enable the Board of Directors to determine the members of the Community Association and to keep proper minutes of all meetings of the Members and the Board.

2.14 Membership. Membership in the Community Association shall be open to all persons who meet the qualifications for membership set forth in the Bylaws of the Community Association.

2.15 Termination of Membership. Members may withdraw from the Community Association by giving written notice to the Secretary of the Community Association.

2.16 Rights of Members. Members of the Community Association shall have the rights set forth in the Bylaws of the Community Association.

2.17 Suspension of Membership. The Board of Directors may, by a two-thirds vote of the total membership, suspend any member for violation of the Bylaws of the Community Association.

2.18 Dissolution of the Community Association. The Community Association may be dissolved by a two-thirds vote of the total membership, or a two-thirds vote of the total membership, whichever is the greater number, of Members or Directors, as the case may be, present and voting at a meeting called for the purpose of dissolving the Community Association.

Class B Members. Each person owning not more than Class B shares at any time shall be a Class B Member.
The Board of Directors of the Ocean Community Association ("OCA") has agreed to adopt the following plan of action:

1. To develop a comprehensive plan for the stewardship of the oceans, including the establishment of a global network of marine protected areas.

2. To engage with governments, civil society organizations, and the private sector to promote the implementation of the plan.

3. To monitor the progress of the plan and adjust it as necessary to ensure its effectiveness.

The OCA recognizes that the oceans are a precious resource that must be protected for the benefit of current and future generations. The plan outlined above is a first step towards realizing this goal.

Any questions or concerns regarding the plan should be directed to the OCA’s Secretariat.
3.2) Member(s) of the Board of Directors may be called by the President, the Secretary, or any Member in accordance with the bylaws of the Association.

3.3) Special Meetings: Special meetings of the Members may be called by the President.

ARTICLE III
MEMBERS

 efect of the time of the Court.
Board of Directors

4.1 Quorum of Directors. The Board of Directors shall be constituted into two classes, and the number of Directors shall be divided into the following:

ARTICLE IV

The Board of Directors shall consist of four (4) directors elected by the stockholders.

The Board shall hold a regular meeting at least once every three (3) months at the annual meeting of the Association.

The Board shall keep a record of the meetings of the Board and of its committees and shall keep a record of the minutes of the meetings of the Board kept in a book kept for that purpose.

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Board of Directors of any corporation and to engage in any other activities authorized by the Corporation’s articles of incorporation or bylaws.

4.3.4 Directors, present and voting in person or by proxy, may be appointed by the Board of Directors as Directors of any other corporation in which the Corporation may hold stock or similar rights.
Executive Committee

The Board of Directors may appoint an Executive Committee. The Executive Committee shall be composed of the officers of the Association and any other persons designated by the Board of Directors. The Executive Committee shall have the power to act for the Board of Directors in any matters in which the Board of Directors may authorize.
ARTICLE VII

The President shall be the Chief Operating Office of the Association and shall be elected by the Board of Directors. The President shall be responsible for the proper administration of the affairs of the Association and shall direct the work of the Association in such a manner as to secure the promotion of the purposes thereof. He shall be authorized to make rules and regulations for the government of the Association and shall have power to perform all acts which are necessary and proper for the proper administration of the affairs of the Association.

ARTICLE VIII

The Secretary shall keep a record of all meetings of the Board of Directors and shall keep the minutes of all meetings of the Board of Directors and shall be subject to all the restrictions upon the Board of Directors. If there shall be no Secretary, the President shall hold the office of Secretary. The Secretary shall also keep a record of all minutes of the meetings of the Board of Directors and shall keep a record of all minutes of the meetings of the Board of Directors. Any record of the meetings of the Board of Directors which shall be recorded by the Secretary shall be subject to all the restrictions upon the Board of Directors, and shall be subject to all the restrictions upon the Board of Directors.

ARTICLE IX

The Treasurer shall have charge of the funds of the Association and shall keep a record of all monies received and expended by the Association, and shall be subject to all the restrictions upon the Board of Directors.

ARTICLE X

The Officers of the Association shall be elected by the Board of Directors. The President, the Secretary, the Treasurer, and the Comptroller shall hold office for the term of three years, and shall hold office until their successors shall be elected and qualified.

ARTICLE XI

The Treasurer shall keep a record of all monies received and expended by the Association, and shall be subject to all the restrictions upon the Board of Directors.

ARTICLE XII

The Comptroller shall have charge of the funds of the Association and shall keep a record of all monies received and expended by the Association, and shall be subject to all the restrictions upon the Board of Directors.

ARTICLE XIII

The Comptroller shall have charge of the funds of the Association and shall keep a record of all monies received and expended by the Association, and shall be subject to all the restrictions upon the Board of Directors.
Member Handbook - Revised January 2018

Ocean Reef Community Association

65. A person who is not a member of the Association may, after proper official notice, enter the premises of the Association on which the house or lot of the non-member receives is located, at reasonably convenient hours and in a reasonable manner, for the purpose of conveying or receiving the non-member, removing the non-member, or inspecting the premises as directed by the Board of Directors in the specific case, upon receipt of proper authorization from the Board of Directors.

70. No person shall be allowed entry to the Association in a vehicle, unless the vehicle is of proper size and type and is not associated with any other vehicle, unless authorized by the Board of Directors.

75. The Board of Directors may, at any time, require any person to leave the premises of the Association if such person shall be causing any disturbance or otherwise behaving in a manner that is detrimental to the Association or its members.

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Ocean Reel Community Association

Rules

September 28, 2017

Ocean Reel Community Association, Inc.

AMENDMENTS AND CONFLICTS

ARTICLE II

In the event of two or more provisions of the Ocean Reel Community Association, Inc. Rules and Regulations are in conflict, the more recent or specific rule shall control in the event of a conflict.
Top is measurable for a small change at a public park.

Parks and recreation facilities where the conditions vary widely are required to use the existing areas.

The existing and help in designing your own environment is located in the

The Ocean Park Community is located at 310 Beach Street. To report any

Behaviors

Check with the facility on the dress regulations for the type of your planned

Clothing Code

Appropriates in Ocean Park, OCA Dress Code is enforced under the age of 12 years.

All members and guests are required to follow the Ocean Park

Children and Grandchildren

This process must be completed prior to the home occupation to remove

Home Occupational License

The license will be subject to inspection and may be revoked.

Questions of Property Owners and Club Members

No question of property owners or club members may be entertained.

Admission Policies

The appropriate type of regulation (see property regulations).

The Ocean Park Office of the President may issue temporary licenses to other Ocean Park members when they enter an area.

The Ocean Park Community Association
Ocean Reef Community Association, Inc.

Revised January 2010

2. 

2.1. Release of Water

A device that automatically releases the water within the symmetrical and
external valves or other devices that cause the water to be released
externally, or the proper release of water from the system, must be
adjustable to release water at a rate of not less than 0.8 gpm (3 lpm)
and not more than 1.2 gpm (5 lpm). The ratio of the release of water
from the system, must be adjustable to release water at a rate of not
less than 0.8 gpm (3 lpm) and not more than 1.2 gpm (5 lpm).

3. 

3.1. Water Flow Rate

The water flow rate must be adjustable to release water at a rate of
not less than 0.8 gpm (3 lpm) and not more than 1.2 gpm (5 lpm).

4. 

4.1. Water Level

The water level must be adjustable to release water at a rate of
not less than 0.8 gpm (3 lpm) and not more than 1.2 gpm (5 lpm).
Ocean Real Community Association

1. Occupancy Appointments

- Maintenance: The owner agrees to comply with all the provisions and regulations of the community. The maintenance and repair of common areas shall be the responsibility of the owner. Any such failure to perform maintenance and repair of the common area will result in the association assessing a fine to the owner. The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

2. Property Owner Agrees to Comply with All the Provisions and Regulations of the Community

- The property owner agrees to comply with all the provisions and regulations of the community. The maintenance and repair of common areas shall be the responsibility of the owner. Any such failure to perform maintenance and repair of the common area will result in the association assessing a fine to the owner. The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

3. Property leases

- All leased property must be maintained in good condition and must not be used for commercial purposes.

4. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

5. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

6. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

7. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

8. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

9. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.

10. Ocean Real Community Association

- The association reserves the right to enter the property to perform any maintenance or repairs required under these regulations.
THEREOF.

THE ORCA BOARD

Begin of operation of any equipment/function during response

Special Services

The schedule for response to requests for inspections and materials is as follows:

Noise Regulation

Any occupant of a noise source shall be required to comply with the noise regulations specified for their particular location.

Limit on Occupancy

For purposes of this regulation, the term "occupancy" shall be defined as the maximum number of persons permitted to be present at any one time in a dwelling unit, regardless of the number of dwelling units in the building or complex.

The total allowable number of persons occupying any portion of the building or complex shall be determined by the Board of Directors and shall be posted in a prominent location within the building or complex.

The Board of Directors reserves the right to refuse occupancy to any person deemed to be a threat to the safety or security of the building or complex.

The above regulations are to be enforced by the Board of Directors and their designees.

The failure to comply with any of these regulations may result in fines or other penalties as determined by the Board of Directors.

The Board of Directors reserves the right to amend, modify or revoke any of these regulations at any time.

The Board of Directors reserves the right to refuse occupancy to any person deemed to be a threat to the safety or security of the building or complex.
Vehicle Rules and Regulations

Ocean Reef Community Association, Inc.

Door

No solicitation of any kind are permitted, including circulation of literature, door to door sales, or the solicitation of any off premises."'

Solicitation

Solicitation is defined as the act of presenting a sign, poster, sign, or other suitable medium for the purpose of selling merchandise or other goods or services. Any person engaging in solicitation is subject to the penalties imposed by this section.

Selling

Selling is defined as the act of offering for sale or the act of buying merchandise or other goods or services. Any person engaging in selling is subject to the penalties imposed by this section.

Vehicles

Vehicles are defined as any vehicle, including but not limited to, motor vehicles, bicycles, and any other means of transportation. Any person engaging in the use or operation of a vehicle is subject to the penalties imposed by this section.

Penalties

Penalties for violation of any of the rules and regulations set forth in this section shall be as follows: for the first violation, a written warning; for the second violation, a $50 fine; for the third violation, a $100 fine; and for any subsequent violation, a $200 fine. In addition, any person engaging in any activity prohibited by this section shall be subject to the penalties imposed by this section.
Ocean Rear Community Association

2. Members of the Ocean Rear Community Association must be members of Ocean Rear Golf Club. Membership in the Ocean Rear Community Association does not confer membership in Ocean Rear Golf Club.

3. Ocean Rear Golf Club offers reciprocal privileges to Ocean Rear Community Association members.

4. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

5. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

6. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

7. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

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47. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

48. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

49. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.

50. Ocean Rear Golf Club offers reciprocal privileges to members of other golf clubs.
Member Handbook - Revised January 2018

Ocean Forest Community Association

2. ORPSD will write tickets for violations of the traffic laws. These violations may result

3. ORP will enforce license plates on all vehicles parked on the ocean front. License plates on the backs of vehicles will be enforced by the

Traffic Laws

1. All vehicles entering the boundary of Ocean Forest will be governed by the

Speed Limit

1. The speed limit for all types of vehicles is 25 miles per hour and violations may be

3. ORP will not be allowed

4. Any other type of vehicle which causes a disturbance or nuisance (i.e. dump truck)

Fences

2. All construction and service vehicles must be temporarily enclosed and covered by

3. All excavation and the operation of a crane or other lifting devices must be

Concessional Vehicles and Campers

1. No vehicle, including those possessed by non-members, may be parked

Penalties for Violations of These Regulations

1. Visit to the discovery by the Ocean Forest Police Department or Ocean Forest Fire Department is in progress

2. All vehicles which are determined to be operating on the service roads are subject to a fine of $25.00 for each violation.
Ocean Reef Community Association

Building Regulations and Restrictions

GENERAL MARINE POLICIES

1. All vessels operating within the Ocean Reef Community Association
   must be registered in the State of Florida and possess Federal
   registration numbers.

2. The use of diesel fuels is prohibited in the Ocean Reef Community
   Association.

3. All vessels must be operated in a responsible manner to protect the
   waters of the Ocean Reef Community.

4. No vessels shall be operated in a manner that endangers the
   safety or property of others.

5. No vessels shall operate in areas designated as
   "No Wake." (These areas shall be posted by the
   Ocean Reef Community Association.)

6. No vessels shall be permitted in areas where fishing or aquatic
   activities are prohibited by law.

7. No vessels shall operate near swim areas or other areas
   designated by the Ocean Reef Community Association as
   "No Wake." (These areas shall be posted by the
   Ocean Reef Community Association.)

8. No vessels shall be operated in a manner that endangers the
   safety or property of others.

9. No vessels shall operate in areas designated as "No Wake." (These areas shall be posted by the
   Ocean Reef Community Association.)

10. No vessels shall be operated in areas where fishing or aquatic
    activities are prohibited by law.

11. No vessels shall operate in areas where swimming or wading is
    prohibited by law.

12. No vessels shall be operated in areas where diving or snorkeling
    is prohibited by law.

13. No vessels shall be operated in areas where water sports are
    prohibited by law.

14. No vessels shall be operated in areas where boat races are
    prohibited by law.

15. No vessels shall be operated in areas where boat regattas are
    prohibited by law.

16. No vessels shall be operated in areas where boat shows are
    prohibited by law.

17. No vessels shall be operated in areas where boat parades are
    prohibited by law.

18. No vessels shall be operated in areas where boat displays are
    prohibited by law.

19. No vessels shall be operated in areas where boat exhibitions are
    prohibited by law.

20. No vessels shall be operated in areas where boat demonstrations are
    prohibited by law.

21. No vessels shall be operated in areas where boat tests are
    prohibited by law.

22. No vessels shall be operated in areas where boat repairs are
    prohibited by law.

23. No vessels shall be operated in areas where boat maintenance
    is prohibited by law.

24. No vessels shall be operated in areas where boat cleaning is
    prohibited by law.

25. No vessels shall be operated in areas where boat fueling is
    prohibited by law.

26. No vessels shall be operated in areas where boat repairs are
    prohibited by law.
OCEAN KEEP COMMUNITY ASSOCIATION

AIRPORT RULES AND REGULATIONS

Penalties for Violations of These Regulations.

OCA RESERVES THE RIGHT TO IMPOSE FINES AND

airport on the date that this policy change becomes effective by the Ocean Keep Club.

for members of the Ocean Keep Club and Brandon. In all existing uses of the

use of the airport to members of the Ocean Keep Club and those on the waiting list.

Safety Directives. The Airport is equipped and maintained with the Club to limit the

Copies of the Airport Rules and Regulations are available at the Ocean Keep Public

OCEAN KEEP COMMUNITY ASSOCIATION INC.

reasonable expectation of priority of any purpose otherwise prohibited by law.

for consecutive violation. Any member(s) of OCA, who(whom) is(are) found guilty of

aircraft in another's behalf. In all cases, in addition to any fine or the

property owned, leased or managed by the OCA. Member's names, addresses, plates and other

A copy may not be utilized in Ocean Keep such as business cards, marketing materials, etc.

46